MR. DEPUTY CHAIRMAN: Now Special Mentions are over. Shri Md. AN Ashraf Fatmi will introduce the Bill.

GOVERNMENT BILLS

The Manipur University Bill, 2005

THE MINISTER OF STATE IN THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (SHRI MD.ALI ASHRAF FATMI): Sir, I beg to move for leave to introduce a Bill to establish and incorporate a teaching and affiliating university in the State of Manipur and to provide for matters connected therewith or incidental thereto.

The question was put and the motion was adopted.

SHRI MD. ALI ASHRAF FATMI: Sir, I introduce the Bill.

The Code of Criminal Procedure (Amendment) Bill, 1994

THE MINISTER OF HOME AFFAIRS (SHRI SHIVRAJ V. PATIL): Mr. Deputy Chairman, Sir, I beg to move:—

That the Bill further to amend the Code of Criminal Procedure, 1973, be taken into consideration.

Sir, the need for amending various provisions of the Code of Criminal Procedure, 1973 has continued to be felt for toning up of the investigating machinery and process, strengthening the prosecution-related machinery, streamlining and improving procedures, especially from the point of view of expediting trial court procedures, tackling problems of undertrials and matters connected with the grant of bail and effective miscellaneous improvements. Accordingly, the Code of Criminal Procedure (Amendment) Bill, 1994 was introduced in the Rajya Sabha on 9th May, 1994. The Bill was referred to the Parliamentary Standing Committee which considered...
the Bill and submitted its report on 28th February, 1996. The report was examined in the Ministry of Home Affairs. The previous Government could not finalise their views on the recommendations of the Committee. Our Government further examined and considered the recommendations of the Parliamentary Standing Committee and based on its recommendations, a list of official amendments to the Bill which has already been introduced in the Rajya Sabha, is being moved. The recommendations of the Committee have been largely accepted.

The thrust areas of the Bill are:—(i) Toning up the investigative machinery and process; (ii) Strengthening the prosecution and related machinery; (iii) Streamlining the improving procedures, especially from the point of view of expending trial court procedures; (iv) Tackling the problem of undetials and matters connected with the grant of bail; and (v) Effecting miscellaneous improvements.

The important proposals contained in the Bill are as follow:—

(i) Prohibit arrest of a women after sun set and before sun rise, except in exceptional circumstances; (ii) Police is being required to give information about the arrest of a person as well as the place where he is being held to anyone who may be nominated by him for sending such information; (iii) Mandatory judicial inquiry in case of death or disappearance of a person or rape of a woman while in the custody of the police. In case of death, examination of the dead body to be conducted within 24 hours of death; (iv) Mandatory provision that if the arrested person is accused of a bailable offence and he is indigent and cannot furnish surety, the court shall release him on execution of a bond without surety; (v) An under trial prisoner, other than the one accused of an offence for which death has been prescribed as one of the punishments, should be released on his personal bond with or without sureties when he has been under detention for period extending to one half of the maximum period of imprisonment provided for the alleged offence; (vi) In no case will an undertrial be detained beyond the maximum period of imprisonment provided for the alleged offence; (vii) Bail and anticipatory bail provisions are being made stringent for hardened criminals; (viii) The State Governments are being empowered to establish a Directorate
of Prosecution under the administrative control of the Home Department of the State; and (xi) Strengthening of legal provisions to ensure peace, harmony and tranquility in the society.

Sir, this Bill has been pending before Parliament since 1994. It has now come before us for its consideration and passing. I hope that these very important provisions will be considered and will be allowed to form a part of the Code of Criminal Procedure.

The question was proposed

MR. DEPUTY CHAIRMAN: The discussion on it will be taken up at 2 0’clock, after lunch.

The House is adjourned for lunch for one hour.

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

The House reassembled after lunch at two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

SHRI E.M. SUDARSANA NATCHIAPPAN (Tamil Nadu): Sir, this Bill was initiated a decade ago. It has been combined with the latest Bill, (Interruptions) But, those amendments are very important amendments. In certain cases, the State Governments have started to have the Director of Prosecution and giving certain administrative powers and also supervising powers to them and other things. But, Sir, in total, we have to find out whether the Criminal Procedure Code and also the Indian Penal Code which are in force from ancient time were practised properly when there is a proper administration at the State level. But, subsequently, when there are changes in Governments, they could not follow the procedures properly, they violated it more often. For example, we can take section 46. In this section, the procedure is given when a person is to be arrested and when the procedure should be followed. It says that save in exceptional circumstances, no woman shall be arrested after sun-set and before sunrise and where such exceptional circumstances exist, the police officer shall, by making a written report obtain the prior permission of his immediate superior officer for effecting such as an arrest. This is for the purpose of arresting a woman. But, this should also apply to a man. Because you know the incident of arresting the former Chief Minister of Tamil Nadu.
Kalaigian Karunanidhi was arrested at midnight. Even though he is a very elderly statesman, he was arrested at mid-night for a simple offence. He was arrested at mid-night, as if he was going to escape from the clutches of the law. So, this type of misuse of the legal process is now happening.

SHRI P.G NARAYANAN (Tamil Nadu): It is not a misuse... (Interuptions)...

SHRI E.M. SUDARSANA NATCHIAPPAN: And the latest incident is that of the Shankaracharya of Kanchi. He was also arrested at mid-night. So, all these incidents are very easily quoted to show how the legal process is misused by certain people, when they are in power. At the same time, when they were in the opposition, they were crying that they were penalised by the misuse of the law. Therefore, Sir, in future also, State Governments may misuse the law. They should follow certain principles. Therefore, this enactment has to be amended, then and there. But, in totality, these amendments are coming after a gap of about 10 years. One set of amendments was proposed ten years back. Subsequently, another set of amendments is placed before the House now. In the meantime, a lot of changes have taken place in the circumstances. In such a situation, a comprehensive amendment should be brought before the House, so that we can take care of the change of circumstances which has happened in the last ten years.

For example, I am taking section 46. This section gives protection to women. No doubt, a woman should be protected. But, at the same time, men should also be protected. As changes in circumstances have taken place, it has to be looked into when a new Bill is brought before the House.

As far as other things are concerned, I would like to say this. How a rape accused should be examined, etc., all these things have been made according to the judicial pronouncements. But, now it is included as part of the Criminal Procedure Code. This is a welcome thing. There are many other things. Section 320 states that in the course of an investigation, a report in writing to the officer in-charge of the police station expressing his desire to compound the offence as provided in the said section. This particular section of allowing the investigating officer to record a statement of compounding the offence in the first instance, after knowing that the accused is ready to compound the offence, in one way, it can be misused very easily because the accused may not have the intention at that time.
Only when there is a charge-sheet before the magistrate and when he appears there, he may feel that the situation has arisen that the complainant will come forward for compounding the offence. But, if we allow like this, the first part itself is made to be the person who admits the offence, even before the entire process of investigation is over, the charge-sheet is filed, the magistrate has taken the cognisance of the case, the file was taken to the magistrate's court and then the summons were issued or the summons were issued to the witnesses, especially the first witness who has complained.

When he or she comes before the court, then only compounding of the offences will come. But here, at the initial stage itself, powers were given to the police officer and that is not a good thing. Very easily, the police officer, who is not at all properly trained, would misuse. It may be a blank allegation, but why this type of request to the Government and on that basis, the amendment is brought up. The prosecution agency, as also the police should adopt modern techniques, but they are following the same colonial methods of threatening the witnesses and accusing the witnesses, and keeping the accused in their illegal custody, not producing them till they extract certain evidence from them, or attempting certain part of evidence and such other things. Therefore, when we are allowing the prosecution, especially the police to have more powers, it will become a police-raj. Nowadays, even in a democratic set up, they are giving importance to the police and not for the development of the State. I can very easily cite the example of Tamil Nadu, where they are giving more importance for police cases. They are threatening everybody, even in the Shankaracharya case. He may have been involved in some case, but ...(Interruptions)...

MR. DEPUTY CHAIRMAN: Mr. Narayanan, let him speak. ... (Interruptions) ...

SHRI E.M. SUDARSANA NATCHIAPPAN: Sir, he can very well speak what he wants to say when his turn comes up. ...(Interruptions) ...

SHRI P.G. NARAYANAN: Sir, he was a manager of the Mutt. ...(Interruptions) ...

MR. DEPUTY CHAIRMAN: When your turn comes up, then you speak. Please sit down.

SHRI P.G NARAYANAN: Sir, he is misleading the House. ...(Interruptions) ...
SHRI E.M. SUDARSANA NATCHIAPPAN: The Chief Minister companion's husband ...(Interruptions)... He was also charged with the possession of ganja. The adopted son of the Chief Minister was also prosecuted under the Narcotics Act for having possessed ganja. The police in Tamil Nadu has become ganja police; whenever you want to prosecute someone, if you want someone not to come out of jail for a year...(Interruptions)... I am not yielding. Why don't you reply in detail when your turn comes up, Mr. Narayanan?

MR. DEPUTY CHAIRMAN: Mr. Narayanan, are you speaking on this Bill?

SHRI P.G. NARAYANAN: No, Sir, but unnecessarily he is charging the State Government and the police. The police arrested the person who has actually committed the crime. ...(Interruptions)... It is unfair. ...(Interruptions)...

SHRI E.M. SUDARSANA NATCHIAPPAN: That will be decided by the courts. Why I am taking this example is, particular modus operandi is adopted in respect of others. Is this applicable for the persons in power in the State Government also? When such is the situation, you are giving more and more powers to the police. Then, the democratic set up would be questioned.

Therefore, I request you to be more cautious when you are giving more powers under the Cr. PC. I would like to know if it would not be misused. In these circumstances of misuse, what is the protection? Now, courts are already burdened with so many cases. Already, the pending cases are crossing more than 2 crores-mark at an all India level. In the High Courts also, more than 1.5 lakh cases are pending in each High Court. In such circumstances, we cannot depend on the judiciary for an immediate remedy; that also would take a long time.

