

[Shri Eduardo Faleiro]

lers and the further area to be utilised by the large trawlers. In spite of these recommendations and in spite of the tragedy that the present situation has created for the traditional fishermen and their families who are for the last about one year literally deprived of their means of livelihood, Government has so far not taken the necessary steps to amend the Fisheries Act or to demarcate the fishing zones. I had raised this matter some months ago under Rule 377, but Government did not care to come forth with any statement. I hope that at least now, hon. Minister for Agriculture would make a statement on this matter.

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14.21 hrs.

MOTION RE: INTERIM REPORTS
OF THE SHAH COMMISSION OF
INQUIRY

MR. DEPUTY-SPEAKER: The House will now take up discussion on the motion by Shri Shyamnandan Mishra. Shri Shyamnandan Mishra.

SHRI K. LAKKAPPA (Tumkur): Sir, I rise on a point of order on the motion being moved by Shri Mishra under Rule 184 regarding motions. Rule 188 says:

"No motion which seeks to raise discussion on a matter pending before any statutory tribunal or statutory authority performing any judicial or quasi-judicial functions or any commission or court of enquiry..... shall ordinarily be permitted to be moved".

The subject matter of this motion today is the Shah Commission Report. The discussion on the Shah Commission Report would give a scope for discussing certain subject matter which is pending in a court. In the basis of the Shah Commission Report, six cases have been pending in the court and summons are being issued

already. Therefore, the process of law has already taken place and the law set in motion. In view of these things, I would like to quote the relevant portion from the May's Parliamentary Practice, which says:

"By a resolution of the House, matters awaiting or under adjudication in a criminal court or a court martial, and matters set down for trial or otherwise brought before a civil court may not be referred to in any debate or question...."

I would like to further consolidate my position by submitting to you, Sir, that there are certain rulings also in this regard. I have got an exhaustive note on the subject which says that discussion on *sub-judice* matters should not be allowed. It is the absolute privilege of the legislatures and members thereof to discuss and deliberate upon all matters pertaining to the governance of the country and its people. Freedom of speech, of course, should not be restricted so far as the parliament is concerned, but there are certain reasonable restrictions imposed by framing of the rules, and the rule whether a motion which relates to a matter which is under adjudication by a court of law should be admitted or discussed in the House has to be interpreted strictly, when this matter has to be considered.

As I said, Sir, six cases now pending before the court for trial and in which summons are being issued, are based on the report of the Shah Commission. Legal process has, therefore, already started. Such a discussion in this House would not only prejudice the adjudication by the court, but at the same time, it would violate Rule 184 and the subsequent rules on the subject in our Rules of Procedure, which take away such a right.

There is another point which I would also like to bring to your kind notice, and that is, that the presiding

officers should also have certain guidelines in matters where the rule of *sub judice* should apply in regard to the proceedings pending before a civil or criminal court in any part. These six cases are pending.

MR. DEPUTY SPEAKER: What are the cases which are there?

SHRI K. LAKKAPPA: Six cases, on the basis of the Shah Commission's report, have been launched against Shrimati Indira Gandhi and some other persons.

MR. DEPUTY SPEAKER: At what stage are they?

SHRI K. LAKKAPPA: Summonses are being issued. They are in the Magistrate's court. It is in the trial court. On that also, I would like to quote these things:

"The rule of *sub-judice* has application only during the period when the matter is under active consideration of a court of law, or courts martial."

This would mean that this is a settled practice, and a citation.

"In criminal cases—from the time the charge-sheet is filed, till the judgement is delivered."

Then it is *sub judice*. The charge-sheet has been filed. Summonses are issued. Not FIRs. This is not a First Information Report. The cases have been filed and summonses are being issued to the accused. You can collect the facts. Let the matter be shelved. You collect all the facts. I would like to raise the issue. In civil suits it is from the time the issues are framed till judgement is delivered. In writ petitions—from the time they are admitted till orders are passed. In the case of injunction petitions, from the time they are admitted, till orders are passed. In the case appeals, from the time the appeal is admitted till judgement is delivered.

The Shah Commission was appointed because of political prejudices.

(Interruptions)

MR. DEPUTY SPEAKER: Mr. Lakkappa, I have heard your point of order. Let us not go into the merits of what has been found in the Shah Commission's report. (Interruptions)

SHRI K. LAKKAPPA: In the circumstances, I would suggest to the hon. Deputy Speaker: let the facts be collected and let us know in what stage the cases are pending, and whether it would not only prejudice the cases which are pending, but also vitiate the proceedings. Let them apply the rule of law—if Government... believes in the rule of law and democratic norms.

MR. DEPUTY SPEAKER: I would like to hear the Law Minister on this.

SHRI K. LAKKAPPA: The proceedings and discussions may be shelved. I request the hon. Deputy Speaker to see that they are shelved.

MR. DEPUTY-SPEAKER: Mr. Lakkappa, you have made your point clear. Now let me hear the Law Minister.

SHRI K. LAKKAPPA: The Deputy Speaker should not take any decision so far as this matter is concerned, till then.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): The hon. Member has quoted a relevant rule, and has enunciated a proper principle. But he is not applying it to the proper facts. He himself quoted—and read out—that when a charge-sheet is filed in a court and a case becomes pending in that court, then ordinarily that matter should not be discussed in this House. That is entirely true. But in the case of all these cases which are arising from the Report of the Shah Commission,

[Shri Shanti Bhushan]

so far only the First Information Reports have been registered. At that stage a case does not become pending. A case is only being investigated by the police. After the investigation is completed, there are two courses open to the police: either to register a charge sheet or to file a final report. In case a final report is filed.... (Interruptions)

SHRI K. LAKKAPPA: Summonses are being issued in several cases.

SHRI VASANT SATHE (Akola): Either they file a charge-sheet or withdraw the cases—is it done after investigation?

SHRI SHANTI BHUSHAN: It is quite clear. In fact the hon. Member himself read out that after a charge-sheet is filed.... (Interruptions).... Perhaps there is a misconception on the part of some hon. Members..... i. e. at the stage when a charge-sheet is filed, a case is not pending judicially before the court at all. At the stage when the First Information Report is filed, a case is not pending before the court. It is only when, subsequently, a charge-sheet is filed after investigation is completed, only then.... (Interruptions)

SHRI VASANT SATHE: In pursuance of the FIR, have the summonses been issued to the so-called accused?

SHRI SHANTI BHUSHAN: No, no. Perhaps the hon. Member is mixing up some other cases which do not arise—because there may be other cases which have nothing to do with the Shah Commission's report.

So far as those cases are concerned, may be that charge-sheets have been filed and summonses have been issued. But, so far as these matters which arise from the Shah Commission are concerned, at this stage, only the First Information Reports have been registered. The cases are under investigation. No charge-sheets have

been filed. Therefore, this rule has no application.

MR. DEPUTY-SPEAKER: As far as I am concerned, I think the matter becomes *sub judice* only after the charge-sheet is filed, after the FIR stage is gone through because in several cases we had discussed in this House the cases which were just at the stage of FIR. Therefore, I don't think Mr. Lakkappa's point of order holds good here. Therefore, I would permit Mr. Mishra to move the motion. But, at the same time, I would say that if there is any case where the stage is, I mean at the stage of the court, if the court is seized of the matter, then they shall not discuss it; other things will be discussed.

SHRI HARI VISHNU KAMATH (Hoshangabad): Mr. Deputy-Speaker, Sir, considering the constitutional and political importance of the subject—Shah Commission's Report and the Government's action taken thereon—may I request—I hope the House will agree—that this matter, this subject, the motion should be discussed at least for eight hours in this House. I am sure that this is at least as important as the language issue which we discussed the other day. And considering that the constitution Amendment Bill, the 45th Amendment Bill is not likely to come up in this Session and the Lokpal Bill also, we have got ample time for discussion. I suggest that we should devote eight hours at least for this discussion.

MR. DEPUTY-SPEAKER: We have already allotted six hours and we shall see, when we are at the stage of completing six hours what the position is. There may not be any speaker even after five hours. Mr. Mishra.

SHRI SHYAMNANDAN MISHRA (Begusarai): I beg to move:

"That this House do consider the Interim Reports I and II of the

Shah Commission of Inquiry and the 'Memorandum of Action taken thereon', laid on the Table of the House on the 15th May, 1978".

Sir, while moving this motion I must say that this day is bound to be reckoned as one of the most important days in the history of Parliament. While discussing these documents, the hon. House will recall that it has got an opportunity to wash off the dark stain that this great institution had contracted on its face some three years back when it approved the proclamation of Emergency issued by the President.

Sir, it was a captive Parliament which acted almost like a rubber stamp of an irresponsible executive when many of the Members of this House were under indefinite detention. And probably this did not stir the conscience of their brother Members here. When most of them were languishing behind the prison bars for indefinite period, this Parliament, Mr. Deputy-Speaker, was also functioning with its proceedings under strict censorship. And that again, did not go against the grain of self-respect of the Members of Parliament of those days! Could any hon. Members of Parliament with any amount of self-respect (Interruptions).

Not all of them. Quite right, of course.

Mr. Deputy-Speaker, Sir, what is worse is that Parliament at that time was not only acting as a rubber stamp of an irresponsible executive but also of a centre of extra-constitutional authority; and I ask them to look at their faces in the mirror whether.. (Interruptions)

SHRI G. M. BANATWALLA (Ponnani): I am on a point of order. I have nothing to say about the merits and demerits of what he is submitting, but the hon. Member has tried to cast reflection and aspersion on this House itself. (Interruptions). It would be a bad precedent for the House collectively to be held to ridicule.

I have nothing to say whatsoever about the merits of what he is saying but no reflection should be cast upon the House and no attempt should be made to lower the dignity of this House. Therefore, those words uttered by the hon. Member should be expunged from the proceedings of the House.... (Interruptions)

SHRI VASANT SATHE: What is your ruling? You should expunge it.. (Interruptions)

MR. DEPUTY-SPEAKER: Members may please resume their seats.

SHRI G. M. BANATWALLA: Even at that time there were hon. Members who protested against such things.

PROF. P. G. MAVALANKAR (Gandhinagar): In fact I corrected him.

MR. DEPUTY-SPEAKER: He subsequently corrected himself on that point. I should request Mr. Mishra not to dilate on Parliament.

SHRI KRISHAN KANT (Chandigarh): History has already given a verdict on that. What he is saying is the whole truth and nothing but the truth.

SHRI VASANT SATHE: I say: do not ridicule the institution of Parliament as such.... (Interruptions). You were part and parcel of that Parliament; do not ridicule yourself.

MR. DEPUTY-SPEAKER: You cannot be talking to each other, please address the Chair.... (Interruptions) Please resume your seats. You do not make a point by just shouting.

SHRI SHYAMNANDAN MISHRA: I am not surprised that when I was referring to the extra-constitutional authority that developed in the country, the hon. Members sitting at my back left somewhat hurt. In fact, that shows how much influence the extra-constitutional authority still wields in this country.

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Now I must say that when this great institution can criticise others; it can also criticise itself in certain moments. Such is, in fact, the proud dignity of this great House.

We were legitimately expecting that such a motion would be moved by the Government itself. In fact, I would go to the length of saying that there should have been a special session of Parliament before this session to consider this important report. That would have indicated that the government wanted to pay urgent attention to it and it wanted to respond to the political and moral challenges thrown by the commission report with determination and élan. But that has not happened. However, if it has fallen on me now to move this motion, I must say that it has been happy quirk of fate, and without loss of humility I can also say that it was peculiarly appropriate. I do not say so because I happened to be one of the honoured guests of Her Majesty's government, but it is also because of the fact that sometime back, only 7 months before the proclamation of the emergency I had moved a motion in this House, in the Fifth Lok Sabha. I should like to remind this House of it in the Fifth Lok Sabha I had moved a motion which read: "that this House is of opinion that the government is creating conditions for the growth of fascism in the country and therefore resolves that a parliamentary committee be constituted to make recommendations to counteract this dangerous trend."

This motion was moved in the month of—December to be precise on 6th of December, 1974 and to and behold! The proclamation of emergency came only seven months later. So I can say with a certain amount of pride that I had a sense of premonition and also certain amount of understanding of the forces that were at work at that time.

Why did I stress the fact that the Government should have indicated

that it was more determined and wanted to pay urgent attention to it? It is amply demonstrated in the newspapers to-day? Foreign countries seem to be taking more serious notice of this report than we in this country. Mr. Bernard Levin a articles appeared in the London Times only yesterday and this great columnist has asked his countrymen to be on guard against this kind of phenomenon emerging in the country like the United Kingdom too.

So, I think that even now our Government would be serious about giving serious thought to implementing the recommendations of the Shah Commission, the findings of the Shah Commission.

The appointment of the Shah Commission was in a sense one of the principal mandates with which the country had sent the Janata Party to power, voted the Janata Party to power. It was the demand of the whole people who had lost their freedoms and suffered immeasurably. It was a decree of democracy which had suffered eclipse and which did not want to be a victim to that phenomenon again at the hands of an unscrupulous one who acted with the help of the obsequious. I must say that the whole lot which had acquiesced in this kind of phenomenon was as much a party to this as was as much as responsible for this as the one single individual on whom the national attention seems to be focussed.

Now, this was also such a probe the like of which had never been undertaken in any other country. I have tried to make a research and yet I have not come across a single probe of this kind; why was it so? It does appear to me that it has been so because in many countries of the world, where the sun of democracy had set it had never risen again. But it is the vitality of the Indian people that when the sun of democracy had again risen here with the result that the Shah Commission was appointed.

Now this also clearly demonstrates that the Janata Party which has come to power wants to learn the lessons from the findings of this great Commission and it wants the people to be alert not only against the future dictatorships but also against itself. Therefore, the House will find that the Janata Party has stripped itself of the powers that the dictatorship of the previous regime had clothed itself with. We are not wielding those powers, we are not coercing our opponents or torturing our opponents in the way in which the previous regime had done. People would also eventually recall....

(Interruptions)

MR. DEPUTY-SPEAKER**: Not one word of what you people are saying would go on record. It is an exercise in futility.

SHRI SHYAMNANDAN MISHRA: People would also recall that there was a wave around 1970 when the phenomena of Mr. Bhutto, Mr. Mujib, Mrs. Bandarnaike and Mrs. Indira Gandhi arose on what they call a wave. They also find that like a wave they came and like a wave they have disappeared! So, it is with some satisfaction that the people of this country can view the developments that have taken place after the Janata Party come

(Interruptions)

Now, Mr. Deputy-Speaker, in all conscience the responsibility committed to the care of this great Commission was indeed colossal. These reports clearly establish that no one was better suited to undertake this task than the hon. Mr. Justice J. C. Shah. The House will recall that when even a saint like Acharya Vinobha Bhave had called the Acharya's Conference during the period of emergency, Mr. Justice J. C. Shah was one of the hand-picked invitees to that conference. (Interruptions). At least you have some respect for Acharya Vinobha Bhave. If a saint like Vinobha Bhave could admire his objectivity and

could think that he could give valuable assistance then I think this Government was quite justified in making a choice of Mr. J. C. Shah. No tribute in words can be sufficient to acknowledge the debt of gratitude to this great man who has performed his duties with unerring objectivity and an unflinching sense of devotion to duty.

This Commission has performed its work with the quickest speed and completed it in record time. Probably even the Warren Commission could not complete its work in such a record time. So, we have to be grateful to this great Commission. This House will also recall that in spite of the greatest provocations that had been given to Mr. Justice Shah, he kept his cool and judicial objectivity. His effigies were being burnt and there were riotous scenes not only around Patiala House which happens to be the headquarters of the Commission but also inside the Commission. There were scenes of rowdiness and there were also some angry demonstrations in Parliament against this Commission. And yet, Mr. Justice Shah did not lose his temper. There is hardly any instance of this kind that a judge in the midst of such grave provocations maintained his judicial temper and continued his work. This reminds me of Kalidas:

निवात निःकम्पमिव प्रदीपम्

"He was like a steady flame in an airless place!"

(Interruptions). I quite realise that the threshold of irritation of our friends is rather low!

SHRI VASANT SATHE: I am amused that you are wasting so much time!

SHRI SHYAMNANDAN MISHRA: In one of her fevered outbursts, Mrs. Gandhi had said that this Commission was a forum of character assassination. But what the findings have

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shown is that there was not much character to assassinate.

Mrs. Gandhi had been given ample opportunity to state her case and justify her stand. She had, in fact, agreed to appear before the Commission and the Commission had taken all the trouble to call 140 witnesses who had been characterised by Mrs. Gandhi as having given prejudicial evidence. So much expenditure was incurred on them and yet, Mrs. Gandhi did not think it fit later to appear before the Commission.

So, this Commission cannot be accused of any unfairness. And yet Mrs. Gandhi's followers have been going round and threatening hell and worse. It is rather strange that some of the Chief Ministers belonging to her party have been threatening bloodshed in the event of the arrest of Mrs. Gandhi. (Interruptions)

We all know that women many a time love to have a session with the mirror but many a time, they do not have the courage to do so when they find wrinkles over their faces. This was probably one of the moments in which Mrs. Gandhi did not like to have a session with this national mirror called the Shah Commission. Why did she not go before it. (Interruptions)

This was not a Commission appointed by any executive fiat of the Government; this was a Commission set up under the law. This Commission functioned within the full public view. There was no hush hush or secrecy about it. Even the Government counsel was pulled by up the Commission on several occasions. What more proof of its objectivity do the hon. Members require?

I find that this Commission has done a work the record of which the probably would be hardly equalled. But I do realise that the terms of reference of the Commission were not adequate. They did not make

any specific mention of the roles of certain important bodies. It would have been quite in order to ask the Commission to go into the role that the judiciary performed in those days. We are not very proud of the role of the judiciary during that time. The Commission has made some incidental remarks but it has not gone into depth so far as the role of the judiciary is concerned. It has also not gone into the role of the Cabinet. I do not know whether it would have been proper to commit to the care of a commission like this the role of the Cabinet itself. But no one can fail to notice that the Cabinet had signally failed on this occasion. If Mrs. Gandhi did not think it fit to consult this pack called Cabinet and instead she thought it fit to consult only Mr. Dhawan or Yash Pal Kapoor and all the rest of them, then it was the demand of self-respect that this Cabinet should have resigned wholesale the next morning. But this Commission was not asked to go into the role of the Cabinet. If this Commission was also not asked to go into the role of Parliament, I would not find any fault with the Government, because it is for the Parliament to set up a Committee to find out why this great institution signally failed on that occasion, how this great institution came to be defrauded by Mrs. Gandhi, who happened to be the Prime Minister at that time. Therefore, in my amendment, I have asked for the setting up of a committee of the House to go into the role of Parliament.

Now, Mr. Deputy-Speaker, the findings of the Commission are bound to be considered with the greatest amount of respect because they are based on the evidence tendered by the highest Government functionaries before the Commission on oath, and on material called from the official records. So, Justice Shah had also said that the evidence adduced before him would be the determining factor. He did not assume that any person, body or group of persons had been guilty of any excess. The findings

of the Shah Commission documents indicate—they are in fact bound to be considered not—anatomy of an authoritarian rule, as well as the horoscope of this great democracy. In them you will find areas of darkness and light, of strengths and weaknesses in our national life.

Also these reports are in more senses than one an indication of the gradual and steady decline in the moral fibre of the nation. After all, this phenomenon of dictatorship or authoritarian rule did not come like a thief during one dark night. It came as a result of the consistent decline of the nation that was taking place under the leadership of Mrs. Gandhi, when she had been in power. Therefore this is one of the sternest warnings of the Commission, which we have to heed, that there was almost a near-collapse of the moral fibre of the nation.

These reports, when read by people all over the world, are bound to prove stunning to them. They are bound to ask whether it is believable, whether it could happen in a country like India which was considered to be one of the strongest bastions of democracy in the under-developed world, and perhaps the last bastion of democracy in the under-developed world. The people are bound to ask: could it happen in the land of Mahatma Gandhi, Nehru, Azad, Rajendra Prasad and Patel? But the greatest tragedy of it all is that freedom was liquidated by the daughter of the great architect of freedom, Pandit Nehru. And may I say that Nehru not only happened to be one of the architects of our freedom, but was also the principal architect of our democracy and the progress and development of our country.

These documents are indeed a formidable and terrifying catalogue of the excesses committed by the previous regime. I would not like to weary the House with all the details of

these excesses because they have appeared in the newspapers from time to time. And yet it should bear repetition that the disclosures show that there was wholesale and wilful perversion of the entire Constitution. Even the grave step of the proclamation of the emergency has been pronounced as *mala fide* and illegal. That means that all that was done in the wake of the emergency was inevitably illegal. The Government has not gone into the full implications of a *mala fide* and illegal proclamation of emergency; this should have been done more urgently. If anybody takes it to the court that many of these things were illegal and certain consequences followed, the Government will have to provide a convincing answer.

It has also been found that there was illegal false and malicious arrest of thousands, many of them under the directions of the Prime Minister herself. One of the respected leaders of the country is no more—Mr. Bhimsen Sachar. He along with his Sarvodaya colleagues had been arrested at the behest of Mrs. Gandhi herself. His death, however, does not mean that the criminal culpability does not follow.

15.00 hrs.

I am also haunted many a times by the figure of the brother of Mr. George Fernandes. He happened to be with me in the same jail. He had come to the jail as a half-dead person. Even now, Mr. Laurence Fernandes is a limping person, he had not recovered fully.

SOME HON. MEMBERS: Shame, shame.

SHRI SHYAMNANDAN MISHRA: And he went to the Shah Commission in that limping condition. I still remember the well that separated me from that actress Snehalata Reddy in the Bangalore Central Jail: She ultimately succumbed to the treatment that had been meted out to her.

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There was also gross and dishonest manipulation of the media, the kind of which had not probably occurred even during the British regime. Every one would bear me out that the press during the British regime did not have to work under such throttling conditions as it did during the period of Emergency. And how much brain-washing was sought to be done by them is demonstrated by the fact that "why Emergency" and the "20-point programme" were printed in as large a number of copies as probably there are families in this country. That brings me to the remissness on the part of the present Government. The Shah Commission Report has not been printed in adequate number in order to be available to the citizens of the country.

AN HON. MEMBER: In all languages.

SHRI SHYAMNANDAN MISHRA: In all languages. The hon. Prime Minister said the other day that the Shah Commission Report would be available at a cheap price of Rs. 2.50 p. and then the next day came a report in the newspapers that it was available at a price of only Rs. 28. If that is the price of this important document, you can realise how the citizens would be able to get hold of it. I think that the first duty of this Government was and even now is, to get as many copies of the Shah Commission Report printed and distributed as may be required by the entire literate population.

SOME HON. MEMBERS: In all languages.

SHRI SHYAMNANDAN MISHRA: And in all languages.

Then, Mr. Deputy-Speaker, the Commission has also highlighted the demoniacal demolitions of the houses of the poor people. When the previous government were speaking of the 20-point programme and the uplift of

the downtrodden people, they found below their nose in this very city that the houses of the poor people were being razed to the ground. At whose instance was it done? The Commission has squarely fixed the responsibility for the demolition of the houses at the doors of the extra-constitutional authority. This extra-constitutional authority, the Commission has said, was the greatest single excess of the Emergency. And the credit for being the greatest single excess of the Emergency goes to the son of the former Prime Minister—Mr. Sanjay Gandhi. This was done at his instance.

Mrs. Gandhi had been found to be involved in three kinds of responsibilities. The first and the most important responsibility is of a moral nature. It has been found that she had 'misrepresented' if I can use a milder word,—Probably it would hurt the friends on the other side if I said that she had lied to the President—regarding the basis and method of Proclamation of Emergency. She was also responsible for the arrests of a large number of persons herself. This was done at her orders. As it happens in any country of the world, if any Prime Minister is found guilty of getting any person arrested on a malicious charge—I say of even a single person—that Prime Minister would have no place in the political life of that country, and he or she will have to retire from public life altogether. Probably, in this country, our sensitivity to moral value is not as keen and, therefore, the moral values of the Prime Minister also, when persons of not the right type of moral stature come to occupy that high position, do not seem to be high. As against, this, let us consider what happened in the United States when Mr. Nixon was arraigned and found guilty of a relatively much smaller charge? Mr. Nixon had not only to quit his great post, but he had also to announce that he was retiring from the public life altogether.

But here almost the entire flock of that party, at any rate many of them, still seem to be lining behind those who were found guilty of so many kinds of evil deeds perpetrated during the Emergency.

She had also perverted the Constitution and mutilated the laws in order to perpetuate her personal rule. The Commission has gone on record to say that the Proclamation of Emergency was done entirely for the purpose of perpetuating her personal or dynastic rule in this country what is worse, she had misused the entire State apparatus for her personal ends.

Please look at the steps that she had taken, not only to subvert the Constitution but also to subvert the economy of this country. One of the friends who happened to appear before the Commission is here. He had to answer certain questions about the appointments to some important posts in the nationalised banks. The Report makes it clear how the important posts in the important economic institutions, like the nationalised banks, came to be filled at the instance of the Prime Minister and her son. Was this the purpose for which the banks were nationalised? The nation is bound to ask: Was it for this purpose the nationalised banks should siphon off most of their resources to the Maruti Limited—that the banks were nationalised? Now it comes to be revealed that during the period of the Emergency a major slice of the resources of some of these banks was siphoned off to the Maruti Limited.

Such was the moral responsibility of the Prime Minister herself, but the matter does not end there. She was involved in the second kind of responsibility for which the Commission imposes on her direct criminal liability. She got people arrested on non-existent grounds and had false and malicious cases instituted against them.

In the case of the textile inspectors, she is liable for prosecution under the Prevention of Corruption Act. The Supreme Court has ruled that defrauding the public exchequer is tantamount to corruption. That is precisely the issue which is involved in the arrest of the textile inspectors.

The third kind of responsibility is suggested by Justice Shah's remark that the emergence of the phenomenon of Mr. Sanjay Gandhi was directly relatable—I infer it from his remarks to Mrs. Gandhi. It was Mrs. Gandhi, and Mrs. Gandhi alone, who was responsible for setting up Mr. Sanjay Gandhi as the *de facto* Prime Minister. My hon. friend, Mr. Subramaniam, happened to be a member, not of the Cabinet of Mrs. Gandhi but of the Cabinet of the *de facto* Prime Minister, Mr. Sanjay Gandhi. It was her hope, and definitely endeavour to, that Mr. Sanjay Gandhi should become the *de jure* Prime Minister as well. It was with this end in view that he was set up as a candidate during the last General Elections.

Then what happens about this overlord of Delhi and the *de facto* Prime Minister? What has the Commission said about this hon. Gentleman? He interfered with the appointments in the nationalised Banks. He harassed business firms out of personal vendetta. Would you imagine, Mr. Deputy Speaker, any person outside the authority, Constitutional authority, giving orders which would be faithfully carried out by the officialdom?

This is precisely what happened. The Intelligence Officers, either the Director of the CBI or the Director of the Intelligence Bureau and most of the important functionaries, all of them were tied to the door-mats of No. 1, Safdarjung Road. This was the state of administration during those days and it was mainly because of the fact that Mr. Sanjay Gandhi came to wield all the powers that the Government had. The Commission has accused him of having actually

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aided and abetted the demolitions, as I have told you earlier.

SHRI SOMNATH CHATTERJEE (Jadavpur): And also the firing incident.

SHRI SHYAMNANDAN MISHRA: Yes. When we come to the torture and arrests of the people, the record of the Emergency shames even the record of Lord Linlithgow. The arrests during this period went upto nearly two lakhs and out of them, the MISA detenus were 36,039. In 1942, during the Quit India Movement, Lord Linlithgow's regime, the British régime had arrested only 60,832 persons. Here, I am reminded of what the great leader, Shri C. Rajagopalachari had said when he became the Governor-General of India. He said that he was shaking hands across the Centuries with Warren Hastings. Now, Mrs. Gandhi was shaking hands across the years with Lord Linlithgow, and if the nation does not get alert sufficiently, any Prime Minister could come and shake hands with Nadir Shah himself. That is the danger which lurks.

Sir, it was a period during which all our important institutions had ceased to function. Many of them had become even disfunctional. What happened in the United States when Mr. Nixon was on trial before the nation? All the great institutions were functioning vigorously and Mr. Nixon was being simultaneously prosecuted before three forums, he was, in a sense, being prosecuted by the people and the press, he was being prosecuted by the judiciary and he was being prosecuted by the Congress, by all the three forums. When I rose to move the motion, my hon. friend, Mr. Lakkappa, stood up to say that the matter was *sub judice* and therefore, no discussion should be allowed. But, let the House remember that Mr. Nixon was simultaneously being prosecuted in three forums and therefore, when these institutions were functioning that vigorously, you

found that Mr. Nixon was adequately, punished. But what happened in this country was that there was almost a near decimation of all the great institutions. It was a period—let us remind ourselves—when this great institution, Parliament had become the hand-maid of the Executive and when the judiciary had also become impotent and paralysed.

