

tantrik... (Interruptions). I am coming to that. TV's whole business is to catch a star or a celebrity in whatever form he or she moves. If Sachin Tendulkar prefers to go to a temple, how can we prevent the TV channel from following him? Can I do it? If you go, before filing your nomination, to a temple, how can I ask you not to go there? It is not regulated by the Ministry. It is all faith and understanding. But, in principle, we don't propagate that superstition should be there. Now, from morning to night, we find so many channels — Astha Channel, Pravachan Channel, etc. Sometimes, in Bengal, I find Astrologers' Channel. Each one is predicting someone's fate. Now, the Ministry cannot prevent all these things. Ministry is concerned about obscenity; Ministry is concerned about misdirection to the nation; Ministry is concerned not to encourage things which will spoil youth and children. Those are general framework guidelines, not by law. But, if you believe a ghost, or a *tantrik*, how can Information and Broadcasting Ministry come into the picture to prevent you? So, this is all I can say. I am thankful to the Members for their suggestions. If, Sir, again I have missed something, I will go through the proceedings and I will respond accordingly.

SHRI CHITTABRATA MAJUMDAR: Sir, ... *(Interruptions)*.

SHRI PRIYARANJAN DASMUNSI: I told you in the beginning that on this staff's issue, I have said that I would play the role of a trade-union leader in the Group of Ministers in regard to pay-scales and other things.

GOVERNMENT BILLS

The Code of Criminal Procedure (Amendment) Amending Bill, 2006

उपसभाध्यक्ष (श्री कलराज मिश्र): अब हम दंड प्रक्रिया संहिता (संशोधन) संशोधनकारी विधेयक, 2006 लेंगे।

THE MINISTER OF HOME AFFAIRS (SHRI SHIVRAJ V. PATIL): Sir, I move:

"That the Bill further to amend the Code of Criminal Procedure (Amendment) Act, 2005, be taken into consideration."

Sir, the Code of Criminal Procedure (Amendment) Bill, 2005, containing 44 clauses was passed by both the Houses of Parliament during the Budget Session of 2005. The Bill, after receiving the assent of

the President of India, has become an Act. The Act has certain provisions seeking to reform the criminal justice system, provide relief to under-trials, protect women, streamline the procedures, and, at the same time, ensure stringent treatment for hardcore criminals and those convicted of heinous crimes. In spite of having so many good features, some organisations, particularly those representing lawyers, protested against it, as they were against a couple of provisions in it. Moreover, the Government had acceded to the Members' demand in the Lok Sabha during discussion on the Bill not to include *danda* or *lathi* in the definition of section 153(a)(a) of the Indian Penal Code. The Government, therefore, did not implement the Act, as there is no provision in it for its partial implementation and keeping some of the provisions in abeyance. Now, in consultation with the Law Ministry, we have prepared a Bill to amend sub-section 2 of section 1 of the Act to enable us to give partial effect to the provisions of the Act. The Bill was introduced in this House on 21st of March, 2006. It does not propose to amend any of the provisions of the principal Act, that is, the Code of Criminal Procedure.

I, therefore, request this House to extend cooperation and full support in consideration and passing of the Code of Criminal Procedure (Amendment) Amending Bill, 2006.

The question was proposed.

SHRI SHANTARAM LAXMAN NAIK (Goa): Sir, I thank you for giving me the opportunity to speak on this Bill. Sir, this Bill is very much required in the present situation because after a Bill is passed and becomes an Act, if there are problems thereafter due to some representations made, then, the Government must be empowered to notify those sections which are acceptable to the community at large, and, those which are not acceptable or controversial can be kept in abeyance. Sir, I would like to suggest in this matter that eventually if the Government comes to a conclusion that the objected provisions are not going to be accepted, then, the Government has to take a definite stand, either to go ahead and notify or to repeal those provisions because after passing of a Bill by the Parliament, it is not ideal to keep certain provisions in abeyance indefinitely. This is my submission.

