12.05 hrs.

SPECIAL COURTS BILL—Contd.

MR. SPEAKER: We will now take up further clause by clause consideration of the Special Courts Bill.

SHRI HARI VISHNU KAMATH (Hoshangabad): Sir, I have already moved my amendment Nos. 45 to 51, list No. 9. By your leave, I will speak on all of them, one by one.

Coming to my amendment No. 45, the first para of the Preamble reads:

"....offences committed by persons who have held high public or political offices in the country"

Here I want to omit the word "have". I am not a stickler for words.

MR. SPEAKER: But a purist.

SHRI HARI VISHNU KAMATH: But, as I said yesterday, I want the proper word in the proper place. One of the greatest books in English literature, perhaps world literature, The Bible, begins with the sentence: In the beginning was the 'Word', and the word was with God and the word was 'God'. Why go so far? Even in our Sanskrit, we have got a very expressive word, a meaningful word, Shabdha Brahma, to describe the Veda. So Shabdha is important. That is why I am emphasising this.

MR. SPEAKER You say it is a superfluous word

SHRI HARI VISHNU KAMATH: It should be read with the next part of the sentence "during the operation of the Proclamation of Emergency". You do not say in English "who have held office in the past"; either you say "held office" or "had held office". Because, if you kindly see clause 5 of the Bill, there the simple past tense has been used; in clause 5(1) it is said "by a person who held high public or political office in India"; the word "have" is not there. Therefore, I think it is more appropriate if the word "have" is deleted. It would read better if you say "who held high public or political offices in the country". I hope the Home Minister will have no difficulty, will have no hesitation, in accepting this simple amendment.

Then I come to my amendment No. 46, which suggests the substitution of the word "withdrawn" by "curtailed". Sir, you were a Judge and you have judicial wisdom; you can decide this point yourself, whether the liberties were "withdrawn" or "curtailed". Withdrawal of the liberty, I do not think is a correct expression; it does jar on one's ears. My ears may not be be perfect, but it does jar on my ears. I think the word "curtailed" would be better. If you all agree—the opposition also agree; they are all nodding their heads; I am happy to see that...

THE MINISTER OF HOME AFFAIRS (SHRI H. M. PATEL): They are nodding their heads to confirm your ears are alright.

SHRI HARI VISHNU KAMATH: You are perhaps judging them better than I do. So I do not want to waste the time of the House. All members, right, left and centre, seem to agree with this amendment.

Then I come to my amendment No. 47. I think what has bedevilled the drafting of the preamble is the Emergency Courts Bill of my hon. friend and colleague. Shri Ram Jethmalani, who is not here.

The draftsmen seem to have just mechanically copied whatever was there, perhaps fearing that any change made even in the drafting might go against the directive given by the Supreme Court while considering the reference by the Government. I suppose the Supreme Court did not bother about the drafting, but only looked into the content. Of course, drafting is important in legal enactments.

If you kindly see the Preamable as it is before the House, it reads: "strict censorship on the press was placed". This is somewhat poetic, or prose run mad. Sometimes the poetry of a poetaster is said to be prose run mad. Instead of that, we can say "strict censorship was placed on the press". You could also have said, "judicial powers to a large extent were crippled", but there it is "judicial powers were crippled to a large extent." Therefore, my amendment, if it is acceptable to the House will make it, "strict censorship was imposed on the press". I do not know whether "placed" is correct. It should better be "imposed on the press", not merely "placed on the press". I see you are nodding. I am sure you are agreeing and so also the House and the Minister.

MR. SPEAKER: That I do not know. At present I seem to agree with you.

SHRI HARI VISHNU KAMATH: Thank you very much for your appreciation. That will go a long away in securing acceptance by the Minister and the House.

Then I come to Amendment No. 49. The draft says: "judicial powers were crippled to a large extent". The phrase "to a large extent" had been used already with regard to civil liberties. Instead of "large", it is "great" there. Already, it has been stated earlier "civil liberties were withdrawn to a great extent". I think we should have some change. A little change is better. Therefore, I would like to amend it by saying "judicial powers were severally crippled". I think this amendment will commend itself to the Minister. He is also nodding his head, for a change at least, and I hope it will be accepted by the House.

Then I come to Amendments 48 and 50. The first one takes care of punctuation also. In line 15, after "was placed" I want to insert a comma, and I want the word "and" after that to be committed, and then in line 16, after the words "judicial powers were severely crippled". I want to add: "and the parliamentary democratic system was emasculated." because that is the core of what happened during the emergency.

If all the amendments are accepted the para will read as follows:

"AND WHEREAS the offences referred to in the recitals aforesaid were committed during the operation of the said Proclamation of Emergency dated 25th June, 1975, during which a grave Emergency was clamped on the whole country, Civil liberties were curtailed to a great extent, important fundamental rights of the people were suspended, strict censorship was imposed on the press, judicial powers were severely crippeld and the parliamentary democratic system was emasculated;"

That is how it will read. If my package deal commends itself to the House, I will be very happy. These four paragraphs will be changed as sought to be amended by me.

One last amendment remains, that is, amendment No. 51....

MR. SPEAKER: Not one; there are four more, Amendment Nos. 51, 52, 53 and 54.

SHRI HARI VISHNU KAMATH: The last three are over. One of them was accepted yesterday and two were reluctantly rejected, I think, not willingly but somewhat willy-nilly, more willy than nilly.

Only one amendment remains and that is Amendment No. 51. I would like to make a point of substance there though it is a verbal amendment. In paragraph 6. p. 2, line 1, the clause before the House reads as follows:—

"AND WHEREAS it is imperative for the functioning of parliamentary democracy....."

Please turn your attention for a second to the statement of Objects and Reasons. It reads:

"For ensuring the healthy functioning of the institutions of parliamentary democracy.."

Unfortunately, Shri Ram Jethmalani, in his Bill, did not use any adjective. So, mechanically the draftman copied it though the statement of Objects and Reasons says, "healthy functioning".

Just as "living" and "healthy living" makes all the difference—you can live on artificial respiration; you can live on blood transfusion; you are living, but what is that living? So, mechanicaly, the draftman copied living, healthy functioning, effective functioning.

MR. SPEAKER: You seem to have done more efficient work than the Draftsman.

SHRI HARI VISHNU KAMATH: I would prefer the word "efficient", efficient functioning. But if the Minister wants to stick to his guns and use the word which has been used in the Statement of Objects and Reasons, I do not mind—that is, healthy functioning. But it should be changed. It should not be mere "functioning" it should be healthy efficient, dynamic, functioning, whatever word you may use.

With these words, I commend them all to the wholehearted acceptance of the House.

MR. SPEAKER: Shrimati Parvathi Krishnan; your amendments are Amendment, Nos. 61, 62, 63 and 64.

SHRIMATI PARVATHI KRISHNAN (Coimbatore): Also Amendment No. 123. They all go together. They are all to the Preamable; one follows from the others.

The purpose of my amendments is really to make this Bill a stronger weapon or instrument by strengthening the whole spirit of parliamentary functionining and parliamentary democracy, in order to take forward the whole process on accountability of those who are in high public places. As the Bill stands today, it is confined only to one particular period, the period of the Emergency and it is as though only out of Emergency those excesses arose and offences that took place.

No doubt they were accentuated during the period of Emergency. But during the last 32 years since independence, we have seen more than one Commission appointed under the Commission of Inquiry Act to go into the various charges against people who were holding high public offices, and those Commissions of Inquiry have come out with their strictures on these individuals. Today I am not going into the past. But some of the past has become present also—one or two Ministers, one or two Chief Ministers, and so on. Anyway, I am not going into that now. But the reason why my Party supports this Bill is because we support this principle of accountability of those in public office and speedy justice on the issues that come up when these Comimssions are appointed.

The Supreme Court have also said, "if it be true—and we have to assume it to be true—that offences were committed by persons holding public or political offices in India under cover of the declaration of Emergency and in the name of democracy, there can be no doubt that the trial of such persons must be concluded with the utmost despatch in the interest of the functioning of democracy in our country and institutions created by our Constitution". They referred merely to the Emergency because the Bill that was referred to them was confined to that. But the point is, the same principle

does apply also to others who hold public offices. If such an enactment had been there earlier and the Special Courts had been there, today certainly we might not see certain people in public offices if the trial of such persons had been concluded 'with the utmost despatch in the interest of the functioning of democracy in our country and the institutions created by our Constitution'.

Already one of the members of the Janata Party has publicly demanded institution of an inquiry into one of the members of the present Government. I do not know where that is going to end. But let us also be prepared for the worst. Similarly, as I referred earlier also, there are things about the Chief Minister of Andhra Pradesh, Chief Minister of Bihar and many other individuals. I do not want to go into each in detail. But action, to be effective, must be directed to clearly conceived ends.

What are the 'clearly conceived ends'? Here we have in this Bill a jumbling up of the Statement of Objects and Reasons in the Preamable. I could understand if clearly the Statement of Objects and Reasons had told us what is the end that is conceived in this Bill. The end is only the preamble. All that is made is more paper, more printing ink, more time for us to read because you read the Statement of Objects and Reasons and then come to the Preamable and find the same thing all listed over again. This is or the first time ever that it has happened with any place of legislation in this country. But the Home Minister is such a wise person; even while answering amendments, he has accused those in the Opposition of being selective in their reading. He has been no less selective in his reading back to us. The only thing is he seemed to be reading it for the first time and we may have been reading it for the second or for the third time. That is all the difference.

My amendment is a very simple, very straight forward and very honest one. I am not covering up anything. It is not directed only to the period of Emergency—that such Special Courts should be set up only for those who commit offences under periods of Emergency. I have said that this should apply whether there is a proclamation of Emergency or not. The immediate concern of the House and with which it is now dealing is what happened during the period of Emergency where such offences reached their climax and height. Therefore, it is necessary that the legislation should come up. But it should not be limited only to the period of Eemergency. This is really the purpose behind my amendment.

Let us create a powerful new precedent for checking the misuse of power by any one in the future, by any one who may hold public office. I know the Minister is very very allergic to amendments and earlier he said....

MR. SPEAKER: You have made your point forcefully.

