

Members were apprehensive about the level of Joint Secretary. Actually, the competent authority or the supervisory authority should be of a higher rank. He should be of the rank of a Secretary or an Additional Secretary, not of a Joint Secretary rank.

SHRI PENUMALLI MADHU: Sir, I want to seek a clarification.

MR. CHAIRMAN: I am not allowing. (*Interruptions*). Please take your seat. The question is:—

"That the Bill to provide for regulation of private security agencies and for matters connected therewith or incidental thereto, to be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

Clause 2 to 25 and the Schedule were added to the Bill.

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

SHRI SHIVRAJ V. PATIL: Sir, I move:

"That the Bill be passed."

The question was put and the motion was adopted.

SHORT DURATION DISCUSSION

On the Report of the V.S. Malimath Committee on Reforms of Criminal Justice System

SHRI JAIRAM RAMESH (Andhra Pradesh): Mr. Chairman, Sir, this is a Short Duration Discussion on the report of the Malimath Committee on reforms of criminal justice system, and I propose to be, well, truly short. Sir, nominated Members often feel left out of discussions, squeezed between major political parties. We have a very distinguished legal personality amongst us today, who is nominated Member. With your permission, Sir, and with the permission of my chief Whip, I forego my right to initiate the discussion and hand it over to Mr. Fali S. Nariman.

SHRI FALI S. NARIMAN (Nominated): Sir, it is a gracious act of Shri Jairam Ramesh, and I must assure all my colleagues here that he has only given me his time and not his party badge.

MR. CHAIRMAN: That I will decide.

SHRI FALI S. NARIMAN: This Report, that we are discussing here today, has a very distinguished lineage. Its author has not only been an eminent Chief Justice of two High Courts, Karnataka and Kerala, but he was senior to judges, who, in my time, became Chief Justices of the Supreme Court, but he himself was never appointed to the Court. I always felt and I continue to feel that the system of appointment of judges both before 80s and after 80s has left much to be desired. It is not that good judges are not appointed; nor, is it that they were not appointed under the pre-existing system or are not appointed under the present system. But sometimes, under both the systems, better judges have been overlooked; so it has been the case with Justice Malimath.

Having said this, the inspiration for this Report under discussion is quoted, at the outset, by the author of the Report. It says, "The law should not sit idle; while those who defy it go free and those who seek it protection lose hope. Sir, those who defy the criminal law do go free especially those we call the big fish or those with big money bags, though we are often shown on television the picture bytes of initial arrests of such persons under the criminal law. There are no pictures to show how they end. We all know how they end! That is, with acquittal, and the victims lose hope. Justice Malimath said, quoting President Venkatraman, that a judge is not concerned with truth nowadays but only with proof, and the Report seeks to remedy this, with a large number of recommendations. I do not know how many of my hon. colleagues read the newspapers this morning. I subscribe to seven of them, and in two of them, the headlines this morning were about a rape that the police could not stop. Shrimati Mohsina Kidwai mentioned about it in the morning. Now, can we foresee a headline in our newspapers one year hence that the law has effectively dealt with cases of a rape or a murder or a terrorist act and that it helped ensure its speedy prosecution and ultimate conviction? the Report, under discussion, visualises such a law and says, "Yes" emphatically.

Sir, in a Short Duration Discussion, the emphasis is on 'short' and not on 'discussion'. This House's capacity for discussion is almost endless, but the Report, I must remind the hon. Members, is already one year old and is already getting mouldy. The Committee was appointed in the year 2000. It spent more than one year interviewing people in all parts of the country. It is a very high-powered committee. So, every discussion really must have a purpose. Sir, the immediate purpose of this discussion, as I see it, is not to express agreement or disagreement on the many, many recommendations that have been made, or, to suggest a new Code of Criminal Procedure on some different concepts of criminal jurisprudence. The report has discussed this also. There are many controversial provisions, as the hon. Home Minister himself mentioned some time ago when a question was put in this regard. But I would, then, request the hon. Minister to have a Bill drafted in accordance with the recommendations of his expert body -- since it is an expert body -- and introduce it. It can, then, straightway go to a Joint Committee of both the Houses where detailed discussion can take place and, then, it can be brought back for quick implementation of only the agreed recommendations. That is the only way in which, Sir, we can do this quickly. And this is how I regard the purpose of this Short Duration Discussion.

Quite frankly, Sir, I wish the Opposition were here because this discussion transcends party lines, and it would have assisted in the debate. I hope they will participate in the Joint Committee when the Bill is drafted and introduced. I do congratulate the Members of the TDP who, while expressing their doubts about the *bonafides* of the Government, have exhibited great faith in parliamentary democracy by coming back to this House. Sir, we participate here not out of any loyalty to any Government, but out of a sense of duty and loyalty to the parliamentary system of Government, which we have adopted out of choice. And whatever our grievances, my own belief is that we have to express them in this House.

In a Short Duration Discussion, we can only make some capsule points, as one of the judges, Justice Bachawat, always used to say. And the capsule points that I would like to make are the following. One, the criminal law and criminal procedure are at the top of the Concurrent List (Items 1

and 2). So, if we in Parliament pass a law on matters included in the Penal Code or the Criminal Procedure Code, we do not require the concurrence of the States and the law we pass becomes the law for the entire country. Two, the Malimath Committee Report is a voluminous report. It is in two parts. And I would urge all hon. Members, particularly the Home Minister, to concentrate on the recommendations in the first volume — there are 30 pages of it — and the Summary of the Responses of the 22 High Courts to the detailed questionnaire issued by Justice Malimath in the second volume which is the distilled voice of experience. There are very pertinent questions and there are very good answers, some of them on the existing system and so on, but mainly on how to spruce up the system. Then, whether lawyers agree or do not agree — and the lawyers will never agree, Sir, neither the lawyers in the Government nor the lawyers out of the Government — we should not bother. We do not need anybody's consent. I would, therefore, suggest to you to introduce these appropriate changes. Let a meaningful discussion take place at the Committee stage, which is really the correct stage. This is not the stage at which we discuss individual matters. Time, Sir, is of the essence. A retired Chief Justice, who retired more than a decade ago, said that the criminal justice system had already collapsed. Another said that it was collapsing. And it was to prevent this that the Malimath Committee was appointed. In fact, when he was appointed, Justice Malimath, who is a very good friend of mine, and an extraordinarily competent gentleman, said that this was the last bus we have; there is no other bus that we can take, because if this collapses and this does not move, then, I am afraid, our criminal justice system will, ultimately collapse. Therefore, it is extraordinarily important, and I am very grateful to the hon. Chairman particularly to have given us this time to give a vent our comments and the points that we wish to make on this Malimath Committee Report. This is only an airing of our views on this Report. It is a very useful Report. I may agree with some conditions; others may disagree with various things, like, whether there is a right of silence for the accused or not and so on. There are some philosophical problems also. But, I would request the hon. Minister to set apart all the differences because we will never resolve them. Let us have a Bill drafted in accordance with this provision; let it be vetted in a Joint Committee of both Houses. Then, there we will see what consensus builds up. And once a consensus builds up, we will get a law. But, it is important to have a law because the state of criminal law in this country, Sir, is extraordinarily bad. I would, therefore,

request the hon. Minister, first, regarding one important problem which the Report also mentions, a complete lack of adequate and competent manpower. There are 2000 vacancies in the Subordinate Judiciary. Out of 13000 judges, there are only 11000. This is because it is the States and State High Courts, at the moment, which are in-charge of the Subordinate Judiciary. There is a crying need, hon. Home Minister, for you to introduce a Resolution in this House, under article 312 which, if passed by a two-thirds majority, will permit Parliament to set up an all-India Judicial Service. Once this is set up, there will be no separate funding for it, and we would not be dependent upon the States which divert funds set apart for the Judiciary for other purposes. It would also help the Centre to monitor a most important aspect of the criminal law, namely, the training of judges. Judges, like Parliamentarians, like everybody, Sir, lawyers and doctors, as well require training, and we constantly require to be updated on various aspects of law, of justice, of how to administer justice. The Report mentions training, and this training, Sir, does not require law, it requires an infrastructure, which I respectfully request the hon. Home Minister, Sir, to set up, along with experts, it necessary, from outside, but we have enough experts in our country, who would be able to train people in order to be judges. In fact, the Supreme Court has just set up in Bhopal an excellent Judicial Academy. I keep telling the Chief Justice that it is very important that when you invite lawyers and subordinate judges, you must ensure that the judges of the Supreme Court also come there. Because only if the judges of the Supreme Court come there, then, the judges of the High Courts will come there. We are such a hierarchical lot, Sir, unless the top man comes, the next man will not come, because he will consider it below his dignity to learn. I think everybody has to learn; we all have to learn. Politicians have to learn; statesmen have to learn; lawyers have to learn, particularly, and judges most of all, have to learn. Therefore, Sir, this is a very, very important thing. This is one of the recommendations.

Now, let me tell you the urgency of a reform of the criminal law. The rate of disposal of criminal cases under the IPC and special local laws, over the last eight years, by courts in our country is dismal. It is a mere meagre 18 per cent. Every single year, it is almost a magic figure, 17.5 to 18.5, roughly 18 per cent. Ever since 1995, this is a record, Sir, the pendency of criminal cases, imagine the pendency, it is easy to talk of pendency, but, do you know what it entails? Pendency of civil cases, of course, means that people wait for a long time for their civil cases to come up. But, here,

they are waiting in jails for their criminal cases to come up because many of them either cannot afford bail or are not granted bail. Therefore, a very large number, 81 per cent of pendency is a very, very large number for any civilized country like ours, particularly. We have to now set the clock right and see what we can do to speed up justice.

Sir, there is one important thing, and here I am not going to be very popular in the other place, which I also visit occasionally. There is a large pendency of criminal cases. The Report recommends long vacations in the High Courts and the Supreme Court should be reduced in public interest. Longer hours for all courts. There are 206 days recommended for work for the Supreme Court, 231 for the High Courts. There is a crying need for this, Sir. As I said, I know, I will be very unpopular elsewhere. But, this is what both the President and the Prime Minister, who almost spoke in quick succession, meant when they said that the judges should sit longer hours in this country, because we do everything by example in India and not by precept. If you preach people about honesty, fair dealing and ethics, no one will listen. But, if you practise, what you preach, everyone will. Therefore, when the President said that the Supreme Court should work longer, he did not mean that the Supreme Court judges are not working hard enough. If any of you go to the highest court on Mondays or Fridays, you would find what an enormous work load there is for each and every Bench. I think, that was the intent that we must set an example from the top. That is what the President meant. If the Supreme Court works one hour more, the High Courts will be compelled to work one or two hours more and so on. And this, what I believe, is imperative.

A few other points, Sir. There are difficulties about the concept of proof without reasonable doubt and so on. I would request the hon. Home Minister not to get into all these. There are three standards of proof in criminal law. One is "preponderance of probabilities;" another is, "clear and convincing evidence;" and the third is, "beyond reasonable doubt. The judges would say that clear and convincing evidence is, perhaps, a little less than 'beyond reasonable doubt.' And that is what the Supreme Court has also said. But, Sir, I think, you should leave that to the judges. The most important part of the report; and I would highly commend that to the hon. Home Minister; is from pages 272-278 and 278 and 279, dealing with investigation of cases and of prosecution. The Malimath Committee Report and 154th Report of the Law Commission require separate investigation wing with trained police

officers, trained in forensic methods of investigation to be in charge of investigation, leaving law and order to be dealt with by a separate and distinct enforcement wing. And this is what was considered essential by the first Police Commission, which Dharmaviraji had presided over and, I think, this has been repeated time out of number. This is, perhaps, our only salvation, Sir, because nobody trusts the police force today for investigation. For law and order; yes, perhaps, in a large way. But for investigation, we have to have very specialist methods, because specialist problems arise, and, therefore, it requires a very, very specialist training. Therefore, please separate these two wings and do that as soon as you can. There are a hosts of recommendations, very useful recommendations in this report which I think should be followed.

The next, of course, is the hostile witness problem. We read about it almost every other day in the newspapers. A group of witnesses comes and tells the police one thing and comes into the court and tells the Magistrate something else. Therefore, in the Criminal Amendment Bill, there is a provision that in crimes of seven years or more, statements are not to be recorded before the police officer, but before the Magistrate. And I said already, we have been running short as, unfortunately, 2000 vacancies are there and we do not have these magistrates. But do not run away with the ideas. The Home Minister must not think that just because you recommend that confessions can only be made before the Magistrates, that they will be really made before the Magistrate. No, people just do not work that way. The lawyers of the accused will tell him he has the right to silence. Therefore, there are different means adopted in other parts of the world, which are recommended here also, namely, an incentive. If, at the first date of hearing before a court the person concerned or the accused, through his lawyer mentions to the court that he pleads guilty to the particular offence, that judge should be empowered to give him a lesser sentence. Otherwise, it is just not worthwhile. Why should he do so, if you are going to give him the same sentence after a prolonged trial, with a lot of money spent and time spent of the State? Then it is no just worthwhile. We have to make this experiment, Sir. I would recommend that this experiment should be made.