Would not the hon. House remember what the present Chief Justice had to say recently while defending the controversial judgment on the Habeas Corpus case? I think, the hon. Chief Justice was not making a full-throated defence of this. But even so, he had to defend it because he happened to be one of the four judges Constituting the majority. What did the present Chief Justice have to say of those appalling days? He said:

"I wish I had the courage to say that if this was the law, I will lay down my office."

He did not have the courage to lay down the office. But I must say that the Chief Justice of India was very candid in admitting that there was lack of courage on his part.

The verdict of the Shah Commission is that the entire ruling constellation, the ruling clique, the Cabinet and all the rest of them lacked courage and honour in the hour of need. I repeat all of them lacked courage and honour. Otherwise, this would not have happened to this great nation.

Here, I would ask the hon. House to pay attention to some of the remarks that have been made by that veteran jurist, Mr. Seervai in his recent book. What had happened to the judiciary during that period is clear from his remarks. Mr. Seervai, in his book, "The Emergency, Future Safeguards and the Habeas Corpus Case: A criticism" says:

"At the darkest period in the history of Independent India, it made the darkness complete."

That is the comment which Mr. Seervai has made on the judiciary of those days.

Mr. Seervai also says:

"Ordinary men and women would understand Satan saying, 'Evil be thou my good', but they were bewildered and perplexed to be told by four learned judges of the Supreme Court that in substance the founding fathers had written into the Emergency provisions of our Constitution, 'Lawlessness be thou our law'".

That is what Mr. Seervai has said of the judiciary. This is the state to which Mrs. Indira Gandhi and her followers had reduced the great institution of judiciary.

MR. DEPUTY SPEAKER: The hon. Member may try to conclude now.

SHRI SHYAMNANDAN MISHRA: I have to bring out some more aspects. Please give me a little more time.

It does not require to be said that the press was muzzled in such a way that you could not even get the voice of this Parliament to the nation. In every way it was the darkest hour in the brief period of our Independence. What Justice Shah has demonstrated and the main conclusion that can be drawn from the Shah Commission Report is that the whole constitution is a heap of ashes if truth departs from the highest seat of power.

15.19 hrs.

[MR. SPEAKER in the Chair]

Sir, you have been a great judge of the Supreme Court.

SHRI HARI VISHNU KAMATH: You are just in time, Sir.

SHRI SHYAMNANDAN MISHRA: If outside the House I have to discuss with you to find out if there is any remedy to the untruth uttered by a

person in the highest authority, probably, I will draw a blank from you. That is also the main conclusion of the Shah Commission's findings. There is no remedy, constitutional or legal to the untruth uttered by the highest functionaries of the State except the power of the people.

But, can we have any safeguards in future after having gone through all this? I think there is one safeguard which the Constitution can provide and that is that some of the rights of the people, particularly the basic freedoms the basic human rights must be made entrenched rights. They must be made inviolate, that is, they should not be violated or taken away in any circumstances.

SHRI HARI VISHNU KAMATH: Is the Bill coming up in this session?

SHRI SHYAMNANDAN MISHRA: It may or may not be coming.

This is the only safeguard that can be provided in the Constitution.

The Shah Commission has also shattered our belief that we had built up a stable policy for our democracy, after 28 years of our independence and after five General Elections. The haunting question, therefore, before the House and before the country is—and that is also a challenge—whether all this will happen again? Therefore, we have to address ourselves to the future also.

Now, Mr. Speaker, many a time it has been said that there is no political remedy to a political crime. I do not accept the helplessness of the political system in this matter. Now, if there have been political crimes of the most heinous type, a political remedy can be provided by the Parliament. I do not subscribe to the view that Parliament cannot take to task wrong-doers who perpetrate such crimes against the people. Parliament cannot throw up its hands. The House remembers that Charles I was impeached by the British Parliament. Not

(Shri Shyamnandan Mishra)

only he was impeached by the British Parliament, there were impeachment proceedings against Warren Hastings and Clive too. Where did this power flow from? Now, some of my Hon. friends will say that while there is provision in the Constitution for the impeachment of the President and the Judges of the Supreme Court there is no such provision for persons like Mrs. Gandhi. That is because of the fact that they happen to be in office. For these out of office too, there can be impeachment proceedings, but there cannot be impeachment proceedings against Members of the Cabinet or of the Government because they are answerable to the House. However, there is no barring the impeachment proceedings, as there had been such proceedings in the British Parliament against persons like Mrs. Gandhi. She can be called to the bar of the House and impeached. (*Interruptions*). The charge against Charles I was that he had waged a war against the people. That is also the charge against Mrs. Gandhi. Charles I was impeached as "the capital and grand author of our troubles"; Mrs. Gandhi can be accused of no less a crime than this. Therefore, I would say that Parliament also can play a role in this matter.

Now, Mr. Speaker, finally I would like to come to the Memorandum of Action that has been submitted to the House and to the people. I must confess my great disappointment at this document. This Memorandum of Action probably consists of 43 paragraphs. Out of them, 42 paragraphs are only a rehash or the summary of the Shah Commission's findings, and there is only one paragraph which condescendingly refers to certain actions that have been taken or are proposed to be taken. And what kind of actions do they refer to? The Memorandum says:

"The Government has accepted the findings of the Shah Commission and follow-up action will be taken after a study of each in-

dividual case through legal and administrative processes'.

Before anything comes out of these studies and procedures, the guilty, Mr. Speaker, would probably have passed into eternity. If that is the pace at which the Government wants to move, I think that the people are bound to feel not only restive but angry.

And what have the newspapers this morning to report? I have here in my hand the *Statesman* of today which reports:

"ANDHRA POST FOR FORMER P.I.O.

"Dr. A. R. Baji, former Principal Information officer, has been appointed Director-General of Information, Public Relations, Exhibitions and Cultural Relations by the Andhra Government, reports PTI.

"He retired from the Central service on July 31, relinquishing charge as Director of Field Publicity."

The person who had been most responsible for muzzling the press has now been appointed as an important officer by a State Government which is under the control of Mrs. Gandhi. So, would not the Government of India, in such a matter, pull up the State Government? (*Interruptions*)

Therefore, Mr. Speaker, my submission is that the Government has to show more evidence that it is serious about accepting the moral and political challenges thrown by the Commission. Unless the Government is able to demonstrate that, it is bound to be accused of being extremely soft in this matter. Sometime back, there was a controversy going on inside the Government on this very issue when the Government was accused of such attitude not by the former Home Minister—the former Home Minister had only conveyed to the Government the feeling of the people—about the action to be taken against Mrs. Gandhi.

The principal question to my mind is not whether Mrs. Gandhi would be punished, or what would happen to the fate of an individual; the principal question before me and before the nation is what will happen to democracy and this great nation if the findings of the Shah Commission are not made operational. And it is in that sense that I beseech my Government which has come on the principle mandate that the evil deeds of the Emergency must be exposed and remedy provided against the repetition of such a national tragedy in the future.

With these words, I commend the motion to the House.

MR. SPEAKER: Motion moved:

"That this House do consider the interim Reports I and II of the Shah Commission of Inquiry and the 'Memorandum of Action taken thereon', laid on the Table of the House on the 15th May, 1978."

There are seven substitute motions that have been given notice of. I will call upon the Members only to move their substitute motions. No speeches will be made at this stage. They will be called upon to speak at a later stage..

श्री राज नारायण (रायवरेली): अध्यक्ष महोदय, मैं प्रस्ताव करता हूँ :

'कि मूल प्रस्ताव के स्थान पर निम्न-लिखित प्रतिस्थापित किया जाए, अर्थात् :—

"यह सभा शाह जांच आयोग के अन्तरिम प्रतिवेदन भाग 1 और 2 तथा 'उस पर की गई कार्यवाही का जापन' पर, जो 15 मई, 1978 को सभा पटल पर रखे गये थे, विचार करने के बाद निश्चय करती है कि लोक प्रतिनिधित्व अधिनियम, 1951 में ऐसा संशो-

धन किया जाय जिस से निराधार आन्तरिक सुरक्षा के नाम पर आपतकालीन स्थिति की घोषणा के कारण राष्ट्र, संसद और संविधान का अवमान करने और शाह आयोग के समक्ष शपथपूर्वक गवाही देने से मुकरने के कारण श्रीमती इंदिरा गांधी अगले 10 वर्षों तक किसी भी चुनाव लड़ने के लिए अयोग्य घोषित की जाय ।" (1)

डा० रामजी० सिंह (भागलपुर): अध्यक्ष महोदय, मैं प्रस्ताव करता हूँ :

'कि मूल प्रस्ताव के स्थान पर निम्न-लिखित प्रतिस्थापित किया जाय, अर्थात् :—

"यह सभा शाह जांच आयोग के अन्तरिम प्रतिवेदन भाग 1 और 2 तथा 'उस पर की गई कार्यवाही का जापन' पर, जो 15 मई, 1978 को सभा पटल पर रखे गये थे, विचार करने के बाद सरकार को निदेश देती है कि जांच आयोग का कार्य तथा उस पर अनुगामी कार्यवाही 1978 के अन्त तक पूरी की जाय ।" (2)

श्री विनायक प्रसाद यादव (सहरसा): अध्यक्ष महोदय, मैं प्रस्ताव करता हूँ :

'कि मूल प्रस्ताव के स्थान पर निम्न-लिखित प्रतिस्थापित किया जाय, अर्थात् :—

"यह सभा शाह जांच आयोग के अन्तरिम प्रतिवेदन भाग 1 और 2 तथा 'उस पर की गई कार्यवाही का जापन' पर, जो 15 मई, 1978 को सभा पटल पर रखे गए थे, विचार करने के बाद सरकार

[श्री विनायक प्रसाद यादव]

को निदेश देती है कि संविधान को तोड़ने से सम्बन्धित व्यक्तियों को कड़ा से कड़ा दण्ड देने के लिए अद्वितीय कार्यदाही की जाय और आपात स्थिति में जिन अधिकारियों ने लोगों को आर्थिक, शारीरिक और मानसिक यातनाएं दी उन पर तुरन्त मुकदमा चलाया जाय।" (3)

SHRI SHYAMNANDAN MISHRA:
I beg to move:

"That for the original motion, the following be substituted, namely:—

"This House, having considered the Interim Reports I and II of the Shah Commission of Inquiry and the 'Memorandum of Action taken thereon', laid on the Table of the House in the 15th May, 1978, resolves that a Committee of the House be appointed to find out how it became possible to subvert the Constitution, to defraud Parliament, to deprive the people of their democratic rights and turn the country into a vast prison house with its key held by one person and to recommend steps to prevent the recurrence of such a grave national tragedy in future." (4).

श्री गोरी शंकर राय (गाजीपुर) :
अध्यक्ष महोदय, मैं प्रस्ताव करता हूँ :

"कि मूल प्रस्ताव के स्थान पर निम्न-लिखित प्रतिस्थापित किया जाय, अर्थात् :—

"शाह जांच आयोग के अन्तरिम प्रति-वेदन भाग 1 और 2 तथा उस पर की गई कार्यदाही का

जापन' पर, जो 15 मई, 1978 को सभा पटल पर रखे गये थे, विचार करने के बाद इस सभा की राय है कि सत्ता का दुरुपयोग करने और गम्भीर अपराध करने के लिए जिम्मेदार पाये गये व्यक्तियों के विरुद्ध तुरन्त कार्य-दाही की जाय।" (5)

श्री कंधर लाल गुप्त (दिल्ली सदर) :
अध्यक्ष महोदय, मैं प्रस्ताव करता हूँ :

"कि मूल प्रस्ताव के स्थान पर निम्न-लिखित प्रतिस्थापित किया जाय, अर्थात् :—

"शाह जांच आयोग के अन्तरिम प्रति-वेदन भाग 1 और 2 तथा 'उस पर की गई कार्यदाही का जापन' पर, जो 15 मई, 1978 को सभा पटल पर रखे गए थे, विचार करने के बाद इस सभा की राय है कि सरकार निम्नलिखित पग उठाए :—

(क) मुकदमे चलाने के लिए विशेष न्यायालयों की स्थापना, जैसा कि शाह आयोग द्वारा संकेत किया गया है ;

(ख) संविधान में आदेशक परिवर्तन करना ताकि कोई व्यक्ति भविष्य में लोकतंत्र, वैयक्तिक स्वतंत्र्य प्रेस और न्यायपालिका स्वातंत्र्य का हनन न कर सके; और

(ग) संविधान के मूल सिद्धांतों के विरुद्ध कार्य करने वाले तथा अपनी सत्ता अथवा शक्ति का दुरुपयोग करने वाले व्यक्तियों को मताधिकार से वंचित करना।" (6)

SHRI PABITRA MOHAN PRADHAN (Deogarh): Sir, I beg to move:

That for the original motion, the following be substituted, namely:—

"This House, having considered the Interim Reports I and II of the Shah Commission of Inquiry and the 'Memorandum of Action taken thereon', laid on the Table of the House on the 15th May, 1978, urges upon the Government to immediately take up the follow up action in instituting both criminal and civil cases." (7)

MR. SPEAKER: Now I call upon the Leader of the Opposition.

SHRI C. M. STEPHEN (Idukki): At the end of the last session, when these reports were laid on the Table of the House, I made a submission expressing a desire for an immediate discussion and I went to the extent of pleading that the House might sit for 3-4 days together to discuss the reports. I remind the House of this submission of mine only to emphasize that we, on this side of the House, have been very keen all along for a discussion of the Shah Commission, its procedure, its findings its reports and the whole lot of it. But, to-day, I feel before you came, Mr. Lakkappa raised a point of order to the effect that the discussion would hit the principle of *sub judice*. The Deputy Speaker, in his wisdom, ruled that it would not. I do not want to make any comment about it because it has come to this when an attack on Congress(I) or Mrs. Gandhi is concerned, no rule is a bar. There is a rule that when a matter is pending before a commission, no questions shall be asked. But questions were being asked. That when a matter is before a commission, no discussion shall take place is a definite rule, but that is what is being done on the floor of the House. That a defamatory statement against anybody without notice to the

speaker shall not be made on the floor of the House is the rule. That is being enforced but when Mrs. Gandhi and persons connected with her are concerned, this is not a bar at all.

Therefore, here, even if the rule of *sub judice* is attracted if, a refraction of that rule will not surprise me and I do not take it seriously. In spite of that, the discussion can go on. But this position is rather dangerous. Irrespective of persons, and whatever be our attitude to the persons are concerned, the rules of the House must be applied to everybody. If it is to Mrs. Gandhi to-day, it may be to somebody else tomorrow. This is all what I have to say preliminarily.

Now, Sir, there was a time when a discussion on the Shah Commission would have evoked a considerable amount of interest. But, to-day, I feel this report has become practically irrelevant. You are now lifting it up from the limbo or from the waste paper basket and having a look at it. Nobody is bothered about the Shah Commission and its findings.... (Interruptions) It would be that.

The history of the Shah Commission, the 14 months that have been covered since its appointment has been a history of a steady decline. With all fanfare of the appointment of the Shah Commission was announced in the House in May 1977 and that was a major news. Subsequently, the way the Shah Commission conducted itself, the procedure it followed, the violation of the basic rules of natural justice that was indulged in the proceedings before the Shah Commission and the facilities that were injected into the court room of the Shah Commission—all that had the cumulative effect of creating a feeling that here is a tribunal which had its judgment already written up but only trying to collect the evidence to back it up.

I am reminded here of a cartoon which appeared in the *Times* of

[Shri C. M. Stephen]

India somewhere about October 1977. There the cartoon was of a foreign tourist coming to this country and Mr. Morarji Bhaj was taking him to the different areas. He took him to a cottage and said, 'We have now returned to the village. Therefore, here is your guest-house', and a small cottage was shown to him. Then he was taken to another place where the Congress split and there he was shown, 'Here is the area where the old monuments of the country have been split up. And finally he took him to the Shah Commission—a light entertainment, as the Shah Commission Report would show. This was expressive, absolutely expressive, of the feelings about the suspense about the Shah Commission, that has come to.

Well, Sir, there is a parallel from the British History which I feel is on all-fours similar to the Shah Commission. That was the Commission on Inquiry against Walpole. This is the story. I quote:

"Walpole had held the centre of the stage for so many years....

"The first step in the attack upon the fallen Minister was therefore the presentation of public petitions to Parliament, demanding an inquiry into the harmful consequences of this mismanagement.....

"Lord Limerick proposed on March 9th that a Committee of Inquiry should be set up to investigate the conduct of affairs by the Walpole Ministry over the previous twenty years. This was rejected by a majority of only two votes, and on March 23rd Lord Limerick returned to the attack by proposing an investigation into the conduct of Walpole as Prime Minister, to extend over the past ten years only. This was carried by a majority of seven, most of the leading members of the new Ministry in the House of Commons speaking in favour of the proposal, the partisan

character of which was emphasised by the appointment of Lord Limerick, a bitter opponent of Walpole, as its Chairman,....

"The proceedings were, and were understood to be, bitter personal attack upon Walpole himself, and they were conducted with such virulence that Sir John Barnard, who had been a consistent and stubborn opponent of Walpole, declared that he would take no part in them.

".....the Committee of Inquiry pressed forward in its labours, and it presented its report on June 30th. It was received with intense disappointment, for it revealed very little. It recorded an allegation that during an election at Weymouth, a place had been promised to the Major, if he would use his influence in obtaining the nomination of a returning officer of the right party. There was a further allegation that on the same occasion the Mayor's brother-in-law, a parson, had been promised a living, with the same object. There were further charges that some revenue officers who had refused to vote for Walpole's nominees had been dismissed; that a fraudulent contract had been given..... for supplying money in Jamaica...

These were small allegations. I again quote:

"These, however, were no more than details..... Still the Committee of Inquiry refused to accept defeat, and stimulated by the sense of frustration which was widespread, it began the task of discovering further evidence.....

"Shortly afterwards, indeed, the new Ministry were at loggerheads, and became the object of public execration. Possibly some of its members reflected unhappily that if they pushed matters to extremes in Walpole's case, they might eventually find themselves in an even worse plight."

This is the story of Walpole's inquiry

stage by stage. I find similarity here. In a political situation a judge is appointed, former Chief Justice of the Supreme Court, Mr. Shah about whom I need not say much here. This House itself is a witness to a mass petition presented against him. And many of the Members on the other side had been the signatories seeking an impeachment of the judge for the show of personality when he disposed of a particular case—totally, a partiality—and many of the Members on the other side were signatories to the document against Justice Shah's past. Justice Shah, after he retired, had been the retainer of many important monopoly firms in this country. I know the Income-tax Department will bear this out. There are numbers of legal opinions given by him.

SHRI GAURI SHANKAR RAI (Ghazipur): Sir, I rise on a point of order. The point of order is: are we discussing the Shah Commission Report or the character of Shah and his background? (*Interruptions*) This is not the way. He should be stopped.

SHRI HARIKESH BAHADUR (Gorakhpur): Then why not the character and background of Shri Stephen be discussed?

SHRI NARENDRA P. NATHWANI (Junagadh): I want to reinforce the point of order. Shri Stephen has referred to partiality of Mr. Justice Shah. That allegation was made on a notice which was intended to serve as an impeachment notice. Certain allegations were made against him and even it was stated that a pamphlet was circulated against Mr. Justice Shah and a reference was made to that. Two things have emerged. Firstly the impeachment notice was not permitted by the Speaker. (*Interruptions*) Secondly, for making that allegation and having circulated that allegation outside Parliament, Shri Gupta was hauled up for contempt. And there is a decision of the Supreme Court and Mr. Gupta was punished for having committed the contempt of

the court. The Charge was that he was partial in deciding that matter. Mr. Stephen was referring to that when he said that he was partial. That very point arose before the Supreme Court and it was held that it (to say that he was partial) amounted to contempt of the court. I do not want to go into details of that matter. The question is whether Mr. Stephen is right in making an allegation against Mr. Justice Shah being partial because that is based on certain proceedings that took place in this House; but, Sir, you know—but many Members do not know—about the whole matter....

MR. SPEAKER: You have made your point. I would like to observe. Mr. Stephen's statement is rather one-sided. The Speaker in that particular case had gone into the allegations made and come to the conclusion that they were all unfounded allegations and the Speaker withheld the permission for the impeachment in that case and Mr. Nathwani has correctly said that the petitioner was held guilty of contempt of court.

SHRI C. M. STEPHEN: Now, when Mr. Shyamnandan Mishra moved the motion, most part of his time was consumed in commending Justice Shah, emphasising that he was an impartial judge and that he performed his duties creditably. Sir, when the Shah Commission report comes before the House then the entire gamut is before the House—the Commission before the House; his conduct is before the House, the procedure is before the House and the way he discharges his responsibility properly is before the House. The whole matter is before the House. Therefore, there is no question of treating Justice Shah as absolutely sacrosanct.

Now, from the very moment Justice Shah's appointment was made, there were declarations and announcements from different parts giving expression to the misgivings that he was a committed person—committed against Emergency, committed against exces-

[Shri C. M. Stephen]

ses and all that. He had gone on record publicly and in public meetings that he addressed condemning the whole thing. May be he is right? As a citizen certainly. But when excesses of Emergency are the matters to be gone into whether a person who has expressed himself definitely on this matter, whether appointment of that person will carry with him the objectivity which is absolutely necessary if the Commission is to command the confidence of the people. This is most important.

Sir, in this respect I would like to invite your attention to what happened with respect to Maruti Commission. For Maruti Commission, Justice Mathur was appointed. Subsequently, Justice Mathur was requested to relinquish his office and here is what Mr. Charan Singh wrote to Justice Shah asking for information about Justice Mathur:

"It is obvious that there must be complete confidence in persons holding such enquiry and there should be no misgivings of any kind regarding objectivity and impartiality of such enquiry."

Charan Singh enforced this with respect of Justice Mathur. With respect to Justice Shah, although expressions were given doubting the objectivity and impartiality of the judge—public expressions were given. Expressions were given in this House—although it was repeatedly done, Justice Shah was continued in the office. I am only submitting Justice Shah has his own connections which would make impossible for him to give an objective judgment because he had his own confirmed views about this matter.

Sir, after he retired from Chief Justiceship, he has been consultant of a large number of firms on income-tax matters. It is known even in the matter of advertisement case he gave his opinion saying that the advertisement of Congress bulletin would not

violate the provisions of the company law. That was his legal knowledge. Subsequently it has come to be, that that legal knowledge is not correct knowledge. He gave that because that advice served the purpose of the companies to which he was giving his advice. That is the background. There are income-tax matters. If there is a dispute, then, a reference is made to Justice Shah. The query and the reply is coming to suit the convenience; and the concerns, the Birlas mostly, present the Income-tax Board with this weighty opinion of the Retired Chief Justice of India.

So, it was a person of this background who was appointed. That was most unfortunate. That is what I am saying. In a case like this, which has got serious implications, a person with absolute objectivity could have been found and could have been appointed.

When Mrs. Gandhi was arrested, Justice Shah declared that he was adjourning and that he was giving up and then he went to Bombay. Subsequently there were reports in the Press that the Home Secretary met him, the Home Minister met him, that he had a discussion with the Prime Minister on this matter and that he was persuaded to continue the Commission work. Well, Sir, the conflict here was between the Government and the previous Government. The matter under inquiry was a matter having considerable political overtones. Under the circumstances, he should not have continued as a Commission and he should have declared it. He can be considered on his own, but the moment the Home Secretary intervenes, the moment the Home Minister intervenes, the moment these ministerial authorities intervene and discuss with him, what would be the reaction of a judge? Sir, you have been in the Supreme Court. What would be the reaction?

SHRI KANWAR LAL GUPTA: Sir. I rise on a point of order. My hon. friend Mr. Stephen is discussing the

conduct of Mr. Justice Shah. Can he, under the rules, discuss the conduct of Justice Shah? He can certainly discuss the Report but not the conduct and the way of working of Mr. Justice Shah. He cannot cast aspersion on him. So, you kindly look into this, Mr. Speaker, that no aspersion is cast on the conduct of Mr. Justice Shah. That is my respectful submission.

SHRI C. M. STEPHEN: You need not give a ruling because that part of my speech is practically over. Now, I am speaking about his conduct as a Commission.

SHRI KANWAR LAL GUPTA: I want your ruling, Sir.

MR. SPEAKER: He has raised a point. Mr. Law Minister, would you like to say anything in the matter?

श्री नथू सिंह (दीसा) : अध्यक्ष महोदय,
मेरा प्वाइंट आफ़ ऑर्डर है ।

MR. SPEAKER: Mr. Nathu Singh, at that time also you rose. Every time you raise a point of order which is totally without merit. Please resume your seat. The Law Minister.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): Mr. Speaker, Sir, when a report made by a Commission of Inquiry is being discussed by the House, I would submit the conduct of the person who has submitted the report should not be made the subject matter of an adverse criticism.

MR. SPEAKER: But was his conduct commended at that time because I was not present?

SHRI SHANTI BHUSHAN: An objection could have been taken. His conduct should not be the subject matter of a discussion on one side or the other side because it is the Report which is under discussion. Therefore, only the report should be discussed.

MR. SPEAKER: Normally, bringing in the conduct of a judge, either commending him or criticising him, is not proper during the course of a debate. But if the conduct has been praised, then, the other side gets a right to criticise it. (Interruptions) The other side gets a right of criticising it.

SHRI SHYAMNANDAN MISHRA: His work has been praised.

MR. SPEAKER: Work is different. One thing I found; of course, nobody raised an objection. Mr. Stephen is not right in saying that he was giving convenient opinion. This is rather unfortunate. You have no occasion to examine his opinion, nor can this forum be utilised for saying that the professional opinion given by him was perverted. This is also not proper. That thing should not have been used. Please go on.

SHRI C. M. STEPHEN: In order to avoid wastage of time I do not want to comment about your ruling. Anyway, I have got my own views. What I am commenting is his conduct as a Commission. As a Commission, it declared, that it was adjourning in protest. It was reported in the papers that the Home Secretary met him and the Home Minister met him. He had a meeting with the hon. Prime Minister. After that, it was announced that the Commission would resume the sitting. It is elementary that if an interested party interferes or tries to influence what that judge will do is to lay it down and say "I will have nothing to do with this." For any kind of trying or influencing the Judge, the Judge will immediately hand it over to somebody else and would say "I would never again sit on those judgements".

He submitted himself to this, making himself susceptible, giving an impression that he is susceptible to the influence by the Government, by the Prime Minister and the Home Minister and even the Home Secretary. This is his conduct. This is what he did and

[Shri C. M. Stephen]

taking this conduct the objectivity of Justice Shah comes under question. That is why I am saying that the sanctity of the Commission of Enquiry, Sir, is the objectivity. The Commission comments that there is no more sanction for a report of the Commission which does not have the legal validity, which does not end in punishment, nothing at all. It gives a judgement which judgement if accepted by the people as a proper judgement by a proper evaluation, it will have the political value and that is the sanction behind it; and if the person handing down the judgement behaves in a manner which gives an impression that his is an opinion prejudiced and pre-made, then that judgement will have no value at all. The tragedy of the situation is that the judgment of the report of the Shah Commission is vitiated by this aspect. Let us not run away from that factor. This is what I am saying Sir. Now, in both the matters are: who held enquiry, subject matter of the enquiry and what is the procedure? These are the important matters. This attitude of Justice Shah was reflected, stage by stage, in every state of enquiry. That is what I am submitting. For example, what was the reference to him? Reference to him was on five matters. There were five matters referred to him—subversion of lawful, process and well-established conventions, administrative procedures and practices, abuse of authority, misuse of powers, excesses and malpractices committed during the period when the proclamation of Emergency was declared on 25th June, 1975, under Article 352 of the Constitution in force or in days immediately preceding the proclamation of the Emergency, the excesses committed during the Emergency, excesses committed during the days preceding the emergency. He was never asked to evaluate the emergency, the correctness or the validity of the declaration of the emergency. That has stood in the way of Government which can make a matter for reference during the emergency, during the days

preceding the emergency; he was never asked to comment about the emergency as such. Justice Shah went out of the way. He trampled the jurisdiction to comment about the Emergency. I would say that the Government declined to make this reference because of a position which has already been taken in Indian Law. I have got a reference that Khanna Commission in Orissa Enquiry where Justice Khanna found Mr. Biju Patnaik guilty on four matters which were referred to him. There, Sir, certain matters were not borne in mind by the Judge in making his observations.