Therefore, giving more powers to the prosecution is not at all advisable. Also, even in the compounding cases, we are giving powers to the prosecution, to send the report to the magistrate. Then, the accused cannot retract from that. He has to follow the same thing which is already written to the concerned magistrate. In the same way, regarding the bail provision, there are some new amendments to sections 436, 437 and also for anticipatory bail, in section 438 the procedures are laid down.

It is a welcoming process because indiscriminately certain courts are
giving anticipatory bail. That itself bypasses the legal process. There a clear direction is being given with regard to the nature and gravity of the case of accusation, antecedents of the applicant, including the fact as to whether he has previously undergone imprisonment and has been convicted by a court in respect of any cognizable offence. All these are a welcome step because already judicial verdicts are there on this aspect. Regarding the first part of this amendment which is related to the punishment for knowingly carrying the arms in any procession, I would submit that it is a welcome step because it becomes a valour to show arms in their hands when they are going in a procession. We can see very easily in the media that many persons, who are participating in processions, carry arms to threaten crowds and also to threaten the civil population. That is also a very welcome step. In the same way, clause 174 is also there for amendment. This clause is regarding non-appearance in response to proclamation under section 82 of Act 2 of 1974. This also is a welcome step. Many of the cases are pending for years together simply because one accused is absconding. A proclamation is issued. Even then the accused is not appearing at all before the court. Therefore, the cases are pending and accumulation of cases can be very easily settled by this method for further punishment. Regarding another amendment, that is, the Criminal Law Amendment Bill, 2003, it is giving a very new appearance in every aspect. But I would just like to submit one point that the Constitutional guarantee which is already given in article 20 (3). I will read out that portion for your appreciation. It says that no person accused of any offence shall be compelled to be a witness against himself. This Constitutional guarantee is now bypassed by allowing the prosecution to get a statement from the accused even at the investigation stage itself. I feel, Sir, it too much upon the powers being given to the prosecution. Sir, as the basic law says, the criminal law says, many real accused may be acquitted but no innocent should be convicted. Innocent persons can be very easily brought in by this procedure where the new procedure is followed of getting a statement from the accused that he is ready to admit the crime. That is the plea of bargaining. It is a system which is followed in America. There the court is the arbitrator. But here the prosecutor is given the power. The prosecutor moves certain application; affidavits are filed by the accused and then the plea bargain starts to work. By this the police can very easily procure the accused to admit the offence. Sir, we can very easily find that modern technology or modern
scientific methods are not at all properly given to the police administration at the grassroots’ level. It may be at the highest level where a white collar crime is committed that they would have followed these procedures. But at the grassroots’ level where the ordinary citizens are affected by this colonial method of ill-treating them, causing cruelty to them, beating them up, making them to have bleeding injuries and then having some recovery, afterwards, they are shown absconding; and then they are shown as arrested; and they are produced before the magistrate, in such a case, these types of giving statement at the first instance itself and then sending it immediately to the magistrate, that means a person, an accused can be asked to sign a blank paper which the police officers will fill up as they like and then send it to the magistrate. By all this an accused is totally deprived of his own defence in the future case.

Therefore, I feel it goes beyond the constitutional mandate already given for a citizen of India. We have to take it as a criminal case and say that he is innocent till he is proved guilty. I would just like to go on with another section. Section 195 (a) is included where the cognisable case before the magistrate can be straightaway taken up for the purpose of compounding and also the hostile witnesses will be treated and also if the witness becomes hostile, he or she will be appointed for that purpose. Already there is a provision in Section 503 of the Indian Penal Code where it should be a mensrea of parties, where a particular witness wants to turn hostile with the intentions that they want to cause injustice to the prosecution. In such a situation, only they are prosecuted but now even an innocent person—who may be first of all shown as a witness but turned hostile because he may not know about what he has given earlier or in his name what was written earlier—when he goes into the witness box he will be treated as a hostile witness but he has to confess to the imprisonment of three years. That is true and there is no security also to make these innocent people to escape from the clutches of law by this provision. Regarding financial statement, Sir, I would like to suggest that nowadays a lot of cases are pending before the trial courts and also the district level courts and also the High Court. But we are passing so many laws in the Parliament and also in the State Legislatures. But the pressure is on the judicial system. The Judiciary cannot come and plead for their expenditure before the Parliament. The Executive can very easily come before the Parliament; get the consent for having more Budget for them.
But the Judiciary is confined. They have got their own exclusion. At the State level, the State is not giving them enough Budget to care of. The judicial officers are not having proper responsibility. They are not even having any proper courts. Even in Delhi, I have seen in a metropolitan court, a man is working like a machine, sitting from 10 o'clock to 5 o'clock going on pushing the paper one after another without understanding what is inside it. This type of thing is going on. Why is too much pressure given? We can just cite the instance of the United Kingdom and the United States of America where when a law is enacted; along with that law the judicial impact is also included. How much financial commitment will be there? If this particular law has come into force, how many cases are they expecting, how much burden will be upon the judiciary from the bottom to the highest level? That expenditure has to be compensated by that particular administrative department. Now, we normally allow the financial statement to come along with this Bill only when it is produced before the Parliament. After that it is not part of the Act at all. It is taken away when it becomes an Act. Therefore, there is no commitment on the part of the administrative departments when they are making a law. They should have the statistics of how many cases they expect by this, how many violations are already reported or how much violation is going to come, how much financial commitment is going to come to the court and also the prosecution agency. If these statistics are given, then, we can very easily remove the pendency of cases and more judges can be appointed or more evidences can be given. With these words, I support this Bill, but, at the same time, I feel that it needs some more consideration when the real making is going on and also when the guidelines are given to the State Governments. Thank you.

SHRI A. VIJAYARAGHAVAN (Karala): Thank you, Mr. Deputy Chairman, Sir. I rise to support the Bill.

Sir, in our country there is an inordinate delay with regard to hearing of cases. There is a tardy investigating system. There is a cumbersome procedure to try cases. There are lengthy judgements. The paucity of criminal courts and the vacancies of judges are all creating problems to the judicial system. The system prevailing in our country is much old. We had started this during the period of the British Raj. So, naturally, there is an urgent need to overhaul the procedures and the cases have to be settled as early as possible. Hence, these amendments are very much
necessary for a proper criminal system in our country. While supporting the provisions of this Bill, I have some doubts as well.

With regard to compounding of offences, I would say that the Standing Committee also recommended in this connection. I have a doubt. This is the period of globalisation. Even in our judicial system, we are applying the norms of globalisation. While we are diluting the compounding of offences under Section 320, there are some suggestions suggested for investigation in the Bill.

Now, I come to the pendency of cases in courts. There is a provision in the Bill dealing with plea-bargaining—out of court settlement. The provisions of the Cr. P.C. are mainly emphasising for out of court settlement, even in criminal cases. In a country like India, we have to think about the prevailing social system. If we allow out of court settlement, it would damage the poorer sections of the society. Naturally, this provision would be misused. So, utmost care should be taken while making such an amendment to the Criminal Procedure Code.

There was also an emphasis for the expansion of human rights. It is very essential. I would like to congratulate the hon. Minister for taking up this initiative. Sir, according to the National Crime Records Bureau, the number of under-trials in prisons, at the end of 2003, was 2,17,659. A majority of them are booked for petty offences. So, this is the situation. The National Human Rights Commission indicates overcrowding of 32.33 per cent in our jails. Sir, lakhs of people have been put behind the bars. Almost all the jails are overcrowded. The situation is very bad. I had an opportunity to go there. I was in jail. At that time, there were 1,500 inmates, out of its capacity of 500. It was very difficult. So, we should pay pur attention to this area also. There is a proposal from the hon. Home Minister, according to which those who have completed seven years of imprisonment should be given some amnesty. Here, I would like to take up the issue of Mr. Abdul Nasar Madani. This is an issue which is very much relevant to mention when we are making amendment to the Criminal Procedure Code. Sir, this is one of the biggest human rights violations which have taken place in our State. It is a matter of concern to the people of Kerala. If Mr. Madani has committed some offence, we don't have any objection to punish him. But, for the last seven years, he has been in jail. He is not getting sufficient medical care. It is a big human
rights violation. No bail has been granted to him so far. He is not even a prime accused in the case. The feeling in our State is like that. Whatever charges have been made against him, we do not support him. Now, there is a feeling. This case is a very good example of human rights violation in our country. While discussing this Bill, I request the hon. Home Minister to take necessary steps and ensure protection of human rights for Mr. Abdul Nasar Madani. Sir, human rights should not be denied to him. Then, Sir, I come to rape and rape-related cases. It is very good that as per new amendments there is a prohibition on the arrest of women after the sunset and before the sunrise, except in unavoidable circumstances. Here, I would support the amendment in the Bill. While discussing this matter, I would like to say that stringent measures should be adopted to deal with such crimes. The Cr PC should be amended accordingly. Even today we read in the newspapers about the Shanti Mukund rape case. It is pending in the Delhi High Court. In such cases whenever an accused offers to marry the victim, the court immediately adjourns the case. There is a male chauvinism among our judges. It is very much reflected in this case. It should be checked. There should not be any loophole in the cases related to rape or any kind of attack on women. Here, in this Amendment Bill, we are providing new provisions to start a Directorate of Prosecution, and also giving more powers to make appeals. I have a suggestion regarding the rape cases and the cases related to attack on women. If a trial court convicts the accused and the higher court acquits, there should be a provision for automatic appeal. The appeal should be mandatory in such cases. If the trial court convicts the accused naturally they approach the higher court. And, if the higher court acquits the convict, it should be mandatory that the State Government should go for an appeal because such cases are increasing day by day in our country. I give you an example of one such case in my State. In the case of Suryanalli, the accused were punished by the trial court, but they were acquitted by the High Court. But the State Government has not gone for appeal so far. It has to be ensured that an appeal is made in such cases. While we are discussing about human rights, and cases related to rape and attack on women, I would like to say that the Government should take stern action in such cases and the CrPC should be amended accordingly. The rights and prestige of women in this country should be safeguarded. Fortunately, there are some provisions in this Amendment Bill, but still I would like to request the Government to make necessary amendments to ensure that
the rights of women are safeguarded, and such type in instances are checked.

