Demand to five emphasis on the use of commonly used Hindi vocabulary in administrative work

डा. प्रभा ठाकुर (राजस्थान): उपसभापति जी, राजभाषा हिन्दी के अनेक मुश्किल शब्दों का प्रयोग राजकाज संबंधी कामकाज में जिस प्रकार प्रचलित है, उसे हिन्दी के साहित्य का अच्छा जानकार भी अक्सर समझ नहीं पाता, तो जिसे हिन्दी की सामान्य जानकारी है, उसे तो ऐसे हिन्दी के शब्दों से अंग्रेज़ी अधिक सरल लगती है। हिन्दी को राजभाषा के रूप में अधिक लोगों द्वारा जानने-समझने के लिए आवश्यक है कि हिन्दी की सरल तथा आम लोगों में प्रचलित उपयोगी सामग्री को प्रकाशित किए जाने पर विशेष ध्यान दिया जाए। हिन्दी का जो गंगा-जमुनी स्वरूप आम लोगों में प्रचलित है, जिसमें सहज रूप से हिन्दी, उर्दू, फारसी, खड़ी बोली, संस्कृत आदि भाषाओं के अनेक शब्द घुल-मिल गए हैं, उस हिन्दी का उपयोग ही राजकाज की भाषा में होना चाहिए। जिस प्रकार अंग्रेज़ी विश्व के सर्वाधिक लोगों द्वारा बोली-समझी जाने वाली भाषा है, उसी प्रकार हिन्दी भारत के अधिकांश लोगों द्वारा बोली-समझी जाने वाली जुबान है।

अत: हिन्दी को चंद लोगों की नहीं, आम लोगों की समझ में आने वाली जुबान बनाए जाने की भावना को ध्यान में रखते हुए राजकाज संबंधी कार्यों में हिन्दी के शब्दों का उपयोग किया जाना चाहिए। मेरी मांग है कि सरकार इस संबंध में उचित दिशा-निर्देश जारी करे।

Demand for CBI enquiry to probe the smuggling of rice under the PDS meant for poor people in Tamil Nadu

DR. V. MAITREYAN (Tamil Nadu): Sir, in Tamil Nadu, under the Public Distribution System, 20 kilogram of rice is sold to each ration card holder at Re.1 per kilogram at the ration shops. Recently, the Headlines Today and Aajtak television channels showed how tonnes of rice meant for the poor, is smuggled out daily. PDS rice is making its way to neighbouring States of Andhra Pradesh and Kerala on trains and from there to Malaysia, Singapore, New Zealand and Indonesia. The smuggled rice is sold at Rs.18 to Rs.28 per kilogram in Andhra, Kerala and Karnataka and at Rs.120 to Rs.150 per kilogram in other countries.

The question is: Can PDS rice be diverted on a large scale in such a manner? This act has been going on for months right under the nose of the authorities.

In view of the fact that the rice-for-rupee one scheme of the State Government in Tamil Nadu, meant for the millions of poor is benefiting the middlemen and well-connected and influential big wags and tonnes of rice is smuggled to other States and even abroad, the AIADMK demands a CBI inquiry into this PDS rice megascam in Tamil Nadu.

MR. DEPUTY CHAIRMAN: We now take up the Code of Criminal Procedure (Amendment) Bill, 2010. Shri Mullapally Ramachandran to move.

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GOVERNMENT BILLS

The Code of Criminal Procedure (Amendment) Bill, 2010

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI MULLAPPALLY RAMACHANDRAN): Sir, I move:

That the Bill further to amend the Code of Criminal Procedure, 1973, as passed by Lok Sabha, be taken into consideration.

Sir, the code of Criminal Procedure (Amendment) Bill, 2006, was passed by the Rajya Sabha on 18th December, 2008 and by the Lok Sabha on 23rd December, 2008. The Bill received the assent of the President on 07.01.2009. The corresponding Act, namely, the Code of Criminal (Amendment) Act, 2008, has been published in the Gazette of India Extraordinary, Part II, Section 1 dated 09.01.2009.

In the meantime, before the Act could be enforced through official notification (as is provided for under section 1(2) of the 2008 amendment Act), a number of representations were received in the Ministry of Home Affairs from all over the country particularly from lawyers' associations and Bar Associations against some of the provisions of the Act.

To address the misgiving of lawyers and others, the hon. Home Minister wrote a letter to the Chairman, Law Commission on 22.06.2009 to take initiative and to hold consultations with very select number of persons representing the premier Bar Associations to bring about a consensus on the issues that seemed to be agitating the minds of lawyers.

Hon. Chairman, Law Commission of India called a meeting on 20th August,2009, for a discussion/consultation with all concerned in respect of the amendment in the Code of Criminal Procedure, 1973, brought about the Code of Criminal Procedure (Amendment) Act, 2008, especially the provisions amending Sections 41 of Cr.P.C. at which the Chairman, Bar Council of India and the Chairman, Bar Council, Maharashtra and Goa were also present.

