

(vi) SUPPLY OF FOOD GRAINS TO BANGLADESH

SHRI JYOTIRMOY BOSU (Diamond Harbour): During the Prime Minister Shri Morarji Desai's recent visit to Dacca a commitment was made to supply Bangladesh 2 lakh tonnes of foodgrains.

There is widespread draught condition in Bangladesh and famine conditions are fast approaching there. It would be our moral duty and obligation that we do our best to help the people of Bangladesh in this crucial situation particularly when we have big buffer stock and the harvest had been very good. In fact in many places there is not enough place to keep the foodgrains harvested this year.

The President of Bangladesh, Ziaur Rahman has sent a fresh message to the Prime Minister to send foodgrains expeditiously to tide over the terrible shortage that they are facing. I also understand that the Bangladesh Food Minister Shri Abdul Momin Khan, who arrived here yesterday has handed over this message to the Prime Minister. He also intends to discuss and work out the follow up measures to be taken in this context. The House would no doubt will join me in supporting that either we make a gift of the foodgrains or give it at a token price since the economic condition of Bangladesh due to various reasons is in turmoil and per capita income there is very low.

I also apprehend some invisible third hand are working to undo the good relations between us. Some western nations are working at it and trying to push in their foodgrains instead. If we fail to help them at this critical hour, it is not only that it will be highly improper, but we shall be doing a positive disservice to ourselves. I would urge upon the Government to accede to their request as best as possible.

MR. SPEAKER: Now, the House stands adjourned for lunch.

13.05 hrs.

The Lok Sabha adjourned for Lunch till Fourteen of the Clock.

The Lok Sabha re-assembled after Lunch seven minutes past Fourteen of the Clock.

[MR. DEPUTY-SPEAKER in the Chair]
SPECIAL COURTS BILL --contd.

MR. DEPUTY SPEAKER: Now we go on with the consideration of the amendments to the Special Courts Bill.

SHRI HARI VISHNU KAMATH: Yesterday I was on my legs on a point of order (*Interruptions*). I raised a point of order under Articles 143 and 108 read with Rules 100, 101 and 102 of the Rules of Procedure. Now Sir, my sole objective in raising this point of order is to ensure not merely, not just the expeditious passage of this important and vital legislation, vital for democracy in our country but the most expeditious establishment of Special Courts well before the anniversary of that blackest day in free India's history, June 25, and it will be an act of divine justice or nemesis if the Special Courts are setup well before June 25, 1979, before the next month-end, and I am sure, those persons, young and not so young, who have been convicted who have been indicated by the Commission of Inquiry the Shah Commission and other Commissions, and who have got a guilty conscience of having committed excesses during the Emergency, now that they have gone on the rampage again in New Delhi, some parts of New Delhi. Into that I do not wish to go, I do not elaborate that, it was debated only yesterday I do not want to dilate on that point.

I waited till the Home Minister moved the motion for consideration. I had half a mind to raise the point of order earlier, but I thought I would wait for him to move the motion

because now I have got an inkling with regard to the Government's mind on these amendments which have been passed by the Rajya Sabha and now have been recommended for consideration by this House.

We have come so far. The Lok Sabha passed the Bill on the 9th March and sent it to the other place. They passed the Bill, I suppose before they adjourned for their recess, the summer recess. I do not know what you call it or the spring recess and then it has come back to us with certain amendments. Now, the question before the House is: where do we go from here, and how do we go?

I am afraid that if the amendments adopted by the Rajya Sabha and now moved for consideration by this House by the Home Minister yesterday, are adopted by the House *in toto*, then this House and Parliament will be giving on a platter a golden opportunity for those mischievous elements, anti-national, anti-democratic elements, to approach or move the Supreme Court once again, challenging the validity of this Bill as amended by the Rajya Sabha. Why do I say so?