"As regards general financial policy by the State Government and the budget figures, it is not disputed that the same were approved by the Legislature. These were also policy matters and, in my opinion, the Commission cannot and should not sit in judgement over the wisdom of the policies approved by the Legislature."

"It is not necessary to go into other details; suffice it to say that a principle was established that in so far as policy is concerned, a minister, who has enjoyed the support of the House for what he has done, cannot be punished subsequently by any other penalty than loss of office."

This is the principle which has now become part of the Constitutional Law of England. This is a principle which was accepted by Justice Khanna in handing down this judgement. Now, he was appointed to head the Commission of Enquiry. Therefore, in the matter of Emergency, it was approved by the House that no reference was made to him that you must go into it. But he did go into it and he went into it in spite of the objections from Shrimati Gandhi. In her statement before the Commission, she said:

"No authority in this country, not excluding any commission appointed under the Commission of Inquiry Act, can sit in judgement over such an Act of Parliament. For any political decision, the Government under our

Constitution is answerable only to Parliament. If this hon. Commission arrogates to itself the power to determine that the declaration of Emergency was an excess, this hon. Commission will not only be stultifying the constitutional scheme, but also establishing a precedent which will make serious inroad into parliamentary supremacy with disastrous consequences to parliamentary freedom."

She said further:

"Apart from this, I should like to bring to the notice of the hon. Commission that while making its pronouncement on my submission that the terms of reference were one-sided and politically motivated and that it was equally imperative that this hon. Commission should go into the circumstances which led to the declaration of emergency, this hon. Commission observed as follows ..."

She made the pleas, one, you have no jurisdiction, the terms of reference do not cover it, two, even the basic law accepted in this country does not permit re-examination of a matter which was accepted by the Parliament, no Commission of Enquiry can go into it and three, if you are disposed to overrule it and go into it, you must cover the entire area of incidents which led to the proclamation of emergency and that she must be given an opportunity to lead evidence on all that happened which necessitated the declaration of emergency. Justice Shah after quoting these pleas makes no comments on these observations, he has quoted, but he has no comments to make. If he rejected it, he must give some reasons. He just keeps completely silent about it. Is this the way, a judge is to behave with respect to a matter which is before him? Basically, what I am saying is that although no reference was made to him, although the law accepted in this country prohibits an examination of a particular matter, although the party specifically pointed out to him the irregularity about this matter, Justice Shah without caring to reply.

to the objections raised grabbed at the jurisdiction because he wanted to come out saying something. This shows the partial way in which Justice Shah behaved in disposing of this matter. I am only saying that about emergency he has come to one finding without any jurisdiction at all. Commenting upon a matter which is not referred to him is doing something without any jurisdiction. Now, this is what George W Keeton in his authoritative book, *Trial by Tribunal* says:

"The fall of Walpole is, indeed, the decisive moment in the development of the English constitution, when the transition is made from extraordinary punishment for a Minister who has lost the confidence of Parliament to the present consequence of loss of office only. After Walpole's resignation there is no longer any expectation that when a Prime Minister leaves office, it will be possible to impose penalties upon him for the execution of policy, however mistaken. This immunity is, in fact, the outstanding characteristic of Parliamentary Government, by means of a Ministry whose members are also members of one of the Houses of Parliament. By maintaining the Ministry in office, Parliamentary in escapably shares with the Government responsibility for policy."

This is the part of the constitutional law. In spite of that, he went into it. I will come to that after a few minutes.

Now, I am on the question of procedure, whether a proper procedure was followed. A very strange procedure has been followed by Justice Shah. Here, I would just invite your attention to a statement by the Law Commission of India about the importance of the procedure.

16.00 hrs.

On the Commission of Inquiry Act, the Law Commission gave a report. They said:

"In order that the special procedure envisaged in the Commissions

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of Inquiry Act, 1952 does not work any hardship on citizens, there should be some safeguards. The great American judge Mr. Justice Frankfurter has observed:

"The history of liberty has largely been the history of procedural safeguards."

And, therefore, in 1971, certain amendments were made in the Act, to spell out what the procedure must be. Of course, residual powers were given to the tribunal to have its own procedure—but subject to these basic things. Those procedures were absolutely clear. The reference itself says this. It is not as if he can do anything. Clause 3 of the reference order says:

"The inquiry by the Commission shall be in regard to

(i) complaints or allegations aforesaid that may be made before the Commission by any individual or association in such form and accompanied by such affidavits as may be prescribed by the Commission,

(ii) and such instances relatable to paragraph 2(a)(i) as may be brought to its notice by the Central Government or a State Government..."

These were the matters on which the Commission was asked to go ahead. After they were collected, there were 3 stages stipulated by the Act. He has disregarded all of them, with the result that the principles of natural justice were completely violated. Section 5A (2) of the Commissions of Inquiry Act says:

"For the purpose of investigating into any matter pertaining to the inquiry..."

There are two things contemplated: one is an investigation, and the other is an enquiry. The connotation of

these terms are well known in jurisprudence. Section 5A. (2) says:

"... for the purpose of conducting any investigation pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission"

have such-and-such powers. Section 5A(4) (5) say:

(4) "The officers or agency, whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon (hereafter in this section referred to as the investigation report) to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusions, if any, arrived at in the investigation report submitted to it under sub-section (4), and for this purpose the commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit."

Now, the Commission issued a notification and got certain complaints 42,000 complaints were received by it. Certain complaints among them had been selected and the decision is given. On that, he says he availed of the services of the investigating agency. He must have received the investigation report. There is no mention in this, about the investigation report at all. Then the only stage contemplated in the Act is sitting and considering whether the investigation reports and conclusions are correct. For that, there is a procedure. That procedure can be an inquiry. At that stage, a large number of persons were put on. Their evidence was collected. The question in dispute is whether, at that stage, it was an investigation which was taking place,

or whether it was an inquiry which was taking place. Was it an inquiry on the basis of the investigation report, or was it a screening, to decide whether that investigation report was correct or not? That itself was part of the investigation process. That is the main question. Here, Justice Shah has said this, in paragraph 3.11:

"For that purpose, it was considered necessary to have investigation made by the investigating staff of the Commission. In the very nature of things, such investigation could not be complete. It was, therefore, thought necessary to ask persons cognisant of the transactions to appear before the Commission to assist the Commission in making the inquiry. It was then made clear that there was no compulsion upon anyone to come before the Commission. It was only a request to assist the Commission in the due performance of its duties."

It says: "It was also necessary in order to maintain some regulation." "After holding this inquiry and perusing the statements made before the investigating staff, it was thought necessary, when it appeared that the Commission could form an opinion that certain persons should be given an opportunity of being heard in the inquiry, and notices under rule 5(2) (a) were given."

Now he has dealt with it as a part of an investigation. The question I am raising is: if it is a part of an investigation, is investigation done in the open? Is it done in the open court or that all the persons were kept away; the persons who were really involved were at that stage kept away? The whole thing was done for the sake of publicity, television and radio. Everything was put into service. If this was part of the investigation process, this has got to be done in secret, in camera. If it is an inquiry, it must be done in open and there if consideration of natural justice has got to be observed, persons

—affected would have been allowed to come in. Therefore, the persons affected were not allowed to come in: they were barred out. If there was a trial by press, so to say complete character assassination, this was the process that was going on by a procedure which was not warranted by law at all. The entire provision was disregarded. This was what was done. Now why this? Justice Shah has—I am repeating—mentally made his own commitment and formed his own opinion; and he wanted to carry on a sort of....

(Interruptions)

SHRI GAURI SHANKAR RAI (Chazipur): I question that statement.

(Interruptions)

SHRI C. M. STEPHEN: This is my main argument. If I am not allowed to put forward my argument, I do not want to put forward my argument. This is my main argument. This is my attack on the Shah Commission.

(Interruptions)

MR. SPEAKER: Even in a court, he can say that.

SHRI C. M. STEPHEN: Now, therefore, what happened was that their inquiry was done ex-party, completely ex-party. After the entire damage was done, Mrs. Gandhi or somebody else was called in to give evidence. Why should they come in? The entire damage was done. I would repeat that what ultimately you find is subsequently irrelevant, because this ultimately is to be decided by the people. What is your finding? That finding can be taken to the people, explained to the people. What happens is whether by your procedure you have damnified me or not? You completely damnify me by floating your procedure which has no warrant in the law at all.

After the whole thing was done, the formality of inviting Mrs. Gandhi to come and give evidence was done. She said: "I am under oath of secrecy."

[Shri C. M. Stephen]

She also said: "You have done the whole mischief against me. There is no question of my coming now. I need not come at all." Then she asked for permission to cross-examine persons who were put in the box; permission to cross-examine the investigating agencies. And Justice Shah ruled out the permission to cross-examine investigating agencies; he refused it. The provision says that their evidence can be collected; they can be cross-examined. But Justice Shah refused, rejected the permission. That was the basic document on which everything proceeded. The gravamen of my argument is that by completely forgetting the procedure, deliberate denial of natural justice, ex-parte collection of evidence, collecting evidence more for the purpose of public consumption, more for the purpose of publication, radio and television, there was persecution in public done in complete disregard of the fundamentals of natural law and natural justice. This is what the Shah Commission has done. After that, he has given the finding and the result we have seen is that you have put everything on the radio, on the television and all the papers have published it. The calculation was that if this trial goes on, if the gravity of the offences are portrayed, the people will revolt against her and she will be politically finished. With this we went to the polls; we went to the people in the South, in Karnataka and Andhra Pradesh, we went to the people in Azamgarh and in different constituencies we have seen what has happened, how people have reacted. They have seen through the entire game: here is vindictive persecution, vindictive persecution was taken in that spirit by the people and they gave their verdict on the conduct of the Shah Commission activity. This is what has happened..

(Interruptions)

SHRI VASANT SATHE: You got zero Madurai.

SHRI C. M. STEPHEN: I am only comparing this with what I quoted:

a parallel commission was appointed as in Walpole case; it had been carried on as in Walpole case, as happened in Walpole case the entire target was Mrs. Indira Gandhi. Finally you have come out with the report. May I ask: what is there in the report? Justice Shah has made a pronouncement about emergency. The charges are threefold. One is: emergency was declared without permission or consultation of the Cabinet.

SHRI KANWARLAL GUPTA: Yes.

SHRI C. M. STEPHEN: The point I want to emphasise is: it was not as if Mrs. Gandhi kept it a secret. In the letter written to the President it was mentioned that the Cabinet was not consulted; it was specifically stated: "I would have liked to have taken this to the Cabinet; I shall mention this matter to the Cabinet first thing tomorrow." That this should not be done, Mr. Balachandran advised the President; that is the evidence which had been given here. The President was told that the Cabinet had not been consulted; the political secretary to the President advises the President that the Cabinet should be consulted. The President considered this matter and after considering that matter signs the proclamation. It is not a case of anything being kept away. Everything is told before the President signs the proclamation. The Cabinet was told. Finally the matter came to Parliament. Parliament accepted it. What I am saying is: let there be no impression that things were done clandestinely.

SHRI SOMNATH CHATTERJEE: Did the Home Minister know?

SHRI C. M. STEPHEN: The Home Minister knew.

SHRI KANWAR LAL GUPTA: Mr. Pai and Mr. Subramaniam are here; ask them.

SHRI C. M. STEPHEN: This is what the Commission report says. The Home Minister was called and told that there was a proposal.

SHRI KANWAR LAL GUPTA: No.

SHRI C. M. STEPHEN: The Home Minister was told and he knew. The point therefore is: it is not as if things were taken away hidden from the Home Minister, whoever was in the picture. The matter came before Parliament; Parliament accepted it; the proclamation came into effect. It was a legal document. Justice Shah had no business to go into it. It was a shock treatment. Shri Siddhartha Shankar Ray has said in his evidence that she was speaking about it long before the Allahabad judgement.

It is not as if it was implemented for the purpose of remaining in power in spite of Allahabad judgement. Things were going from bad to worse. Anarchic conditions were prevailing. But according to Mr. Justice Shah there was no law and order situation.

Well, there another Commission will go into the same matter. Justice Mathew Commission will go into the matter about things that were happening.

This was what he said:

"Be that as it may, there can be no gainsaying the fact that violence threatened the democratic set up in Bihar. Violence was very much in the air at all levels—individual, social and political.

It is axiomatic that civilized life becomes impossible if political violence were to take the place of legal, parliamentary and constitutional processes. Even to suggest that any kind of extra-constitutional action is justified to undo a

wrong will undermine the structure of orderly life with results which cannot be foreseen but can be startlingly unsettling. No democratic system can accept the use of physical violence as an instrument of politics.

The incidents of violence in Bihar including the incidents of explosion at Samastipur were a grave warning to the nation and all people had to give very serious thought as to what action should be taken at the national and political levels to put an end to violence to safeguard democracy and ensure national security. If democracy has to be saved from violence and hatred, everyone must exercise restraint in speech and action."

Therefore, here are two reports. The point I am emphasising is the people are now speaking about what was done by the declaration of emergency. May I put the question back? What happened before that? What happened in Gujarat? What happened in Bihar? Was not violence raging there? This is the sort of things that happened there. (*Interruptions*) Democratic process was attacked by you people, and not by other people. You attacked the democratic institutions. You made an onslaught in Gujarat. You made an onslaught in Bihar. You started exploiting things in different areas. These attacks were made there. Therefore, as a consequence, it came in.

Now, finally, there were other findings. What are those great findings? The great findings are—somebody was appointed as a Governor of the Reserve Bank. 'A' should have been appointed. 'B' should have been appointed. Somebody else was appointed as the Chairman of the State Bank of India. 'C' should have been appointed, not 'D' should have been appointed. These are the great findings that you are finding here. (*Interruptions*) and this is because somebody recommended some other

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name. Mrs. Gandhi felt that somebody else should have been mentioned. That was going out of the way. If that is the standard, may I ask you, how many appointments today can stand scrutiny? Today the Chairman of the Taxation Board was appointed. A non-member of the Board had been appointed. The name of a person was recommended. The Appointment Committee recommended that. The name went upto the highest. That name was not taken. Somebody outside was recruited in and when they were told—a non-Member of the Board cannot become a Chairman, then he was announced as a Member and along with that he was announced as a Chairman also. Which procedure has been followed, I am asking?

The Managing Director, B.H.E.L. was sent away. Trade Unions are protesting. Everybody is protesting. This is wiped away and somebody has been appointed. By what procedure have you done, may I ask you?

Chairman, Shipping Corporation has been appointed. What procedure has been adopted?

There is the Directorate of the Settlement of Income Tax. What happened to the Chairman? Somebody was there. He had some more time to retire. But somebody else was put in. He was asked to resign or take leave. Letter was taken him—three months and sixteen days earlier. Somebody else has been put in. That man is there. Now by the time he came, the rules are changed. Two more years are given. By the time Shastri Commission Report will come. He will get two more years. That person was rubbed into that. No procedure is followed. These are great violations that you have now here.

42,000 complaints were received and examined by the Shah Commission in the case of abuse of power and all that. 'A' was appointed to the Reserve Bank. 'B' was ap-

pointed to the State Bank. Somebody else was recommended. Time was not given and in the Indian Airlines Board, when it was constituted, the names which were given, out of that one name was deleted. That is a great thing. Against that Air Marshal Lal protested and resigned. This is the violation, abuse of power. These are the findings here. What else are the findings, I am asking? Of course, certain arrests have taken place. Condemnation has taken place. I can understand that these things are there. But in an emergency it takes place. Wrong things happened as far as that is concerned. But for a Commission to say that in the matter of appointments to the Reserve Bank and State Bank and in constituting the Board for Air India and Indian Airlines basic things are violated because the recommendations given by the respective people were not dittoed by the Prime Minister—I cannot understand it.

After all this, what has it come to? Mr. Charan Singh has made a statement recently saying that going by the law, it is not possible to convict Mrs. Gandhi and therefore, extraordinary measures may be taken. One political party issued a statement saying, everybody knows that under the law of the land, it will not be possible to bring her to conviction; therefore, Nuremberg-type trials may be resorted to. Knowing that under the law conviction is not possible, now they are thinking of a special court, for a command performance, to appoint another judge who will write as the Government wants. The normal process is going to be bypassed. If under the normal law punishment is not possible, we will put somebody there who will write as we want and bring her to conviction. This is the witch-hunt that is now starting. With all the fanfare the Shah Commission started. It assumed an impression of being a partial tribunal. It went through a procedure which is absolutely unwarranted. It collected evidence *ex parte* and has come out with something which looks

like the mountain giving birth to a mouse and not being able to end up in conviction.

Before I wind up, I want to make one submission. Now there is a Government there and there is an opposition here. Against Mrs. Gandhi, you may proceed as best as you can. All the things that are said here have been said umpteen times that there was no normalcy, etc. You can carry on saying that and revel in it. But ultimately, Political sanction is what matters. The witch-hunt atmosphere you are creating, the vindictiveness you are injecting into this, the lack of objectivity that you are creating in the whole situation—all these things are there. This is what is today happening. The special court you are creating will also be having the same position. The whole thing has got a history. I am not going into the entire history. But there is a struggle going on. The struggle will go on. You have won for the time being. You think you can finish us off. You have won for the time being. You have won a battle and you think that is the end of it. You think you can finish us off. You can go ahead trying to finish us off. But we will stick to our position and carry on our mission as best as we can. This is all I have got to say. This vindictive campaign will not take you anywhere. Here is a report which is disowned by the people. Here is a report which is disregarded by the political intelligentsia and treated with complete lightness. This Commission remains as a standing monument for political vindictiveness, misuse of the legal process to carry vindictiveness to the extent of political annihilations which will be met and our people will defeat your entire conspiracy. The Shah Commission report deserves a place. That place is in the waste paper basket. To that it will be thrown.

Looking at the whole thing, I would like to say that the conduct of the Shah Commission itself is a matter which demands an enquiry and a

commission of enquiry will sit in proper time to go into the conduct of the Shah Commission in the matter of violation of legal procedures.

With these words, I conclude.

SHRI SAUGATA ROY (Barrackpore): Mr. Speaker. Sir, today before the House we have a report or two interim reports which have engaged the attention of the nation for the past one year. And it is one of the reports which has raised a lot of political controversy in the country.

Sir, as has been seen clearly that on this Shah Commission Report, two extreme positions have already been taken. One is by Mr. Charan Singh, to whom Mr. Shyamnandan Mishra, the hon. Member who put the motion, is so closely attached. Mr. Charan Singh in a statement just before his resignation from the Cabinet, had said that after the Shah Commission Report it became clear that Mrs. Gandhi might not be punishable by ordinary laws of the land. People of the country would celebrate Diwali if she was arrested under MISA. There is also the another extreme point of view which has been put forward by Mr. Stephen, which has been spoken about by Mrs. Gandhi and Mr. Pranab Kumar Mukherjee before the Shah Commission. It speaks for total rejection of the Commission, total rejection of its procedure, total rejection of its findings.

Sir, as I have said earlier in the House, we demarcate ourselves from both these points of view because in our point of view both these represent authoritarian trends in the country. The Congress Party on whose behalf I am here to speak, want to say clearly that with regard to the Shah Commission, we have three principal premises on the basis of which this whole issue should be judged. First, while we condemn the excesses of emergency and feel that the guilty found for excesses during the emergency should be punished, we also

[Shri Saugata Roy]

feel that the existing laws of the land should only be used for punishing anybody who is found guilty according to the due process of law. We also want to add that let not the Shah Commission have an element of political victimisation, political vendetta of let not witch-hunting be started in this country. It is in order to maintain democracy that I put forward this point of view.

As far as the Shah Commission is concerned, it is not the first commission of inquiry to be set up by any Government ever since the Commission of Inquiry Act was enacted in 1952. We celebrated its silver jubilee in 1977. 16 inquiry commissions have been set up under the Commission of Inquiry Act. There have been commissions of inquiry against Shri Biju Patnaik, there have been commissions of inquiry against Shri Prakash Singh Badal and there have been commissions of inquiry instituted by Mr. Gandhi against the DMK Government and Mr. Karunanidhi. So, commissions of inquiry are nothing, on the one hand, very sacrosanct and on the other hand, they are nothing that should be rejected outright. They form a part of both the political and the legal life of the nation. But at the same time, I do not think, it is my personal opinion firmly, that political crimes can be judged by Commissions of inquiry. Today, while we are discussing the Shah Commission's report in the House, a young man, a brilliant student is languishing in a jail in Madras, waiting to be hanged. His appeal for pardon has been rejected by the President. His name is Kishan Chetli. He wanted to remove poverty and for that he is being hanged. On the other hand, Mr. Sanjay Gandhi who was responsible for the demolitions and the findings in Turkman Gate area, is scot free. So, I do not think on political grounds this thing can be judged. A commission of inquiry can only find out certain facts. The Shah

Commission has in its own way tried to find out certain facts and those facts are nothing to be disputed. (Interruptions).

SHRI KANWAR LAL GUPTA (Delhi Sadar): How to deal with Sanjay Gandhi? Tell us.

MR. SPEAKER: I don't think you are seeking his legal advice!

SHRI GAUGATA ROY: That is the state of the Janata Party today. What to do?

What I say is that while the Shah Commission in its own report does bring out certain facts, it cannot also bring out all that happened during the emergency, because while the Shah Commission's report does probe into certain things, it does not go far enough. To me, the Shah Commission has dealt mainly with problems of people who were in high office, who were enjoying important positions in the Government. Does the Shah Commission speak about the many jute workers who lost their jobs during the emergency? This was a by-product of the emergency. Does the Shah Commission speak about the many poor people who suffered during the emergency? It does not. Does the Shah Commission say anything about the men of big business, those who were powerful during the emergency? It is silent about them. Does it speak anything about K. K. Birla who was the high priest of the emergency? Does it say one word of indictment against him? No. The Shah Commission only dealt with certain aspects, and to those certain aspects the Shah Commission is limited.

As I said earlier, I do not think there is anything sacrosanct about the Shah Commission because, to my mind, the Shah Commission has dealt with important matters as well as trivial matters. It has dealt with arrest and detention of a large number of persons, while it has dealt with appointments of certain persons. Such appointments take place even today. Here, in this House, I have had oc-

casion to raise questions on irregular appointments, being made in the Government even today with the connivance of certain people in the Prime Minister's Secretariat. So, I do not think this should have formed part of the excesses of emergency, but where the Shah Commission is more graphic is in its indictment of the system, the system which built up the emergency, I will just read a few extracts from the Shah Commission's Report General observations:

"The Commission has by now a fairly comprehensive view of the excesses committed in Delhi during the period covered by the terms of reference, especially in relation to the circumstances in which the imposition of the emergency was recommended, the manner in which certain key appointments were made for collateral purposes, the callousness with which arrests were ordered on false allegations to serve personal and party objectives and with a view to smoother protest, the manner in which the statutory provisions governing detentions, confirmation of detentions and review of detention orders were honoured in their breach, the total indifference displayed in considering even reasonable requests for parole and for revocation of detention orders and the ease with which established administrative procedures and conventions were perverted for the benefit of individuals...."

Then, it again says:

"Tyrants sprouted at all levels overnight—tyrants whose claim to authority was largely based on their proximity to seats of power. The attitude of the general run of the public functionaries was largely characterised by a paralysis of will to do the right and proper thing. Ethical considerations inherent in public behaviour became generally dim and in many cases beyond the grasp of many of the public functionaries."

It is here that the Shah Commission really indicts the system, and if I may say so, the emergency has gone, the former regime has also gone but the system still continues. The Shah Commission is not only an indictment of certain individuals as some people may try to make it out to be, it is an indictment of the system in which the whole thing was made possible. The same officers with a few exceptions are still ruling the roost in the Government. Against them no legal procedures are necessary, only administrative measures were necessary. How many administrative actions have been taken against people who were guilty of this?

Then again, we have seen how this over-zealous officialdom had to foster the new Sanjay Gandhi phenomenon, how officials in the Information and Broadcasting Ministry projected Sanjay Gandhi, how censorship was applied even to parliamentary proceedings. This same officialdom remains today, and the Government has not taken any decision, any positive step, to do away with this.

Not only that, the Shah Commission points out to another dangerous aspect of the situation that the public financial institutions which control funds of the public are also perverted and used for the gains of certain particular individuals. The same system today remains. Not only that. Today here in this Parliament we are to think that the Intelligence system, which is supposed to be the eyes and ears of the Government, too was used to please certain individuals in Government. Whether it was the Intelligence Branch, whether it was the CBI, whether it was the RAW, it was the same. In Delhi the whole administration collapsed altogether. A few names sprouted up like Tamta, Navin Chowla, Kishan Chand, Bhinder and somebody else. But these people kept the whole administration in peril. What does it point out to? There is something lacking in our

[Shri Saugata Roy]

democratic polity that out of this system a system can be built up which will tend to authoritarianism. It is at this point that the country has to consider what steps it has to take to prevent such things from happening again, to prevent the rise of such authoritarian trends in the country. As I said earlier, the judicial processes will continue, but people will take their decisions. Political scores will be settled politically. But we in this country have to find out a way in which a more stable system will be found.

May I say so with great humility why we in the Congress Party are accused or asked why we kept quiet during the Emergency? Is it not a fact that Mr. Biju Patnaik, who is the Minister in the present Government came out with the statement supporting the Emergency? Is it not a fact that none of the top leaders of the CPI (M) which is a close ally of the Janata Party, went to jail protesting against the Emergency? It was a paralysis of the whole system. (Interruptions). Apart from Mr. Jyotirmoy Bosu.

It was the paralysis of the whole system. Neither Mr. Jyoti Basu nor Nambudiripad nor Samar Babu went to the jail. Why that has happened? Why not accuse the whole system?

SHRI SAMAR MUKHERJEE: Mr. A. K. Gopalan, Mr. E. M. S. Nambudiripad, M. Basahpunniya, Mohan Punamia and others—all of them went to jail. That is because the Congress Government wanted to project that by using Emergency they were fighting fascism. In order to keep that posture did not arrest all CPI (M) top leaders. But they exposed themselves by their authoritarian actions.

(Interruptions)

SHRI SAUGATA ROY: I just wanted to mention this in the context of the happenings in Bangladesh where after Mujibur Rahman was de-throned, the High Court judge refused to swear in the new Martial Law Administrator. That was the position. But that did not happen in this country. We have to remember that Bangladesh Ambassadors resigned. Even in Pakistan, when people were agitating against Bhutto, the Ambassadors of Pakistan had resigned. They had that feeling. This did not happen in this country. It was the unfortunate state of affairs, let us admit it. After the Emergency we can all say that we are all heroes. But we are not heroes. The nation as a whole did not stand up to the Emergency in a way that it should have happened. So, what I am saying is that what is necessary is to bring into our Constitution safeguards so that the same thing cannot happen in the country again. That is why the Congress Party has proposed the deletion of Article 352 from the Constitution, a proposal which has not been accepted by the Government who wanted to keep the word 'rebellion' and for that 'rebellion' they wanted the right to impose internal Emergency. I agree with Shyam Babu when he said that a Committee of Parliament should probe into the functioning of the Cabinet government and of the Parliament and the restrictions and constraints on the parliamentary and the Cabinet system during the Emergency. Only then, out of the Shah Commission Report something can come out. Otherwise it is mere political propaganda. Taking advantage of the Shah Commission in the party's internal matters and factional warfares will not serve the purpose, nor will it strengthen the basis of democracy for which we are all pleading ourselves.

