

[Shri Samar Mukherjee]

of the Finance Ministry; However, it appears that by a secret circular dated 4th October, 1978 issued by the Additional Secretary and Director-General of Bureau of Public Enterprises, New Delhi, all Public Sector Undertakings have been directed to consult the Bureau of Public Enterprises even for entering into interim agreements and it has been further directed that no agreements should be concluded without consulting the Bureau.

The Government should immediately allow Public Sector Undertakings to enter into discussions and negotiations with the Employees' Unions so that various outstanding issues may be settled at an early date. I also urge the Minister of Shipping and Transport to issue appropriate instructions to the Shipping Corporation of India so that necessary discussions may be initiated at the earliest opportunity to prevent further worsening of the situation and the outstanding dues of the employees may be paid immediately.

(iv) 3 REPORTED NON-AVAILABILITY OF ENVELOPES IN POST OFFICES

डा. राजवी सिंह (भागलपुर) : अध्यक्ष महोदय, मैं नियम 377 के अन्तर्गत एक प्रतिलिखतीय लोकनियुक्त के विषय की शीर सभा का ध्यान आकर्षित की अनुमति चाहता हूँ। वह हुआ है कि न केवल देश के दूसरे भागों में बल्कि राजधानी की ओर उस में भी संसद भवन के दोनों बाक-बार बरों में बहुत दिनों से लिफाके नहीं मिल रहे हैं। इस सम्बन्ध में मैंने संचार मंत्री की भी ची पत्र लिखा था, लेकिन प्रशासनिक व्यवस्था इतनी संवेदनहीन है कि इन छोटी, किन्तु महत्वपूर्ण चीजों पर कोई ध्यान ही नहीं दिया जाता है।

संसद भवन में पिछले 20 दिनों से पोस्ट-ऑफिस में लिफाके नहीं मिल पाते हैं, यदि नाविक मेल राज्य की बड़ी हुई जकराओं को पूरा नहीं कर सकता है तो सरकार को इस के बारे में कुछ योजना चाहिये और दूसरी वजह उपभोग का प्रयत्न करना चाहिये। जहाँ बसाव होता है, वहाँ अप्रत्याशित की मुलाकात की हो जाती है। जगता सरकार जहाँ तक एक ओर कायाक के बाहर मिलने का औरत प्रयास कर रही है, वहाँ संचार विभाग की विभिन्नता एवं असुविधा के कारण जनकानेक असोचनार्थ हो रहे हैं। यह कोई ऐसी समस्या भी नहीं है जिस

के बिना इसे निवेदन के कुछ साधन करना पड़े। मैं चाहता हूँ कि इस सभा की इस घर में शीघ्र पूर्ण की जाय, साथ ही भी इस सभा के बिना उत्तरदायी हों, उन की भी दृष्टि दिवता चाहिये, प्रत्येक नाविक में इन बातों के बिना इस सर्वोच्च सदन का बहुमुख्य समय हमें व्यर्थ करवा देता।

12.28 hrs.

SPECIAL COURTS BILL—Contd.

MR. SPEAKER : The House will now take up further clause by clause consideration of the Special Courts Bill. Out of 7 hours allotted for all the stages of the Bill, only 50 minutes are now left for completing the clause by clause consideration and the Third Reading of the Bill.

Yesterday, clause 2 to 6 were taken up and amendments were moved thereto. Today I propose to call upon the Members concerned to move their amendments to the remaining clauses etc. of the Bill. Thereafter, I will give an opportunity to some of the Members who have not spoken yesterday to speak on all the clauses and the amendments moved thereto together. Thereafter, the Home Minister will reply.

Voting on the clauses and the amendments will take place around 2.30 P.M.

SHRI HARI VISHNU KAMATH (Hoshangabad) : Mr. Speaker, I rise on a point of order. It is not proper (Interruptions)

SHRI R. VENKATARAMAN (Madras South) : We want to speak on all the Clauses and we want to make some contributions. Otherwise there is no meaning if we cannot speak on all amendments and clauses.

SHRI B. SHANKARANAND (Chikodi) : The Home Minister shall have to reply on Clauses.

SHRI HARI VISHNU KAMATH : On a point of order. If I heard you aright, you said that Members should send chits or some such thing.....

MR. SPEAKER: No. We are asking every member to rise up and move the amendments.

SHRI HARI VISHNU KAMATH: Shall I have to move all the amendments together?

MR. SPEAKER: No, no—one by one you may move in the beginning. When we come to clause by clause, you may do that.

Clause 7—(Pending appeal or revision to be transferred to Supreme Court)

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

Page 3, line 1,—

for "declaration in respect of any offence"

substitute "coming into force of this Act" (81).

SHRI B. SHANKARANAND: I beg to move:

Page 3, line 5,—

after "disposal to" insert—

"the High Court or" (96).

Page 3, line 5,—

add at the end—

"as the case may be" (97).

SHRI R. VENKATARAMAN: I beg to move:

Page 3, lines 4 and 5,—

for "stand transferred for disposal to the Supreme Court"

substitute "be governed by the Code of Criminal Procedure" (108).

SHRI O. V. ALAGESAN (Arko-nam): I beg to move:

I beg to move;

Page 3, line 5,—

add at the end—

"after six months from the date of the declaration unless it is disposed of in the mean while" (115).

SHRI B. SHANKARANAND: I beg to move:

Page 3, line 1,—

for "If at the date of the declaration"

substitute "Immediately after the coming into operation of this Act if" (119).

Clause 8—(Jurisdiction of Special Courts as to joint trials)

SHRI B. SHANKARANAND: I beg to move:

Page 3,—

for clause 8, substitute—

"8. A Special Court shall have no jurisdiction to try any person or persons for the commission of an offence except under the provisions of the Code." (43)

SHRI B. C. KAMBLE: I beg to move:

Page 3, line 7,—

for "in the offence"

substitute "in such offences" (82).

Page 3, line 7,—

omit "in respect of which a declaration has been made" (83).

Page 3,—

after line 10, insert—

"(2) If the alleged offence or offences are committed within the territory of a State by a person or persons ordinarily resident in that State a Special Court established under section 3 in that State shall have jurisdiction to try such person or persons, charged with such offence or offences, and in other cases Special Court established at such other convenient places shall have jurisdiction to try the same." (84).

Clause 9—(Procedure and Powers of Special Courts)

SHRI LAXMI NARAIN NAYAK (Khajuraho): I beg to move:

Page 3,—

after line 31 insert—

“(5) With a view to achieve the objects of this Act, the Special Court shall decide the cases within a period of three months and in case an appeal is filed in the Supreme Court, that Court shall also keep this time limit in view.” (9)

SHRI B. SHANKARANAND: I beg to move:

Page 3, line 14,—

for “may” substitute “shall not” (44)

SHRI HARI VISHNU KAMATH: I beg to move:

Page 3, line 17,—

for “the whole” substitute “all the” (53)

SHRI B. C. KAMBLE: I beg to move:

Page 3,—

for lines 11 to 13, substitute

“9. (1) A Special Court shall in the trial of such cases follow, ‘warrant procedure’ prescribed for trial of warrant cases before a Magistrate as laid down in the Code of Criminal Procedure, 1973” (85).

Page 3, line 26,—

for “of Session and shall have all the powers of a Court of Session”

substitute “also having all the powers of a Court of Sessions” (86)

SHRI B. SHANKARANAND: I beg to move:

Page 3, lines 19 to 21,—

omit “and any pardon so tendered shall for the purposes of section 308 of the Code be deemed to have been tendered under section 307 thereof” (99).

Clause 11—(Appeal)

SHRI B. SHANKARANAND: I beg to move:

Page 4,—

for clause 11, substitute—

“11. Appeal and revision.—Provisions of the Code shall apply for any appeal or revision from the decision of a Special Court as if from a Court of Sessions.” (100).

Clause 12—(Power to make Rules)

SHRI HARI VISHNU KAMATH: I beg to move:

Page 4, line 17,—

after “for” insert “carrying out” (54).

SHRI M. KALYANASUNDARAM (Tiruchirapalli): I beg to move:

Page 4,—

after line 8, insert—

“(2) All such rules shall be placed on the Table of both the Houses of Parliament within two months from the date of their issue or within fifteen days from the commencement of the session of each House of Parliament after the issue of such rules.” (59).

SHRI B. C. KAMBLE: I beg to move:

Page 4, line 6,—

for “Supreme Court”

substitute “Union Government” (87)

Page 4, line 8,—

add at the end—

"which shall be laid on the Table of both Houses of Parliament; and the Supreme Court may by notification in the Official Gazette make such rules as may be deemed necessary for the proper functioning of the Special Courts" (88)

SHRI HARI VISHNU KAMATH: I beg to move:

Page 4,—

for clause substitute—

"12. The Central Government may with the concurrence of the Chief Justice of India make rules for carrying out the purposes of this Act." (127).

Page 4,—

for clause 12, substitute—

"12. The Central Government may in consultation with the Chief Justice of India make rules for carrying out the purposes of this Act." (128).

Clause 13 (New)

SHRI M. KALYANASUNDARAM: I beg to move:

Page 4,—

after line 8, insert—

"13. All notifications issued under sub-section (1) of section 3 and declarations under sub-section (1) of section 5 shall be placed on the Table of the two Houses of Parliament within fifteen days of issue of such notifications or declaration, or within fifteen days of the commencement of the session after the issue of the notifications or declaration." (60).

SHRI HARI VISHNU KAMATH: I beg to move:

Page 4,—

after line 8, insert—

"13. Every notification made under clause sub-section (1) of section 3, every declaration made under sub-section (1) of section 5, and every rule made under section 12 shall be laid, as soon as may be after it is made, before each House of Parliament." (116)

Clause 1. —(Short title and extent)

SHRI HARI VISHNU KAMATH: I beg to move:

Page 2, lines 14 and 15,—

omit "except the State of Jammu and Kashmir" (52).

Preamble

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

Page 1, line 1,—

after "appointed" insert "or to be appointed" (3).

Page 1, line 2,—

after "rendered" insert "or may render" (4).

Page 1, line 3,—

after "held" insert "or may hold" (5).

Page 1, line 5,—

for "during" substitute "from the date of" (6).

Page 1, line 7,

add at the end "onwards" (7).

SHRI HARI VISHNU KAMATH: I beg to move:

Page 1, line 3,—

omit "have" (45).

Page 1, line 14,—

for "withdrawn" substitute "curtailed" (46).

[Shri Hari Vishnu Kamath]

Page 1, line 15,—

for "on the press was placed"

substitute "was imposed on the press" (47).

Page 1, line 15,—

(i) after "placed" insert ";

(ii) omit "and" (48).

Page 1, line 16,—

for "crippled to a large extent" substitute "severely crippled" (49).

