India and we congratulate him on this occaion. We also hope that Sachin, as well as our other cricketers, will continue to break records and bring honour to our nation. Thank you.

The House is adjounrned to meet at 2 o'clock.

The House then adjourned for lunch at forty-four minutes past twelve of the clock.

The House re-assembled after lunch at three minutes past two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

GOVERNMENT BILLS

The Criminal Law (Amendment) Bill, 2003

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

> "That the Bill further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 be taken into consideration."

Sir, this Criminal Law (Amendment) Bill, 2003 seeks to amend the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act. A few sections of these laws are sought to be amended. Sir, there are a few objectives to be achieved by amending this law. One objective is to seek that the witnesses who appear in the court to give the evidence in such a manner that it helps the court to do justice. The second objective is to see that the delays which generally occur because of a large number of cases pending in the courts are avoided. At the same time, this Bill is seeking to provide compensation to the victims. The fourth objective which it seeks to achieve is to provide a punishment which can be awarded ot a person who is giving different versions at different times. The fifthy objective this Bill was drafted to achieve was to do away with the provisions in the existing law relating to the bail and the compounding of the cases under section 498A of the Criminal Procedure Code. And the sixth objective is to amend the Indian Evidence Act.

Sir, it is seen that in some cases, witnesses are set up, and they are given some inducement to give the evidence. In some cases, it is also seen that the witnesses are threatened not to give evidence. If a murder takes place in a village, the people who are present when the incident takes places are threatened not to give evidence. And in some cases when an incident takes place, there may not be any witness standing

there. In some cases, persons are asked to be the witnesses to the incident to give evidence. In both these cases, what is stated by the witnesses is not in tune with the reality. That is why, the jusice done on the basis of evidence given by the witnesses who are set up or who are threatened is not a good jusice and is not a reliable justice. By amending section 195, and by introducing a new section 195A of the Indian Penal Code, it is provided that if anything of this kind happens, the persons or a person who is responsible for inducing or threatening a person to be a witness or not to be a witness can be punished under the Indian Penal Code. Now, this is one of the salutary provisions which this amending Bill is trying to introduce in the criminal laws.

Sometimes, Sir, it is seen that a witness gives one kind of statement to the police, but when he goes to the court, he gives a differen version. He may not support that version which he has given to the police. In such cases, the case becomes very weak and the accused has to be acquitted because of the contradiction in the statements given to the police and to the court. This Amendment Bill provides that if any person is giving different versions before different authorities and if the judge comes to the conclusion that he is changing his stand before the police, before the magistrate and before the trial court, and if he thinks that he is not being truthful, a case can be started against the witness who has made a statement of this kind; and this case has to be conducted under the summary procedure provided in the Criminal Procedure Code. This is the second most important provision this Amendment Bill is trying to introduce. It is being introduced in the Criminal Procedure Code as section 144A. It is a new section which is being introduced in the Criminal Procedure Code.

The third provision relating to witness relates to the expert witness. If fake currency notes are in the market and if it is to be proved that the currency notes or the coins are fake, it was provided by the law that only experts can go and testify whether that particular currency notes are fake or genuine or if the coins are fake or genuine. Generally, they used to call the experts from the Nasik Printing Press. Now, the Nasik Printing Press is not having enough number of experts who can help all the courts in the country. By amending the exising provisions of the Criminal Procedure Code, it is provided that other experts could also be allowed to give evidence with respect to fake currency notes and coins. These are the provisions relating to the witnesses who will come before the court to give evidence.

One of the most important thing which is being done through this Amendment Bill relates to plea bargaining. Now, this Amendment Bill is

introducing a new Chapter, namely, Chapter XXIA. Plea bargaining is provided in new Chapter XXIA. What is plea bargaining? We shall have to understand the concept of plea bargaining. If a case is brought before a criminal court, the accused can make a petition to the judge and say that he is willing to admit his guilt, he is willing to say that he has committed the crime. Now, when such an application is made to the court, the court's duty, as provided in this Amendment Bill, is to give to notice to the prosecutor and to the defence lawyer also, send the application which is supported by an affidavit to them for their examination, and ask them to meet the accused. So, the accused, the victim, the prosecutor and the defence layer, all of them meet and they discuss as to what should be done in that matter, how that case should be disposed of. They decide it. Now, if they decide between themselves the manner in which the case should be disposed of, that is reduced to writing and that is presented to the court. The court can go through the record. If the court finds that what has been agreed to between the two parties is quite acceptable, then the court can pass an order on that kind of agreement. If the court comes to the conclusion that the accused was compelled to admit the guilt, then the court would say that no, that kind of plea bargaining would not be accepted. If the court comes to the conclusion that some method was used in order to hush up the matter, the court will not accept the plea bargaining and the court will not pass a judgement in terms of the agreement arrived at between the two parties. This is provided under this law. But there are some cases in which plea bargaining is not allowed. The cases in which plea bargaining is not allowed are the cases in which a death sentence could be awarded, or, life imprisonment could be awarded, or, imprisonment of more than seven years could be awarded, or, in which women and children are involved, or, socio-economic conditions are involved, or, juvenile is involved. In these cases, plea bargaining is not allowed. In all other cases, plea bargaining is allowed. What is the rationale in providing these provisions relating to plea bargaining in the Criminal Procedure Code? There are two objectives to be achieved. One objective is to reduce the number of cases pending in criminal courts in India. A large number of cases are pending in courts. It has not been possible to dispose them of without any delay. In same cases, the accused are behind bars for years together. They are behind bars for more period than the period for which they can be imprisoned for the offence which they have committed. Fortunately for us, last time, when we amended the Criminal Pocedure Code, we have provided in the amended Criminal Procedure Code that if a person .s in jail for more period than the period for which he

can be sentenced, such person has to be released and the case has to be deemed to have been withdrawn and he gets full acquittal in those cases. We have provided this. But there are so many cases pending in courts and it has not been possible for the State Governments to have more magistrates and more sessions' courts in order to dispose of the cases. In spite of the fact that some amount of money has been given by the Government of India to the State Governments to have more courts, it has not been possible for them to have enough number of courts to see that criminal justice is not delayed. This provision is likely to help them. If cases are to be heard regularly in a court of law, a long time is required. Now if it is a case of the sessions' court, it goes to the Magistrate's court and there the evidence is recorded. If the Magistrate comes to the conclusion that there is *prima facie* case, that case is sent to the sessions' court. In the sessions' court, the trial takes place; the witnesses are produced and they are cross examined and re-examined and then the arguments are heard and after that the case is decided. In this process, a long time is required to dispose of the trials in the sessions' courts as well as the Magistrate courts. With this kind of procedure available to them, it would be possible for them to dispose of the cases in a very short possible time.

One of the most important things which is being introduced in the modern criminal jurisprudence today in the world is this. The concept that the victim should be compensated is getting accepted in the modern criminal jurisprudence. In the old jurisprudence, the concept was to punish the offender, the perpetrator of the crime. Attention was not paid to the plight to which the victim is subjected. Now, this concept is getting accepted. There are some countries in the world which have accepted this concept of compensating the victim. The International Court of Criminal Justice has also accepted this concept, and they have said that there would be trusts, and those trusts would be giving compensation to the victims. Now, by amending this law, we are accepting the concept. The accused may be asked to give compensation to the victim if the case has to be disposed of in a lenient manner, and the accused can be asked to pay some money to the victim in order to make good the loss which he has sustained because of the offence committed. Now this is a new concept. Here, the accused is compensating the victim.

The second idea, which we are introducing, is this. Recently, we have introduced the Communal Violence Prevention and compensation to the Victims Act, and that is going to go before the Standing Committee, and it

will come before this House. Now, in that law also, we have accepted this new concept, the new concept of compensating the people who suffer in communal violence. It is provided in that law that when a case is brought before a court, the Court can decide as to what kind of find should be imposed on the accused, and out of the fine amount so collected from the accused, the entire amount can be given or a portion of that amount can be given to the victim. It is also provided in that law that the State Government shall give compensation to the victim. It is provided that if any victim is there, the judge might say that the State Government shall compensate the victim. So, the funds shall come from Government coffers.