श्री गौरी शंकर राय (गजीपुर) : सर्व-
प्रथम मैं नेता विरोधी दल को धन्यवाद देना

चाहता हूँ, बघाई देना चाहता हूँ, साधुवाद देना चाहता हूँ कि उन्होंने बड़ी मर्यादा के साथ शाह कमीशन की रिपोर्ट के नैतिक पक्ष का विरोध नहीं किया बल्कि चुप हो कर उसका समर्थन किया है और अपने सारे एक घंटे से अधिक के समय को प्रोसीजरल मामलों में ही बिता दिया है । मैं इसके लिए उनका आभारी हूँ । इस ऐतिहासिक अवसर पर उन्होंने इस बात की परवाह नहीं की है कि उनकी मैडम इससे नाराज होंगी तो उनका क्या होगा । इसके लिए मैं उनको बार बार धन्यवाद देना चाहता हूँ । वह धन्यवाद के पात्र हैं क्योंकि उन्होंने एक शब्द भी नहीं कहा अपने भाषण शाह कमीशन की फाईंडिंग के बारे में और नैतिक पक्ष के विरोध में भी एक शब्द नहीं कहा और उन्होंने पार्लियामेंटरी डेमोक्रेसी की मर्यादा को रखा । एक बात लेकिन जरूर कहना चाहता हूँ कि उन्होंने कहा कि इमरजेंसी के पहले की चीजों की जांच हुई । उन्होंने शायद पढ़ा नहीं टम्स आफ रेफरेंस क्या था । उसमें था तुरन्त इमरजेंसी के पहले की जो बातें थीं उनके बारे में जांच होगी । उन्होंने बड़े हाथ हिलाये और तरह तरह की मुद्दाओं और भावों का प्रदर्शन किया ताकि मालूम हो कि कोई बड़ी गम्भीर बात कहना चाहते हैं । लेकिन उन्होंने कोई गम्भीर बात नहीं कही । कभी कभी नेचुरल जस्टिस की बात कही क्योंकि वह वकील आदमी हैं इसलिये अच्छी वकालत करने की कोशिश की और असली पॉइंट को छूने का प्रयास नहीं किया । हमारा काम कठिन हो जाता है । जब इसका कहीं विरोध न हो और हमारे श्याम बाबू ने जो बातें रखीं उसका प्रतिरोध उस पक्ष से नहीं आया, इसके लिये हम उनके आभारी हैं ।

यह बात सही है, आज विषय जो बहस का है उससे कुछ थोड़ा सा अलग मैं ले जाना चाहता हूँ क्योंकि स्टीफन साहब ने वालपोल का कम्पेरिजन किया । मैं दुनिया के इतिहास

का थोड़ा सा कम्पेरिजन उनके समक्ष रखना चाहता हूँ । यह बात सही है कि दुनिया के इतिहास में वैधानिक तथा निश्चित परम्पराओं और प्रचलित शासन प्रक्रियाओं के विरुद्ध काम करने का, इमरजेंसी में अन्याय और अत्याचार करने, मीसा बंदियों के विरुद्ध बंदीकरण के अधिकारों का अनधिकार प्रयोग कर के सारे मामले, घर ढाने के सारे मामले हमारे सामने हैं । लेकिन इन सब मामलों पर बात नहीं करूंगा क्योंकि समय कम है, मैं अपने मित्र की उस तुलना की तरफ सदन का ध्यान ले जाना चाहता हूँ जिसमें उन्होंने वालपोल का जिक्र किया । मैं उनसे कहना चाहता हूँ कि कभी कभी ऐसी सिमिली आपने दे दी जिसका कोई सम्बन्ध नहीं था, उसका मैं अभी जिक्र करूंगा । मैं कहना चाहता हूँ कि मुख्य बात जो इस इमरजेंसी की बहस में है वह अधिकार के दुरुपयोग की है । शाह कमीशन की रिपोर्ट एक ऐतिहासिक डॉक्यूमेंट है । उन्होंने कहा और ऐसी रिपोर्ट हुई थी जो हम नहीं जानते हैं । वह गलत जानते हैं, दुनिया में ऐसे समय कम आये हैं । लेकिन मैं उन्हें बताना चाहता हूँ कि ऐसा समय आया है कि हिटलर ने जब मंत्रिधान का नाश किया था इमरजेंसी का नाम ले कर नागरिक आजादी ले ली थी । उसमें तो कम्पेरिजन कर सकते हैं आप । लेकिन बाल्मपोल ने नागरिक आजादी की हत्या नहीं की थी अदालतों को पंगू नहीं बनाया था, प्रेस पर सेंसर नहीं बैठाया था । हमारे मित्र स्टीफन ने थोड़े से करप्शन और मारुती की बात की । बछड़े को सिर्फ छोटे मोटे मामले ही याद पड़ने हैं, बड़े मामले नहीं । मत करिये अन्याय इस प्रकार वालपोल के साथ तुलना कर के । नागरिक आजादी के ऊपर मला हुआ और सिर्फ शाह कमीशन की रिपोर्ट के बारे में नहीं, बल्कि दुनिया के सबसे बड़े प्रजातांत्रिक फोरम से मैं कहना चाहता हूँ कि आज दुनिया भर को इस बात पर विचार करना चाहिये, सिर्फ सरकारी को ही नहीं

[श्री गौरी शंकर राय]

बल्कि गैर सरकारी एजेंसियों को भी विचार करना चाहिये कि जब इस तरह का नागरिकों पर हमला होगा तो उसका उपाय क्या होगा, उसका शोध क्या होगा ? जैसा श्याम बाबू ने कहा कि फदर रेकॉर्स न हो, इसको सोचना होगा सारी विश्व मानवता को ।

दुनिया के सामने यह सवाल आया था 18 वीं शताब्दी में, 17 वीं शताब्दी के अन्त से ले कर और 20 वीं शताब्दी के प्रारम्भ काल तक जब सारा संसार विश्व युद्ध में झुलस रहा था तो दुनिया के लोग बैठे और उन्होंने विचार किया, एक इंटर-नेशनल कोर्ट बना कर 1907 में हेग में बैठे और 1917 में शायद जिनेवा में बैठे और उन्होंने एक इंटरनेशनल ला बनाया, उन्होंने उसके चार्टर्स बनाये और सारी दुनिया के लोगों ने तय किया कि इस प्रकार का सघ कोई देश पर लादेगा तो उसका क्या इलाज होगा । आज इस बात को मोचने की जरूरत है कि नागरिक अजादी पर जब हमले होते हों तो क्या करना चाहिये ।

एक बात और कहना चाहता हूं कि आज कोई प्रधान मंत्री या कोई शासक अगर डंडा ले कर खड़ा हो जाय और अकेले डंडा घुमाये तो सारी प्रजातांत्रिक प्रक्रिया को समाप्त कर देगा, उसकी हत्या कर देगा, कोई उपाय नहीं है क्योंकि टेक्नोलाजिकल डेवलपमेंट हुआ है । टेक्नोलाजिकल डेवलपमेंट होने के बाद चीन की क्रान्ति का यह नतीजा हुआ होता क्योंकि टेक्नोलाजिकल डेवलपमेंट के बाद सारी दुनिया में एक परिवर्तन हुआ । हिटलर की क्यों इतनी अधिक चर्चा है ? उसकी चर्चा इसलिए है कि औद्योगिक क्रान्ति के बाद पहला तानाशाह था जिसके पास टेक्नोलाजी थी । मान्यवर, मैं पढ़ रहा था, हिटलर का एक मिनिस्टर था, अभी शायद जिन्दा है, एल्बर्ट स्पीयर । उसने जेल से निकलने के बाद

एक पुस्तक लिखी । न्यूरम्बर्ग की जेल के सामने उन्होंने अपना बयान दिया कि हम गुनाहगार हैं, हमें सजा दे दो, लेकिन सारी दुनिया के लोगों इस बात के लिये तैयार हो जाओ नागरिक अजादी के लिये दुनिया को सजग होना है कानशियस होना है, नहीं बनोगे तो एक ऐसी टैक्निकल एज आने वाली है, मैं स्पीयर साहब को पढ़ना चाहता था, लेकिन एक लम्बा स्टेटमेंट है, अदालत में उन्होंने कहा कि थोड़ा सा सजग होने की जरूरत है ।

अन्तर्राष्ट्रीय माध्यम यू० एन० ओ० है, यू० एन० ओ० में ऐसे लोग हैं, दुनिया में ऐसे देश हैं जिनका सेंसरशिप में यकीन है । मेरे मित्र क्षमा करेंगे, मैं किसी को आलोचना की दृष्टि से नहीं कहता ; लेकिन बहुत सारे देश यू० एन० ओ० में हैं जो प्रेस की सेंसरशिप में विश्वस रखते हैं, जो प्रेस को और जो सरकारी साधन हैं उनका प्रचार का साधन बनाना चाहता हैं । परन्तु हमारे संसार के बड़े आदरणीय पुरुषों में लेनिन साहब हुए हैं, उन्होंने कहा है कि जो प्रेस मीडिया है वह प्रोपेगंडा की आर आर्गेनाइज करने की मशीन है और इसलिये इसका प्रयोग होना चाहिये । इसलिये ऐसे लोग हैं जो उसको मानते हैं, लेकिन यू० एन० ओ० के माध्यम से तो नहीं लेकिन गैर-सरकारी माध्यम से आज हिन्दुस्तान को दुनिया की सबसे बड़ी डेमोक्रेसी होने के नाते इस बात की इनिशियेटिव लेनी चाहिये कि सारी दुनिया में इसका उपाय हो कि इस प्रकार के रैकॉर्डिंग न हों ।

हमारे मित्र कम्प्यूटर का रहे थे बालपोल से । मैं उनके कम्प्यूटर को बता दूँ । जिस तरह की एमर्जेंसी हमारे यहां लगाई गई थी, ऐसी ही बात हिटलर ने की थी । 26 जून, 1975 और 28 दिसम्बर, 1933 दुनिया की दो काली तारीखें हैं । 27 दिसम्बर, 1933 को हिटलर ने राईक स्टाक बिल्डिंग में आग लगवा दी । गोरिंग के घर से सुरंग निकलवाई, और यह कहा कि डच

कम्युनिस्टों ने हमला किया। यह भी कहा कि डच कम्युनिस्ट बड़े खतरनाक लोग हैं, उनसे हमको निपटना है और एक दिन में ही 28 दिसम्बर, 1933 को उस आदमी ने एमर्जेन्सी लगा दी। 28 तारीख की प्रातः जर्मनी के बड़े राष्ट्रपति से अपनी डिक्ली पर दस्तखत करवा लिये। जिस तरह से मिसैज़गांधी ने यहां के कायर और डरपोक मंत्रि-मंडल उसकी एप्रूवल ले ली उसी तरह उसने भी ले लिया।

मैं हिटलर की बात करता हूं। ठीक मैं इतना ही पढ़ना चाहता हूं जो डिक्ली हिटलर ने ली थी वह यह थी—

"Thus restrictions on personal liberty, on the right of free expression of opinion, including freedom of the press; on the rights of assembly and association; violation of the privacy of postal, telegraphic and telephonic communications; warrants for house searches; orders for confiscation as well as restrictions on property, are permissible beyond the legal limits otherwise prescribed."

यह निश्चित रूप से वहां थी। अभी हमारे कामान स हब उसका अटिकन बनना चाहते हैं। मैं इसकी पूरी कहानी नहीं पढ़ना चाहता लेकिन इतना जरूर सदन की जानकारी के लिये पढ़ना चाहता हूं। जब आग लगी थी, उसके बारे में एक अंश यह है—

"They never appeared, but the search for the counter-revolution was intensified, and on the night of 27 February the Reichstag building mysteriously went up in flames."

Although there are unsolved riddles in the history of that night—notably how the Nazis got hold of the strange figure of the Dutch Communist, van der Lubbe—the main facts of the story are clear enough. Goering and Goebbels were looking for some pretext to smash the Communist Party. After rejecting various plans—such as an at-

tack on Hitler—they hit on the notion of setting fire to the Reichstag building. An underground passage linked Goering's Palace of the President of the Reichstag with the main building across the street. Through this a small group of S.A. men under the command of Karl Ernest, the leader of the Berlin S.A. entered the deserted building on the evening of the 27th and scattered a chemical preparation with a delayed-action effect over carpets, curtains and chairs. After doing this, they made their way back to safety by the underground tunnel."

उधर आग लगा दिया और तुरन्त आकर डिक्ली दे दिया, ठीक उसी प्रकार एमर्जेन्सी हिन्दुस्तान में भी लगाई गई। पहले कहीं सी० आई० डी० की रिपोर्ट नहीं हैं। हमारे श्री ब्रह्मानन्द रेड्डी यहां नहीं हैं, उस समय के होम मिनिस्टर ने कहीं नहीं कहा कि देश में ला एंड आर्डर की सिचुएशन खराब है, किसी के पास कोई रिपोर्ट नहीं है।

एक दिन 24 तारीख को मुश्रीम कोर्ट, का फैसला आया, मुकदमे के खिलाफ चला गया तो अपनी अदालत के फैसले के बावजूद उन्होंने 2 दिन में इंतजाम किया और उनके मंत्रिमंडल को सजाने वाले जो हमारे मित्र यहां थे, चले गये हैं, उनको पता भी नहीं था। और देश का इतिहास बदल गया, और सारे देश की नागरिक आजादी छीन ली गई। हमारे मित्र, श्री स्टीफन, अगर कोई कम्पेजिन करना चाहते हैं, तो वह 26 जून, 1975 की दुर्भाग्यपूर्ण घटना को 28 दिसम्बर, 1933 की हिटलर की डिक्ली से कम्पेयर करें, क्योंकि दुनिया के इतिहास में इस के अतिरिक्त और कोई घटना नहीं है, जिसके साथ इस का कम्पेजिन किया जा सकता है। जहां तक बालशेवेल का सम्बन्ध है, वह एक प्रजातांत्रिक देश की बात है। अगर हमारे मित्र उस देश को गाली न दें, तो अच्छा है। उसने सिविल लिबर्टीज पर कोई हमला नहीं किया था

[श्री गौरी शंकर राय]

सिमिली, कम्पेरिज्जन या तुलना में कोई तुक हुआ करती है। बरीर किसी तुक के कम्पेरिज्जन या तुलना नहीं की जा सकती है। हमारे मित्र ने बरीर तुक के तुलना करके हमारे पक्ष का समर्थन किया है, जिस के लिए मैं उनका धन्यवाद करता हूँ।

आज दुनिया के समक्ष कई सवाल आ रहे हैं। जैसे, वार क्रिमिनल्ल के विरुद्ध कार्यवाही करने के लिए चार्टर का प्रश्न है। न्यूरेमवर्ग ट्रायल के लिए एक चार्टर बनाया गया था, जिस की रचना चार मुल्कों के जूरिस्ट्स ने की थी। अगर मुझे ठीक याद है, तो उस चार्टर की क्लाज 6(बी) में युद्ध अपराधियों का प्रासीक्यूशन किया गया था। हमारी बहुत सी क्लाजिज उसमें आ जाती हैं। इस सम्बन्ध में एक अन्तर्राष्ट्रीय कानून बनाने की जरूरत है।

हमारे मित्र को इस बात पर प्रसन्नता है कि वह ला आफ्र दि लैंड के अन्तर्गत नहीं आती हैं। जिन लोगों ने इस बात की तरफ इशारा किया है, मैं उन्हें बताना चाहता हूँ कि किसी असाधारण अपराधी के विरुद्ध कार्यवाही करने के लिए कोई असाधारण कानून बनाने की आवश्यकता होती है। अगर कोई आदमी किसी दूसरे आदमी की हत्या करता है, तो ला में उसको सजा देने के लिए प्राविज्जन है। लेकिन जो व्यक्ति संविधान और सब नागरिक आजादियों की हत्या करता है, नैतिक मूल्यों की हत्या करता है, जिसने चरित्र की हत्या कर दी, देश और देश के भविष्य की हत्या कर दी, उसको सजा देने के लिए कोई ला नहीं है। इस लिए आज यह सोचना चाहिए विरोध पक्ष को भी सोचना चाहिए, क्योंकि यह किसी एक व्यक्ति की बात नहीं है—कि ऐसे लोगों के विरुद्ध क्या कार्यवाही की जाये, उनको क्या सजा दी जाये, जिन्होंने राष्ट्र के प्रति अपराध किया है।

इस दुनिया में हयादार लोग भी हुए हैं। हमारे मित्र हमारी कठिनाई को नहीं समझते हैं। बेंगलराब हयादार आदमी हैं; उन्होंने जुडिशल वडिक्ट के बाद इस्तीफा दे दिया। हिटलर भी हयादार था; उसने आत्महत्या कर ली। लेकिन कुछ लोगों का हत्या से कोई ताल्लुक नहीं है। उनके लिए भी कोई कानून होना चाहिए। दुनिया के तानाशाहों में एक मसोलिनी थी, जिस की हत्या की गई। उसके मरने के बाद क्या हुआ, इसके बारे में इतिहास में जो लिखा गया है, वह इस सदन में कहने में भी शर्म लगती है। बड़े बड़े राइटर्ज ने लिखा है जब हत्या के बाद उसका लाश खी हुई थी, तो In the most ancient cultural centre of the world—Rome—the ladies pulled up their skirts and urinated in his mouth.

दुनिया के इतिहास में इस तरह से बेहया लोग भी हुए हैं।

श्री मोरारजी देसाई और अन्य कई लोगों ने कहा है कि सब को भयमुक्त होना चाहिए। लेकिन कुछ लोग तज्जामुक्त भी होते हैं। मसोलिनी की तरह कुछ लज्जामुक्त तानाशाह भी होते हैं। मैं इस बुनियादी बात की तरफ इशारा करना चाहता था।

सी० बी० आई० और दूसरी इन्टेलिजेंस एजेंसीज हिटलर की गेस्टापो की तरह काम कर रही थीं। इमर्जेंसी काल में वे इन्स्ट्रुमेंट आफ टिनी बना दी गई थीं। उसको डिसमैंटल करने का और प्रयास होना चाहिए। इस तरह की परम्परा डालनी होगी कि आज के बाद दुनिया भर में कोई भी इन्टेलिजेंस एजेंसी या खुफिया पुलिस नागरिकों के जीवन को तबाह न कर सके। इस तरह की व्यवस्था सारी दुनिया से हटनी चाहिए और इस बारे में संसार भर में एक अंडरस्टैंडिंग होनी चाहिए। जिस तरह पहले जेनेवा और हेग में वार क्रिमिनल्ल के विरुद्ध कार्यवाही करने के प्रयास हुए हैं, उसी तरह आज भी सारे

संसार के स्वतंत्रता-प्रेमियों को इकट्ठे हो कर यह प्रयास करना चाहिए—श्री स्टीफन इस में इनिशिएटिव लें—कि नागरिक स्वतंत्रता की हत्या करने वाले अपराधियों के विरुद्ध दंड की व्यवस्था की जाये ।

जस्टिस शाह के कैरेक्टर और उन के कमिशन को रिडिकुल करने से समस्या का समाधान नहीं होगा । ऐसे कमिशन की रिपोर्ट इस देश में नहीं, बहुत सारे देशों के इतिहास में नहीं आई है । लेकिन मैं कहना चाहता हूँ कि सिर्फ रिपोर्ट में दी हुई सजा की बात नहीं है, बल्कि कल क्या होने वाला है मानवता का, विश्व का और अपने देश का इस दृष्टि से इस पर विचार करना चाहिए ।

इस ट्रायल के चार पक्ष हैं—1. बाइ ला, 2. बाइ जस्टिस और 3. बाइ हिस्ट्री । जो हिस्ट्री एस्पेक्ट है इस ट्रायल का उस पर सोचना चाहिए और सारे सदन को एकमत हो कर सोचना चाहिए । यही हम से राष्ट्र अपेक्षा करता है और मैं समझता हूँ कि विरोधी दल के जो हमारे मित्र हैं जिन्होंने अब तक नैतिक समर्थन हमें दिया है, वह इसमें भी हमें पूरा समर्थन देंगे ।

SHRI HARI VISHNU KAMATH (Hoshangabad): Mr. Deputy Speaker. Sir, I do not wish to repeat any of the points made earlier by my colleagues in the House, I will concentrate only on certain vital issues that have arisen out of the report of the Shah Commission.

Right from the mid-summer mid-night madness, from June 25, 11.30 p.m., down to the mid-winter miscalculation of January 1977... (Interruptions) the Shah Commission has told the people, told the Parliament, told the nation, that the tyrants' devil dance took place from June 25 to January 1977, i.e. from mid-summer to mid-winter, that the Delhi Mafia and their hounds were in full-cry during these 20 months, that no words, no reports can be adequate to describe

the misdemeanours and the crimes perpetrated against the people.

I do not wish to go into the catalogue of crimes perpetrated during this darkest period of free India's history, but I shall deal with some of the paragraphs of the last chapter of the Interim Report II. They bear repetition, I will quote only a few extracts and not the entire paragraphs.

On page 141 of the Shah Commission's Interim Report II, there is this shocking revelation that at the time the Report of the Commission was signed between 11.00 and 11.30 p.m.:

"There is no evidence of any break-down of law and order in any part of the country—nor of any apprehension in that behalf, the economic condition was well under control and had in no way deteriorated. There is not even a report of an apprehension of any serious break-down of the law and order situation or deterioration of the economic condition from any public functionary. The public records of the times, Secret, Confidential or Public and publications in newspapers, speak with unanimity that there was no unusual event or even a tendency in that direction to justify the imposition of emergency. There was no threat to the well-being of the nation from sources external or internal. The conclusion appears in the absence of any evidence given by Smt. Indira Gandhi or any one else, that the one and the only motivating force for tendering the extraordinary advice..." ('Illegal' is my word) "to the President to declare an 'internal emergency' was the intense political activity generated in the ruling party, and the opposition, by the decision of the Allahabad High Court declaring the election of the Prime Minister of the day invalid on the ground of corrupt election practices".

"... Smt. Indira Gandhi in her anxiety to continue in power..."

(Shri Hari Vishnu Kamath)

17.00 hrs.

"....brought about instead a situation which directly contributed to her continuance in power and also generated forces which sacrificed the interests of many to serve the ambitions of a few. Thousands were detained and a series of totally illegal and unwarranted actions followed involving untold human misery and suffering. In the absence of any explanation, the inference is inevitable that a political decision was taken by an interested Prime Minister....."

It is a euphemism or understatement to say so. I would say, 'power-demented Prime Minister'.

"....in a desperate to endeavour to say so. I would say, 'power-dement-compulsion of a judicial verdict against her.'"

Then the Report goes on to say:

"The nation owes it...."

Parliament must note these words:

"The nation owes it to the present and the succeeding generations to ensure that the administrative set-up is not subverted in future in the manner it was done, to serve the personal ends of any one individual or a group of individuals in or near the Government."

A very telling paragraph! I need not waste the time of the House by quoting more, except the very last paragraph. But, before I go to that, I would only mention that, by an act of God, the then President, Shri Fakhruddin Ali Ahmed, has joined the vast majority who have left this world. Otherwise, probably, he would have been impeached for having signed an unconstitutional Proclamation which was submitted to him without the advice of the Council of Ministers. I will not dwell on that point because he is no longer with us. I would only read out the very last two sentences

of the Commission's Second Interim Report:

"If the Commission's observations should generate a public debate on some of the vital issues focussed by the Commission with the object of devising corrective machinery and remedial action, the Commission's labours will be amply rewarded, especially if the Administration is able to act on the various ameliorative and reformative suggestions of the Commission with expedition."

The Government, I am sorry to say has not seriously looked into the matter. I hope, it will do with expedition in the future. Much time was lost by the Committee of Secretaries who processed the Report. It should have gone to a Cabinet Sub-Committee straightaway, not to the Secretaries' Committee.

"On the case and speed with which this is done...."

This is the last sentence of the Interim Report II.

"....will depend on the vitality and resilience of our democratic processes and institutions".

Now, Sir, during that blackest period of the Emergency in free India, as has already been said by my hon. friend and colleague, Shri Shyamnandan Mishra, the Constitution was subverted. Parliament denigrated, values extinguished, rights and liberties and freedom trampled upon, the press throttled and the judiciary emasculated. All these were sought to be done, but the people, in a mighty resurgence of spirit, in January-February-March 1977, taught a lesson to the tyrant which, I hope, will not be easily forgotten, will not be quickly forgotten and it will be a lesson for would be tyrants also, for these with tyrannical ambitions in muture.

But, Sir, this tyrant, this dictator does not seem to have been chastened by her experience, Shrimati Indira Gandhi. Even her latest statements to

the Press—I will read them out—seem to carry conviction that as a tyrant often believes, she was in the right and she says, 'What mistakes and excesses I have committed—I do not know.' and this is even after the Shah Commission's findings that she was in the know of things that happened during those dark days. Even in her recent statements which have been publicised—I am sure my hon. friend, Mr. Stephen has read them—she says something which even perhaps Hitler and Mussolini would not have dared to say. Even they did not think it decent enough to say so.

The caption is!

"Mrs. Gandhi says she's chosen to rule India."

Chosen by God or the Devil? We do not know. That is what she has mentioned. 'chosen to rule India'....

CHOWDHRY BALBIR SINGH.
Hypocrite.

SHRI HARI VISHNU KAMATH: 'I think, Sir, you have also read it but it bears repetition:

"Former Prime Minister....

I am quoting from an interview that she gave to Barbara Bourne and this was carried in a Norwegian newspaper Arbeiderbladet and it was published in the Hindustan Times Weekly of 16th July.

CHOWDHRY BALBIR SINGH:
'Save India' campaign is going on.

SHRI HARI VISHNU KAMATH: It is not 'Save India', it is 'Save Indira'. I am quoting:

"Former Prime Minister Indira Gandhi thinks she is chosen to rule India, that the present Government is only a temporary delusion....

The Ministers are sitting there. She says that the present government is only a 'delusion'. 'Delusion', not illusion. The Government itself is a delusion to her.

SHRI A. BALA PAJANOR: *Aprenoi deluge*—after me the deluge.

SHRI HARI VISHNU KAMATH: 'Delution' not 'deluge.' They are not synonymous.

"and that her election defeat is only a.... What can you believe it? a nightmare that will soon be over.' How soon—I do not know.

"Barbara Bourne asked Mrs. Gandhi why she did not withdraw after the crushing defeat she suffered during the election last year. Mrs. Gandhi told her that she could not in the end sit passively and watch all the 'suffering'."

Who is suffering? We do not know. The interviewer put her this question. 'My people' she says. Wonderful!

"Then the correspondent goes on to write, Mrs. Gandhi continued her well-known story of chaos, unrest, inflation—and diminishing respect for women....

SHRI SHYAMNANDAN MISHRA:
Diminishing respect for women?

SHRI HARI VISHNU KAMATH: It goes on:

"She quoted Mrs. Gandhi as saying that she ought to speak with the people and find out for herself."

She asked Mrs. Gandhi:

"If her first false step had not been when she did not resign temporarily in June, 1975, after the Allahabad High Court had found her guilty of election irregularities. Should she not have done while the case was taken up in the Supreme Court? 'This would have disarmed your worst enemies and you would have been asked to take over again...."

Mrs. Gandhi interrupted her "impatiently" and said:

"What is most important, India or Indira? Whether I am PM or not is

[Shri Hari Vishnu Kamath]

of no consequence. What I did was done to save India. I risked my post as PM (in March 1977) and lost it. Is that not proof enough?"

"Asked about excesses, Mrs. Gandhi replied:

"I did not know about these errors".

She was an innocent abroad and an innocent at home. But the correspondent was shrewd enough to ask her how this was possible. How she did not know anything about the excesses. The Correspondent says:

"Mrs. Gandhi seems to know, exactly what goes on now, for instance, how many are in prison, while she insists that she did not know as PM how many were locked up."

My hon. friend, Shri Mishra has said that over 200,000 were locked up during the emergency and about 30,000 or 40,000 were detained under MISA. She did not know as PM how many were locked up. She got no answer from Mrs. Gandhi. Mrs. Barbara Bourne asked Mrs. Gandhi "if she, who on every occasion said India had now a disastrous Government, did not feel responsible for having brought this Government upon this country."

The interviewer asked Mrs. Gandhi.... (Interruptions).

SHRI H. L. PATWARY: Now, the country has got a male Prime Minister.

SHRI HARI VISHNU KAMATH: I am quoting. It is not my statement. This is Indira Gandhi's statement. What is the answer? Having brought this upon this country, she found scapegoats. She said:

"It is the Press who is responsible".

They are all somewhere here. They are responsible and nobody else.

Then she exclaimed:

"What animosity, what prejudice have I not been exposed to—India

and I were never treated fairly in the West. India was in danger. I had to impose strict measures etc."

Then the Correspondent says:

"Mrs. Gandhi trotted out her 'favourite ideas' and held forth as often before about the CIA and undermining forces, and said there were ever more conspiracies to murder her."

Murder most foul, is n't it?

MR. DEPUTY SPEAKER: Please conclude now.

SHRI HARI VISHNU KAMATH: I am concluding, Sir. I will take another two minutes. This is the last paragraph:

"Only a few days ago, she said, a man had approached her car with a gun. They had arrested him but she doubted whether the Government would bother to question him and inform the public because the Press was biased against her. The surveillance and the persecution were terrible...."

As if her crimes were final

....she said. People were beaten up and held in custody only for having paid her a visit. Her telephone was bugged, her post opened."

This is the statement that she has made as late as two months ago.

श्री रघवीर सिंह : उपध्यक्ष महोदय,

इस मौके पर मुझे एक शेर याद आ गया—

पैदा हुआ वकील तो शैतान ने यों कहा
खालिक ने मुझे साहिबों झोलाद कर दिया ।

SHRI HARI VISHNU KAMATH: That is why, Sir, I said earlier that she has not been chastened by experience. I do not know how she can be chastised—whether God or the government or others will chastise her.