The Government had referred to the Supreme Court—I am quoting from the Advisory Opinion's text which I have got—special Reference No. 1 of 1978 under article 143, Clause (1), of the Constitution of India, regarding the Special Courts Bill. This was referred by the Government to the Supreme Court last year, and the Supreme Court gave its Advisory Opinion on December 1, 1978. I do not wish to tire the patience of the House by reading *in extenso* from the judgment, but the last page, the last paragraph of the advisory opinion is very relevant, very important and very appropriate to what I am going to make out shortly.

The Advisory Opinion, the last bit of it, reads as follows:

"The classification provided in Clause 4, sub-clause (1) of the Bill "

—as it then was. When the Bill came before the House, it became Clause 5. I am reading that Clause now as it came before the House, as it went before the Rajya Sabha also. It has been amended now by the Rajya Sabha.

Clause 5 (1) reads as follows:

"If the Central Government is of opinion that there is *Prima facie* evidence of the commission of an offence alleged to have been committed during the period mentioned in the Preamble hereto. . .

--of this Bill—

" . . . by a person who held high public office or political office in India, and that in accordance with the guidelines contained in the Preamble hereto, the said offence ought to be dealt with under this Act, the Central Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion "

What did the Supreme Court say about this Clause? I quote:

"The classification provided for in Clause 4 sub-clause (1) of the Bill is valid—mark the words—is valid—to the extent to which ."

—I am reading very slowly deliberately and purposely so that those who are interested may listen attentively—

" the Central Government is empowered to make a declaration in respect of offences alleged to have been committed during the period of Emergency by persons who held high public or political offices in India. ."

—Now comes the gist and the most important part of that opinion—

[Shri Hari Visnu Kamath]

"... Persons who are alleged to have committed offences prior to the declaration of Emergency cannot..."

—I repeat, cannot—

"... validly be grouped along with those who are alleged to have committed offences during the period of Emergency. It is, therefore, not competent for the Central Government to make a declaration under Clause 4 sub-clause (1) of the Bill in respect of persons who are alleged to have committed offences between February 27, 1975 and June, 1975."

Even the persons involved in the commission of offences during that short period, from February 27, 1975 to June 1975, as it was, as the period was as mentioned in my hon. friend and colleague's Shri Ram Jethmalani's Bill even such persons could not be prosecuted under that Bill, under the Bill as it went to the Supreme Court and therefore, they said that persons involved in the commission of offences only during the period of Emergency, from June 1975 till as long as the proclamation of Emergency was in operation, those persons could be prosecuted.

Now, what has the Rajya Sabha done? Unfortunately for us, what has the Rajya Sabha done? Because of the peculiar composition of the Rajya Sabha now we have to know how to the Rajya Sabha every time.

SHRI K. P. UNNIKRISSHANN (Badagara): What is peculiar?

SHRI HARI VISHNU KAMATH: I did not mean it in a derogatory sense. Being a young man, he jumped at the first word. I did not mean the propriety or constitutionality of it, but just a fact of life.

Because of that composition, you may remember, Sir, that last year this House kowtowed to the Rajya Sabha and passed that Constitution (Amendment) Bill, as it came from the Rajya Sabha. Now for the second time, we are faced with a similar situation. But

I am afraid that if these amendments are adopted by this House, the Government will find itself in a serious contretemps or a legal quandary, because the opinion given by the Supreme Court is categorical, definite and there is no ambiguity about it. I refer to the amendments particularly the two amendments. I am not bothered about the three amendments made by the Rajya Sabha out of the five that have been made, that is to say, Amendment No. 1 to the Preamble and the amendment No. 3.

How does the amendment no. 1 read?

"And whereas all powers being a trust, and holders of high public or political offices are accountable for the exercise of their powers in all cases where Commissions of Inquiry appointed under the Commissions of Inquiry Act, 1952 or investigations conducted by Government through its agencies disclose offences committed by such holders"

I am not against the spirit of it. But a similar or the same question was raised in this House by some hon. members here that it should be included in this Bill and the hon. Minister for Home Affairs then made the position of the Government clear by saying, "This is outside the scope of the Bill. We will bring forward another Bill. This cannot be included in the Bill. It is only for a specific purpose, for Emergency offences. We cannot include it in this Bill". This is what he said, if my memory serves me a right.