Page 1, line 16,—

after "extent" insert ", and the parliamentary democratic system was emasculated;" (50).

Page 2, line 1,—

after "the" insert "efficient" (51).

SHRI M. KALYANASUNDARAM:

Page 1, line 7,—

add at the end—

"and in connection with any such offences which may be committed in the future" (55).

Page 1,—

omit lines 11 to 16. (56).

SHRIMATI PARVATHI KRISHNAN

(Coimbatore): I beg to move:

Page 1,—

after line 16, insert,—

"AND WHEREAS the commission of such offences as have been brought to light by the various Commissions appointed under the Commissions of Inquiry Act, 1952 as aforesaid may also be committed in future, with or without any proclamation of Emergency;" (61).

Page 1, line 17,—

after "is" insert "always" (62).

Page 2, line 3,—

after "offences" insert "such as" (63).

Page 2, line 3,—

omit "in the recitals" (64).

SHRI B. C. KAMBLE: I beg to move:

Page 1,—

for lines 1 to 7, substitute—

"WHEREAS Commissions of inquiry appointed under the Commissions of Inquiry Act, 1952 have rendered reports disclosing certain facts pertaining to the acts committed by persons who had held high public and political offices in the country and others during the operation of the Proclamation of Emergency declared on 25th June, 1975 under clause (1) of article 352 of the Constitution of India;" (73).

Page 1, line 9,—

(i) omit "also"

(ii) omit "similar" (74).

Page 1,—

for lines 17 and 18, substitute—

"AND WHEREAS the persons involved in the said offences deserve to be prosecuted;" (76)

Page 1, line 19,—

for "ordinary" substitute "existing" (77)

Page 2, line 5,—

after "additional" insert "and special" (78)

SHRI B. SHANKARANAND: I beg to move:

Page 1, lines 5 to 7,—

omit "during the operation of the Proclamation of Emergency, dated the 25th June, 1975, issued under clause (1) of article 352 of the Constitution" (61).

Page 1, lines 9 and 10,—

omit "committed during the period aforesaid" (90)

Page 1,—

omit lines 17 and 18. (92)

SHRI R. VENKATARAMAN: I beg to move:

Page 1,

for lines 1 to 18, substitute

"Where *prima facie* evidence exists of offences committed by persons who have held high public or political offices in the country." (109).

Page 1, line 19,—

for "WHEREAS" substitute "WHERE" (110)

SHRIMATI PARVATHI KRISHNAN: I beg to move:

Page 1, line 18,—

for "the said" substitute "such" (123).

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

Page 1, line 10,—

add at the end—

"and with regard to which no action had been initiated in any court of law so far" (129)

MR. SPEAKER: All these amendments to the Preamble are before the House. At last we have come to the end.

Clause 2—(Definitions)

MR. SPEAKER: We came yesterday upto clause 2. Mr. Shankaranand has already spoken on his amendments.

Is there anybody who wants to speak on Clause 2, on the amendments? (Interruptions)

I am now on Clause 2. Nobody is there?

SHRI B. SHANKARANAND: The Minister has to reply. I don't know whether he has heard what I spoke yesterday.

THE MINISTER OF HOME AFFAIRS (SHRI H. M. PATEL): Which are the amendments which they want me to reply?

MR. SPEAKER: No. 93 and No. 117 to Clause 2. (Interruptions). It is not easy for anybody. There are so many things. Surely he has to reply.

SHRI H. M. PATEL: Amendments 93 and 117 say this. The first amendment says...

MR. SPEAKER: Omit lines 18 and 19.

SHRI K. LAKKAPPA (Tumkur): Yesterday I moved my amendments.

MR. SPEAKER: They are all moved. Whatever you moved yesterday, they stand moved. Whatever you have not moved, they are not shown as moved. I have been very liberal.

SHRI K. LAKKAPPA: Yesterday all the amendments were moved.

SHRI H. M. PATEL: He wants me to omit lines 18 and 19.

Those lines read as follows:—

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

Now my reply is this. I see no particular justification for omitting these lines.

Then, with regard to amendment No. 117, it says:

substitute for line 17,—'offence' means any offence involved...

SHRI B. SHANKARANAND: That is for the sub-clause.

MR. SPEAKER: Yours is amendment No. 117.

SHRI H. M. PATEL: Amendment No. 117 says, for line 17, substitute

SHRI B. SHANKARANAND: There is some misunderstanding. This is not for line 17. In view of amendment 93, 117 is moved.

MR. SPEAKER: It supplements it. Now that you have opposed 93, we will be putting 93 and 117 together.

SHRI H. M. PATEL: The point is this. I said what it meant. Amendment 93 wants to omit those two lines. For that you are substituting. You say: "offence means any offence involved in or disclosed during the inquiry by the Commission of Inquiry appointed under the Commissions of Inquiry Act, 1952."

I don't see any reason why you should omit the words 'declaration. In relation to an offence, it means a declaration made under section 5 in respect of such offence.'

I don't want these words to be omitted.

If you do that the entire construction of the Bill would be destroyed. 'Declaration', I may say, is an important part of the whole scheme of things.

MR. SPEAKER: Mr. Lakkappa, do you want to say anything on New Clause 2A?

SHRI K. LAKKAPPA: It is a special mechanism almost. You cannot fix up any accused by bringing in or by circumventing legislation. This is a method which is not even known in the ordinary law of the land. There is no doubt that it looks very innocent, but what the real intentions are? We are opposing this Bill on the ground that this is prejudiced with certain political motives and they want to push it through hastily so that they can indict certain person or a group of persons and their motive is ulterior and political vendetta. By this Bill, they want to circumvent even the Criminal Procedure Code. The Prime Minister had stated earlier that the Criminal Procedure Code will be taken

recourse to, but unfortunately, here is a case where a special device has been adopted in order to bring in their net certain people as also innocent people whom they do not like politically or otherwise. This cannot be the object of any legislation based on rule of law. I would, therefore, request that my amendment may be accepted.

SHRI H. M. PATEL: This is not necessary at all. Prosecution will be launched if there is a *prima facie* case; there is no question of anything else.

SHRI K. LAKKAPPA: Who will decide about the *prima facie* case? Will it be a Government agency or a judicial authority?

SHRI H. M. PATEL: It is only when a *prima facie* case has been established by the competent authority that action will be taken. I do not accept this amendment.

MR. SPEAKER: Clause 3.

SHRI B. SHANKARANAND: Why not voting now?

MR. SPEAKER: We said, the voting would be at 2.30 p.m.

SHRI B. SHANKARANAND: The voting cannot be taken once for all the clauses.

MR. SPEAKER: We will put each clause separately later.

SHRI B. SHANKARANAND: Why not now? It would be relevant only now.

MR. SPEAKER: You should have raised this objection earlier. It was earlier decided that we would have this at 2.30 p.m. Members have gone home for lunch now.

SHRI R. VENKATARAMAN: The question is: What is the attitude of the House in respect of these amendments? If the amendments are rejected, then the clauses may be put to vote at 2.30

p.m. We discuss the amendments now and later put these to the vote of the House when several Members would not have heard the arguments in favour of the amendments. This is negation of all democratic discussions.

SHRI B. SHANKARANAND: The House has discussed the amendments now and you are going to take the vote later. Whether you take it now or later, the time consumed would be the same.

MR. SPEAKER: Having announced earlier that the voting will be taken at 2.30 p.m., it will be wrong on my part to take up the voting now.

SHRI B. SHANKARANAND: You can revise your decision.

MR. SPEAKER: I can revise, but the Members are not here. I cannot put the Members in the wrong.

SHRI M. KALYANASUNDARAM: Sir, the procedure is very strange. Each clause must be taken up separately and amendments must be discussed. As soon as the discussions are over, amendments must be put to vote. If the amendments are rejected, then the clauses will be put to vote. If there is no amendment to any clause, that clause will be put to vote.

MR. SPEAKER: You are absolutely right, but you should have raised this earlier.

SHRI M. KALYANASUNDARAM: When we discussed the amendments, many of the Members will not be present and when the amendments are voted, they will be present.

MR. SPEAKER: That is always so. Having made the announcement earlier, it is not proper to revise it now, Clause 3 now.

Clause 3— (Establishment of Special courts)

SHRI NARENDRA P. NATHWANI: (Junagadh): May I be permitted to speak on clause 3 and 5?

Sir, the criticism that has been levelled against the provisions of this Bill is mainly based on clause 3 and clause 5. I would take up clause 3 first. A severe criticism has been levelled against the provisions of clause 3 and Shri Stephen, hon. Leader of the Opposition went to the extent of saying this. He said that the Bill is an instrument of oppression, designed to hand down—in the uncorrected version it is 'hang down'—pre-arranged sentences and convictions through hand-picked Judges. This part of the criticism is based on the provisions of clause 3, and he says it is to be handed down to hand-picked persons, with respect to hand-picked offences, which are referred to in clause 5.

I confine myself to the first part of his criticism. I was rather surprised that this criticism came from an able lawyer who has got practice and who is accustomed to weigh his words rather carefully. Though it is totally baseless, one can understand his references to the kind of offences and offenders, but it is most unfair and most objectionable that he should say that the Bill is designed to hand-down pre-arranged sentences through hand-picked Judges. It is implicit in this statement of his, that even now, at the present stage, there is a conspiracy between the Government and some of the sitting Judges who will be nominated, and also the Supreme Court Judges to whom the appeal would lie. (Interruptions)

He is nodding his head. I do not know. (Interruptions) Whether he appreciates it or not, he would in his heart of hearts understand it. Even his nodding I am unable to understand. If it is a nod, I understand the extent and depth of his exasperation. I may say that it shows his true perception as regards the criminal nature of the acts done by several persons during the ex-Prime Minister's regime. You know the outcome to-day and you are trying in anticipation to protect and build up public opinion by saying that it was pre-arranged. When I heard this remark, I said to myself

[Shri Narendra P. Nathwani]

that the lady by proxy protests too much. I was also reminded of the Constitution (41st Amendment) Bill of 1975, passed in 1976 by the Rajya Sabha. (Interruptions)...

I am trying to defend the provision of the Bill. Before I go to it, I am saying why it is justified, and why the criticism levelled against it is unjustified. I say that this is reminiscent of the Constitution (41st Amendment) Bill which sought to confer protection to the ex-Prime Minister.

MR. SPEAKER: Please come to the amendment.

SHRI NARENDRA P. NATHWANI: I come to the nature of the amendments which are moved. Firstly, it is said that a provision like this is unprecedented. (Interruptions)

MR. SPEAKER: Mr. Nathwani is speaking on amendments moved.

SHRI B. SHANKARANAND: Sir, are you allowing a general debate on this? (Interruptions)

MR. SPEAKER: Mr. Nathwani, they have not spoken on the amendment. You can reply after they speak.

SHRI NARENDRA P. NATHWANI: Kindly look at your amendments.

