

14.54 hrs.

### SPECIAL COURTS BILL

THE MINISTER OF HOME AFFAIRS (SHRI H. M. PATEL): I beg to move\*:

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

The House is fully aware of the findings of the Shah Commission of Inquiry which have shocked the conscience of the nation. The report has revealed how during the period of Emergency, the rule of law had been ignored, indeed violated blatantly, how with vital fundamental rights suspended, civil liberties withdrawn and the press censored, persons in authority had tended to act arbitrarily violating both law and decency and causing great human suffering and injustice. I need not go into details of such actions. Illegal detentions and demolitions and other illegal acts of the commission of which the Shah Commission and other Commissions of Inquiry have revealed prima facie evidence have already been discussed in the House. The Report of the Shah Commission has thrown much light on what occurred and provides justification for further legal action. Government has repeatedly assured this Hon'ble House as also the public generally, that wherever, under the cover of emergency, crimes had been committed un mindful of the law, and against whom evidence exists of the commission of such offences, they will be brought before the courts. It is the obligation of the state not only to prosecute persons involved in such crimes but also to make arrangements for the speedy judicial determination of such prosecutions. The ordinary criminal courts for a variety of reasons, cannot reasonably be expected to bring these trials to an early conclusion. Government, therefore, considers that only if special courts are established at a high level to deal exclusively with such offences, the trial of these cases will not be unduly protracted. This has been am-

ply brought out in the 'Kissa Kurai Ka' case, where progress was made only after the Supreme Court directed the trial court to take up the hearings from day to day and that it was possible to bring the case to a reasonably speedy conclusion.

As Government were anxious that any such measure should be free from all doubts regarding its constitutionality and fairness, a reference was made to the Supreme Court under Article 143 of the Constitution seeking its advisory opinion on the Special Courts Bill, 1978, the provisions of which were substantially the same as those of Shri Jethmalani's Bill. The Supreme Court has opined that the Parliament has the legislative competence to create Special Courts. It has endorsed the constitutionality of establishing Special Courts by law for securing the speedy trial of such offences. It has also pointed out certain infirmities in the Bill referred to it and these have been removed in the present Bill which is now before the House.

The Bill provides for the establishment of an adequate number of Courts to be called Special Courts. Only sitting Judges of the High Courts will preside over these Courts. If the Central Government is of the opinion that there is prime facie evidence of the commission of an offence during the operation of Proclamation of the Emergency dated 25th June, 1975 by a person who has held high public or political office in India and that the offences ought to be dealt with under this Act, the Central Government shall make a declaration to that effect in every such case and prosecution in all such cases shall be instituted only in a Special Court and all prosecutions pending in any Court shall stand transferred to such a Court. All cases before the Special Courts will be tried under the provisions of the Code of Criminal Procedure applicable to warrant cases triable by magistrates. An appeal shall lie as of right from any judgment or order of the Special Court to the Supreme Court both on facts and

\*Moved with the recommendation of the President.

[Shri H. M. Patel]

on law. I do not wish to take more time of the House at this stage and with these few observations, therefore, I move that the Bill be taken into consideration.

MR. SPEAKER: Motion moved:

"That the Bill to provide for the speedy trial of a certain class of offences, be taken into consideration." There are two amendments, one by Mr. Rajagopal Naidu and another by Mr. Faleiro. But both are time barred and so they are not allowed.

SHRI EDUARDO FALEIRO (Mormugao): On a point of order. I gave notice of my amendment to refer this Bill to a Select Committee today before 10 a.m. You are right when you say that as per Rule 79, this is time barred. But I may draw your attention to the fact that you have powers to waive this rule and this rule had been waived in several instances in the past. Even amendments to refer a Bill to a Select Committee which had been submitted on the floor of the House, after the motion for consideration was moved, had been allowed and that too without giving any reasons. I have given it before 10 A.M. There are instances recorded where it had been submitted after the motion for consideration was moved on the floor of the House and it was accepted without giving any reasons. You will never do it consciously, but even unwittingly, none of us should contribute to the impression that we are helping the Government in bulldozing this Bill through Parliament.

15 hrs.

MR. SPEAKER: If there are other amendments to the same effect, I am not allowing them.

SHRI C. M. STEPHEN (Idukki): I submit that we have to give notice of some amendments further. Our party is meeting and we have to take some decision with respect to certain amendments. Therefore, I request that some

accommodation should be given. We will give notice of amendments by this evening.

MR. SPEAKER: About this particular thing, why I am saying is that there is already an amendment to refer the Bill to the Joint Committee.

SHRI EDUARDO FALEIRO: That gives a longer time upto June or July. I do not want to create an impression that we want to delay it. I have given time for the Joint Committee to report by 31st March.

MR. SPEAKER: The delay is condoned in both the cases. Now, the Amendments to be moved.

SHRI A. K. ROY (Dhanbad): I beg to move:

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

SHRI K. LAKKAPPA (Tumkur): I beg to move:

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

"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 Ramoowalia
- (7) Dr. V. A. Seyid Muhammad
- (8) Shri B. Shankaranand
- (9) Shri Kommareddi Suryanarayana
- (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 the 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).

SHRI P. RAJAGOPAL NAIDU (Chittoor): I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 30th June, 1979." (101).

SHRI EDUARDO FALEIRO (Mormugao): I beg to move:

"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 Harendra 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 the 31st March, 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." (102).

MR. SPEAKER: Mr. Faleiro; I have called you to speak on the Bill.

SHRI EDUARDO FALEIRO: I would like to make a few submissions on the Bill. My submission is that what the Hon. Minister has mentioned—that this Bill has the sanction of the Supreme Court—is incorrect. The majority opinion, which was delivered by the Chief Justice, has pointed out that this Bill can be fair only if all offenders in high places, all people who have misused public offices—whether during Emergency, before Emergency or after Emergency—at any time are brought within the scope of this Act. What the Supreme Court has said is that they were powerless because they were merely a court and they can examine only the legal aspect, but they found, in all fairness, that political necessity and moral considerations do require that there should be no distinction between those who have abused public offices and there should be no discrimination against those who are alleged to have misused public offices during Emergency. That is the opinion delivered by the majority of the Judges. Justice Krishna Iyer, who has concurred with the opinion of the majority has gone to the point of saying that, even from strictly legal canons, there cannot be any assurance at this stage that, unless all offenders or all persons who

[Shri Eduardo Faleiro]

abuse public offices in high places are brought within the scope of the Bill, there would not be justified grounds and strong grounds for challenging the Bill, even after it is passed, on Constitutional and legal grounds. Justice Singhal in fact says that this is against the Constitution and wrong, that this Bill now brought before the House is illegal and unconstitutional.