MR. DEPUTY SPEAKER: Please conclude.

SHRI HARI VISHNU KAMATH: Sir, it was more than three months ago that I suggested in this House speaking on the Home Ministry's Demands that a special court should be set-up to try all the persons indicated by the Shah Commission and now the Government has made a reference. I am not wholly happy but anyway the government has found a *via media* or a *modus vivendi*. The Steel Minister told us that the Government had decided—it was a case of semantics—Government decided to set-up a special court and then again decided to move the Supreme Court. However, since the matter is in the Supreme Court, I am not going to dilate upon this further. I hope the Supreme Court will permit the Government to appoint special courts to expedite the trial of all these persons indicted by the Shah Commission.

Lastly, Sir, I am happy to learn that the Forty-fifth Constitution amendment Bill will be taken up in this Session. It is high time, from a constitutional point of view, that we rectified the distortions created by the Forty-second Amendment Act because that was an Act neither to amend, nor to mend but to end the Constitution. It is high time that we scrapped most of it.

MR. DEPUTY SPEAKER: Please conclude.

SHRI HARI VISHNU KAMATH: Lastly, Sir, after what I narrated to the House, I am afraid, she is a psychological case, a pathological case and, I think, there is a blend of paranoia and megalomania. She is a paranoid magalomaniac. That is my diagnosis of her malaise. I think that some psychoanalyst should take care of her, prescribe some treatment and recipes for her, and cure her before she is let loose again on the Indian nation.

MR. DEPUTY SPEAKER: You will have to conclude now.

SHRI HARI VISHNU KAMATH: There are only one or two matters. Mr. Stephen is smiling; whether it is tacit agreement or not, I do not know.

I have listened to the speech of the Leader of the Opposition. I have read the Shah Commission's Reports and noted Shrimati Indira Gandhi's attitude in this matter. They remind me of an old nursery rhyme. (*Interruptions*). Of course, Mr. Stephen, it concerns you also, with a slight variation

"Humpty Dumpty sat on a throne
Down by the people she was thrown
All her Stephens and all her Sathes
can't put Humpty Dumpty on the throne again."

SHRI SOMNATH CHATTERJEE (Jadavpur): Mr. Deputy Speaker, Sir, the Shah Commission Report, I feel, should be read and re-read by the people of this country as it is a testament of the people's resolve to root out all forms of authoritarianism and dictatorship from our body politic for all times to come.

Sir, it unfolds a saga of untold human suffering and miseries, of inhuman barbarism, of lust and an insatiable hunger for power, of ruthless repression, of destruction of all democratic rights and norms of political behaviour, of total loss of civil liberties and extinction of the right to life and liberty, of creating what is known as extra-constitutional sources of power, of the illegal take-over of the administrative machinery by hoodlums and stormtroopers, of pathetic subjugation of the administrative machinery in this country, of the deprivation and emasculation of the judicial process, and, Sir, even reducing this august House to the level of a captive organisation, and last but not the least, the rape of the Constitution that was done during the 19 months of emergency. And, Sir, everything was done just to perpetuate the hegemony of one single individual over the people of this country.

Sir, the country was engulfed by darkness. The people lost their sense

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of prestige and honour. They became deaf and dumb under a haunting fear psychosis. Even the present Chief Justice of India expressed his view that he delivered a particular judgment because he lacked courage. The former Attorney General of India said that he had to present a particular line of argument before the Supreme Court because he was afraid of his own life and liberty.

The people have now freed themselves and let us now all resolve that she will never come back again, in this country, to power.

Sir, the appointment of this Commission of Inquiry was a mandate of the people of this country which was given to the Janata Government. It was in deference to the people's own wishes that this Commission was set up. The Janata party had given a pledge to the people that had to be redeemed.

Sir, I am speaking in respect of the choice of the person who headed the Commission. I think there could not have been a better choice than Justice Shah to head the Commission. A learned and upright Judge, we should congratulate him for discharging so conscientiously his onerous duties and he has rendered a signal service to the nation.

Sir, fullest opportunities were given to all persons and parties. But those people who have neither any legal nor moral nor political case to make, kept away from the Commission on spacious pleas. Sir, if those persons who enjoyed the monopoly of power and misused them for their own purpose had any respect for the people of this country who had given their mandate during the last General Elections of the Lok Sabha, then those persons should have co-operated with the discharge of the duties of the Commission. They have lost all sense of honesty in their political life and accountability. Today they stand because of the attitude they had dis-

played before the Commission, self-condemned and I believe that the intensity of their crime today has necessarily been accentuated. What is more important is that the Shah Commission has gone into the genesis of the Emergency. The genesis of the Emergency has not been the interest of the country or the people but that of a single individual and her cadaverous and despotic progeny. Sir, there were slogans of 'India is Indira and Indira is India'. Such slogans polluted the air of this country during the days preceding emergency and after the Emergency the slogan of 'one leader, one party and one country', in that order, warned the people that fascism and dictatorship were round the corner and ultimately were ushered in.

Sir, our leader Comrade A. K. Gopalan, as early as in 1972, had said in this House that she was nothing but a dictator and she would bring in dictatorship of the worst order in the country and his words have come true.

SHRI SAMAR MUKHERJEE (Howrah): Mr. Gopalan said in 1972 that she was a woman fascist.

SHRI SOMNATH CHATTERJEE: Sir, the Indian National Congress came under the tutelage of the supreme leader: of demoniacal attitude surrounded by stooges, sycophants and henchmen who had lost their conscience and bartered away their sense of prestige and honour for a few crumbs of office. Dr. Ambedkar, during the time when the Constitution was being enacted in the Constituent Assembly said:

"In India, Bhakti or what may be called the path of devotion or hero-worship plays a part in its politics unequalled in the magnitude by the part it plays in the politics of any other country in the world.

Bhakti in religion may be a road to the salvation of the soul. But in politics Bhakti or hero-worship is

a sure road to degradation and eventual dictatorship."

Sir, that is why we find here even after those horrowing experience that the people had to go through because of the personal position and the lust for power of one individual they have lost all sense of proportion, dignity and sense of shame that they are even today speaking in support of the Emergency. It has almost become a petti-coat party. Nothing more. Sir, it is good that some of her colleagues have now realised how they were used as pawns in her ruthless pursuits to arrogate to herself despotic powers and now it is the duty of every democratic person of this country to ensure her political annihilation. Otherwise, the future of this country will never be safe from dictatorship and tyranny that we have experienced. There would have been no emergency in this country if 12th June, 1975 had been an ordinary day in the life of Shrimati Indira Gandhi, but that was the day she lost the case before Allahabad High Court. But because one learned Judge in this country discharged his duties according to law, an unholy crusade was started and was launched against law and the Constitution itself on false pretexts and make-believe situations. Shrimati Indira Gandhi accepted the verdict of the courts in election cases when her colleagues were concerned. Dr. Chenna Reddy had to go, but she put herself above law. She thought and was made to think by her henchmen and those sycophants that she was indispensable for this country and out of that feeling of indispensability, she came to think that she was the country only and after her, the deluge. Therefore the biggest onslaught was started and it was the result of conspiracy at the highest quarter. Even she did not take into confidence her colleagues in the Cabinet and the targets of her attack became the people and the Constitution because she realised that so long as the constitutional rights remained, and the doors of courts were kept open, there would be challenges to her dictatorial actions

and tendencies. Therefore, a calculated attempt was made to stifle the peoples' rights and movement and to take away the peoples' democratic rights so that her discredited leadership and corrupt regime could be bolstered up by means of her unthinkable forms of repression, tyranny and negation of constitutional provisions and of law. That was the experience.

The Commission's Report has shown several types of crimes that were committed. One was the crime against the democracy, the other was crime against the Constitution and the third one was the crime against the people. What was most disturbing and it has now been clearly established, how the constitutional provisions were trampled upon for securing the signature of the President to a particular document called the proclamation of emergency. It has now come out that the letter which is now available in the President's file was sent after the proclamation of emergency had been signed and the original letter has been secreted away. The Cabinet was not aware of it. She bypassed the Cabinet. The ordinary normal process of a civilised administration in this country was not followed.

When this country was attacked by Pakistan in 1971 during Shrimati Indira Gandhi's prime ministership, there could be an emergency cabinet meeting before the emergency was declared. It must be remembered that this House stood as one and supported the proclamation of emergency in 1971 in that late night session and the then Speaker said, that he was proud to be the Speaker of a House, the Members of which have stood by the Government in the hours of peril of the country. But here, she acted in the sly, and misled the President and without calling a Cabinet meeting, emergency was declared, arrests were made. It was the biggest conspiracy that was made for the purpose of denigrating the Constitution of this country and taking away the peoples' rights.

My friends here are still talking as if Shrimati Indira Gandhi is a

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messiah. What will happen to this party when she is not there?

Apart from obtaining the signatures of President on misrepresentation, by-passing the Cabinet, recourse was taken to Article 352 of the Constitution on a false plea of internal disturbances or likelihood of internal disturbances. That was the greatest fraud perpetrated on the Constitution and the people of India. Article 352 could have no manner of application. That was followed by notifications under Articles 358 and 359 to stop people from seeking redress in courts.

The scheme was well thought out. From 12th June, 1975 that conspiracy was started and the scheme was given a final shape when Justice Krishna Rao did not give her a clean chit. No unconditional stay was given, then the onslaught started; arrests and everything followed. The mass media and the newspapers came under her complete grip. People were fed with deliberate untruths, and truth became one of the biggest victims of Emergency, during that time. About the misuse of MISA we all know. I have spoken on so many occasions as to how it was used indiscriminately and comprehensively, against everybody—even against her own party-men. Even Mr. Sahe will not be spared if she comes back to power. I hope that it will never happen. It was what we said in 1971. We had given that warning: "Don't go on thumping the table. One day you will also be in difficulty." Whenever there was a voice of dissent, and whenever there were even personal interests to be served—personal interests of Mrs. Indira Gandhi and her son—that nefarious law was taken recourse to. It was nothing but a sordid misdemeanour and crime committed by the former Prime Minister. But to-day, we are in a situation where we have to ask ourselves: what has been done and what should be done so far as the perpetrators of this crime are concerned?

People have had a traumatic experience; and they are entitled to know what you are going to do, to these perpetrators of crimes, these criminals and their aiders and abettors. 16 precious months have passed. These are valuable, precious months in the life of this country. Not only have these criminals remained unpunished. They are now re-grouping themselves, thanks to the performance of the Government and the ruling party. You are considerably helping her to stage a come-back, in spite of all the crimes that she has committed. We are to-day being warned by this party which should have no place in the political life of this country. Her henchmen or chamchas—we would be insulting the chamchas by calling them chamchas—are to-day saying and threatening that there will be a massive agitation, there will be a civil war and there will be blood-shed. And somebody said on the sands of Chowpatty the other day—I read it—that blood will flow in this country if she were touched. I would like to tell the Government that any attitude of compassion or dilatoriness to criminals would be nothing but an act of betrayal to the people of this country. People have given a mandate to the Government. My request to the Prime Minister and all my friends is this: "You have a duty to the people of this country who have put you to power. By your non-performance, your ineptitude and internecine quarrels, don't give credibility to her."

This question, therefore, necessarily comes up, viz. after the Commission has done its duty to the nation, what action are you going to take? You have to satisfy the people of this country. Our party has been demanding a trial on the lines of the Nuremberg trial. It is not doing it for the sake of political propaganda, but because we feel that there was no parallel or equal to that set up earlier in this country, except that of Nadir Shah—or something like that. It has happened in the garb of a democratic set up. When they made the Indian Penal Code in

the 19th century, even the British could not have thought of this. These are worse than War crimes. A deliberate crime it was, against humanity and against the people of this country who have been kept below the poverty line, for years and years. They have been facing unemployment. They are even unable to have two square meals a day. These people's minimum rights as human beings were denied.

They were not given two square meals a day. At least they could say that they have their fundamental rights they have their basic rights but those were taken away during the Emergency. Mass media was controlled. MISA was utilized against all leaders of democratic movement—government employees, trade unions, everywhere, it was being utilized.

I do not have to remind the hon. Members of the great misdeeds that were committed under MISA. Who was responsible for all this? Let us hope, after a good deal of procrastination and thanks to the initiative of Mr. Jethmalani our esteemed friend, that the Government has thought it fit to refer the matter to the Supreme Court. I do not know why are you showing such an over-zealous respect for the rule of law. If you had set up a special court, she could have gone to the Supreme Court; Supreme Court would have been open for her; she could have gone there and tested it. For whom are you showing over-zealous respect? If you are acting against the rule of law, there are courts of laws. Courts are not closed to her; the doors of courts are open for her; she could have gone there. Why are you dragging your feet so long?

Since you have made that reference, I can only hope that the Supreme Court accedes to it. If the Supreme Court does not do it, then you cannot pass on the responsibility to the Supreme Court having struck it down. What are you going to do then?

(Interruptions)

You have to explain that.

(Interruptions)

MR. DEPUTY-SPEAKER: You must now conclude.

SHRI SOMNATH CHATTERJEE: It is the responsibility of the people and this country to see about it and the Government has to take steps that no one in future shall be able to impose dictatorship under the garb of constitutional provisions as was done in this country. That brings to us a question of proper amendment of Article 352 of the Constitution and although the Constitution Amendment is coming, we have some reservations still. But I do hope that the Government will consider it once more before even that minimal opportunity....

(Interruptions)

MR. DEPUTY-SPEAKER: You must conclude. I will have to call the next speaker.

SHRI SOMNATH CHATTERJEE: The other thing is that the time has come—whatever may be the personal feelings of the Prime Minister; whether she should be allowed the benefit of the Representation of People's Act in this country—for disenfranchising her. (Interruptions) Otherwise, what Justice Shah has said, you can never achieve. I am quoting from pages 140 and 141 of the Report. He said on page 140 as follows:

"Yet, if the nation is to preserve the fundamental values of a democratic society, every person whether a public functionary or private citizen must display a degree of vigilance and willingness to sacrifice. Without the awareness of what is right and a desire to act according to what is right there may be no realisation of what is wrong."

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Then he said on page 141 as follows:

"The nation owes it to the present and the succeeding generations to ensure that the administrative set-up is not subverted in future in the manner it was done, to serve the personal ends of any one individual or a group of individuals in or near the Government."

SHRI RAM JETHMALANI (Bombay North-West): Mr. Deputy-Speaker, Sir, the Shah Commission's Report has been under attack for quite some time by Mrs. Gandhi and her henchmen. The attack has extended itself to the institution of Commissions of Inquiry itself. This attack has to be met; it has to be analysed. It is suggested that the Janata Party has made gross misuse of Commission of Inquiry. That suggestion is being spread around to misguide those who do not know the relevant fact that the Janata Party has not created Commissions of Inquiry for the first time. Let us declare for the benefit of those, who are interested in knowing the truth that the Commission of Inquiry was created for the first time by the great leader Pandit Jawahar Lal Nehru, the father of Mrs. Gandhi. I am surprised to find that the daughter is so critical of her father's creation. If you analyse the commissions of enquiry, throughout the Nehru era, fraud after fraud was discovered through the instrument of the commission of enquiry. Let us recall only one glaring fact that the late husband of Mrs. Gandhi,—may his soul rest in peace; he is of revered memory so far as I am concerned—exposed one of the greatest frauds of his time, the Mundhra fraud through the instrument of the commission of enquiry....

AN HON. MEMBER: What about H. M. Patel?

SHRI RAM JETHMALANI: H. M. Patel was exonerated by everybody; do not misquote facts; read the report

again. The person who was not exonerated was Mr. Nehru's Minister who was only temporarily put out of office and so great was his love of the corrupt that he brought him back again. The late Feroze Gandhi was grateful to the instrument of the commission of enquiry and I am surprised that our last Prime Minister shows no such gratitude for an instrument which was praised by her husband.

When after the last elections Commissions were instituted by the Janata government, I recall the speech of a very distinguished member of the Opposition, Dr. Karan Singh; the best among them, he got up and told us that the Congress Party at that time was as much interested in the discovery of truth as anybody else. He said on the floor of the House that his party was waiting for the commissions of enquiry to declare the truth because truth must be known. I believe Dr. Karan Singh's word and I believe he was genuine. But where Dr. Karan Singh went wrong is in believing that his party also accepted what he believed. He realised a little too late that his party was not interested in the discovery of truth or at least there were a large number of people in his party who were afraid of truth being disclosed and were therefore afraid of commission of enquiry. Ultimately their party was divided into two. Persons who remained on one side were led by Mr. Chavan who told us the day this Parliament opened that the emergency was not part of the ethos of this country; emergency was not part of the constitutional tradition of this country; the then distinguished leader of the opposition at least showed some remorse, some repentance and he was at least prepared to say that emergency would not be repeated again. But when their party divided, it divided between those who believed that the emergency was good who continue to be proud of the emergency and on the other side those who showed remorse and repentance and a certain degree of shame about the emergency. Today

Mrs. Gandhi continues to be the head of that party which has through its leader in this House proclaimed that that party was proud of the emergency, remains proud of the emergency and will be proud of the emergency if they once against come to power and have to reimpose it....
(Interruptions)

It is worth recalling that it was Mrs. Indira Gandhi herself who revoked the emergency when she fell from power, the significance of this must be understood. If she was a believer in the good of emergency, if the present distinguished leader of the opposition is proud of the emergency, why did he not advise Mrs. Gandhi to continue the emergency even after she fell from power. They knew that the dark deeds which she had perpetrated under the cover of the emergency might conceivably be perpetrated by somebody else. Of course we had no intension of doing so. But she was afraid of her own sins. You and she knew the emergency was a cover for fraud and political corruption, and worse still the dynastic corruption of the ex-Prime Minister, whom you still continue to acknowledge as the leader of your party.

After the Shah Commission of Inquiry has given its verdict, criticism has erupted on three or four lines. First of all says Mrs. Gandhi and say others of her way of thinking that this Commission acted very unfairly. How did it act unfairly? It acted unfairly because according to Mrs. Gandhi's long eighteen page letter which she wrote to the Shah Commission, witnesses who appeared before the Commission were jeered at. People were hissing at them. People were showing ridicule and contempt. Now confessions of the most distasteful crimes of the most corrupt acts, of the most inhuman kind of misconduct were being deposited to by witnesses on oath. Witness after witness came before the Shah Commission and swore that he did indulge in corruption of which he

was ashamed of. These confessions were being uttered in presence of the people. You can't expect spectators to act like automatons. They must react like normal sensitive beings to the sordid disclosures. This is the kind of hissing and contempt of which Mrs. Gandhi was afraid of. She knew that the people will show contempt for her. She knew that the people will taunt her. She should have shown the requisite courage. Instead she went round creating contempt against the Commission and committing one of the most heinous crimes which can be committed in democracy, viz., to create contempt of the judicial process and of those who are conducting the judicial process. It has been the policy of your party and it has been the policy of your leader always to frustrate judiciary and legal actions by political corruption and by political hulla-ball which you raise every time because you are afraid that the judicial decision will go against you or has actually gone against you. You have not learnt the basic fact that in democracy you have to accept adverse decisions with good grace. That at least Mr. Sathe should have known because he belongs to my profession. Our profession is characterised by one thing—that whatsoever the decision may be, we bow down gracefully to it. But Mrs. Gandhi and her henchmen have never learnt to accept the judicial process and its conclusions.

Another criticism which she has made is that we have a judge sitting in that Commission who has already expressed himself with his public utterances against the emergency. I want this House to analyse the argument for itself. It is like a rapist who is being tried in a court saying, I cannot be tried by this judge because this judge does not like rape. A robber will say that I cannot be tried by a judge who does not like robbery. What kind of judge did Mrs. Gandhi want? What kind of

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judge did you sitting opposite want to preside over the Commission? Did you want us to select a judge who had disgraced the robes of his office or did you want a judge who had fallen prostrate at the feet of Mrs. Gandhi? Did you expect us to give you some corrupt judge who had sung the song of emergency to sit in judgment over the misdeeds of emergency? These are the things which you must learn to take in your stride if you are to function as a political party in a civilized democratic country. But if you want and if you are determined to take back the country to where it was before March, 1977, then continue in your own ways. The Government will deal with you. The rule of law will deal with you and more than that people of this country will deal with you.

Another criticism of the Shah Commission's Report which again requires to be analysed and understood by this House is that the Shah Commission has no justification or authority to question and sit in judgment over actions which were approved by the Parliament, which existed then. This argument is a joke when you analyse it a little seriously. After all, do we not have the testimony of her own Attorney General who was her favourite, that Attorney General who never recovered from the disease called emergencies. He died recently. But he went on public record to declare that throughout the time of Mrs. Gandhi's emergency the Attorney General of this country lived in a mortal fear. Have you forgotten that you created a situation in which the ablest judges of this country had turned sycophants, the ablest journalists had turned base propagandists and even the Members of Parliament with a few distinguished exceptions which can be counted on one's fingers, had allowed themselves to lie prostrate and be trampled upon by this lady. Is it that Parliament whose ratification you are talking about?

The English people would have obliterated this portion of history, just as they obliterated the Cromwell period from their history. But we have treated the revolution of March 77 as involving no break in constitutional continuity. We have treated it as a peaceful changeover according to the democratic process. We were entitled to treat the March 77 elections as a revolution and if we had treated it as a revolution we would have been justified in accepting the suggestion of my friend Somnath Chatterjee who said that Mrs. Gandhi should have been tried according to the Nuremberg principles of trial. Surely enough a woman, a lady, a politician, who flourished in her political life in retrospective legislation, could never claim, morally at least, to protest against retrospective legislation. But we who are wedded to the rule of law, eschewed that temptation. We got over that provocation and said, "No; we shall not allow her to stew even in her own juice. Let us go by the rule of law," and that shall be the greatest tribute to the philosophy of the Janata Party. We said, we shall not try her by retrospective laws but we shall try her by the ordinary laws of the land and such laws as the constitution permits.

Every criticism of the Shah Commission is unjustified. Now we receive lot of gratuitous advice. It is like what happened in that little anecdote which we used to read as small children. A pious Brahmin, Ramji once upon a time carried a goat on his shoulder and three cheats met him at one after the other. Each was telling him, "Ramji, why are you carrying a dog?" Ultimately, the poor Brahmin in his ignorance was compelled to drop the poor goat and the cheats took it away. Exactly like that, we are being told today by our so-called friends, "Forget the commissions of inquiry. Let us get down to some serious business. Why these commissions of inquiry?" The lesson of this commission of inquiry is that we need more commissions of inquiry.

We need more effective commissions of inquiry. We shall not allow commissions of inquiry to be made non-sense of.

SHRI C. M. STEPHEN: That is what Mr. Charan Singh is demanding and you are refusing: He is demanding the appointment of a commission of inquiry.

SHRI RAM JETHMALANI: There is another brand of cheats who go round telling us and reminding the Prime Minister of our Gandhian philosophy, of our philosophy which is based on love and affection and eschewing of hatred. We are being told, "How can you, Gandhians, entertain this anger and prosecute her? Why not drop the whole matter?" Mr. Deputy-Speaker we shall not succumb to this kind of tomfoolery. The law shall take its own course. It is the constitutional, moral and legal obligation of the Government of the day to bring offenders to book. We are not dealing with ordinary offenders. We are dealing with offenders who will hold a candle to the worst offenders of the worst countries in the world and they are not going to advise us that we should give up our attitude of hatred. No. It is not really contempt and hatred aimed at persons but contempt and hatred of the actions of which they have been found guilty and those actions shall be punished, however Gandhian we are.

What has the Shah Commission after all said? It has *prima facie* found her guilty of two kinds of offences in which there have been two mixed motives for the commission of those offences—firstly, to suppress and destroy political opposition and political dissent and secondly, to prevent the exposure of her dynastic corruption, corruption which was being run by her as a joint Hindu family business from 1971 upto 1977. So, these are the two kinds of offences which the Shah Commission... (Interruptions) Outside the precincts of

this House, I might have even physically afraid of the distinguished Member of the opposition who has just got up. I am sorry, I did not catch his name, but inside this House.... (Interruptions)

18 hrs.

SHRI A. BALA PAJANOR: He is a very soft man inside. (Interruptions)

SHRI RAM JETHMALANI: Let me say for his benefit that there is one historical fact which we have all forgotten that Mrs. Gandhi during the Emergency with her troubled conscience, such of it as was left, bothering her all the time and knowing that some day the strong arm of the law would overtake her and nemesis might befall her despite the strength in which she found herself at that time, brought before the other House a constitutional amendment to confer immunity on her against crimes committed by her both before and during her tenure of office. Those of you who sit and smile at her actions and those of you who do not show sufficient remorse at what happened will recall the disgraceful fact that the constitutional amendment went through the Upper House while you had lost your moral spine and were quietly watching the rape of democracy and the Indian Constitution. (Interruptions) As a lawyer, I draw inferences from circumstantial evidence. If she had not committed crimes why did she seek immunity. The inference is inescapable...

(Interruptions)

SHRI MALLIKARJUN: 'Rape' is a defamatory word and this should be expunged. He is a lawyer, he should use some other word. (Interruptions)

MR. DEPUTY-SPEAKER: We will take care of all the defamatory words; do not worry.

SHRI RAM JETHMALANI: I wish to tell my Government that even in

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our Government, we are compelled to work with the very bureaucrats who once upon a time, followed her will and were parties to her evil actions. I hear from the press and this has never been denied, that the Committee of Secretaries appointed by the Cabinet, went into the question of crimes of Mrs. Gandhi and rendered to the Cabinet an advice which is unworthy of any Secretary who is drawing his salary from the exchequer, that Mrs. Gandhi ought not and cannot be prosecuted.

THE PRIME MINISTER (SHRI MORARJI DESAI): Who said that?

SHRI RAM JETHMALANI: All papers have published this and there is no denial. I have heard the Prime Minister says, no and he must be right. I accept his word.

But let this fact be publicly declared because this fact is going round today and it is being used against us that your own Secretaries have said that Mrs. Gandhi should not be subjected to any criminal prosecution. Deny this fact with the vigour that you are capable of, and give it the publicity which it deserves, because let it not be said that we have embarked upon a venture of vendetta when our own Secretaries have advised us to the contrary. Clear this misunderstanding. It must be done at the earliest possible opportunity. But should you find that there are in our Government or, amongst our bureaucracy, people whose will to enforce the law has been paralysed by previous corruption or current inducement, it shall be your duty to remove them; it shall be your duty to weed them out and see that they do not spread their paralysis to others.

The greatest lesson of the last six months after Mr. Justice Shah filed his prosecution in a magistrate's court is that Mrs. Gandhi as an accused, and other accused in the same posi-

tion as Mrs. Gandhi, are in a position to frustrate the speedy disposal of cases. They are able, by their legal gimmicks and other devices, to postpone the evil day, to postpone the nemesis, to postpone the arm of law overtaking them. The great lesson, therefore, is that we must promptly, vigorously and effectively devise a method of bringing the culprits to speedy justice, because justice delayed, Mrs. Gandhi told us during the emergency, is justice denied, and exactly now she must stew in her own juice. We will give her speedy justice of which she talked during the emergency, and of which she made a great propaganda point. We shall not succumb to the temptation of disenfranchising her, but we shall certainly disenfranchise her for future misconduct, because she continues her misconduct from day to day, continues to throw dirt and dust at our judicial officers, at the commissions of inquiry, she continues to snap her thumbs, she continues to hold them to public ridicule and contempt. It is for these future crimes that we must strengthen the hands of our Commissions. The Commissions must be empowered to punish those recalcitrant and obstinate witnesses who do not have the courage to speak the truth, and answer questions about their public actions.

Mrs. Gandhi after the Allahabad High Court judgment is afraid of lawyers as a camel is afraid of water or perhaps a dog is afraid of Diwali crackers. She is mighty afraid; she will not face lawyers. But those public men or women aspire to political power, but who do not have the moral spine to get up in public and answer questions about the way they conducted their affairs, they have no right to continue to aspire for public offices, and let us at least for the future create the requisite amendment in the law that such people do not again find themselves in positions of power or foist themselves upon the people's heads and destroy their liberties, the Constitution and the decencies of political life.'

SHRI A. BALA PAJANOR (Pondicherry): I rise to speak after hon. Member Shri Jethmalani has created some sort of interest in this discussion. I am not saying anything against the other Members, but when we took up this matter of the Shah Commission discussion, they wanted more time, and they also said that many Members might like to express their feelings on the subject.

