days. It is really a surprise to me to know that such an important day was not only totally ignored by the State Government but also they issued a special notification to prevent the children from participating in the function organised on this day. Sir, I would like the feelings of this House to be conveyed to the concerned authorities; and it must be ensured that in future this sort of restriction is not imposed on celebrating days like the Children's Day or the Teachers' Day.

MR. CHAIRMAN: Now, discussion on the Criminal Procedure Code. Mr. Burman.

SHRI CHARANJIT CHANANA (Delhi): May I take a second, Mr. Chairman? I want to draw your attention to the privilege motion I have submitted to you relating to the breach of privilege of an hon. Member. That is one. There are two other submissions which are lying pending with you.

MR. CHAIRMAN: They are under my consideration. I would consider them.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1978 —*contd.*

SHRI BIR CHANDRA DEB BURMAN (Tripura): Sir, while speaking on the Code of Criminal Procedure (Amendment) Bill, 1978, I want to draw the attention of the House to the fact that the Code of Criminal Procedure of 1973 was meant mainly for separation of the Judiciary from the Executive. That was the main principle of the Criminal Procedure Code of 1973, and it was a good start in the field of our Judiciary.

[**Mr. Deputy Chairman** in the Chair].

Unfortunately, Mr. Deputy Chairman, Sir, in the present Criminal Procedure Code, there is an attempt at erosion of this principle of separation of the Judiciary from the Executive. I will first of all show that by creating the Special Judicial Magistrates through this Bill, the Government wants to push through the backdoor as Judicial Magistrates First Class persons not holding any position or holding any post of Judicial Magistrates. Section 13 of the Code of Criminal Procedure lays that the High Court, if requested by the Centre or the State Government so to do, confer upon any person—I lay stress upon the words 'any person'—who holds or has held any post under the Government, all or any powers conferred or conferable under this Code of a Judicial Magistrate Second Class. In the Criminal Procedure Code of 1973 this provision for the Special Judicial Magistrate was intended to make any person holding any Government post a Judicial Magistrate Second Class. That is understandable. There may be requirement of a lot of judicial officers at the outset, and so. Special Judicial Magistrates of second class may be taken from any person holding a Government post. This Bill wants Special Magistrates of first class also. It provides as follows:

> "in sub-section (1), for the words 'of the second class, in respect to particular cases or to particular classes of cases or to cases generally',.....the words 'of the first class or of the second class, . . .' shall be substituted".

So, we are getting Special Judicial Magistrates of first class also from persons holding any Government posts. The position is that the Criminal Procedure Code was passed in the year 1973, and thereafter there is a lapse of five years; it is 1978 now. Now we have trained Judicial Magistrates of first class who can take charge of taking cognizance of cases exercisable, punishable by the First Class Magistrate. So, what is the intention of appointing Special Judicial Magistrates of 1st class under section 13 which says that any person who has held or is holding any post under the Government can be appointed as

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Judicial Magistrate of first class. It is completely understandable that they want to evade separation of judiciary and executive and want to appoint any person who holds any Government post as Special Judicial Magistrate First Class. There is no reason why this Special Judicial Magistrate First Class is to be provided for under section 13 which says that any person who holds any post under the Government can be conferred upon all powers exercisable by the court of Judicial Magistrate of first class. So, they want to crush the policy of separation of the judiciary and the magistracy. And by providing for the Judicial Magistrate of first class, they are establishing Special Court of Judicial Magistrate which will debar all other Magistrates to exercise any judicial work in respect of cases which are to be taken cognizance of by the Special Court of Judicial Magistrate. Class 3 provides:

> "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 of the first class or of the second class to try any particular case or particular class or cases, and where any such Special Court is established, no other court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established."

So, he wants to create Special Judicial Magistrates of first class from persons holding any Government posts. It is not necessary for them to have the qualification which a Judicial Magistrate of first class ought to have! Any person who is holding a Government post may be conferred the power of Judicial Magistrate of the 1st class. So it is an erosion upon the established principle of separation of the judiciary and the executive because we are introducing this Special Judicial Magistrate, first class, from the backdoor, ignoring the Judicial Magistrates, first class, who have been doing service during these five long years and who are Judicial Magistrates, 1st class, of standing experience. So I want to say that the very healthy principle, upon which the Code of Criminal Procedure, 1973, was introduced, that is, separation of the judiciary and the executive, is going to be crushed under this provision.

Similarly the Special Metropolitan Magistrate was to be recruited under section 18. Now, the original provision, sub-section (3) of section 18 says:

> "Notwithstanding anything contained elsewhere in this Code, a Special Metropolitan Magistrate shall not impose a sentence which a Judicial Magistrate of the second class Judicial Magistrate. Now, they outside the metropolitan area."

That is, the Special Judicial Magistrate has no power except that of the second class Judicial Magistrate. Now, they want to delete that provision.

> "for sub-section (3), the following sub-section shall be substituted, namely:—
>
> '(3) The High Court or the State Government, as the case may be, may empower any Special Metropolitan Magistrate to exercise, in any local area outside the metropolitan area, the powers of a Judical Magistrate of the first class'."

So the Special Metropolitan Magistrates who, under section 18(3) of the Criminal Procedure Code, 1973, were given the power of second class Judicial Magistrate are now being conferred the power of first class Judicial Magistrate. And if the Special Metropolitan Magistrate is going to exercise any function in any special court, all other courts would have no jurisdiction to take cognizance of those offences. So, this is trying to erode the very principle of separation of the judiciary and the executive, the long-cherished and guiding principle of every jurist.

Similarly, I want to say that in clause 13, section 167 is going to be amended by sub-section (2A). Section 167 says:

"(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole;"

Now, by sub-section (2A), the Bill wants to say:

"Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available . . ."

My first objection is, after a lapse of five years, how do you a judicial magistrate will not be available and he has to be taken to the nearest executive magistrate? The police has the power to detain a person for 24 hours. Now you can produce the accused before an executive magistrate, and he shall be remanded for 7 days. This is an erosion of the basic principle that executive and judiciary should be separate, that there should be separation of judiciary from executive. On whom do you confer the power of a judicial magistrate or a metropolitan magistrate? I challenge the honourable Home Minister: Under what section is this power of a judicial magistrate or a metropolitan magistrate to be conferred on an executive magistrate? Is it under Section 13? Sections 13 and 18 say that any person holding any Government post can be conferred with the powers of the post of a special judiciary magistrate. Now the powers of the judicial magistrate are going to be erodcd. Under this section the police, after the lapse of 24 hours, can produce the accused before an executive magistrate on the pretext that the judicial magistrate is not available; so he will be detained for a period of 7 days. Now the power of detention has been given. Then, when the accused person asks for the grant of bail, nothing is said here as to whether the executive magistrate is empowered to grant the bail. Power of detention has been given. The accused can be detained for 7 days. But if the accused person asks for bail from the executive magistrate, will he be able to grant that bail? Nothing is said on that. Further, the Cr.P.C. of 1973 provided that when a person is charged under Section 107, there will be no necessity of asking for surety. Under Section 107 innocent villagers, innocent rustics, are charged for apprehension of breach of the peace. The Cr.P.C. of 1973 said that only a bond is to be executed and there is no necessity for bringing any surety. But now this Code wants that when a person is charged under Section 107, he may be asked to execute a bond with or without a surety. A common man, a rustic, is always charged under Sections 107, 144, 143 and so on. If he is asked to bring a surety, from where will he bring? The 1973 Code said it will not be necessary to ask for a surety, he will only have to

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executive a personal bond, and that is enough. Now this Code, this Bill, wants to introduce a provision that the magistrate may ask for surety. That means, otherwise, that rustic, that innocent man, that poor man, will have to spend his time in jail. Whenever any such person is charged under Section 107, not only has he to executive a personal bond, he has to produce a surety also. If he fails to bring a surety, he will have to undergo imprisonment. We have seen for many years this was what happened during the British regime. It was a good thing that the 1973 Code had abolished that provision of producing a surety. In this Code of Criminal Procedure (Amendment) Bill of 1978, this evil provision is sought to be introduced. Now the poor man will have to find a surety. How can he find one? The result is that he will have to rot in jail because he will not be able to get a surety for him. Nobody bothers to help a poor man. Now the Government wants to introduce it again.

Now I come to clause 13 of this amending Bill. In section 167 of the 1973 Criminal Procedure Code there was a provision saying that if within sixty days the investigation is not completed, the accused person must be released on bail. Now a distinction is sought to be made here. This clause speaks of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years. Otherwise it is sixty days. Now, I want to ask: if the investigation is not completed in sixty days, will it be possible to complete it in 90 days? The investigation starts from the very beginning. The police has to go to the spot and take evidence at the very beginning. Would he be able to take evidence after a lapse of 60 days? Even if he does it, of what use is that evidence? I fail to understand this. If evidence is gathered after the lapse of 60 days, what is the value of such evidence in the eyes of law? Now, because the punishment is death, imprisonment for life or imprisonment for a term of not less than ten years, it is very easy to make an allegation to harass any person. Section 307 IPC speaks of attempt to murder. A man attacks another person with a stick. If the stick falls on him, he will die. That is punishable with imprisonment for more than ten years. These are provisions through which people can be harassed. Any criminal lawyer knows this. We know how easy it is to put in sections prescribing imprisonment for life and so on and so forth. There was no need to prescribe this period of 90 days and say that after 90 days the accused will be released and after 60 days he will not be released. Section 167 of the 1973 Act said that after a lapse of 60 days the accused person must be released on bail. That was good enough. There is no need for making this change.

Now I will dwell upon clause 8. In the High Court I understand that the Central Government has a Public Prosecutor. Now at the district level also there will be a Public Prosecutor and the Central Government can also appoint an Assistant Public Prosecutor. There will be a galaxy of Public Prosecutors. I want to know who will defend the accused. Where is the provision for that? Will the hon. Minister come forward with a provision saying that whenever an accused has no means of engaging a lawyer, he will be defended by the State. In the 1973 Act it is said that in sessions cases, where the accused cannot engage a lawyer, the State will appoint a lawyer for his defence. Similarly, will the Home Minister come forward with a Bill saying that in every criminal case, where the accused person cannot engage a lawyer, the State Government will come forward to engage a lawyer to defend him? What has happened to the proposal to provide legal aid to the poor? It is a very laudable proposi-

tion. Several Commissions have been appointed on this subject. There was the Iyer Commission. There was the Bhagwati Commission. But nothing has come out. Has the mountain turned to be a mouse? The result is that there is no legal aid to the poor. Now, I will dwell upon clause 32.

MR. DEPUTY CHAIRMAN: Please be brief.

SHRI BIR CHANDRA DEB BURMAN: Yes, Sir. Now, notwithstanding the powers that the State Governments have, persons imprisoned for life must undergo 14 years' imprisonment even though the sentence can be commuted. I want to say that it is a direct encroachment upon the powers of the State Governments. The State Government has been given the power to commute sentences. There are cases in which innocent persons have been convicted and they have been given sentence of imprisonment. They may be poor persons and they cannot appeal. Because they are poor and they cannot appeal and because there is no question of any appeal or any revision petition whatsoever, they must undergo the sentence of imprisonment. The State Governments in such cases can commute their sentence and in such cases, Sir, they may be released. But, under this provision, these persons must have to undergo the sentence of imprisonment for 14 years and before that they cannot be released! So, is there anything worse than this? The State Government has the power to commute sentences and in that case also, in spite of the fact that the sentence can be commuted, the person concerned has to undergo imprisonment for 14 years! Is it reasonable at all? Is it just? In these cases, an innocent person is convicted and he is poor and has no power to appeal and if the Government commutes his sentence and he can be released, it cannot be done now because he has to undergo that period of the sentence. Is it justifiable at all? There is no justification at all for this. There is no justification for the new section 433A.

