

SHRI KALP NATH RAI: Mr. Chairman, Sir, I would request Shri Bhogendra Jha to please listen to me. (*Interruptions*) Through you, I would to request Shri Bhogendra Jha that he should take note of the fact that democracy is taking place of communism. The private sector and public sector are competing with each other to raise the generation of power. It is the intention of the Government to give maximum help to the people and that's the objective of this Bill.

Shri Jena, you are very intelligent and you must be knowing that Super thermal power station of 1800 MW is under construction at Kahalgaon in Bihar and the coal supplies for that station will come from Lalmatia coal mines. You must be knowing that the biggest thermal power plant is under construction at Talcher in Orissa which will have the capacity of 3000 M.W. Talcher coalfields will supply coal for that plant. Therefore, Sir, not speaking much with these words by I request that the Bill be passed.

[*English*]

MR. CHAIRMAN: The question is:

"That the Bill be passed".

The motion was adopted

16.15 hrs.

CODE OF CRIMINAL PROCEDURE
(AMENDMENT) BILL

As Passed by Rajya Sabha

[*English*]

MR. CHAIRMAN: Now, we take up the next item, that is, the Code of Criminal Procedure (Amendment) Bill.

THE MINISTER OF STATE IN THE
MINISTRY OF PARLIAMENTARY AFFAIRS
AND MINISTER OF STATE IN THE MINIS-
TRY OF HOME AFFAIRS (SHRI M.M.
JACOB): Sir, I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1973, as passed by

Rajya Sabha, be taken into consideration."

As the hon. Members are aware, section 197 of the Code of Criminal Procedure, 1973 provides for the previous sanction of the Central Government or, as the case may be, the State Government before a court took cognizance of an offense alleged to have been committed by any public servant including a judge, Magistrate and member of the Forces while acting in the discharge of official duty.

With a view to providing more adequate safeguards and protection to public servants employed in connection with the affairs of a State against frivolous or vexatious prosecution for acts done in the discharge of official duty during the period when a Proclamation issued under article 356 of the Constitution was in force in that State, it was considered necessary to provide for the previous sanction of the Central Government instead of the sanction of the State Government.

As the House of the People had been dissolved and the Council of States was not in session and it was considered necessary to make the necessary amendments without delay, the Code of Criminal Procedure (Amendment) Ordinance, 1991 was promulgated by the President on the 2nd day of May, 1991. The Ordinance ceased to operate from the 20th August, 1991 at the expiration of six weeks from the reassembly of Parliament as per the provisions of article 123 of the Constitution.

It has been considered necessary to enact the provisions of the lapsed Ordinance with retrospective effect from the date of its coming into operation, that is, from the 2nd May, 1991.

The proposed legislation will instill a sense of confidence in the minds of the officers who are engaged in the difficult task

[Sh. M.M. Jacob]

of restoring normalcy in the States where the proclamation under article 356 is in force, that there is an assurance of their physical and service protection after the change of the political scene in the State and they will not be subjected to vexatious prosecution for acts done in the courts of discharge of their official duties during the President's rule.

MR. CHAIRMAN: Motion moved:

"That the Bill further to amend the Code of Criminal Procedure, 1973, as passed by Rajya Sabha, be taken into consideration."

SHRI GUMAN MAL LODHA (Pali): Mr. Chairman, Sir, I rise to oppose the Criminal Procedure Code (Amendment) Bill in the House. The most important point is that the rights, freedom and authority of the hon. Members have been attacked through this Bill in planned manner. Under which the Central Government has changed all the laws from time to time and has misused the article 356 of the constitution in the States where the opposition Governments are in power. For which the constitution makers and Dr. Ambedkar commented. "I think the provision will remain dead and will never be used." But on several occasions the provision was misused and duly elected Governments have been dismissed and central rule was imposed to provide a protective umbrella to the corrupt officers. The present legislation has been introduced to make the laws more stringent. My submission is that this legislation is against the spirit of the recommendations of Sarkaria Commission and federal structure of the country. Whenever article 356 of the constitution is proclaimed, no duly elected Government can remain in office. Therefore, this apprehension is totally baseless that the officials and police personnel will be prosecuted and victimised for their misdeeds and criminal acts. When no party is in power during the enforcement of article 356 only the officials and advisers of Central Government will rule

the state. To mind the hon. Minister present in the House is aware of this fact but I think that he is also not well versed in legal matters as is clear from the manner in which the present Bill and the yesterday's legislation on; Punjab were brought forward. The present legislation will render advisors, chief secretary and D.I.G. in competent to take action against the guilty Government officials and police personnel and the onus for it will rest with the Centre. It is unfortunate that the Centre. It is unfortunate that the spirit is to give protection whether it be in Kerala, Tamil Nadu or Assam wherever proclamation under article 356 is issued, in cases of gang rape, murder atrocities on women and girls and to empower the Centre to take action against the guilty persons by creating impediments and obstructions tantamounts to unduly giving protection to guilty personnel and criminals. Main laws are against rule of law and in violation of federal structure of constitution. Therefore, I would like to submit that the provision under 197 already fulfills the objectives of the Bill and as far as CrPc is concerned a provision already exists. After 40 years it is felt that there exist difficulties, impediments and bottlenecks and that's why one fine morning the Government realises that the officers need to be protected. I therefore, oppose the Bill and also appeal to other hon. Members to support me. Yesterday the legislation pertaining to Punjab was passed and a precedent for all times has been established to cancel the elections through the proclamation of presidential ordinance even one day before the election date, whether it be in Kerala, Uttar Pradesh or anywhere else even if the Lok Sabha is not in session and election of unopposed successful candidates will also be declared null and void. Yesterday the hon. Minister during the passage of the black Bill stated that whole of the election process will be over by 11th May. Today it is being said that the conditions have changed. In future also the elections in Punjab are not likely to be conducted as per the signals being given at present. I feel sorry that yesterday during the passage of the Bill all these things were not seriously pondered over.

In Unnuswami Case the Supreme Court made clear that once the notification for elections is issued, the election process can not be stopped. Election Commission can decide it though it may have done it under any circumstances. Constitution makers have given full protection to it under article 329 and other articles, but Shri Kumaramanglam has discovered a new thing. He has stated that under 'General Clauses Act' election process can be stopped by issuing a notification. That's why the jurists have stated that "Law is nothing but codified nonsense and uncodified commonsense". Uncodified commonsense is applicable everywhere. Shri Kumaramanglam is bringing in codified commonsense, which has never been witnessed in 40-42 year history of elections. Now with the promulgation of Presidential ordinance everything can be stalled. Under the black law, undue protection is sought to be given. Therefore, I submit that the criminal procedure code (Amendment) Bill may be rejected. It would violate the rights of the State Governments, tamper with the federal structure and encourage criminal tendencies.

