

SENATE OF PAKISTAN

SENATE DEBATES

Sunday, May 8, 1994.

The Senate of Pakistan met in the Senate Hall (Parliament House) Islamabad, at thirty eight minutes after four in the evening with Mr. Chairman (Mr. Wasim Sajjad) in the Chair.

Recitation from the Holy Quran

بسم الله الرحمن الرحيم

من كفر بالله من بعد ايمانه الا من اكره وقلبه مطمئن بالايمان
ولكن من شرح بالكفر صدر افعليه غضب من الله ولهم عذاب
عظيم ۝ ذلك بانهم استحبوا الحيوۃ الدنيا على الآخرة وان الله لا
يهدي القوم الكافرين ۝ اولئك الذين طبع الله على قلوبهم
وسمعهم وابصارهم واولئك هم الغفلون ۝ لاجرم انهم في الآخرة

هم الخسرون ۝ (۱۶ : ۱۵ - ۱۰۶)

ترجمہ

جو کوئی اللہ پر ایمان لانے کے بعد منکر ہو جائے سوائے اس حالت میں کہ اس پر
زبردستی کی گئی اور اس کا قلب ایمان (کی لذتوں) سے مطمئن ہے (اس پر الزام نہیں بلکہ وہ جو
قصد و اختیار سے دل کھول کر کفر کرے تو ان لوگوں پر اللہ کا غضب ہے اور ان کے لئے بڑا

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عذاب ہے (دنیا میں اللہ کی ناراضگی اور آخرت میں اللہ کا عذاب ہے) یہ اس واسطے ہے کہ انہوں نے دنیا کی زندگی کو آخرت (کی زندگی) کے مقابلہ میں عزیز رکھا۔ اور (جب وہ خود ہی ایک مکمل کامیاب زندگی کے خواہاں نہیں تو) بے شک اللہ (دستور حق کے منکروں) کو ہدایت نہیں دیتا۔ یہی لوگ ہیں جن کے دلوں پر اور کانوں پر اور آنکھوں پر اللہ نے مہر لگا دی (قلب مردہ ہو گیا، سمع و بصر محروم ہدایت ہو گئے) اور یہی لوگ غفلت میں پڑے ہیں (منہد حیات سے بے خبر، انجام سے غافل ہیں) ظاہر ہے کہ یہی لوگ آخرت میں نقصان اٹھانے والے ہوں گے (رحمت سے محروم، عذاب دائمی میں مبتلا ہوں گے)۔

جناب ڈاکٹر محمد ریحان۔ پوائنٹ آف آرڈر جناب۔

جناب چیئرمین۔ جی ڈاکٹر صاحب۔

ڈاکٹر محمد ریحان۔ جناب والا! اس مہینے کی ۲ تاریخ کو نوشہرہ میں ایک بڑا تاریخی جلسہ منعقد ہوا تھا۔ جس میں ملک کی اعلیٰ شخصیات، سیاسی رہنماؤں اور پارلیمنٹ کے دیگر ممبر صاحبان (کے علاوہ) اس معزز ایوان کے جناب اجمل خٹک صاحب، اعظم خان ہوتی، اور کئی دوسرے صاحبان اور خصوصی طور پر ملک کے بلکہ ایشیاء کے ایک مانے ہوئے سیاستدان جناب عبدالولی خان بھی اس میں تشریف رکھتے تھے۔ جناب والا! آپ حکومت کی کم طرفی ملاحظہ کریں کہ انہوں نے اتنے بڑے جلسے کو ایک منٹ کے لئے بھی اپنے الیکٹرانک میڈیا پر کوریج نہیں دی بلکہ اس کے مقابلے میں جب 5 تاریخ کو حکومتی پارٹی کا جلسہ تھا جس میں اس جلسے کے مقابلے میں 1/50 لوگ بھی نہیں تھے اس کو تقریباً آٹھ دس منٹ کوریج دی گئی۔ جناب والا! کیا یہ تنگ نظری نہیں ہے؟ جناب والا یہ تعصب ملاحظہ فرمائیں۔ ----

جناب چیئرمین۔ دیکھیں آپ کوئی تحریک دیں، یہ پوائنٹ آف آرڈر تو نہیں بنتا۔

ڈاکٹر محمد ریحان۔ جناب مجھے صرف ایک دو منٹ دیں۔ صرف ریکارڈ پر لانا چاہتا ہوں۔ مجھے صرف یہ عرض کرنا ہے جناب والا! کہ یہ نہیں سمجھتے ہیں یہ صرف بندگانگ دعوے کرتے ہیں۔ جمہوریت کا نام لیتے ہیں (اور) میں نہیں سمجھتا ہوں کہ کس منہ سے جمہوریت کا نام لیتے ہیں۔ اور پھر یہ جو ڈھنڈورا پیٹتے ہیں رواداری کا، یہ کیا رواداری ہے حکومت کی اپوزیشن کے ساتھ؟ جناب والا! لیکن جو ہونے تھے ان کے بارے میں بھی میں آپ سے ذرا عرض کروں۔ جناب والا! اس کے لئے سارے لاؤ لشکر کو نوشہرہ اور کوہٹ پر مسلط کر دیا، ہمارے محترم

وزیر داخلہ صاحب کو اس Desert storms operation کا انچارج بنا دیا گیا تھا۔ جو اپنے ساتھ terrorists, hardened criminals لئے اور (ان کے) شناختی کارڈ، جناب والا! میرے پاس بطور ثبوت موجود ہیں، جلی شناختی کارڈ، اور کرائے کی خواتین کو وہاں پر لئے اور اس کے ساتھ جناب وہاں پر رشوتیں دی گئیں، آپ اندازہ کریں جناب آئے کی بوریاں لاکر رات کے وقت تقسیم کی گئیں۔ تاکہ دوسرے دن الیکشن کے لئے فائدہ حاصل کیا جائے۔

جناب چیئرمین۔ یہ تو لمبا معاملہ ہے۔

ڈاکٹر محمد ریحان۔ جناب والا! جو حق اور سچائی کا راستہ ہوتا ہے اس کو کوئی نہیں روک سکتا۔ جناب والا! ہمارے محترم نصیر اللہ بابر صاحب کا بیان "خبریں" اخبار کی مورخہ ۲ تاریخ کی اشاعت میں موجود ہے۔ انہوں نے کہا ہے کہ اگر نوجوہ کی سیٹ ہار گئے تو وہ مستعفی ہو جائیں گے۔ جناب والا! میں اس فلور پر ان سے گزارش کرتا ہوں کہ وہ ایک بڑے معزز خاندان سے تعلق رکھتے ہیں، بڑے اعلیٰ منصبوں پر رہے ہیں، ان کو اپنے وعدے کا پاس رکھنا چاہیئے۔ اپنے خاندان کے وقار کی خاطر اور اس ملک کی تاریخ کے لئے ان کو چاہیئے کہ وہ اس وعدے کو نبھاتے ہوئے اس فلور پر اپنے استعفیٰ کا اعلان کریں۔ جناب والا! یہ پانی پت کی جنگ کا جو میدان انہوں نے بنایا تھا تو وہ کل شام اپنے انجام کو پہنچ چکا ہے اور ملک کے عوام کو فتح حاصل ہوئی ہے اور موجودہ برسر اقتدار پارٹی کو لوگوں نے مسترد کر دیا ہے۔ ان کو چاہیئے کہ وہ مستعفی ہو جائیں۔ شکریہ!

Mr. Chairman: General Sahib, you want to say something.

Maj. Gen. (Retd) Naseerullah Khan Babar: That is a very colourful language that he has used. I had expected a much maturer approach from Dr. Rehan Sahib but the facts of the case belie the entire issue. First of all, about the publicity, I think, it has been a consistent policy of all the Governments, I mean, I admit that may be we are failing on our part also but, it cannot be said about the other Governments too that they have been very liberal with the Opposition. I do not, for a moment, (I mean), condone our own shortcomings. But where was the public meeting? It was in Shobra Chowk. Where were the people from? They were passers-by, their vehicles happened to

be driven on that road at that point of time.

(interruption)

Maj. Gen. (Retd.) Naseerullah Khan Baber: They were requested to hold it in the stadium where Mohtarma also held a public meeting, so that the people would know the numbers that would come to attend that meeting.

جناب چیئرمین۔ لیکن یہ relevant رہتا نہیں ہے۔ کون آتا ہے، کون ووٹ دیتا

ہے۔

میجر جنرل (ریٹائرڈ) نصیر اللہ خان بابر۔ جی؟

جناب چیئرمین۔ یعنی ووٹ دینے والے یا ملے والے میں بڑا فرق ہوتا ہے۔

میجر جنرل (ریٹائرڈ) نصیر اللہ خان بابر۔ وہ جو بھی ہوتا ہے لیکن یہ تو show of

strength کے لئے آئے تھے۔ یہ خودی کہہ رہے ہیں کہ ہمارا one-fifth تھا۔ اس لئے میں کہہ رہا ہوں کہ ہم نے تو سینیٹیم میں جلسہ کیا تاکہ عوام اور دنیا پر ظاہر ہو، عیاں ہو کہ لوگ کہاں آتے ہیں۔ انہوں نے شوبرا چوک میں کیا۔۔۔۔ ان کو کہا بھی گیا کہ شوبرا چوک پبلک روڈ ہے۔۔۔۔۔ قطع کلامی۔ مداخلت۔۔۔۔۔

جناب چیئرمین۔ ان کی بات سن لیتے ہیں پھر آپ کی بات سن لیں گے۔ آپ ان

کی بات سن لیں پھر آپ کی بات سن لیتے ہیں۔ (مداخلت) جی جناب جنرل صاحب۔

میجر جنرل (ریٹائرڈ) نصیر اللہ خان بابر۔ میں بزرگ صاحب سے پوچھتا ہوں کہ

ماگی چوک main G.T.Road پر ہے یا شوبرا چوک G.T.Road پر ہے؟۔ شوبرا چوک G.T.

Road پر ہے۔ ٹریفک اس پر چلتی ہے۔ وہاں پر ٹریفک کو رکوا دیا گیا تاکہ آپ کے crowd

بنیں۔ جہاں تک میرے مستغنی ہونے کا سوال ہے، ٹھیک ہے میں نے یہ بیان ضرور دیا تھا

لیکن میرا خیال تھا کہ وہاں پاسداری کے ساتھ صحیح انتخابات ہوں گے۔ یہ حلقہ" کہیں یا اسفند یار ولی

کہیں کہ پانچ گاڑیاں fully armed to the teeth, I was only there without any weapon in

my car مجھے کئی دفعہ کراس کیا نوشہرہ میں الیکشن کے دن۔ وہ حلقہ" کہیں کہ ان کے پاس

ہتھیار وغیرہ تھے یا نہیں؟ یہ کوئی فری الیکشن تھے فری الیکشن کوئی نہیں تھا۔ وہاں انہوں نے

terrorize کیا۔ آپ یہ دیکھیں کہ عموماً "کنٹونمنٹ" میں کیا کاسٹنگ ہوتی ہے؟ کتنی جیت پیلیڈ پارٹی کی وہاں ہر ایکشن میں ہوتی ہے۔ آج کی بات نہیں کر رہا، میں ۱۹۷۰ سے بات کر رہا ہوں اور ان سے پوچھ رہا ہوں کہ نوشہرہ میں کون ہمیشہ جیتتا رہا ہے اور کس اکثریت سے جیتتا رہا ہے اور کل کیا ہوا؟ کل وہی ہوا جو ہونا تھا کیونکہ ہتھیار لے کر آگئے تھے، اور شہر والے لوگ ہتھیار کی موجودگی میں نکلتے نہیں ہیں۔ اس لئے اے این پی کو ۶۸ ووٹ زیادہ ملے۔ میں یہ بالکل مانتا ہوں کہ میں نے یہ کہا تھا لیکن ایسے ایکشن کے بارے میں کہا تھا جس طرح اکتوبر کے ایکشن ہونے تھے، وہ fair and free تھے۔ اگر اس طرح کے ایکشن ہوتے تو میں ابھی بھی اس پر قائم ہوں۔ آپ free ایکشن کرائیں، پھر آپ نوشہرہ کی constituency میں جیتیں، پھر میں ضرور مستعفی ہو جاؤں گا۔ لیکن آپ نے جو terrorism کل کیا اور جو آپ نے ہتھیاروں کی وہاں ناٹش کی۔ اس کی وجہ سے کوئی بھی باہر نہیں نکل سکتا تھا۔

جناب چیئرمین۔ جی جناب خٹک صاحب۔

(مداخلت)

جناب چیئرمین۔ Let him complete his statement پھر خٹک صاحب کو موقع دیں

جی جناب جنرل صاحب۔

میر جنرل (ریٹائرڈ) نصیر اللہ خان باہر۔ ان کو تو صبر ہے ہی نہیں افغانستان سے بھی پاکستان کے خلاف تقریریں کرتے تھے پھر وہاں سے ہم بھی بھیجے۔ ابھی میں آدمی لے آتا ہوں، وہ آکر اس ہاؤس میں حلقہ بیان دیں گے کہ انہوں نے کیا تحفے ان کے پاس بھیجے تھے۔ لیکن انہوں نے بھی یہی کہا کہ ہم اس کے قائل نہیں ہو سکتے کہ ہم اپنے ہی بچوں کو تباہ کریں اور یہ بھی ان سے پوچھیں کہ یہ کس طریقے سے افغانستان گئے تھے۔

جناب چیئرمین۔ جی افغانستان کو بھجوا دیں۔ اس مسئلے پر بات شروع ہوتی ہے، اس پر

جو کہنا ہے وہ کہہ لیں تاکہ۔۔۔۔۔

میر جنرل (ریٹائرڈ) نصیر اللہ خان باہر - I withdraw my words

ٹھیک ہے جی، لیکن کل نوشہرہ کی بات ہو رہی تھی ان کو یہی قائل کرنے کی بات کر رہا ہوں کہ ان کے ایم این اے وہاں رہے ہیں حلقہ یہاں بیان دیں اور ایم پی اے جو الیکٹ ہوا ہے کہ پانچ گاڑیاں loaded to the teeth with people sitting on top with Kalashnikovs وغیرہ

یہ نوضرہ میں پھرتے رہے ہیں یا نہیں؟ we crossed each other ان سے یہ پوچھیں کہ میرے ساتھ گاڑی میں کوئی گن مین بھی تھا؟ کوئی گن تھی؟ کوئی ہتھیار تھا؟ نہیں۔ کیونکہ ہم جمہوریت پر یقین رکھتے ہیں۔ اس لئے جب رات کو ان کی فتح ہوئی وزیراعظم اور صدر مملکت دونوں نے (وزیراعظم نے جو کہ پارٹی کی چیئر مین بھی ہیں) ان کو مبارکباد دی

because we believe in that. She was the first person to congratulate these people on their victory. Because it was victory for the democratic forces. This is what we want in this country's democratic polity. But not the way that they have been running in and particularly in this last election in Nowshera, I am ashamed of it. Thoroughly, I am ashamed of that election, the way they conducted yesterday in Nowshera.

