

exploitation of its vast natural resources and for matters connected therewith and incidental thereto.

The question was put and the motion was adopted.

SHRI O.T. LEPCHA: Sir, I introduce the Bill.

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): Now, Shri Mohan Singh; not present. He has three Bills. Dr. Janardhan Waghmare.

The Compulsory Pre-Marital HIV Test and Other Measures Bill, 2010

DR. JANARDHAN WAGHMARE (Maharashtra): Sir, I beg to move for leave to introduce a Bill to provide for compulsory HIV test for the couples intending to be married and also for establishing the AIDS Controlling Authority to provide counselling and other necessary measures to prevent AIDS and for matters connected therewith and incidental thereto.

The question was put and the motion was adopted.

DR. JANARDHAN WAGHMARE: Sir, I introduce the Bill.

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): Now, Shri Mahendra Mohan; not present. He has two Bills. Shri Rajeev Chandrasekhar; not present. He has three Bills. Shri Shreegopal Vyas.

The Constitution (Amendment) Bill, 2010 (to amend article 10)

श्री श्रीगोपाल व्यास (छत्तीसगढ़): महोदय, मैं प्रस्ताव करता हूँ कि भारत के संविधान का और संशोधन करने के लिए एक विधेयक को पुरःस्थापित करने की अनुमति दी जाए।

The question was put and the motion was adopted.

श्री श्रीगोपाल व्यास: महोदय, मैं इस विधेयक को पुरःस्थापित करता हूँ।

GOVERNMENT BILLS

The Code of Criminal Procedure (Amendment) Bill, 2010 — (Contd.)

उपसभाध्यक्ष (श्री कलराज मिश्र): अब Code of Criminal Procedure (Amendment) Bill, 2010, पर श्री पांडियन बोलेंगे।

SHRI PAUL MANOJ PANDIAN (Tamil Nadu): Sir, at the outset, I wish to state that this Bill is proposed with a view to strike a balance between the rights of the complainant and the accused. There is a right now vested with the victim who will be satisfied as he will be furnished reasons about the non-arrest of the accused. In the same way, the accused can go to court and complain that he was arrested on flimsy grounds.

However, Sir, I wish to State some issues with regard to the proposed amendment. Sir, the present amendment to section 41 of the Code of Criminal Procedure, 1973 imposes a duty upon the police officer to record reasons for not arresting a person involved in an offence punishable up to seven years. I have my own doubts about the efficacy of these amendments. Section 41,

as amended by the Code of Criminal Procedure (Amendment) Act, 2008, empowers a police officer to arrest a person involved in an offence punishable up to seven years only if any of the five necessities set forth in clause (a) to (e) is satisfied. The section also states that while making such arrest, the police officer shall record the reasons in writing. Obviously, the record must be there in the case diary maintained under section 172 of the Code of Criminal Procedure, 1973. The object of the 2008 amendment was to regulate the existing discretionary power to effect arrest. To that extent, the power of the police to indiscriminately effect arrest in certain class of offences stands curtailed. To that extent, the 2008 amendment is a welcome one.

But the present amendment imposes a duty on the police officer to record reasons for not effecting arrest. Sir, this is a negative provision. The anomaly that will set in is that on account of the present amendment, it will make policing difficult. If the police officer decides to arrest a person, it is enough for him to record any one of the five reasons set out in clause (a) to (e), but if he does not want to effect arrest, he should write all the five reasons in clause (a) to (e) as not available for effecting arrest.

Now, let us take clause (e), which says, “as unless such person is arrested, his presence in the court whenever required cannot be ensured.” Can any police officer say with certainty that he is not arresting because he is confident that the person’s presence in the court on the future date can be ensured? Will he take such a risk? Sir, my apprehension is that in the present system, and, if the present amendment is introduced, it will be an easier option for the police officer to record one of the five reasons for effecting arrest rather than justify his decision not to arrest by excluding the five reasons. Sir, I also wish to state that this provision will be misused by the police. Therefore, my apprehension is that arrests will become a routine and the purpose of the 2008 amendment will stand defeated.