Lastly, Sir, I want to cite one instance. We have heard of the Chopra children's murder case and we have seen how the police officers have failed to discharged their duties. Now, in Delhi also, there is a case which I would like to cite here. On 23.12.77, Sir, a boy, aged 16, Ajai by name, in the Mangeshpur village in the Narela area was murdered. He had 52 wounds inflicted with a knife on his body and the body had been thrown into a well. The case was reported to the Narela police station who, influenced by the other party, suppressed the case. Complaints were made to the higher authorities. The case was handled by one Mr. S. F. Narendra Singh Rana, who was related to the culprit. Here one Inspector took interest in this case and that Inspector, Shri Jhagran, was transferred and Mr. Narendra Singh distorted the facts and sent the case to the CID (Crime Branch). This case is FIR No. 290 under section 302 of the IPC sent to the CBI. So, Sir, here in this case, the culprit has been named. It occurred on 23.12.77 and the accused is still not arrested. And, Sir, the poor relatives of that unfortunate boy have not got the relief. This is the way in which the police is functioning and yet, Sir, we are trying to put more and more weapons in the hands of the police to suppress whatever liberties we have. Now, in the IPC, we have given powers under section 147A, relating to preparation to indulge in a riot and we can arrest any person on the ground of his preparing to indulge in a riot. Now, Sir, we have given this power to the police and if a person is produced within 24 hours before an Executive Magistrate, he can be detained for a period of seven days, because the Executive Magistrate is not to do judicial functions. But what will the Judicial Magistrate do? He will do something else.

MR. DEPUTY CHAIRMAN: Please conclude now.

SHRI BIR CHANDRA DEB BURMAN: Yes, I am just winding up. He will do something else, will perform some other functions, which are only administrative or executive in nature like suspension or cancellation of licences. Powers of suspension or withdrawal of licences have to be exercised by the Executive Magistrates. These are the functions of the Executive Magistrates and, in this background, we are giving those powers of the First Class Magistrates to the Executive Magistrates and we are establishing Special Judicial Magistrate Courts and if such Special Judicial Magistrate Courts are established, no other court will have any jurisdiction to take cognizance of these offences. So, we are now equipping the police with more and more powers to suppress what little civil liberties we have got and the action of the police has been manifest in all the cases which I have just now cited. Sir, the Chopra children's murder case is well known. We know how the police is functioing. Now, this is a retrogessive measure and the progressive measure that we have put in the Criminal Procedure Code of 1973 is going to be encroached and eroded by this Bill. This measure will take away the very purpose for which the Criminal Procedure Code, 1973, was introduced, that is, for separation of Judiciary and Executive. This principle has been eroded. The Executive Magistrates are coming by the backdoor to take up the power of Judicial Magistrates.

MR. DEPUTY CHAIRMAN: Shri Naik.

SHRI L. R. NAIK (Karnataka): Mr. Deputy Chairman, Sir, I rise to support the Bill, not in its entirety but to a very substantial extent. The Bill is in respect of amendments to the Criminal Procedure Code. It is a well known fact that the Criminal Procedure Code is a very long standing measure on the statute in our country, and it only deals with procedural matters, and the substantive law regarding crimes is laid down in the Indian Penal Code. The Indian Penal Code, as we all know, was framed by Lord Macaulay and it has stood the test of time. Even then it was found that there should have been some amendment in view of the fact that there have been vast socio-economic changes in our society since the Indian Penal Code was introduced in this country in 1861. Similarly, the procedural law as laid down in the Criminal Procedure Code is also a very long standing law—nearly 95 years old. And still what was done about it was that instead of bringing several amendments to this law, a new enactment or a modified enactment of the Criminal Procedure Code of 1973 was enacted, and it has been enforced in the year 1974. And now, soon after we have found that some of the amendments are essential and these have been brought in this legislation which was only three years back considered in its entire depth, and a new enactment was made. Still, as we see from the Statement of Objects and Reasons and also from the statement of the hon. Minister who has moved this Bill, the changes referred to are very minor in nature; and in fact, they are of a very minor nature, though in some cases the changes made have rather far-reaching effects. It is, therefore, necessary that we consider this Criminal Procedure Code (Amendment) Bill rather carefully in this august House and suggest ways and means about the procedural law. It is from this point of view that I have been able to study the amendment Bill.

The Bill, as you know, Sir, was introduced in May 1978. Since then, it has been possible for me to discuss with some of the important lawyers in Karnataka and also with some of the Magistrates as to what they have to say about the amendments made. And I am happy to say that most of them have agreed that the amendments brought are of a very plausible nature and they should be there.

Now, Sir, coming to the amendments made, the first amendment refers to the local jurisdiction of magistrate,

and the local jurisdiction of the magistrate, as we see from the new Code of 1973, was confined to a district. But the magistrates, in the course of dealing with several cases, have found that these cases are not merely confined to a particular district, but these cases have inter-district ramifications and, in order, therefore, to meet such a situation, the expression 'local jurisdiction' has come to be amended. The local jurisdiction now includes the entire State or any part of the State and it will facilitate the Magistrate to give judgment without being contradicted. So, in my opinion, this sort of amendment is necessary. The second amendment relates to the establishment of special courts. In my opinion, special courts are necessary. As you know, Sir, there are several orders which have come to be passed under the Essential Commodities Act. There are for instance the Textile Cotton Order and the Drug Control Order. There are several such cases and these cases have multiplied and they have to be handled effectively. It is for this reason that it is necessary to establish special courts. Therefore, the amendment brought forward seeks to establish such special courts. Some hon. Members have said that the State Government in consultation with the High Court can establish special courts to deal with particular cases or particular classes of cases. Now, the objection taken is about the word 'consultation'. What the hon. speakers have felt is that the consultation does not mean that the High Court has to entirely agree with the Government in establishing such courts. Therefore, in order to meet such a contingency, the word 'concurrence' would be better. But it is my experience that if the word 'concurrence' is put instead of the word 'consultation', there is going to be a deadlock. There is always a sort of conflict between the State Governments which are also charged with the responsibility of maintenance of law and order and also to see that the crimes are minimised and the crimes are punished. Therefore, in order to avoid such a conflict, in my opinion, the word 'consultation' is better suited than the word 'concurrence'.

The next amendment relates to the holding of courts within the jurisdiction of the Magistrate. That means that the Magistrates can hold courts not only at the place of their headquarters but also anywhere within their jurisdiction. Of course, it is essential. It is more so in the tribal areas where the distance required to be covered is often quite substantial. The Magistrate can hold his court wherever he wants within his jurisdiction. This means that it would facilitate holding of mobile courts and, in my opinion, the mobile courts will suit the needs of the poor people in this country. I, therefore, find that this amendment is in order.

The next amendment refers to the appointment of Additional Public Prosecutors and Assistant Public Prosecutors. As can be seen from the speech of the hon. Minister, this amendment has arisen because this new code refers to one category of Additional Public Prosecutors or Assistant Public Prosecutors. That means, whenever such Public Prosecutors are to be appointed, what is being done is, and I say with reference to my own State of Karnataka, the District Magistrate makes a panel of names and then he refers it to the Sessions Judge for his opinion, and after obtaining his opinion, he sends the panel of names to the Government so that, after examining it, the Government may appoint sufficient number of such Public Prosecutors. But in some other States, this is not the system of appointments. There, the system of appointments appears to be a cadre system. That means, there is a regular cadre of Public Prosecutors and Assistant Public Prosecutors. But the new Code was silent over such cases. In order, therefore, to overcome such a contingency or such a situation, an amendment has now been brought and it refers to both the categories of appointments of these Public Prose-

[Shri L. R. Naik]

cutors, and, therefore, there is nothing wrong about this matter.

The other point that I want to say, Sir, is about *de novo* trials. Whenever there is a change of Magistrate, when the accused appears for the first time before the new Magistrate, the Magistrate asks the accused as to whether he wants a *de novo* trial. And if the accused says that he wants it, then the whole trial begins again, and this is rather a time-consuming factor. Under the new Code, the *de novo* trial has been permitted. But such a power was not given in the case or cases before the Sessions Judge. Therefore, the amendment that has now been brought empowers the Sessions Judge also to take up the cases on the basis of a *de novo* trial and that, of course, will avoid loss of time and it may even result in the speedy disposal of the cases.

Sir, the other amendment refers to the extension of the detention period. That is a very important amendment, in my opinion, in this amending Bill. Now the period is sixty days. And this period is being sought to be extended to ninety days only with-reference to special categories of offences, the punshment prescribed for which is either death penalty or life imprisonment or imprisonment for over ten years. In these cases, the period can be extended to ninety days by the Magistrate. But it is really my experience that this mere extension of time is not an adequate solution. What is needed is that the police officers investigating into such serious crimes have to be very upright in their dealings. Sir, in September, when I went back to my own district of Bijapur, as the President of the District Congress Committee, it was brought to my notice that a certain Harijan was murdered. He was an ex-Army man and he was murdered on the 18th September, 1978. But, till the 2nd October, the Gandhi Jayanthi Day, nobody has heard about this murder. And it was complained to me that there had been an attempt to hush up this offence. I therefore, went to the S.P. and told him that the man appeared to have been murdered on the 18th, that is, about 10—15 days back and nothing had been done in the matter. Of course, to my great surprise, I found that he himself expressed the surprise how such a thing could happen. Still I told him that he could come with me and I would show him the place where the man had been murdered. I, therefore, took him to the spot and showed him how that man, an ex-army official had been murdered. It was in connection with the distribution of some food to the school-going children. It appears that this ex-army man made a complaint against the teacher who belonged to caste Hindus and was incharge of distributing this food. This was not tolerated by that teacher and he said: Who is this Harijan to tell me all these things. He took it is as an offence, so much so that he prevailed upon the other villagers that here is a Harijan who is questioning his deeds. The whole village joined and this ex-army man was dragged out of his house, tied to the electricity pole and beaten black and blue for nearly four hours and at about 5, the man died. Subsequently, an attempt was made to hush up the offence, to burn the body and to create all sort of false evidence. When I went and showed it to S.P. on the 2nd of October, he then realised that his people had committed a blunder. I again sent a telegram to the Chief Minister who took a very prompt action and saw to it that all the accused numbering about 20-25, who were involved, were brought to book and they were all arrested. If this is the approach of the police officers in such cases of offences where the punishment is death or life

imprisonment, I am afraid, mere extension of time of detention will not serve the purpose. I, therefore, feel that sooner these offenders are brought to took, the better it is. Therefore, Sir, I oppose the amendment extending the period of 60 days to 90 days. It should be only 60 days because during that period it would be possible for the police officers to take a prompt action.

Another amendment is about the bigamy. Of course, it is an offence now but we know how these offences are now being committed even by the educated people. All that they do is, they take the consent of their wife saying that she has been divorced and therefore, the man becomes eligible for another marriage. This is how such things take place. I am very happy that the committee on the Status of Women has taken up this issue and recommended to the Government to bring about certain modifications in the Criminal Procedure Code. The modification now is that it is not necessary that the wife alone should complain about it. Anybody who is the relative can make a complaint. It is also not necessary for the wife to make a complaint to the magistrate having jurisdiction over that place or where she lived with her former husband. This is a good amendment and it has to be approved by this august House.