The third was that the entire society also should compensate the victim. If any communal violence took place in any area, in the olden days, that particular area or that village or that town was made to give fine to the Government, and that fine was utilised for compensating the victims. Now, this new idea of compensating the victim is getting introduced in this Bill. This is one of the most important things which is going to happen. Up till now, even if a man was killed, the surviving members of that family were not given any compensation. Now, if a man is injured or killed or his property is destroyed, this law provides that the compensation can be given to him, and under this plea bargaining, this kind of provision is going to be available to the victim. And, in my opinion, this is one of the most important aspects of this Bill. Sir, this amending Bill, as it is before he House today, intends to do away with the provisions in the existing law relating to cruelty committed to a woman by her husband or by her relatives. Sir, in 1983, I was a Member of the Lok Sabha; some offence had taken place against some women in Uttar Pradesh, and that matter was brought before the House. Then, the House unanimously decided that the law relating to punishment that could be awarded in cases, where the members of the family in which she was living subjected a woman to cruelty, should be very stringent. That is why it was provided that that case would be non-bailable and non-compoundable. That kind of provision was made. But, then, some Law Commission reports and some persons spoke against this provision of law. They said that, because of this, the families were getting disturbed. Husbands and wives may quarrel and a case may be filed in a court of a law, but if they want to live together, the case should be compounded and they should be allowed to live together. That is why this offence should be made bailable and compoundable. It was accepted. This plea was accepted. In the Standing Committee also, this plea was accepted. We have come to this House with that kind of an amendment. But, later, we have found that doing away with that kind of provision in the

existing law will not really help in doing real justice to women who suffer, but it will cause more injustice to them. Some organisations and some representatives of women have opposed this kind of amendment to the bill. And the Government has decided not to move this amendment and not to make this law bailable or compoundable. The present Bill has that provision. But I am not going to press for it. I am not going to ask for it. I think some private members are also going to move some amendments. But I am not going to press for that kind of a thing.

Sir, the Criminal Procedure Code was amended and we have the Criminal Procedure Code which was given to us in 1973. But the Indian Penal Code is very old. The Law of Evidence is also very old. It was passed one-and-a-half century ago. This law is not that old; the Criminal Procedure Code is not that old. But the procedural laws are very, very difficult. They are very complicated to understand and also difficult to use. That is why this is the second set of amendments with which we have come to this House. It has really become necessary for us to have a second look at the Criminal Procedure Code, which we have with us today. The old Criminal Procedure Code was a good law. And, yet, it was not helpful to the accused as well as to the prosecution and, so, it was amended. Even the amended Criminal Procedure Code is not helpful in many respects. Many things have become visible to us now. It has become necessary for uso adopt those things. For instance, in criminal cases, dependency is on oral evidence. In civil matters, the dependency is on documentary evidence. But in criminal cases, up to this time, the dependence has been on oral and direct evidence. In criminal cases, one can depend on circumstantial evidence also, on technological evidence also. But we are not paying attention to circumstantial evidence or technological evidence and we are trying to get oral evidence only produced in a court of law in order to dispense justice in criminal matters. That is not helpful. It has become necessary for us to shift from oral evidence to circumstantial evidence. It is said that witnesses may lie but the circumstances do not. That is why it is more dependable to rely upon circumstantial evidence than on oral evidence. As to how we can rely upon circumstantial evidence, we shall have to decide.

I had the occasion to go to China and visit laboratories which they have set up for conducting criminal cases. I was surprised to see that they are depending more and more on new technologies. Now, the genetic technology is being used. Then, all the cases which have been investigated in recent times are re-investigated and they have come to the conclusion, not with the help of oral evidence, but with the help of the evidence collected by

them by following the conversations on the cell phones in the country. So, the criminal jurisprudence has to pay more attention to the circumstantial evidence, to the technical evidence and to the modern things which are becoming visible. Up to this time, we were paying attention to the oral evidence and the systems that we were having, now, that is what we shall have to do it. We are on the job of studying these issues, and we would like to change the Criminal Procedure Code in such a manner that it would be able to help us to do real justice in all the criminal matters. Sir, these are the provisions of this amending Bill, and these provisions are acceptable to all the Members of this House. I hope that the hon. Members will support this amending Bill, and help us in getting this Bill passed.

The question was proposed.

SHRI RAVI SHANKAR PRASAD (Bihar): Sir, I am grateful that you have given me the opportunity to speak on this Bill of some importance and relevance. Before, Sir, I comment on the various provisions of the Bill, I would like to make certain general observations and one caveat which is particularly being asked from hon. the Home Minister. If hon. the Home Minister pays me a little attention, I will be grateful. There was some amendment in May, June, July this year with regard to bail provisions. There were certain agitations by some members of the Bar, some lawyers and some other associations. And, all those provisions, after having been passed by both the Houses of Parliament were kept in abeyance. My caveat is, I am afraid; the same consequence may not befall on this Bill as well. Hon. the Home Minister, you were a little preoccupied when I was asking about a caveat from you. You may recall that in June, July, 2005, there was an amendment Bill of the CrPC whereby certain stringent provisions were incorporated as regards to bail and a host of other provisions. And, if I am not mistaken, because of certain agitations by lawyers and others, those provisions after having been passed by both the House of Parliament were kept in abeyance. I am sure, the same consequence would not fall, as far as the present provisions are concerned. Sir, what are my general observations? I take a cue from what you have just observed in your introductory remarks. Close to three crore cases and pending in this country. A majority of those are criminal cases. Our legal system is based upon the Anglo-Saxon jurisprudence which proceeds upon the premise of innoence of the accused and a presumption thereof. Obviously, that premise cannot be questioned. But, those who are the victims of the offence, those who are the informants, certainly, also have got the right to ensure that those who are culpable must be brought to book. And, obviously, the experience in this connection is not very encouraging, which ultimately impulse us to come with one amendment or the other.

Sir, you would recall that in criminal justice system, there are three components. One is the police; two is the prosecutor and the third is the justice delivery system. In civil law, we have come with alternative dispute redressel mechanism. One cannot do so in criminal law because the right to punish is the sovereign act of the State which cannot be bartered away in favour of any alternative mechanism. There has to be policing; there has to be investigation; there has to be prosecution; there has to be conviction by a court constituted in accordance with the law. This sovereign responsibility cannot, at all, be given to any other authority. Sir, what is the position today? We are suffering in terms of policing; we are suffering in terms of proper prosecution; and, as a result, the consequence is that proper justice delivery system is not being delivered. Hon. Home Minister, I am given to understand that the conviction rate is 10 per cent. Correct me if I am wrong; I would like to know from you, certainly, as to what is the conviction rate in this country. If this is the level of acquittal, then, perhaps, something is seriously amiss which you need to address. And when we are getting the opportunity to discuss these important provisions by way of an amendment in the Cr. P.C., certain connected and relevant issues can also be focused upon. I would be grateful if the hon. Home Minister can enlighten us on those concerns.

What steps are being taken up to improve the policing in this country? What steps are being taken to strengthen the investigative capacity of the police? These levels of acquittals are happening only because the investigation is not proper. The prosecution fails. May be, the time has come to ensure an effective training for policing and for investigation. That is an area which is seriously lacking all over the country.

Hon. Home Minister talked about the technical evidence to be given preference. That idea is fairly welcome, Sir. Today, the country is facing the scourge of extremism, the scourge of terrorism. Sir, how many convictions are there in the cases of naxalite killings? In the State from which I come, or other adjoining States, if any person seeks to help the police, a gang comes and kills 10-15 people! I would like to know whether those victims have the right to have some punishment to those who are creating mayhem in the rural side? Certainly, the hon. Home Minister, it will be interesting for us to know as to how many convictions have been done in extremism-related cases. Terrorism is separate.

I am given to understand that the rate of proceeding even against rank naxal leaders for various instances of murders and mayhem is absolutely disgusting, to say the least. Perhaps, all this is a reflection when talking

about the technical aspect of evidence. I would like to remind the hon. Home Minister that in the much-maligned POTA, there was a provision of intercepts where the mobile phone conversations, other electronic devices, communications could be used as evidence. That was indeed used as evidence. In case of attack on Parliament, convictions were there. All right, maybe, for a variety of reasons including political, POTA is not there today, but what law is there which recognises the legal evidence of these communications and other electronic, technical devices which you mentioned about? It is time to ponder; it is time to reflect.

