

श्री मनोहरलाल बख्शी (मधुरा) : यहाँ बर बंसी बैठे हुए हैं। जिन लोगों के साथ जेल में दुर्घटना हुआ किया गया है, उनके बारे में जांच कर बतलवायें।

12.22 hrs.

SPECIAL COURTS BILL—Contd.

MR. SPEAKER: The House will now take up further consideration of the motion moved by Shri H. M. Patel on the Special Courts Bill. Dr. Murli Manohar Joshi will continue his speech.

श्री० मुरली मनोहर जोशी (प्रलमोड़ा) : अध्यक्ष महोदय, मैं इस विधेयक के समर्थन में खड़ा हूँ। प्रतिपक्ष के कुछ सदस्यों ने कल जो तर्क रखे उनमें एक बात यह ही गई थी कि भाषाएँ स्थिति में कुछ तस्कर व्यापारी पकड़े गये थे इसलिए उसको जर्मन नहीं माना जा सकता। अगर उनको किसी ने पकड़ा था तो अब उन पर मुकद्दमा चलाने की आवश्यकता नहीं है। मैं उनसे पूछना चाहता हूँ कि क्या श्री भीमसेन तस्कर तस्कर थे? जो इन्स्पेक्टर पकड़े गये थे, क्या वे तस्कर थे? श्रीमती स्नेहलता रेड्डी तस्कर थीं? क्या श्री मोरारजी देसाई तस्कर हैं? क्या मैं तस्कर था? मैं जिस जेल में रखा गया था वहाँ पर पकड़े गये अधिकांश लोग राजनीतिक बंदी थे। तस्करों को खुली छूट रही **

श्री बलंत साठे (प्रकोला) : क्या प्राप पर तस्करों का चार्ज लगाया गया था? (ब्यवधान) ****

MR. SPEAKER: Don't record.

श्री० मुरली मनोहर जोशी : श्रीमान्, प्राप देवें कि किस प्रकार से संविधान की हत्या करने का यहाँ प्रयत्न किया गया। उसका अन्तर सुनाकरना नाजी हिटलर की कार्यवाहियों से किया जाए तो सब स्पष्ट हो जायेगा। कि किस प्रकार संविधान का दुष्प्रयोग करके भारतीय जनता को समाप्त करने के लिए किया गया। यह एक वास्तविकता है। मैं न्यूरनबर्ग ट्रायल से कुछ उद्धृत करना चाहता हूँ। हिटलरबर्ग जो उस समय जर्मनी में राष्ट्रपति थे उन के लिए इस में शिवा है :

"He fell for the Nazi leaders' story, and signed an emergency decree in which important articles of the constitution were suspended

the freedom of the person, the free expression of opinion, the freedom of the Press, the right of assembly, the privacy of the post, the protection against house search and arrest without a legal warrant."

उसके बाद क्या हुआ :

"The first concentration camps were built. Newspapers inimical to Hitler were banned, opposition meetings dispersed, the leaders of the opposition arrested."

प्रापे यह पुस्तक कही है :

"On 24th March 1933 only 535 out of total of 647 Members of the Reichstag were present. The absence of some was unexplained—they were in the concentration camps. As a result of Nazi pressure and terror, the Reichstag approved the 'Enabling Act', 441 members voting for it. This event represented the seizure of political control by the conspirators. With the Enabling Act, Hitler became absolute dictator, Weimar became dead, democracy strangled."

उसके पश्चात् न्यूरनबर्ग महाविधायक हुआ। आवश्यकता थी कि उसी तरह का एक महाविधायक यहाँ भी चलाया जाता। लेकिन हमने विधि के अनुसार, संविधान के अनुसार और कानून के अनुसार जो कुछ हो सकता था उसको करने की कोशिश की है।

कल प्रतिपक्ष की ओर से यह कहा गया कि यह महोदय किन्होंने प्रापात स्थिति की घोषणा की लोक सभा में सम्पुष्ट करवाया वह प्राप सत्ताच्छेद है और हमारे साथ है। यह ठीक बात है। लेकिन उन्होंने अपनी गलती प्रहसूस की और उन्होंने उस राजनीतिक तामाशाही पार्टी को बुलाते में परास्त करवाया जिस ने प्रापात स्थिति को लागू करने की कोशिश की थी। उन्होंने प्रावधिपत्र कर लिया है। मैं सब से कहना चाहता हूँ मानवता के नाम पर जनमत के नाम पर भारतीय लोकतन्त्र के नाम पर कि कृपा करके इस विधेयक का प्राप भी समर्थन करी, प्रापात स्थिति के प्रापराधियों को दंडित करायें और प्रावधिपत्र कर

**Expunged as ordered by the Chair.

****Not recorded.

आप की पुष्प के भागी बनो। कोई आपकी पीकेना नहीं। अगर आप पुष्प के भागी नहीं बनना चाहते हैं तो यह आपकी इच्छा है।

इस प्रकार का विधेयक बनाया जा सकता है या नहीं इस विषय को उच्चतम न्यायालय की राय लेने के लिए उसके पास भेजा गया था, प्रेषित किया गया था। न्यायाधीशों ने जो राय दी है वह आपके सामने है। जस्टिस कृष्ण भास्कर ने जो अपने निर्णय में कहा है उसे मैं उद्धृत करता हूँ। वह जनता पार्टी के सदस्य नहीं थे, उनकी नियुक्ति भी जनता पार्टी ने नहीं की थी। वह सम्मानित न्यायाधीश हैं जिन्होंने बहुत से ऐसे निर्णय दिए जिन को लेकर हमारे लोग बहुत दिनों तक आपातस्थिति में जनरलवद रहे। उनका बयान भी आपके द्वारा ही किया गया। वह क्या कहते हैं इसको भी आप सुन लें:

"We need hardly say that there is no law of limitation for criminal prosecutions. Somehow, a few manage to be above the law and the many remain below the law, How? I hesitate to state."

द्विज कहते हैं:

"Every system of government requires that those wielding power should use it for public good and should not make it an instrument of self-seeking. All power is like a trust. Those who derive it from the people are accountable to show that it has been exercised for the people. To repeat what I said recently, abuse of authority by those in power inevitably causes mass disillusionment and results in public frustration. Nowhere is it more true than in a democratic set-up because in democracy it is the people themselves who entrust power to those whom they elect. Abuse and misuse of authority can take many forms. It can result in self-aggrandisement by the acquisition of more authority by those put in power and the use of that authority for eliminating political and personal opponents. Such abuse

of authority paves the way to authoritarianism and dictatorship."

यह है जिसका हमें विरोध करना है, ये हैं सारे तथ्य जिनके बारे में मैं स्पष्ट कहना चाहता हूँ कि बर्गीकरण क्यों किया जा रहा है।

यह कहा गया है आपात स्थिति के साथ जो नियम, कानून बनाये जा रहे हैं उसको वीर-आपात स्थिति के साथ विधेयक क्यों किया जा रहा है, बर्गीकरण क्यों किया जा रहा है उसके विषय में भी श्री मनु, न्यायाधीश कहते हैं:

"Another good reason for upholding the classification is the legality of the State's power to pick out a hectic phase a hyperpathological period, a flash flood and treat that spell alone, leaving other like offensive periods well alone because of their lesser trauma. It is a question of degree and dimension.

If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied. There is no doctrinaire requirement that the legislation should be couched in all embracing terms.

It may be remembered that article 14 does not require that every regulatory statute apply to all in the same business; where size is an index to the evil at which the law is directed, discriminations between the large and small are permissible, and it is also permissible for reform to take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind."

इसलिए भी मनु किसी भी तरह पर जो इन्होंने कहा है इस विधेयक का विरोध नहीं किया जा सकता है यह बहुत स्वल्प परम्परा है और मैं आशा करता हूँ कि कौम्य ही ऐसे विधेयक बनेंगे जो राजनीतिक तथ्य के बुझपनों को सवा के लिए इस देश से समाप्त कर देंगे संवैधानिक परंपराओं की व्याख्या की जाती बाकि

[श्री सुरजी कन्नोहर बोकी]

कास्टीट्यूशनल आफरेंस क्या है इसकी व्याख्या की जानी चाहिये और देश में ऐसी व्यवस्था का निर्माण किया जाना चाहिये जिससे ऐसे अपराध करने और कानून का हथकौड़ी करके पारिवारिक तानाशाही को स्थापित करने के लिए लाखों लोगों को जेल में पढ़ने से रोकने की पूरी व्यवस्था और तैयारी संविधान में होनी चाहिये जब ऐसी व्यवस्था हो जायेगी तो वह दिन इस देश के लिए सुन और अच्छा होगा। और इसी बात को ध्यान में रख कर मैं इस कदम का, जो सरकार न उठाया है, समर्थन करता हूँ।

SHRI C. M. STEPHEN (Idukki):
Mr. Speaker, Sir, this House is now discussing a Bill which, if I may say so, is unprecedented in the legislative history of our country. In the point of the matter of initiation, on the point of the matter of course it took, on the point of the content of the Bill, on the point of the thrust of the Bill and on the point of the repercussions that the Bill will have on the judicial system of this country, this Bill is a piece by itself and quite unprecedented in the legislative history of our country.

Now, I would pose a question which is in dispute: Is it a *bona-fide* piece of legislation as claimed by the Government aimed purely at a speedy trial, at a fair trial, of person or persons classified by permissible and intelligible standards—this is the claim of the Government—or is it, as is alleged by us, an instrument of oppression designed to hand down pre-arranged sentences and convictions through hand-picked judges to hand-picked persons with respect to hand-picked offences. If the former is the case, if what the Government says is the case, the Bill deserves to be supported. If the latter is the case, if what we say is the case, the Bill deserves to be condemned and to be rejected.

Having posed this issue which is in dispute, I would seek of you to consider the vires of the Bill, whether it is vicious, it is constitutionally valid and all that. Let us remember that on a reference to the Supreme Court, all the judges have held that there is very much left to

be desired in this Bill, quite a lot of wrong things, quite a lot of undesirable aspects about the Bill. Two judges have held that the undesirable aspects are found going to the extent of rendering the Bill constitutionally invalid; four judges have held that there are certain undesirable aspects, but it is not for them to adjudicate about it and they do not say that undesirable aspects go to the extent of vitiating the Bill on the basis of constitutionality. Undesirable aspect is considered by everybody; unconstitutionality is established by two judges; unconstitutionality is not sustained by four of the judges. This is the position. Let us remember that at least two judges of the Supreme Court have held that the Bill is, constitutionally invalid. This is a matter which you will have to bear in mind.

Now, one of the major points about it is the classification of the offences and the persons who have to come under the purview of this Bill. The Bill is to cover persons and offences from the point of view of two aspects: one, from the point of view of the period; and two, from the point of view of the status of the persons involved. The Bill confines itself to the period of the Emergency, and the Bill says that the persons who had held high political or public offices alone will be covered by this Bill. There are two classes which will come: those with respect to whom the Commissions found a *prima facie* case; and the other class, which the Bill says, is: Government, by their independent agencies, have come to the conclusion that there is a *prima facie* case. Therefore, it is not merely the persons who are covered by the Commission—the Commission had a good coverage; they picked up, they identified, certain persons; over and above that, the Government says that they made their investigation and they have found that there is a *prima facie* case with respect to certain persons with regard to those similar offences. So, the entire offences are now sought to be covered by this.

This coverage of the Bill is spelt out by the majority judgment on page 76A which has been given to us. Here one important matter is this. I do not want to go into the entire coverage of it. Justice Krishna Iyer has asked, 'Why limit here? Why not go on to the offences against persons high-placed before the Emergency and subsequent to the Emergency; the danger to the democracy is the feeling that high-placed persons are beyond the reach of the law'. It does not matter whether it is within the Emergency or not. Anybody who is beyond the reach of the law, who is supposed to be beyond the reach of the law, must be covered. Otherwise, democracy will not be safe. This is the argument of Justice Krishna Iyer. I am not going into the whole thing. I will confine myself to one simple question arising out of this clause 'high-placed people holding public offices and political offices'. A leader of a political party may not be a Minister but holds a political office; and a Minister may not be a high political personage but holds a public office. If these persons had committed offences during the period of Emergency, would you seek to cover the whole lot of them or would you pick and choose some among them? This is the major question I would like to ask at this stage.

Now, there are three classes. The whole question is the question of the Emergency. Emergency was against democracy. That is the contention. Our argument is that a succession of offences committed by high-placed people in the political arena led to a situation in which Emergency was declared. This is one aspect of this. Offences, there were. Number two is, offences were committed in the matter of the implementation of the proclamation of Emergency; this has got to be covered. Number three, offences were committed by people holding political offices to meet the implementation of the Emergency. The second two cases come under the period of the Emergency. Now, I would straightaway ask this question.

Mr. George Fernandes was a person holding a high political office, leading a great political movement. Did he or did he not commit offence during that period? To meet the Emergency, may be. But did he or did he not commit the offence of overturning 52 trains? Was it or was it not an offence? Take the dynamite case. Was it or was it not an offence? Does it not satisfy considerations that I have spelt out here? Now, if that has happened, then would the Government put him also before the special court?

I would submit here that the Supreme Court held it in favour of validity on one assumption. That assumption is given on page 87 by the majority judgement. This is what they have stated:

"...if the Central Government is of the opinion that there is *prima facie* evidence of the commission of an offence during the period mentioned in the preamble by a person who held public or political office in India and that in accordance with the guidelines contained in the preamble the said offence ought to be dealt with under the Act, the Central Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion. Thus, formation of the requisite opinion casts on the government an obligation to make the declaration in every case, without exception, in which the opinion is formed. Upon the making of the declaration, another consequence follows compulsively..."

That is, that it goes to the Special Court and no other court at all. Therefore, they said:

"It ought to be mentioned that there is no scope for the argument in the instant case that the Bill leaves it to the arbitrary and uncanalised discretion of the Central Government to pick and choose persons for trial before the Special

[Shri C. M. Stephen]

Courts and leaves the rest to be tried by the ordinary procedure in the regular courts."

This is the basis for what they said that there is no constitutional infirmity and Art. 14 is not violated. But I would like to have a clarification whether they accept this principle that every offence committed by every political personality of a high office would be covered and everybody, including Mr. George Fernandes, with respect to whom it is an admitted fact that there was a dynamite conspiracy, would be put before the Special Court for adjudication? If that does not happen, it is only instancing. There are persons who may be accomplices in the government. What happens about them? Are you putting them or are you not putting them? Or are you restricting yourself to one? What happens is; offences which led to the emergency, you condone; offences which were committed to meet the emergency you condone and in case of offences committed in course of implementation of the emergency, some you pick up and some you condone and those alone you put before it. I submit it is in contravention of the contemplation and Condition under which the Supreme Court has spelt out that the Bill is not vitiated. I would ask the Minister to give an explanation as to whether he accepts this principle that the Supreme Court has spelt out and on the basis of which the majority judgment said that it is constitutionally valid and they said, otherwise it will be constitutionally invalid. This is the position.

If you are going to select this pick and choose business, let us remember this is not the end of the matter. This will not be the end of the battle. Political phases can change, governments can change and for offences, let it be remembered, there is no time bar at all. The same machinery can be used, the same methods can be used. What you use to-day can be an

instrument against other offenders when others come into power. Let us remember these aspects of this matter. Anyway this pick and choose legislation is meant only for this particular purpose.

Assuming this classification is correct, then the question is whether you are giving a fair trial. Here, the type of the court that is coming up is graphically described by Mr. Justice Shingal in his judgement after analysing the whole thing and this is what he said:

"The Special Courts envisaged in the Bill are therefore courts the like of which has not been provided in the Code of Criminal Procedure or any other law, and are in fact unknown to the criminal law of the country. The question is whether our Constitution envisages the creation of such courts."

It is said that the instrument that we are putting up is absolutely unknown in the criminal jurisprudence of the country. There must be a compelling justification to set up such a court. Now, what is the justification? The only justification that they are pleading is that the congestion of work in courts makes it difficult to have it done in other courts. Here again I may be permitted to quote Mr. Justice Shingal: The question is whether under the present legal frame work the ordinary courts can be put into service to get an expeditious trial. Mr. Justice Shingal says this:

"In any case the reason for excluding the ordinary criminal courts from trying the class of offences referred to in the Bill within their respective jurisdiction, in accordance with the provisions of section 177 of the Code of Criminal Procedure, 1973 is congestion of work and not their inferior status or incapacity to deal with those cases. The object of the Bill would therefore have been served by the creation of additional courts of the same

category as the "ordinary criminal courts" and the making of any procedural changes which may have been considered necessary in that context to exclude avoidable delays in the trials.

There would have been nothing unusual if such additional courts had been created to save the ordinary congested criminal courts from the burden of more work and to bring the contemplated prosecutions to speedy termination."

That was permissible under the existing law and it would not have been necessary to introduce the present Bill in Parliament.

Therefore, one judge, after surveying the entire criminal structure came to the conclusion that the Criminal Procedure Code and the Constitution, as it is, provide for an exclusive assignment of this task either to the Special Court or to a particular sessions court. It is possible and nobody has refuted it. If that is so, then why another court is the question.

Then, inferences will have to be drawn by your attempt to make another court. Here again I ask: what type of court you are creating? Would it give a fair trial to the accusers? Again I would just quote Justice Singhal:

"Speaking in practical terms, the Bill thus enables the Central Government to decide which of its nominated judges shall try which accused or, in other words, which of the accused will be tried by which of its nominated judges".

As will appear, such a procedure cannot be said to be fair, just and reasonable within the meaning of Article 21 and amounts to serious transgression on the independence of the judiciary."

This is the totality, the gist, of the entire legislation that is coming up before us. Again it says:

"It is not, therefore, permissible for the Executive to appoint a particular judge or magistrate to preside at the trial of a particular accused under the Code of Criminal Procedure. This is fair, just and reasonable and relieves the accused of any possible apprehension"

Now, again, it bears a quotation:

"It has to be appreciated that the problem is of much greater significance in the cases of trials before the Special Courts envisaged in the Bill. As is obvious, a trial by the fiat of a successor government, however justified, is noticed with an amount of scepticism. If one may be permitted to say so, a 'successor trial', broadly speaking, seeks to hit the adversary a second time after his initial discomfiture and displacement from power or authority and in the case of an accused who has held a high political status, it may have the effect of destroying his political future. It is, by the very nature of things, difficult to disabuse the mind of such an accused of the lurking suspicion that the trial is motivated by political considerations and will not be just and fair, or to convince him that it will ultimately lead to justice. It should therefore be the effort of those ordering the trial to do nothing that may, even, remotely, justify such a suspicion. They should in fact do all they can to convince everyone concerned, including the accused that they had the best of intentions in ordering the trial and had provided a fair and straight forward procedure, and the clearest of judges, for the trial in an open and fear less manner. That will not only fore close avoidable criticism but uphold the majestys of the rule of Law in its true sense".

"Moreover, if the result of the trial has to carry conviction with

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the people as a whole, and is meant to acquaint them with the "true character" of the persons who have committed the offences for the survival of the democratic institutions and cleanliness of the political life, as professed in the statement of Object_s and Reasons of the Bill, it is in the interest of those making the declaration referred to in clause 4 of the Bill to convince everyone, including the accused, that the trial is not spectacular in purpose and does not expose those facing it to a risk greater than that taken by any other accused at an ordinary trial, under the ordinary law. That kind of assurance, that there is no pre-arranged result, and that the accused have nothing to fear from the presiding judge of the Court, is the basic requirement of a "successor trial". Human dignity is a concept enshrined in the Preamble of our Constitution and runs through all that it provides. It is therefore necessary that this treasure should be the priceless possession and the solid hope of all our fellow citizens including those who have to face trial for the offences charged against them".

"But the clause of the Bill referred to above are in derogation of the majesty of the judicial edifice so gloriously and assuredly built up by the Constitution, and is a serious inroad on the independence of the judiciary."

Now, could there be a more sweeping and more graphic statement over the dangerous implications of the Bill? You want to select somebody, to pick up somebody; you will pick up a person who is to be tried; you will look through different special courts; you will decide to which of the special courts, which of the persons must go and you will give conviction. You are going to give normal trial. The Bill does not seek that. Then what is it about?

Now, it is not Justice Shinghal alone that said about it. Justice

Krishna Iyer has this observation to make about it:

"Before I conclude, I must admit the force of the reasoning in Shinghal, J's powerful plea against nominated judges. I am persuaded to the view that the sure solution to the tangled web of problems raised by the Reference, consistently with the present object of the Bill, is to make the High court the custodian of the new jurisdiction. This suggestion cropped up even as the argument sailed along but counsel for the Union of India assured the Court that respectful consideration, not more, would be given to the tentative idea expressed from the Bench. The risk of constitutional litigation defeating the purpose of quick justice may well be the price of ignoring the considered suggestion. It is for the wisdom of Parliament to trust the High Courts or the hand-picked judges from the High Courts and face constitutional adjudication. I say no more. There is something to ponder, for those who cherish accountable judicial autonomy, in the apprehension expressed by Shinghal, J. that subtle encroachments on independence of this instrumentality may eventuate in temporising with a fundamental value. While I am impressed with the reasoning of the learned Judge, I desist from pronouncing on the point."

Now, two judges have very strongly said about. May I put the question to the Minister? The Supreme Court during the arguments put forth the suggestion as to why not entrust this matter to any particular High Court. Any High Court may be charged with this responsibility. And they can. The judge of the Supreme Court felt that this is a possible thing. Shinghal said it and Krishna Iyer said it. They said that they would consider it. You owe it to the House to explain why you could not accept it.

There are two methods for asking any particular judge of the High Court or Sessions Court to do it. Leave it to them. If it is Sessions Judge subject to the supervisory decision of the High Court and if it is High Court in its original jurisdiction subject to the Supreme Court. Why could you not do that? If procedural changes are necessary they can be provided for. Why are you fighting shy of it? Why do you want to pick up your own judges? Why do you want to throw out the accuse before the judges of your choice. Why do you want to interfere in the whole matter? It is a question that you will have to answer.