I come back to this morning's newspaper—women are half our population. And how do we make the country safer for women? How do we prevent criminal molestation of women? This is a very, very important point. And

that depends upon how we are treating women in our society. And that depends upon the status of the women. And that is the only reason, Sir, why I am in favour of some form of reservation in the legislatures either through political parties or directly by the law. In this country, most of us, most men, are hypocritical when they speak of women's rights. Women say so also, and I do not blame them. We do not mean it at all. We say, "Yes, yes, very good." Every Session we tell them, "This reservation you must have either through the party or through the law." But I know that we would always like them to be subjugated to men. This is the basic problem of crime against women. If you have more women in Legislatures and in Parliament, we would improve the laws with regard to crimes against women, a topic which needs to be addressed and which is also addressed by the Malimath Committee. I do not agree, of course, with the imposing of death penalty in rape cases simply because it brings down the conviction rate. If you take TADA for instance — which punished terrorists with death — and said that confessions to police officers were admissible, despite this, the conviction rate was only 1.5 per cent. Again the police has lost the art of investigation simply because they are in possession of instruments of torture. They may not torture. Of course, they do not torture. But seeing the instruments of torture you would be made to confess anything — sell your grandmother, your mother, the whole family. There is no difficulty at all.

In other countries, as I said, Sir they have devised a system of incentive if at the first hearing before the judge or magistrate, the accused confesses, but not before the police; the law should empower the judge or magistrate to impose a lower sentence. One last aspect which the report has dealt with and which I do wish the Minister to take into account — victims of crime. We can never ignore them. Do they need to participate in the criminal trial? There are two views. One view is that it will lead to vendetta if they participate. The other is that the police prosecution is not good enough. So, at least till we devise a proper system of professional prosecutors who are competent and people of integrity, I think, we should for at least a while permit the victims of crime also to participate, if not in the trial at least at the appellate stage. Introduce a set of these provisions, if you like, only for one, two or three years and see how they work out.

Unlike in England there is no fund for victims of crimes. In the 154th Report of the Law Commission it recommended it. There is no method of compensating victims of crime except through the machinery of Section

357 which is when a fine is imposed, the magistrate may direct that out of this fine the victim should be paid. Now that is at the stage of conviction and conviction comes rarely at the end, and in the meanwhile there is no support at all. I think, this is the duty of every State. In England they have a Criminal Injuries Compensation Board which is non-statutory. I do not see why we cannot also despite our scarce resources have a National Compensation Injuries Board of victims of crime which could be paid out to victims of crime when paying out is absolutely necessary.

Above all, I believe, Sir, the Government has to show that it cares. And I believe the Home Minister cares. This discussion will have achieved some purpose if at the end of it we can have the Home Minister tell us that next month or the following month he will pick up the recommendations of the Malimath Committee as he finds acceptable and translate them into law and present them at the next Session. Otherwise, this discussion would go on endlessly. It would be like the judge who at one stage says the prosecution is right and then after hearing the counsel for the defence says the defence is right and changes his mind again and again. I would say, Sir, please take the leap. The criminal justice system is in need of major repairs and the sooner it is repaired the greater will be the confidence of the people in the Government that undertakes those repairs. Thank you very much.

SHRI A. VIJAYARAGHAVAN (Kerala): Sir, I am participating in this discussion immediately after my learned friend, Mr. Nariman. But, unfortunately, I would like to say that I have some differences with regard to the opinions and views expressed here, although I am supporting some of them. Here, Sir, it is a proposal to change the system, which is prevailing in our country. When we are changing particularly this system, then so many Acts have to be amended relating to CrPC, IPC, Evidence Act, etc. which are all interconnected. Safeguards to preserve the Fundamental Rights have to be taken note of. While going through these recommendations — of course, we are supporting some of the recommendations — there should not be a lacuna; there should not be the burden of so many cases pending in the court room. It has to be rectified. However, when we are discussing about this thing, utmost care should be given because we are not in an equitable society. In our country 50 per cent of the people are poor and backward. They don't have access

to your legal system. Utmost care should be given whenever we are making any drastic changes which are related to the Fundamental Rights of the poorer sections of the society. Here, Sir, one more point I would like to add. The Committee was appointed during the NDA period and the perspective of the Government was different. I have a feeling that some of the recommendations and suggestions in report are reflecting the viewpoints of NDA. I have that apprehension. When it was submitted, the Bar Council had expressed an opinion. They said it was a draconian, undemocratic and an impracticable proposal to amend Section 25 of the Indian Evidence Act on the lines of Section 32 of the Prevention of Terrorism Act, POTA to make confessions recorded by police admissible as evidence in courts. This proposal is a very dangerous one. It will give enormous power to the Police. Here, if we go through the recommendations, in the last two parts, with regard to Sections 161, 162, 164 etc. there is an attack on the Fundamental Rights. That is my feeling because the witness has to sign. Earlier, that was not the condition. In front of the police, if there would be a signature, it means that it would be under some compulsion and again, the statement should be in front of the magistrate. That means there is more role for the police, more role for the magistrate and it has to be applicable to the decision-making of the magistrate. On verdict, it has an important role. So, it is a total change on the existing Evidence Act. Utmost attention should be given here. Nothing should be there against the poor people in our society. There is a possibility when we are changing the existing rules. Recommendation No. 28 regarding judicial custody by giving 15 days to 30 days, suggests more power to the police. Again, charge sheet is for 90 days and then another 90 days given more power to the police. With regard to judicial confession, it gives more power to the police and to the magistrate. I think we are giving more power to the police and I have an apprehension with regard to police laws in the evidence system, in the judicial system of our country. Then, Sir, there was a sharp criticism about the issue of the Right of Silence. It is a very important area. It is guaranteed under article 20, clause 3 of the Constitution of India to the accused. Now, according to the new Section 13 of the CrPC, they are going to be amended. This Right of Silence is missing and it will create a problem. If the accused remains silent or refuses to answer any questions put to him, the court may draw appropriate inference, including adverse inference, as the court

considers proper in the circumstances. This way it is going on. So, at the time of trial, the court can put a question, then, there would be the presumption of the magistrate with regard to the answer given by the accused. He could not keep silent. That means, here also more power will go to the magistrate. His presumptions with regard to the accused will be reflected on the verdict. Therefore utmost importance should be given while implementing this part. Then, the heart of these recommendations is relating to the burden of proof. The basic pillar is going to be changed. So far, we have been following the British system, whatever may be the limitations. Now, there is an attempt—we may use any technical words here — to change this through Recommendation No. 13 of Chapter-V. Recommendations No. 13 deals with presumption of innocence of accused and burden of proof in the criminal trial. The recommendations are for diluting the standard of proof presently insisted upon beyond a reasonable doubt, with proof of 'preponderance of probability' as is insisted in civil cases. The Recommendation no. 13(i) says, "Proof beyond reasonable doubt" presently followed in criminal cases shall be done away with. Recommendation No 13(ii) says that the standard of proof in criminal cases should be higher than preponderance of probabilities and lower than proof beyond a reasonable doubt. So, there is so much of confusion. It is a very important area where we have to change the Evidence Act. In a country like India the burden of proof rests on the State. Now, if we accept this, the onus will be on the poor man. Now, if you file a case against a poor man, the onus is on him. What will be his condition in a country like India? We have a caste-based society. There is a class-based society. There will be a bias and police is meant only for the rich. The police is against dalits. The police is against women. Are you bringing this kind of changes in such a country? Are you giving utmost importance to them? Who is this man? I don't want to say like that. But, while considering the change of burden of proof from the existing one to the American System, pro-US system, have you ever thought of those poor people? The NDA, which was pro-US, reflected their views even in this report. The BJP-ruled Governments are thinking about the Westernisation and giving importance to pro-American views. They are thinking about pro-American economy. They are thinking about pro-American judicial system. They are thinking about the pro-American legal system. They are thinking about -pro-American bureaucracy. And, they are thinking about the pro-American police. What is this? Are you going to implement these view-points raised

by the Malimath Committee in this poor country? You are thinking of only rich people like judges, bureaucrats, businessmen, etc. What about the poor man in villages? This has not been reflected in the report of Justice Malimath Committee. I cannot support this view. This should not be a part of the rule book of this country. There should not be any kind of amendment to the existing one on the basis of this part of the recommendation. Sir, utmost importance and care should be given while you come before Parliament for any kind of amendment on this issue.

Now, I am coming to the issue relating to Section 125. Sir, here, our hon. Member, Shri Nariman, has just said about a rape incident today. Atrocities on women are increasing day-by-day. Dowry deaths are increasing everyday. Self-immolation incidents are going up everyday. As we all know that the Indian woman will not approach court easily. The Indian woman is always loyal to her husband, children and her family. If her husband beats her, she will not say it in public. Normally, the Indian women will not go to court. They will go to court only as a last resort. In America, they will go to court everyday. Indian women will go to court only as a last resort. She will not go to court if she has been beaten for one year. She will go to court only after she has been beaten for 10 years. So, she is getting help from the existing legal system. Justice Malimath and his expert friends want to scrap that part. I failed to understand why such an amendment and recommendation came from him.

Sir, now, I come to section 498. Now they are proposing section 498(a) IPC to the list of compoundable offences. That is the problem. Then, it is also proposed for insertion of a table under section 324 (2) of Cr.P.C. There is violence against women in our country. There is violence against women by the in-laws. There are dowry deaths. But the laws are very strict in this country. That is the only protection to the women folk in this country. Now, they want to scrap that part. That is why, I am saying that there is a BJP conspiracy, anti-women conspiracy, behind it. Malimath put it here. This proposal ignores the fact that there are no other laws in place to provide relief to women, who face domestic violence in our country. So far, we have not passed any such Act to help the women. The proposal undermines the seriousness of the offence. It does not take into account that this is the only provision that may be used by the women facing domestic violence.

[MR. DEPUTY CHAIRMAN *in the Chair*]

The proposal accepts the myth that women misuse the provisions. *(Time-bell)* This recommendation is anti-women. 'Women' means 50 per cent of the population. If you come with this amendment, as recommended by the Malimath Committee, your Government won't be there in future. The Congress party will lose forever. Don't forget this. *(Interruptions)* Yes; yes. The BJP came with this recommendation and they met their fate. They did not even go through it properly. This is a very dangerous recommendation of the Malimath Committee. Sir, if we go through it *(Interruptions)*. If we ponder over the violence against women, death-related issues, burden of proof issue, high handedness of police, women problems, etc., there are many apprehensions about the Malimath Committee Report. Therefore, utmost care should be taken while dealing with this issue. You cannot change the entire judicial system. There have been complaints about judges. I don't want to speak about them. There are problems. Even in the Jaffar case of crime against *dalits*, the system failed to take action against the accused. There are limitations; there are pending cases. I agree with all these things. Let there be reforms, I am not against it. But you should not think that you could change the whole system. The society has to be changed, otherwise you won't be able to change the system. So, utmost care should be taken while dealing with this issue. You should not come with amendments in a hurry simply because there are recommendations from the Malimath Committee. Is that the role of the Government? Tomorrow, if there are certain recommendations by the Disinvestment Commission, then, can all the recommendations be passed by Parliament? The previous Government played such a role, and they met their fate. That is why, I want to reiterate that utmost care should be taken while dealing with this issue. You should think about the poor man. You should think about the women. I would like to say that a system built on highly unjust and iniquitous foundations cannot be reformed by cosmetic treatments, as if it is a fairy land where mighty class and social autocracy, named by police and bureaucracy, act as guardians or angels of the downtrodden. That should not be the approach. You should think about the poor man; about the society; about the unevenness; about the backwardness; about the caste problem; about the *dalits* and the tribals, keeping their fate in mind. Only then you should come with an amendment in the existing system. Don't go by the sermons given by those people who do not know about the poorer sections of our society. With these words, I conclude, Sir.

MR DEPUTY CHARIMAN: There are eight more speakers. I would request them to adhere to the time-limit.

DR. K. MALAISAMY (Tamil Nadu): Sir, it is a fact that crimes are increasing all over the world, and India cannot afford to be an exception. Sir, new crimes are emerging. The *modus operandi* and the methods are changing. As it is, the existing system, and, the present set of laws may not be adequate, so, periodical changes, fresh look, and re-look are needed. In such a situation, it was a right step to constitute a Committee, which would go into the problems of criminal justice system, suggest measures and methods for correction and improvement. As such, a Committee was, rightly, constituted, and it has submitted its report. They have done a fairly good job in identifying the varied problems in the system. They have suggested what best they can do for giving a just, speedy, inexpensive, and time saving justice delivery system to the people. Sir, this is the only comprehensive report, which has come after a period of 150 years. I do not agree very much with Mr. Vijayaraghavan, and I will not say everything is fine. I am always in-between. There are several plus points and there are several minus points in the report. I request the hon. Home Minister to have a comprehensive view on this, and, at the same time, take an objective view of the issues which we are discussing.