Secondly, Sir, in the matter of Civil Procedure Code, similar situation arose. In fact, there were some provisions in the Civil Procedure Code (Amendment) Bill, which affected the common man. Time limits of certain

proceedings were restricted, and, as a result people suffered. It was not the lawyers who suffered. By and large, it was the weaker sections of the society who could not submit their documents to the lawyers in time. Because they did not have those certified copies in hand — which the rich men were having — they suffered. It is they who suffered and who lost their land. We say that we are bringing the amendment for speedy disposal, taking care of time limits etc. etc. All these are laudable things. Ultimately, the weaker section, the Tribal people, Scheduled Caste and Scheduled Tribe people, having not been able to submit their documents in time suffer the most. They suffer because they don't have their documents on hand. In such a situation, we did not listen to them and notified.

Therefore, before such controversial Bills are enacted, people at large should be consulted. Now, in the present Bill that was passed last time, there are some good provisions, and, I think, our Minister should try to convince the people, especially Tamil Nadu Bar and others who had objected to the provisions, say, for instance, relating to anticipatory bail etc. In the anticipatory bail also, there are some good provisions made. Supposing, just because to humiliate a person, the police tries to prosecute a person, then, the courts should give necessary anticipatory bail to such person. This is a new concept. Sometimes, it happens that they are interested in humiliating a person. Such clauses are also included, and, therefore, our Ministry should try to tell them that there are also certain things, which the Bar, at large, should accept.

Then, I come to the last amendment that has been passed and this is relating to a provision to strengthen the Directorate of Prosecution. Why should anybody object to that? Today, the Directorate of Prosecution has to be strengthened, has to be modernised; rather it should be computerised and well equipped so that there are less and less acquittals and the machinery of prosecution is strengthened. Then, there is a provision of DNA test in the last amendment, which should also go on.

Right of the arrested person to have his relatives or even friends informed has been incorporated in that Cr. P.C. amendment. These things are to be told to the people at large so that these provisions are notified as early as possible. Moreover, no woman can be arrested after sunset or before sunrise. This is a laudable provision, which is contained there. It is there without being notified all these months. Therefore, the NGOs

and the others, which are involved and because of whom such provisions have been made, have also to be told that these are the provisions which are there in the Code of Criminal Procedure (Amendment) Amending Bill, 2006.

Then, as far as this approver is concerned, the question is, today there are serious trials going on and there are some approvers coming to depose before courts. Now, there is no provision for bailing them out. It is necessary that when approvers come forward, there must be some inducement for them to come forward, and bail can be one of them. Therefore, necessary amendments in Section 306 have to be made to provide for bail to those approvers which come forward to help the prosecution.

Then, recently hotly-debated question of witnesses turning hostile has come up in several cases. Now, this is an issue which has to be seriously dealt with by the Government. The hostile witnesses have to be tackled. If hostile witnesses are let free and things go in the manner in which they have been going on all these years, there won't be justice. There would be hardly 5 per cent conviction in courts of law. Out of hundreds and thousands of cases, there may be hardly 5 per cent conviction, if hostile witnesses are allowed to go free. Therefore, a special chapter containing two-three solid provisions with respect to hostile witnesses has to be made.

Another aspect is of Investigation Officer. At investigation stage, several mischiefs are conducted throughout the country in several States. These things are going on either unnoticed or after being noticed, we become helpless. What do we do? Suppose, there is a *prima facie* case of investigator's fault, what do we do? We do nothing. The investigation machinery brings the thing before the court and the courts decides. The court passes some strictures. Sometimes the strictures are very, very serious. Then, the Government takes some action. I think, in each such case, penal provisions have to be made and the concerned officers have to be prosecuted. Unless that is done, the mischiefs will continue. Incidentally, I am making one suggestion, Sir. Now, the Central Bureau of Investigation is an important prosecution machinery throughout the country. Till today, we don't even think of enacting legislation for the purpose of regulating the Central Bureau of Investigation. We just say that the Criminal Procedure Code and the Special Delhi Police

Establishment Act is going on. But, when such an important machinery is functioning without an independent legislation of its own, this is something not understandable. Therefore, a special legislation should be there to regulate investigation by the Central Bureau of Investigation. Whatever powers we may give or take away, that Parliament will discuss subsequently. But, a thought should be given to have a special legislation for the purpose of Central Bureau of Investigation.

