[Shri M. Kalyanasundaram]

But no steps have been taken to pay that. They are eligible for two 6labs of clearness allowance. So, the workers in general and the trade union movement concerned with the Central Government employees in particular are anxious whether this is a prelude to a wage freeze and for impounding the dearness allowance. So I would warn the Government because they have already taken away the right of the trade unions to go on strike in certain Ministries. Now they are toucning then wages and dearness allowance. This is very dangerous. They are treading on a dangerous path. When they speak so much that our country is threatened on our borders and the security and independence of the country is so sacred, is this the way of securing the cooperation of the working class and the trade union movement in the country? So I want the Government to reconsider '-t and issue directives to the General Insurance Corporation to carry out the directive issued by the Supreme Court.

THE SPECIAL COURTS (REPEAL) BILL, 1980

MR. DEPUTY CHAIRMAN; Now we take up Bills for consideration and passing. We taken up the Special Courts (Repeal) Bill. 1980.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI P. V33NKATASUBBAIAH): Sir, with your permission, I move:

> "That the Bill to repeal the Special Courts Act 1979, be taken into consideration."

While taking leave to move it I would like to make certain observations. This Act was put on the Statute Book by the Janata Party Government with the primary motive of political vendetta against our Prune Minister, in whom they felt frightened to see a leader of national and international reputation, championing the cause of the weak and the downtrodden, and whom they wanted to eliminate from the political 6cene, as they were haunted with a fear that people would again put her back to power, the electoral defeat being only a temporary phase. Her expulsion from the Lok Sabha and her imprisonment are clear proof of the revengeful attitude. Through the Act they wanted to demolish her standing in the public life but much water has flown down the river Jamuna after this Act was passed. The peoples court by whom they were swearing day in and day out has given a resounding victory to our leader and thrown out her political opponents, lock, stock and barrel. The mandate given to her was massive demonstrating the wrath and indignation of the people at the manner of the Janata Party worked overtime to denigrade a leader of Shrimati Indira Gandhis stature. Our leader and our party do not want to follow the Janata Party example and We do not want to use this Special Courts Act to take vengeance against our political opponents. Hence we have brought forward this Bill to repeal the Special Courts Act.

Sir, the ostensible purpose of the Special Courts Act is to secure speedy trial of classes of offences, as is evident from the preamble to the Act. But the irony of it is, the Act would not be able to achieve this objective as there are in-built limitations.

Firstly, the Writ jurisdiction of the High Court remains. If a litigant so chooses, the proceedings can go on dragging. Secondly, the power of superintendence of the High Court remains. Our difficulties can also arise if a sitting Judge nominated by the Chief Justice were to decline to act as a Judg of the Special Court an embarrassing situation would result and

an unhealthy controversy affecting the pestige of the Judiciary would arise. Further, since the Courts would be st up by the Central Govrnment the administrative arrangements being centralised would become unnecessarily complex and expensive. The speedy trial sought to be achieved through the provisions of the Act would not be achieved. The same objective of fair and speedy trial could as well be achieved through normal procedure by having additional Courts, if necessary. Under-section 407 of the Criminal Procedure Code, it is also open to the High Court to try any case whenever it considers it expedient to do so in the interest of justice. It would thus be seen that it would not be appropriate to prosecute persons who are alleged to have committed certain offences under the provisions of the Special Courts Act when they could very well be tried in ordinary Criminal Courts. The continuance of the Special Courts Act is thus totally unnecessary, if not irrelevant, if 1 may say so. It is only a legacy of an unsavoury past and deserves to be removed from the Statute Book.

In this connection, I would like to quote the observations made by Justice Krishna Iyer when this Act was referred to the Supreme Court, and also the dissenting judgment that was delivered, by Justice Singhal. Sir, Justice Krishna Iyer said:

> "I consider that the Bill hovered perilously near the unconstitutionality in certain respects but was saved by the application of pragmatics principles.'

Justice Singhal said:

> "It will not, however be permissible or proper to appoint a "sitting" Judge of a High Court to preside over a Special Court which is lesser or inferior to the High Court. In all probability "sitting" Judges of High Courts will refuse to serve as presiding judges of the Special Courts, and there is no provision In the Constitution under which they can be compelled or ordered against their will to serve there. The eventuality will make the provisions of the Bill unworkable even if it were assumed for the sake of argument that they are otherwise valid and Constitutional. At any rate the possibility that the "sitting" High Court Judge may not agree to serve as presiding Judge of the Special Court is real and their very refusal would embarass Judicial administration and lower the prestige of the judiciary... This is also a factor which should caution those concerned with the Bill and its enactment that it is not only unconstitutional but is not likely to work well and may not serve the avowed purpose of discharging their "commitment to the Rule of Law" to which reference has been made in the Statement of Objects and Reasons of the Bill."

Sir, this is an Act which had been politically motivated and only designed to denigrate and harass the political opponents. So, we do not want to continue this Act any more on the statute book. Sir, with these words, I beg to move the Bill for consideration of the House.

The question was proposed.

MR. DEPUTY CHAIRMAN: It is a very small Bill. I would request the hon. Members to finish it within one hour. Shri Dhabe.

SHRI SADASHIV BAGAITKAR (Maharashtra): You ask Mr. Dhabe to speak. I have got a point to raise. In the Statement of Objects and Reasons of this Bill it is said:

> "The experience of the working of the Act has shown that it has not inspired public confidence."

This is one sentence in the Statement of Objects and Reasons of this Bill. I would seek a clarification from the hon. Minister; How has the Government come to the conclusion with regard to this particular aspect? It has been said that it has failed to

[Shri Sadashiv Bagaitkar]

inspire public confidence. What is the criterion by which the Government has come to this conclusion and why was this inserted in the Statement of Objects and Reasons?

SHRI SHRIDHAR WASUDEO DHABE (Maharashtra): Mr. Deputy Chairman, Sir, though it is a very small Bill, repealing the Special Courts Act of 1979 and the reason given, as was pointed out by my learned friend, is that "the working of the Act has shown that it has not inspired public confidence and that it has failed to achieve its object of speedy trial," I think, Sir, that the Minister should give a clarification on this point. As far as we understand, as soon as this Government came into power, the notification was withdrawn. Under Section 3 of the Act, the power vests in the Central Government. There is no permanent Special. Court. The Government had by a notification appointed a Special Court to try a particular offence. The notification having been withdrawn, the whole Act merely remains on the statute book and nothing else is to be done. Therefore, there were two options open to the Government. One was, as was earlier done by the Law Minister, to withdraw the notification and not to appoint Special Courts so that the Act remained on the statute book. Now the second course has been adopted by the Government and they have said, "It was for political vendetta, and we do not want that this Act should continue". This Act has certain principles with which we may not agree, about the Emergency or the other things. But the main question which the hon. Minister should consider is whether this Government wants or not political corruption or offences by persons in high offices to be eradicated to make our democracy smooth and function efficiently. There were two steps taken at that time. One was the Special Courts Act. You can say it was for vendetta. Many of us were also supporting this view and saying that this should not be done—the Shah Commission cases and so on. But there was also another Bill, which was a healthy Bill, the Lok Pal Bill in which the Prime Minister, Members of Parliament, legislators, all were included and made liable to answer if political corruption took place. That Bill which was introduced was a very healthy Bill but it has now lapsed. Does it mean that the Government thinks that either the Special Court or the Lok Pal should not be there to remove political corruption? In some States, for example, in Maharashtra, there is already the Lok Ayukt Act in force. In some other States also it is there. But it is unfortunate that this Government has not taken prompt steps to remove political corruption in high places. Sir, our democracy will be unsafe if corruption perpetuates in the political system itself. We cannot have a clean administration unless our political system and political parties are above corruption. If the fountain-head of corruption is going to be the political system, the democratic institutions are not going to succeed in our country. Therefore, this is a question with which everybody is concerned, that our political system should become clean. For that purpose, I would like to know from the hon. Minister whether he considers that political corruption is an evil in our system or not. If that is so, why is the Lok Pal Bill not being brought forward in some form or in a modified form, in whatever way the Government wants it, so that there is some check in this matter?

Secondly, what is the principle of Special Courts? The Special Courts Act only says that the trial will be held and the appeal will lie to the Supreme Court. Only the forum was changed and the forum was changed with the objective of speedy and expeditious trial. If the Government is very keen to bring the Essential Services Ordinance to ban strikes, to scuttle the rights of workers and make them penal offences and take large powers to send them to jail for

six months or to impose a fine of Rs. 1,000—in the case of a leader, it is one year's imprisonment or a fine of Rs. 2,000—what about economic offenders? Does the Government believe that a Bill must be brought to curb economic offences? And for that purpose, does the Government consider whether special courts will be necessary or not? The Special Court is an institution for speedy trial. Black marketeers, smugglers and economic offenders are operating on a large scale. Is the Government going to take any steps against those, economic offenders? Or is it that only the labour and the working class be attacked and their rights will be curtailed? There is a strong feeling in the country that the Government wants the support of capitalists, wants to protect hoarders, wants to protect those who are financing the political parties and does not want to take any action against them. Even in matrimonial matters there is a demand for special courts for speedy and expeditious trial, so that time is not wasted in ordinary courts. Therefore, now that the Government has thought it p fit to repeal this act, I would like to know whethe$_r$ this Government would like to bring forward the Lok Pal Bill to check political corruption. What was wrong with th$_e$ Special Court as an institution? Ther$_e$ is nothing wrong with it. They could have adopted the course of withdrawing the notification and keeping the Act o'n the statute book. This Act is not applicable only to enquiry cases at that time. Future cases would also be covered. Now that the Government ha$_s$ thought it fit t$_0$ repeal it, I will again plead with the Minister to take some steps to bring a law to check corruption in our political and public life.

SHRI SYED SHAHABUDDIN (Bihar): Mr. Deputy Chairman, I rise to oppose the Bill before the House. The honourable Minister, while introducing the Bill, took us back to the days of the Emergency. He really opened old wounds. I wonder whether the Treasury Benches today are still proud of what happened during the bleck period in ouit post-independence history—the period of the Emergency. It seemed to me while listening to the honourable Minister that he thought nothing unusual had happened during that period at all, and aH that came to pass before the eyes of the people of this country and the people of the world was a make-believe, was an illusion, was a *maya.* I will not go more into that. But I would like to quote Ghalib with an apology to his soul and with a little change in what he said:

इमरजेंसी का जो जिक्र किया तूने हम नशीं,
एक तीर मेरे सीने में मारा कि हाय-हाय !

Mr. Deputy Chairman, the purpose of the Act which the present Government seeks to repeal, as my honourable friend, Mr. Dhabe, has clearly pointed out, was institutional, to secure speedy trial of a certain class of offences committed, if I may say so, by a certain class of offenders. The class of offenders relates to the holders of high political or public office. The class of offences relates to the misuse of power vested in them or entrusted to them. Indeed, the Act was passed in the background of the Em<-ergency, because, during the Emergency we had violations of the rights of the people, by the people vested with authority, administrative or political, at all levels, from the top to the policeman on the beat. I shall not go into the details at all. But I admit the fact that the Special Courts Act came into being because of the feelings created in the people that it was indeed reprehensible that acts of atrocitie$_s$ should b$_e$ committed by thos$_e$ entrusted with political power.

Now, we know how our judicial system functions. I do not wish to say anything derogatory to the honourable judges. We have all spoken time and again in this House about the delays which are known to the system as it exists. The judicial machinery at all times seems to be clogged. I do not hav« to quote figures. It has been mentioned :a the House by the Trea»-

[Shri Syed Shababuddin[ury Benches, that thousands of cases have been pending, not only at the district level in the sessions courts, but in the High Courts and the Supreme Court. The people also know how the course of justice .can be manipulated by money power or even muscle powe*.

It was with this background, the political and the judicial, that it was found necessary that for trying a certain .class otf offences, committed by a certain class of people, special courts should be instituted. Now, it was not the intention nor does the Act lay it down, that this was to be limited only to the people who held political power or administrative power during the Emergency. That was accepted by the then Government in power...

SHRI P. VENKATASUBBAIAH: What was the intention of the Government?

SHRI SYED SHAHABUDDIN: I am aware of that. I am going to tell you. I am talking of the Act as it finally emerged from Parliament . . .

SHRI P. VENKATASUBBAIAH: But what was the intention of the Government?

SHRI SYED SHAHABUDDIN: If you still want to know about the intention of the Government, I may add that the then Government referred the Bill, to the Supreme Court, as has been mentioned by the honourable Minister himself for seeking its advice under Article 143 of the Constitution. And I am indeed surprised that while th$_e$ hon. Minister quotes the minority opinion, he fails to abide by the majority opinion of the Supreme Court.

AN HON. MEMBER: He takes what suits him.

SHRI SYED SHAHABUDDIN: He simply forgets about the rest. The Supreme Court said that the Parliament was competent to enact such a Bill and the Supreme Court also said that the content of the Bill was within the four walls of the Constitution. The Supreme Court also pointed out, as it was their duty, certain infirmities in the Bill and those infirmities were, if I may Say so, with humility accepted by the then Government who brought forward amendments of which three of them were accepted by Rajya Sabha and then the Bill went to Lak Sabha where it was finally passed. We are concerned with the finished product in which the Government and the opposition then had struck a note of concensus. What I wish to point cut is that the Bill was not enacted only against a set of people who held political power at a particular time. It was meant to be warning to everybody and all Governments who come to hold political power and to remind them that power is a trust and the exercise of power must be with due restraint and at the same time with due appreciation of the fundamental rights of the people. Power can never be permitted to be misused in a manner so as to ride roughshod over the liberties of people. It is because of misuse of that power in the past that we have today this Bill be,-fore us. I do not think anybody in this House can suggest that we are condemned at all times to have arbitrary and tyrannical Governments. But at the same time, Mr. Deputy Chairman, a time might come again when a Government might:—ride roughshod over the liberties of people and repeat the emergency. I am not saying that the present Government will do it. I have still some respect for the words of the Prime Minister who said that emergency shall not be repeated. But who know3 in this country that a Government may come and do the same thing? We suffer from feudal and syndrome monarchical complex. We have a tradition of arbitrary and tyrannical Governments. We have a tradition in which people who held political power used that political power to their own advantage and against the good of the people. This tradition is in our blood. Who knows that the virus in

our blood shall not breakout some time or the other? Therefore, this Act was supposed to be warning for all times to come for all Governments in future. Who knows that the present Government will not be replaced by us and we then shall come under the threat or under the control of this piece of legislation?