So, I find that the Bill is discriminatory, that the Government has not heeded the very wise remarks made by the Supreme Court, that the Government has picked up only certain passages from the majority opinion of the Supreme Court, with which they are now seeking—I use a strong word—to 'mislead' the House. Therefore, it cannot claim any justification from the highest court in the land. This is a vindictive measure. Nowhere in the world has there been a precedent for this type of legislation. Never before was there such legislation. Even in a neighbouring country like Ceylon, which has also witnessed this kind of political turmoil and sudden change of Government, there is only a Commission of Enquiry and that also consists of Supreme Court Judges. The courts that will try the persons who had abused their offices during the past regime will be ordinary courts, and there will be no special courts. Only in the case of Pakistan, which is under a military regime, this type of court has been formed. I submit that this should not happen in our country—what has happened in Pakistan in the past and what is happening today, as far as action against people of the previous regime is concerned. I therefore say that this is a black Bill which is really going to destroy and contribute a great deal towards weakening our parliamentary institutions which, I must admit, at no time have been strong. Our institutions are stumbling and this will deliver a fatal blow to our democratic institutions by bringing this kind of a discriminatory Bill and making Parliament merely a weapon for indulging in vengeance and

vindictiveness against a person no less than a former Prime Minister of the country.

SHRI PABITRA MOHAN PRADHAN

(Deogarh): I rise to support this Bill because, during the Emergency, for 20 months extraordinary powers were being assumed by the ruling authorities, both political and administrative. So many offences of a grievous nature have been committed by such authorities that if a special arrangement is not made to try such cases, those cases will go on pending in the law courts for decades together. As per legal principles, delay means denial of justice. If delay is made in these respects, then justice to the nation is denied. Not only the Opposition, the then political and administrative authorities are very eager and desirous to see that justice is given quickly, but also the parties which are affected by these offences are very eager to see that justice is given promptly. In other words, I would say that the ruling Party, the other parties and also the Opposition, the true Opposition—I mean, the Congress-I—are eager to see that justice is given very quickly. The people at large, the *janata*, are waiting to see that justice is given very quickly. I may say that all the people, both the intelligentsia and the masses, demand and desire trial of such offences. It has also they all want to know whether those political authorities and others who are alleged to have committed offences are really guilty or not. Under the circumstances, if in ordinary course, these cases are tried, as I have said earlier, two decades will pass and no justice can be given in these cases. So, special courts are necessary. It is for this reason that this Bill has been brought. It is under consideration and it needs immediate passage in this House. Sir, in the meantime, Commissions had been set up and they have given their findings; their findings say that a great number of offences have been committed both by the political and the administrative authorities during the period of Emergency. Also from other sources of the Government,



it has been ascertained that hundreds of offences have been committed. Therefore, it is the duty of the Government to make arrangements for speedy and immediate decisions on these cases, and these 'arrangements' would mean that special courts are to be established. For that, this Bill has been brought in this House and it is now under consideration.

The hon. Member who spoke before me said that the Bill had been referred to the Supreme Court to get their opinion. The Supreme Court has given their opinion that constitution of such special courts, under the circumstances is necessary. Of course, one or two judges might have given a different opinion. But the majority of the judges have given the judgment that such a Bill is Constitutional and it is necessary.

SHRI C. K. JAFFER SHARIEF  
(Bangalore North): Unconstitutional.

SHRI PABITRA MOHAN PRADHAN: So the government is in the right position to introduce this Bill and they desire that such a Bill should be there in their hands so that the nation's desire can be fulfilled.

With these words, Sir, I support the Bill.

SHRI VIJAY KUMAR N. PATIL  
(Dhulia): I rise to oppose this Bill for establishing Special Courts.

My friend has earlier said that only two or three Judges have passed some remarks. But I would say the reference made by the President to the Supreme Court is itself incomplete. I will read out the question:

"Whether the Bill or any of the provisions thereof, if enacted, would be constitutionally valid?"

That was the question posed before the Supreme Court regarding the Special Courts. It was not asked:

"Whether it would be necessary in the light of the findings of the Shah Commission to expedite the matter of this trial?"

If that reference had been there, I think the Supreme Court's opinion would have been rather different.

Secondly, as my friend, Mr. Faleiro has pointed out, when the Supreme Court has suggested so many things in the note which has been prepared by various judges, only those things which are expedient are brought before the House and others are concealed. That is why we have moved an amendment for remitting this Bill to a Select Committee for a thorough study and that amendment itself will show that Special Courts, as he has explained in his speech, is not necessary.

Secondly, every Bill if referred to the Supreme Court for an advisory opinion like this, will result in some recommendations from the Supreme Court which will be the guiding principles for this Parliament and sometimes that will amount to indirectly compelling this Parliament to enact whatever has been directed by the Supreme Court. That means the importance of this House as the supreme body, as it is called, will not be there. Why I say this is because in the earlier reference and in the original Bill referred to the Supreme Court, it was envisaged that a retired Judge may be appointed to act as a Judge of the Special Court to which the Supreme Court objected and has said that only a sitting Judge of a High Court should be appointed with the concurrence of the Chief Justice of India. That only indirectly shows that Judges of High Courts will be sitting in some other offices to try these cases. Then why not try such cases in the High Court itself? It is only a farce to establish these Special Courts under the pretext of expediting the matter.

Thirdly I will say that the mover of the Bill, Mr. Patel has referred that because of the offences committed during emergency and the findings of the Shah Commission, this is necessary. In the original bill it starts like this:

"Whereas the Commissions of Inquiry appointed under the Commissions of Inquiry Act, 1952..."

[Shri Vijay Kumar N. Patil]

It starts with plural, that is, the Commissions of Inquiry. So, the findings of the several commissions, to start with just show—I would say that—that it is only meant for trying the persons who are alleged to be found guilty in the findings of the Shah Commission. That is to come to an end with only Shrimati Indira Gandhi, former Prime Minister. We have noticed that right from the beginning of the Janata Rule, the Janata Party Government has tried to convict, to arrest or imprison Indira ji on this or that pretext as they could not do so... (Interruptions). The time is yet to prove it. That is why you are trying to establish special courts. Before that proof, you were trying to arrest her once. In every session we see that some bill or some enactment is there. Last session has also witnessed that the Privileges Committee's findings were put to vote and punishment was awarded to Shrimati Indira Gandhi. Here also it is meant to punish her by enacting the Special Courts Bill.

Then, it has been said in Sec. 5,

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

Here again it points out to the person who held office previously. But, as we know the Shah Commission was investigating that and had prepared a report about the emergency excesses. But, who was the mover of the emergency? Our hon. Minister—now Deputy Prime Minister, Shri Jagjivan Ram was the mover. Then why this should not contain the person who held the office and who is holding the office? Why it should contain only those persons who are not in the office at present whether in the States or in the Centre? That is the pointer which suggests that this Special Courts Bill is only meant to punish a certain individual under

the garb of expediting the trial and punishing the alleged criminals.