Now, the Government has accepted this amendment in the Rajya Sabha for reasons best known to them. After having made out clearly their position in the Lok Sabha, they accepted the amendment in the Rajya Sabha. You see the wording of the amendment. It is an all-time amendment. It does not use the past participle. It says, "disclose offences". The original Bill used the word "have disclosed offences". That means, "in the past". The amendment adopted by the Rajya Sabha says "disclose offences". I do not know

whether it refers to the present or to the future, not to the past. It says, "disclose", not "have disclosed". It is vague to that extent. I do not know if it is a slip of the pen of the hon. member who moved that amendment. I do not know what exactly he means. The hon. Minister accepted the amendment in the Rajya Sabha. Let him clarify it.

I am not against the two amendments with regard to the nomination of the Special Court judges. That does not alter the Bill. There is, however, amendment No. 5 which is a more serious amendment and more destructive of the Bill. It says:

"That at page 2, line 34, the words "during the period mentioned in the Preamble hereto" be deleted".

How does it read then? The whole thing becomes a jumble. If this is included in the Bill, the entire Bill becomes a jumble, an incoherent jumble because in the first paragraph of the Preamble, the Bill refers only to a particular period. That is unaffected. Then, suddenly, this has been smuggled in. There is an amendment to the Preamble, after the fourth paragraph of the Preamble, an omnibus amendment, with regard to the Commissions of Inquiry—past, present and future, perhaps. But the more serious amendment with which we should concern ourselves is the amendment to Clause 5, Clause 5, as it is, reads as follows:

"If the Central Government is of opinion that there is *prima facie* evidence of the commission of an offence alleged to have been committed during the period mentioned in the preamble hereto by a person..."

But the amendment says, the words "during the period mentioned in the Preamble hereto" be deleted. If this is adopted, where do we stand? The clause says, "... by a person who held high public office". When, where and how. Nothing is mentioned. Any time, past, present and future.

MR. DEPUTY-SPEAKER: But the Preamble is still there.

SHRI HARI VISHNU KAMATH: But what do we do here? Is that also omitted there? That is not omitted. The Preamble stands.

MR. DEPUTY-SPEAKER: That is what I say; the Preamble stands.

SHRI HARI VISHNU KAMATH: You are helping me, Sir. I am thankful to you for your intervention. The Preamble stands, restricting the action by Government to the period of Emergency. Is it not?

MR. DEPUTY-SPEAKER: By the removal of this sentence in Clause 5, does the Bill get affected? That is my question.

SHRI HARI VISHNU KAMATH: Yes; because of the Supreme Court's advisory opinion, it is not competent. Some one else may—I do not say 'will' but 'may'—go to the Supreme Court challenging the validity of the new Bill. These two amendments impart a new composition, a new complexion, a new character, a new substance, to the Bill. Therefore, it is a Bill essentially different from the Bill which was brought before this House. The Bill as amended by the Rajya Sabha is different from the Bill which was brought before the House....

PROF. P. G. MAVALANKAR: The House was competent to pass that legislation.

SHRI HARI VISHNU KAMATH: The Supreme Court held that the House was competent to pass that legislation.

My knowledge of the law and the Constitution is rather meagre. But, even so, I am afraid that, if this Bill goes to the Supreme Court—I do not say that they will but they may—they may hold it as invalid, and it will drag on for months and months with protracted proceedings... (Interruptions) Therefore, Sir, I would recommend to the Government and to this House—right, left and centre—I would urge them, to ponder over this issue.

[Shri Hari Vishnu Kamath]

Now, if we do not accept the amendments as adopted by the Rajya Sabha, where do we stand? Here rules 100, 101 and 102 come into operation ..