Sir, that there are three elements in the Bill. The first one is that the special court shall be constituted by sitting Judges of the High Court and that they shall exclusively deal with specific offences as determined by the Central Government, so as to expedite the process of justice. The third element was that appeal shall lie to the Supreme Court only. I can very well understand the objection raised at that time— I was not here then—that the Bill was cutting short the levels of appeal. For instance, if the trial starts at the lower level, say in the court of Sub Divisional Magistrate, the accused will have three levels of appeal. But we are not dealing with ordinary offences, but special offences by a special category of people. Therefore, the Supreme Court agreed that our level 'of appeal was Constitutional and legal.

Now, Mr. Deputy Chairman, the appeal to the Supreme Court has an advantage. The Supreme Court does not normally go into questions of fact. But now they can go into both questions of fact and of law. That is my submission is a positive aspect which gives protection against misuse of this Act by any Government against its predecessor Government. I have submitted that power is a trust and that the people who had power should be made accountable for using or misusing it. That is the main principle behind this Bill. And Sir, the second principle which I would like to point out to you is that there is some distinction between an offence, say, a murder committed by a daeoit and a murder committed by a policeman and there is a difference between an offence committed by a person who is in authority and an offence committed by an ordinary person. I think thi$_s$ is an equitable principle though this need not be a principle of law. But such abnormal situations, as I have said, will continue to recur and, therefore, there is every reason to keep this law in our books. I know that we have got s$_0$ many law$_s$ in our books-, and I know that in the British legislative history we come across hundreds of pieces of legislation, which are today completely obsolete and they never come into use. But please have some tolerance for this piece of legislation which may not be useful today, may not be useful tomorrow, but some day it may save th$_e$ very spirit of democracy in this country. We have a large number of out-dated$_)$ irrelevant and unnecessary pieces of legislation in our books. Even if you consider that this is irrelevant and unnecessary in term$_s$ of today$_>$ still let it be there. It is not hurting you. It is not demanding any action from you. Then why are you so anxious to take it out of the books? Sir, th$_e$ honourable Minister has given the answer to the question as to why he is so anxious to take it out of the books. It was not the Janata Government, Mr. Deputy Chairman, which had $_a$ political motive in bringing forward this legislation, because it was an Act against itself. But it is this Government which today, having come back to power, want$_s$ to erase— history, want$_s$ t$_0$ rewrite history, and wants the people of Indi$_a$ to forget all that happened during the period 1975—77, and it is this Government which wants to safeguard itself against future thrusts and, therefore, it is anxious to repeal this piece of legislation. I know it very well from the very opening sentence of the honourable Minister when he rose to move the Bill for consideration of the House, saying that this Bill seeking to repeal the Act was enacted against them. From that I knew that this Bill is indeed politically motivated a symbolic act to tell us like this "Here w$_e$ have come back, we have been returned and how dare you question our legitimacy of yesterday or of today?" Mr. Deputy Chairman, Sir, I, therefore, submit that I

[Shri Syed Sahabuddin]

can see no other earthly reason for this.

I think a question has been asked as to whether the purposes and objects as stated in this Bill factually correct and I do not want to repeat all those things. Surely, there is a way to judge whether the Act has failed to inspire public confidence or whether it has lost its value or whether it has served its purpose or not. But I think that the purpose was not fulfilled yesterday. The purpose goes far far into the future and, therefore, even while analysing the statements made by the Government, I would like to say that the repeal makes no sense at all. The repeal is nothing but a symbolic political act in order to thwart the emergence of a democratic spirit in the country, in order to ensure that tomorrow, against the repetition of the emergency, the people have no judicial shield. Thank you very much, Sir.

DR. BHAI MAHAVIR (Madhya Pradesh); Mr Deputy Chairman, Sir, I was amused at the introductory remarks made by the honourable Minister, not by the fact that he referred to the great and omniscient leader without invoking whom nothing from that party can start, but that he tried to put a very healthy piece of legislation in a light v/hich is totally misconstrued. He - said that the whole thing was designed to margin the national leader and to stop her from voicing the distress of the poor a'nd the down-trodden. This Government does not want to follow the example of the Janata Government which, according to him had just one aim to demolish the image of Mrs. Indira Gandhi and nothing else. But I wish to mention one fact, that this Bill has curiously been introduced in the Rajya Sabha. During the days of emergency they had introduced an amendment of the Constitution whkh was at that time placed before the 44th Amendment. That 44th Amendment was intended to create a class of people who were above the law: the Prime Minister, the President, the Vice-President and the Speaker. And they were going to be made immune against all prosecutions for any offence they might have committed. "Under no Constitution worth the name, under no democratic system, is there such • provision which this party, which is accusing us or the Janata Government of that day for having maligned or victimised Mrs. Gandhi, had brought This type of legislation, which they were intending to pass, has not been enact in any democratic government of the world. I would like to ask the hon. Minister if he will satisfy me by quoting just one instance where four of such top functions have been placed above the law. And that was the lirst instalment. Probably they would have included the Government, the Chief Ministers and possibly the sons and daughters of Prime Minister, Chief Ministers and Governors also. That, Sir, was also introduced i'n the Rajya Sabha, and was passed by the Rajya Sabha under the threat of the dark cloud °f emergency when free opinion was suppressed, when the Parliament was gagged, when the Press was stifled and nobody was able to raise his voice in defence of the freedom or liberty. Even the great paper which carries the name of Pt. Jawahralal Nehru—as the founder of *National Herald* used carry a banner-line earlier. 'Freedom is in peril, Defence it with all your might'—it was during the days of emergency that that line was removed, because at that time probably they thought that freedom was no longer in peril and it bad Deen protacted for all time. But my good friend, the Minister, should have been more reasonable in his attack on this Act. I would like to put a very simple question, which has already been touched upon by my friend. Does he believe or does he not, that political people, people in political authority, also can be guilty of wrong deeds and guilty of corruption?

If he believes that they are immune and there cannot be any people who can be charged with having amassed wealth through illegal means, well, then, perhaps he is closing his eyes to the facts of history. If he cares to recall, no less a person than Pt. Nehru was instrumental in appointing Commissions of Inquiry, whether it was against Dr. Mahtab or Pratap Singh Kairon or Bakshi Ghulam Mohammad or against somebody else. Even Mrs. Gandhi was instrumental in appointing Commissions of Inquiry against high placed people charged with corruption. Now the voluminous reports given by those Commissions are gathering dust in almirahs here and there; and the people have a Problem, the people have a question. They say: These politicians on hammer and tongs against anybody who indulges in a slight corruption but when people in high authority are involved, the effort is to eye-wash everything and thes^e Commissions' reports are not acted upon, there is no follow up action. Now, Sir, if this is the case, this Act was an attempt to fill up that lacuna; the Janata Government did it. And if the Janata Government did it according to the logic on that side it must be abolished, it must be repeated. If the Janata Government started a campaign for literacy, that must be ended. If they started the Antyodaya programme for the benefit of the poor and the down-trodden, it must be done away with. So this piece of legislation also cannot be permitted to remain on the statute book simply because the Janata Government brought iit. But I would like to ask him if it is not a fact that up till now the appointment of the Lokayukta or Ombudsman, which is considered to be some sort of an assurance that politicians or political men in authority will not be able to get away with corruption or which misdeeds—if that appointment of Lokayuktas has been put off on one pi'etext or the other by his party or by his great leader or by her benign followers? Sir, if there are Special Courts, such people against whom the commissions of inquiry j bring forth charges and those charges j are found to be true, those people can be proceeded against in such courts. ' Such Special Courts can proceed against these people irrespective of the kept that credibility alive in some Chief Minister or a Prime Minister. Nobody should be above law.

Our political system is on trial today. People i'n the street are doubting the credibility of the political system. This provision of Special Courts was a thing which could have kept that credibility alive in some measure by assuring the people that those in authority can be proceeded against and that they would not be able to wriggle out of it through legal intricacies or through the delayed process of ordinary law. The Special Courts had a very healthy social content. But my good friend, the Minister, is totally blind to that particular aspect. He has come with a mandate that at that time since Mrs. Indira Gandhi was in the dock, this Act has to go. The Special Courts were not created by this Act. The Special Courts have for the first time been there before that also for other types of offences such as terriorism. The Rafiakars of Hyderabad were tried by Special Courts. Kasim Razvi was tried by these Courts. These courts were set up for expeditious settlement of cases. Now, the terrorists, the smugglers, economic offenders and boottleggers who have committed destardly type of crimes, people like Billa and Ranga, should be tried by these Courts. You have to have expeditious trial for these people. What is wrong about it? I do not see why the Minister, this party or that party should be afraid of it. He is correct in saying that at that time Mrs. Gandhi was in the dock. We are not discussing the emergency. Otherwise, I would have established that emergency was not a gloriom period which they want to show. When the Janata Government referred it for the opinion of the Supreme Court, they opined that the application of the Bill should not be limited to the period of emergency. Oh their

[Dr. Bhai Mahavir]

guidance, the scope of thg Bill was extended and made applicable for all times to come.. It was provided that these Special Courts would be set up in order to try all those who *have* misused their official position and political authority. Sir, t_0 my mind, this Government whose dimensions of corruption today are unparalleled, is afraid that if remains on the Statute Book thi_3 Act can be invoked against them and their colleagues. I may remind my friend that Mrs. Indira Gandhi had appointed a Commission known as the Sarkaria Commission after a very dramatic type of action, in Tamil Nadu. At that time, Tamil Nadu was ruled by the D.M.K, and this party was not on very good terms with the ruling party in the Centre. So, on the first oi January, 1976, an action was taken which reads like a novel. The army was used. The Air Force was used. The Navy to_0 was used. On 1st January 1976, forces in B.S.F. and C.R.P. wer_e landed in Madras. All the important Police Stations were disarmed. That next day. Karunanidhi who was the Chief Minister woke up as an ordinary citizen having lost his position as Chief Minister. Now, the Sarkaria Commission was appointed to go into the allegations against Mr, Karunanidhi. Tha Sarkaria Cofmission found substance in two cases, one of purchases of wheat in Punjab and Haryaha *ond* the other for spraying of crops by some Bombay firm, the illegal gratification had been given After that Sarkaria Commission's authority and findings it was the Janata Government which instituted those cases. Those cases were going on. And it goes to the credit of my good friend and his great leader and their great party that where the allegation of corruption have been proved by a Judge of the Supreme Court those cases have also been withdrawn for no ostensible or real or unreal justification. Is that the reason why you are afraid of having this provision of Special Courts? I can understand. Sir, that there may be certain difficulties. There are so many Act* for which there are so many difficulties. He says that a Judge may refuse to work on the Special Court and, therefore, the Act has to go as if this Government is so very conscious of the susceptibilities of the Judges. If they do not accept to serve on the Special Courts, then the provision has t_Q go. This Government which is today twisting the arms of the judiciary, of the Judges and making them accept the position where they would be willing to get transferred anywhere and threatening them that their terms would not be extended if they do nat accept this, this Government is so very susceptible to the feelings of the High Court Judges that it is prepared to do away with this Act. Unfortunately, Sir, the peopls are not such fools would accept any explanation that is offered to them. Sir, in Britain, there has been a case known as Blackburn case—there was a Black gentleman known as Blackburn—which has made history. An ordinary citizen went to the court against the police telling them that the police are not taking action against a den of gamblers. The House of Lords there held that an ordinary citizen can *move* the courts and get a writ *ot* mandamus asking the police to take action against any den of corruption that is present in the society. This Blackburn has made history in England and because of that the Supreme Court here also recently said that public interest litigation was welcome. Today, the bane of our life is that we are indifferent. We see a murder being committed. We see wrong things being done and we say, how does it bother me, why should I put myself into trouble. But, sir, here an ihdividual citizen can move the High Court and the Supreme Court for the purpose of invoking their authority to make the police through a writ of mandamus act in a certain situation where the crime is being committed. Sir, if this Supreme Court interpretation stands, this Government was afraid of the presence of the Special Courts or the possibilities of the Special Courts being appointed as a threat, a sword hanging on the head of the people who could not escape the charges of cor-

ruption or bungling or other misdeeds of political nature. If that is not the case, *I* would request the hon. Minister to at least believe that if they are the paragons of virtue, at least tomorrow or a day after a Government may come with such people who are corrupt and at least to keep them on the straight path, to keep them under threat, to punish them at least this should be kept for the purpose of keeping democracy safe and healthy. That, Sir, is my submission. And if the hon. Minister and his Party have not closed their eyes to reason, I hope, he will reconsider the matter and withdraw this Bill.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE (Maharashtra): Mr. Deputy Chairman, Sir, I look at the queer turn of destiny when I rise to support this Bill for repealing this nefarious and black Act called the Special Courts Act. My memory goes back to September, 1978 when a reference was made by the President under article 143 for the validity of the Bill which was brought forward by the then Government. After due deliberations, after considerable consultations among themselves, they thought at that time that they had devised an instrument of such superpower that it would in the end destroy their sole enemy, viz. Mrs. Indira Gandhi. Sir, in a minute I will come to the point as to how that instrument miserably failed.

The Vice-Chairman (Dr. Rafiq Zakaria) in the Chair].

DR. BHAI MAHAVIR: That will be enough.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: It will be surprising that in September 1978 I was challenging the validity of that Bill in the Supreme Court and today I am supporting its repeal before this House. It is also...