Mr. Chairman, Sir, the matter regarding atrocities committed on Harijans was raised during the Zero Hour today and the hon. Members of the House submitted that police committed excesses on them. This Bill does not make any provision to impose restrictions on them. With these words I conclude.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RANGARAJAN KUMARAMANGALAM). Sir, I am sorry he has not understood me properly. With your permission, I would like to make a clarification. Yesterday, I did not say at all that the notification would be issued...

SHRI GUMAN MAL LODHA: You said three options were before you. There were three options before you which are - the Election Commission, the General Clauses

Act Notification and this Act.

SHRI RANGARAJAN KUMARAMANGALAM: I said there are three options available. I would like to clarify again. If the hon. Member would be kind enough to hear me out, he will understand me. One option was to go through an interpretative exercise, which we did not agree with of saying the General Clauses Act applies on the Representation of People Act and therefore the power to notify an election also includes the power to notify cancellation. We did not accept that interpretation. The second option which is available to us was to amend the Representation of People Act giving general power to the President to cancel, which also we did not agree upon. We felt that cancellation of the election is a very important matter which should be done by a specific law. There is a Parliament which represents the sovereign which does it. I am very sorry that the hon. Member did not really catch me fully.

I wish he would appreciate my stand.

(Interruptions)

MR. CHAIRMAN: I am by no means reopening the discussion on the Bill that was passed yesterday. Now, Shri Pawan Kumar Bansal to speak.

SHRI PAWAN KUMAR BANSAL (Chandigarh): Mr. Chairman, Sir, this Bill should have found unanimous approval of all sections of this House. I thought that way. But I was appalled to hear Shri Guman Mal Lodha being indeed very critical of the Bill inasmuch as he went to the extent of calling it as a black law. I did not know that political considerations of Shri Guman Mal Lodha would overtake his legal acumen, would overtake that sense of impartial judgment which he would have rendered in a case if it might have come before him sometime dealing with a situation which the present amendment seeks to take account of.

Sir, section 197(1) of the Code of Criminal Procedure as it stands now says:

[Sh. Pawan Kumar Bansal]

"When any person who is or was a judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offense alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offense except with the previous sanction

(a) In the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offense employed, in connection with the affairs of a State, of the State Government...."

Here, I want to emphasise the words 'acting or purporting to act in the discharge of his official duty....'

The meaning of the above Section is that where a person, against whom an offense is alleged, if he is employed in connection with the affairs of a State, no prosecution can be launched against him excepting with the previous sanction of the State Government. If such a person is employed in connection with the affairs of the Union Government, the sanction of the Union Government has to be obtained. That is the position of the law. Shri Guman Mai Lodha is now questioning why after 40 years, the Government is bringing in an amendment of this sort which we are going to do now. Perhaps, Shri Guman Mai Lodha is not aware of the circumstances which impelled the last Government to do that. This Bill emanates from the Ordinance promulgated by the last Government. The last Government got to be aware of the fact that certain threats were being held out to certain people in Punjab. The previous Government led by Shri Chandra Shekhar realised that. There was an open threat held out by certain elements in Punjab that if they came to power after the elections which were to be held there, they would ensure that all the people who were employed in Punjab in any

capacity including the Magistrates they would take action against them. That was a very disquieting feature.

(Interruptions)

[Translation]

[English]

Action would not be withheld the Central Government would give the sanction; this amendment is proposed to be brought if this amendment was not to be brought out, we could have before us an environment where a person deployed to perform an official duty during the course of the President's Rule in the State, could be hauled up, could be tortured, could be harassed by any succeeding Government. There could be cases where in the discharge of the official functions- mind you, a threat was held out to the Director-General of Police by the people in Punjab - senior honest and efficient persons, engaged in a grim struggle against terrorism might be called upon to take a *bona fide* against any person 'B', 'B' or 'C'. If the President's Rule were to end and the new Government were to come, it would be quite possible if any one from 'A', 'B' or 'C' - whom I had just now referred to - were to occupy an important position in the State Government, and if those people had held out a threat earlier and if they were to grant a sanction, where do you think the judicial opinion would come in? It is precisely to check a situation like this that the present amendment has been brought.

If you intend taking action against any person for an offense alleged to have been committed during the period when the President's Rule was in force, then the sanction of the Central Government has to be obtained. That is all. The Bill does not proceed further. The Bill does not say that those persons will get immunity and no action will be taken against them. It only says that in those given cases, previous sanction of the Central Government has to be obtained. The Bill is very simple to that extent.

Shri Lodha has gone on to say that the Government at the Centre is systematically usurping the powers of the States. He has referred here to the promulgation of the President's Rule in States from time to time. He has referred to the Centre arrogating to itself the power to accord sanction in cases of prosecution. Had these views been taken in isolation, perhaps, I would not have commented on that while participating in this debate because it calls for an indepth discussion on an appropriate occasion as to what are the cases where the President's Rule has to be promulgated. I am not disagreeing with him or anybody else for that matter. I do hold opinion that certain guidelines have to be provided in all the cases where the President's Rule could be promulgated. But that calls for an in-depth and detailed study. Here we are dealing with a situation where people feeling aggrieved, in creation cases that feeling of theirs may not be emanating from *bona fide* considerations against certain action of the officers who were engaged, were to accord sanction. They should not be made judges of their own cause. It should be left to the Central Government. Shri Lodha also perhaps, remarked about that. In all such cases, for all purposes, the appropriate authority would be the Central Government. There is a provision that where a person is employed in the discharge of functions of the Union, the sanction has to be obtained from the Union. Here is a case where Central Governments functions may be performed in that state within the territorial jurisdiction of a particular state. But as Shri Lodha referred to the functions and duties that relate to the affairs of the union, the Government of India, at that moment of time is directly responsible for all that goes on in the State. So, it is just an extension of the existing provisions and a provision on this has been incorporated. With utmost respect, I submit, that this is not to deal with any *aparadhi* or offender as Shri Lodha was referring to; for that the law would take care of. It is only with reference to those offences which are alleged to have been committed by a particular officer in the discharge of his official duties. Then, an amendment is sought to be made that sanc-

tion has to be obtained from the Central Government.

I would only wish to submit that any and every provision which the Government seeks to incorporate in any law should not be used for partisan purposes. A wrong impression should not be created that it is to serve some political interests of the party, and that the ruling party is getting certain functions to itself and that it is going to shield the corrupt people; it is going to shield the offenders. It is not so. The Government does not stand to support any person who is corrupt. It does not stand to support any person who commits atrocities—the word atrocity has been used by my hon. friend from the other side. The Government is committed to cleanse the public life; Government wants to create an environment where the Government officers can function without fear or favour and can discharge their duties conscientiously. The mere fact that law is sought to be made after 40 years does not militate against bringing a provision like this. Our society is not a static society. Law is the manifestation, is the sanction of the society to certain need which arise or which are felt by the society at particular point of time. In a moving and in a dynamic society, you cannot have a static law. It is the duty of the Government to come forth with any law which may be required to meet a particular situation and it is only to meet a situation like the one which the hon. Minister of State for Home Affairs was pleased to refer while moving this Bill that the Government seeks to meet by bringing in this amendment.

