

[Shri C. Subramaniam]

First of all, the report of the Privileges Committee itself is not unanimous. That point has been made. In all the matters which came up before this House, the action taken was unanimous on the basis of the Privileges Committee's report. But unfortunately, there is a heated discussion and there is difference of opinion and sharp conflict. That is the atmosphere even in the discussion. Therefore, under those circumstances, will it be wise — I would particularly request the Prime Minister to consider — that we should proceed with this and take a decision on the basis of a vote of the House. I respectfully submit, you would be creating a completely wrong precedent.

There are conflicts in every walk of life today, whether it be economic, social or political. Within the political parties, there are conflicts and tensions. It is so in every party that you may take. So, under those circumstances, should you throw another apple of discord or another apple of bitterness into the national arena, which is likely to affect not only the functioning of the Government, but the restoring of harmony and peaceful atmosphere in the country as a whole? It is from this point of view... (*Interruptions*)

13.00 hrs.

MR. SPEAKER: Please hear him; you have a duty to hear him. You may agree or disagree.

SHRI C. SUBRAMANIAM: I am not interested in protecting anybody. (*Interruptions*) I am speaking what I consider to be in the interests of the country. If you don't want to listen to me, it is a different matter. I know in which direction the Janata Party Government are going. They are fast proceeding towards chaos. I don't think it should happen to this country. That is why we are all concerned; that is why I say that having been a party to the framing of this Constitution, and having been a Member of this House for such a long time, I want to plead that this should not be proceeded with on this basis.

SHRI SHYAMNANDAN MISHRA (Begusarai): And your having been a party to the termination of Dr. Swamy's membership.

MR. SPEAKER: Mr. Subramaniam will be speaking after lunch. The House is adjourned for lunch.

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

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

[MR. SPEAKER in the Chair]

MOTIONS RE. THIRD REPORT OF
THE COMMITTEE OF PRIVILEGES
—Contd.

SHRI C. SUBRAMANIAM: Mr. Speaker, Sir, I made a statement that in respect of privilege, decisions have been taken on a unanimous basis. I was referring to the proceedings in this House. As a matter of fact, privileges and procedures and other things vary from House to House. I am aware that perhaps in Rajya Sabha a decision was taken on a majority basis. I am not concerned with what happened in Rajya Sabha; I am concerned with the privileges and conventions we follow in this House. When I made this appeal that it would be desirable not to proceed with the consideration of this subject, I was not making a light-hearted appeal. I have got other reasons also, because this is not a straight and simple matter in which decisions could be taken. As was pointed out, it is riddled with constitutional and legal issues and we are called upon to take a decision on these legal issues. When a point was made here that the Janata Party Members had already made up their mind, there was protest from that side saying that they have got an open mind, but from the way in which they reacted even to a suggestion from their own Member Shri Rajnarain or Shri Madhu Limaye,

it shows what the feelings of the Members, on that side are. I could very well understand it because many of them on that side had undergone sufferings and the rigours of the Emergency. Many of them were put in jail and even those who did not go to jail might have gone through other sufferings. Therefore, there is that subjective feeling and that subjective feeling, however much you try to be objective, comes upper most. Therefore, if they take that attitude, I am not at all surprised. If they have already come to a conclusion, I am not at all surprised. Therefore, it is in this atmosphere that this House is called upon to decide on complicated constitutional and legal issues.

I am not going into all the issues. I am going to deal with only two points on which you will be called upon to decide. One is with reference to whether this House can take cognizance of a breach of privilege which happened in the previous House. In this connection, my hon. friend, Shri Jethmalani, cited the conventions of the House of Commons. The House of Commons procedure and those conventions would be applicable if there are no provisions in our rules for dealing with our privileges. Fortunately we have got our own rules and therefore we have to look into them and interpret them rather than go to Westminster to find precedents for that.

SHRI JYOTIRMOY BOSU (Diamond Harbour): I quoted Tulmohan Ram case. (*Interruptions*).

SHRI C. SUBRAMANIAM: That was a matter of corruption. The point I am making is this. Rule 222 says... (*Interruptions*)

MR. SPEAKER: Mr. Bosu, I have called only Mr. Subramaniam.

SHRI C. SUBRAMANIAM: Rule 222 says:

"A member may, with the consent of the Speaker, raise a question in-

volving a breach of privilege either of a member or of the House or of a Committee thereof."

What is meant by "the House" is a matter which has to be considered. Arguments were raised that the Lok Sabha is a continuing thing and there is absolutely no break. But I would like to refer to the article relating to that. Article 83 deals with it:

"The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House."