جناب چیئر مین۔ Thank you, جی جناب خٹک صاحب۔

جناب محمد اجمل خان خٹک۔ جناب چیئر مین صاحب! میں کل کی بات نہیں کر رہا، آج اس ہاؤس کے سامنے معزز وزیر داخلہ نے جو کچھ کہا اس پر اگر یہ قائم رہیں تو میں کہوں گا کہ آپ صادق ہیں۔ آپ نے کہا کہ کوئی حلفا کہنے کہ کل کیا ہوا ہے؟ اس جگہ کا انچارج میں تھا جہاں پر پانچ ویگن اور لاریاں خواتین کی بھری ہوئی لائی گئیں اور میں نے ان کو حفاظت میں رکھا۔ آپ نے کہا کہ کوئی حلفا کہے تو میں استعفیٰ دینے کے لئے تیار ہوں۔ میں حلفا کہتا ہوں کہ وہ پانچ کی پانچ بسوں میں صرف ایک خاتون کے علاوہ سب کرائے کی خواتین تھیں۔ انہوں نے اپنا نام نہیں بتایا، اپنے باپ کا نام نہیں بتایا، اپنا پتہ نہیں بتایا۔ ہم نے ان کی عزت کی، لاج رکھی۔ اور وہ سب کے سب ان کے خاندان اور ان کے گھر سے ہمارے ساتھی سمجھا کرتے ہوئے وہاں لے آئے۔ ان کا پورا گاؤں نکلا انہوں نے کہا کہ ہماری بے عزتی ہوئی۔ کس نے کی انہوں نے کی کیونکہ ہمارے ایک معزز اور تعلیم یافتہ گاؤں ہے اس میں اس قسم کے غیر جمہوری، غیر اخلاقی، غیر آئینی اور غیر شریعتی کام ہو رہے ہیں۔ اس پر پورا گاؤں نکل آیا۔ میں حلفا کہتا ہوں کہ نہ وہ خواتین وہاں کی تھیں، اور نہ وہاں وہ خود آئی تھیں اور وزیر داخلہ صاحب حلفا کہیں کہ مردان سے مسلح راکٹ لانچروں سمیت، اس پورے شہر میں لوگ گھومتے نہیں رہے اور ہم پر حملہ کرنے کی دھمکیاں نہیں دیتے رہے؟ اگر آپ یہاں حلف اٹھالیں اور اخبارات میں آ جائے تو میرے لئے یہی کافی ہے کہ کل لوگوں نے جو کچھ دیکھا، وہی کافی ہے۔ جیسا کہ ڈاکٹر

محمد رحمان نے پریس کے بارے میں کہا ، ہمیں یقین نہیں ہے کہ پریس یا وہ ٹی وی وہ کچھ دے گا جو کچھ وہاں ہوا ہے ۔ لیکن کم از کم وزیر داخلہ اتنا کہیں کہ کل مردان سے راکٹ لانچروں کے ساتھ جو گاڑیاں آئی تھیں وہ پیپلز پارٹی والوں کی نہیں تھیں ؛ یہ حلف " کہہ دیں ، میرا حلف بھی آ جانے ان کا حلف بھی آ جانے تاکہ ضلع نوشہرہ کے عوام دیکھیں کہ جھوٹا کون ہے اور سچا کون ہے ۔ کل جو کچھ ہوا وہ ایک ایسا واقعہ ہے کہ ہم نے اس سے پہلے بہت سے جو واقعات دیکھے ہیں ، لیکن ان میں اور اس میں کافی فرق تھا ۔

جناب والا ! مجھے ایک بات اور کرنی ہے وہ یہ ہے کہ جب میں آ رہا تھا تو میں نے اخبارات میں پڑھا کہ ایم کیو ایم کے اشتیاق اصرار صاحب وغیرہ ، ایوان میں حاضر ہوں گے ، یا ان کو لایا جائے گا ۔ میں نے یہاں دیکھا تو ان کی نشستیں خالی ہیں ۔ کیا میں پوچھ سکتا ہوں کہ اسی پارلیمنٹ میں ایک مثال موجود ہے اس کی گہرائی میں میں نہیں جانا چاہتا لیکن یہاں کے ایک شخص کو لایا گیا ، پوری کارروائی میں وہ شامل رہا ، اس کے لئے مخصوص جیل بنائی گئی ، تمام آسانیاں اس کو مل رہی تھیں ہمارے اشتیاق اصرار صاحب اور دوسرے اراکین کو کیوں یہاں نہیں لایا گیا ۔ دوسرا معاملہ انہوں نے اٹھایا ہے ، ہم اسے نہیں اٹھانا چاہتے ، ہم نے کل حجت کیا ہے اور پاکستان میں حجت کر کے دکھائیں گے کہ دہشت گردی ، چوری اور دہشتگی ، ان خرابیوں سے پاکستان انشاء اللہ صاف ہوگا جس میں تمام چور ، خواہ وہ کوئی بھی ہوں ختم کر دیئے جائیں گے اور جناب والا ! میں فخر کے ساتھ کہہ سکتا ہوں کہ میں افغانستان گیا تھا اور فخر کے ساتھ کہتا ہوں کہ وزیر داخلہ صاحب نے گورنر ہو کر جو کام کئے ہیں ، میری شرافت مجھے روک رہی ہے کہ ان کے وہ کارنامے اس ایوان میں بیان کروں ، جو کہ افغانستان کی فائلوں میں موجود ہیں ، کیونکہ میں سمجھتا ہوں کہ انہوں نے پیپلز پارٹی کو اور پاکستان کی تمام جماعتوں کو ایک راستے پر لے جانا چاہتا ہوں ۔ اگر اس بات میں جانا چاہتے ہیں تو میں چیلنج کرتا ہوں کہ میرے کابل جانے کا معاملہ یہ عدالت میں چیلنج کریں ، اس ایوان میں چیلنج کریں ، ہم اس کے لئے تیار ہیں ۔

جناب چیئرمین ۔ یہ بات کسی اور موقع پر کریں ۔ اقبال حیدر صاحب ۔

Anything you want say on this.

Maj. Gen. (Retd.) Naseerullah Khan Babar: He has raised the issue about the Senators, we have no objection to it.

Mr. Chairman: I just want to make a slight observation on this

مجھے آج ان کے بیٹے نے اطلاع دی کہ جس طرح اقبال حیدر صاحب نے کہا تھا کہ اگر وہ درخواست

دیں کہ ہم سینیٹ کے اجلاس میں جانا چاہتے ہیں تو ہم اعتراض نہیں کریں گے۔ اس کے مطابق انہوں نے عدالت میں درخواست دی اور انہوں نے اعتراض نہیں کیا، عدالت نے ان کو اجازت دے دی ہے۔ عدالت کا حکم لے کر وہ ہوم سیکریٹری کے پاس گئے۔ ہوم سیکریٹری صاحب آج اتفاق سے اسلام آباد میں ہیں اور چیف منسٹر صاحب بھی اسلام آباد میں موجود ہیں۔ چنانچہ انہوں نے وہ حکم نامہ غالباً "ڈپٹی سیکریٹری صاحب کو دیا۔ انہوں نے کہا ہے کہ حکم نامہ تو مل گیا لیکن مجھے چیف منسٹر کی clearance چاہیئے۔ میری خوش قسمتی ہے کہ آج اسلام آباد میں مجھے چیف منسٹر صاحب مل گئے تو میں نے ان سے ذکر کیا اور ان سے درخواست کی کہ مہربانی کر کے اس معاملے کو expedite کرا دیں اور ہم نے تحریری fax ان کے ہوم سیکریٹری کو بھیج دی ہے۔ تو میں آپ سے بھی درخواست کروں گا کہ اب جب سب کچھ ہو گیا ہے تو مہربانی کر کے اس کو expedite کرا دیں۔

سید اقبال حیدر۔ جناب چیئرمین! اس پر آپ نے جو کچھ کہا وہ بالکل درست ہے۔ اس بارے میں فوری طور پر عدالتی حکم کے اوپر عملدرآمد ہوگا۔ آپ مطمئن رہیں۔

جناب چیئرمین۔ اصل میں اس میں عدالت کے علاوہ انتظامی بات بھی ہے ناں عدالت نے تو ایک formality پوری کی ہے۔

Syed Iqbal Haider: The Federal Government has already taken measures and taken steps and we are ready

انشاء اللہ تعالیٰ، کل پرسوں تک یہ کارروائی پوری ہو جائے گی۔

All that is required is an - جناب چیئرمین۔ پرسوں تک نہیں۔ آج کر دیں - order from the Chief Minister.

سید اقبال حیدر۔ کل یا پرسوں تک ہو جائے گا۔

جناب چیئرمین۔ نہیں، نہیں آج کر دیں۔

سید اقبال حیدر۔ آج کا تو میں نہیں کہہ سکتا ہوں۔

(وقفہ اذان برائے نماز عصر)

Mr. Chairman: So we adjourn the House for fifteen minutes for

Asar prayers.

آج کرنا ہے آج۔

سید اقبال حیدر۔ پوری کوشش ہو گی۔

(The House adjourned for fifteen minutes for Asar Prayers)

(The House re-assembled after interval with Mr. Chairman (Mr. Wasim Sajjad) in the Chair).

LEAVE OF ABSENCE

Mr. Chairman: Leave Applications.

جناب جمائیر بدر تا خیر سے پہنچنے کے باعث مورخہ ۴ مئی کو اجلاس میں شرکت نہیں کر سکے۔ اس لئے انہوں نے ایوان سے رخصت کی درخواست کی ہے۔ کیا آپ ان کی رخصت منظور فرماتے ہیں؟
(رخصت منظور کی گئی)

جناب چیئرمین۔ جناب امداد علی اعوان صاحب ادائیگی جج کیلئے سعودی عرب جا رہے ہیں اس لئے انہوں نے مورخہ ۸ مئی سے عالیہ مکمل اجلاس کے لئے ایوان سے رخصت کی درخواست کی ہے۔ کیا آپ ان کی رخصت منظور فرماتے ہیں۔
(رخصت منظور کی گئی)

جناب چیئرمین۔ سید محمد فضل آغا صاحب بھی جج کی غرض سے ملک سے باہر جا رہے ہیں اس لئے انہوں نے مورخہ ۹ تا ۲۲ مئی کیلئے ایوان سے رخصت کی درخواست کی ہے۔ کیا آپ ان کی رخصت منظور فرماتے ہیں؟
(رخصت منظور کی گئی)

جناب چیئرمین۔ جناب حاجی گل شیر صاحب ذاتی مصروفیات کی بنا پر مورخہ ۸ تا ۱۲ مئی کیلئے ایوان میں حاضر نہیں ہو سکیں گے اور انہوں نے ایوان سے رخصت کی درخواست کی ہے۔

کیا آپ ان کی رخصت منظور فرماتے ہیں؟

(رخصت منظور کی گئی)

جناب چیئرمین۔ جناب محمد طارق چوہدری صاحب نے ذاتی وجوہ کی بنا پر مورخہ ۸ تا ۱۰

مئی ایوان سے رخصت کی درخواست کی ہے۔ کیا آپ ان کی رخصت منظور فرماتے ہیں۔

(رخصت منظور کی گئی)

جناب چیئرمین۔ جناب وقار احمد خان صاحب نے ذاتی مصروفیات کی بنا پر حالیہ مکمل

اجلاس کیلئے ایوان سے رخصت کی درخواست کی ہے۔ کیا آپ ان کی رخصت منظور فرماتے ہیں۔

(رخصت منظور کی گئی)