MR. SPEAKER: Mr. Nathwani, I will give you an opportunity. Now amendment No. 34.

SHRI NARENDRA P. NATHWANI: It confers power upon the...

MR. SPEAKER: You do it after the Mover speaks on it. Mr. Lakkappa, now about your amendment No. 34.

You want judges to be appointed in consultation with the accused.

SHRI K. LAKKAPPA: I want to refer to the intention. I do not want to cast any aspersions on the judiciary.

MR. SPEAKER: Do not do that; ultimately you are cutting the ground under your feet.

SHRI B. SHANKARANAND: Should it be done with the consent of the Prosecutor?

SHRI K. LAKKAPPA: We have been talking about the object. The entire Special Courts Bill is maliciously brought in. In order to prove that they have stated that it was pertaining to the Emergency. I have already said that Emergency is a Parliament Act.

MR. SPEAKER: Please address yourself to the amendment.

SHRI K. LAKKAPPA: They are going to bring in special legislation because they wanted to circumvent the ordinary laws of the land; under the ordinary laws of the land they cannot punish people. But in the statement of objects and reasons, they say that the courts are congested with heavy work. If so additional courts can be created.

MR. SPEAKER: Please come to the amendment.

SHRI K. LAKKAPPA: The intention is not to relieve congestion but it is only to see that a particular person is indicated by this kind of special court. When there is special legislation for these things, I think special attitude should be taken. I do not know whether after being passed this Bill I will stand the scrutiny of the Supreme Court because anybody can challenge. It was advisory opinion. To safeguard such a kind of vilification campaign that your motive and intention was that—whatever you may say in the debate, people will say so—to avoid that, I have given my amendment. You have brought in special legislation for this purpose; nothing wrong. I do not know whom they are going to indict.

Whoever it is, let it be in consultation with that person. That would

at least create an impression in the country that there is no malice. We want to safeguard that.

SHRI B. SHANKARANAND: Parliament is requested by the government to give them extraordinary powers of appointing or nominating the judge. To control the arbitrary action of the government in nominating or appointing a judge, the Chief Justice should be brought into the picture. My amendment No. 38 reads as follows:

Page 2,

after line 29, insert—

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

If such a person is nominated how can we expect fairplay in the hands of such a Judge, if he is a Judge who has been appointed recently by the Janata Government who has been aggrieved directly or indirectly by the Emergency. What will be his attitude? It is human psychology. We are human beings whether Members of the Opposition Party or Janata Party, we all belong to the same stock, human beings. We carry our own impressions, our own emotions and our own attitudes in life. If he is a Judge who has been appointed recently and who was aggrieved directly or indirectly during the emergency, definitely what would be his attitude? What would be his emotional background? What would be his psychology in deciding such a case? Will Parliament allow the Government to have such a judge and decide the fate of an accused who is hand-picked by the Government only to secure conviction?

SHRI HARI VISHNU KAMATH: In that case, would not a *quo warranto*

writ petition in the Supreme Court be in order?

SHRI B. SHANKARANAND: You are not helping me to remove the disease. You are suggesting some remedy.

By amendment No. 84, I have suggested a substitute for the words “an adequate number of courts to be called Special Courts”. If this amendment is accepted the Clause will read like this:

“The Central Government shall, by notification in the official gazette establish additional courts to try persons involved in the various enquiries by the Commissions of Inquiry appointed under the Commissions of Inquiry Act, 1952 and such courts shall be called Special Courts.”

My intention is this. Let special courts be appointed. But they are under the Constitution additional courts only because under the Constitution Parliament has no authority to create parallel courts. That is the observation made by the Supreme Court in their advisory opinion. We cannot appoint parallel courts like High Courts. We cannot establish courts which are beyond the scope of the hierarchy suggested by the scheme in the Constitution. So, I have said that such courts should be additional courts and these courts should try all the cases disclosed by the various Commissions of Inquiry appointed under the Commissions of Inquiry Act.

My amendment No. 95 seeks to omit lines 28 and 29, which is in consonance with my earlier amendment.

So far as my amendment No. 118 is concerned...

MR. SPEAKER: It is on the same lines as the Lok Pal.

SHRI B. SHANKARANAND: Yes, Sir. This is in consonance with my

[Shri B. Shankaranand]

amendment No. 94. You know how the Lokpal Bill was introduced in this House and sent to a joint Select Committee. The then Home Minister promised this House that he would get the report of the Joint Committee within a month or two. But you know how long it dragged on. Shyam-babu was the Chairman...

MR. SPEAKER: What has that to do with this?

SHRI B. SHANKARANAND: There also the Government was trying to have arbitrary powers as they are going to do under this Bill. Since the Government have refused to send it to a Joint Committee the House is entitled to deliberate on this issue. Who should have the authority of appointing the judge? It is a moot point. The Lokpal Bill was deliberated upon for a pretty long time in the Joint Committee and attracted many amendments. Now the Government is rushing with this Bill within a couple of days without giving any time to deliberate on these things. I say that, as in the Lokpal Bill, the appointment should be done by the President. The Supreme Court has ruled that parallel courts can be appointed; so, the constitutional authority of it has been ruled in favour of the Government. The question is whether Parliament has to give this power in the hands of the Government. This is unfair. Under the scheme of the law, President can have the authority of the law and he can appoint the Judge of the Special Court in consultation with the Chairman of the Rajya Sabha, the Speaker of the Lok Sabha, the Prime Minister, the Leader of the Opposition and the leaders of the other parties. In that case, it will create credibility about the impartiality of the enquiry and the impartiality of the judiciary in the minds of the public. Otherwise Government would be treading on a very dangerous path. Now by this action Government are trying to create in the minds of the public doubts about the impartiality of the

judiciary. Let them not do this. So, I request that my amendment should be accepted.

SHRI M. KALYANASUNDARAM: I do not want to add anything to what I said yesterday. I only want to make an appeal to the Home Minister to accept my amendment so that this Bill will not be open to the charge that it enables the Government to pick and choose judges. Charges have already been levelled by the opposition that this Bill is conceived to pick and choose judges. Why should the Government be open to such charges. If my amendment is accepted, to that extent at least the charge can be warded off. So, I want my amendment to be accepted.

SHRI R. VENKATARMAN: My amendment No. 103 is a formal drafting point, where I suggest the substitution of "may" for "shall", because the word "shall" is something definitive, like there shall be two or four courts. But where discretion is given, the word should be "may". It is a drafting point and I hope the Home Minister will accept this amendment. In this particular case, the word "shall" has no meaning.

MR. SPEAKER: Of course, in courts we interpret "shall" as "may" but it would be more appropriate to use the word "may".

SHRI K. LAKKAPPA: Sir, now you have also agreed, I am sure the Home Minister will agree.

SHRI R. VENKATARMAN: Coming to my amendment No. 104, 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."

I am suggesting the omission of the words "the Central Government with the concurrence of", because it runs contrary to the Directive Principles

of the Constitution in Chapter IV, where we have said that there shall be separation of powers between the judiciary and the executive.

MR. SPEAKER: Would you take some more time?

SHRI R. VENKATARAMAN: I want another five minutes.

MR. SPEAKER: Then he may speak in the afternoon. The House stands adjourned till 2 O'Clock.

13 hrs.

The Lok Sabha adjourned for Lunch till Fourteen of the Clock

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

[MR. SPEAKER in the Chair]

SPECIAL COURTS BILL—Contd.

SHRI R. VENKATARAMAN (Madras South): I was saying just before we broke for Lunch that the assumption of power by the executive to nominate the Judge with the concurrence of the Supreme Court is a violation of the Directive Principles of the Constitution which enjoins on us to have separation of the judiciary from the executive. I shall not dilate on it because there is no time.

My second point is that so far as the Judge is concerned, it must be so arranged that the person appointed will command the confidence of not only the parties before it, but the country as a whole. After all, the administration of justice must be above party consideration and the least that could be done in the circumstances is to entrust the power of appointment of a Judge in a Special Court in the hands of the Chief Justice of the Supreme Court. This will be in consonance with the policy which has been enunciated by the Janata Party in their own manifesto and which they have ad nauseam repeated in the House. I fail to see why in this case they

should say that the Central Government should have no power to nominate the Judge. There is a lot of difference between the appointment of a Judge with the concurrence of the Chief Justice and the appointment of a Judge by the Chief Justice himself. It does not require great logic to point out this difference. The appointment by the Chief Justice will carry the imprimatur of fairness and justice and will have that effect on the public mind. So, on this ground also I suggest it.

Thirdly, as has been pointed out by Justice Singal in the dissenting opinion, there is a great danger of the possibility of a Judge suggested by the Central Government declining to serve as a Judge of the Special Court, in which case this will lead to a great deal of suspicion and the entire process will become vitiated. My submission is that many Judges would be hesitant to accept this nomination, if it comes from the Government, whereas many Judges will have absolutely no hesitation if the nomination comes from the Chief Justice of the Supreme Court. For all these reasons, I would request the Government to accept my amendments.

SHRI NARENDRA P. NATHWANI: Sir, I am opposing all these amendments. So far as appointment by the Central Government is concerned, I want to point out that there is nothing abnormal or unusual or unprecedented about it. If there is anything unprecedented in this kind of provision, it is this that the appointment or nomination by the Central Government has to be with the concurrence of the Chief Justice.

May I point out that during the post-Independence era several Acts were passed to deal with corruption or breach of public order. Three Acts have been referred to in the (1952) Supreme Court Reports in three well-known cases, and in each one of these Acts the power has been vested either in the Provincial Government or the

[Shri Narendra P. Nathwani]

Central Government. I have not come across any single Act creating special courts where the power of appointment has been vested in a body other than the Government. I may say here that in order to allay any apprehension that Government may act out of political consideration, a provision has been made that the Central Government should appoint with the concurrence of the Chief Justice.

A reference was made to the suggestion made by the Chief Justice, Mr. Chandrachud that if power were to be vested in the High Court, it would be better. While I have tremendous respect for the learned Chief Justice, with respect I want to ask: is it not implicit in this provision itself that the approval of the Chief Justice of the concerned High Court has to be obtained? Kindly bear that aspect in mind. Sir, you know from practical experience that so far as the appointment of any Judge of a High Court is concerned for a purpose like this, it would be open to the Chief Justice of the Supreme Court to recommend or suggest the name of any High Court Judge. But as regards suggestion for making any judge available for the purpose, the Chief Justice of the High Court is not at all bound. There is no subordination in such a matter. Therefore, whenever any name is suggested that a particular judge of a particular High Court should be nominated, the approval of the Chief Justice of that High Court will have to be obtained.