Secondly, Lok Pal Bill came here. It was referred to the Joint Select Committee. Because there were public men, what was the suggestion made. It is now before the House. The President will appoint in consultation with the Chairman of the Council of States and the Speaker of Lok Sabha who will consult the different party leaders, if they so choose. Because it is a public office confidence must be imparted—successor government in the former government. It has got political tingle about it. Therefore, assurance must be given. Why are you fighting shy of it? Constitution says that the President appoints and when *ad hoc* judges have got to be appointed the Chief Justice appoints. Why in this case the Government of India and not even the President. May be the President functions in the name of Government of India. That is a different matter. Why the Government of India? Why do you want to appropriate it? This confirms the conviction and the fear, sir, that it is going to be a case of hand-picked offenders being put before the hand-picked judges with the pre-arranged dispensation whereunder to use Shinghal's words pre-arranged judgement could be handed down in the service of justice and in the prosecution of the law of this country. Would it carry conviction? This is all I have got to say.

Now, in the case of appointments, the majority judgment says what? Let us not forget that. That is majority judgment, not the dissenting judgment. The majority judgment has this to say about that:—

‘The right of an accused to life and liberty cannot be made to depend upon pious expressions of hope, howsoever past experience may justify them. The assurance that conventions are seldom broken is a poor consolation to an accused whose life and honour are at stake. Indeed, one must look at the matter not so much from the point of view of the Chief Justice of India, nor indeed from the point of view of the Government, as from the point of view of the accused and the expectations and sensitivities of the society. It is of the greatest importance that in the name of fair and unpolluted justice, the procedure for appointing a Judge to the Special Court, who is to be nominated to try a special class of cases, should inspire the confidence not only of the accused but of the entire community. Administration of justice has a social dimension and the society at large has a stake in impartial and even handed justice.’

This principal has got to be applied. Now, unfortunately, the Chief Justice felt that if his concurrence is obtained, this requirement is satisfied. Instead of consultation, if it is concurrence, this requirement is satisfied—that is what he thought. It is for the accused persons to say about this, following the self-same dictum. In this House I do not want to criticise any judicial authority. But let us remember what is the judgment of the Supreme Court about the present Government. They have said this. (*Interruptions*) This is what they have stated, Sir, that they are ‘amenable to influencing’. That is stated by the Supreme Court.

MR. SPEAKER: Who? Judges?

SHRI C. M. STEPHEN: I am coming to it. This is what they say. This

[Shri C. M. Stephen]

is on pages 100 and 101. They were discussing about the Retired Judges coming in and they said this:—

'A retired judge presiding over a Special Court, who displays strength and independence may be frowned upon by the Government and there is nothing to prevent it from terminating his appointment as and when it likes... The process of consultation has its own limitations and they are quite well-known. The obligation to consult may not necessarily act as a check on an executive which is determined to remove an inconvenient incumbent.'

Let us remember that this deals with a particular case, a case of a temporary legislation, its immediate, expeditious disposal. And this Government has the Supreme Court in view. And then they say, a retired judge is not acceptable because it is likely that the Government may frown upon them. It is likely that independent judge could be removed by them. They have got in their mind the retired judge. Who?—The present Government. The Government is likely to do that. If that is the type of thing that is possible then do you expect us to accept your appointment of a judge as impartial, as inspiring confidence? If you are capable of frowning on an independent judge, removing an independent judge, the supreme court says, 'there is a likelihood of your frowning upon him' don't put a retired judge but only a judge who is protected by the Constitution. If that is the type of thing would you expect us to accept it as impartial appointment? This is what I have got to say.

MR. SPEAKER: Mr. Stephen, you have taken half-an-hour.

SHRI C. M. STEPHEN: Five minutes more. I am concluding, Sir. I am closing. This is the position about the Chief Justice; Concurrence is not enough. This is all that I have got to say. Because, unfortunately, Sir,

Chief Justice agreed to go into certain matters which the Prime Minister chose to refer to him. It was stated in the Rajya Sabha that the Chief Justice went through the statement and approved of it. This is something which we don't expect from the Chief Justice of India. This is a matter in which law does not compel him. He went into it, he examined it. And if that concurrence is all that is necessary, my submission is, that concurrence will not give any confidence at all, Sir.

We know the purpose of this Bill. You have been carrying on a sort of prosecution. After 1977 many things have been done. Many Commissions of Enquiry were appointed, nothing has come out of them; the capsule was dug out, nothing came out of it, a sort of photostat copy of a cheque on a Swiss Bank was produced, but it was proved that it was fake. Then, it was said that money was sunk in Sri Lanka and Mauritius; enquiries were made and nothing came out of it; sleuths of the Government went out everywhere, but nothing came out of these things. One after the other, efforts were made, but nothing could be brought out of these. Finally, Shri Charan Singh tried to arrest her and put her in jail, but the courts said that she was innocent and she was released. Then, the floor of the House was used to put her in jail. All right; that has been done, she has been put in jail. Finally, Shri Charan Singh said that under normal laws of the country, it may not be possible to put her in jail and, therefore, Nuremberg trial. Mr. E. M. Shankaran Nambodripad, the realist that he is, said that under ordinary law, a punishment cannot be inflicted, so there should be Nuremberg trial. Nuremberg trial is not provided in the constitution but she must be put in jail. How to put her in the jail? Pick out a judge, pick out an offender, put the offender before the judge, arrange a judgement, hand it over and send her to the jail, and finish up the case. This is what is being attempted. (Interruptions). Now this has got a sig-

miscance. Jail has no sting about it, but jail will have a sting about it if the people are convinced that the jailing is as a result of a crime committed. Jailing will not have any sting about it. You are bringing this Bill and are creating conditions under which a presumption will go about to the effect that this is an act of prosecution and there would be no presumption that the conviction has got a moral turpitude attached to it. If that happens, then these things will not be there; the purpose will be defeated, judiciary will have been concocted, will have been polluted, nothing will have been achieved and we must say we look at this in this manner.

Shri Ram Jethmalani had moved this Bill; it is absolutely unprecedented. Shri Jethmalani said in his Bill "Whereas the Government has come *prima facie* to this conclusion." May I ask: "How did he come to know of this?" If the Government came to a *prima facie* conclusion, how did a Private Member come to know about it? And, he has been going about it.

Now, in the Janata Government, there are three types of persons. There are people who say: "People have punished her let us leave her". There are others, who say: "Let the court take its course". There are still others who say: "Blood for blood; tooth for tooth. We were put in jail, we will put her in jail". They are divided in two classes. Some say: "I was put in jail, I will, therefore, put her in jail." Then, "my client was put in jail and therefore, I will put her in jail". Shri Jethmalani comes under that—"My client was put in jail I will put her in Jail. Some smuggler was put in jail Haji Mastan was put in jail, therefore, I will put her in jail". And, therefore this Bill.

Now, go on with that. The fight is not over. We have lost the battle, the war is on; the war will be fought and the day will come when we will fight back and win that.

MR. SPEAKER: The Lok Sabha stands adjourned for lunch till 14.00 hours. After lunch, the first speaker will be Shri Kamath.

14.05 hrs.

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

The Lok Sabha re-assembled after Lunch, at five minutes past Fourteen of the Clock

[MR. DEPUTY SPEAKER in the Chair]

SPECIAL COURTS BILL—contd.

SHRI HARI VISHNU KAMATH (Hoshangabad): The Special Courts Bill is a long awaited Bill. Ever since the vigilant people of our great country won the mighty battle of the ballot two years ago, this very month, March, two years ago which marks a distinct political watershed in free India's history a great political watershed, people outside and inside Parliament have been asking with greater and greater impatience; how about those criminals, what about those offenders against the Constitution, against the people who during those dark days of tyranny torture and terror emasculated, the Constitution, sabotaged democracy and crippled Parliament. These questions were being asked, and people were getting impatient and at last we have come to grips with the question, and the Bill is before the House.

Last year, in April 1978, when the Home Ministry's demands were on the anvil and were being discussed in the House, I referred to this matter. The Shah Commission's first report was presented to the House by the government, was placed on the Table of the House by the government on the 12, March 1978, and the second report, on 26, April 1978. On that very day, April 26th, speaking on the Home Ministry's Demands, I said that "a special law should be passed by the Parliament, to try the offenders named, the persons indicted, by the Shah Com-

[Shri Hari Vishnu Kamath]

mission, whoever they may be; let there be a special law, a special enactment, a special statute passed by Parliament, and let there be special tribunals." Exactly a year ago or a little less than a year ago, I demanded of the Government that this should be done. But there was some shilly-shallying, dithering about this matter. I do not describe it as *mala fide*, or business, or lackadaisicalness or dilatoriness, because the Janata Government, the Janata Party, the *Janata*, the people who have installed them in power, the people, the party and the Government have been anxious to maintain and cherish and promote the rule of law in this country. Therefore, the Government referred the matter to the Supreme Court, and the Supreme Court gave its verdict in December or thereabout.

SHRI D. N. TIWARY (Gopalganj):
Not verdict, but opinion.

SHRI HARI VISHNU KAMATH:
The verdict on that reference came in December or so. That is why this delay occurred. Perhaps, it could have been obviated and this Bill could have come before this Parliament earlier.

Only last week two of the offenders, two of the anti-people criminals during the Emergency period, have been tried, have been convicted and sentenced by the Sessions Court. Two of the Delhi mafia, of India's Emergency Gang of Four—in Hindi there is a more expressive and more popular term.

"दोषी दोषी"

two of them have been convicted and sentenced by the Sessions Court. One is reminded of the slogan

दोषी दोषी दोषी

not in the same sense, but in a different sense. Two of them have been brought to book and they have filed an appeal, or they are going to file an appeal so the papers say, before the High Court. Let it take its own course.

This morning, the Leader of the Opposition, Shri Stephen, the lawyer that he is, held forth, long and loud, as is his wont, on certain matters which, according to him, would vitiate or taint this measure, this Bill. He is a lawyer and he is accustomed to courts, lower and higher courts, the Supreme Court also, I believe.

AN HON. MEMBER: No, no.

SHRI HARI VISHNU KAMATH:
May or may not be.

He read out certain extracts, convenient to him, from a certain judgment; he read out certain *obiter dicta* made by two Judges. Well, I am not a lawyer, but I have read the law and I have administered the law also. He referred to Justice Krishna Iyer endorsing what Justice Shingal said. I am not referring to that. I am referring to what Justice Krishna Iyer said in the course of his opinion, which is very important and has a direct bearing on the Bill before us.

"It is common knowledge that currently in our country criminal courts excel in slow-motion. The procedure is dilatory, the dockets are heavy, even the service of process is delayed and, still more exasperating, there are appeals upon appeals and revisions and supervisory jurisdictions, baffling and beulking speedy termination of prosecutions, not to speak of the contribution to delay by the Administration itself by neglect of the basic necessities of the judicial process.

"Parliamentary and pre-legislative exercises spread over several years hardly did anything for radical simplification and streamlining of criminal procedure, and virtually re-enacted, with minor mutations the vintage Code making forensic flow too slow and liable to hold-ups built into the law. Courts are less to blame than the Code made by Parliament for dawdling and Governments are guilty

of denying or delaying basic amenities for the judiciary to function smoothly."

It is the ordinary criminal courts that he is referring to.

"Justice is a Cinderella in our scheme. Even so, leaving V.V.I.P. accused....

—not V.I.P., but V.V.I.P.—

"...to be dealt with by the routinely procrastinating legal process is to surrender to indeterminable delays as an inevitable evil."

So, that is why the Government has come forward with this Bill as it does not want to surrender to this inevitable evil. Mr. Krishna Iyer concluded by saying:

"Therefore, we should not be finical....

—I do not know whether it should be 'finicky' or 'finical'—

"...about absolute processual equality....

—it is new language, new coinage I welcome it because it enriches the English language—

"...and must be creative in innovating procedures compelled by special situations."

Here is a special situation. Desperate diseases need drastic remedies, and this was a desperate evil, a drastic evil, the evil of the emergency's dark days of tyranny and terror, which therefore called for a special remedy, and this special Bill.

Mr. Stephen referred to—perhaps that is on his brain, on his mind, very much, I do not know whether it was a command performance this morning, I do not know but even if it was not—he referred to my colleague, Mr. George Fernandes. I do not know with what logic or with what wisdom that God has endowed him with he raised this

matter, because this is equating the criminal and the hero, because Mr. George Fernandes fought against the emergency, fought for the people, and was part of a resistance movement.

What happened in Europe? Did the Nuremberg Tribunal try the resistance movement people also? No, Hitler's criminals were tried, the Nazi criminals were tried by the Nuremberg Tribunal. Not those in France, not those in Germany, not those in Switzerland, not those in Holland, not those in Italy were brought to book by any Tribunal, because they fought for the resistance movement against Hitler, against his emergency, against his anti-people laws. Nobody among them was brought to book. Such was Shri George Fernandes who fought for the people, who fought against the emergency, fought tooth and nail, fought with might and main against the emergency during the dark days of tyranny and terror, and kept up the spirit, tried to maintain the spirit, of the people during the emergency, and called upon them with whatever force he could muster to fight the emergency and to destroy those who were perpetrating this evil of the emergency on this country. Therefore, it is wholly unjustifiable that these perpetrators of the emergency, of the evil, and the fighters against the emergency should be equated by such an able lawyer as Mr. Stephen. I do not know if it is just a political gimmick that he introduced in his speech.

SHRI DINEN BHATTACHARYA (Serampore): Legal gimmick or political gimmick?

SHRI HARI VISHNU KAMATH: Political gimmick.

Today, I am sorry to say, as far as I am aware, he and his party on this particular issue, because Nemesis has overtaken them, has overtaken the leader of the party, that party stands isolated in this Parliament....

SHRI C. M. STEPHEN: Hear, hear!

SHRI HARI VISHNU KAMATH: Even his former colleagues, the news-

[Shri Hari Vishnu Kamath]

papers tell us, in the Congress party to which he himself belonged before he crossed over, even they have let him down. They have taken a stand on the Bill which is diametrically opposed to his stand.

DR. V. A. SEYID MUHAMMAD (Calicut): That is not correct. You are wrong.

SHRI HARI VISHNU KAMATH: I am sure, therefore, because of this, there will not be any difficulty, and hurdle in the Bill being passed by the Rajya Sabha also.

Then, he was talking about battles and war, he used to battle before he joined the party of which he is the leader in the House, he perhaps was a hero of a hundred battles which he must have fought. Now, his leader is not with him in this House but the leader is there outside. Parliament took that decision....

SHRI C. M. STEPHEN: You abstained in the voting, you disagreed.

SHRI HARI VISHNU KAMATH: It was the decision of Parliament. He had the temerity to say that Parliament behaved like this saying, she put us in jail and so we put her in jail, she did something and we do the something. What gumption he had to say this? It is *lex talionis*, a tooth for a tooth, an eye for an eye. Have we done that?

SHRI C. M. STEPHEN: That is what you are doing.

SHRI HARI VISHNU KAMATH: How many have we detained without trial? Have we tortured anybody as Mr. Lawrence Fernandes was tortured or as was Mrs. Snehlata Reddy tortured and killed?

SHRI VASANT SATHE (Akola): It was proved to be a lie after an inquiry.

SHRI C. M. STEPHEN: The commission of inquiry has said that it is a lie.

SHRI HARI VISHNU KAMATH: He said, it is all vendetta. I do not know what he is thinking of.

There are one or two other matters about the Bill. I have given notice of amendments, and I will speak on them later on.

He said that he will lose battles but win the war. He is welcome, his party is welcome. Let him be prepared to face any battle. He gloats over Chikmagalur, he lost Samastipur, lost Fatehpur, lost Khandwa. Come on and fight battles. We are prepared.

SHRI VASANT SATHE: Manipulated.

SHRI HARI VISHNU KAMATH: You are experts in rigging with 30 years experience of manoeuvring. Now, the people have taught you a lesson. You can never do that again.

SHRI VASANT SATHE: At Samastipur, you manipulated at the counting. It is a shame on you.

SHRI HARI VISHNU KAMATH: He talked of war and, I hope, he means non-violent war.

SHRI C. M. STEPHEN: Non-violent war.

SHRI HARI VISHNU KAMATH: When he talked of battles, I hope, he did not mean violent battles.

SHRI C. M. STEPHEN: Not at all.

SHRI HARI VISHNU KAMATH: If he had in mind violent battles, let him sharpen his weapons, let him choose his weapons. We are prepared to face his party and his weapons. Let him think of war. He is not a strategist, he is not a tactician for a war. Let him fight battles. He has lost most battles in the last 2-3 months. Let him prepare for a war to the finish with no holds barred.

SHRI C. M. STEPHEN: Come on, you declare elections.

MR. DEPUTY-SPEAKER: Please conclude.

SHRI HARI VISHNU KAMATH: I would conclude after touching on one more point. Mr. Vidya Charan Shukla

and Mr. Sanjay Gandhi have been convicted and sentenced. Under the scheme of the Bill under Clause 7 of the Bill, to expedite matters, those cases which are pending in appeal can be transferred to the Supreme Court from the Court of Appeal. That may be considered when it arises.

I will conclude by saying that this Bill is a very welcome measure and, should have been brought before the House earlier, and I hope that a Bill of this kind, followed by other Bills, similar Bills, will in future prevent, deter, any would be tyrants, anti-people criminals, anti-Constitution criminals, anti-democracy criminals, anti-Parliament criminals, from behaving as Shrimati Indira Gandhi and her gang did during the Emergency.

SHRI SOMNATH CHATTERJEE (Jadavpur): Mr. Deputy-Speaker, Sir, I feel that it was overdue that the Janata Party should have kept its trust with the people of this country.

It is our solemn duty not only to dismantle the structures of Emergency but also to give abject lessons to the perpetrators of the most heinous crimes against humanity, so that the free people of this country may never become slaves again.

What does this Bill seek to provide? It is to authorize setting up of Special Courts to try offences committed by some highly placed individuals wielding political and executive power during a particular period, so that the trials may be held with utmost dispatch.

Now, what is that period which has been selected as the relevant period under the Bill? It is the period when the hoax of Emergency was proclaimed to perpetuate a family rule, when the light of freedom of the teeming millions of the people of this country was extinguished engulfing the people in total darkness. What did the people witness during those months in this country? We saw the sordid

spectacle of the most calculated and comprehensive attack on basic concepts of freedom, democratic rights and civil liberties.

With the avowed object of nullifying an inconvenient judicial verdict and for projecting a theory of indispensability of one individual, make-believe situations were created, sponsored demonstrations were held, the slogan of 'Indira is India' was raised, thousands of political leaders and workers were put behind the bars without trial, and a rampage was let loose on all democratic institutions and values.

A dictator propped by a paranoic progeny and surrounded by cringing cowards and sycophants became the sole arbiter of the fate of 600 million people of this country during these nineteen months. Detentions without trial, degradation of Parliamentary processes in this country, diminution of judicial power and authority, a comprehensive censorship, extinction of fundamental rights of the people, promulgation of Draconian laws, changing the electoral laws to give *ex-post facto* sanction to corrupt practices, and mutilation of the Constitution of India were some of the infamous achievements of that darkest period in the history of India since independence.

Free people were subjugated in an all-pervasive manner, being denuded of all basic human and Constitutional rights. On the one hand there was a joke in the name of 20 point programme and on the other hand, a ruffian under the benign guidance and maternal inspiration was let loose and he carried out his misdeeds on the people of this country, having been turned into slaves. They became playthings in the hands of one individual. Life, liberty and property became the subject matter of the benign dispensation of Gandhi, not Mahatma but *duratma*. We found that houses and shops were demolished to beautify cities, people were jailed to silence dissent and the young and the old were

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castrated to satisfy one's perversity. What happened during those 19 months was nothing but a calculated brigandage on the people of this country.

The history of emergency is a history of crimes, it is a history of humiliation of India. It is a history of subjugation of her free people and the annihilation of all democratic rights and values and all these, for the sake of one individual a vindictive, arrogant and power-hungry individual.

To-day we are witnessing the sickening spectacle of the abettors of crimes against humanity carrying out their performances—as Mr. Kamath said, their command performances in a manner which will bring shame to everybody in this country. I believe the opposition to this Bill is nothing but an insult to the democratic rights and values of this country. One will take hours and hours to recount the blackest deeds during the emergency. I believe the Shah Commission has discharged a very solemn duty to the nation and the historic document which it has produced as its report, is replete with instances of draconian actions on the part of the ruling authorities at that time. Not having any defence on the merits, the principal actor and her cohorts fled away from the Commission, did not face the Commission and as a result we have now found that the facade of innocence that was sought to be put up has been ripped open and now ugliness has been laid bare.

In these circumstances, what would an institution like the Parliament, a responsible institution do? I feel it is to-day charged with the solemn duty of not only undoing and dismantling the foundation and structure of the emergency but also evolve measures to see that in future the liberty of the people is never tampered with.

What is the context in which this Bill has been moved. Our Party has been demanding for a long time from the very beginning that crimes against humanity, crimes against the ordinary

people, the working classes and political opponents cannot be treated in a manner as it was being done these two years. That is what we have been demanding. Now, in this context I feel that the Bill is a very innocuous Bill. It does not create any new offence. It does not create any new procedure for trial of the offences. What it does is to select a court where the trial can be held with expedition. Now those who try to procrastinate proceedings and trials like this will oppose such a Bill. What is the complaint in this country? All the learned Judges in the Supreme Court have referred to that. Criminal cases take years and years for disposal. There are appeals, there are revisions and there are easy methods of delaying the hearing of the cases in ordinary criminal courts.

And we have seen, recently, until the intervention of the Supreme Court, how one of the accused in the *Kissa Kursi Ka* case was trying to take dilatory tactics by bogus pleas or frivolous pleas for obtaining adjournments thereby trying to delay the matter because they had no defence before the courts. Now, with proper safeguards, if provisions are made for the constitution of a court where the only change will be that there will be speedy disposal of cases and no other cases will come up, to delay proceedings, how can any responsible person or any person, who *bona fide* feels, that justice should not be delayed, can oppose this Bill?