جناب چیئرمین۔ جناب سیف اللہ خان پراچہ صاحب ذاتی مصروفیات کی بنا پر مورخہ ۲ تا

۶ مئی اجلاس میں شرکت نہیں کر سکے اس لئے ان تواریخ کے لئے ایوان سے رخصت کی درخواست

کی ہے۔ کیا آپ ان کی رخصت منظور فرماتے ہیں۔

(رخصت منظور کی گئی)

جناب چیئرمین۔ جناب جاوید میگل صاحب علالت کی وجہ سے مورخہ ۲ تا ۵ مئی

اجلاس میں شرکت نہیں کر سکے اس لئے انہوں نے ان تاریخوں کیلئے ایوان سے رخصت کی درخواست

کی ہے۔ کیا آپ ان کی رخصت منظور فرماتے ہیں۔

(رخصت منظور کی گئی)

جناب چیئرمین۔ جناب محمد افضل خان صاحب کو عہد تشریف لے گئے ہیں اس لئے وہ

آج اجلاس میں شرکت نہیں کر سکیں گے۔ اب اقبال صاحب کس طرح کریں؟

سید اقبال حیدر۔ میں نے سربراہ عزیز سے گزارش کی ہے کہ اگر اس سلسلے میں ہم

تعداد متین کر لیں اور ہم بھی پانچ سے reduce کرنے کو تیار ہیں۔

جناب چیئرمین۔ اس دن چونکہ یہ بھی طے ہوا تھا کہ کراچی کی صورت حال پر بھی

بحث ہو جائے۔

سید اقبال حیدر۔ اس کے بعد، یعنی Privilege Motion کو conclude کر کے۔

جناب چیئرمین۔ مہربانی کر کے کوشش کریں کہ وہ سینئرز صاحبان کو۔۔۔

سید اقبال حیدر۔ وہ بھی بات کر لی ہے اور ہماری طرف سے کوئی غیر ضروری تاخیر نہیں ہو گی۔

Mr. Chairman: In fact, I am grateful to you

کہ آپ نے اس میں تعاون کیا اور ان کے عدالت کی جانب سے آرڈر ہو چکے ہیں۔ اب تقریر کس کس نے کرنی تھی؟ میرا خیال میں مولانا صاحب کو فلور دے دیتے ہیں۔ ڈاکٹر رحمان آن پوائنٹ آف آرڈر۔

ڈاکٹر محمد رحمان۔ جناب والا! اس سلسلے میں میری بھی privilege motion ہے۔ اگر آپ منظور فرمائیں تو میں اسے پڑھ دیتا ہوں۔

جناب چیئرمین۔ اس کے ساتھ آگئی ہے اور بار بار کیا پڑھنا۔ آپ کو تقریر کا موقع دے دیں گے۔ جب ایک ہو جائے تو پھر دوسری نہیں پڑھی جاتی اور اسی میں ہو جاتا ہے۔ جی مولانا صاحب۔

FURTHER DISCUSSION ON THE PRIVILEGE MOTION

REGARDING THE PRESIDENTIAL PROCLAMATION ISSUED

UNDER ARTICLE 234.

مولانا عبدالستار خان نیازی۔ میں جناب یہ عرض کرنا چاہتا ہوں کہ اس ایوان کے اندر وکلاء نے، قانون دانوں نے جو نگاہ پیش کیا ہے وہ نہایت ہی جامع اور مکمل ہے لیکن ایک خاص پہلو جس کی جانب کسی نے توجہ نہیں دی اور میں نے اسے اپنا فرض منصبی سمجھا کہ اس کی طرف سب کی توجہ مبذول کراؤں، یہ ہے کہ ہماری democracy ہماری representation باقاعدہ conditional ہے اس میں elected representatives جو ہیں وہ authority کو as a sacred trust استعمال کریں گے یعنی صاحب اقتدار صدر ہو، کوئی بھی ہو، چاہے قومی اسمبلی میں ہو، صوبائی اسمبلیوں میں ہو، کہیں بھی ہو، وہ باقاعدہ اقتدار کو، اختیار کو، بطور ایک sacred trust کے، مہدس امانت کے طور پر استعمال کرے گا۔ پھر یہ بھی اس آئین کے اندر ہے کہ ہر پاکستانی کو

every Pakistani will be enabled to order his life individually as well as,

collectively according to the Injunctions of Islam as laid down in Quran and Sunnah.

ہر پاکستانی کو انفرادی اور اجتماعی طور پر شریعت کا پابند بنایا جائے گا۔ اس کی رو سے ہم میں سے ہر ممبر کو یہ حق حاصل ہے کہ اگر وہ دیکھے کہ sacred trust کے طور پر بطور امانت کردار ادا نہیں کیا جا رہا، اور اس کا جو باقاعدہ privilege ہے اس کو زک پہنچتی ہے، تو اس کا فرض ہے کہ وہ اس کو نمایاں کرے۔ اس لئے میں سمجھتا ہوں کہ جو کچھ ہوا یہ تو secret trick کے طور پر ہوا ہے۔ ادھر کر دو، کبھی ادھر کر دو، اور جنہوں نے وہاں پر باقاعدہ فلور کراسنگ کی ہے، جن کے متعلق طے ہو چکا، اخلاقی طور پر ان کو اجازت دینا اور پھر کبھی کہنا کہ اسمبلی کو مطلق کر دیں، کبھی نہیں کرتے، ان سب باتوں سے ہمارا استحقاق مجروح ہوا ہے، اور شرعی اسلامی نقطہ نگاہ سے میں سمجھتا ہوں کہ صدر کو اور یہاں پر موجود ہر ایک کو اس اختیار کو بطور مقدس امانت کے استعمال کرنا ہے۔

جناب چیئرمین۔ جی آپ کیا کہنا چاہ رہے ہیں؟ ایک منٹ جی عطیے ان کو بولنے دیں، جی آپ نے بولنا ہے تو آپ پلیز نام دے دیں۔ اعتراض صاحب، منظور لگی صاحب۔۔۔۔۔۔ نہیں۔ یہ تو آپ آپس میں طے کر لیں ناں، مجھ پر نہ چھوڑیں۔ کیونکہ میرے پاس تو شیخ رفیق صاحب کا نام بھی رکھا ہوا ہے، عبدالرحیم مندوخیل صاحب بھی بولنا چاہتے ہیں، ساجد میر صاحب کا نام بھی ہے، ظفر صاحب کا نام بھی ہے۔ اعتراض صاحب کے بعد بھنڈر صاحب بولیں گے۔ حاجی صاحب بھی بولنا چاہتے ہیں، لاہ منسٹر صاحب یہ معاملہ گھمبیر ہو گیا ہے، مہربانی کر کے اس کو sort out کر لیں۔ جی جناب اعتراض صاحب۔

Ch. Aitzaz Ahsan: Mr. Chairman, Sir, I am grateful to you for permitting me to speak on this motion today. Mr. Chairman, you will recall the debate that has so far taken place on this issue and while I do not want to repeat any one of those arguments, I will draw your attention to the fact that because it concerns the interpretation of one and perhaps more clauses of the Constitution, it is indeed a debate, it is indeed a discussion that has become, to some extent intertwined in forensic logic and let me say also, Mr. Chairman, that there would be few persons more competent than you before whom such a

discussion and to whom such a debate can be addressed. But necessarily, because it has become legalistic, because it has become forensic we have encountered comments from the House, from honourable members and as well as from the fourth pillar of the State that the debate has become far more legalistic than it was necessary or that this House gave picture of a court-room-drama. This was an oft-quoted remark, I remember the days when it last took place that this was more of a court-room-drama. I do want to add to that particular impression of this debate. Mr. Chairman, but I think it of necessity that when I address myself to a person of your competence in law on the question that concerns the Constitution and interpretation of law, there is bound to be a certain legalistic flavour to the argument and there is perhaps an inevitable impression that may be created that this is a court room. The essential questions are two that have been pouring in. The first is, what is a privilege, what is generally, broadly and specifically the meaning of a privilege and second is, can a privilege be created where there is no duty on any body to act or to refrain from acting in a particular manner. Permit me, Mr Chairman, to explain this slightly I am sure Mr. Chairman, you have perhaps comprehended me but I do not want to remain far too legalistic and I do want to explain that a privilege first of all, Mr. Chairman, is a jural relation. It creates a certain kind of a right and in creating a right it imposes a corresponding duty. I have a privilege not to be arrested from this Chamber without your permission or from the precincts of the House, Mr. Chairman, I have a privilege not to be arrested in certain circumstances as a member of this august House that means that somebody has a duty not to arrest me in those circumstances. If there is no duty on another person, I do not have a privilege. I have a privilege to speak here as much as I want subject to your guidance, directions and admonishment from you. I have a privilege to speak on any subject whatsoever subject to the

rules and every other learned friend of mine here has a duty not to interrupt within those rules nor can anybody sue me on account of what I said there that means that the privilege corresponds to a duty in somebody else and Mr Chairman, you are well aware of Hohfeld jural relations table and I will refer you here to jurisprudence pages 34 to 35 which is in the library, happily of the Senate also . The concept of privilege among other things is given that a privilege which is also a liberty has a direct opposite of duty in some body else. Now, if there was a duty cast upon the President of Pakistan to present that Proclamation within the first two months, we are talking of first two months, within the first two months, Mr. Chairman, if there was a duty cast upon the President to present that Proclamation, to lay that Proclamation before this House or in the joint sitting, then there is a privilege, but Mr. Chairman, if we look at it, if we look at the Constitution we must come to conclusion. First that no duty is cast upon the President to lay that Proclamation within the first two months of its life before this House or before Parliament in a joint sitting. Mr. Chairman, here we will, of course, have to take recourse to the Constitution and while I go straight to Article 234 in the first instance, I may also mention then I will revert to a particular statement of the law that the number of privileges granted to members of Parliament cannot now be increased. As the Law Minister, the honourable Law Minister said in his opening statement that there is a difference between legality and privilege. Everything that may be illegal, and we are not conceding that it is illegal, is not necessarily a breach of privilege. Now, Article 234 sub clause (3) says:

"A Proclamation issued under this Article shall be laid before a joint sitting and shall cease to be in force at the expiration of two months unless before the expiration of that period it has been approved by a resolution of the joint sitting and may

by like resolution be extended".

Mr. Chairman! you kindly note because I will refer to two cases: one in which you, Mr. Chairman, were a respondent and one in which your illustrious late father Justice Sajjad Ahmad Jan gave a judgement. The cases that guide us on the use of the word 'shall', Mr. Chairman, the essential question is one honourable Senator from that side said decisively and said in a tone, that was judicial as I had pointed out earlier he had held high judicial offices and his tone, his manner was a little patron and of finality but in law there is no finality. In law we always discuss, in law the word 'shall' may not mean 'shall' it may mean 'may' and you more than anybody else, Mr. Chairman, are aware that sometime the word means shall. Now, the language of the Article, sub-Article(8) "the President shall lay the Proclamation before the joint sitting". Now, one easy way out is, 'shall' is mandatory, it is compulsive, it is unavoidable hence the President has committed a default, hence there was a duty on the President and since there was a duty on the President where was a privilege in the House because a privilege has an opposite co-relative duty. Unless they can establish that the President was duty-bound within the first two months to place the Proclamation before the joint sitting, there is no privilege that is created because privilege is dependent upon, is contingent upon, my privilege is contingent upon a duty in somebody else. Without a duty being cast upon somebody else I have no privilege, I have no immunity, I have no liberty but there is a duty to refrain or duty to do something. If the President was duty bound, Mr. Chairman, under the language of this particular provision, yes Mr. Chairman, there would be a privilege, but no, Mr. Chairman, the President was not bound within the first two months, even though the term and word used is 'shall'. Because first of all before I go to the judgements, Mr. Chairman, one concerning you directly and happily for this House because

that judgement brought you to this House ultimately, Mr. Chairman, in the year 1985 or 86. And second, Mr. Chairman the earlier judgement delivered by your father. Mr. Chairman, before I go to them, permit me first of all to see and go through the other provisions in which the words shall be laid has been used in this Constituion to see whether it is mandatory, which means obligatory or merely directory which gives an option, which places no duty, no in-escapable duty.

The first, Mr. Chairman, is Article 29. Kindly read Article 29 with me, Mr. Chairman, and you will see that at least for 6, 7 years whatever is prescribed by Article 29 has not been done. It was done this time, recently by the honourable Law Minister. He has complied with Article 29 after several years had passed and no question of privilege was raised and yet Article 29 (3) says. "shall be laid" shall be caused to be laid by the President. Article 29 (3) is about the Principles of Policy and every year the President is required to place a report before the National Assembly, shall be caused to be laid and no action, no privilege is breached. I will subsequently state, why? And I will draw one of the two judgements that I have stated and referred to in respect of each. Article 29(3), Mr. Chairman, "In respect of each year, the President, in relation to the affairs of the Federation and the Governor of each Province, in relation to the affairs of his Province, shall cause to be prepared and laid before the National Assembly or, as the case may be, the Provincial Assembly a report on the observance and implementation of the principles of Policy, and provision shall be made in the Rules of Procedure of the National Assembly or, as the case may be, in the Provincial Assembly, for discussion on such report. Now, Mr. Chairman, no duty is cast, no unavoidable duty is cast. It is good if the President were to lay before the House that report but the President has not done for the last 6-7 years. And the honourable Law Minister has caused to be

laid before the House reports that dated back to last 6-7 years altogether. No duty is violated, no law is violated. It is a good recommendation. He should have done it but the President and the former President and I was going to say a brief time in between that Mr. Chairman, you were President but there was no National Assembly so, I can't really make a point on that.