The other amendment refers to section 433 A. This is also a very important section of this amending Bill and it refers to inflicting punishment whenever a person has been sentenced to death and that sentence has been commuted or has been remitted by the State Government. In that case, a further remission is unauthorised. For instance, let us say a person has been sentenced to death and then later on his sentence has been commuted to life imprisonment. Again, after sometime, if the life imprisonment were to be reduced to five or six years from fourteen years, this would make a mockery of the criminal law. It is for this reason that the Joint Committee of Parliament had recommended that this anomaly should disappear and that its right place should be in the Criminal Procedure Code and not in section 57 of the Indian Penal Code. It is for this reason that a new section, namely, section 433A has been introduced in this amending Bill. Sir, I could have said a lot of things. There are so many amendments of a very interesting nature and they are a necessity for the implementation of the Criminal Procedure Code in its right perspective. However, as I have not much time at my disposal I would like to thank you for giving me at least this much time to say a few words on this subject.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 2 P.M.

The House then adjourned for lunch at fifty-seven minutes past twelve of the clock.

The House reassembled after lunch at ten minutes past two of the clock.

Mr. Deputy Chairman in the Chair.

श्री राम लखन प्रसाद गुप्त (बिहार) : उपसभापति महोदय, मैं क्रिमिनल प्रोसीजर कोड अमेंडमेंट बिल, 1978 का समर्थन करता हूं और इसमें किये गये कुछ प्रावधानों के विषय में अपने विचार प्रकट करना चाहता हूं ।

जहां तक सेक्शन 14, 18, 20, 25, 182, 198, 209, 276, 293, 297, 299, 320, 323, 326, 374, 377, 378 और 428 का प्रश्न है, इन सारे सेक्शंस में बहुत से टक्नीकल अमेंडमेंट किये गये हैं और इनके विषय में मैं कुछ विचार प्रकट करने की आवश्यकता नहीं समझता । परन्तु जहां तक सेक्शन 24 का प्रश्न है, इसमें एडीशनल पब्लिक प्राजीक्यूटर" का प्रावधान किया गया है और उसमें डिस्ट्रिक्ट कोर्ट में भी सेंट्रल गवर्नमेंट कापलिब्क प्राजीक्यूटर रहे, इसका प्रावधान किया गया है । यह भी बहुत ठीक है क्योंकि जितने भी केसेज बढ़ते जा रहे हैं उस

हिसाब से पहले जो एक पब्लिक प्राजिक्यूटर का प्रावधान था उसमें काम नहीं चल सकता और डिस्ट्रिक्ट में भी बहुत सारे केसेज सेंट्रल गर्नमेंट के आ गये हैं और आते जा रहे हैं। इसलिए ये दोनों ही प्रावधान-ऐडीशनल पब्लिक प्राजीक्यूटर का और डिस्ट्रिक्ट में सेंट्रल गर्वनमेंट के द्वारा पब्लिक प्राजीक्यूटर का—बहुत नहीं है ।

सेक्शन 102 में 'सीजर' के विषय में रखा गया है कि प्रापर्टी जिस समय सीज की जाती है उस वक्त तुरन्त मजिस्ट्रेट को रिपोर्ट करनी चाहिए । यह भी बहुत उचित और न्यायपूर्ण है क्योंकि अभी तक यह प्रावधान था कि कोई भी प्रापर्टी सीज करने के बाद जो पुलिस अफसर होते हैं उनके द्वारा सीज करने पर उसके अन्दर बहुत सारी गड़बड़ी पैदा होती थी और उसमें ज्यादा देर भी हो जाए तो उसको देखने वाला नहीं होता था । इसलिए मजिस्ट्रेट के यहां रिपोर्ट करने का यह प्रावधान न्यायोचित है और न्याय की तरफ बढ़ने का रास्ता है ।

उसके बाद सेक्शन 167 में जो 90 दिन का रखा है, यह 60 दिन से बढ़ाकर 90 दिन किया गया है, यह तो उचित ही है । परन्तु सिर्फ 90 दिन कर देने से भी लाभ नहीं होगा क्योंकि मैंने देखा है और मेरा यह अनुभव है—मैं काफी दिनों तक जेल में रहा हूं—कि जो क्रिमिनल्स होते हैं यह 60 दिन का प्रावधान होने के कारण एक बहुत बड़ा हथकंडा उनके पास बन जाता है, खासकर जो रेप केस में, डकैती केस में और मर्डर केस में जेल में जाते हैं तो वह कोशिश करते हैं कि किसी तरह से 60 दिन पूरे कर दो और उसके बाद बाहर निकाल दिये जायेंगे । 60 दिन तक पुलिस फाइनल फार्म सबमिट न करे, इसकी व्यवस्था की जाती है और पुलिस इसमें काफी विलम्ब तो करती ही है, अभी भी पैसे लेने के बाद या दूसरे केसेज में वह जान-बूझकर जिस समय वह सबमिट करना भी आवश्यक होता है तब भी नहीं करती है । अभी 10–15 रोज पूर्व का मेरा अनुभव है एक केस में मैंने देखा कि जिस दिन घाटना घटी, मर्डर केस की उसी दिन सारी इंवस्टिगेशन ले ली गई, इंवैस्टिगेशन कंम्लीट हो गई और डी० एस० पी० ने अपना सुपरविजन नोट दिया कि सब केस झूठा है । उसके बाद भी फ इनल फ र्म उस समय तक नहीं गया जब तक कि डिस्ट्रिक्ट जज ने तीन बार कहकर नहीं मंगाया । उसके बाद भी फाइनल फार्म तब तक नहीं आया जब तक पार्टी ने जाकर गुरु दक्षिणा नहीं चुकाई । जब 60 दिन के भीतर भी यह बात हो सकती है तो 90 दिन के अन्दर भी हो सकती है । इसलिए सिर्फ 30 दिन बढ़ा देने से न्यायोचित हो जाएगा या बहुत न्यायपूर्ण इंवैस्टीगेशन होकर केस कोर्ट में चले जायेंगे, इस बात को मैं नहीं मानता हूं । इसलिये यहां पर मंत्री जी को मेरा यह सुझाव है कि इसके लिये भी एक प्रावधान बनाना चाहिये कि अगर इतने दिनों के अन्दर फाइनल रिपोर्ट पुलिस सब्मिट नहीं करती तो उसके खिलाफ क्या कार्रवाई हो सकती है या उसके करेक्टर रोल पर क्या हो सकता है । इस तरह का कोई प्रावधान होगा तब हम जा कर पुलिस के हाथ से जल्दी कोई इनवैस्टीगेशन करा सकते हैं । हमारे पूर्ववक्ता महोदय ने कहा था कि 90 डेज बहुत कम हैं । बहुत सारे केसेज ऐसे होते हैं जो 90 डेज में पूरे नहीं हो सकते यह सही बात है कि 90 डेज काफी होते हैं जब कि इनवैस्टीगशन करके रिपोर्ट रखी जा सकती है एक और चीज मैं कहना चाहता हूं जिस पर सरकार को ध्यान रखना चाहिये । एक ही पुलिस इंसपेक्टर को जिसको हम क्राइम के लिये, ला एंड आर्डर के लिये रखते हैं और इनवैस्टीगशन के लिये रखते हैं, उसके सामने कभी-कभी कठिनाई आती है, जो सचमुच ईमानदारी से चाहता है कि समय के अन्दर फाइनल रिपोर्ट दे दे लेकिन समय की पाबन्दी रहने के कारण वह ऐसा नहीं कर सकता ।

इसके लिये मैं यह मांग करता हूं कि सरकार को चाहिये कि हर थाने के अन्दर इनवेस्टीगेशन के लिये अलग से अफसर रखे जो इसके लिये जिम्मेदार हो और बाकी सब ला एंड आर्डर के लिये हों तब मैं समझता हूं यह काम समय पर ही हो सकेगा ।

सैक्शन 309 डिले के संबंध में है । इसमें पहले से प्रोवीजिन है । 309 की सब-क्लाज-I मैं पढ़ना चाहता हूं ।

"In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finally adjourns the same beyond the following day for the necessary reasons to be recorded."

इसी में यह प्रावधान किया गया है । इसमें जो प्रोविजो जोड़ा गया है वह इसीलिये जोड़ा गया है ताकि इसमें ज्यादा डिले न हो इस प्रोविजो में एक अमेंडमेंट है :

"Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him."

यह बात सही है कि एक बार सेन्टेंस सुनने के बाद कनविक्शन हो जाएगा पर अपील सुनने का समय ज्यादा नहीं दिया जाना चाहिये । क्या सजा दी जाएं इस पर बहस करने में ज्यादा समय चाहिये, यह बात नहीं है । यह जो मैंने पढा है । इससे मुझे लगता है कि सरकार की भावना, जल्दी से जल्दी केस का फैसला हो, यही है । परन्तु 309 में जो उसके लिये एक रीजन दिया जाता है । कहा जाता है कि उन्होंने एडजोर्नमेंट के लिये इतना टाइम मांगा, यह मांगा, वह मांगा । मेरे को एक केस का अनुभव है एसेन्शियल कामोडिटीज के बारे में । वह केस 10-12 साल से लोअर कोर्ट में पेंडिंग रहा । अगर लोअर कोर्ट में पेंडिंग रहा है तो कारण उसके लिये कुछ भी बताया जा सकता है । इस तरह के केसेज के जल्दी से फैसले होने चाहिये और एडजोर्नमेंट बिना कारण के नहीं होना चाहिये । जब तक यह प्रावधान कानून में नहीं होगा तब तक उस पर चेक नहीं होगा । अगर ऐसा नहीं होगा तो उस पर कार्रवाई क्या की जाएगी । क्या कार्रवाई की जाए इसका प्रावधान भी कहीं न कहीं होना चाहिये । क्लाज 309 के अन्दर यह है कि डिले नहीं होना चाहिये बिना किसी कारण के एडजोर्न नहीं किया जाना चाहिये, यह बात सही है, लेकिन इसके लिये प्रावधान क्या होगा ? मेरा यह अनुभव है कि सिर्फ डिले कहने से काम नहीं होगा । हमने देखा है कि बहुत सारे कोर्टस के अन्दर जो पावर डेलीगेट की जाती है, एसेंसिशयल कामोडिटिज के लिये पावर डेलीगेट होती है वह हर मजिस्ट्रेट को नहीं रहती है ।

अभी स्थिति यह है कि पावर्स को डेलीगेट करने में वर्षों का समय लग जाता है । आम तौर पर पावर्स को डेलीगेट करने में काफी समय लग जाता है और परिणाम यह होता है कि मामलों का ट्रायल नहीं हो पाता है । इसी तरह बहुत से जूडिशियल मजिस्ट्रेटों की जगहें खाली रहती हैं और महीनों तक वे भरी नहीं जाती हैं । मैं समझता हूं कि अगर इन जगहों को जल्दी भर दिया जाये तो मामलों को निपटाने में काफी मदद मिल सकती है । मैं आपको बिहार का अनुभव बताता हूं । वहां पर कोर्टस की स्थिति यह है कि उनमें कोई स्थान खाली है ही नहीं । बरामदों तक में कोर्ट लग हुये हैं और लोगों से भरे हुये हैं । ऐसी हालत में यदि हम चाहते हैं कि अदालतों में केसेज का फैसला जल्दी होना चाहिये तो पावर्स की डेलीगेशन में, जुडिशियल मजिस्ट्रेटों की एपाइन्टमेंट में और स्टाफ की एपाइन्टमेंट में किसी

[श्री रामलखन प्रसाद गुप्त]

प्रकार की देरी नहीं होनी चाहिये और अदालतों के लिए और कर्मचारियों के लिए आवास की भी समुचित व्यवस्था होनी चाहिये ताकि वे लोग अपना काम सुविधा-पूर्वक कर सकें। अभी स्थिति यह है कि कई न्यायालयों में टाइप की मशीन नहीं होती है। जजमेंट लिखाने के लिए टाइप की मशीन का होना बहुत जरूरी है। मैं समझता हूं कि अगर आप इन सारी चीजों की व्यवस्था करेंगे तो इससे केसेज को निपटाने में काफी मदद मिलेगी।

जहां तक सेक्शन 433 का सम्बन्ध है, यह सेक्शन बहुत ही कंट्रोवर्शियल है। मैंने इसके सम्बन्ध में यहां के माननीय सदस्यों के भाषण सुने हैं और लोक सभा में दिये गये भाषणों को भी मुझे देखने का मौका मिला है। सेक्शन 433 में यह समझा जा रहा है कि इसमें जो 14 वर्ष की अवधि रखी गई है वह किसी प्रकार से भी कम नहीं की जा सकती है। मैं सदन का ध्यान इस बात की तरफ दिलाना चाहता हूं कि 14 वर्ष की अवधि को कम करने में कोई विशेष बाधा नहीं है। हमारे संविधान के आर्टिकल 72 में यह कहा गया है कि—

"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 person 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."