After holding consultations, the Law Commission recommended further amendment in the provisions of amended section 41 of the aforesaid Act to make it compulsory for the police to record the reasons for making an arrest as well for not making an arrest in respect of a cognizable offence for which the maximum punishment is up to seven years. The Law Commission also suggested further changes in the newly inserted section 41A of the Code of Criminal Procedure Act, 1973 (inserted by Act of 2009) to make it compulsory for the police to issue a notice in all such cases where arrest is not required to be made under clause (b) of sub-section (1) of the amended section 41. It was also suggested that the unwillingness of a person who has not been arrested to identfy himself and to whom a notice has been issued under the aforesaid section 41A could be a ground for his arrest. The Code of Criminal Procedure (Amendment) Bill, 2010 has been prepared on the basis of the recommendations of the Law Commission of India.

The Bill has been introduced in the Lok Sabha on 15.3.2010.

The Chairman, Rajya Sabha referred the Bill to the Department-related Parliamentary Standing Committee on Home Affairs for examination and report. The Committee examined the Bill and has submitted its 146th Report to the Chairman, Rajya Sabha, on 23.6.2010.

The recommendations of the Committee is given as, 'Since the recommendations of the Law Commission have been incorporated in the Bill and there appears to be unanimity amongst the legal community on the proposed amendment, the Committee recommends that the Bill be passed.'

Sir, the Bill is already passed by the Lok Sabha on 12th August, 2010. The Bill is now submitted to the Rajya Sabha for consideration and passing.

The question was proposed.

श्री अविनाश राय खन्ना (पंजाब): उपसभापति जी, धन्यवाद। इस अमेंडमेंट को लाने की इंटेशन बहुत अच्छी है। सर, पुलिस कई बार लोगों को या जो एक्यूज्ड है, उसको अरेस्ट करने के लिए इसका मिसयूज भी करती है। सर, मैं कुछ सुझाव देना चाहता हूं, क्योंकि यदि पार्लियामेंट में ही वे सुझाव लागू करके, उनको मानकर इस बिल को पास किया जाएगा, तो जो अमेंडमेंट आपने ऐक्ट में की है, यदि इसकी इंटरप्रेटेशन हाई कोर्ट या सुप्रीम कोर्ट करेगा, तो वहां कितने लोग जा पाएंगे, यह पता नहीं है, इसलिए मेरा एक सिम्पल सा सुझाव है। मेरा बहुत छोटा सा अमेंडमेंट है, इसलिए इस पर ज्यादा बोलने की जरूरत नहीं है। आपने लिखा है कि जो कल्प्रिट है या जिसको अरेस्ट करना है, उसको पहले एक नोटिस दिया जाएगा। सर, इसमें कहीं भी यह प्रोवाइड नहीं किया गया है कि रिटन नोटिस होना चाहिए। नोटिस क्या होता है? There are two types of officers to deal with the offence—one is the investigating officer and another is the arresting officer. The investigating officer अगर इनवेस्टिंग ऑफीसर एक जिम्मी भी अपनी डायरी में डाल लेगा कि हमने फलां आदमी को नोटिस दे दिया और उसने कम्पाइल्ड विद नहीं किया, तो आपकी जो इंटेशन है, वह एक जिम्मी केस डायरी में डालने से खत्म हो जाएगी। मेरी आपसे रिक्वेस्ट है कि इसमें एक रिटन नोटिस की बात होनी चाहिए। आप इसमें खाली नोटिस शब्द मत लिखिए, इसमें रिटन नोटिस लिखिए। दूसरी बात, नोटिस दे दिया, अरेस्टिंग ऑफीसर उसके घर पर नोटिस देने के लिए गया, वह नहीं मिला, तो क्या यह नोटिस समझा जाएगा? इसमें एक अमेंडमेंट कीजिए कि duly received by that person or any adult member of the family of that person यह प्रैक्टिकल डिफिकल्टी आपको आएगी, क्योंकि इसमें बहुत कुछ आई.ओ. (इन्वेस्टिंग ऑफीसर) के हाथ में होता है कि किस ढंग से इसको मोल्ड करना है। सैकिंडली, आपने इसमें कहा कि अगर वह नोटिस को कम्पाइल्ड नहीं करता, तो कम से कम यह नोटिस टाइम बाउंड होना चाहिए कि कितने घंटे के लिए है। अगर आप रिटन में अमेंड नहीं करते हैं, तो आई.ओ. कहेगा कि मैंने फोन कर दिया था, वह नहीं आए, इसलिए मैं उनको अरेस्ट करने के लिए जा रहा हूं, इसलिए इसमें 24 ऑवर्स या 48 ऑवर्स का एक टाइम बाउंट नोटिस इंक्लूड करने की जरूरत है, अदरवाइज इस प्रोविजन का भी मिसयूज होगा।

