THE VICE-CHAIRMAN (SHRI GHANSHYAMBHAI OZA): We shall now take up the clause by clause consideration of the Bill. There are no amendments.

Clauses 2 to 20 were added to the Bill.

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

DR. PRATAP CHANDRA CHUNDER: Sir, I move:

"That the Bill be passed."

The question was put and the motion was adopted.

DR. PRATAP CHANDRA CHUNDER: Sir, I thank the hon. Members of this House for passing this Bill.

THE VICE-CHAIRMAN (SHRI GHANSHYAMBHAI OZA): Now we shall take up the next item—Shri Patil.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1978

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI S. D. PATIL): Sir, I beg to move:

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

Sir, the provisions of the Bill are intended to remove the doubts and difficulties felt in the actual working of the new Code. As the hon. Members are aware, the new Code enacted in 1973 replaced the 75-year-old basic law of Criminal Procedure. A new law of this range and complexity cannot be made perfect straightaway and the time has come after watching its working to remove such doubts and difficulties through suitable amendments. The present Bill seeks to do this. The new Code provisides for the appointment of Public Prosecutor/Additional Public Prosecutor in a district out of a panel to be prepared by the District Magistrate in consultation with the Sessions Judge. While this provision can we satisfactorily in States which have no regular cadre of prosecuting officers for appointment as Public Prosecutors/Additional Public Prosecutors, it creates difficulties in States in which regular cadres of prosecuting officers exist for there it becomes impractical to follow the procedure prescribed for preparing a panel for each district. Clause 8 of the Bill accordingly provides for appointment of these funtionaries out of a regular cadre in States where such cadres are formed.

Under the existing Code a Magistrate can demand a personal bond but not surety from a person for keeping the peace. The corresponding provision under the old Code contained a provision for demanding sureties also. After the enactment of the new Code, some of the State Governments have suggested that the provision under the old Code providing demand of sureties along with the bond should be restored as the new provision is not proving effective. Clause 11 of the Bill seeks to amend section 107 to enable the Magistrate to demand sureties in appropriate cases.

The new Code makes a provision in section 167 that if the investigation is not completed within 60 days, the accused person, if in custody, shall be entitled to be released on bail. Behind this provision lies the statutory intention to check delays in investigation. However, in serious cases it is often difficult to complete the investigation within 60 days and if the accused is released on bail serious damage may result. To remedy this, clause 13 of the Bill seeks to extend the period of sixty days to ninety days in cases of offences punishable with death, imprisonment for life or imprisonment for not less than ten years.

It has also been provided in that clause that an Executive Magistrate

on whom powers of a Judicial Magistrate have been conferred can also order the remand of a person produced before him, for a period of not more than 7 days. This provision is intended to provide for cases where a Judicial Magistrate is not readily available.

The Committee on Status of Women in India recommended that to remove difficulties faced by women in launching prosecution for bigamy, it should be provided that a complaint may be made on behalf of the wife by any relative of hers and that such complaint can be made at the place where she resides, instead of her being compelled to go to the place where she lived with the husband. This recommendation has been accepted and the amendments in clauses 15 and 17 are intended to give effect to this

A salutary provision has been made in the new Code for giving the accused person an opportunity for having his say in the matter of punishment. This should not, however, be allowed to protract the trial unnecessarily and it has accordingly been clarified by the amendment in clause 24 that no adjournment shall be granted only for this purpose.

It sometimes happens that committal proceedings, though routine, take more than one day. Under the existing Code there is no provision authorising the committing Magistrate to remand the accused person during the committal proceedings. This defect is being removed in clause 19.

The existing section 378 provides that an appeal can be filed in the High Court from an original or appellate order of acquittal passed by any court other than the High Court. The section is proposed to be amended so as to provide that an appeal can be filed in the High Court against an order of acquittal passed by the Court of Sections in revision also.