As far as the appointment of the Commission is concerned, there cannot be any two opinions. I do not agree with Mr. Stephen on this point. I think Mr. Stephen also agreed that it is good to go into the matters. I know how the Law Minister argued before the Sarkaria Commission in favour of its appointment. Why do I mention this? Because sometimes according to convenience we change our arguments. I went through the arguments of the hon. Law Minister, Shri Shanti Bhushan, at every stage before that Commission, how he wanted to prolong the corruption charges made against the ex-Chief Minister of Tamil Nadu, Shri Karunanidhi. But now I have read certain reports, and some of the hon. Members of the Janata Party are also agitated about it, but they must try to analyse the position after the Shah Commission's reports. It is because of the division created in the Janata Party.

I need not cite Gupta's Commentary on the Commissions of Inquiry as contemplated under the Act of 1952. Because some Members within the Cabinet expressed the feeling that Mrs. Gandhi had the punishment by the verdict of the people. Some started saying that she must be punished severely according to law. According to some, she should be punished through a special court, according to some through special law and according to some like the trial of Nuremberg. But if you take the Commission's report, it says that as the people of the country desired that there must be a Commission of Inquiry, it

has been appointed. As my friend, Mr. Saugata Roy said, the number of Commissions have increased. I went through the Reports of the Commissions of Inquiry and I found that there were 202 Commissions from 1952 onwards. Out of those 202 Commissions, 49 are very important Commissions appointed prior to the Shah Commission.

They have appointed 21 Commissions so soon afterwards. That is the reason why some people say that this is a government of Commissions and government of omissions. If I say 'omissions' it is because of the differences that you yourself create and ventilate openly without any discipline both inside and outside Parliament. I say, the mistake is within. I find the discussion on the Shah Commission Report has become more academic. If you ask me to argue like Mr. Shanti Bhushan, I can also do so pointing out the good points and also the mistakes in every page, how Mr. Shah has erred in particular places etc. Fortunately, Mr. Shah has not come out with the findings in a categorical statement because he knows the law very well. It is a fact-finding Commission as per the Commission of Inquiry Act, 1952, under which the reference has been made. This reference to inquiry is a peculiar one because it said that the people demanded inquiry into all the excesses committed during the Emergency. And Mr. Jethmalani was very eloquent in saying that even excesses prior to the Emergency must be inquired into. Some of the speakers said that there must be a trial like the Nuremberg trials. But I wonder how in a democracy it can be done. Our eloquent speakers must read the great Tagore who said in his *Gitanjali*:

"Where the head is held high
And the mind is without fear
Unto that Kingdom, Father, Let my
country awake."

I know why we are eloquent. Some of them are enjoying eloquence

[Shri A. Bala Pajanor]

knowingly or unknowingly. There lies the crux of the problem. When I say some people in the Government of India—I do not blame them—act according to circumstances and convenience, I am not comparing why Mr. Stephen is supporting Emergency or why he opposed it some time back and how we all acted immediately after elections. But we have to analyse why these things have taken place. Please do not get agitated. It is a *fait accompli* in this country that Emergency was a rude shock and some praise it not because they have less respect for liberty and democratic values, but because they have no food, shelter and clothing in the new programme. So, I appeal to you to please take up this matter as a matter that must go under the due process of law. You appointed a Commission of Inquiry as per the Act of 1952, and it is a public inquiry. I do not dispute how Mr. Shah had to conduct the entire inquiry. We wanted to honour the public opinion. That is the reason why it was an open inquiry and people had a right to know what has happened. At the same time it should not be a matter of vulgarity also. I am using a strong word because the purpose for which you have appointed the Commission may not be served.

As you have noted, many Members are very vociferous about Emergency excesses. We also supported it for some time, but we realised it later on. In the last Lok Sabha many of us including Prof. Mavalankar had discussed in this house about how to outwit it. I know how clever many of the Members used to be. But everybody has his own method of outwitting certain unwanted elements. Let us not claim that we alone are the heroes in those days. When I see Babuji, I understand his method. Perhaps he waited till the elections were announced. I remember what Mr. Mohan Dharia said. When he was to resign, I asked him: "Were

you with coloured glasses when you were a Minister?" He said: "There is time for everything." I agree with him. Similarly, I am not sorry for it because circumstances are different at different times.

So, let us not boast of these things and say that we have done this or we have done that. What really the people want at this hour is the question. Are you prepared to analyse it? People are not happy and they do not want to bring Mrs. Gandhi back because of her autocratic rule of 19 months, which has been revealed to us later on. People are not prepared to have the same old method of suppressing the press and allowing the press to go to the dogs. The people are worried, because we are not giving to them what they wanted. People are not happy with eloquence or rhetoric remarks of Justice Shah, who is presiding over the Commission of Inquiry. I have some experience of the Sakaria Commission, where I had an opportunity to function, along with my friend, Shri Shanti Bhusshan. I know how he defended the accused in that case; I vividly remember how he protracted the proceedings, how he delayed the hearings. Of course, that is the right of the lawyers and the right of the accused also. In that case, I appeared for the complainants, for the Memorialists.

It took two years for Mrs. Gandhi to appoint that Commission. She went on delaying it and then finally she took the decision. You people are talking of the use of MISA during the Emergency. After the Emergency was declared, for seven months Shri Karunanidhi ruled over Tamil Nadu. Do you know what he said? For seven months he used the MISA and many of our party members were put behind the bars. You have suffered a lot and similarly we have also suffered.

Now you are talking of democracy, liberty and so on in this House. Is it not a shame on our part to talk of such things? Here I would rather like

to quote Lord Acton who said "power corrupts and absolute power corrupts absolutely." It is not a fact that this malady started only 19 months ago. Other people were in power then and now you are in power. I remember Shri Madhu Limaye, who was sitting on this side; I also remember Shri Vajpayee speaking from these benches. We have seen such people. It all started 11 years back. Because you wanted to shield certain things, take certain benefits from certain corners, so you are not bold enough to say when you see something that is bad. You do not in fact have that right.

All this discussion is a waste of time. Let us take up those questions which are important. I know it is very easy to say, in fact I want to throw a challenge to you when you say that you are doing something because the people of the country want it. Take the appointment of the Grover Commission. You appointed that Commission to enquire into charges against Mr. Devraj Urs. Now that he is in power, what are you going to do with the findings of that Commission? Suppose Mrs. Gandhi is re-elected tomorrow. Will you say that she has a right to rule because the people of this country have given a verdict in favour of her ruling the country? It can never be so. Then what is your reason?

I appeal to many of you who are below 40 or 45 years of age not to talk about general principles for ever. This House is not prepared, this country is not prepared, to listen to preachings or lessons on liberty, freedom and democracy, as Shri Jethmalani was doing. I can also talk for hours together on liberty, quoting Russel, Burke and others, from Tagore to the lowest man in this country. But that will not serve the purpose. What is required is to understand the hopes and aspirations of the youth of this country, to try to solve the problems of the poor men of this country, to try to help them and show them the methods by which they can solve their problems.

There is no point in this House discussing the question or the Report of the Shah Commission again and again. I do not want to waste the precious time of this august House by doing that. That time can be well spent for discussing about the steps to be taken for the progress and welfare of the people of this country, because that is the most democratic thing. But you seem to forget it.

About 45 minutes were spent on considering whether the Shah Commission Report should be discussed. As I said earlier, if you want, I can also argue technically about this Report, find fault with it page-wise. I can do it. Similarly, I can also take up the complimentary parts of that Report and show how Justice Shah has done it well. But that is not the purpose. I have seen from the Mover of the Resolution in the very beginning to Shri Jethmalani, the last speaker, all of them wanted to bring home to the conscience of the people of this country what called for the appointment of the Shah Commission, the declaration of Emergency, when we had to lose our freedom and liberty of the people of this country during those 19 terrific months according to many of us, but there was also discipline during those days; that you cannot forget..... (Interruptions) You cannot forget it. If you say it was not so, then you are going to enter into a dangerous argument. I am not justifying it, please take it from me. I am not justifying it or saying that the Emergency was a necessary thing. But, at the same time, you cannot forget that there was discipline and we could safely live in Delhi.

Now there is division in your ranks ... (Interruptions). Are you disciplined, I am posing this question. Are you all prepared to obey the Prime Minister of this country? I am prepared to obey the Prime Minister of this country. Are you prepared? I am asking a very straight forward question. I say that you people are not disciplined. You want to give vent to your own feelings

[Shri A. Bala Pajanor]

and you are not prepared to obey the Prime Minister. Please talk in one voice.

Let not Mr. Raj Narain come out with a statement, let not Mr. Charan Singh come out with another statement and let not the other people come out with different statements. That is the reason. You are not talking in one voice. I have no fascination for Mrs. Gandhi. But when she was the Prime Minister of this country, I said that there must be some honour and respect for the seat. I have no fascination for Mr. Morarji Desai. But I have a great respect for him personally. That is a different matter. But so long as he occupies the chair of the Prime Minister, every citizen of this country and especially every Member of Parliament, must have respect for him. Then only this country will be respected. If you do not talk in the same tone, I am not challenging. I am not arguing, but I warn you that you will have to face many challenges. I express my feeling, the feeling of the youth. I used to talk to Mr. Sharad Yadav, Mr. Subramaniam Swamy, Mr. Nathu Ram, Mr. Ram Vilas Paswan, irrespective of their party affiliations. We speak for the youth of this country. If you are not going to take the word of the youth of this country, you people are above sixty and seventy, old in your thinking, words and aspirations, old in your progressive methods, it will only destroy this country. We may not welcome Mrs. Gandhi and her evil actions. Personally, we do not have anything. That is a different matter. You can laugh at it. But that is the call that is coming out of this country everywhere. If you are not going to respect the youth of this country, the youth is going to take over.

Just now my friend, Mr. Saugata Roy, referred to a person been hanged in Madras. He is not bothered about it. But somebody is going scot free. We can also talk like that. But do not get agitated. Mr. Malikarjun may challenge

and say "let us have elections" and you may be defeated. Will you say that Mrs. Gandhi won the election? What is happening everywhere? Are you winning the elections? What happened in Madurai? Mrs. Gandhi attracted the crowds. Where is Mr. Ramachandran? Where is the Janata Party? It is cypher now. Can I say that Janata Party is completely erased out of Tamil Nadu? That cannot be said. Let us not unnecessarily waste our time on this question. We have given this work to a Judge.

AN HON. MEMBER: Please do not waste time.

SHRI A. BALA PAJANOR: That is my right. My party has the right, I can take time. It is not your right. I have the right to put forward my views and if you are not prepared to take it, woe unto you. (Interruptions). If I say things palatable to them, I have found, they will give cheers. But I am not moved by that. If I say something which is true, which pricks them, they will not support me. I do not want that. The same thing is the case with this side also. But truth should be placed as the Prime Minister has said.

SHRI DHARMA VIR VASISHT (Faridabad): On a point of order.

MR. DEPUTY SPEAKER: What is the point of order? On what rule?

SHRI DHARMA VIR VASISHT: What relevancy has it got here?

MR. DEPUTY SPEAKER: No, that is not a point of order.

SHRI A. BALA PAJANOR: I went through the entire report of the Shah Commission. He has taken a lot of panics. Sixteen months have passed and we are told that he will give the last report before the end of September. The Prime Minister has been saying, both inside and outside the House, categorically that due process of law will take its own course. It has been said by many members when they

were provoked here, that they are trying to set up a special Court. If it is legally permissible, you can do it. But we are going to discuss that here because it is outside the scope of the present discussion. If it is a question of going by due process of law, if you are going to try Mrs. Gandhi and her gang, —if they are found guilty, the law will take its own course—how many times should we repeatedly go on talking about it? Will it give food to the people of this country? I am very happy that you have taken a stand to condemn the illegal things done during the Emergency. But what about things that happened prior to Emergency?

AN HON. MEMBER: Don't preach.

SHRI A. BALA PAJANOR: I am not preaching. I am not that old to preach. But I am posing a small question. You ask your Law Minister what he was saying before the Sarkaria Commission, I can also argue like that. But I do not want to do that. Many of you are eloquent and I am also eloquent. But touch your heart and tell. He said: "Janata Party is on the vain". Why? I want to ask this on the discussion on the report of the Shah Commission, I had great hopes on you and I still have. Why? You must come out with plans. There is no point in simply talking about Indira Gandhi daily. You are making Indira Gandhi the biggest element or the biggest demon, as he said. Why?

The people of this country have given a verdict and she had accepted that in good spirit. I remember what she said immediately after the Elections. She said: "I respect the verdict of the people." At times, she said, "I am sorry for it." Now I am bold enough to say that some of you even provoked her. She admitted her guilt. What else do you expect? I want to put this question to many of you, both on this side and that side, who cooperated with her, who enjoyed the benefits then. Now they have become the biggest champions of it. Why? That is the reason why I say so. Let us not also repeat the same mistake. I can

also condemn Mrs. Indira Gandhi; I can find fault with every section of them. There was the Tulmohan affair and I can point out various other instances. I can say, Mrs. Indira Gandhi is a devil. But what is the purpose it will serve? That is what the people ask. When the Prime Minister and the Law Minister say that the law will take its own course, that she will be punished according to law, you have a difference of opinion and it is your difference of opinion which is the cause for all this. I repeat that you better get a disciplined set so that this country can be disciplined. Otherwise, it is going to be a dangerous thing for us.

With this request, I say that the Shah Commission which was started in good spirit and which has given the report is not being followed it up with the same spirit.

SHRI M. N. GOVINDAN NAIR (Trivandrum): Mr. Deputy-Speaker, Sir, with due respect to the youth of this country, I feel that it would have been more appropriate that this motion was moved from the Government side rather than by a very leading member of this House. I also feel that this motion should have been moved during the first week of the session. I do not want to cover the field already covered by the Shah Commission. Nor do I want to question whether there was any procedural irregularity or not.

Now, the Shah Commission has come to certain conclusions. The Commission has found Shrimati Indira Gandhi and some of her other colleagues guilty of certain offences. What are we going to do about it? This question has to be viewed from three angles. Firstly, what are we to do with the findings of the Commission with regard to crimes committed by Shrimati Indira Gandhi and her other colleagues? Secondly, what is the guarantee that such things will not be repeated in future? What steps has this House to take to see that whoever be the Prime Minister, he or she may not have a chance to repeat the Emergency

(Shri M. N. Govindan Nair.)

again. Thirdly, in your over enthusiasm to save democracy, you do not stab democracy.

Before I come to the first question, as you know, a few months ago, there was a news item in the press that Princess Anne of the British Royal family was fined for a traffic offence. Neither the constable who charge-sheeted her nor the magistrate who punished her did feel that something extra-ordinary had been done. It was in the normal course of the functioning of law. However high a position of the person be, before law everyone is equal and, therefore, law should operate in that manner. Nor did Princess Anne mobilise her royal guards to fight against the constabulary and bring down the Government. But what is happening in our country?

12.30 hrs.

[SHRIMATI PARVATHI KRISHNAN in the Chair]

The Shah Commission has come forward with certain charges levelled against Shrimati Indira Gandhi. How can my friend, Mr. Stephen, whose talents and eloquence, I do not think, anybody in this House will question, shut his eyes to the fact that all our democratic rights were completely grabbed during that period, that the press was muffled? When the Shah Commission says that the former Prime Minister committed a crime against the Constitution or that her declaration of the Emergency was *mala fide*, why should he waste his talents to establish that it is outside the purview and all that? That is why, I say that these lawyers are the most confusing people....

(Interruptions)

If there is a law by which lawyers are not permitted to contest elections, I think, we would be in a much better position. That apart, my point is....

SHRI SOMNATH CHATTERJEE:
So that you can commit all sorts of illegalities!

SHRI M. N. GOVINDAN NAIR: If all of you join, then I will be in a minority, I cannot argue against you.

That apart, I do not agree with the attitude that the Congress-I is taking on this issue. If there is a charge, you should find out who is the best lawyer to argue your case. All the arguments which my friend, Mr. Stephen, has put forward, even questioning the legality of the Shah Commission, can be put forward there. But don't try to organize an army; if any legal action is taken against her, then this country will be put in a turmoil. (Interruptions)

All of us speak about democracy. By profession we are democrats. But by habits and thinking, we are fossils. (Interruptions) Don't try to argue with me now. I will tell you how these personalities come up. That is why I quoted the example of Princess Anne or the daughter of Churchill. How many times was she put in jail? Was there any commotion in Britain? Because there the rule of law is accepted, equality of law is accepted, equality before law is accepted. But we have not accepted that.

Now, what has happened? On this question instead of leaving the whole matter to Mr. Shanti Bushan who, according to me, is an excellent lawyer—I do not know whether he has forgotten law after becoming the Law Minister; it should have been left to him to decide what course of action should be taken,—the matter has been referred to the Supreme Court as to what type of court should try her. But I warn one thing. In democracy, just as there is rule of law, the independence of the judiciary has also to be maintained. So, taking all that into consideration, leave it to the concerned Minister, the Prime Minister and the Home Minister. But what is happening here?

AN HON. MEMBER: Mr. Jethmalani.

SHRI M. N. GOVINDAN NAIR: Yes, Mr. Jethmalani brings in a Bill. Sir, I have great respect for his legal ability. That is not the point.

SHRI RAGAVALU MOHANARANGAM (Chengalapatlu): Kissa Kursi Ka.

SHRI M. N. GOVINDAN NAIR: What is happening? What is your job, Mr. Shanti Bhushan? I ask you. If you want something to be brought in, this or the Special Court or whatever it is, why cannot you take the initiative? Why do you want that—what Malani?

AN HON. MEMBER: Jethmalani.

SHRI M. N. GOVINDAN NAIR: Why do you want that? Mr. S. N. Mishra brings in a motion. What else? What has this Shah Commission done? It has created the biggest havoc for the ruling Party and it has been a great boon to the great lady in the dock because in place and out of place you were giving the biggest publicity to that one. And I tell you that all your discussion whether it should be a Nuremberg trial or something else—Nuremberg trial for Indira Gandhi?....

SOME HON. MEMBERS: No, no.

SHRI M. N. GOVINDAN NAIR: That is why I said—what was the quarrel? How is it that our friends who normally should sit there—where are they?

Mr. Raj Narain is here. He has taken out his green turban. Other hon. Members are not to be seen here. What is it? It is all because what should be done with regard to Shah Commission report—on that there was a controversy.....(Interruptions). That is why I said the Shah Commission has created a problem for you and

Indira Gandhi is getting publicity every day in the Press. Now we are discussing her for 3 hours....

AN HON. MEMBER: Six hours.

SHRI M. N. GOVINDAN NAIR: Yes, six hours. Whatever it is, tomorrow all over the country and outside the country she gets all the publicity. Then he quoted a foreign journalist. I read that write-up. He is almost convinced that by the time you take some action, people will forget all the crimes that had been mentioned in the report and she will be a heroine again. That is also the fear. Why this fear?

Therefore, if you want to be above board, you allow the law to take its own course. Don't circumvent the constitution, nor should you take law into your hand.

MR. CHAIRMAN: The hon. Member's time is up.

SHRI M. N. GOVINDAN NAIR: Only five minutes.

MR. CHAIRMAN: No, no. Two minutes.(Interruptions).

SHRI M. N. GOVINDAN NAIR: This is a deliberate attempt to curtail my speech. If the Deputy Speaker were there, he would have allowed me at least ten minutes. You have come, and I have to obey you.

MR. CHAIRMAN: I hope you will.

SHRI M. N. GOVINDAN NAIR:**
(Interruptions)

SHRI M. N. GOVINDAN NAIR: As I was telling, my point is that in your over-enthusiasm you should not move beyond that. That is all. Go by the existing law and take whatever action that is called for. And what you are trying to do is all wrong. That also should not be done.

**Expunged as ordered by the Chair.

SHRI C. M. STEPHEN: What are we trying to do?

SHRI M. N. GOVINDAN NAIR: Now members think 'If Indira is touched, the whole country will be on fire.'

All these things are coming.

SHRI C. M. STEPHEN: We have never said it.

SHRI M. N. GOVINDAN NAIR: You never said it here.

SHRI C. M. STEPHEN: We have never said it. Any proceedings according to law will take its own course. Nobody is going to do anything like that. (Interruptions).

SHRI M. N. GOVINDAN NAIR: That is the most important point (Interruptions). What are the steps to be taken to see that whoever becomes the Prime Minister, he cannot abuse such extraordinary powers. Therefore, we were hoping that a Constitutional amendment will come up before this House. I think it may come. It must provide that particular provision whereby the internal emergency cannot be proclaimed. The clause providing for the internal emergency must be taken away from here. Then only: no Prime Minister will be able to introduce that again. Otherwise if we were going to qualify it on the way or the other, then these prominent lawyers may say that when Mr. Raj Narain and other friends of him go with the walking sticks, immediately, their case can be argued that they are going on an armed rebellion and then this emergency might be imposed.

So, that clause should be taken away.

MR. CHAIRMAN: Mr. Nair, your two minutes are over: You must conclude now.

SHRI M. N. GOVINDAN NAIR: Another thing is this. If you want any constitutional provision by which

impeachment is to be included, then do it. Whatever precautions you want to take, take them so that such things may not be repeated.

Necessary constitutional changes should be brought in. These are the things. I am afraid of the Chairman. I therefore conclude.

MR. CHAIRMAN: All references to the sex of the Chair will be expunged.

THE MINISTER OF STEEL AND MINES (SHRI BIJU PATNAIK): Law is an ass.

MR. CHAIRMAN: Will the hon. Minister kindly resume his seat? I have called Shri Mrityunjay Prasad. Please carry on.

श्री मृत्युंजय प्रसाद (सीवान) : सभानेत्री जी, जिस बात से मैं खतम करना चाहता था, सभा का रुख देख कर उसी से शुरू करता हूँ। कहीं कल मैंने पढ़ा था :

"There was a young lady from Riga. It will be recalled who smiled as she rode on a tiger. They returned from a ride with the lady inside. And a smile on the face of the tiger."

इसको आप चाहे विनोद में ले लें या चाहे दूसरी तरह से लें, देवी जी श्रीमती इन्दिरा गांधी ने बाघ की सवारी की लेकिन उस पर कब्जा करने का साहस उनमें नहीं था। अन्ततः वह बाघ उनको खा गया और उनको ही नहीं खा गया बल्कि उसके रास्ते में जो हम सब थे, सबको खा गया।

अब एक चीज की परफ में आपका ध्यान दिलाना चाहूंगा और उसके लिए मैं स्टीफन साहब को बहुत धन्यवाद देता हूँ कि जो बात मैं कहना चाहता था, उसका प्रमाण उन्होंने बार बार पढ़कर सुना दिया और वह यह है कि संविधान का हनन श्रीमती इन्दिरा गांधी ने जान बूझ कर किसी योजनाबद्ध रीति से

किया। राष्ट्रपति के नाम इन्दिरा जी के पत्र को पढ़कर उन्होंने बार बार याद दिलाया था। इससे स्पष्ट है कि राष्ट्रपति कुछ भी करे, उससे पहले उसके पास मंत्री मंडल की मंत्रणा पहुंचनी चाहिए थी लेकिन मंत्री मंडल की मंत्रणा उसके पास नहीं पहुंची और सिर्फ एक मंत्री की मंत्रणा पहुंची वह प्रधान मंत्री थी। इस के साथ ही साथ इन्दिरा जी ने सोलह आने झूठ बात लिखी है अपने भाषण में कि

Unfortunately, I wanted to take this matter to the Cabinet but that is not possible to night.

यह कहना सोलह आने गलत है क्योंकि यह बात प्रमाणों में सिद्ध हो गई है कि वे कई दिन पहले से यह निश्चय कर चुकी थी कि हमें एमरजेंसी लगानी है। वे यह भी तय कर चुकी थी कि हमें कैबिनेट में नहीं पूछना है। फिर इसके लिए कैबिनेट की मीटिंग बुलाने का सवाल कहाँ उठता था? उन्होंने सिद्धार्थ राय से यह पूछा था कि

Can I do it on my own without consulting the Cabinet?

इसके मायने क्या है? इसके मायने तो साफ है कि वे पहले ये तय कर चुकी थी कि उन्हें कैबिनेट की राय नहीं लेनी है और अपने आप ही यह काम करना है। इसके साथ साथ यह भी जहिर होता है कि उन्होंने मंत्रि मंडल से नहीं, बल्कि कुछ औरों से सलाह ली। उनके इर्द-गिर्द एक चण्डाल चौकड़ी बन गई थी। उन्होंने उस की सलाह ली। यही नहीं, उसके बाद उन्होंने बाहर से मुख्य मंत्रियों को बुलाया और उनको कहा कि एमरजेंसी आ रही है, तुम जाओ और अपने यहां पूरी तैयारी करो, लोगों को पकड़ना धकड़ना होगा, उसके लिए पूरी तैयारी करो। उनसे यह भी कहा कि रास्ते में दूसरे मुख्य मंत्रियों से भी कहते जाओ। श्री बेंगलराव ने यह बात कबूल की है कि वे आई०ए०एफ० के प्लेन से बेंगलूर गए। वहां कर्नाटक के मुख्य

मंत्री को संदेश सुनाकर हैदराबाद गये। संवैधानिक रूप से उस प्लेन पर जाने का उनको कोई अधिकार नहीं था। ऐसे ही श्री प्रकाश सेठी भी गए और रास्ते में वे राजस्थान के मुख्य मंत्री श्री हरिदेव जोशी को संदेश देते गए। इस तरह से सेना के प्लेन पर जाने का इन किसी को अधिकार नहीं था। फिर भी गए। यह सब गलत हुआ। यह सब इसलिए हुआ कि इन्दिरा जी ने यह तय कर लिया था कि उन्हें जिन पर विश्वास है, पहले वे उनसे ही बातें करेंगी। जबकि देश के नियमों के अनुसार एमरजेंसी से सम्बन्धित जितनी बातें थी वे सब गृह मंत्रालय की मारफत की जानी चाहिए थी क्योंकि देश के सभी भागों से रिपोर्टें वगैरह सब गृह मंत्रालय के पास आती हैं। गृह मंत्रालय को इस प्रकार की कोई रिपोर्टें नहीं मिली। कितनी अफसोस की बात है।

18.47 hrs.

[MR. SPEAKER in the Chair]

जब तत्कालीन गृह मंत्री से इस सम्बन्ध में उन्हें कोई राय नहीं मिली तो उनके सहायक मंत्री श्री ओम मेहता को बुलाया गया। फिर साढ़े दस बजे श्री ब्रह्मानन्द रेड्डी को बुलाया गया और उनसे पूछा गया कि क्या आपकी राय है कि यह एमरजेंसी लगाई जाए तो उन्होंने इन्कार किया और कहा कि आपके पास तो एक एमरजेंसी चालू पहले से ही है, फिर इसकी क्या दरकार है। वे चले गए और फिर वे वापस बुलाए गए और उनसे कहा गया कि आपके सुझाव पर विचार किया गया है किन्तु उस पुरानी एमरजेंसी से काम चलने वाला नहीं है। गृह मंत्री ने कहा कि अब आपकी जो समस्या में आए वह कीजिए। फिर सब कुछ तय करके एक सादे कागज पर होम मिनिस्टर ने पत्र लिख दिया। ऐसे होम मिनिस्टर थे।

अब यह प्रश्न उठता है कि आपने जब मंत्रियों से पूछा नहीं है तो फिर ऐसा करने की भूल के बचाव में आप उस चीज की आड़ कैसे लेती हैं? आप कहती हैं कि ट्रांज़िशन आफ बिजनस रूल्स में जी कुछ है उनके मुताबिक

[श्री मृत्युंजय प्रसाद]

ही काम होना चाहिए था। क्या कोई भी रूल संविधान के ऊपर जा सकता है? अगर संविधान के ऊपर नहीं जा सकता है तो संविधान तो साफ कहता है—

There shall be a Council of Ministers with the Prime Minister as its head to aid and advise the President in the exercise of his functions.