Before going into the criminal justice system, I would like to tell you the macro level system in which we are living. Sir, our democracy stands on three pillars of the Executive, the Legislature, and the Judiciary, operating through bureaucracy, and assisted by the Fourth Estate. As it is, the three great pillars of our Indian democracy are the Legislature, the Judiciary, and the Executive. Our Constitution has been very clear in defining the varied aspects of these three big organs or pillars, and one should not override the other or encroach upon the other. This is the way in which we have, all along, been functioning. But, to be honest with you, Sir, there are instances where among the three organs, the Judiciary is slightly overlapping or overriding or sometimes encroaching upon the Executive or the Legislature. Sir, many times, people are of the opinion that the Judiciary, instead of being active, has gone to the extent of adventurism even to the extent of terrorism. Why I say so is that in the process of applying discretion, engaging contempt of court, and other functioning, we have seen their excess. For example, summons are issued even to the President of India by a Magistrate in Gujarat. I don't want to blame the Judiciary, but, what I am trying to appeal to the hon. august House is that we are the Legislature,

we are the supreme body to enact laws , and, while doing so, we have to be very cautious be very cautious whether our Legislature is being subordinated, whether our Legislature is weak, or, whether our Legislature lack guts. This is the only point I want to tell you before I enter into a discussion on the criminal justice system.

As far as the criminal justice system is concerned, there are several parties. The parties to the dispute are the accused and the aggrieved. These are the first parties before any criminal case. Then comes the police investigation, then comes the prosecuting agency, then comes the court and there is one more agency also; the prison department. All these 5-6 Departments put together, unless they function well in their own arena, our criminal justice system, cannot hold good. What I am trying to make out is that it is not the exclusive function of the Judiciary or the courts alone. On the other hand, the other machinery is also responsible for the effective implementation of the criminal justice system. But, of all the role players, the core player is the judiciary. That is why I am highlighting the role of judiciary.

Sir, the Report has listed out the major areas of problems. Sir, as a student of Management, I have been taught by the teacher that to solve a problem, a student must, first of all, identify the problem. Then, he should go for a solution. There may be several solutions available to one single problem, but, fitting in with the problem, one has to choose the most appropriate solution. this is the way I have been taught. So, first of all, one should identify the problem area. The two major problems in the system are huge pendency of cases and the inordinate delay in courts. Then, there are complicated and cumbersome procedure. It is not simple, fast, cheaper, and people-friendly system, that is why it is not winning the confidence of the common man.

Sir, the third area of defect in the system is this. There is, lack of quality justice. If an innocent person is punished and a guilty is exonerated, what will happen to the quality of justice? Again, justice delayed is justice denied. These two things are already available in the system.

Then, Sir, a large number of vacancies for the post of Judges are to be filled up. Sir, it is seen that in our country, for one million population, there are about 12-13 judges. (*Time-bell*) Is it for me, Sir? (*Interruptions*)....

[10 May, 2005]

RAJYA SABHA

MR. DEPUTY CHAIRMAN: Yes ...*(Interruptions)*....

DR. K. MALAISAMY: Mr. Deputy Chairman has got a knack of cautioning me. ...*(Interruptions)*....

MR DEPUTY CHAIRMAN: No, it is a warning system, 'Tsunami' warning system.

DR. K. MALAISAMY: Okay Sir. Sir, in Canada, for one million population, the total number of judges is 75; in Australia, total number of judges is 41, whereas in our case, it is only 12-13.

Now, I come to some more defects in our criminal justice system. In our criminal justice system, the main player for investigation is the police. Unfortunately, the system does not have that much of confidence in the Police. The police is, they are not trained for investigating sophisticated and professionalised crimes at all. Another great defect on the prosecution side is that the prosecuting machinery is weak. If Members like Narimanji are on the one side of defence, then, how can a public prosecutor or Assistant Public Prosecutor, who is not well-trained or well equipped could conduct the prosecution case or prove the case. What I am trying to say is, depending upon the talent, many a time, there is a mismatch between the prosecution and defence.

Sir, since the time at my disposal is less, I will quickly list out the recommendations under two categories plus and minus. As rightly said by Mr. Vijayaraghavan, there are some major defects in the report, which I will sum up in a couple of minutes, and in another couple of minutes, I will mention the best points which are available in the report.

MR. DEPUTY CHAIRMAN: What is the definition of 'couple of minutes'?

DR. K. MALAISAMY: Sir, the Report is, mainly, victim-oriented. It is okay. It is a right step they have taken. But it does not mean that it should be too harsh on the accused. I don't know why they want to discriminate the accused and boost up the victim. It is right that they are giving enough support and treatment to the victim, but why the rights given to accused — have been taken out. Sir, you can see how the existing system, which envisages several rights to the accused, has been done away with in the Committee's Report.

5.00 P.M.

Firstly, the accused should be presumed to be innocent. This is the fundamental principle on which we have been taught law. Now, that has to go, according to the Committee. Then, prove any crime beyond reasonable doubt. It is a very good legal maxim. Now it has again been taken away by this Committee. Then, coming to confessions...

SHRI SANTOSH BAGRODIA (Rajasthan): Sir, it is already 5 o'clock.

MR. DEPUTY CHAIRMAN: Just a minute. Under Rule 60 of the Rules of Business of the House, Half-an-hour Discussion, which is scheduled for today, has to be taken up between 5.00 P.M. and 5.30 P.M. In view of the ongoing discussion on the Malimath Committee Report, do I have the consent of the House to take up the Half-an-hour Discussion after this discussion is over?

SHRI P.G. NARAYANAN (Tamil Nadu): Sir, this could be taken up tomorrow.

MR. DEPUTY CHAIRMAN: We could take up the Half-an-hour Discussion after the discussion on the Malimath Committee is over.

SHRI SANTOSH BAGRODIA: Sir, I don't think that would be in all fairness.

PROF. RAM DEO BHANDARY (Bihar): Sir, we could continue the discussion tomorrow.

DR. K. MALAISAMY: Sir, I shall complete my speech within three minutes.

SHRI SANTOSH BAGRODIA: Am I allowed to speak for a minute? I have raised a point of order.

MR. DEPUTY CHAIRMAN: You can do that. Just a minute, please.

SHRI SANTOSH BAGRODIA: Am I allowed to speak for a minute? I have raised a point of order.

MR. DEPUTY CHAIRMAN: Yes, you may do so, you have raised a point of order.

SHRI SANTOSH BAGRODIA: Sir, the point is, this is the right of an individual Member. If, every time, the sense of the majority of the House were taken into consideration, then the right of the individual would be completely ignored. So, I need your protection.

[10 May, 2005]

RAJYA SABHA

This discussion should be taken up first; that is the normal practice. Thereafter, the Short Duration Discussion could be continued. This has always been the practice. Even yesterday, we started at 5.00 PM and then we completed it. So, that has always been the practice. In any case, I would go by your ruling, Sir.

SHRI V. NARAYANASAMY (Pondicherry): Sir, I am on a point of order. The hon. Member has raised the issue of the right of a Member. When the sense of the House is to go by the decision of the majority, everybody has to abide by it.

Secondly, the report of the Malimath Committee is on the very important issue of judicial reform. Let us not conclude it today. It may be continued tomorrow because some more Members may want to speak. Kindly permit this, Sir, because it is a very important issue...*(interruptions)*... There are about eight to nine Members to speak on the issue. Kindly consider this. An impression should not be created that we are in a hurry to finish it today itself. It is a very important subject...*(interruptions)*...

SHRI R. SHUNMUGASUNDARAM (Tamil Nadu): Sir, this is a very important subject...*(interruptions)*...

MR. DEPUTY CHAIRMAN: We have taken a decision in the Business Advisory Committee that because this is the last leg of the Session, we would sit beyond 5 o'clock if there are matters to be discussed. So, let us continue and complete the discussion on the Malimath Committee Report. There are only five speakers left, to speak in this discussion. If there were a number of speakers left, I would have agreed with you.

We would conclude this debate and then, we can take up the Half-an-hour Discussion and complete it. Even yesterday we followed the same procedure. Let us complete the discussion on one subject. Tomorrow, another Short Duration Discussion would be coming up, and you would be losing the opportunity to discuss the subject of the next Short Duration Discussion.

SHRI SANTOSH BAGRODIA: Sir, I think we would be starting around 6.00 or 6.30 PM. Do you want the reply also to be given today?

MR. DEPUTY CHAIRMAN: That is why I am requesting the hon. Members to speak to the point only and not repeat the whole thing.

SHRI SANTOSH BAGRODIA: Sir, you might request them, but they would not listen. You might request them, but everybody would like to make his point. So, does it mean that this would go up to, approximately, 6.30 PM?

MR. DEPUTY CHAIRMAN: Yes, roughly.

SHRI SANTOSH BAGRODIA: And then, it would continue till it is over, that is, up to 7.00 PM, 8.00 PM or beyond?

MR. DEPUTY CHAIRMAN: No, it would be over in time. Please, carry on. I think the time allotted to your party is over.

DR. K. MALAISAMY: Sir, confession by an accused before the police is inadmissible as per the Present System.

MR. DEPUTY CHAIRMAN: Please, conclude.

DR. K. MALAISAMY: As per the recommendation made by the Malimath Committee, even confession by the accused before the Police is admissible. Then, the judge can put any number of questions and non-reply, silence, on the part of the accused would lead to drawing adverse inference. This, again, goes against the accused. then, the accused would be compelled to give a statement....

MR. DEPUTY CHAIRMAN: Mr. Malaisamy, please, conclude.

DR. K. MALAISAMY: Sir, I would take another two to three minutes; I would certainly conclude.

MR. DEPUTY CHAIRMAN: Please, conclude within two minutes.

DR. K. MALAISAMY: Sir, another important point is regarding forcing the accused to give his fingerprint, footprint, photo and blood sample. This has also been recommended by the Malimath Committee, which is contrary to the earlier system. Finally, as far as minus points are concerned, it will empower the Police to intercept electronic and oral communication and the same messages can be used against the person against whom such kinds of messages are given, and this is the point to which I want to draw the attention of the hon. Home Minister. Will the above said points not amount to an infringement of accused's Fundamental Right given under

Article 20(3) of our Indian Constitution, *i.e.* an accused should not be made a witness against him himself? This is the point which I want to make very, very clear. Sir, whatever is going against...*(interruptions)*...

MR. DEPUTY CHAIRMAN: Kindly conclude it...*(interruptions)*...

DR. K. MALAISAMY: I will take just two minutes...*(interruptions)*...

MR. DEPUTY CHAIRMAN: You have already taken two minutes. This is the best way of getting time...*(interruptions)*...

DR. K. MALAISAMY: The best aspect of the Report is that they have done a good work to protect the witness' interests. Then coming to victim's entitlement to participate and his entitlement to compensation. This is also good. Several federal laws have been contemplated to control the organised crime, terrorism, etc. Additional rights have been given to women, and that is welcome.

MR. DEPUTY CHAIRMAN: Dr. Malaisamy, you have to conclude. All points cannot be...*(interruptions)*...

DR. K. MALAISAMY: The Police Act is pretty old...*(interruptions)*...

MR. DEPUTY CHAIRMAN: Please cooperate.

DR. K. MALAISAMY: Lastly, the very important piece of recommendation of this Report is: "Irrespective of the fact whether it is a cognisable offence or a non-cognisable offence, it should be registered and it should be investigated further". There are umpteen number of other suggestions which the Deputy Chairman may not permit me to give due to paucity of time. Thank you.

SHRI RAVULA CHANDRA SEKAR REDDY (Andhra Pradesh): Sir, the present Committee was constituted on 24th November, 2000. The Committee was constituted with a specific terms of reference. They were given six issues to be probed and recommendations should be made to the Government. Out of them, I would like to draw the attention of the hon. Home Minister towards the item No. 2 wherein they were asked whether there is a need to Rewrite the Criminal Procedure Code, to bring the Indian Penal Code and the Indian Evidence Act in tune with the demand of times and in harmony with the aspirations of the people of India—as we are aware that the Indian Penal Code 1860 and the Indian Evidence Act, 1872

are age-old Acts. The Committee was to make suggestions to the Government so as to enact a new law. We must change according to the changing circumstances and according to the need of the hour. Sir, the Indian Penal Code and the Indian Evidence Act definitely need a thorough review.

Sir, the item No. 3 was to make specific recommendations on simplifying judicial procedures and practices and making the delivery of justice to the common men closer, faster, uncomplicated and inexpensive. These are the terms of reference made to the Committee, and they have done an in-depth study. Sir, the Committee has made about 158 recommendations. They met many people and prepared a questionnaire. This questionnaire was sent to all important personalities of the country. To our utter surprise, out of 3164 people only 284 people responded to the questionnaire which was sent by the Committee. If we go by the statistics...*(interruptions)*...

[THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA) in the Chair.]