Lastly, the Special Courts Bill, I would only say, is a political expediency to try to weed out strong political opponents whom Janata Party thinks that it will be difficult for them to avoid from coming to power if elections are held in the near future or after five years? So, by hook or crook, before the period is over of this Sixth Lok Sabha, this Government is trying to punish the so called criminals. Therefore, I will oppose this Bill and say that this trial of whatever persons who were found guilty by Shah Commission or by various other Commissions which were appointed previously the findings of which show that the persons in power are also guilty of same offences. So, all of them should be tried in regular high courts. To conclude I will again say that as the combined opinion of the Chief Justice of the Supreme Court suggested that once if once a case is tried in one special court it should be transferable to another special court. This means the same thing Trial in the high court or a special court and appointments of a sitting judge also points out to the same thing that the Supreme Court wants indirectly to suggest to you that this is not necessary to enact although they have said that it is constitutionally and legally valid to enact such a Bill. But it is not necessary to enact it. Therefore, I will say that this Bill should be dropped and the course of law which will be taken through the high courts should be adopted. If such a Bill is brought, it should be brought for the smugglers of which one of the movers of this Bill is himself an advocate.

We found that during emergency these smugglers were punished. Of course, there were some political prisoners, but majority of them—I can say of Maharashtra—were smugglers and *mutka* kings who could not be punished by the ordinary courts of law and only through Emergency, they could be punished. Now they are let loose and again there is lot of smuggli-

ing going on throughout the country. *Mutka* business is going on. These persons cannot come within the clutches of law and they can afford to pay huge amounts of fees to the advocates. So, the cases remains pending in the High Courts and ordinary courts against such persons. So, if a Bill is to be enacted it should be enacted for these persons who are offenders of the law of the land and the persons who held high office in political life or government of India or State governments should be tried in regular courts. With these words, I conclude.

SHRI YASHWANT BOROLE (Jalgaon): Mr. Deputy-Speaker, Sir, I rise to support the Bill. To uphold such a Bill is not doing any injustice to anybody according to me. The first important point to be seen is that the objective of the Bill is simply to expedite the matter. It has been reportedly told on the Floor of the House in a very very loud and emphatic manner by the Leader of the Opposition and other members that justice delayed is justice denied.

Sir, we all know that the present Criminal Procedure Code and the very constitution of the courts. First we start with the Magistrate's court; then comes the Sessions Court; then there is High Court and the Supreme Court. This hierarchy of courts which we have in the judiciary has been a matter of anxiety for us as to how we can cut-short and bring to book the guilty persons in the shortest possible time. In fact, we want to amend our ordinary procedures also in order to see that justice is expedited as far as possible. We are going to seriously tackle this question in the very near future and all of you will be saying it is better.

Now, Sir, the very fundamental principle involved is one of giving good opportunity to the person concerned, namely, the opportunity which is afforded to him in the ordinary course of law by proceeding from various hierarchy of courts is not denied. It is not denied on account of this Special Courts Bill. So, I fail to understand

how this Bill can be called prejudicial. The question is that only one court has been out off. That means the Sessions Court in which ordinarily these offences could have been tried. When they are offences triable by the Sessions Court they would have been initiated in Sessions Court and tried in the Session Court. Thereafter one appeal would have been there and thereafter there is appeal in the Supreme Court. We have put in here a provision which is very important. Look at that. The appeal is not only against the legal points but also against facts in the Supreme Court. May I ask the Opposition, would they not appreciate the point that the facts will be greater appreciated by the Supreme Court if Supreme Court avenue is available where learned judges are sitting to appreciate and re-appreciate the evidence on which the case has been decided by the Special Courts. When such a tremendous advantage is being given for a person to defend himself I see no reason why you should have a grudge against this. But their inherent attitude which has been there is borne out all along by the Congress (I) Leader and the Congress party. It is the real root cause for their opposing this Special Courts Bill. The Special Courts Bill ought to have been welcome, even by Mrs. Indira Gandhi and the Leader of the Opposition, in the true spirit of meeting out justice to the persons concerned, so far as this machinery is concerned. But I think that the Leader of the Opposition has been prompted to say that this Bill is nothing but one which has been brought up on the basis of a political vendetta against Mrs. Indira Gandhi and the person who have committed excesses. (*An hon. Member: What is wrong about that?*) I think if that had been the main reason there would have been nothing to prevent the Janata party to proceed expeditiously and bring them to book by special tribunals even. We could have definitely had special tribunals and Nuremberg type of trials could have also been held, as was held by the International Tribunals. There was nothing

[Shri Yashwant Borole]

wrong at that time with it because we were also empowered by the very same emergency and MISA provisions which were in existence. We did not avail of them. We did not think it fit also to avail of them and to proceed in a totalitarian manner. On the contrary, we have appointed a commission to look into the excesses and to find out *prima facie* whether there has been existence of any case or not. But that opportunity has not also been availed of by Mrs. Indira Gandhi and other persons who were called before the Commission. Have they done it? No. They have not even submitted what they wanted to say on the evidence against them. They have not given anything on oath. They have, on the contrary, refused the opportunity. They were given the option when they were told even by Privileges Committee: 'Well, if you do not even take oath, you are at liberty to say it even without taking oath; you can state before us your possible defence so that we can reasonably conduct ourselves.' Now, what was wrong then? May I ask him? The oath was not being administered. The Committee also told her. The Privilege Committee has told Mrs. Indira Gandhi and others. 'Look here; you can give your explanation. If you don't want to take oath, don't take oath. But say what you want to say about the factual position that appears against you.' But, have you explained it? What regard have you got for the tribunals? What regard have you got for the courts? What regard have you got for the Privilege Committee which is appointed by this House?

Therefore, looking to the objectives of this particular enactment...

AN HON. MEMBER: and the larger objectives of the nation and the people.

SHRI YASHWANT BOROLE: If we have got any sense of justice, if we really imbibe that spirit, that here we are the citizens of this country who want justice, justice should be ex-

peditionously meted out. The only precaution which is necessary is to see that a person against whom we are proceeding should not be denied the opportunity to defend. Now, let us see what opportunities are being denied. I shall be educating myself and even the House will become educated if the Leader of the Opposition and the persons in the opposition kindly explain to us in what way the opportunities which are necessary would be denied to the persons who are going to be tried under the provisions of the Special Courts Bill.

Do you not agree with us that the ordinary procedure which takes long long time, should not be followed in this particular context?