SHRI RAMAKRTSHNA HEGDE (Karnataka): Illogical.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: There is no illogic so far as we are concerned and it is very logical because I will come to that in a minute. The most important aspect of the matter was that several things have been said by the hon. Members on the other side. Mr. Dhabe wanted to know how the public has lost confidence. Then may I say, please do not try to deny because you know that the popular court in this country, which is the people's court, has given a clear verdict in our favour. They have realised...

SHRI SADASHIV BAGAITKAR: Had the Congress Party included the repeal of the Special Courts Act in its manifesto?

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: They realised that they should instal in power Mrs. Gandhi, who alone followed and implemented vigorously the 20-point programme. They also realised that those like you who had only one-point programme of harassing Mrs. Gandhi should be thrown out of power. *(Interruptions)* .

[THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA) in the Chair] Yes, Mr. Bhandare, please do not be affected by what they are saying.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: What can I do. Sir? Whatever may be the manifesto, the mandate of the people is clear that this one point programme of harassing Mrs. Gandhi Should be buried once and for all and I am glad that this House is doing it now. *(Interruptions)* .

श्री रामेश्वर सिंह (उत्तर प्रदेश) : भंडारे साहब को भी कहिए ।

उपसभाध्यक्ष (डा० रफीक जकरीया) : भंडारे साहब तकरीर कर रहे हैं भाषण दे रहे हैं । उनको क्या कहूं ? बंद करवाऊं ?

श्री जे० के० जैन : (मध्य प्रदेश) वह हमको स्पेशल कोर्ट में नहीं ले जाना चाहते । बंद मत करें ।

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Mr. Bhandare, please address me and do not address them.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: Mr. Vice-Chairman, Sir, it is only appropriate at this... (Interruptions).

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): You see, you are making an effective speech and they want to distract you from that.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: I won't be distracted. But I should wait till I am heard because when they are talking I cannot be heard.

Sir, it is only proper that on this occasion I go into the basic principle of this Bill and the basic principle which I even placed before the Supreme Court even in those days was that the majority of the day have no right of any political reprisal, of any political vendetta, against the majority of yesterday. I think that is a very great democratic principle which really is fulfilled by the repeal of this Bill. Because the sole object of that Bill, and I will read in a minute the various clauses of the Preamble of the Bill as it was introduced, was really to get at one single person, her followers, her supporters, her relations, her colleagues, and her friends and it was not to serve any object of punishing people in high offices be-v cause 1, as a lawyer, I, as a citizen of this country, feel that there is complete adequacy in the ordinary laws of the land to punish everyone howsoever high or howsoever low he may be, with great speed, if the Government means it. But what they did was something really very very...

DR. BHAI MAHAVIR: Obnoxious.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: . . . unpardonable. They made a Reference so that that Bill could not be challenged at all. That Reference was made in the most bald and vague style. Only one question was referred: Are the provisions of this Special Courts Bill legal and constitutional? What provision was unconstitutional, which provision was illegal and for what reasons, nothing was mentioned. *(Interruptions).* I may tell you Sir, that even a lawyer will refuse to give an , opinion when such a bald question ig asked to him for his opinion; And in spite of the vigorous opposition by those of us who appeared before the Supreme Court, in spite of the fact that the advisory jurisdiction of the Supreme Court should not be used so as to, stifle the., basic right of a citizen to move the Supreme Court under article 32 of the Constitution of India, it is a matter of great regret that such a bald, such a vague question waa chosen to be answered on the arguments made by the counsel for the other side. I take this opportunity, therefore. . . *(Interruption)*

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Mr. Bagaitkar, please sit down. He has a right to put forward his point of view.

SHRI P. N. SUKUL (Uttar Pradesh): Why do you disturb him?

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: You must know that they disturb...

AN HON. MEMBER: Because they themselves are disturbed. *(Interruptions)*

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: Sir, if I may now continue, I will take this opportunity to tell the Government and through the Government, the President, not to use the advisory jurisdiction of the Supreme Court in a way as will scuttle the basic rights of citizens. I still believe that it was wrong on the part of the Supreme Court to have answered that reference. I hope, such occasions will not be there in the future where the basic right of ordinary citizens to, move the Supreme Court, either under article 226 or

under article 32 of the Constitution will be stifled.

The next question is about the policy which we have followed. When we came to power, our leader, Shri-mati Indira Gandhi made it very clear that there was no time for political reprisals. We have stuck to that promise. During the last one year and eight months, we have not taken one single step which can be termed as a step of political vendetta. There have been corruptions galore on thei, part 'and, in fact, there would not be a period in the history of our country where, within a short span of three years, so much corruption could be attributed to the then Government in power. But we have not taken that opportunity to start doing what you had done. It is a logical consequence of our policy that there will be no political reprisals, that there will be no political recriminations, that there will be no political vendetta, that, today, we are moving this Bill to repeal thi, Act.

Sir, what has been said by some Members from the other side is shocking, because, it is a betrayal of their ignorance in regard to the provisions of the Bill. I think, it will be in the fitness of things to read before the House some of the provisions of the Preamble of the Bill. You will see what they have said:

> "Whereas Commissions of Enquiry appointed under the Commissions, of Enquiry Act, 1952, have rendered reports disclosing the existence of *prima* facte evidence of offences committed by persons who have held high public or political offices in the country...
>
> Whereas investigations conducted by the Government through its agencies have also disclosed similar offences committed during the period aforesaid; and
>
> Whereas the offences referred to in the recitals aforesaid were committed or continued during the operation of the promulgation of the Emergency dated 25th June, 1975, during which a grav, Emergency was clamped on the whole country ..."

It goes on like this. It was restricted to the period of the Emergency and the whole attack wa, really to get on, perso, under the net of the law.

SHRI RAMAKRISHNA HEGDE: If my friend would yield, he is trying to mislead the House. He has read the provisions of the original Bill and not the provisions of the Act, as it was passed.

SHRi MURLIDHAR CHANDRA-KANT BHANDARE: I am coming to that. I am only reading the provisions of the Bill. I am not misleading you unless you feel that you are misled. I can lead you because. . .

SHRI RAMAKRISHNA HEGDE: You are not misleading me because I know the provisions of the Bill in its final shape.

SHRI MURLIDHAR CHANDA-KANT BHANDARE: It is only when the Supreme Court saidthat..

THE MINISTER OF COMMUNI- / CATIONS (SHRI C. M. STEPHEN): ' The original Bill showed what your intentions were. The amended Bill showed what will of the House was.

SHRI RAMAKRISHNA HEGDE: We accepted your sensible suggestion.

SHRI C. M. STEPHEN: There was nothing for acceptance.

SHRI RAMAKRISHNA HEGDE: We are not a$ dogmatic as you are,

SHRI C. M. STEPHEN: There was no question of acceptance. The majority was on this side.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: The first shock for them was when the Supreme Court said that the Bill as brought before the Supreme Court would not

[Shri Murlidhar Chandrakant Bhandare]

be valid and constitutional. Therefore, it was not as a matter of charity or as a matter of principle that they did it. They had no opinion, but to do it; otherwise the whole Bill and the whole Act would have been struck down. Therefore, they said: "All right, now that the Supreme Court has said something, let us try to see that it is in accordance with the wishes and the *diktat* of the Supreme Courts." Then came the will of this House and the other House and there were further changes. But there was no manner of doubt whatsoever that the whole object was to punish only Mrs. Gandhi. And I am again saying that the Supreme Court went wrong in upholding the validity of section 4 under which it was left to the discretion of the Government to pick and choose. Will Mr. A., who was an offender, during the emergency, go before the Special Court? This will be decided not by anybody but by the Government. Will Mr. B., who had committed some offence during the emergency, also go before the Spcial Court? No, because that is the wish of the Government. Why was this done? This was done to terrorise the supporters of Mrs. Gandhi. This was done to get approvers from among the supporters of Mrs. Gandhi. And I cannot conceive of a Bill being approved which really leaves it to the subjective satisfaction of the executive— the Government—to refer or not to refer a particular case to the Special Court. I have not known of a more pernicious provision of law which deals with the basic political rights of the citizens in the matter of fair criminal trial in our realm. I was, therefore, surprised when hon. Dr. Bhai Mahavir said that a *mandamus* could be asked. I am really surprised at this. If you want a speedy trial, first of all you do not take any action. When you do not take any action, some enlightened citizen should get up and go on making applications demanding justice that this should be done. When that fails, he should go to the court and ask the court to issue a *mndamus* that this case be referred tq this court. The proceedings for a *mandamus* itself would, in our country, go for at least 15 years, if not more, and at the end of it, they will say: "Oh, this is a remedy which is so iweet, so speedy that the matter should be referred". I hope the hon. Members on the other side know what they are saying. It is only appropriate that we remove the aberrations of the past. We promise to the entire country that in matters of these rights, there will not be any discrimination and that all the citizens will be treated alike. It is in this context that I want to refer to one or two things which I may point out.

There was a reference made to the economic offenders. In this context, I want to refer the House to the speech made by our Prime Minister from the ramparts of the Red Fort on the morning of 15th August. In no uncertain terms has she said that we are going to have a go at these anti-social elements, these economic offenders, these smugglers, these blackmarketeers, these profiteers end these hoarders. And I if, am right...

SHRI RAMAKRISHNA HEGDE: You cannot do it. *(Interruptions).*

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I tell you they were all your great supporters and they continue to be your great supporters. You would nor, raise your little finger against them. But if I mistake not, very soon this House will be debating a Bill which provides for a summary trial, which provides for a minimum deterrent sentence for all these economic offenders. And I would like to see at that time—I hope that will be in this Session itself—the reaction of my friends who are now vigorously opposing the present Bill. Now that

takes me to a few other points and it is this that the major instrument they used in those days was the Shaw Commission of Inquiry and I only have to refer the House to a decision of the Delhi High Court which tore the Shah Commission to pieces. By the process of appointment of the Shah Commission and by the process of proceedings before the Shah Commission, the then Government resurrected the Star Chamber and things which were totally unknown, things which had no place in our Republic, in our democratic set-up were resurrected as a matter of which hunt against our Leader. I find no adequate words to condemn what has been done. It is only appropriate that the Shah Commission Report should get an uncermonious "burial at the hands of a very distinguished Judge of the Delhi High Court.

I think Francis Bacon was very right when he said:

> "In takinfi revenge a man is but even with his enemy, but in passing it over, he is superior".

And, that is why, in not making revenge but passing it over, Mrs. Gandhi is superior. There is another quotation which says that "Revenge proves its own executioner", and what an executioner it has proved, particularly when I see the faces of my friends on the other side!

May I end only by saying out of a Spanish proverb that "No revenge is more honourable than the one not taken."? and that is why, this Government continues to be honourable. I have done, Sir.

श्री हुकमदेव नारायण यादव (बिहार): उपसभाध्यक्ष महोदय, अभी मैं सुन रहा था और आपसे पहले उपसभापति जी जब आसन पर विराजमान थे तो जब गृह राज्य मंत्री जी इस बिल को सदन में रख रहे थे तो उपसभापति जी ने कहा कि यह बहुत ही छोटा विधेयक है। लेकिन मैं कहना चाहता हूं कि यह छोटा नहीं यह तो—

सतसैया के दोहरे, जिमि नावक के तीर
देखने मे छोटे लगें, घाव करें गम्भीर।

देखने में जरूर छोटा है, लेकिन जितना ही छोटा है उतना ही ज्यादा यह गहराई मे जाने वाला है ।

आज जब हमारे गृह राज्य मंत्री जी इस विधेयक के बारे में भाषण दे रहे थे तो इस विधेयक के बारे मे कम बोल रहे थे, लेकिन अपने नेता का प्रशस्तिपत्र मानो पढ़ रहे थे जिससे लग रहा था कि जैसे वाल्मीकि रामायण लिखने से पूर्व राम जी का गुणगान कर रहे थे, हनुमान जी का गुणगान कर रहे थे। वह भी अपने नेता के गुणों का वर्णन कर रहे थे । मैं कहता हूं कि ये वर्णन आप कब तक करते रहेंगे? आप भी जानते होंगे, मैं भी जानता हूं, मेरे कहने से न उनके दुर्गुण गुणों में बदल जायेंगे, न गुण दुर्गुणों में बदल जायेंगे, न दुर्गुणों को आप दुर्गुण मान सकते हो । यह तो उनके गुणों को देखने की अपनी अपनी दृष्टि है । यह तो कानून को देखने की अपनी अपनी दृष्टि है । यह तो अपनी दृष्टि है दुनिया को संचालित करने की । आप की और हमारी दृष्टि मे बुनियादी फर्क है । आप जब कभी कानून और किसी चीज के बारे में सोचते हो तो आपकी दृष्टि लगी रहती है कि कानून ऐसा होना चाहिए कि मैं, मेरे बाद तें, तेरे बाद तें, तें के बाद तें । आपके कानून बनाने की प्रक्रिया यों चलती है । लेकिन जब हम कानून बनाने की बात सोचते हैं तो हम सोचते हैं कि हिन्दुस्तान की नम्बर एक की कुर्सी पर जिस दिन हल चलाने वाला, घास

[श्री हुकम देव नारायण यादव]