Therefore, either it is dissolved before five years or automatically after the expiration of the term, it gets dissolved. Then there is an election held and a new House comes into existence. When we meet here, we do not take into account all the previous sessions and say that this is the 35th or 36th session; we say this is the first session of this House. Therefore, we make a distinction between House and House. It is a separate entity. Therefore, when the words here are "the House" could it relate to the earlier House also which was dissolved and after which another House had come into existence?

It is further fortified by what is stated in rule 224, that the question shall be restricted to a specific matter of recent occurrence. This should also be kept in mind in interpreting this. Therefore, if you take all this into account, you will find that "the House" would mean only the House as it is constituted now, it cannot take us back. This is a matter which will have to be legally argued, legally construed, and a legal decision will have to be taken. This is my first point.

Secondly, Shrimati Indira Gandhi be called upon to defend herself, and very eloquently it was said she should give an unqualified apology. It is not as simple as that, because there are

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already prosecutions pending with reference to these facts. Therefore, can she defend herself properly? And even if she wants to apologise without detriment to her defence there, can she make an apology here? Therefore, she is put in a very difficult situation. Therefore, article 20 of the Constitution also will have to be taken into consideration in coming to conclusion.

The point I am making now is that we are called upon to decide on this. Are we going to decide these nice constitutional, legal issues on the basis of 250 voting for and 150 voting against? Is this the way to decide very complicated legal, constitutional issue? Who are going to decide this? As I have already said, those who have a grievance against Shrimati Indira Gandhi, personal grievances against her because of the sufferings they had undergone, however much they may say "no". (*Interruptions*)

Mr. Speaker, you have been a Judge. Suppose Shrimati Indira Gandhi is tried by a Judge who has a personal feeling against her and supposing a petition is made for the transfer of the case, will it be said: no, in spite of the subjective feeling, the Judge should go on with the case? Whether we like it or not, that subjective feeling comes uppermost and therefore I am making the suggestion that we are bound to be clouded by this subjective feeling. So, what will the outside world think when you take a decision particularly on the basis of voting, and the decision is against Shrimati Indira Gandhi mainly because of the vote of those who have got a personal grievance against her? Certainly it is going to be a clouded judgement, not an objective judgement.

Taking all this into account and also the atmosphere to which even the Prime Minister made a reference, I respectfully submit that no worthwhile objective can be achieved by proceeding with this.

A question was put: should the wrong go unpunished? I am not here to justify any action. If there is a court of law and there is a case pending and if she has committed any offence, naturally the court will take note of it. It is not necessary for us, under political conditions, to take a decision condemning her and taking away her personal liberty or her right to represent a constituency in this House.

श्री वसंत साठे (अकोला) : अध्यक्ष महोदय, आज यह सदन इस देश की सर्वोच्च पंचायत के रूप में बैठा है। इस देश की महान न्याय पंचायत के जिस रूप में यह सदन बैठा है, मैं यह आशा करता हूँ कि यह न्याय पंचायत जहाँ न्याय करने की बात आयेगी, वहाँ अपनी भावनाओं से प्रभावित हो कर निर्णय नहीं करेगी। मैं केवल एक ही मुद्दा आज आप के सामने पेश करना चाहता हूँ। सब तर्क पेश हो गए हैं तकनीकी मामले में। मैं यह कहना चाहता हूँ, एक बुनियादी बात है, यदि इस सदन के सत्ताधारी पक्ष के बहुसंख्यक सदस्यों की भावना यह हो कि हम कुछ नहीं जानते, इंदिरा गांधी ने हमें जेल में डाला (व्यवधान) . . . अब हमें यह मौका मिला है, 19 महीने हम ने लगातार कोशिश की हर तरीके की कि उन्हें किसी तरह से सजा कराएँ, कमीशन पर कमीशन बैठे, अभी तक कुछ उस में से नहीं निकला, अब मौका मिला है पकड़ में आ गई, अब जरूर जेल में डाल कर रहेंगे (व्यवधान) . . . आप के ही सदस्य कल बोले और जिस तरह से आप ने राजनारायण और मधु लिमये जी को बात को दबाया, तब जो शोरगुल आप ने किया वह आप की भावनाओं का प्रमाण है कि आप किस रुख से इस सवाल को देख रहे हैं।