SHRI VAYALAR RAVI (Kerala) Now, you can ask for half-an-Hour discussion.

SHRI RAVULA CHANDRA SEKAR REDDY: The issue of "drop-outs" can be dropped out. Sir, if you look at the figures of cases registered under IPC, the cases of offence against women, offences against children, the Scheduled Castes and the Scheduled Tribes and major fraud cases ...and the conviction ratio, if we look at them, it is most surprising that the cases under IPC, though only 18 per cent were disposed in a year, out of them during 1996, if the convictions are seen, 37 per cent are convictions. During 1997-98, they are 38 per cent. Out of the total cases tried, only 18 per cent; and out of those 18 per cent, during 1996—37 per cent; 1997—38.2 per cent; 1998—37.4 per cent; and, 1999—39 per cent, Sir, like this, less than 40 per cent are convictions out of the cases tried, which are very less. Sir, according to the figures available with us, 18 per cent of the total pending cases were tried in a year and the conviction ratio is far below than the expected levels. Sir, this is due to many reasons. *(time-bell)*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): I am only going by the record. The time-sheet says you have already...*(interruptions)*...

SHRI P.G. NARAYANAN : He has just started...*(interruptions)*...

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRAODIA) He has not even started! I am only going by the time-sheet given to me. Take one more minute only...*(interruptions)*. No, but it is not possible...*(interruptions)*. Now, one way you want to follow the rule; another way, you don't follow the rule. If you want to follow the rule, you follow the rule everywhere.

SHRI RAVULA CHANDRA SEKAR REDDY: Sir, I may not follow the rule, but I will abide by you.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): I mean, if your time is over, what can I do?

SHRI RAVULA CHANDRA SEKAR REDDY: Sir, I will finish as early as possible.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Not as early as possible, one minute.

SHRI RAVULA CHANDRA SEKAR REDDY: Sir, the basic reason is when a crime is reported...

SHRI VAYALAR RAVI: Sir, at least, their Party is attending the House, when boycott is there from the Opposition.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Mr. Vayalar Ravi, I don't know if there is a rule that because he is attending the House, he should get more time. I don't know about that rule.

SHRI VAYALAR RAVI: Sir, we also know the rule. I also know the rule...*(interruptions)*. Don't try to teach me the rule. Sir, this House has a precedence...*(interruptions)*.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Will you please speak politely?

SHRI VAYALAR RAVI: When you are sitting there, don't talk to me like that. I also know the rule. There is precedence in the House, when Members are speaking, everybody is given some more time. What is wrong in that? This is a very important discussion. What is this?...*(interruptions)*.

SHRI P.G. NARAYANAN: Sir, it is an important discussion.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): I have heard you. I know how to handle...*(interruptions)*. Please leave it to me. If you have any problem with me, you can appeal to me, but...

SHRI VAYALAR RAVI: I don't agree with you.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): You may not agree. It is your privilege not to agree. But, I have to run the House.

SHRI VAYALAR RAVI: We have also to run the House. Don't think you have to run the House alone. We are also...*(interruptions)*.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Mr. Vayalar Ravi, it has been heard. Please, let him speak. Mr. Ravula Chandra Sekar Reddy, you have one minute.

SHRI RAVULA CHANDRA SEKAR REDDY: Sir, I will not trouble you. Sir, why the success rate is not up to the expected level? To me, it appears that when a crime is registered, a crime is reported, an FIR is issued; then, a GD entry is made, General Diary entry; then, a Case Diary (CD) is made; then, again, investigation, charge framing, trial, evidence, examination of accused under 313 CrPC; then arguments. All these things take a lot of time. If a person is no more, in a murder case, normally the sympathy will be with the accused. Since the person has already died, and this man getting old, having a lot of problems for him, and trying to gain this sympathy or threat, coercion, like that, on witnesses. Apart from this, lack of prosecutors, lack of facilities and the vacancies in Courts, many things contribute to the delay in disposal of the cases. Sir, I would like to draw the attention of the hon. Home Minister towards the recommendations of the Committee. Sir, they have given many interesting suggestions. The Committee is of the view that the law should be amended to provide for audio or video recording of statements of witnesses, dying declarations and confessions, etc., and about their admissibility in evidence. A beginning may be made to use modern techniques, at least, in serious cases. Sir, this can be looked into. While I may not agree totally with Shri Vijayaraghavan, and I cannot follow the middle path of my friend, Dr. Malaisamy, there are specific important recommendations on the part of the Committee and those should be looked into. Finally, they have come forward with a recommendation that the Government may come with a policy statement on criminal justice. It is up to the Government to accept the recommendations or not but while coming to a conclusion, the recommendations must be taken into consideration. They have done elaborate exercise. They wrote to all the High Courts, they wrote to the Governments of various States and the response from all sections, right

from the High Courts and other people was good. But, Sir, only, 284 people responded to the questionnaire.

Sir, another interesting aspect is that nowadays when people are in custody, we see them talking to the TV freely, to the electronic media freely, saying that 'I will kill so and so person, and, if I am allowed, I will kill two, three people'. The Ministry should view this very seriously.

Sir, if a person is in judicial custody or in police custody, he is in custody and certain procedures are bound to be followed. Sir, though an accused cannot be punished and should be given fair deal till he is proved guilty but at the same time when an allegation is made against him, when he is facing a trial, he should not be allowed to take law in his own hands. These things are happening frequently and that should be looked into.

Sir, the other aspect is the under-trial prisoners in jails. The jails are over-crowded. The under-trial prisoners are there in jails since many years. This is due to various reasons like non-production of accused in the court for want of security; if one of the accused is absconding, the trial will go on for quite a long time; at the time of evidence, the witness may not come; or, at the time of arguments, the advocate may not appear. All these things contribute to a protracted litigation and the accused is kept in jails. That is the reason for the overcrowding of jails also. Now, we need reforms in jails... (*Time Bell*).

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): You have to finish now.

SHRI RAVULA CHANDRA SEKAR REDDY: I will abide by your decision. Finally, I would request the hon. Minister to look into all these recommendations and come forward with a policy of the Government on these suggestions made by the Committee. Then, that can be discussed again. Once again, I thank you for having given me the opportunity to speak on this subject.

श्री राशिद अल्वी (आंध्र प्रदेश): सर, मैं आपका ज्यादा वक्त नहीं लूंगा लेकिन अगर आप घंटी बजाएंगे तो मुझे बोलने में परेशानी होगी। मैं खुद बहुत कम वक्त लूंगा। बहुत-बहुत शुक्रिया सर, आपने मुझे बोलने का टाइम दिया। मलीमथ कमेटी की जो रिपोर्ट है, वह, हिन्दुस्तान के अंदर जो क्रिमिनल लाँ है, उसके अंदर क्या रिफॉर्म होना चाहिए, इस बारे में मलीमथ कमेटी की रिपोर्ट है। जस्टिस मलीमथ ने इस रिपोर्ट को बनाने में बहुत मेहनत की, बिला शुबहा, एनडीए की सरकार

द्वारा बनाए हुए इस कमीशन के अंदर करीब-करीब 3,164 लोगों से उन्होंने कॉन्टैक्ट किया। तमाम स्टेट गवर्नमेंट्स, तमाम हाई कोर्ट्स, सुप्रीम कोर्ट के जजेज़, तमाम पॉलिटिशियन्स, जिन-जिन से वे कॉन्टैक्ट कर सकते थे, उनसे कॉन्टैक्ट करने की उन्होंने कोशिश की। वे फ्रांस गए। फ्रांस के अंदर क्या क्रिमिनल लॉ है, अमेरिका और इंग्लैंड के अंदर जानने की कोशिश की कि वहां क्या क्रिमिनल लॉ है, और उसके बाद उन्होंने अपनी यह रिपोर्ट दी! बहुत सारे सैमिनार्स किए। तब 158 रिकॉमैण्डेशंस उन्होंने दी। मैं होम मिनिस्टर साहब से बहुत अदब से कहना चाहता हूं, क्या जो क्रिमिनल लॉ इस देश के अंदर इस वक्त मौजूद है, क्या सरकार ने कभी तवज्जह दी कि वह क्रिमिनल लॉ कब बना था? सर, यह क्रिमिनल लॉ जिसकी हम बात कर रहे हैं, 1860 के अंदर आईपीसी बना था, 1860 के अंदर ऐक्ट और सीआरपीसी बना था, 1861 के अंदर पुलिस एक्ट बना था। यह उस वक्त की बात है जब पूरा देश गुलाम था। कितनी अजीब बात है! साठ साल की आज़ादी के बाद, आज भी उसी सी० आर० पी० सी० में अमेंडमेंट हो रहा है, उसी आई० पी० सी० में अमेंडमेंट हो रहा है, उसी एक्ट में अमेंडमेंट हो रहा है और जो भी कमीशन बनता है, सबसे पहले वह यह जानने की कोशिश करता है कि यूरोप में क्या कानून है, युनाइटेड स्टेट्स में क्या कानून है, इंग्लैंड में क्या कानून है? मैं बहुत अदब के साथ कहना चाहता हूं कि इस मुल्क की जो समस्याएं हैं, जो मसाल हैं, वे इंग्लैंड के नहीं हैं। यह कानून इसलिए नहीं बना था कि हिंदुस्तान के लोगों को इंसाफ मिले। यह कानून इसलिए बना था कि हम सब लोग, इस मुल्क में, लगातार गुलाम बनते रहें और उसी कानून में अगर हम अमेंडमेंट करते रहेंगे, उसमें रिफॉर्म करते रहेंगे, तो मुझे यह उम्मीद नहीं है कि इससे कोई बहुत बड़े नतीजे निकल पाएंगे। क्रिमिनल लॉ के साथ-साथ पूरे कानून, पूरे ज्यूडीशियल सिस्टम के रिफॉर्म की जरूरत है और आपको अगर ज्यूडीशियल रिफॉर्म को रिफॉर्म करना है, तो आपको इस देश की पुलिस को रिफॉर्म करना पड़ेगा। पुलिस को रिफॉर्म करना है, तो देश के ब्यूरोक्रेटिक सिस्टम को रिफॉर्म करना पड़ेगा। अगर आप ईमानदारी से चाहते हैं कि गरीब आदमी को इंसाफ मिले, तो इस पूरे पैकेज को आपका अमेंडमेंट करना पड़ेगा, सिर्फ सी.आर.पी.सी. में करके कोई नतीजा नहीं निकलने वाला है।

सर, लॉ कमीशन 1955 में बना था। उसकी फिक्सी रिपोर्टें आई हैं, 188 के करीब रिपोर्टें आ चुकी हैं और 47 के करीब रिपोर्टें इम्प्लिमेंट नहीं हुईं। मेरे ख्याल से गवर्नमेंट के पास, पूरे सिस्टम के पास, कानून के बारे में कोई भी राय लेने के लिए, कोई सिफारिश समझने के लिए, लॉ कमीशन के अलावा दूसरा कोई सोर्स नहीं है। आज हिंदुस्तान में सुप्रीम कोर्ट में 29,622 केसेज पेंडिंग हैं, जबकि 1999 में 20,334 केसेज पेंडिंग थे। छः साल में 9,000 केसेज की तादाद बढ़ी है। 1999 में हाई कोर्ट में 32,65,300 केसेज पेंडिंग थे, 2004 में 32 लाख से ज्यादा केसेज पेंडिंग हैं। लोअर कोर्ट्स में भी तो मैं पहले भी अर्ज कर चुका हूं कि दो करोड़ से ज्यादा केसेज पेंडिंग हैं। सर, राज्य