पहले 41 की रिक्वायरमेंट्स थी, अब 41 (ए) आया है। आपको अमेंडमेंट करने की जरूरत पड़ी, क्योंकि लोग लॉ कमीशन तक गए, स्टेट्स ने अपने व्यू रखे, इसलिए हमारी ऐसी भावना है कि इसका मिसयूज न हो। सपोज, आई.ओ. ने टाइम दे दिया कि आप मेरे पास दो बजे आ जाइए, वह आदमी आ गया, लेकिन वहां पर आई.ओ. नहीं मिलता है, तब उसका क्या प्रोसिजर होगा? आप यह इन्सर्ट कीजिए कि जो वहां का एस.एच.ओ. है या वहां का एम.एस.सी. है, वह अपनी रोजनामचा रिपोर्ट में यह ऐड करे कि फलां आदमी आया था, लेकिन आई.ओ. के न होने के कारण वह अपनी हाजिरी नहीं दे सका। इससे उसको अगला टाइम दिया जा सकता है। इसमें क्या होगा कि लोग तो आएंगे, लेकिन वह सिम्पली एक और जिम्मी डालेगा कि मैंने नोटिस दिया था, वह आया नहीं. इसलिए मैं उसको अरेस्ट करने जा रहा हूं। आप इसको भी थोड़ा सा क्लैरीफाई कीजिए। थईली, बहुत अच्छी इंटेशन है, उसको अपने आपको पेश करने का इमिडिएटली मौका

मिलेगा, लेकिन कई बार ऐसे लोग भी होते हैं कि जिनको अरेस्ट करने से उनकी रेप्युटेशन पर फर्क पड़ता है। मान लीजिए I.O. और Arresting Officer इस provision को comply with नहीं करता, तब arrest का status क्या होगा? So-called accused के पास क्या right है? क्या उसकी arrest illegal मानी जाएगी? Non-compliance के लिए Arresting Officer या Investigation Officer को क्या सजा मिलेगी? जितने लोग practice करते हैं, वे practical difficulty feel करेंगे या जब इसको implement करना होगा, उस समय मुश्किल आएगी, फिर इसका interpretation कोर्ट्स करेंगी। पता नहीं कितने लोग हाई कोर्ट और सुप्रीम कोर्ट तक जाएँगे। इसलिए मेरा आपसे यह निवेदन है कि आप good intentions से यह amendment लाए हैं, यह intention ठीक रहे, इसका फायदा लोग ले सकें, कानून को भी अपना रास्ता मिले, लेकिन मैंने जो दो-तीन मूल बातें बताई हैं, अगर उनको यहाँ पर amend करके डाल सकें, तो बहुत अच्छा होगा। आपका बहुत-बहुत धन्यवाद।

DR. E.M. SUDARSANA NATCHIAPPAN (Tamil Nadu): Mr. Deputy Chairman, Sir, I thank you very much for giving me the opportunity to speak on this Bill. First of all, I congratulate the Government for taking into consideration the modern trend of giving more human rights issues in favour of the persons who are under the criminal justice system. Sir, earlier, the police used to have the power of arrest and they used to convert the non-cognisable offence also as a cognisable offence, because they had arrested the person and the media also covered it. Nowadays, the media trial is also very famous. Even before the court trial starts, the media start to say that so and so is arrested, he is coming before the police or coming before the magistrate and they bring out lot of stories on that issue. Finally, in many cases, they may not find any charges to be framed. Then, the case used to be ended with that. But, the thing happened due to the drama of the arrest. In that case, what will happen? The individuals and their families' reputation will be totally tarnished. Therefore, now the system of giving notice to the person who is needed for commission of any cognisable offence or any complaint which is reasonable is a new departure from the procedure which we are following till now.

Sir, this particular amendment has also come forward after lot of discussion in the Parliamentary Standing Committee which has submitted the Report No.128, and also recently, after this Bill is brought in, in Report No.146. In the meantime, the Law Commission was also asked by the Ministry of Home Affairs to get the evidence from different parties to come to the conclusion. Here, Sir, I would like to just submit that whenever a law is brought in on the procedure and also on the substantial questions, then, there should be a role of the Bar Council of India. Hon. Law Minister is also here. My suggestion is, the Bar Council of India should also have a separate wing to go into the issues like this and come forward with the recommendation to the particular Parliamentary Standing Committee or to the Ministry concerned or to the Law Ministry so that their representation can also be looked into before framing any law like this. I am saying this because they are the part of the judges made laws. They are making lot of interpretations before the High Courts and the Supreme Court. But, nowadays, we find, Sir, that even for small things they start to agitate, and stop the working of the court system itself. The people are having the last resort to the courts. Now, gradually, they are losing dependence on certain institutions. Therefore, the court is the last resort for the citizens. That should also not be

closed because of the reasons of legal fraternity. If they have got their problems, they can solve the problem by way of discussion. They can come forward to the proper forum and redress their grievances.