Then, you are giving more authority to the police with regard to confession, statements taken before a Magistrate, etc. I think, it will overburden the Judiciary. The existing provisions in the IPC and the CrPC are sufficient to protect the human rights.

So, these are some of my suggestions with regard to this Bill. I think some more Bills, related to the CrPC, are pending. We have to make necessary changes to expedite the proceedings of the various cases that are pending before the different courts in this country.

SHRI FALI S. NARIMAN (Nominated): Thank you Mr. Deputy Chairman for permitting me to intervene in this very important Bill. I must congratulate the Home Minister for helping to keep the law, especially, the criminal law, more and more civilised. As has been rightly said, we wind up our clocks so that they keep time. So, also, from time to time, we must wind up our laws to see that they move with the times. Unfortunately, the Bill introduced way back in 1994 by late Mr. S.B. Chavan, and vetted by a Committee report of 1996 is, at last, coming up for passing, with some amendments, in the year 2005. Now, Sir, ten years delay in courts is to be deplored and it is very deplorable. But, I think ten years delay in passing a Bill by this House is unpardonable. It is, absolutely, unpardonable because there is an excuse for it. At least, judges have an excuse that ‘oh, we have a very large backlog and so on.’ But we have no backlog. What is the backlog here? Therefore, I would, respectfully, suggest to the hon. Minister not only in his Department, but in every single Department of Government to see that this does not happen. Otherwise, we make a mockery of making the law. In fact, we always criticising the Judiciary, and, rightly, for not speeding up things. Now we have to blame ourselves if we don’t speed up things. Therefore, we must look inwards a little. If the hon. Parliamentary Affairs Minister was here, he could, perhaps, make some notes and tell everybody with regard to each and every Ministry, We must see which are the pending Bills. There is a whole line of Bills, pending since 5-10 years, and, then, we push them into a mill as if it were for being passed in the next session; whatever they are, whether they are of a particular Department, which is headed by the hon. Home Minister, or any other Department.
Having said this, there is one aspect on which I would like to draw his attention. About a week or two weeks ago, I recall that in the Question Hour we had some debate on the Mallimath Committee report in which the hon. Home Minister had intervened. The Mallimath Committee report is a much more recent report. It is controversial in parts. There are difficulties which the Home Minister had pointed out on the last occasion. But I recall that the Chairman, sitting where you are sitting now, had, expressly, said that we can have a debate for half-an-hour or one hour on the Mallimath Committee Report. I would, earnestly, urge upon the hon. Home Minister to have some sort of a debate on the Mallimath Committee report so that we can get rid of the provisions, which are not acceptable to the House. But there are very useful provisions in the Mallimath Committee Report, which I think, we should get passed also as soon as possible. There is no difficulty in introducing another Criminal Procedure Code (Amendment) Bill. The whole idea is to try and improve civilized law of crimes, which is in crying need for repairs.

There are two or three small points, Sir. I welcome the amendment to section 202 for people who make frivolous complaints, especially against persons who do not reside within the jurisdiction of the Magistrate. The Home Minister has very rightly said that the Magistrate must stop and must not issue process unless he himself is satisfied. That is a very, very good provision. But whilst this is correct, there is section 46, which says, “No women to be arrested after sunset and before sunrise.” I would, respectfully, suggest that no person should be arrested except in ‘exceptional circumstances’ after sunset and before sunrise. What is the haste? The other day, we read that in another country, which is a neighbour of ours, a very prominent gentleman, who happened to be the ex-Prime Minister, was arrested at the dead of night. His wife pleaded, “Please don’t take him away at 2.30 in the morning.” But he was taken away at 2.30 a.m. I still recall a judge, a very well known judge, Justice Tendulkar, had said in connection with requisition orders in Bombay that it is dark deeds that are associated with the night and please don’t do anything at night. There is no need, unless there is a compelling reason. If you have a compelling reason, the section provides for it under ‘exceptional circumstances’. ’Exceptional circumstances’ belies any definition. There is no need to define it.
Therefore, why only women, no person should be arrested at night, because we do have some respect for dignity. What is the use of talking about article 21, human dignity, and life and all that if we are not going to incorporate the same in our laws. Therefore, I don’t think that you must only restrict it to women. Of course, I accept that women should not be arrested in the night, but I don’t see why a male person should also be arrested at the dead of night unless there are some absolutely urgent circumstances, for example, fleeing or some such information. So, I would respectfully request the hon. Home Minister to move himself an amendment and substitute the word ‘person’ for ‘women’ and there will be no difficulty in section 46.

I am very happy to see that Mr. Patil has personally looked into various amendments, because I find in 50 (a), for instance, introduced by him, that the moment a persons is arrested,-it is a very useful provision-you must inform the person’s relatives to find out where he is. This is the civilising influence of the criminal law which I greatly admire and respect and I congratulate the Minister for that. I also welcome the guidelines that are now framed for granting anticipatory bail. We get more and more cases of anticipatory bail because there are more and more false criminal complaints, so allegedly false criminal complaints filed or to be filed against various persons.

One last thing, Sir, and that is on section 125.1 ask the Home Minister, is it enough to raise Rs. 500/- for maintenance of a person who neglects his wife and child to only Rs. 1500/-. Remember, section 125 starts with the words, "whoever having sufficient means, neglects his wife and child." Now, if he has sufficient means, please give the magistrate a discretion, because I have known of cases where very affluent people, in various walks of life, belonging to your community, my community and other communities as well, are very stingy when it comes to maintaining neglected wives and children. Therefore, we must give powers to the magistrate. Empower him to say, "not exceeding Rs. 5,000/-." I don’t think that it is such a large amount for a neglected wife to get, if the' means of a husband justify it. That is all I have proposed and I am very happy to welcome this Bill. Thank you.

भी राशिद अलवी ( आंध्र प्रदेश): सर, मैं सरकार को और ऑनरेविट होम मिनिस्टर को मुहाफान करता हूँ कि सीआरपीसी को अमेंड करने का उन्होंने कदम उठाया। बहुत देर से उठाया
[4 May, 2005] RAJYA SABHA

क्योंकि यह 1994 से लेकर अभी तक पैठिंग पड़ा रहा, देर आयाद दुर्खत आयाद। बुनियादी पौर इस समय में जहां चाहिए कि हमारा देश 100 करोड़ की आबादी से ज्यादा बड़ा देश है और इस देश के अंदर इंस्टीट्यूशन और बहुत सारे सिस्टम कालेज करते जा रहे हैं बहुत अद्यतन के साथ कहना बाहर है कि मैं वैल्डम करता हूँ जो सीआरपीएची के अंदर अमेडमेंट किए गए लेकिन इसके साथ- साथ जरूरत इस बात की है कि पूरी कानूनी सिस्टम की ओर से लेकर ऊपर तक, जब तक तब भी नहीं किया जाएगा, तब तक दीक्षा नहीं किया जा सकता। तमाम कामानी बाहर है सीआरपीएची और आईपीएची है या दूसरी कायरैन्स है, देश का जुड़वाहिल सिस्टम सिर्फ इसलिए है कि देश के लोगों को इसका मिलना चाहिए, देश की कानूनी व्यवस्था लोग एंड आईर टीक रहना चाहिए। बीचे 60 साल के बाद आज हम सीआरपीएची के अंदर जो अमेडमेंट कर रहे हैं, पहले भी हम सीआरपीएची और आईपीएची के अंदर अमेडमेंट करते हैं। लेकिन हमने कभी पूरे जुड़वाहिल सिस्टम के बारे में गौर नहीं किया। पूरे जुड़वाहिल सिस्टम को हमें बदलना पड़ेगा अगर हम पूरे देश की व्यवस्था टीक करना चाहते हैं। कमीशन ने जो रिकमेंटेंशंस हमें दी थी, उसके मुताबिक आज की सरकार यह अमेडमेंट ला रही है।

यह बहुत बेहतर है। लेकिन बहुत सारे कामानी इस देश के अंदर, मिसाल के तौर पर पंजाब जेल नेतुजाल के अंदर आज भी लिखा है, जब मैं आर्य कर रहा हूँ इस हादसा के अंदर और वह बात मुझे याद है, मैं लोक सभा में when Advani Sahib was the home Minister, even then I said in the Lok Sabha. पंजाब जेल नेतुजाल में आज भी कानून बना हुआ है कि:

What shall be the uniform of European jailor, and what shall be the uniform of Indian jailor. आज भी लिखा कि, liquor is allowed for foreigners inside the prison, but no for indians. मैं यह नहीं कह रहा हूँ कि इंडियन का है जालरा दे दीए जाए, लेकिन , it is shameful for all of us . 60 साल के आबादी के बाद भी, आज this is the law of the land. युरोपियन जेलर की जिमीफरम बचा होगी और इंडियन जेलर की जिमीफरम बचा होगी। इससे भारत चलता है कि हमने ताजकों नहीं दी है कि पूरे देश के किस तरीके का कानून चाहिए, कोन-सा कानून है जो इस देश के लिए मुताबिक हो सकता है। अंजन्य करते यह लेकिन जो कानून वह हमें देखा जल्द, इसी कानून के ऊपर हम तरफ मार्ग चलते हैं और ताजकी जुड़वाहिलियों उसी पर भिड़ी चलती है। हमने कभी ताजकों नहीं दी, हमें पूरे जुड़वाहिली सिस्टम को बदलना पड़ेगा और जब तक यह जुड़वाहिल सिस्टम नहीं बदला जायेगा तब तक शिपित ही नहीं होगी। इसके बावजूद मैं कहना चाहता हूँ कि इस मीठूदा सिस्टम के बारे में पालिकामंडल की रिपोर्ट है कि पिछले दस साल से, उससे ज्यादा समय से एक लाख 13 हज़ार 444 केरान सिमाउड़ोस टेंटों के अंदर पैडिंग है। मैं वैल्डम करता हूँ जो अमेडमेंट आप कर रहे हैं कि आजो से ज्यादा अगर किसी आदमी ने जेल काट ली है, तो उसकी जमानत दे देंगी चाहिए। लेकिन मैं सरकार से.
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कहना चाहता हूँ कि दस साल से ज्यादा एक लाख 13 हज़ार केलेज कोर्ट्स के अंतर्गत पंडित हैं, जिनका फैसला नहीं हुआ है। इन एक लाख 13 हज़ार के अंदर बहुत से लोग हैं जो बसी हो जायें, उनके खानदानों को क्या होगा? टाटा के अंदर दो सपरसेंट लोगों को सजा दी गई, 98 परसेंट लोग बेगुमाह साबित हो, ये दस-पन्द्रह साल तक जेलों के अंदर पड़े रहे। उनके खानदान तबाह हो गये, उनकी आँखों नहीं तबाह हो गयीं। इसके लिए कौन सम्बन्धशाली है? अपने इसमें अंग्रेज़ी किया है
उसका भी आदि यह होता कि ऐसा ही रूप युज़ॉना किया है, जिस आदि की बेगुमाह बगी किसी वजह के निपटार अगर पुलिस करेगी। मैं बहुत जब्त से कहना चाहता हूँ कि यह एक आदि का अगर पुलिस निपटार करती है, बगी किसी वजह के करती है, बगी किसी जोड़के के करती है और उसके बाद उसों ज्यों दिया जाता है और आर एक हज़ार रुपये का जु़ॉना उस पुलिस आवेदन पर करते है, क्या यह काफी है? क्या इस सिस्टम का अन्न आप करेंगे? जो आदि एक रात जेल में गुज़ार कर आ रहा है, उसकी तामाम सोसाइटी के अंदर, उसकी जो बेजुकजुती हुई है, उसके लिए कौन सम्बन्धशाली होगा? क्या उसका कम्पने किया जिसका चंद रुपये हो जायेंगे। इसके बाद मैं अर्ज करता कि इसको और अंग्रेज़ी किया और सहा से सख़्त सजा का प्राप्त्वान करता गाहिए।

दूसरे मुखों में और हमारे मुख में एक कर्ज है। दूसरे मुखों के अंदर यह सोचा भी नहीं जा सकता है कि पुलिस बेएमानी कर सकती है। यूनाइटेड क्रिग्ड के अंदर, दूसरे के अंदर, अमेरिका के अंदर और गलप कंट्रोल के अंदर, यह सोचा जा सकता है कि बड़े ऑफिस, बड़े लोग, मंत्री लोग, प्राइम मिनिस्टर हिल्स के अंदर कोई बेएमानी कर सकते हैं, लेकि जयद कोई भी आदि यह तय नहीं कर सकते कि पुलिस आवेदन पेक्षा बेएमानी कर सकता है, लेकि हमारे देश के अंदर यह बदलने सकता है कि आांता का विवाद पुलिस के अंदर नहीं है। पुलिस के अंदर विविधतगत कम्पन संग है, बहुत लारी रुस्स्टेंड के अंदर है, मैं उत्तर प्रदेश की सिधियॉ इस मात्रे पर बदल नहीं करता बाहर हूँ। जो हालत है, या इस तरीके के फिर सीआरपीसी के रिफर इलेक्ट्रॉन तंत्र में कम नहीं चलने वाला है। सर, सब ऑफिस कोर्ट्स के अंदर 2 करोड़ 27 लाख, 57 हज़ार 893 पूरे हिंदुस्तान के अंदर सवा दो करोड़ केलाज पंडित हैं। सेवा दो करोड़ केलाज को निपटनेंगे देखा समय लगा? सीआरपीसी के इन अंग्रेज़ी से कोई बहुत फर्क नहीं पड़ेगा। टैंडिलिंग केंटे की जो रिकम्बिनेशन है, उन रिकम्बिनेशन पर भी सरकार को बााकर करना पड़ेगा। रिकम्बिनेशन केंटे ने जो 1734 फास्टर्ड कोर्ट्स रिकम्बिन की थी। अभी तक 246 फास्टर्ड कोर्ट्स बनी भी नहीं है। फास्टर्ड कोर्ट्स ने 12 लाख केलाज में से करीब-करीब 6 लाख केलाज को तय किया। इस बारे में इसने जस्टिस कहा बाहर हूँ कि जो तेजी के साथ केलाज का फैसला होता है, तो बहुत अच्छी बात है लेकि इसके अंदर भी कितना लोगों को इससफ निकलता है। ज्यूबीशियारी के अंदर यह जस्टिस नहीं है- इसाक के लिए, जस्टिस के लिए- कि जो केलाज पंडित है, अगर तो करेंगे

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केरिज पैठिंग है तो एक दम उन सबकों खस्त कर दिया जाए। यह कल्त हो जाएगा, ईमानदारी का और ईसाफ का। इसके लिए हमें कोई सरकार निर्देशना पड़ेगा। नारीमन साहब यहां बैठे है। सुप्रीम कोर्ट के अंदर 98 परसेंट केरिज फर्स्त हीरसिंग के अंदर हिस्सेमिस हो जाते हैं। 27-28 जजिज हैं पूरे देश का बोझ उनके कंटों पर है लेकिन इस ईसाफ तो नहीं कहा जा सकता कि फर्स्त हीरसिंग के अंदर 98 परसेंट केरिज हिस्सेमिस कर दिये गए। दो परसेंट केरिज को एडमिट किया गया और दो परसेंट केरिज के अंदर भी नौटिस ईयू किया गया। जब नौटिस के बाद दूसरे पार्टी आई तो उनमें से भी प्रहास परसेंट हिस्सेमिस कर दिए गए। किसी तरीके से आप कह सकते हैं कि आम आदमी को ईसाफ मिल रहा है? ज्युडिशियल सिस्टम इस देश के अंदर या दुनिया के किसी भी देश के अंदर इससे बनाया जाता है कि आम आदमी को ईसाफ मिले, देश के हर आदमी को ईसाफ मिले। मैं यही कहना चाहता हूँ, इस पूरे सिस्टम के अंदर, कि जब तक हम पूरे सिस्टम को नहीं बदलेंगे, तब तक हम इस पर कामयाबी हासिल नहीं कर सकते। सर, मैं ज़रूर कहना चाहता हूँ कि दुनिया के बहुत सारे मुस्लिमों के अंदर, खास तौर पर क्षेत्रिय केरिज के लिए देशी मैं नहीं हूँ। सरफर उन्होंने पुलिस के अंदर एक कर्मना बना दिया है जहां पर क्रिप्सलास को बंट करते हैं। जब बैठता है, मुई भी को हुता लेता है, मुहब्बत को भी बुला लेता है। तभी मरांहो को भी बुला लेता है और एक हफ्ते के अंदर केरिज को तय करने-उनकी परिसमेति दे देता है। अगर कोई अपील में जाना चाहता है तो अपील में जा सकता है। लेकिन हमारे हाल में कोई गुरुत्व तय नहीं है कि कितनी मुदत लगेगी। मुझे यदि है, मैं चीफ जजिस्ट्स ऑफ इंडिया की कोट्स में बैठा था। As I remember it, was in 1993 दस साल पहले 18 एकड़ डिस्यूडिड लैंड का एक केस आया, चीफ जजिस्ट्स के सामने। All of your would be surprised to know that that case was filed in the Subordinate court in 1863 मैं यह केस राइत हुआ था जो सुप्रीम कोर्ट के सामने 1993 में आया और after hearing that case, the Supreme Court referred the case back to the high court on a particular legal point। एक और जजिस्ट्स वाहिंए, एक सारी और वाहिंए इस केस को तय करने के लिए। यह कौन सा ज्युडिशियल सिस्टम है? इसके पहले मैं कहना चाहता हूँ कि एक नहीं जो टिट बनाया जाता है। मैं होम मिनिस्टर साहब से कहेंगा क्योंकि होम मिनिस्टर साहब मैं पूरे तरीके से मुनाफी नहीं है इस सिस्टम से। I can quote चुड़ियास गपे एकी के एक आरामक है, जिसमें उन्होंने ज्युडिशियरी पर कोई लिखी जाती नहीं किया है लेकिन उन्होंने कहा था कि "Judiciary can compel the Executive to perform its duties, but it should not issue executive orders as such. There is a difference between issuing executive orders and ensuring that the Executive performs its duties" जो सीआरपीसी से इसका कोई मतलब नहीं है लेकिन होम मिनिस्टर साहब को भी यह जारी है कि कहीं न कहीं ज्युडिशियल सिस्टम के अंदर गड़बड़ बदल रही है। कोई अकाउंटेबल लैटीटी नहीं है, ज्युडिशियरी की। अभी लोकात्मक बिल पेठ्इंग कमेंट्री के सामने
You will be surprised to know and he was in-charge of the police Station. He was the person in-charge of the police Station.

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Shri Upasamapti: कनकुड कीजिए।
SHRI VASANT CHAVAN (Maharashtra): Mr. Deputy Chairman, Sir, thank you for giving me this opportunity to speak on this Bill. Sir, at the very outset, I welcome the Code of Criminal Procedure (Amendment) Bill, 1994. It was pending for long and it is good that it has come to this House. On page 3, item no. 10, clause 4, “In exceptional cases, the law provides for arrest of women.” Well, I am not against the arrest of women at night time because, particularly I come from Mumbai, and I know among the prominent smugglers, there are some women smugglers today; among the prominent dons, there are some women dons also. Sir, they are operating big gangs. (Interruptions)...

It is a fact. (Interruptions)...

All women are not alike but there are criminal women also. (Interruptions)... It is a fact. (Interruptions)...
SHRI VASANT CHAVAN: Well, Sir, I will convince my sisters with some facts. I will give them papers. I don't say all women are like that but about dons I am speaking. Sir, it is not like that. In law sometimes it is also essential for the general good of the public to arrest women. But this particular provision has allowed the policemen, with immediate superior authority, or, immediate superior officer, to arrest the women. This is risky. A Constable has got immediate superior authority, his Head Constable; a Head Constable has got immediate superior authority, his Assistant Sub-Inspector; and, then an Assistant Sub-Inspector has got his immediate superior authority, his Sub-Inspector.

