
(1976) 12 BOM CK 0001

In the Bombay High Court

Case No : Criminal Application No. 3134 of 1976

Uttamrao Patwari

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 17-12-1976

Acts Referred:

Defence and Internal Security of India Rules, 1971 — Rule 184, 36(6), 36(7), 43(1), 45(1)

Penal Code, 1860 (IPC) — Section 124A

Citation : (1976) 12 BOM CK 0001

Hon'ble Judges : B.N. Deshmukh, J; B.M. Sapre, J

Bench : Division Bench

Advocate : R.M. Agarwal, for the Appellant; R.S. Bhonsale, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

B.N. Deshmukh, J.—The petitioner who is a legal practitioner at Vaijapur, District Aurangabad, has filed this application for enlarging him on bail. His similar application was rejected by the trial Magistrate. The learned Additional Sessions Judge, Aurangabad, confirmed that order in Miscellaneous Application No. 186 of 1976. Being aggrieved he has filed this application.

2. The facts are not in dispute. The petitioner is a resident of Taluka place Vaijapur and is a practising lawyer. His house was searched on October 9, 1976, by the Dy. S.P. and in that section four different types of documents were seized. They are as follows :

1. Two cyclostyled 4 page pamphlet with the heading Lok Sangharsha in Marathi.
2. A bunch of five printed pamphlets dated 20-9-1976 being title "Amendment of the Constitution or Throttling the democracy".
3. One booklet printed in English and published on September 13, 1976, by N.G. Gore, Pune, bearing the title "People".

4. One packet containing pamphlets of Maharashtra Societies party dated 14-9-1976.

3. Apparently these documents were examined by the police between 9-10-1976 and 12-9-1976. Since the Police Officers formed the opinion that this printed and cyclostyled material contained prejudicial report and the petitioner was in possession thereof without any lawful excuse, he was arrested for the possession of that material. The petitioner's application to the Magistrate as well as to the Additional Sessions Judge was rejected on the ground the Rule 184 of the Defence and Internal Security of India Rule 1971 (hereinafter referred to as the "said Rules) permits granting of bail when it is opposed by the state only if the Court is satisfied that there are reasonable grounds to believe that the petitioner is not guilty of the contravention of any of the Rules. It is this order which is being challenged before us.

4. This is a prosecution under Rule 43(1)(a), (b), (c) and (d) read with Rule 45(1) (b) of the said rules. The gist of the offence is that the petitioner is found in possession of documents containing prejudicial report. The expression "prejudicial report" used in the said Rules has been defined in Rule 36(7) of the said Rules. It means any report, statement, or visible representation, whether true or false, which or the publishing of which, is, or is an incitement to the commission of a prejudicial Act. Now, "prejudicial Act" has been defined in Clause (6), of Rule 36. "prejudicial Act" as defined in that clause means any Act which is intended or is likely to lead to the results in corporate in Clause (a) to (s) of that rule. For the present purpose reliance is being placed upon two sub-clause (e) and (h) of that rule. If any Act is intended or likely to bring into hatred or contempt or to excite disaffection towards the Government established by law in India it would fall under Clause (e). If that Act were to cause fear or alarm to the public or to section of public, it would be covered by sub-clause (h) of sub-rule (6) of Rule 36 of the said Rules. The only Act alleged against the petitioner is that he was in possession of documents containing prejudicial report.

5. The present petition is being argued by Shri R.M. Agarwal, Counsel for the petitioner, on the footing that the possession of the material seized and placed before the Court may be assumed so far as the petitioners is concerned. On that assumption the only argument that is being canvassed before this Court is that reading the seized material, as a whole and on a fair, free and reasonable construction from the point of view of the readers for whom it is meant, it is impossible to construe that this printed or cyclostyled material could never be described as "prejudicial report". If that is not so, on the face of the record, the Court can legitimately reach the satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of the contravention of any of the said Rules. The provisions of Rule 184 of the said Rules seems to be thus satisfied and there is no reason why the petitioner should not be released on bail. On behalf of the state the application for bail is opposed. In support of the orders passed by the Courts below it was urged that the material seized from the

petitioner does constitute objectionable or prejudicial report. For drawing that conclusion, one of the approaches suggested is that the two courts below have already taken a view and it does not appear that the view taken by them is either impossible or perverse. At this stage, therefore, this Court should not interfere. The second argument is that even after fair and reasonable reading of the material it is demonstrable that the material is seditious and is covered by the provisions of the Rules. It is these contentions that we have to examine.

6. The meaning to be attached to the expression "prejudicial Act" in Rule 36(6) and "prejudicial report" in sub-rule (7) of that rule is now well settled. There can hardly be any controversy about it. These rules do not use the expression seditious, but the provisions which are relevant and which we have indicated above almost keep the language of section 124-A of the Penal Code. There are a number of judgments of this Court as also of the Supreme Court, where it has been held that the language of the said rules being identical or similar to the language of section 124-A of the Penal Code, the same meaning must be attached to the provisions of rules as has been the established meaning of the provisions of section 124-A of the Penal Code.

7. In recent judgment of this Court in (Criminal Application No. 1445 of 1976 decided on 24th June, 1976), Bom.H.C. (D.B.) to which one of us (Deshmukh, J.) was a party the same view has been taken. Similar view has also been taken on 7th December, 1976 by another Division Bench of this Court in (Spl. Civil Application No. 2949 of 1975, with Spl. Civil Application No. 3003/75), Bom.H.C. (D.B.) decided by Tulzapurkar and Gadgil, JJ. Before these rules were framed there were the Defence of India Rules under the Defence of India Act, 1939. The language of Rule 34(6)(e) of those rules was similar or identical with the language of the present Rule 36(6)(e).

8. Much before the present rules were framed, section 124-A of the Penal Code came up for interpretation and its meaning was settled. There is a long history about the meaning and intendment of the provisions of sedition contained in section 124-A of the Penal Code. But it is unnecessary to repeat the entire history every time. That history has already been stressed in the above two referred judgment of this Court as also very exhaustively dealt with by the Supreme Court in its celebrated judgment of Kedar Nath Singh Vs. State of Bihar, . In fact it is this judgment of the Supreme Court which has set at naught the controversy which arose because of the differing views expressed by the Federal Court of India in Niharendu Dutt Majumdar's case AIR 1942 F.C. 22 , and the contrary view expressed by the Privy Council in AIR 1947 82 (Privy Council)

9. The context in which the Supreme Court was required to interpret and find out of the real meaning of section 124-A of the Penal Code was to examine its constitutionality which was being challenged. The Privy Council had relied upon the plain wording of the provisions of that section and had concluded that when reading certain material which would have the tendency to create disaffection which merely means want of affection disloyalty or hatred, was enough to

constitute sedition, according to the law of this country. The Federal Court on the contrary went beyond the plain meaning of the wording of that section and after surveying the development of the concept of sedition in England concluded that the same concept was underlying the provisions of section 124-A of the Penal Code and that section must be interpreted only in that light. The conclusion of the Federal Court therefore was that every citizen had a right to criticise not only the Government measures and administrative acts but also to criticise the public men in office as also public servants who are carrying out the administration of the country. That criticism could be strongly worded even if the language used constitutes some other offence and proceeding could be undertaken. If an offence of sedition u/s 124-A was to be alleged it must be further shown that the wording must be of a nature which incites people to violence against the Government established by law or has the intention or tendency of creating public disorder.