Can you not differentiate between the acts of a decoit and the acts of a man in power, who has been trusted by the Indian citizens, but who misused his own office to suit his own interests? Can you not make any distinction between these two things? It is from this aspect of the matter that this should be taken up as expeditiously as possible. Even now the speeches made in a West Delhi meeting may kindly be looked into where Mrs. Indira Gandhi has stated "they want to kill me and my partymen." This is what you are telling the nation. Is it the talk which is to be made? Have you tried to give opportunity to the Shah Commission to examine the case? You said "No, I will not present myself, I will not speak, I will not give out my theory, I will not give out my details, I will not give evidence". Why? What is the reason? When a Special Court is being appointed, you stoutly oppose it. On what principle and what grounds? Sir, if some persons who have committed excesses during Emergency irrespective of the fact whatever party they belong to, if they are brought to book, what wrong is there? A man in power who misuses his power, who has a tremendous capacity to destroy the basic rights of the humanity, did not mind putting thousands and lakhs of

people in jail. For what offence? Have you ever thought of it? When there was emergency, about one-and-half lakh people were behind the bars and they were in jail for 19 months. What had fallen down on India? What had happened to India during that time? Have you ever thought about it? But when a course has been open by way of a judicial court so that you can come forth and give the evidence and put up your case—which is a democratic course—you say it is objectionable and highly objectionable. It is no use laughing at this matter. Kindly take a serious note of it. Have you noted the tendency that has been growing in the Indian people? When the rulers themselves misbehave in a particular manner, what kind of co-operation are you going to get from the masses of this country? But have you given thought to the fact when during the emergency excesses had been committed in this country, I humbly submit, Sir, that it is absolutely necessary that such a Court should exist. Why it should exist, I will, in brief, make my submission. We know that the cases linger in ordinary courts for a long time and therefore it will require at least not less than 10 years to come to a decision, at the hands of an ordinary court right starting from the Magistrate's court up to the Supreme Court. Well, it shall be our endeavour to see that the courts procedures are being followed.

**SHRI M. N. GOVINDAN NAIR** (Trivandrum): You say it takes 10 years. In the normal course, how many cases have taken 10 years? How many cases have been pending for the last 10 years?

**SHRI YASHWANT BOROLE:** Many cases. Plenty of cases are pending.

**SHRI M. N. GOVINDAN NAIR:** Up till now how many cases are pending?

**SHRI YASHWANT BOROLE:** Mr. Nair, I am not ready with the figure. But whatever it is, I can point it out, on the floor of the House if you particularly refer back to the old debates, you will kindly recall to your mind

that the inordinate delays, have been there in many cases against the citizens of India. Mr. Shanti Bhushan our Law Minister had complained about this on the floor of this House. If you remember very correctly, it is true. The question that arises before us is whether the Special Courts which are sought to be instituted, will be in any way prejudicial to the defence of the accused. The most important point which lies for determination by the House will be this. Don't think that you belong to the Congress or that I belong to the Janata Party. Cast off such ideas and kindly come to a conscious decision. Is injustice going to be perpetrated on the accused persons who are going to be tried, by virtue of these Special Courts? Find out as to how they will lose the opportunity, or whether better justice will be available, i.e. whether judgement will be available according to law and justice. That is the fundamental issue. It is a question of lingering a litigation and so delays are to be combated and reduced. We are all obsessed with the idea that the cases in the courts are delayed inordinately. That is what we have said here and elsewhere. We shall be highly obliged to the Members who oppose this particular Bill, if they can say how it becomes prejudicial to the defence of the persons concerned. Kindly concentrate on this aspect of the matter and convince the House. The House shall be with you. It is not that we want to do any injustice or we are having any preconceived ideas. We are open to correction, definitely, if it is found necessary; and this House can come to another decision also. But please don't go on with a prejudice, and don't go on thinking that nothing wrong has been done in this country. If you say that nothing wrong was done during Emergency, and that everything was OK then, perhaps it will be an untrue statement, and it will deceive the people of this country. But if you want to combat all the evils that have happened, if you want to do justice to the particular matter, kindly don't put up the same attitude

[Shri Jashwant Borole]

to-day at least. You can fully support this Bill. If you find that there are certain defects, they may kindly be pointed out. But the object of the Bill is a very laudable one; and the inordinate delays in booking the offenders, which is there in the ordinary courts has to be avoided, because of the special nature of the authority with which these offences have been committed. And we have to distinguish them, on the basis of certain standards. We should show that we want to meet the grievances of the 60 crores of Indian people who feel that justice cannot be meted out if the cases start at the lowest ladder and then gradually reach the top level of judiciary. If you don't have any prejudice, my submission will be that you should definitely think on these lines and point out what injustice is going to be perpetrated against the persons concerned, in their putting up their defence and how it is going to hamper it.

With these words, I support this Bill.

**SHRI M. KALYANASUNDARAM** (Tiruchirapalli): Mr. Deputy-Speaker, Sir, my party generally supports the purpose and the wisdom behind this Bill, namely, those who are guilty of grave offences of misuse of power, corruption and other atrocities during the emergency should be brought to book and punished. The Bill in its present form seeks to raise the trial court to the level of the High Court and appointment of judges is left to the Government, although concurrence of the Chief Justice is necessary.

Classification of offence to be referred to such courts is left in the hands of the Government. The worst part of it is that the scheme of the Bill is confined only to what happened during the Emergency. Why should there be a differentiation between the crimes committed during the emergency or some kind of offences committed either before the emergency or in the future without emergency.

The credibility of our people in our democracy and in our political system has to be restored. Those who were found guilty of the emergency excesses had once been punished politically. People had thrown them out of power. While it is necessary to punish them for the crimes, how is it justified to confine the Bill only to the emergency period. How can the people trust that a new Sanjay Gandhi will not come in the future? Where is the guarantee? It is not a virtue or vice of Mrs. Indira Gandhi and her family or the caucus that was working around her to commit these crimes. Where is the guarantee that such things will not be repeated even without an emergency. Emergency, of course, helped them to commit these crimes without being questioned. People cannot go and complain immediately. Justice V. R. Krishna Iyer has pointed out that if one takes courage and makes a complaint in a court, he will be diverted to a jail after leaving the court. If one goes through the note of Justice V. R. Krishna Iyer, one will find that he has not found fault with the Bill for what it seeks to achieve but for what it has failed to achieve. He has categorically stated that the Bill morally fails in discriminating between the offences committed during the emergency and either before or after the emergency.

If one goes through the history of several commissions of enquiries that were appointed not immediately after the Independence but when the Act came into force in 1952, one will find that at least 12 commissions of enquiry have been there and their reports are also there. Some of those who are involved in those commissions of enquiry are adorning either on the Central Cabinet or on the several State Cabinets. How can the credibility of the people be restored if this is confined only to the period of emergency. Then this Bill is open to the charge or attack that it is done with political motive, political vindictiveness. I do not want that charge to be levelled against this party. I do not want criminals to escape by putting the blame on

the Bill. That is why my Party has not moved any amendment at the stage of introduction of the Bill. We have given notice of amendments to processes. I want this Bill to be a permanent measure to deal with any crime, either past or future, during or after emergency. That will meet the ends of justice and will go a long way to restore the confidence of the people in our democratic system, democratic administration. The full story of all that had happened has not been brought out by the commissions of enquiry; they were only partially brought out. Events connected with the working people of this country, how they suffered during that period, how their houses were demolished and how they were attacked, all these details have not come out. Only some superficial things have come. Some of the officials were allowed to escape. Those officials who were found guilty, only a very few of them, have been brought to book. Many of them are still there in key positions of the government. They must be booked now. If necessary service conditions and rules may be changed so that they could be suitably punished for the crimes of collusion with political personalities who were in power in that period.