Lastly, I would like to make a suggestion with regard to all the important trials which are going on in various States and at the Centre. Some may not agree with me, but I am of the opinion that important trials in the courts of law should be televised so that people in the country can see them, know them and understand them. That is all, Sir. Thank You.

SHRI RAVI SHANKAR PRASAD (Bihar): Sir, I rise to support the Bill. In fact, this Bill, in a way, is just a formality. I will not go into the details of it, because you are seeking power to notify different provisions from different dates. That is what you are going to do. You have also explained the reasons as to why you are seeking these powers. Because some friends from Tamil Nadu did not want some provisions to be implemented. As a consequence, the entire law stands unimplemented.

Hon. the Home Minister has just mentioned that amendment of 2005 contained very significant provisions, including the position of plea-bargaining. You may recall that. Substantial amendments have been introduced in the Cr. P.C., but because of lack of implementation all are putting on hold. Let me say this today here. We saw it in C.P.C., and we are observing it in the case of Cr.P.C., that we often come with a law, but it is time to have a determination to implement it. Otherwise, the whole sanctity of the law is lost. I think it is time to reiterate this basic premise. If any initiative for reform will be made, there would be opposition—may be a very valid opposition or may be a motivated opposition. But when we, in Government or in Parliament, after the approval of the Standing Committee, after taking all the feedback, come with a law, I think we need to ensure that this is implemented. You are seeking this power to implement the provisions from different dates.

Hon. the Home Minister I have only one query to you. Would it mean that only some would be implemented and if there is any opposition the notification would not come in the case of others? Because this is also a double-edged sword. I hope you will appreciate it. The opponent

would argue saying, 'keep it in abeyance, don't issue the notification'. Therefore, once you are taking this power, which you quite appreciate you need to, I think I must administer this caveat.

Sir, only one issue I would like to highlight today which my friend has just touched upon. This is the most serious issue. The infirmity in the trial, criminal trial, is coming to the public notice repeatedly. The entire legal system, criminal justice administration, is based upon trust and confidence that those who commit crime would be punished. Hon. the Home Minister, unfortunately, a serious apprehension is looming large in the entire country that if you commit an offence, you manage the prosecution, you manipulate the witness, and get acquitted honourably. This is happening in high profile cases. This happens in small cases in the rural areas. The issue of witnesses turning hostile is certainly an issue which is causing great concern. Hon. the Home Minister, we would certainly like to ask you, taking the opportunity of the present amendment, to have an assurance that you do contemplate certain amendments to ensure as to how witness protection programme should be there. The Supreme Court and courts have administered caution from time to time on the issue of witnesses turning hostile. But perhaps today the time has come to reflect upon this whole gamut of investigation, trial, and witness protection in the light of some of the high-profile cases ending in acquittal, which has raised a very serious controversy in the entire country, which we need to respond. Sir, with these words, I support the proposed amendment Bill.

SHRI MOINUL HASSAN (West Bengal): Sir, I rise to support this Bill. Sir, in paragraph No. 3 of the Statement of Objects and Reasons, it is said that, "to empower the Central Government to notify different dates for implementation of various provisions of the said Act." This is the main reason behind this Code of Criminal Procedure (Amendment) Amending Bill, 2006. I rise to second this Bill.

While I am supporting this Bill, I would like to say, Sir, we should have a comprehensive Criminal Procedure Act. I would say even after this amendment, there are a lot of loopholes to make this Criminal Procedure Act to face the situation which is prevailing in our country today. So, I would request the Ministry, especially the Home Minister who is present here, to look into the matter and a comprehensive Criminal Procedure Act should be there in our country. Sir, it is a small Bill. There

is only a small amendment, which is specially raised in Tamil Nadu. Sir, I will not go into the details of the Bill which is circulated. There is no scope also. But I would like to raise two or three questions in this regard.