10. This controversy was set at rest by the Supreme Court in the case of Kedar Nath Singh. The learned Government Pleader before us is trying to make some point in the context in which Kedar Nath Singh's case was decided. We will consider that aspect a little later. However, the challenge before the Supreme Court was that section 124-A and 505 of the Penal Code were unconstitutional in view of the provisions of Article 19(1)(a) of the constitution. The freedom of speech guaranteed by the constitution and the restrictions put by section 124-A of the Penal Code on the performance of certain acts had to be reconciled and balanced. The Supreme Court found that if the interpretation put by the Privy Council in Sadashiv Narayan Bhaleroa's case were to be accepted the section would be required to be struck down as unconstitutional. On the contrary if the interpretation made by the Federal Court in the case of Niharendu Dutt Majumdar were to be accepted the provisions would be constitutional. Their Lordship then referred to another well known principle that when two interpretations are possible and available one rendering certain provisions of the constitution unconstitutional and the other saving it as constitutional, the Court should always lean in favour of upholding the constitutionality of laws. They therefore, concluded that section 124-A of the Penal Code should be declared valid by giving it the meaning which was given to it by the Federal Court in Niharendu Dutt Majumdar. The Supreme Court has quoted with approval several passages from the Federal Court's judgment, where the learned Chief Justice Sir Maurice Gwyer has referred to how mere harsh words or frothy language does not lead to any of the consequences contemplated by the definition of sedition. The Federal Court has also pointed out that one has to look to the life in the present context. Certain language which might have had a particular impact upon the mind of the people, loses its force in different times. Constant use renders it bereft of any meaning. Even though it amounts to vulgar or abusive language and though otherwise condemnable and capable of leading to some other kind of criminal prosecution for defamation etc. may not necessarily be a sort of material which will incite people to violence. The ultimate conclusion,

therefore, is that in the democratic set up which this country adopted conscientiously under the Constitution, criticism of Government measures and administrative Acts as also of high placed public servants and public men is implied in the concept of democracy. Replacing one party in power by another through the Constitutional machinery of ballot box is another well recognised fundamental feature of the constitution. In fact educating the public opinion and accordingly getting their votes at the periodical elections is the only mode by which a political party can secure the confidence of the people and get a mandate to rule the country. For doing this, it would be entitled to criticize the policies of Government in the sense, policies of the political parties and persons in authority. Though decency and the normal rule of the game may require that the language used in the propaganda should be sober and dignified, it is possible that some people will breach this rule of the game and use abusive and even vulgar language. However, that by itself cannot be the test of deciding whether the Act falls under sedition as contemplated by section 124-A of the Penal Code.

11. The principle therefore is that one has to make a distinction between Government established by law and those who manage the Government for the time being. Stability and continuity of Government is sine qua non of any political unit known by the expression "State". A peaceful transition of power as a result of the will of the people can never be objected to. However, that transition must be brought about by lawful and peaceful means. Violence cannot be used for getting power. In the same way while criticising the Government or the persons in authority for the purpose of persuading the people to the view of the speaker he cannot do anything or use language by which people will be incited to use violence or physical force. Sedition in relation to the state would almost border on treason. Without disloyalty to the state as such but with a view to criticize the existing Government in the sense of the people in power, it is permissible to criticise the policy as well as actions. Even strong worded criticism is not debarred provided care is taken that nothing is done or said which incites people to violence or to lead them to public disorder. If that is done or has the intention or tendency to create public disorder or it incites people to do violence against the Government established by law the Act would undoubtedly fall under the definition of sedition.

12. It is this interpretation of section 124-A which has been accepted by the Supreme Court in Kedar Nath Singh's case. The result therefore is that whenever one reads section 124-A of the Penal Code one must take it that the legislature has enacted that section with the meaning assigned to it by the Supreme Court. Since the same language has been copied in the earlier Defence of India rules or the present defence and internal security of India Rules, the definition of "Prejudicial Act" and "Prejudicial report" must yield to the same interpretation. It is important to note that with the full knowledge of the judicial interpretation by the Supreme Court of India, the present rules of 1971 have been re-enacted with the identical language which was contained in the earlier rules and which language forms part of section 124-A. There is therefore no doubt that this

meaning of the words "Prejudicial Act" or "prejudicial report" is established and accepted and any controversial meaning and any allegation of the offence of sedition or the commission of the Prejudicial Act must be decided on the basis of this meaning.

13. Before we go to the actual material which has been seized from the petitioner, we could notice one more argument of the learned Government Pleader. The approach proposed by him and canvassed before us seems to be sound and is not being disputed by the learned Counsel for the petitioner. He brings to our notice that the fact that the present times are not normal and there has been a declaration of emergency which is in force. The interpretation of section 124-A made by the Supreme Court was in a different context and normal times. To-day when the country is facing emergency a different approach must be adopted. When we asked the learned Government Pleader whether by this argument he meant that the theoretical interpretation of section 124-A by the Supreme Court has to change its basis altogether, he was frank enough to say that was not in his mind. However, according to him, an Act which may not lead to serious consequence in a given set of circumstance or at a given time, may flare up unpleasant consequences in different context and in different times. The courts must be aware of this approach. Therefore, in the present emergency any objectionable literature must be read in the context of the changed circumstances and if the Court finds that viewed from this point of view the consequences contemplated by the law are possible then it must lean in favour of declaring that material seized by the police as either objectionable or prejudicial report.

14. This approach also seems to have been accepted judicially and the Division Bench of this Court consisting of Tulzapurkar and Gadgill, JJ. in (Sp. C. A. No. 2949/75), have quoted certain judgments where countenanced has been given to such an approach. Another Division Bench of this Court in Binod Rao v. M.R. Masani 78 Bom.L.R. 125, has relied upon the observations of the Lord Sumner in Bowman v. Secular Society Limited 1917 A.C. 406. According to Lord Sumner, the words, as well as the Acts, which tend to endanger society differ from time to time in proportion as society is stable or insecure in fact, or is believed by its reasonable members to be open to assault. Social and political environments prevailing at a given time, therefore, become relevant when the effect of certain acts or words are to be considered.

15. Undoubtedly, we shall keep this approach in mind when the document seized are being examined for the real meaning and effect of the contents thereof. One of the arguments of the learned Government Pleader which we are not able to appreciate is that the Supreme Court was interpreting the provisions of section 124-A in a different context, viz. to examine the constitutionality thereof. According to him, if that Court were called upon to consider both the provisions in the present context like an emergency, perhaps a different view might have been taken. We are not able to appreciate this argument. The limits of criticism

in a democratic society seem to be well established. There shall not be disloyalty to the state in the sense treason on the one hand and there shall not be attempt either by words spoken or by deeds otherwise performed to throw the Government established by law by force of violence. Short of these limitations, if criticism and propaganda is resorted to it for bringing about a change in the Government, and in doing so the language tends to become rather violent or abusive it cannot be at once branded as sedition. Emergency as the very word shows is something different from normalcy. It is not expected that any nation will live long or permanently under the conditions of emergency. Normalcy or the normal condition should be the expected mode of life and emergency an exception. Ordinarily therefore all laws would be enforced and interpreted in normal times. So far as the constitution of the country is concerned which is the supreme document or supreme law, it lays down the limitations of making laws themselves. If certain provisions of this constitution are breached, the law would be struck down as unconstitutional. The constitution cannot have one meaning in normal times and another in emergency. If therefore on the anvil of the constitution certain laws have been interpreted, the meaning assigned to them by the Supreme Court would continue to be the law of the land whether the times are normal or emergency. May be that in emergency certain factual aspects which may have been made earlier may gain importance and the courts must be aware of full needs of the times. Beyond that it is difficult to say that an interpretation of the statute made by the Supreme Court in the normal times can change colour or meaning in emergency. We are not, therefore, able to agree with the learned Government Pleader that some different approach need be made during emergency for finding out the real meaning of the word "sedition" as defined in section 124-A of the Penal Code or the offence of "Prejudicial Act" as defined in provisions of the said rules.

16. Going to the material that has been seized from the petitioner, we may point out that the document at serial No. 4 which is the pamphlet of Socialist party of Maharashtra issued from 25 Baijivan Lane, Thakurdwar, Bombay on 14-9-1976 is concerned, no allegation is being made that it contains any prejudicial report. So far as the other three documents are concerned, it is being us as it was done before the Lower Court that some of the pages at any rate from those documents are highly objectionable and amount to prejudicial report. It would be therefore necessary to examine each of these documents with reference to the contents thereof. It is not being doubted that while reading these documents for finding out their real meaning each one of them must be read as a whole and the matter contained therein could not be read out of context. We do not think that it is necessary to refer to any decided cases on this point. In Special Civil Application No. 2949/75, referred to earlier, and decided by another bench of this Court reference is made to the *The State of Bihar Vs. Shailabala Devi*, *Debi Soren v. The State* AIR 1954 Pat. 254 and *Anant Janardhan Karandikar v. M. A. Deshmukh* 68 Bom. L.R. 256. We would therefore consider the contents of the three objected documents in seriatim and in doing so we would read them as a whole

as also consider the effect thereof in the existing circumstances.