Therefore, hon. Home Minister, the reason as to why I am making all these observations is that the criminal justice system in the country is under siege. This word I am using with a full sense of responsibility. It is time to address this issue. Let me take the opportunity of your presence and the discussion on this amendment to raise this larger issue on the criminal justice system in the country.

We came up with fast track courts where we had stated that all the sessions trials pending for two years or more must be given priority. I remember, I had the occasion to handle that issue in the Government, that was giving very good results. Can we extend that kind of delivery system in other matters as well? Because, you in your introductory remarks and also in the Statement of Objects and Reasons, mentioned the long pendency of criminal cases has been indicated as a matter of serious concern. There is a very famous saying in law-newer challenges call for newer solutions. Are we prepared in the light of this despicable situation to come out with never solutions? We will be grateful if the hon. the Home Minister can enlighten us on some of the ideas, which the Government is sharing, as also the new initiatives, which he proposes to take. And I would be particularly curious to know as to what initiative the Government is seeking to take as far as giving legal recognition to technical evidence is concerned. The Information Act is there; the other Acts are there. They have a limited purpose. They do not come as far as tackling serious criminal cases are concerned. Therefore, I would like to know this from the hon. the Home Minister.

Now, coming to the specific part of provisions, Sir, I stand here to support it. I have certain observations to make, which I will make. But at the very outset, let me also congratulate the hon. the Home Minister that at least this is one of the rare initiatives of the previous NDA Government which has found favour with the present Government and is being continued. I think I must thank the Government in general and the hon. the Home

Minister in particular for carrying into effect a legislation, which was initiated by the previous Government.

Now, Sir, let me come to certain specific provisions and here while clause 195 (a) gives a bigger punishment, larger punishment, enhanced punishment to those who seek to induce or force a person to give or not to give an evidence and the punishment that has been given is for seven years, including false evidence, hon. Home Minister, if you see the Mallimath Committee Report, there is a whole provision on witness protection programme. What is the initiative in that regard? From my own experience as a lawyer and as an activist both, on the ground also, let me say, Sir, a lack of witness protection programme is one of the biggest stumbling blocks in prosecuting trial of criminal cases. This is more so, the hon. the Home Minister, in cases of those where there are mafia elements who can use strong arm tactics. What is the position of all other cases? Therefore, witness protection programme, the hon. the Home Minister, is very important. Though a provision has been made that enhanced punishment can be given, but to what extent protection is to be given to the witnesses who are prepared to depose. I would like to know from you what is the pogramme in various other cases where significant mafia elements are involved. That is the ground reality. In many cases police officers seek to have protection against those mafia elements because they are not in a position to secure the presence of witness. If they take initiative even they come under threat. Mr. Deputy Chairman, Sir, therefore, witness protection programme with due statutory backing, with proper police safeguards, as a statutory obligation, must be given a proper recognition in law. This is my humble suggestion while making my observation on clause 195 (a), which is indeed a correct provision. Sir, clauses 161 and 162 are fair enough. When an offence takes place particularly where death is the punishment, then police officer must go and take the witnesses to the magistrate and the same is recorded because there is a sanctity and he cannot retrace from there. There is a caveat as far as clause 162 is concerned and I would like the hon. Home Minister to clarify some of the simmering doubts which arise because clause 162 talks of material witness who will also put his signature on the deposition that he gives before the police. he has to sign it. Now, you may be aware that under article 21 of the Constitution, you cannot be forced to become a witness against .....(*Interruptions*)....

SHRI SHIVRAJ V. PATIL: That provision is being withdrawn. This Bill was referred to the Standing Committee and the Committee recommended

that a witness should not be compelled to sign the statement. So, it is being withdrawn.

SHRI RAVI SHANKAR PRASAD: I am grateful that you have clarified the position. Clause 164A is a correct provision. As I said, it is an improvement upon Section 161 because it is an obligation that the statement must be recorded before a Magistrate so that he cannot retract it subsequently. Now, I make my observations on plea bargaining. It is, indeed, a welcome step. I remember the Law Commission, headed by Mr. Thakkar, itself recommended that why plea bargaining should be included. I would like to quote the reasons as to why the Law Commission, headed by Mr. Thakkar, in its 142nd Report, talked of plea bargaining. It has given five reasons. They are interesting. Most people arrested are guilty anyway. Why bother a trial? This is the first reason. The second one was, 'why waste public money'? The third one was, 'plea bargaining is a compromise. Both sides give a little and gain a little.' The fourth one is 'trial consumes time and cost.' And the fifth one is, 'it is best for both sides to avail it since, on the one hand, there is always a chance that even if accused is guilty and the evidence is adequate, there is a chance of a slip-up. On the other, the accused saves time and money and earns a concession in the form of a less serious offence or sentence. Sir, plea bargaining, as a concept, is prevalent in America on a very substantial way. People say that almost 80 per cent of criminal cases are settled through the process of plea bargaining. There, if I am given to understand, it is outside the court. What is an improvement in our law is that plea bargaining has been given a proper statutory cover. It is good. But, Sir, there are two or three caveats here which I would like to share with the hon. Home Minister. And, I am sure he would enlighten us while replying to this Bill. Illiteracy is rampant in India. You have given a limit that offences punishable for seven years and above shall not come within the ambit of plea bargaining. Most of these petty cases are in the rural side like aam jhagda, measurement of lands, etc. Does an illiterate victim understand the implication of plea bargaining? How to ensure that the opportunity given for plea bargaining to an accused is not used by him to the disadvantage of an illiterate victim? That is, indeed, a very serious concern which I would like the hon. Home Minister to address when he gives his reply. Yes; there is a provision that when mutually satisfactory aspects are being made out, then, the notice shall also be issued in the form of a Writ. As of now, hon. Deputy Chairman, Sir, you know, in a case initiated by a police FIR, the victim does not have any effective say. In plea bargaining, the victim is given an opportunity. It is a good opportunity. We appreciate that. But,our concern is that. The second

concern, Mr. hon. Home Minister, you will appreciate, is this The Standing Committee has recommended, in its very well prepared Report, about the Directorate of Prosecution to ensure effective mechanism of plea bargaining. If you recall, Mr. Minister, in Veenet Narayan's case, the Supreme Court had mentioned the same concept. Do we have any autonomous mechanism on the lines of the Directorate of Prosecution to ensure that plea bargaining is conducted in a fair, just and proper manner which is beneficial to both--accused and illiterate victim. That is, indeed, a concern which I would, certainly, like to share.

Lastly, Mr. hon. Home Minister, there is one rather curious concern which I have, as far as plea bargaining is concerned, and, that is, Clause 265F. If you kindly have a look at it, it says, 'Notwithstanding anything contained in any law for time being in force, the punishment imposed under this Chapter shall be considered expiatory in nature and no person punished under this Chapter shall be liable to any disability under any law for the time being in force on the ground that he has been punished under this chapter.' Now the maximum punishment is seven years. Under the Representation of People's Act, if your conviction in two years or more you stand disqualified. If he gets a punishment under this, would it be that in spite of this punishment he is not disqualified to contest an election. (*Interruptions*) This is a concern that I would like the Home Minister to address because, the hon. Minister knows, there are 3-4 types of cases, those who are mafia elelments, death sentence and most of the others are small offences, like, *jhagra, etc.*—seven years and below. If the plea-bargaining, ultimately, ends on a sentence of two years, or, a little above, would it disqualify him, or, would it not? Because, under section 265(f), it says, "... only expiatory in nature". If that happens, it is a little matter of concern, which I would like you to kindly clarify.

Sir, other provisions are quite welcome. I appreciate them, except the concerns that I have addressed.

Lastly, I would like to say that making 498(a) a compoundable, at the instance of a married woman, is a fairly good amendment being brought about. Section 498(a) is one of the most abused provisions in the Indian Criminal Law, often the courts have committed upon. This provision, at times, has been used to settle scores between mothers-in-law and daughters-in-law. Therefore, let this provision not become an instrument to create a permanent discord in the matrimonial life of a couple. There has to be a way out. And, that way out is not there. Now, this, having been made compoundable, is a fairly welcome move.