Further, there is no real attempt on the part of this government, although they talk so much against corruption and for having a clean administration, to examine and remove the causes that give rise to such a phenomenon. What is the action they propose to take against the big business who were behind those political personalities and officials who were pulling wires; Sanjay Gandhi and the officers were only used by the big business. They are scot free. They are perhaps supplying funds for other political parties also... (Interruptions) If you have information please give it. The big business houses and the multinationals are trying to use not only important personalities in the Central Cabinet but also in the States; the World Bank is now allowed to freely negotiate even with the State Governments. Where is the

guarantee that such things will not be repeated? They made such a serious allegation that Shrimati Gandhi was having funds in Swiss Bank. I do not know. Where is the guarantee that the new ministers do not have similar bank accounts. . . (Interruptions).

DR. SUBRAMANIAM SWAMY  
(Bombay North-East): In German banks?

SHRI M. KALYANASUNDARAM: I do not know—German bank or Swiss bank. Details may be available with friends like Dr. Subramaniam Swamy. Jokes apart, this is a serious matter. It concerns political administration of this country. So, I want to appeal at this stage to the Prime Minister who is a Gandhian to examine whether it is right to confine this only to crimes committed by a few personalities and that too during emergency. If they had committed crimes before emergency, those things cannot be classified. Then you are opening yourself to the charge that you pick and choose as per your likes and dislikes you are using that power. This will be the misuse to bully people from other parties. The clause relating to the classification of offences will give room for such a criticism. Therefore, the following are important suggestions—

1. The Bill must be made permanent. It should be amended or important amendments should be accepted and if a better amendment can be brought officially by the Government, let them bring it to make it applicable to all the crimes of this nature—both in past, during emergency and in the future. That will restore credibility of the people in the Bill.

2. When so much talk is going on about emergency excesses, why does the Government hesitate to bring Constitutional amendments to remove the Article which gives power for the declaration of internal emergency? That shows that they are not opposed in principle to emergency.



[Shri M. Kalyanasundaram]

3. My amendment is with regard to the appointment of judges. Clause 3(2) says—

“A Special Court shall consist of a sitting Judge of a High Court, nominated by the Central Government with the concurrence of the Chief Justice of India.”

This is an eye wash. The name will be proposed by the Government and how can the Chief Justice disagree? No doubt, it will not be a nomination. I propose that the Chief Justice may nominate. At least accept this amendment; that the judge must be nominated by the Chief Justice.

4. Clause 5 (2) says—

“such declaration shall not be called in question in any court.”

When the power to classify the offences for reference to the Special Court is vested with the Executive—Executive means the Home Minister of the Government—single man gets that power, why should they object to it? If there is some discrepancy, why should they not give opportunity to cases in a court and that will not be the court below the rank of Supreme Court. It cannot be taken to any other court.

I do not want to take much of the time. I appeal to the Government to reconsider the whole thing and bring suitable amendment for putting this Bill as a permanent measure in our statute book.

16 hrs.

डा० रामजी सिंह (भागलपुर): उपाध्यक्ष महोदय, जब एक विशेष अदालत का विधेयक उपस्थित किया जा रहा है तो लोगों को धारणा होती है कि कहीं मार्शल ला की तरह का कोई कानून तो नहीं बनाया जा रहा है। सामान्य परिस्थिति के लिए सामान्य अदालत चाहिये। लेकिन विशेष परिस्थिति के लिये विशेष अदालत होनी चाहिये। जहाँ तक यह बात कही गई कि इमरजेंसी के लिए ही यह अदालत क्यों बनायी गई, तो इमरजेंसी में जो अपराध किये गये हैं वह साधारण अपराध नहीं हैं। वेदा वल निर्णय में हमारे न्यायिकों ने बताया है कि इमरजेंसी के दौरान कोई छोटे अपराध कहीं किये गये हैं, और संविधान के बिना, सामान्य कानून

के बिना और जनतंत्र को तोड़-फोड़ करने के लिए भी अपराध इसमें शामिल हैं। इसीलिए इन अपराधों को सामान्य स्तर पर देना ठीक नहीं है।

जहाँ तक न्यायवृत्ति बरिस्ट ब्रदर का यह सवाल है कि सचमुच में इमरजेंसी कहने से केवल अपराधों को धमक नहीं कर देना चाहिये। उन्होंने कहा है :

“Public offenders are not a peculiar feature of the Emergency but has been a running stream for long and bids fare to flow on, sometimes subterraneously, sometimes gushing through a mountain gorge. Therefore, a corrupt continuity cannot be cut up without better justification.”

उपाध्यक्ष महोदय, सचमुच में जब हम विशेष अदालत के प्रावधान के सम्बन्ध में चर्चा कर रहे हैं तो हमें न्याय के लिए एक सामाजिक वर्ग, सोशल क्लास की धारणा के सम्बन्ध में भी ध्यान देना होगा बाविर हम किस के खिलाफ यह काम कर रहे हैं? वस्तुतः जब हम न्याय के सामाजिक वर्गों की चर्चा करते हैं तो हम मानना होगा कि सत्ता कोई चीज में नहीं निची हुई होती है जिसका जो चाहे दुरुपयोग कर ले

The crucial test is, all power is a trust.

जब सत्ता एक धरोहर है तो उसकी रखा करना पवित्रता के साथ हमारा सब का परम कर्तव्य है। सत्ता की धरोहर के साथ जो बिस्वासघात करता है वह राजनीति और जनतंत्र का शत्रु होता है। हमने देखा है कि इमरजेंसी के समय में सत्ताधारियों ने सत्ता का दुरुपयोग किया, अपने पदों का दुरुपयोग किया, संविधान के साथ खिलवाड़ किया और इसीलिये उनको सामान्य कानून के मातहत अग्रर करेंगे तो क्या स्थिति होगी। यदि हम बरिस्ट कृष्ण ब्रदर के शब्दों में ही सुनें, सामान्य जो कानून होता है उसमें कितना समय लगता है, विचार लगता है, यह हम सभी देखते हैं। उन्होंने कहा है:

“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 baulking 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."

तो उपाध्यक्ष महोदय, सच मुच में अगर हम इसको सामान्य अदालत पर छोड़ दें तो यह कब तक तय होना कुछ नहीं कहा जा सकता है। कुछ ही दिन पहले हमारे विधि मंत्री ने कहा था कि सुप्रीम कोर्ट और हाई कोर्ट में 10, 10 साल के केस बैक हैं। पब्लिक मैमोरी बहुत बॉर्ड होती है और 4, 5 साल के बाद जो जनसंख्या के साथ खिलबाड़ किया गया है, सत्ता का जो उपयोग किया गया है उसको भी जताया जा सकता है, और राजनीतिक बंधों में जो राजनीतिक प्रभंजन होता है उसे भूल जाती है। इसलिये आवश्यक है कि अगर न्याय देना है तो जल्दी देना है।

माननीय दोरोले साहब ने धीमी कहा है जस्टिस डिसेज जस्टिस बिनाइड। हमारे प्रतिपक्ष के मित्र कहते हैं Justice in haste goes justice waste.