Mr. Chairman: Not only there was no National Assembly, there was no exercise of powers under 234.

Ch. Aitzaz Ahsan: No, I am talking about 29 (3) not 234. I am coming to that. I am submitting that mere 29 (3) was not invoked and complied with for 7-8 years. That is not all. Let us look at 230, there are some intervening ones where it is mandatory and I will come to them later.

Mr. Chairman: Under 29 (3) reports have to be laid before the House.

Ch. Aitzaz Ahsan: No.

Mr. Chairman: No. No. Even when I was Law Minister I used to do that.

Ch. Aitzaz Ahsan: May perhaps, but then there was a gap. Then, there was a long gap.

Mr. Chairman: I remember when I was Law Minister I made sure that the report was laid.

Prof. Khurshid Ahmed: In the National Assembly a privilege motion was moved and then the report was laid.

Ch. Aitzaz Ahsan: The honourable Law Minister is here, for the last 4-5 years he has just presented it now because these go to the National Assembly. I am just saying the practice of the two Houses would be a guidance

not necessarily binding but a guidance on the interpretation of the Constitution of the

Mr. Chairman: The Law Minister has presented the report for the last three years now. Then why did he do it now?

آپ نے کیوں کیا، نہیں آپ نے کیوں پیش، اب کیوں کیا۔ Law Minister صاحب آپ نے کیوں پیش کی وہ۔ آپ نے محسوس کیا کہ liability ہے، کوئی duty بنتی ہے۔ اگر duty نہ ہوتی تو آپ پیش نہ کرتے، صحیح بات ہے ناں۔

چوہدری احتراز احسن۔ نہیں جی۔

جناب چیئرمین۔ نہیں میں Law Minister صاحب سے پوچھ رہا ہوں۔ اگر ضرورت محسوس نہ ہوتی تو وہ اسے پیش نہ کرتے؟

چوہدری احتراز احسن۔ ہاں دو سال اور بھی نہ کرتے تو privilege نہ بنتا۔

جناب چیئرمین۔ نہیں وہ علیحدہ بات ہے، آپ نے کی تو کس لئے؟

چوہدری احتراز احسن۔ میں جو عرض کر رہا ہوں جناب چیئرمین صاحب،

what is important, which we have to see is, the language. I am saying that when the Constitution says that something be done, normally, it ought to be done but there is no duty; sometimes there is a duty and sometimes there is not a duty and why there is no duty, under Article 234, sub-Article (3), I will come to that. I will explain what are the differences.

Now, first of all, is Article 29. It is not a duty because it does not say that if the President does not present these reports every year, it says "every year" otherwise, in respect of each year, if the President does not present it then this shall be the consequence, no consequence is provided and I will show from the word of the Supreme Court that where no consequence is provided, it is merely a recommendatory.

Mr. Chairman: If we accept your argument, under Article 91, it says :

that "the President shall appoint the Cabinet of Ministers". But there is nothing saying what will happen if he does not appoint the Cabinet.

Mr. Aitzaz Ahsan: No, no. There are other things that follow that executive authority and all that through the Cabinet.

Mr. Chairman: No penalty attached.

Mr. Aitzaz Ahsan: I did not use the word penalty, I said consequence. There is tangible consequence, for instance, Ordinance, I will come to that. There is a tangible consequence that is attached to the word 'shall'. If this is done, and this 'shall', the Parliament will be vested with the authority to repeal it by a resolution. There is no such thing in 234(3), if a consequence is provided. I will submit, I think, you will recall your own judgement on interpreting Section 23, 24 of the Senate Elections Act, in which your honour was the respondent. I will quote from the Chapter in words. I am submitting, let me state, "nor the term shall be laid or shall be done or shall be acted upon is used and no consequence is given of either of a non-observance or a violation". Non-observance of that particular command, then that is recommendatory. I am using the word recommendatory because some learned members here may not see the distinction between mandatory and directory. When I say recommendatory, I really mean directory, it gives the discretion when it is recommendatory, then it is not a duty, then there is no binding or obligatory forcing back and unless there is a binding or obligatory forcing the word 'shall be laid' in Article 234, sub-Article (3):

"The President was not bound by any duty to present that within the first two months or lay it before the two Houses together and hence no privilege was gained or did vest in us.

Now, Mr. Chairman, the second provision, I felt, is Article 230. In

Article 230 also, there is an apparent command:

The Islamic Council shall submit its final report within 7 years of its appointment and shall submit an Annual Interim Report. The report, whether interim or final, shall be laid for discussion before both the Houses and each Provincial Assembly within six months of its receipt. The Majlis-e-Shoora (Parliament) and Assembly, after considering the report, shall act and enact laws in respect thereof within a period of two years of the final report".

Now, here you will see two different things clearly established the Interim Report and the Final Report. After the Interim Report, the Annual Interim Report, no consequence, there is no follow-up, no follow through. So, that part is directory. After the final report that part is mandatory, why? Because within two years from the presentation of that report the laws have to be enacted on the basis of that report. Now, kindly, see the word used is "shall" but it has two different interpretations. The word used is shall, yes, the honourable Senator from that side said, "shall" means "shall" but "shall" does not mean "shall". Unfortunately, Mr. Chairman it does not always mean shall. It sometimes means "may". Even must at times means "may". Now where a consequence does not follow as in 230. Now see Mr. Chairman, now kindly see, Article 89, here is a clearly, mandatory provision. Here the consequence follows. Here once the Ordinance has been laid before the House, the House can reject it before the four months. So, the House is vested with a power to cut off the validity period of the Ordinance. That power is denied to the House and would lead perhaps to some kind of breach of law whether it would indeed still be a breach of privilege. I am not prepared to say at the moment. But by an ordinary definition of the word "Privilege" if a duty is cast upon the honourable law Minister and he does not do so, because there a duty would be caused, then, there might be a particular consequence that might follow in law, either a breach of privilege or

not. An Ordinance in Article 89 Mr. Chairman, promulgated under this article shall have the same pose and effect and act of Parliament and shall be subject to the like restriction as the power of Parliament to make laws. But every such Ordinance shall be laid. Now I will just read one or the two clauses, because that brings in the Senate also. "Before both the Houses if it does not contain provisions dealing with any of the matter referred in sub paragraph(1) and shall stand repealed at the expiration of four months from its promulgation or if before the expiration of that period, a resolution disapproving it, is passed by either House". Now, Mr. Chairman! had 234 said that the President shall lay the Proclamation before the joint sitting and the Proclamation shall cease to have effect on the expiry of two months or if the joint Houses rejected earlier then from the date of rejection. There would be a mandatory provision. A consequence would follow for the two months and to clip the wings of the Proclamation the Joint Houses would be vested with Constitutional right and authority to reject, to divest the Proclamation of force and you rightly asked, Mr. Chairman, you will recall, the very pertinent question and I am in a position now to answer that Mr. Chairman, and the question was as to what does happen and, I think, it was asked of some members of the other side perhaps the venerable Mr. Yahya Bakhtiar: you asked repeatedly Mr. Chairman, what is the consequence of the joint Houses rejecting the Proclamation before the two months. The answer is that there is no consequence, it has no effect, that resolution will be in effectual, that resolution is not enforceable, that resolution is distinct from the other resolution, like a resolution under Article 89.

Now, come Mr. Chairman to Article 232, sub-Article(7) see the consequences, the attachment of the consequence of the word "shall". Article 232 is the Proclamation of an emergency. Now, Mr. Chairman, a Proclamation of Emergency has certain effects. It restricts fundamental rights. Under that an

order can be passed once a Proclamation of Emergency is issued and an order can be passed restricting every citizen's fundamental right. It is an important thing under that, Mr. Chairman, a law made by Parliament, during an emergency, can continue to exist for six months after the Emergency is withdrawn. Article 234 is a two months stop gap arrangement. I do not say that it is not an important exercise of authority by the President, but comparatively what can be done by the Executive under 232 and 233 is far in excess of what the Executive can do under 234. So therefore, under 232 sub Article(7) when, Mr. Chairman, it is provided that the Proclamation of Emergency shall be laid before the Houses then it says a Proclamation of Emergency shall be laid before a joint sitting which shall be summoned by the President. Now, nothing is to say that this is not said, even this is not said, which shall be summoned by the President in 234, which shall be summoned by the President to meet within 30 days of the Proclamation which has been issued and (a) shall cease to be enforced at the expiration of two months unless before the expiration of that period it has been approved by a resolution of the joint sitting and (b) shall subject to the provisions of paragraph (a) cease to be enforced upon a resolution disapproving the Proclamation which has been passed by the votes of the majority of the total membership of the two Houses in joint sitting. This is mandatory. This imposes the duty upon the President and this may perhaps vest a privilege in us. Although, I am not going too far as yet, in an appropriate situation I will have to look at that through another angle of inquiry but this is the mandatory power because once the President permits the Proclamation, let us say, suspends fundamental rights, Parliament passes laws which has certain legality beyond two months and beyond the Proclamation and then the President is bound to place that Proclamation before the two Houses, call the session within 30 days and then if the two House by a majority vote say, "on

the 15th day that Proclamation is rejected", it will cease to exist, it will cease to be in force on the 15th day. No such power or authority is given to the joint House under 234. See Mr. Chairman, Article 235. It gives the same power as 234 in sub-Article(4). So, let us go back now again, Mr. Chairman, permit me in the light of this to read Article 234 sub-Article(4) once again, bear with me because what I have established, Mr. Chairman, is that there are other provisions in the same Constitution which provide for a consequence, which provide for a follow through or a follow up which provide for incidental steps , actually, consequential steps , specifically, not generally, that the President may take incidental and consequential steps but it prescribes the steps that the President will take after the Proclamation has been issued and those steps are the steps which invest the joint Houses with the authority to reject the Proclamation on the fifth day, on the sixth day, on the seventh day or any day before two months and that is an important power, Constitutional power, that is a sovereign power . If the President divests, if the President chooses to keep that power away from the House by not laying the product of Proclamation , that Proclamation before the Houses , yes, perhaps there would be a violation of the law, there would be a violation of the Constitution and perhaps their might also be a violation of some privilege. But what does 234 sub-Article (4) say sub-Article (3) say. A Proclamation issued under this Article shall be laid before a joint sitting and shall cease to be inforce at the expiration of two months unless before the expiration of that period it has been approved by a resolution of joint sitting and may, by like resolution be extended for a further period not exceeding two months at a time but no such Proclamation shall, in any case, remain in force for more than six months.

Mr. Chairman, I think the matter and the Constitution speaks of itself.

Mr. Chairman, the Constitution is clear. For two months the President is not

required to place the Proclamation before this House. He is under no duty to do so. Although, he may do it on his own free will, it would not be illegal on his part to place the Proclamation before the House. It may be perhaps in the light of the spirit of the Constitution but I am also not at the moment conceding to that. I am saying that the President will have no duty cast upon him by the Constitution to place the Proclamation before the joint sitting within the first two months nor will any resolution of the joint sitting affirming or negating or rejecting the Proclamation have any effect, whatsoever, in the light of the first two months life term of the Proclamation. So, what we are discussing is an academic issue that the President should have placed the Proclamation before the House. What are we discussing is something that would have been ineffectual. One Senator said "you don't have the power and yet you are discussing", he was right. Has the President issued another Proclamation has the President extended the term of the Proclamation without a resolution, affirmative resolution of the House? Yes, Mr. Chairman, that indeed would have been the interpretation of the Constitution, what are the consequences? Whether it would have been a breach of privilege or not I cannot even say to that but what I am clear it is a question of privilege. If there is no duty cast upon the person we are accusing of breaching the privilege then there is no privilege and these Articles prescribe and provide, no such duty. Mr. Chairman, I may just refer to one or those two or three judgements because I know you often refer to the judgements of the Supreme Court and I am also conscious that quite pertinently Senator Shafqat Mahmood raised the question of this House's authority and your own to discuss and interpret the Constitution and, I think, wisely, Mr Chairman, and within the ambit of your own authority, you did observe immediately that you and the House have the authority to the extent that it is necessary to run the proceeding of the House. Mr. Chairman, you are

well aware that the Supreme Court nevertheless, remains the ultimate arbitrator of the Constitution and the Supreme Court firstly, in one case, Mr. Chairman, this is the Niaz Muhammad Khan's case, PLD 1974 Supreme Court, Page, 134 held that if again, the question was whether the word 'shall' necessarily means that there is a mandatory duty and obligation, and the court held that if the direction is not followed by an express provision that in the fault of compliance, the effect shall be null and void and if no consequence of disobedience or disregard is specifically provided, the provision is said to be only directory or advisory and if it is directory Mr. Chairman, no consequence is followed.