Sir, in this particular amendment we are protecting the interests of the individuals. Already in article 23 of our Constitution a person is protected from being used as a witness against himself. Similarly, in article 22, the arrest and detention is also formulated that if there is arrest, then within 24 hours, they have to bring him before the Judicial Magistrate. In this particular amendment *prima facie* it is very, very clear that a citizen is to be respected properly, given notice, given sufficient time to appear before the concerned officer and cooperate into the investigation of a particular case. But, at the same time, we have to see that this procedure can be misused against an innocent person. The Constitution under article 22 guarantees that an arrested person has to be produced before the court within 24 hours. Here specific time has not been given. They can be held up in a police station for many days simply because notice has been issued and they may say that investigation is going on, inquiry is going on. They may ask the person to keep quiet and sit there only. This type of thing can happen by misusing this particular proposition. Therefore, there should a standing order to police of different States. When they are formulating the standing order for police, I request the Government of India to give direction to them that there should be proper protection and entry is made about when that particular person came to the police station, about the basis of the notice, when investigation was started and when he was asked to go out. All these things should be recorded. I am saying this because the words used here are and I am quoting, 'provided that the police officer shall in all cases where arrest of a person is not required..'. This is very dangerous, Sir. There is no need for arrest but he is called there. This is a departure from the non-cognizable offence. If there is a non-cognizable offence, the police has got no right to call him to the police station. But now it is allowed that he can be called even if it is a non-cognizable offence. Then, Sir, under the provisions of this sub-section, 'record the reasons in writing for not making the arrest', it is not for making the arrest. That means you are giving more powers to the police to say, "I am not arresting because of these reasons." Then he can be sent out.

Sir, next dangerous thing which is coming is plea bargaining. We have amended our law and we have shifted to the American system where an accused can have plea bargaining and can file a petition before the court. Sir, this section can be very much misused by the police officer by keeping the person there, asking him to go for plea bargaining because he is going to file the charge-sheet. And he can say 'if you are going for plea bargaining, then, I will not arrest. He would say, "I will give the reasons. If you are not obliging it, then you will be arrested." This can happen very easily. I am sorry to say this. Although many human right activists and politicians are raising their voice, but even now the police officers have not changed their colonial

mind because they have huge pressure of the work. I do not deny the fact that they have got the pressure of work from different quarters. But, at the same time, we have to see how much and how far we can protect the interests of the common citizens. Similarly, the second amendment is also like this, 'the police officer may' is changed to 'the police officer shall'. The subsequent amendment is also like this, 'where such person at any times fails to comply with the terms of the notice or unwilling to identify himself...' It is very easy to misuse this particular phrase saying that 'he has not identified himself that is why I am arresting him.' 'The police officer may, subject to such orders as may have been passed by the competent authority, competent court in this behalf arrest him for the offence mentioned in the notice.' Sir, this particular clause I am quoting it again, 'subject to such orders as may have been passed by a competent court', it is directly applying for an anticipatory bail. The court used to issue anticipatory bail orders even though the order says that he has to be released immediately but he can be arrested by using this particular provision.

He can very easily say because this provision itself gives the power to the police officer 'subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice.' Therefore, Sir, I feel a very, very dangerous power is given to the police. If they are doing it properly we don't deny that they have got every right.

Sir, I want to stress another important point. Nowadays we are following the American system in procedural law also. The Fifth Amendment in the American system gives the guarantee that even if a person testifies against himself the jury should not take notice of the negative inference. That means, Sir, a person is guaranteed that he will not be incriminated for a criminal justice simply because he was pressurized by some system to testify certain things before the jury. Similarly, they have got the right even at the early period of Prisoners Council Act, 1838. They have got the right to two things. One is, they can be represented by the attorneys *i.e.* by the advocates here and the other is, he can keep silent. Now, in India if anybody keeps silent he will have all the third degree methods to shout at least for the help of the mother or father or God. Therefore, if we follow the American system we have to follow it at least in these human rights issues in a proper way. Are we maintaining the Right to silence? I will just read that portion, "Make inferences on an accused's failure to face cross examination or to answer a particular question. This limits usefulness of silence as a tactic by the defence." In England, The Criminal Justice and Public Order Act, 1994 under the Rule of criminative circumstances. These were the guarantees given by UK and USA laws. Now, we are allowing the police officers to honourably call the particular person on a notice and give sufficient time for that. That does not mean that he has to break his silence because already our Constitutional Right is given under 23 that a person cannot be a witness against himself. Therefore, the Right to Silence is silently given in the Constitution of India. That should be protected. That should not be misused by the police force. Thank you.