यह बात ठीक है कि जल्दी में नहीं करना चाहिये। अगर जल्दी में करना होता तो हमारे प्रतिपक्ष के नेता मान-वीर स्टीफन जानते हैं कि हम लोग इन्धिरा जो की और उनके लोगों को मीसा में कैद कर सकते थे। लेकिन वह नहीं किया गया, हम लोगों ने जल्दी कोई कानून भी नहीं बनाया। हम लोग न्यायालय की प्रतिष्ठा करते हैं और इसलिये कि हमारा कानून न्याय-सम्मत है। यही नहीं, इसके लिये हमने सर्वोच्च न्यायपालिका के सदन से इसको पूछा और जब उसने इसको अपनी स्वीकृति और सम्मति प्रदान कर दी तब यह वहाँ सर्वोच्च मदन में आपके विचारार्थ रखा गया है।

जब हमारे प्रिन्सिपल मित्र कहते हैं कि इसमें न्यायपालिका की कोई सम्मति नहीं है तो मुझे हंसी आती है। यह ठीक है कि न्याय के सम्बन्ध में बात होती है कि विवेक नहीं करना चाहिये, क्योंकि एग्जेंसी और नान-एग्जेंसी का विवेक नहीं करना चाहिये, लेकिन जस्टिस क्लब्स धर्म्यर ने अपना भ्रम मत दिया है। उन्होंने कहा है कि—Every differentiation is not a discrimination. इसलिये जो भ्रम होता है वह विवेक नहीं होता है। इसीलिये जो यह डिफरेंसियेशन किया गया है, इसको आर्टिकल 14 के अन्तर्गत डिस्क्रिमिनेशन नहीं कह सकते हैं। यह सोचने की बात है।

राजनीति का यह इस प्रकार के बात रहा है कि हम लोगों को लग सकता है कि सचमुच में एक प्रकार के प्रतिहिंसा की भावना रखकर जनता सरकार कर रही है। मुझमें, समय और व्यक्ति कुछ ऐसा है कि ऐसा लगना स्वाभाविक है लेकिन हम तो यह कहते हैं कि यह उदात्त परम्परा है।

डर क्यों है? न्यायपालिका तो हमारी कोई अविनाश न्यायपालिका नहीं। जनता सरकार ने न्यायपालिका को सत्ता और सम्पत्ति दे दिया, वह हमारी शक्ति की शक्ति नहीं है, फिर न्याय-प्रसिद्धि के सम्बन्ध

जाने में डरने की बात क्यों होती बाहिये? जिस तरह के प्रतिपक्ष के लोगों ने आरोप लगाये, हमारे प्रधान मंत्री ने स्पष्ट रूप से सारे आरोपों को सर्वोच्च न्यायालय के मुख्य न्यायाधीश के सामने स्पष्ट और निर्भीक रूप से रख दिया है। जब वह निर्दोष हैं तो उनको डरना क्यों चाहिये? यह एक बहुत बड़ी बात है।

बिहार में भी दो कमीशन नियुक्त किये गये थे। उस समय भी मधुलकर कमीशन और दूसरे कमीशन बने थे, लेकिन क्या हुआ? कुछ नहीं। सारी बातों पर पर्दा पड़ गया। भारत के इतिहास में यह पहली बार हुआ कि है कि राजनीतिज्ञों को डर होना चाहिये। राजनीति में सर्वोच्च पद पर रहकर सत्ता के दुरुपयोग का दृष्ट होना चाहिये। अगर डर नहीं होता तो जिस प्रकार से इन्दिरा गांधी और उनके लोगों ने सत्ता का दुरुपयोग किया है, कोई ठिकाना नहीं कि प्रधान मंत्री मोरारजी देसाई और चौधरी बरधसिंह भी बैसा ही न करें। इसलिये यदि हम राजनीति को स्वस्थ और परिष्कृत करना चाहते हैं तो यह आवश्यक है कि हम ऐसे लोगों के लिये ऐसी सजा की व्यवस्था करें। केवल राजनीति में होने से आदमी निर्दोष नहीं हो जाता है।

भुट्टो साहब को मिल जाये मजा। मैं तो मृत्यु-दंड का विरोधी हूँ, इसलिये उस दृष्टि से भुट्टो साहब के लिये क्षमा करना है कि उनको मृत्यु-दंड नहीं मिलना चाहिये, लेकिन भुट्टो ने अगर हत्या की है बाह्य वह प्रधान मंत्री हो या राष्ट्रपति हो, या बाहर का आदमी हो, हत्या का हत्या ही है।

मुख्य और संजय ने जो जर्म किये थे, क्योंकि वह एक राजकुमार और एक मंत्री थे, क्या इसलिये उनका अपराध कम हो जाता है?

जनसंख्या और न्यायपालिका की मर्यादा है कि सर्वोच्च पद पर रह कर भी अगर कोई फौजदारी अपराध करता है तो उसको दण्ड मिलना चाहिये। मैंने पहले ही निवेदन किया कि हमारी न्यायपालिका की परम्परा और व्यवस्था कैसी है। कई लोगों ने हमारे फैलीरो साहब ने कहा कि इसकी कहीं परम्परा नहीं है। मैं ज्यादा तो नहीं, लेकिन दो-तीन चीजों के विषय में कहना चाहता हूँ।

भारतवर्ष में ही मुख्य न्यायाधीश, जस्टिस पंतजलि शास्त्री, के समय में सुप्रीम कोर्ट के तीन निर्णय हुए—और दोनों तरह के निर्णय हुए। स्टेट ब्राऊ बैट बंगाल बर्लस धनबरी धनी सरकार केस में एक तरह का निर्णय दिया गया और काठी रानिग राबत बर्लस स्टेट ब्राऊ सौराष्ट्र केस में दूसरी तरह का निर्णय दिया गया। इस लिये यह कहना गलत है कि स्पेशल कोर्ट की बात परम्पराविहीन है।

केदारनाथ बजोडिया बर्लस स्टेट ब्राऊ बैट बंगाल केस में सुप्रीम कोर्ट का मैजिस्ट्री थ्यू यह है:

"Whether an enactment providing for a special procedure for the trial of certain offences is or is not discriminatory and violative of Article

[श्री राजीव सिंह]

14 must be determined in each case as it arises, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary."

काठी रातिय रावत बसई स्टेट ब्राक सौराष्ट्र केस में सुप्रीम कोर्ट का मैजिस्ट्री थी इस प्रकार है:

"In its verdict delivered on February 27, 1952, the Court by a majority of four to three, upheld the Saurashtra State Public Safety Measures (Third Amendment) Ordinance, 1949, on the ground that the special procedure prescribed was less discriminatory."