छिलने वाला, जूता बनाने वाला, पालिश वाला, मजदूर, गरीब और दलित वर्ग का इंसान उस कुर्सी पर बैठे, ऐसा मजबूत कानून होना चाहिए कि हिन्दुस्तान के गरीब से गरीब लोगों को भी सामान्य रूप से जल्दी और सस्ता न्याय मिल सके । हम कानून बनाते हैं इस दृष्टिकोण से, हम कानून इसलिए उन गरीबों के लिए बनाना चाहते हैं क्योंकि हिन्दुस्तान की इस जनतांत्रिक, लोकतांत्रिक पद्धति में कोई भी आदमी बड़ा नहीं होता । आप मानकर चलते हैं कि अंग्रेजी संविधान के अनुसार---दि किंग कैन डू नो रांग" । आप मानकर चलते हो कि राजा कोई गलती नहीं कर सकता । जनतांत्रिक मर्यादा कहती है कि कानून से परे हिन्दुस्तान में कोई व्यक्ति नहीं है । यह बुनियादी फर्क है । हम मानकर चलते हैं कि हिन्दुस्तान में कोई बड़ा नहीं है, चाहे हिन्दुस्तान में कितना भी बड़ा व्यक्ति हो, उसके लिए वही कानून होगा जो हिन्दुस्तान के सर्वसाधारण व्यक्ति के लिए कानून होगा । अभी हमारे कई माननीय सदस्यों ने कहा कि आप यह कानून बनाकर चले थे कि हिन्दुस्तान का प्रधान मंत्री कोई अपराध करे तो उसे अपराध न माना जाए । चौराहे पर अगर हिन्दुस्तान का प्रधान मंत्री हाथ में छुरा लेकर किसी के पेट में मार दे, तो उसे कानून की नजर में अपराधी न माना जाए । यह कानून आप बनाने चले थे लेकिन हम इस कानून को मानने वाले नहीं हैं । हम इस कानून के खिलाफ लड़ने वाले हैं और लड़ते रहेंगे । आपने यह भी कहा कि इमरजेंसी नहीं लायेंगे । लाइये तो बाबा, न लाइये तो बाबा । दम है कितना दमन में तेरे, देख लिया है, देखेंगे । हमने जुल्मों को भोगा है और आगे भी भोगेंगे । करोड़ों वर्षों से हिन्दुस्तान के अन्दर सताये हुए लोग हैं ।

हम दमन के खिलाफ लड़ते रहेंगे, लड़ते रहे हैं । हमारी लड़ाई जारी रहेगी लेकिन हम आपके सामने घुटने टेकने वाले नहीं हैं । मैं निवेदन करना चाहता हूं कि यह जो विधेयक आप लाये इस विधेयक में आपने लिखा है । मैं अंग्रेजी तो पढ़ा नहीं हूं । गांव का रहने वाला हूं, साधारण किसान हूं, और यह, सारी बातें अंग्रेजी में कही जाती हैं । दो-चार बात समझ लेता हूं बाकी बात समझ में नहीं आती है । आप क्या बोल रहे हैं हमारी कुछ समझ में नहीं आता । मैं हिन्दुस्तान का रहने वाला हूं । आपने इसमें यह लिखा है :

"It hag not inspired public confidence".

हम को कोई अंग्रेजी की डिक्शनरी से निकाल कर बता दें कि 'इन्सपायर्ड पब्लिक कांफिडेंस' का माइने क्या हैं। क्या आपने अपने वक्तव्य में इस बारे में कोई नजर डाली कि स्पेशल कोर्ट के तहत आपने इतने मुकदमें दायर किये जब से आप सत्ता में आए और उन मुकदमों में फैसला होने में इतनी देर लगी । आपने कभी इसके आंकड़े दिये हैं कि इतने मुकदमें विशेष अदालत में दिये गये और क्योंकि विशेष अदालत में इन मुकदमों का इतनी जल्दी सदाधान नहीं हो सकता, जल्दी न्याय नहीं मिल सकता, इसलिये जनता का विश्वास इस अदालत से उठ गया । आपने यह लिखा है

"It has failed to rchieve its object of speedy trial." हमारे दरभंगा, बिहार में एक कहावत है कि बेटे का पता नहीं कमर के सोने का सीकर बनवा रहे हैं। अदालत में कोई मुकदमा है नहीं, कोई केस गया नहीं और आप कह रहे हैं कि स्पीडी ट्रायल नहीं है । गाड़ी का पता नहीं । न घोड़ा है

और न घोड़े की दुम हैं और आप कहते हैं कि घोड़ा तेज चलता नहीं । क्या तमाशा है । धन्य है आपकी बुद्धि को, धन्य है आपको । आप आंकड़े देते नहीं कि इतने मुकदमें दायर किये गये इस विशेष अदालत के अन्तर्गत और इतने दिन इसमें लगे । आपने यह भी नहीं कहा कि सर्वसाधारण अदालत में जितनी जल्दी लोगों को न्याय मिल जाता था उतनी जल्दी इस विशेष अदालत में न्याय नहीं मिल सका जिसके कारण हम इसे उठा रहे हैं, इससे हमारी आवश्यकता की पूर्ति नहीं होती । फिर जब आप बोलते हैं तो आप गुणगान करने लग जाते हैं कि एक आदमी को, एक व्यक्ति के परिवार को, उन के रिश्तदारों को, उनके मित्रों को, उनके कुटुम्बों को घेरने के लिये जनता पार्टी ने यह विधेयक बनाया था । मैं कहता हूं कि आप कुटुम्ब, रिश्तेदार और मित्र शब्द का इस्तेमाल क्यों करते हैं । यह कानून इस लिये बनाया गया कि न केवल श्रीमती इन्दिरा नेहरू *गांधी बल्कि सत्ता* में बैठने वाला कोई भी आदमी रहेगा उसे कानून का भय खाता रहेगा । हिन्दुस्तान की नम्बर एक की कुर्सी पर बैठने वाला कानून की हद से बरी नहीं होगा । अपराधी होगा तो दोषी भी माना जाएगा । लेकिन इस विशेष अदालत का इस्तेमाल---जाकी रही भावना जैसी, प्रभु मूरत तिन देखी तैसी--- उन हरिजनों, आदिवासियों पर जो बरसों से जुल्म हो रहे हैं उनको इन्साफ दिलाने के लिये नहीं किया जा सकता था । क्या आप इस विशेष अदालत का इस्तेमाल जल्दी इन्साफ दिलाने के लिये नहीं कर सकते थे । इस विशेष अदालत की व्यवस्था हजारों एकड़ जमीन जोतने वाले, 20 हजार एकड़ जमीन जोतने वाले, बिहार के पूर्णिया के आमील बाबू और 18 हजार एकड़ जमीन जोतने वाले कुरसेला के रघुवंश नारायण सिंह के विरुद्ध नहीं कर सकते थे जो भूमि हदबंदी कानून की छाती पर खड़ा होकर कानून तोड़ रहे हैं । मैं जानना चाहता हूं कि क्या आप इस कानून का प्रयोग अपराधियों को पकड़ने में नहीं कर सकते थे ? हमारे देश में जो लोग भूमि सुधारों के मार्ग में बाधक हैं, जो समता और सम्पन्नता लाने के मार्ग में बाधक हैं, जो समाजवाद के रास्ते में बाधक हैं, उन लोगों को पकड़ने में आप इस विशेष अदालत का प्रयोग कर सकते थे । मैं समझता हूं कि विशेष अदालतों के माध्यम से आप गरीबों को न्याय दिला सकते थे । लेकिन आपने ऐसा नहीं किया । अभी जब हमारे विद्वान मित्र बोल रहे थे तो उन्होंने कहा कि जब सुप्रीम कोर्ट में इस कानून पर बहस चल रही थी तो उस वक्त भी इस प्रश्न को उठाया था और इस पर बहस की थी । उस वक्त आपने सही जगह पर गलत तर्क दिया और अदालत ने उसको नहीं माना । आज फिर आप गलत तर्क पेश कर रहे हैं । एक जगह तो आप हार गये, लेकिन अब दूसरी जगह पर अपने बहुमत के बलपर इसको पास कराना चाहते हैं । बुद्धि हार गई, विवेक हार गया, आपका ज्ञान हार गया, लेकिन अब आप लाठी और पशुता के बल पर इस कानून को रिपील कर रहे हैं । यह तो कोई भी कर सकता है । अगर कोई अपराधी सत्ता में आ जाय तो वह सकता है कि मैं आई०पी०सी०को रिपील कर रहा हूं, सी० आर० पी० सी० को रिपील कर रहा हूं । मैं समझता हूं कि आपकी कार्यवाही तो वैसी ही हुई जैसे कि किसी अपराधी के हाथ में सत्ता चली जाय तो वह कहे कि मैं सारे ताजो राते हिन्द को रिपील कर रहा हूं, वापस ले रहा हूं । अगर हाजी मस्तान प्रधान मंत्री बन जाय तो वह कह सकता है कि मैं कोफेपोसा को रिपील कर रहा हूं क्योंकि इसमें मुझे पकड़ा गया था . . .

श्री अरविन्द गणेश कुलकर्णी (महाराष्ट्र): श्री भंडारे तो वकील हैं । उनको आप यह बात बताइये ।

श्री हुकमदेव नारायण यादव: श्रीमन्, मैं यह निवेदन करने के लिए खड़ा हुआ हूं कि चाहे आप हों या हम लोग हों, हिन्दुस्तान की महान जनता को सबक सीखना चाहिए । हिन्दुस्तान की जनता मरी नहीं है हिन्दुस्तान की जनता बेवकूफ नहीं है । इसलिए मैं यह कहना चाहूंगा कि विशेष अदालत के कानून को रिपील करने के लिए आपने जो बहुत से नजीरें दिये हैं, कमीशनों का नाम लिया है, ये तर्क किसी भी तरह से उचित नहीं है । जनता पार्टी की सरकार का यह दावा है कि जनता पार्टी ने इस दुनिया में इस तरह से कभी भी कानून का गलत ढंग से इस्तेमाल नहीं किया । आपका यह कहना है कि विशेष अदालतों का गठन राजनैतिक विद्वेष की भावना से किया गया था और आप यह भी कहते हैं कि आप इस भावना से काम नहीं करना चाहते हैं । लेकिन मैं पूछना चाहता हूं कि आपने मजदूरों के हड़ताल करने के अधिकार पर जो अंकुश लगाया है उसमें यह प्रावधान क्यों किया है कि अगर उनको कोई पैसा देकर संरक्षण देगा तो उसको पकड़ लिया जाएगा ? क्या इस आधार पर हुकमदेव नारायण यादव को गिरफ्तार नहीं किया जा सकता कि उसने मजदूरों को संरक्षण दिया है ? अगर कोई व्यापारी आपको चन्दा नहीं देता है तो आप उसको इस कानून के अन्तर्गत पकड़ सकते हैं और यह कह सकते हैं कि वह मजदूरों को पैसे देकर मदद कर रहा था । आपको तोड़ कहां है, यह हम जानते हैं। आपको किला कहां है, यह भी हम जानते हैं । प्रत्येक के अन्दर जो जज होता है वह भी इंसान होता है, उसका भी विवेक हारा है, उसका भी राग होता है, उसके अन्दर भी द्वेष भावना होती है । चाहे कोई जज कितना भी विद्वान हो, उसका फैसला इन भावनाओं से प्रेरित हो सकता है ।

श्रीमन्, मैं गांव का रहने वाला हूं । हमारे देश की अदालतों में सैकड़ों अपराधियों के मामले चलते रहते हैं । कोई चाहे कितना भी बड़ा अपराधी हो वह अपने को निर्दोष साबित करने की कोशिश करता है । लेकिन सारी दुनिया जानती है कि कई बार इतिहास के पन्ने हजारों वर्षों के बाद खुलते हैं । कौन दोषी हैं और कौन निर्दोष है, यह इतिहास के पन्ने बताते हैं । हजारों वर्षों के बाद इतिहास के पन्ने फैसला करते हैं । यह भारत की मिट्टी है । भारत की मिट्टी में रहने वाले लोग जानते हैं कि इतिहास के पन्ने किस प्रकार से अपने फैसले लिखते हैं । ऐसी स्थिति में यह बात मेरी समझ में नहीं आती कि आप विशेष अदालत के कानून से इतने भयभीत क्यों हैं?

4 P.M.

क्योंकि डर रहे हो । आप इस बात से डरे हो कि अगर स्पेशल कोर्ट रहेगा तो श्रीमती इंदिरा गांधी और उनके साथ जालिम और जुल्म करने वाले लोगों को अदालत में बन्द किया जायेगा । आज आप इसकी रिपील कर सकते हो लेकिन अगर प्रतिहिंसा वाले लोग सत्ता में आयेंगे और उनका बहुमत होगा तो वे इस तरह के सैकड़ों कानून बना लेंगे । इस तरह के कानून हथियारे भी बहुमत के बल पर बना सकते हैं । लोकतंत्र में बहुमत के बल पर आप ऐसा कर रहे हैं।

आखिरी बात कह कर मैं अपनी बात समाप्त कर दूंगा । यह याद रखो कि न राजा रहेगा न रानी रहो, यह माटी सभी को कहानी कहेगी, न कोई रहा है न कोई रहेगा । एक आदमी के लिये, एक वंश और खानदान को संरक्षण देने के लिये चाहे आप जितने कानून बना लो

लेकिन इस देश की माटी में वंशवाद और खानदानवाद को हमने दफनाया है और आगे भी इसको दफनायेंगे । हम इसके लिये लड़ चुके हैं और आगे भी लड़कर देखेंगे ।

SHRI DIPENDRABHUSAN GHOSH (West Bengal): Mr. Vice-Chairman, I was a little bit confused when I was listening to the hon. Members of the Treasury Bench, particularly when they were speaking on the Special Courts (Repeal) Bill. When I was listening to the debate particularly emanating from the other side of the House, it looked as if they were participating in a debate on a motion of felicitation or censure of a particular individual. I think it may be set right by our hon. Members and particularly by the hon. Minister of State for Home Affairs that we are discussing the Special Courts (Repeal) Bill, 1980 and we are not discussing a felicitation resolution or censure resolution of a particular individual.

Now, what for these Special Courts were set up? My learned friend, Mr. Shahabuddin has already stated that these Special Courts were set up to try offences committed by some highly placed individuals wielding political and exerptive power during a particular period so that trials may be held with the utmost dispatch. It was not a question of a particular individual. It was a question of individuals. When T go through the Statement of Objects and Reasons, I find that it has been stated:

> "The experience of the working of the Act has shown that it has not inspired public confidence".