Then, Mr. Chairman, I refer to the judgement reported in PLD 1986, Supreme Court, page 178 and it is haply titled and was haply adjudged, Mr. Chairman, as Syed Mukhtar Hussain vs Mr. Wasim Sajjad. In this you will recall, Mr. Chairman, the question arose that the word 'shall' had been used in section 23 and 24 of the Senate elections and it has been said that one section said that the voting to the Senate shall be in the prescribed manner and in the other that the voting shall be by secret ballot, and then, Mr. Chairman, a consequence was provided by the law that if it is not in the prescribed manner and if it is not by secret ballot or if the secrecy is violated by any manner in this case, it will be certain that the vote shall be invalid and the court, Mr. Chairman, on that ground that a consequence was provided rejected the votes, not just 'shall', as had been just said supposing voting shall be by secret ballot and assume, Mr. Chairman, no consequence has been provided for breach of secrecy, though may be, of the most blatant one, would have passed through the law. They would have gone down the course of law and that some remarks on that might have been adjudged valid but when the law says, if secrecy is betrayed the vote shall be invalid then in this case the court held that this was mandatory because of the consequence provided, and the votes which

betrayed secrecy, which divulged the identity of the voters in some manner or the other, were rejected and Mr. Chairman, from that day this House has had the advantage of having had your august company in these chambers hearing and participating in debate also. Now, in another case and this is the last one I just want to give, I said, I confessed at the outset that this has become legalistic. I confess that our very important part of the polity, the fourth state keeps saying, has become 'a court room drama' but you have to interpret, Mr. Chairman, and we to assist you and assist you in the open House and this is the only way a system can really be given.

Mr. Chairman, in Ata Muhammad Qureshi's case, this is PLD 1971 Supreme Court, page 61, at page 70 the illustrious and very enlightened judge Mr. Justice Sajjad Ahmad Jan of the Supreme Court of Pakistan held that prescribed principle which the Supreme Court has duly followed and it was a principle that had in fact, been pronounced before by very learned judges also, that is where a provision is expressed in the affirmative, I am not talking of the consequence that is another point, wherever a provision is expressed in the affirmative, it is normally deemed to be only directory not obligatory, not mandatory and where a provision is expressed in the negative there it is deemed to be mandatory and I am sure that a learned former Chief Justice will agree, he himself has been deciding such cases of eminent constitutional importance. Now, how is Article 234 (3) expressed? If, Mr. Chairman, it had said, "the President shall not do this, if it had prevented the President from it, if it had placed a prohibition upon the President from doing a certain act, it would have been mandatory, it would have been obligatory. According to the interpretation placed upon such provisions by the Supreme Court on the word "shall", but Article 234 sub-Article (3) does not say that the President shall not. It says that the President shall and, therefore in fact it says that the President may, and if it

says that the President may, in fact, it says that the President may not and if it says that the President may not, Mr. Chairman, then the President may not and if the President does not, the President does not violate any law, the President does not violate any duty under the law that may be cast upon him, placed upon him and Mr. Chairman, therefore the President has not, breached any privilege of this House.

Now, Mr. Chairman, I want to just conclude with two or three things. One question again you had raised, Mr. Chairman, I am sure you are aware of it, by now. One question you had raised is, can the President vary the Constitution? I am sure you have, perhaps, by now seen Article 236. Article 236 clearly provides and that is a short answer to that pertinent question, because it was a pertinent question in respect to the proceedings that we are discussing at the moment, and your mind, of course, does go beyond our reaches and ahead of us, as you have always been, Mr. Chairman, Article 236 (1) says, "A Proclamation issued under this part may be varied or revoked by a subsequent Proclamation." And the only test that a court may have to decide as to whether the variation is within the initial terms within the original terms that are of reference, that are allowed under Article 234. Does the variation takes it beyond the provisions of Article 234 then, of course, it would be invalid. In my opinion. In my respectful and humble opinion, Mr. Chairman, the variation in this case does not conflict with the provisions of Article 234 and therefore, the President had the authority under 236 (1) - to pass and to vary the resolution.

Two more points and as briefly as the last one. It is only the first point that I wanted to dwell on at some length because it would need some explanation and effort to elucidate it on my part. Mr. Chairman, you also asked a very pertinent question and it, of course, set my mind thinking. Because I think as they say in cricket, Mr. Chairman, you were on the ball. You were right on the

ball. That you were watching the line and length of the bowler and bating. I say very effectively and forcefully because you were on the ball and what did you ask, Mr. Chairman? You asked, but if the power of the Provincial Assembly is vested in the joint Houses, then not calling the joint Houses because the Provincial Assembly had to exercise powers, and the joint Houses would exercise the same powers and therefore it would be a breach of privilege even within those two months. The joint Houses had to be called because the joint sitting was the repository of the powers of the Provincial Assembly under Article 234 (1) (b) which we have read, I don't want to repeat again. The powers of the Provincial Assembly had been placed in the joint sitting and you were indeed upset and I would say perturbed at why the joint sitting was not called because this was depriving the joint sitting from exercising the powers of the Provincial Assembly? Now, Mr. Chairman you are also well aware of the principles of law, age old and well determined that a delegate cannot get more powers than the delegator originally had. Put it in another way. A recipient of power cannot obtain greater power than the donor has. To put it in another way, a repository of power under the Constitution, the joint sitting cannot have greater power than the Provincial Assembly had, a greater privilege. Because when you pour water from one vessel to an other, the second vessel, the recipient vessel cannot get more water than the donor vessel. It cannot act to its map. So, the power of the joint sitting could not exceed those of the Provincial Assembly and the limitations upon the Provincial Assembly would visit the joint sitting also. They would visit the joint sitting, they would inhibit the joint sitting and Mr. Chairman, what do we see under the Constitution, is it mandatory for any Provincial Assembly to be called so regularly, with such incessant inevitable regularity that there cannot be a gap of two months? If there could not be a gap of one month in the sitting of a Provincial Assembly

then the joint sitting is not called for two months. There would be a contravention of the Constitution. Yes. But if the Provincial Assembly need not be called for four months and the President wishes to make no further orders under the Proclamation, if he wants to make no appointment, he wants to pass no budget, he wants to make no financial arrangement, then there is no need to call the joint sitting and Mr. Chairman, kindly see Article 127 and Article 154. Article 127, you are aware Mr. Chairman, states that certain provisions concerning the National Assembly will apply to the Provincial Assembly. These include Mr. Chairman, Article 54 which says :

"There shall be at least three sessions of the National Assembly every year, and not more than 120 days, four months, shall intervene between the last sitting of the Assembly in one session and the date appointed for its first sitting in the next session". Before four months, the Provincial Assembly does not have to be called and the Provincial Assembly is the donor of all authority to the joint sitting. The joint sitting receives its powers and its limitations from the Provincial Assembly. If the Provincial Assembly need not be called for four months, what is the compulsion upon the President to call the joint sitting within two months except and unless he wants to extend the Proclamation for another two months. Surely, Mr. Chairman, that which the Provincial Assembly cannot make a grievance in these circumstances. A joint sitting cannot make a grievance of the same nor Mr. Chairman, can in that *ipso facto* any single House of the joint sitting make a grievance of that particular fact or matter and, finally, Mr. Chairman, permit me only for a couple of minutes, two- three sentences reiterate what the Law Minister did say, what was his point, I think, we essentially have to address ourselves to that point. They say, "The President has acted illegally". We say, "he has not". But alright assume for a

moment that he has. Will it make a breach of privilege? No.(2) even if it makes a breach a privilege, would the intervention of the House be necessary under Rule 66 (3) when the Proclamation has gone passed, when the Proclamation has lapsed. When the Assembly has decided, and if Mr. Sabir Shah has a majority, he should move a no confidence motion tomorrow. He should move it tomorrow and he should displace Mr. Aftab Sherpao. Let whosoever has the majority remain in Government and the Chief Minister of the NWFP. What does Senate have to do with that ? Are we going into every bush fire and going into it straight away, even when the law and the Constitution does not permit us. Are we going to be that hypersensitive as Professor Sahib, has been at times. Surely, you have to go by the Constitution, by the law. Maulana Sahib said , there is Islam. Yes, there is Islam, but we are governed at the moment by the Constitution, Mr. Chairman. We have taken oath under this Constitution. Now, when the provisions of this Constitution are so clear, how can Professor Sahib, come upon general principles of political science and Maulana Sahib that cannot be directly derived from the Constitution. The Constitution says , Mr. Chairman, that the Province must be ruled by majority .

Mr. Chairman: That is a separate issue. What have you been talking so far is whether it is mandatory to place it before the joint sitting , or not . That is the issue.

Ch. Aitzaz Ahsan: I just want to say something about the intervention part. The intervention means that there is something. There is a fire that is going to catch on . Stop it , intervene.

Mr. Chairman: No. No. Supposing an Ordinance is not laid before the House then what is the fire that is going to catch on.

Ch. Aitzaz Ahsan: That there is . There will be people who would be affected by it. And the House would be deprived of a right to cut short the life of that Ordinance. That is different. That is entirely different. People may be sentenced under that . Whereas the House may decide after 15 days. No sentence. Nobody is to be tried under the Ordinance. That can have very serious consequences. This is not in 234. Article 234 is a temporary stop-gap arrangement. Perhaps, if the President feels that the heat in an Assembly is so much that if it is allowed to go on like that the Assembly may have to be necessarily dissolved. And the Governor feels that. And they are two Constitutional offices. And they decide , alright, let us take combatants away for two months, let us unlock them. Let us dislodge them for the time being. After two months the tempers will cool down . And they will come back. The Assembly comes back and the rule of the majority comes back and has come back. Now, when it has come back , Mr. Chairman, I submit there is no need for intervention . And finally, the last submission, that since the matter has been , or is going in one respect or another , before superior court the Proclamation is also being challenged etc; may be, you might consider, even that is a reason , at least for with-holding this matter for the time being.

Mr. Chairman: Here, the only limited question is that whether the breach of privilege has taken place or not, which the court is not going to decide.

Ch. Aitzaz Ahsan: Which the court is not going to decide, but it will rule on the validity.....

Mr. Chairman: That will not be competent to decide many cases.....

Ch. Aitzaz Ahsan: It would rule on the duty of the President in

one way or the other.

Mr. Chairman: No, I don't think this issue is before the court, in any case.

Ch. Aitzaz Ahsan: I think, now, in the present appeal where the Proclamation.....

Mr. Chairman: I don't think this would be an issue even now, whether the Proclamation should be laid before the joint session or not?

Ch. Aitzaz Ahsan: Not laying it, I believe, I may be wrong, I believe one of the ground before the Supreme Court now, in this fresh petition in which the whole turn over has been challenged.

Mr. Chairman: We will see to it. But this is something which concerns the Parliament and not the court.

Ch. Aitzaz Ahsan: I am just making that additional submission to my other arguments that you might feel constrained or out of the respect for the superior courts. If that ground is there, at least, we might as well, wait rather than give a judgement.

Mr. Chairman: No. I will have to perform my duty, if a matter comes to me, whether it is a breach of privilege or not. I have to decide.

Syed Iqbal Haider: Sir, I would like to make just one clarification on the point that has been raised by your goodself about the authority and whether it needs to be determined by a court or not; one point that I made and I am re-emphasising and clarifying that breach of privilege in this case, is dependent upon establishing that there is a violation of the Constitution and violation of the Constitution can only be determined by a competent court of

law and this matter, this issue is also one of the grounds.

جناب چیئرمین۔ وہ جو پوائنٹ یہی اختیار صاحب نے raise کیا کہ

we have all taken an oath to uphold the Constitution; I have also taken an oath to uphold the Constitution. So, what do we do if somebody points out to me that the Constitution has been violated in respect of the procedure of this House. What do I do? Do I refer to the Supreme Court?

Syed Iqbal Haider: Sir, the best remedy and the forum for interpretation of the Constitution is a court of law and the matter is already pending there. It can be allowed that the court may interpret whether there is a violation or not in the best interest of the justice.

جناب چیئرمین۔ ٹھیک ہے جی۔ جناب مولانا صاحب آپ کچھ فرمانا چاہتے ہیں۔

Maulana Abdus Sattar Khan Niazi: Mr. Chairman, there is no question of sovereignty and supremacy of the Constitution over Islam. The Constitution says:-

"and the authority to be exercised by the people of Pakistan within the limits prescribed by Him as a sacred trust;"

Therefore, Mr. Aitzaz should not, I think, say that the Constitution is superior. The Constitution says 'Islam', is superior.

جناب چیئرمین۔ نہیں Allah is sovereign اللہ کا کھیا ہے۔ sovereignty vests in Allah Almighty.

جی پروفیسر خورشید صاحب۔

پروفیسر خورشید احمد۔ کیا اعتراض صاحب بتا سکیں گے کہ آئین میں جو صدر کا اختیار

ہے وہ constitutional machinery breakdown سے متعلق ہے یا heat in the Assembly سے متعلق ہے؟

جناب چیئرمین۔ نہیں وہ پھر لمبی بحث شروع ہو جائی گی۔ جی جناب انور بھنڈر

Ch. Muhammad Anwar Bhinder: Mr. Chairman, I think, the question raised in this House is of vital importance and a lengthy debate has taken place it was very necessary because it pertained to the rights of the members and the privileges of this august House. It may have far reaching effects and this debate and the ruling which is going to be given by your honour would be very beneficial for this House and the other Houses to come. Therefore, I think, this debate is of utmost importance. We have heard the learned members on both sides and your honour has formulated the questions to direct the debate in the right manner. We have to answer those questions before your honour to give an authoritative pronouncement on this issue.