श्री नरेन्द्र कुमार कश्यप (उत्तर प्रदेश): मान्यवर, मेरी समझ में दंड प्रक्रिया संहिता (संशोधन) विधेयक, 2010 मुख्य तौर से दो बातों पर ध्यान रख कर लाया गया है। इस संशोधन में पहली बात यह आई है कि 1973 की धारा 41 के आधार पर अधिकतम 7 वर्ष तक की सजा के केसेज़ में पुलिस बिना वारंट के गिरफ्तारी कर सकेगी। इस संशोधन में दूसरी बात यह दर्शायी गई है कि 7 वर्ष तक के अधिकतम दंड के केसेज़ में गिरफ्तारी करने या न करने के संदर्भ में तफ्तीश करने वाले ऑफिसर्स को लेखबद्ध करना पड़ेगा। इस प्रकार इसमें इन दोनों बातों पर खास तौर से प्रकाश डाला गया है।

महोदय, एमेंडमेंट पढ़ने के बाद मैं महसूस करता हूँ कि यह बात सही है कि यह एक छोटा-सा संशोधन है, लेकिन इसके प्रभाव और कुप्रभाव पर जब तक हम लोग चर्चा नहीं करेंगे तब तक मेरे हिसाब से इसमें संशोधन करने का ओचित्य स्पष्ट नहीं हो पाएगा।

मान्यवर, मेरे मन में इसके पीछे बहुत सारी शंकाएँ उपज रही हैं। मेरी सबसे पहले शंका यह है कि अगर पुलिस को बिना वारंट के गिरफ्तारी के अख्तियारात दे दिए गए तो कहीं पुलिस इसका नाजायज लाभ उठाकर समाज के माहौल को दूषित न कर दे।

मेरी ऐसी आशंका इसलिए है कि बिना वारंट गिरफ्तारी के अधिकार मिलने के बाद भ्रष्टाचार को बढ़ावा मिल सकता है। निर्दोष लोगों की गिरफ्तारी के समय हम लोग कोई बात कहने के लिए उपलब्ध नहीं होंगे। पुलिस को वारंट की जरूरत नहीं होगी, वह जिसको चाहेगी, अरेस्ट कर लेगी, चाहे वह दोषी है या निर्दोष है। इससे निर्दोषों के खिलाफ अन्याय की प्रवृत्ति को बढ़ावा मिल सकता है और पुलिस की ज्यादती बढ़ सकती है। क़ानून के पीछे कानूनविदों की मंशा है कि लोगों को सस्ता और सुलभ न्याय मिले। इसमें इस बात की कमी होने की आशंका मुझे इसलिए नजर आ रही है कि क़ानून की मंशा है कि समाज के हर व्यक्ति को सस्ता और सुलभ न्याय प्राप्त हो, लेकिन जब बिना वारंट गिरफ्तारी का अख्तियार पुलिस के हाथों में आ जाएगा तो फिर कहीं न कहीं न्याय पैसे पर आधारित हो सकता है। जो ज्यादा पैसे देगा, उसकी बात को मान लिया जाएगा और जो नहीं देगा, उसकी बात नहीं भी सुनी जा सकती है। इसलिए मान्यवर, मैं समझता हूँ कि पुलिस को बिना वारंट गिरफ्तारी का अख्तियार देने से हम लोग बहुत बड़े न्याय की उम्मीद नहीं कर सकते हैं। क़ानून की मंशा समाज को अपराधमुक्त, अन्यायमुक्त और भ्रष्टाचारमुक्त बनाने की है, लेकिन इस अख्तियार के मिलने के बाद मैं यह समझता हूँ कि क़ानून की यह मंशा शायद पूरी नहीं होगी। Indian Constitution के अनुच्छेद 21 में जीवन के अधिकार का उल्लेख किया गया है। संविधान का अनुच्छेद 21 यह कहता है कि किसी भी व्यक्ति के जीवन के अधिकार को किसी प्रकार से प्रभावित न किया जाए। अगर सी.आर.पी.सी. में अमेंडमेंट हुआ और पुलिस को विदाउट वारंट अरेस्ट करने का राइट दिया गया, तो इससे कहीं संविधान का अनुच्छेद 21 तो प्रभावित नहीं होगा? माननीय मंत्री जी कृपया इस पर भी जरूर विचार कर लें।