मेरी आपसे एक नम्र प्रार्थना है कि इंदिरा जी को कमेटी के सामने भी और यहां जरा भी हिचकिचाहट नहीं थी सब तथ्यों को रखने में। उन्होंने केवल एक ही बात कही थी प्रिविलेज कमेटी के सामने कि साथ ही साथ यदि फौजदारी मुकद्दमा चलाया जा रहा हो इन्हीं तथ्यों पर तो मैं यदि कोई बात आप के सामने कह दूँ तो उसका उपयोग मेरे खिलाफ उस फौजदारी मुकदमे में होगा ... (व्यवधान) ... मुनिए, मुनिए। यह उन्होंने कहा कि क्या प्रिविलेज कमेटी यह आश्वासन मुझे दे सकती है कि इस का उपयोग वहां नहीं होगा? प्रिविलेज कमेटी के चेयरमैन ने कहा कि हम ऐसा कोई आश्वासन आप को नहीं दे सकते। आज आप भी यह आश्वासन नहीं दे सकते कानून में कि यहां जो कुछ बात कही जायगी, यदि उन्होंने ने आ कर यह कहा कि मैं सम्पूर्णतया सदन के अधिकार को मानती हूँ और अपने आप को जो सदन अपनी मर्जी से तय करे उस के स्वाधीन करने को तैयार हूँ तो आप भी यह आश्वासन नहीं दे सकते कि यहां जो वह कहेंगे उसे कहीं जूडिशियल कन्फेशन के रूप में फौजदारी कोर्ट में उपयोग में नहीं लाया जायगा। ... (व्यवधान) ...

अध्यक्ष महोदय, आप को याद है—इस सदन की कुछ परम्परायें हैं—हारे मॉशनज के बारे में एक सिद्धान्त यह है कि जहां जूडिशियल एन्क्वायरी उसी मामले के बारे में उन्हीं तथ्यों के बारे में हो रही हो, चाहे कमीशन आफ इन्क्वायरी के समाने हो या कहीं भी हों, तो उसे मॉशन के रूप में हम लोगों को नहीं लाना चाहिये। इस सम्बन्ध में आप का रुलिंग है—आप को याद होगा, जब मैंने यह बात आप की नजर में लाई—मैं आप का ध्यान आकर्षित करना चाहता हूँ—

MR. SPEAKER: Mr. Stephen read out that portion; don't repeat it.
3538 LS—11

श्री बसन्त साठे : आप ने यह कहा कि—

“As far as the Shah Commission aspects is concerned, these also I have gone through the entire matter. I have gone through the terms of reference of the Shah Commission. They are confined to Emergency Excesses and matters connected with them. This event has taken place much earlier than the declaration of the Emergency. Therefore I thought it was not necessary to go by that consideration”.

इससे साफ है—यदि आपको उस वक्त यह बात मालूम होती—मैं आपके अन्दर जो न्याय देवता है, उसको सम्बोधित कर रहा हूँ—... (व्यवधान) ... क्या आप अपने हृदय पर हाथ रख कर यह कह सकते हैं—यदि उस वक्त आप को यह बात मालूम होती कि इस मामले पर शाह कमीशन में एन्क्वायरी होने वाली है तो आप स्वयं कहते कि यह सबजूडिस है, मैं इसे प्रिविलेज कमेटी में नहीं भेजता। आगे जब शाह कमीशन ने इन्हीं तथ्यों के ऊपर सीधी एन्क्वायरी की और उसके आधार पर, प्रिविलेज कमेटी में इन्दिराजी के आने के पहले फौजदारी को दायर हो गया, तब आप खुद बताइये—एक न्यायाधीश होने के नाते कि जहां उन्हीं तथ्यों की एन्क्वायरी होने वाली है, यदि आज उन्हीं तथ्यों के बारे में कुबूली हो जाती तो क्या उस का प्रभाव उनके खिलाफ वहां नहीं होता?

यह सदन सर्वोच्च न्यायालय है—देश का ... (व्यवधान) ... चलिए, इस तरह से कहता हूँ, यह हाउस, यह सदन और आप प्रधान मंत्री जी यहां पर हैं—आप इतना कह दीजिये—क्या इस से शान्ति होने वाली है कि हम ने इन्दिरा जी को सजा दी, जिसके लिये कि पिछले 15 महीनों में इस देश के बुनियादी सब लों और आर्थिक विकास पर

[श्री बसन्त साठे]