Therefore, the opposition to this Bill cannot be for the purposes which my learned friend, the Leader of the Opposition was labouring to make out. If we look at the provisions of the Bill, we will find that this Bill provides for greater safeguards to an accused than in an ordinary criminal court. The trial will be before a high court which is ordinarily the appellate authority. The procedure under the Cr.P.C. will be applicable here. Secondly, the very important safeguard is an automatic appeal to the highest court of the land the Supreme Court—both on facts and on law. It will have to be appreciated that in ordinary cases, the approach to the Supreme Court of the land is not

automatic or a matter of right. One has to get a special leave from the Supreme Court. In many cases of convictions, the Supreme Court does not grant special leave and does not take up the matter. In case he is convicted, he will get the statutory right of appeal to the Supreme Court. The Supreme Court will hear the appeal not only on questions of law but will go into the question of facts. The point here is simple. Has the hon. friend faith in the Supreme Court or not? Have my hon. friends got faith in the judges of the Supreme Court or not? We have found how they tried to manipulate the dispensation of justice during the emergency. At that time the learned judges were picked and chosen for the purpose of showing favours to them because they danced to their tune. How persons were selected to grant favours! Even then we are proud that the judiciary in the high court level in this country tried to protect the rights of citizens as human beings. We have seen how the learned judges tried to give relief to illegally detained persons without trial. They could not tolerate that. They brought it before the Supreme Court and a judgment was delivered in their favour. Then the Supreme Court was to their liking. They had no objection to the supreme court when they upheld this contention. when they gave a decision that the people had no right to life and liberties during the emergency. . . (Interruptions).

SHRI C. M. STEPHEN: Is it possible for the Supreme Court to write a judgment in our favour? Somebody said that that is possible even now.

SHRI SOMNATH CHATTERJEE: I am not saying anything about the Supreme Court. What I am trying to point out here is that my hon. friend has been trying to make imputations insinuations about the judges of the high courts. When the judges delivered their judgment to your liking that was all right. You will remember that here is an automatic right of appeal to the Supreme Court. There is also a very important safeguard so far as the exercise of the executive authority is concerned. Clause 7 makes it very clear that the selection of cases by the Government will not be accusedwise or personwise but offencewise. That is of great importance. The Supreme Court has stressed on it. There is no question of picking out any accused during a certain period. Once that declaration is made, then without any distinction all the cases will come up before the special court—whichever may be the offenders or accused in the cases.

Here it is for expeditious disposal of criminal cases of persons and it does not suit persons who procrastinate such trials. Sir, what we are witnessing is that strong arm methods are being employed during the trial of the offences in the subordinate courts in this country here and everywhere. A few days back it hapened in the court of the Districts and Sessions Judge. A judge was deliberately insulted. The persons got entry to the court and raised slogans and threw missiles at the judges. We found that when the Commission of Inquiry was appointed by their favourite Sri Siddartha Shankar Ray as in Calcutta where one of the minions of the then prince had to

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appear there, what happened was that no hearing could take place. There hordes of hoodlums entered the court room, created disturbance, set on the judge's chair and stood up at the judge's table. Is this the way they want courts to function in this country? Now, that type of 'tamasha' will not go on throughout the country and then they will have the revisions and appeals one after another.

Sir, at the same time I do not know why these learned judges do not take contempt of court proceeding. Probably, they are afraid of these gangs of hoodlums. Therefore, my request to the hon'ble friend is that every reasonable and right thinking person in this country should welcome this Bill. And I should have thought if anyone has a feeling that he or she is an inevitable accused before the Special Court then he or she should search her heart to find out whether he or she has any defence. If she has any defence she should welcome it because trial will be over quickly and she will be acquitted of the charges. Therefore take that chance. Why don't you take that chance! (Interruptions).

Sir, the government although it was not required to do had gone to the Supreme Court to obtain its advisory opinion. Now, Mr. Stephen has become greatly enamoured of the dissenting opinion. Of course, they never tolerated any form of dissenting opinion during those nineteen months. Sir, let him also read if he has got spare time or if he has been allowed to read the majority judgment also. If I may with your permission quote...

MR. DEPUTY SPEAKER: Please conclude now. No more quotations.

SHRI SOMNATH CHATTERJEE: Sir, on page 77 on the question of discrimination the Supreme Court has said:

"It is irresistible that the classification provided for by the Special Courts Bill is valid and no objection can be taken against it."

Sir, as you are imposing time-limit may I draw your attention and attention of the hon'ble Members to the judgment at page 84 where question of delay and dispatch has been dealt:

"that it is imperative for the functioning of the Parliamentary democracy and the institutions created by or under the Constitution of India that the commission of offences referred to in the preamble should be judicially determined with the utmost dispatch. If it be true, and we have to assume it to be true, that offences were committed by persons holding high public or political offices in India under cover of the declaration of emergency and in the name of democracy, there can be no doubt that the trial of such persons must be concluded with the utmost dispatch in the interest of the functioning of democracy in our country and the institutions created by our Constitution. Longer these trials will tarry, assuming the to be justified, greater will be the impediments in fostering democracy, which is not a plant of easy growth. If precautions which the Bill envisages are allowed to have their normal leisurely span of anything between 5

to 10 years, no fruitful purpose will be served by launching them. Speedy termination of prosecutions under the Bill is the heart and soul of the Bill."

Therefore, Sir, if my friends on the other side, who are opposing this Bill, if they have any sense of dispensation of justice in proper manner then they should welcome this Bill instead of opposing it.

श्री इश्वरभूषण तिवारी (खलीलाबाद) : मैं विशेष न्यायालय विधेयक का स्वागत करता हूँ। मुझे आश्चर्य है कि यहाँ पर ऐसे विधेयक का विरोध करने के लिए भी लोग खड़े हो जाते हैं। माननीय स्टीफन ने कहा है कि इस में पिक एंड चूज किया गया है। एक अन्य माननीय सदस्य ने इसको विडिक्टिव लैजिस्लेशन की सभा दी है। उनके कहने का मतलब क्या था यह मेरी समझ में नहीं आया है। इस विधेयक के प्रीएम्बल और उद्देश्य जो हैं उन में साफ कहा गया है कि एमरजेंसी के दौरान जो जुर्म किए गए हैं वे साधारण किस्म के नहीं थे, असाधारण जुर्म थे। ऐसे जुर्मों के खिलाफ मुकदमा चलाने के लिए कौन सी व्यवस्था होनी चाहिये इसके बारे में इस विधेयक का प्रारूप तैयार किया गया और इसके बारे में सुप्रीम कोर्ट की राय ली गई और उससे यह पूछा गया कि संसद को संविधान के तहत यह अधिकार प्रदत्त है या नहीं कि वह इस प्रकार का विधेयक बना सके? सुप्रीम कोर्ट ने संसद द्वारा इस प्रकार का विधेयक बनाए जाने के अधिकार को स्वीकार किया और इस प्रकार के कानून को वैध करार दिया। उस में यह बात साफ कही गई है कि हमारे जो क्रिमिनल कोर्ट्स हैं, साधारण न्यायालय हैं और वहाँ जो प्रोसीजर है उसको देखते हुए इन केसिस का जल्दी निपटारा नहीं हो सकता है। इसके पूर्व कमिश्नर बनाए गए थे और उन्होंने अपनी संस्तुतियाँ दीं। बड़े लोग जो हाई पावर में थे उनके खिलाफ उन्होंने रिपोर्ट दी और कहा कि उनके खिलाफ प्राइम फेसाई तौर पर जुर्म साबित हो गए हैं अब उनके बारे में घीमी गति से और ढिलाई से मुकदमें चले तो हमारे यहाँ जनता के मन में ऐसे इस्टीमेशन के प्रति विश्वास की भावना पैदा नहीं हो सकती थी और वह खत्म हो जाती। जो जुर्म एमरजेंसी के दौरान किए गए और संविधान का संशोधन किया गया वह सब अपने मन की मंशा के मूलाबिक किए गए। आप कहते हैं कि उसको करने का आपको हक हासिल था। परन्तु जनता सरकार ने ऐसे नहीं किया है। हमने बाकायदा

शा कमिशन बिठाया, रेंजु कमिशन बिठाया, तमाम कमिशन की नियुक्ति की और उन कमिशन के पास जो शिकायतें पहुँचीं उनको उवहोंने तुरतीब से देखा। जब वे इस निष्कर्ष पर पहुँचे कि कुछ लोगों के खिलाफ प्राइम फेसाई केस बनते हैं और उनके खिलाफ मुकदम दायर किये जाने चाहिये तब सी बी आई या अन्य एजेंसियों के द्वारा उनकी छानबीन की गई, जांच पड़ताल की गई और मुकदमे दायर करने की तैयारी की गई। उसका बाद यह सवाल पैदा हुआ जब यह देखा गया कि दोषी व्यक्ति टालमोल करने की कोशिश कर रहे हैं कि एक विशेष न्यायालय के द्वारा ऐसे मामलों को क्या सुनवाई करवाया जाना उचित नहीं होगा? इस में कोई विडिक्टिव होने का प्रश्न नहीं है इस में साफ तौर पर कहा गया है :

The answer to that question can be one and one only namely that offences alleged to have been committed during the emergency by persons holding high public and political offices in India stand in a class apart.

यह तर्क दिया जाता है कि इस में डिस्टिंक्शन है, इक्वैलिटी बिफोर ला का जो प्रिंसिपल है उसको नकारा गया है। लेकिन वास्तविकता यह नहीं है। प्रीएम्बल में साफ कहा गया है कि एमरजेंसी में एक विशेष परिस्थिति थी और उस दौरान जो आफेंस किए गए वे पोलिटिकल मोटिव से किए गए, सिलैक्टिव थे और पोलिटिकल अप्रोनेट्स को सप्रेस करने के लिए, उनको खत्म करने के लिए किए गए। जो मौलिक अधिकार हैं उनको समाप्त कर देना, बिना कानून के लोगों को जेल में डाल देना, जो बेसिक फ्रीडम आफ दी कांस्टीट्यूशन हैं उनकी तरफी कर देना यह हमारी व्यवस्था और हमारी आस्था को समाप्त करना था और यह बहुत बड़ा जुर्म है। अगर केवल घूसखोरी का ही होता, केवल अपने पर्सनल ग्रेन के लिये होता तब तो यह बात कुछ समझ में आ सकती थी। और यह सारे जुर्म केवल इमरजेंसी के गाव में ही किये जा सकते थे, केवल अतंक और इस तानाशाही के परिवेश में किये जा सकते थे, इसलिये ऐसे जुर्म को न्यायालय द्वारा जल्दी से निर्णय देने के लिये ट्रायल करने के लिये इस विशेष न्यायालय की आवश्यकता है।

दूसरी बात मेरी समझ में नहीं आती, आप इसे विडिक्टिव कैसे कहेंगे? क्योंकि यह आखिरी न्यायालय नहीं है। अपील करने का आपको हक है। और जैसा माननीय स्टीफन ने कहा कि सरकार को यह हक हासिल है कि वह अपने मन के मूलाबिक जिस जज को चाहे नियुक्त कर दे स्पेशल कोर्ट का। परन्तु इस विधेयक में यह कहा गया है कि अगर ऐक्यूज्ड के मन में शंका है कि इस जज से उसको न्याय नहीं मिल सकता तो कस ट्रांसफर के लिये, ऐप्पीकेशन भी दी जा सकती है

[श्री सुब्रह्मण्य तिरुवारी]

धीर उस पर सुनवाई होगी और वह आगला हूबरे सब के सामने पेश किया जाएगा। इसमें कहा इन्फिजेंस आफ प्रिजिडियरी जज हो जायेगी ? कहा। पर हमारी मिन्डिफिजेंस साबित होगी है, क्योंकि आपने तो नया कानून बनाया और यहां पर इस वेज में भी इस बात की बात भी कि ऐसे बड़े जो मुजरिम हैं इनके लिये नया कानून बनाया जाय। परन्तु हमने कोई नया कानून नहीं बनाया। जो प्रिजिडियरी जज है—कमिन्स प्रोसीजर कोड, आई०पी०सी० ऐबीडब्लू का, उन्हीं के अन्तर्गत हम इस मामले को निपटाना चाहते हैं। केवल फर्क यह है कि आपका ट्रायल सर्वोच्च कोर्ट के जरिये नहीं हो सकता है। धीर उसमें भी पूरी कोशिश की गई है कि कहीं पर किसी भी प्रकार से यह बात साबित न होने पाये कि सरकार की तरफ से मिन्डिफिजेंस से कोई काम किया जा रहा है। धीर यह कह कर बच नहीं सकते कि आप पर भी बीसेबी। हम पर भी बीसे। क्योंकि यह केवल जनता पार्टी की सरकार के जमाने में हुआ, धीर यह अगर स्पेशल कोर्टस जनता के लोगों को बूट करे तभी यह बनाया जाय, ऐसा नहीं है। हम एक जनतांत्रिक मू्यों की व्यवस्था की बुनियाद की मजबूत करने जा रहे हैं। धीर आज तक जो बड़े बड़े हार्ड प्रपोज के उनके खिलाफ कभी कोई कार्यवाही नहीं होती थी। धीर आस तीर पर ऐसे मुमें जैसे कभी इस वेज में नहीं हुए थे। अगर इन न्यायालयों के जरिये, क्ल आफ ला के जरिये, सामान्य कानून के जरिये हमने यह फैसला किया, धीर सही माने में अगर इनका ट्रायल हुआ तो उसके काफी लोगों को नतीजा मिलेगी और सबसे बड़ी बात यह है कि जनता के मन में जो प्रतिश्वाह पैदा हो रहा था, वह भी समाप्त हो जायगा। इसलिये मैं कहना चाहूंगा कि इसके बारे में जितने प्रकार की संकाये व्यक्त की जा रही हैं इनका कोई मतलब है नहीं, धीर वह संकाये बिना किसी आधार के हैं। इन्हें भी कोई बात नहीं है। जैसा बटर्नी साहब ने कहा आप ही कहते हैं कि हाह कमीशन या धीर जो कमीशन है उन्हीं की यह सरकार है, यानी कमीशनों की सरकार है, यह प्रोसेज केवल प्रोपेरेन्डा के लिये किया जा रहा है, हमारे व्यक्तित्व को जनता की निगाह में निपटारा जा रहा है, तो यह इत्मान हमारे ऊपर नहीं लगाया जाना चाहिये कि हमने इन नारे कमीशनों का निर्माण केवल आपको नीचे गिराने के लिये या मुजरिम बनाने के लिये किया है। अगर इसमें सच्चाई है तो आप अपने पक्ष में सच्चाई पेश करें और विशेष न्यायालय इनके मुक्त होकर और तथ्यों के आधार पर अपना निर्णय देगी। धीर अगर आप बरी हो जाते हैं तो ठीक है। धीर अगर आपको रंड मिलता है तो आपको फिर नौका मिलता है आप सुप्रीम कोर्ट में इसकी प्रतीक कर सकते हैं। तो इस प्रकार से मैं यह धर्म कल्याण कि इसमें इस बात की भी व्यवस्था है कि ऐसे कौनसे केसेब स्पेशल कोर्टस द्वारा देवी आर्सेने, सरकार उस सम्बन्ध में भी अपनी बोधना जारी कपेनी। ऐसा नहीं कि वह जनमाने

आधार पर, बल्कि बोधना के लिये भी ठीक आधार होगा। ठीक आधार पर अगर यह बात साबित होती है कि इन-इन मुकदमों का निपटारा विशेष न्यायालयों के द्वारा होगा चाहिये तो जो प्री-प्रवबल के बातें तो नहीं हैं, जो आधार तय किये गये हैं, उन्हीं आधार पर, प्री-प्रवबल को बुष्टि में रखकर केवल प्रायातकाल के दौरान किये गये मु्यों का, जिस प्रकार से सरकार बोधना करेगी, ऐसे मुकदमों का निर्णय धीर निपटारा इन विशेष न्यायालयों द्वारा होगा।

भी बसत साठे: बेनेज नहीं हो सकते कहीं।

श्री सुब्रह्मण्य तिरुवारी: उसमें बेलेंज करने का प्राचीन केवल यह है कि फिर इस पर मुकदमे-बाजी मुक्त हो कि यह बिस्सेयेरेशन सही है या गलत है। बिस्सेयेरेशन के पहले भी जो मान-बंद धीर मान-बंद निर्धारित किये गये हैं, वह उन्हीं के आधार पर होते धीर उसके बाव फिर जो सामान्य कानून है आई०पी०सी० धीर सी०आर० पी०सी० है उसके न्यायिक निर्णित किये जायेंगे। अगर उसमें भी आपको तिकायत है तो सुप्रीम कोर्ट में जाने की व्यवस्था तो उसमें है ही। इसलिये इसमें किसी प्रकार की तिकायत करने की आवश्यकता नहीं है। अगर आप इसका विरोध करने के नाम पर विरोध करें तो मुझे कोई आपत्ति नहीं है, परन्तु अगर आप ईमानदार हैं, सम्बन्ध में आपको लोकतंत्र में, न्यायपरिका धीर उसकी प्राथम्यता, स्वायत्ता धीर स्वतंत्रता के यकीन है तो आपको ऐसे विधेयक का पुर्जोर तरीके में स्वागत करना चाहिये और विल लोककर आगे जाना चाहिये। आपको तो खुश होना चाहिये। जैसा आपने कहा कि आप आज संसद गये हैं इसलिये यह विधेयक बुरा है, ऐसी बात नहीं सोचें। यह तो एक नीय है। जैसा मैंने कहा कि अगर हमारे लोक या धीर भी जाने वाली सरकार या सार्वजनिक या राजनीतिक पक्षों पर जाने वाली नीय, सर्वोच्च पक्षों पर प्राचीन नीय भी अगर इस प्रकार से जनता, संविधान धीर मान्यता के साथ धीर इस वेज की प्राथम्यता धीर उसके मुकदमों के साथ कोई प्रायात करे, कोई मुमें करे तो उन्हीं की इसी प्रकार की विशेष न्यायालयों की बसत में जाना पड़ेगा और कानून के न्यायिक उन्हीं की बसत प्रगतता पड़ेगा।

SHRI SAUGATA ROY (Barrack-pore): I rise to speak on this Bill which has aroused some controversy and some interest in this country. It is not very often that a Bill to be brought forward by the Government is referred to the Supreme Court for its legal opinion, under Article 143(1) of the Constitution. The Special Courts Bill being one of those very few legislations, has naturally aroused

ed some controversy in the country.

15.00 hrs.

As far as our Party is concerned, this controversy has touched our Party also, and that is why our Party has decided not to issue any formal whip for voting on this Bill. Members are free to speak and vote according to their conscience. When I speak on this Bill, I speak with conscience and conviction. And when I speak, I speak with my own conviction and also with the conviction that a large number of friends in my own Party feel the same way as I do. The Special Courts Bill as has been stated is a controversial Bill. What is my opinion about the Special Courts? It has been said that ours is a country where justice is very often denied to a large section of the people, it is also delayed for a large number of people. The other day I was reading Mary Tyler's, 'Five years in Indian prisons' where she graphically describes the condition of undertrials in different jails in India. There is no doubt that there is a special court necessary for expeditious justice for all such undertrials in the country for all suspects and persons who are on trial, justice should be speeded up. That is why, having a special court for some people when so many people are being denied justice speedily, does not appeal to me, I think there is an authoritarian streak in it. But the fact is this. Unfortunately in the last thirty years in the country, we have had often taken recourse to special courts. Six special courts, if I may say so, have been referred to the Supreme Court, three were upheld, three were struck down by the Supreme Court. I have seen in my state the unfortunate spectacle of special tribunals for Naxalite prisoners, people who, may be, did wrong but with conviction. For that there is speedy trial, as if they were hardened criminals. In West Bengal and in Kerala special courts have taken place. I cannot speak with a clear conscience that special courts are something un-

precedented in this country. It has happened in this country before, it has happened in respect of people who have fought for their convictions. So there is nothing basically antagonistic to what has happened in the past.

The vexations question arises as to how I look at the Bill. The Special Courts Bill is an offshoot of the Emergency Courts Bill that was brought forward by hon. Member and esteemed friend Shri Ram Jethmalani. The Bill was referred to the Supreme Court and the Supreme Court in its judgement suggested several modifications. I am glad that the government had accepted some of the modifications. I was totally at varium with Mr. Jethmalani when he tried to force of the emergency from May 1975. That has been struck down by the Supreme Court. This Bill does not include that clause.

Instead of three tiers, this Bill provides for a two tier court as in the case of the Election petitions which many of us have faced. It allows the Supreme Court to go into the facts and the law of the case which will be referred to it and decided upon by it. I find one thing which is objectionable in this Bill—nomination of the judge. It is natural that when a Bill arouse controversy if any sort, the government should be very careful in formulating its approach. But the Bill says: the special court shall consist of a sitting judge of the High Court nominated by the Central government with the concurrence of the Chief Justice of India. I feel that this is not correct; I have brought in an amendment to the effect that nomination should be done, not by central government, but by the Chief Justice of India directly so that there is no colouring in it, there is at least no accusation of colour in it against the appointment. As far as the judgement of the emergency offences is concerned, our party had in the past taken a very clear stand. Our leader Shri Chavan has spoken in this

[Shri Saugata Roy]

House that we have set our backs against emergency, we do not want to try to shield anybody who has committed any excess or crime during the emergency. So when I say this, I say with a clear conscience and conviction that as far as our party is concerned nobody should feel that judging anybody, not prejudging, who has been accused of emergency excesses is against the policies of the party. Our party has stated it clearly time and again and also in its resolution in May 1977. But the question remains that emergency was an example, when people in high office misused power, when they did arrogate authority, when preventive detention laws were used wrongly and very often vindictively, when the press had to be badly censored. The worst victim of the emergency has been the Congress Party, which after 30 years of ruling the country lost to a conglomerate who never hoped to come to power. As a backlash of the emergency, our party suffered a split. We have been going through the painful process of the backlash of the emergency. That is why with a clear conscience I say that I cannot find any logic, whether from the political standpoint of the party or from the legal standpoint, to oppose the Bill. I say that the Bill is good but not good enough, it goes far but not far enough. I refer to Justice Krishna Iyer's judgment in this case, where he states very clearly, in his usual bombastic, picturesque or verbose style, whatever you call it as follows:

"To sum up, the Bill hovers perilously near unconstitutionality in certain respects, but is surely saved by application of pragmatic principles rooted in precedents."

As I said, there are precedents for this. He goes on to say:

Nevertheless, justice to social justice is best done by a permanent statute to deal firmly and promptly with super-political offenders, since

these 'untouchable' and 'unapproachable' power-wielders have become sinister yet constant companions of development in developing countries."