The Joint Committee of both the Houses of Parliament on the Indian Penal Code (Amendment) Bill, 1972, inserted a proviso to section 57 IPC to provide that where a sentence of imprisonment for life is imposed on conviction of a person for a capital offence or where a sentence of death imposed on a person has been commuted into one of imprisonment for life such person shall not be released from prison unless he has served at least 14 years of actual imprisonment, as it was brought to the notice of the Committee that sometimes due to grant of remission, even murderers sentenced to death whose death sentence was commuted to life imprisonment, were released at the end of five or six years. As this proviso more appropriately relates to the provisions of Chapter XXXII of the Code of Criminal Procedure, clause 32, seeks to insert a new section 433A to cover this point.

I may inform Members that the provisions of the Bill have been worked out after extensive consultations with the State Governments and implementing agencies. A Bill to amend the Code of Criminal Procedure 1973, was introduced in and passed by this House in 1976. It thereafter lapsed as it could not be considered in the Lok Sabha. The few provisions in that Bill that could have been the subject matter of controversey have been left out from the present Bill, so that it is generally acceptable. A few provisions have been added, the main object, as I have mentioned earlier, being to remove practical difficulties that have come to light and to make the new Code a more fitting instrument and to secure its intended purpose of ensuring efficient and speedy justice. I am sure the hon. Members will readily approve these amendments.

The question was proposed

SHRI DINESH GOSWAMI (Assam): Mr. Vice-Chairman, Sir, it appears that a tendency has grown in

[Shri Dinesh Goswami]

this country to treat important provisions of law with a measure of convenience. When the Government feels that certain provisions are not helping them, they bring in amendments; or they bring in amendments when they find that certain provisions are necessary to facilitate their working. Sir, we should bear in mind that important Bills like the Indian Penal Code and the Criminal Procedure Code have stood the test of time for years together without amendments. But it is a tragedy—and perhaps it reflects our incompetence—that when we amend a Bill of this type which has stood the test of time for years, within months, we have to bring in fresh amendments. The same thing has happened so far as this Bill is concerned. The Minister has said that he has dropped certain controversial provisions. I think he has dropped seven provisions including the provision of anticipatory bail. I think by this Bill he has dropped the provision of anticipatory bail. Now, whether the Government has applied its mind fully on it, is a matter on which the Minister has not said a word. After all, there will be two opinions regarding the provisions of anticipatory bail itself. If I am correct, he has dropped this because at a given time political vendetta has become the order of the day.

SHRI S D. PATIL: That is not the part . . .

SHRI DINESH GOSWAMI: But, I think, you have dropped that.

SHRI S. D. PATIL: Yes.

SHRI DINESH GOSWAMI: When political vendetta has become the order of the day, we know in many cases the provisions of anticipatory bail came to the rescue of many a person. Whether we ought to have dropped this provision also, is a matter which the Minister ought to have considered seriously. But because this is not a part of the Bill, I will not dwell at it at length. But my first objection to this Bill will be clause 3, which says that special courts shall be set up by the State Governments after consultation with the High Court. It is unfortunate that in this clause 3 no guideline has been given as to the conditions or the exigencies under which special courts should be set up, because when you bring in the provision of special courts, when you want to set up special courts, when you want to try a man under a special procedure the Act itself should give broad but concrete guidelines as to the nature of the circumstances in which such persons are to be treated differently from the normal law of the land. Now, Sir, clause 3 says:

> "Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more special courts of Judicial Magistrates..."