ध्यान देने की फुर्त नहीं मिली। मैं कहता हूँ—
जकर सजा दो, चलो एक बार भर्मान पूरा
हो जाय, लेकिन मैं प्रधान मंत्री जी से कहूँगा—
आप अभी यह कह दें कि वह फौजदारी मुकदमा
हम हटा लेते हैं... (व्यवधान)... सजा
इन्हें देनी है तो सजा दे दीजिये, लेकिन जो
फौजदारी केस है, चार साल चले, 5 साल चले,
उस को रोक दो।... (व्यवधान)...
या तो फौजदारी मुकदमा तय होने तक इस
केस को आप मुलतवी कर दो, उस के बाद भी
आप सजा दे सकते हो नहीं तो वहाँ से मुकदमा
हटा लें और यहाँ सजा दे दें। कहीं भी एक जगह
सजा दें, जितनी चाहें सजा दें, पांच साल की,
दस साल की, जितनी आप चाहें दें। मैं आप से
कहता हूँ कि यदि यह सदन ऐसा करे तो मैं
अपनी नेता से हाथ जोड़ कर यह कहने को
तैयार हूँ कि आप इस सदन में आइये और इस
का सामना कीजिये। लेकिन आप दोनों जगहों
पर फौजदारी केस चला कर भी और यहाँ भी
... (व्यवधान) क्या आप पंच यत के सदस्य नहीं
हैं जो इस तरह से चिल्ला रहे हैं? (व्यवधान)

प्रिविलेज कमेटी के सामने जो पिकचर
थी, उसी को वजह से इंदिराजी की गवाही
का वहाँ प्रश्न नहीं था। वहाँ जो इकतरफा
गवाही हुई है, उसी के आधार पर प्रिविलेज
कमेटी के कुछ सदस्यों ने यह रिपोर्ट दी है।
यह रिपोर्ट यूनिमस नहीं है। (व्यवधान)
मैं यह कह रहा हूँ आप से कि आज यदि
आपने यह तय कर लिया है कि इस सदन
के वानावरण से दिख रहा है तो मुझे तो यह
लगना है कि इन केस के लोगों ने या सत्ताधारी
पक्ष के लोगों ने कोखों का रूप धारण कर
लिया। (व्यवधान) ये जबरदस्ती आज
अन्याय पर उतर आये हैं। इन्होंने तो तय कर
लिया है। क्या आप इन के साथ सहमत होना
चाहते हैं,—रू नूनी मद्दे पर भी? प्रिविलेज
कमेटी में आप ने इतना भेजा, मैं ने आपको
प्लाइड आउट भी किया था। अगर इस

भेज भी दिया था तो शाह कमीशन के मुद्दे
पर इस को वहाँ से वापस लाया जाना चाहिए
था और सदन में यह राय दी जानी चाहिए
थी कि यह अलम से वहाँ गया है। इसलिए
मेरा यह अनुरोध है कि इस पर केवल अपोलोजी
का प्रश्न नहीं है कि वह दी जा सकती है या
नहीं दी जा सकती है। इस में हमें कोई दिक्कत
नहीं है। लेकिन आप न्यायाधीश बनें और
यह देख कि क्या आप किसी को डबल
ज्योपाडी में डाल सकते हैं? मेरा कहना है
कि आप नहीं डाल सकते हैं।

आखिर में मैं इतना ही कहना चाहता हूँ
कि बहुमत के जोर पर आप कुछ भी कर लें।
कल श्री राजनारायण जी ने कहा कि राम
का तरीका अख्तियार किया जाए, यदि कोई
विभीषण की तरह आ जाए तो उसे क्षमा कर
देना चाहिए। चौधरी चरण सिंह भी मोरारजी
भाई के पास विभीषण बन कर गये थे। क्या
हुआ (व्यवधान)? मैं यह कह रहा हूँ कि
आप यदि यह भूमिका लेकर चले हैं कि
हम किसी भी हालत में मैजोरिटी की ताकत
पर सजा देना चाहते हैं तो मैं एक शेर अर्ज
करना चाहता हूँ :—

ये माजिश कर रहे हैं चार तिनके आशियाने के।
कि बिजली को किसी सुरत असीरे आशियां
कर लें ॥

आप बिजली को इस तरह से दबा नहीं
सकते हैं। हम देखना चाहते हैं कि मगरूरियत
आप में कितनी है—(इंटरप्श) हम देखना
चाहते हैं कि कितनी बाजुआं में आप की
ताकत है। इस को भी हम देख लेंगे। दा सजा
जितनी देना चाहते हो।

MR. SPEAKER: I think there has
been sufficient discussion on the
subject. Now I am proceeding to put
the motion to the House. The question is:

"That this House do consider the
Third Report of the Committee of

Privileges presented to the House on the 21st November, 1978."

The motion was adopted.

The Prime Minister.