This is where the Government could have shown a little more foresight. This was the occasion when it could have shown its sincerity in laying down a permanent statute for all sorts of political offenders. As a political worker myself, I would not like to be judged for any crime I commit at the same level as an ordinary criminal. I would like political crimes to be judged politically. That is why there was necessity and there is still scope for the Bill to be enlarged to include not only the period of emergency but also all future times. If it can do that, the Government will absolve itself of the blame that it is totally directed against some people and it will also set a very healthy precedent for future. In fact, Chief Justice Chandrachud, who was one of the four judges giving the majority judgment in the case, although he did not mention it in the judgment itself and when he went into the constitutionality of the Bill said it was within the legal competence of the Parliament to go into such a Bill, said in a speech at Dharwar on 21st December, 1978 as follows:

"The Chief Justice of the Supreme Court, Mr. Y. V. Chandrachud, today pleaded for enlarging the scope of the Special Courts Bill. Addressing the delegates, the Chief Justice said, there was no reason why the operation of Special Courts should be limited to try offences connected with Emergency excesses. Other offences which had a bearing on society should also be included within the purview of the Special Courts and the Chief Justice of a High Court should be empowered to determine which of the cases deserved to be referred to the Special Courts to be tried by Special Judges."

I draw the attention of the Government to this observation by the learned Chief Justice of India. I appeal to them that while I say I cannot find anything in my conviction to oppose the Bill, there is scope for this Bill to have a foresight into the future and to set a healthy precedent in this country so that in future also and for today also, nobody in high political offices ever dreams of misusing the power without being judged properly and expeditiously:

बी कंबर नाथ मुल (विस्ती सरर) : उपाध्यक्ष महोदय, मैंने सोचर धाक दि अयोधीयन का प्रायण बहुत ध्यान से सुना । उन्होंने इस विधेयक का विचन करते हुए कहा कि जनता पार्टी ने इस विधेयक के द्वारा कुछ व्यक्तियों को चुना है । उन्होंने यह कहा कि कुछ न्यायाधीशों को भी तम किया हुआ है और किस कानून में उन को सजा देनी है यह भी तय किया हुआ है और यह कहानी है जो पहले से निश्चित की हुई है । उन की निगाह में यह डिस्क्रिमिनेटरी है और डिडिक्टिव ऐटी-यूब है जनता पार्टी का । लेकिन अगर उन की बात की तरह ध्यान दिया जाय, मैंने उन की बात पौन बंदे ध्यान से सुनी, उस में एक बार भी यह नहीं बताया कि जो प्राबिनरी प्रोसीचर है उस के इस किस में कहां बैरिगहन है ? कोई नया धाफेंस इस में जियेट किया गया जो पहले धाफेंस नहीं था ? कोई प्रोसीचर कम न्याया किया गया ? नहीं किया गया । कोई सेफगाई को इस्टिन ला में प्रबालत में धाते बहु सेफगाई कम किए गए ? किसी भी कलिस्ट को लिए बहु सेफगाई कहीं भी कम नहीं किए गए । जब सेफगाई स भी बड़ी है, प्रोसीचर भी बड़ी है, अफेंस भी बड़ी है उसके बाद धाय कइते हैं कि जब और यह सब डिडिक्टिव है । मैं धाफेंस सहबत हूँ कि सरकारें धारी हैं, बसो जाती हैं । धायने तो कइा इतने डेटिव लूच की, मैं इसको बैटिन नहीं मानता, यह बैचट की लडाईं की किलमें बल हार नय, फन को फन भी हार बकते हैं लेकिन इतना मतलब यह नहीं है कि जो हाइने बाले हैं उनपर कुकबना कलाया जाये । इसका मतलब यह भी नहीं है कि उनका प्राचीकपान किया जाये । लेकिन यह सब यह कइ रहे हैं ? लाला यही है । धायका कहना है कि हम यह कर रहे हैं लेकिन वेरा कहना है । मैं धाय को बलते बलत यह कइते को से उल्ला बाइहा हूँ कि दो लाले के बाद धाय यह किल कामे है, दो साल तक धाय कइ कइते रहे ? क्या भी साल तक धाय सोचते रहे ? कमीशन की रिपोर्ट भी धा गई थी । बाह कमीशन की पबली रिपोर्ट धाने के बाद धनर नामेन कोस में भी धाय बलते दो अभी तक यह कार्यवाही कुछ धागे बहु धाती । धाय ने उसके बाद सुप्रीम कोर्ट को रिकर कर दिया जिसमें 8-9 महीने लग गए । बाह कमीशन की जो पबली रिपोर्ट है उसमें कमीशन ने प्राबपारफेती केंस इस्टैबलिश किया है । उसके बाद धायने सुप्रीम कोर्ट को रिकर किया । सुप्रीम कोर्ट की बीच रिकर की गई,

कमीन कोर्ट ने कइते कई प्रोपों में सुबोडन कियो... कइते यह कि रिपयमें सब गही डीनत, डिपेंड सब धाय प्राबिध सर्मिक कॉन्विकत धाने । उन्होंने डीक कइतः सुप्रीम बड भी कहा कि वेन डीककर हो सकता है, सुपर डीच में कहीं अणपारो को बाबूध हो कि येरे साथ न्यायाधी हो रही है तो वह सुप्रीम कोर्टमें जा सकता है । उसको बहा जाने का धायकार है । यह सारी सेफगाई स इसमें है । जहां तक मैं ला जागता हूँ, इस विधेयक में सेफगाई स न्याया है बनिस्वत किसी प्राबिनरी ला के । लेकिन इसको बाव भी धाय चाहते हैं कि यह विधेयक पस न हो । धाय हबसे कइा रीफुजेनस एटीडुबन एक्सपेक्ट करते हैं लेकिन धायने अगुर उल्ला की हो हिस्सा भी इमजेंसी के दिनों में विबाया होता तो हब धायको बहाई देते । जब इन्विरा जो कइ रही थी कि मैं पालियामेंट हूँ, मैं सुप्रीम कोर्ट हूँ, मैं हाईकोर्ट हूँ, मैं वेन हूँ, सब कुछ मैं ही हूँ, जो मैं कइती हूँ वही कानून है और कोई भी चीज कानून नहीं है उस वकत धाय में से किसी ने गही कहा कि बीमसीओ, धाय योग्य हो सकती है, बड़ी हो सकती है लेकिन पालियामेंट से बड़ी नहीं हो सकती है, वेन से बड़ी नहीं हो सकती है । जिसने भी यह बात कही उसको मैं बहाई देता हूँ, उसके धागे अणना सर मुकाता हूँ लेकिन मैं समझता हूँ प्राबिकाल गुने ही बैठे थे । (ब्यबधान) इवर भी होगे, मैं किसी को भी बचाना नहीं बाइहा । तो जिसने एक को नहीं, सबा लाल लोगों को नजरबंद किया, हम वहां पूछते थे हमारा कुसुर बताया जाये, हमने क्या किया है तो अबालत कइती थी धायको नहीं बताया जायेगा कि कुसुर क्या है, हमने कहा कि हमें न बताया जाये, कमिटेड अजेक को बतला दें, जो कमिटेड अज बैठे थे लेकिन उनको भी बताने की इजाजत नहीं दी गई । एक नहीं, डीकडों बाग जेको में भर गए । तो जो बायलेजन मुझा को धाफेंस किए गए, धाबिडर हम न्याय किसके लिए चाहते हैं ? हम जो स्पीडी ट्रायल चाहते हैं वह किस लिए चाहते हैं ? हम उन को सबा देने को लिए नहीं बलिक उन को जल्दी न्याय बिलाने को लिए चाहते हैं, बिन्होंने धाफेंस किया है । धाय कइते हैं कि धाफेंस नहीं किया है, ठीक है लेकिन इस में दो राय है । बेरी बिनाह में उन्होंने बहुत बडा धाफेंस किया है और धाय की निगाह में नहीं किया है । तो हमारा डीरेय है कि उन को जल्दी से जल्दी न्याय मिले We do not want to torture those people.

धायरी निगाह में वे मुजरिन हैं । इसलिए यह धाय के हित में है लेकिन धाय को इस से संकनीक हो रही है । Because, you are not sure of your ground, you do not stand on a sound footing, you feel you are culprita. That is my difficulty.

ओ बलंत साठे : जिस तरह से विक्रमनपुर की चुनाव के बाद धाय में उन्में निगावा, उसी तरह से धाय उन को न्याय देने वाले हैं ।

SHRI KANWAR LAL GUPTA: There are those who still grumble and grouse against the Bill, those who complain of discrimination and persecution, as my friends did. I wish that those who were so eloquent against this Bill today were at least one-tenth of that eloquent one the floor of this House in those days. I know that they are only asking for immunity for Shrimati Indira, Gandhi from prosecution for offences.

भाप क्या चाहते हैं? भाप चाहते हैं कि जिन्होंने गुनाह किया है, उन्हें छोड़ दिया जाए। जिन्होंने बिधान के साथ रेप किया, धन्याचार किया, डेमोक्रेसी को खत्म किया जो इस भारत देश की परम्परा है, जिसका हथारों वालों का इतिहास है और उसमें कभी किसी तानाशाह बादशाह के जमाने में भी ऐसा नहीं हुआ, जो 19, 20 सदीनों में हुआ, भाप चाहते हैं कि उस को छोड़ दिया जाए। अगर उन को छोड़ दिया जाए, तो कल को अगर, किसी का विमाय जो है, वह खराब न हो और वह ठीक तरह से बने, इसलिए भी ऐसा विधेयक पास करना जरूरी है।

SHRI C. M. STEPHEN: You are not answering the point I raised. My point is simply this. As suggested by the Supreme Court at the time of the argument, and as emphasized by Justice Sinhgai and Justice Krishna Iyer, why can't you agree to make any of the High Courts as Special Courts for trying these offences? Why do you want to pick up Judges and create Special Courts? Why could you not agree to the suggestion made by the Supreme Court?

बी कैंबर जान बुझ : मेरे पास कोर्ट का वह जजमेंट है और आप ने भी यह पढ़ा होगा। मैंने भी उसे पढ़ा है और उसमें जो कुछ कहा गया है उस के अनुसार यह जो विधेयक है, वह कॉन्स्टिट्यूशनल है। उन्होंने कुछ सेफगार्ड्स भी उसमें बताए हैं और उन्होंने यह कहा है कि इमर्जेंसी के काले और बाद की भीड़ें इसमें नहीं आ सकती। इसलिए मैं यह कहना चाहता हूँ... (स्वभाविक)...

Personally I do not mind it. It could have been done one year back. Personally speaking I would have preferred that. It should have been done much earlier. Now it is too late. We have to compensate for that. For speedy justice I say today this is a "must".

वे इस तरह से भी कर सकते थे और मुझे बुरा लगता है कि सी०आर० पी० सी० के अन्दर यह होता।

I would have preferred that. That is my personal opinion and I must confess it before you.

अगर हम मिनिमल प्रोसीजर कोड में इन दो वालों में पहले बचल कर लेते, तो इतनी देर न होती।

I would prefer that. I would not mind it.

भाप तो आप ऐसी तस्वीर बना रहे हैं कि जैसे यहां कोई आई० एन० ए० जैसा ट्रायल हो रहा है, कोई मार्शल ट्रायल हो रहा है। कोई आई० एन० ए० जैसा ट्रायल नहीं हो रहा है, कोई समरी ट्रायल नहीं हो रहा है और यहां तक कि उसमें यह सेफगार्ड्स भी दिए गये हैं कि सुपीम कोर्ट में जो प्रपील जाएगी, वह केवल ला पर नहीं जाएगी, फेजट्स पर भी प्रपील की जा सकती है। इसलिए मैं माननीय सदस्यों से कहूंगा कि वे इस बिल को अपना समर्थन दें अगर वे चाहते हैं कि जिन लोगों ने गुनाह किया है, उन को सजा मिले।

"Let me sound a note of warning. A nation that looks upon crimes against democracy and rule of law breeds despotism. These are crimes which we can ignore only at grave peril to our system. A routine crime injures an individual. A group crime poses a greater threat. Organised abuse of authority by those to whom it is given in trust is a crime against the entire nation."

अगर यह आप पर लागू नहीं होता है तो रोज आप पर केसिज चलाए जा रहे हैं तो उनसे आप अपने को बचवी से साफ नहीं कर सकते हैं।

It is in your own interests that this Bill should be passed as early as possible. That is my own feeling.

उपाध्यक्ष महोदय, आपके जरिये मेरा कहना यह है कि मैं अपनी पार्टी को स्व. प्राक ला अपनावे के लिए मजबूत बना चाहता हूँ। वह मार्शल क्ल. अपना कर चल रही है। अगर उसमें 'मिनिमिजेशन' की बाधना होती तो जब वह पावर में आयी थी, उस समय नीला का कानून लागू था, उसके अन्दर आप सब को बंध किया जा सकता था। उपाध्यक्ष महोदय, इंदिराजी को पकड़ने के बाद जब छोड़ दिया गया तो सी० पी० आई० के कुछ अफसर मेरे पास आये और कहने लगे कि आप हम से नाराज हैं कि हमने इस केस को ठीक तरह से हैंडल नहीं किया। उन्होंने कहा कि आपने नेताओं के हान को भी ध्यान दे कि इंदिराजी को कोई तकलीफ नहीं होती बाकिर और कोई कानून से हट कर नहीं

होना चाहिए। उन्होंने मुझ से यह भी कहा कि जिस तरह से हमने आप लोगों को कब्जा पहले ही से गिनत में पकड़ लिया था, अगर आप हमें छोड़ें हैं तो हम इन लोगों को भी ही गिनत में ला कर आपके पास बिठा सकते हैं। लेकिन जनता पार्टी इस में विश्वास नहीं करती, वह उस आफ ला में विश्वास करती है। वेर फेसे हो जाए, लेकिन हम कानून से परे नहीं जाएंगे।

उपाध्यक्ष महोदय, मैं एक बात इन सब पाठियों से जो कि इधर बैठे हैं, कहना चाहता हूँ। अगर आप चाहते हैं कि इस देश में प्रजातंत्र रहे, उस आफ ला बना रहे, कानून का राज हो, एक परिवार का या एक व्यक्ति का राज न हो तो क्या आप इस विधेयक का विरोध कर सकते हैं? आप इस विधेयक का विरोध नहीं कर सकते हैं। इसलिए मैं आप से अपील करूँगा कि अगर आपको प्रजातंत्र प्यारा है, अगर आप चाहते हैं कि अगला इलेक्शन हो तो यह आपके हित में है, सारी पार्लियामेंट के हित में है। इस विधेयक का आपको समर्थन करना चाहिए।

उपाध्यक्ष महोदय, इन शब्दों के साथ मैं इस विधेयक का समर्थन करता हूँ और धारा करता हूँ कि इस विधेयक के पास हो जाने के बाद सरकार इस को जल्दी से प्रमेल में लायेगी ताकि जाने वाला कोई भी व्यक्ति, चाहे वह इधर बैठा हो या उधर बैठा हो, इस देश में संविधान को अल्प कर के शासन न चला सके। इसके द्वारा इस प्रवृत्ति को हमें रोकना है। जो पोलिटिकल लोग हैं अगर वे ऐसा करते हैं तो उनको इसके द्वारा सब्त से सब्त सजा मिलनी चाहिए। इन शब्दों के साथ मैं इस विधेयक का समर्थन करता हूँ।

SHRI A. K. ROY (Dhanbad): Mr. Deputy-Speaker, Sir, it has become a custom in this House to preface each and every lecture with the words "19 months of Emergency". Whether it is a Bill on Courts, a Bill on animal welfare, a bill on unemployment, a debate on Budget, a debate on President's Address or on flood or drought, we must start with "19 years of Emergency".

Why is it very cold today? It is because of the 19 years of emergency. Why is it raining today? It is because of the 19 years of emergency.

AN HON. MEMBER: Nineteen years or 19 months?

SHRI A. K. ROY: It will soon become 19 years.

During these 19 months I was in jail, and I think very few Members here had

to fight the elections from jail and were released two days after the results were broadcast. But I think that everything should have a limit. If you stretch a thing beyond limits, it becomes counter-productive, and that is what it is becoming today.

I stand here not to support, not to oppose, but to expose this Bill, and also to take this Bill to the people. The regime of the Congress Party has got a notoriety for making all unfair things in a very fair way, and this Janata Government has earned, by its foolishness, a name for doing fair things in an unfair way, and the Special Courts Bill is a special exhibition of a fair thing done in an unfair way.

I would advise the new Home Minister to beware of lawyers and Bars. He has taken this Bill to the Supreme Court, and spent four months to determine the constitutional validity of this Bill. I know that the Indian Parliament is not as sovereign as the Parliament of England to make any law that it likes, that the law made by it must stand the test of constitutional validity, the test of the competence of the legislature to make it, and the test of article 19 of the Constitution. But here what matters is not the constitutional validity, what matters is political validity. Whether it is constitutionally all right or not is a minor thing, the major thing is whether it is politically desirable or not. For that the Bill must go to the people and be debated in every forum.

A lot of constitutional exercises are being made on the jurisdiction of personal liberty before the court of law, on the jurisdiction of Parliament, on the jurisdiction of the Supreme Court etc., but nothing has been said on the jurisdiction of the people.

You will be surprised to know and I was also a bit upset to know, that this Bill took its present shape because of the Forty-second Amendment. The Forty-second Amendment made a provision for making this type of law by transferring the subject from the State

[Shri A. K. Roy]
List to the Concurrent List. That has enabled the Government to come out with this Bill under article 246(1) and (2). That means we are adopting the method of the Forty-second Amendment in an indirect manner.

I have also give an amendment on the classification and selection of the Judge and the name of the Bill. I want this Bill to be called not the Special Courts Bill, but the Janata Courts Bill or the People's Courts Bill, because the Janata Government also should be against anything special. And then, the nature, scope and the technique of introducing it must also be changed. That is why I say that, this Bill must go to the people, must be debated. Who was the worst sufferer in Emergency? The politicians, people like us, spent 19 months in Jail but remained 38 months in Parliament. I think this is not bad. Many people outside will agree. Anybody, if he is given an option that he can remain 19 months in jail and in lieu, of that, he will be in office for 38 months, he would agree. There will be a long queue for that. Who suffered most during Emergency? In ten years, I had spent five years in jail during Mrs. Gandhi's regime and we fought when she was in power. Today she has been removed and I pity her. It is only by pitying Mrs. Gandhi that you can finish her and not by punishing her. These people have kept her alive and I suspect that there is a political collusion between the two sides. When these people have come to this side, they day in and day out, think about Mrs. Gandhi and when they go to the other side they will also start saying so and so. Who is that "somebody", I do not know, because this is rolling and changing. I say that there is a collusion between the two sides. They do not want that the image of the other should go into the background so that the Indian politics is divided between the devil and the deep sea. We have got no way out. What is wonderful, and perhaps you will also be surprised is that when these people go from this

side to the other side they suddenly understand the importance of the courts, the Supreme Court, the Constitution and such other things. But as soon as they go to the other side, they start feeling the importance of the streets. They take up matters to the streets. Today we are seeing that the birds of the same feather flock together.

Who sabotaged the Constitution in India. First, it was the Congress party. I remember that while I was in jail in 1968, I read a statement of Mr. Morarji Desai. He was the person who with Mrs. Gandhi, the then Congress President was pressurising Mr. Nehru to pull down the constitutionally elected Communist Government in Kerala. It is you people who did all these things together. When the other people take politics to street you say that violence is being resorted to.

This is not democracy. This is an exhibition of a superb performance of hypocrisy and the Special Courts Bill is a special example of that. Who can correct us? There are some political pundits also like Prof. Madhu Dandavate who claims that he is a socialist. I say that....

THE MINISTER OF RAILWAYS (PROF. MADHU DANDAVATE): I do not want him to insult me by saying that I am a pundit.

SHRI A. K. ROY: I withdraw that. Can any student of political science think that such a big thing could happen only because of the mischiefs and mistakes of a few individuals? Our Professors used to tell us that Romans were sheep and so Caesar could become a Caesar. We will have to understand and accept that Indians were sheep and so a lady could become a Caesar or we have to understand and analyse the socio-political consequences and the socio-economic reasons for that and they are engrained in the system itself and we are continuing that system. Is there any alternative? Is there any scope? Is there any future for this moribund society? It has got no alter-

negative. It has left three alternatives. Firstly, there will be authoritarianism in any form. You will be surprised to know that it half a dozen provinces that are run by the Janata people, there is some sort of a MISA, that is, detention without any trial, where you will be arrested without a trial. One of my Adivasi leaders and my colleague, Mr. Shivoo Soren, was in jail for four months under that Act. After a lot of movement, he could be released. This is the democracy.

I do not blame them. It is not a question of shame, it is a question of compulsion. This system, this socio-political order, cannot work in a complete democracy. It is a Utopia. Either some sort of an authoritarian rule will be there or there will be a chaos or there will be a revolution. When you cannot have a revolution, either you have a chaos or an autocracy. It is a mixture that they are having. That is why I say that the Special Courts Bill is a political Bill. It has got a political motive. It aims at some political persons, it aims at a certain period. Everything is political. We should be bold enough to announce it that it is a political Bill and we will punish those who are responsible for Emergency.

SHRI RAM JETHMALANI (Bombay North-West): Mr. Deputy-Speaker, Sir, my intervention in this debate is mainly an attempt to carry some conviction to my very dear friends on the opposite Benches, those who have been laughing away for the last 10 minutes when this is a very serious and a solemn occasion. Though I am conscious of the fact that I am trying to sow some seeds on an extremely inhospitable soil if not rocky craniums which have a tremendous quality of impenetrability, yet, I think, in a democracy, it behoves us to make attempts.

First of all, Sir, there are special courts and special courts. This Special Courts Bill is a Special Courts Bill in a very special sense, not in the

sense in which the special courts bills are normally understood. Even Pakistan has special courts in which the accused have no right of proper defence, in which adjournments are not granted, in which the accused will not get an opportunity to prepare their defence and in which the right of cross-examination is curtailed.