I do not know what by the term "public confidence" the hon. Minister sought to say. But I think it was a wrong expression. It would have been better if for those words, he had substituted these words, "it has not inspired those for whose trial these courts were set up" or "it has not inspired those for the trial of whose offences these court; were set up." We knew there was a period— the citizens of our country had experienced that period— when a particular individual was sought to be synonymised with the whole country. It looks as if now also they are going to make the word "public" synonymous with a particular individual. So I think this should be corrected and this expression, that "it has not inspired public confidence", should be deleted. On the contrary, it should read, "it has not inspired the confidence of those for the trial of whose offences these courts were set up".

Yesterday amidst our protests, an Ordinance was laid on the Table of the House and soon the Bill will be introduced, I think. And what did that Ordinance seek to do? The Bill or the Ordinance sought to take away the rights of the working class of our country to go in for strike or any kind of demonstration or collective action to vantiate their grievances. And even in that Bill a provision has been made for summary trial of those poor workers or employees who may have to go in for a collective action to press for their legitimate grievances. And today another Bill has bsen moved by the Government to repeal the Special Courts which were set up for the trial of a particular type of offences, offences of corruption or nepotism or a particular class of offences of a particular class of people wielding high executive or administrative or political power. This is the irony, that yesterday a Bill was introduced by the Government to tak away the rights of the working people to seek a system of summary trial for the workers who may have to go in for collective action to press their demands, while today another Bill is being brought to abo-

[Shri Dipendrabhusan Ghosh]

hsh the system of trials for the offences of a particular class of people wielding high executive and administrative power. I am not going into the details of this Bill or other things. But there has been a lot of talk of whether it is political vendetta or it is not political vendetta. Long before the Janata Government came into power, a commission of inquiry was set up by the earlier Government, the Government earlier to the Janata Government. And that commission of inquiry was the Sarkaria Commission. That Sarkaria Commission was set up by the Government which was headed by the present Prime Minister and a Chief Minister was implicated in a case of corruption and nepotism, and he was dismissed. And that Sarkaria Commission submitted reports against that individual and the Government started prosecution. But immediately after, when that particular Chief Minister or the party of that particular Chief Minister, joined hands with the Congress-I, the Central Government had withdrawn that commission of inquiry and...

SHRi V. GOPALSAMY (Tamil Nadu): I am sorry to interrupt the Member...

SHRI DIPENDRABHUSAN GHOSH; Let me conclude. You will have the right to speak, you will have your chance to speak. I am only trying to drive home the point. . .

SHRI V. GOPALSAMY: No, you cannot politicise things like this....

SHRI DIPENDRABHUSAN GHOSH-. I am not going to hurt anybody's feelings. I am only trying to bring home certain points...

SHRI V. GOPALSAMY; No....

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): This is the maiden speech of the honourable Member_ Therefore, please let him speak uninterruptedly.

SHRI DIPENDRABHUSAN GHOSH; I am only referring to a partic-urar case.,..

THE VICE-CHAIRMAN *(SSL.* RAFIQ ZAKARIA): Mr. Ghosh,, yous have hardly two minutes left.

SHRI DIPENDRABHUSAN GHOSH; I am only talking about 'political vendetta' or 'no- political vendatta'. The question is that we have seen that commissions of inquiry were set up and on the basis of their reports certain actions were mooted. But as soon as the situation, particularly when the political support to a particular Government changed, the persons or the individuals concerned were exonerated and the proceedings and the reports were withdrawn. I want to drive home this particular point by saying that it is not a question whether we are going to repeal the Special Courts Act or not. The question is when previously Special Courts or the various com™iissions of inquiry had gone into various complaints and charges of corruption and nepotism on the part of persons in high places, why the Government did not take any action against them. If the Government is so sincere in taking action? against the persons involved in corruption and nepotism, then what action did the Government take en the reports so far submitted by the Special Courts or the various commissions of inquiry? j request the-honourable Minister kindly to tell us, during the course of his reply to the debate, what actions the Government took on the reports of the Special Courts or the commissions of inquiry hitherto submitted to the Govern-, ment in such cases of corruption or nepotism. I am saying that the Central Government being the fountain-head of all the corruption and nepotism are now seeking to introduce a Bill to repeal the Special Courts Bill so that individuals who are involved in such class of offences can get exoneration. With these few words, I conclude my speech.

SHRIMATI PURABI MUKHOPADHYAY (West Bengal): i would

like to draw your attention to the fact that when Mr. Ghosh was speaking, he referred to particular Commission and a particular offence. You then told him that he was travelling too far and it was outside the jurisdiction of the Bill- I submit it, was not proper and anybody in this House and outside knows about Sarkaria Commission and its observation _____

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Your remarks are absolutely uncalled for. Please -sit down. We are discussing the Special Courts (Repeal) Bill. We are not discussing the Inquiry Commissions Act. These Commissions are appointed under the Commissions of Inquiry Act, nor is it being repealed. Therefore, to tell him that he was travelling wide is not a remark to which any Member in his wisdom can object. I am not going to allow you to say anything ----------

SHRIMATI PURABI MUKHOPADHYAY; He was being- intimidated. ..

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): I said it was his maiden speech and then requested him not to travel too wide from tht provisions of the Bill Now here is a .gallant lady coming forward...

SHRIMATI PURABI MUKHOPADHYAY: Do not forget that you are the presiding officer...

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Will you please sit down?

SHRIMATI PURABI MUKHO-,-PADHYAY: The rights and privileges of Members are honoured by the Chair. Do not forget that.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA); Sit down.

SHRIMATI PURABI MUKHO. PADHYAY: No please. You revise -your statement.

THE VICB-CHAHIMAN(DR. RAFIQ ZAKARIA): There *is* no question of doing that. I said he wa3 travelling a little wide off the provisions of the Bill. Here is a lady... j *(Interruptions)* Please sit down.SHRIMATI PURABI MUKHO.

I PADHYAY; No, I will not. It is not proper for a Vice-Chairman to say so.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): It was most proper and your intervention is most im-porper... *(Interruptions).* The hon. Member is speaking without my permission. Please do not record whatever she says.

(Shrimati Purabi Mukhopadhyay continued to *speak.)*

SHRi V. GOPALSAMY: The Vice-Chairman has never intimidated him. He allowed him to speak and remarked that it was his maiden speech. She is unnecessarily raising this issue. Being a senior Member of the house, she should obey the Chair.

SHRI SHRIDHAR WASUDEO DHABE; Why do you speak for him?

THE VICE-CHAIRMAN(DR. RAFIQ ZAKARIA); Mr. Hegde.

SHRI RAMAKRISHNA HEGDE: Mr, Vice-Chairman, here is yet another handiwork of the "Government that works." Sir, it is a matter of shame that this Government should consider that it is necessary to repeal an important Act, a historic Act. Sir, [1] the Commissions of Inquiry Act was enacted as long as back as in 1952 and since then there have been many Commissions appointed not only by the late Prime Minister, Shri Jawahar-lal Nehru, but also by the present Prime Minister when she was in office from 1966 to 1977. I am sorry that the Minister of State for Home Affairs has described this Bill in totally undeserving terms and he also referred to the Special Courts Act that was passed in 1979 as politically motivated. Sir, if there is any Act or action of the

[Shri Ramakrishna Hegde]

Government that was politically motivated, 1 can give a series of such things and I can mention the dismissal of the Governors, the enactment Of the National Security Act, *he issuance of the recent Ordinance called the Maintenance of Essential Supplies Ordinance and so on. These are all the acts of the Government which are politically motivated.

SHRI P. VENKATASUBBAIAH: It is the height of imagination.

SHRI RAMAKRISHNA HEGDE: Sir, the Bill called the Special Courts "Bill was brought forward after a good deal of exercise. It was introduced with a vie$_{w}$ ^{t0} ensuring expeditious trial of those cases wherein misuse of public office and corruption had been alleged. Sir, I do not know why the treasury benches pick up only Mr. Bhandare t_{0} defend a totally indefensible measure. I am sorry, Sir, that with all his brilliance, as he failed before the Supreme Court when he was arguing against the Special Courts Act, challenging that, he miserably failed here also. Since something that he quoted reminded me of the saying, though I would not like to call him a devil, it is almost like the devil quoting the scriptures. Sir, this Special Court Act was not antidemocratic as the MISA. It was not as unconstitutional as several other measure$_{s}$ introduced during the emergency period and it is not as discriminatory as the 39th amendment of the Constitution by which the Constitution was amended just to safeguard the interests of the Prime Minister who wa$_{s}$ unseated and it is not as discriminatory as the measure, sought to be brought forward by the ruling party in 1975, exempting the President, the Prime Minister the Speaker of the Lok Sabha and the Vice-President from all criminal or civil liabilities. Now, what was wrong with this Act? Sir, th$_{e}$ Minister did not say a word about it nor my friend, Mr. Bhandare. What was wrong with this? He says, and in the preamble it is said, that the working of the Act has shown, that it ha$_{s}$ not inspired public confidence. This is really laughable. Ho'w did you measure the public confidence?' Did you have a referendum?

SHRI P. VENKATASUBBAIAH: I will tell you how.

SHRI RAMAKRISHNA HEGDE: Did you put thi$_{s}$ issue before the public at the time of the elections in 1980?-(Interruptions). In the first place, this Government did not even allow the Special Courts to function. The very first act of this Government, after resuming office, was to abolish the Special Courts. Sir it has been very aptly described by Shri Hukm Dev Narayan Yadav that it is like the accused scrapping the very piece of legislation under which he was charged. All of you were accused at ine time. That accusation has not gone. If you want to erase history, I am sorry you will not be successful. Recently, in the Lok Sabha, a Resolution was moved to rescind the previous Resolution about the expulsion of Mrs. Gandhi, from the membership of the Lok Sabha. Do you think that you could erase history?

AN HON. MEMBER; Yes.

(Interrttptio'tis)

\ SHRI RAMAKRISHNA JHEGDE: It is not possible. You cannot re-write history, you cannot erase history, you cannot unmake history.

SHRI KALPNATH RAI (Uttar Pradesh) ; You have made history.

(Interruptions)

SHRI RAMAKRISHNA HEGDE: I would like to ask one question of the hon. Home Minister. Was it an irritant to you—this Act? I can understand if it was totally useless or harmful or anti-people. Is it anti-people -as your recent Ordinance is? It is not as anti-people as your National Security Act is. Why was it irritant? You are afraid that when again you will go out of office if this Act is on the Statute Book you will be prosecut-

ed. Sir, we will bring it again. Don't worry. *(Interruptions)* _ Okay, don't be pretentious or don't be presumptuous Sir, they....

AN HON. MEMBER: The hon. Member is Tupping for the impossible.

SHRI RAMAKRISHNA HEGDE: You were also hoping for the impossible in 1979. Don't forget it. जब ये लोग यहां बैठते थे के चेहरे देखने लायक थे *(Interruptions)* You Mr. Bhandare didn't see because you were not here at that time.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Mr. Hegde, please wind up.

SHRI RAMAKRISHNA HEGDE: Words like 'vendetta', 'vindictive-ness', 'political motivation', have been used here. May I ask, what was basis on which the Puri Committee was appointed? Why not a Judge of the Supreme Court or the High Court, if you think there was some hanky-panky? Was it not politically motivated? I challenge you—today I take this opportunity—if you have the guts, if you have any conviction— - prosecute the people concerned.

SHRI KALPNATH RAI: We shall do it at the proper time.

SHRI RAMAKRISHNA HEGDE: Don't abolish this Act, don't repeal this Act, and bring all those people whom you think are guilty or those whom you accused... *(Interruptions)* Was the common law of the land not sufficient when you brought the National Security Act? *(Interruptions)* Was it inadequate? Which law was inadequate?

AN HON. MEMBER: There were certain loopholes.

SHRI RAMAKRISHNA HEGDE: There are so many Acts in our Country, There are adequate provisions to deal with black-marketeers, to d*al with hoarders, to deal with smugglers. But have you ever booked any case? *(Interruptions)* Last year as well as this year the Prime Minister said that corruption is growing. This year she has mentioned about the hoarders and black-marketeers. May I ask this Government, how many blackmarketeers have you booked under the National Security Act? I can tell you today, nearly 90 per cent of the people who have been arrested are either students or workers, political workers or industrial workers.

(Interruptions)

AN HON. MEMBER: The hon. Member's allegation is mischievous.

SHRI RAMAKRISHNA HEGDE: I am sorry if some people have such eyes that see only blackness in whiteness and whiteness in blackness; *T* cannot help it. And Mr. Bhandare is one of them, because he chose to call the Special Courts Act as 'nefarious" and 'black-Act', and he has praised measures like the Maintenance of Essential Services and the National Security Act. I do not know how deep is his jaundice. He is a lawyer. I thought that he would at least see reason.

Sir, I want to close by saying that after referring on a very, very auspicious occasion, to the growing corruption, Mrs. Gandhi, within a few months, withdrew the Sarkaria Commission's Report and the cases filed against the persons concerned.

How do you justify it? In one breath you say that there is growing corruption and just the next moment you withdraw cases of people against whom the charges "have been proved *prima facie.* How do you reconcile this? The corruption charges are being levelled against the Congress Ministers practically in every State and no action is ever taken against them. This was at least one of the

[Shri Ramakrishna Hegde] measures which was a kind of deterrent to these people who held public offices that they must not misuse the trust reposed in them. 1 close by quoting the Objects and Reasons of the Act. Mr. Bhandare thought that he could twist the facts, but he has not succeeded. The Objects and Reasons of th$_e$ original Bill said:

"Whereas all part$_s$ being a trust, the holders of high public or political offices are accountable for the exercise of their powers in all cases where Commissions of Inquiry appointed under the Commissions of Enquiry Act 1952 or investigations conducted by the Government through its agencies disclosed offences committed by such holders."