इस तरह से आप देखें तो आपको पता चलेगा कि स्टेट गवर्नर को यह पावर है कि वह किसी भी मामले में समय को कम्प्यूट कर सकता है, उसमें कमी कर सकता है। इस धारा के अन्दर 14 वर्ष की अवधि रखी गई है उसके सम्बन्ध में यह सोचना कि वह कम नहीं की जा सकती है, यह ठीक नहीं है। कुछ विशेष केसेज में तो पार्डन भी मिल सकता है। स्टट गवर्नर के द्वारा सारी परिस्थितियों की जांच करके इस अवधि को कम भी किया जा सकता है। इतना ही नहीं, जेल मैन्यूअल में लाइफ इम्प्रिजनमेंट के लिए 20 वर्षों की अवधि निर्धारित की गई है। यद्यपि इस सम्बन्ध में सुप्रीम कोर्ट का डिसीजन हो चुका है कि लाइफ इम्प्रिजनमेंट मीन्स लाइफ इम्प्रिजनमेंट लेकिन हमारे देश के जेल मैन्यूअल के अनुसार इस बारे में 20 वर्ष की व्यवस्था है। इन 20 वर्षों में भी छुट्टियां आदि मिला दी जाती है और अन्त में यह अवधि 14 वर्ष ही रहती है। जहां तक छूट देने का सवाल है, बिहार जेल मैन्यूअल के अनुसार अगर कोई कंविक्ट एक सांप मार देता है तो उसको तीन दिन की छूट मिल जाती है। इसी तरह अगर किसी कंविक्ट ने एक सांप को मारा तो उसी हिसाब से छूट मिल जाती है। अगर किसी ने सौ सांप मार दिए तो उसी हिसाब से छूट मिल जाती है मैं चाहता हूं कि इस सम्बन्ध में कुछ लिमिटेशन होनी चाहिये। यह ठीक है कि जेल के अन्दर जो कंविक्ट होता है वह

अगर कंट्रोल से रहता है और उसका व्यवहार ठीक है तो उसको कुछ सहूलियतें दी जा सकती हैं लेकिन ध्यान देने की बात यह है कि 20 वर्ष की अवधि में कमी करके अब उसको 14 वर्ष किया गया है और इस 14 वर्ष की अवधि में भी कमी की जा सकती है । स्टेट गवर्नर के द्वारा जांच करने के बाद इसमें कमी की जा सकती है । परन्तु यह बात भी सही है कि इसके पक्ष में कोई डिटरेन्ट पनिशमेंट हो, तभी अपराधों में किसी प्रकार के सुधार की आशा की जा सकती है । इससे हम देखते हैं कि अमरीका और इंग्लण्ड में किस तरह से कैपिटल पनिशमेंट कम होते चले गये धीरे-धीरे और उसी तरह से हत्यायें भी कम होती चली गई हैं और आज भी हिन्दुस्तान में कैपिटल पनिशमेंट के खिलाफ लोग हैं । लोग चाहते हैं कि कैपिटल पनिशमेंट न हो । लाइफ इम्प्रिजनमेंट की बात जहां आती है वहां पर यह प्रावधान किया गया है । तो यह प्रावधान बहुत सही है । परन्तु इस बात की ओर भी हम मंत्री महोदय का ध्यान आकर्षित करना चाहेंगे इस रिफरेन्स में कि ये हत्यायें जो होती हैं, जो घटनायें घटती हैं, इस तरह के जो आफन्स होते हैं उसके पीछे बहुत सारे मनोवैज्ञानिक कारण होते हैं । मेरा एक साथी अरविन्द कुमार नाम का व्यक्ति था वह इजीनियरिंग पास था । आवेश में आकर उसने अपने चाचा की हत्या कर दी और फिर जेल के अन्दर रोज रोता था । उसे बहुत पश्चाताप होता था । तो जहां पर हम सुधार की बात करते हैं और हम चाहते हैं कि उसका सुधार कैसे हो और इस तरह की घटनायें आगे न करें तो इसके लिए हमें डिटरेन्ट और रिफार्मेटिव इन दोनों बातों का समावेश करना चाहिये ताकि सजा भी हो और उसका सुधार भी हो । इन दोनों बातों को ध्यान में रखकर हमें आगे बढ़ना चाहिये । इसलिए जो 433 में प्रावधान किया गया है कि 14 वर्षों से कम न हो यह बात भी बहुत ठीक है । फिर उसके बाद 478 को मैं यहां पर पढ़ना चाहता हूं सेक्शन 478 में है कि :

"If the State Legislature by a resolution so requires, the State Government may after consultation with the High Court, by notification direct that—

(a) references in sections 108, 109 and 110 to a Judicial Magistrate of the first class shall be construed as references to an Executive Magistrate;

(b) references in sections 145 and 147 to an Executive Magistrate shall be construed as references to a Judicial Magistrate of the first class."

अब इसमें उपसभापति महोदय स्टेट लेजिस्लेचर की जगह पर अमेंडमेंट कर दिया गया है असेम्बली लेजिस्लेचर ।

"for the words 'State Legislature,' the words 'Legislative Assembly of a State' shall be substituted."

मैं नहीं समझता कि इसमें स्टेट लेजिस्लेचर को हटाने की क्या आवश्यकता है ? अगर वह लेजिस्लेटिव कौंसिल है और इसमें कोई फाइनेंस की बात है तो फिर और बात है उसमें आपको असेम्बली को ही प्रमुखता देनी होगी और जो लेजिस्लेटिव कौंसिल उसको प्रमुखता नहीं देंगे । यह बात मेरी समझ में नहीं आती है इसका कारण है । इसलिए मेरा निवेदन है कि स्टट लेजिस्लेचर जो है वह रहना चाहिए । उसकी जगह पर लेजिस्लेटिव असेम्बली करने की जरूरत नहीं है ।

ये सारे मेरे कुछ सुझाव हैं और मैं समझता हूं कि मंत्री जी का ध्यान इन सुझावों की ओर जायेगा । इसमें अमेंडमेंट की और भी बहुत ज्यादा जरूरत है इसके अन्दर । परन्तु अभी जो अमेंडमेंट आये हैं उनका समर्थन करता हूं । इसमें अभी और भी संशोधनों की आवश्यकता है, इसमें

[श्री रामलखन प्रसाद गुप्त]

और भी ज्यादा नए प्रावधान लाने की जरूरत है, इस ओर सरकार का ध्यान दिलाते हुये मैं अपना बयान समाप्त करता हूं ।

SHRI AMARPROSAD CHAKRABORTY (West Bengal): Sir, the hon. Minister, while placing this amendment Bill before the House, pointed out that there were some practical difficulties in carrying out the administration or the judicial work and so they felt it necessary to bring this amendment and accordingly the amendment has been made. But, Sir from a careful reading of the entire amendment, it does not seem so; it is not so innocuous nor so simple. Probably, Sir, you are aware that in this country we were trying everywhere to make a separation between the judiciary and the executive. After much endeavour this was done and this was accepted by the 1970 Criminal Procedure Code

Regarding some other sections also there is an apprehension that this is not an amendment to remove difficultives but it is an amendment to create difficulties in the working of the entire Act. So far how is criminal law administered in our country? It is an accepted principle in a democracy that the rule of law prevails and to maintain this theory of rule of law we adopted this statute to give benefit to the people. Only best intentions to cure the citizens or remove criminal instinct from the citizens of the country will not do. The procedure should be so made and it should be so implemented that the measure should work as a corrective measure and should benefit the people. But that is not done here. Having been a Minister in the State Government I have some experience as a member of the Jail Code Revision Committee, and have found that, however best the intentions may be, from the British times till this date the procedures adopted continue to be the same, the techniques adopted continue to be the same. Whatever the law the same procedure is adopted. If you visit a jail, you will find that we are making the people criminal instead of correcting them, instead of removing the criminal *instinct from them.* Why? Because, between the law we make and the way we administer it, there is a gulf. Take, for instance, the amendment suggested by the honourable Minister, detention up to 90 days. If one reads the clause one feels that the Minister is very nice in limiting the time, in limiting the period to 90 days; after that the detention cannot be continued. At present under the law there is a discretion with the magistrate or the sessions judge or the High Court judge that bail can be granted. There is no question arising for making any limitation that no magistrate shall allow the detention for more than 90 days. That is in Clause 13. *Prima facie* if one reads this one finds that the Minister has come with the best of intentions. But in fact, it is not so. I am afraid whether it is a backdoor, that it is only a subtel by providing for one procedure which amounts to the procedure or is equivalent to the procedure of habeas-corpus. Why is this position created? Now, the law is there. If one is arrested, one must be produced before the magistrate and the magistrate will see whether he should be detained or remanded in custody, and if the remand is necessary, then the magistrate will give the order, or his representative can fight out the case saying that specifically in the FIR there is no name of the person.

In the FIR given there is no name of the person. Then also, will he be detained for 90 days for nothing? Will he be detained for nothing? You know what the Police does. They always manage to cite so many sections like 302, 307 and 364, offences under which will lead ultimately to conviction or sentences for more than ten years because if the offence is punishable with imprisonment for a term of not less than ten years, under this amendment the period of

ninety days is applicable. If that is so, he will not be released. Under the law he can be detained. I only want to draw the attention of the Minister to this aspect of the matter. We all know what the Police did during the emergency. I know it because I had handled thousands of cases as the Chairman of the Legal Aid Committee. If I am not favourably disposed to the ruling clique, then the Police can be asked to report against me. They will level a charge saying that I was found in such place at such and such hour carrying arms in the company of such and such person to commit a dacoity or murder. On the basis of this charge I will be detained. You are aware what happened under the MISA. I have handled such cases and found nothing against the persons and they were set free. There are some sections under which the sentence of imprisonment is for not less than ten years. Then the accused can be detained for ninety days. I hope the hon. Minister has appreciated my point and he will reconsider this. This is wrong. Suppose in the FIR the names of XYZ are mentioned but on enquiry it is found that Z is not at all connected with the crime or the allegaton of the crime. Will the Minister have any pleasure in keeping retention for 90 days because the punishment prescribed for the offence which he is alleged to have committed is a sentence for more than ten years? I appreciate the mind of the hon. Minister. He introduced this in order to remove difficulties. Even now he can move an amendment to this. I hope he will think over the matter and agree to keep the section as it is without this amendment. That will help in easing some problems in our jails also. I had been detained for about 5 years in 8 jails. I have also visited several jails and therefore I know what is happening in our jails. Lots of people are arrested in the industrial areas for various offences. Our jails are overcrowded and in such conditions if somebody is forced to spend 90 days in a jail he will come back as a hardened criminal. This period is sufficient enough to make him a hardened criminal. This is how psychology works. As a member of the Jail Code Revision Committee I have visited jails and talked to the people there. So, what I said is my personal experience. I would request the hon. Minister to see that the Home Ministry issues a circular saying that whoever is arrested should be allowed to go out on bail, if the Magistrate finds on the face of the documents that it could be done. Subsequently, he may be found to be innocent. But if this provision remains there, the chance of his becoming a hardened criminal is very much there and you are not making the corrective process successful and it is only a penal process for the citizens of this country. If this provision is not there, there is a chance of the person improving. Otherwise, his chance of becoming a hardened criminal is there.