17. The first document is the cyclostyled pamphlet bearing no date and bears the title Lok Sangharsha Samiti. This pamphlet is in Marathi. On behalf of the state almost the whole of this pamphlet is being relied upon to show that it contains prejudicial report. This pamphlet is in the nature of reply to a certain new item appearing in an English paper dated 8th June, 1976. The name of the English Paper is not to be seen in the pamphlet. The title under which the English Paper printed the reply of the Indian Government refers to the allegations India in relation to the suppression of human rights. That news item said that India had given a very comprehensive reply and it indicated that neither outside interference nor outside incitement in an important matter like this will be tolerated. The leaflet then proceeded to point out that the original news item relating to the allegations against India nowhere appeared in any papers and therefore the reply to the earlier allegations is rather difficult to follow. Thereafter that subject-matter is dealt with by this pamphlet and it is that portion which is being objected to. A free English translation of that portion would be as follows :

"There is an organisation in New York named "International League of Human Rights". An organisation of the India state in America named "Indians for Democracy" has registered a complaint with that organisation that in India, i.e. Bharat, the fundamental rights of some of the political works are being denied. On the basis of such a complaint and the information which was supplied along with it, the International League of Human Rights registered a complaint with the United Nations. Ever since the declaration of emergency in India, there has been a breach of the human rights as adopted by the United Nations and hence a representative delegation of the United Nations be sent to India for inquiry. The charges levelled by the League were published in some foreign papers but they were not published in India at all."

18. Permanent Delegation of India in the United Nations has issued an extraordinary pamphlet for publication. In that pamphlet it is said that the charges levelled by the League are without any foundation and are misleading. There is no need to send any inquiry commission as demanded by the League. The pamphlet further says that the league should stop its activities of trying to intentionally interfere in the internal affairs of India.

19. Government of India says in this pamphlet "protection of the human rights in a question falling within the sovereign function of the state". It is not a subject falling within the fields of operation of the members of the United Nations.

20. One of the fundamental principle of the United Nations as incorporated in Article 2(7) of the Charter of United Nations is that the United Nations shall not interfere in the domestic internal affairs of a member nation. But to this there is an exception and as mentioned in Chapter VII the United Nations shall inter alia, if the situation poses threat to international peace and security.

21. Similarly as provided by Article 29 of the Human Rights declaration as adopted by the United Nations, there shall be limits according to law upon the enjoyment of the principal rights by every citizen as also for the purpose of permitting the other citizens to enjoy their rights on the basis of limits inherent in a democratic set up of the society.

22. The pamphlet of the Government of India further says that it is a extremely surprising that the League has held out a challenge to the very right of the popularly elected representatives to act according to the provisions of the constitution against the situation created by anti-national elements for the purpose of thwarting the internal piece and harmony of the country. For the league to say that the reasons given by the Government of India for the purpose of declaration of emergency are morally insufficient is to exhibit ignorance about the special an distinctive provisions of the Indian Constitution. It is the say of the League that as compared to the circumstances, the measures taken are rather extreme but it is strange that the League should arrogate to itself the right to decide whether the action taken by the Government of India is in the interest of Indian People or not. To interfere in the internal affairs of India in that manner is certainly not in the interest of the Indian people. On the contrary this amounts to encouragements to those anti national forces that are working to destroy the democracy set up in a country like India which has to face stupendous problems. That alone seems to be the intention of the League.

23. After stating that it is the people of India alone who will decide whether the measures taken were good or bad, the pamphlet further says ---

"There is internal peace in the country. There has been dramatic reduction of prices. Production of Industry and agricultural which is the very foundation for fulfilling the basic needs of the people has increased. The people are gasping the sign of relief, in that the hoarders smugglers, corrupt officers and the political groups indulging in sabotage have no more free hand".

24. After reading this pamphlet, which means after reading the summary of that pamphlet, certain questions arise in the mind---

(1) If this pamphlet is published in the Indian newspapers why was not the legislature's statement allowed to be published. Is this not partially ?

(2) Can the protection of fundamental right be considered as exclusively internal affair of a country ? In this regard, there seems to be some confusion in the pamphlet organised by the Government of India. The Charter of the United Nations was first prepared. Thereafter the declaration of human rights was declared after some years. A question was raised at that time as to whether the United Nations should merely be a silent spectator if the fundamental rights are being trampled upon in a given country.

There was discussion on the subject. India along with many other countries expressed the opinion that this will not do. If the United Nations is not going to

make any move for the protection of any fundamental rights, what is the point in merely adopting the declaration. Ultimately it was decided that if there is any invasion of the fundamental rights, the United Nations must make enquiry in that behalf and it is shown that there has been such encroachment it must also take measures.

25. That means, the say of the Indian Delegation that the United Nations should take steps only when there is danger to the international peace and security is not correct. The fun is that when the Macarthy Committee was harassing some of the literary artists, under the guise of preventing communism, the question was raised before the United Nations. India had joined in that effort. In the same way when apartheid was given a legal from and recognition in South Africa, India has taken leading part in raising that question before the United Nations, and a resolution to effect economic blockade of South Africa was also approved.

26. How can India that has taken lead in raising discussion before the United Nations when there was encroachment over the fundamental rights in other nations, now say, that no discuss that question is to interfere in the internal affairs of a nation ?

Has Government of India any evidence to accuse the League of inciting anti-social forces in the country ? It appears that a party resorts to counter-accusations only when it finds that its own side is lame and indefensible ?

27. One thing must be admitted that in the said pamphlet, it has not been plainly stated that there has been no encroachment at all in India on the human rights. It has been admitted in that pamphlet that some measures were required to be taken to face the internal emergency. Therefore, "there is no need to send a delegation to inquiry" whether there has been breach of human rights in India. The say of India Government, that there is no need to spend time and money, seems to be reasonable.

28. The say of the Government of India that the Indian people alone will decide, whether what has happened is good or bad is correct. What is the point in foreigners saying that the fundamental rights of the Indian citizens have been crushed ? That might add to their knowledge, but, ultimately the Indian people themselves must decide whether they are being robbed of their fundamental rights by the irresponsible use of MISA, severe suppression of the Press, ban on meetings and processions, closing the doors of the courts of Justice, making laws giving special privileges to the members of the ruling party, and amending the constitution etc. In order to determine this, it would be worth while to note some of the provisions of the Declaration adopted by all the nations.

(1) All human beings are born free and their dignity and rights are all equal.

29. Everyone had conscience and power to think, and they must conduct themselves in a brotherly way with each other.

(2) All must be able to enjoy and exercise all the freedom and rights adopted in

the declaration without there being obstacle on the ground of race, colour, sex, language, religion, political and other views, political domicile or social status wealth, birth, or any other pretence to dignity.

(3) Every one has a right to live, right to enjoy freedom and right to security.

30. Having thus translated the entire pamphlet, it would have to be seen whether the reading of this pamphlet as a whole can have the tendency or intention to create disaffection against the Government established by law and to incite the Indian citizen to resort to violence or to bring about public disorder. We have already pointed out earlier that a mere criticism of administrative acts or measures and more particularly a criticism not to the liking of the ruling party in power cannot be the basis of holding that a particular matter is seditious. Is it possible to say that any part of this pamphlet of it constitutes a "Prejudicial Act". The main theme of this pamphlet is to impress upon the readers the fact that during the emergency which is prevailing in this country and which has been declared by the President of the advice of the Council of Ministers belonging to the ruling party there has been a serious erosion of the human rights or the fundamental rights which are not only guaranteed by the Indian constitution but which were also declared "as precious as human possession" by a certain declaration of human rights by the United Nations. India has been one of the champions of that cause whenever the question of suppression of such right arose for discussion before the United Nations. The pamphlet then points out to the reader that the Government of India is playing a double role in upholding those rights when it comes to their suppression in other countries, but when the same allegations are made against the measures taken by the Government of India itself, it comes out with an explanation which is not true. The attack starts in this pamphlet from the non-disclosure or partial disclosures of nest in relation to the allegations made by the International League of Human rights. What precisely the League said has not been permitted to print in his country because of the censorship enforced during the emergency. From the replies given by the permanent delegation of the Government of India in the United Nations the writer spell out what allegations must have been made by the International League of Human Rights. The argument of Government of India in the pamphlet handed out to the members has been tried to be answered point by point and an attempt is made to show that the reasoning of the Government of India in that pamphlet is neither supportable on facts nor supportable in theory. Can the question of human rights or the fundamental rights of human being be treated as a purely domestic or internal matter of a nation. If that can be, in theory then the adoption of human rights declaration by several nations who are members of the United Nations is misleading. The further reasoning in the pamphlet is that the United Nations has to look into the question in relation to a particular nation only when the situation endangers internal peace or security, otherwise the declaration of human rights would lose all its importance.