Sir, the proposed amendment to section 41-A is a welcome one but that will come into play when the police officer decides not to arrest. In effect, section 41-A will become a dead letter and will not be put to use because the police officer will invariably take a decision to effect arrest, which decision cannot be subjected to judicial review. Action taken by an Executive Authority at the ground level in a given situation cannot be subjected to judicial review unless *malafide* is manifest on the very face of it.

Sir, my apprehension is that the present amendment will have the effect of nullifying the 2008 amendment to section 41. Sir, I wish to know what is the mechanism adopted by the Government in order to implement the above provisions, and, how will they be complied with? There is also an apprehension as to how this procedure will be monitored.

Sir, in cases where the accused commits an offence against women, for example, under sections 354, 498-A, and, 509 of the IPC, and, also under an Act, which we have in Tamil Nadu,

called the Tamil Nadu (Prohibition of Harassment of Women) Act, 1998, the accused will not be arrested. I urge upon the hon. Minister to consider its consequences in the society.

Lastly, Sir, I wish to mention the recent observation of the hon. Supreme Court. The hon. Supreme Court has said that the criminal justice system has crumbled. Therefore, I urge upon the Government to reform and rationalize the criminal law of our country by introducing a comprehensive legislation instead of bringing piecemeal amendments. Thank you.

SHRI A.A. JINNAH (Tamil Nadu): Thank you Mr. Vice-Chairman, Sir. There is a saying in Thirukkural indicating how much a State or a Government should be careful in approaching the problems.

A lot of party politics, a lot of people are there to betray the Government and a lot of terrorists and other people are there. Two thousand and five hundred years before Thiruvalluvar had come to understand what would happen in future. For that only, our police force is day-by-day modernizing with the help of State Government and the Central Government, which is taking some of these amendments.

The key features of the Bill make it compulsory for the police to record reasons for making an arrest or not making an arrest. This provision renders useful information in understanding the police action taken. These reasons are subject to judicial scrutiny, would always go to the court of law. The papers they are taking in writing should be submitted before the court of law for judicial perusal.

It makes it mandatory for the police to issue a 'notice of appearance' to a person in all such cases where arrest is not required to be made under section 41 of the Cr.P.C. It is very much essential because according to other Members who are talking that police can take any action, even now or after the amendment also, the police can take action according to their whims and fancies. It means that cannot be done after this amendment. They have to make it in writing why they are arresting the person and what are the reasons for arrest. The entire thing should be recorded. This amendment has been taken up after substantial discussion with Bar Associations and taken into consideration the suggestions of the Law Commission. So, the reasons have to be noted as to why a person can be arrested or cannot be arrested. They have to be answerable. The Cr.P.C. amendment would increase transparency and also reduce the arbitrariness in discretionary police action. Police action cannot be one-sided. They cannot take action according to their terms and conditions. They have to go by this amendment and they have to be transparent in all their activities and all that has to be scrutinized by the court of law.

Now, Sir, any effort to increase the trust and confidence of people in the police is welcome. As the guardians of law and order, the policemen should discharge their duties to ensure that there is no arbitrariness in their duty. One of the major challenges is to facilitate the common man to understand what his Fundamental Rights are. When a person is arrested, he should

know why he has been taken into custody and if a person is let off free, the system should communicate to the complainant why there has been no arrest made. These are all grey areas in our law and order system. This Bill seeks to remove this and ensure that we have a transparent and straightforward process that is uncomplicated.

At this juncture, Sir, law and order is a State subject and States must be given autonomy in the management of this vital service. However, at this moment, I would like to request the hon. Home Minister ...(*Time-bellrings*)... to increase training facilities and allocate necessary assistance to modernize our police force to face the law and order challenges of the day, to take action against atrocities of the terrorists and anti-social elements. The Parliamentarians and the Legislatures are engaged in information of laws. Courts are rendering justice by making use of the laws. Police forces are supposed to implement the laws without fear or favour and render justice.

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): Your time is over.

SHRI A.A. JINNAH: Sir, I am concluding. The atrocities of the lawbreakers like anti-social elements and terrorists should be curbed by police by making use of the powers vested in them. At this juncture, I would like to record my request to the police force. They have to take it up. It is a job given to them not only by the Government, but it is given by the Parliament and they are answerable to the people. We are people's representatives and we are giving powers to them. They must make use of the powers reasonably. I would like to tell one thing. Everybody knows the things. They are searching for a black cat in a dark room when it is not there. All know it pretty well. What is the power of the police? The police officers must understand the powers vested with them.