There is no indication whether these special courts are meant to tackle cases like atrocities on Harijans, minorities and so on. There is also no indication whether these special courts are meant to tackle offences like blackmarketing as well as political personalities. After all, Sir, we cannot rely on the promises of the Ministers. The Act should specifically and categorically say under what circumstances and for what types of cases the Government intends to set up these special courts under clause 3. The only safeguard is in consultation with the High Court'. But you know Sir, in legal parlance, the word 'Consultation' has a different meaning from the word 'concurrence'. Even in the Presidential reference on the Special Courts Bill, the Supreme Court did not agree with the Government's view and put pressure upon the Government to change its decision regarding consultation to concurrence. The original provision was that the Judges of the Special

Courts will be appointed in consultation with the High Courts. But the Supreme Court said 'in consultation' would mean giving a lot of latitude to the Government, because you are bound to consult but you may or may not accept the recommenadtions. They insisted that instead of 'consultation' it should be 'concurrence'. If we want to have a safeguard, I would suggest that the wording here should be 'concurrence' and not 'consultation'. My view is that no nexus and no guideline has been given and it gives uncanalised power to the executive to pick and choose as to in which case there will be special courts and in which case there will not be special courts. I have a strong objection to such a provision which gives uncanalised power to the executive to pick and choose, to put me in peril of a special court and to deny me the advantage of the normal procedures of the law.

The second aspect of the matter which I would like to point out is this. When you set up special courts under clause 3, you deny me the right of asking for a transfer of a case from one special court to another, where an accused may feel that the court is biased. After all, clause 3 says that the Government may constitute one court even for the whole State. If, in a case, an accused feels that the court is biased, he will have no option but to ask for a transfer. The hon. Minister is also well aware that even in the Presidential reference on the Special Courts Bill, the Supreme Court took care to see that the right of transfer is provided in the statute itself. Now, Sir, when we talk of special courts, the hon. Minister says that they have done it in order to ensure speedy justice. May I know, Sir, whether they have applied their mind at all to a far-reaching judgement which has been given by Justice Krishna Iyer? This is also in connection with the Presidential reference on the Special Courts Bill when he has asked for permanent political offences law. I would like to know from the Janata which speaks about morality and so on: What is your comment in regard to this view made out by Justice Krishna Iyer? I will only quote from the newspaper reports because I do not have the judgement. While giving his broad assent to the Bill, he has said:

> "If passed into law and enforced peremptorily the Bill may partly salvage the sunkencredibility of the general community in democracy-in-action, already demoralised since Independence, by the perversion of power for oblique purposes as evidenced by periodical parliamentary debates and many commission reports still gathering dust."

While commenting on this Bill, he went on to say that this Bill, namely the Special Courts Bill, comes:

> "...periliously near being under-inclusive and, threfore, unequal', he observed it was a turncated provision of a manifestly wider principle that exalted offenders shall be dealt with by the criminal law with speed so that the common man may know that when public power is abused for private profit or personal revenge the rule of law shall rapidly run them down.
>
> While prompt trial and early punishment might be necessary in all criminal cases, in a decelerating situation of slow-motion justice, with courts choked by dockets there is a special case for speedier trial and prompter punishment where the offender sits at the top of the administrative pyramid."

Again to quote him:

> "Leisurely justice, years after the long-drawn-out commission proceedings hardly carries conviction when man's memories would have forgotten the grave crimes, if any, committed and men's confidence in the rule of law would have been wholly demolished by seeing the

[Shri Dinesh Goswami]

> top brass continuing to hold such offices despite credible charges of gross crimes of misuse."

Applying the test that holders of powers are accountable for its exercise, Mr. Justice Iyer said the Bill "must fail morally if it exempts non-emergency criminals about whom prior commission reports, now asleep in official pigeon-holes, bear witness and future commission reports (who knows?) may, in time, testify."

Pointing out to criminal courts Mr. Justice Iyer said, I quote:

> "Criminal Procedure Code made by Parliament for dawdling and governments are guilty of denying or delaying basic amenities for the judiciary to function smoothly."

May I know what is the Government's reaction regarding this permanent political offence law? Or is it, because you are in power today, you want to brush aside this observation?

The second point on which I want to rely is the last observation of Justice Krishna Iyer that it is not the courts which are guilty for laws delay but the Code of Criminal Procedure. Look to the provision which you have made. You are thinking of making special courts from the first class and the second class Magistrates. Obviously, when you make special courts of the special Magistrates of 1st and 2nd class,....