I know from my experience, as a sitting judge, when a State Government wanted a particular judge. It suggested to the Chief Justice: "Kindly make available a judge who is neither Hindu nor Muslim in order to try certain things, in order to investigate certain matters." The Chief Justice said no and pointed out that he would not make him available because he had specialised in criminal law or sales-tax matters. Thus, after

considering the administrative convenience, he offered two or three other names to the then Chief Minister. In substance, no doubt, it would be the Chief Justice of High Court who also would be concerned and whose approval would also have to be obtained.

Secondly, my hon. friend, Shri Shankaranand waxed eloquent that a judge who belonged to any particular political party or should have expressed any opinion, should not be nominated as a special judge. But that aspect is taken care of by reason of provision for transfer. If you care to look....

SHRIMATI PARVATHI KRISHNAN: If he has to brief the Home Minister, he can sit next to him.

SHRI NARENDRA P. NATHWANI: I am trying to meet the arguments..

SHRI C. M. STEPHEN (Idukki): To meet the arguments is the job of the Home Minister. Your job is only to argue for your own amendment, nothing more than that.

SHRI NARENDRA P. NATHWANI: I am opposing these amendments....

SHRI C. M. STEPHEN: You cannot speak on behalf of the Minister.

SHRI NARENDRA P. NATHWANI: A reference has been made to Justice Singhal's observation.....

MR. SPEAKER: Mr. Nathwani, I think you can leave it here. The Home Minister.

SHRI NARENDRA P. NATHWANI: As regards Justice Singhal's observation, I have got great respect.....

MR. SPEAKER: It is not a matter for you to deal with. The Minister will deal with it. You leave something for the Home Minister also.

SHRI NARENDRA P. NATHWANI: I am resuming my seat. But before I

do it, I merely say that so far as Justice Singhal's observations are concerned, he has not dealt with, according to my impression, according to my recollection, the aspect that such an appointment will take place with the concurrence of the Chief Justice.

SHRI SAUGATA ROY (Barrackpore): I have moved Amendment Nos. 124 and 125 to Clause 3 regarding the nomination of the judge of the Supreme Court. I have suggested that a judge can be either a High Court judge or a Supreme Court judge. I do not know in the Bill itself a Supreme Court judge is precluded from sitting in the Special Court....

MR. SPEAKER: An appeal will go to the Supreme Court.

SHRI SAUGATA ROY: The main point which has been argued earlier is regarding the nomination of a judge of the Special Court.

It has been said that he will be nominated by the Central Government in concurrence with the Chief Justice. A situation may arise in which the Chief Justice may not concur with the nomination of the Central Government. A piquant situation, in which the Government and the Chief Justice may be at loggerheads may arise. That is why, I suggest that this matter should best be left to the wisdom of the Chief Justice. As I said yesterday, the question is not only a legal question but also a political one. Government must not only be correct but should also appear to be correct. There have been controversies over the appointment of judges in the past. Then the appointment of judges in the Supreme Court was a matter of controversy, it is only natural that the appointment of judges to the Special Court, which is itself very controversial, will create more controversy. That is why I have moved this amendment. I hope Government will accept the spirit of this and accept that the Chief Justice

will be given the full powers to nominate judges to the Special Courts.

SHRI H. M. PATEL: In so far as Mr. Lakkappa's amendment is concerned, I am unable to accept it.

So far as Amendments 103 and 104, which Mr. Venkataraman has moved, are concerned, I must say that, at one point of time, I felt that there was some force in his argument about 103 where he said that 'shall' might be changed to 'may', because the courts have generally held that they are interchangeable. But in this case I am afraid I am not able to accept it because it would appear as if Parliament deliberately changed 'shall' into 'may'. This was submitted to the Supreme Court for its opinion. They have looked into it and suggested various changes. If we make any change from this on this occasion, it is liable to be interpreted differently. Therefore, I would not like to accept it. They may laugh, but I am perfectly frank and am giving the reason for it.

So far as 104 is concerned, I am afraid I cannot accept this (interruptions) Mr. Lakkappa, I have considered your point, I am sorry I am not able to accept your amendment; you only see malice in every thing Government does.

So far as 104 is concerned, I am afraid I cannot accept it, because, it has to be with the concurrence of the Chief Justice. That means, in effect, it is the Chief Justice who is nominating.

Clause 4. cognizance of cases by special courts).

SHRIMATI PARVATHI KRISHNAN (Coimbatore): The purpose of my amendment is two-fold. Firstly, we are today considering this Bill and are taking it up in an atmosphere throughout the world where there is a feeling that political vendetta is carried out in such a way as to try and eliminate one's political opponents. So the *bona fides* of the Parliament and of our people must

[Shrimati Parvathi Krishnan]

be established by saying that, whoever may be guilty of an offence which attracts capital punishment as it exists in the Criminal Procedure Code today, the normal course would be followed. This is one side of it. I am very sorry to say about it because I think the *bona fides* of the Parliament will be called into question. When political excesses are committed, when people holding high offices during the emergency committed excesses we condemn those excesses and we want them to be speedily judged in a Special Court. But this goes beyond that, because my Party stands and has always stood for abolition of capital punishment also. Therefore, pending such a major amendment from the government, at the moment at least this safeguard should be there. I hope the Minister will accept this amendment, and secondly, bring forward a legislation abolishing capital punishment altogether in the law of the land.....

SHRI HARI VISHNU KAMATH:
Separately.

SHRIMATI PARVATHI KRISHNAN:
Yes, by a separate Bill. I am asking for an assurance. But this amendment I am asking him to accept now in reference to this Bill. At the same time I am making that request to the government. The Law Minister is sitting there. This is a very appropriate and very auspicious moment. He has just come and in time. This is something abhorrent in any civilised society. You want to punish an individual for a very grave crime. Let him remain alive to go through that punishment and to serve that punishment. Capital punishment is absolutely barbaric and in our country we should do away with it altogether.

AN HON. MEMBER: What about the Communist countries?

SHRIMATI PARVATHI KRISHNAN:
We will consider that when you become a Communist country here. We

are talking about our country. Why are you talking about the Communists?

SHRI SAUGATA ROY: My amendment suggesting that the Special Courts do not have the rights to award capital punishment on anybody has been prompted by the situation that is obtaining to-day in Pakistan where a former Prime Minister, Mr. Zulfikar Ali Bhutto has been ordered to be hanged by the Supreme Court of Pakistan. While we say that our country is very different from Pakistan, while we do claim that democracy has taken firm roots in our country it is also necessary to incorporate in our statutes such provisions so that a duplication of the situation in Pakistan cannot be repeated here.

As I have said yesterday, this Special Court is for judging political offences, for judging excesses committed by people in high offices during the period of emergency. While it may be quite true that many people will bear grudges against those who committed excesses, but these grudges should not go to the illogical extreme of taking capital punishment. Since I am one of those who hold that the scope of the Special Courts Bill should be enlarged to include events in future, to include misuse of high office of power, at present and in future and not only during the emergency, I think at this stage it is very necessary to incorporate this particular clause so that situation in Pakistan may not be repeated here.

It is unfortunate that our government has not appealed like many other governments, to Pakistan for clemency for Mr. Bhutto which, I think, is a matter of shame for the government. At least it can redeem some of its lost face in this matter if it includes this clause.....

SHRI HARI VISHNU KAMATH:
The President has appealed.

SHRI SAUGATA ROY: Yes, the President in his personal capacity but

not the Prime Minister or the Government. A Bill for abolition of death penalty by Dr. Ramji Singh is already pending in the Parliament, also the opportunity for the Home Minister and the Law Minister to look into that Bill and see that capital punishment should be abolished altogether not only for political offences but also for offences of all kinds. So, while not condoning any of the excesses committed during the emergency, I strongly urge on this government to accept this amendment.

SHRI H. M. PATEL: I am sorry this question of capital punishment has been raised.....

SHRIMATI PARVATHI KRISHNAN: Let him wait till the Law Minister conclude his confabulations.

SHRI H. M. PATEL: I do not think there is any need for the hon. Member to worry about capital punishment. It is, of course, very rarely awarded and it is an exception and life imprisonment is the normal practice. But, in any case, we do not propose that through this legislation we should bring in a reforms of that nature...

SHRIMATI PARVATHI KRISHNAN: Are you for abolition of capital punishment?

SHRI H. M. PATEL: I am not.... (Interruptions) I am neither for nor against it. All I have said was.....

AN HON. MEMBER: Political offences.

PROF. P. G. MAVALANKAR (Gandhinagar): We would like to know the Government's stand on this point.

MR. SPEAKER: This is not the occasion for it. This is a Special Courts Bill.

SHRI H. M. PATEL: My hon. friend need not worry about that. I don't think Government need make

any statement on this point (Interruptions) It has an absolutely open mind. It is slightly distinguishable from blank mind.

So for I think that this is the only point that has been raised both by Shri Saugata Roy and Mrs. Parvathi Krishnan. I cannot accept it.

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

SHRI G. NARASIMHA REDDY (Adilabad): Mr. Speaker, Sir my amendment is this. After, I speak, I am only afraid that I shall receive the same reply from the Home Minister that 'I cannot accept that' Anyway, I shall keep my amendment before the House. I see that Special Courts Bill, as it has been mentioned by a good number of hon. Members, is meant only for punishing those politicians who have committed offences during Emergency. I would only like to know from Government whether they would differentiate between the offences committed by the politicians during the emergency and those committed by them during the other period. Have they got no differentiations between these two offences? Whether the Government would like to allow all the politicians to commit any type of offence without emergency? This gives a very grave doubt in the minds of the people of this country. What is the objective or intention of this Government? Would they like to see that they are interested only in punishing Shrimati Gandhi and others and allow all other politicians who are committing excesses or who may commit excess as to go free?

I appeal to the Minister through you to accept most of these amendments namely that the Bill may provide for all those political people who are holding high office or who may hold high office in future and if they commit any offence, they also should be tried in these Special Courts only.

MR. SPEAKER: On amendment Nos. 35 and 36, Shri Lakkappa has already spoken. Mr. Shankaranand's amendment No. 39 is on Clause 5. Mr. Shankaranand.

SHRI B. SHANKARANAND: Sir, in my view this clause is very important in the scheme of the Bill because the Government gets mischievous power. (Interruptions) It is full of mischief. (Interruptions)

MR. SPEAKER: Please allow him to explain.

SHRI DINEN BHATTACHARYA (Serampore): Why are you afraid of?

SHRI B. SHANKARANAND: At the moment you are sailing with them. So, you are not afraid. All right. By this Clause the Government gets the power to declare that it is of the opinion that there is a prima facie offence of the commission of an offence alleged to have been committed during the period mentioned into Preamble by a person who held high public or political office in India and that in accordance with the guidelines contained in the Preamble thereto, such offences ought to be dealt with under this Act.