THE PRIME MINISTER (SHRI MORARJI DESAI): It is on an occasion of both sadness and at a difficult moment in the history of this great and august institution that I am speaking on a motion which on one side condemns one among others who has played such a prominent part in the political life of the country and on the other, upholds the dignity and sanctity of our premier democratic institution against a grievous wrong perpetrated by her. The choice before me was and before this House is a very poignant one. In coming to my Judgement on that choice I have had to set aside my feelings of warmth and affection for her illustrious father and also the memory of my long association with him and her—an association which but for some erratic interludes has extended over practically the entire period of my political and official career. It is, therefore, with a heavy heart that setting aside these personal bonds I stand before this House in the discharge of my bounden duty as is the duty of all its members—to protect and preserve its cherished and noble privileges.

Sir, I have read carefully and with the concentrated attention it deserves the report of the Committee of Privileges and the concurring and the dissenting notes of some of its members. On an occasion like this when we have to deal with guilt we have to approach the subject with utmost objectivity and independence of judgment. I need hardly say that eschewing any bias or prejudice we all have to do it and ensure that notwithstanding the gravity of the offence we administer justice and fairness to those whom we have to adjudge.

It is in this spirit and attitude of mind that I have approached the valuable documents to which I have referred and I can say in all conscience that there is no other conclusion to which I can subscribe than that Shrimati Indira Nehru Gandhi, Shri R. K. Dhawan and Shri D. Sen are guilty of a grave misdemeanour against the sacred privileges of this House. The gravity of Smt. Gandhi's misconduct is further heightened by the long tenure of the distinguished office she held, her long experience of the traditions and obligations of the membership of this august House, and the fact of the oath which she had taken to uphold the Constitution and to conduct herself without fear or favour, affection or illwill. It is made even worse by the attitude of defiance and contempt with which she has refused to testify and cooperate in the work of the Committee and has cast aspersions on the integrity of the Committee itself. The arguments she has used in the process ring hollow in the context of her own experience of the composition and functioning of the Committee of this House and the tradition of objectivity and fairness of their approach to the matters which are entrusted to them.

Sir, under the oath which she took she was enjoined to do right to all manner of people in accordance with the Constitution and the law. In fact what she and the two officials who are arraigned at the same time did is, briefly stated, to destroy the peace and reputation of four humble and honest public servants who had nothing to do with policies and were only collecting information at the behest of this House. She misused the official machinery to humiliate them and deflect them from the path of official duty. She went out of her way to shield her son in regard to the alleged misconduct of her son in relation to the affairs of an undertaking of which he was the keyman. She could have established her *bonafides* if she had cooperated with the Committee.

[Shri Morarji Desai]

Instead she defied it and there can be no other reason for such defiance except that she knew she could not meet the case that was presented against her.

Let us not at this moment think of other delinquencies in the conduct of her official position which are ascribed to her in relation to emergency of which she was the fountainhead. We should not prejudice our minds with that tragic episode. Instead we should view the enormity of her crime in relation to this misconduct and this alone. Let us not also attach any importance to the fact of her return to this House from Chikmagalur. That would be irrelevant to the issue which confronts us. We have to deal intrinsically and exclusively with that issue and that issue alone.

As regards the two officers who have been arraigned with her, one of them, Shri Dhawan, has been in closer and more intimate employ by her, while the other was the head of a department whose duty it was to conduct himself with detachment and fairness. Both stood by her in violation of the well-established norms of the conduct of civil Servants. Nevertheless the House will be justified in taking the view that they were under orders.

Sir, I have already said that for me it is a moment of sadness but at the same time one of meeting the inexorable demand of discharge of duty. That demand affects not only me but each Member of this House. What is our membership worth if we do not stand up united and uphold the sacred dignity, trust and traditions of that membership and to uphold the sanctity of this great democratic institution to which we have the honour to belong. It is in that spirit I moved this motion.

Sir, I beg to move the motion, of which I have given notice, in the revised form, as follows:

"That this House having considered the Third Report of the Com-

mittee of Privileges agrees with the findings of the Committee:

That Shrimati Indira Nehru Gandhi, Shri R. K. Dhawan, former Additional Private Secretary to the then Prime Minister and Shri D. Sen, former Director of CBI, committed a breach of privilege and contempt of the House by causing obstruction, intimidation, harassment and institution of false cases against four concerned officers;

That she committed a further breach of privilege and contempt of the House by her refusal to take oath/affirmation before the Committee;

That she also committed a breach of privilege and contempt by casting aspersions on the Committee in her statement dated 16th June, 1978 submitted to the Committee, and that the last two breaches of privileges have aggravated the first mentioned contempt.