Therefore, Sir, in conclusion, I support this Bill. However, I would like the hon. Home Minister to make his response to some of the serious concerns he has introduced. Yes, it is rightly stated that we need to revisit the CrPC of 1973. The impression that I got was that you are against piecemeal amendments. Is it your case, then, that the Government proposes to overhaul the CrPC completely? The report of the malimath Committee has come about. If that is going to be the case, then, this will have to be preceded by a larger consultation. I am quite sure, on the floor of the Parliament, that these observations need a little clarification.

With these words, Sir, I conclude my speech.

SHRI SHANTARAM LAXMAN NAIK (Goa): Sir, I stand here to support the Bill. However, at the outset, I would like to mention that whenever any reforms come in legislation, like, for instance, in the background, I would like to say that the Civil Procedure Code was amended some years back by the other regime.

[THE VICE-CHAIRMAN (Prof. P.J. Kurian) in the Chair]

And, for a speedy trial and speedy justice certain amendments were sought to be introduced. Ultimately, it transpired that time for filling written statement was substantially curtailed; time for producing documents was curtailed. And, many other limitations were also imposed. Who are the sufferers? Sufferers are the weaker sections of the society. I am mentioning this because crime and land disputes are together. Richer class, elite class have their records intact in their houses, ready to be produced before any court, at any time. But the weaker sections of the society have suffered because of the reforms in the CPC, at that time. They are still in force. I would had put a question, but the Government says that they are not anti-poor, or, anti-weaker sections, whatever it is. But reforms should not lead to such consequences. And, every Government has to keep this in mind. This I would like to say in background.

The present amendments, no doubt, are of far-reaching consequences, as far as justice is concerned. But I would have been happy if there were exhaustive amendments in the IPC and the CrPC. And, all the observations of the courts of law, in criminal matters, were covered under these two legislations, because courts make observations, pronouncements, judgements, some of which may be acceptable to the Government, and some of which may not be acceptable to the Government. Analyses have to be made of such pronouncements and, at the opportune time, in legislation, we have to say 'yes' or 'no' to those pronouncements. I am not

aware whether such analysis were made with respect to the pronouncements in criminal matters.

In general terms, Sir, I would like to mention one aspect that we govern our system under old laws, as our Home Minister has also referred to. We are still governing the police under the Delhi Police Act of 1861, and our IPC is as old as the last century. Now, the question is: should we not give a thought to these legislations? The other day I put a question in Parliament regarding the State Police Acts of the various State Governments. The Central Government had no information whether the State Governments have enacted Police Acts and which are those States. I think, this is a vital information which should be maintained at the Central level. Forget about the other things, the Central Bureau of Investigation is being governed by an old legislation. Now, Sir, the Central Bureau of Investigation is an effective machinery and they are playing an effective role in today's crime scenario. And the job that they are doing, we must say, is a commendable job. Should not that be regulated by a proper legislation? We have no guidelines regarding the cases which are to be referred to the CBI, the cases which they accept for the purpose of prosecution, the cases which, normally, the Central Government would like to recommend to be taken up by the Central Government. Therefore, in this whole scenario, it is essential that instead of the Central Bureau of Investigation being governed under a very old legislation, linked with CrPC no doubt, that an independent legal machinery should be provided for the purpose of regulating the Central Bureau of Investigation in the present scenario especially.

As regards criminal jurisprudence, we have before us now, the Justice V.S. Malimath Committee Report. There are already provisions which are controversial, no doubt, right from the beginning of burden of proof. He recommends that the burden of proof should lay with the accused. Nobody would accept that. But, there are, if I am not mistaken, a few legislations which impose, even today, the burden of proof on the accuses. May be, there are limited type of legislations. But, as far as the right to silence is concerned, some analysis has to be made with respect to this right. There is a view that if you do away with this right, the Constitution will be violated. No doubt it is there. But in some respects this right has to be restricted because unless you get a view from the accused, you cannot rightfully draw certain inferences. The accused version is a vital information. Today, we are deprived of that information. And, as a result, Abu Salem has started saying that he is suffering from amnesia. Nobody will be able to judge whether it is so, except by medical reports. Therefore, if a court of law is

entitled to ask him on this question, then, his version will be a vital information for the purpose of justice. Therefore, no court of law, according to me, should be deprived of such information. Then, there is a valid principle, no doubt, that, "Accused is innocent till proved guilty". I think this terminology has to be changed a bit. 'Accused is innucent' appears to be too far. I think that terminology has to be changed. It should be, "that accused is suspect till he is proved guilty". Because with all that *prima facie* evidence which comes against an accused, still calling him an innocent, because he is still to be proved guilty, looks rather odd. Therefore, I think a neo principle has to come to light saying, "acused is suspect, till proved guilty".

Now, coming to section 164 A, in certain matters like punishable with death or imprisonment for seven years or more, the accused has to be taken before a judicial magistrate or a Metropolitan Magistrate, etc. for the statement. What are the guidelines for the purpose of assessing voluntary nature of the statement? Nothing has been laid down. Perhaps it is left to the interpretation, of course. Ultimately, when these matters go to the court, the entire section will be laid down by the courts. When one should consider it is voluntary, when one should consider it under coercion, when one should consider there was no promise or lure to that person do. All these guidelines will be laid down by the court of law, which we could have, very well, laid down here. Ultimately, this section will be redundant and the provisions that will be laid down in the course of time by the courts will be the law. Therefore, it is better that we provide the basic ingredients to this section.

Then, a new technology has come. Confessional statements have become very relevant. Just sidetracking them will do no justice to the society as a whole. Why not resort to video recording of confessional statements wherever they take place, whether it is before police station, whatever may be the relevance of that statements, whether it is before Magistrate, as permissible under the new provision. Perhaps, I would venture to say that live recording of such statements should be made. We should go as far as that, in future, important trails in the country, important session trials or important trial, as we consider of the type which take place now, should be telecast live.

AN HON. MEMBER: Just like a 'sting operation'.

SHRI SHANTARAM LAXMAN NAIK: Yes. Sir, people are entitled to know what is happening in these trials. People are anxious to know who commit all sorts of crime against the nation. Those who commit crime

against the nation, against the sovereignty and integrity of India, their trials should be shown live to the public so that people will know what is happening. There should be total transparency for the world to understand. Then, nobody would accuse the Government of India. When they go abroad, they say that they will not get a fair trial. But our country has shown in the last 50 years how our courts function, how independent and fair our courts are. But if somebody goes abroad and say, 'No, I will not get a fair trial; therefore, I should not be extradited'. Therefore, I, strongly, propose that live telecast of certain trials should be made.

Then, Sir, in case of false evidence, of course, the cases of false evidence are very common theese days, and punishment for such offenders is necessary. However, Sir, under 195 A which is a new section, what is the punishment provided for? It is seven years or with fine or in court. Now, when you say seven years or with fine, in the first case of offences, judges are inclined to impose fine. Therefore, unless certain punishment is made compulsory for these offences, they will not be deterrent. There is a fashion to give imprisonment till the rising of the court. If the court wants to punish, it orders imprisonment till the rising of the court, that is, one day's imprisonment. The person is made to sit in the court to fulfil this condition. Therefore, Sir, in these types of cases, I feel, there must be some compulsory punishment to be given.

As far as plea bargaining is concerned, there are plus and minus points. As Ravi Shankarji has rightly pointed out, there are many things which have to be considered. The Chapter XXIA is no doubt a good chapter, but it contains some flaws also. One can now bargain in case of offences other than those punishable with death sentence, life sentence, seven years' imprisonment, etc. In this case, Sir, how will the machinery of a court judge the voluntary nature of these applications for plea bargaining? It is very, very difficult. I have seen *Apharan* very recently. And after seeing *Apharan, I think,* our I.P.C. and Cr. P.C. have no meaning; they are just redundant; they are shocking. In the background of that movie, a picture that I have got in mind, I feel that strong precautionary measures have to be taken with respect to this application for plea bargaining. Considering the poverty that exists in our country and threats to the family that are likely to be given, rape offences may be converted by such threats into minor molestations, so that they are not obstructed, are covered under this plea bargaining provision. So many things can happen. Sir, although this provision is a good provision in principle, unless there are proper guidelines to examine each of these ingredients of voluntaryness to ensure that there are no threats, coercion or any other promises, this additional

chapter may not give them necessary results. Then I come to expiatory nature of offences which the hon. Member has mentioned. He has said that in certain offences two years' punishment will disqualify a person from contesting elections. I would like to state that under the Representation of People's Act, there are many sections, which, I mentioned, disqualify a person from contesting election. Not necessary two years, in certain offences, even one day's punishment is sufficient to disqualify a person from contesting elections, and, in certain offences, two years and above.