SHRI S. D PATIL: I do not want to interrupt the hon. Member but these are special courts of the Judicial Magistrates.

SHRI DINESH GOSWAMI: That is true. These are special courts of Judicial Magistrates, but are you going to appoint new Judicial Magistrates or are you going to confer the power of special court to the existing Judicial Magistrates? You do not have sufficient court rooms and other infrastructure. You have not given facilities for new Magistrates. You will appoint special courts from the existing Judicial Magistrates to try special offenders. God knows,, what type of special offenders will they be because it will be at the discretion of the executive? You have not spelt out in this provision as to what type of offenders will be brought under this provision. Again when you confer the Judicial Magistrates with the power of special court, don't you see that ordinary litigants shall have to suffer for laws delay because when the Judicial Magistrates who are dealing with ordinary criminal cases, will have to deal with special courts, they will have no time to take ordinary cases and thus there will be further laws delay. In the Bill itself, which according to you is meant to bring speedier justice, I do not see any provision as to how you are going to tackle it. Obviously the situation, as it is today, has been amply focussed in Justice Krishna Iyer's judgement that we do not have even the infrastructure to have more Judical Magistrates and if you give the power to the exisitng Judicial Magistrates to try a special court, there will be further laws delay. Therefore, this provision in the Bill on the one hand will give arbitrary, uncanalised and naked power to the executive to pick and choose and make somebody triable under the special court and on the other it will further affect the speedy administration of justice and thereby come in the way of the broad objectives which you have laid down in the Bill itself.

My second point is this. The time is short for me and I will just deal with it. I exepected that while you talked about all the prosecutor and prosecution, I could understand that it was to facilitate prosecution because you have said that there was a very long discussion with the State Government and the police officials before this Bill was brought forward. But, Sir, the police officials and the State Governments are interested in prosecution. I want to ask; Have you

had any discussion with the common man, an ordinary under-trial prisoner, with a man who is finding difficulty in the hands of the law? You do not discuss it with them Have you discussed it with the legal community? Have you found out what difficulties they are finding in having speedy administration of law? Have you discussed it with the citizens as to how many times they have to go to a court of law in order to defend their own rights and because of complexities of procedure sell their property and ultimately to go to jail bacause they have nothing to fall back upon? When you talk about discussing with police officials and State Government machinery, that is one aspect, but the other and the most important aspect in democracy is to see that the man is not punished, unnecessarily, not harassed unnecessarily and unforutnately, in the Minister's statement I do not find anything that they have discussed about this provision either wih the legal community or with the general public at large. It seems that they do not count in the state of affairs today. What has happened to the scheme of legal aid? I want to know this from him. If these amendments are meant for the purpose of facilitating adinistration of justice, one very pertinent thing is providing legal aid to the poor. Bhagwati Committee for legal aid was appointed under Mr. Justice Bhagwati and Mr. Justice Krishna Iyer. It went round the country and gave a valuable report. But the Government is sleeping over it. Therefore, my whole objection to this provision of law is that you have brought this provision of law only to facilitate prosecution. But you have not taken care of the common man, or those persons who are trying to defend themselves under the provisions of law. I would like to know from the hon. Minister when he has said that the objective of the Bill is to facilitate administration of justice, what steps he is taking to see that a common man can defend himself, that he is in the capacity to defend himself because in a democratic country, it is the fundamental principle of law it is the fundamental principle of democratic governance that a man must be given all opportunities and help to defend himself in a criminal court. We know that the fundamental principle that we have adopted in this country is that every body is treated to be innocent till he is proved guilty. We also know—I do not know what statement the Minister of State for Home is going to make at 4.30 p.m.—that a hon. lady Member of this House has made a serious complaint about the atrocities committed on her by police and we have also seen that at least when she was to come to Parliament, she could not come. She has given her own version. If an hon. Member of Parliament cannot protect his or her rights, how is an ordinary citizen going to protect his or her rights? So what steps are you going to take to see that an ordinary common man below the poverty line, who is always at the mercy of the police, can protect his or her rights and interests? You bring a Cr.P.C. Amendment Bill but you don't look to that aspect of the matter—and that is my prime grievance against the Bill which you have brought.