Sir, with your permission, I would say that discontent between truth and evidence is the stark reality of the legal system. We are observing the gap between these two for many, many years. Between these two systems, there is a lot of gap. My question is: How to bridge this gap? This Bill is not sufficient to bridge this gap between truth and evidence. Sir, in the 178th Report of the Law Commission, there is a remark. I would like to quote from that Report, "To protect public interest and to safeguard the interests of society, measures need to be devised to eliminate, as far as possible, scope for such happenings."

Sir, I raise this point because point of hostility of witness is already raised before this august House. I just quote the opinion or observation of the Law Commission which is placed in its 178th Report. I would like to request the hon. Minister to look into the matter. In addition to that, I would say, everybody knows about the Jessica or Priyadarshini rape case which have provided us with a historic opportunity to introspect on the weakness of the existing system. Sir, this is our Criminal Procedure Code. I raise this question only for this reason that it is a situation to look into the matter very seriously and we want a comprehensive Act so far as the Criminal Procedure Code is concerned.

Sir, another point I would like to put forward is that it is a loud Bill which is placed here. When it was placed in the Lower House—I had the opportunity as I was a Member of that House at that time—it was said that it is a big Bill. Today, the question was raised that arrest of women after sunset and before sunrise to be prohibited except in unavoidable circumstances. Sir, this word 'unavoidable' is very, very remarkable. I raised this question that 'unavoidable' should be defined and its meaning should be explicitly written in the Bill. It is not possible today, but, in future, it should be done. Another aspect in the Bill was strengthening the legal profession to ensure peace, harmony and tranquillity in the country. Sir, throughout the country, it is happening. In the name of religion, in the name of language, in the name of race, it is happening throughout the country. But the Criminal Procedure Code is not fit to protect the common interests of the beloved citizens of our country. Sir, again, it is my request to the hon. Minister to do something for them. Lastly, Sir, I want to raise

one more point, not covered by the Bill, regarding the right of victims. Sir, there is a lot of discussion in different parts, not only in the country, but also in the legal side, in the legal academy, between the Justices and the senior advocates of our country. Victims of crimes today, feel left out, ignored and are crying for justice. I quote from one judgment of the Rajasthan Court. It states: "The Courts must not only keep in view the rights of the criminals, but also the rights of the victims of crime and society at large, while considering imposition of appropriate punishment." Sir, my suggestion is, we should make a beginning today so far as the right of a victim is concerned. I would like to quote the United Nations Declaration of 1985. I quote: "A beginning can be made by bringing about a model legislation, based on the U.N. Declaration of 1985, and by setting up a fund of payment of compensation to the victim of a crime under an independent court." This is my suggestion so far as this Bill is concerned. So, with these observations, I again support this Bill, and I conclude. Thank you.

SHRI SHIVRAJ V. PATIL: Sir, this is a simple, technical Bill, which seeks to amend only sub-section 2 of section 1 to provide that different provisions of the Act can be notified on different dates. This amendment became necessary because some lawyers objected to the provision relating to the anticipatory bail. Now, if you talk to the prosecution lawyer, one view is expressed, if you talk to the defence lawyer, another view is expressed. All the same, we did not want to brush aside their view, and we said that we would look into it carefully. By amending this provision, we would like to notify all the provisions in the Bill excepting this one, and this will be done immediately after this Bill receives the assent of the hon. President of India. As far as this provision relating to the anticipatory bail is concerned, we would like to persuade them and see that the law is not going to create any difficulty for them also. If there is a provision in the Criminal Procedure Code requiring the applicant to be present in the court at the time when the order will be passed by the court, this can be done by the judge. Even without the law, he can ask him to be present in the court. So, I hope that we would be in a position to persuade them. This is a very good piece of legislation. It was introduced, I think, in 2003, and thereafter, it went to the Department-related Standing Committee. Then, it came back, and thereafter, it was introduced, and before the Bill could be passed, the elections were declared, and so again, it was to be introduced. There are many, many salutary provisions provided in this

piece of legislation, and we would like those provisions to come into force, and we would like to use them to give them relief. I am not going to go into the provisions which are there in the Criminal Procedure Code because of the amendment which was introduced some days back, and which is there. There were some other points made by the hon. Members relating to the Criminal Justice System relating to investigation, relating to the procedure which is followed by the courts in disposing of the cases, and so many other things. I would like to inform this hon. House that we have prepared a Bill, which is with us, and we are going to introduce that Bill in the House, and it is going to be a Bill dealing with many, many provisions of the Criminal Procedure Code.