संविधान में यह साफ है कि प्रधान मंत्री मंत्रिमंडल का प्रधान होगा और उसको शामिल करके पूरी काउंसिल आफ मिनिस्टर्स राष्ट्रपति को एड एण्ड एडवाइज करेगी। जो संवैधानिक स्थिति है उसमें तो यह बात है कि एक आदमी नहीं बल्कि सारे मंत्रिमंडल की एडवाइस पर एमरजेंसी लागू होनी चाहिए थी। लेकिन किसी से कुछ पूछा नहीं। उस एमरजेंसी को किसी भी रूल से सिद्ध नहीं किया जा सकता।

इसके अलावा एक और चीज आ जाती है, मंत्रियों की ज्वान्ट रिस्पॉन्सिबिलिटी। किसी से भी पूछिए, क्या आपने ज्वान्ट रिस्पॉन्सिबिलिटी को तोड़ा या नहीं? अगर ऐसा किया तो आपने संविधान का हनन किया। मैं नहीं जानता कि संविधान में प्रधान मंत्री को दण्डित करने का कोई रास्ता है या नहीं। यह तो हमारे संविधान के जो विज्ञ लोग हैं वे सोचें। मैं तो यह कहता हूँ कि सोलह आने गलत काम किया गया है, संविधान का हनन किया गया है और उतावलेपन में काम किया गया है। उतावली इस बात की थी क्योंकि चारों तरफ खबर भेज दी गई थी। बिहार के चीफ मिनिस्टर को रातोंरात खबर गई। वह रातों-रात दरभंगा से दौड़े हुए पटना आए। भोर में दो बजे चीफ सेक्रेटरी को फोन करके बुलाया। खबर चली गई थी कि लोगों को पकड़ना है। तब वही स्थिति में आपात काल की घोषणा न हो तो क्या होगा। फिर क्या हालत हो जाती इसको आप समझ सकते हैं। ये सभी मुख्य मंत्री सबमें कि प्रधान मंत्री की गद्दी डोल गई।

यह डर था। इस वास्ते वे चाहती थीं कि आपात घोषणा हम जल्दी से जल्दी उसी रात में करा लें। किसी कीमत पर वे मंत्रिमंडल की बैठक नहीं बुला सकती थीं। उसमें खतरा था। मैं एक बार पहले अर्ज कर चुका हूँ कि मंत्रिमंडल की बैठक बुलाने में सबसे बड़ा खतरा यह था कि कभी भी यह चीज, आपात का प्रस्ताव उसमें पास न होता इसलिए कि उसमें मंत्री लोग पूछते कि आखिर किस आधार पर आप इसके लिए कह रही हैं। आपने पत्र भी लिखा प्रेजीडेंट साहब को। उस पत्र में भी आप क्या लिखती है? आप खिलती है:

"As already explained a little while ago, information has reached us, which indicates that there is an imminent danger."

इसके माने है कि अभी हाल में खबर मिली है। यह पहले की कहानी नहीं है। तब क्या शाह साहब की इपटी नहीं थी कि वह पहले की बात को भी देखते? पहले की कौन सी घटना है। पहले अगर कोई बात हुई होती तो क्या आपके पास छ: महीने का समय नहीं था लोगों में, मंत्रिमंडल से चर्चा करने का? समय की आपके पास नहीं कमी थी। तब जरूर तुरन्त कोई बात हुई थी। तुरन्त की घटना एक ही है कि उस दिन शाम, चौबीस तारीख को सुप्रीम कोर्ट का फैसला हुआ और साथ साथ पच्चीस तारीख को यहां दिल्ली में जयप्रकाश का भाषण। यह दो चीजें नहीं हुईं। और दूसरी क्या बात हुई? इसका मुझे पता नहीं चल सका है। 21 से 23 जुलाई 1975 को लोक सभा में आपात के समर्थन में जितने भी भाषण हुए हैं उनको मैंने पढ़ा है, संसद की कार्रवाई को पढ़ लिया है, लोगों ने उन भाषणों में आपातकाल के समर्थन में बहुत कुछ कहा है लेकिन किसी ने भी यह नहीं बताया कि आखिर क्या बिगड़ा हुआ था। जिसके लिए आपात घोषणा कराना जरूरी हो गया था गोलमोल बातें सभी कर सकते हैं, देश में अशान्ति है, बहुत बड़ा खतरा है, इस तरह से साधारण तौर पर कह देने से तो काम नहीं चलेगा।

आपको बताना होगा कि कौनसा खतरा था, किसने क्या किया ? मैं बताता हूँ कि दो घटनाएँ हुई। उन दोनों में सरकार की क्या हालत है ? एक घटना 1974 की तीन दिसम्बर की है। एक कांस्टेबल मारा गया मोरवा में हमारे घर के नजदीक। आज तक आप किसी को ठंग से पकड़ नहीं सके। आज तक कोई मुकदमा पूरा नहीं हो सका। पता ही नहीं चल सका कि किस ने मारा। दूसरे कहा जाता है कि श्री ललित नारायण मिश्र पर बम मार दिया गया था। उनको किस ने मारा कैसे मारा यह आप आज तक नहीं बता सके। आज तक किसी को पक्के तौर पर पकड़ नहीं सके हैं। हम मार्च 77 में आए हैं। यह घटना जनवरी, 1975 की है। तब से जब तक इन्दिरा राज रहा सवा दो बरस में किसी को पकड़ कर क्या आप मुकदमा खत्म करा सके हैं ? किसी मुकदमे का फैसला आप नहीं करा सके हैं।

अब इसको लेकर कहना कि यह पालिटिसियन्ड का काम है, ऐसा किया वैसा किया, यह सरासर झूठ बोलने के सिवा और कुछ नहीं है। और कोई चीज आपके पास नहीं है। यह कहना कि घेराव होते हैं तो मैं पूछना चाहता हूँ कि इतने बड़े देश में कब कहीं कुछ नहीं हो रहा है। एक एक छोटी घटना को लेकर आप चलेंगे तब तो कभी भी आप आपात काल से बच नहीं सकते हैं। इस वास्ते मैं कहना चाहता हूँ कि सोलह अग्रे गड़बड़ का काम किया गया है। शाह कमिशन ने इसका जाहिर किया है और जाहिर इसलिए किया है कि सरकारी झूठ सामने लानी थी। शाह कमिशन के निष्कर्षों की बात मैं नहीं करता हूँ। जो गवाह उसके सामने आए, उन्हीं की बातों पर मैं जाऊंगा, उससे अधिक नहीं कहूंगा। गवाहियां कितनी विध्वंसनीय हैं। इसका भी आप देखें। उसमें एक बात आ जाती है कि आपके मन्त्री जो गवाहियां देने गए थे और उन्होंने वहां जाकर जो गवाहियां दीं, क्या मैं उनको झूठा कहूँ ? जिन्होंने कबूल किया कि

मुझ से उस समय गलती हुई, उनको मैं झूठा नहीं कह सकता हूँ। यह तो नहीं कह सकता। फिर साथ ही साथ एक आदमी ने तो अपनी जान देकर साबित किया कि सच्ची बात कह रहा था। मेरा मतलब दिल्ली के भूतपूर्व उप-राज्यपाल, श्री किशन चन्द से है जिन्होंने आत्म हत्या की कि इस जिल्लत से जीना अच्छा नहीं, बल्कि इससे तो मरना अच्छा है। अब या तो उन्होंने स्वयं आत्म हत्या की, या किसी ने उनको मारा। और मारा शायद इसलिए होगा कि उसने भेद खोला। तो दोनों परिस्थितियों में से कोई भी बात सही हो, वह पुराने शासन के खिलाफ जाती है।

इसका क्या जवाब है कि 11 बजे रात में इमरजेंसी डिक्लेयर करने के लिये प्रधान मंत्री का पत्र आता है और राष्ट्रपति के सचिव श्री बालचन्द्र ने उन्हें मना किया कि मन्त्रिमण्डल की मन्त्रणा पाये बिना ऐसा करने का आपको अधिकार नहीं है। तो भी प्रेसीडेंट साहब ने दस्तखत कर दिये। अब वह तो रहे नहीं जो उनसे पूछा जाये। किन्तु जो हैं उनसे तो पूछ सकते हैं। और इस पर भी इसलिये जोर दिया कि आपात विष बूझ है और उसके जो पत्ते, फल निकले उनकी क्या अनन्त है। एक हुई इन्दिरा गांधी जिन्होंने देश को बरबाद किया, लोगों से बदला लिया। यह कहानी युग युग तक चलेगी, जल्दी खत्म नहीं होगी। जिन माताओं की गोदें सूनी हो गईं, जिन अंधों की लाठी टूट गई, उनके बेटे मारे गये, जिन महिलाओं की मांग सूनी हो गई क्या उनका रोना आपके कहने से खत्म हो जायेगा कि हमने खेद प्रकट कर दिया, गलती को प्रकट किया ? आपको कहा गया लोगों के साथ अत्याचार हो रहा है। पहले तो आपने किसी की बात सूनी नहीं और अगर कोई कहने भी गया तो उनको जेल में ठूस दिया गया। जब किसी ने शिकायत की तो उसको जेल भेज दिया, यहां तक कि भीमसेन सच्चर जी ने भी तो केवल एक पत्र लिख कर ही उनका ध्यान आकषिप्त किया था लेकिन उनको भी जेल में डाल दिया गया।

[श्री मृत्युजय प्रसाद]

जिनके बेटे एक महीने के लिये ही सही वह सजा पाकर जेल नहीं गये, केवल प्रिवेंटिव डिटेंशन में उनका इसलिये रखा कि कहीं वह गवाहों को भड़का न सकें उनको देखने तो इन्दिरा जी दो घंटे के भीतर ही जेल पहुंच गई। न जाती तो मैं उन्हें मां नहीं समझता। किन्तु जब आपने दावा किया कि देश की मां थी, और उस समय लोग मर रहे थे गोलियां खा रहे थे उनके घर गिराये जा रहे थे जेलों में जितनी जगह थी उसके तिगुना चौगुना लोग जेलों में ठूस दिखे गये थे, उस समय आपने उनके बारे में क्यों नहीं सोचा और क्यों एक को भी देखने नहीं गई? किसी अस्पताल, किसी जेल का मुआयना नहीं किया। पटना में आदर्शनीय जयप्रकाश नारायण की अन्तर्दृष्टि किया की सारी व्यवस्था कर दी गई थी, उसके लिये लकड़ी और कागज तक खरीद लिया गया था, सब इन्तजाम पूरा करके रखा गया था। यह तो हमारा सौभाग्य है कि वह बच गये और आज हमारे बीच में हैं, मगर आपने अपनी ओर से क्या उठा रखा? सभी जालिम सोचते हैं कि उनका राज सदा बना रहेगा, कोई सग उठा नहीं सकेगा। यही भूल इन्दिरा जी ने की।

अन्त में मैं कहूंगा :

करीब है बार रोजे महशूर,
छिपेगा कुशतों का खून कब तक।

जो चुप रहेगी जवानें खंजर,
लहू पुकारेगा आस्ती का।

श्री राज नारायण (राय बरेली) : श्रीमन्, मैं आपकी व्यवस्था जानना चाहता हूँ कि यहाँ बोलने का क्या तरीका है। 7 घंटे से हम यहाँ बैठे हुए हैं। सारा केस हमारे केस से ही शुरू हुआ, हमारी इलेक्शन पेटीशन पर यह इमर-जेंसी लगी, आप उसी को बोलने नहीं दे रहे हैं।

MR. SPEAKER: We shall consider that.

SHRI K. P. UNNIKRISHNAN (Ba-dagara): I think some of the parties' time is over. Sir Independent Members are called only after the Members belonging to the various parties are called.

श्री राज नारायण : यह बहुत से लोग जो गुल गुल कर रहे हैं यह नहीं चलेगा। हमने माननीय रवीन्द्र वर्मा को तीन दिन पहले लिख कर दिया था कि हम भाषा के ऊपर और इस शाह कमीशन पर बोलेंगे, और हमारा संगोष्ठन भी है। क्या कारण है कि हमको बोलने का मौका नहीं दिया जा रहा है?

I know Parliamentary practice and I have been in Parliament for more than 25 years, Sir, if it is necessary we can continue this discussion tomorrow.

SHRI SHYAMNANDAN MISHRA: Many Members want to speak. We can continue this discussion tomorrow.

MR. SPEAKER: The pleasure of the House can be taken later. We can consider that later.

श्री राज नारायण : अगर ऐसा करेंगे यह लोग जो व्हिप बने हुए हैं, जबकि हमने परमों ही अपना नाम दे दिया था, अगर हमारे नाम के साथ जाल बट्टा करेंगे तो सभी की मिट्टी पलीत हो जायेगी।

एक मननीय सदस्य : इसको कल तक चलायें।

SHRI SHYAMNANDAN MISHRA: Let there be a fuller discussion.

MR. SPEAKER: I am willing to sit the whole night.

Shri Mavalankar.

PROF. P. G. MAVALANKAR (Gandhinagar): Mr. Speaker, Sir, this important discussion on Shri Shyamnandan Mishra's motion, as I can see sitting all along, has gone all along on expected and anticipated

lines, but I wonder whether the whole point is clinched or perhaps it is misused altogether.

The Shah Commission enquiry was held, reasons for which I need not go into—the whole House knows them, the terms of reference were clear—to find as to why it was necessary for this unfortunate country of ours to go through the nineteen months of emergency, and to know what precisely happened in those nineteen dark and ugly months. It is only through the reports of the Shah Commission, based entirely as they were on judicial understanding and on evidence and on a proper and careful scrutiny of the evidence, and the facts available, that the country could know what ugly and terrible things happened. Even after the emergency was over, there were some people unfortunately in our country, who would not believe that such ugly and terrible things had happened. But the Shah Commission has brought out these things, and the vital truths have been revealed and re-asserted.

I ask: have we, or have we not, learnt any lesson from all what happened during the nineteen months of emergency? Those ugly and utterly immoral events of emergency abound in warnings and lessons, and unless we take warnings and lessons from those ugly and immoral events we will be disloyal to ourselves and to posterity. This Parliament, if I may put it that way, the last Parliament, the Fifth Parliament, barring a few honourable exceptions, was made to conform, in a very ugly manner, in a very arbitrary manner, to the dictates of one individual. I am glad that some of those who were supporting her at that time have at least been honest in saying that they were wrong. I respect them for their learning the lesson. But my point is that this Parliament, by and large, was made captive, press was punished and politicians and political opponents and dissenters were shut down and silen-

ced under MISA. Lakhs of people were arrested under MISA or DIR and the Shah Commission report says that preventive detention was converted into punitive detention. Nowhere in the democratic world preventive detention is considered punitive detention, but the Shah Commission report points out that it was done in this country. I ask this, in all humility whether we have learnt a lesson. Has each one of us endeavoured to see and improve? I do concede, no one can be taught, especially hon. Members of Parliament and politicians, but surely each one of us can learn and my question is: are we learning and are doing these things? This is what the Shah Commission in its reports, findings, observations and recommendations expect of us, all Indians, whether we belong to this party or that party, or inside the House or outside the House.

What do we want? I am asking this question to ourselves. The Shah Commission asks us in a way. The choices are clear, but they are very difficult; very difficult, because this requires a lot of alertness, tremendous vigilance and the whole sense of integrity and value judgment on our part. What are those choices? I would like to put them briefly. The choices are clear, but very difficult. Do we want democracy, or do we want the dangers of authoritarianism to come back? Do we want rule of law to be restored, preserved and strengthened, or do we want arbitrary actions done in a most high-minded and cavalier fashion?

Thirdly, Mr. Speaker, do we want the independence of judiciary, or the subverting and smothering of the entire judicial process? Do we want a free Press or an enslaved Press? Do we want an informed and alert citizenry, or an ignorant and apathetic one? Do we want an upright and impartial Administration, or a servile, obedient, self-interest-finding and self-preservation-seeking Administration?

[Prof. P. G. MAVALANKAR]

Do we want a continuous and critical participation by the people of this great democratic country or an occasional involvement by the people when an election or a by-election comes but an otherwise conformist population? Do we want an enlightened, vigilant and vibrant public opinion or an oversleepy and silent public yes-manship? These are the choices. These are very difficult choices. They are clearly enunciated perhaps, in the Shah Commission's report, but they are very difficult choices.

It is the responsibility not only of the Government—they should no doubt perform—but also of this new Parliament and of all those who love democracy and freedom. We must find out how we can learn from these ugly 19 months of Emergency.

Now, a word or two about the Shah Commission's report. Copies of this report were burnt in many cities, and in my own state, viz., Gujarat. I was ashamed of it. The Congress (I) people did it. I told them: "If you have a better and a more clear alternative, why don't you put it before the people?" It is only in Hitler's Germany that books were burnt, and only in British democracy that books were read. As long as books are burnt, democracy will get destroyed, and when books are read, democracy will prosper.

SHRI C. M. STEPHEN: There are books and books.

PROF. P. G. MAVALANKAR: I want the Leader of the opposition to remember that burning of reports and books smacks of a fascist, dictatorial tendency. I can understand, you may not like a part, or the whole of the Shah Commission's report. But instead of burning it, the better thing will be for you to bring out your own.

What does the report of the Shah Commission say? I want to mention 2 or 3 things quickly. It says very clearly:

"Tyrants sprouted at all levels overnight—tyrants whose claim to authority was largely based on their proximity to the seats of power".

These tyrants, ever hungry for power, were no longer there for some time. For some time, they seemed to have gone underground. They are now raising their head in the horizon. You must be careful about this.

I told Mrs. Gandhi in this very House on 22nd July 1975, which was a Tuesday, that it was not an act of a courageous Prime Minister, but that the act of promulgating Emergency was an act of a weak and cowardly Prime Minister. I said that she wanted to live on borrowed strength. This report clearly says:

"In the absence of any explanation, the inference is inevitable that a political decision was taken by an interested Prime Minister in a desperate endeavour to save herself from the legitimate compulsion of a judicial verdict against her."

And finally, at another place, the Shah Commission's report says this very succinctly and nicely:

"The Government has a special responsibility...."

It is talking about the new Janata Party Government. It says:

"The Government has a special responsibility to ensure that extra constitutional centres of power are not allowed to grow, and if and when located, to snuff them out ruthlessly."

This is what is expected now, of this Government, of this Parliament and of all of us.

Therefore, to conclude: where do we go from here now? Mrs. Gandhi

and her caucus and her political supporters have committed several types of offences. Their criminal offences are being now investigated and perhaps in a few weeks, they will go to a court of law. Her political affronts on freedom and democracy had been well punished in March 1977 elections when the people of India gave their clear verdict. But what about her constitutional crimes? That is the question, and it is perhaps the most perplexing question. How do we deal with them, punish them? We seem to be not very sure. What can this Parliament do? What can this Government do? That is a vital question and I beg of the Government to think and act courageously and convincingly on this point before time runs up, because time is of essence in this kind of thing; because we are racing against time.

And finally about her ethical misconduct—how do you deal with ethical misconduct of one individual or one party or one group? May I say with all humility, the only answer is that whenever there is misconduct at the highest place, the real answer is that only a proud spirit of vigilant and free people can deal with this kind of a situation. Therefore, when we are discussing the Shah Commission's two Reports, I consider particularly these two aspects: what laws can do and what we can do? Laws can do something; I do concede that laws must therefore do something. But laws have their own limitations; laws have their own limits. Mr. Speaker, you very well know those limitations of laws, because however good one may try, however honest one's intentions are, laws have their own limitations. But my faith is pinned down not merely in laws—although I want laws, I want them to be just; I want them to be expeditious but just and honourable and not with a sense of political vindictiveness—but, at the same time, I would say that apart from laws, what we want is the freedom loving people who can and must do everything to defend

democracy and to strive for and advance towards a just and an egalitarian society, to strengthen the rule of law, to preserve values of truth, freedom and justice, and thereby protect and enhance and expand the quality of life and the fabric of democracy in our ancient and dear Motherland.

MR. SPEAKER: Mr. Raj Narain. You claim to be responsible for emergency.

श्री राज नारायण (रायबरेली) : श्रीमन्, अब इतनी देर में आपने मुझे पुकारा है कि मेरा दिमाग इधर से उधर चला गया।

हमारे मित्र श्री स्टीफेन साहब ने एक तर्क दिया था कि "ट्रिब्यूनल इन्क्विरी एमर्जेंसी" इसकी जांच के लिए ग्राह कमीशन बना, उसके पहले के लिए नहीं। मैं उनसे निहायत अदब के साथ अपील करूंगा कि वह टर्म आफ रेफरेंस देखें—

The terms of references of the Commission shall be as follows:

"To enquire into the facts and circumstances relating to the specific instances."

आगे चल कर उन्होंने यह लिखा है कि एमर्जेंसी के बाद ग्रीन प्री-एमर्जेंसी के पीरिअड का जो कुछ होगा वह भी यह कमीशन देखेगा। तो प्री-एमर्जेंसी में यह एमर्जेंसी कैसे लागू हुई यह सब भी आ जाता है। इसलिए मैं स्टीफेन साहब से कहूंगा कि वह वकील हैं, हम ने वकालत पढ़ी है लेकिन कचहरी में की नहीं है, जनता की वकालत की है...

MR. SPEAKER: It is not correct to say that you have not appeared in a court; you have appeared in the court.

श्री राज नारायण: हां, मैं अपने केस में गया हूँ।

अब, श्रीमन्, मैं बड़ा आश्चर्यचकित हूँ कि आखिर हम लोग यहां क्यों बैठे हैं? क्या सही मैं हम जनता का प्रतिनिधित्व कर रहे हैं? क्या सही मैं हमारे सामने जनता की

[श्री राज नारायण]

थलाई है ? हमारे मित्र अभी जो बोलें हैं मावलंकर साहब, मैं इनकी बात से पूर्णतः सहमत हूँ कि हमें चुनाव है कि हमें क्या करना है। मुझे शर्म आती है इसको देखकर कि आज भी हमारे सदन में ऐसे तत्व विद्यमान हैं जो कहते हैं कि एम.जैसे ठीक था और एक सज्जन तो यहां पृष्ठने लगे। मैं उनको बड़ा प्यार करता हूँ, रईस पांडिचेरी, वह पृष्ठने लगे कि क्या आप प्रधान मंत्री की हां में हां मिलाने के लिए तैयार हैं ? यह डिक्टेटर की बोली है या डेमोक्रेट की बोली है ? य तो यह चाहते हैं कि वह दिन आ जाय भारतवर्ष में कि प्रधान मंत्री डिक्टेटर बन जाए और जो वह कहे उसके दल के सब सदस्य उसी की हां में हां, हां में हां मिलाएं।

न तू कह हमारा

न हम कही तोहार।

यह तो बिल्कुल डिक्टेटर की आवाज है। इनको डेमोक्रेसी से क्या लव है, क्या प्यार है, क्या मोहब्बत है ?

SHRI RAGAVALU MOHANARAN-
Sir, he has not said anything about Sir, he has not said anything about toadies or yesmen: he has said something about obedience. (Interruptions)
He never asked about the toadies or the yesmen of the Prime Minister; he has asked about the obedience.

SHRI A. BALA PAJANOR: I am not worried; the translation is not correlated; let him say anything; I am not bothered.

श्री राज नारायण : अब मैं आपके द्वारा सम्मानित सदस्यों की खिदमत में पेश करना चाहता हूँ कि यह इमजेंसी आई क्यों ? शाह कमीशन ने शुरू में लिखा है कि 12 जून को इलाहाबाद हाईकोर्ट का श्रीमती इन्दिरा गांधी बनाम राज नारायण, राज नारायण

बनाम श्रीमती इन्दिरा गांधी फैसला हुआ। मैं जजमेंट के सारे रेलिवेन्ट पोर्शन पढ़ दूंगा :

"All that I would say is that the statement made by the respondent No. 1 (meaning, Shrimati Indira Nehru Gandhi) fails to satisfactorily explain the inconsistency."

यह पूरा पैरा संबंधित है जो इन्दिरा जी ने अपना बयान दिया है, यानी हमारी पेटीशन है, पहले उसका रिटर्न रेप्लाइ दिया "समर्थित-एल्स", एडिशनल रिप्लाइ दिया "समर्थित-एल्स", एंटेरेगिस्टरी रेप्लाइ दिया "समर्थित-एल्स" और जब विटनेस बाक्स में आई तो :

"When the respondent No. 1, however, entered the witness box she took a different stand and said that so as she knew no decision about her candidature was taken by the All India Congress Committee."

विटनेस बाक्स में आकर बदल गई। हमारे सम्मानित सदस्य क्या इस तरह के व्यक्ति को समर्थन देंगे जिसकी बात का कोई यकीन न हो और जो कभी सत्य बोलना जानता ही न हो ? इन्दिरा जी ने केवल एक कला सीखी है अपने जीवन में— कभी न सत्य बोलना। कभी भी सत्य न बोलने वाले का साथी एक कलुषी होगा— कलुषी के माने पापी। (व्यवधान) हमारे यहां सूत्रों में कहा गया है कि विधान निर्मात्री परिषद् में जाग्रो तो सत्य पक्ष को धारण करो। सत्य को असत्य से विधा मत देखो। जो मनुष्य या जो प्रतिनिधि सत्य को असत्य से विधा जाते देखेगा वह कलुषी होगा, यानी पापी होगा। इसलिए मैं कहना चाहता हूँ कि पापी मत बनो। दुनिया में एक दिन मरना है। न कोई लेकर आया है, न कोई लेकर जायेगा। खाली हाथ आये हो, खाली हाथ जाओगे। इसलिए यह सन्तोष तो रहे कि सत्य बोले

मैं जजमेंट को पढ़ता हूँ :

"The plea of the respondent No.1 that she held herself out as a candidate for the first time on the 1st February, 1971, is not established to be true."

यानी श्रीमती इन्दिरा नेहरू गांधी ने जो कुछ अपनी बात कही, वह कभी सत्य नहीं रही—यह जजमेंट से सिद्ध होता है। यह जजमेंट लम्बा है, इसको आप पढ़ लें। जो आर्डर है वह मैं मुनादे देता हूँ :

"In view of my findings on Issue No. 3 (first set), Issue No. 1 (first set) read with Additional Issue No. 1, Additional issue No. 2 and Additional Issue No. 3, this petition is allowed and the election of Smt. Indira Nehru Gandhi respondent No. 1, to the Lotk Sabha is declared void."

आगे देखिए :

"The respondent No. 1 has been found guilty of having committed a corrupt practice under Section 123 (7) of the Representation of the people Act by having obtained the assistance of the Gazetted Officers of the State Government of U.P. viz., the District Magistrate, Rae Bareilly, the Superintendent of police, Rae Bareilly, the Executive Engineer, P. W. D., Rae Bareilly, Engineer, Hydel Department, Rae Bareilly, in furtherance of her election prospects in the manner indicated in my finding on Issue No. 2. she has further been found guilty of having committed another corrupt practice under Section 123(7) of the Representation of the people Act by having obtained the assistance of Shri Yashpal Kapur a Gazetted Officer in the Government of India holding the post of Officer on Special Duty in the Prime Minister's Secretariat for furtherance of her election prospects in the manner indicated in my finding on Issue No. 1..... The respondent No. 1 accordingly

stands disqualified for a period of six years."

आगे आने वाले 6 सालों के लिये, इस फैसले के दिन से, श्रीमती इन्दिरा नेहरू गांधी को किसी भी चुनाव के लिए वंचित कर दिया गया, वह गांव सभा की पंचायत का चुनाव तक नहीं लड़ सकती थीं। यह इलाहाबाद हाईकोर्ट का जजमेंट था। इस तरह से वह 6 साल के लिए डिसक्वालिफाई हो गई, लेकिन अब इनका डिसक्वालिफिकेशन कैसे हटता है। वह हटता है एमर्जेसी में। यदि एमर्जेसी न लगी होती तो उनका डिसक्वालिफिकेशन कभी भी नहीं हटता। क्योंकि जब वह सुप्रीम कोर्ट में पेटिशन में आई, अपील की—मैं सम्मानित सदस्यों को यह जरूर बतला सकता हूँ—जो जज साहब आज हमारे आदरणीय स्पीकर बन कर बैठे हुए हैं, इनका भी इस केस में बहुत बड़ा श्रेय है—क्योंकि जो हमारे इन्टेलिजेंट लोग थे, जिनको इलाहाबाद हाईकोर्ट में एक बार जज ने एलाऊ किया, लेकिन दूसरी बार काट दिया, जब श्रीमती इन्दिरा नेहरू गांधी लन्दन गई थीं—इसके बड़े बड़े किस्से हैं, मैं बाद में बतलाऊंगा।

कौन कौन गुण वरणी जवरी तोर,
जियने खियौली बारामूली,
मइले खिअइवी झोर।

मैं कांग्रेस पार्टी के नेताओं से कहना चाहता हूँ—अब वह आपको झोर खिलाना चाहती हैं। झोर मत खाइयेगा, स्टीफन साहब, साठे साहब, वरना देश वरबाद हो जायगा.... (व्यवधान)

इन्टरप्रेटर लोग जरा ठीक से ट्रान्सलेशन करें, ताकि हमारे इधर के साथी समझ सकें, आप बचराइये मत, यदि स्पीकर साहब समय देंगे तो मैं अंग्रेजी भी बोल दंगा।

MR. SPEAKER: There is something wrong.

SHRI RAGAVALU MOHANARAN-GAM: He should be given more time.

MR. SPEAKER: No, no. He has got five minutes more.