जहाँ तक गिरफ्तार करने या न करने की बात को लेखबद्ध करने का मामला है, इस पर भी मेरी आशंका है, जिसे मैं इस माननीय सदन के समक्ष लाना चाहता हूँ। पुलिस जिसको अरेस्ट करेगी, उसकी डिटेल उसे लेखबद्ध करनी पड़ेगी। अगर वह किसी accused को अरेस्ट नहीं भी करेगी तो उसको भी उसे लेखबद्ध करना पड़ेगा। पुलिस या आई.ओ. पर इस लेखबद्ध करने वाली प्रक्रिया का बोझ बढ़ जाने से अपराधों को पंजीकृत करने में कहीं कमी तो नहीं आएगी? हमारे माननीय मंत्री जी को इस पर जरूर सोचना पड़ेगा कि अगर हम पुलिस का रिटेन वर्क बढ़ा देते हैं, तो कई बार इसका कुप्रभाव यह हो सकता है कि पुलिस ऑफिसर्स बजाय मुकदमा दर्ज करने के उसमें compromise की बात सोचेंगे। अगर किसी के साथ अन्याय हो रहा है तो वे उस बात को रफा-दफा करने की सोचेंगे। इस पर भी हमारे क़ानून मंत्री जी को विचार करना चाहिए कि बयानों को लेखाबद्ध करने से समाज के लोगों पर यदि कोई कुप्रभाव पड़ता है, तो इस पर पुनर्विचार होना चाहिए,

otherwise केसों के दर्ज होने में कमी होगी जिससे अपराधों में बढ़ोतरी हो सकती है। जब अपराध बढ़ जाएँगे और मुकदमे कम दर्ज होंग, तब फिर न्याय की उम्मीद करना, मेरे विचार से संभव नहीं हो सकता है।

मान्यवर, मैंने इस विधेयक में एक और चीज़ यह पढ़ी है कि इसमें सारे अख्तियार एस.ओ. को दिये गये हैं। अरेस्ट करने की प्रक्रिया को लेखबद्ध करना या अरेस्ट न करने की प्रक्रिया को लेखबद्ध करना, इस बिल में ये सारे राइट्स एस.ओ. को दिये गये हैं। माननीय मंत्री जी, यह बहुत अच्छा होता कि इस बिल में अरेस्ट करने या न करने की प्रक्रिया को लेखबद्ध करने की निगरानी किसी सीनियर अधिकारी को दी जाती। जब हम सारे अधिकार एस.ओ. को दे रहे हैं कि वह स्टेटमेंट भी नोट करेगा और अगर अरेस्ट नहीं करना है, तो यह स्टेटमेंट भी वही नोट करेगा, लेकिन वह सही कर रहा है या गलत कर रहा है, इसकी कोई व्यवस्था हमारे इस अधिनियम में नहीं दी गयी है। बहुत अच्छा होता कि इसके लिए एक निगरानी अफसर depute किया जाता, जो इस बात को देख पाता कि जो arrest हुआ है, जो स्टेटमेंट नोट हो रहा है, वह सही है या नहीं, इसलिए मैं माननीय मंत्री जी का ध्यान इस ओर दिलाना चाहता हूं।

उपसभापति जी, इसके अलावा मेरे एक-दो छोटे-छोटे सुझाव हैं कि inquiry and interrogation के समय audio and video recording का प्रबंध होना चाहिए। आज समाज में यह हो रहा है कि किसी भी निर्दोष व्यक्ति को या अभियुक्त को पकड़ लिया जाता है और थाने में उसके साथ कैसा व्यवहार होता है, यह बात किसी से छिपी हुई नहीं है। इसलिए मैं मंत्री जी को सुझाव देना चाहता हूं कि inquiry के समय कम से कम audio and video recording की व्यवस्था होनी चाहिए, ताकि किसी भी अनियुक्त या निर्दोष व्यक्ति के साथ injustice न हो सके। मेरा दूसरा सुझाव यह है कि जब आरोपी को lock-up में डाला जाता है, तो उसकी भी videography होनी चाहिए। कई बार थानों में ऐसी घटनाएं हुई हैं कि किसी व्यक्ति को पकड़ा गया और उसके बाल काट दिए गए या उसके साथ दुर्व्यवहार किया गया। आए दिन ऐसी बहुत सी घटनाएं और incidents होते रहते हैं कि पुलिस स्टेशन में पुलिस की मार से अभियुक्त मर जाता है, इसके कारण बहुत सी मौतें भी हुई हैं। बाद मे मुकदमे दर्ज़ होते हैं और पब्लिक में रोष होता है। मेरा निवेदन है कि माननीय मंत्री जी इस पर ध्यान देने की कृपा करें कि यदि किसी अभियुक्त को लॉक-अप में रखा जाता है, तो उसकी videography होनी चाहिए, ताकि पुलिस उसके साथ अन्याय न कर सके।