SHRIMATI PARVATHI KRISHNAN: Earlier he has said, 'We will have to examine this deeply.' He has had so many days to examine it. We gave him a holiday while we were discussing the Railway Budget and I hope he was serious enough to lend thought to it because it was not a very basic and very fundamental legal point, but it is a very basic and a very fundamental political point and the *bona fides* of the Government, the *bona fides* of the Parliament are now on test before the people to be judged. Those *bona fides* have to be reflected in this Bill and it is for that purpose that this amendment is there, to tell the people, the country and the world that our *bona fides* are unquestionable and above suspicion.

And, in concluding, I would just quote to the hon. Finance Minister..

AN HON. MEMBER: Home Minister.

SHRIMATI PARVATHI KRISHNAN: Yes,..the hon. ex-Finance Minister and present Home Minister....

AN HON. MEMBER: .... and future Railway Minister.

SHRIMATI PARVATHI KRISHNAN....who might have or might not have read that in his youth or in his student days....

PROF. P. G. MAVALANKAR (Gandhinagar): He is a well-read man generally.

SHRIMATI PARVATHI KRISHNAN: I would like to quote to him none other than John Ruskin who said:

> "Quality is never an accident. It is always a result of an intelligent effort. There must be the will to produce a superior thing."

I hope he will now show his will to produce a superior thing and shows us that he is capable of intelligent effort by accepting my amendment.

MR. SPEAKER: Shri B. C. Kamble not here.

Shri B Shankaranand.

SHRI B. SHANKARANAND (Chikkodi): Mr. Speaker, I have moved amendment Nos. 89, 90, 91 and 92 to the Preamable of the Bill. Amendment No. 89 refers to the omission of the word....

12.28 hrs.

(Shrimati Parvathi Krishnan in the Chair.)

SHRI R. VENKATARAMAN (Madras South): You deserve it.

AN HON. MEMBER: Immediate reward.

SHRI O. V ALAGESAN (Arkonam): I am afraid, Sir, when she has taken the seat....

MR CHAIRMAN: I will show intelligent effort here. Don't be afraid.

SHRI B. SHANKARANAND: Madam Chairman....

MR. CHAIRMAN: Carry on, Mr. Shankaranand.

SHRI B. SHANKARANAND: I am referring to my amendment No. 89 which is concerend with the first paragraph of the Preamble. Madam, Chairman, I am just now going to support you when you were here speaking on the Bill. You wanted that the law should be equally applicable to persons involved in all the Commissions of Inquiry along with the Shah Commission of Inquiry. That is why I have said that the words 'during the operation of the Proclamation of Emergency dated 25th June 1975 issued under Clause (1) of Art. 352 of the Constitution' be omitted. I need not again re-emphasize what you have said when you were sitting with us....

MR. CHAIRMAN: I shall be back. Don't worry.

SHRI B. SHANKARANAND: Why I say this thing is, this paragraph in the Preamble refers to the persons who held high political and public offices and others who have not held. It reads like this:

> "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 connected with the Commission of such offences...."

I have been persistently again and again telling this House that the Government in their wisdom—I do not know why—have omitted the word 'others' from clause 5 of the Bill which empowers the government to make a declaration. Is it the intention of the government to leave these other person who have not held high public or political offices to use them as a total against the main person.

Madam, I draw your attention to Clause 9 sub-clause (3) wherein it

is said: "tender a pardon to such person...." So. the Government wants to use such other persons who have not held high public or political offices against the main accused person to extract the confessional statements. The object is: "You help us we help you". If as stated in the Preamable that this Bill is intended for a fair and speedy trial why don't they include all other persons and also all those persons who held high public or political office and found guilty by other commissions of enquiry? So, madam, my amendment suggest that that the words which refer to only Shah Commission should be omitted otherwise it will be discriminatory. While the first line mentions—and I quote:

> "Whereas commissions of Inquiry appointed under the Commissions of Inquiry Act, 1954 have rendered reports disclosing the existence of *prima facie* evidence of offences committed by persons who have held high public or political offices...."

This refers to the Commissions of Inquiry but the government is picking up only one commission and, that is, Shah Commission. Instead of naming the Shah Commission they have clothed their idea in these words:

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

They are picking up only one Commission. I do not know how this government is trying to protect the parliamentary functioning of the democracy in this country by punishing only those who were involved in the Shah Commission leaving all those high public figures who were involved in other Commissions of Inquiry.

Madam, I want this House to think seriously on this point whether this picking up of one Commission of Inquiry from the plethora of Commissions of Inquiry is discriminatory or not, is arbitrary or not. And what is the intention of the government? whether dealing with the persons involved in the Commission of Inquiry will help in protecting the functioning of the parliamentary democracy in this country? I have said it time and again why don't you say frankly that you want to convict Mrs. Gandhi only and that is why you have brought it. Although the Home Minister does not say so but the other Members of the Janata Party have said so. (*Interruptions*).

This Bill, if enacted, can be very well be used against you friends also. Do not think you are going to continue here for ever. Change will take place and the time has come very near. Thereare many Members sitting on the Treasury Benches today who were involved in many Commission of Inquiry. So. don't think it applies to Congress only and you will remain permanently there. (*Interruptions*) Mr. Jyotirmoy Bosu, my friend, from CPI (M)..... .. .. ..s

MR. CHAIRMAN: Mr. Shankaranand, we have to allow Mr. Jyotirmoy Bosu to let off steam from time to time! You please carry on.

SHRI B. SHANKARANAND: That steam only warms the Janata party!

Madam, my Amendment,—Amendment No. 90 deals with this. It says:

Page 1, line 9 and 10,—

Omit 'committed during the period aforesaid'

Now, I come to Amendment No. 91. It is a very important thing. I have suggested something very important. It reads....

MR. CHAIRMAN: Amendment 91 reads:

> omit lines 11 to 16.

SHRI B. SHANKARANAND: What does these lines say? I quote:

'Whereas the offences referred to in the recitals aforesaid were committed during the operation of the said Proclamation of Emergency..'

MR. CHAIRMAN: Mr. Kamath read it also. It is the same. It has been read out.

SHRI B. SHANKARANAND: I want to read it again. I quote:

The lines to be omitted are these:—

"And whereas the offences referred to in the recitals aforesaid were committed during the operation of the said proclamation of Emergency during which a grave emergency was clamped on the whole country, civil liberties were withdrawn to a great extent, important fundamental rights of the people were suspended. strict censorship on the press was placed and judicial powers were crippled to a large extent...."

Madam, the Preamble, as it stands, includes this para which refers mainly to the emergency.

Now I wish to bring your notice and the notice of the House the provisions contained in the Constitution of India, in Articles 352 to 360. Part XVIII of the Constitution which deals with the emergency provisions. Now, the question before us is this: Was the emergency declared legally? Was the emergency declared constitutionally? Was it in consonance with all the provisions contained in Part XVIII of the Constitution? Were those provisions followed or not? Then why do you say about civil liberties, fundamental rights etc. as is stated here, in the third paragraph of the preamble? If that was legally done by this Parliament, by this very House, why should you have this here? May be that so many Members of Parliament are different now. But what was done was constitutionally done, legally done. It does not lie in the mouth of anybody in the House or on the part of the Central Government to say that what was done was illegal or unconstitutional. Nobody can say by any stretch of imagination that what was done was unconstitutional or illegal.

MR. CHAIRMAN: I dont think it is 'emergency' as such which is being questioned here. It is relating to 'Offences' committed during the operaion of the 'Emergency.'

SHRI B. SHANKARANAND: What was done during the emergency was done under the Constitutional provisions, and it was done legally. It was done constitutionally.

SHRI JYOTIRMOY BASU (Diamond Harbour): Quite right!

SHRI B. SHANKARANAND: Let not my friend speak about the Constitution.

MR. CHAIRMAN: Mr. Shankaranand, please conclude. There are still three or four hon. Members who want to speak. Please try to conclude now.

SHRI B. SHANKARANAND: What is the effect of the declaration of emergency? Articles 353 of the Constitution deals with that. Is it the contention of the Home Minister that the effect of the declaration of emergency was not what it should be or what it ought to be. Is it his contention? No. Was not suspension of provision of article 19 during the emergency done under article 358 of the Constitution? What have they got to say? But they are writing here that civil rights were curtailed.

MR. CHAIRMAN: You want this to be omitted?

SHRI B. SHANKARANAND: I want this to be omitted.

MR. CHAIRMAN: Please come to your next amendment, 32.

SHRI B. SHANKARANAND: In amendment No. 32 I seek to omit the following lines: "Whereas the consti-

tutional legal and moral obligation of the state is to prosecute persons involved in the said offences....." What is a state ? Article 12 of the Constitution defines what is a State.

MR. CHAIRMAN: Will you please try to conclude? There are four more persons to speak.

SHRI B. SHANKARANAND: You want to hustle the Bill?

MR. CHAIRMAN: I do not want to do so, but I would like those four also to get an opportunity.

SHRI B. SHANKARANAND: I must at least try to convince you.

MR. CHAIRMAN: I am convinced; I assure you. You are taking much time in this manner.

SHRI B. SHANKARANAND: Article 12 defines the state: "In this part unless the context otherwise requires, State includes the government, the Parliament of India and the government and the legislatures of State and of local or other authorities within the territory of India or under the control of the Government of India." State include government also. What is the moral duty of this government? To punish Mrs. Gandhi? What is the moral duty of this government? To sell all the gold reserves. What is the moral duty of this government? To put such huge tax on the middle class people? These are the moral duties, they are accepting it and they are doing it. What is their moral duty? To enact such laws and say it is their moral duty. They cannot equate themselves to the word State as defined in the Constitution. The moral duty of this government should have been different from what they are doing now. They ought to be more purposeful and they should work honestly for the welfare of the poor. Their moral duty should have been to see that this country marches on the road to socialism and secularism. They did not think of those moral responsibilities. Their moral duty should have referred to the preamble of the Constitution. They cannot put a preamble of their own in this Bill and say that it is: their moral duty to punish Mrs. Gandhi. What is the moral duty? Till the other day the Prime Minister and the two Deputy Prime Ministers were fighting for seats, there was collision in the Cabinet. We thought that they were fighting and they were going to come to blows the next day. . (*Interruptions*). Is it their moral duty to enact this Bill? What is their moral duty? To make some people sit in judgement.. (*Interruptions*).