The Central Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion. Sub-clause 2 is important. Such a declaration shall not be called in question in any court. Government wants to have the arbitrary power to use it viciously against Mrs. Gandhi. I shall just show you how this clause is drafted. I do not know who has drafted this clause. But the Home Minister is piloting this Bill. This clause refers to the Preamble twice. I do not know. For the first time I am finding such a wonderful drafting of a clause in the Parliament. I have never seen any clause referring to the preamble. Preamble runs full page it speaks of the moral obligation of the government. I quote:

"And whereas it is constitutional, legal and moral obligation of the

State to prosecute persons involved in the said offences."

I do not know what moral obligation the present government has. Can there be any moral obligation? You can have constitutional obligation, legal obligation but I do not know what will be the moral obligation. Whether moral obligation of Shri Charan Singh, Shri Patel or Shri Morarji Desai? Whose moral obligation? And what is the moral obligation of Janata party? Whether in the courts they want to decide the moral obligation of a political party? Can it be justifiable? Can courts entertain such a clause?

Sir, this clause runs contrary to the very preamble itself. In this clause they have referred twice to the preamble but the clause itself runs counter to the preamble. I quote:

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

The words 'and others' are missing in Clause 5. Is it the intention of the government to leave such others because although they referred to 'and others' in the preamble they are leaving it in the operative part of the clause 5. So, sir, the cat is out of the bag. So the mischief that the government wants to do with help of this bill is very evident. I warn the government and the Janata party that..

कौबरी गलबरी सिंह (होशियारपुर) : बाप का तो काबू है ।

SHRI B. SHANKARANAND: My red turban friend does not know that he may be hauled up by the next government. (Interruptions)

I only warn the Janata friends that they are setting a very bad precedent.

The government is setting a very bad precedent and I do not want this House to be a party to such action of the government. As they are setting such a bad precedent, it will recoil on them—maybe after a couple of years if not immediately. It is not that they are occupying their hereditary office. One day or the other they shall have to quit and face the music from the successful government. So, Sir, I have suggested a new Clause in place of the present Clause 5. It is my sincere request to the House that this House be not a party to giving such draconian powers to the government. So, I am introducing a new clause as I am not willing to give this power to the government. It reads like this: (Interruptions)

It is the people of this country who will decide as to who will be the Prime Minister of this country.

Sir, the new Clause which I have given reads as follows:—

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

It covers all the Commissions of Inquiry. This is what I say for the information of my friends from the CPI and others, those who want to say that this should be made applicable to all the people who are involved in the other commissions. So I have put in this. That is why I say:

'On receipt of a reference the Special Court shall hear the parties concerned as per the provisions of the Code of Criminal Procedure, 1973.'

So, Sir this is a very important and a very well-drafted amendment. It will save the Government from its

own embarrassment. It is for the Home Minister to think very calmly. I don't know why the Law Minister is not cooperating with the Home Ministry. That is how I find it, Sir. That is what I see. Creation of posts is under the provisions of the Constitution. It is the business of the Law Ministry. They have to deal with this. I do not know how the Home Minister has come to pilot the Bill. That tells us about the ill-drafting of the Bill. So, this is my doubt. The Government is not united on this. Maybe, the Janata party is also not united on this. I request Home Minister to accept my amendment.

MR. SPEAKER: Amendment No. 67—shrimati Parvathi Krishnan.

SHRIMATI PARVATHI KRISHNAN: In view of the fact that you look the clock I will try to be as brief as possible. My amendment actually has to go along with my amendment to the preamble.

MR. SPEAKER: You want permanent legislation.

SHRIMATI PARVATHI KRISHNAN: It is for extending the ambit of the Bill. I say that it will be extended for the future also. I say this because I think, it is very necessary that we establish the principle in this country of the accountability of all those who have been and who are in high places to the people, to the public and to the electorate. That is the reason. It is not only in periods of emergency that such public offices are misused but other times also. It is only this morning that I was reading in the papers—and I say this for the benefit of those hon. Members as Chaudhary Balbir Singh and Shri Gauri Shankar Ray—that one of their colleagues Shri Hukam Chand Kachwal has been asking for a Commission against one of the members of the present Cabinet. And once that is completed, what do you do? On the finding of the commission what do

(Shrimati Parvathi Krishnan)

you do? Are you going to have another Bill and another Special Courts? So, Sir, if such a commission is appointed, a Bill or a legislation like this should cover such an offence also. Various charges are being made against the Chief Minister of Andhra Pradesh regarding the manner in which his 60th birthday was being celebrated. I do not know what is to be the future of that accusation. We know what is being said about the Bihar Chief Minister. Maybe, a Commission will come. We do not know what will happen. Therefore, Sir, the underlining point of my amendment is that this principle of accountability should be established. That is why I have given this amendment. I am sure the Minister, being a very upright soul that he is, will accept it. He claims that his mind is open on these questions. I am sure his mind is not blank on this and I hope that he will accept this amendment and thereby arouse credibility in the country as a whole.

SHRI R. VENKATARAMAN:
Clause 5, as it stands, is arbitrary.
Clause 5 stands as follows:

"If the Central Government is of opinion that there is *prima facie* evidence of the commission of an offence...."

I want that it should be amended as:

"If the Central Government is satisfied that...there is *prima facie* evidence of the commission of an offence...."

You know the difference between 'the Government is of the opinion' or 'the Government is satisfied....' I do not want to take the House into a take the House into along long judicial history in the interpretation of these two terms, but one thing is very clear, and every hon. Member knows, that before a prosecution is launched or ordered, if it has to be launched on the satisfaction of the authority, then there must be an

objective examination of the evidence, whereas if it is said that it is of the opinion that *prima facie* case exists, then it is not subject to examination or enquiry by a court of law.

There can be misuse of authority not only in the past Government, but also in the present and in the future Governments. In order to safeguard the rights of citizens whoever that may be when we are putting on the Statute Book something which gives power to the Government to launch prosecution, at least the elementary safeguard that the Government must be satisfied that there is a *prima facie* evidence for such prosecution is necessary. Therefore, the elementary thing that the Government can do is that before they say that a particular prosecution should be launched or a case should be referred to the special courts, the Government must be satisfied, it should not be merely of the opinion that there is a *prima facie* case and that satisfaction should be subject to scrutiny by the courts.

This clause read with sub-section (2) makes it all the more arbitrary. Sub-clause (1) says:

"If the Central Government is of the opinion that there is *prima facie* evidence of the commission of an offence....."

Then sub-clause (2):

"Such declaration shall not be called in question in any court".

Even the opinion whether it is based on evidence, sufficient evidence or no evidence can not be called in question. This is the very clause which everybody has been objecting in this country and most vociferously by the other side, and now they themselves come forward saying that such declaration shall not be called in question in any court. Should we have double standards? Are we indulging in double talks? What is it that we are doing? If you say that the Government is going

to be objective in this matter, then the protection that is ordinarily afforded in any statute of this kind, particularly a criminal statute of this kind, is that before a person is prosecuted or a charge is filed against him, the Government must be satisfied that there is a *prima facie* case. Even if you say that there is *prima facie* evidence, you cannot bar the jurisdiction of the court to go into it at all. This makes it doubly arbitrary and I do not understand how they can defend this. This is the very clause which they objected in the Constitutional Amendment Bill and in all the other legislations passed. Now they come forward and put the same clause that such declaration shall not be called in question in any court. This is ridiculous and they cannot justify it before the Parliament and the public.

I would, therefore, suggest that my amendment that the Government must be satisfied that there is *prima facie* evidence of the commission of an offence and that the courts should have the jurisdiction to go into these matters must be accepted by the Home Minister.

My other amendments to this clause are consequential.

MR. SPEAKER: In the morning, it was objected to by some hon. Members that the voting on the amendment to the clauses should have been taken up immediately after the discussion was over. There was an omission on my part. We will now take up voting on clauses 2 to 6.

Clause

MR. SPEAKER: In Clause 2, there are 3 amendments—2 of Mr. Shankaranand, viz. Nos. 93 and 117, and one of Mr. Lakkappa, viz., No. 57, which is a new clause. Now I put the amendment No. 93 of Mr. Shankaranand.

Amendment No. 93 was put and negatived.

MR. SPEAKER: I now put amendment No. 117 of Mr. Shankaranand.

Amendment No. 117 was put and negatived.

MR. SPEAKER: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

MR. SPEAKER: Now I put the amendment of Mr. Lakkappa, for new clause 2A, viz., amendment No. 57.

Amendment No. 57 was put and negatived.

MR. SPEAKER: We now come to clause 3. Amendment No. 34 by Mr. Lakkappa. I put it now:

Amendment No. 34 was put and negatived.

MR. SPEAKER: Now I put Mr. Shankaranand's amendment No. 38.

Amendment No. 38 was put and negatived.

MR. SPEAKER: Now I put amendment No. 58, of Mr. Kalyanasundaram. The question is:

Page 2, line 28, —

omit "the Central Government with the concurrence of" (58)

The Lok Sabha divided:

Division No. 3]

[14.56 hrs.

AYES

Ahmed Hussain, Shri

Alagesan, Shri O. V.

Austin, Dr. Henry

Badri Narayan, Shri A. R.

Banatwalla, Shri G. M.

Basu, Shri Dhirendranath

Chettri, Shri K. B.

Dabhi, Shri Ajitsinh

Deo, Shri V. Kishore Chandra S.

Desai, Shri Dajiba

Dhondge, Shri Keshavrao

Faleiro Shri Edurado
Gogoi Shri Tarun
Gomango, Shri Giridhar
Gotkhinde, Shri Annasaheb
Haren Bhumi Shri
Jaffer Sharief, Shri C. K.
Jeyalakshmi, Shrimati V.
Kadam, Shri B. P.
Kalyanasundaram, Shri M.
Kamakshaiah, Shri D.
Khan, Shri Ismail Hossain
Kidwai, Shrimati Mohsina
Kolur, Shri Rajshekhar
Krishnan, Shrimati Parvathi
Kunhambu, Shri K.
Lakkappa, Shri K.
Lakshminarayanan, Shri M. R.
Laskar, Shri Nihar
Mallikarjun, Shri
Meduri, Shri Nageshwara Rao
Mirdha, Shri Nathu Ram
Mishra, Shri G. S.
Murthy, Shri M. V. Chandrashekhara
Pajanor, Shri A. Bala
Parvati Devi, Shrimati
Patil, Shri Vijayakumar N.
Rajan, Shri K. A.
Raju, Shri P. V. G.
Rao, Shri M. S. Sanjeevi
Rao, Shri P. V. Narasimha
Rath, Shri Ramachandra
Rathawa, Shri Amarsinh V.
Reddy, Shri G. Narsimha
Reddy, Shri S. R.
Roy, Shri Saugata
Shankaranand, Shri B.
Shrangare, Shri T. S.
Stephen, Shri C. M.
Thorat, Shri Bhausaheb
Unnikrishnan, Shri K. P.
Venkataraman, Shri R.