Sir, with these words, I conclude my speech. I welcome this amendment. Thank you very much.

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): Now, Shri Baishnab Parida. You have three minutes.

SHRI BAISHNAB PARIDA (Orissa): Sir, I stand here to support the Code of Criminal Procedure (Amendment) Bill, 2010. The amendment is aimed at streamlining the power of police. It is also intended to reduce the arbitrariness of the police and to bring transparency in police actions. Sir, according to this amendment, it makes compulsory for the police to record in writing its reasons for arresting or not arresting a person accused of a cognizable offence that carries imprisonment up to seven years. This means, the police cannot make needless arrest or may, under pressure, let go people who may be wanted in the case.

Sir, the intention is very noble, but, I think, at present, in our society, the police arbitrariness is growing and atrocities on people are also growing. There are lot of deaths in police lock-ups. Though it has very good intention, yet, I think, it is very difficult to implement this law in rural areas. Among the poor people, police high-handedness, torture and arbitrariness is going on. I think, it will be a step to stop the police arbitrariness. So, I support this.

Sir, in the second amendment, under Section 41(A), police is given power to arrest a person when he or she fails to comply with the terms of the notice sent in writing by the police for questioning. But, the police can arrest the person for an offence on the order of a competent court. Of course, police arbitrariness can also be checked by this amendment because before arresting a person, the police has to obtain the order of a competent court. Sir, since the Criminal Procedure Code is very old — originally, it was made during the British time — I would appeal to the hon. Home Minister to introduce a comprehensive Bill in the Parliament to reform and rationalise the criminal law of the country instead of bringing forward amendments in a piecemeal manner.

The Criminal Procedure Code has been amended 10 times since 1973. Originally, we have followed the British procedure, and now, we are going to follow the American procedure.

उपसभाध्यक्ष (श्री कलराज मिश्र): कृपया बैठिए, आपका समय समाप्त हो गया है।

SHRI BAISHNAB PARIDA: The administration of the criminal jurisprudence is a subject of the Centre and States. So, when a comprehensive and rational law will be introduced in the Parliament, the States views should be taken into consideration. That is my suggestion.

उपसभाध्यक्ष (श्री कलराज मिश्र): श्री आर.सी. सिंह। आपके पास दो मिनट हैं।

श्री आर.सी. सिंह (पश्चिम बंगाल): सर, मैं मंत्री महोदय को बधाई देता हूँ कि विद्वान विधिवेत्ताओं से बातचीत करके वे ये संशोधन करने जा रहे हैं। अंग्रेजों के जमाने के 1861 के कानून आज भी लागू हैं, जिसके कारण आज भी लोग पुलिस को देख कर डर से भागते हैं। इसमें सम्पूर्ण संशोधन करने की जरूरत है। इसके बावजूद इन्होंने इसमें जो संशोधन किया है, इसके लिए मैं उन्हें बधाई देता हूँ। सर, मैं एक बात कहना चाहूँगा कि अगर पुलिस friendly नहीं हो सकती है, तो पत्थर का हल बुलेट नहीं हो सकता है, जैसा कश्मीर वगैरह में हो रहा है। इसलिए इनको 1861 वाले कानून को पूरी तरह से बदल कर सदन के पटल पर रखना चाहिए और इसे बदलने की कोशिश करनी चाहिए।

सर, इस बिल में इन्होंने तीन संशोधन किए हैं। पहला यह है कि सेक्शन 41 के अनुसार पुलिस ऑफिसर को इसके लिए बाध्य किया गया है कि जब वह किसी व्यक्ति को गिरफ्तार करता है या नहीं करता है, तो वह उसका रेकार्ड दर्ज करेगा। यह अच्छी बात है, लेकिन अगर इसमें गिरफ्तार करने के बाद उसकी family को inform करना add कर दिया जाता है, तो बेहतर होता।