If this serious decision in Exceptional cases is to be taken, it should not be taken at such a junior level or such a small level. What I would request our learned Home Minister that this level should not be less than the rank of Assistant Superintendent of Police whose prior permission must be required for arresting the women at midnight. Sir, this level should be elevated. While making rules, the hon. Minister may make such rule and should make such rule that it should not be at the level of lower officers who are moving together. The Constable, the Head Constable, the Assistant Sub-Inspector, and, the Sub-Inspector, they all are moving together; they just chat with each other and that becomes a permission. That should not be the provision. It should always be with some superior, senior person like an Assistant Superintendent of Police; he is a person of 40-45 years of age and he understands the gravity of the case. So, it should be elevated.

Sir, you have done good for the women. Can you not think about senior citizens? God knows that time is going to come in future. At least, senior citizens of 70 years and above should also be considered in this clause, and, there should be a provision that for arrest of senior citizens who are more than 70 years of age, some permission should be required. Senior citizens should not be rounded up on the road just like anything because they have passed certain age, their health is a problem, and their activities are also a problem. So, this is what I want to suggest.

Sir, on the same page, item 25, it is mentioned that every police officer
is to inform the relatives of the arrested person, accused person that such and such person is arrested. Information is to be given to his relatives, to his family members or to any responsible person. Sir, it is a good thing. Nowadays, many times, it happens that a person is arrested and nobody knows where he has gone. The relatives don't come to know, the friends don't come to know; they lodge another complaint of missing of that person. They can't arrange for any legal remedies for that. This is a good thing but there is no time limit in this clause. It should be informed to the responsible person, relatives or friends whosoever he names for, but police has got no time limit within which they should inform. Sir, in' law it is prescribed that if a person is arrested, he should be produced before a court within 24 hours. So, there should also be a limit of at least 24 hours. If a person is arrested, within 24 hours, his family members, his relatives or his nominees should be informed so that they can do some legal remedy. Or, if his health is not proper, or, he is undergoing some treatment, they can inform the police that such and such person has been arrested, and he has got such ailments, so, take care or anything like that. Sir, I again want to speak on one point, that is, on page 12, item no. 41, Section 436. A new section is being inserted. It is a very good thing, a very good sense, in the procedure of giving justice. This is totally a new concept, a new idea that if a person is detained, because it happens many times, that a person is arrested and the final punishment to the person is one month simple imprisonment. But, for inquiry matter, he is detained for two months. After two months, the court gives him one month's simple imprisonment. Actually in law and justice, detention itself is a simple imprisonment. When a person is detained, he is not allowed to go anywhere; his activities are restricted. It is simple imprisonment. So, where the final punishment is simple imprisonment, he is already under detention. He has now come with a good clause that if a person is under detention, he should not be under detention for more than one half of the time of the final punishment. (time-bell) Suppose a person is to be punished under the law for the month, then, he should not be under detention for more than 15 days. It is a good idea. It is a good clause. But, where would you compensate it? That is not written in the law. When you undergo punishment in jail, your days are reduced after some time. Every year also, it is reduced on good conduct and you get the benefit. But, if he is in detention for 15 days and the final punishment is for one month, he is allotted one month, then, these 15 days should be reduced from the 30
days of punishment. So, some such equation should be there. If he is going to be given a rigorous imprisonment, then, you may reduce one-fourth. But, if it is simple imprisonment, you may reduce the same quantum which he has already suffered for matter of inquiries in the police custody or magistrate custody. Sir, these are some of my suggestions. I welcome the Bill. I think, the hon. Home Minister would consider them. Thank you.

SHRI N.K. PREMACHANDRAN (Kerala): Thank you very much, Mr. Deputy chairman, Sir. I also welcome the proposed amendment to be incorporated in the Code of Criminal Procedure, 1973, and, hence, I support the Amendment Bill. Sir, as has already been cited here, this Bill has been pending since 1994. This Bill is drafted on the recommendations of the Law Commission, National Police Commission, headed by Mr. Dharamveer, and also the observations made by various courts and suggestions from various State Governments. After having a long thought, this Bill had been brought in the year 1994. As just now mentioned here, we could have a discussion after a decade, that is, in 2005. Before entering into the Bill, I would like to make a submission to the hon. Home Minister. When the National Police Commission's Report is being partly incorporated in this Bill, I would like to suggest that most of the recommendations made in the National Police Commission's Report are not being implemented either by the State or by the Centre. So, I would like to take this opportunity to request the hon. Minister to look into the National Police Commission's recommendations and to see that those recommendations are implemented in proper form. That is my first request to the hon. Home Minister. Sir, now I come to the amendments. One is regarding arrest. It is well explained here. Detailed discussions took place regarding arrest. It is there in Clause 7 and Clause 8 of the proposed Amendment Bill. It is said that all persons, except women, can be arrested after sunset and before sunrise. Now, an exception is being given to women. We are discussing all these matters in this House, so the discussion should have an impact. So many official amendments come from the hon. Minister, from the Government. I would request the hon. Minister to make an amendment so that this provision may be made applicable to senior citizens also. Then we will think of the next phase of widening that base. Let an official amendment also come today with the consent of this House so that this discussion will have an immediate impact on this Bill.

Sir, now I come to the issue of examination which is contained in.
Clause 10 and Clause 19 of the Bill, that is, amendments to Section 53 and Section 164 of the Cr. P.C. Section 53 is to be amended as Section 53A, and Section 164 is to be amended as 164A. Both these amendments are in respect of examination of the accused in the case of a rape and examination of the person of the woman who is subjected to rape. Now, a new amendment has come regarding medical practitioners. The present practice is to have a qualified doctor in a Government hospital. It is now being liberalised. Now, any Registered Medical Practitioner is sufficient to examine the person of the accused as well as the person of the woman who is subjected to rape. Sir, my apprehension is that this provision will be misused. Because a registered medical practitioner can be a Homeopathic registered Medical Practitioner, and Ayurvedic Medical practitioner can also be a Registered Medical Practitioner, here, I am subject to correction. I want to know whether in a rape case, medical examination either by a Homoeopathic Registered Medical Practitioner would be sufficient. I want to seek clarification from the hon. Minister in respect of a registered medical practitioner. There is every chance of this provision being misused by police officials, they handle these cases in an improper way.

The third point is regarding the amendment is respect of custodial rapes and custodial deaths. I fully welcome the amendment brought forward by the Government. Now, this has become a usual thing. Some days back in my hometown, one young boy was taken to custody on the allegation of theft of a mobile phone, and he was killed in the custody. Agitation is still going on in my hometown. It was the case of Kolol East Police Station. Now, if this amendment is there, definitely, a judicial inquiry will be there. A mandatory provision is there to have a judicial inquiry if there is a custodial death or a custodial rape. It is a welcome amendment to be incorporated in the Cr. P.C. so that the human rights will be protected, especially in the custody. Strikes, agitations and every such thing can be avoided by way of this amendment. I strongly welcome this amendment.

Sir, my next point is regarding Section 436. This Section is to be amended as Section 436A by virtue of Clause 41 of this Amendment Bill.

Sir, once again, I refer to the case of Mr. Abdul Nasar Madani. As per this amendment, if he is detained, without having bail for half of the maximum period of imprisonment specified for that offence under that
law, he should be released on bail even on his personal bond or with or without sureties. This is a very good suggestion. As far as Mr. Abdul Nasar Madani is concerned, he is in jail for the last seven years as an under-trial, and the trial has started now. I do agree. And what will happen? I would like to put this question to the whole nation about our judicial system. Suppose after evidence, examination and everything, Mr. Abdul Nasser Madani is found to be innocent, then who is responsible for his custody in the jail for the last seven or eight years? This is a pertinent question. Even Mr. Abdul Nasser Madani has not been allowed to attend the last rites of his grandmother. So, that is the judicial system which is there. My suggestion is that some drastic amendments are also required to meet this situation. Not only Mr. Madani’s case, but so many other cases are also there. These under-trial prisoners, after evidence, examination and everything, the court finds that he is not guilty and he is being released. That situation we have to meet. This is happening in our judicial system. Also, the other case which has been mentioned here, the Shanti Mukund Hospital rape case yesterday. I am not going into the details of the verdict and all these things. After all these things, the Delhi Sessions Court has found that the accused is guilty. After the pronouncement of the quantum of the punishment, the accused is ready to marry this girl. The nurse is aged 22 years whose eyes are brutally hurt by this rape and all these things are being done after two years. When the quantum of punishment is to be determined, the petitioner came to the court and the magistrate is asking the family members to come and attend the court to respond to the petition. After doing all these things, what is the meaning of it? So, there should be some clear-cut observations (Interruptions)... I am surprised to hear the verdict or the observation of the court. I am not quoting it. But it is quite unfortunate to see such incidents after the rape. This is creating a new precedence in our country that after committing the rape, if he is ready and willing to marry the girl, the quantum of punishment will be reduced. That observation has also come from the court. That is reported in the Press. Its observation is that if you are ready to marry the girl, definitely the quantum of punishment will be reduced. So, this has to be checked. This is my suggestion. And also, Sir, regarding the Director of Prosecution, most of the States have implemented and the States are now empowered by this legislation that they can have Director and Deputy Director of Prosecution. Also, there is some conflict between the Director of Prosecution and the
Advocate-General. So many conflicts are there. Sir, as far as the criminal matters are concerned, the opinion of the Director of Prosecution shall be given due respect and weight.

Also. I want to make one more suggestion regarding the custodial deaths and custodial rapes. The Standing Committee on Home Affairs has recommended a very good suggestion, that is, if a custodial death or a custodial rape has taken place, definitely it is the bounden duty of the Government to pay compensation to the dependents of the deceased or the dependants of the victim and also a Government job has to be given. That is a recommendation which the Standing Committee Home Affairs has made in respect of this Bill. And also, I would like to suggest that that amendment may also be made an official amendment in this Bill, so as to make it work in a full-fledged manner. With these words, once again, I take this opportunity to congratulate the Minister as well as the Government in bringing forward such new and reformative amendments to the Criminal Procedure Code. With these words, I conclude. Thank you, Sir.