The first question that has been put to us and formulated by you Sir, is whether there are any other privileges of members except those mentioned in Article 66 (1) and (2) and before we answer this question we must in reality and in the fuller sense of the term first understand what are the privileges, what is meant by the term privileges, what are the statutory rights, what are the constitutional rights of the members and this august House? Sir, I would refer to May's Parliamentary Practice and read only one or two paras from this book. Chapter III pertains to the privileges of Parliament and it says:

"Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually without which they could not discharge their functions and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law."

It again says that: it is more convenient to reserve the term "privilege" to certain

fundamental rights of each House which are generally accepted as necessary for exercise of its constitutional functions. Then, it says, "the distinctive mark of a privilege in its ancillior character, the privileges of the Parliament are rights which are absolutely necessary for the due execution of its powers. They are enjoyed by individual member because the House can't perform its functions without unimpeded use of the services of its member, and by each House for the protections of its members and the vindication of its own authority and dignity". Then it says. Sir, "certain rights and ammunities such as freedom from arrest or freedom of speech belong primarily to the individual members of each House and only secondarily and indirectly to the House itself; but there are other rights and immunities such as powers to punish for contempt and the power to regulate its own Constitution which being rather directed to the maintenance of its own collective authority than to the security of the individual member, may be said belong to primarily to each House as a collective body". This is a useful distinction but fundamentally it is only as a means to the effective discharge of the functions of the House, that individual privileges are enjoyed by the members. The Common's in their reasons offered at a conference with the Lords in the controversy arising from the case of Sherlay v/s Fagg in asserting that privilege of the Parliament belongs to every member of the House of Commons, declared that the reason of that privileges is that the members of the House of Commons may freely attend the public affairs of that House without disturbance or interruption. "The earliest occassion on which this reason was given was on the Commons petition to Henry IV 1904. Some privileges rest solely under the law and custom of the Parliament while others have been defined by Statute. Upon these grounds all the privileges are founded. Their Lords have ever enjoyed them simply because they have placed and voiced in Parliament but a practice has obtained with the Commons

that would appear to submit their privileges to the royal favour.

Sir, my idea of placing these definitions before this august House was that we must understand what the term 'privilege' denotes and what is meant by the privileges. Why the privileges are there? Privileges are there so that the House may act in accordance with the functions assigned to it and the House may function unhampered and without any impediment and the members should feel that whatever are their statutory duties, whatever are their constitutional duties they can perform those duties without any impediment and without any obstruction. So, Sir, with all these definitions keeping in view I would very humbly submit that at present there are certain privileges of the members and those are defined in Article 66(1) and (2) of the Constitution, i.e. there is freedom of speech, that any member can make a speech inside the House and he is protected to say anything he likes. (2) there is freedom of vote, that any member may vote in accordance to his own conscience and there is freedom of vote. Then there is freedom of the publication of the reports under the authority of the House. Then there are other powers and privileges and immunities defined by law. Whatever privileges this House has or the members have under the law, they are the privileges of the House and the members and those privileges were defined for the first time by Ordinance IX of 1963 before the promulgation of this Constitution and after that by Ordinance XXI of 1977. Very limited privileges were given that a member can't be detained during the Session and No. 2; that he is exempted from appearing in civil or a revenue court and then he was also not subject to appearance before the Election Tribunal during the period a session & 14 days before & after, but that facility or the privilege was withdrawn in the year 1977. Those are the limited privileges which are with the members of this House under the law. Then, Sir, according to the Rules of Procedure we have two or three privileges. According to our Rules of Procedure

and Conduct of Business under Rule 71 no member will be arrested within the precincts of the House and then Rule 72 says that no service of any process can be made within the precincts of the House without your permission. These are the privileges Sir, which have been defined by law and the Rules of Procedure. But one thing we must remember Sir, that whatever is defined as a privilege in any law that is the privilege of the House and whatever rights of the members are defined in the Constitution which is the supreme law those are also the privileges of the members and the House. Sir, it is my right to be here so long as I am a member of this House, it is my right to address or speak here and I am not liable for anything I say here on the floor of the House, whatever duties, whatever rights, I have a right to participate in the debate, I have a right to give any Private Members' Bill, I have a right to give any resolution. I have the privilege to give any motion, I have a right to move any amendment. These are my rights and privileges and Sir, they cannot be segregated from the Constitutional right of the members of the House. The privileges of the members of the House and the rights guaranteed in the Constitution or the Conduct of Business Rules are the privileges and we cannot say that only those are the rights and the privileges of the members, which are defined in any particular statute or in the law, the Constitution is our supreme law and privilege or the right contained in the Constitution is my privilege and, if it is breached, it would amount to breach of privilege of this House as well as the breach of privilege of a member.

Mr. Chairman Sir, in this Constitution so far as Article 89(2) is concerned that deals with the laying of the Ordinance in the House. I would only be confining to the laying of a thing. There are other duties, there are other rights of the members in the Constitution but since the exact question and the pertinent question whether in the non laying of a Proclamation in the joint

sitting of Parliament is a privilege or not or whether any breach of privilege has taken place on that account or not? So, I would be citing only those provisions of the Constitution which require the laying of a particular document or the laying of any report before the House. First is Sir, Article 89 (2) that requires that every Ordinance must be laid before the House. Then is Article 160 (5) that says, that the recommendations of the National Finance Commission must be laid before the House. Then Article 171 requires the laying of the report of the Auditor General, before the House. Then Sir, under Article 230 (4) Annual Report of the Council of Islamic Ideology is to be laid before the House. Then under Article 232 the Proclamation of Emergency, is to be laid before the House. Then under Article 236(3) the Proclamation issued under Article 236(1) is to be laid before the joint sitting of the Parliament and Sir all those documents are to be laid before the House and if none of them is laid before the House, then what would be the position.... Sir? If no Ordinance is laid before the House, if no report of the council of Islamic Ideology or the report of the Finance Commission or the report of Auditor General is not laid before the House then Sir, will these Assemblies be called the House of Parliament? the answer is, "No" they would be in-effective, they would be sitting here idle or they would not be performing their statutory duties, they would not be performing their Constitutional functions. The requirement of laying of Constitutional document is not just laying, this is not only for the sake of laying. These are Constitutional obligations. These Constitutional obligations must be fulfilled and if these Constitutional obligations are not fulfilled I would very humbly submit that this would not be in accordance with the provisions of the Constitution and would amount to taking away the rights and the privileges of this House and, therefore, amount to the breach of privilege. So all those things which are required to be done under the Constitution for the members of

the House are the privileges of the members and this honourable House. To say that the laying of the Proclamation before the joint sitting of the Parliament is just a requirement which may take place or not, is not correct. It is not the discretionary power of the President that he may do it or not. It is the constitutional obligatories. Sir, your honour is well aware that the Constitutional rights are very jealously guarded by the courts by the House and, by the individuals. Therefore, I would very humbly submit that the violation of these Constitutional obligations must be held as the breach of the privilege of this House.

Sir, Article 66(2) says "that in other respects the powers, immunities and privileges of the Majlis-e-Shoora (Parliament) and the immunities and the privileges of the members of the Majlis-e-Shoora shall be such as may from time to time be defined by law". The word "powers" has also been mentioned. It is not only the privileges; and not only the rights, but the word "power" has also been used whatever is within the framework of the power of the members of the Parliament or the powers of this House as a member it would also constitute a privilege of the House or a member and in the exercise of those powers wilful disobedience is done or if some obstruction is made, that would amount to the breach of privilege. Therefore, Sir, my humble submission would be that this amounts to the breach of the privilege of the House.

Sir, another question arises that if the laying of the Proclamation was necessary but it was not laid and I feel aggrieved of it or, this House feels aggrieved of it, where should we go? Can we go to a civil court. The answer is no, because it is not a civil right vesting in any citizen. Is it a criminal offence? No, it is not a criminal offence, I cannot go to a Criminal Court for its breach. then is it a fundamental right for the enforcement of which I should invoke the jurisdiction of the High Court. The answer is, "no". Sir, the only forum where we

can raise this question is this August House of which the mover Mr. Sartaj Aziz, is the member. He has rightly raised this question in this forum. In view of these submissions, Sir, the non-laying of the Proclamation amounts to the breach of Privilege and it has been rightly raised in this House.

Sir, the second question posed by your honour was that whether the breach of the Constitution viz-a-viz a member does not amount to the breach of the privilege. My answer Sir, would be that it does. As earlier submitted, the Constitution is the law and it has been provided in Section-62 that any violation of a privilege defined by law amounts to the breach of the privilege and if any Constitutional violation takes place that will amount to the breach of the privilege and that question can be raised in the House.

Sir, the third question is whether it not necessary in all circumstances to lay the Proclamation before the joint sitting of the Parliament or it is only necessary if the period of Proclamation is to be extended. For this I would very humbly submit that if your honour would read the language of sub-Article(3) of Article 234, it says, "a Proclamation issued under this Article shall be laid before a joint sitting". Sir, I stop here. The words used are "shall be laid". An effort has been made to say that "shall" is often used for 'may' and 'may' is often use for 'shall' Sir, why should we not follow the plain language. Why the framer of the Constitution has not used the word 'may'? Why the framer of the Constitution has used the word "shall"? This sub-Article Sir, starts with these words that "a Proclamation issued under this Article shall be laid before the joint sitting", that is the first condition of sub-Article(3) and therefore, it is abundantly clear that "shall" should be read as 'shall'. Why should 'shall' be read as 'may'? It should be read in whatever term or phraseology it has been used in sub-Article (3), we should not deviate from that and we should read and deduce from this word whatever is its clear meaning. It is obligatory that

the proclamation issued under Article 234 must in all circumstances be laid before the joint sitting of the Parliament.

Sir, the language of sub-Article (3) Article 234 is that "a Proclamation issued under this Article shall be laid before a joint sitting and shall cease to be in force at the expiration of two months unless before the expiration of that period it has been approved by the Resolution of the joint sitting and" so on . Sir, if the laying of the Ordinance would not have been necessary then these words would have been omitted and the language should have been that a Proclamation issued under this Article shall cease to be in force at the expiration of two months, unless before the expiration of the period it has been approved by a resolution of the joint sitting without requiring the laying of the Proclamation this intention could have been conveyed, Sir, words used in the Constitution are never superfluous . We should not presume that these words were unnecessarily used. Whatever was the intention of the framers of the Constitution that has to be read in accordance with the words used in it and if that would have been the intention, as has been argued by my learned brothers on the other side, then it could be read like this, Sir, that a Proclamation issued under this Article shall cease to be in force at the expiration of two months. The words "shall be laid before the joint sitting" would not have been there. If those words would not have been there, then, their interpretation would be correct.

Mr . Chairman: Please consider it that supposing joint sitting disapproves a Resolution what happens then?

Ch. Muhammad Anwar Bhinder: Joint sitting can , Sir....

Mr. Chairman: It can approve and it can also disapprove.

Ch. Muhammad Anwar Bhinder: I am coming to that Sir,

Mr. Chairman: What would be the consequences ?

Ch. Muhammad Anwar Bhinder: That would be my next argument, Sir, I would be coming to that, but my humble submission, Sir, in this respect is that the word which has the sense, which they say that could be conveyed if the language would have been, "that a Proclamation issued under this article shall cease to be in force at the expiration of two months," then it would have been alright, but the sub-Clause(3) starts with the words "shall be laid before the joint sitting. "By this I would, very humbly interpret and say that the laying of the Proclamation before the joint sitting is necessary, it is a must and that has been deliberately included in this Article. The sense was that after all one man is issuing this Proclamation and is taking such an important action and such a drastic action against a Provincial Government then the Parliament should be taken into confidence otherwise, Sir, does it mean that the House should not be taken into confidence? The Senate, the elected representatives and the members of the National Assembly - should be ignored? even for one day, Sir. It can not be said that the President had the full powers, why, Sir? The President cannot on his own, issue or pass a Bill or enact a legislation. He can promulgate only the Ordinances and those too are subject with approval of the Parliament. Why, Sir? Because it is the intention of the framers of the Constitution that whatever he does, must come before the legislature and before both the Houses and so Sir, deliberately these words have been used. They must be followed and interpreted in whatever manner and the language they have been used.

Mr. Chairman: Mr. Aitzaz has argued that even if you disapprove resolution, the Proclamation will continue for two months.

Ch. Muhammad Anwar Bhinder: No. Sir, I very humbly

submit , that so far as the power of the joint sitting is concerned if this resolution, if this Proclamation is placed, any member of the joint sitting can move that it should be disapproved.

جناب چیئر مین - نہ پھر کیا ہو گا۔ what will happen? یعنی وہاں پہ لکھا ہوا ہے

کہ۔ it will continue for two months.

Ch. Muhammad Anwar Bhinder: Sir for the second resolution.

جناب چیئر مین - نہیں وہ اس کی علیحدہ resoulution ہے۔

Ch. Muhammad Anwar Bhinder: If they want to extend ,then they shall had to had a second resolution.

Mr. Chairman: A Proclamation issued under this article shall be laid before a joint sitting and shall cease to be in force at the expiration of two months. Unless before the expiration of that period it has been approved by a resolution of the joint sitting. So.

پہلی چیز تو آگئی

It shall be laid before a joint sitting No.1. And shall cease to be in force at the expiration of two months, what is being argued ,is this that in any case no matter what happens, its life is going to be two months. This is waht is being argued.