What is wrong in it? I$_s$ there any. - thing objectionable? Was this Act against any particular person? Was its application confined to a particular period? What was wrong with it? What were the irritants? Why did you feel that it was very uncomfortable for you? There was nothing wrong in this. I am sorry that this Government has brought it forward. They think that it is one more feather In the cap of the Government, but it is a feather of ignominy.

श्री कल्पनाथ राय : आदरणीय उपसभाध्यक्ष महोदय, मैं अपने मित्रों की बातों को सुन रहा था स्पेशल कोर्टस बिल के सम्बन्ध में। अभी हमारे मित्र हेगड़े जी ने कहा कि हमने उन शक्ल-सूरतों को देखा था जनता पार्टी के जमाने में जब हम सरकारी बैंचों पर थे। मैं आदरणीय हेगड़े जी से पूछना चाहता हूं कि तीस वर्ष के बाद देश की जनता ने आप को सत्ता सौंपी थी कि आप देश में सामाजिक आर्थिक परिवर्तन की राजनीति करेंगे, इस मुल्क की जनता के लिए कुछ करेंगे, लेकिन सत्ता में आने के बाद जो घृणा, जो अपने राजनैतिक विरोधियों को कुचलने की कोशिश, जो राजनैतिक बदला लेने की भावना का आपने काम किया उसी का परिणाम था कि आज आप इस जगह पर बैठे हुए हैं और देश की जनता का विश्वास आप ने इस हद तक खो दिया कि ढाई वर्ष के अन्दर आप सत्ता से अलग हो गये। थोड़ी शर्म को भी शर्म होनी चाहिए। इन्दिरा गांधी की महानता को आज भी मानने को तैयार नहीं हैं। देश की नेता इन्दिरा गांधी या उन के परिवार.... (**व्यवधान**)

श्री रामकृष्ण हेगड़े : 11 साल अधिकार में रहने के बावजूद अगर श्रीमती इन्दिरा गांधी हार सकती हैं तो ढाई साल हम पावर में रहने के बाद हार गये तो कोई आश्चर्यजनक बात नहीं है।

श्री कल्पनाज राय : उपसभाध्यक्ष महोदय, मैं बोलना नहीं चाहता था लेकिन हमारे उन साथियों ने जो तमाशा दिखाया, सत्ता में आते ही कुर्सी के लिये जो मार-पीट का दृष्टांत प्रस्तुत किया वह दुनिया के इतिहास में किसी ने कभी नहीं देखा होगा। तीन वर्ष के अंदर उन्होंने तमाम मुल्क की अर्थ व्यवस्था को चौपट कर दिया, देश की सीमाओं को तोड़ा। मुल्क के अंदर उस समय अराजक तत्व बढ़े। देश की सीमायें टूटने लगीं और सारा मुल्क चरमरा उठा और देश की जनता ने एक नारा दिया :

मक्कारों की पापी गठरी ढोने का नहीं, यह वक्त इन्दिरा लाओ देश बचाओ, सोने का यह वक्त नहीं।

देश की जनता ने इस नारे के तहत कदम उठाया और वह इस सरकार को सत्ता में लायी है। उपसभाध्यक्ष महोदय, सारा काम एक बदले की भावना से आप की सरकार ने किया और आप की

सरकार ने कमीशन आफ इंक्वायरी बिठायी इसी राज्य सभा में कांग्रेस पार्टी ने मोरार जी देसाई के भ्रष्टाचार के खिलाफ और चौधरी चरण सिंह के भ्रष्टाचार के खिलाफ कमीशन आफ इंक्वायरी की मांग की और साल्वे जी के प्रस्ताव पर ऐक्ट किया (व्यवधान)

श्री बी० सत्यनारायण रेड्डी (आन्ध्र प्रदेश): भ्रष्टाचार तो तुम्हारी रग-रग में मौजूद है।

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): If there are interruptions every now and then, we may have to sit a little longer.

SHRI B. SATYANARAYAN RED-DY: Sir, you ask him to confine to the subject. False allegations should not be made in the House. He should confine himself to the Special Courts Bill. We are not going to interrupt him. If he makes false allegations, we have to oppose him.

श्री कल्पनाथ राय : इसी राज्य सभा में हम ने प्रस्ताव पास किया और हेगड़े साहब भाग गये। थोड़ी नैतिकता और शर्म नाम की चीज होती तो उन को यहां मौजूद रहना चाहिए था। वह नैतिकता की बात करते हैं। हम ने रेजोल्यूशन पास किया और कम्यूनिस्ट पार्टी, मार्क्सिस्ट कम्युनिस्ट पार्टी डी एम के, अन्ना डी एम के और कांग्रेस आई और कांग्रेस यू, सारे राजनीतिक दलों ने मांग की कि कमीशन आफ इंक्वायरी बिठाया जाय और वह नैतिकता की बात करते हैं। सारे देश का सोना दुनिया के बाजारों में बेच कर देश के खजाने को लूटने वाले नैतिकता की बात करते हैं और वैद्यलिंगम रिपोर्ट के आते ही जिन्होंने कमीशन आफ इंक्वायरी बिठायी थी (व्यवधान)

SHRI HAREKRUSHNA MALLICK (Orissa): Therefore, he should support the Special Courts Bill.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): If there are more and more interruptions, we may have to sit beyond 5 o'clock. If you want to interrupt him every now and then, you are welcome. Otherwise, please do not interrupt him. Your side has put its point of view. He has a right to put his point of view.

श्री सत्यपाल मलिक (उत्तर प्रदेश) : आप में ऐसे लोगों के खिलाफ मुकदमा चलाने की हिम्मत नहीं है।

श्री कल्पनाथ राय : उपसभाध्यक्ष महोदय, देश की जनता ने वोट इस लिये नहीं दिया था देश की जनता ने आप को सत्ता में इस लिये नहीं भेजा था...

उपसभाध्यक्ष (डा० रफीक जकरिया) : आप मेरी तरफ देख कर बोलिये।

श्री कल्पनाथ राय : आप ने 28 कमीशन आफ इंक्वायरी बिठाये और रेड्डी कमीशन ने लिखा कि हिन्दुस्तान का प्रधान मंत्री झूठ बोलता है। मोरार जी झूठा है। उस ने इन्दिरा गांधी के खिलाफ इस प्रकार के आ कर बयान किये हैं और सारे कमीशन आफ इंक्वायरी ने इंदिरा गांधी को और कांग्रेस जनों को उन के द्वारा बिठाये गये कमीशनों से मुक्त किया और इसी राज्य सभा में सारे विरोधी दल के नेताओं की तरफ से एक प्रस्ताव पास हुआ कि उन के खिलाफ एक इंक्वायरी कमीशन बिठाया जाय। उन्होंने वैद्यलिंगम कमीशन को बिठाया और उस ने अपनी रिपोर्ट में लिखा कि हिन्दुस्तान के सोने को मोरार जी का बेटा कांति देसाई और उस की भ्रष्ट सरकार कई टन सोने को बेच कर उस ने हिन्दुस्तान में करोड़ों रुपयों का गबन किया है।

श्री सत्यपाल मलिक : मेरा एक व्यवस्था का प्रश्न है। मैं आप की व्यवस्था चाहता हूं कि हमारे माननीय सदस्य ने एक गलती कर दी है। उस को आप

[श्री सत्यपाल मलिक]

रेकार्ड में देख लें । उन्होंने कहा कि वैद्यलिंगम कमीशन ने जो फाइंडिंग दी है उस को हम ने एव्वाइंट किया । हम चाहते हैं कि आप की सरकार चरण सिंह और कान्ति देसाई के ऊपर मुकदमा चलाये। अगर आप में हिम्मत हो तो आप मुकदमा चलाइये। हम उस के लिये तैयार हैं। तो आप मान्यवर इस रेकार्ड को सही कर लीजिए ।

THE VICE-CHAIRMAN (DR. RA-FIQ ZAKARIA): This is no point of order.

श्री सत्यपाल मलिक : वैद्यलिंगम कमीशन का नाम रेकार्ड में गलत चला गया है। उसे आप देख लें ।

श्री कल्पनाथ राय : उपसभाध्यक्ष महोदय, मैं चाहता हूं कि माननीय सदस्य मेरी बात सुनें । आप उठकर चले गये । मेरी बात सुनिये, घबड़ाइये मत । अभी मैं बोल नहीं पाया । अभी तो मैंने शुरु किया है । उपसभाध्यक्ष महोदय, मैं आप से निवेदन कर रहा हूं कि आप यहां मौजूद रहे हैं । इसी राज्य सभा में इतने शर्म की चीज कोई हो नहीं सकती, उनको चुल्लू भर पानी में डूब मरना चाहिए था जिस दिन भारत की संसद में कमीशन आफ इंक्वायरी के सवाल पर साल्वे साहब के प्रस्ताव पर यहां जनता सरकार हार गई और आपने कहा कि राज्य सभा की रिकमंडेशन रिकमंडेटरी है और उन्होंने अपना जज बैठाया और आपकी सरकार ने जो जज बैठाया, जिसको जज बैठाया, उसने अपनी रिपोर्ट में लिखा कि भारत के प्रधान मंत्री, उप-प्रधान मंत्री और गृह मंत्री भ्रष्ट थे और दोनों के परिवार वालों ने इस मुल्क के खजाने को लूटा और भ्रष्टाचार किया । यह है आपकी सरकार के खिलाफ सुप्रीम कोर्ट के जज का फैसला । आप बात करते हैं इंदिरा गांधी की । मैं पूछता हूं कि तुम्हारे द्वारा बनाये गये जितने इंक्वायरी कमीशन बैठाये गए, उनकी फाइंडिंग्ज आई हैं । क्या इंदिरा गांधी या किसी कांग्रेस-जन के खिलाफ एक भी आरोप साबित हुए ? इंदिरा गांधी के विषय में बात करते हैं। आपने उनको कहा कि फौरन घर खाली करो । विलिंगडन क्रीसेंट में रहने गई, 2800 रुपए आपने उनसे लिया । फिर कहा कि 10 हजार रुपया दीजिए वरना आपके पास पुलिस जाएगी और आपको घर से निकाल देंगे । इतने छूटपने का व्यवहार आपने किया । जब इंदिरा गांधी सत्ता में आई तो जितने बड़े बड़े लीडर थे, वाई० बी० चौहान, चौधरी चरणसिंह, जगजीवन राम—जो देश के नेता हैं उनसे कहा कि आप जिस बंगले में रहते हैं एम० पी० की हैसियत से, एम० पी० के ही किराये पर रहिये । हमें देश को चलाना है । सत्ता में आने के बाद 14 जनवरी को रेडियो ब्राडकास्ट में उन्होंने कहा—मेरे शत्रु वे नहीं हैं जिन्होंने मुझे या मेरे कांग्रेस-जनों को या मेरे परिवार को जेल में डाला, या पार्लियामेंट से निकाला, लाखोंलाख लोगों को जेलों में डाला बल्कि हमारा शत्रु और सभी भारतीयों का शत्रु भारतीयों की गरीबी है । आइये, हम सब मिलकर उस गरीबी को दूर करें और देश के सबसे बड़े शत्रु को नष्ट करें, देश की आजादी और एकता को मजबूत करें । यह है इंदिरा गांधी का वक्तव्य जो उन्होंने पार्लियामेंट में आने के बाद, प्रधान मंत्री बनने के बाद दिया । आप अपनी उनसे तुलना कीजिए । हेगडे साहब आप जरा अपना भाषण पढ़ें

और सोसे के सामने खड़े हो जायें । इंदिरा गांधी को आप क्या समझें--

जो तोकों कांटा बोए,
ताहि बोह तू फूल,
ताको फूल के फूल हैं,
वाको हैं तिरशूल ।

इंदिरा गांधी ने आपसे सद्व्यवहार किया । भारत की जनता से अपील की । आप लोगों के काले कारनामों से परेशान होकर देश की जनता त्राहि त्राहि कर उठी । आपने देश की इकानामी को नष्ट किया । मुल्क की सीमायें आपने तोड़ीं । देश की आजादी को खतरे में आपने डाला । भारत की इस आजादी का सौदा आप साम्राज्यवादियों से करने लगे। इसलिए भारत की जनता ने ढाई वर्ष के अंदर आपको सत्ता से हटाया और श्रीमती इन्दिरा गांधी पावर में आईं । इन्दिरा गांधी ने बदले की भावना से कोई काम नहीं किया । अभी बात कही गई आर्डिनेंस की । एशियाई, अफ्रीका और राष्ट्रों के बीच भारत ही एक ऐसा देश है जहां पिछले 34 सालों से डेमोक्रेसी का राज सफलतापूर्वक चल रहा है । इस देश में हमने डेमोक्रेसी के साथ समाजवाद लाने का संकल्प लिया है, जनतंत्र के माध्यम से समाजवाद और समाजवाद के माध्यम से जनतंत्र . . .