Sir, as you have already rung the bell, I will not take much of your time. But I feel that this system that we have adopted in this country of bringing ad hoc amendment to suit the necessary of time or Government should be done away with. In important provisions like the Indian Penal Code and the Criminal Procedure Code, or any other fundamental law, mind should be applied deeply and comprehensive Bills should be brought forth and such *ad hoc* types of Bills should not be brought. Today the Government will come forward and bring a particular provision. Another Government will think differently. So I hope the hon. Minister will try to reply to some of the queries that I have raised.

Sir, I am thankful to you for giving me this opportunity of placing my views on this Bill.

SHRI V. GOPALSAMY (Tamil Nadu): Sir, I am grateful to you for having given me this opportunity to take part in this discussion on the Code of Criminal Procedure (Amendment) Bill. I oppose this Bill, particularly that draconian provision, the new section, which is sought to be inserted in clause 32—that is Section 433A. Sir, it is a new section rstricting the powers of remission or commutation in certain cases. I seek the indulgence of the hon. Members of this House, I humbly request the hon. Members of the House and the hon. Minister to heed my viewpoint. The proposed section contravenes the Constitution of India. It is *ultra vires* of the Constitution of India. I want to bring to the notice of he Government that the powers of remission or commutation of sentences—even in death sentences—are with the Central and State Governments, according to articles 72 and 161 of the Constitution. I quote Art. 72:

"72. (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any persons convicted of any offence—

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force."

Article 16 say:

"The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends."

The present section is in conflict with the articles of the Constitution. So the Government must have a look into the conflict part of the present provision which is intended to be inserted.

Also I want to bring to the notice of the Government that this section is in conflict with section 433-(b) and 434 of the Cr. P.C. There also the Government has not looked into the contradiction. Section 433(b) of the Cr.P.C. empowers the appropriate Government to commute the sentence of imprisonment for life term not exceeding 14 years or fine conflicts with the proposed section 433A Cr.P.C. especially when it only reads 'not withstanding' anything contained in sec. 432 without making any reference to section 433(b) or section 434 Cr.P.C. Therefore, that provision under section 433-A would be in conflict with sections 433(b) and 434 of the Cr.P.C. Therefore, I request the Minister to look into the argument that this provision under section 433(a) would be in conflict with section 433(b) and 434.

Also I want to bring to the notice of the Members of this House that this is an attempt to encroach on the powers of the State Government already given to them. Now we are raising the slogan of State autonomy from Tamil Nadu up to West Bengal. But the present Government intends to curb the powers already given to the States because now the States are

given powers to remit or commute a sentence. But if you curb that right or privilege of the Government, then the States have no say in this matter. What is the necessity for such an attempt now?