MR. CHAIRMAN: Kindly do not help him to take more time.

SHRI B. SHANKARANAND: I scanned the entire Constitution to find if there is anything about the moral duty in the Constitution..... (*Interruptions*).

MR. CHAIRMAN: I would request the hon. Members to cooperate with the Chair and let him finish as early as possible and not to co-operate with Mr. Shankaranand to take more time.

SHRI B. SHANKARANAND: I scanned the entire provisions of the Constitution and I did not find a single line which speaks about the moral duty of the State.

SHRI JYOTIRMOY BOSU: On a point of order.

MR. CHAIRMAN: Which rule?

SHRI JYOTIRMOY BOSU: Rule 376. I was feeling a little sleepy. I am not quite sure whether he is speaking on the first reading or on the amendment.

MR. CHAIRMAN: There is no point of order. Mr. Bosu, it is a very serious measure....

SHRI JYOTIRMOY BOSU: Today there is Private Members' business also and we propose to finish the Bill before that.

MR. CHAIRMAN: We are aware of it. Mr. Shankaranand, kindly conclude.

SHRI B. SHANKARANAND: One word about my friend, Shri Jyotirmoy Bosu.

MR. CHAIRMAN: Speak to your amendment. Mr. Bosu cannot be amended!

SHRI B. SHANKARANAND: I say in all seriousness that the moral duty of the State has not been codified as yet. Unless it is codified and unless it has some basis on legal foundation, how can the courts interpret this provision? Courts cannot lay their hands on any law and say that this is the moral duty of the State. Perhaps they are speaking of the moral duty of the Janata Government and they are identifying themselves with the State. The Government cannot be indentified with the State. Therefore, I think that these lines should be deleted.

They have referred to the preamble in clause 5. I am yet to find any law which refers to the preamble in any section.

MR. CHAIRMAN: This discussion took place at that time and you made that point. It has already been put to vote. Don't try the patience of the members by repeating what you said earlier.

SHRI B. SHANKARANAND: Don't you see that my amendments are reasonable?

MR. CHAIRMAN: Yes, kindly resume your seat. Mr. Venkataraman.

SHRI B. SHANKARANAND: You should help in making the Home Minister accept my amendment.

SHRI R. VENKATARAMAN (Madras South): My amendment is comprehensive. It does not deal with any declaration of emergency nor does it deal with any particular commission of inquiry. It deals with commission of offences by men in public office and in public life. I would for the benefit of the House read this particular portion:

> "where prima facie evidence exists of offences committed by persons who have held high public or political offices in the country".

This will exclude all controversial aspects as to whether a particular offence has been committed during the emergency or whether it was in relation to any particular commission of inquiry. It will deal with a matter with which the whole country is concerned. It is well known that offences have been committed in the past by men in public offices and public life. It is also common knowledge that people now in public offices and public life do commit and are committing these offences. There is no doubt that in future persons holding these public offices and in public life will commit these offences. Therefore, if you want that the purity of public life should be maintained, that the integrity in public life should be restored, then it is necessary that you should have a law which will take note of offences committed by people in public offices and in public life, whether in the past, present or future. Therefore, my suggestion is if *prima facie* evidence shows—and *prima facie* evidence is always established by investigation—that such offences have been committed than irrespective of time and irrespective of the selective nature of the person chosen, any person who is guilty of such offences, who is accused of such offences, must be tried. That is the kind of law we would like to have.

Than there is a slight confusion in the present Preamble. As Shri Shankaranand has pointed out, even "others connected with the commission of the offence" could be brought in, to what extent it is not clear. My point is that only persons in public offices and in public life should be tried by Special Courts and other must be tried by ordinary courts of law. Therefore, I have confined it to persons holding public office and men in public life and my amendment excludes persons who do not fall within that category.

The stock answer which the Home Minister gives is that the Bill has been approved by the Supreme Court and

therefore, he is unable to make any change. You may remember that I moved an amendment, which even the Speaker said looks reasonable. The hon. Home Minister said that he would not like to change the phraseology, because the Bill has been approved by the Supreme Court What the Supreme Court has decided in its advisary opinion is the legality of the measure before it; it has not decided on the propriety of it, it has not decided on the morality of it. Therefore, to plead that he would not make any change, because the Supreme Court has approved the draft Bill is to deny to Parliament the right to make changes on the propriety of the legislation. In fact, it appears to me that we should be very careful and we should perhaps take very strong exception to referring Bills to the Supreme Court for advisory opinion, because then it becomes an easy excuse for the Government to push through the Bill, even in respect of matters in which Parliament has competence the authority to decide. In this very case, the Supreme Court has not said, nor has it the authority to say, whether this particular legislation is proper. In fact, how can anybody go and justify it? Well, on the face of this legislation, it is clear that it is directed against one single individual, that a legislation of this kind can be put on the statute-book excluding others who are falling in the same category, people who have committed offences not only during the emergency, but even before.

If you look at it from the angle of propriety, then there is no reason why a man in public office or public life who has committed an office either before or during the emergency should be excluded from this Bill. There is no reason why a person in public life, who is holding a public office and yet committing offences, should be excluded from this. Nor is there any reason why a person who is going to hold offees in future, if he commits these offiences, should be excluded from this Bill.

Have we referred this question to the Supreme Court for their opinion? Can the Supereme Court give its opinion on this matter. All that the Supreme Court has said is that the Bill, as it is framed, falls within the classification covered by article 14 and therefore the Bill is legal. Clause 5(2) says "such declaration shall not be called in question in any court" Whichever Government comes to power, the first casualty will be the authority of courts, and the very people who very strongly objected to this clause in the previous amendment of the Constitution and so on, are the very persons now coming forward and putting the same clause word for word, without a change of a comma or a colon. Even on this, the Supreme Court has said that it is not for them to go into the propriety of this legislation, but that they are sure that the courts, m spite of this clause, will have the authority to look into its validity.

Therefore, my point is that this Bill, as it is framed, is directed against one person and it takes awey the very purpose, the very laudable object, of trying to establish integrity in public life. If my amendment is accepted, namely that persons who have held high public office and who are in public life should be tried by a special court, then the objection which is raised with regard to the selective character of the accused, the selective character of the offence etc., all that will be wiped out, and it would be open to the Supreme Court or the High Court or the Special Court to look into only two questions: firstly, whether the person has held a high public office and whether he was in public life otherwise, he cannot be tried by a Special Court; secondly whether an offence has been committed. Also, according to the amendment which I have moved, they should not refer this matter to the Special Court except in cases where the ordinary courts, due to congee-

[Shri R. Venkataraman]

tion of work or other reasons, cannot reasonably be expected to deal with them expeditiously.

The only reason for referring to a special court must be that ordinary courts are not able to dispose of the case because of pressure of work for because of any other reason. Therefore, this will take away the sting that is directed against a person. My amendment will make it universal, it will apply to all politicians, all men in public life, present, past and future. If they are really interested in improving the public life, in maintaining the integrity in public life, this is the amendment which I commend to them for their acceptance.

MR. CHAIRMAN: The House stands adjourned till 2 O'Clock.

13.00 hrs.

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

The Lok Sabha adjourned for Lunch Lunch at five minutes past Fourteen of the Clock

(Mr. Speaker in the Chair)

SPECIAL COURTS BILL—Contd.

MR. SPEAKER: Shri Alagesan.

SHRI EDUARDO FALEIRO (Mormugaon): My name is also there, Sir.

MR. SPEAKER: Your name is not there. You have not moved the amendment.

SHRI EDUARDO FALEIRO: I have not moved but my amendment is the same.

MR. SPEAKER: That does not matter.

Shri Alagesan.

SHRI O. V. ALAGESAN (Arkonam): I will not be as lucky as my friend, Mr. Kamath....

AN HON. MEMBER: For what?

SHRI O. V. ALAGESAN: I find, Sir, his flair for amendments has not lessened with the passage of years nor his persuasive powers have diminished. By his new clause which has been accepted by the Government the number of clause has become Thirteen So, I am afraid your Bill has become somewhat unlucky....

SHRI HARI VISHNU KAMATH: Thirteen is unlucky for Christians only.

SHRI O. V. ALAGESAN: I do not know what sort of career your Bill will have.

Now, the Preamble is absolutely a new innovation. We have not seen such a long-winding Preamble in any other Bill—at any rate, I have not seen—that has been brought before the House. A fear was expressed on the floor of the House that this Preamble itself will get the Government into difficulties in courts. But I think the Government has woken up to its earlier bunglings and mistakes and it has tried to plug all the loopholes. It was said on the floor of the House that by taking this measure before the Supreme Court, the Government is effectively preventing such a endments or improvements as Parliament could make in the Bill. But then the Government has become too circumspect that they want to do everything in a perfect way. If they had not gone to the Supreme Court and had brought this Bill straightaway into this House, people might have argued, "Have you tested the legality of this Bill?" So anticipating some such objections the Government was careful enough to go to the Supreme Court and had got a verdict from the Supreme Court as to the....

AN HON. MEMBER: A camouflage.

SHRI O. V. ALAGESAN: ....legality of the Bill. Now, this Bill was so carefully drafted. My friend, Mr. Kamath wanted to improve clause 3 of the Preamble—by improving its language, etc., a lover of words that he is and he claims to be. It has been pointed out in the advisory opinion given by the Supreme Court that what occurs in clause 3 of the preamble has

been lifted bodily from the judgment of Mr. Justice Fazal Ali in the *State of Rajasthan and others vs. Union of India*. I need not go through it. Various things have been stated.

Now, I am on this point. My amendment wants to create two categories of prosecutions. As far as the first category, namely, such of the cases which have already gone before the Shah Commission, they can certainly go before the Special Courts, because they have had one vetting, at any rate, have gone through the mill. But such of the prosecutions which will be as a result of investigations conducted by the Government through its agencies, for those prosecutions there need not be any declaration and they may be processed through the ordinary courts of law. That is what my amendment seeks to do. If this amendment is not there, perhaps the Government may not be enabled to exclude the second category of cases and they will have to issue a declaration in every case. If this amendment is accepted, they can completely exclude this category of cases and they can allow them to go to the ordinary courts of law in the country and only put up such cases which have been vetted through Commissions, like the Shah Commission, before the Special Courts.