MR. DEPUTY-SPEAKER: All these points, you can make when you speak on the Bill.

SHRI HARI VISHNU KAMATH: This must be decided first. Let the Government make it clear to the House whether they insist on the House accepting these amendments because, for some Members, for almost all of us, voting will depend on the Government's attitude.

Unlike a Constitution Amendment Bill, here, article 108 of the Constitution does not make it imperative or obligatory for the Lok Sabha to accept the amendments of the Rajya Sabha. In the case of the Constitution Amendment Bill, last year, we had to accept that willy-nilly, more nilly than willy. Otherwise, it would have fallen through—the Forty-Fourth Constitution Amendment Bill. The Law Minister is here; he also felt unhappy about it. But we had to accept it; there was no other go. But here, in the case of an ordinary Bill, there is no such obligation. Here rules 100, 101 and 102 come into play, come into operation. Those rules provide that you may accept an amendment or amendments. Please read the rules...

MR. DEPUTY-SPEAKER: I have already read them.

SHRI HARI VISHNU KAMATH: Both, singular and plural are used. Rule 100 reads:

"(1) If a motion that the amendments be taken into consideration is carried, the Speaker shall put the amendments to the House in such manner as he thinks most convenient for their consideration.

(2) An amendment relevant to the subject matter of an amendment made by the Council can be

moved, but no further amendment shall be moved to the Bill unless it is consequential upon, or an alternative to, an amendment made by the Council."

Rule 101 reads:

"The House, if it agrees to the amendment made by the Council, shall send a message to the Council, to that effect, but if it disagrees with that amendment or proposes further amendment or an alternative amendment, the House shall return the Bill or the Bill as further amended to the Council with a message to that effect."

The last one is the most vital. Rule 102 reads:

"If the Bill is returned to the House with a message that the Council insists on an amendment or amendments...."

Because, it is upto us to accept two of the amendments and not accept the other two amendments.

"...With a message that the Council insists on an amendment or amendments to which the House has disagreed, the House shall be deemed to have finally disagreed as to the amendment or amendments." At that stage Art. 108 comes into play. .

MR. DEPUTY-SPEAKER: Joint session. But what is the point of order? You are only explaining the procedure which would have to be adopted.

SHRI HARI VISHNU KAMATH: I want this to be made clear whether this Bill is a Bill different from the Bill adopted by the House. I want it to be made clear whether the Bill as brought before the House with the amendments from Rajya Sabha will be a Bill different from the one passed by this House in March. If that be so, will the government be averse to a joint sitting of the House to pass the Bill?

MR. DEPUTY-SPEAKER: That comes later. That is only a matter of procedure.

PROF. P. G. MAVALANKAR: We want to know whether this is an amended Bill or a new Bill.

SHRI HARI VISHNU KAMATH: Joint session issue can be taken up later

THE MINISTER OF LAW JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN) The hon Member from Hoshangabad has invited the attention of the House to two amendments which have been passed in the other House so far as the present Bill is concerned—that is, amendment No. 1 and amendment No. 3, one making a change in the Preamble and the other deleting a particular clause from clause 5, namely, during the period mentioned in the Preamble thereto, i.e. the period of emergency. The hon. Member has also cast some doubt that since the Supreme Court had said that the Bill as it was considered by the Supreme Court in its then form was all right and the seal of approval of the Supreme Court had been given to that Bill, it is a vital modification of that Bill and, therefore, the legality or the constitutionality of the Bill with the present amendments would be in doubt. He also asked what is the attitude of the government in regard to these amendments.

So far as the attitude of the government is concerned, these two particular amendments have been accepted by the government in the other House. Therefore, consistent with the position which the Government has taken in the other House, it would not be possible for the government to take up a different position. Having taken up one position, the Government will adhere to that position and, therefore, would accept these amendments even in this House now and would not go to a joint session so far as these amendments are concerned.