The House further authorises the Honourable Speaker to take steps to ensure the presence in this House of Smt. Indira Nehru Gandhi in her seat, Shri R. K. Dhawan and Shri D. Sen before the bar of the House, on such date as may be decided by the Honourable Speaker, to hear them on the question of punishment and to receive such punishment as may be determined by the House."

MR. SPEAKER: One word may I say? Instead of 'seat' it should be 'place'.

SHRI MORARJI DESAI: Yes. It should be 'place'. That is all right. I correct myself.

MR. SPEAKER: Now, this is open for debate.

SHRI C. M. STEPHEN (Indukki): Sir, I rise on a point of order. The point of order is with respect to the wording of the motion. The motion is

under Rule 315 (3) and it states the form of the motion must be:

"After the motion made under sub-rule (1) is agreed to, the Chairman or any member of the Committee or any other member, as the case may be, may move that the House agrees, or disagrees or agrees with amendments, with the recommendations contained in the report."

Now, Sir, every report has got two sections. One is the finding and the other are the recommendations. The rule is very clear. This has got to be with reference to the recommendations—whatever the recommendations may be. In three manners the motion can be framed. Either we agree with the recommendation or disagree with the recommendation or we agree with the recommendation with the following amendments. According to me, as I could see, this motion is not in conformity with this report. It speaks about findings and it spells out certain things. The recommendation was that the House may impose punishment. The recommendation is before me. The recommendation is very clearly spelt out. If it has got to be amended in any form it must come in the form of an amendment. What I am submitting is when the Rule of Procedure very specifically spells out what exactly should the form of the motion be, deviation from that from is not permissible. May I also submit when you call somebody—I do not know, this has never happened—to hear about the punishment, this is something which has never happened. Why exactly do we constitute the Privileges Committee? The Privileges Committee is constituted in order that in an atmosphere of objectivity the accused persons may be heard, not in the surcharged atmosphere of a large House. And if a person is lled to the Bar, calling before the Bar of the House itself is a punishment. After you make up your mind, you call a person before the Bar of the House to

receive the punishment. It is not for the purpose of putting up a defence at all. And if a defence can be put up there are cases to the effect that defence can be put up through counsel. What I submit is this. We have got to give deep thought to the form of the motion that is coming in. Is it contemplated that there are to be three stages, one stage before the privilege committee, another stage when you discuss these things without them, and another stage when you give a hearing to them and the final stage when we make a decision? This is not contemplated by the procedure at all. My submission is this. That is why the rule very specifically says, the motion can be either agreeing or disagreeing or agreeing with amendments. Any motion which must be moved must be put in one of these shapes. And I can understand that Mrs. Gandhi, being a member of this House, can speak, participate in the debate, give her explanation, whatever she chooses. But, for two other people to come in and to argue before this House is setting up a very dangerous and a wrong precedent. It is to avoid that sort of a thing that the Privilege committee is there. We generally punish people who do something here from the gallery. We don't give them any hearing in this House. We have never given a hearing to persons who are not members of this House. But that is what is now proposed; that is what is now contemplated.

SHRI JYOTIRMOY BOSU (Diamond Harbour): There was no such case before.

SHRI C. M. STEPHEN: Stages are spelt out. Therefore, my point of order is this. This motion is not in accordance with rule 315, sub rule(3). This motion contemplates giving a hearing in this House to outsiders which is not contemplated in the rules. The rule says that we can decide the punishment. For that purpose, hear-

[Shri C. M. Stephen]

ing any person is not contemplated by the rule at all.

Sir, I do not deny that this House is supreme. But the motion should be in accordance with the rules of procedure. And this motion contemplates more than two stages. (*Interruptions*) This contemplates more than two stages. This is not within the contemplation of this rule. So, therefore, this motion, according to me, is out of order.

MR. SPEAKER: I do not think I should decide this now. There are a number of motions. This is not the only motion before us. There are a number of motions. I will give the decision after all the motions are moved. If any one of them contravenes the rule, that will be over-ruled. This is not the only motion before the House. I would have given my decision here and now on this, but that does not serve the purpose. There are a large number of motions.

PROF. P. G. MAVALANKAR (Gandhinagar) : A point of order, you can hear. I have a point of order on this.

SHRI K. P. UNNIKRISHNAN (Badagara) : You can hear them. There are points of order on the motion.

PROF. P. G. MAVALANKAR: Mr. Speaker, Sir, I have a point of order which is slightly different from the point of order raised by the hon. Leader of the Opposition.

SHRI B. P. MANDAL (Madhepura) : Can there be a point of order on a point of order?

MR. SPEAKER: He is raising a different point of order.