AN HON. MEMBER: What do you want?

SHRI O. V. ALAGESAN: I want these words to be added to Clause 2 of the Preamble so that second category mentioned in the second Clause is omitted from being placed before the Special Courts.

MR. SPEAKER: Mr. Stephen you have got amendments Nos. 130 and 131.

SHRI C. M. STEPHEN (Idukki): Sir, the amendments that I have moved are practically identical with the amendments of other friends. Therefore, I do not want to speak very long on these. My amendment No. 130 concerns the deletion of the following words:

> "AND WHEREAS investigations conducted by the Government through its agencies have also disclosed similar offences committed during the period aforesaid;"

According to me it will serve my political purpose if this is there because this gives me ground possibly for a writ of mandamus for launching of the prosecution against certain persons but what I want to highlight is that the Government seems to take this House for granted. Here is an assertion that the investigation conducted by the Government through its agencies have also disclosed similar offences committed during the period aforesaid. Has the House been told anything about this? How many offences have been disclosed? What are the cases. We are now subscribing to a statement of facts that Government conducted investigations and as a result of these investigations something *prima facie* has come and that a Bill is being framed on the basis of that. Is it not fair and just to the Parliament that they tell us. I do not want them to tell who the accused are but something there must be. There is absolutely nothing at all. Is it fair to this Parliament, I am asking? The House is being taken for granted.

Secondly, Sir, this is an adopted Bill. A Bill moved by a private Member is being adopted by the Government. I am asking: How is it Mr. Jethmalani who moved this Bill came to know there and *prima facie* case was establigations, *prima facie* evidence was there and *prima facie* cas was establis shed? How is it that Mr. Jethmalani came to know about it? If the Government could communicate that information to Mr. Jethmalani, how is it that the Government cannot communicate that information to this House? Are you treating Mr. Jethmalani, a member of this House on a basis distinct from

[Shri C. M. Stephen]

the rest of us, on a plane higher than the rest of us? Mr. Jethmalani brings forth the Bill telling that the Government made investigations and Government came to the conclusion and, therefore, he has brought forward the Bill. The Government comes forward and adopts the Bill. Government does not tell the basis of this assertion and this House has to pass this Bill without knowing about the details of any of these investigations. Something, at least for formality's sake there must be as to what do you mean by this assertion. Whether that is correct or not is a different matter but do you not owe it to the House to the tell as to what these investigations are and what are the offences. You speak about similar offences. What do you mean by similar offences? Does it mean the same offences as found out by the Shah Commission or offences different from that? What exactly are the offences? I would call upon the Government to tell us what they mean by similar offences—whether offences distinct from the offences found out from Shah Commission. You must tell us. How many cases have you investigated? How many are different from the Shah Commission's? If you are in a position to say, you must tell us about this, before you ask us to subscribe to this sort of assertion. This is my submission. The Government must not take the Parliament for granted. The Government must not take the legislative authority of this Parliament for a ride. Government has committed a gross act of impropriety in passing on this information to Mr. Jethmalani and in keeping that information away from the rest of us. This is a very serious matter. I wanted to highlight this matter. That is why I have given notice of this amendment.

Coming now to the other thing, Sir, my friend Mr. Kamath has talked in great detail about it. Other hon. Members have talked in great detail about it. There must be some felicity of language and phrasing of any law that we pass. Does it fit into the concept of a legislative enactment that we are accustomed to? When you make this sort of assertion here, is it really a statement of fact or of law? That is what I am asking. Mr. Fazal Ali, in his judgment made certain observations. This has been mentioned in the Supreme Court judgment. I have got Mr. Fazal Ali's judgment before me. He has mentioned all this, not by way of describing what exactly was done during the period of the emergency at all. He has summed up the whole thing and he has said these things happened. He has said this: It is one thing for the judgment to give the descriptive statement of certain things that had happened and it is another thing putting it into the preamble of a legislation. I just cannot understand this. You say, 'Civil liberties were withdrawn'. What is this? I just cannot understand how 'civil liberties' can be withdrawn. Civil liberties can be curtailed. Civil liberties can be suppressed. Civil liberties can be circumscribed. Where is the question of 'withdrawal of civil liberties'? What is the civil liberty as distinct from the fundamental right? Civil liberty is spelt out in the Preamble of the Constitution. Civil liberty is a natural liberty and as a natural right of the citizen, as per the judgment of the Supreme Court. They got merged in the fundamental right. This is what the Supreme Court has said. What is it that you say here as fundamental right here? Do you mean this is different from that fundamental right? What do you mean by saying 'withdrawal of civil liberties'? And once you withdraw it, who gives back? You say: somebody withdraws it. Who is giving it back? (Interruptions) You may put anything here as you like, I am not bothered about it. But this is not the way of doing it. That is what I say. And then you say 'Fundamental rights of the people were suspended'. Well, the position in law is, only the right to move the court for the enforcement of a funda-

mental right was suspended. That alone remained suspended. The fundamental right is not suspended at all, except for Article 19. And that only, for the purpose of legislative enactment, not otherwise. Your right to enforce fundamental right by a judicial process gets suspended by a Presidential Proclamation. Fundamental rights are never suspended. Enforcement of fundamental right alone is suspended. Here in the law you are saymg 'Fundamental rights were suspended'. Could you not be more precise? Could you not be more practical and correct in the assertion of the consequences of this thing? This is just what I am asking you. Then you say: 'Judicial powers were crippled to a large extent.' What do you mean by this, by saying, 'Judical powers were crippled'? Was it that by some enactment the judicial powers were curtailed? Or, is it by arm-twisting, the judiciary was forced to write some judgment? What exactly is it that you are meaning? If it is as suggested by Mr. Jethmalani when he made a speech that by arm-twisting judicial authorities were made to write such and such judgments if that is what you mean, then, you are giving credence to the position that the judiciary in this country is liable to be arm-twisted. If on the other hand by certain enactment some laws were held to be beyond the reach of the judiciary, are you not doing the same thing by the same Act? Here you say, a particular declaration shall be beyond attack by the judiciary. We have moved an amendment against it. You are asserting that the judiciary shall not come in the way of invalidating your declaration. The Supreme Court warned you that this is absolutely infructuous, that the court will extend its arm to any declaration, if it is done arbitrarily. Nevertheless you have written this into the law. And you say that the judiciary is crippled. If it is arm-twisting, arm-twisting is being done even today. That is what just now happened in the case which Mr. Shanti Bhushan mentioned here. Mr. Shanti Bhushan mentioned a particular case here about the promotion of Mr. Vohra and all that.

MR. SPEAKER: Let us not go on from one to the other.

SHRI C. M. STEPHEN: That is necessary, Sir. These are statements before the House. I am not saying anything beyond that. What he said was this. A decision was taken. The decision was withheld. Why? Because, the trial in the Kissa Kursi case was in an advanced stage. Was that the only case at an advanced stage? Were there not other cases at an advanced stage? If there were other cases in an advanced stage, would they not be a bar for promotion? Why advanced stage in this case alone must be a bar to promotion? Therefore, you are taking one case apart. You are discussig with the Chief Justice of Delhi saying, this case is in an advanced stage; if promotion takes place, it will bar it. The result is: You tell the magistrate or judge, whoever it is, here is a promotion order taken, the order will be pronounced only after the judgment is given. Therefore, two things are incorporated there: hurry the judgment so that you may get promotion early and hustle the trial through and give the order immediately. Because here is a decision taken; you are a marginal case; 20 persons are taken; one has to be from the judiciary. Are we not intefering with the judiciary really, interfering in the promotion of the judiciary? This is what is happening.

I am only saying that when there is an emergency proclamation, certain constitutional consequences follow, article 19 is suspended, Presidential declaration follows suspending the judicial remedy with respect to certain fundamental rights; all these necessarily follow. But you say therefore emergency was clamped on the whole country. I cannot understand it. It is because of the existence of the emergency that proclamation takes place it is not that after the proclamation emergency is clamped. Emergency conditions exist and proclamation is issued. When proclama-

[Mr. Speaker]

tion is issued, legal consequences follow. Conditions of emergency were clamped not only by the proclamation of emergency but by certain agitations which took place prior to the emergency. Emergency conditions were clamped on the country not by the President of India, not by the Government but by the gentlemen sitting on that side. You clamped emergency on this country; it is a fact.

MR. SPEAKER: You have dealt with that argument.

SHRI C. M. STEPHEN: Therefore, I am only saying that these are factual misstatements which are absolutely unnecessary for the purpose of this law. It would have been enough if you say. during the period of emergency offences were committed. The descriptive things are factually incorrect and legally meaningless assertions and they have completely disfigured this law. My pleadings will be of no avail because there is a cyclostyled answer to everythig that was said: no, no, no. I am prepared to receive that cyclostyled answer, but let me go on record that in this act of disfiguring the statute book of this country, in this act of disfiguring this particular law—we are not a party to that at all—we have pointed out to you that you should correct it. It is absolutely incosequential whether you accept our plea. Let it not be said that it was not pointed out to you; it is pointed out to you not by me only but by Mr. Kamath also that you should correct it; you can see. It is pointed out by everybody, even from friends in your own benches. But here is a Minister, here is a Government which says: what I have seen yesterday is the wisest thing, what I have heard yesterday is the best thing, whatever is now shown to me is non-existent and so I have one reply: No. You ask again and the reply is: no. It is a closed book. Here is a statute, accept it, swallow it. This is the sort of legislative process that is being attempted, the House is taken for granted. I register my protest to that sort of conduct and so I moved these amendments and press them.

THE MINISTER OF HOME AFFAIRS (SHRI H. M. PATEL): I am sorry that inspite of Mr. Stephen's desire that I should be different from what I am, I propose to deal with each matter on its merits and not just oppose or accept anything for its own sake. I do appreciate Mrs. Parvathi Krishnan's great desire that I should so function.....

(*Interruptions*).

MR. SPEAKER: Mr. Sathe, we had a quiet time in the morning.

SHRI VASANT SATHE (Akola): I like him.