सभा में दो महीने पहले लॉ मिनिस्टर ने एक सवाल के जवाब में बताया था कि लॉ कमीशन की रिपोर्ट, जिसके मुताबिक ये केसेज पेंडिंग हैं, इनमें कमी की जाए, वह सारा इंप्लिमेंट कर दिया गया, अब कुछ बाकी नहीं रह गया है। सर, इस सिस्टम से इस देश के लोगों को कोई फायदा नहीं है। मलिमथ कमेटी की जो रिपोर्ट है, इसमें बहुत सारी अच्छी बातें हैं, मैं यह नहीं कहना चाहता, लेकिन जब तक पूरे सिस्टम में तबदीली नहीं होगी, जजों के अपाईंटमेंट्स के बारे में मलिमथ साहब ने कुछ बहुत ज्यादा नहीं कहा। इस रिपोर्ट के मुताबिक मलिमथ साहब ने कहा है कि दुनिया में कानून के दो सिस्टम हैं – एक Inquisitorial System है, जो हमारे देश में नहीं है। यह सिस्टम इटली में, फ्रांस में, स्विट्जरलैंड में और स्वीडन में है। एक सिस्टम वह है, जिस सिस्टम से हम चल रहे हैं मैं इतना जरूर एप्रिशिएट करूंगा कि रिपोर्ट्स में उन्होंने सिफारिशें की हैं कि इनवेस्टिगेशन ज्यूडीशियल पुलिस ऑफिसर के अंडर में होना चाहिए। मौजूदा पुलिस के ऊपर खुद जस्टिस मलिमथ को भरोसा नहीं, और सिर्फ उनको ही नहीं, देश के लोगों को भरोसा नहीं। उस दिन होम मिनिस्टर साहब कह रहे थे कि पुलिस को क्रिटिसाइज नहीं करना चाहिए। मैं उनकी बात से सहमत हूं। देश में बहुत सारे काम हैं जो पुलिस ने बहुत अच्छे किए हैं। टेरेरिस्ट्स के साथ हमारे कितने पुलिस वाले शहीद होते हैं, वह काबिले तारीफ है, लेकिन जो आम आदमी, गरीब आदमी की परेशानी है, क्या उस पर गौर नहीं करना पड़ेगा? क्या उसके बारे में नहीं सोचा जाएगा कि इस देश में गरीब आदमी को इंसाफ मिलता है या नहीं? इस देश में बेगुनाह आदमी जेल में रहता है और क्रिमिनल्स बाहर रहते हैं इस मौजूदा कानून से हम उनसे निपटारा नहीं कर सकते। इनवेस्टिगेशन के बारे में जो मलिमथ रिपोर्ट ने कहा है कि ज्यूडीशियल सिस्टम अंडर पुलिस ऑफिसर होना चाहिए। मालीमथ कमेटी के अंदर जो सबसे इम्पोर्टेंट बात कही गई है और जिसको मैं पूरी तरीके से एप्रिशिएट करता हूं कि मौजूदा सिस्टम के अंदर कम से कम हम यह रिफॉर्म, responsibility of a judge to discover the truth, जरूर कर सकते हैं। अभी तक हमारे सिस्टम के अंदर यह है कि इससे जब को कुछ लेना-देना नहीं है। फॉर्मर प्रेजिडेंट ऑफ इंडिया, श्री आर. वेंकटरमन जी, ने कहा था, "The judge does not seek the truth, but only decide whether the charge has been proved by the prosecution or not". सबूत नहीं है तो छूट जाएगा, सबूत है तो नहीं छूटेगा मैं आपको कितने केसेज बता सकता हूं, कोई कत्ल, कोई मर्डर ऐसा नहीं होता, मैं आम मर्डर की बात करता हूं, 90 परसेंट केसेज में सारे शहर को यह मालूम होता है कि किस आदमी ने कत्ल किया है, लेकिन सबूत नहीं होता है, इसलिए उसे सजा नहीं मिलती है।

श्री उपसभाध्यक्ष (श्री संतोष बागड़ोदिया): अब आपको खत्म करना होगा, क्योंकि आपका समय तो हो गया है।

श्री राशिद अल्वी: सर, मैं अपनी बात खत्म कर दूंगा और अगर आप कहेंगे तो मैं नहीं बोलूंगा।

श्री उपसभाध्यक्ष (श्री संतोष बागड़ोदिया): मैं कह रहा हूँ, बिकाज, जैसा समय है।

श्री राशिद अल्वी: आप कहेंगे तो मैं बिल्कुल खामोश हो जाऊंगा। जो इस रिपोर्ट के अंदर बात कही गई है, वह सबसे इम्पोर्टेंट चीज है कि जज का काम सिर्फ फैसला करना नहीं है, जज का काम सच्चाई को जानना है। सबूत है या नहीं है, it is not very important. जज को सच्चाई का पता करना पड़ेगा, उसके हिसाब से जो फैसला होगा, वह सही फैसला होगा। महोदय, दुनिया में बहुत से ऐसे मुल्क हैं, जहां पर जेलें नहीं हैं। हमें अपना मुकाबला अमरीका और इंग्लैंड से नहीं करना चाहिए। अमरीका और इंग्लैंड के माहौल अलहेदा हैं। वहां की पुलिस और ज्युडिशियरी के ऊपर हमारी तरह शक और शुबहा के सवालिया निशान नहीं लगे हुए हैं। हमारे यहां 90 फीसदी लोग पुलिस के ऊपर भरोसा नहीं करते हैं। हमारी लोअर ज्युडिशियरी के ऊपर भरोसा नहीं किया जाता है। प्रोसिक्यूशन और ज्युडिशियरी मिल जाती है। आम आदमी को ईसाफ नहीं मिलता है। 'अकरबा मेरे करें कत्ल का दावा किस पर, वही कातिल, वही शाहिद, वही मुन्सिफ है।' सब इकट्ठा हो जाएं, हमारा मुकाबला उन मुल्कों से कीजिए, जिन मुल्कों के अंदर हालात हमारे मुल्क जैसे हैं। दुनिया के ऐसे बहुत सारे मुल्क हैं, जहां मैं खुद भी गया हूँ, वहां पर जेलें नहीं हैं। जज बैठा है, प्रोसिक्यूशन को बुला लेता है, विटनेसिस को बुला लेता है, एक हफ्ते में फैसला देकर सजा दे देता है। इसलिए उन मुल्कों के अंदर क्राइम नहीं होता है। वहां पर क्राइम्स की तादाद बहुत कम है, न के बराबर है। इन अमेंडमेंट्स से हमें कोई बहुत ज्यादा फायदा नहीं होगा। इन तमाम अमेंडमेंट्स से पुलिस को ज्यादा ताकत दी गई है। महोदय, आप मुझे टाइम नहीं दे रहे हैं, वरना मैं मालीमथ कमेटी की एक-एक रिपोर्ट के बारे में चर्चा करना चाहता था। यहां मैं सिर्फ दो-तीन बातें ही कहूंगा। मालीमथ रिपोर्ट में कहा गया है कि अभी तक पुलिस को सिर्फ 15 दिन का रिमांड दिया जाता है। पुलिस किसी भी मुजरिम को 15 दिन के लिए अपने पास रख सकती है। उससे पूछताछ कर सकती है। जस्टिस मालिमथ का कहना है कि इसे 15 से बढ़ाकर 20 दिन कर दिया जाए। वह मर जाएगा, वह जिंदा नहीं बच पाएगा हमारे यहां जिस तरह की पुलिस है, मैं अपने क्षेत्र उत्तर प्रदेश के बारे में बताता हूँ। अभी दो महीने पहले एक बेगुनाह आदमी को, सिर्फ शुबह होने पर, उसके जिस्म के अंदर डंडे घुसा दिए। आदमी की टांगें उल्टी करके सिर से मिला दी गई। मैं उसको देखने हॉस्पिटल गया था। वह जिंदगी और मौत की लड़ाई लड़ रहा था। यह कोई एक मिसाल नहीं है। इसके अंदर कहा गया है कि अभी तक कानून है कि 90 दिन के अंदर अगर चार्जशीट फाइल नहीं होती है, एज ए मैटर ऑफ राइट, तो उसको बेल मिल जाती है। जस्टिस मलीमथ का कहना है कि अगर 90 दिन के अंदर चार्जशीट फाइल नहीं होती है, तो वह 90 दिन और ले सकता है। 6 महीने के लिए, आप उसे जेल के अंदर डालकर कब तक रखेंगे? यह तमाम जस्टिस मलीमथ की रिपोर्ट्स हैं, जिनसे मैं पूरे तौर से इत्तिफाक नहीं कर सकता हूँ। आप मुझे टाइम नहीं दे रहे हैं, इसलिए मैं होम मिनिस्टर साहब से कहना चाहता हूँ कि इनकी जो तमाम अच्छी बातें हैं, उनको हम इम्प्लीमेंट कर सकते हैं। लेकिन पुलिस सिस्टम को बदलने के लिए खुद जस्टिस मलीमथ ने कहा है। उन्होंने कहा है कि हमें

न्यू पुलिस एक्ट लाना चाहिए। नय पुलिस एक्ट बनाइए, पूरे पुलिस सिस्टम को नए तरीके में तब्दील कीजिए। लॉ कमीशन ने कहा था कि सी.बी.आई. को यह अख्तियार दिया जा सकता है कि पंद्रह दिन क बजाय तीस दिन उसे रिमांड में दिये जाएं। जस्टिस मलीमथ का कहना है कि पुलिस और सी.बी.आई. में कोई फर्क नहीं किया जा सकता है। जस्टिस मलीमथ का कहना है कि अगर कोई आदमी कन्फेशन करता है, तो पुलिस के सामने करे। उन्होंने थोड़ी सी तब्दीली कर दी, एस.पी. के सामने कन्फेशन हो जाए तो उसे मान लेना चाहिए। कितनी अजीब बात है, जिस दिन मुजरिम थाने के अंदर पुलिस से कन्फेशन(व्यवधान)...

उपसभाध्यक्ष (श्री संतोष बागड़ोदिया): अब आपको खत्म करना होगा। You have taken much longer time.

श्री राशिद अल्वी: मैं खत्म करता हूं। जिस दिन मुजरिम थाने में जाता है, उससे सादे पैजिज पर दस्तख्त ले लिए जाते हैं। सादे कागज पर दस्तख्त लेकर पुलिस जो चाहे लिख लेती है। अगर कन्फेशनल स्टेटमेंट के बारे में यह कहा जाए कि पुलिस के सामने कन्फेशनल स्टेटमेंट को पुलिस मानेगी, अगर एस.पी. के सामने कर दिया जाए, तो यह एक दुर्भाग्यपूर्ण कदम होगा। महोदय, इन बातों के साथ, मैं सिर्फ इतना कहूंगा कि इसके साथ-साथ ज्यूडिशियरी की एकाउंटेबिलिटी बहुत जरूरी है। इसके बारे में जस्टिस मलीमथ ने थोड़ा-बहुत कहा। आज कोई अकाउंटेबिलिटी जजेज की नहीं है। अभी अनफॉर्च्यूनैटली चीफ जस्टिस ऑफ इंडिया ने कहा कि लोकपाल बिल के अंदर जजेस को नहीं रखा जाए क्योंकि नहीं रखा जाए? क्यों नहीं ज्यूडिशियरी को लोकपाल बिल के अंदर रखा जा सकता है? क्यों नहीं हाई कोर्ट और सुप्रीम कोर्ट के जस्टिस हों? जस्टिस मलीमथ का कहना है कि चीफ जस्टिस को अख्तियार दिया जा सकता है।

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now, you have to finish. You have taken double of your time.

श्री राशिद अल्वी: चलिए, मैं सिर्फ इतना कहकर अपनी बात खत्म करता हूं कि यह बहुत इम्पोर्टेंट मामला है। जिस तरीके का डिस्कशन हुआ है, इस पर ज्यादा डिस्कशन का जरूरत है, मलीमथ रिपोर्ट नहीं, बल्कि पूरे ज्यूडिशियल रिपोर्ट पर जरूरत है। इस पर पूरी बहस होने के बाद हमें किसी नतीजे पर आना चाहिए। थैंक यू वेरी मच।

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Shri Shunmugasundaram.

SHRI R. SHUNMUGASUNDARAM (Tamil Nadu): Sir, the one place, a rightful place, this report deserves, is the museum. This report is totally impracticable and I see the Committee members — Justice Malimath, N.R. Madhava Menon, etc. — are big names. I doubt very much whether they know anything about the magistrate courts, the police thanas, the

jails, etc. It is only those persons who had suffered imprisonment, who had undergone police torture, police custody, custodial interrogation, etc., those persons only, can realise what is happening in this country. Sir, if these big names go to the police station just like ordinary men, can they successfully lodge a complaint or can they just get an accused person, falsely charged, released from the police custody? That can never be done by these persons. Sir, this is the reality. That is why I say that these suggestions and recommendations are totally impracticable. Sir, I have a little experience in the criminal side. I have been a lawyer for the last 28 years. I have been practising in the trial courts or the magistrate courts in the city of Chennai. I have sent them to jails also as I have also been a prosecutor in the High Court for the last seven years. Sir, I know practically what is happening. I have advised police; I have defended criminals; I have defended most dreaded terrorists of LTTE; I have defended most dreaded terrorists charged under TADA and POTA. Sir, when I look at these recommendations, I find that just one recommendation is enough to throw this particular report to dustbin. Sir, on the suggestion about the right of accused to be silent, what they say is this. If an accused is silent while being interrogated in a court, that is a new procedure they seek to introduce under section 313 of the Cr. P.C., and if the accused maintains silence, that can be interpreted against him, and an adverse inference can be drawn against him. What does section 313 Cr. P.C. say? It says: "If the accused remains silent or refuses to answer any question put to him by the court which is not compelled by law to answer, the court may draw such appropriate inference, an adverse inference." This is what the recommendation is. This is a draconian provision. They did not properly understand what the ruling of the Supreme court in one of the cases was. In one of the cases, when an accused gave a wrong answer, the Supreme Court said: "Adverse inference can be drawn against the accused." That was wrongly taken into consideration, and now, what they suggest is, if the accused remains silent, then, an adverse inference can be drawn against him. I am only reminded of a story of a French Lord. A French Lord, was invited for a Royal dinner among several Lords. While attending the dinner, the Queen found that her necklace was missing. Therefore, everybody wanted to investigate and find out who the culprit was. All the invitees were Lords and Royal guests. Therefore, it was embarrassing for everyone to question each and everyone. Ultimately, a suggestion was made that everybody should be frisked and their pockets should be

checked. But one particular Lord, who was a very poor person, objected to that particular procedure, and said: "No, I won't allow," and everybody's suspicion fell on him. The queen ultimately graciously permitted the poor Lord to leave the place. After some time, the queen discovered that necklace was in her chamber. It was not missing. Later, the Lord was questioned: "why did you do that?" The Lord said: "I was hungry. I was so poor that I was carrying some bread and cake for my use the next day." And that is the situation here. If an adverse inference can be drawn against such a person, what will happen? This is what happening in police stations. You know, what is happening at the time of extracting confessions? While extracting confessions, they are detained illegally in police station. Their wives, children, parents and other loved one's are there. Some of them are stripped, and by inflicting torture, confessions are extracted. This was kept in mind when the Supreme Court decided Kartar Singh case. In Kartar Singh case, a similar situation arose. The confession by a Superintendent of Police, which is now recommended in this report, was considered in Kartar Singh case. The majority of three Judges said: "No, the Superintendent of Police is a high officer. He can be believed." But, what did the dissenting Judge, Justice Sahai say? He said: "No, you cannot believe a Superintendent of Police. Let him be a Superintendent of Police. But still, He is a police officer, who is interested in the success of the prosecution. So, he will stoop to any level, and that is the background." And now, this report says that section 25 of the Cr. P.C. has to be amended so that the Superintendent of Police can record confessions.