31. The above objected material insists on pointing out that if there has been no

suppression of human rights in India why should India object to a delegation of the United Nations visiting this country for inspection and verification. It is then argued that there is no denial of the allegation of the League by the Government of India. On the contrary there is an implied admission that some measures were required to be taken in view of the emergency declared due to the unsettled internal conditions.

32. Having thus pointed out that Government of India is putting forward a shield of national sovereignty on the basis of double reasoning, the pamphlet proceeds to point out how India was very much vocal and active when the accusations of apartheid in South Africa and the working of Macarthy Committee in America were the subject-matter of discussion. Referring to a further part of the reasoning in the Government's statement the above objected pamphlet undoubtedly changes its tone and adopts a scenic approach. It is admitted that the Government of India is right in saying that the Indian people alone will decide whether what has happened in this country is right or wrong. It is then sarcastically remarked that so far as the foreigners are concerned, if they come to know the precise situation prevailing in this country it might merely add to their knowledge. Which obviously means that they will know that there has been suppression of certain freedom in this country. However, the pamphlet points out that improving the knowledge of foreigners will not help the people but the Indian people will have to act themselves. If the situation is to be changed to their liking, the Indian people will have to satisfy themselves in the first instance whether they are really robbed of their liberty and fundamental rights by the Government of India at all. For that purpose the pamphlet points out that the people should ponder over the several provisions of law. Reference is thus made to the suppression by the use of the provisions of MISA, the suppression of newspapers by introducing very strict and wide censorship, the total prohibition of holding meetings and processions, introducing provision for preventing a citizen from going to a Court of law for release and passing laws which gave special privileges to the members of the ruling party and effecting amendments to the constitution itself.

33. These are the instance cited to invoke them among the people and to satisfy themselves in the first instance whether these has been any encroachment of the fundamental rights at all. No action is suggested as to what they should do, but in order to determine whether their fundamental rights are encroached at all they are apprised of some of the contents of the declaration of human rights adopted by the United Nations. The last three paragraphs of the above translated pamphlet refers to the equality of human being and the fact that he is born free. It is also emphasised that every human being has not only his power but a right to have and he possesses conscience. Since every human being has all these qualities a brother-hood of human being must always be established and there cannot be superiority of some over the orders. It is then suggested that all the freedoms which are declared by the Charter must be available to every one for being enjoyed. By reason of historical development or otherwise, several

obstacles are being raised in the enjoyment of those freedoms. A list of such difficulties or obstacles is then given in the second last paragraph, though all these elements may not be presented in every country. However, there would be no distinction between man and man on the ground of race, religion, sex, language colour, political and other views, domicile, wealth or any other artificial assumptions of high birth or low birth etc. It is ultimately added that every one has a right to live right to enjoy all freedoms and right to security.

34. The list is given only to point where all these objects are being practised one can say that in that country freedom really prevails. Citizens therefore should have in relation to the conditions prevailing in India to first decided whether there has been any encroachment at all upon their fundamental rights at the hands of Government of India and through the mechanism listed in this pamphlet. At this stage the pamphlet stops.

35. Reading this pamphlet as a whole the question to be decided is whether it incites or calls any individual to resort to unlawful means for throwing out the present Government established by law or it has the tendency to incite violence or public disorder. Undoubtedly the pamphlet is quite critical and may not be much liked by those who are in power. It may also be that the approach of the writer of the pamphlet supporting an outside body like the International League of Human Rights for criticising the Government of India in the United Nations may not be appreciated. However, the question that is fundamentally raised in this pamphlet is whether the human rights on fundamental freedom are internal matters of a country or they being the question relating to human rights transgress the limits of nations and invites the attention of the entire mankind wherever there is encroachment on such rights. It is undoubtedly a debatable issue but it cannot be said that by merely highlighting the nature of the problem and by asking people to decide in the first instance whether they are satisfied that the writer of the pamphlet is right and the Government of India is wrong, the effect could be that normal reader will think in terms of violence or disturbance of public order.

36. It is often said that the basis of a real democracy is enlightened public opinion. Now, is this public opinion to be brought about ? It is accepted on all hands that political education is needed before a nation becomes mature to create a proper climate of public opinion. Ours is undoubtedly a vast country with majority of the citizens being illiterate. Public opinion is trained or prepared only through dissemination of political thoughts. The mass media which could be used for that purpose are entirely controlled by the Government in this Country. In the present context newspapers have limited scope in view of the pre-censorship or other orders prevailing. If therefore a political worker prepares a pamphlet like the present one, for the purpose of propagating at least one lesson in political education viz. to tell the people that they are losing their rights as agreed before the United Nations as being the pre-requisites of a free human society, the subject involved in the pamphlet is beyond the comprehension of an ordinary

person. Those who understand what is a nation, what is political philosophy and what are human rights will alone follow not only the plain language but the implied sarcasm of this pamphlet. Such people are very limited. Can it be said that an educated Indian who understands all the implications of this pamphlet and is perhaps prepared to believe with the writer that there has been some encroachment or substantial encroachment upon his fundamental rights, likely to be induced to resort to violence or public disorder ?

37. On a plain and objective approach to this pamphlet, we find it impossible to believe that literature of this type which is so highly argumentative and includes some of the important problems relating to the fundamental freedoms can lead to the inducement to violence or lawlessness. So far as this pamphlet is concerned, we do not think that it can be described as a prejudicial act within the meaning of that expression in Rule 43 read with Rule 36(6) of the said Rules and possession of which is an offence under Rule 46 of the said Rules.

38. The next objectionable matter relates to a printed pamphlet called "Lok-Sangharsh" (Maharashtra), dated 20th September, 1976. The front page of this pamphlet gives an appearance that this is a periodical and this is the third issue of the second year of that periodical. Number of copies printed seem to be very limited, as the person who printed this makes a request on the front page at the top to the reader, who might come in possession of this periodical or pamphlet, that he should at least write out two copies of this pamphlet or periodical in his own hand and send them to two friends of his. The first article on the front page of this so called periodical has the title " Amendment of the Constitution or throttling democracy? ".

39. Before the trial Court only one sentence out of the second paragraph on the front page was relied upon for being attacked as prejudicial report. The learned Addl. Sessions Judge, who heard the matter and who has reproduced verbatim every passage which was objected to, has quoted only two sentences from that passage. These sentences alone are relied upon before the trial Judge as before the learned Addl. Sessions Judge. The learned Public Prosecutor here also relied upon the same sentences. Apart from the real meaning and implication as also the effect of these sentences alone the first objection of this petitioner is that a sentence or a part of the objectionable material cannot be read in isolation but the matter must be read as a whole. We are therefore translating for easy reference the entire paragraph which opens with the above sentence. The paragraph read as a whole would be as follows :

"Present exercise in amending the Constitution is anti-democratic. Even if the fact that Constitutional experts like Moorarji Desai, Madhu Limaye and Jyotirmay Basu who are in jail is to be treated as a minor affair, so long as the opposition parties cannot hold meetings and cannot carry on public discussion through newspapers. Remains a fact and so long as these restrictions are not lifted no constitutional amendments should be carried out, is a view expressed by eminent political thinkers like Prof. S.V. Kogekar and Rajani Kothari. However,

Government has rejected out of hand that suggestion."