This Special Courts Bill is special only in two senses, firstly, that it is designed to deal with a very extraordinary and special kind of an offender and, secondly, that it confers extraordinary generous rights upon an accused person which no accused in the history of criminal administration in this country has ever enjoyed. But the only fault of this Bill for which this Bill is being abused, for which this Bill is being maligned, for which this Government is being maligned, is that it takes away the right of a dishonest accused to frustrate the judicial process by causing inordinate and extra-ordinary and special kinds of delay.

The object of this Bill is that those people who want to go to the polls, the people who wish to throw themselves open to the public for the purpose of an electoral process, those who wish to be returned to political power again in this Parliament and in our legislatures, their real character must be determined before the next elections take place in the country. The object of those who are opposing this Bill is precisely to foreclose the possibility of their real character being exposed before the next Election takes place. They hope that the ordinary procrastinating process of other courts will drag on. They drag on at the best of times but they can certainly be made to drag on by a powerful accused of the kind who are going to be dealt with by the proposed Special Courts. It is their object that people, after five years, will forget their crimes, that after the Election again they will put forth another argument i.e. why continue the trials since another Election

[Shri Ram Jethmalani]

has intervened. It is this hope, this last glimmer of hope, which the dishonest accused sure of conviction in his case is trying to exploit. This is the last possible straw which a drowning man can catch.

The Special Courts Bill was promoted by three experience in the light of which the performance of those who have brought this Bill before the House must be understood. First of all, the accused who are going to be tried by these Special Courts, have shown an extraordinary ability to suborn evidence and corrupt witnesses. The strongest possible evidence of that is not the judgment of a special court, nor the judgment of a Judge who has been hand-picked by the Janata Government, but it is the latest judgment of a Sessions Judge—a Sessions Judge who was not selected by the Janata Government but who existed long before the Janata Party was born and in whose selection as a Trial Judge this Government or its prosecutors had played no part. That Judge, today, has gone on record to declare that two accused before him suborned and corrupted 23 witnesses at one trial alone. Some of these witnesses were persons occupying the highest administrative positions. One is today the Chief Secretary of a State Government and the other belongs to the Indian Administrative Services, not to speak of the humbler people whose evidence was suborned. Humble people can be forgiven that they may succumb to the temptation of money and bread but those in the position of Secretaries to Government succumbing to the corrupt influence of these accused persons is an eye-opener to all—and I hope it will be an eye-opener to the distinguished Leader of the Opposition as well. We did not want to have courts over whom the accused can exercise some influence, which they exercise over Secretaries and Joint Secretaries. After all it is a subordinate Judge sitting as a Magistrate. I am proud of the Judiciary that, in

spite of the temptation to which they are exposed and the pressures to which they are subordinated, there are gems amongst them who are still able to do justice. This is a tribute which this House should pay to the Judiciary. But if the accused have tried to corrupt people in high administrative positions, is it not a reasonable assumption to make that they must have tried at least to bribe the smaller people who, against odds, are trying to carry on with integrity and honesty the judicial processes of this country? The accused in this case has shown a remarkable capacity (*Interruptions*)

MR. DEPUTY-SPEAKER: Is it a point of order that you want to raise?

SHRI RAM JETHMALANI: Raise something intelligible at least!

SHRI M. RAM GOPAL REDDY (Nizamabad): He is bringing in the names of Judges. He says that some people who supported their cause are gems and the others are not gems.

SHRI RAM JETHMALANI: The accused have demonstrated in an abundant measure their capacity to cause delay. Trials which should be disposed of in exactly thirty minutes have gone on for years. I do not wish to blame the Magistrates, but I blame the accused who are appearing before these Magistrates. There is at least one trial which could be disposed of within a few minutes and yet the great accused has seen to it that the trial is nowhere near the end. We do not want that to take place. Therefore, there must be some courts which do only this work and try these mighty offenders and bring them to justice. May I say this that an innocent accused, convinced of his innocence, having some belief and confidence in justice ... (*Interruptions*)

SHRI VASANT SATHE: You defended the smugglers....

SHRI RAM JETHMALANI: I have defended Congressmen who were worse than the smugglers....

SHRI VASANT SATHE: Can you tell us a single case where it has been disposed of in 30 minutes? *(Interruptions)*

SHRI RAM JETHMALANI: I defend everybody who comes to me, and every one is entitled to come to me, including Mr. Sathe. One day he will need me. *(Interruptions)*

Now, as far the fairness of these courts, we have not created any new offences. The offences with which the accused are being charged have existed on the Statute Book for over centuries, for hundreds and hundreds of years. A large number of accused in this country have been convicted of these offences. The principles of law which are there for the benefit of an honest accused—the case must be proved beyond reasonable doubt, that the benefit of doubt should go to the accused; that the accused must have the fullest opportunity of defence—are not touched at all in the slightest degree by the present Bill. The whole of the Criminal Procedure Code is made applicable. And no accused in this country has enjoyed the right that he goes to the highest fountain of justice, namely, the Supreme Court. The Sessions court might make a mistake, the High Court might make a mistake but at least in the theory of law, as far as human beings can ensure, the best justice you get is in the Supreme Court, and so far I have not yet heard you challenging the integrity of the Supreme Court itself.

Now, let me say this. Only the other day when a court other than a special court pronounced judgment—and this is one great experience that we have had—a large number of hoodlums collected in the court room, the hoodlums assaulted the public prosecutor, the hoodlums assaulted the police, assaulted the judge. One of the hoodlums got on to the judge's chair and pronounced a judgment of 'not guilty' in favour of Mr. Senjay Gandhi and Mr. Shukla. The hoodlums can be pardoned. *(Interruptions)* but am-

ongst those hoodlums there was present a man from whom a greater sense of responsibility is expected; I refer to my distinguished colleague, Mr. Vasant Sathe, who was an eye-witness to everything that happened in that court room, and Mr. Sathe did not even show the common courtesy to a fellow lawyer. Mr. Sathe, you are a practising lawyer, and when your lawyer-friend was being assaulted by the hoodlums, you did not open your mouth and try to tell them 'Don't assault a public prosecutor'. *(Interruptions)*

SHRI VASANT SATHE: Sir, I want to give my personal explanation at this point lest it should be misunderstood. Because he is making an accusation, I must explain this.

MR. DEPUTY-SPEAKER: Yes.

SHRI VASANT SATHE: The facts of the matter are that, on that day. *(Interruptions)*

SHRI VASANT SATHE: I was there in the Court. To begin with, when the court announced its decision handing over the sentence, there was perfect peace in the court room. Sir, thereafter, the so-called hon. junior of Mr. Jethmalani made a very unworthy abusive remark.

SHRIMATI PARVATHI KRISHNAN: (Coimbatore): Unparliamentary.

SHRI VASANT SATHE: which I cannot repeat against a person who is sitting there and who is also a lawyer. Therefore, that lawyer—I do not want to take names here—retorted against that gentleman whom he calls his hon. colleague. That is where the fracas started and I would like to say that Policemen came in which is normally not done—a whole platoon of Police rushed inside the court room—at that time people got provoked and they started shouting slogans against the Police.

PROF. MADHU DANDAVATE:
Against the Magistrate.

SHRI VASANT SATHE: The Magistrate had already gone to his Chamber earlier after declaring the sentence.

PROF. MADHU DANDAVATE:
After the slogans.

SHRI VASANT SATHE: Slogans came later on when the Police force came in. But the fact is—my friend over there was not there but he must have been told. I got up on the chair in between and I appealed to all to keep quiet and I also appealed to the Police saying 'Please withdraw from the court. I will take the responsibility to see that no one will make disturbances here provided you are willing to co-operate.' But the Prosecutor said, 'No'. Mr. N. K. Singh who was there refused. He said 'No. I will not withdraw the Police force. I will stand here.'

Then one of the Sub-Inspectors manhandled an advocate who did not belong to any party. He said 'I have nothing to do with any Party.' But that advocate was physically caught by the collar by that Sub-Inspector. He was asking the name. That name was not given. All that was told to you. Why don't you tell the truth? This is what happened in the court.

SHRI RAM JETHMALANI: This is a story which is wholly contrary to truth. He does not deny that he was present. He also does not deny that the hoodlums got up on the Table and pronounced the judgment of 'Not guilty'. You were present and you interfered only when the Police force arrived into the court room. At that stage you found....

SHRI C. M. STEPHEN: I rise on a point of order.

With respect to an incident which took place somewhere, two versions are given. One by a Member who says 'I was present and I swear to what happened.' Also another mem-

ber admits he was not there. But he was told by somebody. So, his is a hearsay statement and on the basis of that hearsay statement he is contradicting the statement made by a member who swears, 'I was a witness and this is what happened.' That contradiction given in that manner is *malafide* and that contradiction should not be permitted and this amounts to a breach of privilege. This is the point of order I will make.... (*Interruptions*)

MR. DEPUTY-SPEAKER: Mr. Bharat Bhushan, please take your seat now.

(*Interruptions*)

DR. SUBRAMANIAM SWAMY (Bombay North-East): Mr. Sathe, you were not in your senses there.

SHRI RAM JETHMALANI: So far as the fairness of this Bill is concerned, apart from the extra-ordinary rights which no other accused has ever enjoyed in the administration of Criminal Justice in this country, let me refer briefly to the history of this Bill when it was being argued before the Supreme Court.

When the arguments were on in the Supreme Court, it was said to the Supreme Court that our objective was only to secure a quick disposal of these cases. Suggestions for the benefit of the accused person were accepted by Government. The judges suggested three things which were immediately accepted on behalf of the Government.

Thereafter, Mr. Justice Chandrasekhar, speaking for himself, and for three judges has gone on record to say 'we do not accept that by reason of those considerations, the creation of a special court is calculated to damage or destroy the constitutional safeguards of judicial independence. The reason for this view will become clearer after we deal with the questions arising under Art. 14 and 21. But,

suffice to say at this stage that the provisions in clause 19 of the Bill are for an appeal to the Supreme Court from every judgment and order by special court and the provision for transfer of one case from one special court to another."

In the course of the arguments, it was pointed out that only a sitting judge shall have to be appointed from the Supreme Court. That judge will carry with him his constitutional status, rights and privileges and obligations. There is no reason to apprehend that a mere change of venue will affect his sense of independence or allow him to be open to the influence of the Executive. One can also be unmindful of the benign presence of Art. 226.

It was suggested by the Supreme Court strongly and in stronger terms supported by the fifth judge Mr. Justice Untwalia and also supported by Mr. Justice Krishna Iyer. There is only one judge who took the view which, as a student of law, I say is the wrong view and, in any case, is negative by the majority of six to one. According to him, it is not permissible at all to create any kind of special court outside the existing hierarchy of courts.

SHRI C. M. STEPHEN: What about the fourth suggestion of the judge?

SHRI RAM JETHMALANI: I was in court and I have heard the arguments. I have not forgotten that.

SHRI C. M. STEPHEN: Sir, I rise on a point of order. That is he cannot be permitted to make a misstatement in regard to the Supreme Court in the House with reference to the proceedings of the Supreme Court. He said that three suggestions were made. That is a misstatement. Mr. Justice Untwalia, it was stated, during the course of the hearing of the reference, made four suggestions, regarding one of which, he said, was still under consideration of the Government. Therefore, when he says... (*Interruptions*)

I am entitled to say that he made a wrong statement before the House. I am entitled to know the other suggestion that was made.

MR. DEPUTY-SPEAKER: You have already enumerated the four suggestions. Let him continue with his speech.

SHRI RAM JETHMALANI: Sir..... (*Interruptions*)

SHRI C. M. STEPHEN: A wrong statement is made here. (*Interruptions*)

SHRI RAM JETHMALANI: If Mr. Stephen thinks that the person who is present in the court is entitled to more credence, I was and he were not.

SHRI C. M. STEPHEN: He said four suggestions were made. The fourth one is under consideration. What has happened to that? That is what I am asking. If four were under consideration of the Government, what has happened to the fourth? That is what I am asking.

SHRI VASANT SATHE: He is saying that Mr. Justice Untwalia was wrong.

SHRI RAM JETHMALANI: I am not saying that Mr. Justice Untwalia was wrong. Mr. Singhal is wrong. The arguments which I have heard from Mr. Stephen and the rest of his colleagues on the other side would have carried some greater authenticity if these were the principles which they steadfastly adhered to in the past. What were their principles in the past? They had been a party to the creating of a whole Chapter in our Constitution which creates administrative courts for the trial of offences. The administrative courts will be presided over by the judges appointed by Mrs. Gandhi according to the procedure decided by Mr. Sathe and imposition of punishment will be decided by Mr. Stephen. This is the kind of courts they had agreed upon under Art. 321 of the

[Shri Ram Jethmalani]

Constitution. At that time you had forgotten all these principles which you are talking about now. And, Sir, what is more? When Mrs. Gandhi and the Congress party moved an amendment that no Prime Minister shall ever be liable to be tried for a criminal offence committed before she became Prime Minister, after she became Prime Minister and after she ceased to be Prime Minister these gentlemen did not at that time remember the high principle which have suddenly occurred to them now. (Interruptions)

16.00 hrs.

I would have greater respect for you if you had steadfastly adhered to this principle and talked about them when hundreds and thousands of people were taken into custody and put in jail. You denied them even the trial. So, you have at least no right to talk about it now.

Sir, only a word about the point which has been raised and continuously raised on the Floor of the House: Why is Mr. George Fernandes' trial not taking place? Why has that case been withdrawn? Let me give the reply once for all. If today Subhas Chandra Bose were to turn up in this country and were to be found, are we going to try Subhas Chandra Bose for the offence of sedition which he undoubtedly committed at a time when the British were in power. Sir, it happens that when the democratic processes exist and the means of climbing the stairs of power have not been destroyed at that time, crime of violence must be condemned. They must be outlawed. They must be punished with a heavy hand. But when a dictator destroys this staircase by which he or she ascends to the terrace of power so that nobody else should be able to go behind that terrace then that dictator must face violence and be overthrown by violence if violence is not abhorrent to some people who strictly follow the

philosophy of Mahatma Gandhi. Overthrowing by violence of a dictatorial regime is more honourable than succumbing like you people on your prostrate bellies to the dictator. You succumbed like prostrate children. It is much more honourable that you must take up cudgols and fight.

And, Sir, it is the success of a revolution which ultimately decides the character of the people. If the revolution does not succeed they will be treated like criminals but if it succeeds they are heroes, they are representatives of the people and they get to the terrace of power and that is precisely what is causing you all that mental pain that how is it that people who were kept in custody for so long are now ruling over you. They will because they rule by the success of the revolution, by the will of the people and I call upon all right-thinking people to support this measure. Innocent accused can call it not a Special Courts Bill but the Speedy establishment of innocence Bill provided you are an innocent accused. But the dishonest accused and crocks will continue to say that this Bill is designed merely to inflict punishment on them, which is not so. Punishment will come because of your deeds and it will come when the deeds are proved by the civilized laws of evidence, by the civilized code of criminal procedure and at the hands of civilized judges whom we shall not influence because we are opposed to the abhorrent notion of a committed judiciary which you started and by which you have polluted the fountain of justice. We are only trying to remedy and weed out the seeds of Corruption sown by you in our otherwise unblemished judicial soil.

16.34 hrs.

[SHRI N. K. SHREEWALKAR in the Chair]

SHRI VASANT SATHE (Akois):
Sir, we have heard the protagonists of the Special Courts Bill speaking in support of this Bill and we find that

even when they argue you could say that they don't carry conviction. It is because they are obsessed in their minds constantly by the fact that this Bill is brought for one purpose that they cannot get over that feeling. They are therefore talking all the time about the emergency, about the 19 months, about the atrocities, about the excesses and so on and about Mrs. Gandhi and family cult and all that.

Sir, if they are clear in their hearts that this Bill has all the elements of normal rule of law and of justice, then, they would not be obsessed by this consideration.

And, the elementary lacuna in this Bill is that it restricts this to a particular period. Let me say this. Why should it be restricted? Why was this period of emergency selected? If you say that only in emergency certain illegal things took place then you are presupposing that imposition of emergency itself was illegal. Then you could say that in an illegally imposed emergency these things took place and that is why the period is selected and so on. But tell me this. No one has challenged this and the Supreme Court has not pronounced in any of its pronouncements that the imposition of emergency under Art. 352 was *ultra vires* the constitution, and was illegal in any form. If that was not so, then whatever may be said about Shah Commission about misuse of authority and so on, could not per se be described as something done contrary to law. It was all within the framework of the law. If it was within the framework of the law then what happens? You have said that you have restored the rule of law as you call it. But I say let the normal law take its course. That would be the basic principle of the rule of law. But, no. You are wanting the Special Courts. What was the special plea? You say, people in authority, political as well as public, might misuse their offices. Therefore, there must be a law to deal with them expeditiously.

But may I say this? If that is the objective, then, it must apply to all the people in authority, for all times to come. You can't say that people in authority in this time alone will be selected for this kind of a treatment. There is ordinary, common, law. It applies to all. In that law everybody is equal. As the Judge has said, if there is no limitation for an offence, then, you throw people in authority, wherever they might have been, at whatever point of time, you say that they are guilty of offence and you establish Special Courts and all of them are capable of being brought in within the purview of the Special Courts Bill. Why don't you have the honesty and the courage to say. I say here on my authority that if you were to say that there will be a Special Court to try the VIPs or people in authority any time, we will support it. Come along, let us have it. But it is not to be done in this manner. The elementary principle of law and justice is that justice must not only be done but also appear to be done. It must inspire the confidence not only in the ordinary citizens but those who go before the court for trial. He must have the confidence in them that he will get a fair deal. Is that appearance there? You see the atmosphere in the country for the last two years and the way that Government is going on or has been going on. Have you found in the last two years an iota of evidence which can be called as a proof of any offence in law yet to be established. At best, at the ex parte evidence before the Shah Commission, all that you got was misuse of authority.

AN HON. MEMBER: What about the 'kissa kursi ka case'?

SHRI VASANT SATHE: I will come to that. Even in this case on which my friend has been waxing eloquently, you see how you have denigrated the judiciary. It was so unfortunate that we have never seen this kind. Who brings pressure on the witnesses? In ordinary times, who has the power?

[Shri Vasant Sathe]

Persons out of office, persons without any authority, persons in the jail...? Here is the entire Government machinery. They do not influence the witnesses, they cannot influence the witnesses, witnesses turn hostile, according to my friend, under the pressure of being accused. Officers, Secretaries, all of them, according to him, are subjected to pressure. But according to you it is not like that. And I will tell you why? Because you have the temerity to say openly that the judgement was in your pocket.

SHRI RAM JETHMALANI : You are(Interruptions)

SHRI VASANT SATHE: You have the temerity to say even if there is not a single witness, I will secure it as the conviction is in my pocket.... (Interruptions). You have the temerity to say that, Mr. Jethmalani. You have committed the biggest contempt on judiciary and the Judge was to say "oh, you jocularly remarked". But that is not a joke and I think that is the saddest commentary that any man can make. We have assured you if you hand over the conviction, you will be made a High Court Judge. Is this the integrity? Is this what you want to do? (Interruptions). That is why I say so, Sir. Is this the way of functioning? I have never seen things happening like this. I have also been practising all these years, particularly, on Criminal case and I know, as my friend knows, how the case decided. Do you ever know who decides in a trial court? Whether the accused is guilty of swearing, if the trial court knows best the trial court says 'No, he is not guilty'. The High Court says 'to go into the case, he is not guilty'. What does Mr. Jethmalani do? He takes the matter to the Supreme Court and the Supreme Court has called upon him and he makes the entire drama to cancel the bail order. Does this add to the credibility? (Interruptions)

SHRI RAM JETHMALANI: You will abuse every Judge.

SHRI VASANT SATHE: My dear Sir, you are denigrating the judiciary.

SHRI RAM JETHMALANI: You abuse every Judge. Is there any credibility?

(Interruptions)

SHRI VASANT SATHE: Sir, when a Judge, after the first notorious arrest(Interruptions)

MR. CHAIRMAN: Your time is over. You have already taken 10 minutes.

SHRI VASANT SATHE: Sir, you have extended the time. Let me be given more time. We are the persons who are sufferers.

MR. CHAIRMAN: I can give you two or three minutes. You can continue.

SHRI VASANT SATHE: One point I would like to say about the sitting Judge, Mr. Singhal. I will quote:

"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 judges may not agree to serve as presiding judge of the Special Courts is real, and their very refusal will embarrass the judicial administration and lower the prestige of the judiciary for clause 7 of the Bill provides for the nomination of the presiding judge of a Special Court...."

I would, therefore, say that this picking up of judges will destroy the very root, the credibility of our judicial system of the highest court. For Heaven's sake, do not do this because if that happens, just as the other day the Chief Justice is reported to have

agreed to give his opinion on a private matter referred to him, the Kamlibhai case, that goes against the very grains of justice and impartiality of the judges.

SHRI RAM JETHMALANI: Nehru did it, when he asked justice Das to do it.

SHRI VASANT SATHE: I hope, you will not do anything to reduce the prestige of the judiciary.

I would conclude by saying that this Government is continuing to suffer from the phobia of hatred of one person.

CHOWDHRY BALBIR SINGH (Hoshiarpur): One and a half.

SHRI VASANT SATHE: Yes, half is more important.

जी भारत प्रथम (नीनीतल) : सभापति महोदय, मुझा करने वाला दोषी नहीं, क्षुणित कार्य करने वाला दोषी होता है जो मुझा को अन्य वेता है और वस्तु साठे क्षुणित कार्य करने वालों के साथी है।

SHRI VASANT SATHE: Do not come under the influence of those maniacs, megalmaniacs, the RSS cult; it is they who are forcing you to bring such Bills.

प्रस्त में सभापति जी मैं एक खेर कह दूँ, यह कैकी प्राच्यनी का खेर है—

मुझा है हुकम कैकी को संगसार करो,

यहाँ कैकी की जगह सजय को रख दो

मुझा है हुकम के सजय को संगसार करो, कभीदू मीठे हैं सुपकर कहीं, खुसा जाले।

कहाँ है यह मसीह, जो कहते थे कि सजय गाँधी बकबर है, विवेकात्मक है, बकराप्रार्थ है, जीसत फाइस्ट है। कहाँ है यह मसीह, यहाँ सरकारी हुकम ही गया कि कभीदू संगसार करो, खबर से मारो, ये करो।

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यही हुकम महोदय है, यही पालनपन इन पर सवार है, जब तक यह पालनपन रहेगा, यह सरकार कोई बकब की बात नहीं कर सकती।

SHRI SHYAMNANDAN MISHRA (Begusarai): Mr. Chairman, Sir: Frankly, I feel very much intrigued at the opposition to this measure, if not very much amused at it. But I have a shrewed feeling that the hon. friends who are opposing this measure, are indeed welcoming it in their heart of hearts.