SHRI ARUN JAITLEY (Gujarat): Sir, may I seek a clarification on the last point which the hon. Minister has made?

When the original comprehensive Bill with a large number of amendments was introduced, one of the key features of that Bill was to deal with this problem of hostile witnesses in a criminal trial. And the

[MR. DEPUTY CHAIRMAN in the Chair.]

provision which had been suggested, both by the Law Commission and the Justice Malimath Committee, was that in cases which are heinous criminal offences, which involve a punishment of seven years or more, the statements of the key eye-witnesses need not be recorded before the police, but would require to be recorded, in the first instance, before a Magistrate on an oath so that, subsequently, when he comes to depose before the court, even if he turns hostile, two consequences will follow. The first will be that on the earlier statement he can be confronted with, and being a statement on an oath, it will have some evidential value. And the second will be that he himself would be liable for perjury that one of the two statements that he has made on oath is a false one.

Now, the original amendment, if I recollect correctly, incorporated this. This did not find favour with the Standing Committee, and acting on the basis of the Standing Committee's Report, the Home Ministry was, then, persuaded to drop this suggestion. Subsequently, we have seen newspaper reports that several persons, including the President of the Congress Party, have written to the Home Minister, asking them to reconsider this viewpoint, particularly after some high profile cases in various parts of this country where this problem of hostile witness has

come to light. And we also read a statement by the Home Minister that the Government was seriously contemplating bringing some provision in Parliament, even at that time. So, in this comprehensive legislation, in which you are talking about of fresh round of reforms, is this one of the proposals that you have under consideration? And by when should we expect that?

SHRI SHIVRAJ V. PATIL: Sir, we have considered all these issues, and the matter is with the Law Ministry. They are drafting the Bill on the basis of these, including this provision also. Again, it may go to the Standing Committee, and the Standing Committee may look into it. The Government was of the view, the previous Government and this Government were of the view, that these provisions should be there in the Criminal Procedure Code to see that the witnesses do not give different versions before the police, and also in the court. But this is going to be there. Let us see what happens, how the Standing Committee looks at it—it is certainly going before the Standing Committee—and as to how the Standing Committee decides, once again, with respect to this provision of the Law.

One of the most important things which we are trying to do is to consider the issue of compensating the victim. This was raised by the hon. Member. So far, we have considered the aspects relating to, being very correct, the accused persons and the guilty persons. But as far as the victims are concerned, there is a provision in the Criminal Procedure Code to give some kind of a compensation, but that provision is very rarely used. But we are accepting the concept that the victim should be given compensation in certain kinds of cases. If a murder takes place, if a rape takes place or if a grievous injury is caused, and things like that, compensation should be given to the victim. Who should give the compensation, who should decide the compensation, what portion of the responsibility should be shouldered by the Union Government and the State Governments, these are issues which have to be considered. And that also we are considering.

There are many other things which have to be considered by us and have to be accepted by us, but the procedure which is followed in dispensing justice in the criminal matters is very huge and complicated. There are Reports given by the Law Commission, and also by the other Commissions appointed for this purpose. And those Reports have been considered. But, then, there are different views on the suggestions made