श्री राज नारायण: मैं निवेदन कर रहा था, 6 साल के लिए श्रीमती इन्दिरा नेहरू गांधी डिस्क्वालिफाई कर दी गई। इलाहाबाद हाई कोर्ट का यह फैसला सुप्रीम कोर्ट में कभी भी नहीं बदलता, जब वह अपील में आई, तो मेरी जानकारी है, मैं एफिडेविट दे कर कहने को तैयार हूँ—जहाँ जहाँ इनके लोग जाकर बात करते थे, वहाँ की खबरें शाम को तिहाड़ जेल में मेरे पास पहुँची जाती थीं। जजों ने कह दिया था—इलाहाबाद हाई कोर्ट के जस्टिस सिन्हा का जजमेंट आल्टर नहीं हो सकता। तब उन्होंने कहा कि पोलिटिकल तरीका अपनाइए, कानून को ही पालियामेंट से बदलवा दीजिए और तब पालियामेंट के जरिए उस कानून को बदला गया। जिन जिन मुद्दों पर श्रीमती इन्दिरा गांधी हारी थीं, वे सभी पालियामेंट के जरिए बदल दिए गए। यह पालियामेंट का डिस-रिस्पूट है या नहीं? पालियामेंट को इससे बड़ कर बदनामी क्या मिलेगी वह सब रिट्रास्पेक्टिव हो गया, मानों इलाहाबाद के जज ने 12 जून को कोई फैसला ही नहीं दिया था।

इलाहाबाद हाई कोर्ट बैठा ही नहीं, मुकद्दमा मुना ही नहीं गया। सैकड़ों गवाह गुजर गए, करीब पाँच साल तक मुकद्दमा चले तो गवाह दूढ़ों, कागज जुटाओं और लोग परेशान हो गए। यहाँ पर जैसे पालियामेंट हो ही नहीं, हम लोग जेल में थे, और पालियामेंट में श्रीमती इन्दिरा नेहरू गांधी की हाँ में हाँ मिलाने वाले लोग थे, बन्दर बन्दर भालू, भालू। मैं बहुत शर्म के साथ कहता हूँ कि नर्ककुण्ड के गन्दे कीड़ों ने सदस्यों के दिमागों को चाट कर छलनी कर दिया था क्योंकि सत्य बात वे देखते ही नहीं थे, वरना इस तरह का गन्दा कानून हरगिज हरगिज न बनता। मैं पूछना चाहता हूँ साठे साहब से, स्टीफन साहब से,

उन्नीकृष्णन साहब से और जितने भाई बैठे हैं उनसे मैं नम्रतापूर्वक निवेदन करता चाहता हूँ, छाती पर हाथ रख कर कहना चाहता हूँ कि क्या वे चाहते हैं कि ऐसे व्यक्ति के हाथ में फिर सत्ता जाए, जो व्यक्ति कभी सत्य बोलना नहीं सीखा। खुदा के लिए, भगवान के लिए, हे भाई साठे जी, हे भाई स्टीफन साहब, अपने दिमाग को आप परिवर्तित करो और अब इन्दिरा नेहरू गांधी के जाल बट्टे में न फँसों। एक प्रार्थना तो यह है दूसरी प्रार्थना मैं अपने कानून मंत्री श्री शान्ति भूषण जी से करना चाहता हूँ:

सीता कै अति विपत्ति विशाला।

बिनहि कहे भल दीनदयाला॥

हनुमान जी जब लंका में गए और वहाँ से लौट कर जब आए, तो राम ने उनसे पूछा कि सीता कैसी है। तो उन्होंने कहा कि सीता के बारे में कुछ न कहना ही अच्छा है:

सीता कै अति विपत्ति विशाला।

बिनहि कहे भल दीनदयाला॥

ऐ दीन दयाल, उनके दुःख के बारे में कुछ न कहना ही अच्छा है। भारत की जनता के बारे में बोलते हो? जनता कपड़ा चहाती है, खाना चहाती है, मकान चाहती है, पढ़ाई चाहती है। दवाई चाहती है ये तो बोल गए लेकिन यह बात मैं समझता हूँ ठीक है:

“मांग रहा हिन्दुस्तान
रोटी, कपड़ा और मकान।”

कांग्रेस से निकलकर यह नारा हम दे रहे हैं सन् 1946 से। मैं यह चाहता हूँ कि जब शाह कमीशन ने इमरजेंसी की एट्रॉसिटीज के बारे में सारी बातें लिखी हैं, तो वहाँ यह भी लिख देना चाहिए था कि अगर इमरजेंसी न रही होती और आर्टिकल 14 लागू होती, तो हरगिज इस तरह का कानून संसद में न बनता। जिन्होंने इमरजेंसी को लगाया, उन्होंने अपनी छः साल की डिस्क्वालिफिकेशन को ठीक करा

लिया। शान्ति भूषण जी, आप उसके लिए क्या करने जा रहे हैं? यह भी जनता पूछ रही है। जनता हम से यह भी पूछ रही है कि इमरजेंसी के कारण ही जो छः साल डिस्क्वालिफिकेशन खत्म हुई, उसको तुम्हारी सरकार ठीक करेगी या नहीं करेगी इसीलिए आप देखेंगे कि हम ने जो एमंडमेंट दिया है उसमें यह है कि पिपुल्स रिप्रेजेंटेशन एक्ट में ऐसा संशोधन कर दिया जाए कि 10 साल के लिए इन्दिरा जी चुनाव लड़ने के कार्य से वंचित हो जायें। यह दस साल के लिए हमारा एमंडमेंट है।

श्री कंवर लाल गुप्त : आपने दस साल ही क्यों कहा है ?

श्री मल्लिकार्जुन : आप तो उनके खिलाफ चुनाव लड़ने वाले हैं। राजा नारायण जी आप दस साल ही क्यों बोल रहे हैं (व्यवधान)

श्री राज नारायण : हमको शान्ति से सुनिए तो हम आपको सुनायें। इतनी देर से हम बैठ कर आपकी बात सुनते रहे हैं। किसी के बीच में नहीं बोले हैं।

मेरा निवेदन है कि हमने श्री श्यामनन्दन जी के मूल प्रस्ताव पर एक संशोधन रखा है। उस संशोधन को यह सदन माने। वरना कोई ताली बजाने से कोई काम चलने वाला नहीं है। मैं माननीय सदस्यों से निवेदन करता हूँ कि इस सदन से अपनी राय जाहिर करवाओ ताकि सरकार यह अच्छी तरह से समझे कि यह इस सदन की राय है हमारे दल के सदस्यों की राय। आप जनता के प्रतिनिधि हैं। जनता की राय यहां प्रकट होनी चाहिए। जब यह होगा तब तो समझो कि यह संसद है वरना यह अपने महत्व को छोड़ देगी ?

एक तर्क हमारे मित्रों ने जो दिया है उस तर्क को मैं इस सदन के अन्दर खंडित करना चाहता हूँ। वह तर्क है कि रूल 12 में प्राइम मिनिस्टर को अधिकार है कि वह ऐसा कर सकता है। शाह कमिशन की रिपोर्ट में यह स्पष्ट कहा गया है कि रूल 12 में प्राइम मिनिस्टर को अधिकार नहीं है। रूल 12

के तीन भाग हैं—ए०, बी० और सी०। ए० में तो उनको अधिकार है मगर बी० में नहीं है।

“(da) - Cases relating to a proclamation of emergency under Articles 352 to 360 of the Constitution and other matters related thereto.”

“In the light of the foregoing rule, it not understood how this provision could have been circumvented by the application of Rule 12 of the same transaction of Business Rules.”

यह तो शाह कमिशन ने स्पष्ट लिखा है; मैं यह समझ नहीं पा रहा हूँ कि रूल 12 का अधिकार प्रधान मंत्री को कैसे चला जाता है। “इस रूल के अन्तर्गत अधिकार लेकर राष्ट्रपति को सलाह दी गई है इसमें आगे चल कर मैं और पढ़ देता हूँ। यह इस रिपोर्ट का पांचवां खण्ड है, उसमें लिखा है :—

“This was more in the nature of a shock treatment...”

यानी जो इमरजेंसी लागू की गई, वह श्रीमती इन्दिरा नेहरू गांधी का संघट्टीट्रैटमेंट था।

“...than a legally permissible Emergency, which could be declared according to the law then in force.”

यह लीगल एमरजेंसी नहीं थी, यह तो सोफ्ट ट्रीटमेंट था जो कि देश को दिया गया। हम नहीं समझते कि प्रधान मंत्री को यह अधिकार कैसे पहुंचता है। कंसिटीयूशन के प्रविजन में तो यह है ही नहीं। कंसिटीयूशन में लिखा है कि प्रधान मंत्री काउंसिल आफ मिनिस्टर्स की राय मानेगा। Prime Minister is not Council of Ministers. Council of Ministers is something different. Prime Minister with all the Ministers is the Council of Ministers.

[श्री राज नारायण]

इसलिए इसके सम्बन्ध में किसी के दिमाग में मुगलता नहीं रहना चाहिए। जो एमरजेंसी लागू की गई वह बिल्कुल ला के खिलाफ लागू की गई। यह कांस्टीट्यूशन की हत्या थी। मैं शांति भूषण जी से कहना चाहता हूँ कि जो इतना जबरदस्त अपराध देश की जनता के साथ किया गया उसके बारे में कुछ करें।

श्रीमन् मैं एक बात और कहना चाहता हूँ जिसकी मुझे बड़ी प्रसन्नता है। आज हम यहां आ रहे थे तो हमको श्री मनी राम बागड़ी ने यह पत्र दिया।

An open letter to the Members of Parliament by Acharya J. B. Kripalani.

एक माननीय सदस्य : कब की बात है ?

श्री राज नारायण : यह तो जुलाई की है।

"What the Government has decided in this matter coincides with the assurance the Prime Minister is said to have given to Mrs. Gandhi when he met her for the first time after assuming his high office, that he will save her, but he could not save her son. This decision to prolong the cases against her falls in line also with the answer he gave to a press correspondent who asked him why his Government was not expediting the cases against Mrs. Gandhi. To this he replied, 'Has she not suffered enough?'"

यह जवाब है कि क्या श्रीमती इंदिरा नेहरू गांधी काफी मुसीबत नहीं उठा चुकी हैं ?

Copy of the letter, dated 27th June, 1978, from Acharya J. B. Kropalani (Camp: Raj Bhavan, Madras)

एक दूसरे में उन्होंने यह लिखा है :

Mr. J. B. Kirpalani has said that he did not understand the Prime Minister Mr. Morarji Desai's view that there

could be no interference by any outside authority.

मैं इसी पर आ रहा हूँ। आगे आप देखिये :

"I am sorry to read in the same paper that the Law Minister advocated even a 'more softer line' and thinks that 'she has been punished by the people when they threw her out in the Lok Sabha Poll'."

शान्ति भूषण जी की राय को मैंने पढ़ा है। यह दादा कृपालानी का ओपन लेटर था आल मैम्बरज् आफ पार्लियमेंट को।

THE PRIME MINISTER (SHRI MORARJI DESAI): It was pointed out to him that he was quite wrong in what he said. Then he said that it was a rumour and that if it was wrong, he was sorry.

श्री राज नारायण : प्रधान मंत्री जी ने माफ कर दिया बहुत अच्छी बात है। कितनी अच्छी बात हमने कर दी है बहुत से मेम्बरों के मन में इसके बारे में शंका थी और वे इसके बारे में पूछा करते थे। यह पत्र हम को दिया गया। उनकी डिम्पन नहीं थी प्राइम मिनिस्टर को इसके बारे में कहें। वे यैस में यैस और नो में नो मिलाते हैं। श्री बागड़ी ने हम को इसे लाकर दिया और हमने इनको यहां आपके नामने रख दिया। बहुत अच्छा हुआ कि इसकी सफाई हो गई। मैं प्राइम मिनिस्टर का अनुशील हूँ कि उन्होंने सफाई कर दी है और वह यहां उपस्थित थे। मैं आपका और भी ज्यादा अनुशील हूँ कि आपने मुझे ऐसे मौके पर बताया जब प्रधान मंत्री यहां उपस्थित थे।

ला मिनिस्टर यहां बैठे हुए हैं। मैं उनसे लाजिक की एक बात कहना चाहता हूँ और उनसे उसके बारे में पूछना चाहता हूँ। श्री मोरारजी देसाई अन्तिमकी सीट हाजिर गए थे तो उनको जनता ने यह पनिशमेंट क्यों दी ? शान्ति भूषण जी कहते हैं कि इंदिरा जी को मनिशमेंट मिल चुकी है।

मैं उनसे अब पूछना चाहता हूँ कि श्री चन्द्र
शानु गुप्त

SHRI RAGAVALLU MOHANARAN-
GAM (Chengalpattu): Has it anything
to do with the Shah Commission's
report?

SHRI RAJ NARAIN: It has got
everything to do with the Shah Com-
mission's report. You understand it.

MR. SPEAKER: You have already
taken half an hour.

SHRI SHANTI BHUSHAN: May I
intervene for half a minute with your
permission? Normally, of course, the
whole world knows what the rela-
tionship between Raj Narainji and
Shanti Bhushan is. I only say what he
tells me to say.

He has put a query and I would
like to reply to him. Perhaps there
has been some misunderstanding
which I have tried to clear on an ear-
lier occasion also. Mr. Raj Narain is
a voracious reader of newspapers and
other journals. So he must have
come across it also. I have
said that so far as the commission of
a crime against any existing law is
concerned, losing an election is entire-
ly irrelevant. Law has to take its
course, law does not recognise any
distinction between high and low, as
to what position was held by a parti-
cular person and what position was
not held by a person. Therefore, for
any contravention of law by any
person, the law has to run its
course and every one is liable
to be prosecuted for that offence. But
so far as any so-called political
crimes, namely, political misdeeds not
amounting to offence under the exist-
ing law are concerned, law only re-
gards that political punishment to be
rendered by the people, namely, loss
of an election is the punishment
which the people give and the kind
of defeat in an election by which it
is ensured that a person will never
be able to win an election again in
his or her life-time is the maximum
punishment that the people can give
for such political deeds.

Our Constitution ensures, and we
are those who believe in that Consti-
tution, that a person can be prosecu-
ted only for an act which was an of-
fence at the time of the commission
of that act and no retrospective effect
can be created within the framework
of the law. Of course, some people
might be of the view....

श्री राज नारायण : That will do.
श्रीमान् यह सदन की साधु परम्परा है कि सदन
का सम्मानित सदस्य और विशेष कर के एक
मंत्री कुछ कहे उसको उसी रूप में मान लेना
चाहिये । तो हमारे माननीय शांति भूषण
जी जो कह रहे हैं मैं उसको मान रहा हूँ ।
अब मैं कहना चाहता हूँ कि ठीक है जनता
ने उनको सजा दे दी । तो क्या कोर्ट उनको
सजा नहीं देगा ? मैं विधि मंत्री की क्षमता
को जानता हूँ, मैं उनसे जानना चाहता हूँ
कि शाह कमिशन ने कहा है कि अधिकांश
जितने आर्डर दिये गये, टेलीफोन कट,
बिजली लाइन कट, वसों को लाओ, यह सारे
के सारे ओरल आर्डर्स हैं । कहिये तो पढ़
दु । इन ओरल आर्डर्स के लिये कहां से कोर्ट
में सजा दिलायेंगे । इसलिये हमारा कहना है
कि स्पेशल कोर्ट बनना चाहिये । बिना स्पेशल
कोर्ट के यह ओरल आर्डर किसी आर्डिनरी
कोर्ट में जा नहीं सकता, वहां इस पर कोई
कार्यवाही नहीं हो सकती । हमारे विधि
मंत्री जी बुद्धिमान हैं वह इस चीज को समझते
होंगे, हम यह कह रहे हैं कि जिस तरह से
शाह कमिशन में गवाहियां आयी हैं

MR. SPEAKER: I have been un-
derstanding this. But the only thing
is, time is very precious.

श्री राज नारायण : मौखिक रूप से
कहा गया और उस आदेश का पालन किया
तो मौखिक आदेश पर कोर्ट में कोई मुकदमें
की कार्यवाही होगी या नहीं होगी यह मैं
उनसे जानना चाहता हूँ । आगे चलने के बाद
इसमें और बहुत सी चीजें आयेंगी जिसमें

[श्री राज नारायण]

यह पता चलेगा कि किस किस तरीके से किन-किन लोगों को मुसीबत में रखा गया। माननीय ज्योतिर्मय बसु हिसार जेल में थे। यह कहें कि अब हिसार जेल में जाने का नाम नहीं लूंगा।

MR. SPEAKER: Mr. Raj Narain, you must finish. You have taken more than 45 minutes.

SHRI K. GOPAL: Sir, you give whatever time he wants, but I hope our time will not be cut.

श्री राज नारायण : पांच मिनट मुझे और दे दीजिये। मैं आपको एक घटना बता रहा हूँ कि जब मैं सुप्रीम कोर्ट के मुकदमे के सम्बन्ध में तिहाड़ जेल में आया हुआ था। हमारे दो वकील थे, एक श्री प्रणव कुमार चटर्जी और दूसरे श्री जे० पी० गोयल। इनकी हमने कहा कि जे० पी० के बारे में बड़ी खबर उड़ रही है, जरा जाकर जेल में देख आओ। ये लोग चण्डीगढ़ गये और देखकर आये। आकर हमको कहते हैं— नेताजी, उनका पांव सूज गया है, मुंह सूज गया है, अब ऐसा लगता है कि शायद वंचे नहीं।

दूसरे दिन हमने चिट्ठी लिखी एक गृह-मंत्री को और एक डा० कर्ण सिंह, स्वास्थ्य मंत्री को और यह लिखा कि आप इंडियन इंस्टीट्यूट आफ मेडिकल साइन्सज के डा० बी० एन० टंडन को भेज दो, वह श्री जय प्रकाश जी के स्वास्थ्य की अच्छी तरह से परीक्षा करके सब जगह बता ताकि जेल में कोई अतंक पैदा न हो। हमने यह भी कहा कि अगर आप ऐसा न कर सकें तो पुलिस की हिरासत में जैसे हम लोगों को अदालत में ले जाया जाता है, पुलिस की हिरासत में हमको वहां ले चलिए, हम चण्डीगढ़ जेल में जे० पी० को देखकर लोगों को बता देंगे। यह चिट्ठी लिखी, 10, 11 बजे रात हो गई।

एकदम फौरन तुगलकी फरमान हमारे पास आ गया कि तिहाड़ जेल में राज नारायण का रुका रहना खतरे से खाली नहीं है, इनका ट्रान्सफर फौरन हिसार जेल में कर दिया जाये क्योंकि हरियाणा की सरकार ने इनको अपने यहां रखना मान लिया है।

रात में ही सुपरिन्टेंडेंट साहब आये और बोले साहब यह ट्रान्सफर आर्डर आ गया है। हमने कहा देखिये, रकिये, हम चलेंगे। इस समय ले चलेंगे तो जबर्दस्ती कर के ले जाओ, अपने से नहीं जायेंगे : सबरे में चला जाऊंगा। तो सुपरिन्टेंडेंट ने कहा कि सबरे हम तैयार हैं।

मैं यह बताना चाहता हूँ कि इन्दिरा नेहरू गांधी ने एमर्जेंसी के बीच में कितनी नापाक साजिशें की हैं, जय प्रकाश जी को मारने की पूरी साजिशें थीं। (अवधान) श्री मोरारजी देसाई समय के कालचक्र के मुताबिक प्रधान मंत्री के पद पर बैठे हैं, उनको याद होगा जय प्रकाश जी के घर जब पुलिस गई रात को एक बजे के करीब तो राधाकृष्ण ने हमको टेनीफोन किया कि नेताजी पुलिस आ गयी है। हमने कहा कि हम आते हैं, मोरारजी देसाई को फोन कर दिया कि जय प्रकाश जी को गिरफ्तार करने पुलिस चली गई है। उन्होंने कहा कि ठीक है, जावेदो। इसके बाद हम टैक्सी लेने निकले तो चारों तरफ से हमारा गेट पुलिस ने घेर रखा था। कोई निकल ही नहीं सकता था। फोन से टैक्सी नहीं आई तो हमने फाटक खोला कि साइकिल से टैक्सी लाओ। देखा, एकदम सरुड़ों पुलिस हमारे घर के चारों तरफ थी। यह हम लोगों की हालत थी।

MR. SPEAKER: I have given the maximum time.

श्री राज नारायण : अध्यक्ष महोदय, एक मिनट।

MR. SPEAKER: You cannot go on asking for time. Your one minute has gone.

श्री राज नारायण : मैं हिसार जेल में था, हिसार रेलवे स्टेशन पर जहाँ गाड़ी रुकी, पुलिस ही पुलिस पहुँच जाती थी। चाहे कोई मुसाफिर उतरने वाला हो या नहीं, फौरन गट्टा पकड़ कर खींच लिया और ले जाकर कैम्प में डाल दिया और जबर्दस्ती नसबन्दी हो गई। इस प्रकार का अमानवीय कुकर्म एमर्जेंसी के दौरान इंदिरा नेहरू गांधी की सरकार ने किया है। मैं आज इस सदन में यहाँ की दीवारों को और रेशे-रेश को पुकार कर कह रहा हूँ हमारी बात को सारे देश की जनता में फैलाये कि श्रीमती इन्दिरा नेहरू गांधी के हाथ में कभी भी जनता अपना ईमान न दे, उनके हाथ में कभी सत्ता जने न दे। अबकि सत्ता जायेगी तो जहाँ कुछ बच-बुचा है वह भी सत्यानंद हो जाएगा।

अन्त में मैं फिर माँग करता हूँ कि हमारे इस संघोधन को ये लोग स्वीकार करें, स्पेशल कोर्ट बँटाई जाये और सुप्रीम कोर्ट की राय जेन को क्या बात है? इतने विद्वान वकील बैठे हैं, अगर सुप्रीमकोर्ट की राय आवश्यक थी, तो पहले क्यों नहीं लिखी आई 11 मार्च को शाह कमीशन की रपट आई है, मार्च, अप्रैल, मई, जून, जुलाई, अगस्त कितने महीने बीत गये हैं, 5 महीने के बाद क्यों लिखा? इसका मतलब, जो कि कृपालानी जी ने लिखा है कि यह उदास है, सौपटर लाइन रखना चाहते हैं। सौपटर लाइन छोड़िये, नहीं तो सौपटर लाइन पर जनता श्री शांति भूषण जी के साथ हम लोगों को आफटर कर देगी, बचेंगे नहीं।

AN. HON. MEMBER: When are we adjourning?

MR. SPEAKER: Any way we will have to sit till 8.30 p.m., because we have started half an hour late.

SHRI KANWAR LAL GUPTA: We have to extend the time.

MR. SPEAKER: Let us see. Mr. Unnikrishnan (Interruptions)

श्री राज नारायण : अध्यक्ष महोदय, अगर इस चर्चा के समय को बढ़ाया जाना है, तो मुझे कुछ और समय दे दिया जाये, ताकि मैं उन चिट्ठियों के बारे में कुछ बता सकूँ, जो मैं ने जेल से लिखी थीं। कुछ चिट्ठियाँ इस किताब में छप गई हैं। (व्यवधान)

SHRI K. RAMAMURTHY (Dharma-puri). What about the time allotted to our party?

MR. SPEAKER: No, No. Your leaders has taken much of the allotted time.

SHRI KANWAR LAL GUPTA: I move a motion that the time for the discussion on the Reports be extended from 6 to 8 p.m. tomorrow. (Interruptions)

MR. SPEAKER: Let us see. It is for the House....

AN HON. MEMBER: We can decide about it now. It is only seven minutes to eight.

MR. SPEAKER: We are going to sit till 8.30 p.m. because we started half an hour late. (Interruptions) I will put it to the House. Is it the pleasure of the House to sit till 8.30 p.m.?

SEVERAL HON. MEMBERS: No. We can take it up tomorrow.

MR. SPEAKER: I would like to hear the Minister for Parliamentary Affairs.

SHRI K. P. UNNIKRIISHNAN: Tomorrow is Friday and we will have the private Members' Bills. (Interruptions)

SHRI SAUGATA RAY: Tomorrow it is not possible. (Interruptions)

MR. SPEAKER: Mr. Minister, can we fix it for some other day?

THE MINISTER OF PARLIAMENTARY AFFAIRS AND LABOUR (SHRI RAVINDRA VARMA): We do not mind if it is postponed to some other day. But no exact date can be fixed. It depends....*(Interruptions)*

MR. SPEAKER: Am I to take it that the House is not willing to sit beyond 8 p.m. today? *(Interruptions)* Tomorrow, it is not possible because we will have Private Members' Bills. We shall consider on what day we can have this discussion.

SHRI KANWAR LAL GUPTA: We can have it tomorrow from six to eight.

MR. SPEAKER: That is not possible. *(Interruptions)*

SHRI RAGAVALU MOHANARANGAM: The motion regarding the resolution passed at the Chief Ministers' Conference is already there.

SHRI K. GOPAL: Please allow our party members to utilise the time allotted to our party and let him speak till eight.

MR. SPEAKER: Yes, Mr. Unnikrishnan. *(Interruptions)*

SHRI KANWAR LAL GUPTA: Can we continue the discussion on Monday?

MR. SPEAKER: We will consider that. Mr. Unnikrishnan.

SHRI K. P. UNNIKRISHNAN (Badagara): Mr. Speaker, Sir, we have had the benefit of a wide spectrum ranging from serious to comic on this very serious question, on the two reports of the Shah Commission. I do not want to touch on the comic aspects which the House has seen. I was really astonished at the performance of the Leader of the Opposition. I have great respect for him. But I do not know how he can draw a parallel with the Walpole Inquiry. To students of British Constitutional History, it is well known, as you

know, that Walpole's regime was known to be the most corrupt and it was as a reaction to Walpole's regime that they have set standards of behaviour for British Parliamentary Democracy. So, when the Leader of the Opposition drew a parallel between the Inquiry against Mrs. Gandhi, as he called it, and the Inquiry against Walpole, I was not only surprised but also shocked. Because he was known as the "percentage" Minister. There have been not one but many studies on how one single episode of Walpole Inquiry changed the course of British history. So, Sir, I do not know whether he wanted to give us any idea of his own as to how things were. But, in any case, I am sure, that was not his intention.

Even as far as this country is concerned, the Shah Commission's wide terms of reference as well as its performance has been unique in the history of the Commission of Inquiry Act. In the last 26 years, there have been inquiries and enquiries. There are people there and, possibly, here also who have been subjected to inquiries, both on the Treasury Benches as well as on the Opposition Benches. But they were basically different. As far as we have understood it and we had reiterated in the resolution of the AICC in last May that whatever happened during Emergency, we consider as an aberration. We deplore it and we accept the fact, if it is legally and constitutionally done, that it must be inquired into and that those who are responsible must be booked.

I also recall the words of my, the then, leader, Mr. C. M. Stephen, who said in this very House, in this very seat, "Hang her, if you can if you want." Well, I do not say, she should be hanged. I do not say that there should be a Nuremberg trial. I am totally opposed to it. Let me reiterate and say that we are totally opposed to any kind of proceedings which would take away the spirit of the rule of law which we want to reassert in this country. As I said on

the question of Walpole, we have to set standards in this country. That has been the major pre-occupation. I understand, the intention of the Shah Commission was very different from other commissions of inquiry, both different in texture and dimensions. So, the course that the Shah Commission has taken up is of crucial and vital significance to the future of Indian parliamentary democracy.

The revelations and reports are a grim reminder to this country, not only what happened during Emergency but also the freedoms that we may lose and a warning to us, more than to outside world, to the members of this House as to how we are going to adhere to the norms of parliamentary democracy. The lesson is that it should not be allowed to be repeated with impunity, by anyone, whether it be by Mrs. Indira Gandhi or Mr. Morarji Desai or anyone else.

SHRIMATI PARVATHI KRISHNAN (Coimbatore): Or Mr. Raj Narain.

SHRI K. P. UNNIKRISHNAN: It has been an unfortunate exercise but

a very necessary exercise also in public education in this country because people seem to have a short memory and it is the duty of those who believe in parliamentary democracy to correct the distortions and the directions.

Above all, I would say that there are serious political and moral questions involved in it. That is why, I said that the Indian National Congress took a firm decision—at that time, Mrs. Indira Gandhi was a member and, I presume, a party to it and so also other friends who are with us here—that the Congress shall not stand in the way of these inquiries provided they are done legally, constitutionally and by established procedures.

MR. SPEAKER: You will continue.

The House stands adjourned till 11 A.M. tomorrow.

20.00 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Friday, August 4, 1978/Sharana 13, 1900 (Saka).