SHRI RAVI SHANKAR PRASAD: I agree.

SHRI SHANTARAM LAXMAN NAIK: In such a matter, what is the consequence of this nature? If this be so, then these accused, who are prospective candidates are convicted or likely to be convicted, then these people are likely to exert *(Time-bell)* coercion, undue influence, and all sorts of tactics against persons, so that they file applications for the purpose of plea bargaining.

Sir, if the conviction rate in the country has to be increased, then in the entire States, we should strengthen our prosecution machinery by modern gadgets, by providing our prosecutors proper salaries, by giving them necessary scientific methodology, and by making them independent, free and fearless for the purpose of prosecuting deadly criminals in the country. If we want to increase the rate of conviction, then this strengthening of prosecution machinery is a must today.

Lastly, Sir, as far as extradition treaty is concerned, we have to do something with regard to that. Abu Salem was brought here with an international commitment. We read it in newspapers. Nobody knew what was the nature of those commitments; nobody told the people of India about it. As a result, when on second or third day accused was produced before a Judge, the Judge remarked, "Don't come here under preconditions." The Government of India has given some commitments; Judge says, "Don't come before me with pre-condition." The highest police officers who briefed the Press also said, "It is a matter of arguments, we don't know at this juncture what is it"? Why such things should remain intriguing. If there are international commitments which are to be obeyed, then also, the people of the country should know what is the law on the matter; because otherwise it looks, Government of India commits something, court says something, nobody knows what it is and, therefore, I think there must be a definite policy in this matter.

THE VICE-CHAIRMAN (PROF. P. J. KURIAN): Okay, please conclude now.

SHRI SHANTARAM LAXMAN NAIK: And if there is international commitment, people should be told. With these words, Sir, I support the Bill.

THE VICE-CHAIRMAN (PROF. P. J. KURIAN): Thank you. Shri A. Vijayaraghavan.

SHRI A. VIJAYARAGHAVAN (Kerala): Sir, here we are discussing about an important Bill which has important ramifications in the legal system which is prevailing in our country. It was a move by the previous Government to amend the Cr. P.C. That move was actually a change, a shift, from the existing system which was prevailing in our country for nearly one century. And the move was like this. Actually, there was a shift from the Anglo-Saxon system to the US system. The previous Government's approach was a pro-US approach and this Bill, as such, was a product of that pro-US approach. While we are going through a piece of legislation, we have to look into the details — whether it would be helpful to the poorer sections of society, or, will it give a further strength to the affluent section in our society. with regard to this Bill, I have a feeling that it would be more helpful for the richer and affluent sections in our society. They would be able to enter more and more in the judicial system in our country. The first attempt was to encroach on the Fundamental Rights of our people. Here, I do not want to go into details. When we were discussing about this, two important issues are, the witness protection and the witness turning hostile. In both these cses, at the outset, the first part, that is Sections 161 to 164, the original attempt was tc give more powers to the police. Then, the second one was to give more powers to the Magistrate. And here, during the investigation, all the statement would be recorded by the Magistrate and at a later stage, he would make a judgement on those statements. That was the main concern raised against this amendment in the first part of this legislation and simultaneously, it was an attack on the right to silence guaranteed under Article 20 (3) of the Constitution of India. Even though the Home Minister has accepted a part of it, with regard to signatures, still, I have my own doubts whether it will further encroach on the Fundamental Rights of the citizens in our country which should be avoided.

Similarly, Sir, with regard to the witness turning hostile, here also, Sir , in this country, when we are discussing about this matter, the witness turning hostile is a manifestation of the rot of the system and not the cause. That aspect we have to consider. When we see a high-profile case like the Best Bakery, in spite of all the protection afforded, the witness

turned hostile for the second time. That experience we have and we are going through this when we are attempting to change this piece of legislation. Naturally, a distinction needs to be made. It understands restrictions which are due to compulsions and situations which amount to corrupt practices deliberately faltering before the court at the stage of evidence for bribes received from the accused. So, in this way, a proper analysis is needed to find out whether it is a proper piece of legislation or not. In our country, there is a division between the rich and the poor, and we have to think about this difference while introducing such a change in this particular clause of this Bill.

Thirdly, with regard to clause 265A, plea bargaining and summary trial etc., there are some doubts. Here also, some hon. Members have already expressed their concerns about clause 265(f). What does it mean? Clause 265(f) itself is a manifestation that the richer section can utilise this piece of legislation as an escape route. This is very much clear from the provision in clause 265 (f). Again, by introducing this plea bargaining, the aggrieved will lose their valuable right since the right to appeal is taken away from that provision. Similarly, after initiation of the proceedings for plea bargaining, in case the court finds it proper to disallow that plea, and proceeds with trial of the case, the aggrieved will be highly prejudiced in the trial of the case, and the judge or the presiding officer would also find it embarrassing. This problem is also there. Once there is an attempt for this thing, then again, it will be before the magistrate, and this problem will arise.

Thirdly, the police may play havoc with the accused persons in their custody and may presurize them to apply for plea bargaining. That possibility is very much there in our country. What system is prevailing here? The police have an upper hand over the poor man. Naturally, that possibility is there. The police may play havoc with the poor man. Likewise, they may influence the aggrieved persons also and get their induced consent, and in case, the court did not accept the offer and finds it proper to refuse the plea bargaining, then the entire proceedings may be prejudiced and will play havoc with the right of plea of innocence, and this will disrupt the entire proceedings. This is the glaring defect that can be pointed out in this kind of a new system which is foreign to the age-old concept of pleadings of the accused. So, naturally, while introducing this new system, there are so many arguments. There are crores of cases pending before different courts in our country, and this is a short cut to reduce the pendency. But for a country like India, where there is a possibility of misusing the system, what was the experience which we have during the last 58 years

of Independence. Whenever there is a loophole, that was misused by the richer section in our society, and they used the power of the police, the power of the administration and governance always as an escape route for the affluent section in our society. So, naturally, while introducing this thing, we need sufficient safeguards to avoid the misuse of this provision.

Finally, with regard to amendment of section 320 Cr.P.C. and 498A in this Bill, I would like to say, in this august House that this is a positive thing because this was an issue which we have discussed during the introduction of this Bill. Unfortunately, even now, this is a point for discussion. These right wing forces in our country are trying to dilute the safeguards for women in our country. Of course, there is an assurance from the Minister. Even now, I am very much concerned about this thing. These right wing forces are opposing this move. I cannot understand why they are opposing this positive step. Finally, even the Government when they originally placed this Bill before thd House, was not ready to accept this particular provision which was against the interest of women in our society. At last, because of the compulsion of this House and also because of the recommendations and suggestions made by the Left Parties the Government is ready to accept this provision which was included in this Bill by the previous Government. This is a right step taken by this Government. I think, it is because of this step only that this Bill has become a landmark because this Government is able to curtail the move to restrict the rights of women in our society. I am grateful to the Government for the bold step which they have taken in this regard, and I hope that the Government will be very careful about the apprehensions that are expressed with regard to this Bill. The legal system shuold not be turned fully in favour of the richer sections of our society, and sufficient safeguards should be there against the misuse of this piece of legislation in the amendments to be made.