Venkatareddy, Shri P.
Venkatasubbaiah, Shri P.
NOES
Abdul Latif, Shri
Ahuja, Shri Subhash
Amat, Shri D.
Amin, Prof. R. K.
Arif Beg, Shri
Bahuguna, Shri H. N.
Balak Ram, Shri
Balbir Singh, Chowdhry
Barakataki, Shrimati Renuka Devi
Barnala, Shri Surjit Singh
Basappa, Shri Kondajji
Berwa, Shri Ram Kanwar
Bharat Bhushan, Shri
Bhattacharya, Shri Dinen
Brahm Perakash, Chaudhury
Brij Raj Singh, Shri
Chand Ram, Shri
Chandra Shekhar, Shri
Chandra Shekhar Singh, Shri
Chaturbhuj, Shri
Chaturvedi, Shri Shambhu Nath
Chaudhary, Shri Motibhai R.
Chaudhry, Shri Ishwar
Chauhan, Shri Bega Ram
Chauhan, Shri Nawab Singh
Chavda, Shri K. S.
Chowhan, Shri Bharat Singh
Dandavate, Prof. Madhu
Das, Shri S. S.
Dasgupta, Shri K. N.
Dawn, Shri Raj Krishna
Desai, Shri Morarji
Deshmukh, Shri Nanaji
Deshmukh, Shri Ram Prasad.
Dhandayuthapani, Shri V.
Dharis, Shri Mohan
Dhillon, Shri Iqbal Singh
Digvijoy Narain Singh, Shri
Dutt, Shri Asoke Krishna
Fazlur Rahman, Shri

Fernandes, Shri George

Ganga Bhakt Singh, Shri

Gattani, Shri R. D.

Gawai, Shri D. G.

Ghosal, Shri Sudhir

Gore, Shrimati Mrinal

Goyal, Shri Krishna Kumar

Guha, Prof. Samar

Gupta, Shri Kanwar Lal

Hanukesh Bahadur, Shri

Jagjivan Ram, Shri

Jethmalani, Shri Ram

Kaiho, Shri

Kaldate, Dr. Bapu

Kamath, Shri Hari Vishnu

Kamble, Shri B. C.

Kamble, Shri Purushottam

Khan, Shri Ghulam Mohammad

Khan, Shri Kanwar Mahmud Ali

Khan, Shri Mohd. Shamsul Hasan

Khrime, Shri Rinching Khandu

Kisku, Shri Jadunath

Krishan Kant, Shri

Kureel, Shri Jwala Prasad

Kureel, Shri R. L.

Kushwaha, Shri Ram Naresh

Liaquat Hussain, Shri Syed

Machhand, Shri Raghubir Singh

Mahala, Shri K. L.

Mahi Lal, Shri

Mahishi, Dr. Sarojini

Maiti, Shrimati Abha

Malhotra, Shri Vijay Kumar

Malik, Shri Mukhtiar Singh

Mandal, Shri Dhanik Lal

Mandal, Shri Mukunda

Mangal Deo, Shri

Mankar, Shri Laxman Rao

Meerza, Shri Syed Kazim Ali

Mehta, Shri Ajit Kumar

Mehta, Shri Prasannbhai

Mhalgi, Shri R. K.

Miri, Shri Govind Ram

Mishra, Shri Janeshwar

Mishra, Shri Shyamnandan

Mondal, Dr. Bijoy

Munda, Shri Karia

Nahata, Shri Amrit

Nathuni Ram, Shri

Nayak, Shri Laxmi Narain

Nayar, Dr. Sushila

Negi, Shri T. S.

Onkar Singh, Shri

Oraon, Shri Lalu

Pandey, Shri Ambika Prasad

Parmer, Shri Natwarlal B.

Parulekar, Shri Bapusaheb

Paswan, Shri Ram Vilas

Patel, Shri H. M.

Patel, Km. Maniben Vallabhbhai

Patidar, Shri Rameshwar

Patil, Shri S. D.

Phirangi Prasad, Shri

Pipil, Shri Mohan Lal

Rai, Shri Gauri Shankar

Rai, Shri Narmada Prasad

Rajda, Shri Ratansinh

Ram Dhan, Shri

Ram Kinkar, Shri

Ram Sagar, Shri

Ramachandran, Shri P.

Ramdas Singh, Shri

Rangnekar, Shrimati Ahilya P.

Ranjit Singh, Shri

Rao, Shri Jagannath

Rathor, Dr. Bhagwan Dass

Rodrigues, Shri Rudolph

Roy, Dr. Saradish

Saha, Shri A. K.

Sahoo, Shri Ainthu

Sai, Shri Larang

Sai, Shri Narhari Prasad Sukhdeo

Saini, Shri Manohar Lal

Samantasinhera, Shri Padmacharan

Saran, Shri Daulat Ram
Shah, Shri D. P.
Shah, Shri Surath Bahadur
Shakya, Shri Daya Ram
Shanti Devi, Shrimati
Sharma, Shri Jagannath
Sharma, Shri Rajendra Kumar
Shastri, Shri Bhanu Kumar
Shashtri, Shri Ram Dhari
Shastri, Shri Y. P.
Shejwalkar, Shri N. K.
Sher Singh, Prof.
Shrikrishna Singh, Shri
Shukla, Shri Chimanbhai H.
Shukla, Shri Madan Lal
Sikander Bakht, Shri
Sinha, Shri Satyendra Narayan
Sukhendra Singh, Shri
Suman, Shri Ramji Lal
Suman, Shri Surendra Jha
Suraj Bhan, Shri
Swamy, Dr. Subramaniam
Tej Pratap Singh, Shri
Thakre, Shri Kushabhau
Tiwary, Shri Ramanand
Tripathi, Shri Madhav Prasad
Tripathi, Shri Ram Prakash
Tyagi, Shri Om Prakash
Ugrasen, Shri
Vajpayee, Shri Atal Bihari
Varma, Shri Ravindra
Verma, Shri Brij Lal
Verma, Shri Chandradeo Prasad
Verma, Shri Hargovind
Yadav, Shri Jagdambi Prasad
Yadav, Shri Ramjilal
Yadav, Shri Roop Nath Singh
Yadvendra Dutt, Shri
Zulfikarullah, Shri

MR. SPEAKER: Subject to correction, the result* of the division is Ayes 54. Noes 163.

The motion was negatived

MR. SPEAKER: I shall now put amendments Nos. 94 and 95 by Shri Shankaranand:

Amendments Nos. 94 and 95 were put and negatived.

MR. SPEAKER: Amendment No. 103 by Shri Venkataraman.

SHRI R. VENKATARAMAN: If they do not want to accept any improvement in drafting, I leave it to their own good sense.

MR. SPEAKER: So, you are not pressing it?

SHRI R. VENKATARAMAN: No.

Amendment No. 103 was, by leave withdrawn.

MR. SPEAKER: Amendment No. 104 is the same as No. 58 already disposed of.

I shall now put amendment No. 118 moved by Shri Shankaranand.

Amendment No. 118 was put and negatived.

SHRI SAUGATA ROY: I have two amendments Nos. 124 and 125. Amendment No. 125 is similar to that of Mr. Kalyanasundaram's.

MR. SPEAKER: So, it goes. You do not press Amendment No. 124.

SHRI SAUGATA ROY: No.

Amendment Nos. 124 and 125 were by leave withdrawn.

MR. SPEAKER: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted
Clause 3 was added to the Bill.

*The following Members also recorded their voted for NOES:

Sarvashri Charan Singh, Satish Agarwal, Narendra P. Nathwani, Raghbir Singh, Brij Bhushan Tiwary Mahamaya Prasad Sinha, Sharad Yadav Hukam Ram, Shrimati Rano M. Shalzaand Shri Pabitra Mohan Pradhan.

Clause 4

MR. SPEAKER: There are two amendments Nos. 66 and 72.

I shall first put Amendment No. 66 by Shrimati Parvathi Krishnan to the vote of the House

Amendment No. 66 was put and negatived.

MR. SPEAKER: Amendment No. 72 by Shri Saugata Roy is covered by the earlier amendment.

Amendment No. 72 was, by leave, withdrawn.

MR. SPEAKER: The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill

Clause 5

SHRI R. VENKATARAMAN: The Minister has not replied to the points which I made.

MR. SPEAKER: If he does not want to reply, I cannot force him to reply. He can say, "I have no reply".

SHRI B. SHANKARANAND: It will be contempt of the House if he says he has no reply.

MR. SPEAKER: Have you anything more to say, Mr. Minister?

15 hrs.

SHRI H. M. PATEL: I would only like to say, since Mr. Venkataraman is anxious that I have to make observations on what he has said....

AN HON. MEMBER: Reply.

SHRI H. M. PATEL: Observations in this case mean reply.

Mr. Venkataraman was very much concerned with the fact that Clause 5, as it stands, will be disastrous and so also Mr. Shankaranand was concerned about it. I would like to say that this

point was specifically considered by the Supreme Court and, if I may refer to pp. 77-78, you will see that they consider that Clause 5 is perfectly sound and it does not in any way contravene anything that my hon. friends on the other side have said. This is absolutely in accord with all the due canons of justice.

SHRI R. VENKATARAMAN: He has not understood my point at all. What I said was not about the legality....

SHRI H. M. PATEL: I do not think it is necessary for you to reiterate all that you have said.

SHRI R. VENKATARAMAN: I am not reiterating. I am just saying that you did not reply to any of the points raised. What I said was not about the legality. What the Supreme Court decided was only about the legality. What I said was that in respect of every criminal charge, a person is entitled to all the principles of justice. He has to say on that.

SHRI H. M. PATEL: What Mr. Venkataraman says is that I should accept everything that he says and then only I will be conforming to all the principles of justice. The Supreme Court is as well aware of what is proper in such cases.

MR. SPEAKER: Now, there is the Amendment No. 8 moved by Shri G. Narsimha Reddy.

SHRI G. NARSIMHA REDDY: I am not pressing.

MR. SPEAKER: Has he the leave of the House to withdraw his Amendment?

SOME HON MEMBERS: Yes.

Amendment No. 8 was, by leave, withdrawn.

MR. SPEAKER: I now take up Amendment No. 35 and 36 moved by Shri Lakkappa. I will first put Amendment No. 35 to vote.

Amendment No. 35 was put and negatived

MR. SPEAKER: Amendment No. 36 is to Clause 5. Clause 5 says that when the Government gives an opinion that there is a *prima facie* case and makes a declaration, then it can be referred to the Special Court and the opinion of the Government shall be final and it cannot be called in question. Two suggestions have been made that in place of opinion, it must be satisfaction and barring the jurisdiction of the courts must be deleted.

The question is:

"Page 2,—

omit line 40." (36)

The Lok Sabha divided:

Division No. 4] [15.10 hrs.