इसके बाद, इन्होंने 41(ए) में 'may' शब्द को बदल कर 'shall' किया है। इन्होंने पुलिस अधिकारी को इतना अधिकार तो दे ही दिया है कि वे dilemma में नहीं रहेंगे, वह उसको गिरफ्तार कर सकता है। अगर वह अपनी पहचान बताने से इनकार करता है, तो वह उसको गिरफ्तार करेगा, लेकिन उसको लिखित तौर पर एक नोटिस होनी चाहिए, सिर्फ उसकी डायरी में इसका रेकार्ड नहीं होना चाहिए।

सर, सेक्शन 41 के द्वारा पुलिस अधिकारी किसी को मनमाने तरीके से गिरफ्तार नहीं कर सकता है, इन्होंने इसमें दिया है, लेकिन मुझे इसमें एक बात कहनी है, चूंकि मेरे पास समय बहुत कम है, कि जब तक वह enquiry करेगा, तब तक असामाजिक तत्व या नक्सलवादी या आतंकवादी ऐसे लोग हैं कि उनकी enquiry करते-करते कहीं गायब न हो जाएँ, इसमें इसकी सम्भावना रहती है। इसके लिए मंत्री महोदय क्या व्यवस्था कर सकते हैं, मैं चाहूँगा कि वे इसके ऊपर जरूर अपने विचार रखेंगे।...(समय की घंटी)... सर, मैं ज्यादा समय नहीं लूँगा।

उपसभाध्यक्ष (श्री कलराज मिश्र): आपका समय समाप्त हो गया है।

श्री आर.सी. सिंह: ठीक है।

3.00 P.M.

जहाँ तक Notice of Appearance जारी करने की बात है, तो मैं समझता हूँ कि नागरिकों के जीने के अधिकार के अनुकूल ही इन्होंने व्यवस्था की है। इससे हमें मदद मिलेगी। पुलिस नागरिकों के लिए friendly बने, मैं यही बात कहना चाहता हूँ। इन्हीं शब्दों के साथ मैं अपनी बात समाप्त करता हूँ।

SHRI KUMAR DEEPAK DAS (Assam): Thank you very much, Sir, for giving me this opportunity to participate in the discussion on the Code of Criminal Procedure (Amendment) Bill, 2010 which aims to streamline the power of arrest of the police. It is a fact that there is an imperative need to reform and rationalize the criminal law of the country by introducing a comprehensive legislation in the Parliament. There is a need of bringing the police laws in tune with the time in every State to make the police work more transparent. The Code of Criminal Procedure has been amended 10 times since 1973. The present Bill is 11th in the series. Sir, the hon. Members of this House have already given some important suggestions. I support those suggestions. Also, custodial deaths must be avoided. Harassment and excesses of the police should be reduced. There is a need to introduce the video recording system for taking statements of the accused in police custody. Sir, North-East Region is well known for these custodial deaths and deaths in fake encounters. It has become an everyday phenomenon in the North-Eastern Region. Again, while supporting this Bill, there is an urgent need for amendment of Section 41A under which the police will get powers to arrest a person where he or she fails to comply with the terms of notices sent to him/her for questioning. Sir, the amendment will reduce arbitrariness and apprehension of people and bring about transparency.

Sir, while supporting this Bill, I, again, request the hon. Home Minister to look into the black laws prevailing in our Region, i.e. the Armed Forces (Special Powers) Act. There is a need to withdraw these black laws. So, I hope, the Government will come out with a resolution to withdraw the black laws. With these few words, Sir, I support the Code of Criminal Procedure (Amendment) Bill, 2010. Thank you very much, Sir.

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): Thank you, Mr. Das. Now, Shri M. Rama Jois.

SHRI M. RAMA JOIS (Karnataka): Sir, this is a very short amendment brought to the Criminal Procedure Code but has got greater implications on human rights. As we are aware, we got Independence on 15th August, 1947 and, then, the Constitution was brought into force on 26th January, 1950. In the meanwhile, on 10th December, 1948, human rights were declared by the United Nations called "The Universal Declaration of Human Rights". All the fundamental rights incorporated in Part III of the Constitution are, basically, human rights that have been incorporated. Article 21 is most important. It says: "No person shall be deprived of his life or personal liberty except according to procedure established by law." So, you can take away the right or liberty or the right to life of an individual provided it is taken away according to the law.