So far as the doubts expressed by the hon. Member from Hoshangabad are concerned, I would say in a way there is an improvement in the Bill by this amendment in the sense that

although the majority had upheld the classification, even of offenders holding high public offices into two sub-clauses namely, those who committed offences during the period of emergency and those holders of high offices who might have committed offences outside the period of emergency, but they had upheld the same because there are classes and classes. First of all, the first classification is among persons who occupy high offices and commit offences and then other persons who do not occupy high offices and commit offences. So far as this classification is concerned the reasonableness of this classification has been upheld not only by the majority of the Supreme Court but also by Mr Justice Krishna Iyer. In fact, Mr Justice Krishna Iyer has gone and made some observations to the effect that this classification is not enough, namely, further sub-classification is doubtful as to whether it is constitutionally permissible because he has pointed out particularly on pages 7 and 8 of his opinion. He has said holders of high public offices can certainly constitute one class but what difference does it make whether they commit offences during the emergency or whether they commit offences without there being any emergency.... (Interruptions) Once the class of people has been established—holders of high public offices, Mr. Justice Krishna Iyer was inclined to the view that this further sub-classification may not be quite desirable, proper and even constitutional, and he said it might verge on unconstitutionality. Therefore he opined that the same quick procedure of special courts should be permissible and should be applicable in respect of offences committed by holders of high public office whether they commit offences during the period of emergency or they commit offences even subsequent to the period of emergency. But, yet, he said that even though he has doubts, on subsequent consideration etc. he felt that there could be justification even for the sub-classification and he would not that basis

[Shri Shanti Bhushan]

It appears that those who moved this amendment in the other House picked up this cue from Mr. Justice Krishna Iyer's judgment and said 'well all right. Why not apply the same procedure for offences committed by the holders of public offices whether the offences are committed during the period of emergency or after the period of emergency if the offences are committed by the people in similar authority.' That was accepted. That was done by adding something to the amendment to the Preamble and then by deleting these words, limiting words, during the period referred to in the Preamble. The Government accepted this position and said 'all right, if you want to enlarge the ambit of this Bill on Special Courts, we have no objection. Having taken up that position in the other House, Government is not going back from that position and it has no objection. It is another matter that the interpretation of the addition, of this additional Preamble and the deletion of these words, would necessarily lead to that conclusion or, in substance, leave the Bill untouched. There may be a controversy in regard to that. If a view is taken, even after the deletion of the words from clause 5 and even after the addition of another Preamble substantially the old position remains. Such reference to that Preamble is still there. Emergency is referred to in the Preamble. So, even after the deletion of these words from Clause 5, the position still remains that this talks about the offences committed during the period of emergency. That may be the possible view. If that view is taken, then, substantially the original bill stands. On the other hand, if, after this amendment, a view is taken namely that this is not confined to offences committed during the period of emergency, so long as the offences are committed by the people in high authority, these will apply to offences which are committed even outside the period of emergency and so, the pro-

cedure of the Special Courts will still be applicable. No harm. But, so far as this classification is concerned.... (Interruptions).

SHRI HARI VISHNU KAMATH: What would you say to this? The Supreme Court has held a view that it is not quite competent—the Government is not competent.

SHRI SHANTI BHUSHAN: No, no. That is the language. But it does not mean that. It does not say that. Suppose the same procedure is applied by the Special Courts to offences committed by everybody. The Supreme Court could not have said that we could not do that. There will be no classification at all in that case and there would be no discrimination at all. Even outside the period, the offences committed by the ordinary people will go to the normal courts. But for the offences committed by the people in high authority, there is no justification for them not to go to the Special Courts because there is need for a quicker trial of those people in high authority. In that case, this classification has been upheld. It is another matter to say that the Supreme Court by a majority has further upheld the sub-classification, namely, 'All right, if you want to further classify and say that even among the holders of high offices, in respect of persons, who have committed offences during the period of emergency and the persons who have committed offences outside the period of emergency they were willing to uphold the classification also! But, the Constitution does not make it obligatory that you must classify that. You can treat in the same way various clauses and apply the same procedure. To that, there cannot be any objection. That is why Mr. Justice Krishna Iyer was inclined to find an objection to the sub-classification by saying 'what is the distinction of a person in high authority commits murder during the period of emergency and a person in high authority who commits it outside the period of emergency.' What is important is quicker trial in both

