RECOMMENDATIONS

The whole process sends wrong signals and the wrong message giving rise to the following reforms. :-

- Finding concrete steps to set International norms,
- The International remedies may no more remain the idealistic principles,
- Check further exploitation of human dignity under the garb of national security,
- International Human Rights Law needs to be strengthened to meet excessive recourse to power by the States,
- Observance of validity of Emergency can justify the procedural mechanism,
- Having in place suitable apparatus when both the national and international covenants have shown the unwillingness to address the vital questions that relate to current problems of the status.

"An understanding of the general philosophy behind the provisions is essential, specially because, some times in the name of Law & liberty, we are liable to lose sight of - who is the villain who is to be protected; and by whom"

The executive is chosen by the people of nation. It has legitimacy. And that is why executive is trusted by the people to protect them in an Emergency as in normal times.
In the words of an eminent lawyer- 'the government is NOT THE VILLAIN; IT IS THE PROTECTOR. The villain is the small minority- anti national that might subvert the whole social order and constitutional life. Someone must judge this antisocial element. A quick judgment is sure to prevent damage that is eminent and looms large. The Government again is trusted by the emergency. That alone can know. There can be no better judge under the circumstances'.

PREVENTIVE DETENTION AND RIGHT TO FAIR TRIAL

- The grounds of detention must be based on Law.
- Parliament's discretion to restrict right must be subject to checks & restraint,
- International Law must be followed strictly and in spirit.
- Emergency Powers must be proportionate to the gravity of the situation,
- Detention must be as short as possible and non-extendable.
- The detainee must have the right to have his cause heard immediately
- Executive's power to withhold reason of detention must be review able
- There must be right to appeal
- Detainee enjoys the rights of innocence until proved guilty,
- He must have the rights to defense & have counsel of his choice,
- His rights to be tried impartially and quickly must prevail.

"It cannot be doubted that any humiliation of human being is an affront
to his human dignity and thus, a violation of his Human Rights. It has always been mystery to me how men can feel themselves honoured by the humiliation of their fellow beings."

- MAHATMA GANDHI

INDEPENDENCE OF JUDICIARY

Recognize that-

- Preventive detention is not illegal per se. But due process of law must be observed strictly.
- Judiciary must protect liberty rather than perfunctorily support the executive action.
- Courts must annul detention if it is found undesirable.
- Excessive action must be declared unconstitutional.
- Normally the undesirable detention must be compensated by the state,
- There must be consensus between human dignity, national security and international responsibility.
- Develop Constitutional & non Constitutional Human Rights enforcement mechanism nationally & Internationally.
- Reporting procedures must be very stringent & evasion proof
- Strong system of supervision must be in place.
- Any discrimination must be strongly dealt with, steps must be in place towards elimination of discrimination.

The GOAL must be — "All HUMAN RIGHTS FOR ALL."
"The ramparts of defense against tyranny are ultimately in the hands of the people. The Constitution, the courts, the laws could only act as aids to strengthen the judiciary."

Justice KHANNA,