SHRI N. JOTHI (Tamil Nadu): Mr. Vice-Chairman, Sir, I support certain provisions of the Criminal Law (Amendment) Bill and I also oppose certain provisions of this Bill. Sir, as far as clause 2 concerning an amendment proposed to be made in section 195 of the Indian Penal Code is concerned, it contains sub-clauses (a) and (b). Section 506 of IPC can take care of sub-clause (a) and section 195 of IPC can take care of sub-clause (b), except seven years imprisonment. The only aggravated from of seven years imprisonment is sought to be made. Otherwise; two provisons are already available in the Indian Penal Code. In section 195, that can be very easily foisted upon any person. Suppose a witness has turned hostile.

The prosecutor may say that the witness has turned hostile because of this particular accused. Then, immediately, the witness will be prosecuted, or he can be hauled up for seven years imprisonment. This sentence is very severe for the purpose for which the witness is called for. So, I oppose the sentence on two parts: (a) since two enabling provisions are already available, there is no need of having section 195A. And this sentence is also very excessive. So, I oppose it on that ground also.

Sir, coming to the amendment to be made under section 161 of the Code of Criminal Procedure, there are two provisos which are now sought to be added to section 161. If one looks at section 161 as a whole, it says that the investigating officer need not write the statement; he need not take down the statement if he intends to record the statement before the Magistrate. Sir, this will only delay the process. Suppose a Magistrate is not available; he may be on leave. There will be an Incharge Magistrate. An Incharge Magistrate could be already burdened with two courts; he may not have time to record the statement. Suppose three or four witnesses usher to him. In the jurisdiction of several police stations, there are several crimes committed on a particular day or in a particular week. This will further delay the investigation, and the credibility of evidence available immediately after the occurrence will deter the recording of such statements. In addition to that section 161 forms part of the investigation. Even though section 164 is today available with the limited scope for recording the Statement of witness, the courts have come down heavily on resorting to such practices. No sanctity is attached to such statements except if it is a confessional statement under section 164. If, there is a statement to be recorded under section 161 by the Magistrate, no sanctity will be immediately given to that except a fear which can be infused into the witness. And courts have come heavily on that: "Don't have this kind of practice," I am having the judgement right now. A full constitution bench of the Supreme Court has come down heavily that such a practice should not be resorted to. Now, we are legalising it. I am opposing these two provisions sought to be added to section 161. In addition to that, it will create an additional burden on the court. The courts are already heavily burdened with a lot of the file work. This kind of recording work alone will go on for days together in the courts. In addition to this, as regards recording of the statement under section 164 by the magistrate, mainly we have got rural rustic witnesses. If he is ushered before the magistrate for recording the statement under section 161, which a police officer should do, which he has been doing all along, it will only create some kind of fear psychosis in the witness mind. Either he may not tell the truth or he may exaggerate

it which he may not maintain at the time of trial later. Then he will be hauled up under section 195A for 7 years imprisonment. According to me, this is not a progressive step. It is not at all a progressive step. Kindly have a rethinking on this. A few months ago we had carried out a lot amendments in the Cr. P.C. A lot of agitations took place all over India. Then you have suspended their applicability. The Minister of State for Home Affairs is fully aware of it. They have been now suspended. Nearly 50 amendments which you had brought about have not been suspended and they have no applicability. Don't add this also to it. Kindly have a rethinking on it. This is what I humbly pray.

The next point is the signature of the witness that should be obtained on the 161 statements. It is another bad step. Whose independence are you doubting? You are doubting either the independence of the witness or the independence of the investigating officer or the court. You are suspecting. So, you want to have the thumb impression or the signature of the witness. Whom do you want to buy? You want to buy the witness. Sir, as you know, most of our witnesses, as I have already said, are rural rustic witnesses. You want his signature appended down below the statement or on what you have written. Most of the practising lawyers know, Mr. Ram Jethmalani knows it well, that under section 161, statements are mostly cooked up version of the police. They are cooked up version of the police. The cases are mainly thrown out because the over-enthusiastic police officers recored the statement without getting into the truth or write it in the name of somebody. that somebody is now made to append his signature down below. If he doesn't stick to that, he will be hauled up for 7 years imprisonment. These are all the problems which we are facing. What the greatness in getting the signature? You don't believe his version, but you believe his signature. It is not correct. The independence of the trial is being curtailed by this kind of methodology, coercion and duress which is exhibited by the signature obtained thereon. I oppose this clause which authorises the police officer to obtain the signature of the witness.

Now, I come to the point of giving copies freely and immediately. That is what he has stated. Even now there is a ruling that a copy of the FIR should be given immediately to the informant. In how many cases is it being done? In how many cases are the police giving it? There are so many judgements to this effect. In Dr. D.K. Basu's case, it was stated that the grounds for arrest should be immediately sent to the person who is arrested. In how many cases is it being stated? These are all laws being written for the purpose of overriding. These are not sought to be put into

practice. On the simple ground, whether you have given a copy immediately or not, the case will be thrown out. If a copy of the FIR is not given and if the witness resiles thereafter from his earlier version, the case will be thrown out. You are giving ideas as to how to throw out the cases. This is what I could visualise from these provisions.

Now, I come to plea bargaining what is called no law contender in certain countries. He is not contesting any law. He is bargaining with the opposition party to quantify the compensation and he wants to go away with it. This is what is now sought to be achieved for which this process is being drawn. The application will be put up. Then the veracity of it has to be tested by the Magistrate. Thereafter, the public prosecutor has to take steps. Then, the injured will be called in. He will be quantified. Then the victim will be called in and he will be quantified. Thereafter, the payment will be made. Is it not plea bargaining? False cases would be filed for the purpose of extracting money. This is what is going to happen now under the guise of plea bargaining. Already, we can see such things in motor accident cases. What is being done is, small injury is being blown out of proportion and money is being extracted from insurance companies. The booty is being shared by so many people. I do not want to take names of parties which are sharing the booty in motor accident cases. Like that, we are going to convert our criminal court cases into a sharing business. It will be shared among so many participants under the guise of plea bargaining. If I take their names, I will be denigrating this institution. I do not want to say it openly; although I am speaking in Parliament and I am supposed to tell it very frankly. Still, I would like to caution them. Shri Regupathy, the Minister of State, who himself is a lawyer, knows who all are involved in such plea bargaining. The court has to go into the authenticity of the application. The public prosecutor then has to take steps. The victim will step in and then the Magistrate will quantify him. So many persons get involved in it. What will happen to them? I leave it to your imagination without pinpointing who will have the lion's share and who will have a smaller share. These are all foreign concepts, especially Western concepts. Let us not have these things. A person will get himself injured in order to extract money. It will lead you to that extent. Sir, I oppose very strongly this plea bargaining business. It says that the offences will be notified later. What are those offences which could be brought under plea bargaining? That will be done later through a notification. Who makes a notification? Now the subordinate legislation makes a notification. Subordinate legislation is done by officers. So the power of Parliament is

being delegated to the officers who will decide as to what are the offences, under which enactment, which could be brought under plea bargaining. We are bartering our power to officers. This is yet another mistake in the plea bargaining chapter. I am opposing it very strongly on this ground also.

The Indian Penal Code is not the only law available here. There are several enactments. There are several local enactments by the State Governments. They also come under criminal trial. What is the position? Who will issue notifications? It is the State Government. Where is the provision for that? The local enactments, the State Government enactments will not come under this. That seems to be the idea of the Central Government. You may say that under Cr.P.C., the State Government can bring an amendment on its own. But certain State Governments may not like it and certain State Governments may like it. It will not be a universal application throughout the country. While framing such enactments you should consult the Bar, you should consult the State Governments, and, thereafter, you should bring in such a legislation. It has been lying in cold storage since 2003. No consultation has taken place with the State Governments and with Bar Associations. You are introducing a new theory in the criminal law. A new concept is being brought in under the guise of plea bargaining. If I am having money in my pocket, I will injure you. Then I will pay money to you and to others also and then get myself scot-free. That is what plea bargaining is al about. *(Interruptions)*. The Standing Committee alone is not a country. The country is long enough and large enough.