by the Law Commission and the other Commissions. The Justice Malimath Committee Report is there. People have expressed their views differently on the Report given by the Justice Malimath Committee. Even on the recommendations made by the Law Commission, the people, the jurists, the lawyers and the judges have expressed their views differently. That is why it is becoming difficult to arrive at a conclusion and decide whether the recommendation made by the Law Commission should be accepted as it is or whether it should be modified and, then, accepted, or whether it should be rejected. But then we don't want to wait till the time when it becomes possible for the Government to consider all the recommendations given by all the Commissions relating to all the provisions in the Criminal Procedure Code. The previous Governments did consider some of the recommendations given and they did bring Bills before this House and some of the Bills have been passed. We are also doing the same thing. We are not waiting till the time everything is handled in one go. We are trying to handle this in piecemeal. You have asked that why we don't do it in one go. It is becoming difficult. If we have to do it in one go, we shall have to wait for a long time to bring about a consensus on the recommendations made by all those who are concerned with the matters relating to the criminal justice system. That is why we have adopted this way. I feel a little unhappy and am very sorry that the Bill was passed and it has so many salutary provisions, yet it could not be enforced. Now, immediately after this Bill is passed, we would like to notify it and give it in the Official Gazette, and it will come into force. The other piece of legislation would come before the House later, I hope that this Bill will be passed by this House unanimously.

श्री विनय कटियार (उत्तर प्रदेश): सर, मैं पिछले दिनों होम की स्थाई कमेटी में रहा हूँ और इस पर बड़ी चर्चाएं भी हुई हैं और विशेषकर गवाहों के संबंध में, जो गवाह होते हैं और जो गवाह मुकर जाते हैं। लेकिन इसके दोनों पक्ष हैं। एक पक्ष यह है कि ग्रामीण इलाकों में जो घटनाएं घटित होती हैं और उसमें अक्सर ऐसा देखा जाता है कि पुलिस पेशेवर गवाहों को लाती है और उस समय जोर दबाव दे करके यह होता है, जबकि कई बार यह घटनाएं, जिस वक्त आरोप लगाया जाता है कि वह सत्य नहीं होता है। पिछले दिनों दो-तीन घटनाएं जो कोर्ट के द्वारा हुई हैं या कुछ केसेज में जो निर्णय आए हैं, तो गांव के अंदर एक ग्रामीण पृष्ठभूमि में मामला इस रूप में होता जा रहा है कि पेशेवर भी जिनको लाते थे वे भी कहते हैं कि अब तो जो पुलिस को सामने कहा था, जो गवाही दी थी अब मुझे वहां बोलना है, नहीं तो मुझे भी अदालत इंडित कर देगी। तो सच में जो प्राकृतिक न्याय मिलना चाहिए वह कहीं न कहीं उसमें कुछ कमी दिखाई दे रही है और उसमें जो

गवाहों का मामला है वह दुधारी तलवार है, क्योंकि जब थाने के अंदर व्यक्ति रहता है तो उस समय डंडे का जोर होता है और अच्छे-अच्छे लोग जो पुलिस बोलती है वही उसको बोलना पड़ता है। सब की जैसिका लाल जैसा हत्याकांड की चीज नहीं हो सकती है या और बड़े वी०आई०पी० का जैसा सब जगह नहीं हो सकता है, बहुत सारे ऐसे स्थान हैं इसलिए इस पर सोच समझकर करना चाहिए, मेरा ऐसा विचार है। अगर हो सके तो बड़ी कृपा होगी, नहीं तो गांव के अंदर बहुत सारे लोग बेचारे हैं और वे उसके शिकार हो जाएंगे, उनको इस प्रकार का न्याय नहीं मिल पाएगा।