Then, Sir, there is the second point. I do not understand one thing. I do not understand why the Government has become this time so keen to appoint Assistant Public Prosecutors even up to the district level. I know that a ready argument will come from that side and already point will be made by the Minister. I have some experience during the last 27 years in the High Courts and I know what the Criminal lawyers approved by the Government are doing. I want to ask one thing from the Minister. But I know the same type of reply, the stereotyped reply will come from his side. There, Sir, the lawyers take much time and they are not fighting the case and their interest is not in having the cases disposed of quickly and, therefore, Sir, thousands and thousands of persons have to suffer and mainly because of this crores and crores of rupees are being wasted and have been wasted all these years. Now, you are extending the provision to cover the remote districts also. Why? It is not necessary at all. Why are you unnecessarily doing it? In all humility, Sir I want to tell the Minister that

[Shri Amarprosad Chakravorty]

there is already a State Prosecuter and already there is a panel prepared by the Government in consultation with the Sessions Judge according to the law and there are Prosecutors even in the District Sessions Courts. But I do not know why this dual system of appointing the Prosecutors by the State Government and also by the Central Government is being introduced now. They can ask the State Governments to do that. But they will say that for effecive disposal of the cases, for expeditious disposal of the cases and for expeditious trial, they are appointing these Prosecutors so that the trial may be expedited, so that the trial may be finished in time and they can be defended by persons competent to do so. But the Central Government is creating a dual administration now. I do not under stand this. I think one argument will come from the side of the Government: "Oh, it is done because the Central Government matters are involved and the Central Government are involved and so this is required.' But this was not required for the last 30 years or so. The Public Prosecutor or the Assistant Prosecutor is being appointed by the State Government. So, why bring in this amendment? Therefore, here also, Sir, I do not quite follow why they are doing this thing. I do not know why they are creating a dual system. You should not create a division between the State administration and the Central administration. What you have done now only complicates the matter and adds to the complexity of the matter. This is my seond point, Sir.

Thirdly, Sir, there is another thing of which we are afraid of. Now there is a tendency or instinct to bypass the judiciary or the magistracy that is there. How? Because they have adopted another procedure now and have brought forward an amendment and now they will create Special Courts wherever it is necessary. Sir, I can understand this if this is going to be done, say, for the trial of Mrs. Indira Gandhi. If they say that they are creating the Special Courts for her trial, I can understand that. If it is there for a specific purpose, it is all right. But why as part of the statute they are creating Special Courts wherever they say that are necessary, I cannot understand at all. I know again that there will be a ready argument and there will be a ready reply. I know that the Minister will say: "This is done only for the effective judicial administration, for efficient judicial administration, and it is for this purpose only that we have done this." This reply will be there. But I think this amendment is not at all necessary.

Then, Sir, you come to the new section 433A, that is, clause 33. I do not understand why they have put this here. It is rather painful. Sir, the present Government of West Bengal has released many persons. We have released many persons. Why? Because we have decided to release them even though they might have been accused of having committed some crimes on political grounds and they might have been convicted and sentenced to imprisonment for more than ten years. We have released people—I think more than two thousand. Even in my time as Judicial Minister, I have released many. Why? Sir, by putting these people in jail, making them rot for years and years, instead of correcting them we are making them criminals. We are creating more criminals than correcting them. Why is he giving 14 years? He does not make any amendment in order to mitigate the difficulties of people who are under trial. I give one instance—of Anant Singh; you might have heard of the Chittagong armoury raid during the British days. Anant Singh was the leader of that. His trial started before Mr. Roy came into power. And for more than 8 years he was under trial. No bail was granted. Nothing was granted. For eight years the trial was going on—more than 8 years. But we have released people on the political ground. So, Sir, why is the Minister not coming forward with such amendment?

If there is the likelihood of his being released, then during this period of 7 years he will be detained. Why is he not coming forward with an amendment? On the contrary, he says 14 years....

MR. DEPUTY CHAIRMAN: Please wind up.

SHRI AMARPROSAD CHAKRABORTY: This creates some sort of an apprehension in our mind that it is not as innocuous as he has made it out while introducing the Bill.

Lastly, Sir, I would submit one thing. In this case, for speedy trial he is appointing Prosecutors at the district level, independently. Why is the Minister not coming forward with such an amendment about the poor people who cannot engage a lawyer, who have no means to engage a lawyer for defence? Now, there is some provision during the sessions trial. It can be done. But why is the Minister not coming forward with such amendment? I feel, Sir, that there must be a change in the procedures in our country, both civil and criminal. It is done in some socialist countries. The number of judges should be increased. Why is the Minister not coming forward with some progressive measure here to give relief to these people, to make them the real beneficiaries and to correct, instead of carrying on, the old traditions and these clumsy procedures?

With these words, Sir, I conclude.

MR. DEPUTY CHAIRMAN: Mr. Nanda.

SHRI NARASINGHA PRASAD NANDA (Orissa): Mr. Deputy Chairman, Sir, while we are debating on the Bill, there is a news report that the Cabinet has approved of another amendment of the Code of Criminal Procedure for setting up Special Courts for trial of a particular type of offences. The point that I intend to make is that the Code of Criminal Procedure, which was adopted in the 19th century, continued to be good in many respects—at least till the year 1955, when some substantial changes were made in the Code of Criminal Procedure. Sir, this Criminal Procedure Code which was made years ago remained a good and effective procedure at least till the year 1955. What is worrying me is that there is some difficulty with our draftsmen who probably do not consider all the aspects while drafting a piece of legislation and our Ministers are anxious to come forward with some legislation so that they can get their ego satisfied thinking that as Ministers they were able to discharge their duties properly. Proper thought is not given to all the aspects of the question as a result of which such amendments are brought immediately after the parent Act is passed. We adopted the Code of Criminal Procedure in 1973. Now, the Minister comes forward with the plea that in order to remove doubts and difficulties experienced in the actual working of the new Code, he has to bring forward these amendments. While giving these clarifications, he has introduced a new clause inserting Section 433A regarding which my hon. friends have already given their comments. This relates to remission and commutation of sentence. It has been laid down that if the sentence of an accused who has been convicted to a sentence of death is commuted to imprisonment for life, then that accused must spend 14 years in imprisonment before he is released from jail. Has the hon. Minister considered one aspect of the question? Is it consistent with the provisions of article 72 of the Constitution? Can he make a law which is not consistent with the provisions of article 72? Supposing the President commutes the sentence of a particular accused which is less than 14 years, does he mean to say that he will not be released from jail because Section 433A is there? Is it not inconsistent at least with article 72 of the Constitution? Has this aspect been taken into consideration while introducing this Bill? This shows the hasty manner in which the Bills are introduced and later on the amendments are brought forward without difficulty. I illustrate this point by another example. As I said at the outset, they are contemplating the constitution of special courts. Here you have made a

[Shri Narasingha Prasad Nanda]

provision for the establishment of special courts. It is said in Clause 3 of this Bill:

> "In section 11 of the principal Act, to sub-section (1), the following proviso shall be added, namely:—
>
> "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 of the first class . . ."

It was thought that the constitution of special courts of Judicial Magistrates of the first class would be necessary. So, this enabling provision has been made by virtue of this amendment. The hon. Minister does not tell us what will be the nature of the special court, what will be the cases which these special courts will be supposed to try, etc. Will a special court have some speciality apart from the ordinary courts of law? What is the nature of speciality that these special courts will enjoy? What is the type of cases these courts will try? We are left in darkness about this. So, we find that in respect of some offences, special courts will be constituted, and the possibilities of discrimination in trial would be there. So, Sir, sufficient justification must be there for bringing about such an amendment. Some technical amendments have also been brought forward. But the hon. Minister ought to have justified why they felt the need for the constitution of such special courts. Does he mean to say that by constituting special courts, they can expedite the trials? Does he mean to say that the ends of justice will be met by the constitution of the special courts? What is the justification? A Bill is brought forward, and we just get through the Bill and subsequently we find difficulties, and again amendments are brought forward. That is the experience in respect of these Bills, as we notice.

Sir, I now come to my second point. An amendment to section 24 is being sought and you will kindly notice, Sir, there is a provision that for the appointment of Public Prosecutors and Additional Public Prosecutors, a lawyer has to have a practice of at least seven years. But in the State from which I come, Sir, a Judicial Magistrate is appointed after putting in a practice of three years. You can be a Public Prosecutor if you have put in seven years of practice. But you can be a Judicial Magistrate of 1st Class and try offences with an experience of only three years at the bar. Sir, I have not been able to understand the rationale behind the fixation of this period of practice for appointment as Public Prosecutors and Additional Public Prosecutors, and a period of ten years for special Public Prosecutors. I have no grouse against the Central Government appointing some Public Prosecutors because the Central Government do launch prosecutions in respect of certain Central Acts sometimes and they might like to appoint their own Prosecutors to take care of the cases under the Central Act. I have no grouse against that. But why put this period of practice of seven years for which there is no rationale?

Sir, the third point which I would like to make is about the amendment to section 167 of the Code of Criminal Procedure and which is a very serious thing. Sir, based on the long experience in this country of police habits, a solutary principal was adopted in section 167 that if an investigation will not be completed in sixty days, then the accused will be entitled to be released under a particular chapter. That does not release him away from the case. If a subsequent chargesheet is filed, he can again be re-arrested. But in a case unless prima facie case is established, a person should not be snatched away of his liberty. He should not be put in prison for an indefinite period. And, I think, sixty days is a long period. In my experience

as a lawyer, I have never come across any such case where the investigation has been completed beyond a period of thirty days has ended in the conviction of the accused. I must have conducted at least more than 100 such cases. Wherever there has been a delay in investigation, wherever there has been a lack of promptness on the part of the investigating agencies, the cases have invariably ended in the acquittal of the accused. That has been my experience. Now you want to give an additional premium for the inefficiency and incompetence of the police. You try to increase their efficiency; you to increase their competence; you give them more sophisticated equipments; give them fast-moving vehicles and other equipments which will enable them to complete the investigation as quickly as possible. But instead of trying to find a remedy, you are trying to extend the period from 60 days to 90 days and you are adding an explanation enabling an executive magistrate to remand the accused for a further period of 7 days. And you say: All right; we are only acting under the procedural law and it does not affect the substantive right of an individual. This is how you are encroaching upon the substantive right of an individual. If a particular person has not committed a crime and is only a suspect in a crime, you can keep him for a reasonable period; that is understandable. And if in an investigation, a period of 60 days is not considered sufficient, I do not understand how a period of 90 days will be considered sufficient. Then, the police officers will also find it difficult, within a period of 90 days to catch hold of the culprit and then again another Home Minister will come and say: We are facing difficulties in the actual working of the amended Code and, therefore, from 90 days, please extend it to 120 days. There is absolutely no rationale behind this proposal. It may be that he succeeds in getting this Bill through and getting it passed but it does not satisfy an ordinary man of prudence with regard to the rationale or the logic behind it. There may be heinous crimes committed but the percentage of such cases where detection of the crime takes a longer time, may be 000.1 per cent. But are we making a law for 000.1 per cent cases or we should make the law for the higher percentage of cases? What is the rationale behind this type of logic? Therefore, Sir, I have very serious objection to the amendment of section 167 of the Code of Criminal Procedure.