Only one more passage is referred to in the courts below from the front page of that periodical but there too only a portion is quoted from a paragraph, which is the only paragraph which begins in the middle of the second column in the front page. We would therefore like to translate the entire paragraph rather than a portion of it. That paragraph is as follows :

"What is the reason for this? It is clear. The Lady wants to concentrate all power in her by suitably amending the Constitution in the name of raising slogans of removal of poverty. Readers must be remembering that, " for saving the country from the conspiracy of reactionaries" the Lady already got passed two important constitutional amendments in August 1975---(1) the corrupt practices committed by Indiraji in 1971 election should not be treated as corrupt practices at all; and (2) no prosecution should be launched even if the Prime Minister commits murder.

Now also, several similar amendments are going to be made. For instance, (1)....."

40. Then follow nine different provisions relating to the amendment of the Constitution which have bearing on the subject. This is the portion of the article which is being described as prejudicial report. This article must be read as a whole. Even if these two passages, which are quoted above are to be read only which are in the same tone in which the rest of the article is written, the writer wants to emphasis the fact that amending the Constitution and making important changes is a matter vital to the life of the country and the people. Such an important function of amending the fundamental law of the nation which law would continue to shape the destiny of the nation, should be passed in a free atmosphere. The winter undoubtedly refers to the detention in jail of some of the important opposition leaders whom he styled as constitutional experts. Apart from a few individuals of high stature from the opposition who may not be available for free discussion, the writer asserts that there is no free discussion available as the opposition parties are not in a position to hold meeting or discussion in view of the declaration of emergency and the restrictions imposed. He then cites the view of two of the political scientists who are purely academicians like Prof. S.V. Kogekar and Prof. Rajani Kothari.

41. The intention of the writer undoubtedly seems to be to emphasis the fact that undesirable amendments are being brought about by preventing open discussion by the opposition and by misusing the conditions of emergency available to the ruling party. It may be noted that so far as the amendments are concerned, the view expressed by the writer may be wrong. They may be in the interest of the country. However, the point that is sought to be canvassed is that it is not enough to do good but it must also be done in a proper manner. For that purpose let conditions of normalcy come back and let the people at large then decide after hearing the views of both the sides whether they are inclined to accept the amendment of the Constitution.

42. The writer undoubtedly imputes motive to the ruling party and the Prime Minister Particularly. He throws out a direct criticism at the Prime Minister by saying that she has already got two laws passed which are important constitutional amendments and which are meant not for any public good but to cover up her own conduct which has been found against her by a Court of Law validly appointed under the Constitution itself.

43. It is in this context and on the basis of such views that the writer wants to emphasise the fact that the present exercise in amending the Constitution is not for any bona fide purpose, but it is meant to throttle the democracy itself in this country. Though the language is undoubtedly rather strong, it appears to be a type of criticism which can be made and must be permitted to be made, if healthy public opinion in favour of any major changes to the Constitution are to be brought about. There can always be two views on a subject and when opposing views are being canvassed particularly relating to the matter of amendments to the Constitution, feeling to run high and the language may tend to be rather strong or violent. Could it then by itself be a test for adjudging the matter as seditious or prejudicial act or prejudicial report as defined by the various Rules of the Defence and Internal Security of India Rules 1971 ?

44. The article then proceeds to give two different lists of subjects. One list refers to the proposed amendments which were going to be made very shortly. This list, it is described, embraces subjects which are similar to the two subjects by which provisions in favour of the Prime Minister have been already made. The writer then proceeds to emphasise that there are many subjects which require to be dealt with by the legislature for doing something really good in favour of the poor. In order to criticize the present Government that it is not pro-poor it is suggested that there is a list of the subjects that follow, which are all subjects in favour of the poor but no amendments in that behalf are proposed. The intention to amend the constitution is thus only to strengthen the position of the party in power and particularly the Prime Minister.

45. The article read as a whole may or may not be appreciated by large number of people but it does present a point of view from the opposition side. The present amendments may be believed to be really healthy and useful for the growth of the nation by some people or by large number of people. There can however, be a section of people who think that neither the amendments which are proposed nor the manner in which they are proposed are in proper keeping with the traditions of democracy. Even assuming that their point of view is wrong, they must have a right to Advocate their point of view and to place it before the public for whatever it is worth.

46. The great Parliamentarian Edmond Burk has put this philosophy of freedom of democracy in the most spectacular words. He said to this opponent. " I do not agree with you. But I will fight for your right to disagree with me." If this is the real essence of democracy, one cannot be very touchy from the language used by the opponent. It need not be added that all must endeavour in a democratic

State to maintain a certain decorum and high level of criticism. However, if some commit errors in that behalf and lose balance of mind, their vociferous expressions cannot be dubbed as seditious. We are, therefore, satisfied that this article contains nothing which can be styled as prejudicial report or prejudicial act.

47. In the same issue of Lok Sangharsh, there is another article bearing the title "No shame.....to us." The whole of the article relates to the interview which Indiraji had with foreign press in which she asserted that the rigour of the emergency was gradually being reduced and relaxed and the number of political detenus were being freed. The writer of this article considers this was a white lie of the Prime Minister and wants to justify his allegation by giving certain statistical information.

48. In the courts below as also before us only six paragraphs. viz. first and the second and the last four, are being relied upon as objectionable matters. The intervening two paragraphs are not being relied upon as objectionable. Those six objected paragraphs when translated would read as follows :

"No shame.....to us."

"While giving interviews to many foreign journalists Indiraji said, the emergency is relaxed in India., most of the political duteous are released and the press censorship is lifted.

These statements for the Lady are not false but to the extent of more than three fourth are untrue.

All those parties that opposed the emergency are prohibited from holding meetings on any public issue, or take out a procession. The workers of those parties are constantly shadowed by the police. Propaganda is carried out through police machinery to see that others do not get near them. Students who expressed views opposing the emergency have been refused admission in colleges and Universities. Plain clothes police have been posted in all colleges.

With all this Indiraji says that the emergency is relaxed.

While telling lies, Indiraji may not have any sense of shame, but while listening to such lies, have the citizens lost all sense of shame ?".

49. This is another example from the periodical where a direct frontal attack is made upon the Prime Minister and she is dubbed as an utter earlier. The subject, however, on which this allegation of falsehood is being made against her is the relaxation of emergency. We fail to understand how the prosecution can drop the two intervening paragraphs and quote the remaining six paragraphs as objectionable. Does it mean that the two central paras are not objectionable ? They are two paragraphs which give the detailed and statistical information about the number of detenus and the nature of the press censorship still in vogue in the State. In the first, out of those paras, a statement is made that out of the

political detenus all those belonging to Jamat-E-Islam have been released. But hardly five percent of the workers are released from those belonging to the organisations like Sarvodaya, Jansangh, Socialist Party, Organisation Congress or Bhalod. It is then asserted that there are at least 70,000 political detenus yet and over a lac of people are being prosecuted under the Defence and Internal Security of India Act and Rules and those are not being conducted for the last more than a year. This is the first paragraph.

50. The second paragraph says that the pre-censorship which was a universal phenomenon once, had been lifted. But it is still re-imposed on papers like Daily Marathwada, Weekly Manus, Magazine Seminar etc. All the news item issued by the Samachar are pre-censored news. Even to-day directions are issued by the Censor that certain news should not be give or certain news item should worded as directed by the Censor. For instance there is a direction that do not describe Sanjay Gandhi as a youth leader. Call him merely Sanjay Gandhi. Do not give news item about the rise of prices of essential commodities, and also do not let people know that prices of raw jute have been reduced. It should not be published in the interest of law and order that Jayprakash Narayan had reached his home town Patna. The orders closing down weeklies like Sadhana, Janata etc. are all issued by the Government censor department itself.

51. If these two paragraphs are not to be objectionable at all as they were never either read before the Court below or before us, what is the justification for the prosecution to pick out the other paras as either false or unreasonable criticism of the Prime Minister ? If all the factual information contained in those two paragraphs is true, there is a valid base for criticising the Prime Minister for making claim that censorship is relaxed. It may be that the language is not very commendable but then it is the reaction of a news writer who finds that contrary to the existing facts of life, which he has quoted, a claim is being made before the foreign press by suppressing information. He is bound to feel annoyed and according to the level of the culture of the writer his views find an expression. Even if you do not like the manner in which he writes or the language used, it is impossible to describe such writings as seditious. Such writing will certainly not induce anybody to pick up arms against the Government established by law or to think in terms of public disorder or breach of peace. If this criticism is considered totally false, the proper answer is not to prescribe such literature but to make news freely available in an extensive manner as it was being available before the declaration of emergency. We appreciate that the Government of India must be thinking primarily in terms of the security of the country and for that purpose must be controlling the spread of news. However, human nature being what it is, whenever there are controls introduced and secrecy observed, atmosphere effect which is contrary to what was desired. These being the effects of life, it is difficult for us to dub the writing as seditious or one containing prejudicial report.