श्री रामकृष्ण हेगड़े : आप किस विषय पर बोल रहे हैं (**व्यवधान**)

श्री कल्पनाथ राय : आपकी अक्ल को खोल रहा हूं । यदि आपके पास अक्ल नहीं है तो आपको अक्ल दे रहा हूं । इस मुल्क के अंदर, इस आजादी को बचाने के लिए, जनतंत्र को बचाने के लिए या तो हिन्दुस्तान की अर्थव्यवस्था को बदलो या हिन्दुस्तान डायनामाइट हो जाएगा । इसलिए हमने यह एसेंशियल सर्विसेज आर्डिनेंस बनाया, यह कानन बनाया . . . (**व्यवधान**)

श्री बी० सत्यनारायण रेड्डी : आप क्या बोल रहे हैं ।

श्री कल्पनाथ राय : हम आर्डिनेंस लाये हैं । आज जिस दौर से हमारा देश गुजर रहा है, जिस पालिटिकल, राजनीतिक आर्थिक संकट से और चुनौतियों के बीच गुजर रहा है उस हालत में आज जरूरत है देश में उत्पादन बढ़ाने की, खेती में उत्पादन बढ़ाने की, कारखानों में उत्पादन बढ़ाने की । ऐसी हालत में हड़ताल करना, हड़ताल के लिए उकसाना या लॉक-आउट करना, इसके लिए उकसाना, रेलवे में हड़ताल करना जनघाती, राष्ट्रघाती है । इस राष्ट्र की आजादी को मजबूत करने के लिए, राष्ट्रीय एकता को मजबूत करने के लिए, राष्ट्र में अनुशासन कायम रखने के लिए उत्पादन बढ़ाने की जरूरत है । जो व्यक्ति, जो पार्टी तोड़-फोड़ या हिंसा या हड़ताल करने की बात करती है उसकी कुछ समय के लिए बंद करना चाहिए । राष्ट्र को हमें बचाना है । हमने देश को, राष्ट्र को मद्देनजर रखते हुए ऐसा कानून बनाया है । आपने स्पेशल कोर्ट बिल राष्ट्र और जनता के हित को सामने न रख कर बल्कि कुछ व्यक्तियों, पार्टियों को मद्देनजर रखकर बनाया था इसलिए वह जनघाती, राष्ट्रघाती बिल जितनी जल्दी रिपील होगा उतनी जल्दी हिन्दुस्तान में स्वस्थ वातावरण पैदा होगा और हमारे राष्ट्र के अंदर एक नये युग की शुरुआत होगी । राष्ट्र मतैक्य आधार पर समस्याओं का हल ढूंढेगा।

/dynamise the economy of the country or get yourself dynamited.

श्री रामकृष्ण हेगड़े : अमेठी में यही भाषण किया था । (व्यवधान)

SHRI P. VENKATASUBBAIAH: Mr. Vice-Chairman, Sir, I am extremely thankful to all those hon. Members who have participated, starting from Mr. Dha>e and ending with my great friend, Mr. Kalp Nath Rai.

Sir, when I heard the speeches of some of the Members opposit, I was reminded of an old saying about the Bourbons of France. They have for gotten nothing and they have learnt nothing, in spite of the fact that the people had given a massive man date and they have no regrets to make. I am very sorry about it. Many of them have made out that thi$_s$ Bill which is going to be repea led was not intended for political vendetta. If I may go to the origin of the Bill, I may remind the hon. Members that this Bill has originated from a private Member's Bill, name ly, Mr. Jethmalani's Bill. This Bill of Mr. Jethmalani was clearly of the nature, which was intended for poli tical vendetta. This was called the Emergency Courts Bill, 1978 provid ing for trial of offences committed by persons holding high political and public offices during the emergency. Sir, the question of Government un dertaking a legislation in this behalf was considered and a Bill, namely the Special Courts Bill was referred by the President to the Supreme Court on 1-8-1978 to obtain its advi- 1 sory opinion under article 143 of the Constitution on the validity of the Bill. Except those words, "Emer gency Bill" very few verbal changes were made and with the dele tion of that particular word, it a$_s$ sent to the Supreme Court. Why I am tel ling you all this is because some Members have contended that it was not a politically motivated Bill. But when it was referred to the Judges, the majority judgement, headed by ' Justice Chandrachud made these ob servations about the infirmities which) they felt should be removed:

(i) Provision in the Bill under which a retired Judge of the High Court could be appointed as a. Judge of the Supreme Court.

(ii) The provisions of the Bill under which the appointment as a Judge to the Special Court could be made by the Central Government in consultation with but with- out the concurrence of the Chief Justice of India; and

(iii) The absence of a provision for transfer of a case from one Special Court to another.

The intention of political motivation-is amply clear when this original Bill wa$_s$ sent to the Supreme Court for it$_s$ advice, as was pointed out by Shri Bhandare. And still if our friends say that it wa$_s$ not a Bill or an Act with political motivation, what else could it be? I am asking my friends to clarify this point.

Now why we have ourselves voluntarily come forward to repeal this Bill i$_s$ because if you go through clauses 5 and 6 of the original Bill, it has been clearly stated in clause 5—

If- the Central Government is of the opinion that there is a *prima facie* evidence of the commission of an offence alleged to have been committed by a person who held high public CM- political office in India and that in accordance with the guidelines contained in the preamble here to th$_e$ said offence ought to be dealt with under this Act the Central Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion.

Such declaration shall not be called in question in any court." Then clause 6 says:

"On such a declaration being made in respect of any offence, notwithstanding anything in the Code, any prosecution in respect of such *offence* shall be instituted only in a Special Court designated

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

These are the two obnoxious provisions that have been incorporated in the Special Courts Bill and, as I have stated earlier, the infirmities that had been pointed out by the Supreme Court which go to show clearly that this is an Act intended to take political vengeance against those people who were holding high offices in public life. Sir, we are ourselves abdicating these provisions. We have come forward to repeal this Bil] so that these provisions should not be vested in the Central Government. What else could you, my friends, imagine...

SHRI RAMAKRISHNA HEGDE: In that case, why don't you amend it? Bring an amending Bill if your objection is only limited to these two.

SHRI P. VENKATASUBBAIAH: The entire Bill is being repealed. I am coming to that. Please don't be impatient. I am telling you that these are the two things. About the workability of this Bill also I have stated in my speech about certain inbuilt difficulties in the implementation of this Act. I again repeat, the writ jurisdiction of the High Court remains; if a litigant so chooses, the proceedings can go on dragging; and secondly, tho power of superintendence of the High Court remains.

SHRI RAMAKRISHNA HEGDE: You have safeguards.

THE . VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): You can seek clarifications later on.

SHRI P. VENKATASUBBAIAH: The same objective of a fair and speedy trial could as well be achieved through normal procedure, by having additional courts, if necessary. It is also open to the High Court to try any case whenever it considers it expedient so to do in the interests of justice So, even according to the normal law this can be made available according to the criminal Procudure Code.

SHRI RAMAKRISHNA HEGDE; He has just now read a sentence. Is it the Law Ministry's opinion or what?

SHRI P. VENKATASUBBAIAH: It is the opinion of the Government.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHIV SHANKAR): He seems to be allergic to the Law Minister.

SHRI P. VENKATASUBBAIAH: Are you allergic to the Law Minister? I don't think so.

SHRI RAMAKRISHNA HEDGE: He is a great Law Minister, He will go down in history.

SHRI P. VENKATASUBBAIAH: So, Sir, to say that this Act had come from the paragons of virtue who only wanted to establish Rama Rajya in this country and did not want to take any vendetta or vengeance against their opponents is, as Mr. Kalpnath Rai has very ably said, only an eyewash to mislead the people.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA); Mr. Minister, sorry to interrupt you. How long will you take?

SHRI ?. VENKATASUBBAIAH: Five to ten minutes.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA)- I am told that we caVi extend the House by a few minutes beyond five o'clock and finish this Bill. That is what the Minister of State for Parliamentary Affairs . . .

SHRI NARASINGHA PRASAD NANDA (Orissa): But in the Busi ness Advisory Committee it was de cided that ..... *(Interruptions)*

THE VICE-CHAIRMAN- (DR. RAFIQ ZAKARIA: It is left to the[1] House. In case of any extension it is

[Dr. Rafiq Zakaria]

the wish of the House. (Interruptions): Unfortunately a lot of interruptions took place and therefore the time allotted for .this Bill has far exceeded the limit and if we have to adhere to the time schedule given by the Business Advisory Committee itself, then I would seek your cooperation, and extend the time for this Bill, if necessary. If it is necessary we will sit beyond five o'clock. That is all. (Interruptions) The other Bill is very small and if you wish that also.

SOME HON. MEMBERS; No, no.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Only for this Bill? Then that is ell right.

SHRI. P. VENKATASUBBAIAH: Sir, hon. Members have raised several matters which are not relevant to this Bill—about eradication of corruption. Lokayukt and several other things. I can only say on this occasion that our Prime Minister, our Party and our Government are determined to root out corruption in whatever sector it i*. It is our endeavour to fulfill the promises we have given to the people alnd these people need not teach us any lessons because they have been amply taught a lesson by the people already.

DR. BHAI MAHAVIR: A lot of cases against Karunanidhi and a number of others... (Interruptions).

SHRi V. GOPALSAMY: Why are you unnecessarily bringing in his name?

SHRI P. VENKATASUBBAIAH: Whatever, has been said, those which are not relevant to the subject I am leaving out and I am dealing only with such of those matters which are relevant here and I will only end with these few words:

Only a few days back a very leading English has given an editorial. I will only read from that, editorial and conclude my speech.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA); Which paper?

SHRI, P. VENKATASUBBAIAH: It is the Times of India dated 14-8-81. I quote: —

> "The Janata did not become the national party the Congress WM earlier, and Mrs. Gandhi remained the only national leader even when she had been voted out of office in 1977 because she alone commanded substantial influence all over the country and she alone could serve as a bridge-between different regions, communities and castes. This ic so today a.3 well. Mrs. Gandhi is the only true national leader India posset?ess.' *(Interruptions)*

Sir, many things have been said. This Bill was intended to take political vengeance against Mrs. Gandhi. That is why it is relevaint, what I quote.

SHRI HAREKRUSHNA MALLICK:: This must be off the record.

SHRI P. VENKATASUBBAIAH: This is very much relevant:

> "To oppose her on the national level, the opposition 'will need a national leader of a similar stature which a merger of two or three parties cannot produce. Indeed, such a merger is bound to lead to another split. To vary the Maoist slogan of "unite, struggle and unite", the law of Indian opposition politics can be said to be "splinter, unite and splinter'.

With these few words, I commend that the Bill be passed.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

> "That the Bill to repeal the Special Courts Act, 1979, be taken into consideration.' The *motion was adopted.*

SHRI VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): We shall now take up the clause-by-clause consi-

deration of the Bill. There are no amendments to clause 2.

Clause 2 *was added to the Bill.*

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA); For clause 1, there is one amendment (No. 2) by Shri P. Venkatasubbaiah.

Clause 1 *(Short title)* SHRi P. VENKATASUBBAIAH: Sir, I move;

"That at page 1, line 3, for the "1980" the figure "1980" be substituted."

The question *was put and the motion was adopted.*

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

"That clause 1, as amended, stand part of the Bill",

The motion was adopted.

Clause 1, as *amended, was added to the Bill.*

Enacting Formula

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): For the Enacting Formula, there is one amendment (No. 1) by Shri P. Venkatasubbaiah.

SHRI P. VENKATASUBBAIAH: Sir, I move:

"That at page 1, line 1, for the word "Thirty-first" the word "Thirty-second" be *substituted."*

The question was put and the mo-lion was adopted.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

"That the Enacting Formula, as amended, stand part of the Bill.'

The motion was adopted.

The Enacting Formula^ as amended was added to the Bill.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKAR[T]A): Now we take up the Title. There are no amendments. The question is.

"That the Title stand part of the Bill."

The question wa$_s$ put and tht motion was adopted.

The Title was added to the Bill. I

SHRI P. VENKATASUBBAIAH; Sir I move:

"That the Bill, as amended, be passed

The question wa$_s$ proposed.

SHRI RAMAKRISHNA HEGDE: Sir, even at this stage, I would like to make a very earnest request to the Minister that he may withdraw this Bill. If h$_e$ really finds that there are certain infirmities in this Act, let him bring an amending Bill. Sir, this special Courts Act was enacted by Parliament with a specific purpose and that purpose still exists. It must be on the Statute Book.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): You are repeat-ing$_i$ Mr. Hegde. You have said this.

SHRI RAMAKRISHNA HEGDE. If there is any case of repeal of any Act, it is the National Security Act, not this one.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): You are repeating.

SHRI RAMAKRISHNA HEGDE: No.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA). Yes; yes. Shri Jha.

SHRI RAMAKRISHNA HEGDE; I hope better sense will prevail.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA). Shri Jha.

5 P.M.

श्री शिव चन्द्र झा (बिहार) : उपसभाध्यक्ष महोदय, इन लोगों के भाषण को मैं सुन रहा था । इन लोगों के भाषण में यही था कि यह मोटीवेटेड विधेयक था, जनता सरकार ने लाया प्रधान मंत्री इंदिरा गांधी को हैरास करने के लिए । मैं इनसे पूछना चाहता हूं कि जनता सरकार में ताकत थी, जब दिल्ली में सरकार थी अढ़ाई साल । उतनी

[श्री शिव चन्द्र झा]

ताकत जरूर थी जितनी आपकी भी है । जनता सरकार यदि चाहती तो इससे भी बड़ा बिल ला सकती थी। ला सकती या नहीं आप ही बता दें । उपसभाध्यक्ष महोदय, इतिहास में नूरेम्बर्ग ट्रायल हुआ है, वह भी एक कोर्ट था और ये बाबू लोग जब यहां बैठे हुए थे और हम लोग वहां पर थे तो हम लोगों ने आवाज उठायी थी, रिकार्ड को आप देख लें कि इंदिरा गांधी का नरेम्बर्ग ट्रायल किया जाय इमरजेंसी के लिए, जनता वालों से मांग थी । लेकिन हमारे नेता आडवाणी जी उस वक्त वहां पर बैठकर कहा करते थे 'रघुकुल रीति सदा चली आयी, प्राण जायें तो जायें पर वचन न जाई' हमेशा जनता सरकार के नेता कहा करते थे हमारी जान चली जा सकती है लेकिन जो वचन जनता को हमने चुनाव में दिया है उससे मोहनदास कमरचंद गांधी और लोकनायक की सीख के कारण हम बाहर नहीं जायेंगे। जनता सरकार के प्राण पखेरु उड़ गये लेकिन वचन से जनता सरकार नहीं हटी । आज उनको धन्यवाद देना चाहिए जनता सरकार को कि जिसकी बदौलत, जिसकी कुर्बानी की बदौलत जिसने अपने को कुर्बान कर दिया, वे वहां बराजमान हैं । एक शब्द होता है 'कृतघ्न' कृतघ्न अनग्रेटफुल होता है तो मैं कहूंगा कि ये लोग कुछ उस तरह के है ।