This question came up, before the Supreme Court, first time, in A.K. Gopalan's case. At that time, the Supreme Court interpreted saying if there is any law which authorizes the State to arrest a person or take away his liberty, that would satisfy the requirement of Article 21. But much water has flown under the bridge. Subsequently, in Kesavananda Bharati case's, thirteen judges' judgment came where the Supreme Court declared that the basic human rights, which are part of fundamental rights, cannot be altered at all. Articles 21, 19 and 14, equality and other freedom, including the right to liberty, were all considered as basic human rights. And, therefore, any law made by the State Government must, according to the subsequent judgment of the court, if it is not sufficient that you have got the law, must answer Articles 14 and 19 also. Therefore, keeping that point in view, we have to consider the validity of the present amendment brought to the Criminal Procedure Code. Now, as we see, in Section 41 of the Act itself, it was incorporated to ensure and protect the fundamental rights of an individual. Here, it says, this Chapter is made to regulated the arrest person by the police without warrant.

Therefore, without any warrant issued by any Magistrate or Court, a power is conferred on the police officer to arrest a person. So, before arresting a person, there are certain conditions to be satisfied. They are all set out, namely against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine. These conditions must be satisfied. I don't want to repeat them. These conditions are laid down in the section. In such a case, the police officer shall record, while making such arrest, his reasons in writing.

Before going to the proviso, my submission is that it is not sufficient that the police officer should record the reasons in writing, but the date and time of the arrest should also be recorded, his family should be informed of the arrest and a report should also be sent to the jurisdictional magistrate. These safeguards must be included. I am saying this from my judicial experience. One day, when I was taking up *habeas corpus* writ petitions in Karnataka High Court, a petition came up saying that some person had been arrested by the police a week back. After I issued notice, the person was produced before the court. The police said, "We had arrested him just yesterday and we are producing him within 24 hours as required under article 22 of the Constitution". Then, we asked the police to go out of the court and asked him when he was arrested. He began to weep and said, "Sir, I was arrested one week ago. I was taken to Chikballapur and somewhere else and tortured me". The police methods are very strange. They don't record the arrest at all. They arrest and just before the completion of 24 hours, when they have to produce him before the jurisdictional magistrate, they will record that they have arrested him on that day. Therefore, there must be some safeguard. The date and time of arrest should be recorded. The family may not be knowing whether the person is arrested or not. Therefore,

there should be a provision in section 41 itself. Apart from the police officer making such arrest should record his reasons in writing, a report should be sent to the jurisdictional magistrate and his family should also be informed. Unless these safeguards are included, the police officers are likely to misuse the power and the human rights will be violated.

Now, coming to the present proviso where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice subject to such orders as may be passed by the competent court. It is a double-edge sword. Undoubtedly, it is intended to protect an individual's right. Therefore, the reasons should be recorded for not arresting. But once you give these powers to the police, we don't know what is going to happen, particularly, in these days of rampant corruption. They can easily say, "We will not arrest him". For collateral consideration by recording same reason. Therefore, here also it is necessary, particularly, in the proviso to add a provision to the effect that not only the reasons should be recorded but also a report should be sent to the jurisdictional magistrate and the members of his family should be informed. Many a time, a family may not be knowing whether a person is arrested or not and they will be searching where the person is and all that. This is absolutely necessary.

There is another case which we had to deal with. A lady came and presented a *habeas corpus* writ petition saying that her husband was missing for one week and the police had arrested him. The Police Commissioner appeared and filed an affidavit saying that they had not arrested him. I was taken by surprise. After the Police Commissioner went away, we told her that the Police Commissioner has said that they had not arrested him and, therefore, we said that there was no question of issuing writ of *habeas corpus* and we could not interfere. Then, she said, "No, Sir. My husband has been arrested. My husband has been kept in a private house in Basaveswara Nagar Extension and not in the police station". Then, we appointed a Special Officer of the High Court to go along with the lady to the place mentioned by her and find out whether he was there or not. The lady went along with the Special Officer and he found there not one person but eight persons. Subsequently, we sat, after the court hours, at 7 o'clock and directed that all those persons should be produced and after that they were released. More than one week they had kept them in custody, but they did not bring it on record. Therefore, this safeguard must be introduced in the provision. Otherwise, there would be every possibility of the police interfering with the Fundamental Rights, and with impunity.