PROF. P. G. MAVALANKAR: The Hon. Leader of the House, while moving his motion under 10A of the supplementary List of Business for today started by a very dignified statement...

MR. SPEAKER: Should we go into the merits? We have a long discussion. You cannot make everything into a speech.

PROF. P. G. MAVALANKAR: I will express my view later on sometime in the debate. But, after that, when he had moved his motion, my point of order arises in this way. In two respects there has to be some objection. One is that the motion is not strictly in conformity with the statement which is made preliminary to the moving of the motion. That is number one. But, apart from that, if you see the last para of this motion, and read it in conjunction with rule 315 (3), what is it that the Leader of the House wants this House to do? He said, and I quote:—

"The House further authorises the Honourable Speaker to take steps to ensure the presence in this House of Smt. Indira Nehru Gandhi in her place, Shri R. K. Dhawan and Shri D. Sen before the Bar of the House, on such date as may be decided by the Honourable Speaker."

So far this is correct, but what I am objecting to is:

"...to hear them on the question of punishment and to receive such punishment as may be determined by the House."

Rule 315, sub-rule 3 cannot think of more than one motion now at this stage, that is, the contingent motion, but the Prime Minister's motion now moved makes it obligatory for this House to have now two motions. The wording says that the House will first hear Mrs. Indira Gandhi, Mr. Dhawan and Mr. Sen at the respective places "to hear them on the question of punishment and to receive...". Without the House having first determined what the punishment is, what is the House going to listen in terms of what the punishment is and what they have to reply?

Sir, we are in the midst of a very unprecedented situation, and therefore, there are not many guiding rules. I agree to that. Therefore, I am seeking your guidance. I hope, this will not be considered as a precedent for future. I do not want this to happen in future. But still when the Speaker rules, he must rule for future also. The wording here is:

"...to hear them on the question of punishment and to receive such punishment as may be determined by the House."

The punishment must be determined by the House first, so that they can be asked to give their defence, if any. But in the absence of any punishment having been determined by the House, what are these people going to say in their defence?

MR. SPEAKER: The whole difficulty is that some hon. Members do not know what is a point of order and what is an amendment. If you wanted an amendment to this motion, I can understand, but I cannot understand a point of order on this.

PROF. P. G. MAVALANKAR: The motion is in contravention of the rules.

MR. SPEAKER: You can move an amendment to that; there is no difficulty.

Mr. Jethmalani.

SHRI K. P. UNNIKRISHNAN: The point of order is whether the motion is in order. The motion must be in order.... (Interruptions)

श्री उपसेन (देवरिया) : हम लोगों का जो प्रस्ताव है वह ले लीजिए, उसके बाद व्यवस्था का प्रश्न सुनिए। हमारा प्रस्ताव लेने से सब गलतफहमी दूर हो जायेगी।

MR. SPEAKER: Even if the motion is not in order, that is not the end of the motion.

SHRI SAUGATA ROY (Barrack-pore): Sir, can you admit a motion which is not in order. This is a wrongly drafted motion.... (Interruptions)

SHRI K. F. UNNIKRISHNAN: This is in violation of the rule.... (Interruptions)

MR. SPEAKER: I have called Jethmalani.

SHRI RAM JETHMALANI (Bombay North-West): Sir, I am speaking on the point of order raised by the Leader of the Opposition, Shri Stephen.

MR. SPEAKER: No.

SHRI RAM JETHMALANI: What do you propose to do?

MR. SPEAKER: I propose first to have all the amendments to the motion moved and, thereafter consider which one of them is valid or not. If all of them are invalid, they are invalid. If they are valid, they are valid. At that stage, I will hear you.

SHRI C. M. STEPHEN: When you say that there are other motions also, I want to understand this. There were other motions, but you did not call these other motions; they are not identical with this motion. Their motions were given notice of earlier.

They were put in the Bulletin as contingent motions.

MR. SPEAKER: This is not an occasion for making a speech.

SHRI C. M. STEPHEN: I am not making a speech. I am saying which motion the House must take into consideration.

MR. SPEAKER: It is for the House to decide.

SHRI C. M. STEPHEN: You have allowed it.

MR. SPEAKER: Even if it is out of order?

SHRI C. M. STEPHEN: I am not on the out-of-order business. You have allowed the Leader of the House to move a motion. You have also said that now the debate begins.

MR. SPEAKER: Immediately I corrected it and said that the other motions will be.... (*Interruptions*)

SHRI C. M. STEPHEN: There are other motions; and those motions will also have to be moved, in that case; and that means the Leader of the House moved a motion and he was allowed to make a speech. What happens to the other motions?