Sir, I am really surprised at the outlook of the Government regarding punishment because the old doctrine of retributive theory is outmoded now. Now the theory of reformation has come and has been accepted by almost all the countries of the world. But you want to punish a criminal. You do not want to release him until the expiry of 14 years. Do not mistake me. I do not ask the Government to release all the life convicts before the expiry of 14 years. But we have to take into consideration various factors which caused the commission of the offence because nobody is born a criminal. A person commits an offence. What are the reasons for the commission of the offence? There can be so many reasons—sociological factors, psychological factors and socio-economic factors. Because of these factors a man commits an offence. So we should view that person from that point of view. We should not view that he is a born criminal. Out of force of circumstances people commit offences. Courts have seen cases where a mother kills her own children due to extreme poverty in our country. Courts have also seen cases where a person commits a murder due to the bitter betrayal of his wife as she was found under compromising circumstances with another man. Unable to contain himself he immediately chops off her head and immediately goes to the police station and surrenders there. And after that he realises that he committed a wrong. Do you want to say that that person should be kept in jail till the expiry of 14 years? We have to see certain cases. A doctor states a person commits murder in a fit of anger. Afterwards he realises his mistake. Such a person should be given a chance to start his life anew. You must give him a chance to serve the society. So we have to take into consideration all the factors because the courts cannot give a lesser punishment. The courts have to give the punishment of death or life imprisonment. The Government must then come into the picture. They must take into consideration various factors: Oh, he has served ten years in jail; his behaviour in the jail was very good; he will be useful to the society; he can protect his children and the suffering members of the family. So taking into consideration these things the State must have the power and privilege, the right and privilege to release an accused—but only after taking into consideration these things. I ask the Government: why can't you give some guidelines for exercise of these powers? Give some guidelines; taking them into consideration, you can release the person. But why should you make a full stop? Our present Janata Ministers are always quoting Gandhiji in session and out of session. But Gandhiji told us that jails are hospitals of our country. If a jail is a hospital, a person must be freed from the hospital once he is cured. He must be sent from the hospital. He must be given an opportunity to be released. (*Time bell Rings*) Sir, this is a pertinent matter. If you pass this legislation now, then it will be a doom for all the life convicts. So many Members of the Treasury Benches had the bitter experience of jail life during emergency. Some Ministers also have experiences of jail life. I myself had personal experiences in my jail life. I have seen that many of the life convicts are wonderful people. After realising what they have done, committed a murder or any other thing, their behaviour is very good, their approach to the problems of life is very good. They respect other people; they love other people; and they are honourable creatures. They want to serve the society, they want to live again. They want to help the needy persons. So we must take into account their sufferings. We must see the sufferings in jails. Actually, the life convicts are good and wonderful people.

[Shri V. Gopalswamy]

I want to quote in this context Justice S. K. Varma. When he was the Chief Justice, Uttar Pradesh, in his inaugural address at the seminar on the problem of juvenile delinquency and the probation system, at Shahjahanpur, on the 24th July, 1971, he observed—I quote:

"Charles Dickens echoed the feelings of civilised humanity when he thundered against the deleterious effect of the jail system in the immortal pages of 'Nicholas Nickleby'. With profound indignation he declared "Away with him to the deepest dungeon beneath the castle moat". It aroused the conscience of another great idealist William Blake who was provoked to remark, "Prisons are built with stones of law, brothels with bricks of Religion." Oscar Wilde, who had personal experience of incarceration, highlighted the baneful effect of prison life in the "The Ballad of Reading Gaol":—

'The vilest deeds like prison weeds

Bloom well in prison air:
It is only what is good in man

That wastes and withers there."

So we must take into consideration the conditions in jails. In this context, I want to quote another eminent jurist, Justice of the Madras High Court, Mr. Justice Ismail. In his report on the Commission of Inquiry appointed to inquire into the incidents of beating and ill-treatment alleged to have taken place in the Central Prison, Madras during February, 1976 to February, 1977, during Emergency and President's Rule in Tamil Nadu he says: I quote:

"What happens within the four walls is a closed book to the outside world. A free citizen outside the prison, however low, however ill and however miserable he may be, may have an outlet of running away from where he is, seeking succour wherever he may get and obtaining shelter wherever he can. But as far as a prisoner is concerned, he cannot cross the four walls of the prison..... The result is, the life of a prisoner is a life in a hell without any hope or prospect of any relief. Under these circumstances, the prisoners should certainly be the greatest object of pity and sympathy of the outside world.