Sir, now, I come to the inquisitorial system. Suggestions have been made that the inquisitorial system is much better, and some of the salient features of the inquisitorial system must be taken to strengthen the adversarial system, and it is also said that section 311 of Cr. P.C. can be amended suitably. This is also a very wrong procedure, and I suggest that the hon. Minister should ignore all these because, the law which is already in existence, is sufficient to deal with the situation. Section 167 of the Evidence Act is sufficient in this respect. Another Pandora's box is being opened by recommending amendment to section 482. The Committee seeks to give the inherent powers of the Supreme Court to the District courts and various other courts also. The suggestion is that every court should be given inherent powers. What for? The Magistrate Courts and District Courts have to abide by the law. They don't require these inherent powers. Now, they intend to open a Pandora's box, and this will only

lengthen the proceedings. The litigations will proliferate, and there won't be any end to the litigations.

Sir, certain doubts are raised about the percentage of convictions. The percentage of convictions is only a jugglery of statistics. The other day, when I was the Chief Public Prosecutor of Tamil Nadu, we used to have conferences. The police used to come and say, "We have 80 per cent of conviction". Eighty per cent of conviction through what? Through admission of some arrack cases, five litres, four litres, illicit distillation or prohibition offences. Whenever we want, we can increase by just doubling the number of cases. We can increase the statistics. We should not be carried away by statistics. If it is 18 per cent conviction, it is good. If you take 85 per cent, they are all fabricated cases. The police fabricate 85 per cent cases. If there is one single accused, he is a true accused. They add up three or four accused; their entire family is roped in. Everywhere it is done. In how many cases, has the Supreme Court or the High Court, after finding that the FIR was fabricated in a particular case, ordered any disciplinary action against the police officers? Nothing has been done. We should look at it on these lines; there is nothing wrong in 18 per cent conviction. That is enough. We should qualitatively improve the court procedure, the delivery system.

Sir, about the suggestions on the prosecutors, the prosecutors want that there should be legal advisors for police. Sir, prosecutors get involved with police over a period when they are permanent prosecutors. That is why, in Tamil Nadu, district level and high court level prosecutors are totally independent; they are appointed every five years after the change of Government. And that is better. If the Government does not like him, or if somebody does not like him, he can be changed. If he is a permanent prosecutor, nobody can change him, and he will be always at the doorsteps of the Superintendent of Police. I have seen the Assistant Public Prosecutors, in the Magistrate Courts, who are always taken by the police in police jeeps to police stations, to coach witnesses and then to court. They just behave like subordinates to the Deputy Superintendent of Police. When that is the situation, they won't independently project any prosecution.

The other recommendation is about the extension of police remand from 15 days to 30 days. This was used in POTA and TADA cases. The

Committee has liberally used the POTA provisions and the TADA provisions. The Committee has not understood the reality. POTA and TADA have been withdrawn, repealed. And it was against the people's will. We know how POTA and TADA were misused over a period. ...*(Interruptions)*... Everywhere, in Tamil Nadu particularly, and in other places too. Sir, I am very sad that this Committee...

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): You have to finish it. Half-a-minute is left.

SHRI R. SHUNMUGASUNDARAM: Sir, after considering so many details, the Committee has not recommended anything about the judicial accountability and the impeachment of judges, and how the impeachment procedure can be made easier. The present impeachment procedure is cumbersome. Recently, when all the lawyers in Tamil Nadu were agitating against a particular judge, nothing could be done against that judge. When that is the situation, something should be done about the judicial accountability, and the impeachment procedure should be made easier. Sir, with these words, I plead with the Ministry to throw this Committee's Report into the dustbin.

उपसभाध्यक्ष (श्री संतोष बागड़ोदिया): प्रो० राम देव भंडारी जी। आपके पास पांच मिनट हैं।

प्रो० राम देव भंडारी (बिहार): माननीय उपसभाध्यक्ष महोदय, मैं माननीय नारीमन साहब का आभार व्यक्त करता हूँ कि उन्होंने इस महत्वपूर्ण विषय को सदन में इनिशिएट किया और बड़ी बारीकी से कमेटी की रिपोर्ट के बारे में हम सभी को बताया। महोदय, दो बातें जिन्हें मैं समझ सका, जो उन्होंने किसी बड़े आदमी के रेफरेंस में कही थीं, एक तो यह कहा कि criminal justice system has collapsed और दूसरी बात उन्होंने आज के ज्यूडिशियल सिस्टम के बारे में कही थी कि "Not with truth, but with proof".

[MR. DEPUTY CHAIRMAN in the Chair]

महोदय, कोर्ट में सबूत कैसे पेश किए जाते हैं, सबूत कैसे बनाए जाते हैं, कैसे बिगाड़े जाते हैं, कैसे तोड़े जाते हैं, कैसे जोड़े जाते हैं, तकरीबन हम सभी को इसकी जानकारी है। इस समय कोर्ट में जो पेंडिंग केसेज हैं, जिनके बारे में एक माननीय सदस्य ने कहा और मैंने भी कहीं देखा था, Common Cause का 31.03.2004 का आंकड़ा था कि सुप्रीम कोर्ट में 24,901 केसेज पेंडिंग हैं, हाई कोर्ट में 35 लाख 28 हजार something और डिस्ट्रिक्ट तथा सबऑर्डिनेट कोर्ट्स में 2 करोड़ 27 लाख 57 हजार 693। कुल मिलाकर 2 करोड़ 63 लाख 11 हजार 462, जिसमें 10 साल

से जो पेंडिंग केसेज हैं, वे 53 लाख 51 हजार 580 और 3 साल से कम के पेंडिंग केसेज 1 करोड़ 62 लाख 73 हजार 769 हैं। कोर्ट में इतनी बड़ी संख्या में केसेज पेंडिंग हैं। महोदय, अगर आपको कभी मौका लगेगा और आप किसी डिस्ट्रिक्ट जेल में या सब-डिविजनल जेल में जाएंगे और जो जेल में वर्षों से बंद हैं, उनके बारे में जानकारी प्राप्त करेंगे तो उनमें से 98 प्रतिशत ऐसे लोग हैं, जो गरीब और कमजोर वर्ग के लोग हैं, शैड्यूलड कास्ट के हैं, पिछड़े वर्ग के हैं, बड़े लोग नहीं मिलेंगे। इसका क्या कारण हो सकता है? इसका सबसे बड़ा कारण यह है कि हमारी जो पुलिस है, उसके मन में गरीब और कमजोर वर्ग के लिए अभी भी कोई हमदर्दी नहीं है और जैसा मैंने देखा-समझा है, इस रिपोर्ट में पुलिस को हम और भी ज्यादा पावर देने जा रहे हैं। एविडेंस एक्ट के सेक्शन 25 के बारे में दूसरे माननीय सदस्यों ने भी चर्चा की है कि 'to make confession recorded by police admissible as evidence in the court'. अभी भी पुलिस मार-मार के कोर्ट में कहलवाती है जब हम पुलिस को पावर दे देंगे तो उनके सामने जो एविडेंस होगा, उसकी मान्यता कोर्ट में होगी, महोदय, तब तो जो स्थिति अभी है, उससे और भी बदतर हो जाएगी। महोदय, गवाहों के बारे में, होस्टाइल गवाहों के बारे में चर्चा हुई है। मैंने पहले भी कहा है कि गवाह आजकल अपनी मर्जी से कोर्ट में नहीं जाते हैं, गवाह को ले जाया जाता है, जिसको जबरन होती है तो गवाह को ले जाता है, जो बड़े लोग हैं उनको गवाहों की जबरन होती है और वे गवाहों को ले जाते हैं, उनको जबरदस्ती रखते हैं। इतनी बड़ी संख्या में मामले पेंडिंग हैं, इन्हें हम कैसे कम करेंगे दस वर्षों से, पन्द्रह वर्षों से जितनी सजा मिलनी है, कई ऐसे लोग भी हैं, उससे भी ज्यादा वर्षों तक जेल में बंद रहते हैं, उनके बारे में भी हमको सोचना होगा।

महोदय, पुलिस की मानसिकता अभी क्या है? अब तो पुलिस के द्वारा रेप की बात होती है। हिरासत में किसी की मृत्यु हो जाती है, तो कहते हैं कि इसका हार्ट-फेल कर गया है, लेकिन कारण यह नहीं बल्कि जो थर्ड डिग्री पुलिस उस पर लागू करती है, उससे उसकी मृत्यु होती है। मेरा मानना है कि हमने अभी पुलिस जो पावर दे रखी है, उससे ज्यादा पावर देने के लिए पहले उसे तैयार करना पड़ेगा। जब तक पीपुल फ्रेंडली पुलिस नहीं बन जाती है, जब तक पुलिस में सेवा-भावना नहीं आती है, तब तक उनके पास जो पावर है उससे ज्यादा पावर देना इस देश की कमजोर और गरीब जनता के हित में नहीं होगा। इसलिए इस रिपोर्ट को ज्वाइंट पार्लियामेंटरी कमेटी में भेजने की आवश्यकता है।

महोदय, इसमें कई ऐसी रिकमंडेशनस हैं, जिनके बारे में माननीय सदस्यों ने चर्चा की है, मैं उस पर ज्यादा चर्चा नहीं करता चाहता। कई रिकमंडेशनस, जो देश की आम जनता के पक्ष में नहीं है। देश का कानून किताब में जो कुछ भी लिखा हो, मगर कानून गरीबों के हित में नहीं जा रहा है, कमजोर वर्गों के हित में नहीं जा रहा है, इस कानून का बड़े लोग दुरुपयोग करते हैं, पुलिस के माध्यम से उसका दुरुपयोग करते हैं और अपनी मनमर्जी के अनुसार उस कानून को चलाते हैं। इसलिए, महोदय, यह जो क्रिमिनल जस्टिस सिस्टम के बारे में रिकमंडेशनस आये हैं, मैं चाहता हूँ

कि इसे एक ज्वायंट पार्लियामेंटरी कमेटी में भेजा जाए, जिससे उस पर विस्तार से चर्चा हो और उसके बाद एक अच्छा बिल सदन में आए, गृह मंत्री जी उसे सदन में लाएं। उस बिल में आम लोगों के हित में बात हो और इस देश में जो गरीब लोग हैं, कमजोर लोग हैं, शेड्युल्ड कास्ट्स के लोग हैं, पिछड़े वर्ग के लोग हैं, उन पर जुर्म, अत्याचार न हों और अगर उन पर जुर्म, अत्याचार होता है तो कानून उन्हें बचाए, उन्हें संरक्षण दे, इस प्रकार का कानून सदन में आए। इन्हीं शब्दों के साथ मैं आपका धन्यवाद करते हुए अपनी बात समाप्त करता हूं। बहुत बहुत धन्यवाद।

SHRI SANTOSH BAGRODIA (Rajasthan): Sir, I would just go through two-three points quickly. One is regarding Recommendation No. 28, Some of the recommendations of the Malimath Committee will go against the interest of the poor people of the country. The provision for giving more power to police under Section 167 of the Cr.PC. for obtaining police remand beyond 15 days as prescribed under the present law may be misused by the police to detain the poor people who cannot afford good legal aid, while in the custody.

The second point is about Recommendation No. 13. The lowering down of the standard of proof as recommended in the Malimath Committee will also make the investigating agency slack and lazy and they will not do their investigation work professionally and efficiently to collect the clinching evidence to prove the guilt without any reasonable doubt and the poor person who is accused will be suffering as he may not be in a position to engage good lawyers because of prohibitive fees.