SHRI H. M. PATEL: I am so glad Mr. Sathe says he likes me. I would be grateful if he will demonstrate his liking for me by keeping absolutely quiet.

MR. SPEAKER: You are asking for the impossible!

SHRI H. M. PATEL: I am unable to accept the amendment 3—7 moved by Shri Narasimha Reddy. (*Interruptions*). Unlike my other friends like Shri Shankaranand, I try to be as brief as possible. If you want elaborate reasons and the kind of language Mr. Shankaranand used, I can also do it, but is it necessary for me to imitate those things? Where there has been a real and honest research done, I am willing to consider it. That is what Mr. Kamath has done. Mr. Hari Vishnu Kamath has really taken the trouble to study and to see whether the words really carry the proper significance. Since he has taken all that trouble and found that in some places we have erred, that is to say, the words we have used have not carried the meaning that they were intended to carry, I am prepared to accept his amendments. For instance, in amendment No. 45, he says, "Page 1, line 3; omit 'thave'". Obviously it is bad English. So, I accept the amendment. In Amendment No. 46 he says, "Page 1, line 14, for 'widdrawn' substitute "curtailed"." I think it is an improvement and I think I cannot but accept it. Next, in amendment

No. 47, he says, "Page 1, line 15, for 'on the press was placed' substitute 'was imposed on the press'." It is obviously a clear improvement and I accept it. He then goes on to say in amendment No. 48, "Page 1, line 15, (i) after 'placed' insert "," and (ii) omit 'and' ". This is linked with amendment No. 50 and I accept it. Then he says in amendment No. 49, "Page 1, line 16, for 'crippled to a large extent' substitute 'severely crippled' ". It is a clear improvement, particularly when two lines ahead it is said 'to a great extent'. Therefore, it is definitely an improvement. I accept it. Amendments 48 and 50 go together because the corrections are made in that way. In amendment No. 50 he says, "Page 1, line 16, after 'extent' insert 'and the parliamentary democratic system was emasculated'." Certainly that makes things clearer and much more positive. So, I accept that.

SHRI VASANT SATHE: The old ICS has prevailed!

SHRI H. M. PATEL: Mr. Sathe was quiet until now. Now when he has broken his quietude, he has done the right thing. He says that the birds of a feather flock together. Certainly birds of a feather do flock together and you remain there also because of that reason! In amendment No. 51, Mr. Kamath says, "Page" 2, line 1, after 'the' insert 'efficient'.' As it is, it reads "And whereas it is imperative for the functioning of parliamentary democracy". Quite obviously, what we mean is, it is imperative for efficient and healthy functioning. I prefer the word 'efficient' rather than 'healthy'. So, I accept the amendment and use the word 'efficient'.

Shrimati Parvathi Krishnan was very eloquent, I think, understandably eloquent because you are eloquent when you do not have much of substance to urge.

MR. SPEAKER: Not always.

SHRI H. M. PATEL: I say this because she did want me to say that. I will produce the superlative thing. I think, she quoted from Ruskin. Although I have read Ruskin in my young days, unfortunately, I do not recollect. I did not have the opportunity of checking this particular thing. But I agree that everything she said in that quotation is what I endeavour to do, that is to say, I produce something that really is a good thing. She chose the word 'super thing'.

MR. SPEAKER: That means you accept the quotation but not the amendment.

SHRI H. M. PATEL: I accept the quotation and not the amendment.

I would like to compliment Mr. Shankaranand for having taken the longest to say the least. He is a very able lawyer but when he has nothing to plead, then undoubtedly, it becomes difficult.

MR. SPEAKER: By implication you mean to say that an able lawyer says nothing?

SHRI H. M. PATEL: I am afraid, with reference to context and no further.

My hon. friend referred very eloquently to certain expressions in the Preamble. He referred to the words 'grave emergency was clamped on the whole country, civil liberties were withdrawn to a great extent' and so on. He considered that there were not the proper things to do. Mr. Stephen also said the same thing and he said, perhaps, I will refer to the same. I will certainly do what he wanted me to do.

In its advice the Supreme Court has said:

"On January, 8, 1976, a Presidential order was issued under Article 359(1) suspending the right to move any court for the enforcement of the Fundamental Rights conferred by Article 19 of the Constitution.

[Shri H. M. Patel]

These and other measures taken during the period of Emergency have been summarised by one of us, Fasal Ali, Justice, in the State of Rajasthan and others Vs. Union of India thus:

(1) A grave emergency was clamped in the whole of the country;

(2) Civil liberties were withdrawn to a great extent;

(3) Important fundamental rights of the people were suspended:

(4) Strict censorship on the press was placed; and

(5) the judiciary powers were crippled to a large extent."

This is how the various measures taken during the Emergency were summarised and we have taken it from that. The whole point that has been forgotten by the hon. Members on the other side is that this particular Bill is designed only to deal with certain types of cases or offences committed during a certain period. There is a definite reason for it. . .

SHRI VASANT SATHE: In a most arbitrary and vindictive manner.

SHRI H. M. PATEL: I know how difficult it is for Shri Sathe to restrain himself.

These crimes are of a basically different kind and for a different motivation, committed during the emergency, of a certain kind, by certain people, crimes which are alleged to have been committed during the extraordinary period of emergency and to that extent, there is selectivity. I regret, I am not able to accept any of those amendments.

MR. SPEAKER: I will now put the amendments to the vote. First I will put amendments Nos. 3, 4, 5, 6 and 7 by Shri G. Narsimha Reddy to the vote of the House.

Amendments Nos. 3, 4, 5, 6 and 7 were put and negatived.

MR. SPEAKER: I will now put amendments Nos. 45 to 51 by Shri Hari Vishnu Kamath, which have been accepted by the Government, to the vote of the House.

The question is:

'Page 1, line 3,—

omit "have" (45).

Page 1, line 14,—

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

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).

The motion was adopted.

MR. SPEAKER: I will now put amendments Nos. 55 and 56 by Shri M. Kalyanasundaram to the vote of the House.

Amendments Nos. 55 and 56 were put and negatived.

MR. SPEAKER: I will now put amendment No. 61 moved by Shrimati Parvathi Krishnan to the vote of the House. The question is:

"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).

The Lok Sabha divided:

Division No. 5] [14.44 hrs.

AYES

Balakrishniah, Shri T.
Bhakta, Shri Manoranjan
Bonde, Shri Nanasahib
Chandrappan, Shri C. K.
Chettri, Shri K. B.
Dhondge, Shri Keshavrao
Doley, Shri L. K.
Engti, Shri Biren
Faleiro, Shri Eduardo
Gogoi, Shri Tarun
Gotkhinde, Shri Annasaheb
Jeyalakshmi, Shrimati V.
Kidwai, Shrimati Mohsina
Krishnan, Shrimati Parvathi
Kunhambu, Shri K.
Lakkappa, Shri K.
Mallanna, Shri K.
Mallikarjun, Shri
Mane, Shri Rajaram Shankarrao
Mirdha, Shri Nathu Ram
Mohsin, Shri F. H.
Naidu, Shri P. Rajagopal
Nair, Shri B. K.
Nair, Shri M. N. Govindan
Narayana, Shri K. S.
Pajanor, Shri A. Bala
Patel, Shri Ahmed M.
Patil, Shri S. B.
Patil, Shri Vijaykumar N.
Poojary, Shri Janardhana
Pradhani, Shri K.
Rajan, Shri K. A.
Ramalingam, Shri N. Kudanthai
Rao, Shri Jalagam Kondala
Rao, Shri Pattabhai Rama
Rath, Shri Ramachandra
Ravi, Shri Vayalar
Reddi, Shri G. S.
Reddy, Shri K. Vijaya Bhaskara
Sangma, Shri P. A.
Sathe, Shri Vasant
Shankaranand, Shri B.
Shinde, Shri Annasaheb P.
Shive Shankar, Shri P.
Shrangare, Shri T. S.
Stephen, Shri C. M.
Sudheeran, Shri V. M.
Sunna Sahib, Shri A.
Thakur, Shri Krishnarao
Thorat, Shri Bhausaheb
Tulsiram, Shri V.
Venkataraman, Shri R.
Venkatasubbaiah, Shri P.

NOES

Abdul Lateef, Shri
Agrawal, Shri Satish
Ahuja, Shri Subhash
Alhaj, Shri M. A. Hannan
Amat, Shri D.
Amin, Prof. R. K.
Asaithambi, Shri A. V. P.
Bahuguna, Shri H. N.
Bahuguna, Shrimati Kamala
Balak Ram, Shri
Balbir Singh, Chowdhry
Baldev Prakash, Dr.
Bateshwar Hemram, Shri
Berwa, Shri Ram Kanwar
Bhagat Ram, Shri
Bhanwar, Shri Bhagirath
Bharat Bhushan, Shri