It is indeed a special tribute that this regime is paying to a special category of persons. And I think this House should be doing less than respect and justice to them, if it did not pass this measure for Special Courts. For, have we do not found that sometimes, Commissions are appointed to take evidence from special persons? They do not have to go to the court. In fact, the Commissions go to them, and take evidence from them. Is that in any way a measure of humiliation or disrespect, or does it involve any kind of justice to them? Now, if some of my hon. friends who happen to belong to that special category, are saved the trouble of going to a Magistrate, or to a district court, I should think that they should be thankful to this house and to this regime which is instituting this measure.

Mr. Chairman, why should anybody take a dark view of it? Is this regime saying that the Special Courts will be doing the same thing to the accused, as the courts did, during the period of Emergency? The courts said then, to people who were affected by the Emergency, to all the citizens of this country, "Mr. Citizen, you cannot enter my precincts. You have no right to life and property." And we did not have any court at all worth the name during the period of Emergency. Now

[Shri Shyamnandan Mishra]

here is an opportunity given to them for the fairest trial possible.

My hon. friend, the Leader of the Opposition has said that this is going to be a hand-picked court, a hand-picked Judge dealing with hand-picked persons, handing out pre-arranged judgements. If I take them out from the hand-picked category, they will not feel happy about it, because they belong to the hand-picked category; and if they are treated as hand-picked, there is nothing surprising about it. But even so, what I would like to submit is that there is nothing unfair that is going to be done to the hand-picked persons. After all, they did not represent the entire section of the society at that time; and if the society had opted for Emergency, of course they would not have been in the hand-picked category; but the society did express its opinion unmistakably that it was not in favour of the Emergency and the kind of regime that they had clamped on the country. And so, they had, in fact, opted for the hand-picked category, and if they find themselves in that unenviable category, it is not because of the fault of this regime, or because of the party which is dealing with them. In fact, it is the entire country which is dealing with them, as such.

It had also been suggested but they did not weigh their words very carefully when they said it—that it was going to be manned by a hand-picked judge. I ask them to tell us honestly whether they had filled the High Courts with handpicked persons. Out of the 300 or 350 Judges who happen to adorn the office of Judges. I think hardly 50 Judges would have been selected by the present regime. And is it their suggestion that we are going to confine the selection only to the 50 who have been selected by the present regime? Nobody in his senses can suggest that the choice is going to be confined only to these 50. If they are going to be hand-picked Judges, they have to thank themselves for this. In fact, they

have to take the credit, for they had made the selection; and we had not found any fault with their selection. Why should they find fault with the selection that we are going to make? If we had found any fault with their selection we would not have in fact filled the highest post in the judiciary in the manner in which we did. I do not want to cast any reflections on the hon. judges who happen to be on the benches in the Supreme Court. But it had been their way and practice to hand-pick judges. Therefore you found that the Chief Justice of India was handpicked by them superseding the most deserving and the senior most judges. Was it not a naked case of selection according to their choice? In fact it is they who had done this; this regime has not done it. Everybody would concede that. There was one case which has enough to knock out the judiciary and the Supreme Court and most of the judges and that was the Habeas Corpus case. In the habeas corpus case the hon. Supreme Court had held a view and we respectfully differed from that kind of view; the entire country differed from that kind of view. And yet we had honoured their choice; we have made the person who happened to be your choice, without superseding him, the Chief Justice of India. It is the practice of the opposition to which my hon. friend the Leader of the opposition belongs to hand-pick judges; it is not our practice and we are not going to do it.

Then, it has been said that there would be pre-arranged judgements. But before I proceed to that may I also ask the House was it a hand-picked judge who had tried Mrs. Gandhi and pronounced that she must be released. It was a magistrate who tried Mrs. Gandhi. If it had been a case of making selections like that, Mrs. Gandhi would not have been released, after her arrest about a year or so back. We have not been of that view and we are not going to pay them compliments by emulating them by handpicking judges. After all, the spe-

cial court is not going to be a novelty. Elections constitute the foundations of our democracy and election cases are tried by special courts. We do not have to come from the bottom of the ladder. Is it their suggestion that the special court which tried the election petition against Mrs. Gandhi, Justice J. M. L. Sinha, was selected by the present regime. If that were so, if the verdict were adverse in the present situation, probably these people would say that that was because of the fact that Justice J. M. L. Sinha was hand picked by the present regime. Justice J. M. L. Sinha was selected by the High Courts of those days and the distinguished judge who is going to be remembered in history was one of the selections made by the previous regime, the regime which lasted for thirty years or so. Most of the judges who find themselves on the benches had been selected by the previous regime. All these things which my hon. friend the Leader of the opposition said with great flair and gusto—hand picked judges, hand picked accused and pre-arranged judgement—are only high, sounding empty words which cannot carry conviction with any person. I think that if they dread the situation that confronts them, that faces them in the future, I really do not think that there is any cause for it. They have nothing to dread because it is the fairest kind of trial that they are going to get at the hands of the court. At the same time but here I have a complaint with which, I would deal first. After closely scrutinising the measure, I will try to show how the Bill suffers from many lacunae.

First coming to the judge who would be appointed for the purpose, I really do not see why the appointment should be made with the concurrence of the Chief Justice of India and not with the concurrence of the Chief Justice of the concerned High Court. In the case of a special tribunal constituted for election pur-

poses, it is the Chief Justice of the High Court who makes the choice. So I feel that there is absolutely no justification for obtaining the concurrence of the Chief Justice of India so far as the appointment of the judge is concerned. It is the High Court concerned which could say whether a particular judge would be able to perform the task properly. From the highest pedestal, the Chief Justice cannot do justice to this matter. I think this matter should have been left in the hands of the Chief Justice of the concerned High Court from which nomination would be sought to be made. But the point I was trying to make was that this situation was of their own creation. I think this situation could have been avoided if after the clear and decisive verdict at the elections, my hon. friend, the Leader of the Opposition and his party came to the House and confessed the guilt; they had made a clean breast of the guilt that they had perpetrated on the people of India. If they wanted a Gandhian remedy, they had to create conditions for a Gandhian remedy. If Mrs. Gandhi, who happened to come to the House after some time, had made a clean breast of the guilt, I think the pressure for the special courts and dealing with the cases with despatch and expedition would have been much less than it has been. We are all committed to Gandhian values. It is farthest from our mind to be vindictive or to nourish feelings for reprisals. But after having waited for 19 months or so, we now see that there cannot be any let up in giving expression to the public will in this matter. The public will was clear. They did not like the emergency. They did not like repressive measures. If that were so what stood in the way of Mrs. Gandhi and her party from coming before the House and say, "Mr. Speaker, this is the clear verdict of the people. I bow down to the verdict of the people. We have indeed committed a guilt. We have perpetrated an excess on the people of India and we are sorry for it?" But they did not do it.

[Shri Shyamnandan Mishra]

Coming to the Bill proper, I am afraid, it is not going to be much less cumbersome than the normal procedure, because there is a provision that there can be appeals from interlocutory orders to the Supreme Court. It is not my suggestion that the accused should be prevented from making an appeal from the interlocutory orders. I am only stating the position as would obtain even after the institution of the special courts. There would be interlocutory orders both on facts and on law to the highest court. This Bill provides enough scope for it.

Take for example people in high public or political places. What are the words used here?—"persons who have held high public or political offices". What would be meant by it? Who will define and determine these and which would be considered high public place or low public place? All these things will be taken to the Supreme Court. Let there be no doubt about it. You have not tried to define it. So, I am submitting to my hon. friend, Mr. Sathe and my hon. friend, the Leader of the Opposition that there could be all manners of appeal from interlocutory orders to the Supreme Court.

There are other things also where they have provided scope for it. The Preamble itself, I must say, is a piece of declamation par excellence. I really do not know how any draftsman could bring himself to putting in all that is required to be placed in the Statement of Objects and Reasons in the body of the Bill. That is the rightful place; it should have properly found its place in the Statement of Objects and Reasons. As it is this is a pompous thing. This should not have found place in the body of the Bill itself.

However, what is being claimed so far as the preamble is concerned, is that it contains the guidelines. Now, mind it, if that constitutes the guidelines, I think. God alone will make it a short process. Nobody can make it

a short process because everything would be challenged on the basis of the preamble itself and whether you are conforming to the guidelines. The preamble again says that it is the moral and constitutional duty of the Government to do it. Where does morality find its place in a piece of legislation? I really do not know.

15.38 hrs.

[MR. SPEAKER *in the Chair*]

I was submitting that the preamble is a piece of declamation. It is a pompous thing. It contains so many things which cannot be interpreted or defined properly. To repeat it is said that it is the normal and constitutional duty. But may I submit that even if I break my oath, violate my oath, that would be in a sense constitutional offence but not a legal offence. That is not an illegal offence. Similarly, it is said that it is the moral duty of the Government. Although I do think that no piece of legislation can be immoral piece of legislation and yet it had to be an amoral thing. But here morality is brought in, ethics is brought in, constitutional propriety is brought in. I really do not know whether the draftsman had done justice to the drafting of this measure.

All this is going to land the whole process into complexities and difficulties so that you would find in the end of all that it will not be less cumbersome than it would have been through the normal course.

Now look at the first and a second paragraphs. What do they mean? I really do not understand what the two paragraphs mean: They are not disjunctive; they are conjunctive. What does it mean? It means that both processes have to go together, both the paragraphs have to be read together. Even if there is a report by the Commission of Inquiry, it has to be followed by the investigation. May be that in many cases you do not require any investigation, but if there

is one and it discloses a different kind of situation, then what happens? According to this Bill, you will have to disclose the findings both of the agency of the Government as also of the Commission. And if both of them have to be disclosed, then there can be many points of conflict and contradiction between the two. And,—if my reading is correct that both of them have to be read together—in that case, the position would be that, so far as the second paragraph is concerned, that has to be preceded by the kind of action that is envisaged in the first paragraph. Otherwise on the basis of the findings of a separate agency of the Government, the Government cannot take any matter to the Special Court. That will have to be preceded by action under the auspices of the Commission.

MR. SPEAKER: He should conclude now.

SHRI SHYAMNANDAN MISHRA: Give me some more time.

MR. SPEAKER: You have taken more than 20 minutes.

SHRI SHYAMNANDAN MISHRA: Fifteen minutes for a Bill of this kind is not sufficient. This is what brings down the quality of the debate. You should kindly consider that this brings down the quality of the debate. I am trying to analyse the Bill in its components.

MR. SPEAKER: We are very much behind the schedule.

SHRI SHYAMNANDAN MISHRA: Then, you will kindly observe that in another paragraph, for example in clause 5, "persons connected with it" have been left out. In the first paragraph persons connected with the offences have been brought in but in the operative part the persons connected with it have been left out. Would it not create another kind of situation?

Then, hurrying to another point—I would be completing soon—in clause 7 it is said that matters pending in the lower courts would be taken straight to the Supreme Court. If a matter is pending, may be at the

district level in the court of revision since it has been disposed of by a lower court, it will be taken straight to the Supreme Court. If that is so, is there any meaning or justification for the institution of a special court? So Clause 7 of the Bill completely knocks out the justification for the institution of a special court. To repeat, if you have to take it straight to the Supreme Court even from the lower court, without going through a higher court as is suggested in this measure, then there is no justification for this kind of a step that you are envisaging.

Sir, since there is no time, I would not like to strain your patience. I know you are governed by the limitation of time. But I am quite clear in my mind that I have not been able to do full justice to the measure in the manner I ought to have done.

SHRI B. SHANKARANAND (Chikodi): Mr. Speaker, Sir, I must thank a few speakers on the other side who have really helped us in projecting our view, for had not my friends like Shri Jethmalani and others spoken on this, it would not have been clear to the entire House that this Bill is meant against Shrimati Indira Gandhi and Shri Sanjay Gandhi, not only meant against them but it is meant for their conviction. If you go through this Bill, because you have had very vast experience in the Supreme Court....

MR. SPEAKER: All that has been forgotten, because in this House it is not necessary.

SHRI B. SHANKARANAND: This looks like a Letter of Intent of the Janata Party to convict Shrimati Gandhi very shortly. You must acknowledge that it is the intention of the Janata Party to put Shrimati Gandhi in jail within three months. Rumours are afloat already, and they have been given credence by the few speakers who have spoken in this House. And more so, a person, an hon. Member who has been a prosecutor to see that Mrs. Gandhi and others are convicted spoke in support of this

[Shri B. Shankaranand]

Bill in this House? Mr. Speaker, if it is really meant for justice to Mrs. Gandhi, why is this hurry? The Janata Party take it as their honour that they waited for 2 years, they wanted to give time and all that. Heavens are not going to fall if Mrs. Gandhi is tried in the ordinary courts. But they have not. They would have done, but they were fighting amongst themselves for two years and they further feel that if Mrs. Gandhi is left outside, perhaps they will see their end very soon. But they are mistaken. I warn the Janata Party that if they see that Mrs. Gandhi is in jail, they will see their fate. The more they hurry to send Mrs. Gandhi to jail, the earlier they will end their rule in this country. (Interruptions) I am not repeating the arguments that have been put forward by my friends on this side, but the only thing that I am going to point out from the provisions of this Bill is how there is a design in this Bill. I will point out from the provisions of this Bill that there is a design in this Bill to see that Mrs. Gandhi is convicted and that is, Mr. Speaker, this Bill is not only for the people who have held high offices, political and public offices. It is not only for them. I will read the Preamble as follows:

"Whereas Commissions of Inquiry appointed under the Commission of Inquiry Act 1952, have rendered reports disclosing the existence of *prima facie* evidence of offences committed by persons who have held high public or political offices in the country and others...

And who are these 'others'? Nobody has defined who are these 'others'. I will tell you who are these 'others'. Mr. Speaker, these are the others who will be created as co-accused and they will be pardoned to involve Mrs. Gandhi. And that pardon clause is here. It is clause 9. And what does clause 9 say? We have never seen any Acts giving special provision for pardoning the accused. In no criminal law it is there. There is a special clause in this Bill pardoning an accused. And for what? Sub clause (2) of clause 9 says:

"A special court may, with a view to obtaining evidence of any person suspected to have been directly or indirectly concerned in or privy to an offence, tender a pardon to such person on condition of his making full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal, conspirator or abettor in the commission thereof."

Now, there is a bribe, a legal bribe given by this Government in this Bill, an open corruption, to corrupt the witnesses. And some of my friends are speaking here that 23 witnesses have been corrupted in Sanjay Gandhi's case and so many people have been corrupted in that. Mr. Speaker, here is an evidence, and here is a piece of Bill that has been brought before this House. Can we put our hands on our hearts and say honestly that this Bill is honest? It is fraught with dishonesty only with an intention to convict Mrs. Gandhi by hook or crook. Otherwise, this proviso would have found no place in this Bill. And this is how the draftsman of this Bill—I do not know the mover of the Bill, I do not hold the Home Ministry guilty of this because there is somebody behind this Bill, in drafting this Bill who is guiding the scene in this House. I do not hold even the Law Minister guilty. Otherwise this Bill would not have been drafted in such a shabby manner.

Mr. Speaker, you have read many Acts, you have interpreted and analysed them. See the language of this Bill.

See the language of this Bill. As Shyamnandanji has said, the purpose of the Bill has been mentioned in the Preamble. He says that it speaks about moral obligation. I quote the last paragraph:

"And whereas the ordinary criminal courts, due to congestion of work, cannot reasonably be expected to bring these prosecutions to a speedy termination."

Had it been only this, I could have understand it, that there is rush of work and so such cases cannot be decided early, but it says:

"And whereas the ordinary criminal courts due to congestion of work and other reasons..."

What are those reasons?

This Central Government has been neglecting the trial of hundreds and thousands. There are 82,000 under-trials in this country who have been languishing in jails from six months to many years. They are not caring for the release and early trial of these people. This is what the Janata Government is. It is only for the Supreme Court to issue directions and writs under *habeas corpus*.

I have given some amendments. The only thing that I say is that this Bill should not have been introduced. This Bill will create a sound ground for establishing incredibility in the honesty and impartiality of the Judges. I do not decry the Judges or the administration of justice, but this Government is maligning the Judges by bringing in such Bills and creating Special Courts that doubt is created about the administration of justice. I oppose this Bill. My request to the Home Minister is: don't malign the administration of justice, do not malign the Judges, withdraw this Bill. There are law courts, there are other laws by which the accused can be tried and convicted if found guilty.

MR. SPEAKER: The Home Minister.

SOME HON. MEMBERS rose—

MR. SPEAKER: No, we have exceeded the time. I will give you opportunity at the time of the amendments.

PROF. P. G. MAVALANKAR (Gandhinagar): This is a Bill on which several points of view have been expressed.

MR. SPEAKER: No. I am sorry.

PROF. P. G. MAVALANKAR: I object. You are not even listening to me.

MR. SPEAKER: That is all right.

PROF. P. G. MAVALANKAR: You cannot brush me aside like that.

MR. SPEAKER: I understand your importance, but I cannot give you a chance on every occasion.

PROF. P. G. MAVALANKAR: I object to your words. I will be the last man to go against the Speaker. I respect the Speaker's office, but my point is...

MR. SPEAKER: That you must be given an opportunity.

PROF. P. G. MAVALANKAR: Please bear with me for a minute. If you wish me not to speak for the whole session, I will keep quiet, but that is not the point. The point is this. Kindly look at this Bill and its background. Some of us have to express a point of view which has not been expressed so far in the House. Would it not be proper for you to include an Independent either at this stage...

MR. SPEAKER: I have given independents also every opportunity.

PROF. P. G. MAVALANKAR: or at the stage of Third Reading.

MR. SPEAKER: I will consider it. I will give others who have not had the opportunity during the Amendment stage or...

PROF. P. G. MAVALANKAR: I have not given any amendment.

MR. SPEAKER: Then I will give at the final stage.

PROF. P. G. MAVALANKAR: I have deliberately not given any amendment, because I do not want to speak at length. I only want to bring...

MR. SPEAKER: I will give you opportunity at the Third Reading.

PROF. P. G. MAVALANKAR: I am not here to speak for the sake of speaking. I am here to express a point of view. I object to your remark, and the use of the word 'importance'. I am here to express my point of view. It is not fair. What is the point in speaking at the stage of Third Reading? At the Third

[Prof. P. G. Mavalankar]
Reading, you will limit me to only "Yes" or "no". Because I am neither wholly for "yes" nor "no", I want to speak something more than that. So, I want to speak at this stage. (*Interruptions*)

MR. SPEAKER: I am sorry. We have exceeded the time limit. Therefore, I cannot allow.

PROF. P. G. MAVALANKAR: Would you allow me to speak on the Third Reading by going into the details? You will not. Under the Rules, you will stop me.

MR. SPEAKER: I have heard you.

PROF. P. G. MAVALANKAR: What is the point of your hearing me? I am not here to be merely satisfied that you have heard me. I want to get justice.

MR. SPEAKER: Every Member will ask for it. What is the point? I have already called the Home Minister.

PROF. P. G. MAVALANKAR: The debate is not complete. If my point of view cannot be heard...

MR. SPEAKER: There will be hundreds of points of view.

PROF. P. G. MAVALANKAR: No. Time was extended to accommodate Members of other parties. I agreed, that is good. Would you allow me to speak in detail at the stage of Third Reading? Would you allow me to speak during Clause-by-Clause consideration?

MR. SPEAKER: I have already called the Home Minister.

PROF. P. G. MAVALANKAR: I do not appreciate your point of view at all.

MR. SPEAKER: I understand that also.

PROF. P. G. MAVALANKAR: I abide by your decision. I sit down. I am sorry, because you used the word 'importance'. We come here to make speeches. Then, why use the words like 'importance'? In this very House, on these matters, on all

the matters of the Preamble, I have spoken a number of times. I have a right to express my point of view. How can you deny that right? I can make no speech for the rest of session, if you want. But you cannot use the word 'importance' and belittle the status of an independent person, not backed up by any party! You cannot do that. You cannot do anything... (*Interruptions*). In Parliament, things are not going merely by party position. I am not interested in making... (*Interruptions*) I object...

MR. SPEAKER: I am on my legs. I have heard you. I know your importance.

PROF. P. G. MAVALANKAR: Again I am objecting.

MR. SPEAKER: Everybody's importance is recognised. Everybody has a point of view. It is not physically possible to give all the Members a chance. There are at least 20 Members in the list who still want to speak, who feel as important as you do. I feel everybody is equal.

PROF. P. G. MAVALANKAR: With great respect to you, I object to what you are saying. I am not used to walking out and making the theatrical protests. I sit down. But I object to what you are saying.

THE MINISTER OF HOME AFFAIRS (SHRI H. M. PATEL): Mr. Speaker, Sir, this is a very important Bill and I am sorry that the Leader of the Opposition and some of his colleagues have chosen to describe it as a Bill which will destroy the judicial system or something of that kind and made very serious reflections on the judicial system of this country.

SHRI VASANT SATHE: Your credibility is gone. The credibility of the judiciary will also go.

SHRI H. M. PATEL: Will you stop? Did I interfere? If you wish to go on interjecting like this, I am very sorry. You are so accustomed to misbehaving...

SHRI VASANT SATHE: Do not get provoked.

SHRI H. M. PATEL: I am sorry. Mr. Speaker, Sir, the hon. Member is behaving in an extra-ordinary manner. He is entitled to it...

17.00 hrs.

SHRI VASANT SATHE: This is an extra-ordinary remark.

SHRI H. M. PATEL: He is accustomed to doing this.

SHRI VASANT SATHE: It is a special remark.

SHRI H. M. PATEL: His behaviour is seen here by all of us. There is no question of any non-eye witness here in this regard. The judgment on how he behaves is there for everybody to see. I have barely begun when he proceeds to interject...

SHRI VASANT SATHE: Are you to speak on the Bill or on me?

SHRI H. M. PATEL: If he goes on like that, I am compelled to speak, through him, on the Bill. The hon. Member is so accustomed to authoritarian methods...