उपसभापति जी, मेरा यह भी निवेदन है कि third degree method की व्यवस्था खत्म होनी चाहिए। आज हमारे देश में यह व्यवस्था है कि जब तक कोर्ट यह decide न करे दे कि इसने offence किया है या नहीं किया है, तब तक किसी भी व्यक्ति को दोषी नहीं माना जा सकता, लेकिन पुलिस का रवैया यह हो गया है कि वह किसी भी नामजद अभियुक्त को पकड़ती है और उसके साथ इतना बुरा व्यवहार होता है कि वह व्यक्ति पुलिस की शक्ल देखकर भागता है। इसलिए मेरा निवेदन है कि यह third degree method समाप्त होना चाहिए।

हमें वकीलों का भी ध्यान रखना पड़ेगा। जब यह मामला लोक सभा में विचार के लिए आया था, तो इस पर डिबेट हुई। सुप्रीम कोर्ट के अधिवक्ताओं ने, हाई कोर्ट के अधिवक्ताओं ने, जनपदीय अधिवक्ताओं ने इस बात की आशंका व्यक्त की थी कि कहीं उस अमेंडमेंट के आने से अधिवक्ताओं के कार्य में बाधा तो पैदा नहीं होगी, क्योंकि पुलिस का लेन-देन बढ़ जाएगा? जब without warrant arrests होंगे, थानों में bails दी जाएंगी, तो वकीलों के काम पर इसका कुप्रभाव न पड़े, इसके लिए हमें कुछ व्यवस्था करने के बारे में सोचना पड़ेगा।

इसके अलावा SC और ST का मामला है। मैं यह कहना चाहता हूँ कि Scheduled Castes and Scheduled Tribes के खिलाफ जो atrocities के मामले आते हैं, उत्पीड़न के मामले आते हैं, इस बिल में ऐसी कुछ व्यवस्था होनी चाहिए, ताकि इन मामलों में कमी आए और Scheduled Castes and Scheduled Tribes के साथ उत्पीड़न न हो, उनके साथ ज्यादती न हो। यदि इसके लिए बिल में कुछ व्यवस्था होती, तो बहुत अच्छा होता।

महिलाओं के मामलों पर CrPC मौन है। 498A, Dowry Act - कई ऐसे offences हैं, जिनमें 7 साल से कम सज़ा का प्रावधान है...(व्यवधान)...

श्री उपसभापति: कश्यप जी, अब आप समाप्त कीजिए।

श्री नरेन्द्र कुमार कश्यप: उपसभापति जी, मेरा निवेदन है कि CrPC में संशोधन आया है, वह बात ठीक है, लेकिन मेरा अनुरोध है कि CrPC की समीक्षा होनी चाहिए। हमारे देश में लंबे समय से इसमें अमेंडमेंट आ रहे हैं, कभी सैक्शन 41 में अमेंडमेंट आता है, कभी सैक्शन 42 में अमेंडमेंट आता है। आज हमारे देश की व्यवस्था बदली है, हालात बदले हैं, इसलिए अगर CrPC में संशोधन का प्रस्ताव मंत्री जी लाएंगे, तो अच्छा होगा। आपने मुझे इस बिल पर बोलने के लिए समय दिया, इसके लिए मैं आपको धन्यवाद देता हूं।

SHRI K.N. BALAGOPAL (Kerala): Sir, at the outset, I would support the positive intention of the Government behind bringing this proposed amendment. By this, the Government hopes that it will be able to control the arbitrariness on the part of the Police authorities while considering criminal cases which attract cognizance up to 7 years of punishment.

Sir, actually, it is in continuation of the 2008 Amendment. In the Statement of Objects and Reasons, it has been stated that this is a proposal moved by the Law Commission of India to compel the Police officers or make it mandatory for them to record the reasons for the non-arrest of a particular accused, and, through this, the culprits and the corrupt officers cannot connive criminal conspiracy to sabotage legal remedy available for the affected people.

Sir, technically this is very good and correct. But like my learned friend, Dr. Natichiappan, said here, there is ample scope for arbitrariness on the part of the Police authorities even after this amendment. Sir, this will be successful if it is done in a laboratory condition or in a green house condition. But, unfortunately, in India, we don't have a laboratory condition. The sweet dreams of the legal letters will not be realized knowing the bitter practical experience of the Police Force. Sir, actually we need a total revamping of the criminal jurisprudence in the country. It is not only related to the Police force. I think, a total revamping, from the legislation stage to the judicial scrutiny, is needed in this country.

Sir, after this amendment in 2008, there is a provision for recording the reason for the arrest and now we are making it mandatory to also record the reasons for non-arrest. But even after this, the issue of atrocities against women is not properly addressed. If we go into the details, there is enough space for ambiguity and subjectivity with regard to some of the provisions. Sir, Section 354 of the IPC is related to molestation of women. But here, with regard to the question as to how outraging the modesty of a woman will be identified, there are subjective provisions. If a Police Officer is willing to help a particular accused, he can make a subjective assessment to free that person. Similarly, with regard to 498A of the IPC which is about atrocities against women, there also even the Supreme Court has not clarified or finalized the position as to how it can be assessed whether there is an atrocity or not. The mental torture can be there; the other aspects may be there. So, in these kind of situations, the Police Officer can easily help the accused person. Sir, there is another aspect. There is also a scope of

corruption on the part of the Police Officer who is interested to indulge in such activities, as other Members have also mentioned.