Now, coming to the second amendment, the earlier provision was that the police officer may, in all cases, where the arrest of a person is not required under the provision, issue notice to the person against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists that he has committed an offence, to appear before him and if he fails to comply with the terms of the notice, it shall be lawful for the Police

Officer to arrest him for the offence mentioned in the notice subject to such orders as may be..." and so on. This is sought to be substituted: for the words "The police officer may", the words "The police officer shall" be substituted". This is a very welcome suggestion. Earlier, the police officer had the discretion to either issue the notice or not. Now, the police officer is bound to issue notice, giving reasons or the circumstances under which a person is going to be arrested. And in sub-section (4), the following sub-section is request to be substituted, namely, "Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, 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". It is only in such cases where he fails to identify himself, the police officer can arrest him. But, as I said, the power to record reasons not to arrest, no doubt, on the face of it, appears to be a very good provision, but it is likely to give a handle to the police officers, to use his discretion not to arrest on collateral consideration and, then, record same reasons. Therefore, this requires two modifications at both places; the time and date of arrest should be recorded and the report should be made of the reasons for his arrest or non-arrest to the jurisdictional Magistrate.

Lastly, the family should be informed. These safeguards must be incorporated here. These are my suggestions. Of course, I have not moved any official amendment, but these suggestions must be taken into consideration by the Home Minister because of the rampant misuse of powers by the police. In fact, in the most ancient times, in Kautilya's Arthashastra, I quote what protection was given to human rights. Here are the powers. I would read, not the Sanskrit portion, but the translation. Misconduct by police officers jail superintendents: the Superintendent of the jail is liable to be punished for his acts of commission and omission, for putting a person in jail without disclosing the grounds for such detention, for subjecting prisoners to unjust torture — now that Bill against Torture is also coming up — for transferring a prisoner to any other place or depriving him of food and water — even the Supreme Court now says, under article 21, an arrested person has the right to get food and water — for causing trouble to prisoners or receiving bribe from them, for beating a prisoner resulting in his death, for having sexual intercourse with the wife of a thief or any other person, for interfering with the taking of food or sleep; all these basic human rights have to be protected. This is in Kautilya's Arthashastra written in 250 B.C. It is at that time, that these safeguards had been incorporated. Therefore, now, in this 21st century, the Criminal Procedure Code should be such as would respect the human rights. No doubt, reasons to be recorded itself is not going to solve the problem. The reason should be communicated to the jurisdictional of magistrate and also the time of the arrest of persons should be recorded and family also should be informed. Such safeguards should be introduced. With these suggestions, I support the Bill.

THE MINISTER OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): Mr. Vice- Chairman, Sir, I am deeply grateful to the hon. Members who have participated in this debate. I begin by offering my sincere apologies that I was not present for most of the debate. That is because in the last 3-4 working days, there was so much work going on in both Houses, that I had to be present in that House too. But, I have, of course, with the final statement of my good friend, Shri Rama Jois, got the sense of what the House has been debating. I also heard a part of the hon. AIADMK Member's speech.

Sir, criminal procedure code has already been amended. In fact, clause (a) and (b) of section 41(1) have already been amended and we have introduced sub-section 2, 41A, 41B, 41C and 41D. We did not notify it because several Bar Councils and Bar Associations represented against the amendment that was made. Therefore, if hon. Members read amendments already made by this House, much of the doubts will be allayed. For example, I heard hon. Member say that we must inform a member of the family. That has already been done under 41B. 41B which this hon. House has already passed says, 'inform the person arrested; unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.' Whether a friend or a relative has to be informed of his arrest is already there. Then, right of arrested person to meet an advocate is already there in 41D. Therefore, all these safeguards have been introduced.