श्री शिवराज वी० पाटिल: माननीय सदस्य ने जो कहा है, बिल्कुल सही बात है, यह मुश्किल है। अभी यहां पर कहा गया कि सत्य और गवाह में बहुत फर्क होता है, इसलिए सत्य और गवाहों का जो अंतर है वह कम करने की बात करनी चाहिए मगर कौन जानता है कि क्या सत्य है और कौन यह गवाह है और यह सत्य है। आपने बिल्कुल दुरुस्त बात कही, उनको सजा देना मुश्किल हो जाता है। ऐसा देखा गया है कि बहुत सारे केसेज हैं जिन्होंने अपराध किए हैं उसके अनेक कारण हैं। एक कारण तो यह है कि कहीं अगर किसी की हत्या हो गई है, एक आदमी ने हत्या की है, तो कभी-कभी ऐसा देखा गया है कि जिसने हत्या की है उसका नाम होता है, उसके भाई का नाम होता है, उसके पिताजी का नाम होता है, उसके दोस्तों का नाम होता है, पूरे खानदान का, कुन्बे का नाम उसके अंदर जोड़ दिया जाता है और जिसने देखा है वह वहां पर बोलने के लिए तैयार नहीं होता। वह कहता है कि मैं अगर बोलूँ और उसमें सजा हो जाए तो यह जिंदगी भर की दुश्मनी हो गई, तो इस कारण वह बोलने के लिए तैयार नहीं होता है, वह कहता है कि मैंने देखा नहीं, पहले तो कहता है कि मैं था ही नहीं, मैंने देखा ही नहीं। अब जब नहीं होता है तो कभी-कभी जिसने देखा है उसको तो खड़ा कर देते हैं लेकिन कभी-कभी गलत विटनेस को भी आपने जैसा कहा कि खड़ा कर दिया जाता है। और खड़ा कर देने के बाद मुश्किल यह हो जाती है कि जिसने खड़ा किया, उसको भी मालूम होता है कि इस आदमी ने ऑफेंस किया है, इसलिए उसके खिलाफ बोलने में तो कोई दिक्कत नहीं होती है। मगर दूसरों के खिलाफ असत्य कहकर, उसको जिंदगी भर के लिए जेल में डालना या फांसी पर लटकाना, उसके लिए बड़ा मुश्किल हो जाता है। जेटली जी अच्छी तरह से जानते हैं कि जो अच्छा lawyer होता है, कितना भी होशियार विटनेस आ जाये, अगर वह सत्य बात बोल रहा है, तो उसके मुंह में से वह सही बात निकाल सकता है। इसलिए जब एक के बारे में उसने कहा है, वह सही है और चार के बारे में कहा है वह असत्य है, तो ऐसे विटनेस पर rely करना भी मुश्किल हो जाता है और केसेज छूट जाते हैं। लोग पूछते हैं कि केसेज क्यों छूटते हैं? केसेज इसलिए भी छूटते हैं क्योंकि गलत आदमियों को उसमें rope in करने की कोशिश होती है और उसके बाद पुलिस भी कभी-कभी, अपना केस है, उसमें सजा होनी है, इसलिए गलत विटनेस करती है और कभी-कभी दूसरे रीजन्स से भी करती है, उसकी भी कमजोरी हो जाती है और विटनेस की भी कमजोरी होती है और बहुत दिनों