MR. DEPUTY CHAIRMAN: Thank you. Shrimati Ambika Soni.

SHRIMATI AMBIKA SONI (Punjab): Thank you, Sir, for allowing me to briefly intervene on this Criminal Procedure (Amendment) Bill, 1994. Sir, since 1994, there has been 11 years’ delay. I believe the Standing Committee cleared the amendments as early as by 1996. But for one reason or the other, successive Governments have either taken it up or deferred discussions. The fact remains that 11 years’ delay has really meant in this case is justice being denied to so many. But I congratulate the Home Minister for the amendments he has brought before the House today. A lot more has to be done, but, nevertheless, a good beginning has been made, a beginning in showing that law can be made more gender sensitive.

We might just wonder that forbidding the police authorities not to arrest women after sunset and before sunrise, except in very exceptional cases, is a very small sensitivity being shown to them. I wish, along with this, Sir, you had also decided to bring in a part of this amendment that women should be tried in camera always, and only women should be asked to be around women when women are arrested. But, nevertheless, I would also like you to kindly consider that when you talk of exceptional cases where women also could also be arrested after sunset and before sunrise, it
should not only be sufficient to take the permission of one person senior to the man making
the arrest. The earlier speaker has said that it is very often that two ranks are travelling
together. So, one senior rank, probably, would not be enough for exercising authority in a
transparent manner. I wish you would name an authority, higher than the immediate
senior, to take permission from if a woman has to be arrested after sunset. I
congratulate you that by way of these amendments, you have made an attempt to bring
about greater transparency, the amendment of setting up a Directorate of Prosecution,
whereby, you would have a collegium of people in authority to cooperate, and interact with
police. This would, to my mind, eliminate,—I am not a legal person, I am an activist—to a
very great extent, charges often make that at a lower level, prosecution is not always
transparent. Sir, you have also brought about amendments where you would bring about
greater accountability. You have talked of custodial deaths, rape while in custody, those who
abscend while they are in custody, you have laid down an authority that of a magistrate to go
into or make inquiry into these cases. Certainly, I feel that this is a step which Would
increase accountability, and would be more fair. Sir, I must also congratulate you for one thing. In
response to a question I asked during the Question Hour earlier in this Budget Session of
Parliament, when I had asked you as Home Minister, would you consider releasing all those
people and my question was in direct reference to the young Punjabi youths, who have
served more than 14 years in custody, which probably, in most cases, is more than the term
they were going to have or be indicted for, in some cases, more than a life term, and while
answering my question, you had promised that you would favourably consider this appeal. I
would like to congratulate you that in your amendments, you have spoken about people who
can't afford to pay bail, to be released after they have served half their term of punishment on
a self bond. But more than that, you have also spoken of those who have gone through
their entire term or what could be their entire term, to be released. Sir, when you brought this
amendment, I would now like you to please expedite this whole process, and let those young
people, who are rotting in jails, be provided justice. The political atmosphere in this
country has changed even though you continue to hold Punjab as a disturbed area. We
all know that it is not now today a disturbed area.

It is a most peaceful area. I would like you, Sir, to expedite the process
of releasing an those young people, whether they are in the Jodhpur jail or in any other jail across this country, and let them get on with their lives in, what is, today, a peaceful Punjab.

Sir, I would also like to mention here that you have brought an amendment where you have banned or you have authorised authority giving permission to hold public processions or demonstrations, and you have banned the use of weapons. Sir, I would request you to qualify that because there are religious communities in this country, which use what would, probably, ordinarily qualify a weapon, but what is necessarily a part of their religious practices; I mean the Kripan, I mean the talwar, which is often used by the Sikh community as an essential symbol, or as one of the five symbols necessary for their religious practices. Sir, it can be incorporated, or exceptions could be made where they are being used, from times immemorial, as part of their religious sentiments, or certain sizes can be permitted, as was once indicated to a member of the Sikh community, who wanted to enter Parliament with an oversized weapon, the so-called weapon. There was a clarification as to the size to be used. I would like you to look over this clause, a little bit more sensitively, so that it does not hurt the religious sentiments.

Sir, I am not going to take much more time, but I would like to make a few more suggestions which you can incorporate, if not in this very Bill, but in the one which you would bring, hopefully, before the Session finishes! And that is, Sir, relating to some stringent punishments. I would request you to amend the Cr. PC to try, under article 302, that is murder, all those involved in the trade, manufacture and selling of spurious drugs. They kill people. It is murder. I would also like you to try all those people, bring whatever amendments, Sir, as you find, are necessary, who commit rape, also under article 302. They kill the spirit of a woman they rape. I would also like you to try, under article 302, all those people who physically abuse children. They kill a bud before it is allowed to blossom. Sir, in the changed circumstances of this country, these crimes are so prevalent that they affect both the rich and the poor at the same time. This would not only be a very welcome step for the people across our country but would go to prove that the law is the same for all those who kill people, whether they take the life away in physical terms or whether they kill the spirit of the person they abuse in one way or the other.
Sir, I would like to congratulate you for bringing these amendments. It is high time, Sir, that in the last six or seven years we just waited patiently for these amendments to come in. But in the course of one year, Sir, you have brought forward this Bill. I wholeheartedly support it.

KUMARI NIRMALA DESHPANDE (Nominated): Sir, I would like to congratulate, through you, the hon. Home Minister for bringing these amendments, and, as my esteemed colleague, the eminent lawyer, has said that the law should also change along with the changing times, much more needs to be done. But still whatever has been done, though belated, is to be really appreciated.

I would just like to place some of the major facts that need to be given attention to. It is the implementing agency that has much to do. Though we may have very good laws, who is going to implement them? May I just refer to what we experienced two years ago during the Gujarat carnage? Both the police and the Army were there. But when I met the poor women, who were victims, in the camps, they said, "ये फौजी देवता है जिन्होंने हमें बचाया है, लेकिन ये पुलिस नाले जो हैं ये तो राक्षस हैं." The policemen were like devils and the army men were like angels. Both of them are Indians. Both of them I would say, come from the same community or class. Then, why is there this difference in training? I would like to say that in those days, fortunately, the Indian Army behaved in such a way that we could raise our heads high because of their performance. But, at the same time, the police behaved in such a way that we had to hang our heads in shame. A woman in the camp told me that when she was crying for help "बचाओ, बचाओ" the policemen who were standing at a few feet away said, "आज आपको बचाने का आदेश नहीं है." they said, "We have no instructions to save you today". What does it mean? They were not doing their duty. Why? It is because of—there may be other reasons—the difference in training and orientation. What is needed today is to change the mindset of the whole police force in accordance with the changing times.

I may take you back to some of the riots in one of the States. You might have found in the newspapers that Hindu-Muslim riots had taken place. They were not Hindus and Muslims. They were Muslims and police.
It was the police who were killing the Muslims. Why? Because they did not have the mindset that they were there to save the Muslims. So, in the whole country, the mindset of the police force needs to be changed and such kind of an orientation should be given to them that they are protectors of communal harmony, they are protectors of human rights. This difference is possible with proper training and orientation.

I would just like to tell you a small incident. I was touring in a remote area of Kashmir and there was a unit of BSF. Some officers requested me to go there and address them. I asked them, "When you leave this place, what would you like to be termed as? सुशासन प्रदान करते जाना चाहते हैं या बदलूं कैसे अपने याद किया जाएगा?" I told them many things. They were in tears and they said, "None has told us like this before. We are not that people. But we are never told like that", then I realised that it is the training and the orientation that makes a difference. So, I would like to request, through you, Sir, to the hon. Home Minister that this should be taken into consideration. All over India, special efforts should be made to change the mindset of the police. They should treat other human beings as human beings and, especially, with regard to minorities, they should be able to realise that they are there to protect and not to kill. So, some kind of a course has to be devised to give proper training and orientation to the police force. They are human beings. We should train them to do what the Indian Army did in Gujarat. Really, the women, sometimes, wanted to touch their feet. They said, "No, no. You are like our sisters. We are your brothers. We only did our duty". Why did they behave like angels? Why did, I would say, their own community people in the police force behaved in a different way? So, kindly give a thought to proper training and orientation. Thank you.

SHRI P.G. NARAYANAN: Mr. Deputy Chairman, Sir, I welcome this amendment Bill, though it has come very late. There is one important amendment in this Bill that a woman accused should not be arrested in the night. Sir, it is a very welcome provision. Even if an accused happens to be a male, normally the arrest is made in the day time, in normal and ordinary circumstances. But in extra-ordinary situations or under special circumstances, the arrest can be made in the night in order to maintain peace. Actually, it depends upon the accused. Suppose, the accused
happens to be a popular political personality or a high profile religious person, he
should be arrested in the night time to avoid any untoward incident of violence and
to maintain peace.

[THE VICE-CHAIRMAN (SHRIMATI SARILA MAHESHWARI) in the Chair]

Madam, the hon. Member, Shri Natchiappan has referred to the arrest of Shri
Karunanidhi. When he was arrested even in the night, he had created unnecessary and
unwarranted scenes. He shouted at the top of his voice that the police was killing him.
(Interruptions). That scene was allowed to be video-tapped and it was even shown on the
Sun TV. Had he been arrested in the day time, he would have instigated violence and
created a lot of other problems. So to avoid such scenes and to maintain peace, the
arrest was effected in the night time.