The last point is regarding Chapter V on Presumption of Innocence. We strongly propose that the onus of proof should not shift in any way from 'prosecution' to the 'accused'. Though the recommendations for toning up 'investigation' and 'prosecution' machinery and improving the functioning of courts to provide speedy and affordable justice to the people, are welcome, we would strongly oppose any deviation from the 'due process of law' and providing reasonable and just opportunity of self-defence to the accused. We would also oppose enactment of any draconian law. Thank you.

THE MINISTER OF HOME AFFAIRS (SHRI SHIVRAJ V. PATIL): Sir, I would like to start my response by thanking the hon. Chairperson, who has kindly agreed to allow this debate to take place and also thank Mr. Nariman who suggested that this Report should be discussed in the House, and who made a very good speech on the Report itself.

Various Members have expressed their views on the recommendations given in the Report. Some Members have said that this Report is unacceptable, and they have used very harsh words about it. Some Members have said that there are some good points which should be considered by the Government, and those points should be considered to dispense better criminal justice to the people at large. Some Members have said that there are suggestions which should be considered very carefully before they are accepted. Sir, I would like to say that I do not want to take a stand which is at a very extreme position. I am not going to say that it is totally useless. I am also not in a position to say that all the recommendations that have been made will be accepted, because that never happens. There are Reports given by different Commissions, and all the suggestions given by different Commissions are not accepted. The Sarkaria Commission's Report is a very good Report. But the Government has not accepted all the suggestions given in the Sarkaria Commission, and it is not going to be possible for this Government or any Government for that matter, to accept all the suggestions which are given in this Report. Two Committees were appointed to consider the recommendations given, and those Committees have expressed their views. They have said that certain recommendations will be accepted. Certain recommendations have been accepted and incorporated in the law. And they have clearly said that certain recommendations cannot be accepted. To be very brief, I would like to say that there are certain recommendation which, I think, will be very difficult for us to accept? What are those recommendations which will be very difficult for us to accept? It is suggested that the truth and not the proof should be the principle used in deciding the criminal cases. It is said, "Don't depend on the proof, but depend on the truth, and the quest for truth should be carried out." This is what is suggested. Is it possible for us to find out the truth? Who would tell us what the truth is. So, as we are human beings, we shall have to accept a formula which can really help us in doing justice in criminal matters. And, the formula, which has been accepted and used by us for all these years, is to depend on the proof and not on the truth because we do not know what the truth is. It is very difficult to find out the truth, and what is found as a truth may not be truth also. It may be an intermediate position; it may not be a final position, and, one would not know what is finally true. That is why, in my opinion, proof and not the truth should be the formula that should be used in India to decide the cases. The Constitution of India gives the right to silence. The

Constitution of India says that no accused can be compelled to be a witness against himself. A few days back, when we were discussing the Criminal Procedure Code, this point was raised by one of the hon. Members. The Criminal Procedure Code provides that the finger-print of the accused person should be obtained to find out whether he is really a person against whom the trial should be started or not. And then the hon. Member was saying that it would amount to making him a witness against himself, and this is not allowed by the Constitution of India. This Report is saying that the right to silence, which is given to the accused should not be there and in some cases a very convincing logic is used to make this point. They say that nobody knows as much as the accused about the crime that has taken place. But this is true if he is a person who is actually involved in it. If he is not involved in it, he would not know anything at all, and that is why this right to silence, which has been enshrined in our Constitution, should not be given up. The fourth point that has been mentioned, and one of the hon. Members while speaking on this topic mentioned it, is about the role of the judge. In Indian jurisprudence, in Indian system, the judge does not help the prosecution, or, the defence. He keeps a distance from the prosecution as well as from the defence, and then decides on the basis of the evidence, which is produced before him as to the guilt, or, the innocence of the accused. It is suggested that a judge should be more active; he should be proactive; he should be active and he should be allowed to ask questions. As a matter of fact, those who have practised on the criminal side and those who have conducted criminal cases, know that, even today, under the existing Criminal Procedure Code, the judge is allowed to ask the accused if he has to give any explanation, if he has to make any comment on the evidence that is produced by the prosecution to prove his guilt, and the accused is allowed to make a statement. But if the accused refuses to make a statement, adverse inference is not drawn. When the case is conducted before the judge, at times, the judge asks the prosecution to put a question in a particular manner, or, he himself puts a question to the witness. When the defence is also asking a question, the judge helps the defence lawyer also to put a question in a particular manner to find out as to what the factual position is. But, to provide in the law that he should play an active role, probably, will be giving up the principle, which we have followed up to this time for many, many years. We have followed this principle. And these principles have come to us through the British criminal jurisprudence and the Roman law, and these are the principles which have

been established not in the last 100 years time but these principles have been established on the basis of the experience, I would say, of thousands of years. They have experimented with the criminal jurisprudence in Rome, in Great Britain, in India also, and in other societies. Even in India, we have experimented with this in a different manner. But this principle, in my opinion, is such that it would be very difficult for us to give up at this point of time.

One of the things, which was discussed here on the floor of the House, related to the standard of proof. The Report says that the principle 'beyond shadow of doubt' should be given up. This principle is not enshrined in any law, not even in the Constitution. This is the principle, which has developed through precedence. This is the principle, which has developed through the decisions given by courts. And the courts, while hearing the cases, have come to the conclusion that in civil matters, preponderance of probability should be the principle and in criminal matters, 'beyond shadow of doubt' should be the principle. I think it is a very, very salutary principle. This principle helps us to hold that an accused, until he is convicted, should be treated as an innocent. And that conviction should be based on the principle that the proof is beyond a shadow of doubt. Even an iota of doubt is sufficient to release him. Why is this being done? Sir, there are cases—Mr. Nariman is a renowned lawyer and those who have practised, they know that there have been cases—in which the accused have been sentenced to death and they have been hanged. And, after they were hanged, the person who was supposed to have been killed had come back. Now, that is why this principle of proving beyond a shadow of doubt, I think, should not be easily given up, and we should not bring it nearer to the principle which is followed in the civil matters. The Report is saying that if the judge is convinced that the accused is guilty, then, he should punish the accused. I think, this suggestion has to be taken with a pinch of salt, and not to be accepted. I am finding it very difficult to accept this suggestion.

There are some suggestions given that the burden of proof should shift from the prosecution to the accused, also in some cases. It has not said this thing in very clear terms, but at some places, this has been mentioned in the Report. I would say that the principle that we are following and which

is enunciated in the law and in the decisions given up to this time, should not be given up. So, these principles and these kind of philosophies which are accepted and followed up to this time in doing criminal justice, it is very difficult to give them up, throw them to the wind and accept some new principles simply because the number of cases in the courts is increasing, simply because it is becoming difficult for the prosecution or the police to prove the cases against the accused persons. The principle that let not the innocent person be punished at any time, is a good principle, and we should not give it up.

Then, there is a suggestion given that the confession made to the police should be accepted. Sir, I am very sorry to say this. So many Members have said so many things against the police. I am working with the police people. I know their agony. They are living in some conditions in which they commit suicides. I know that people have died to save the lives of other people. Let us not condemn them and condemn the entire police force, as such. There are good people and bad people. Let us punish the bad people. But, let us not say because there are bad people, all people are bad people and condemn them like this. Having said this, I am saying, Sir, that the confession which is made to the police should not be accepted. The police is an interested party in the prosecution. The police may not have taken money; police may not have any ill-will against anybody. But, then, because he is investigating, as the human nature is, he becomes an interested party in the prosecution. He is interested in seeing that what he has done proves to be correct. So, the human psychology will compel him to act in a manner which may go against the principle of trying to do real justice in the matter. So, I am saying that this suggestion also may not be accepted.

There is a suggestion about the inherent powers of the court. The Supreme Court has an inherent power and the High Courts have the inherent power. Now, if we give this principle of inherent power to the lower judiciary also, that would create many difficulties. When the matter relating to the conflict between the Legislature and the Judiciary was decided—Allahabad High Court case—Mr. Nariman must be knowing it...ultimately, they said that under inherent power, we are entitled to find out whether the case is correct or not. It is all right as far as the Supreme Court and the High Courts are concerned. But, if the inherent power is made available to the lower judiciary also, probably there would be many complications and that kind of a situation we should not allow.

Having said that, Sir, I would come to the positive points which have been mentioned in the report. It would be wrong for us to say that the Judge has looked into this matter and he has made some very, very good suggestions; and if some suggestions are not acceptable to us, even good suggestions should not be accepted. I am not willing to say that it should be thrown to the wind—I am not saying 'thrown into the dustbin'; I am saying 'thrown to the wind'. This kind of attitude is not really helpful. As a matter of fact, this report has made certain good suggestions. Even before this report was made available to us, there were other Commissions and Committees appointed, they had also made suggestions; and, some jurists and judges also had made suggestions and some decisions also contained certain suggestions; and we have accepted those suggestions, and we have incorporated them into the law. This should not be forgotten. It is only two days back, by amending the CrPC, we have provided that the anticipatory bail should be given. Now this report is saying, "Let there be a provision in the law for giving anticipatory bail and in certain circumstances, anticipatory bail should be given." We have already incorporated it in the law, only two days back. We have incorporated that provision in the CrPC. Why should we say that the Malimath Committee has suggested this thing but it is not acceptable to us though we have accepted it, incorporated it in the law. And so we cannot be allowed to say that this is not acceptable? Then, Sir, this law is saying, "Let there be a Directorate of prosecution." This law is saying that let there be a Directorate of prosecution. Why? Because, if there is a Directorate of prosecution, there is some independence available to it. Then the people who are experts in the field will be working and then there will be public prosecutor and additional public prosecutor who would be helping the prosecution of the cases in a proper manner. This is a suggestion given and this issue has been discussed in many cases and it has been suggested in this report also, and we have already accepted this suggestion. In fact, we have incorporated this suggestion in CrPC, which we have passed only two days back. Can we be allowed to say that this is a suggestion which is not worth consideration and it should be thrown out?

Then, it has suggested to use the technology, modern technology. While speaking on the Amendment Bill, I had said that from oral evidence to circumstantial evidence and from circumstantial evidence to technical

evidence, that has been the movement; we have made, up to this time, in order to come to a position in which the judgment can be more correctly given. So, we have adopted the principle. This report says that it has been possible for us now to have DNA tests; and if you have the DNA test, that test should be very convincing. A witness can give wrong information. He can make false statements. But the DNA test will not make a false statement. The DNA test will be more reliable than the oral evidence given by an eye witness. That is why, Sir, this report is saying that now that we have new technologies and new methods, let us adopt those new technologies. This report has specifically mentioned that the DNA test should be accepted and we have already incorporated that provision in the law. This report is saying that it is becoming very, very difficult for the judges, for the lawyers, for the witnesses and for the accused also to come in the court and to give evidence and the evidence is recorded. Sir, what is actually happening is that in some cases the judge is sitting in the court, the prosecution stands up there and he puts questions to the witness. Then witness replies to them and then it is written in the regional language in which he is making the statement. Then it is translated by the judge in English and then it is recorded. Both the versions are recorded. Then he goes to the defence and the defence does the same thing. A lot of time is taken. It is very tiresome to go through this rigmarole. It becomes very, very difficult. This report very rightly is suggesting that when we have audio and video machines; why not use these audio and video machines. I know when a copy of any judgement was required from the court of law, we had to wait for months together because applications given were too many and the people who were to type were few. If we put computers in the courts, if the judgements are written on computers, if it is on the computer and if the evidence is also on computer, just by pressing a button you get the copies of it. This facility is provided to the lawyers and to the persons involved in cases in order to conduct the cases in a proper manner. This is a suggestion given. May I make a mention here in this House, Sir, that before this Report was made 10 years before, at my place there was a judge who used his own money, out of his own money, he asked the lawyers also, purchased some video cameras and audio gadgets and he started recording evidence in the court on the video and audio machines. At that time, there was no law. But then he said, 'Let me experiment with it. Let people know how it can be done.' It has become possible for us now to record the evidence of a witness who is in jail. It is not necessary for that witness to