Sir with these words, I support this Bill.

[*Translation*]

SHRI VIJOY KUMAR YADAV (Nalanda): Mr. Chairman, Sir, I oppose this Bill. The hon. Member who spoke just before me referred to Punjab and his arguments are not in consonance with the spirit of the Bill presented in the House. The Congress Government had set up Sarkaria Commission to improve the centre-state relations. The Commission suggested several guide

[Sh. Vijoy Kumar Yadav]

lines. But the Government of the party which set up the Commission refused to accept the report later on. One of the significant recommendations was regarding imposition of President's Rule in States. Centre has always been accused of adopting bias attitude; there have been several occasions when objections to this effect have been raised. The Government claim to provide adequate protection and safeguard to the public servants through this Bill. Against whom this protection is to be given when do such occasion arise? Generally, no suits are filed against the Government officials; it takes place only when they fail to discharge their duty in a proper manner or they take undue advantage of their post or misuse their authority and commit excesses on people.

The Government claim that justice will be possible if the Central Government restrict those rights to themselves; and if the officials in the State Government get those rights they would definitely misuse them to do injustice. It means that the Government lack complete confidence in the officials posted at higher posts in States; and since they are at the centre they intend to take the political benefit out of it. People are already scared, very few persons get the permission to file a case and it would not be in the interest of States that the Central Government take the matter in their own hands, the Government have already been curtailing the rights of the State Governments. It would give no other result than spoiling the centre state relations.

If the Government apprehended anything hazardous in respect of Punjab it can be in respect of any state they could have enacted a separate law for the purpose. They have already been enacting laws in regard to Punjab state which do not apply to other states. It is totally wrong and undemocratic on the part of the Government to concentrate such rights in their own hands in the name of Punjab. It is nothing more than the breach of the right of the States.

Mr. Chairman, Sir, I have gone through the objects and reasons given for introducing this Bill. You have stated about the objects but what is the reason? This question has been raised by an hon. Member of BJP. I think he has asked a right question. After ruling the country for a long period of forty years what is that bitter experience which has compelled them to take this measure? Some concrete reasoning must be given. They have merely expressed their intention to provide more protection to the Government officials. Common masses never oppose rather they co-operate with a Government official who keeps himself in limits while discharging his duty. I was not interested to raise an issue in regard to the wide spread corruption in the country. My intention was not to mention the country but the matter relates to common interest and you should know that not less than one and a half lakh rupees are taken as a bribe in obtaining bail or in a court case in Bihar and similar situation must be prevailing at other places.

What is the appropriate place to raise matters in regard to the persons involved in such malpractice's? It is not a simple matter. It is very rare that person goes against the verdict given by a court because he does not get justice; rather a case of contempt of court is made against him. Thus, there is no meaning in giving special protection to the officials. Therefore, I would like to support the view already expressed that it is a black legislation because its scope is not very comprehensive. Therefore, I oppose the Bill.

[English]

SHRI P. C. CHACKO (Trichur): Sir, I support the Bill moved by the hon. Minister of State in the Ministry of Home Affairs, Shri M. M. Jacob. This is a statutory requirement, only to replace the ordinance.

It is a little bit unexpected and unfortunate that the hon. Members Shri Lodha and Shri Vijay Kumar Yadav have opposed this Bill. I think they have done so with different

understanding of the Bill which is before us — this Bill is being termed as a black legislation. The implications of Section 197 of the Cr. P.C. are very well known to all the hon. Members who opposed this Bill. Under Section 197 of the Cr. P. C. - which provides protection to the Government officers including Judge or Magistrate who acts in a particular situation - they need the prior sanction of the State Government.

Article 356 of the Constitution is one of the items which has been subjected to severe criticism from most of the political parties on various occasions in this country. When those political parties who never thought that they would come to power, who always chose to criticise the Congress party for the promulgation of President's rule in various States and who used to advance very strange and very illogical arguments against this - came to power, very interestingly, forgetting all the arguments, they have promulgated the same Article 356 of the Constitution on more than one occasion. Nobody can get away from the blame and those critics who were very severe in criticising the use of this provision have very frequently used the same provision. We have seen that. When the Janata Party Government came to power in 1977, they have used this provision very lightly, to replace half-a-dozen State Governments. We have seen that in this country. But, I am not justifying this. When the President's rule is promulgated in a State, it is becoming exceedingly difficult for the law enforcing officers in this country to implement the law or to be the custodians of law, because the situation is changing. None of us are in favour of bringing in a black law or any measure which is of a suppressive character. We are equally or even more firmly against bringing in such suppressive laws. We do not want to bring in any suppressive law afresh in the Statute Book. We are against that. But, the strange situation or the difficult situation which may be there in the states should also be taken into consideration when we are thinking of such a legislation. If promulgation of President's rule is avoidable, there is nothing like that. That is

the best thing one could do and everybody is for that.

In a given situation in the country whether it is in Punjab or in any other State - after the President's rule, if the political party which comes to power go against the law implementing machinery or the law enforcing officers go with a prejudice, then there is no end to it. Then, the law enforcing machinery cannot implement the law. That situation has created a lot of problems. Shri Vijay Kumar Yadav was asking for examples and I would say that there is no dearth of any example. There are large number of cases - some happened recently also - in many of the States and I do not want to go into the details. Amendment to section 197 of the Cr. P. C. has become necessary because during the President's rule, those officers, who act in good faith - with a malicious intention, with a political motive after the President's rule, when the new Government comes to power, if action is taken against them - should get a protection. This is not delaying the chance of getting prosecution against them. Even under this law, even under the amended law, action can be taken against the erring officers. There is enough provision for that. But the only thing is that prior permission of the Government of India is to be obtained for that. If this much protection is not afforded to the officers, who are responsible for enforcing the law, how can we tackle the difficult situation which is prevailing in the country?

Mr. Vijay Kumar Yadav was saying that in the Punjab context we are bringing this black legislation. This is far from the truth. This is not because of Punjab. Punjab unfortunately is a sad thing for all of us. What is happening in Punjab, none of us wants that situation to continue like that. Not for Punjab but for any State, let this not happen. Let this not become necessary. That is what all of us wish. But if it happens the threat is against the officers who are called upon to enforce them. Surprisingly the parties also have issued statements. They are coming out openly against the officers who are to enforce the law. So, it is for every law-abiding

[Sh. P.C. Chacko]

citizen. This is a sort of pre-condition. Any Government for that matter in our context is bound to give this much protection to the law-enforcing officials. So, this has become necessary. I do not think that it is necessary to view this particular thing from any political angle.