Bhattacharya, Shri Dinen
Borole, Shri Yashwant
Bosu, Shri Jyotirmoy
Burande, Shri Gangadhar Appa
Chand Ram, Shri
Chandan Singh, Shri
Chandra Pal Singh, Shri
Chaturbhuj, Shri
Chaturvedi, Shri Shambhu Nath
Chaudhury, Shri Rudra Sen
Chauhan, Shri Nawab Singh
Chavda, Shri K. S.
Chhetri, Shri Chhatra Bahadur
Dandavate, Prof. Madhu
Dave, Shri Anant
Desai, Shri Morarji
Deshmukh, Shri Ram Prasad
Dhara, Shri Sushil Kumar
Dhillon, Shri Iqbal Singh
Dhurve, Shri Shyamlal
Digvijoy Narain Singh, Shri
Fernandes, Shri George
Ganga Bhakt Singh, Shri
Ganga Singh, Shri
Gattani, Shri R. D.
Ghosal, Shri Sudhir
Godara, Ch. Hari Ram Makkasar
Gore, Shrimati Mrinal
Goyal, Shri Krishna Kumar
Guha, Prof. Samar
Gulshan, Shri Dhanna Singh
Gupta, Shri Shyam Sunder
Halder, Shri Krishna Chandra
Harikesh Bahadur, Shri
Heera Bhai, Shri
Jaiswal, Shri Anant Ram
Kamath, Shri Hari Vishnu
Kar, Shri Sarat
Kisku, Shri Jadunath
Kundu, Shri Samarendra
Kureel, Shri Jwala Prasad
Kushwaha, Shri Ram Naresh
Lal, Shri S. S.
Machhand, Shri Raghubir Singh
Mahala, Shri K. L.
Mahi Lal, Shri
Maiti, Shrimati Abha
Malik, Shri Mukhtiar Singh
Mandal, Shri Dhanik Lal
Mangal Deo, Shri
Mankar, Shri Laxman Rao
Mehta, Shri Prasannbhai
Modak, Shri Bijoy
Mritunjay Prasad, Shri
Mukherjee, Shri Samar
**Naik, Shri S. H.
Nathu Singh, Shri
Nathwani, Shri Narendra P.
Negi, Shri T. S.
Pandeya, Dr. Laxminarayan
Pandit, Dr. Vasant Kumar
Parmer, Shri Natwarlal B.
Parulekar, Shri Bapusaheb
Patel, Shri H. M.
Patel, Shri Meetha Lal
Patel, Shri Nanubhai N.
Patidar, Shri Rameshwar
Patil, Shri Chandrakant
Patnaik, Shri Biju
Pipil, Shri Mohan Lal
Pradhan, Shri Amar Roy
Raghavendra Singh, Shri
Rai, Shri Gauri Shankar
Rai, Shri Narmada Prasad
Rai, Shri Shiv Ram
Rakesh, Shri R. N.
Ram, Shri R. D.
Ram Dhan, Shri
Ram Kinkar, Shri
Ram Kishan, Shri
Ramachandra, Shri P.
Ramji Singh, Dr.
Rao, Shri Jagannath
Rathor, Dr. Bhagwan Dass
Rodrigues, Shri Rudolph
Saha, Shri A. K.
Sai, Shri Larang
Saini, Shri Manohar Lal

**Wrongly voted for NOES.

Samantasinhera, Shri Parimacharan
Saran, Shri Daulat Ram
Sarda, Shri S. K.
Satapathy, Shri Devendra
Satya Deo Singh, Shri
Sen, Shri Robin
Shakya, Dr. Mahadeepak Singh
Shastri, Shri Y. P.
Shejwalkar, Shri N. K.
Sheo Narain, Shri
Sher Singh, Prof
Sheth, Shri Vinodbhai B.
Shiv Sampati Ram, Shri
Shukla, Shri Chimanbhai H.
Shukla, Shri Madan Lal
Sikander Bakhat, Shri
Sinha, Shri Purnanrayan
Sinha, Shri Satyendra Narayan
Somani, Shri Roop Lal
Suman, Shri Ramji Lal
Suraj Bhan, Shri
Tirkey, Shri Pius
Tiwari, Shri Brij Bhushan
Tripathi, Shri Madhav Prasad
Tyagi, Shri Om Prakash
Vajpayee, Shri Atal Bihari
Varma, Shri Ravindra
Verma, Shri Brij Lal
Verma, Shri Chandradeo Prasad
Verma, Shri Raghunath Singh
Yadav, Shri Ramjilal
Yadav, Shri Vinayak Prasad
Yadav, Shri Roop Nath Singh

MR. SPEAKER: Subject to correction, the result** of the division is: *Ayes* 53, *Noes* 138.

The motion was negatived.

MR. SPEAKER: I take it that you are not pressing your other amendments.

SHRIMATI PARVATHI KRISHNAN (Coimbatore): No, because they are only consequential.

MR. SPEAKER: Has the hon. Member the leave of the House to withdraw her Amendment Nos. 62, 63 64 and 123?

SEVERAL HON. MEMBERS: Yes.

Amendments Nos. 62, 63, 64 and 123 were, by leave, withdrawn.

MR. SPEAKER: Now I come to Mr. Kamble's amendments.

SHRI B. C. KAMBLE (Bombay South-Central): I am not pressing them.

MR. SPEAKER: Has the hon. Member the leave of the House to withdraw his Amendments Nos. 73, 74, 76, 77 and 78?

SEVERAL HON. MEMBERS: Yes.

Amendments Nos. 73, 74, 76, 77 and ' were, by leave, withdrawn.

MR. SPEAKER: Now I will put Mr. Shankaranand's amendments Nos. 89, 90 and 92 to the vote of the House.

Amendments Nos. 89, 90 and 92 were put and negatived.

MR. SPEAKER: Now, I will put Mr. Venkataraman's amendments Nos. 109 and 110 to the vote of the House.

Amendments Nos. 109 and 110 were put and negatived.

MR. SPEAKER: Now, I will put Mr. Alagesan's amendment No. 129 to the vote of the House.

Amendment No. 129 was put and negatived.

MR. SPEAKER: Now, I will put Mr. Stephen's amendments Nos. 130 and 131 to the vote of the House.

**The following Members also recorded their Votes:
AYES: Shri G. Mallikarjuna Rao, Shri M. Bheeshma Dev, Shri S. H. Naik.
NOES: Shri K. Prakash.

Amendments Nos. 130 and 131 were put and negatived.

MR. SPEAKER: The question is:

"That the Preamble, as amended, stand part of the Bill."

The motion was adopted.

The Preamble, as amended, was added to the Bill.

MR. SPEAKER: The question is:

"That the Title stand part of the Bill."

The motion was adopted.

The Title was added to the Bill.

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

"That the Bill, as amended, be passed."

MR. SPEAKER: We have taken a good deal of time. Therefore, I am restricting the third reading speeches to five minutes.

Motion moved:

"That the Bill, as amended, be passed."

SHRI C. M. STEPHEN (Idukki): I rise to oppose this motion, and to plead with the House that the Bill may not be passed.

I have got seven reasons to oppose this Bill. One is that the Bill was in castuous in its conception, hybrid in its incubation, and rather grotesque in its consummation. It has taken a course which this House is practically unfamiliar with. A very important Bill like this, as I mentioned in my speech in the first instance, was brought to the House by a private Member. This is a matter in which policy questions were involved. The Shah Commission was appointed, and its report was placed on the Table of the House. Declarations were being made from time to time that action would be taken in the light of the report of the Commission. There was nothing forbidding Government from coming forward with a legislative measure, but it was left to a private Member who, unfortunately, had earned, I should say the reputation, I shall not use the word notoriety, of a vindictive stand against certain persons, and who was carrying professional activity as an advocate with regard to this in the different courts. It was unfortunate that such a person came to this House in pursuit of his professional activity if I ma say so, with a Bill, rather than the Government. So, at the very beginning the Bill was vitiated in this manner. It was not a straightforward Bill that came up.

Even if the Government accepted the spirit of the Bill, they should have put their law department to action. They should have framed a proper Bill, properly phrased, and our legislative department is not inefficient in that respect. They are framing perfectly good laws, they are using precise phrases. It is the Parliament of India which is passing a Bill, and it is taking a place in the statute-book. As was mentioned by everybody, cutting across party labels, this is a clumsily phrased Bill, shabbily drawn up, a Bill which any legislative forum will be ashamed of owning. I am not speaking of the contents of the Bill, but of the phrasing, the language of the Bill, the way in which it has been drawn up.

SHRI JYOTIRMOY BOSU (Diamond Harbour): What about the Thirtyninth amendment?

SHRI C. M. STEPHEN: The Legislative Department was kept away.

Thirdly, it took a very unusual course of a reference to the Supreme Court. I expressed my apprehension at that time by a letter to you saying that it was interference with the legislative functioning of the Members of Parliament. You, in your wisdom, ruled it out saying that under article 143 the President has the power, and that it does not come in the way. But how has it happened ultimately? The Supreme Court gave the opinion and here comes the Home Minister saying that the Supreme Court has said it. I have nothing more than that to say. I

won't change anything in the law because that has passed muster in the hands of the Supreme Court. "We have been taken as a sort of rubber stamp." The Supreme Court became the Legislative Chamber and we became the approving Chamber and this impression of the Supreme Court having expressed the opinion has been hanging on the head of the Members of Parliament, when they were legislating, so much so that the constitutionality was not gone into freely, the phrases were not discussed freely and the Government did not keep its mind open freely saying that the Supreme Court has said about it, nothing more is to be said about it. This is the third matter on which I have got serious objection. The legislative process was very wrongly conducted and there was absolutely no reason for referring this matter to the Supreme Court and if they made it, the fact that out of the seven Judges who gave the judgement, two Judges said that this is constitutionally invalid did not prevail with the Government. After all, it is not like a judgement being given in a case where there is a list, it is an opinion being given and the opinion given by two Supreme Court Judges was that this is constitutionally invalid and they warned you that if you are going to pass this, you may have to face the same danger that you are trying to avoid *viz.*, running against a challenge, against the constitutional validity of this Bill. After having gone to the Supreme Court, you should have taken that opinion also into consideration and should have rectified the Bill in such a manner as to keep it beyond reproach.

Having gone to the Supreme Court, there is a particular clause, with respect to which the Supreme Court expressed its opinion, that is to say, clause 5(2) where they say that no court shall call in question a declaration made under clause 5(1). This is what the Supreme Court says:

"Sub-clause (1) of clause (5) provides for making of the declaration by the Central Government, while sub-clause (2) provides that such a declaration shall not be called in question in any court. Though the opinion which the Central Government has to form under clause 5(1) is objective, we have no doubt that despite the provisions of sub-clause (2), it will be open to the judicial review at least within the limits indicated by this court in Khudiram *vs.* State of West Bengal, where it was observed by one of us, Justice Bhagwati, while speaking for the court, that in a Government of law, there is nothing like unfettered discretion immune from judicial reviewability. The opinion has to be formed by the Government, to say the least, rationally and in a *bona fide* manner."

In effect they have said that this is not going to prevail against the judicial review. Nevertheless, they have retained it. They have refused to accept an amendment that it may be deleted. Therefore, the Supreme Court is quoted where it suits them and where it does not, the Supreme Court is discarded. This is how the Bill has taken shape.