3 PM

I shall make another point and then I will conclude. I find that there is a surreptitious attempt to violated the accepted principle of separating the judiciary from the executive. There is an attempt, very indirectly, to subvert that wholesome accepted principle. If you kindly examine Clause 4 and Clause 6 of this Bill, you will be convinced beyond doubt that such an attempt is being made. An attempt is being made to shrink the powers of the judicial magistrate and confer indirectly certain powers on the executive magistrate. We are trying to reverse the process which we started, a wholesome principle which we accepted, in the Code of Criminal Procedure of 1973. We are trying to reverse it. This is very unfortunate.

Lastly, Sir, I would submit that restoring the old provision of demanding surety from a person brought under section 107 of the Code of Criminal Procedure is a process on the reverse order. Hundreds and thousands of political prisoners are arrested every day under section 107. This is our experience. Once you bring hundreds of them to the courts and ask them to give sureties not on a personal bond, they will have no other alternative but to go to jail. Apart from the question of poverty and other things, this is happening. By this, we are giving a handle to the executive to misuse and abuse the present amendment and the hon. Minister is trying to reverse the process which had been

[Shri Narasingha Prasad Nanda]

started by the Code of Criminal Procedure, 1973. I would, therefore, submit, Sir, that this Bill is not as innocent as it appears to be on the face of it. Therefore, Sir, the hon. Minister should consider all these objections raised on behalf of the Members and bring forward a comprehensive amendment or withdraw this present amending Bill. Well, they are trying to bring forward another Bill to constitute Special Courts. They can bring a consolidated amending Bill when we can consider in depth all aspects of the amendments and pass the Bill.

श्री शिव चन्द्र झा (बिहार) : उपसभापति महोदय, इस विधेयक में जो कुछ भी अच्छाइयां हैं उनका मैं स्वागत करता हूं । परन्तु जिस रूप में इस विधेयक में संशोधन लाय जा रहे हैं और पुराने क्रिमिनल प्रोसीजर कोड में संशोधन किये जा रहे हैं, उनको देखने में मुझे लगता है कि कोई बहुत बड़ा परिवर्तन नहीं होने नहीं जा रहा है ।

[The Vice Chairman (Shri Arvind Ganesh Kulkarni) in the Chair.]

इन संशोतनों से आम जनता को इंसाफ दिलाने में, सस्ता और जल्दी इंसाफ दिलाने में कोई बहुत बड़ा कदम उठाया जा रहा हो, ऐसा मुझे नहीं लगता है । मैं श्री भट्टाचार्य जी से इस बात में पूरी तरह से सहमत हूं कि आम जनता को सस्ता और जल्दी इंसाफ दिलाने के रास्तों के बारे में हमें सोचना चाहिये । मैं समझता हूं कि केवल मात्र इन संशोधनों को इधर-उधर जोड़ देने से कोई बहुत बड़ा परिवर्तन नहीं हो रहा है । हमें ऐसे रास्ते अख्तियार करने चाहियें जिससे आम जनता यह महसूस कर सके और समाज यह महसूस कर सके कि हम उनको इंसाफ दिला कर ही रहेंगे। उन्होंने इस सम्बन्ध में बहुत सी बातें कहीं । लेकिन मैं देख रहा था कि आखिर में आम जनता को सस्ता इंसाफ दिलाने का वह कौन सा रास्ता है; इसके बारे में वह सुझाव देंग । लेकि उनके भाषण में मुझे ऐसा कुछ नहीं मिला उधर से कुछ लोगों ने इनएफिसिएन्सी और टार्डी लेलैस की बातें कहीं । ये बातें तो रहेंगी ही । मैं समझता हूं कि इन बातों में बहुत दम है ।

पहले मैं यह कहना चाहता हूं कि यह जो विधेयक है यह फैसिलिएट करता है सुविधा देता है प्रोसीक्यूटस को ज्यादा, बनिस्पत प्रोसीक्यूटेड को । जो प्रोसीक्यूट करेंगे, मुकदमा चलायेंगे, जो पब्लिक प्रोसीक्यूटर्स होंगे चाहे वह सरकार हो, सरकार का कोई अधिकार या कोई और उसको ज्यादा सुविधायें होती हैं बनिस्पत कि जो प्रोसीक्यूटेड होता । और यही झमेला है जिससे हमें निकलना है । जब हम इससे निकलेंगे तभी इन्साफ सही मायनों में आम जनता का होगा, सस्ता होगा और जल्दी होगा । तो यह कसे होगा ? बहसें मैंने सुनीं । बहुत सी बात आयीं । लेकिन मैं देख रहा था कि वह कौन सा रास्ता है जिससे यह काम हो सकता है और वह रास्ता मैं आप लोगों के सामने रखता हूं । आप विचार करें । अब तक जो मजिस्ट्रेसी की बनावट रही है, कोर्ट की बनावट रही है, जूडीशियरी की बनावट रही है मोटे तौर पर वह बनावट जनता के हाथों से बाहर रही यानी जनता के संचालन के हाथ से बाहर रही है । अगर आप देश में जनतंत्र चाहते हैं और चाहते हैं कि जनता के प्रतिनिधि दिल्ली आयें, पटना जायें और कारखानों में मजदूर वहां के कामों को चलायें तो जब यह बातें आ रही समाज में जनतंत्र को बढ़ाने के लिए और जनतंत्र को मजबूत करने के लिए तो फिर क्या जनता के प्रतिनिधि मजिस्ट्रेट नहीं हो सकते हैं, चुन कर के जज नहीं हो सकते हैं ? कहने का मतलब यह है कि समाजी रिप्रेजेन्टेशन क्यों नहीं होगी, इलेक्टेड क्यों नहीं होगा

जनता द्वारा चुनकर जिला मजिस्ट्रेट और जिला जज और हाई कोर्ट का जज क्यों नहीं होगा ? वहां डेमोक्रेटाइज करने में, उन महकमों में ऐसी व्यवस्था लाने में आपको क्या दिक्कत हो रही है ? आपको यह अनहोनी बात लगेगी कि जनता के प्रतिनिधि चुने जायेंगे मजिस्ट्रेट बनाने के लिए और जज बनाने के लिए, यह शायद भयानक, सिल्लरी जसी बात मालूम होगी। लेकिन यह हकीकत है और अगर आपको इंसाफ जनता में लाना है तो आपको पिपुल्स कोर्ट बनाने होंगे और पिपुल्स कोर्ट तभी होंगे जब कि पिपुल्स मजिस्ट्रेट होंगे और पिपुल्स जज होंगे । यानी जनता द्वारा चुना जाना । इन महकमों को भी आपको डेमोक्रेटाइज करना होगा और जनता द्वारा संचालन के रास्ते को अख्तियार करना होगा तभी आम जनता को इन्साफ मिल सकता है। भट्टाचार्य जी और चक्रवर्ती जी तभी इन्साफ सस्ता होगा, जल्द होगा । इसलिए इस चीज पर जोर दिए जाने और ख्याल रखने की आवश्यकता है । इस तरह का संशोधन यहां आना चाहिये । मंत्री महोदय से मैं कहना चाहता हूं कि यह कोई . . .

SHRI G. LAKSHMANAN (Tamil Nadu): Mr. Jha is a very powerful and good English speaker. There are a number of people here who can understand English. Why can't he speak in English?

SHRI KAMALNATH JHA (Bihar): But you have a good understanding of Hindi.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): It is better that he is speaking in his own Hindi language. You will be spared of whatever he is speaking.

श्री शिव चन्द्र झा : उपसभाध्यक्ष महोदय, चक्रवर्ती जी ने कहा कि समाजवादी दुनिया में क्या होना है उसका रिफरेन्स उन्होंने दिया । मैं पूंजीवादी दुनिया का रिफरेन्स दे रहा हूं जहा जनता द्वारा जज चुने जाते हैं। पूंजीवादी दुनिया में जनता द्वारा जज चुने जाते हैं, पुलिस के हैड जो होते हैं वह चुने जाते हैं। केलीफोर्निया अमरीका में सरकिट कोर्ट के जज जनता द्वारा चुने जाते हैं । श्री दिलीप सिंह सौंध जो कि केलीफोर्निया में रहते हैं वहां के सरकिट कोर्ट के जज चुने गये और फिर वह चुनाव में खड़े हुये और सुप्रीम कोर्ट के जज चुने गये । फिर वह अमरीकी कांग्रस में हाउस आफ रिप्रेजेन्टेटिव में चुनकर गये । जनता द्वारा जज चुनने का तरीका अभी भी पूंजीवादी समाज में जहां पर जनतंत्र का सो-काल्ड डवलपमेंट कहते हैं वहां पर है । केलीफोर्निया में शेरिफ जो हमारे आई० जी० के बराबर होता है वह जनता द्वारा चुना जाता है । हमारे जैसे नहीं कि एप्वाइंटेड या कम्पटीशन की बदौलत बल्कि जनता के वोट के द्वारा चुना जाता है। यह सिलसिला पूंजीवादी समाज में अभी भी चल रहा है । यह कोई असंभव नहीं है कि यदि हम इस सिलसिले को अपने समाज में, देश में लायें और तभी इसी सिलसिले में आप इन महकमों को डेमोक्रेटाइज कर सकते हैं। यह जो महकमे हैं, विंग है ये जनता से दूर हैं इसी लिए जनता को इंसाफ नहीं मिलता है और इंसाफ देर से होता है और कभी ही होता है । अतः इस दृष्टिकोण से आपको सोचना होगा । अंग्रेजों ने जो क्रिमिनल प्रोसीजर कोड बनाया था उसी में आप कटनी छंटनी कर रहे हैं परन्तु आपको सोचना होगा एक नये कोड के बारे में, नये समाज के संदर्भ को सामने रख कर इसको आपको बनाना होगा । मैं तो कहूंगा कि फिर एक ला कमीशन बहाल किया जाय और तमाम क्रिमिनल कोड के जो प्रोसीजर्स हैं जिसको अंग्रेजों ने बनाया और लागू किया

[श्री शिव चन्द्र झा]

उनको रिवाइज किया जाय इसको नये सिरे से जो कानून के पंडित लोग हैं उनके द्वारा बनाया जाय ।

कानून क्या है ? उपसभाध्यक्ष महोदय, उसमें कानून के पंडितों के अलावा जनता के सेवक जो विशेषज्ञ हैं, अपने-अपने क्षेत्रों में वे भी लॉ कमिशन के सदस्य हों और फिर से एक ला कमीशन को बिठाकर होल क्रिमिनल प्रोसीजर कोड को रिवाईज किया जाय यह मेरा निवेदन है। एक बुनियादी बात जो कही गयी वह ठीक है कि इन महकमों को डेमोक्रेटइाज करना है, जनता के प्रतिनिधियों द्वारा संचालित करने का सिलसिला लाना है तभी ये कोर्ट्स पीपुल्स कोर्ट्स होंगे, जज और मजिस्ट्रेट पीपुल्स मजिस्ट्रेट होंगे और इंसाफ की हम ज्यादा से ज्यादा उम्मीद कर सकते हैं ।