MR. SPEAKER: Let us go to the subject.

SHRI H. M. PATEL: I am speaking on the subject. He applauds the remark "speak on the subject". I do nothing else but speak on the subject which is totally different from what my hon. friend does invariably.

The last speaker brought in the question of under-trial prisoners. This is illustrative of their methods of discussing this Bill. He said, "Why are you wasting your time on a Bill like this when there are so many under-trial prisoners? How long have the under-trial prisoners been there? Have they begun to be there in a large number only since we came in power? Do they know that there are people as under-trial prisoners who have been there for the last 10 or 12 years? They have been there in a much more large number during their period than

what has been during the period since we came to power. Did they ever take notice of them? As against that, this Government has taken up the question of under-trial prisoners in right earnest and intends to see that the question of under-trial prisoners is handled in such a way that the number is reduced and that the cases of those people who remain as under-trial prisoners for various difficulties of their own, their inability to represent their cases properly through lawyers and so on and so forth, are handled properly. This is what this Government does. It is not as if, as my hon. friends say, we are indifferent to such matters. But they are. You consider this.

The honourable Leader of the Opposition was very eloquent on various matters. But I would like merely to say this. If you look at the Statement of Objects and Reasons for bringing for this Bill, it says:

"Reports of various Commissions of Inquiry appointed under the Commission of Inquiry Act, 1952, have disclosed the existence of *prima facie* evidence of offences committed by persons who have held high public or political office in the country and others connected with the commission of such offences during the Proclamation of Emergency..."

It further says:

"It is the constitutional, legal and moral obligation of the State to prosecute persons involved in these offences..."

SHRI C. M. STEPHEN: From where are you reading?

SHRI H. M. PATEL: I am reading from the Statement of Objects and Reasons.

SHRI C. M. STEPHEN: What about the Preamble?

SHRI H. M. PATEL: This shows that the Leader of the Opposition has not chosen to understand the Bill. Whatever it sounds like to him, he should try to understand these points as to why this Bill has been brought forward.

[Shri H. M. Patel]

Having said this, the Leader of the Opposition and his other friends referred to the fact that this Bill suffers from various disabilities which will create many difficulties. But what he did say was that this Bill will result in the accused not receiving a fair trial.

SHRI C. M. STEPHEN: That is my point.

SHRI H. M. PATEL: This is not the case. Not one Supreme Court judge in his judgment has said that, if the Bill is freed from certain infirmities that are pointed out, there is no question of the accused not receiving a fair trial.

So far as this Government is concerned, it is only interested in this, that those against whom there is a *prima facie* case are prosecuted and the prosecution is completed with the utmost despatch and that the trial is fair. That is why emphasis was laid by a number of speakers on this side of the House on the point that there is no change in the procedure. The procedure remains the same as it would be if it were not before a Special Court. Therefore, there is no question of anybody being tried in a different way.

Now, I would like to quote from the judgment. (*Interruptions*).

"As stated in the 5th para of the Bill's Preamble, the ordinary criminal courts, due to congestion of work, cannot reasonably be expected to bring the prosecutions contemplated by the Bill towards a speedy termination. The congestion in courts, the mounting arrears and the easy and unconcerned dilatoriness which characterises the routine trials in our courts are well-known facts of temporary life".

"They are too glaring to permit disputation. Seminars and symposiums are anxiously occupied in finding ways and means of solving what seems to be an intractable and frustrating problem. The Bill therefore justifiably provides...

SHRI VASANT SATHE: Where are you reading from?

SHRI H. M. PATEL: I am reading from the Supreme Court Judgment which you have not taken the trouble to read. It is the Supreme Court's opinion that I am reading from. (*Interruptions*).

"The Bill therefore justifiably provides for a method whereby prosecutions falling within its scope may be terminated speedily. It is not that a speedy trial is a universal requirement of every trial...

SHRI VASANT SATHE: That's right.

SHRI H. M. PATEL: It is not; that is what it says. (*Interruption*).

"A recital of the sixth para of the preamble shows the true nexus between the basis of classification under Clause 4(1) and the object of the Bill. That paragraph says that it is imperative for the functioning of parliamentary democracy and the institutions created by or under the Constitution of India that the commission of offences referred to it in the preamble should be judicially terminated with the utmost despatch. If it be true—and we have assumed it be true—that offences were committed by persons holding high public or political offices under the cover of declaration of Emergency and in the name of democracy, there can be no doubt that the trial of such persons must be concluded with the utmost despatch in the interests of the functioning of democracy in our country and the institutions created by our Constitution. Longer these trials will tarry, assuming the charges to be justified, greater will be the impediments in fostering democracy which is not a plant of easy growth. If prosecutions which the Bill envisages are allowed to have their normal measure span of anything between five and ten years, no fruitful purpose would be served by launching them. Speedy termination of prosecutions under the Bill is the heart and soul of the Bill." (*Interruptions*).

MR. SPEAKER: If you attend to interruptions, you will never complete it.

SHRI VASANT SATHE: I would like to know about the 'kernel'. You talked about 'hand-picking': You justify that.

SHRI H. M. PATEL: The Hon. Member spoke selectively quoting from extracts. He may permit me also to quote extracts which I consider relevant.

SHRI VASANT SATHE: You have to meet the arguments you advanced, Mr. Home Minister.

SHRI H. M. PATEL: The Hon. Member cannot be silenced, it is true. He was silenced only during the Emergency. I have seen that. He is a lion today, but there was not one whimper when he signed away everything. He signed away every right. When the Constitution Amendment Bill was brought here, he supported it without a single word. Today he is a lion. And he is the lion today!

SHRI VASANT SATHE: The lion is sitting by your side. The lion is Babuji.

SHRI H. M. PATEL: I will not waste my time on this. (*Interruptions*)

Regarding classification, about which they spoke so much, there are ample arguments here to show that there is no objection to the classification in the manner that is proposed. In fact, the distinction is not discriminatory in every case. There is no such thing as that involved in this. What we should really go by is the final opinion of the judges, which is what we are doing, and we have amended the Bill, we have rectified the Bill that was submitted to them for opinion in respect of those three matters.

My hon. friend opposite thinks that there is hand-picking. What is the meaning of this word 'hand-picking'? By whom are all the judges appointed? The judges are appointed by Government. Is that hand-picking? All the judges of the High Court throughout the country are appointed by Government. Therefore, there is no hand-picking of any particularly new man. (*Interruptions*) It is in order to safeguard this kind of charges, meaning-

less charges, that we have accepted the Supreme Court judges' advice and said that it would be done with the concurrence of the Chief Justice. I do not understand where the hand-picking comes. What is most objectionable is. (*Interruptions*)

SHRI A. BALA PAJANOR (Pondicherry): Here the question of appointment of judges is not there.

SHRI VASANT SATHE: It is not initial appointment. When you select some judge (*Interruptions*)

SHRI A. BALA PAJANOR: It is only nomination.

SHRI H. M. PATEL: You are entitled to your opinion. Here I am replying to a point. You may not necessarily agree with what I say...

SHRI B. SHANKARANAND: Nomination is there in the Bill. It is not our opinion. Mr. Home Minister, have you read the Bill?

SHRI H. M. PATEL: You did not even know what was there in the Bill?

SHRI B. SHANKARANAND: You do not know. You were talking about appointment.

SHRI H. M. PATEL: His intelligence is conditioned in this way. He consider that the intention of this Bill is to find Mrs. Indira Gandhi guilty. What an amazing kind of understanding of English or law! Where does the Bill say that it is intended only to find Mrs. Indira Gandhi guilty? Where does it say that? There is no such thing. (*Interruptions*)

I really do not think that there was anything in the observations made from the Opposition side which really call for further answers. It is clear that every single point which was made is based on the assumption that we have some ulterior motives. There is no ulterior motive beyond what is stated clearly and frankly in the Statement of Objects and Reasons. If they wish to read ulterior motives, other ideas, etc. behind these things, the are welcome to do so. I would repeat that our intention is only this, that the trial should be as speedy as possible. We do not want that these trials should be

[Shri H. M. Patel]

prolonged and in order to do that, we thought of this Special Court and because we wanted also to ensure this, that there will be no objection and it will be constitutional and proper, we sought the opinion of the Supreme Court before bringing this Bill. We have abided by the opinion of the Supreme Court and then we have brought this Bill. I think the Bill is sound in every respect. I know hon. Member, Shri S. N. Mishra made certain observations and said there were lacunae. It is possible. I will not question that, because he has studied this Bill far more than the Opposition took the trouble to study.

I would, therefore, commend the Bill to the House.

SHRI C. M. STEPHEN: He was replying. You heard me. I specifically asked for an answer to a question which I raised repeatedly. He is avoiding that. I want to know if he is prepared to answer that.

The Supreme Court put forth four suggestions. The fourth suggestion that the Supreme Court put was that a speedy trial is possible under the present frame-work giving the original jurisdiction with respect to these matters to the High Court and the Supreme Court has said that the Government informed them that they were considering this matter. That has not been incorporated into that. Why has it not been incorporated? Why was that suggestion not accepted? Speedy trial can be completed and no procedural changes are effected and the only change is that 'we will pick out the Judge'. They say, 'Have the High Court'. Why are you not accepting it? Give an explanation about it.

SHRI H. M. PATEL: There is no question of my not answering the question.

So far as the advice of the Supreme Court is concerned, it is an opinion running into 109 pages... (*Interruptions*) I understand you fully. It is for me to give you the reply that you have asked for and not for you to give me a reply nor am I bound to give the

reply as you like. The reply is like this. This is the opinion.

"In conclusion, our answer to the reference is as follows...."

SHRI C. M. STEPHEN: That is not what I asked.

SHRI H. M. PATEL: This is the answer. We asked the Supreme Court for their opinion and they have given it. This is the answer—what is stated in the Judgement on pages 108 and 109.

AN HON. MEMBER: Please explain to him. He has not understood it.

MR. SPEAKER: I have a limited function.

SHRI VASANT SATHE: You please explain it to him properly so that a proper reply comes. That is one part of your functions.

MR. SPEAKER: Now I shall put the amendments to the vote of the House.

SHRI B. SHANKARANAND: Sir, I rise on a point of order. Sir, the Home Minister of this country on such a very important Bill has finished his speech within five minutes.

MR. SPEAKER: That is all right. You are responsible for this. You are putting him so many questions. This is not a point of order.

SHRI B. SHANKARANAND: Please listen to me and hear me fully. Here the Home Minister has finished his speech within five minutes. It was the duty of the Government, Mr. Speaker to reply. Many questions have been raised in this House. The debate is going on for hours; how can the Home Minister escape from the replies?

MR. SPEAKER: There is no point of order.

SHRI B. SHANKARANAND: The House is entitled to know the reasons.

MR. SPEAKER: I cannot compel anybody.

SHRI B. SHANKARANAND: There is no question of compelling anybody. That is the duty of the Government to satisfy us.

MR. SPEAKER: I cannot compel them.

SHRI B. SHANKARANAND: Please hear us. You are the custodian of our rights in this House. You have to compel him to satisfy the House.

MR. SPEAKER: I am sorry. I cannot do that.

SHRI B. SHANKARANAND: Maybe, we may not be satisfied. But, let him reply to the questions that we have raised.

MR. SPEAKER: That is not my function.

Now, I shall put the amendments to the vote of the House unless the hon. Members want to withdraw their amendments.

(Interruptions)

SHRI M. KALYANASUNDARAM: Sir, I rise on a point of order. On this side there are members who, while supporting the Bill, made some suggestions that this Bill may be made a permanent measure for all similar offences of persons in the future. What is the objection of the Government? He has not made that point clear. We are supporting this Bill and while doing that we have made suggestions. At least two Members on this side made the suggestions. What is the attitude of the Home Minister if he replies, that will help us. He should clarify that.

MR. SPEAKER: Would you like to say anything on this?

SHRI H. M. PATEL: Sir, the Bill, as it has been brought in here is for a clear and specific object. If there is a possibility or advisability of extending the scope, that can certainly be considered. But, it cannot be considered now because it has many implications. Then comes the question of definition and putting in other clauses etc.

Whether we want to have it as a permanent measure or not is something again which calls for a careful and further consideration. That is my reply so far as this is concerned. *(Interruptions)* I am sorry my hon. friends do not see the point. The basic or essential point in this Bill is that there was

an emergency from June 1975 to January 1977 during which period, a number of excesses were committed; injustices were inflicted upon the people and various other things had taken place. And those who were perpetrators of those offences should be brought to book as quickly as possible and the trials completed speedily.

If the hon. Members think that a bill of this nature should have a permanent place in our statute book, we can certainly consider this and examine it. But, it cannot be done now when this Bill is before us. *(Interruptions)*

SHRI M. KALANASUNDARAM (Tiruchirappalli): Sir, this relates only to Shah Commission and other Commissions. There was Sarkaria Commission also appointed in that period. There was another commission during this period against for the Chief Minister and other ministers which will not come within the purview of this Bill. That is why I suggested that it could be made a permanent measure against all the persons, whether connected with the emergency or not, to be tried. Why should he object to that?

MR. SPEAKER: It is for him. I cannot answer this.

SHRI M. KALYANASUNDARAM: We want an answer.

PROF. P. G. MAVALANKAR: Mr. Speaker, if you will permit me, I would suggest one thing. You will kindly see the statement of objects and reasons. Please see the first few lines. What does it say? Reports of various Commissions of Inquiry appointed under the Commission of Inquiry Act, 1952, have disclosed the existence of *prima facie* evidence of offences committed, etc. Now, the point which the Home Minister is not able to answer, and which we want him to answer so that we can support it, is, namely, whether all such offences....

MR. SPEAKER: There are amendments when you can take that up.

PROF. P. G. MAVALANKAR: My point is this. By way of reply, the Minister should atleast inform in the House as to what is the Government stand on this?

If the Government says that all *prima facie* cases established by all Commissions of Inquiry will be looked into as of right and automatically, then we support it. But if it is limited to a particular portion, then Government's intentions are to be doubted. (*Interruptions*)

SHRI A. BALA PAJANOR: Sir, the Home Minister is misleading the House because he said that if there is anything in future we will consider because my point is already there is Sarkaria Commission constituted much earlier where *prime facie* cases has been established. Why are you not including it? (*Interruptions*)

SHRI NARENDRA P. NATHWANI (Junagarh): Mr. Speaker, Sir, I want to speak on two points. During the conduct of the present debate some Members wanted the hon'ble Minister to explain why certain alternative course is not taken regarding the nomination of trial judges. (*Interruptions*) if you allow me two minutes I will explain.

MR. SPEAKER: Not at this stage.

Now, I shall put the amendments moved by the hon'ble Members to the vote of the House unless any hon'ble Member wants to withdraw. Amendment No. 19 stands in the name of Shri A. K. Roy. He is absent. Still I have to put it to the Vote of the House. The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 25th June, 1979."
(10)

The motion was negatived.

MR. SPEAKER: Now I come to Mr. Lakkappa's amendment No. 32.

SHRI K. LAKKAPPA (Tumkur): I would like to speak. This is my legitimate right. Nobody can prevent me.

MR. SPEAKER: Mr. Lakkappa, it is a motion for consideration now. Later on, the amendments will come. At that time you will have opportunity. Do you want your amendment to be put to vote.

SHRI K. LAKKAPPA: Yes.

MR. SPEAKER: There is another amendment in your name—Amendment No. 33. Then there is amendment No. 101. It is in the name of Shri Rajagopal Naidu. It is barred. Then there is amendment No. 102 in the name of Shri Eduardo Faleiro.

SHRI K. LAKKAPPA: Sir, my amendment is that the Bill be referred to a Joint Committee of the Houses. But you have not mentioned that. My amendment No. 33 is very clear. You have mentioned Mr. Faleiro's amendment. My amendment No. 33 is a very clear amendment.

MR. SPEAKER: This question will come only when the amendment comes.

SHRI K. LAKKAPPA: Why have you not put it to vote?

MR. SPEAKER: This will come only when the amendment comes.

SHRI K. LAKKAPPA: By which order do you take? You should guide properly. We are sitting on this side.

MR. SPEAKER: You have not spoken. Yes, Mr. Lakkappa, you can say.

(*Interruptions*)

SHRI K. LAKKAPPA: Please withdraw that order.

MR. SPEAKER: You please continue. You say what you have got to say about your amendment.

SHRI K. LAKKAPPA: I have said that the Bill to provide for the

speedy trial of a certain class of offences, be referred to a Joint Committee of the Houses consisting of 15 members, 10 from this House, namely: (1) Dr. H. Austin, (2) Shri G. M. Banatwalla; (3) Prof. P. G. Mavalankar....

MR. SPEAKER: That is all; you come to the point.

SHRI LAKKAPPA:...(4) Shri A. Bala Pajanon, (5) Shri H. M. Patel; (6) Shri Balwant Singh Ramoowalla; (7) Dr. V. A. Seyid Muhammad..

MR. SPEAKER: That is all right; you need not mention names..

SHRI K. LAKKAPPA:...(8) Shri B. Shankaranand....

MR. SPEAKER: You only speak in support of it.

SHRI K. LAKKAPPA: Mr. Speaker, Sir, at the time of introduction of the Bill itself, I objected saying that the present special Courts Bill brought forward by this Government is not only in conflict with and in violation of the Constitution, Article 14 and so on, but that it is in conflict with certain procedural rules of the House. Therefore, not only does the Government want to blackmail this House but they are bypassing the Rules of Procedure. Rules 67 and 69 of the Rules of Procedure are there. The present Private Member's Bill is pending. And that question has not been properly answered; (Interruptions)—properly answered, according to me. And also on that issue, I moved a privilege motion. Even in spite of all these things, please see the provisions regarding objects and reasons which have been enumerated. They not only create confusion in the whole country, but, the people also will ultimately decide and come to the conclusion that the present Government..

MR. SPEAKER: You can speak in support of the amendment.

SHRI K. LAKKAPPA: Why I am moving is this; (Interruptions)

MR. SPEAKER: Please don't disturb the proceedings.

SHRI K. LAKKAPPA: Shouting will not get us anything.

MR. SPEAKER: You are speaking on an amendment. Please be brief.

SHRI K. LAKKAPPA: Kindly don't disturb me. In fact I wanted to speak on this Bill. But my party has no whip. And unfortunately somebody has spoken, but I am not allowed to speak, but I wanted to speak. There was no whip in my party.

MR. SPEAKER: Nobody objected to your speaking...

SHRI K. P. UNNIKRISHNAN (Badagara): This is very unfair. He should discuss this matter in the party, not here.

SHRI K. LAKKAPPA: Therefore, even as a matter of abundant caution, when such hasty and rash Bills are being brought, what should we do? It is brought forward with this purpose only. As Prof. Mavalankar rightly pointed out, the Statement of Objects and Reasons enumerated here refers to the 1952 Act. On the basis of that you have got other people who are found as guilty, Mundhra and others. So many people are involved who are higher up in society, in politics, in power, every where. But it is most unfortunate that only for a specific period, a specific purpose, this legislation has been brought in only to indict an individual and a group of people.

MR. SPEAKER: Mr. Lakkappa, you have to speak only on your amendment and not on a general basis.

SHRI K. LAKKAPPA: I have to convince many of the Members here and also persons outside.

MR. SPEAKER: I have nothing to do with outside persons.

SHRI K. LAKKAPPA: Please refer it to the Select Committee.

(Interruptions)

In the Objects and Reasons, they have mentioned only Mr. Jethmalani's Bill, that is, "Emergency Court's Bill 1978".

MR. SPEAKER: That has already been dealt with.

SHRI K. LAKKAPPA: This shows the guilty mind of the Government.

MR. SPEAKER: You come to the amendment. You are only to speak on your amendment. Nothing more. I have to follow the rules.

SHRI K. LAKKAPPA: It is my right to say that.

MR. SPEAKER: It is not your right. We are now at the stage of amendments.

SHRI K. LAKKAPPA: Is it not my right?

MR. SPEAKER: No.

SHRI K. LAKKAPPA: Then how is it that you are protecting the rights of the Member? I have no reason to believe the present Government. Sir, they have some motives behind.

MR. SPEAKER: Mr. Lakkappa, at the time of moving the amendment, a Member has no right to speak. But I have still given you a chance to speak only on your amendment.

SHRI K. LAKKAPPA: Then you say that you are not giving me a chance.

MR. SPEAKER: Now, I won't allow you to speak.

SHRI K. LAKKAPPA: Sir, why can't you allow me to speak for a minute now?

MR. SPEAKER: No, I have already given you time.

SHRI K. LAKKAPPA: You allowed those people, but you are not allowing me.

MR. SPEAKER: No, No. Do not record.

(Interruptions)**

MR. SPEAKER: Now, there are two amendments regarding circulation of the Bill for the purpose of eliciting opinion. Amendment No. 32 is moved by Mr. Lakkappa. I shall now put the Amendment No. 32 moved by Shri Lakkappa to the vote of the House.

The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st June, 1979". (32)

The motion was negatived.

MR. SPEAKER: There are two amendments, amendment No. 33 and 102, by Shri K. Lakkappa and Shri Eduardo Faleiro for referring this Bill to a Joint Committee of the two Houses. I will now put these to the vote of the House.

The question is:

"That the Bill to provide for the speedy trial of a certain class of offences, be referred to a Joint Committee of the Houses consisting of 15 members, 10 from this House, namely:—

- (1) Dr. H. Austin
- (2) Shri G. M. Banatwalla
- (3) Professor P. G. Mavalankar
- (4) Shri A. Bala Pajanor
- (5) Shri H. M. Patel
- (6) Shri Balwant Singh Ramoo-
walla
- (7) Dr. V. A. Seyid Muhammad
- (8) Shri B. Shankaranand
- (9) Shri Kommareddi Suryana-
rayana

** Not recorded.

(10) Shri K. Lakkappa

and 5 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee; that the Committee shall make a report to this House by 31st July, 1979; that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 5 members to be appointed by Rajya Sabha to the Joint Committee."(33).