Now the most abnoxious part of the Bill is with respect to the appointment of the Special Court. Different propositions have been put forward here. Mrs. Parvathi Krishnan moved an amendment that the appointment be made by the Chief Justice of India. They have rejected it. Another amendment was proposed that the President may make the appointment in consultation with the Speaker and the Chairman of the Rajya Sabha, but they have rejected that also. Different proposals were put forward. But all of them were rejected. Even the proposal that the Chief Justice of India may make the appointment has been rejected. They stand strongly by this that they must have the right to make the appoint-

[Shri C. M. Stephen]

ment. That is a sort of course which has been attacked by the Supreme Court Judges saying that this is a handpicked method and this will not be conducive to justice.

They are for expeditious trial. I remember, when we passed a Bill, an amendment to the Representation of People's Act, it was attacked saying that it was to save Mrs. Gandhi and that it was for one person. Here is another Bill, the reverse of it. If an amendment of the Representation of the People's Act, according to them, was for one person and not for anybody else and, therefore, they attacked it, here is a Bill, the reverse of it, to vindictively victimise one person. This is a one-person Bill. For one person, the circuitous process is being gone into. Even this Government was hesitant to touch it. An adventurist like Mr. Ram Jethmalani's intervention was necessary to initiate the whole process. They just adopted it; they are now keeping it on to them. Expeditious disposal is what they are asking. They are not going to get it. At every stage, the Bill will have to be attacked; the provisions will have to be challenged; the writ petitions will have to be filed; the appeals will have to be filed. It is all because the motivation is bad, because you are making a distinction between person and person, between accused and accused and because you are making out of this Bill an instrument of oppression, persecution, vindictive victimisation and illegal incarceration. If this is the purpose of the Bill, it will have to be resisted and it will have to be countered.

This is not the end of the matter. It is not going to be the end of the matter. At every stage, it will be opposed; at every stage, the persecution will be faced and, at every stage, it will certainly be countered. This is a black Bill which is going to be put on the statute book of this country. It is going to be a disgrace for the Parliament that it has been stampeded into passing this sort of an instrument for victimisation and oppression. I avail of this opportunity to go on record that we oppose the Bill; only to say that we wash our hands off this act of sin and this violation of the sanctity of Parliament.

With these words, I oppose this Bill strongly.

SHRI M. N. GOVINDAN NAIR (Trivandrum): Mr. Speaker, Sir, we are supporting this Bill. When amendments were moved for sending the Bill to a Joint Committee, we did not support it. When we moved some amendments to improve this Bill, it is unfortunate that our Home Minister could not accept them.

As everyone knows, this Bill was fathered by Mr. Ram Jethmalani...

AN HON. MEMBER: Mothered.

MR SPEAKER: He is from Kerala.

SHRI M. N. GOVINDAN NAIR: Let it be "mothered". Though the Minister of Parliamentary Affairs has kept the Adoption Bill in cold storage, he gave an exemption to the Home Minister to adopt this Bill. Then, there is a doctor to nurse it—Mr. Shanti Bhushan. Unfortunately, he was on a sick bed. That is why a Bill like this has come this way. When somebody tries to improve it, I cannot understand why they should oppose it.

15.00 hrs.

Many things have been raised here. If they had accepted our amendment that the Chief Justice of India may appoint a judge, much of it could have gone to enhance the quality of the Bill. But he could not accept that. Then, again, another important amendment moved here and very eloquently and ably argued was that the bill should not restrict it to those particular individuals or a particular period. From our

experience, we can foresee that such a situation can arise even in the future. In that case, should there be another Bill? So we said that in case a similar situation arises, you should provide for future purposes also. I cannot understand why they could not accept it. So, very two reasonable amendments which would have improved the Bill very much and which would have taken the wind out of the sails of the Opposition has been rejected by the Hon. Home Minister. I know he has been suddenly called upon to handle this portfolio. He has interested in calculating the revenue; that was his job when he was in Finance, but suddenly he was called upon to handle this.

Now, by the rejection of our amendments you are going to be forced to discuss this Bill again. I am quite sure these two reasonable amendments which were put forward, will get accepted by the other House and then, again, you will have to bring this Bill here. For rejecting these two amendments if you are going to have a Joint Session, people will laugh at you.

I know my appeal will have little effect on the Home Minister. When they are nto guided by reason but by passion they may not pay any heed to this suggestion but still, even at this last minute, I again appeal to you to accept these two amendments, improve this Bill and see that it gets accepted, and you can go ahead without unnecessary delay.

SHRI M. RAM GOPAL REDDY (Nizamabad): I whole-heartedly support this Bill on one condition—that all the present courts must be abolished and only the special courts must be established! Indiraji had been fighting to abolish all special things. She has abolished the special privileges for Princes, she has abolished special privileges for ICS people. Now, unfortunately these special courts are being applied to her. That is why I oppose the Bill tooth and nail. If required, we can take steps to thwart this monstrous Bill.

PROF. P. G. MAVALANKAR (Gandhinagar): Mr. Speaker, Sir, I rise to support this Bill at this third reading and last stage. But I must say at the outset, that I do say so, adding that my support is qualified. Had I occasion to express my views elaborately at the second reading stage, perhaps I would have gone in detail into the arguments, but time did not permit me, nor does procedure permit we now at this stage to go into details. But I want to go on record that although I did not participate in the two Divisions last week and the Division a little while ago today, I do agree and endorse the spirit of the amendments and, had I spoken at the second reading, I would have certainly voted on those amendments. But having failed to speak, I did not want the debate to show that without speaking I voted, and that is why I did not vote.

I support this Bill because the heart of the matter is, as has been put down by the Minister himself in one simple, short sentence 'judicial determination with the utmost despatch'. That is what he wants—because of the special nature of the offences. I agree. But my difficulty is that the Bill does not go well enough and does not go far enough. The point is that anybody who reads this Bill with or without the Emergency experience will find the Bill smacking of an element of political vindictiveness and a kind of tit-for-tat attitude which does not augur well for my friends in the Janata Party who, in any case, said that they would not repeat a single thing which was bad which Mrs. Indira Gandhi did. Then why are they repeating what my friend, the Leader of the Opposition, has said? That is, one particular Constitution Amendment Bill was wrong because it dealt with one individual. Then this Bill also though on the face of it deals with some other individuals also, substantially deals

[Prof. P. G. Mavalankar]

with one individual only. My esteemed friend, Mr. H. M. Patel, sitting on these Benches with me here those days made a number of speeches against the Emergency and against those provisions as I did at that time. Has he forgotten the spirit of those comments? Has he now changed his attitude because he happens to be on the Treasury Benches? I cannot change my opinion, as I am an independent, and I am committed to my conviction. Therefore, I say, they cannot repeat the kind of vicious follies which my friend, the present Leaders of the Opposition and his Party did when they were in power. I wish, my friends belonging to Congress-I had not said many of the harsh things against this Bill in the language in which they said because, only a little while ago, just three years back, they did many more atrocious things in this very House with the support of themselves when we were opposing those very things. But I will not go into those details now. The time is very limited. I only want to suggest this. I am not one of those who can trust any Government with this kind of power. If Government says that this is limited to a particular period, then I suspect that they have an intention to spare some of their favourites who may also come under the purview of this kind of thing. I cannot say that Congress-I cannot be depended upon but the Janata Party can be depend upon, any Party coming to power, for that matter, even Independents coming to power....

MR. SPEAKER: I doubt that—Independents coming to power.

PROF. P. G. MAVALANKAR: Theoretically speaking. That will never happen, God forbid!

But why I do I say this? I say this because it is inherent in a democratic system that power must be distrusted and absolute power must be distrusted absolutely. This Bill tries to give a certain type of absolute power in the hands of the Special Courts. I want that power to be used against all the defaulters and not only against defaulters of a particular kind. That is why I say that it is bad.

Two more points, and I will finish. When anything has been established as *prima facie* wrong by a Commission under the Commission of Inquiry Act, 1952, which, I suppose, is headed by a judge most of the times, when a judge of the Commission says that the fault is there *prima facie*, then no Government should have the option of saying, 'Some of these we will send, and some we will not'. They must send all of them if they are *prima facie* established by the judicial Commission. Let the person found guilty *prima facie* by a judicial Commission exonerate himself in a Special Court.

Lastly, anything giving overemphasis to the Government of the day, whether Janata Party or Congress-I or any other Party, is to be suspected because if you say that the appointment will be made by the Government and concurred in by the Supreme Court Chief Justice, you have given only a veto power, and it will be very very difficult for the Chief Justice to go against the Government's selection or nominee. I would, therefore, like them to prove their *bona fides* by coming forward and saying, 'Allright, the appointment will be made from among High Court judges by the Chief Justice of the Supreme Court and that will be final, that will be the end of the matter'. If that is done, I would say that it is very good.

One final sentence. Why did I start saying, 'I endorse this Bill'? It is because lawlessness of the kind which was perpetrated on this Country between 1975 and 1977 was unprecedented and it has to be punished. If they are innocent, they can also find themselves innocent in a Special Court. But no vested interests can be given to anybody, I mean VESTED interests? No vested interests can be with anybody for delaying justice. The Special Courts Bill is good because such vested interests are withdrawn. Therefore, I make this appeal to my friend the

Home Minister whom I respect and honour because of his erudition and because of his good nature; of course sometimes he is very inflexible, sometimes he is very rigid! I appeal to him in the name of democracy. I appeal to him to at least give and assurance on the floor of the House today that will bring forward another Bill as early as possible to remove the lacunae which were pointed out by the various amendments. Why do I say all this? Because it is important that when such ugly things will happen any time, they will be dealt with urgently and effectively It is essential and vital for the maintenance and enhancement of Democracy and the Rule of Law, for a cleaner and healthier political climate and public life and for restoring and raising good standards and norms of public life, and what is the last but not the least important, for rehabilitating the credibility of Parties, the politicians and the polity in the minds of the people and in the life of the nation at large

SHRI K. LAKKAPPA (Tumkur): Mr. Speaker. Sir, you know that even at the introduction stage ..

MR. SPEAKER: You opposed it.

SHRI K. LAKKAPPA: I opposed.

Sir, the concept of Special Courts was introduced by the Britishers in the Rowlatt Act of 1919. When the whole Congress Party then fought for Freedom, they opposed it. Then there was the Jalianwala Bagh massacre. The same Act was opposed by the entire nation during the Congress movement. Therefore, the entire Congress culture embedded with the freedom struggle of this nation is opposed to this kind of a black law.