The BJP Member or the Janata Dal Member differed on this question. If they were in Government, if they were the people ruling, then they also would have taken the same legislation. I do not think that any party would have taken a different position at all. We have been seeing for the last almost 1 1/2 months in this House also that on matters of innocent legislations also, people are deliberately expressing different viewpoints.

This country is facing a crucial situation politically, socially and economically. Therefore, the political parties are to come together on issues where they can be together. They have to be together. They have to take unanimous decisions. Unfortunately, they find pleasure in taking a different attitude. This has become a sort of phobia. I do not know how it is developing. This Innocent Bill, which is coming before us, and which has become necessary, is only an extension of section 197 which is already prevailing in the Cr. P. C. If Mr. Lodha is so opposed to this ordinary provision, which is going to be added, then the Hon. Member should have brought in at least a Private Member's Bill seeking for amending section 197. If this is reasonable, section 197 is also reasonable. This is only an extension of section 197 of the Cr. P.C.

What I want to point out is that what they have expressed here, of course, they have to do so because they are sitting in the Opposition. That has become the style of our political functioning in this country because they think that they have to oppose whatever Government is bringing forward. So, that may be the reason which is prompting them to oppose this. I hope that the Members will change their stand and sup-

port this Bill, and also they will support the things which the Government is bringing with a good intention for the good of the society and for the country. With such a change of mind, in this context, I request them to support this Bill.

I appeal to the good sense of all the political parties and leaders in this House that we have to come around to have a new approach on problems like that. Let it be a new beginning. I hope that all the Members, who oppose and the parties who are sitting with a determination to oppose, will have a rethinking and they will support this Bill. With these words, I support the Bill.

SHRI CHITTA BASU (Barasat): Sir, I rise to oppose this Bill..

(Interruptions)

I am opposing this Bill on a basic principle underlying the Bill.

If you go through the Bill, Sir, I think you will agree with me that this Bill reveals a trend towards over centralisation of administrative power in the hands of the Centre, while the need is for decentralisation of power. Even for over-centralisation of administrative power at the hands of the Centre, the Bill reveals greater concern for the corrupt and bureaucratic tyrants instead of safety, security and democratic rights of the common rung of the citizens. You want to provide safeguard for corrupt officers, for bureaucrats, for tyrants and against whom? It is against the people. Whereas the public servants for whom you are going to protect are not very much liked by the general people of our country because of their corrupt practices, their conduct, their vices, etc. and the Bill wants to protect them.

Sir, this Bill is also a further attempt on the erosion of the State rights. These are the major three principles on the basis of which I oppose the Bill. Let us understand what will be the impact of this Bill and this Act. Suppose West Bengal has to face President's Rule under certain political circumstances.

And if some of the officers of that State Government or the Central Government commit certain excesses and a popularly elected Government, which comes to power, wants to launch a prosecution against those officers who committed the excesses. In such a position, if this Bill is converted into an Act, then it prevents that State Government to give consent for launching prosecution against the corrupt officers and tyrants. Sir, for that, the State Government will have to come to the Centre to seek permission and if permission is obtained, then and then only, prosecution can take place.

Sir, let us apply this to Punjab. This is of greater importance to me. Yesterday, I was one of those Members who from this bench, extended my support to the Bill which sought to cancel the process of elections in Punjab. There was more or less a unanimous view expressed from all quarters of the House that elections should be held as early as possible and it was demanded that the date of elections should also be announced. But what is happening in Punjab today? You want to hold elections there as soon as possible. And you want to create conditions conducive for free and fair elections. And what is happening there? There are corrupt police officers the Punjab Police, extorting money and putting innocent young men into the cell and harassing them, demanding a ransom. A large section of them are committing these kinds of excesses.

17.00 hrs.

Now, I would like to quote the hon. Home Minister. He had stated that: "The proposed legislation will instil a sense of confidence in the minds of the officers who are engaged in the difficult task of restoring normalcy in the State, where the proclamation under Article 356 is in force and where there is an assurance regarding physical and service protection." This makes them much more oppressive. This encourages them that, "all right, let us commit excesses, the Home Minister is there, he will give protection to us." Therefore, I think, that is not desirable for a country which has ac-

cepted democracy. So, on these basic principles, this Bill should be rejected.

Lastly, it affects the Center-State relations. We are for States' autonomy. I should not be misunderstood. the States' autonomy means, greater power for the administration of the States and also for the progress and prosperity. That should not be done at the cost of the unity and integrity of the country. We want a strong Centre as well as strong States. Strong States can create a strong Centre. We should not be misunderstood that we are demanding a larger and greater autonomy for the States. This is an approach which undermines that spirit and co-operation between the Centre and the States. It is very harmful, particularly, in the context of the changing world today. Sir, one Chief Minister of Orissa had made certain public statements demanding greater autonomy for the State. I do not find any fault in it. Because that is the urge of the people in that State. if we accept this principle underlying the legislation, then it will be like accepting the principle of over-centralisation, whereas the country needs decentralisation of power.

Therefore, I oppose the Bill.

SHRI P. C. THOMAS (Muvattupuzha): Sir, this Bill has been brought forward to give sanctity to the acts done by the public servants in good faith. It does not go to the extent of stopping any prosecution against a person, who may be an officer. I would say that there must be a law for giving a backing to an officer. Truly so Section 197, at present gives protection to the Government under which an officer is working. There is absolutely nothing to say against a person who has been working under the Central Government.

So, my submission is that this is not a Bill which is to be viewed in the other sense. But, I would say that the word 'sanction' is not a good interpretation in a very loose manner. The word 'sanction' also has been interpreted new the Courts. This power has to be judiciously exercised. It is not that a

[Sh. P.C. Thomas]

sanction will be given in a political manner as such. If it is being used or misused as I would say, then the Court of law can give effect to the real meaning of the word 'sanction'. The Government which has to give sanction has to really apply its mind and then take a decision as to whether a sanction is to be given or not.

Suppose the Government feels that any prosecution should be launched against the officers who have acted, though in good faith, politically against them, the effect would be even more severe than the effect which has been pointed out by my friends who have opposed the Bill. So, I support the Bill.

Generally, I cannot support any Bill which takes away powers of any State. But I would think that this is not a Bill which takes away powers of a State as such because this is one which should be exercised by the Central Government under which a public servant works in a state of emergency or in a place where proclamation of emergency

SHRI SYED SHAHABUDDIN (Kishanganj) : Mr. Chairman, if you permit me to make a common on this Bill, it should delight you, no end that. Not only the BJP and the Janata Dal, while speaking on the Bill, have joined each other in opposing this Bill, but even the Left Front has joined them in doing so This is a reference to a comment made by the Chairman a little while earlier. So, it must be heard in that context.

17.06 hrs.