उस दिन आपने देखा कि जो सरोज खापर्डे की मजिस्ट्रेट की बात करने का हल्ला हुआ । कौन अफसर था वह इस बनावट का था जिनकी आंखों के सामने सेवा भावना नहीं होती है, डोमीनेशन की भावना होती है। उस बेचारी को तंग किया गया इसलिए कि अंग्रेजों के जमाने से यह भावना इनहेरिट करती आ रही है । हम हाकिम हैं, हमारा यहां पर रोआब चलता है, सरोज खापर्डे पर रोआब झाड़ना है लेकिन जब जनता का प्रतिनिधि होगा तो बात दूसरी होगी । मैं यह मानता हूं कि प्रतिनिधियों के तरीकों में गड़बड़ियां हो सकती हैं जैसे चिकमगलूर में हुआ, चुनाव पद्धति में खराबियां हो सकती हैं लेकिन यही एक तरीका है । मानव समाज में जहां आम मानव, आम जनता अपनी किस्मत का आप फैसला कर सकते हैं, इसलिए यह विधेयक जो है, यह मैंने कहा कि इसमें जितनी अच्छाइयां हैं उसका मैं स्वागत करता हूं, लेकिन मंत्री महोदय नये सिरे से इन विंगों को डेमोक्रेटाईज करने की बात सोचें । पुलिस का महकमा भी जैसा मैंने कई बार कहा कि ऐसा है जो मोस्ट फासिस्टवादी टोटेलीटेरियन विंग हमारे समाज का है । जितने जुल्म अपराधी नहीं करते हैं उससे ज्यादा अपराध ये पुलिस के अफसरान करते हैं। यह पुलिस की बनावट है सको डेमोक्रेटाइज करने की बात आपको करनी होगी और इसे सिरे से आपको इसमें प्रावधान लाने होंगे। होल प्रोसीजर कोड में चाहे पीनल कोड हो या कोई और हो इस तरह से अगर चक्रवर्ती जी कहेंगे तो रास्ता बनेगा और जल्दी इंसाफ समाज को मिलेगा ।

जहां तक विधेयक का सवाल है इसके बारे में मैं एक दो बातें कहना चाहता हूं । ये जो प्रावधान आप कर रहे हैं यह बड़े प्रावधानों की बात है । क्लाज 107 में हमारे सदस्य ने ठीक ही कहा है कि इसमें परसनल बांड और श्योरिटी की बात दुहरा रहे हैं आप। मैं खुद 107 में रह चुका हूं, यह केस लम्बा चलता रहा था ।107 में लोग परेशान होते हैं, कोई मतलब नहीं होता है, बेमतलब आदमियों को परेशान किया जाता है । पुलिस वाले जिसको जहां हुआ परेशान करते हैं । इसलिए फिर वही सिलसिला चलेगा । 107 यदि चलेगा तो कितने दिन चलेगा यह विधेयक में शायद आपने कहीं कहा हो, आप बतायें, साफ करें कि कोई लिमिट 30 दिन 90 दिन तक 107 होगा और फिर वह खत्म हो जायगा, डाई आऊट इटसेल्फ। यदि है तो बता दें, तब तो ठीक बात है और यदि लिमिट नहीं है तो 107 जो है वह साधारण नागरिक को परेशान करने का हथकंडा है जिसको आप फिर कर रहे हैं और श्योरिटी बांड लगाकर फिर वही बात ले रहे हैं । मंत्री महोदय, आप इसको ठीक करें । मैं सको खत्म कर रहा हूं ।

आपका दूसरा क्लाज है जिसमें 14 इयर्स इन जेल है । 14वां या 33वां है । यदि कैपीटल अफेंस भी है तो 14 साल उसको रहना ही पड़ेगा । एक ज्वाइंट कमीशन ने

एक संशोधन किया, एक सिफारिश की और झट से आप बदल गये । ज्वाइंट कमेटी की बात आ गयी इसका मतलब वह ठीक ही हो जायगा । 14 साल का समय एक लम्बा समय होता है । एक छोटा सा उदाहरण मैं दे देता हूं । भारत के प्रथम राष्ट्रपति डा० राजेन्द्र प्रसाद के सामने एक केस आया । यह बात अखबार में भी आ गई थी, बहुत बाद में आयी थी, वह कैपीटल आफेंस की बात थी उन्होंने सारे केस को देखा, खुद देखा और आखिर में देखकर 10 साल की जिसको सजा कहते हैं वह दी गयी । यह बात अखबार में आई, रिकार्ड में है तो मेरा कहने का मतलब यह है कि 14 साल की अवधि तक जो रहना ही पड़ेगा, यह एक लम्बा समय है इसको आप ज्यादा से ज्यादा 10 साल करें यदि आप सजा देना ही चाहते हैं । लेकिन ख्याल रखें जब कोई क्राईम करता है और उसको सजा मिलती है तो 10-12 साल में वह दूसरा इंसान हो जाता है, वह दूसरा व्यक्ति हो जाता है, वह वही व्यक्ति नहीं होता है जो 10 साल या 15 साल पहले था. . . . *(Interruptions)*

उपसभाध्यक्ष (श्री अरविन्द गणेश कुलकर्णी) : ठीक है ।

श्री शिव चन्द्र झा : गुणात्मक परिवर्तन आपमें और हम में होता है । जो इंसान जिस दिन अपराध करता है और 10 साल जेल में महसूस करता है तो वह दूसरा व्यक्ति हो जाता है । कानून कहता है कि 10 साल पहले के इंसान को पकड़ो लेकिन समय उसको दूसरा इंसान बनाता है इसी लिए यह अवधि 14 साल की बहुत बड़ी है, इसमें आपको कानून का दूसरा रास्ता अख्तियार करना होगा इंसान को बदलने के लिए ।

(Interruptions)

THE VICE CHAIRMAN (SHRI ARVIND GANESH KULKARNI): Minister please.

श्री शिव चन्द्र झा : एक मिनट प्लीज इंसान को बदलने के लिए होना चाहिए न कि खत्म करने के लिए एक फारमेलिटी होनी चाहिए ।

उपसभाध्यक्ष (श्री अरविन्द गणेश कुलकर्णी) : बस हो गया ।

श्री शिव चन्द्र झा : उपसभाध्यक्ष महोदय, यह देश गांधी का, जवाहर का और लोकनायक जयप्रकाश का देश है । यहां मध्य प्रदेश के माधो सिंह ने सरेंडर किया । कैसे किया ? कानून के जरिये नहीं बल्कि दूसरे जरिये से । इसलिए इन तरीकों से काम होना चाहिए और इन बातों को मद्देनजर रख कर एक नया संशोधन लाना चाहिए । लेकिन यदि इसमें कोई अच्छाई है तो मैं इसका तहेदिल से स्वागत करता हूं जैसा और लोग करते हैं ।

उपसभाध्यक्ष श्री अरविन्द गणेश कुलकर्णी) : हां ठीक है ।

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI S. D. PATIL): Mr. Vice-Chairman, I am very grateful to all the hon'ble Members who have supported the motion of the amending Bill as well as those Members who have offered constructive and very useful suggestions . . .

SHRI KHURSHED ALAM KHAN (Delhi): And those also who have remained neutral.

SHRI S. D. PATIL: . . . and also those who graced this House by their presence.

Sir, it is not a new Bill which I am piloting. I am only doing what was left in the year 1976 when this august House passed this Bill in August 1976 but due to the dissolution of the other House the Bill could not see the light of the day. This Bill is not dealing with any sub-

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stantive law. It is only dealing with the criminal procedure. As to what should be the penal law of the country, what should be the basic law, whether what Macaulay stated should hold good in the changing circumstances or we should have new norms for our own country, whether we should have people's court and people's Judges—these are all wider questions with which at present I am not concerned. There will be another forum where such questions can be taken up.

Now, coming to the history of this Bill, Sir, some of the hon. Members have criticised it as if it is sort of a figment of my imagination that we want to adopt *ad hoc* amending Bills just to suit exigencies of the time; but that is not so. As the House is aware, the Criminal Procedure Code was enacted as far back as 1898. Then, after about 25 years, there were a few amendments in 1923. Then, in 1955, there were major amendments and in 1970, after the 41st Report of the Law Commission was submitted in 1969, the whole of the Code was almost revised and many new changes were introduced, such as the separation of the Judiciary from the Executive and other things. Those who have the experience as lawyers will see the difference between the Act of 1923 or 1955 and that of 1973. When we embarked upon an altogether new Act in 1973, it is incumbent on the Government or the implementing machinery to find out the defects as experience is gathered while implementing the Act. So certain difficulties arose and that is why in order to consider them and to meet the difficulties which were experienced by various State Governments—particularly because law and order is the responsibility of the State Governments—we consulted them and asked them to send reports on the working of this Code. We have received various reports from the State Governments and the demand is there for a change. It is essentially the police which has to implement the Criminal Procedure Code, howsoever we may condemn them. That is a different matter. What sort of police personnel we should have, what should be their conditions, what type of people should be recruited—these are all matters which will be considered by the National Police Commission, or whichever body is entrusted with that stupendous task. I for one only say that they are in charge of the implementation of the Act and so a conference of IGPs was called by the earlier Government, much earlier than the promulgation of the Emergency. I am happy that none of us here has criticised me for bringing in the earlier legacy and thereby following the footsteps of the earlier regime. Whatever work had been done spade work had been done. So, taking into consideration the requirements of the present time, we have deleted certain things which we found were rather cumbersome or not just for the purposes of implementing the Act and also improved upon certain provisions.

I will shortly enumerate certain provisions which are excluded. Before the Bill was actually introduced, there was also a conference of high level officers in the Central Ministry, headed by the then Secretary, Shri H. S. Khurana, and after consultation they had come to certain conclusions. The Bill was introduced in 1976 in the Rajya Sabha, but it was found lacking in certain respects, for example, the provision for bigamy under sections 182 and 196. So certain important provisions were also accommodated and some of the provisions which were found inconvenient were withdrawn. As many as seven provisions were dropped from the earlier Bill.

(1) The provision to amend section 9 to enable the Court of Session to hold sitting in prison or place of detention of the accused person.

(2) The provision empowering the State Government to confer powers of Judicial Magistrate on Gazetted Officers functioning as Executive Magistrates to try such offences or class of offences under some sections of the Indian Penal Code and under any special law for the time being in force which are punishable with imprisonment for a term not exceeding one year or with fine or both. Similar provisions which were incorporated in section 18 relating to Special Metropolitan Magistrates have also been excluded.

(3) The proviso inserted to section 14 enabling Judicial Magistrates to hold sitting in prison or place of detention of the accused person has been excluded.

(4) The provision to amend section 25 to clarify that nothing shall preclude the State Government from conferring on the Inspector General of Police the powers of administrative control and supervision over the Assistant Public Prosecuters.

(5) The provision enabling the Metropolitan Magistrate or the Special Judicial Magistrate invested with first class power to record statements and confessions.

(6) The provision which ought to deny the accused copies of documents as well as the inspection thereof if the documents are considered prejudicial to the interest of the security of the State.

(7) The provision seeking to delete the proviso relating to grant of anticipatory bail.

These are all the seven provisions which were included but we have dropped them advisedly because they were found rather not to be in tune with the time.