+ Ch. Muhammad Anwar Bhinder: Sir, if it is laid before the House and the House disapproves this.

Mr. Chairman: Yes, then what happens?.

+ Ch. Muhammad Anwar Bhinder: Then, Sir, it cannot stand even for one month. Sir, this is a Proclamation issued under this Article and it shall be laid before a joint sitting and shall cease to be in force at the expiration

+ Speech corrected by the Honourable Senator.

of two months. When , it is laid it will remain for two months unless before the expiration of that period it has been approved by the resolution of the joint sitting that means that the approval of the Resolution is subject to a motion made for the approval or for the disapproval .

Mr. Chairman: The House is adjourned for 15 minutes for Maghrab Prayers.

(The House then adjourned for prayers).

*[The House reassembled after interval with Mr.Chairman(Mr.Wasim Sajjad)
in the Chair]*

Mr.Chairman: Yes, please Yahya Bakhtiar Sahib.

Mr. Yahya Bakhtiar : Mr. Chairman, I want to say one or two words. You asked a question as to what happens if the House disapproves? ... So, on this point I thought before the debate goes on, I will very briefly submit that if the joint session disapproves then under those circumstance, because after all this is an important matter and it is on the advice of the Prime Minister and the Cabinet, that the Proclamation has been issued, they should immediately withdraw it because the House has disapproved it. In other words the House has expressed a vote of no confidence, the Prime Minister and the Cabinet should resign. This is not an ordinary issue, it is very important issue. It is far more important than any other thing. The House says, "we disapprove their action to issue the Proclamation, to suspend the Assembly, to suspend the Government", therefore, the Prime Minister should advise the President to revoke it.

(interruption)

Mr. Yahya Bakhtiar: If on the contrary they think it so important i.e. for the Prime Minister and the Cabinet. As a matter of principle, they have done it. Then they should resign and face the electorate for fresh mandate.

Thank you.

Mr. Chairman: Yes, please Shafqat Mahmud Sahib.

Mr. Shafqat Mahmud: Mr. Chairman, it is not such a simple matter as Senator Yahya Bakhtiar is making it out to be. There can be a whole debate on this question, also.

Mr. Chairman: Yes, right.

Mr. Shafqat Mahmud: Particularly, the way this Article is worded, if you kindly see, it says: "A Proclamation issued under this Article shall be laid before a joint sitting and shall cease to be in force at the expiration of two months, unless before the expiration of that period it has been approved by a resolution of the joint sitting" and may be, by a like resolution, that means two resolutions are admissible, not just one resolution.

Mr. Chairman: No, that is for the extension.

Mr. Shafqat Mahmood: But approval is not necessary, you see a point,.....

(interruption)

Mr. Chairman: No, not necessary, we are saying that supposing, they say that they will not approve it, then what will happen? Nothing will happen. Mr. Aitzaz is also saying that nothing will happen.

Ch. Muhammad Anwar Bhinder: Sir, the whole philosophy will become a mockery, it is a very complicated matter, not a simple matter.

(interruption)

Mr. Aitzaz Ahsan: Mr. Yahya Bakhtiar has raised a point. Just one thing, he has said that the Prime Minister shall then advise but the Prime Minister may not advise.

Ch. Muhammad Anwar Bhinder: Sir, I was referring to Article 234 (3). Sub Article (3) Sir, has five parts. The first is, a Proclamation issued under this article shall be laid before a joint sitting. "This is the first part that it is to be laid before a joint sitting". Then second part and shall cease to be in force at the expiration of two months unless before the expiration of that period it has been approved by a resolution of the joint sitting, this is the second part. And Sir, this second part is very much relevant and is under debate and according to this it shall cease to be in force at the expiration of two months unless before the expiration of that period has been approved by the resolution of the joint sitting... The word "unless" is very pertinent Sir, "Unless before the expiration of that period, it has been approved by the resolution of the joint sitting", means that before the expiry of that period, it is to be laid before the House and the decision is to be taken by the joint sitting either of approval or disapproval. It is necessary that it should be laid before the joint sitting of Parliament and therefore, the word has been used that it must be laid. First, it must be laid and then before the expiry of the period of two months, the approval is necessary and if the disapproval is there, as your honour was asking, then that Proclamation shall cease to be in force immediately. If, a resolution is passed, before the expiry of the period of two months, may be after one month it would be valid.

Mr. Chairman: What you are saying is, that wherever there is a power of approval, it implies a power of disapproval and the power of

appointment implicitly is the power of dismissal.

+ Ch. Muhammad Anwar Bhinder: The Constitution cannot envisage that necessarily the House will approve it. It is not obligatory that the House must approve it, the House can approve, the House can disapprove. So, Sir, my humble submission is that if we read this second part of this Article, the word "unless" clearly says that before the expiry of that period, the decision of the joint sitting should be there. It has to be there. If the House approves it, well and good, it will go on for two months, if disapproves it, immediately that shall cease to have effect and that shall not be operative. So, it is the language of this sub Article.

جناب چیئرمین۔ اور یہ اور طریقے سے بھی ہے جس طرح مولانا صاحب نے فرمایا تھا۔

sovereignty vests in Allah and it is to be exercised by the people of Pakistan through the chosen representatives of the people. Now, this is the highest forum of the chosen representatives of the people.

اس سے اونچا کوئی forum نہیں ہے

joint session of Parliament is the highest forum, so vested in this forum is the sovereignty subject to the sovereignty of Allah. So, this forum, if disapproves,

تو پھر وہ کیسے رہے گا ایک individual کا order یا ایک government کا order۔

+ چوہدری محمد انور بھنڈر: سر نہیں رہے گا۔

That is my humble submission. That it will go and that is the intention of this Constitution and therefore, they have used the word "unless" and the period, has been provided, it is to be decided by that joint sitting, before the expiry of that period. If there is disapproval, the Proclamation will go.

Mr. Chairman: Then, why there is distance in the language between Article 232 and 236 ?

تو راشدی صاحب نے اس پر argument کیا تھا۔ کہ ۲۳۲ والی Proclamation ہے اس کی

+ Speech corrected by honourable Senator.

language کچھ اور ہے اس میں approval اور disapproval دونوں آجاتے ہیں غالباً۔

+ Ch. Muhammad Anwar Bhinder: Sir, necessary approval cannot be envisaged. The House can only approve and cannot disapprove cannot be the intention of the framers of the Constitution.

Mr. Hussain Shah Rashdi: The question of confidence only relates to the National Assembly and to no other forum...

جناب چیئرمین۔ ٹھیک ہے۔ ٹھیک ہے۔

+ Ch. Muhammad Anwar Bhinder: So, Sir, I was very clearly making my submission that it seems to be opposed to the expiration of two months unless this. 'Unless' puts a restriction on two months. 'Unless' restricts it. This is a sort of proviso to the earlier words and it says "unless before the expiration of that period", that before two months it has been approved by the resolution of joint sitting and if the approval is visualised then laying there, getting approval before the two months is necessary. I would very humbly submit that the laying before the House is necessary then before the expiry of the House, obtaining the vote of approval is necessary and if there is no vote of approval and if the House disapproves that it will go on the day the resolution of disapproval is passed.

Then, Sir, my other submission would be that sub-Article(4), of this very Article says "Notwithstanding anything contained in clause (3), if the National Assembly stands dissolved at the time when a Proclamation is issued under this Article, the Proclamation shall continue in force for a period of three months but, if a general election to the Assembly is not held before the expiration of that period, it shall cease to be in force at the expiration of that period unless it has been approved by a resolution of the Senate. "This also clarifies that the intention of the framers of the Constitution is that it must be laid there for a decision and it can only

+ Speech corrected by the honourable Senator.

continue for two months or for three months as in sub-Article(3) if there is a decision of the joint sitting or joint sitting in sub-Article(3) and the approval of the Senate in sub-Article(4). So, Sir, if there is to be approval or disapproval of the House then necessarily it is first to be laid, then it is to be debated and then it is to be voted upon. Therefore, my humble submission would be that the laying, not only the laying but the approval of the resolution before the expiry of the period of two months was a must which has been violated in this case. Neither it has been laid before the joint sitting nor it has been voted upon by the joint sitting nor it has been approved or disapproved by the joint sitting. So, this is a clear case of breach of the privilege of the august House of the National Assembly as well as the Senate, both constituting the Parliament.

Sir, I would be going to the next question that it has been said that the matter does not require the intervention of the Senate, therefore, inadmissible under Rule 62, sub-Rule(3). Sir, my humble submission would be that the Senate is a component part of the Parliament, it is the constituent of the Parliament. So Senate, and the Senate can protect my rights, the rights of this House, the rights of the joint sitting, and ultimately the rights of the Parliament. So far as those rights are concerned this Senate is fully competent to agitate those points, to preserve those rights and to safeguard the interest of the members of the Senate as well as joint sitting and the Parliament. So, being a component part of the Parliament, Senate is the competent authority to safeguard the rights and to take action in case of the breach of privilege. Sir, if my right or Mr. Sartaj Aziz's rights, being the member of this august House and ultimately the rights of this House have been infringed, where should I go?

Next objection is that the matter is *subjudice* and the motion is out of order rule 62 does not make the privilege motion inadmissible on the ground that it is *subjudice* and Sir, I would very humbly submit that this matter, whether any

breach of privilege of this House or the breach of the joint sitting has taken place is not *sub judice*, something else is *sub judice*. This matter is not *sub judice*. Therefore, on both the grounds that it does not relate to the privilege motion and (2) this question is not directly *sub judice* before any court of law that any breach of privilege has taken place makes the motion admissible.

Sir, another question was raised that no time is mentioned as to when the Proclamation is to be laid before joint sitting of Parliament. My submission would be as I have submitted earlier and in my own way or in my own thinking I have interpreted sub-Article 3, the period is there, within two months before that it is not only to be laid, it is to be deliberated, it is to be voted upon, therefore, this period has been given otherwise Sir, my friends say about this that he may place the Proclamation after six months. What is the fun in that? Sir, what would be the idea behind that? What would be the efficacy of that action, and will the President do that? Will he place the Proclamation before this House or before the joint sitting after the six months? That would be just a mockery of the procedure governing the joint sitting I don't think that any sane man can think of this that he may put the Proclamation four months after, six months after, eight months after, no, Sir, it is provided in the Constitution in sub-Article (3) that he must call the joint sitting and he must place within two months, otherwise after if it is disapproved, it will end earlier it is not disapproved it will end after two months, if they want. To extend the period by another Resolution they can extend the period but so far as first Resolution is concerned that must be before the expiry of the period of two months?

Next question is, what is the effect of Proclamation of the legislative functions of the Parliament. Instead of the Provincial Assembly Parliament should have the power to legislate for the Province. As your honour has already pointed out that a very big action was taken, all the powers of the

Provincial Assembly were taken, Proclamation was examined by your honour, and you have seen that all the functions of the Provincial Assembly were entrusted to the Parliament and the Parliament could legislate, and the Parliament had all the powers, to legislate over the provincial matter. But the Parliament had no power to have the Proclamation before it. Sir, this is paradoxical. I don't understand the logic behind this that we can legislate for NWFP during those two months. We have the powers to legislate. But, Sir, we don't have the power to have that Proclamation before us because that is the discretion of the President. Sir, that is never the intention of the Constitution makers and that has never been the intention of the law. The intention was very clear that if we have the power then at least first step should be the laying of the Proclamation before the joint sitting. If that has not been done, then how could joint sitting be called. No Proclamation has been laid. Both the Houses have not been taken into confidence and Sir, this is, according to my humble submission a clear case of breach of privilege. How high so ever a person might be, if there is a breach of privilege of the House, the House of Commons, the House of Lords have been taking cognizance. Sir, I would request your honour and this House very very humbly that these privileges should be very jealously guarded. Otherwise, if we would not guard our own privileges then in future we should not expect that these Houses should have the respect which they are supposed to command. In the interest of the honour and prestige which the Parliament has. I think we must take action in this matter. This is a clear case of breach of privilege and we must safeguard these privileges and I would very humbly submit that this motion may very kindly be held in order and it may be referred to the committee concerned. Thank you very much, Sir.

جناب چیئرمین۔ جی جناب پروفیسر صاحب۔

Mr. Sajid Mir: Sir, this motion is essentially legal and constitutional in nature, and you have perhaps rightly given much more time to those of our friends who belong to the legal profession. But I think those of us who don't belong to that profession.....