[MR. DEPUTY SPEAKER *In The Chair*]

I rise to oppose the Bill primarily because it goes against the spirit of the rule of law; it goes against the concept of the autonomy of the State and the basic federal structure of our Constitution; it certainly goes against the interest of the people at large.

Section 197 was enacted with the Constitution in view and it makes no difference

at all whether a certain State, happens to be under the President's Rule for the time being. It does not require a different legislation to deal with acts of omission and commission on the part of the public servant.

Now, we speak to add a proviso to sub-section 1 and to add two sub-sections *ab initio* after section 3 in terms of 3 (A) and 3 (B).

Law and order is always a State responsibility; the maintenance of the public order is a State responsibility. I would like to know from the hon. Minister, who is present here whether the character of the State Government undergoes a revolutionary change, a radical change. Does it cease to exist if the State is under the President's Rule? I don't think that is the constitutional position. The constitutional position is, as far as I understand, that the State Government continues to exist, but the powers have been transferred to the President of India. If the State Government does not cease to exist, the original Law made a clear distinction between a State employees and a Central employee; and whether a public servant was acting on behalf of State or on behalf of the Central Government; there are two very clear classifications made in the original Act. One is whether a particular public servant happens to be a servant of the Central Government or whether he happens to be a servant of the State Government. Obviously, the controlling and the disciplining authority is vested in the Central Government if he is a Central Government servant; otherwise, it is vested in the State Government. And the second classification comes in where a State Government servant may be deputed or in a certain situation may be acting on behalf of or under the Central Government. Now, reverse cases are also known to us. Mr. Pawan Kumar Bansal, I am happy, is following my point. If the Constitution says that the maintenance of law and order, maintenance of the public order is an affair of the State, and if a Central Government servant acts within a jurisdiction which is normally a part of the State Government machinery, when para military force or the armed force, is sent out to assist the State

[Sh. Syed Shahabuddin]

Government, does it not become an affair of the Union?

It still remains an affair of the State. And if it remains an affair of the State and if a misdeed is committed, if a wrongful act is committed, if an offence is committed then the responsibility to punish them must lie with the State Government. These are the two distinctions, The nature of the Government servants and the nature of the affair. Therefore, my basic point is that this Bill is misconceived. It has been misconceived deliberately to serve a specific purpose. The cat was let out of the bag. There was a political consideration behind it. There was a fear that some public servants, who have been facing serious charges, serious allegations of misconduct and misdemeanor, offences amounting to criminal negligence and sometimes criminal offences, are sought to be protected if there is a political change.

What else can be called politically motivated. The cat is out of the bag? The objective of the Government is absolutely clear. Shri Bansal stands self condemned.

SHRI PAWAN KUMAR BANSAL: The amendment is only regarding the case where the person is doing some duty or executing an order or some work for the centre in the State. Then I said that a situation like this could arise. In that case it is for the Central Government to act, as per the amendment now proposed.

SHRI SYED SHAHABUDDIN: Shri Bansal has cited the example of the DG of Police. The DG of Police is an officer of the Indian Police Service. He is a servant of the State Government, and you want to protect him. I do not know whether he is guilty.

SHRI PAWAN KUMAR BANSAL: That is not the argument. The need is to allay the fear that officers shall not be prosecuted inductively.

SHRI SYED SHAHABUDDIN: I am afraid, I do not see the discretion. You mentioned that there was a fear.

SHRI PAWAN KUMAR BANSAL: I do not agree.

SHRI SYED SHAHABUDDIN: That if another Government comes and if it happens to be of a different complexion then it might take it out on those who had served on the orders of the previous administration. That is what you mentioned. I am only submitting that this is what political motivation means; that you are bringing a law primarily to protect public servants against the legitimate and democratic exercise of power by the people. (*Interruptions*)

That is what I am saying, and that is not fair. It is unconstitutional. To my mind that goes against the law and it goes against democracy.

An Ordinance was issued on the 2nd May 1991. We have not been told at any stage by the speakers on behalf of the Treasury Benches what was the occasion to issue that Ordinance on that particular day. I would like to know that. Parliament was going to meet very soon. It could have been brought before the House. What was the need or the urgency? What were the circumstances under which the Ordinance was issued. I would like the hon. Home Minister to enlighten the House on that today.

Secondly, the Bill lapsed on the 20th August, 1991. Why was it permitted to lapse? That also calls for an explanation. Because it lapsed, therefore, this Bill has been brought a big clause has been added to the original Bill, in order to give *ex post facto* coverage to that period, that is from the 20th August 1991 and the date on which the President happens to or shall give his assent to this Bill. Now, therefore, I ask the hon. Home Minister why was that Bill allowed to lapse?

I have been a public servant myself. And I support the principle of giving protection, even immunity to public servants for *bona fide* acts done in the course of their duty. But this protection or exception cannot operate when they exceed their function or their act exceeds limits, when the officer

acts in an unjustifiable or unreasonable manner and if he omits to perform his duty.

Sir, the principle of reasonableness and the principle of prudence must always be there to establish whether a particular official act was *bona fide* or not. We know of public servants who commit acts of omission and commission, commit offenses, in the discharge of their official duty, who take bribes, who kill people, who injure people and who loot property who humiliate people should not they face the consequences.

And this Bill has a provision, provides an extra shield, an extra wall to protect them. I do not think why this should be done. Any act, which causes damage to a person's life or limb or property or honour to the people must be punished in any democracy if democracy has to have any foundation.

Therefore, the Bill seeks to make it more difficult for the people to secure justice against the depredations of the public servants. If there are alleged offences, there should be courts of law. We are in any way taking away the right of the judiciary to sit in judgment. But at least the people must have easy access to the courts of law. This bill tries to erect another barrier to the access of the people to the judicial machinery. And, therefore, we have to oppose the bill.

Sir, I will not take more of your time.

We know that there are parts of our country, where black laws are in operation, in which unlimited powers have been given to the forces. There is the Armed Forces Special Powers. There is the TADA, which has been discussed in the House. There is the Disturbed Areas Act. There any a number of public safety and preventive detention acts. Unlimited power over person's life, limb, property and honour is given to the forces. And this particular Bill defines the term "forces" in a manner that even if a member of the State Police is accused of committing an offence against the people, then the Central Government's permission is required. It thus goes to the other extreme. The pendulum swings to the other

side. The normal situation would be that if the Central Government servant is acting under and on behalf of the State Government, the State Government should have a right to sit in judgment over the alleged conduct. And here even if it is a State Government employee who is alleged to have committed an offence against the people, the Central Government must come into the picture. Is it not absurd, Sir? We know of atrocities being committed on a mass scale. This Bill, Mr. Chairman, is nothing but a licence to the forces to go on committing atrocities against the people. It is a licence to kill. It is a licence to humiliate the people. It is a licence to loot the property of the people.