Now regarding the other criticism about the special courts under clause 3. The Government had made a reference through the President to the Supreme Court, and we have got the decision of the Supreme Court on this matter. And it is reported that the Cabinet has also decided that special court should be established with certain modifications as suggested by the Supreme Court. Now why should there be special courts? This is a much earlier ideas; it is of 1976. What is the purport and what is the rationale behind it? That is a very relevant question which I must answer. Sir, I am not avoiding that responsibility. Sir, if we look to the wording of the proviso, we find that it provides that the State Government should consult the High Court. Here again, some Hon. Members asked why should there by consultation with the High Court, not concurrence. Sir, when the power to constitute special courts is the responsibility of the administration, it is quite fair for them also to consult the judiciary, the High Court. It is not in respect of appointment: it is only in respect of establishment or constitution of such courts that consultation is essential. So, the question of concurrence does not come here. Even in the reference matter, their Lordship of the Supreme Court have not commented upon this provision. That is number two. The Central Government shall by notification, create adequate number of courts to be called 'Special Courts'. So, that provision even on the point of concurrence is not in any way *ultra vires* or beyond the competence of the Government. It has been agreed to. The main point which the critics had in their minds and where I think they have a slight confusion is that they think that the personnel of the Special Court will be appointed by the State Government .That is not the case. The High Court has the power to appoint. So we are not interfering with any of the powers of the High Court, as far as the presiding officer is concerned. So, the theory that there will be interferences from the State level and that the powers of the High Court will be

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some extent, is groundless.

The question now is, what is the purport for which these courts are to be created? Sir, we find that there are a number of cases which appear to be of a minor nature but which have also got ultimate importance as far as the public order is concerned. For example, there are a number of cases arising out of railway offences which are on the increase. The railways have a continuous jurisdiction passing through various districts. *(Interruption)* I have not interrupted you. Whatever questions you have asked, I am just trying to reply. So, to meet certain exigencies created by railway offences, where the offences can be traced from one district to another district and the jurisdiction can be overlapping, to meet such circumstances we require sometimes special courts. Then the second category is that of, say, offences of traffic. This is a sort of enabling provision. We are not here making an exhaustive list.

(Interruptions)

SHRI AMARPROSAD CHAKRABORTY: No need of special courts. A wrong argument.

SHRI S. D. PATIL: The question is, these cases require to be dealt with immediately. So the question of exclusive jurisdiction assumes importance. So railway offences and traffic offences are covered. We can even include atrocities on Harijans and Girijans and also minorities. Then there are vigilance cases, CBI cases, State excise offences, food adulterations and offences of a similar category. We can also include here offences where the extent of the offences may have relevance to more than one district, may have inter-district relevance. So such types of offences are covered.

SHRI AMARPROSAD CHAKRABORTY: With all respect to the Minister, under the Excise Act, there are provisions for trial by magistrates. *(Interruptions)* He is misleading.

SHRI KHURSHED ALAM KHAN: On a point of information.

SHRI S. D. PATIL: I do not yield.

SHRI AMARPROSAD CHAKRABORTY: Under the Railways Act, Magistrates are there. Under the Excise Act, Magistrates are there. There is no need of special courts.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): That is all right.

SHRI AMARPROSAD CHAKRABORTY: He may say that it is necessary. That is one way of argument. But there are other Acts and under those Acts, Magistrates are there. *(Interruptions)*

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): Mr. Minister, you are to conclude now.

SHRI S. D. PATIL: It says:

> "One or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases . . ."

So they are confined to a particular case or a particular class of cases. So, I think there is nothing which causes any inroads on the authority of the normal courts.

Now, criticism is also levelled against the provisions contained in clauses 4, 5 and 6. It is alleged that they infringe upon the rights of the judiciary. I am not able to follow the argument as to how they infringe upon the rights of the judiciary because here what is tried to be done is that in the original section 13, to the words "of the second class", we are adding the words "of the first class or". So no erosion of the power

of the judiciary is thereby caused. Only we are making certain provisions . . .

SHRI BIR CHANDRA DEB BURMAN: You can appoint any person to this class.

SHRI S. D. PATIL: If you read section 13, it empowers the High Court.

> "The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds. . ."

So the power to confer any rights or any powers rests with the High Court. So, there is no question of erosion. Only if the State Government requests, then alone the Central Government can Act.

Now coming to Clause 8 about appointment of Public Prosecutors and Assistant Public Prosecutors, the difficulty arose since there were certain vigilance cases, cases under the anti-corruption law, CBI cases, etc. where the Centre has to send its own prosecutors. The Centre has already got a panel of prosecuting officers. The question was why there should be two sets of public prosecutors. That was because the cases or the persons involved from the Central Services are of a complicated nature and persons who are on the panel of prosecuting officers, those who have maturity and experience, they alone are competent to deal with them. Even earlier this provision was there. There are certain States like Haryana, Punjab and others where they have got their panels of prosecutors. So the difficulty arose. In earlier cases if there was a reference to the sessions judge, in consultation with the sessions judge, the panel of public prosecutors was to be prepared. Then these persons were left out. In order to cover such cases also the panel is now to be made both from the cadre of the particular State or in consultation with the sessions judge. This has been done in order to cover such cases.

Then a question arose whether we are substantially changing this law. One honourable Member criticised and asked why we wanted to make this 7 year and 10 year rule. As you all know, public prosecutors at the district level have to handle many important cases in sessions. They must be men with experience and sufficient maturity and sufficient knowledge. Even in the earlier provision this was there: sub-section (5), section 24:

> "A person shall only be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) if he has been in practice as an advocate for not less than 7 years . . ."

And for a Special Prosecutor it was 10 years. So, this is not a new thing. I am sorry, the honourable friend on the other side has got a long experience as a criminal lawyer, but he has not cared to see that particular portion or the provisions of sub-clauses (5) and (6) of Section 24. . .

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): Please be brief now.

SHRI S. D. PATIL: But, Sir, if I do not deal with all the points, I may be charged with having skipped certain things. However, I shall try to be brief.

Then, Clause 11 has been bitterly criticised by several Members as to why a surety is insisted upon now. Sir, the experience of the working of the 1973 Act has shown and it is the demand of the State Governments that they cannot deal with persons who are involved in committing breach of peace and order. It is not as if this is being used against political persons. But the law and order situation demands that unless a man is bound by a surety, he is likely to create trouble. The point is—whether it was there earlier or not is not the question—when there is insistance

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on behalf of the State Governments that they cannot keep law and order in their control, is it not fair to concede their request? In fact, it was the earlier Government which did this. However, the question is not whether the earlier Government did this or somebody else did this. When in the interests of law order a certain demand is made for this provision by the State Governments, then we should not shudder in accepting it.

Then, Sir, a lot of criticism has been levelled against Section 167 as to why the investigation is not completed within 60 days. There is a provision for releasing a person on bail. Why do we want to extend it by thirty days? We have made two categories. Ninety days are applicable where the investigation relates to an offence punishable with death,—there are eight offences punishable with death—imprisonment for life—we have 48 offences punishable with imprisonment for life—or imprisonment for a term of not less than ten years and we have 36 offences punishable with this sentence. Only in such cases which are complicated in nature investigation takes a longer time. To complete this kind of investigation, one has to go to other States as well. This has been our experience. As one in charge of CBI I have come across several, most important cases where the investigation could not just be completed within the stipulated time in spite of our anxiety to complete it. Whatever may be the efficiency of the Police, we cannot do it because of the complexities of offences in this modern world. Therefore we have to give some scope for the investigating machinery to complete the investigation as far as possible within the stipulated time. Otherwise the accused is detained. It is not as if he is detained without any reason. A person involved in such serious offences will not be detained without any substance. There will be *prima facie* edident against him.

Then criticism is levelled against Section 2A where Executive Magistrates are empowered to give a remand upto seven days. This provision is limited by two considerations. One is that only when the Judicial Magistrate is not available, and secondly the powers of the Judicial Magistrate should be conferred on the Executive Magistrate . . .

SHRI BIR CHANDRA DEB BURMAN: Who has to confer these powers?

SHRI S. D. PATIL: The Executive Magistrates are part of the criminal courts. In section 6 it is there as to who confers that power. The High Court has power to confer this power. . .

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): Mr. Minister, I am pressed for time. You have to conclude now.

SHRI S. D. PATIL: Lastly, I come to clause 32 which seeks to insert new section 433A. This is in consequence of the deliberations of the Joint Select Committee on the Indian Penal Code. There is some misunderstanding about this provision. The power of commutation under article 72 rests with the President and the power under article 161 rests with the Governor of the State. Only thing is that in certain States the jail manuals are such that the person who has committed a capital crime for which the punishment is either death or imprisonment for life is released within six or seven years. In order to counteract this eventuality, this particular amendment has been suggested by the Joint Select Committee in their collective wisdom. . .

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): That is all right.

SHRI V. GOPALSAMY: (Tamil Nadu): I would like to seek a clarification from the hon. Minister. . .

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): The question is:

"That the Bill further to amend the Code of Criminal Procedure,

1973, as passed by the Lok Sabha, be taken into consideration."

The motions was adopted.

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

Clauses 2 to 35 were added to the Bill.

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

SHRI S. D. PATIL: Sir, I beg to move:

"That the Bill be passed."

The question was put and the motion was adopted.

SHRI S. D. PATIL: Sir, I thank the House for having passed it quickly.

THE MOTOR VEHICLES (AMENDMENT) BILL, 1978

THE MINISTER OF STATE IN CHARGE OF THE MINISTRY OF SHIPPING AND TRANSPORT (SHRI CHAND RAM): Sir, I beg to move:

"That the Bill further to amend the Motor Vehicles Act, 1939, as passed by the Lok Sabha, be taken into consideration."

Sir, while moving this Bill for the consideration of the honourable House, I want to say a few words explaining the main features of this Bill.

PROF. N. G. RANGA (Andhra Pradesh): What is this Bill?

SHRI CHAND RAM: This is a 42-clause Bill amending the Motor Vehicles Act, 1939, and the main feature of the Bill is to provide for reservations for the members of the Scheduled Castes and the Scheduled Tribes and reservation for or for giving preference to the economically weaker sections in matters of permits or stage carriages or public carriers or national permits. Sir, for the members of the Scheduled Castes and the Scheduled Tribes, we have made a provision that the ratio of reservation would be the same as is the case in the matter of recruitment to public services. But, in the case of the economically weaker sections, Sir, this matter has been left to be decided by the State Governments and the State Governments will be deciding this matter of defining the economically weaker sections on the basis of income, whether that income comes from land or from any other sources. But the limit will be decided on the discretion of the State Governments.

PROF. N. G. RANGA: In consultation with the Union Government or not?

SHRI CHAND RAM: No. That is not necessary, because the Act itself says that the discretion is of the State Governments and there are two conditions. If a State Government feels that it should make certain reservations as has been made in the case of the Scheduled Castes and the Scheduled Tribes, it is free to do so. But, if it wants that it should provide only for certain preferences in the case of the economically weaker sections of the society, it is free to do so. So, this is the point.

Sir, in fact, in the election manifesto of the Janata Party, we had provided that there would be reservations in the general sectors also for these people. There is a special sector meant exclusively for the members of the Scheduled Castes and the Scheduled Tribes. There the provision for their upliftment is very meagre and in the last thirty years, Sir, we have seen that that provision has not benefited these sections. Therefore, it has been thought proper that wherever possible we should make reservations in the general sector schemes also. Now, the permits, quotas, licences, etc. are the sectors in which many sections of the people are benefited under the State or Central Government. Therefore,