52. From the same periodical two news items out of many items sub-listed towards the end of the periodical were cited before us as objectionable. The first

news appears under the title "Death Anniversary of Democracy" in the capital ". The news item is as follows :

53. "Death Anniversary of Democracy" in the Capital. Do you know with what enthusiasm and pomp the 26th January was celebrated in the capital. Citizens of Delhi were, however, completely indifferent to this propaganda. Anticipating that there may be opposition and demonstration tight security measures were enforced. About 500 houses were searched at about the same time. About 5000 people were arrested for a short or long period. Several women were detained for days together at the Police Stations under the garb of enquiry and interrogation. The police established a new record of harassing the people.

54. In spite of this in the fact of the Union Administration, Anti-Indira posters were pasted even in front of a number of police stations. These posters not only revived courage among the people, but it is understood that requisitions were made for these posters from high placed individuals from big officers.

55. On the 26th of June itself on the Boat Club Ground near the Rashtrapati Bhavan, eight persons went on Satyagraha. They were immediately arrested.

56. In London on 26th of June thousands of Indians had collected at the Trafalgar Square and taken out a big protest march to the High Commissioner's Office for protesting against the declaration of emergency in India and the invasion of individual liberty and the freedom of press. This protest march was organised by the Friends of India Society, International."

57. So far as the courts below are concerned, only paragraph 2 from the above was read out to the Court and it was styled as objectionable materials. Before us the learned Public Prosecutor relied upon all the four paras which are translated by us. Even here, we wonder how reading such news can one lead to the incitement of violence or public disorder. On the contrary many people might be satisfied that protest is registered, that something is already done and that they need not do anything further. If it is to be assumed that there can be no differing views in the country, then there is no question of entertaining any argument with regard to democracy. However, if it is assumed that there can be opposing points of view, it is equally possible that opposition point of view can be wrong. People who are in opposition today would say that the point of view of the ruling party is wrong, but they are right only because to-day they seem to be in power. Such claims are bound to be made against each other and if that is the sine qua non of the individual freedom of holding any views, one wonders why news of the present type should be suppressed.

58. It is not argued that the news is false. It cannot be argued and it is not argued that this is published without the prior consent of the censor. Such argument cannot be possible, in view of the Prime Minister's own declaration quoted in the earlier article that there is no censorship on the press. Whether it is desirable to print such a news is an entirely different point of view. In a democracy that is yet to mature. People must be accustomed to hear any kind of

news or views and must develop a sense of their own to pick up the views and act accordingly. This is a part of the political education and we do not think that the news item by itself can constitute a prejudicial report especially when there is no argument at all that the news is either false or exaggerated.

59. Then there is another news item bearing the title " Once Again Dandi March." The entire news item is being styled as prejudicial report. Hence we translate it below for ready reference :

"Once again "Dandi March" ".

60. From 26th June, once again, " Dandi March " has commenced in Gujarat. Shri Babubhai Patel of the Peoples" Morcha Government, first led this " Morcha" procession---which gave calls of anti-emergency propaganda and re-establishment of democracy in India. This "Morcha" procession started from Ahmedabad, it is going to terminate at Dandi. Within a short time of its commencement, Shri Babubhai Patel was put under arrest. At present, Smt. Maniben Patel, an old leader of the Organisation Congress is adoring the leadership of the "Pad-Yatra". Thousands of people from Gujarat particularly students are participating in this march for sometime. On behalf for the Pada-Yatriks, meetings after meetings are held in towns and villages on the way and speeches are made on the strong demand for re-establishing democracy and to explain how unnecessary is the continuance of the emergency. What is remarkable is that people flock to these meetings in spite of Government propaganda and repression."

61. A part of the reasonings which is included in our comment on the first news item of the "Death Anniversary of Democracy in the Capital " is also relevant for the present news item. It is not the claim of the prosecution that the news itself is false. This news item merely informs the readers that some people have copied Mahatma Gandhi in protesting peacefully against the present measures for clamping emergency in the country and imposing bans on addressing meetings. Morchas are utterly peaceful. When arrested the leader goes away without causing any flutter in the public. How can such a news item by itself be styled as a prejudicial report. It any not be to the liking of the censor or the present administration that people should protest against them in a modest way in one corner of the country. That is not a ground which can convert the news item into a prejudicial report. We are no substances at all in the argument of the learned Public Prosecutor. We thus hold that so far as the periodical or pamphlet called "Lok Sangharsh" dated 20-9-1976 is concerned, there is nothing in it which is in the nature of prejudicial report.

62. We then come to the 1st objectionable document, viz. a publication bearing the title "PEOPLE" . It is a publication by Shri N.G. Gore, the well known socialist leader of Pune. In the foreword written by him he describes this brochure as the collections of all the writings, speeches, interviews and letters of Shri Jayprakash Narayan on the subject of the present emergency. Shri Gore makes it clear that

he wants the people to know the real views of Jayprakash Narayan on the subject and clear off certain misgivings, which are being created about Jayprakash Narayan and his views. This booklet contains certain letters written by him to the Prime Minister. It includes an interview with the B.B.C. dated February 12, 1976. It includes his advice to other prisoners who are detained in jail in the emergency and his expectation from his own party. It also contains his comments on the Habeas Corpus judgment recently delivered by the Supreme Court and the letter addressed to the Western papers. It is a booklet containing about 44 pages. For possessing this booklet a prosecution is launched against the present petitioner.

63. During the course of arguments and out of curiosity we made a query with the learned Defence Counsel as also from the learned Public Prosecutor, whether Shri Jayprakash Narayan , to whom is attributed the authorship of these writings, and Shri N.G. Gore, who is a publisher of this booklet, are subjected to any prosecution at all ? This query was not made with a view that a person who is prosecuted can have a defence that another person committing similar offence is not being prosecuted by the State and therefore the prosecution against him should be dropped. However, we were told at the Bar that Government has noticed the publication of this brochure by Shri N.G. Gore, who has published this without the permission under the Press Act. For the breach of these rules he is being prosecuted but not for publishing any prejudicial report or seditious material. It was also stated that no action seems to have been taken against Jayprakash Narayan for writing such articles or giving such interviews. This was only an incidental query and we do not want to decide in favour of the petitioner simply because no action is taken against either Shri Jayprakash Narayan or Shri N.G. Gore.

64. The first reference from this booklet related to the interview of Jayprakash Narayan with the British Broadcasting Corporation on February 12, 1976. The passage or two passages from a reply to one question, which are being objected to appear on page 17 of this booklet and are as follows :

"J.P. I felt very angry at the time of the declaration of the emergency. I do feel even so now. The reason is that the declaration of the emergency was on totally false grounds. There was no such crisis in the country, no such danger, there was no external danger at all. Internally also, the situation was not such that there was any possibility of a rebellion. The people are simply exercising their democratic rights.....I have always been feeling, have been saying for years, that Indiraji's temperament is that of a dictator. I used to be asked why I said this. But now it is proved; she has found the opportunity."

This is a reply from Jayprakash Narayan to a question about his views in regard to emergency. He was reminded that he has written to the Prime Minister a letter dated July 21, 1975, which was a significant one; and was there any response to that letter. To such a question the answer was being given, which included the above reference.

65. He was then asked that a film show is being shown in Bombay which depicts people like him, Moorarji Desai and George Fernandez, if not in so many words, then by implication, as fascist dictators. What had Jayprakash Narayan to say about it ? His reply was as follows :

"J.P. What more proof is required? What more is needed? Power lies with Indiraji and who can deny that she does exercise dictatorial powers? Parliament exists only in name; all powers reside in her. She has taken all special powers. The Emergency continues and behind its veil her own powers and life of the Parliament has been extended by a year. If the emergency continues for an indefinite period, the life of the Parliament is also extended without any justification. After all what does a dictator do?