Therefore, with every emphasis at our command, we must oppose this Bill if the principle of federalism if the principle of the rule of law is to have any meaning in our country.

I oppose this Bill.

SHRI K. RAMAMURTHEE

TINDIVANAM: Sir, I rise to support this Bill with all vehemence.

This Bill is very much self-explanatory. It is explained very well in the Statement of Objects and Reasons that this bill seeks to provide more adequate safeguards and protection to public servants employed in connection with the affairs of a State against frivolous or vexatious prosecution for acts done in the discharge of official duty during the period when a Proclamation issue under article 356 of the Constitution was in force in that State, it was considered necessary to provide for the previous sanction of the Central Government instead of the sanction of the State Government.

Sir, there is one consideration that has come in the way. One is the merit of this Bill. Another is advocacy for the State autonomy. Both the things are being mixed here in this discussion.

As far as the bill is concerned, nobody can find fault with it because it seeks to protect the officer. We must remember that

[Sh. K. Ramamurthee Tindivaram]

the Government is a permanent institution; whichever Party takes over the administration. The officer has to have the confidence when he executes the orders of the Government. And who is to sit over judgment over the officers' duties? Is it the Government which orders him at a particular circumstance, at a particular time to act in a particular way? Or is it the Government which succeeds afterwards, some after months or one year or 2 years or more, who should sit over judgment as to whether the Officer was effectively and correctly implemented the order or whether he has erred? If that is taken into consideration, it is always considered necessary that the Officer must have a sense of security when he executes the orders of the Government with which he works.

I do not think that there is much of a difference on this particular issue. But this is confused with the argument is that the State autonomy is being eroded into. The argument is that the political authority of the Centre has been brought in through this Bill. Every party professes State autonomy and when it becomes a personal matter the same parties do not hesitate to give up State autonomy, and ask for the Interference of the Centre and also demand the Centre's intervention in the State affairs. For example, in my own State, Tamil Nadu I come from Tamil Nadu we demanded the interference of the Centre when Kaveri water issue came up. Very recently some of the political parties asked for the interference of the Centre into the affairs of Andhra Pradesh. So, also in Punjab, Assam, U.P. and other States. So, when it becomes a necessity, we do not hesitate to give up our theory of State autonomy and demand the Centre's intervention. No political party feels shy of demanding centre's interference. For example in Tamil Nadu, the DMK party which stands for State autonomy has at one time demanded President's Rule under Article 356 in the State. So, also the AIADMK demanded President's Rule at one stage. The Congress Party has also done it. So, also in other States like Andhra Pradesh, the Telugu

Desam demanded the interference of the Centre under Article 356. So in other States also the political parties do not feel shy to demand action under Article 356.

I can give another example that in 1965-66 when the anti-Hindi agitation was rocking our State, Tamil Nadu there were many instances of violence and when the police acted, there was retaliation also. Ultimately that was over. After that in 1967, when the DMK formed the Government, there was the fear that DMK Government which spearheaded the anti-India agitation would penalize the officers. Then, the then Chief Minister who ordered police action, gave a written order to the Secretary asking him to burn all the files concurring the anti-Hindi agitation, and the Secretary did it. Subsequently, when the new Chief Minister took charge, he called the officer and asked him as to whether it is not a wrong thing to burn the files. The Officer said, 'Yes'. When the Chief Minister Shri Anna asked him once again as to whether he do the same thing if he orders it, the officer said, 'if your order is written, I will do it.' Ultimately, the previous Chief Minister took up the responsibility for burning the files and said that it was done in the interest of the Administration because the Government is a running institution. You can not penalise officers for fault of theirs. The Chief Minister said that the circumstances were such that I have ordered the police officials to execute the directions issued to them. They did it, and it is for me to safeguard them.

17.26 hrs.

[MR. SPEAKER *In The Chair*]

You cannot now come with a different background and start penalising those people for the act that was done several months earlier. He told the opposition. When you were in the Opposition, you did not know what exactly was the law and order situation. Because I was in the administration, only I can know what. So, Sir, I can say that there were very many occasions which warranted the officers to act in a particular way, of course, under the direction or the orders

of the then Government. This was the stand taken by the outgoing Chief Minister and the incoming Chief Minister accept it in principle. But how can you judge the action of the officer after six months? The other arguments is that we can not interfere into that because it leads to over centralisation and that we are for decentralisation. Yes, we are for decentralisation. What happened in Assam? Did we not ask for the Centre's interference? What happened in Punjab? What happened in U.P? Are not the opposition parties asking for the Centre's interference? So, the reasoning must be how far we are justified in bringing an amendment of the present nature.

An hon. Member from the other side was asking why this amendment after forty years? Every amendment comes in only after experience. Our experience has been such, that our political parties in the States have been behaving in such a way that an amendment of this kind has become a necessity. And this is an amendment which safeguards not the erring officer, not the unwanted officer, not the officer who commits an act which is not justifiable. This is an amendment which gives protection to the officer, which gives confidence to the officer to act without fear and to act in a democratic way. In a democracy, if we are not going to safeguard our own official institutions, our administrative institutions, how are we going to safeguard other values in democracy? So, this is a Bill which is very much needed and which needs the support of the entire House. My only request is that this Bill must be used for the purpose for which it has been brought.

MR. SPEAKER: Shri Bhagwan Shankar Rawat.

SHRI NIRMAL KANTI CHATTERJEE (Dumdum) : Sir, CPI (M) has not yet been called. Mr. Ajoy Mukhopadhyay is there to speak. This is a very strange situation, Sir.

MR. SPEAKER: Yes, I will call him. He comes after Shri Rawat.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT (Agra): Mr. Speaker, Sir, I consider the Amendment brought forward as meaningless. Because it is an attempt to make an unnecessary interference in the jurisdiction of the States. Law and order is the subject of the State. Government and the Central forces are invited by the State Government just to assist if required. Through this amendment, the Government is going to destroy the very basic structure of the Constitution. In the constitution the subjects have been divided between the Central Government and the State Government. The Central Government want to shield the crimes of their forces in which they might indulge under the order of the Central Government in a State under President's rule. It seems to me that the Central Government is obsessed with the criminal acts of the Armed Forces.

By imposing the President Rule, you try to repress the people in wrong way and if an elected Government comes in the State, it may allow prosecution against the defence forces for their atrocities and criminal acts. Therefore, the Central Government wants to provide them with this impenetrable shield. But its future results will be dangerous. The law and order situation of the entire state will go out of control. In the Constitution, a lot of powers have been given to the high officials. A Government in any country is run on the basis of its police and forces. If the Central Government keeps direct control on the security forces, the officials of State Government will never be able to control them. Their control will end forever. Therefore, I would like to submit that there was no need to bring such illegal and unconstitutional provision because it will harm the democracy of this country, but the need was to analyse the Cr. P.C. and other laws extensively so that rule of law can effectively established in this country and to make provision to provide free and fair justice to all under the Constitution.