the cases. I do not think there is the slightest risk of the court's saying that since we have brought both these clauses in the same procedure, there is no discrimination or no unconstitutionality involved. Therefore, Government's position is that having accepted these amendments in the other House, government has accepted the amendments here too.

MR. DEPUTY-SPEAKER: Having heard both Mr. Kamath and the Law Minister, I think, what Mr. Kamath really wanted to raise is only some clarification and not a point of order. I suppose that has been thoroughly clarified.

As I said earlier, in the Preamble, it starts off with the period of emergency and in clause 5, they have deleted those words. But the Preamble still has the 'emergency period.' Therefore, I think the Government will be governed by the Preamble. It cannot escape from the Preamble.

So, I do not think there is any substantial difference in the amendments; they have not altered the Bill in any form. So, we proceed with the Bill.

SHRI HARI VISHNU KAMATH: One clarification with regard to the Preamble. I have noted your observation, but if I remember aright, in Keshavanand Bharati's case, when the Preamble was mentioned in the Supreme Court the court held perhaps—subject to correction by the Law Minister—that the Preamble is not part and parcel of the statute.

MR. DEPUTY-SPEAKER: Let us leave it to the court. Now, I call Mr. P. Shiv Shanker.

SHRI P. SHIV SHANKER (Secunderabad): Mr. Deputy Speaker, Sir, I must submit that this particular Bill is one of the most ill-drafted Bills that we have come across and the amendments seem to have made the position much worse.

The Law Minister submitted to the House just now that the intention of

the movers of the amendments in the other House was that the period of offences should not be confined merely to the emergency but it must also take within its sweep offences of the period before that and this position the Government accepted. I take it that they have accepted it very fairly. If that be so, was it not proper for the government if the wording of the amendment was a little defective to substitute it by some other amendment or by some other words so that the intention could become clear. While the Law Minister very fairly explained that the intention was to bring in the offences not only during the emergency but even earlier and when it comes to the question of the wording. I must submit that there is room left for a lot of doubt and in my view it clearly appears as though the offences are again confined to the emergency period alone.

MR. DEPUTY-SPEAKER: That is why I said the Preamble should have been amended.

SHRI P. SHIV SHANKER: This is where I am submitting the government had been very much unfair.

MR. DEPUTY-SPEAKER: But those who wanted to amend in the other House they should not have done it.

SHRI P. SHIV SHANKER: That is a different issue. We are opposing the Bill.

Clause 5 by virtue of the amendment seeks the deletion of the expression "during the period mentioned in the Preamble hereto." Perhaps, it was thought that by deleting this particular expression as to the period the objective stands achieved. Now, I read the clause with the deletion and make my submission:

"If the Central Government is of opinion that these is *prima facie* evidence of the commission of an offence alleged to have been committed by a person who held high public or political office in India

[Shri P. Shiv Shanker]

and that in accordance with the guidelines contained in the Preamble hereto . "

Thus it is obvious that again the reference is to "the guideline contained in the Preamble hereto;" only the said offence ought to be dealt with under this Act. Once you go to the guidelines as to the period, the very first guideline is only with reference to the emergency. It is there. I am submitting that the government unfortunately have misled the Rajya Sabha and are also trying to mislead this House by saying that we are accepting the amendment. (Interruptions) Therefore, why should it be made more controversial? Is it not the duty of the House to make it clear—if it could be made clear? This is my submission so far as this amendment is concerned. If you go through the Bill as amended it has added another confusion. Though the Law Minister and the Home Minister have made their intentions clear that the amendment takes within its sweep the offences committed even before the emergency, those intentions are not at all made clear in this amended Bill. The whole Bill is to be rejected as had the other amendment which is material is Clause (1) which deals with the amendment of the Preamble. The second one connected is for deletion of words in Clause 5.