When we have power, then whether we will (I personally have no wish to be in the Government) be dictators, history will tell. But history has furnished a clear and a living proof that dictatorship has been imposed on India to day and that is the dictatorship of Indiraji and Congress party."

From this interview with the B.B.C. the two replies reproduced above alone are styled as a prejudicial report. It is argued before us that one cannot forget the fact that Jayprakash Narayan at one stage was very close to Pandit Jawaharlal Nehru and he knows the Nehru family very closely over years. It is further argued that one might allege that the views of J.P. are wrong or not in keeping with the latest situation. It is possible to say that J.P.'s thinking is out of date, and his appreciation of the present situation is not very accurate. It is further argued that granting all this criticism against J.P., it is difficult to say that he is not a honest political thinker and it is equally not possible to say that whatever views he holds are not his honest views. If a person like J.P. who has been so close to the family of Pandit Jawaharlal Nehru has watched the Prime Minister grow from her childhood, and as a result of this acquaintance he reads the mind of the Prime Minister and calls her dictator, may be he is wrong but he cannot be styled as dishonest. Since he forms that opinions about the Prime Minister and her temperament, he describes logically the steps taken by her as dictatorial. This is one part of what J.P. is supposed to have said or written. We will take a survey of all the objected material from this book and then make our general comments.

66. The next objectionable matter appears on pages 31 and 32, which appears to be a press statement issued by Jayprakash Narayan. The title is "On Habeas Corpus Judgment". What was relied upon in the courts below and what is relied upon before us consists of the first three paragraphs only which are as follows :

"The Supreme Court's judgment on the Habeas Corpus question has put out the last flickering candle of individual freedom.

Mrs. Gandhi's dictatorship, both in its personalised and institutionalised forms, is now almost complete.

All freedom loving Indians must face the question boldly to-day as to how we can reverse the reactionary course of history and regain our lost liberties and re-establish our democratic institution."

The above views of J.P. are undoubtedly his personal views. According to him, the last hope of democracy was lost, when the Supreme Court pronounced in the fundamental rights case that the result of the proclamation of emergency by the President and the order dated 25th June, 1975 issued by him is that-it is not open to any citizen to move the Court for enforcing any of the fundamental rights under Articles 19, 21 and 22 of the Constitution. This immunity from challenge to the executive orders is read by J.P. as the last blow to the faint hope of individual freedom that was still being entertained by the citizens. The free hand to the administration in the matter of enforcement of emergency and the complete immunity of challenge from the courts of law declared by the Supreme Court of India, according to him, resulted in completing Mrs. Gandhi's dictatorial hold in a personalised form as well as in the institutionalised form. Having made out these two premises from the Supreme Court's judgment, he invites the Indian citizens to face this question boldly and to do something to reverse this reactionary course of history and to regain the lost liberty.

67. To quote only the first three paragraphs referred to above is to do great injustice to Jayprakash Narayan. The approach so far as the offence of sedition must always be whether the writing as a whole has the tendency to incite violence or to cause public disorder. It is not so much as to what is the conclusion of J.P. He may be right or wrong. The main question is having built up these premises, does J.P. suggest any remedy for it? When he gives a call to the people to do something to regain lost liberties does he also suggest any way out? Any one, who reads the first three paragraphs of this article, is bound to read further out of sheer curiosity as to what J.P. has to say by way of remedy for the situation. The moment he does so, he will get the further views of J.P. on the suggestion. What is suggested in the very next paragraphs is that this reactionary course of history can be prevented and the lost freedom can be won. To quote the next paragraph in his own words it is as follows :

"This can be done---if it is to be done Constitutionally---if free and fair elections to the Lok Sabha are held.

To this end, we will have to organise a programme of education in democratic values at the grassroots.

We will also have to work to unite the opposition and to defeat the Congress, for experience has shown that the present Congress leadership has no respect for democratic freedom.

All this is easier said than done, it is true; but it is also equally true, if not more, that all this has to be done.

(1) Meetings of the general public and of different institutions and organisations

be held all over the country demanding revocation of the emergency, release of political prisoners, holding of elections to Parliament, restoration of the freedom of the press and platform.

(2) Those who believe in individual freedom and free democratic institution must immediately, in whatever way possible even in small groups of 3 to 4 persons, start educating the people in the fundamental issues involved."

Jayprakash Narayan has given a complete exposition of his idea as to what must be done to restore democracy in this country. He wants people accepting his views to start at the very grassroots and spread political education in democratic values with the long term view of getting sizable majority of the public to his own point of view through Constitutional and lawful propaganda and through the organisations of lawful bodies and associations. This is the advice tendered by Jayprakash Narayan.

68. If all this is read together, is it ever possible to say that any part of this article or leaflet could ever be objected? We assume here that there is no democracy in this country and that there is dictatorship of Indiraji as a wrong assumption of J.P. Even then, the only remedy suggested by him is entirely constitutional and if any individual or organisation talks in terms of constitutional means of holding elections and hopes to win them, could you ever call such writings as seditious.

69. The learned Public Prosecutor before us has drawn our attention to a part of the same article on page 32. This portion was not relied upon in the courts below. He says that ultimately when Item No. 3 of the programme is being described by J.P. and after he suggests that along with that programme of people's education, there should also be a programme of people's organisation, the following reference appears.

"During the Bihar movement, organisation took the form of Jan Sangharsha Samities and Chhatra Sangharsha Samities I suggest that similar organisation be set up in the rest of the country."

Referring to these two organisations in Bihar, the learned Public Prosecutor stresses the result that followed in Bihar, viz. confrontation between Government and the people. The confrontation involved violence. It is this violence which is the objectionable part and not mere peaceful propaganda of a particular type. Since J.P. is describing even now similar organisations, similar results are bound to follow, even if Mr. Jayprakash Narayan may not personally desire them.

70. What is to be examined is the tendency or attempt of the writing and if that tendency is to bring breach of peace or is likely to lead to violence and public disorder, the writing must be held as prejudicial report. Here again the learned Defence Counsel drew our attention to a further part of the same article appearing on page 32 itself. It appears that J.P. is quite conscious of the fact that there was confrontation between Government and people in Bihar. Shri

Jayprakash Narayan had been in active politics for a long time in his life and it was only recently that he has switched over to Sarvodaya movement. He could not be unaware of what reaction takes place in a particular movement. It is well known that the idea of Satyagraha propagated by Mahatma Gandhi was an entirely peaceful Satyagraha of a real Satyagrahi. Even if there was any assault by the members of the police force, the Satyagrahi was not supposed to resort to violence. In spite of that kind of propaganda violence did break out and Mahatma Gandhi had on the ground of such reaction to withdraw the movement itself, the learned Defence Counsel argues and with great force, that can we therefore equate Satyagraha of Mahatma Gandhi with violence. Can it be argued that the Satyagraha movement in the real theoretical sense has the tendency to lead to violence or disturbance of public disorder? It is in that spirit that J.P. has already answered the possibility of confrontation.

71. Down below on the same page 32 itself is what he says :

"Confrontation with Government was not the aim of the Bihar Movement. It was a bye-product which the movement took in its stride. If the programme suggested herein is taken up seriously and it spreads and gathers strength, it might involve confrontation, but that would not be of our seeking; it would be as in the past, the result of society's reactionary forces led by the Government trying to put down the people's revolution."

72. It is again a well known rhetoric of all the political bodies that what they want to bring about in this country is a real revolution which revolution is very much needed for eradicating all evils existing in the present day society. In the same vein Shri Jayprakash Narayan is visualising the revolution of his own but through the peaceful spread of political education at the grassroots and transfer of power to more forward looking leaders through the mechanism of elections. He therefore asserts impliedly in the above paragraph that we will assume that such movements will always be peaceful. However, as it appears, that movement has to move from stride to stride. The present people in power were described as reactionary or leaders of reactionary force would themselves want to crash such movement. This is the idea of confrontation, viz. that Government will resort to force for crushing a peaceful movement which is a legitimate movement and which movement must be permitted, if democracy in its real sense has to exist in this country.