Sir, another important analogy is this. Clause 265(B) (2) says that plea bargaining will be made applicable only to those persons who are not earlier charged with the same offence. Supposing, he was earlier involved in some other offence, say, under Section 307, meaning to say he is involved in yet another case, thsi provision would still be available because it is applicable only with respect to the same offence. It only says that he should not have been charged with the same offence earlier. I am unable to find any rationale behind this particular clause. What is the meaning of 'same offence'? Supposing he has committed a more grievous offence, or even if it is a lesser berious offence, even then, that will not be taken note of; he is a shielded person, and since he did not commit the same offence, plea-bargaining will be allowed. A rowdy-like person might threaten saying, "If you do not allow me plea-bargaining, see what happens after I come out." That is also possible. So, Sir, I am opposing this clause for several reasons.

Then, coming to the clause relating to section 265 E,...

SHRI JAIRAM RAMESH (Andhra Pradesh): All these issues have been dealt with in the Standing Committee.

SHRI N. JOTHI: Mr. Ramesh, you expect all of us to keep quiet when you speak on economic matters. The same treatment I would expect from you when I speak on law matters.

Sir, it is all the more surprising that under plea bargaining, the punishment will be halved. What is this bargaining for half punishment? Simply because an accused filed an application, he would get it. This is something very strange....

SHRI N.K. PREMACHANDRAN (Kerala): So many procedures are there.

SHRI N. JOTHI: After all, what is the procedure? The procedure is that he has to file an application. The magistrate will then decide whether his plea bargaining should be allowed or not. This is what the procedure is. The procedure can be hijacked very easily. How the cases are going to be hijacked, we will know shortly.

Then, coming to disability on punishment. I am unable to really understand this clause relating to section 265 F which says, "No person punished under this Chapter shall be liable to any disability..." Sir, if a person goes through this process of plea bargaining, it will not be an indictment against him, and it will not be a stigma on him. Sir, Section 8 of the Representation of the People's Act disqualifies people from contesting elections if they are found guilty; they need not necessarily undergo imprisonment. Even if they pay a fine, they will be disqualified under section 8. Now, supposing such a person, who has been charge-sheeted, undergoes the process of plea bargaining, then, what will happen to him as per section 265 F?

SHRI N.K. PREMACHANDRAN: This is the general observation of the House in respect of Section 265 F..

THE VICE-CHAIRMAN (PROF. P.J. KURIAN): Mr. Premachandran, when you time comes, you can say what you want to say. Let him speak now.

SHRI N.K. PREMACHANDRAN: I don't want to interrupt him. But I just want to say one thing. I have gone through the Bill and have gone through the official amendments which have been brought by the hon. Minister. Almost half the contents of the Bill have been taken away; like, sections 61, 62 and 64 have already taken away by way of official amendments. Section 60 is also being taken away by the latest amendment. Let the

Government take this opportunity to reconsider their decision regarding 265 F. That is my suggestion.

THE VICE-CHAIRMAN (PROF. P.J. KURIAN): Section 265 F says that notwithstanding anything contained in any law for the time being inforce, including the Representation of the People's Act, there will be no stigma; that person will not be disqualified. This is very strange. In the guise of plea bargaining, something strange is going to occur. This has to be seriously looked into.

Then, there is another provision regarding finality of judgement. Once plea bargaining is done and the order is pronounced, no appeal can follow; there is no return to provisions under sections 226 and 227. Sir, sections 226 and 227 are constitutional rights of a citizen. An accused person is entitled to challenge it, and this right cannot be curtailed. And, I really have a smile on my face when I read this provision. I am really having a smile on the framers of this provision. They have said no appeal to Supreme Court will lie under section 136 or even under sections 226 or 227. But, unfortunately, they have forgotton that there is a revision aspect advocated in the Cr. P.C. under section 397 and 401 is there. Even if they pass this and the Act is brought in, still revision will lie, because under this provision, sections 397 and 401 of Cr.P.C. are not taken care of. So, revision will lie. They may say it is our intention to leave that. If that is so, your purpose of eliminating other things does not arise, because you yourself are permitting revision. Then, what will happen if they appeal and if they file revision? What is the difference between the both? Not much. The accused will achieve the purpose. The whole purpose of this provision is incorrect.

Then, coming to the only welcome aspect—as I said, I welcome some and I oppose many—I want to say that under compounding provision, section 498A has been brought in where the husband and wife relationship is sought to be now maintained even after an estranged relationship that let to the filing of the complaint. Suppose, the wife come back, and both the husband and the wife want to live together. The case will be a problem in the reunion. In those cases what we used to do is make the witnesses hostile. We used to advise the trial court lawyers to do that. That was the only way in which it was possible. There was no other alternative. Now, in order to get over that, this compounding provision has been brought in. I welcome this. I welcome Clause 9. Except Clause 9, I oppose all the provisions which are totally unnecesary.

I will say only one word before I conclude. I appeal to the Home Ministry that it should stop bringing these kinds of enactments. The reasons is

that nobody will come forward to whitewash Taj Mahal, because it is not necessary; nobody will attempt to change the colour of milk, because it is not necessary it is already good. Like that our Indian Penal Code is now 115 years old. It has stood the test of time. It has stood the test of so many millions of lawyers. It is a good enactment brought forward by Lord Macaulay. Like that, our Code of Criminal Procedure of 1908, later amended in 1973, has also stood the test of time. Our Evidence Act of 1872, brought in by George Stephan, is even now a wonderful enactment. These three enactments have lived up to our expectations and are doing very well. Please do not try to orphan it by means of amendments, amendments, amendments and so on, with agitations all over India, lawyers going on hunger strike and rail roko calls, lawyers coming and meeting the Home Minister, the Prime Minister, wasting your time and our time and, thereafter, the Government suspending the notification. Please avoid bringing these kinds of amendments. We have these kinds amendments galore these days! Please stop this.

SHRI RAVULA CHANDRA SEKAR REDDY (Andhra Pradesh): Sir, I rise to support the Bill with a few apprehensions. We are aware of the legal jurisprudence and the age-old saying of justice is not only to be done but it must also appear to have been done'. Sir, here is an amendment which is seeking to amend three Act, the Criminal Procedure Code, the Indian Evidence Act and the Indian Penal Code. I would like to mention here that trials in lower courts are protracted in almost all the cases for a few reasons like vacancies in courts, lack of facilities in courts; today morning itself, we had a question in Question Hour regarding the establishment of courts at the village level. The proposed amendments are in Sections 161, 162, 344, and it is also proposed to insert Sections 164A, 344A in the Cr. Procedure Code. They tourch the aspect of perjury and to enhance the punishments for the people who induce or threaten the witnesses under Section 195A. Sir, I would like to seek a clarification as to the punishment. The punishment may extend to seven years, or with fine, or with both. What is the rationality when you are having a punishment of seven years, to the maximum extent, or,. with fine? I would like the hon. Minister to explain the rationality behind it. Under 164(A), it is made mandatory that the Investigating Officer shall in course of such investigation produce all persons whose statement appears to him to be material and essential for proper investigation. Now, it has become mandatory. Sir, the fresh amendment to 164(A) is not clear. I want a clarification from the hon. Minister on this. The next provision is about the statements made with the

magistrate and witness turning hostile. There are instances. I was practising in a lower court. There were many instances. Since the evidence takes place up to many years, and often witnesses are not being brought before the court, or, they are turning hostile for various reasons. For that, I want that there should be a speedy trial so that the memory of the witnesses should not be faded out. This is one aspect. Sir, the other aspect is, custody in the police, or, with the judicial custody. Nowadays, it has become a fashion in the lower level. We have a classic case in Andhra Pradesh that one accused appearing in public saying, "I have killed so and so person and I am going to kill two more people to see glitter in the eyes of my brother-in-law". There is a famour phrase, or, famour quotation in Andhra Pradesh. In the presence of the police, in the presence of the media, Sir, if that is allowed to be done, if that is allowed to take place, and. If people get inspired with that, what will happen then? What will be its impact on the society? What will be its impact on the witnesses who are likely to depose against him? Will they come forward to give witness? so, tat should be taken care of. In spite of all these things, if somebody gets convicted, there is a provision for mercy petition. There is another classic example in Andhra Pradesh itself. A life convict is released within three years through a mercy petitition. Sir, I would like to request the hon. Minister that when he is trying to bring out a comprehensive amendment to all these enactments, please keep this in mind.