In view of the people's demand for free

[Sh. Bhagwan Shankar Rawat] and fair justice, Shrimati Indira Gandhi had constituted the Jaswant Singh Commission to decentralise the benches of High-Court. But it has been years since the Commission submitted its report. It is gathering dust in the almira. A lot of demands are being made for decentralisation and for setting up of benches of the High-Courts but the Government is paying no attention in this regard. I demand that the recommendations of the Jaswant Singh Commission should be implemented immediately. Due criterion should be followed in the entire country for setting up of the benches. There is much difference between the jurisdiction of the High-Courts of Goa and Sikkim and the jurisdiction of the High-Courts of Uttar Pradesh, Maharashtra and Madhya Pradesh. Therefore, I would like to submit that decentralisation should be done and the benches should be set up on a fixed criterion.

A provision is there in the Constitution that where there is super time scale judiciary, the officials working there are also called district judge. This has also been provided that the Central Government can authorise them to hear the writ petitions on less important cases. The work load on the High-Court and the Supreme Court can be reduced by following this practice.

Now, I would like to raise the point of social justice being provided to the advocates. The advocate has been given recognition under Cr. P.C. and a central enactment is also there in this regard, but in the present working system, the advocates and their clerks are not getting social justice. The Government has totally neglected them. I would like to close this topic here and would like to say that justice should be immediately provided to them. I would like to close this topic here and would like to say that justice should be immediately provided to them. There is a phrase.

[English]

Justice delayed is justice denied.

[Translation]

In view of the backlog of work in the

courts, the number of judges and subordinate judiciary should be increased. During emergency the provision of anticipatory bail was scrapped in some states. As it is a matter of concrete jurisdiction therefore I would like to say that the Central Government should definitely interfere in the working of administration of those states. Where the people had been deprived of their right to individual freedom with the scrapping of anticipatory bail and police rule has been established. The Centre should restore the provision of anticipatory bail. Not only regarding Cr. P.C. but for the entire judiciary, a Commission should be constituted. A judicial reforms commission was constituted. A comprehensive law should have been brought to implement the recommendations of this commission. Today Cr. P.C. has been linked with the religions. Under the provision 125 the muslim women have been excluded from it. It is the time to bring amendments in Cr. P.C. and resolutions would be brought and action should be taken to frame a uniform civil code, only then justice can be provided to the people.

Our friend has mentioned about the public servants. I would like to tell him that public servants are not only working under the Central Government, but are working under the State Governments as well. I would also appeal to define the word "forces" which has been used here. The Home Minister should categorically reply that the provision should not be misused in the name of "forces". I vehemently oppose this.

The thing which is taking place in the democratic set up and federal structure of this country, will cause a danger to democratic system. The country should be saved from this crisis, otherwise the people will lose their faith on the judiciary of this country. When the people are in distress and are oppressed, they go to judiciary to redress their grievances. If this right of approaching the judiciary is snatched from them, democracy will not remain in the country and a situation of anarchy will rise in this country.

With these words, I oppose this amendment.

[English]

SHRI AJOY MUKHOPADHYAY (Krishnagar): Mr. Speaker, Sir, the purpose of this Bill is to replace an Ordinance promulgated on the 2nd May, 1991 and thus to enact a provision in the form of an amendment in section 197 of the Code of Criminal Procedure, 1973. This is not an innocent Bill as it has been stated here by so many Members from that side of the House. I do not understand as to why it was felt so urgent to promulgate an Ordinance and that too just for the 10th Lok Sabha Elections. Prior to the promulgation of the Ordinance, during the past, no such change was ever contemplated. So, I would like to know from the Home Minister the reasons which have prompted them to bring such a Bill. This seems to be a direct encroachment on the rights of the State Government and imposition of President's rule in any State does not mean that the State Government ceases to exist. The State Government still exist and so, there cannot be any justifiable ground for such as amendment.

Incidentally, I would like to observe that we have been agitating for years together against the indiscriminate abuse of the Article 356 of the Constitution to serve the narrow political interests of the ruling party at the Centre. The provision which is intended to be used sparingly on rare occasions has been reduced to an undemocratic weapon in the hands of the ruling party for having political mileage. With this weapon the Congress (I) Government at the Centre has dislodged democratically elected Governments in different States on one or the other plea or even without any plea altogether. So far as my memory goes, since the constitution of free India came into being, this Article has been used for more than 90 times to surprises the political opponents of this country. Now, this Article has become a threat to the parliamentary democracy and now, through this Bill, the Government is trying to concentrate all the powers in their hands. It has been stated that the present Bill has been brought in for providing more adequate safeguards and protection to pub-

lic servants against frivolous or vexatious prosecution for acts done in discharge of official; duty.

But what we have been witnessing is, some of the members of the different armed forces, public servants often commit serious offences which is totally unbecoming of the public servants. Sometimes they were indulging in criminal activities but in the name of providing safeguards political protection is given to the Government servants on a number of occasions. This is a growing phenomenon which is dangerous to democracy.

I am representing a constituency in Nadiad district in West Bengal which is situated on the Indo-Bangladesh border. The Border Security Force is meant for protecting the borders of the country. But it is a matter of deep regret that a good number of the members of the armed forces are more interested in safeguarding the interests of notorious smugglers and anti-social elements of that area. Some of them are even directly committing smuggling and other anti-social activities. Poor villagers of the border areas are often subjected to harassment and severe torture.

A few months back, some of the armed BSF personnel rushed to a broad village named Devnathpur and shot down 11 innocent villagers in a board day light without any provocation whatsoever. That was a cold-blooded murder which created a deep resentment among all sections of the people, not only in that district but also throughout the State. No penal measure or exemplary punishment has yet been given to them.

There are many other examples like this. So, in the name of difficult situation in Punjab or any other plea, it is not proper to bring such an undemocratic Bill before the House which will further erode the powers of the State Government. So, I would request the Government to withdraw this Bill.

With these words, I oppose this Bill.

17.43 hrs.

SHRI K.P. REDDAIAH YADAV (Machhlipatnam): Mr. Speaker, Sir, from our Party we oppose this black Bill due to the following reasons:

One of the hon. Members from the Congress I Party has just mentioned that it is necessary to bring this Bill during this Session because some of the other Parties are capturing power in those States where Congress-I was in power. So, the background to bring such a Bill is because in U.P., Bihar and Tamil Nadu, the Governments belong to the Parties other than the Congress-I. Already there are a number of protective measures and privileges enjoyed by the officers and the Government servants. If after the expire of the President's rule, any Opposition Party comes to power in that particular State and picks up a particular case where the officer is convicted or given punishment, there is some meaning to bring this Bill. I would like to ask the hon. Home Minister, how many officers have been punished during the regime when the opposition Party was ruling.