AYES

Ahmed Hussain, Shri
Alagesan, Shri O. V.
Badri Narayan, Shri A. R.
Banatwalla, Shri M. G.
Basu, Shri Dhirendranath
Chettri, Shri K. B.
Dabhi, Shri Ajitsinh
Desai, Shri Dajiba
Dhondge, Shri Keshavrao
Faleiro, Shri Eduardo
Gogoi, Shri Tarun
Gomango, Shri Giridhar
Gotkhinde, Shri Annasaheb
Haren Bhumij, Shri
Jaffer Sharief, Shri C. K.
Jeyalakshmi, Shrimati V.
Kadam, Shri B. P.

Kalyanasundaram, Shri M.
Kamakshaiah, Shri D.
Khan, Shri Ismail Hossain
Kidwai, Shrimati Mohsina
Kolur, Shri Rajshekhar
Lakkappa, Shri K.
Lakshminarayanan, Shri M. R.
Laskar, Shri Nihar
Mallikarjun, Shri
Meduri, Shri Nageswara Rao
Mirdha, Shri Nathu Ram
Mishra, Shri G.S.
Murthy, Shri M. V. Chandrashekhara
Pajanor, Shri A. Bala
Parvati Devi, Shrimati
Patil, Shri Vijaykumar N.
Rajan, Shri K. A.
Raju, Shri P. V. G.
Rao, Shri M. S. Sanjeevi
Rao, Shri P. V. Narasimha
Rath, Shri Ramachandra
Reddy, Shri G. Narsimha
Reddy, Shri S. R.
Shankaranand, Shri B.
Shrangare, Shri T. S.
Stephen, Shri C. M.
Thorat, Shri Bhausaheb
Venkataraman, Shri R.
Venkatarreddy, Shri P.
Venkatasubbaiah, Shri P.

NOES

Abdul Lateef, Shri
Agrawal, Shri Satish
Ahuja, Shri Subhash
Amat, Shri D.
Amin, Prof. R. K.
Arif Beg, Shri
Bahuguna, Shri H. N.
Balak Ram, Shri
Balbir Singh, Chowdhry
Barakatali, Shrimati Renuka Devi

Barnala, Shri Surjit Singh
Basappa, Shri Kondajji
Bhadoria, Shri Arjun Singh
Bharat Bhushan, Shri
Borole, Shri Yashwant
Brahm Perakash, Chaudhury
Brij Raj Singh, Shri

Chakravarty, Prof. Dilip
Chand Ram, Shri
Chandan Singh, Shri
Chandra Pal Singh, Shri
Chandra Shekhar, Shri
Chandra Shekhar Singh, Shri
Charan Singh, Shri
Chaturbhuj, Shri
Chaturvedi, Shri Shambhu Nath
Chaudhary, Shri Motibhai R.
Chaudhry, Shri Ishwar
Chauhan, Shri Bega Ram
Chauhan, Shri Nawab Singh
Chavda, Shri K. S.
Chowhan, Shri Bharat Singh

Dandavate, Prof. Madhu
Das, Shri S. S.
Dasgupta, Shri K. N.
Dawn, Shri Raj Krishna
Desai, Shri Morarji
Deshmukh, Shri Nanaji
Deshmukh, Shri Ram Prasad
Dhandayuthapani, Shri V.
Dharia, Shri Mohan
Dhillon, Shri Iqbal Singh
Digvijoy Narain Singh, Shri
Dutt, Shri Asoke Krishna

Fazlur Rahman, Shri
Fernandes, Shri George

Ganga Bhakt Singh, Shri
Gattani, Shri R. D.
Gawal, Shri D. G.
Ghosal, Shri Sudhir
Gore, Shrimati Mrinal
Goyal, Shri Krishna Kumar

Guha, Prof. Samar
Gupta, Shri Kanwar Lal

Harikesh Bahadur, Shri
Hukam Ram, Shri

Jagjivan Ram, Shri
Jethmalani, Shri Ram

Kaiho, Shri
Kailash Prakash, Shri
Kaldate, Dr. Bapu
Kamath, Shri Hari Vishnu
Kaushik, Shri Purushottam
Khan, Shri Kunwar Mahmud Ali
Khan, Shri Mohd. Shamsul Hasan
Khrame, Shri Rinchang Khandu
Kisku, Shri Jadunath
Krishan Kant, Shri
Kureel, Shri R. L.
Kushwaha, Shri Ram Naresh

Liaquat Husain, Shri Syed

Machhand, Shri Raghubir Singh
Mahala, Shri K. L.
Mahi Lal, Shri
Mahishi, Dr. Sarojini
Maiti, Shrimati Abha
Malhotra, Shri Vijay Kumar
Malik, Shri Mukhtiar Singh
Mandal, Shri Dhanik Lal
Mangal Deo, Shri
Mankar, Shri Laxman Rao

Mehta, Shri Ajit Kumar
Menta, Shri Prasannabhai
Mhalgi, Shri R. K.
Miri, Shri Govind Ram
Mishra, Shri Janeshwar
Mishra, Shri Shyamnandan
Mondal, Dr. Bijoy
Munda, Shri Karia

Nahata, Shri Amrit
Nathuni Ram, Shri
Nathwani, Shri Narendra P.

Nayak, Shri Laxmi Narain

Nayar, Dr. Sushila

Negi, Shri T. S.

Onkar Singh, Shri

Oraon, Shri Lalu

Pandey, Shri Ambika Prasad

Parmar, Shri Natwarlal B.

Parulekar, Shri Bapusaheb

Paswan, Shri Ram Vilas

Patel, Shri H. M.

Patel, Km. Maniben Vallabhbhai

Patel, Shri Nanubhai N.

Patidar, Shri Rameshwar

Patil, Shri S. D.

Phirangi Prasad, Shri

Pradhan, Shri Pabitra Mohan

Raghubir Singh, Shri

Rai, Shri Gauri Shankar

Rai, Shri Narmada Prasad

Raj Narain, Shri

Rajda, Shri Ratansinh

Ram Dhan, Shri

Ram Gopal Singh, Chaudhury

Ram Kinkar, Shri

Ram Sagar, Shri

Ramachandran, Shri P.

Ramdas Singh, Shri

Ramji Singh, Dr.

Rangnekar, Shrimati Ahilya P.

Rao, Shri Jagannath

Rathor, Dr. Bhagwan Dass

Rodrigues, Shri Rudolph

Roy, Dr. Saradish

Saha, Shri A. K.

Sahoo, Shri Ainthu

Sai, Shri Larang

Sai, Shri Narhari Prasad Sukhdeo

Saini, Shri Manohar Lal

Samantasinghera, Shri Padmacharan

Saran, Shri Daulat Ram

Satapathy, Shri Devendra

Shah, Shri D. P.

Shah, Shri Surath Bahadur

Shaiza, Shrimati Rano M.

Shakya, Shri Daya Ram

Shanti Devi, Shrimati

Sharma, Shri Jagannath

Sharma, Shri Rajendra Kumar

Shastri, Shri Bhanu Kumar

Shastri, Shri Ram Dhari

Shastri, Shri Y. P.

Shejwalkar, Shri N. K.

Sher Singh, Prof.

Shrikrishna Singh, Shri

Shukla, Shri Chimanbhai H.

Shukla, Shri Madan Lal

Sikander Bakht, Shri

Sinha, Shri M. P.

Sinha, Shri Satyendra Narayan

Sukhendra Singh, Shri

Suman, Shri Ramji Lal

Suman, Shri Surendra Jha

Suraj Bhan, Shri

Swamy, Dr. Subramaniam

Tej Pratap Singh, Shri

Thakre, Shri Kushabhau

Tiwari, Shri Brij Bhushan

Tiwary, Shri Ramanand

Tripathi, Shri Madhav Prasad

Tripathi, Shri Ram Prakash

Tyagi, Shri Om Prakash

Ugrasen, Shri

Varma, Shri Ravindra

Verma, Shri Brij Lal

Verma, Shri Chandradeo Prasad

Verma, Shri Hargovind

Yadav, Shri Jagdambi Prasad

Yadav, Shri Ramjilal

Yadav, Shri Sharad

Yadav, Shri Roop Nath Singh

Yadvendra Dutt, Shri

Zulfikarullah, Shri

MR. SPEAKER: Subject to correction, the Result* of the division is: Ayes 47; Noes 174.

The motion was negatived.

MR. SPEAKER: I will now put amendment No. 39 of Shri Shankaranand to vote.

Amendment No. 39 was put and negatived.

MR. SPEAKER: I will now put amendment No. 67 of Shrimati Parvathi Krishnan because she wants it to be a permanent one and not confined only to the emergency. The question is:

Page 2, line 34—

Omit "during the period mentioned in the preamble hereto" (67)

The motion was negatived.

MR. SPEAKER: Now amendment No. 105 by Shri Venkataraman. Are you pressing your amendment?

SHRI R. VENKATARAMAN: I am not pressing.

Amendment No. 105 was, by leave, withdrawn.

SHRI R. VENKATARAMAN: About my amendment No. 106. There is some confusion because the preamble has been brought into the section and this is an amendment which relates to the Preamble. If my amendment to the Preamble is carried, then you may take up this.

MR. SPEAKER: Not necessary. I will put No. 106 to the vote of the House.

Amendment No. 106 was put and negatived.

MR. SPEAKER: Now I will put amendment No. 112 to vote.

Amendment No. 112 was put and negatived.

MR. SPEAKER: The question is:

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

Clause 6

MR. SPEAKER: Mr. Shankaranand.

SHRI B. SHANKARANAND: I have moved my amendments.

MR. SPEAKER: You have moved. But would you like to say anything in the matter?

SHRI B. SHANKARANAND: Yes, Sir.

Sir, you see in clause 6 a new word has been introduced. I will read the clause:

"On such declaration being made in respect of any offence, notwithstanding anything in the Code, any prosecution in respect of such offence shall be instituted only in a Special Court designated by the Central Government and any prosecution in respect of such offence pending in any court shall stand transferred to a Special Court designated by the Central Government."

In the previous clauses the word used is 'nominated'. A judge shall be nominated. Then in clause 3, a Court shall be established. What is this 'designated'? Does it refer to the Judges or does it refer to the courts? Why have they put this new word 'designated'? The Special Court is to be 'established'—that can understand. As

*The following Members also recorded their votes:

Ayes: Shrimati P. Chavan, Shri R. R. Patel, Amarsinh V. Rathawa.

Noes: Shri Ghulam Mohammad Khan, Shri Mohan Lal Pipil, Jwala Prasad Kureel.