What is objected to was why are you making a provision where the police officer shall record reasons only if an arrest is made in a case falling under 41(i), that is, arrest without a warrant. If it is above 7 years, then the question does not arise. We are talking about punishment up to 7 years. Therefore, when this objection came, I met with a number of Bar Member and then I said, 'All right, we will refer it to the Law Commission, let the Law Commission hold a consultation with academics, lawyers, Bar Associations, Bar Councils and let them come up with a recommendation.' So, I wrote a letter to the Chairman of the Law Commission on 22nd June, 2009. The Chairman of the Law Commission was very kind to agree to my suggestion. He held a formal consultation with a number of persons representing premier Bar Associations. A meeting was called on the 20th August, 2009 and at the end of the meeting, the Chairman summed up the consensus, more or less unanimity, where they recommended that 41 should be further amended to say, 'when we arrest in a case falling under 41(1), we shall record reasons, when you do not arrest also you should record reasons.' The argument was, if you require an officer to record reasons only when making an arrest, he may for good or bad reasons not arrest a person and then we will not know why he did not arrest the person. Therefore, the Law Commission recommended, after consulting the Bar Associations, 'All right, we will now make it clear that you will record reasons for arresting, you will record reasons for not arresting.' Then,

consequently, if you are not arresting, the original section was you may issue notice to the person, but now they have said that consequently for not arresting you shall issue notice to a person so that he will join the investigation, he will be available for interrogation; if he does not even identify himself, then you have to arrest him. That is the only change we are bringing about.

Otherwise, all other safeguards have already been done in the earlier amendment, which we did by the Act 5 of 2009, in the early part of 2009. Now, if you read the Bill in that light, I think much of the doubt will be cleared. What does it say now? Let me read the section that will read, as amended. Any police officer may, without an order from a magistrate or without a warrant, arrest any person; (a) who commits in the presence of the police officer a cognizable offence; (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, if the following conditions are satisfied:—

- (i) the police officer has reason to believe that such person has committed the said offence;
- (ii) the police officer is satisfied that such arrest is necessary— (a), (b), (c), (d), (e), and the police officer shall record, while making such arrest, his reasons in writing¹. Provided that the police officer, in all cases, if arrest of a person is not required under the provisions of the section to record the reasons in writing for not making the arrest. Now, if you read it together, it is very clear now. It applies only to a case of an arrest without a warrant, in an offence where the punishment is up to seven years, in circumstances where there is a reasonable complaint or credible information, he is satisfied that one of the five conditions is or is not attracted. If any of the five conditions, one of them, is attracted, he shall record reasons. If he thinks that none of the five conditions is attracted, he shall also record reasons for not arresting. So, if you read the whole of it together, I think, it is quite clear that it is not an expansion of discretion; it is a restriction of discretion. Earlier, he can arrest, without recording any reason, until we amended it, last year. Now, if we don't make this amendment, he need not arrest and without recording any reasons. What we are now doing is, whether you arrest or whether you do not arrest, record your reasons. Therefore, it restricts his discretion. The person arrested can go to court for bail and say, "Look at the reason that is recorded. This is an absurd reason. I should not have been arrested. I should be given bail." If the person is not arrested, the reason is there, the complainant can go to court and say; the prosecutor can go to court and say, "Look at the reason for not arresting him. He should have been arrested. Therefore, please direct the police to arrest him." Therefore, I think, this is a restriction on discretion, not an enlargement of discretion. Therefore, I would request the hon. Members to accept the amendment...

SHRI M. RAMA JOIS: It should be communicated to the judiciary...

SHRI P. CHIDAMBARAM: I am coming to that. Once the person is arrested, and the reason is recorded, it will go as part of the Case Diary as to why he is arresting him. The Case Diary is there. The Case Diary will have to record (A) has been arrested for the following reasons. That is where he will record the reason. The Case Diary will go. And the prosecutor will have to produce the Case Diary. The lawyer for the accused will say, "Let us see the reason why you arrested my client. He should have been let on bail. Why is he not being given the bail?" The complainant can go and say, "Look at the Case Diary, why did he not arrest this person? He should have been arrested." I think, it is a restriction of discretion.