"That the Bill to provide for the speedy trial of a certain class of offences, be referred to a Joint Committee of the Houses consisting of 15 members, 10 from this House, namely:—

- (1) Shri G. M. Banatwalla
- (2) Shri Bedabrata Barua
- (3) Shri P. K. Deo
- (4) Shri V. Kishore Chandra S. Deo
- (5) Shri Hitendra Desai
- (6) Shrimati Parvathi Krishnan
- (7) Shri H. M. Patel
- (8) Shri Mohd. Shafi Qureshi
- (9) Dr. V. A. Seyid Muhammad
- (10) Shri Eduardo Faleiro

and 5 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee; that the Committee shall make a report to this House by 31st March 1979; that other respects the Rules of Procedure of this House relating to Parliamentary Committees shall

apply with such variations and modifications as the Speaker may make; and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 5 members to be appointed by Rajya Sabha to the Joint Committee."(102).

The Lok Sabha divided.

Division No. 2]

[17.45 hrs.

AYES

Ahmed Hussain, Shri
Alagesan, Shri O. V.
Avari, Shri Gev. M.
Balakrishniah, Shri T.
Banatwalla, Shri G. M.
Barve, Shri J. C.
Basu, Shri Dhirendranath
Choudhury, Shrimati Rashida Haque
Dabhi, Shri Ajitsinh
Faleiro, Shri Eduardo
Gotkhinde, Shri Annasaheb
Jaffer Sharief, Shri C. K.
Jayalakshmi, Shrimati V.
Kadam, Shri B. P.
Kidwai, Shrimati Mohsina
Krishnan, Shri G. Y.
Lakkappa, Shri K.
Lakshminarayanan, Shri M. B.
Laskar, Shri Nihar
Mallikarjun, Shri
Meduri, Shri
Meduri, Shri Nageswara Rao
Mirdha, Shri Nathu Ram
Mishra, Shri G. S.
Murthy, Shri M. V. Chandrashekhara
Patil, Shri Vijaykumar N.
Ramamurthy, Shri K.
Rao, Shri M. S. Sanjeevi
Rao, Shri Pattabhi Rama
Reddy, Shri G. Narasimha

Reddy, Shri M. Ram Gopal
 Reddy, Shri S. R.
 Roy, Shri Saugata
 Sayeed, Shri P. M.
 Shankaranand, Shri B.
 Shrangare, Shri T. S.
 Stephen, Shri C. M.
 Sunna Sahib, Shri A.
 Thorat, Shri Bhausahab
 Unnikrishnan, Shri K. P.
 Venkataraman, Shri R.

NOES

Abdul Lateef, Shri
 Agrawal, Shri Satish
 Ahuja, Shri Subhash
 Amin, Prof. R. K.
 Arif Beg, Shri
 Bahuguna, Shri H. N.
 Bahuguna, Shrimati Kamala
 Balak Ram, Shri
 Balbir Singh, Chowdhry
 Baldev Prakash, Dr.
 Basappa, Shri Kondajji
 Berwa, Shri Ram Kanwar
 Bharat Bhushan, Shri
 Borole, Shri Yashwant
 Brij Raj Singh, Shri
 Burande Shri Gangadhar Appa
 Chakravarty, Prof. Dilip
 Chandan Singh, Shri
 Chandra Pal Singh, Shri
 Chandravati, Shrimati
 Chaturbhuj, Shri
 Chaturvedi, Shri Shambhu Nath
 Chaudhary, Shri Motibhai R.
 Chavda, Shri K. S.
 Chowhan, Shri Bharat Singh
 Chunder, Dr. Pratap Chandra
 Dandavate, Prof. Madhu
 Das, Shri S. S.
 Dasgupta, Shri K. N.
 Dawn, Shri Raj Krishna

Desai, Shri Dajiba
 Desai, Shri Morarji
 Deshmukh, Shri Ram Prasad
 Dharis, Shri Mohan
 Dhillon, Shri Iqbal Singh
 Dhondge, Shri Keshavrao
 Digvijoy Narain Singh, Shri
 Dutt, Shri Asoke Krishna
 Fazlur Rahman, Shri
 Fernandes, Shri George
 Ganga Bhakt Singh, Shri
 Gattani, Shri R. D.
 Ghosal, Shri Sudhir
 Gore, Shrimati Mrinal
 Gulshan, Shri Dhanna Singh
 Haider, Shri Krishna Chandra
 Harikesh Bahadur, Shri
 Hukam Ram, Shri
 Jagjivan Ram, Shri
 Jain, Shri Kalyan
 Jethmalani, Shri Ram
 Joshi, Dr. Murli Manohar
 Kachwai, Shri Hukam Chand
 Kailash Prakash, Shri
 Kaldate, Dr. Bapu
 Kamath, Shri Hari Vishnu
 Kamble, Shri B. C.
 Kapoor, Shri L. L.
 Kar, Shri Sarat
 Khan, Shri Kunwar Mahmud Ali
 Kishore Lal, Shri
 Kisku, Shri Jadunath
 Krishan Kant, Shri
 Kureel, Shri Jwala Prasad
 Kureel, Shri R. L.
 Kushwaha, Shri Ram Narash
 Machhind, Shri Raghubir Singh
 Mahi Lal, Shri
 Mahishi, Dr. Sarojini
 Maiti, Shrimati Abha
 Malhotra, Shri Vijay Kumar
 Malik, Shri Mukhtiar Singh

Mandal, Shri B. P.
 Mandal, Shri Dhanik Lal
 Mangal Deo, Shri
 Mankar, Shri Laxman Rao
 Manohar Lal, Shri
 Marhatti, Shri Jagdish Prasad
 Meerza, Shri Syed Kazim Ali
 Mehta, Shri Ajit Kumar
 Mehta, Shri Prasannaibhai
 Mhalgi, Shri R. K.
 Miri, Shri Govind Ram
 Mishra, Shri Janashwar
 Mishra, Shri Shyamnandan
 Mukherjee, Shri Samar
 Munda, Shri Karfa
 Nathu Singh, Shri
 Nathani Ram, Shri
 Nathwani, Shri Narendra P.
 Nayak, Shri Laxmi Narain
 Nayar, Dr. Sushila
 Negi, Shri T. S.
 Onkar Singh, Shri
 Orana, Shri Lalaj
 Paraste, Shri Dalpat Singh
 Parmar, Shri Natwarlal B.
 Paswan, Shri Ram Vilas
 Patel, Shri H. M.
 Patel, Km. Maniben Vallabhbhai
 Patidar, Shri Rameshwar
 Patil, Shri S. D.
 Patil, Shri U. S.
 Patwary, Shri H. L.
 Phirangi Prasad, Shri
 Pipil, Shri Mohan Lal
 Pradhan, Shri Pabitra Mohan
 Rai, Shri Narmada Prasad
 Raj Keshar Singh, Shri
 Rajda, Shri Ratansinh
 Rakesh, Shri R. N.
 Ram Dhan, Shri
 Ram Gopal Singh, Chaudhury
 Ram Kinkar, Shri

Ram Sagar, Shri
 Ramachandran, Shri P.
 Ramji Singh, Dr.
 Ramjiwan Singh, Shri
 Ramoowalia, Shri Balwant Singh
 Rangnekar, Shrimati Ahilya P.
 Rasheed Masood, Shri
 Rathor, Dr. Bhagwan Dass
 Rodrigues, Shri Rudolph
 Roy, Dr. Saradish
 Saeed Murtaza, Shri
 Sahoo, Shri Ainahu
 Sai, Shri Larang
 Sai, Shri Narhari Prasad Sukhdeo
 Saini, Shri Manohar Lal
 Samantasinhera, Shri Padmacharan
 Saran, Shri Daulat Ram
 Sarda, Shri S. K.
 Satapathy, Shri Devendra
 Shah, Shri Surath Bahadur
 Shaiza, Shrimati Rano M.
 Shakya, Shri Daya Ram
 Shanti Devi, Shrimati
 Sharma, Shri Rajendra Kumar
 Sharma, Shri Yagya Datt
 Shastri, Shri Bhanu Kumar
 Shastri, Shri Y. P.
 Shejwalkar, Shri N. K.
 Sher Singh, Prof.
 Shrikrishna Singh, Shri
 Shukla, Shri Chimanbhai H.
 Shukla, Shri Madan Lal
 Sikander Bakht, Shri
 Sinha, Shri M. P.
 Sinha, Shri Satyendra Narayan
 Somani, Shri S. S.
 Sukhendra Singh, Shri
 Suman, Shri Ramji Lal
 Suman, Shri Surendra Jha
 Suraj Bhan, Shri
 Swamy, Dr. Subramaniam
 Tej Pratap Singh, Shri
 Thakre, Shri Kishanbhai

Tiwary, Shri D. N.
 Tiwary, Shri Ramanand
 Tripathi, Shri Madhav Prasad
 Tripathi, Shri Ram Prakash
 Tyagi, Shri Om Prakash
 Ugrasen, Shri
 Vajpayee, Shri Atal Bihari
 Varma, Shri Ravindra
 Verma, Shri Brij Lal
 Verma, Shri Chandradeo Prasad
 Verma, Shri Hargovind
 Yadav, Shri Jagdambí Prasad
 Yadav, Shri Ramjilal
 Yadav, Shri Roop Nath Singh
 Yadvendra Dutt, Shri

MR. SPEAKER: Subject to correction, the result*** of the Division is:

AYES : 40

NOES : 172

The motion was negatived.

MR. SPEAKER: The question is:

"That the Bill to provide for the speedy trial of a certain class of offences, be taken into consideration."

The motion was adopted.

Clause 2—(Definitions)

MR. SPEAKER: We now take up clause-by-clause consideration of the Bill. Clause 2. Voting on the amendments will be tomorrow. Mr. A. K. Roy is not here. Now Shri Shankaranand.

SHRI B. SHANKARANAND: I beg to move:

Page 2,—

omit lines 18 and 19,—(93)

Page 2,—

for line 17, substitute—

'(a) "offence" means any offence involved in or disclosed during the inquiry by the Commission of Inquiry appointed under the Commission of Inquiry Act, 1952.' (117)

MR. SPEAKER: We will put all the amendments to the vote only tomorrow. You can speak on both the amendments.

SHRI B. SHANKARANAND: I have a very small amendment here. All my amendments will tend to show that I am not agreeing to give powers in the hands of the Government to make a declaration with respect to any offence as envisaged in the Preamble. The Bill is so shabbily drafted that certain clauses make references to the Preamble. I have not read any law under which any clause or section of a Bill or an Act can refer to something which is there in the Preamble. This is what they have said. I am opposing the very right of declaration and my further amendment will show that I am opposing them; and I have moved an amendment to withdraw that power from the Government. I have moved an amendment to sub-clause (b) of clause 2 which says:

" 'declaration,' in relation to an offence, means a declaration made under section 5 in respect of such offence;"

I have further given an amendment to remove clause 5 and for a new clause to be substituted in its place. That is why I say that since this right of de-

***The result of this Division applies to each of the amendments Nos. 33 and 102 separately.

The following Members also recorded their Votes:

AYES: Dr. Henry Austin and Shri A. R. Badri Narain.

NOES: Shri Shiv Ram Rai, Shri Sachindralal Singha and Shri Syed

Ram Murti, Prof. Samar Guba, Shri Liaquat Hussain.

claration which is envisaged in this Bill is being opposed by me, I am asking that this be omitted. This is my amendment.

The second amendment is that in its place, I am inserting a new clause because the Bill speaks with reference to certain offences; but there is no definition in this Bill. I do not know whether the mover of this Bill has studied this Bill. The word 'offence' has not been defined at all. Because they are particularly referring to certain periods, they have not defined the word 'offence'. Here, since I want to extend this Bill to offences involved in other Commissions of Inquiry, I have given a definition of 'offence' and that is termed as sub-clause (b) of clause 2. My amendment says:

“ ‘offence’ means any offence involved in or disclosed during the inquiry by the Commission of Inquiry appointed under the Commissions of Inquiry Act, 1952.”

Why I say 'disclosed during the inquiry by the Commission' is this. Many offences have been sought to be disclosed in the inquiry by creating false evidence, perjury and what not, by the investigating officers. Who will deal with these offences? They have committed offences during the inquiry of these cases. If the offences are in relation to such persons, then the persons who have created evidence to book these persons should also be tried. That is why I say my amendment is this: "Offence means any offence involved in or disclosed during the inquiry by the Commission of Inquiry appointed under the Commissions of Inquiry Act, 1952." These are very simple amendments. I think the Home Minister will not find any difficulty in accepting these amendments.

MR. SPEAKER: Mr. Lakkappa, you have moved an amendment No. 57.

New Clause 2A

SHRI K. LAKKAPPA: I beg to move:

Page 2,—

after line 23, insert—

“2A. No person or group of persons shall be prosecuted under this Act, if such person or group of persons was holding an office in Government when the Emergency was approved by Parliament unless their actions were *prima facie mala-fide*.” (57).

My amendment is very simple. I have taken this issue at the highest level. The entire objects and reasons narrated here belong to declaration of emergency under Art. 352 of the Constitution of India. It provides if there is any mutiny, if there is any revolt, if there is any invasion or erosion of a parliamentary democratic system by any group of people because at that time the J.P. movement had led the nation into catastrophe and also certain violent activities were let loose by the groups of RSS and Jan Sangh..... There are Members of Parliament who were also Members when this Constitutional amendment was made. We were all party to this. It was an act of Parliament. Of course, they have brought out excesses of emergency. This is a very vague term.

SHRIMATI PARVATHI KRISHNAN (Coimbatore): I am on a point of order. Has Mr. Balbir Singh joined the Treasury Benches, we would like to have this clarification?

SHRI K. LAKKAPPA: As far as these excesses of emergency are concerned, here we have been advocating that these are confining to the political parties. The previous government was duly elected and exercised its power. But in such matters, you want to circumvent not only the rule of law and the Constitution and the ordinary rule of procedure but also you want to bring a Special Courts Bill. In the objects and reasons, they have stated that a lot of cases are pending in the courts. The reasons do not pertain to the provisions and the preamble of this Bill. They are not fitting to the objects and reasons of this Bill. There-

[Shri K. Lakkappa]

fore, it is very necessary that the hon. Home Minister should apply his mind, if any he has got. The only thing is that you exercise due care and caution. Now I would like to bring another important. . .

MR. SPEAKER: You are only speaking on your amendment. You seem to be speaking on something else.

SHRI K. LAKKAPPA: This is very important.

MR. SPEAKER: Otherwise, you won't speak I know.

SHRI K. LAKKAPPA: It is therefore necessary to speak about the ordinary criminal courts because of congestion and other reasons.

MR. SPEAKER: That is not the point. Now you want to delay it.

SHRI K. LAKKAPPA: I would not delay it, because this law which they have drafted is not perfect.

MR. SPEAKER: That is not the point. We are on the amendment.

SHRI K. LAKKAPPA: As far as this congestion is concerned, there are 1200 pending cases and Rs. 980.90 crores of gross revenue, blackmarket, hoarders and all that. We have no mind to bring any legislation for such people as a special law. There are the hoarders; they cannot hold the nation to ransom by taking advantage of the provisions and filing cases. Is there any law for them?

Therefore there should be consultation with Parliament. I think it is necessary that on this issue there should be consultation with Parliament. Because it was under an Act of Parliament that Emergency was done. Emergency excesses may have been done by some people; it is not exactly the people who were ruling the country. Suppose some officers have committed offence. But you want to indict a person who was legally, constitutionally elected as a leader. . .

Clause 2—(Establishment of Special Courts)

MR. SPEAKER: Is Mr. Shankaranand moving his amendment?

SHRI K. LAKKAPPA: Therefore I want the Law Minister to agree with my amendment.

MR. SPEAKER: Mr. Roy is not here. Mr. Shankaranand is moving amendment No. 38 also?

SHRI M. KALYANASUNDARAM: My amendment No. is 58.

SHRI B. SHANKARANAND: I have 94 and 95 also.

SHRI K. LAKKAPPA: I beg to move.

Page 2, line 29,—

add at the end—

"and in consultation with Parliament and the person or group of persons concerned in the case."
(34)

SHRI M. KALYANASUNDARAM: I beg to move:

Page 2, line 28,—

omit "the Central Government with the concurrence of" (52)

In clause 3, sub clause 2, provision is made for the appointment of the judge. In the opinion given by the Judges it has been brought out that the power of selecting the judge should not be in the hands of the executive. They have taken objection even to the appointment of a retired judge. Now it is limited only to a sitting Judge of the High Court. I appreciate the view of the government that the special court must be raised to the level of the High Court for the purpose of the trial; so far as it goes it is welcome. But why should take the choice of the judge in their hands? It can be left to the Supreme Court; the Chief Justice can nominate a Judge out of the sitting judges in all the High Courts,

SHRI HARI VISHNU KAMATH:
Concurrence is there.

SHRI M. KALYANASUNDARAM:
It implies that the proposal will come from the government, that is the Home Ministry or the Law Ministry or both together. Why should they make the proposal and get the concurrence; the Chief Justice will be put to embarrassment. So the Chief Justice must himself be asked to name the Judge from the sitting judges. If my amendment is accepted it will read: The special court shall consist of a sitting Judge of a High Court nominated by the Chief Justice of India. Government need not take any objection. They can leave it to the Chief Justice.

MR. SPEAKER: Shri Shankaranand. You are moving No. 38 also?

SHRI B. SHANKARANAND: No. 38 and also Nos. 94 and 95. I beg to move:

Page 2,—

after line 29, insert—

"Provided that no Judge shall be nominated if he was a member of a political party before his appointment as a Judge and he has put in less than 5 years of service as a Judge of a High Court and he is aggrieved on account of Emergency directly or indirectly". (38)

Page 2, lines 25 and 26,—

for "an adequate number of courts to be called Special Courts".

substitute "additional courts to try persons involved in the various enquiries by the Commissions of Inquiry appointed under the Commissions of Inquiry Act, 1952; and such courts shall be called Special Courts." (94).

Page 2, omit lines 28 and 29 (95).

SHRI R. VENKATARAMAN (Madras South): I beg to move:

Page 2, line 24,—

for "shall" substitute "may" (103).

SHRI B. SHANKARANAND: I beg speak tomorrow.

SHRI B. SHANKARANAND: I beg to move:

Page 2,—

for lines 28 and 29, substitute—

"nominated by the President of India in consultation with the Chief Justice of India, the Chairman of the Council of States, the Speaker of the House of the People and the Prime Minister:

Provided that the Chairman of the Council of States and the Speaker of the Lok Sabha shall consult in the matter, the leaders of opposition and other recognised parties and groups in the opposition in their respective Houses." (118).

SHRI SAUGATA ROY (Barrackpore): I beg to move:

Page 2, line 27,—

after "High Court" insert—

"or Supreme Court" (124).

Page 2, line 28,—

for "nominated by the Central Government with the concurrence of"

substitute "to be appointed on the advice of" (125)

MR. SPEAKER: Amendment No. 126 does not arise; it is already covered. We go to clause 4. Shri A. K. Roy and Dr. Ramji Singh are not there; their amendments are not moved.

Clause 4—(Cognizance of cases by Special Courts)

SHRIMATI PARVATHI KRISHNAN: I beg to move:

[Shrimati Parvathi Krishnan]

Page 2,—

after line 31, insert

"Provided that no offence which may attract capital punishment shall be referred to such Special Court." (86).

SHRI SAUGATA ROY: I beg to move:

Page 2,—

after line 31, insert—

"Provided that no offence possibly attracting capital punishment be referred to such Special Court." (72).

SHRI O. V. ALAGESAN: I am not moving 113.

Clause 5—(Declaration by Central Government of cases to be dealt with under this Act)

MR. SPEAKER: Clause 5. Shri Narasimha Reddy. He is there.

SHRI G. NARASIMHA REDDY: (Adilabad): I beg to move:

Page 2, line 35,—

after "held" insert—

"or may hold" (8).

MR. SPEAKER: Shri A. K. Roy is not there. Amendment Nos. 35 and 36. Are these moved? Is Mr. Lakkappa moving these amendments?

SHRI K. LAKKAPPA: I beg to move:

Page 2, line 39,—

add at the end—

"provided the Central Government shall take the opinion of both the Houses of Parliament and the

concerned accused persons before making such declaration." (38).

Page 2,—

omit line 40. (36).

SHRI B. SHANKARANAND: I beg to move:

Page 2,—

for clause 5, substitute—

'5. (1) If the Central Government or the State Government, as the case may be, is of the opinion that there is a *prima facie* evidence of the commission of an offence committed during the period of Emergency as per the report of a Commission of Inquiry appointed under the Commission of Inquiry Act, 1952, the matter shall be referred to a Special Court.

(2) On receipt of a reference the Special Court shall hear the parties concerned as per the provisions of the Code of Criminal Procedure 1972." (39).

SHRIMATI PARVATHI KRISHNAN: I beg to move:

Page 2, line 34,—

omit "during the period mentioned in the preamble hereto". (87).

SHRI R. VENKATARAMAN: I beg to move:

Page 2, line 32,—

for "of opinion", substitute "satisfied" (105).

Page 2, lines 38 and 39,—

omit "in which it is of the aforesaid opinion". (106).

Page 2, lines 35 and 36,—

omit "in accordance with the guidelines contained in the preamble hereto". (113).

MR. SPEAKER: Amendment No. 107 is the same as Amendment No. 36 and 111 is the same as Amendment No. 37.

Clause 6—(Effect of declaration).

SHRI B. SHANKARANAND: I beg to move:

Page 2, line 41,—

omit "On such declaration being made in respect of any offence," (40).

Page 2, lines 43 and 44,—

omit "designated by the Central Government". (41).

Page 2, lines 45 and 46,—

omit "designated by the Central Government" (42).

MR. SPEAKER: Amendment No. 79 is the same as Amendment No. 40.

SHRI B. C. KAMBLE (Bombay South-Central): I beg to move:

Page 2, line 43,—

for "only in a Special Court" substitute—

"in a Special Court only" (80).

SHRI O. V. ALAGESAN: I beg to move:

Page 2, lines 44 to 46,—

omit "and any prosecution in respect of such offence pending in any court shall stand transferred to a Special Court designated by the Central Government". (114).

SHRIMATI PARVATHI KRISHNAN: Tomorrow some members may say that these amendments were taken after six O'clock.

SHRI R. VENKATARAMAN: Key may be circulated to the Members.

MR. SPEAKER: The key may be circulated.

18.05. hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Friday, Mārch 2, 1979/Phalguna 11, 1900 (Saka).