[Shri B. Shankaranand]

per the constitutional provision, a Special Court can be established and it can be established under clause 3. Now the Judge is to be 'nominated.' All right. They have passed that clause that the Judge shall be nominated. Here, the Central Government was designating the court. Now, what is this? I do not understand this mystery of 'designation'. They cannot designate a court. They can establish a court. They can designate a Judge. But here they say 'Special Court designated by the Central Government'. What is 'designated'? I do not understand. What meaning have they understood? I do not know. I want to know from the Law Minister or the Home Minister.

Sir, I do not want to give this power to the government. I say this should be omitted as this will give much power, an arbitrary power to the government to do any mischief against any one because they will appoint any Judge and they will appoint any court because their declaration cannot be challenged in any court of law.

SHRI B. C. KAMBLE: Sir, I will be very brief. I have two points only. First point is this. So far as making a declaration is concerned, it will be followed by the institution of prosecution. There is now a real difficulty so far as such of the cases which are already instituted and which have already been decided and a revision appeal is pending is concerned. Therefore, my purpose is to separate the declaration from the institution of the trial. Otherwise, only those cases which are so far not instituted alone will be conducted and those cases which are already pending prior to your declaration, the cases cannot be declared and such of the cases which are already decided and a revision appeal is made, those cannot be covered by this. This is a lacuna to which I want to draw the Government's attention. I am doing so, so that Government may examine that lacuna.

SHRI O. V. ALAGESAN (Arkonam): Sir, in this House we have the strange spectacle that the hon. Mover does not meet the arguments made. We also see another strange spectacle and that is, my hon. friend, Shri Nathwani, anticipated the arguments and tried to meet them. I think you will direct the Home Minister to properly reply to the points raised on the floor of the House.

My amendment seeks to amend the scheme of the Bill slightly. As the Supreme Court observed, the Bill is now before us in flesh and blood. I would like to cut out some flesh and draw out some blood purely in the interest of the health of the Bill. There are now two categories of emergency cases—one is; the declaration of cases will be made and prosecutions will be launched before the Special Courts; the other set of cases has already been taken up and they are in various stages of being processed through the courts—may be the magistrate courts, district courts or appellate court—High Court. I desire by my amendment that it should not appear that we try to give retrospective effect to the principles and procedure laid down in this Bill by bringing in cases which are already before some courts of law.

Sir, I seek to exempt that. They may be carried on or they may be processed in the usual course. Only such of those cases about which the declaration will be made hereafter can be put before the special courts. That is my amendment. Sir, I may here read out what the Supreme Court has said. They have said that this Bill has tried to put both these things together. I quote:

"The Bill, in short, excludes the existence of two parallel jurisdictions in the same field."

SHRI HARI VISHNU KAMATH: Is that the majority opinion?

SHRI O. V. ALAGESAN: Yes, that is the majority opinion. This ensures effectively that all offences, which

fall within the scope shall be tried by the Special Courts only and by no other court. That is what they have said. They have only explained the scheme of the Bill but they have not opined against the scheme envisaged in my amendment. It is possible that there can be two parallel jurisdictions and the old cases can be carried on in the ordinary parts of the land. Such of the cases for which the declaration will be made may be taken up by the Special Courts. That is my point.

SHRI H. M. PATEL: There is nothing that I can add. The wordings are:

"Any prosecution in respect of such offence pending in any court shall stand transferred to a special court designated by the Central Government".

These are the words which he wants to omit. As he himself read out, the Supreme Court has gone into it and considered that there should not be two jurisdictions. I cannot accept it.

MR. SPEAKER: I now put amendments Nos. 40, 41 and 42 moved by Shri B. Shankaranand to the vote of the House.

Amendments Nos. 40 to 42 were put and negatived.

MR. SPEAKER: Mr. Kamble, are you pressing your amendment No. 80?

SHRI B. C. KAMBLE: No, Sir, I would like to withdraw my amendment.

Amendment No. 80 was, by leave withdrawn.

MR. SPEAKER: I now put amendment No. 114 of Shri O. V. Alagesan to the vote of the House.

Amendment No. 114 was put and negatived.

MR. SPEAKER: The question is:

"That clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

Clause 7

MR. SPEAKER: Mr. Kamble, are you pressing your amendment No. 81?

SHRI B. C. KAMBLE: No, Sir, I would like to withdraw my amendment.

Amendment No. 81 was, by leave, withdrawn.

MR. SPEAKER: Mr. Shankaranand, there are amendments No. 96 and 97 in your name.

SHRI B. SHANKARANAND: Sir, the clause as it is reads:

"If at the date of the declaration in respect of any offence an appeal or revision against any judgment or order in a prosecution in respect of such offence, whether pending or disposed of is itself pending in any court of appeal or revision, the same shall stand transferred for disposal to the Supreme Court."

Sir, in view of my other amendments which I have suggested to various other clauses, I say that it first should go to the High court or the Supreme Court as the case may be. Sir, I request the Home Minister to pay attention to my point. (*Interruptions*). If it is pending in the Sessions Court it should go to the High Court and if it is pending in the High Court it should go to the Supreme Court.

SHRI R. VENKATARAMAN: Sir, my point in amendment No. 108 is that though certain cases may be referred to the Special Courts yet there are cases which are already decided and/or pending in appeal and there, the normal Criminal Procedure Code should apply and there is no reason why it should go to the Supreme Court straight. Sir, as the special courts are manned by the High Court judges it is presumed that there is better appreciation of the evidence by them and that there is better consideration of the case at the first stage itself, yet in regard to the cases which have been dealt with at the

[Shri R. Venkataraman]

other subordinate courts, it may not be so. That is why the Cr. P.C. has itself provided a series of appeal and revisor to the High Court. To deprive an accused in this case of the normal procedure which he is entitled to and eligible under Cr. P.C. to deprive him justice. That is my point.

If cases were heard by a Trial Judge who is a judge of the High Court and if there is an appeal to the Supreme Court, then, a certain consideration of the case by the High Court has already taken place. Therefore, the Supreme Court itself will be able to deal with the facts and the law. But where a case has not been dealt with by a Judge of the High Court but it has been dealt with by the subordinate judiciary, then the normal protection given under the Cr. P.C. for appeal and revision should be available to him. Otherwise, you will be depriving a man of his judicial right. Therefore I press my amendment.

MR. SPEAKER: Amendment No. 115. Mr. Alagesan.

SHRI O. V. ALAGESAN: Amendment No. 115 is in line with my previous one. But it is slightly different also...

MR. SPEAKER: More or less similar.

SHRI O. V. ALAGESAN: Not exactly similar. Now, this is with reference to cases which have decided and which are likely to go on appeal or which are pending in an Appeal Court. At least 6 months period should be given to the normal Appeal Court to decide the case. And if it is not possible for the court to decide the cases within that period, then only it should stand automatically transferred to the Supreme Court. That is all that my amendment seeks to bring about. The Supreme Court have stated: "Speedy termination of prosecutions under the Bill is the heart and soul of the Bill." That is what has been

claimed. We shall be able to know whether the ordinary courts are able to dispose of these cases in a speedy manner. If they are found incapable of doing it, then only it should be transferred and not automatically done. That is my amendment.

MR. SPEAKER: Amendment No. 19. Mr. Shankaranand.

SHRI B. SHANKARANAND: I am not going to elaborate this because I have already opposed giving authoritarian power to the Government, the authority of making declaration. Under Clause 5 I have said that it will be objectionable for me to keep this power. I have said this about clause 7. So, I have given my amendment.

MR. SPEAKER: These can be put together—Amendments Nos. 96 and 97.

I will now put amendments Nos. 96, 97 and 119 moved by Shri Shankaranand to the vote of the House.

Amendments Nos. 96, 97 and 119 were put and negatived.

MR. SPEAKER: I will now put Amendment No. 108 of Shri R. Venkataraman to vote.

Amendment No. 108 was put and negatived.

MR. SPEAKER: We come to Amendment No. 115, by Shri Alagesan. I will now put Amendment No. 115 to the vote of the House.

Amendment No. 115 was put and negatived.

MR. SPEAKER: We will now take up the clause. Mr. Kamath, I may just point out to you that whatever clarification they give, is not binding on the court.

SHRI HARI VISHNU KAMATH: Please allow me to make my submission. Parliament also has to uphold its right. On a point of clarification, Sir, I would like the Minister to throw light on one of the obscure points in

this clause. You are well aware that last week two of the offenders during the emergency period were convicted and sentenced and their appeals are pending. Now, Sir, when this clause comes into force would it be possible—I am talking only of one of the accused, Shri Shukla, and not the other, Shri Sanjay Gandhi, because he held neither public nor political office during the emergency, and so he cannot come within the purview of this Act?...

MR. SPEAKER: I don't think, Mr. Kamath, that the Minister should give any assurance because this is a matter that will be decided by the court.

SHRI HARI VISHNU KAMATH: Government should give a clarification.

MR. SPEAKER: No. I am not allowing it. Any expression he might make might prejudice the court one way or the other. No, please, Mr. Kamath.

SHRI HARI VISHNU KAMATH: Please read the Clause.

MR. SPEAKER: No. Mr. Kamath. I am not allowing.

SHRI HARI VISHNU KAMATH: You are arbitrary in your ruling.

MR. SPEAKER: I will now put Clause 7 to vote.

The question is:

"That Clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

MR. SPEAKER: The House has to take up Private Members' Business now. I want to know whether further consideration of this Bill should be continued on Monday or after the discussion on the Railway Budget.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND LABOUR (SHRI RAVINDRA VARMA): I suggest that it may be taken up after the

general discussion on the Railway Budget on Thursday.

MR. SPEAKER: All right; we will take it up further on Thursday next.

COMMITTEE ON PRIVATE MEMBERS BILLS AND RESOLUTIONS

TWENTY-EIGHT REPORT

SHRI CHATURBHUJ (Jhalawar): I beg to move:

"That this House do agree with the Twenty-eighth report of the Committee on Private Members' Bills and Resolutions presented to the House on the 28th February, 1979."

15.31 hrs.

[DR. SUSHILA NAYAR in the Chair]

SHRI EDUARDO FALEIRO (Mormugao): Madam Chairman, may I draw your attention to paragraph 3 of this report; at II, it is stated that the Committee met on 27th February, for classification and allocation of time for discussion of Bills (vide Appendix II). This Committee has also recommended in paragraph 7 that the allocation of time to Bills by the Committee as shown in Appendix II be agreed to by the House.

Madam Chairman, in Appendix II, you will see that the Committee has considered Bills which were given notice of only a few days ago; all Bills are of 1979. I had given notice of a Bill as early as 26th July, 1978. This Bill concerns the grant of statehood to the Union Territory of Goa, Daman and Diu which is very dear to my constituency. This Bill is being suppressed by the Home Ministry just because it does not suit them. I would request that the hon. Speaker may use his powers under the relevant rule, Rule 294(2), if I am not mistaken, and he may request or direct the Committee to look into this matter as to why the Government have delayed this type of