The other amendment which is material is with reference to Clause 3 of the Bill, which deals with the appointment of a sitting judge. It opines that the Chief Justice of the High Court would nominate a judge of the High Court with the concurrence of the Chief Justice of India, which judge would be a sitting judge. Here, I would invite the attention of the House to what Justice Shingal has said while rendering his opinion under Art. 143(1) of the Constitution with reference to the Special Courts Bill. He said this and I quote:—

"It will not however be permissible or proper to appoint a sitting Judge of a High Court to preside over a Special Court which is lesser or inferior to the High Court.

In all probability, 'sitting' judges of High Courts will refuse to serve as presiding judges of the Special Courts, and there is no provision in the Constitution under which they can be compelled, or ordered against their will, to serve there.

That eventuality will make the provisions of the Bill unworkable—even if it were assumed for the sake of argument that they are otherwise valid and constitutional.

At any rate, the possibility that the 'sitting' High Court Judge may not agree to serve as presiding Judges of the Special Courts is real, and their very refusal will embarrass the judicial administration and lower the prestige of the judiciary."

I read it out only to show that the Special Courts under the Bill are not to be equated with the High Courts, and it is in that context that while going into the constitutional set-up of the courts Mr. Justice Shingal had to make an observation with reference to the acceptance by 'sitting' judges to preside over the Special Courts. Now, in fact, I submit that if this is the state of affairs and if one or two or a few judges are persuaded to accept the position as Special Court Judges, unfortunately, what follows is, it does give an impression that has been apprehended by the Leader of the Opposition yesterday. I would not like to repeat those observations which he was compelled to make yesterday. This definitely brings down the higher hierarchy of the judiciary. That impression unfortunately gains ground in regard to this clause. We are now laying down a procedure which procedure not only brings down the judges of high court to a different level but also gives the impression that appointment of judges to such posts is politically

motivated. I would have very much wished the Home Minister and the Law Minister, who are avid readers, to have read a book called 'Political Justice' by Mr. Kirchheimer. I have to only quote one small passage from Chapter VIII, entitled, 'Trial by fiat of a successor regime'

The author says

"Such prosecution often takes place at the strategic juncture when the old regime has been replaced and the incoming one prepares to sit in judgement over it. As a result of such change, the whole court system might well be reorganised; at the very least, the regime will fashion its own system of juridical defence against its political force manning the strategic legal bastions with its own men of confidence."

This impression which gains ground was made clear yesterday by the leader of the Opposition. It came as an answer to a Minister, to the query put by him. At least let us not bring down the judicial system in our country which has had its own pristine glory. I would not like to go further into this aspect, but I would like to say only this much that these two amendments unfortunately create complications and they do give some room for apprehensions, that have already been expressed.

I will make my submission with reference to the Bill itself. Well, I am only sorry that the Government has chosen to bring this Bill for the purpose of the enactment giving very peculiar reasons to the public at large. The object of this Bill, as it has been stated, is first, to relieve the congestion of work in the courts. This in my submission, is a premium on delays which are taking place in the courts.

Secondly, what has been said is that there is an alteration of the procedure as a result of which quick justice will be achieved. The question

is: would it be so? Now, if this is the two-fold objective of the Bill, then I regret to say that the Bill does not achieve these objectives at all. Why I am saying so is, that so far as the case of congestion of work is concerned, that cannot be the valid reason as to why the Special Courts have to be established. If it is the case of a congestion of work, you could as well recruit a few more judges for the purpose of relieving the congestion of work in the court. I submit let us go into this Bill a little deeper for the purpose of understanding.