There is another amendment that if a person is arrested, his arrest should be
intimated to his relative or to a person nominated by him. This is a very welcome
amendment. All other amendments are relevant and absolutely necessary. I welcome all
these amendments. With these words, I support the Bill. Thank you.
गया है, वह है कि पुलिस कर्त्तवी में जो मौसम हो जाती है या जब बलात्कार के मामले बनते हैं, तब
बदल हो जाकर बनाना होता है, मूलतः ही दृष्टि होता है जब ऐसे मामले बनाए-पाए में आते हैं, और जब
हम ऐसे मामलों के विषय में पढ़ते हैं। जब यह भी महत्वपूर्ण बन जाएगा, तो जनता मदद के लिए कहा
जाएगा मैं समझता हूँ कि यदि एक आम आदमी किसी हत्या का या बलात्कार का अपराधी है, हमसे
भी अधिक सही आपराधिक है कि यदि पुलिस कर्त्तवी में ही इस प्रकार का कोई अर्थ होता है। कई
बार ऐसे मामलों में हम अकसर देखते हैं कि पुलिस के जो लोग हैं, वे उन संबंधित पुलिस कर्मियों
को बचाने में सहयोग देते हैं, क्योंकि उन्हें लगता है यदि उन पर आरोप आता है तो इससे पूरा पुलिस विभाग
कल्पित होगा। यह रोचक गाता है, इस सीख को बदलना जानी के अवसर क्षमा है, किसे वह बाहरी द्वितीय के
माध्यम से हो या किसे भी हो। मैं समझता हूँ कि पुलिस विभाग में यह सीख आने की आवश्यकता है
कि यदि किसी ऐसे केंद्रित व्यक्ति को सजा मिलेगी तो इससे पुलिस विभाग का नाम उजड़ा होगा,
उज्जवल होगा और उसमें जनता का विश्वास और अधिक बढ़ेगा, सीख इस प्रकार की होनी चाहिए,
जबकि ऐसी इसके विरुद्ध बिखरी है।

महोदय, मैं इससे एक उदाहरण देना चाहती हूँ, आठ वर्ष बाद मैं अजमेर से लोक सभा का
प्रतिनिधित्व कर रही थी, अजमेर में एक युवा दलित छात्र नेता धर्मनंद के साथ इसी तरह की घटना
घड़ी, उसे कुछ नहीं था, वह लड़का के अपने दोस्तों के साथ बैठा था और वो लोग बिगड़ गये थे। वो
रहे थे। पुलिस के लोग आए और वो अधिकारी नोट में लिखा था, उसके कुछ कहा-सुनी हुई और उसे
उठाकर एडिटर कर लिखा था। इसी समय उसके लिए पुलिस के हरा इसमें से पीटने के कारण मौका हो गया।
इस सज्जा से बहुत जला। उनका उन्मुख हुआ, दलित समाज में भी आत्मा उच्च और जनता में भी आत्मा
उच्च हुआ। हमें माना की जो वहाँ से दिल आए और उस मामले की जांच हुई, जब तक वो अधिकारी
समझ सके कि वो उस मामले के बाद तुनने में आया। वो अधिकारी वहुत गंभीर और बाहर कर दिए गए। अगर ऐसे
मामलों में संबंधित अधिकारियों को, जो उस समय दोषी हैं, राजा नहीं होती, तो फिर वो उस मामले को जालमहत्ता का
मामला बनाने में लग जाते हैं या और कुछ फाइन है देने लगते हैं, उससे पूरा पुलिस विभाग कल्पित होता है। अतः मैं
मानन्य यह मान जो से यह कहना चाहिए कि इसके लिए सही तरह व्यवस्था होनी चाहिए, सही
तरह व्यवस्था होनी चाहिए, सही प्रकार की पर्योगी होना इसके लिए बहुत आवश्यक है।

कई बार धारा 173 के संशोधन के तहत हम देखते हैं कि जेल में जो पुलिस वाले होते हैं या
पुलिस अधिकारी होते हैं, वे अपराधी को इतना मारते हैं, इसमें एक और संशोधन भी करना चाहिए, मैं
भावी हूँ कि इसमें वे कुछ और भी जोड़ सके। जैसा कि लिखा गया है कि जो पुलिस वाले बलात्कार या
हत्या के अपराधी पर जाएगा, उन मामलों की पहले पुलिस के हरा ही जांच की जाती थी किन्तु अब
व्यावस्था द्वारा ऐसे मामलों की जांच की जाएगी, हम इस कदम का स्वागत करते।

[4 May, 2005] RAJYA SABHA
RAJYASABHA

[4 May, 2005]

है, इससे इस तरह के मामलों में कमी आएगी। इसमें माननीय गृह मंत्री जी एक चीज और जोड़ने के लिए पुलिस के लिए दिया है कि मामलों में कमी आएगी। इसमें माननीय गृह मंत्री जी एक चीज और जोड़ने के लिए पुलिस के लिए दिया है कि मामलों में कमी आएगी। इसमें माननीय गृह मंत्री जी एक चीज और जोड़ने के लिए पुलिस के लिए दिया है कि मामलों में कमी आएगी। इसमें माननीय गृह मंत्री जी एक चीज और जोड़ने के लिए पुलिस के लिए दिया है कि मामलों में कमी आएगी।

माननीय गृह मंत्री जी बहुत संवेदनशील हैं, वे माननीय गृह मंत्री जी से कहना चाहेंगी कि अज कभी मंत्री जी या अन्य किसी भी नेता के पास जाने में इतना अच्छा होना चाहिए है, लेकिन इस बांट वर्णन है कि आज भी पुलिस को देंकर लोग झट रहे हैं, उसे अपना नित्र अच्छे रखने में सक्षम हैं। जनता में पुलिस के संबंध में प्रति विदेश निर्धारित है, जनता उससे दूर रहना और दूर भाग नहीं है। बांट है जिन्होंने इसकी सीमा होनी चाहिए। पुलिस को जनता के संबंध में संबंध है कि आज पुलिस को देंकर लोग झट रहे हैं, उसे अपना नित्र अच्छे रखने में सक्षम हैं। जनता में पुलिस के प्रति विदेश निर्धारित है, जनता उससे दूर रहना और दूर भाग नहीं है। बांट है जिन्होंने इसकी सीमा होनी चाहिए। पुलिस को जनता अपना नित्र समझ, अपना संबंध समझ और उस पर विचार कर कि यह हमारी सहायता बनेगा। यह निधि कहना नहीं है! इस दुर्मिलापण किंग किंग पर विचार करने की आवश्यकता है। तीर्थ है अनुशासित होगा, कारण होगा पुलिस के लिए जुटाने, लेकिन तालिका है उन्हें पानी माननीय मज, उनके संबंध के किसी भी ट्रेनिंग दिया जाने की आवश्यकता है। जो यह एक उपरोक्त किया गया था अर्थात् 46 का संबंध करते हुए कि असाधारण परिस्थितियों में ही महिलाओं को यात्रा में सुरक्षा के बाद या सुरक्षा से पूरा मिलाकर किया जा सकता अन्यथा नहीं। यह एक रामायण योग संशोधन है। लेकिन माननीय गृह मंत्री जी, इसमें यह कहा गया हैं- असाधारण परिस्थिति में है। यह कई माननीय बड़े-बड़े वक्त बते हुए थे, ये जानते हैं इस बात को कि अगर कानून में युगल के बारे में युगल भेद भी रह जाता है तो उनसे एक हां सुरक्षा करता है। माननीय गृह मंत्री जी से कहना चाहिए, हालांकि एक माननीय लोकता ने कहा था कि महिला डाँड़ भी हुआ करती है उनके बारे में व्याख्या। इसके बारे में युगल भेद भी रह जाता है तो उनसे एक हां सुरक्षा करता है। माननीय गृह मंत्री जी से कहना चाहिए, हालांकि एक माननीय लोकता ने कहा था कि महिला डाँड़ भी हुआ करती है उनके बारे में व्याख्या।
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हुआ कि डॉन कौन है और कौन नहीं। तो किसी महिलाएं होगी डॉन। ऐसी बात का सहारा लेकर के 9७ फिसदी या ९९ फिसदी से जबकि वो महिलाएं, जो कहाँ इस उसमें नहीं आती, लेकिन एक लेकिन ऐसा रह जाने से कहाँ ऐसा न हो कि और कई महिलाओं को उस धारा को पुनर्गठन पर, बल्कि होना यह चाहिए कि मानवीय गृह मंत्री, जुड़वां के मामले में भी यह होना चाहिए कि सूचार्य के बाद या सूचार्य से पूर्व यदि निरूपण किया जाता है तो किसी विषय परिवर्तित में ही गिरफ्तार किया जाए। यदि किसी महिला के लिए अस्तांगण परिवर्तित होगा होता है तो उसले व्यापार से आशेष लेने के बाद ही उसे विषय परिवर्तित में माना जाए अन्यथा नहीं, यह म ज्ञाना बाहुंगी अंत, म, म, म ज्ञाना बाहुंगी, मानववर...(व्यवहार)...... पुलिस भालों के कार्यालय में वह भी शामिल है कि रात के दुक रोकना और दुक रोक कर जिस तरह उसने पुलिस भाले वैदिक करते है, इकलेक्टर करते है, तो वह कहाँ हो जाती है कि जब बाहर ही खेत को खाने लगेंगी तो रखवाली कौन करेगा। तो इस बात को सोचने की जरूरत है, इन पश्चात प्रदान देने की आवश्यकता है।