come to the court. We do have equipments and the witness may be there, the judge may be in the court, the lawyer may be there and with the help of cameras and computers it has been possible. This is something he has taken note of. He is suggesting that let us not stick to the old methods of doing justice and recording evidence and writing judgement and giving judgement. He has mentioned that we should use the new technology. Why should we not use it? What is the objection to it? I do not understand what objection can be there. Can we say, throw this also in the dustbin? We should not do that. If we do that probably we are not doing justice to him. There is one more thing, that is, plea-bargaining. There are many cases, small cases and small people involved and unnecessarily they are going to courts and then they are harassed. So, it is suggested—in many other countries it is accepted—to have plea-bargaining. That means before going to the court, if the case can be compounded, let it be compounded in small matters. Somebody has come and slapped a person. Is it necessary for that man to go to the court every now and then appearing in the court, wasting his time, energy and money? It is not. So, it is suggested—as it is done in other countries it is being done—if both the sides are agreeing to compound the case, even without going to the court it should be allowed. So, that kind of plea-bargaining should be adopted. This is a very salutary suggestion. Why should it not be accepted? So, we are coming before this House with one more amendment to the Criminal Procedure Code in which we have incorporated this suggestion. I hope that suggestion will be accepted. It is also suggested that there are many cases, in which only fine is imposed which is awarded by the judge. Why should a person, who can be fined only, be arrested by the police? This report is saying that cull out these sections and find out in which cases only fine can be imposed. If only fine can be imposed, then do not say that that man should be imprisoned. Why should we not accept this principle? What is the difficulty in accepting this principle? Then it has also suggested that computerise everything, computerise the judiciary, the entire judiciary and not only at the apex, the Supreme Court and the High Courts, but let the lower judiciary also be computerised so that things can be done expeditiously. It has also suggested that do not depend on oral evidence. The witnesses can make false statements. But blood group will not make a false statement. So, it has suggested that the forensic laboratories should be modernised and we in the Home Ministry have taken steps. We

have provided 50 crores of rupees and given money to the forensic laboratories in Nagpur and other places to see that modern technology are made available to them. As far as training is concerned, Sir, the same thing is being done in training also. This report is suggesting that let the investigating wing of the police be separated from the wing of the Police which is given the responsibility of maintaining law and order in the country. This is a very salutatory suggestion. Government is finding it difficult to accept it. That is altogether a different thing. Why is the Government finding it difficult to accept it outrightly is this: they are asking to have an investigating agency at all places. We shall have to have the officers meant for this purpose who would not be doing law and order maintaining duties. So, we will be adding to the strength of police force in large numbers for this the funds have to be found out. But I do think that this is a salutary provision. If it cannot be done throughout the country, let us do it in cities like Mumbai, cities like Calcutta, Chennai, Bangalore, Delhi and other places where it is possible to separate the police forces and men in such a fashion without increasing the number or by increasing the number in small measures and providing this kind of facility. We are going to look at it. This report says that the police forces have to be acquainted with new laws. There are many laws which are coming up here. There are laws we have made about cyber crimes. There are laws we have made about electronic crimes, genetic crimes. Many, many new laws are being passed. It was difficult even for a person who has studied something of the law to understand the provisions in these laws and the police officers or the police officer who is all the time busy in providing security and law and order and maintaining peace in the society is expected to understand them in clear terms and know them. So, the report is saying that the law is becoming more complicated, more technical and because of this it would be useful to have a wing of lawyers working in districts and States where these matters can be referred to them and something can be done for this purpose. These are some of the provisions, to which I have made a reference, which are really salutary and acceptable, and we have already accepted and incorporated in the law, and there will be no difficulty in accepting some of the salutary provisions which have been mentioned here. So I want to say that these are some of recommendations which are acceptable to us. Let them not be thrown to the wind. Now, what will the Home Ministry do in future? I just want to make some statements. This report is suggesting that the witnesses these days are very vulnerable. So

protect the witnesses. This has been highlighted. It is not only given in this report but the Supreme Court has also asked to protect the witnesses and there should be a law to protect the witnesses. I would like to submit to this House that Home Ministry, Government of India would like to have a law to protect the witnesses. We would like to have a law to protect them. Sir, this principle of giving compensation to the victims is being discussed. The police arrest the accused and convict him. But what happens to the man who has actually suffered, who has got his limb broken or lost his life or property of kith and kin? So, the new principle, which is developing, is that, 'give him the compensation'. Our leader has asked us to look into how compensation can be given. We are making some other laws also. Under the proposed laws, we are deciding as to how compensation can be given. I think Mr. Nariman spoke about the compensation issue. We would like to have a law on this — law to give compensation to the victims. How can it be done? Should the court give the compensation? Or, should the Government give compensation? Or, should there be some other mechanism created for giving compensation? where the fund should come from? Whether there should any corpus be created for giving compensation at the national, State and district level. And, what should be the quantum of compensation awarded? These are all to be provided in it. And, in which case compensation should be given? We are thinking of having a law for giving compensation to the victims.

This Report has suggested that the IPC, the Cr. P.C., and the Evidence Act should be amended. I think, Mr. Alvi, said, 'for how many years we have been using these laws?' It is a fact. These are on the statute book for long many years. But, simply because the time has elapsed, everything in the law need not be changed. This law is an essence of the thinking and experiments which have been made in this field for thousands of years by different countries and different jurists. All the laws need not be changed lock, stock and barrel. It is not necessary. But, it is also a fact that new situations are becoming visible. New crimes are becoming visible. The computer-related crimes, the electronic-related crimes, law of patents, law of genetics and many, many things are happening in this world. It is mind-boggling. It is not possible to explain how wide and comprehensive that issue has become. So, it has become necessary to take into account the changed circumstances also and to give a new shape to the IPC, the Cr. P.C., and the Evidence Act. Without giving up the basic structures, which is most important, which is going to be valid. We are thinking of appointing Committees make suggestion to change these laws.

A suggestion was made that the Nyay Panchayats be given the responsibility. According to the new law, Panchayati Raj is a part of the Constitution. The District Bodies, the Talukas and Panchayats are all part of the Constitution. In some Panchayat laws, there is a provision for Nyay Panchayats. This Report suggests why cannot small cases, summary trials, in which fine can be imposed and not imprisonment, be transferred to Nyay Panchayats! It should be possible for us to transfer them to Nyay Panchayats. We are also going to look into this aspect.

One of the most important questions, which is generally asked whenever we go to villages and to our constituencies or whenever we talk with our colleagues or whenever we participate in elections, is this: In elections and in all other matters the FIRs are given to police but they are not registered. What do we do if FIR is not registered? And, they are asking for solution. They say, 'Why don't you see that the FIR is registered and all those things?' Something has to be done in this respect. Something has been suggested in this Report. But, I am suggesting on my behalf and I have been telling it to my colleagues also—many-a-time I have said this to my colleagues— if FIR is not registered by the police, the simplest thing that can be done is that the person giving information has to send a copy of that FIR to the magistrate of that area and there is a proof that FIR is given to the police and there will be a proof that FIR is not registered. So, the police will be responsible and the case will be started. So something of this kind we would like to do in this respect also.

It is suggested that the New Police Act should be looked into and amended. Some of the suggestions given by the Police Commission with respect to the amendments to the Police Act are acceptable. Some suggestions require discussion and the concurrence of the State Governments. But we are thinking in terms of making these laws also. I would like to say that we would like to make these laws more humane. We would not like to see that the arrested person is kept behind bars in the custody of police, for fifteen days; for thirty days; for ninety days. If it is required, there are Judges, and there are methods by which that can be done. But we would like to see that these laws become more humane. But, at the same time, we, as a Government, which has been given the responsibility of protecting the innocent people's lives, limbs, properties, and reputation also, have to see that these laws don't become ineffective.

They have to remain effective. So, these are the two interests that we have to balance. On the one hand, they should be humane to innocent; on the other, they should be effective towards the criminals. This is something which can't be easily done. It is very difficult to achieve that objective. But this is what we would like to do.

There is only one point that I would like to make in the end, and, then, I would have done, Sir. The issue of death punishment has been raised many a time. And, whenever the question of rape is mentioned, the punishment of death is mentioned by some and also opposed by others. This report says that don't accept the death punishment against the accused who is convicted of rape. Many jurists have also said the same thing. Here, in this House, also many hon. Members have said the same thing. So, dilemmas are faced by those who have to take the decisions. Those who are sitting in the courts, they face this dilemma. Those who have to decide whether a man should be hanged and put to death or not, they face this dilemma. One of the things that has been said in this report is very, very salutary in my opinion. It may not be acceptable to everybody. Until a time, when the death punishment is provided in the Indian Penal Code, there will be cases; there will be courts, which will be using this provision to punish a person to death. There is no denying the fact that there are other countries which have abolished the death punishment and accepted the life imprisonment. But what is 'life imprisonment'? In India, 'life imprisonment' means only 14 years' jail, and nothing more than that. 'Life imprisonment' means life imprisonment. But it is commuted to 14 years. And, then, within 14 years time the convict comes out of the jail. But there are countries in the world that have interpreted 'life imprisonment' as life imprisonment—unto the last. The person has to be in jail until he breathes his last. That is the kind of interpretation which they have. So, we have three kinds of cases now—death, and his life is finished; imprisonment for life that cannot be commuted; and imprisonment for life that can be commuted, that means, within fourteen years time he can come out of jail. So, if we are not going to accept the principle of awarding death punishment very easily, can we accept the principle that the person, who is sentenced for life, should remain behind bars for life? If we accept the principle of the basic goodness of human beings and the criminal psychology as some sort of aberrations; some sort of madness; some sort of disturbed mind, the principle of refinement is also accepted. While

looking at this problem, Sir, this has to be done. This is something that has to be done by the police; by the judge; by the witnesses; by the members of the family, in which he is born, and members of the entire society itself. If we are only blaming the police or only blaming the accused or only blaming the judge and saying that we have no responsibility, then, probably, we would be wrong. We all have to share this responsibility, and all have to contribute to see that the criminal justice system becomes better and real justice is meted out to the all persons. We shall have to look to this report from this angle. I would like to repeat, and, I would like to repeatedly thank Mr. Fali Nariman and the Chairman for giving us the opportunity to discuss it and express our views on this. ...*(Interruptions)*...

SHRI A. VIJAYARAGHAVAN: Sir, there is one small point. ...*(Interruptions)*...

प्रो० राम देव भंडारी: सर, एक सवाल है।

श्री उपसभापति: बहुत हो गया। Mr. Vijayaraghavan, see, we are not enacting a law. ...*(Interruptions)*... It is only a discussion. ...*(Interruptions)*... इसमें क्लेरिफिकेशन क्या है?

SHRI A. VIJAYARAGHAVAN: Sir, there is issue of women's ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: When the matter comes up later, we can discuss it again. Why are you raising it now? ...*(Interruptions)*...

SHRI SHIVRAJ V. PATIL: Sir, these matters are pending with us for eleven years. ...*(Interruptions)*... So, please given them 5—10 minutes.

MR. DEPUTY CHAIRMAN: The report has been taken up for discussion. ...*(Interruptions)*...

प्रो० राम देव भंडारी: मंत्री जी, आजकल कोर्ट्स में बड़ी संख्या में PIL हो रहे हैं और अनावश्यक PIL हो रहे हैं। क्या हम कोई ऐसा प्रावधान करेंगे कि उनको रोका जाए या कम किया जाए क्योंकि पहले से ही कोर्ट्स में मुकदमों की बहुत ज्यादा भीड़ है।

MR. DEPUTY CHAIRMAN: Mr. Prem Chand Gupta will make a statement. ...*(Interruptions)*...

SHRI A. VIJAYARAGHAVAN: This issue of women ...*(Interruptions)*... Sir, a wrong impression will go to the society. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Mr. Vijayaraghavan, we will take it up later ...*(Interruptions)*. . अभी कुछ नहीं हुआ, आप क्यों ...*(व्यवधान)*... No assurance was given ...*(Interruptions)* We are just discussing the Malimath Committee Report. . *(Interruptions)*

SHRI SHIVRAJ V. PATIL: We are not going to get an opportunity again ...*(Interruptions)* So, let them put questions . *(Interruptions)*

MR. DEPUTY CHAIRMAN: Statement by Shri Prem Chand Gupta . *(Interruptions)*

STATEMENT BY MINISTER

Status of Implementation of Recommendations contained in the Eleventh, Twelfth and Thirteenth Reports of the Department-related Parliamentary Standing Committee on Finance

THE MINISTER OF STATE OF THE MINISTRY OF COMPANY AFFAIRS (SHRI PREM CHAND GUPTA): Mr. Deputy Chairman, Sir I beg to lay on the Table a Statment on the status of implementation of recommendations contained in the Eleventh, Twelfth and Thirteenth reports of the Parliamentary Standing Committee of Finance in pursuance of Direction of the Hon. Chairman, Rajya Sabha issued *vide* Rajya Sabha Bulletin-Part II, dated 28.9.2004

HALF-AN-HOUR DISCUSSION

Points arising out of the answer given in Rajya Sabha on the 14th March, 2005 to Starred Question No. 161 regarding school dropout.

MR. DEPUTY CHAIRMAN: Now we will take up Half-an-Hour Discussion .. *(Interruptions)* Mr. Santosh Bagrodia . *(Interruptions)*

It is over . *(Interruptions)* . Once this Half-an-Hour is listed, we have to take it up on that day . *(Interruptions)* Mr. Santosh Bagrodia . *(Interruptions)*

SHRI SANTOSH BAGRODIA (Rajasthan): Sir, you had taken the sense of the House earlier . *(Interruptions)* If you want to take the sense of the House and if they want to discuss it tomorrow, I have no problem . *(Interruptions)*