4 ई. 11. 11. कहना चाहता हूँ कि विरोधी दल का ह कहना सलत है कि जनता सरकार एक नई परम्परा बना रही है। भारतवर्ष में यह परम्परा रही है।

दर्की में भी 14 अक्टूबर, 1960 को एक स्पेशल कोर्ट के द्वारा भूतपूर्व प्रेजिडेंट सेनाल बेयर और भूतपूर्व डेमोक्रेटिक पार्टी रेजीम के 600 मेम्बरों और समर्थकों की टायल हुई थी और सत्ता के दुरुपयोग के आरोप में उनको सजा दी गई थी।

हमारे पड़ोसी देश पाकिस्तान में भी स्पेशल कोर्ट स्थापित किया गया है। इसी तरह श्रीलंका में भी एक कमिशन की स्थापना की गई थी।

"A Commission has been appointed on March 31, 1978 by the President, Mr. J. R. Jayawardene, to enquire into the 'excess' and abuse of power by the previous Government."

जब श्रीलंका जैसे छोटे देश में भी राजनैतिक लोगों द्वारा सत्ता के दुरुपयोग की जांच करने के लिए कमिशन बनाया गया है, तो क्या हम नहीं बना सकते हैं? क्या यह बिडबिडनेम और प्रतिहिंसा है? अगर विरोधी दल का दामन निष्कर्षक है, तो उन्हें भागे बड़ कर इस बिल का स्वागत करना चाहिए। जैसा कि हमारे मित्र, श्री कल्याणसुन्दरम्, ने कहा है, इस के लिए एक पर्मिनेंट एम्बेडमेंट होना चाहिए।

मुझे दुख है, और अपनी सरकार से शिकायत है, कि दो वर्ष बीत गये हैं, मगर अभी तक लोकपाल बिल और एन्टी-डिक्लेमन बिल पास नहीं हो सके हैं। अगर लोकपाल बिल पास हो गया होता, तो शायद आज इस तरह के स्पेशल कोर्ट की उत्पत्ति जरूरत न होती।

सत्ता के बारे में कहा गया है कि वह धावनी को अपवित्र करती है। Power corrupts man, and absolute power corrupts man

absolutely. सर्वोच्च सत्ता में यह कर बीवसी इन्डिया गांधी और दूसरे राजनीतिज्ञों ने सत्ता का जो दुरुपयोग किया है, उसका प्रमाण तो हमें कल ही मिल गया है—एक छोटा सा प्रमाण; संजय-नृपत को दो-दो बरस की सजा मिली है। बाह्र कमिशन ने जितनी सेहतल की है, उसके फलस्वरूप केसिज निकलेंगे, और सजा तो होगी ही। "श्रुतं च सत्यं चापीडात तपसो ध्यायाम्" ५ कर्म का फल तो मिलेगा ही। अगर अपराध किया है, सत्ता का दुरुपयोग किया है, तो केवल जनता के हाथों ही बंद नहीं मिलेगा, बल्कि अगर कानून का मंग किया है, तो कानून के अन्तर्गत भी सजा के लिए तैयार होना चाहिए।

मैं इस बिल का समर्थन तो करता हूँ, लेकिन मैं संसदीय कार्य मंत्री से, जो सदन में बैठे हुए हैं, कहना चाहता हूँ कि अगर जनता पार्टी में ईमानदारी है, तो वह लोकपाल बिल और एन्टी-डिक्लेमन बिल को भी पास करावें, ताकि भारत की राजनीति और प्रजातंत्र का स्वास्थ्य अच्छा हो सके।

SHRI B. C. KAMBLE (Bombay South-Central): So far as the central objective of this Bill is concerned, I perfectly agree that there should be speedy trial of these offences, but so far as the provisions contained in the Bill are concerned, I humbly submit that this Bill will not be free from constitutional attacks.

I am aware that the Bill was referred to the Supreme Court for its opinion, and the opinion has been obtained. Still, that opinion may not be helpful in the determination of the constitutional validity of this Bill. I am afraid that a political revolution came out of a judgement of a High Court, and that is why the Janata Party is now in power. Therefore, when this Bill is enacted and several cases came up, I am afraid another political revolution may come up out of the judgments that may be delivered in those cases. Therefore, only from the point of view of constitutionality I am raising certain points, and the Government may give due consideration to them.

My first submission is this, I have gone through the opinion of the Supreme Court. That is, after all, an opinion, that will not be binding even upon those very Judges who have delivered the opinion. Under the Constitution we have the Union judiciary.

the State judiciary and the subordinate judiciary. So long as there is no amendment of these three categories, I am afraid there cannot be any kind of variation in the kinds of courts which are to be set up. The Supreme Court Judges have given the opinion, and that is the right opinion, that so far as Parliament is concerned, it has the power, it can give powers to courts, withdraw powers from them, and can set up courts. That is true, but what kind of special court is it going to be? Will it be a special Supreme Court or a special High Court or a special subordinate court? And here is likely to be a constitutional blunder, because what is proposed in the Bill is that a High Court Judge will be appointed, and he will be deemed to be a Sessions Court. It is a contradiction. Therefore, let the Government think a hundred times over this. It will have to be equivalent either to a High Court or a subordinate court. The moment it is a subordinate court, it falls within the jurisdiction of the State, that is to say it will have to be dealt with by the Chief Justice of the respective High Court and the concerned State Government.

Secondly, if this court is deemed to be a Sessions Court, according to the Criminal Procedure Code, only the Sessions Court is competent to try certain cases including those under section 302. Unless there is some amendment of the powers of the Supreme Court, the High Courts and the Sessions Courts in the matter of such sessions trial, I cannot see how a Sessions Court can also be termed a High Court just because a High Court Judge is being appointed.

So far as the territorial jurisdiction is concerned, this Bill is completely silent about the territorial jurisdiction. If a High Court judge is to be appointed, I would say, the High Court has the jurisdiction over the territory of the State. In this Bill and even in the previous Bill which became an Act, amending the Criminal Procedure Code,

there is no territorial jurisdiction specified.

As regards the declaration of a *prima facie* case, it is a new element which is being introduced. You file a first-hand-report and you file a chargesheet. What do you mean by declaration of a *prima facie* case? That means, you are becoming a judge, this Parliament is becoming a judge. It is for the judiciary to determine whether there is guilt or no guilt. So, the concept of declaration of a *prima facie* case is not a good concept. It will go against the judicial concept and, therefore, that must be given up.