भर्ती डिपो के इस्तेमाल से कई बार होता यह है कि अपनी सोचता है कि मार-मार कर मेरी हत्या हो रही है तो इससे आश्चर्य है कि हत्या का आर्थिक ही कथन कर तो तो यह स्थितियां बनती है। यहां पर कोई व्यापार के किसी संबंध के बिना भर्ती डिपो का इस्तेमाल नहीं होना चाहिए, अंत में, म इसमा ज्ञाना बाहुंगी कि ऐसी विषयवस्तु भूनी है मानवीय गृह मंत्री, ज्ञाना कोई दुर्घटना होने पर या किसी भी कारण से महिलाएं पुलिस भालों में जाने के नाम से ही उड़ती है। अलावा आप देखिए सड़कों पर कितने एक्सेटोट होते है। लेकिन कोई यथार्थ रिपोर्ट लिखने नहीं जाता तथा दुर्घटनाश्रय व्यक्ति की कोई मदद नहीं करता। क्यों नहीं करता? इस रह के मारे नहीं करता कि पुलिस के चर्कर कौन करेगा, पुलिस के प्रेषणों से बचने के लिए ही वह ऐसा सोचता है कि कठी ऐसा ही न हो कि मुझे न फंसा दिया जाए यह जो मदद करने वाले सोचते है कि मुझे पुलिस फंसा देती कि इस रह के मारे पुरुषात्मक हरे में मदद नहीं करना वाले होते है। ऐसे परिवर्तित में बदलाव के लिए मानवीय गृह मंत्री ज्ञाना इसमा और कुछ संशोधन करने का आवश्यकता है। महिलाओं के साथ कोई भी काट हो जाए, क्यों हो जाए लेकिन वे याने में रिपोर्ट करने नहीं जाती, शाम के बाद या शाम से पहले भी नहीं जाना पंदर करती, क्योंकि उन्हें आम आदिवासी से व्यापा खतरा अर्थात याने में जाने से लगता है, या करण है? इस व्यवहार को अप्रत्यय देखिए जाए कि पुलिस अर्थात में यदि कोई भी पुलिसकर्मी नहीं में पाया जाता है, शराब का सेवन करता है, उसकी पूरी दूर्तरियों की जाए तथा उसके हिराफ गंभीर कार्रवाई की जानी चाहिए। यह आम तौर पर होता है, या तो कई बांट वेस्टर्ड इंटरनेट में या किसी दबाव के तहत या शराब के नहीं में या दर्द के नहीं में पुलिस के लोग, पुलिसकर्मी पुलिस कार्रवाई में लोगों पर इतना जुल्म जाते है, जोकि बहुत अनावश्यक हो जाकर सकता है।
SHRI ASHWANI KUMAR (Punjab): Madam Chairperson, thank you for giving me this opportunity. May I at the threshold state that this is indeed an important amendment Bill, the amendment of the Criminal Procedure Code. Madam, I do believe that the Criminal Procedure Code is the fulcrum of the administration of the criminal justice system in this country. And to that extent, it is related directly to the functioning of the police power of the State, which is the ultimate symbol of its sovereign power. We have for long witnessed a very purposeful debate in the country as to the need to civilise the police power. And to the extent that some of the amendments brought before this House seek to do exactly that, I would like in all humility like to commend hon. the Home Minister. I, Madam, have a proclaimed bias in favour of restraint on police power, and, therefor, whatever I am going to submit needs to be viewed as a proclaimed philosophical and personal bias, consistent with the human rights jucispeudence in this country and consistent with the experience of the misuse of power, both of the magistracy and the police Madam, at the threshold, I would like to commend the hon. Home Minister with respect to the proposals he has brought forward in Clauses 24 and 29. These are indeed very significant proposals because we have often witnessed wrongful complaints being filed against persons at far-off places which are ex-facie untenable and motivated. The proposed amendment in Clause 24 seeks to build into the land necessary safeguards and to that extent, these are indeed most welcome.

Madam, clause 29 is, indeed, another very significant and progressive amendment which ensures that in order to reform a convict, the mandatory 14-year period for proposing his release on probation would include the time spent as an undertrial in custody. Indeed, very significant, and in line
with the judgements of the Supreme Court. And, of course, there are a number of other provisions which seek to provide in-built safeguards consistent with the human rights jurisprudence sanctified by a catena of very significant decisions of the Supreme Court. But, I must confess my support and my appreciation for the amendments must come to an end there. I have very serious reservations about many provisions in the amendment, Bill and I would implore the hon. Home Minister to kindly take note of deeply felt sensitivities on the manner in which the Bill has been drafted.

Madam, at the outset, I would like to draw the hon. Home Minister's kind attention to Clause 7. Madam, Clause 7 seeks to incorporate an amendment to section 46. And this is how the Notes on the Clause reads: It says, "This clause seeks to amend section 46 to empower the police officer concerned to use all means necessary to effect arrest including causing death in the case of proclaimed offender under sub-section 4 of section 82." I dare to ask, under what principle of Constitutional jurisprudence or criminal law is it justified for police to cause death merely because the person happens to be a proclaimed offender? An hon. Minister of this House, who for good or bad reasons, was once declared a proclaimed offender. I cannot condone and endorse the suggestion that would enable the police to cause death in discharging a duty to apprehend. On the face of it, it does not read well, it does not sound well and it brings us no credit. I would recommend and strongly suggest that such a provision should be deleted forthwith.

Sir, I next come to clause 14. Again, it is a kind of replica of drafting from the relics of the British RAJ. Clause 14, inter-alia, says if the police seizes property which is of perishable nature and of which the value is less than Rs. 500, you shall auction it. Is it practical to conduct auction of a perishable property which has a value of Rs. 500? Did anybody apply his mind to this? Certainly, not condonable, Sir. There has to be an application of mind, there has to be credibility in legislation which seeks to civilise the criminal justice system of this country. I would request the Home Minister to kindly take note of this and ensure that the seriousness in drafting of a legislation, as pristine as this, is not lost sight of.

Sir, I have a comment on clause 17 which relates to the alimony payable under section 125 of the CrPC. It states that on the recommendations of
the Chief Justices, the alimony amount should be increased from Rs. 500 to Rs. 1,500. I do not think it is a very generous proposal. Rs. 1,500 a month is less than the minimum wage in this country. It must be extended significantly. You have to give a subsistence allowance to a divorced wife or a separated wife; it must be meaningful. You cannot just take the support of the Chief Justices' conference to accept the recommendation as it is. There must certainly be a meaningful subsistence allowance for the divorced separated wife.

Sir, I have a comment on...

SHRIMATI BIMBA RAIKAR: Sir, it should be at least one-fourth of the husband's income because you cannot get the idea of the income of lawyers and doctors as to how much they earn. If he is a Government servant, you exactly know what is his earning.

MR. DEPUTY CHAIRMAN: Please do not intervene.

SHRI ASHWANI KUMAR: May I proceed and make my comment on clause 21, Sir? Clause 21 is a very important clause. It seeks an amendment in section 176. I would like to draw the kind attention of the hon. Home Minister to section 176. Clause 21 says, See 126 is sought to be amended to provide that in case of death or disappearance of a person or rape of a woman while in the custody of the police, there shall be a mandatory judicial inquiry." It is a very wholesome provision. But may I submit to the hon. Minister, how does one know whether a particular offence has, in fact, been committed in the custody of the police? All of us, who have practised politics on the ground know that offences are committed on people while in actual custody of police, but they are not shown on record that they are in the custody of police. So, if you want to make this safeguard meaningful, Sir, you will have to incorporate in the provision the guidelines or specific criteria to say how would you determine or how would you ensure that those who are in actual custody are so recorded in the papers of the police.

Sir, there is then a provision about anticipatory bail—this is section 438. I think this is an extremely important provision. It talks about the conditions in which anticipatory bail will be granted. The hon. Home Minister
may please look, with me, at the way it is drafted, and I am reading from the Notes on Clauses. It says in note (iii) that the presence of the person seeking anticipatory bail in the court should be mandatory. In my respectful submission, it makes nonsense of the provision. All of us know that any one who seeks anticipatory bail, if he is seen moving around, even to go to the Court, is arrested and apprehended. So, his plea becomes infructuous. I am sorry, Sir, it is a bad piece of legislation. It is a legislation that affects all of us. Please look at these provisions carefully, Sir, with request to clause 41—you say that you are inserting a new clause 436 (A) to provide that where an under-trial prisoner other than the one accused of an offence for which death has been prescribed as one of the punishments, has been under detention for a period extending to one-half of the maximum period of imprisonment provided, he shall be released on a personal bond. Why one-half Sir? I ask a simple question. If a man is accused of an offence punishable by 7 years, do we seriously want to tell the people of this country that he can be detained for three-and-a-half years? Not even for three hours should a man be detained ordinarily. Of all one’s rights, the most valuable human right is the right to freedom, right to dignity, right not to be incarcerated. We are willy-nilly providing in the law that you can be incarcerated for years without being convicted. I tell the Hon. Minister the reason appears to me to be that it is physically impossible to bring an end to trial resulting in a conviction or an acquittal, considering the number of cases, and the number of judges. Sir, any reason could be justified but not this. The primary responsibility of the State, which exists for the individual and not vice-versa is to ensure that individual dignity is not compromised through a power sanctified by law. Please see, Sir. This is a matter of great sensitivity. I do not see any logic in the incarceration of a person for half of the punishment which might be inflicted upon him on conviction. Today there are any number of offences for which you could be convicted for years. Does it mean that a person could languish in jail for months and years without trial or Conviction? I am sorry to say, Sir, (Time-bell) that I, consistent with my own commitment to human rights, which I think is my primary commitment, I cannot endorse it. Please do take my observations on record.

My last point is that you have said that section 324 will be made a
non-bailable offence. Every single day, there are hundreds and thousands of instances of simple hurt by sharp weapons. But it is still a simple hurt. Now, if you are going to be making this also as non-bailable, it would only add to the burden of the courts; bail would continue to be denied; and, this would be contrary to justice Krishna Ayer's judgement given as early as 1977 that bail is the rule and jail is an exception. This amendment does not do justice to the salutary principle hallowed by every international convention. Please, Sir, I implore upon you not to push this Amendment Bill as it is. I know it has taken 11 years. Let it take another couple of weeks or two or three months. Please give it your very personal attention. It does not do justice to the spirit that emanates this amendment. With these words, I thank you, Sir.

STATEMENT BY MINISTER

MR. DEPUTY CHAIRMAN: Hon. Members, the Statement by the Defence Minister is listed after the business is over. The hon. Minister wants to make the statement. I would like to take the sense of the House.

SOME HON. MEMBERS: Yes.

MR. DEPUTY CHAIRMAN: Mr. Minister please read the statement.

An article appeared in Outlook Magazine about visit of Justice S.N. Phukan Commission to Pune and other places

THE MINISTER OF DEFENCE (SHRI PRANAB MUKHERJEE): Sir, with your permission I would beg to state that the issue of the Outlook magazine dated 9th May 2005 has commented adversely on the visit of Justice S.N. Phukan Commission to Pune and other places. In this connection I would like to place the facts before the Hon'ble Members.

2. Hon'ble Members may kindly recall that the Commission was looking into 14 items relating to the Ministry of Defence which included:

I. T-90S Tanks

II. Tank Navigation System Upgunning of 130mm Field Guns Krasnopol