جناب چیئرمین۔ نہیں جو بولنا چاہتا ہے۔

Mr. Sajid Mir. Just a minute, Sir, I have also the right to speak on this,

اور یہ تھوڑا سا جو imbalance ہے جی legal profession والوں اور دوسروں میں اس کے بارے میں ایک شعر آپ کی نذر ہے کہ
 بہت ہے تیرے میلانے میں لیکن
 برائے مصطفیٰ زیدی نہیں ہے

جناب چیئرمین۔ نہیں جہاں تک میرا تعلق ہے جو بھی اس پر بولنا چاہتا ہے I have allowed everybody, I am not cutting off anybody تو آپس میں اگر کوئی arrangement کر لیں تو اور بات ہے

But as far as I am concerned, anybody who wishes to speak, since, we have allowed everybody, I will allow everybody

ابھی مندوخیل صاحب نے بولنا ہے تو میں چاہتا ہوں کہ ادھر ادھر سے بولیں تاکہ balance ہو رہے جی لچکی صاحب۔

جناب منظور احمد لچکی۔ شکریہ جناب چیئرمین۔ دو دن سے اس تحریک استحقاق پر بحث ہو رہی ہے اور اس جانب اور اس جانب ہمارے معزز اراکین نے جن کا تعلق وکالت کے پیشہ سے ہے انہوں نے سیر حاصل بحث کی ہے اور قانونی پوائنٹس اٹھائے ہیں۔ میں چونکہ وکیل نہیں ہوں اس لئے میں اس سے تھوڑا ہٹ کر political angle پیش کرنے کی کوشش کروں گا۔ میں دو حصوں میں اسے تقسیم کرتا ہوں بلکہ تین حصوں میں، ایک presidential Proclamation کا ہے دوسرا جو ہے کہ آیا اسکو admit کرنا ہے یا نہیں تیسرا یہ ہے کہ اسکا political aspect کو سامنے رکھنا بہت ضروری ہے۔ جناب چیئرمین! میں سمجھتا ہوں کہ جو

کچھ بھی ہوا وہ start ہی vote of no confidence سے شروع ہوا اور میں یہ سمجھتا ہوں کہ اگر اس دن۔۔۔ جناب والا! مولانا صاحب سے کہہ دیں کہ تھوڑا خاموش ہو جائیں۔

جناب چیئرمین۔ جی مولانا صاحب وہ آپ کی باتوں سے disturb ہو رہے ہیں۔

جناب منظور احمد گچکی۔ مولانا صاحب ہمیشہ حائل ہو جاتے ہیں جی۔ جناب والا! میں سمجھتا ہوں کہ اگر اس دن سرحد اسمبلی میں یہ کھیل نہ رپایا جاتا تو شاید اس کے کوئی دوسرے بہتر پہلو نکل آتے۔ آپ کو یاد ہوگا کہ جس دن تحریک عدم اعتماد پیش کی گئی اور میں سمجھتا ہوں کہ پارلیمنٹ کے اندر یہی ایک حق ہے ممبران کا کہ وہ جب بھی چاہیں جس وقت بھی چاہیں قانونی طور پر تحریک عدم اعتماد پیش کر سکتے ہیں اور جس طریقے سے اسپیکر نے غیر ذمہ داری کا مظاہرہ کیا۔۔۔

(مداخلت)

جناب چیئرمین۔ اس جھگڑے میں اگر ہم نہ پڑیں تو میرے خیال میں بہتر ہوگا کیونکہ پھر اس طرف سے بھی شروع ہو جائیں گے۔

جناب منظور احمد گچکی۔ جناب والا! آپ مداخلت کیوں کرتے ہیں۔

جناب چیئرمین۔ دیکھیں اس میں یہ ہوگا کہ پھر یہ debate ختم ہی نہیں ہوگی۔

جناب منظور احمد گچکی۔ جناب آپ کیوں disturb کر رہے ہیں۔

جناب چیئرمین۔ میری عرض یہ ہے کہ اس وقت جو مسئلہ ہے وہ ہے استحقاق مجروح ہونے کا۔

جناب منظور احمد گچکی۔ جب تک آپ پیچھے نہیں جاتیں گے اس وقت تک آپ

politically establish کیسے کریں گے۔

جناب چیئرمین۔ اگر آپ اس مسئلے کو پھیریں گے تو میں ان کو بھی نہیں روک

سکوں گا پھر پہلے والی بات شروع ہو جائے گی۔ میں مداخلت نہیں کر رہا صرف میں آپ کو یہ بتا رہا ہوں کہ اگر آپ اس مسئلے کو پھیریں گے تو میرے لئے ناممکن ہو جائے گا کہ میں ان کو روکوں کہ آپ اس پر بات نہ کریں۔ ابھی تک ہم نے کوشش کی ہے۔۔۔

جناب منظور احمد گچکی۔ ظاہر ہے کہ میں کوئی legal expert وہ تو نہیں ہوں میں

کوئی Barristor at law نہیں ہوں کہ تمام آئین کو پڑھ کر آپ کو سناؤں آپ کو تو مزہ اسی میں آتا ہے۔

جناب چیئرمین۔ عرض صرف اتنی ہے کہ issue جو اس ہاؤس کے سامنے ہے وہ یہ ہے کہ استحقاق مجروح ہوا ہے یا نہیں because of violation or alleged violation of Article 234 تو اگر ہم ہسٹری میں پلے جانیں گے تو میں کیا کروں گا آپ مجھے جانیں اگر آپ کھولنا چاہتے ہیں اس issue کو تو پھر کریں یہ بات ختم نہیں ہوگی۔

جناب منظور احمد گیلگی۔ جی، آپ کی مرضی جس طریقے سے ہاؤس کو چلانا چاہتے ہیں آپ کسی کو بولنے دیں یا نہ دیں یہ آپ کا انداز ہے بہر حال I protest جناب والا! چلو میں اس کو بھڑوڑ دیتا ہوں کیونکہ آپ کے مزاج پر گراں گزرتا ہے تو میں جناب والا! آپ کے اس ہاؤس کے اپنے ہی فیصلے کو quote کرتا ہوں میں Decisions of the Chair, July, 1976 کی ایک ruling ہے اس وقت کے چیئرمین کی میں سمجھتا ہوں کہ اس ruling کے بعد اور مجھے یقین ہے کہ آپ نے ۸۵ سے ۸۷ کی ruling پڑھی ہوگی بالکل بعینہ ایسا ہی subject ہے اور آپ نے ۷۲ سے ۷۷ کا جو Decision of the Chair ہے وہ بھی پڑھ لیا ہوگا جناب چیئرمین! بالکل بعینہ ایک motion move ہوا جو فیڈرل گورنمنٹ کے خلاف تھا کہ unconstitutional order of the suspending Balochistan Government and of directing Balochistan Governor to chair resume all powers in the Province on behalf of the Federal Government نے rule out کیا۔ اور chair کا فیصلہ یہ ہے

"The Chair observed that the previous order by the Provincial Government and the Provincial Assembly of Balochistan were suspended, expired on the night between the 29 - 30 June. A fresh order was issued on 30th June. Under this order the Provincial Government has been suspended and its power has been given to the Governor. But the Provincial Assembly has been revived. So it could not be contended that this order, then is a detail in it, thereupon the Chair observed that such a complicated constitutional point be decided by him. If there was anything unconstitutional or illegal in the order, passed by the President that could be challenged only in a High Court or in the Supreme Court. He could not sit in

judgement over it. In this deal , he added, the Senate is not the proper forum to raise discussion over this question. the motion was, therefore, ruled out.

Mr. Chairman: Please tell me page number.

Mr. Manzoor Ahmad Gichki: Page 97. Senate 5th July, 1976.....

Now Sir, I come to the second one. This ruling is dated 6th July 1986. At that time Mr. Ghulam Ishaque was the Chairman, Senate. This was on the 6th July, 1986, Senator Haji Malik Farid Ullah Khan, asked to raise a question of a breach of privilege arising out of the appointment of acting Governor of NWFP, during the absence abroad on medical leave of Nawabzada Abdul Ghafoor Khan Hoti, former Governor, NWFP, later resigned his office. According to the mover the appointment of the acting Governor could only be made when the Governor was on leave. As after tendering resignation the Governor ceased to hold office, the very act of making acting appointment was wrong and acting appointment was unconstitutional. Sir, this the ruling of the Chairman. Putting the motion out of order, the Chairman, Mr. Ghulam Ishaque Khan, observed, "the President could competently make the impugned action i.e". appointment under Article 101 sub-Clause(5), read with Article 104, in regard the privilege, he observed, "I have earlier held in this House that whether this House can judge the constitutionality of the question raised on some other body under the Constitution, if I apply my previous ruling to this situation and assuming that acting appointment was not constitutionally tabled then the Senate is not a proper forum where its constitutionality, or otherwise, could be questioned, agitated, or examined. Superior courts alone had the prerogative to examine the constitutionality issue. Senate is not an appropriate forum for this purpose". The Chairman also quoted a ruling of 5th July, 1976, which I have already read. He further observed, that, however, such constitutional issue touches upon the

working of House that becomes a different matter and the Senate has full authority to decide such a matter. If somebody can believe that acting appointment has been made in breach of any constitutional provision then the action should be challenged in a court. The Chairman also ruled, "that a matter of privilege must be such as required the intervention of Senate. The present matter was for the President and Prime Minister to settle and, I think, we cannot sit in judgement on the constitutionality of such action of the executive".

جناب والا! یہ دو rulings ہیں بالکل اسی سے متعلق میں constitutionality پر، جناب چیئرمین! میں سمجھتا ہوں کہ یہ تحریک استحقاق جب پیش ہوئی تھی تو آپ کو تو اس تحریک کو چیمبر میں ہی kill کرنا چاہیئے تھا، چہ جائیکہ آپ اس کو ایوان میں لے آئے اور اس کی admissibility پر discussion شروع کر دی اور آپ نے دو دن اس کی discussion میں لے اور مجھے یقین ہے کہ اگر مقررین زیادہ رہے تو تیسرے دن بھی یہ چلے گا۔ چونکہ باقی aspects ہمارے دوسرے دوستوں نے Proclamation کے بارے میں (اعتراز احسن اور راشدی صاحب نے) اس ہاؤس کے سامنے رکھے ہیں اس لئے میں ان details میں نہیں جانا چاہتا میں تو صرف، سینٹ کی ہی دو decisions کا حوالہ دیتا ہوں۔ شکریہ۔

جناب چیئرمین۔ شکریہ۔ اب Law Minister صاحب کیا کیا جائے؟ مندوخل صاحب آپ کتنا وقت لیں گے۔ آج ہو سکتا ہے یا کل کریں؟

سید اقبال حیدر۔ میرا خیال ہے کہ کل کریں کیونکہ بہت سے اور اراکین کی بات کرنے کی خواہش ہے۔

جناب چیئرمین۔ کیونکہ وہ سندھ کا معاملہ بھی بڑا important ہے اس پر بھی لوگ بات کرنا چاہ رہے ہیں۔

سید اقبال حیدر۔ privilege motion پر debate ختم ہو جائے تو۔

جناب چیئرمین۔ نہیں یا تو یہ کر سکتے ہیں کہ کچھ time fix کر لیں کہ وہ بھی take up کر لیا جائے کیونکہ کچھ ممبران وہ بھی چاہ رہے ہیں۔ بہر حال فی الحال تو کل کے لئے کرتے ہیں۔

سید اقبال حیدر۔ کل صبح رکھ لیں سر۔ کل Monday ویسے تو off day تھا لیکن کل پر رکھ لیں۔

جناب عبدالرحیم خان مندوخیل۔ جناب والا! صبح اس طرح رکھیں کہ یہ مسئلہ سب سے پہلے ہو۔

سید اقبال حیدر۔ جی ہاں اس privilege motion پر پہلے debate ہو گی۔

جناب عبدالرحیم خان مندوخیل۔ جی ہاں پھر ٹھیک ہے۔

جناب چیئرمین۔ ٹھیک ہے جی۔

Syed Iqbal Haider: And legislation, Sir?

کل، کیونکہ ہمیں سر تاج عزیز صاحب نے بھی گزشتہ جمعرات کو۔۔۔۔

جناب چیئرمین۔ آپ بات کر لیں تا کہ یہ بھی چلتا رہے اور باقی کام بھی ہوتا رہے۔ legislation بھی ہو جائے۔

سید اقبال حیدر۔ میں مشکور ہوں سر تاج عزیز صاحب کا کہ انہوں نے گزشتہ جمعرات کو کچھ یقین دہانیاں کرائی تھیں کہ اگر اس privilege motion پر بحث جمعرات کو ختم کرنے کی بجائے آج بھی جاری رکھیں تو وہ پیر سے پھر legislation کے عمل میں ہمارے ساتھ تعاون فرمائیں گے میں امید کرتا ہوں کہ وہ جو non-controversial legislation ہے اس کو پاس کرانے میں اگر ان کا تعاون حاصل رہا تو ہم legislative کام بھی چلاتے رہیں گے۔ کل صبح رکھ لیں ویسے تو کل off day تھا لیکن کل صبح رکھ لیں۔

جناب چیئرمین۔ ٹھیک ہے۔ جی جناب پروفیسر خورشید صاحب۔

پروفیسر خورشید احمد۔ مناسب ہے کل privilege motion کے اوپر بحث رکھ لیں اور جو ہماری motion ہے سندھ پر اس کے لئے ابھی سے طے کر لیں کہ پرسوں اسے fix کر لیں یعنی Tuesday پر۔ اس پر تو ہم نے آج کے لئے agree کر لیا تھا تو اب اس کو منسلک کے لئے رکھ لیجئے تا کہ کل آپ legislation بھی اپنی کر لیں اور privilege motion پر بھی بحث کر لیں۔

جناب چیئرمین۔ چلیں فی الحال تو کل کے لئے adjourn کرتے ہیں باقی آپ ان

سے مشورہ کر کے جو بھی آپس میں طے کر لیں۔ So, the House is adjourned to meet again tomorrow at 10.00a.m.

[The House then adjourned to meet again at ten of the clock in the morning on Monday, the 9th of May, 1994].