The position in law is, that the High Court has also the power to withdraw a criminal case and try itself the same. Now, what would happen is that by virtue of the provisions namely, Clause 11, against all the orders and the judgement, appeals are provided on both questions of law and facts. If this is the position no doubt the appeal is provided to the Supreme Court but that only means that supposing an interlocutory order is passed, the matter could be taken to the Supreme Court. The matter would then be delayed because the Supreme Court has to go into the question of facts. In the ordinary course, if the revisions are preferred against interlocutory orders, the same could even be dismissed at the admission stage itself which would not be so in the present case. I must say that this, in my view, provides a greater latitude for the purpose of disposal of the cases, perhaps more than necessary.

The bone of this Bill is Clause 5 and I must submit that in the entire Anglo-Saxon Jurisprudence, there is no such Act with a provision like the one as under the clause. In the past various special court enactments have been brought on the anvil. I do not deny that. This is right from Anwar Ali Sarkar's case. But if you look to Clause 5, it gives a total discretion to the Central Government to form an

opinion whether declaration should be given in a particular case or not. It is this which is the bane of the whole thing; it is this about which it is legitimately said that it is a black law. If we were to say: look, here is an offence and if this offence is committed, it will be directly referred to the special court, then it is perfectly all right. But when the matter is left to the domain of the Central Government to decide and its opinion has got to be formed before a declaration is given, things become doubtful. Now, there may be two cases; in one case a minor offence might have been committed by a person holding high public and political office; in another case, a major offence might have been committed by another person in the same position. It is left to the Central Government to declare and to decide which case should be referred to the court. It may be that they may refer the case to the court where the minor offence has been committed and may not refer the case where the major offence has been committed. It is this which is the bane of the entire Bill. Thus, an impression is gaining ground that this is a case where political elimination of personalities is sought through the judicial process. It is this which has happened perhaps in Pakistan, and it is what is happening in Sri Lanka. This is the impression that is gaining ground here and it is there that I am submitting that it is a black law.

SHRI JAGANNATH SHARMA (Garhwal): Mr. Deputy-Speaker, Sir, the changes made by Rajya Sabha in the Special Court Bill are most welcome.

PROF. P. G. MAVALANKAR: Why didn't you welcome them earlier here?

SHRI JAGANNATH SHARMA: These changes are very important and at the same time, they are of far reaching consequence. The amendments have the effect of transferring the Bill from an ad hoc legislation to a permanent enactment. Even those who were labouring under the erroneous conception that this

Bill might be an instrument of vendetta against any of the persons who were holding high office or against Shrimati Indira Gandhi must also welcome it. The scope of the Bill has been widened and now it is applicable to all those offences which were committed before Emergency or after Emergency.

My learned friend, who just spoke before me, said that the scope of the Bill has again been narrowed down in the form as it was passed by Lok Sabha. Even if it may be true, the purpose of the Bill remains unaffected. In spite of the opinion under Article 143 of the Constitution, nobody can stop any party from going to the Supreme Court. In either case, the purpose will be served.

The most important change that has been brought about in this Bill is the selection of the judge. Previously, also the selection was to be done by the Government of India, of course, with the concurrence of the Chief Justice of India on the recommendations of the Chief Justice of the High Court in which the case was to be filed. Now the Special Court consists of that judge who is a sitting judge of the High Court nominated by the Chief Justice of a particular High Court with the concurrence of the Chief Justice of India.

I thought that with these amendments, the possible objections would have been met, but I was simply shocked to hear the Leader of the Opposition yesterday—he is an eminent lawyer and an able parliamentarian; unfortunately he is not here in the House at the moment...

MR. DEPUTY-SPEAKER: You can deal with the Leader of the Opposition and take up that point on Monday when we resume further discussion on this Bill.

Now, we will take up Private Members' business.

Shri Vinodbhai B. Seth.