Now, the second one is, where the existing sub-section (4) read, "Where such person, at any time, fails to comply with the terms of the notice 41(A), it shall be lawful for the police officer to arrest him for the offence mentioned in the notice." That is what it says. Now, the Law Commission substituted with the following. "Where such a person, at any time, fails to comply with the terms of the notice..." — that is a repetition — "or is unwilling to identify himself" That is all we are adding. We are adding the words, "unwilling to identify himself". Suppose, I say, "All right, I will not arrest you, but I want to issue a notice to you. Tell me, what is your name and what is your address?" If he refuses to identify himself, then, obviously, he has to be arrested. I am willing to exercise my discretion not to arrest him. Therefore, I say, I will give you a notice, you join the investigation tomorrow, at 12 o'clock in the police station; tell me what is your name and what is your address. And, if he refuses to identify himself, obviously, he has to be arrested on-the-spot. So, all that we are doing is, to the existing 41(A), which has already been passed by Parliament, we are adding six words, "or is unwilling to identify himself". This is all the two amendments we are making, Sir. The other amendments have already been made. They had not been notified... which is why, maybe, my friend, Rama Jois, did not find it in the body of the Cr.P.C., but at the footnote amendments already made by this House not yet notified are carried out.

If you read with it with the amendments already made, it becomes very clear we are restricting discretion. We are requiring him to record reason because these are the cases falling in the middle category, up to seven years. Then we say this is obviously justiciable if you go to court, both the arrested person as well complainant can certainly make the reasons justiciable and the court will decide. Therefore, I think these are the amendments which complete the exercise we started last year. Now there has been a demand that we should not make these piecemeal amendments to the Criminal Procedure Code. I entirely agree. I have already written to the Law Minister that he should refer the matter to the Law Commission that a comprehensive look at the Criminal Procedure Code may be done and we must have a comprehensive Criminal Procedure Code. This is after all of 1973, which is already 37 years old. We have made piecemeal amendments over a period of time. He has acknowledged my letter and says that he

agrees with me and he will refer the matter to the Law Commission. I say that let it be done in about a year. I hope the Law Commission will be able to give its Report by next year. Once that Report comes, certainly, we will look into it and bring about a comprehensive new set of laws on criminal laws. But for the present we are completing an exercise we started last year. One bit remains, we are completing that exercise. I request the hon. Members to pass this Bill.

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): The question is:

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

The motion was adopted.

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): We shall now take up clause by clause consideration of the Bill.

Clauses 2 and 3 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI P. CHIDAMBARAM: Sir, I move:

That the Bill be passed.

The question was put and the motion was adopted.

[श्री उपसभापति पीठासीन हुए]

PRIVATE MEMBERS BILLS

The Fruit and Vegetable Board Bill, 2010

श्री मोहन सिंह (उत्तर प्रदेश): महोदय, मैं प्रस्ताव करता हूँ कि फलों और सब्जियों तथा उनके उत्पादों के विकास, भंडारण और विपणन के उपाय करने तथा उससे संबंधित अथवा उसके आनुषंगिक विषयों का उपबंध करने के लिए एक विधेयक को पुरःस्थापित करने की अनुमति दी जाए।

The question was put and the motion was adopted.

श्री मोहन सिंह: महोदय, मैं विधेयक को पुरःस्थापित करता हूँ।

The Prevention of Female Infanticide Bill, 2010

श्री मोहन सिंह (उत्तर प्रदेश): महोदय, मैं प्रस्ताव करता हूँ कि कन्या शिशु-हत्या रोकने के लिए उपाय करने और उसे कठोर शास्ति सहित दंडनीय बनाने और तत्संसक्त अथवा उसके आनुषंगिक विषयों का उपबंध करने के लिए एक विधेयक को पुरःस्थापित करने की अनुमति दी जाए।

The question was put and the motion was adopted.

श्री मोहन सिंह: महोदय, मैं विधेयक को पुरःस्थापित करता हूँ।

The Political Parties (Maintenance and Auditing of Accounts) Bill, 2010

श्री मोहन सिंह (उत्तर प्रदेश): महोदय, मैं प्रस्ताव करता हूँ कि राजनीतिक दलों के वार्षिक लेखाओं को तैयार करने, उनके अनुरक्षण तथा लेखा परीक्षण और तत्संसक्त अथवा उसके आनुषंगिक विषयों का उपबंध करने के लिए एक विधेयक को पुरःस्थापित करने की अनुमति दी जाए।

The question was put and the motion was adopted.