के बाद होता है। इसीलिए हम कह रहे हैं और स्टैंडिंग कमेटी ने यही तर्क दिया था कि क्या इतने मजिस्ट्रेट आपके पास होंगे, जिसके सामने आप इमीडिएटली विटनेस को ले जाकर पेश करेंगे। चार दिन के बाद देंगे, तो उसको tutor करने का भी मौका मिल जाता है। यह भी कहा गया था कि एक दफा तैयार करके, बनाकर कर उसको खड़ा कर दिया जाये, तो बाद में उसको अपनी सही बात कहने का भी मौका नहीं रह जाता है और अनेक तर्क देकर जब स्टैंडिंग कमेटी ने कहा, तो 164 के जैसे स्टेटमेंट जब मजिस्ट्रेट के सामने जो करने की बातें नहीं करनी चाहिए, तो गवर्नमेंट ने उसको मान लिया। मगर एक दूसरा जो पहलू है जो Malimath कमीशन की रिपोर्ट में आया हुआ है और जजिज़ ने भी कहा है और जब कोई केस आ जाता है, तो उसकी चर्चा हो जाती है, उसके परिप्रेक्ष्य में भी यह सोचा जा रहा है कि ऐसा करना जरूरी है। हम दो-तीन चीजें करने की कोशिश कर रहे हैं कि जहां जरूरी हो, सभी केसिज़ में शायद ऐसा करना मुश्किल हो जायेगा, हर तरफ मजिस्ट्रेट नहीं होते हैं, मजिस्ट्रेट की संख्या कितनी है हमारे पास, हम यह जानते हैं और अगर हर जगह पर गुनाह हो, तो उस जगह पर ले जाने की जरूरत है। हम इसमें दो-तीन चीजें करने के लिए जा रहे हैं कि जहां जरूरी हो, वहां पर वह करें। वैसा प्रॉवीजन तो आज भी है, उसके अंदर प्रॉवीजन है, वह उसको करें। दूसरी बात यह कर रहे हैं कि जहां पर भी यह हो सकता है, वहां पर उसका स्टेटमेंट राइटिंग में नहीं ले लें, लिखित रूप में उसका नहीं ले लें, उसकी आडियो-वीडियो रिकोर्डिंग भी करें। आडियो रहे, वीडियो रहे और राइटिंग में रहे तथा तीनों को कोर्ट के अंदर पेश कर दें। सिटीज़ में तो वीडियो रिकोर्डिंग करना कोई मुश्किल नहीं है, देहात में भी आजकल बहुत जगहों पर ऐसा किया जा सकता है। मगर कैमरे के सामने आकर जब पहली दफा विटनेस बोल रहा है, तो वह किस दृष्टि से बोल रहा है, इसको देखकर, उसका demeanour को जजिज़ देखते हैं, वह जब विटनेस बॉक्स में आता है, तो उसको देखकर भी किया जाता है। उसको भी हम करने की कोशिश कर रहे हैं। मगर मैं यह आपको बताना चाहता हूं कि यह बोलना बहुत आसान है कि सत्य क्या है, वह पूरी तरह से जान जायेगा ऐविडेंस से। सत्य क्या है, यह जानना उतना आसान नहीं है, जितना हम समझते हैं और इसीलिए आज तक का जो ऐविडेंस एक्ट जो है, Criminal Procedure Code है या Indian Criminal Jurists System जो है या British Criminal Jurists System है या Roman System है, वह European System से अलग है और उसमें यह कहा गया है कि बेनिफिट ऑफ डाउट देना चाहिए, यह करना चाहिए, वह करना चाहिए। मगर हम किसी भी एक किनारे पर जाकर विचार नहीं कर सकते हैं, हमको दोनों चीजों को देखकर करना है। आप जो कह रहे हैं, उसमें बहुत सत्य है, मगर उसके बाद भी दूसरे जो कह रहे हैं, उसमें भी सत्य है और इन दोनों सत्य को एक जगह पर लाकर किस प्रकार का कानून बनाया जाये, यह हमको देखना पड़ेगा।

[16 May, 2006]

RAJYA SABHA

3.00 p.m.

MR. DEPUTY CHAIRMAN: The question is:—

"That the Bill further to amend the Code of Criminal Procedure (Amendment) Act, 2005, be taken into consideration."

The motion was adopted.

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

Clause 2 was added to the Bill.

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

SHRI SHIVRAJ V. PATIL: Sir, I beg to move:

"That the Bill be passed."

The question was put and the motion was adopted.

MR. DEPUTY CHAIRMAN: Now we will take up the Assam Rifles Bill, 2006.

The Assam Rifles Bill, 2006

THE MINISTER OF HOME AFFAIRS (SHRI SHIVRAJ V. PATIL): Sir, I move:

"That the Bill to consolidate and amend the law relating to the governance of the Assam Rifles, an Armed Force of the Union for ensuring the security of the borders of India, to carry out Counter Insurgency Operations in the specified areas and to act in aid of civil authorities for the maintenance of the law and order and for matters connected therewith, be taken into consideration."

The Assam Rifles was raised in 1835 as Cachar Levy for watch and ward duties in the North-Eastern part of the country and to assist the civil administration in maintenance of law and order in the tribal areas of the erstwhile composite State of Assam. The Assam Rifles came under the control of the Central Government in 1941 with the passing of the Assam Rifles Act, 1941. The Force, which consisted of five battalions at the time of independence, was administered by the Governor of Assam under the overall control of Ministry of External Affairs. In 1962, this Force