Two aspects are there. If a Police Officer is willing to help someone, he can record it positively in favour of the accused and *vice-versa*. Generally, convicting is easy. Some advocates jokingly say, 'that particular Judge is convicting everyone because he does not know how to record the reasons for acquitting a particular person after having a lot of evidence.' It is because convicting a person is easy for many Judges. This is what the advocates generally say. Like that, the Police Officer, for lack of proper reasoning for not arresting a person, may also write some reasons for arresting him and thereby can make a mockery of this law. Sir, I would like to say something regarding this. I am supporting the intention of the Government. I am supporting the Law Commission. But, I think, in our country, more than the Police system, we have to revamp our legal system also. The criminal administration in the country, as I said earlier, from legislation to judicial scrutiny, needs to be revamped. We are having a system which we have traditionally followed from the British days. We are not revamping many of those provisions even now. We are making only piecemeal provisions and amendments. So, we have to thoroughly change this thing. Sir, for 'POLICE', as per Police, 'P' stands for 'Politeness'; 'O' for 'Obedience'; 'L' for 'Loyalty'; 'I' for 'Intelligence' and like that. But we all know what is actual picture of the Police in the country. We know that everyone is scared of the Police. From Kashmir to Kanyakumari, 'Police' is a name which scares everyone, which threatens everyone. When we were studying in law colleges our Professors used to say that. Even though the provisions are there in the law book, don't think that a Police Officer or a Policeman is knowing all these legal provisions. So be careful. So, Police is to be revamped. Even though all these provisions are there, Bhagalpur has happened in our country where the Police dealt with the under-trial prisoners in the jail in a very bad way.

Sir, we read about custodial deaths and fake encounters. The recent Gujarat cases are a subject of serious discussion. There is the situation in Kashmir. People do not believe the Police. Why is this happening? Police reforms are very important. I wish to cite some examples here. The Kerala Government started community policing where policing is done with the help of common people. The Police is involving the common people. Also, they have started a student policing system where students are involved in the process and they also get some idea about policing. In Kerala, we have introduced a Police Complaint Authority under the chairmanship of a High Court Judge at the State level where one can lodge complaints about Police; the Authority would then look into the matter. There are Police Complaint Authorities even in the districts. So, police reforms are very important.

The next point I wish to make is about the judicial system. I am happy to see the hon. Law Minister here and I hope he is listening to me. Now, in the name of judicial activisim, there is

judicial anarchism at many places. ...*(Interruptions)*... Many things are happening in the name of judicial activism. The judiciary is there to look after the legality of the system; even the legislative procedure in which we are involved can go in for a judicial review. The arbitrariness of any activity, whether it is policing or anything else, needs to be looked into by the Judiciary. Unfortunately, this is not happening. For instance, in Kerala, the hon. High Court made a decision banning public meetings throughout the State. Public meeting is a meeting held in a public place. I would like to know from the hon. Law Minister, how these kinds of * or arbitrariness on the part of the judiciary can be controlled.

MR. DEPUTY CHAIRMAN: The word * may be removed.

SHRI K.N. BALAGOPAL: Sir, this is not a *sub judice* matter. I am just making a point about the judiciary. ...*(Interruptions)*... The judicial service and related matters need to be studied in the wake of the most recent case. Yesterday, there was a case in Andhra Pradesh where five judges, senior officers from the judicial services, were debarred from the University Examination, while taking their LLM examinations. They were some district judges appearing in the examination for promotion as Judges in the High Court. They were caught copying. This is the situation in the country.

Hence, a totalbroad approach is needed to revamp the legal system and not an amendment to the CrPC alone. A total revamp is needed.

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MESSAGE FROM THE LOK SABHA (Contd.)

The Educational Tribunals Bill, 2010

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

"In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Educational Tribunals Bill, 2010 as passed by Lok Sabha at its sitting held on the 26th August, 2010."

Sir, I lay a copy of the Bill on the Table.

MR. DEPUTY CHAIRMAN: The House is adjourned to meet at 2.30 p.m.

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The House then adjourned for lunch at four minutes past one of the clock.

The House re-assembled after lunch at thirty-one minutes past two of the clock,
THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA) in the Chair.

PRIVATE MEMBERS' BILLS

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): Shri Prabhat Jha; not present. He has two Bills.

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*Expunged as ordered by the Chair.