To-day we are having the Congress culture. If they have got any Congress culture on that side, I think they will agree that this is a black law. But here is a government that only wants an eye for an eye and a tooth for a tooth. This is a vindictive act of the Government which is reflected in these obnoxious black laws which are being introduced and hastily brought. I am sure they will not be sustained by our courts.

My Party ultimately decided that at least this should be referred to a Joint Select Committee an amendment in respect of which I have moved, but even that was opposed. Now, Sir, you can understand the intention and the venom they have and the vindictive attitude of this government to indict only the previous government and the people who held offices—some individuals and a group of people.

We brought it time and again but even ignoring the legal implications and the legal lacunae pointed out by the legal luminaires both on this side and on that side, this government is not in a mood to accept because they have no respect for rule of law. If they had any, they would have referred the matter to a Select Committee. When Mr Kamath pointed out so many defects, he has accepted one amendment...

MR. SPEAKER: No, no. He has accepted 7 amendments.

SHRI K. LAKKAPPA: No, only one. Even though he has accepted it in his mind, he is in no mood to concede because they are in a hurry. They know the law of the land. they know the rules and they cannot bring out this sort of vindictivness against the person whom you are aiming at. Therefore, they want to introduce this special law—to indict an individual politically. How is this kind of legislation going to be enacted in this Parliament? Sir, I warn this government that utilimately this will go to the people.... (*Interruptions*) Ultimately this will go to the people's court. The people will face you. This is a thing which no civilised nation will do. These things happen only in countries where there is martial law or dictatorship. Only in such countries these things prevail. You have a living example in Bhutto. They have to face the wrath of the people tomorrow.

[Shri K. Lakkappa]

Therefore, Sir, I would request the hon. Home Minister that if he has got still some belief in the rule of law and a democratic set up, then let him withdarw it gracefully. Otherwise, he was to face the biggest Court—People's Court and he will have to face their wrath.

So, Sir, I not only oppose this black law. This is a black law and I warn again this government to withdarw it gracefully to maintain the democratic system and the rule of law decency of a civilised nation should not be tarnished by bringing this kind of a black law.

SHRI JYOTIRMOY BOSU (Diamond Harbour): Mr. Speaker, Sir, the Janata Party came here with a massive mandate becauhe the people thoroughly disapproved Mrs Indira Gandhi and the people who were behind her in bringing the darkest day in this country. I am critical of the Janata because they had to wait for two long years to take a proper step to bring to book those criminals and villains who had brought disgrace to the whole country and humiliated the country's image before the rest of the world.

Now, I have been hearing quite often Mr. C. M. Sstephen talking...

AN HON. MEMBER: Kindly ask him to withdraw these words.

MR. SPEAKER: Do not use these words.

SHRI JYOTIRMOY BOSU: Is it unparliamentary?

MR. SPEAKER: No. But let us not do it.

SHRI JYOTIRMOY BOSU: Mr. Stephen is saying that the Bill has been brought to punish one particular person. This shows that they do not any kind of home work. I have got a list of criminal cases registered by the Special Investigation Unit of the CVI on the basis of the reports of various Commissions of Inquiry appointed since 1977. They are:

1.	Case is against.	Mrs. Indira Gandhi. Shri R. K. Dhawan ; and Shri D. Sen.
2.	Case against	Mrs. Indira Gandhi. Shri R. K. Dhawan; and Shri P. S. Bhinder.
3.	Case against	Shri P. S. Bhinder and others.
4.	Case against	Shri Sanjay Gandhi; M/s. Indira International; Smt. Indira Doddy of Indira International; Shri D. Sen; Shri P. S. Bhinder and others.
5.	Case against	Shri V. C. Shukla; and; Shri Narendra Sethi.
6.	Case against	Shri Sanjay Gandhi; Shri Jagmohan; and Shri Ranbir Singh.
7.	Case against	Shri Pranab Kumar Mukherjee; Shri S. R. Mehta and others.
8.	Case against	Shri Dhirendra Brahmachari; Shri R. K. Dhawan; and Shri V. N. Nagar.

MR. SPEAKER: You have proved that there are a large number of cases. Don't mention more.

SHRI JYOTIRMOY BOSU: Ninth case is against

10 Case is against:—

Eleventh case is against..

SHRI SANJAY GANDHI:

SHRI B. R. TAMTA:

SHRI RAM SINGH and others:

SHRI C. M. STEPHEN: Sir, at this stage I rise on a point of order. The rule is that with respect to any person nothing incriminatory or defamatory can be stated. Here is reading out a few names and says that there are criminal cases and criminal charges which no prosecution has brought. They have been described as criminals who have committed offences.

SHRI JYOTIRMOY BOSU: I am quoting from a document.

SHRI C. M. STEPHEN: Which document? Have you got information about the document? Where is the document? What is the document?

Sir, you have been very strict and when somebody mentioned about Kanti Desai you struck it off. Quite a number of names are mentioned here and he says that criminal cases are being taken against them. Names are called out and they are described who are going to be accused of criminal charges. Is it not defamatory and incriminatory? Are those things to come on the record? Are those statements to be made here? Has he given a notice about it? I want to know about it.

MR. SPEAKER: I don't think there is any point of order. On the one side it was mentioned that only one individual is involved. What Mr. Bosu is trying to show is that a large number of individuals are already involved.

All the same, Mr. Bosu, now your time is over.

SHRI JYOTIRMOY BOSU: I want to say this.

MR. SPEAKER: No, no. The cases are investigated.

SHRI VASANT SATHE (Akola): He says that against these people criminal cases are pending. That is wrong.

MR. SPEAKER: I will look into it.

SHRI JYOTIRMOY BOSU: These people do not look into what is being circulated in the House day by day. This information was given in reply to Unstarred Question No. 201 on the 21st of February, 1979

MR. SPEAKER: Mr. Bosu, that is all right.

Mrs. Mohsina Kidwai—Just two or three minutes please.

SHRI JYOTIRMOY BOSU: You have been very partial, I am vry sorry to say this.

श्रीमती मोहसिना किदवई (आजमगढ़) : माननीय अध्यक्ष जी, स्पेशल कोर्ट बिल जो आज सदन के सामने पेश है, उसकी मुखालफत करने के लिए मैं खड़ी हुई हूं। मुझे मालूम है कि इस सदन में जनता पार्टी के मेम्बरों की भारी अक्सीरियत होने की वजह से और उसका नाजायज फायदा उठा कर वे लोग इस बिल को जरूर पास करायेंगे। (व्यवधान) मैं यह कहना चाहती हूं कि जनता पार्टी को इस में छिपा हुआ खतरा नजर नहीं आ रहा है। अगर वह खतरा आपको नजर आता तो आप भी इस बिल से मुतफिक्क नहीं होते। इस बिल में जो सब से खतरनाक क्लाज है वह क्लाज 9, सब क्लाज 2 है। मैं आपसे कहना चाहती हूं कि यह उन चीजों का नमूना है जो कि मुल्क को डिक्टेटरशिप की तरफ ले जाती है। (व्यवधान) आज यह चीज आपको नजर नहीं आ रही है। यह क्लाज बना कर उन लोगों को प्रोटेक्शन देने का, डाइव देने का, रिस्मत देने का मौका दिया गया है। इस क्लाज को इस बिल में लाने की क्या जरूरत थी? (व्यवधान) इस में सरकार की बदले की भावना नजर आती है। इस बिल के जरिये से हमें सरकार की बदले की नियत नजर आती है।

MR. SPEAKER: I have given your party much more time; so, there is no question of your saying like that.

श्रीमती मोहसिना किदवई : अगर मैं कम बोलती हूं तो यह मतलब नहीं कि है आप भी मुझे बोलने का मौका नहीं दें। आपको मुझे मौका देना पड़ेगा। मैं

[श्रीमती बीहुसिना किदवई]

आप से कहना चाहती हूं कि जनता पार्टी के लोगों में बदले की भावना का एक लावा उभरता नजर आ रहा है। इस बिल को लाने की जो कोशिश की जा रही है वह महज इसलिए कि ए क खास तरह के जज तकर्रर किए जायेंगे। इसी से सब से ज्यादा शुबहा हम लोगों को मालूम होता है। (व्यवधान)

MR. SPEAKER: I have given everybody plenty of time.

SHRI MALLIKARJUN (Medak): Mr. Speaker Sir,

MR. SPEAKER: I have given your party all the time.

SHRI MALLIKARJUN: It is totally vindictive. Mr. Spaker, Sir...

THE MINISTER OF HOME AFFAIRS (SHRI H. M. PATEL). Mr. Speaker, Sir...

SHRI MALLIKARJUN: My name was there. It is my right. It is very unfair on your part, Sir.

MR. SPEAKER: Mr. Minister.

SHRI H. M. PATEL: I would like to say this. Mr. Stephen mentioned that this was a black bill and it was vindictive. I would like to say that there is nothing vindictive in this Bill. The Bill is not directed against any one person. It is clear to any one who chooses to read the Bill. But if anybody insists upon perverting the meaning, reading anything that he likes, then, there is nothing to be said.

SHRI MALLIKARJUN: ...(*Interruptions*)**.

MR. SPEAKER: Don't record it.

SHRI H. M. PATEL: A person who has jaundice, see everything with a jaundiced eye My hon. friend talks of perversion elsewhere when he alone is perverted. I am sorry that my hon. friend Prof. Mavalankar also chose to say that this Bill is vindictive, I am surprised about this. He is usually a very mild person. There is nothing in this Bill which can be described as vindictive in attitude or otherwise I would say it is a fair Bill. As I said at the outset, this is intended to provide a fair and just trial expeditiously. This is all I would say.... (*Interruptions*).

SHRI C. M. STEPHEN: He has not answered my points. (*Interruptions*)

MR. SPEAKER: The question is:

"That the Bill as amended, be passed".

The motion was adopted.

Shri C. M. Stephen and some other hon. Members then left the House.

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15.26 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*].

MR. DEPUTY-SPEAKER: Now, we shall take up Sugar Undertakings (Taking over of Management) Amendment Bill

**Not recorded.