If no officers have been punished by the Governments run by the Opposition Parties, there is no necessity to bring forward this Amendment Bill. It is very necessary to consider that the Ordinance was promulgated before the Parliament elections. They knew that in Punjab the Government was going to be captured by the Akali Dal or by some other Opposition Party. They also anticipated that that the Government would take action against erring officers during the last four years who have harassed the common man in Punjab or in Tamil Nadu or in Andhra Pradesh. In this background they promulgated the Ordinance. Now, this Government has brought forward this Bill in this very Session itself.

I would like to bring to the notice of this House that not even a single Government officer was punished for the excesses committed against the innocent people in this country. This is a very powerful Clause.

They are distinguishing between a State Government employee and a Central Government employee which is, in fact, not correct. If any employee commits a mistake, blunder etc. There are so many stages where the employee is supported by the Executive. Not a single officer was punished during the last 43 years for an offence committed against the innocent people. That is why I oppose this Bill. I would, therefore, request the hon. Minister to withdraw this Bill if it is possible, withdraw the protections previously given to the officers.

Finally, I would like to say one thing. I would request the hon. Minister to let the Executive officers, administrative machinery function on moral grounds and moral fabric. He should not try to give them such protections like these things. Where are you going? The other countries are going in a democratic way. This Government is going in a dictatorial way by centralising all these powers. Therefore, I oppose this Bill.

With these words, I conclude.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI M.M. JACOB): Sir, I am happy to say that the hon. Members who have participated in this debate have expressed in different ways the anxiety to see that the rights of the State is protected; the right of the citizen is also protected. I do not want to take much time in answering all these points raised here. But at the same time I would like to answer all the points mentioned here by my hon. Friends.

Sir, it seems that there was a feeling amongst some Members who have participated in this debate that this is a new Bill brought forward by this Government at the moment. They felt that the Home Ministry has brought forward a totally new Bill something unheard of. That is why some of the hon. Members said that after 40 years, we are bringing in a Bill like this. Section 197 of the Criminal Procedure Code is already

there in this country. This section has been there already. It is not a new thing. What is the context in which this Bill has been brought forward? What is the context in which this amendment, this particular item has been brought before the House today? I would like to say that the purpose behind this Bill has to be understood.

An hon. Member asked that when there was Parliament why did you want an Ordinance to be passed. It was actually not an Ordinance passed when the Parliament was in Session.

When the previous Caretaker Government was there, there was no Parliament. It was a Caretaker Government, in fact. They found it absolutely essential to prevent certain difficulties faced by the officers, faced by the public servants at that time. So, immediately an Ordinance was promulgated. For that, now I stand before you to get the ratification. I am also seeking a few days' retrospective effect to that period because that Ordinance lapsed on August 20.

That is precisely the point for me to bring the Bill to you. (*Interruptions*)

SHRI AJOY MUKHOPADHYAY: What was the urgency there to bring this amendment?

SHRI M.M. JACOB: I will come to that.

MR. SPEAKER: Let us be very brief.

SHRI M.M. JACOB: When our friend Shri Lodha was speaking, he was expressing a concern over the Bill. As a student of political science, when the Constituent Assembly was in session here and when this particular subject about the protection of bureaucracy, protection of Government officers was discussed, I still remember, it was Sardar Patel who got up and said, "the bureaucracy had to be protected in India because every State will have different types of Government in the years to come. It will not be the same Government in different States. So, somebody will have to protect

the bureaucracy. There must be enough adequate laws to protect them. Otherwise, they shall not discharge their duties loyally, faithfully and honestly." This applies to the Indian Administrative Service also.

The idea behind mentioning this here is that it is not to protect the corrupt officers. We do not want to protect the corrupt officers in this country. If an officer is corrupt, there is a law and he has to face the music of law in the court.

There is also a judgement to this effect in the Supreme Court. in the case of H.H.B. Gill Vs. King AIR 1948 SC 128, 133, it has been held that:

"A public servant can only be said to act or purport to act in the discharge of his official duty, if his act, is such as to lie within the scope of his official duty. Thus a judge neither acts or purports to act as a judge in receiving a bribe, though the judgement which he delivers may be such an act; nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that what he does, he does in virtue of office without fear or favour."

Again in Matajog Dubey Vs. Bhari AIR 1956 SC 44, the Supreme Court held that:

"In order to necessitate sanction, there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that he could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

[*Translation*]

SHRI BHAGWAN SHANKAR RAWAT:
Has the Central Government no faith in the

State Governments, that it is taking over the enforcement in its purview?

[English]

SHRI M.M. JACOB: I have quoted these two judgements because in impression was created that there was an attempt to protect corrupt officer. No, Sir, it is not to protect corrupt officer. (*Interruptions*)

SHRI SYED SHAHABUDDIN (Kishanganj) : This Bill seeks to give a double protection and also un necessary protection.

SHRI M.M. JACOB: Even today, in the existing Criminal Procedure, regarding the State officer permission is getting from the State Government to take action. Regarding Central Government officer action is taken after getting permission from the Central Government. During the spell of President's Rule, somebody must be responsible for it. It is the Centre who is responsible for it. We take up the responsibility of the officers during that period. And it is not for protecting corrupt officers. It is only for the precise and specific period and not for any other thing. We do not want to take over the right of a State. The Constitution is so evident about it. Article 123 of the Constitution is clear about it. We have got three Lists—Central List, State List and the Concurrent List. This Criminal Procedure Code falls in the Concurrent List—List—III of Schedule VII. So, the Central Government, and this Parliament has every right to come up with a legislation of this sort. I shall conclude now. (*Interruptions*)

SHRI SYED SHAHABUDDIN : During the extension of the President's Rule, does the State Government cease to exist? (*Interruptions*)

MR. SPEAKER: The House now take up clause by clause consideration of the Bill.

The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill

MR. SPEAKER: The question is

"That clause 1, Enacting formula and Long Title were added to Bill.

The motion was adopted.

Clause 1, Enacting Formula and Long Title were added to the Bill.

SHRI M.M. JACOB: I beg to move: "That the Bill be passed."

(*Interruptions*)

SHRI SYED SHAHABUDDIN (Kishanganj) : Sir, I want to say one thing.

MR. SPEAKER: You spoke at the consideration stage!

SHRI SYED SHAHABUDDIN: Even at this late hour, I would appeal to the Government not to make mincemeat of the federal principle, of the rule of the law and pass this anti-people Act. (*Interruptions*)

MR. SPEAKER: The question is:

"That the Bill be passed."

The motion was adopted.

17.57 hrs.

MESSAGE FROM RAJYA SABHA-
CONTD.

[English]

SECRETARY - GENERAL : Sir, I have to report the following message received from the Secretary-General of Rajya Sabha:-

"In accordance with the provisions of