"But the ancient attitude of the public, was such they thought that a prisoner or convict was a person who deliberately did some wrong to a fellow citizen or society and thereby invited all the trouble on himself. However, the attitude towards the crime, penology and punishment has undergone progressive and considerable change during the years and the present trend of attitude is totally different. The modern understanding of the crime is one of a temporary mental aberration of the offender for which he alone is not exclusively responsible and the society also has its share of responsibility.

"The older notion was that the society will have its revenge or vengeance against the offender who has wounded the society. But even when an offender is punished and incarcerated, he does not cease to be a member of the society and he is not thrown away for all purposes. Originally, the theory of punishment of an offender was rested on retribution or retaliation expiration, deferrence and protection of the society. . . . However, the latest addition to these theories is the reformation or rehabilitation of the offender himself. This is based on the fact that a criminal is not a born one and it is the circumstances of the society which make him commit a crime. Consequently, the remedy is not merely to prevent him from committing such a crime in future, but also to

reform him so that he will lead a normal life just like any other citizen."

So, I would request all the Members of the House to reconsider this issue and see that this section 433A is not inserted in the Act. You may fix other guidelines, 8 years or 10 years. When you pass this legislation, it would curb the right and prerogative of the State to take a lenient view of the cases of the persons inside the jail. With these words, I close, Sir.

STATEMENT BY MINISTER

Arrest of Shrimati Saroj Khaparde

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI S. D. PATIL): Mr. Vice-Chairman, Sir, according to the information available, Kumari Saroj Khaparde, M.P., was arrested in case F.I.R. No. 681/78 and 682/78 respectively u/s 353/294/34 IPC and 147/149/353/332/336/337 IPC and 135 Bombay Police Act at Nagpur, in connection with the Nagpur Bundh on the 27th November, 1978.

Steps were taken to produce Kumari Khaparde and others before the Judicial Magistrate on the 28th November, but they did not co-operate with the police in taking them to the Court. Eventually, the Judicial Magistrate First Class visited the Police Headquarters at 1930 hours on the 28th November. Kumari Khaparde and others complained to the Magistrate that they had not been informed of the offences for which they were arrested and also that no facility had been given to them for availing of legal aid and also that they had not been produced before the court within 24 hours. The Court allowed them time for engaging counsel. Accordingly, the same night, i.e. the 28th November, Kumari Khaparde and others were produced before the Magistrate at 2230 hours. The Court ordered that they should be released forthwith and they should attend the court next day to execute personal bonds. They, however, remained at the court residence. When they were persuaded to leave the residence they refused to be released anywhere in the city and continued to squat in the police vehicles. They were, therefore, taken back to the police Headquarters, Takli Lines, where they stayed for the night in the recreation hall. They were told clearly that they had been released and were not in police custody. All guards were removed and they were at liberty to leave as and when they liked. On the 29th November at 1630 hours Kumari Khaparde and others attended the Court, but refused to execute personal bond of Rs. 200/- ordered by the Magistrate. After hearing they were remanded to judicial custody till December 18th.

On 2nd December, 1978, the Judicial Magistrate, Nagpur, also allowed Kumari Khaparde to attend the Rajya Sabha under the police escort and while giving permission directed that arrangements may be made by the Police Commissioner, Nagpur, to transfer her to Delhi. The Court further directed that the warrant should be taken to the Chief Metropolitan Magistrate, Delhi. On the 3rd December, 1978, Kumari Khaparde, escorted by a lady Sub-Inspector of Maharashtra Police, arrived at Palam from Nagpur by IAC flight around 10.50 p.m. Prior to this, a Dy. S P., CRPF, had been requested on telephone by the Assistant Commissioner of Police, Nagpur, to render necessary assistance on arrival, which information was accordingly passed on to the Delhi Police Control Room.

On arrival at Palam, Kumari Khaparde was received by the Palam Airport Police and escorted to the VIP Lounge and made comfortable, while arrangements were made to clear her language. At 12.50 a.m. they left the airport in a taxi and reached the residence of the Chief Metropolitan Magistrate, Delhi, in