So far as the appointment of a High Court judge is concerned, the underlying principle in the Constitution throughout is that there is single judiciary—it is all connected—the Union judiciary, the State judiciary and the subordinate judiciary. It is one single judiciary for the oneness of the nation. That is what the Constitution makers have done. Now, the underlying principle is that this is the consultation only, not the concurrence. If you will accept the principle of concurrence, it will go very hard against you, in future, in making future appointments. Therefore, don't change the very concept underlying the principle which is embodied in the Constitution. Consultation may amount to concurrence or consultation may be such that it may be binding. Therefore, the underlying principle embodied in the Constitution should not be done away with. Otherwise, the Government will have to repent for disturbing this principle.

So far as the rule-making power is concerned, so far as the carrying out the purposes of the Act is concerned, it should be vested in the Government. But so far as the smooth functioning of the special courts is concerned, the rule-making power should be vested in the Supreme Court. To burden the Supreme Court with the rule-

[Shri B. C. Kambhise]

making power is to transfer the responsibility of the Government over the head of the judges of the Supreme Court.

These political matters arise simply because there is no law which will give punishment for the breach of the Constitution. I would plead otherwise. I will not say that such an Act should be a permanent Act. I would say that you bring a Bill which will provide punishment for the violation of the Constitution.

This Bill has been reduced to a document which does not deserve any respect. If you want it to be respected, then such a Bill should be brought forward.

Lastly, I have given notice of some amendments and I will make submissions on the amendments later on at an appropriate stage.

श्री ०. बृजमोहन चौधरी (बलमोहा) : उपाध्यक्ष महोदय, मैं बृजमोहन चौधरी को इस बात के लिए बधाई देता हूँ कि उन्होंने यह ऐतिहासिक विधेयक इस सदन के सम्मुख प्रस्तुत किया। वस्तुतः यह विधेयक इससे पहले वादित किए जाने की आवश्यकता थी। इस देश की जनता तो यह इतीहास कर रही थी कि आपात स्थिति के जो अपराधी हैं, उनके अपराधों को दण्डित करने के लिए कूरणवर्ग अदालत-प्रभियोग की भाँति कोई व्यवस्था इस देश में होगी। जनता की यह आकांक्षा थी कि आपात-स्थिति में विधेयक संविधान के साथ बलात्कार किया, जिन्होंने अपने राजनीतिक पद और संविधान के अधिकारों का दुरुपयोग किया और वह दुरुपयोग जिन्होंने केवल अपने व्यक्तिगत स्वार्थों एवं पारिवारिक अभिजात्यकावद को इस देश में स्थापित करने के लिए किया, उनको भी अतिशयोक्ति दण्डित किया जाना चाहिए। लेकिन साथ ही, मुँकि जनता पार्टी ने कुछ विधि और विज्ञान के साथ इस देश में कानून के राज्य को स्थापित करने का संकल्प किया था, इसलिये संविधान के अनुसार, विधि के अनुसार, हम ने कार्य करना शुरू किया। इसलिये इस में विलम्ब अवश्य हुआ है, लेकिन अब अधिक विलम्ब करने की आवश्यकता नहीं है।

इस से पहले कि इस सम्मेलन में कुछ और बातें रहें, कुछ सम्मेलित सदस्यों ने जो आपत्तियाँ यहाँ प्रस्तुत की हैं, उन के विषय में कर्ण करवा चार्गास। यह कहा गया है कि इस विधेयक के द्वारा कुछ राजः-कीटिक प्रतिरोध सेने की चेष्टा की जा रही है। श्री बृजमोहन चौधरी, राजनीतिक प्रतिरोध सेने की कोई इच्छा नहीं है। किन्तु लगभग 23 महीनों में कोई भी प्रत्यक्ष इस देश

में इस प्रकार की इतिहास नहीं की जा सकती यहाँ इस शासन ने कहीं पर भी राजनीतिक प्रतिरोध सेने की कोशिश की हो। कहा यह गया है कि विधि का जो मार्ग है, जो समय है, उसको सेने दिया जाता। मुझे देख कर बड़ा आश्चर्य हुआ कि सम्मेलित सदस्यों ने अदालतों के प्रति सम्मान और अधिकार के बारे में कुछ कहने की चेष्टा की है, लेकिन कल और परसों "किस्सा सुनौ का" के अपराधियों का जो व्यवहार रहा है, उस को देख कर मेरा क्या है कि उन्हें शर्म आनी चाहिये, जिन लोगों के लिये वे यहाँ बलात्कार कर रहे हैं। उन्होंने मैजिस्ट्रेट की अदालत में क्या किया, किस प्रकार दुस्वियों पर बल कर, पेसों पर बल कर फाइलों को केंक कर मैजिस्ट्रेटों और व्यापकीकों के साथ क्या व्यवहार किया। आज उन के हिमायती यहाँ यह तर्क प्रस्तुत करते हैं कि सामान्य अदालतों में इस मामले को चलने दें, सामान्य कानून के अनुसार, निबन के अनुसार न्याय होने दें। आपात-स्थिति में हम कहते हैं कि सामान्य नियमों के अनुसार काम होने दें, तब आप के क्या तर्क हैं? आज आप को यह कहने का कोई अधिकार नहीं है कि आपात-स्थिति के जितने केसेज हैं, उन के लिये अलग से कानून न बनायें।

उपाध्यक्ष महोदय, यह कहा गया कि इस में कानू-सिकेशन क्यों किया गया, वर्गीकरण क्यों किया जा रहा है और विशेष वर्ग के अपराधियों के लिये यह अदालत क्यों बनाई जा रही है। आप ने 1978 में बम्ब प्रक्रिया संहिता में संशोधन किया है कि सामान्य राज्य सरकारों की अपने बहुत विधेय प्रकार के अपराधियों के लिये न्यायालयों की स्थापना कर सकती है, यदि वे ऐसा कर सकती हैं तो केन्द्रीय शासन भी कर सकता है और फिर हम तो लोक सभा की अनुमति से करना चाहते हैं, संसद की अनुमति से करना चाहते हैं। यह कानून अग्रा-देश के द्वारा लागू किया जा सकता था, इस के लिये अग्रादेश की बनावट जा सकता था और कोई ऐसी चीज नहीं थी जो उन अपराधियों को दण्डित करने से रोक सकती थी, लेकिन नहीं, इस विधान को माने के लिये, इस व्यवस्था को माने के लिये, इस व्यवस्था को यहाँ लोक सभा के समक्ष प्रस्तुत कर्छे हम ने जन-तात्मिक परम्पराओं को सम्मान के साथ स्थापित करनी की चेष्टा की है। शासन जो ऐसे अपराधियों को दण्डित करने के लिये सब प्रकार से सज्जम या जनता की ओर से उन के विरुद्ध आवाज होने के आग्रह थी, हम ने संविधान और विधि की व्यवस्था बनाये रखने के लिये पूरी प्रक्रिया, पूरे उपक्रम पूर्ण करते का मार्ग अपनाया।

MR. DEPUTY SPEAKER: The hon. Member will continue tomorrow. The House stands adjourned till 5.00 P.M. today.

16.30 hrs.

The Lok Sabha adjourned till Seventeen of the Clock.