73. From Jayprakash Narayan's own point of view therefore this is what happened in Bihar. It may be that contrary claim can be made, and for ought we know, that may be true. However, a point that is being advocated by the learned Advocate in his argument is, has this article read as a whole any material in its which is likely to lead people to take up arms against the present Government established by law? Has it such a tendency as to lead to public disorder? Looked at from that point of view and examined objectively, we fail to understand why the failure of Jayprakash Narayan in the past can be given as a reason for considering the possible effects of this article on the mind of the reader. Here we

think the Public Prosecutor's argument is not acceptable and must be rejected. Reading the article as a whole, we do not find that it contains any material which can be described as prejudicial report.

74. This takes us to page 33 where a passage is being objected in the courts below as also before us. It is a letter to the Western Press. One of the pieces that is dealt with is "emergency". What is stated in the objectionable portion is as follows :

"Emergency

As for the emergency itself being justified or not, I suggest that unprejudiced democratic leaders from the West should come to India and find out if the conditions in this country prior to June 26 (the day emergency was declared) were such as to justify declaration of emergency, arrests of thousands of persons, imposition of press censorship of a kind that even the British imperialists had not thought of. Mrs. Gandhi no doubt paints a frightful picture of pre-twenty-sixth June India and makes out as if there was such violence growing in this country, that there was danger even to her life and that of her family (as she told an Italian Lady press reporter)."

75. In the courts below reliance was placed from the above quotation only upto the sentence ending with the words "British imperialists had not thought of". We are unable to understand how this writing can have the tendency for classifying the writing as seditious. It is quite possible that many people will object to the invitation of the Western leaders to visit India for the purpose of finding out certain facts. It is equally possible to say that this is an internal affair between the people of India and the Government of India, as has already been so asserted by the Government of India while replying to the attempt of the International League of Human rights. All said and done, how can this writing be considered as an invitation to people to overthrow the present Government by restoring to force or by unlawful means. We do not see much substance in the argument of the learned Public Prosecutor that this part of the letter appearing at page 33 can be treated as objectionable material.

76. Yet another passage from page 35 is also being objected too. This is a part of the statement issued by Shri Jayprakash Narayan on the eve of his departure to Wardha on his way to Patna. This appears to have a reference to Jayprakash Narayan journey back to Patna after his illness and treatment at Jaslok Hospital at Bombay. The topic that is objected to appears under title "Struggle against Dictatorship" and it appears on page 35. It is as follows :

"Struggle against Dictatorship: As for the struggle against the present dictatorship launched by the Lok Sangharsh Samiti (People's Struggle Committee) there will be no surrender and no weakening. If there is a pause it should be utilised to go to the people and enlighten them on what is happening in the country.....This is one against a domestic dictatorship, which has to be broken."

The intervening sentences were not relied upon but only the above quoted portion was styled as seditious. According to the learned Public Prosecutor, a reference to the Lok Sangharsha Samiti undoubtedly invites people to take up cajoles against the established Government. It spreads dislike against the present leaders and the administration. It would bring into hatred and contempt the Government established by law. Here again we think the learned Public Prosecutor is doing injustice to the writer himself, in quoting a part of his writing and not taking the paragraph as a whole. In fact the entire article has to be read and when there are one or more writing put together as a brochure, it would be fair to read the whole brochure and see what is the effect or the mind of the people. In the portion which was not quoted Shri Jayprakash Narayan says that if you get some breathing time it should be utilised for going to the people and enlighten them as to what is happening in the country. Ultimately it is the people who will have to decide the future of the country and if they are taken into confidence they would lend a helping hand. He emphasises the fact there is no quick way to win the current struggle and a patient and ceaseless struggle is the only answer. People will have to be prepared for a long drawn struggle. For this they must become fearless. The fearless people will break draconian laws and face the consequences. This struggle is tougher than the one against the British Raj. That struggles was against the foreign rule.

77. Throughout this writing as well as the other writing in the booklet, the emphasis is upon a long drawn out struggle against the party in power and educating the masses by first given them information and then spreading doctrinaire instructions. The ultimate aim is elections through which the Government is to be changed. If this is the tone in which J.P. is writing or talking throughout this booklet, we find it difficult to object to any part of the writing. From the same statement the learned Public Prosecutor here relies upon another passage bearing title "The Indian Judiciary and the press."

78. Shri Jayprakash Narayan says in this paragraph that as for the judiciary, the High Courts have come out with flying colours in the present crisis. However the record of the Supreme Court is very disappointing, viz. because Mrs. Gandhi has packed it with submissive Judges except for a few. The learned Public Prosecutor before us argued that this is a frontal attack on the Judiciary and more particularly the Supreme Court which is the guardian of all the freedoms that the people have in a democracy. Undoubtedly Jayprakash Narayan has in his mind the recent judgment of the Supreme Court in the fundamental rights case, where the doors of the courts are completely closed to a detenu if he wants to enforce his fundamental rights to freedom. Here again the subject is extremely controversial and it is difficult to say that a view similar to the one held by J.P. should not be held by any one at all. It is equally possible to say that the interpretation put by J.P. on the judgment of the Supreme Court is erroneous and that the Supreme Court has the duty to interpret the laws of the country according to the letter and the spirit.

79. The question is not whether the criticism is correct or justified, but the question is about the effects of such criticism, even though honest upon the mind of the reader. The controversy with regard to the question of individual liberty is a very fluid one. Should the executive alone have the right to decide whether the activities of a certain individual are such that he must be placed behind the bars without any accusation or trial thereafter. If that is being done should there be no other authority like a High Court or Supreme Court where he can point out that he is wrongly detained and there is no reason whatever why his individual liberty should be so curtailed.

80. Even when arguments were permitted for challenging the orders of detention, there were various limitations within which enquiry was possible. The primary object is to secure not only security in the face of either external aggression or internal disturbance. Stability of State is undoubtedly the primary object. However, while so doing, is it possible to assume that the Government and its Executive Officers will never commit a mistake and will never arrest a wrong man. Even if applications are permitted and are argued within the limitations of the provisions of law available in that behalf, it would appear that a very small section of the detenu could get an advantage of the judgments of the courts. The opposing point of view therefore does not depend upon how many are released, but there is a forum where the grievance can be ventilated and there is a chance of getting justice, if there has been injustice. Should this safety valve be itself removed and a law so made should be accepted as valid law at all by the Supreme Court. There are people in this country like J.P. who Advocate that this is not correct and there are others, much is done is correct. The theoretical controversy of this type and the level at which J.P. writes in this pamphlet is not certainly meant for consumption by ordinary citizens, and particular canvassing of what is constitution and what are rights and priorities. When such a writing is attributed to a person like J.P. one has to see what is the objectionable material in it. We are unable to hold that any part of this pamphlet can be described as seditious in the sense, a writing which would have undesirable effect of inciting the people to violence or to bring about public disorder. These are all the objectionable passages from the booklet "PEOPLE" which was the third document seized from the house of the petitioner.

81. Our discussion above shows that none of the above writings can be considered as prejudicial report, when the contents are examined in the light of the arguments addressed to us on both sides. When it is difficult to describe the contents of these printed and cyclostyled leaflets as prejudicial report, it would be further difficult to hold that possessing them whether conscientiously or unconscientiously could be equated with prejudicial act, viz remaining in unlawful possession of prejudicial report. It is the requirement of Rule 184 of the said Rules, as we have pointed out earlier, that where Government objects to the release on bail of an accused, the Court must examine the material before it and that examination must satisfy the Court that there are reasonable grounds for believing that the accused before the Court is not guilty of the contravention of

any of the provisions of the said Rules. It is the satisfaction of this type which alone enables the Court to enlarge the accused on bail. Since, if after hearing exhaustively the two learned Counsel and after closely examining all the objectionable passages in the various documents, we find it impossible to hold any of that material as objectionable material or prejudicial report, we think that it is clear case where the requisite satisfaction under Clause (b) of Rule 184 of the said Rules can easily be reached by this Court. Since we reach that satisfaction and also come to the conclusion as detailed above, we think that this petition must be allowed and the petitioner must be released on bail.

82. We therefore allow the petition and direct that the petitioner be released on bail of Rs. 500/- with one surely in like amount. Rule made absolute. There shall be no order as to costs.