MR. SPEAKER: They will also be allowed.

SHRI C. M. STEPHEN: To make a speech? Those motions are going to be moved...

MR. SPEAKER: I am going to take up the motions.

SHRI C. M. STEPHEN: Then the point of order is in which order the motions will be taken up.

MR. SPEAKER: I will consider it.

SHRI K. P. UNNIKISHNAN: According to my understanding and according to the understanding of most of the people in the House, you have permitted the hon. Leader of the House to move this motion under rule 315(3), because I presume that that is the stage we are in, with reference to the consideration of the privilege issue. This clearly contemplates only one thing: under rule 315(3), he can, at the last paragraph, suggest; he cannot bring in an extraneous matter like allowing anybody to be heard, particularly strangers because that has not been the practice. It violates the practice of the House, and the rules of procedure of the House.

SHRI SHYAMNANDAN MISHRA (Begusarai): It does not.

SHRI K. P. UNNIKISHNAN: It is not in conformity with the dignity of the House, and certainly not on the

question of punishment. Punishment is a matter which the House, after debating this motion under rule 315(3) will have to arrive at a decision on. Once that decision is there, it is handed over and implemented through your medium. This has been the practice followed right from the beginning of the Provisional Parliament; and without changing these rules, you cannot, under rule 315(3), enter into a new practice, because it violates not only the spirit and practice but also the specific rule 315(3). So, I do not know how you could have admitted this motion in this revised form.

SHRI JYOTIRMOY BOSU: I have got two things to bring to your notice. It is a requirement that the House requires Mrs. Gandhi....

MR. SPEAKER: You are on a point of order; what is the point of order?

SHRI JYOTIRMOY BOSU: I have got two points of order. Firstly....

MR. SPEAKER: Is it on the contingent motion?

SHRI JOYTIRMOY BOSU: I have written to you that Mrs. Gandhi's presence in the House is mandatory.

MR. SPEAKER: That is not on this issue. It is a different issue. That has nothing to do with this.

SHRI JYOTIRMOY BOSU: I come to the recommendation part of the Committee's report.

MR. SPEAKER: It is not on this issue. Are you raising any point of order on the Prime Minister's motion?

SHRI JYOTIRMOY BOSU: I admit that the motion could have been suitably worded; and the only remedy lies in giving an amendment to the motion.

MR. SPEAKER: This is not a point of order.

SHRI SAUGATA ROY: I am on a point of order with regard to the operative part of this motion, viz.:

"The House further authorise₃ the Honourable Speaker to take steps to ensure the presence in this House of Smt. Indira Nehru Gandhi in her place, Shri R. K. Dhawan and Shri D. Sen before the Bar of the House, on such date as may...."

etc. If you have gone through all the other contingent notices of motions received, you will find that the motions in all cases have been split up into two, one relating....

MR. SPEAKER: What is your point of order?

SHRI SAUGATA ROY: This motion is wrong. In the same motion, you cannot include a Member of the House and two outsiders. Always you have to split it up into two. The motion is wrongly worded in the sense that it is not in conformity with rule 315(3) and not in conformity with normal forms. You are putting a Member of the House and two outsiders on the same pedestal, which you cannot.

MR. SPEAKER: It is 3 O'clock. We have got Private Members' Bills.

SHRI SHYAMNANDAN MISHRA (Begusarai): I have got a point of order on this.

MR. SPEAKER: We have adjourned it to Tuesday.

SHRI SHYAMNANDAN MISHRA: I am giving you an instance.

MR. SPEAKER: It has already been adjourned to Tuesday. I have adjourned it to Tuesday.

SHRI SHYAMNANDAN MISHRA: On this I have got a point of order.

MR. SPEAKER: I will hear you on Tuesday. Shri Manohar Lal.

15.01 hrs.

COSTITUION (AMENDMENT) BILL*

Omission of Article 14

SHRI MANOHAR LAL (Kanpur): I beg to move for leave to introduce a Bill further to amend the Constitution of India.

MR. SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Constitution of India."

The motion was adopted.

SHRI MANOHAR LAL: I introduce the Bill.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) AND THE REPEAL OF THE CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES BILL*

SHRI RAM JETHMALANI (Bombay North-West): I beg to move for leave to introduce a Bill further to amend the Code of Criminal Procedure, 1973 and to repeal the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

MR. SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Code of Criminal Procedure, 1973, and to repeal the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974."

The motion was adopted.

SHRI RAM JETHMALANI: I introduce the Bill.

RESERVATION OF VACANCIES IN POSTS AND SERVICES (FOR