अब दूसरी बात आती है जब ये कहते हैं कि मोटीवेशन के और पर यह विधेयक लाया गया था । मैं पूछना चाहता हूं नौजवानों से जिनमें अभी भी थोड़ा गर्म खून है । यह गांधी का देश है, मोहनदास करमचंद गांधी का, जब उनसे भी त्रुटि होती थी, गलती होती थी, हिमालयन ब्लण्डर होता था तो वे अपने आपको सजा दे देते थे, उपवास करते थे सेल्फ प्योरीफिकेशन के लिए, यह रहा है । तो क्या आप चाहते है कि यहां एक तंत्र हो । यह ठीक बात उठायी गयी है यहां से कि नम्बर एक कुर्सी पर जो भी रहेगा वह भी कानून से परे नहीं रहेगा । यदि आप जनतंत्र को मजबूत करना चाहते हो । दृष्टिकोण में यह फर्क है उपसभाध्यक्ष महोदय । तो इसीलिए उपसभाध्यक्ष महोदय, यह बात उठायी गयी कि यदि इसमें कुछ आपको खराबी लगती... (**व्यवधान**) कुर्सेला के जमींदार है, जमीन वाले है आप दूसरे अपराध लगाते ? (**व्यवधान**) कुछ नहीं लगाये । लागू किया होता और उन सबमें नकामी होती हो कहते लेकिन यदि कुछ खराबियां मोटीवशन को लेकर होती तो आप अमेंड कर देते । परन्तु रिपील करने में एक और बात सामने आती है वह है आपके निकम्मेपन के लिए। आप इतने निकम्मे है कि विधेयक जब संसद से पास होता तो उसको कार्यान्वित कराने की क्षमता भी आपमें नहीं है वरना हिम्मत है ..(**व्यवधान**) ... दूरदर्शिता है । इसीलिए यह विधेयक जनता सरकार ने मोटीवेशन से नहीं लाया था जनतंत्र और समाजवाद को मजबूत करने के लिए लाया । लेकिन आज यह रिपील का जो विधेयक है यह दो सौ परसेंट मोटीवशन से है । इस दृष्टिकोण से नीयत से कि एक तंत्र राज रहे एक छत्र राज रहे और फिर कहां नया है इसके बाद उसके बाद, लाईन को बराबर रखेंगे । इन्हीं शब्दों के साथ मैं खत्म करता हूं और मंत्री महोदय देर आयद दुरुस्त यह बात आप साफ कर लें ।

THE VICE-CHAIRMAN (DR. . RAFIQ ZAKARIA); You do not want to reply?

SHRI P. VENKATASUBBAIAH: No. SHRI HAREKRUSHNA MALLICK: I have one suggestion to make. *(Interruptions)*

SHRI SADASHIV BAGAITKAR: Sir, 1 wanted a clarification . . .

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): No, no, your name is not there for the third reading.

SHRI SADASHIV BAGAITKAR: I have asked for a clarification from the Minister. I was busy in the Business Advisory Committee...

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): This is no excuse. I am sorry. Other party members were there.

SHRI SADASHIV BAGAITKAR: I had raised' the point before he put the Bill before the House. I want to know whether "he has answered my question.. .

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARTA); Mr. Bagaitkar, the Minister is not expected to reply to every point made by every Member. It is his discretion to reply to such points as he deems fit. I cannot compel the Minister to reply...

SHRI SADASHIV BAGAITKAR: I had asked him to clarify...

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): But T cannot compel the Minister.

SHRI SADASHIV BAGAITKAR: I wanted to know how the Government came to the conclusion that the people had lost confidence in the Special Courts. 1 would like to know what was the basis on which the Government came to this conclusion. *(Interruptions)* I was busy in the Business Advisory Committee.

(Interruptions) THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA); Mr. Hegde, what are you doing? You are having a conversation with Mr. Bagaitkar. (Interruptions)

SHRI SADASHIV BAGAITKAR: I am only requesting the Minister to answer that.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Well, if the Minister wants to reply, that is his pleasure. But I cannot compel him. Now, the question is...

SHRI HAREKRUSHNA MALLICK: Sir, 1 have a small submission to make.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA). No, no.

SHm HAREKRUSHNA MALLICK: The lion. Law Minister is here. We want to hear him on this point. The hon. Law Minister is here. We want to know what his opinion is... *(Interruptions).* Why is he keeping silent? He should speak (Interruptions)

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA). Dr. Mallick, I am sorry you do not know the rules of business. The Law Minister cannot speak. The Minister who has moved the Bill alone can reply.

SHRI RAMAKRISHNA HEGDE: The Law Minister can intervene.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): There is no intervention in the third reading. Now the question *is-*

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

I think the Ayes have it. The motion is adopted

SHRI SHIVA CHANDRA JHA: The Noes have it. I want a division.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Mr. Jha, you should have asked for a division before I announced my decision. You got up just now...

SHRI SHIVA CHANDRA JHA; I can ask. I want a division.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): AH right, I will again put the motion.

SHRI ERA SEZHIYAN (Tamil Nadu): I do not want to insist on a division, but let us keep the record stright because you have given a ruling. Only after the announcement of the decision, it can be challenged. I am not insisting on a division. But the position is, a decision can be challenged only after it is given.

THE V CE-CHAIRMAN (DR. RAFIQ ZAKARIA): Since only Mr. Jha wants a division and the others from t'ne Opposition are not insisting on it, I think I will request Mr. Jha. The sense of the House is quite clear. It is no use unnecessarily . . .

श्री शिव चन्द्र झा : आपकी मर्जी है. . . (व्यवधान) नियमों का उल्लंघन हो रहा है। डिविजन कराइये।

THE VCE-CHAIRMAN (DR. RAFIQ ZAKARIA): There is no question of

नियमों का उल्लंघन .

श्री शिव चन्द्र झा : अगर आप ऐसा करना चाहते हैं तो आपकी मर्जी है। मैं लोक सभा में भी रह चुका हूं। लोक सभा में श्री संजीव रेड्डी स्पीकर थे। अगर हम दो चार आदमी डिवीजन की मांग करते थ, तो डिवीजन होता था। यहां क्या हो रहा है ?

THE V-CE-CHAIRMAN (DR. RAFIQ ZAKARIA): All right, Mr. Jha, I will take the division. Those in favour of the Bill may please stand.

AN HON. MEMBER: Division.

THE V CE-CHAIRMAN (DR. RAFIQ ZAKARIA): I can adopt either of the measures. Mr. Secretary-General, will you please count?

THE VICE-CHAIRMAN (DR. RAFIQ ZAKAR'A): The result is...

SHRI K. K. MADHAVAN (Kerala): On a point of order . . .

THE V CE-CHAIRMAN (DR. RAFIQ ZAKARIA) • No, there is no point of order during Division.

SHR! K. K. MADHAVAN: There standing instruction, a set procedure. There is a mechanism for taking the count. You can adopt the procedure yau are now following only if that mechanism fails.

SHRI DINESH GOSWAMI (Assam): I am also on a point of order, Mr. Vice-Chairman. You are entitled to follow any procedure so far as counting is concerned. But I feel before a division is called and a count is taken, a reasonable opportunity must be given to all Members i who are present in the precincts of j the House to come into, the House and express their views. The division bell should be rung; otherwise, many Members may be deprived of their opportunity. There may be many Members in the Lobby. Some may have a favourable view t_Q express, some may have an adverse view to express $0 far as the bill is concerned. Therefore, I submit that this procedure should not be followed. If you want division, you must have the division bell rung; otherwise, we will be setting up a bad precedent.

THE VCE-CHAIRMAN (DR. RAFIQ ZAKARIA): I agree with the honourable Member Since only Mr. Shiva Chandra wanted the division and none else, I put it to the House and I wanted to take the count in this manner. Tf still the House insists, division bell can be rung. But as per the Rules of Procedure it can be done this way also. However, t*he point that has been raised by the honourable Member is also relevant and pertinent. So let the division bell be called.

SHRI K. K. MADHAVAN: On a point o,f order . . .

THE VICE-CHAIRMAN (DR. RAFIQ ZAKAR^{T}A): Please sit down. There is no point of order in what you are saying . . .

SHRI K. K. MADHAVAN: There is. My point of order is this . . .

THE VICE-CHATRMAN (DR. RAFIQ ZAKARIA): Please sit down.

(Interruptions)

SHRI K. K. MADHAVAN: Ignor-! ance is bliss. I am walking out.

(At this: stage the honourable Member left the Chamber.)

SHEl DINESH GOSWAMI; Now you please put it again.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA); That is why this confusion is arising. When Mr. Jha made the request for division, from the Opposition same Members said that it was only his personal view and they were not interested in it...

SHR: SHIVA CHANDRA JHA: On a point of order . . .

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): You please sit down when I am standing. Since he insisted $_0$n taking the vote, I have taken the vote by counting. Now the point that you have raised is relevant . . .

SHRI ERA SEZHIYAN: Point of order. Mr. Vice-Chairman. This should not be taken as a precedent. I quote the rules. Rule 252(4) (a) says:

"If the opinion of the Chairman as to the decision of a question ia challenged and he does not adopt the course provided for in sub-rule (3) above he shall order a 'Division' to be held."

So the Chair shall order a division ...

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): But please also read what is given before that:

"(3) If the opinion of the Chairman as to the decision of a question is challenged, he may, if he thinks fit ask the members who are for "Aye" and those for "No" respectively to rise in their places and, on a count being taken, he may declare the determination >of the Council. In such a case, the names of the voters shall not be recorded."

Therefore, the course that I adoptd is also provided for under Rule 252(3). But as the honourable Member has just now s-nd. since there is insistence^ a divisio.. *may* be called by ringing the bells. I am agreeable to that. I am not saying there is no question of ringing the bells. And there is no question of setting any precedent, because provision for such an action by the Chair is. also there under the rules. Mr. Jha was almost isolated. He alone was insisting on division. Other Members from the opposition were not very particular ... If the entire opposition had insisted on division, I would have certainly asked the Secretary-General to start division. The opposition itself was not very keen...

SHRI RAMAKRISHNA HEGDE: Even if one Member demands division, you have to agree to it.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): There, I have the right to conduct the division in the manner I have chosen. But since Mr. Dinesh Goswami suggested that ends of justice would be better served by giving an opportunity to those Members who are outside the House, I said I have no abjection.

श्री शिव चन्द्र झा : पोइन्ट आफ आर्डर । डिवीजन क्लेक्टिवली नहीं मांगा जाता । सबों की फीलिंग्स रहती हैं । चूंकि डिवीजन मांगा गया है और सदस्य इनसिस्ट करता है तो सभापीठ का यह कर्तव्य है कि वह डिवीजन कराये । आप का यह कहना कि बहुत लोग नहीं चाहते थे इस आधार पर मैंने किया यह तरीका मैं समझता हूं कि नियम के खिलाफ जाता है । एक आदमी भी इनसिस्ट करता है तो आप को डिवीजन कराना चाहिए ।

उपसभाध्यक्ष (डा० रफीक जकरीया): हाउस की कार्यवाही एक दूसरे के साथ समझ कर और पहले से फैसला करके की जाती है । यह बातें ऐसी नहीं कि हर चीज के ऊपर एक मेम्बर ने कहा तो यह कर दिया जाए । इस तरह तो हाउस को चलाना मुश्किल हो जायेगा । इसी लिए विहप्स होते हैं इसीलिए बिजनेस एडवाइजरी कमेटी होती है, इसी लिए

[डा० रफीक जकरीया]

रूल्स बनाये गये हैं । आप को भी इस में सहयोग करना होगा । आप ने डिवीजन मांगा । आप के डिवीजन मांग पर मैंने काउन्ट करवाया जैसे रूल्स में प्रोवाइड किया हुआ है । इस के बाद मेरे काउन्ट डिक्लेयर करने से पहले मिस्टर दिनेश गोस्वामी ने कहा कि नहीं, बाहर के भी जो मेम्बर हैं उन को भी मौका देना चाहिए । इस की भी कोई आवश्यकता नहीं है । जब तक मेरा डिसीजन फिर से चेलेंज नहीं होता है यह आवश्यकता पैदा नहीं होती है, लेकिन अगर यह समझा जाता है कि काउंटिंग उस तरीके से ली जाए तो उस में भी मुझे कोई एतराज नहीं, लेकिन मैं यह समझता हूं कि...

श्री लाडली मोहन निगम (मध्य प्रदेश) : उन्होंने कुर्सी की इज्जत बचा दी ।

उपसभाध्यक्ष (डा० रफीक जकरीया) : कुर्सी की इज्जत बचाने का सवाल ही नहीं था। कुर्सी के जो नियम हैं उनको तोड़ रहे हैं आप, निगम साहब । कुछ हुआ है नियम के अनुसार हुआ है इसलिए जो डिवीजन के रिजल्ट्स हैं उनको डिक्लेयर कर देता हूं ।

Ayes .. 43

Noes .. 16

The motion was adopted.

ANNOUNCEMENT BE. STATEMENT BY THE PRIME MINISTER ON APPLE TO BE MADE ON THE 20TII AUGUST, 1981

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): I have an announcement to make. Immediately after Question Hour tomorrow, the Prime Minister will make a statement on 'APPLE'.

MESSAGE FROM THE LOK SABHA

The Export-Import Bank of India BUI, 1981

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): There is a message from the Lok Sabha.

SECRETARY-GENERAL: Sir, I have to report to the House the following message received from the Lok Sabha signed by the Secretary of the Lok Sabtha:

"In accordance with the provisions of Rule 96 of the Rules af Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith the Export-Import Bank *of* India Bill, 1981, as passed by Lok Sabha at its sitting held on the 18th August, 1981." Sir. I lay ttie Bill on the Table.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at nineteen minutes past five of the clock till eleven of the clock on Thursday, the 20tb August, 1981.