The mercy petitions are taken up with political considerations. Is it advisable? Is it desirable? that should be looked into

SHRI VAYALAR RAVI (Kerala): Every State Government is doing it.

SHRI RAVULA CHANDRA SEKAR REDDY: I somebody is practising a bad thing, and it inspires others, it is not a good thing. the very essence of criminal procedure code is being taken away. In most of the cases, we are aware that the rate of conviction is very, very low for various reasons. In spite of all the odds, in spite of all the constraints and restraints, if somebody is convicted, again, he is going scot-free.

Sir, with due respect to my friend Jothi, I beg to differ with him that the age-old laws are still good and they should not be tinkered with. We must change according to the changing circumstances. The situation has changed. There are lots of crimes which are coming up by way of cyber crime and so many things. Without disturbing the basic structure, the basic ideology of all these enactments, one should bring out new

enactments so that it will help the society. Sir, there is the famous phrase 'let hundred criminals go scot-free, but not one innocent should be punished.' This is taken the other way. Sir, when the incident takes place, the Investigating Officer is there. The trial is delayed as he will be going somewhere else, or, getting promotion, or, leaving the job, or, he may not be in the service itself and the witnesses' memory is faded out. By virtue of all these things, by virtue of lack of judges in the lower courts, the trial of a criminal case is taking a lot of time. I request the Government, the authorities, to see to it that not only facilities are provided, but also the trial is expedited so that the accused does not go unpunished. Sir, 498(A) IPC which provides for punishment to the husband or relatives of husband of a woman subjecting her to cruelty, earlier it was non-compoundable and now they are trying to bring it into the category of compoundable.

Sir, I wonder and worry whether a serious thought is given on the other side of the picture also. Have you given a thought whether it will not act against the interests of the women, whether it would not be detrimental to the interests of women? In that angle it should be explained. Section 292 Cr. P.C. deals with experts in the Indian Mint or Indian Security Press etc. I welcome the amendments. There are few people in the Nashik Printing Press and they can come forward and render evidence. This amendment I welcome, Sir.

Apart from this, the other amendments to the Indian Evidence Act and the IPC are most welcome. While requesting the Minister once again to explain the rationality, as far as punishment is concerned, and the one dealing with the accused-which is a major concern for me - and the mercy petition, which is the third aspect, I conclude. Thank you.

प्रो॰ राम देव भंडारी: उपसभाध्यक्ष जी, यह बिल देश के क्रिमिनल लॉ, इंडियन पीनॅल कोड, क्रिमिनल प्रोसीजर कोड और इंडियन एविडेंस एक्ट के संशोधन के लिए सदन में लाया गया है। मैं इस बिल का समर्थन करता हूं।

मान्यवर, इस सदन में माननीय जेठमलानी जी, भारद्वाज जी, ज्योति जी, रवि जी और कई देश के जाने-माने व बड़े ख्याति प्राप्त विधिवेत्ता बैठे हैं। मैं कानून की बारीकियों और गहराइयों में नहीं जाना चाहता मगर सदन में जो संशोधन के लिए विचार लाए गए हैं, उस पर अपने अनुभव के आधार पर विचार रखना चाहूंगा। महोदय, ''मैं जो भी कहूंगा सच कहूंगा, सच के सिवाय कुछ नहीं कहूंगा।'' यह मेरी उक्ति नहीं है बल्कि जो गवाह विटनेस बॉक्स में जाता है, उस को वहां जाते ही गीता पर हाथ रखकर शपथ खिलायी जाती है कि, ''मैं जो भी कहूंगा सच कहूंगा, सच के सिवाय कुछ नहीं कहूंगा।'' महोदय, किसी मुकदमे की तकदीर, उसका परिणाम या जजमेंट - यह सब कुछ गवाहों पर निर्भर करता है। महोदय, हमारी कानूनी प्रक्रिया ऐसी है कि विटनेस बॉक्स में जाकर

शपथ खाने के बाद अगर गवाह झूठी गवाही भी दे दे तो रवि जी जैसे माननीय वकील तरह-तरह से जिरह करेंगे और चाहेंगे कि उस ने जो गवाही दी है, उस से उसे अलग ले जाएं क्योंकि उस की गवाही पर मुकदमे का परिणाम निर्भर करता है।

महोदय, मैं ग्रामीण क्षेत्र से आता हूं और जहां तक मेरी जानकारी है, 90 प्रतिशत मुकदमे ग्रामीण क्षेत्रों से आते हैं। अगर किसी जिले की जेल में या सब डिवीजन की जेल में आपको कभी जाने का मौका मिला होगा तो आपने देखा होगा कि तरह के लोग जेलों में बन्द हैं। गरीब तबके के लोग, भूमिहीन लोग या छोटी-छोटी जमीन जोतने वाले लोग, इसी प्रकार के लोग जेलों में बन्द होते हैं। मुकदमा कैसे होता है? पुलिस थाना में मुकदमा कैसे होता है? अभी भी पुलिस की व्यवस्था है, वह पुरानी व्यवस्था ही चल रही है। भारत को 1947 में आजादी मिली। आज 58 वर्ष से भी अधिक हो गए हैं, मगर यहां के जो गरीब लोग हैं, शायद उनको अभी तक आजादी नहीं मिली है।

महोदय, गांवों में तो पुलिस मुकदमे बनाती है, गवाहें भी तैयार करती है। गवाहों को पता नहीं होता कि किसी केस में उनका नाम लिख दिया गया है। पुलिस अपने मन से चार्ज शीट में उनका नाम लिख देती है। अगर पुलिस को गवाह नहीं मिलता तो वह चार्ज शीट में कुछ लोगों का नाम भर देती है। उन्हें पता नहीं होता है क्योंकि वहां उससे हस्ताक्षर लेने की जरूरत नहीं है। पुलिस वाला अपनी डायरी में उसका नाम भर देता है। उसको पता तब चलता है, जब कोर्ट से उस पर बेलेबल या नन-बेलेबल वारंट इश्यू होता है। उसके बाद उसका पता चलता है कि इस केस में मेरी गवाही लगी हुई है। इस तरह से गवाहों को तैयार किया जाता है, झूठे मुकदमे दर्ज किए जाते हैं।

महोदय, आजकल तो बिना चढ़ावा दिए एफ०आई०आर० दर्ज ही नहीं होती। थानों की बोली लगती है। मैं देश के किसी एक भाग की यह बात नहीं कर रहा हूं, कमोवेश यही बात सब जगह की है। अच्छे थानों में पोस्टिंग के लिए बोली लगती है। वह गवाह किस प्रकार तैयार होगा? गवाह पर भय, दबाव डाला जाता है। अगर किसी बड़े आदमी के खिलाफ मुकदमा है और उसमें किसी गरीब की गवाही दे दी गई है तो वह कैसे जाएगा गवाही देने? अगर वह जानता भी है, अगर वह प्रत्यक्षदर्शी गवाह भी है, उसने घटना होते हुए देखा भी है, उसके बाद भी वह गवाही देने के लिए नहीं जाएगा, क्योंकि गवाही देने के बाद जब वह लौटकर आएगा, तो उसकी सुरक्षा कहां से होगी? मैं रवि जी को सुन रहा था कि अधिकांश मुकदमों में अगर सच्चाई भी होती है तो उसमें गवाह की कमी के कारण एक्यूज्ड को रिहाई मिल जाती है। खास कर के जो बड़े लोग होते हैं, जो रसूख वाले लोग होते हैं, वे गवाहों को बदाव देकर भय से या लोभ-लालच देकर मिला लेते हैं। और मुकदमे में बरी हो जाते हैं। अभी भी इस प्रकार से पुलिस थानों में और कोर्ट में कानून चल रहा है। रवि जी कह रहे थे - तीन करोड़ मुकदमे लम्बित हैं। मेरे पास एक आंकड़ा है, मगर मैं बताना नहीं चाहता। लगभग तीन करोड़ मुकदमे हाई कोर्ट में, सुप्रीम कोर्ट और लोवर कोर्ट में पैंडिंग हैं। जिस मुकदमे में दो-चार-छः महीने या साल भर में निर्णय हो जाना चाहिए, छोटे केस में, जिनमें महीनों की सजा होती है, सैकड़ों या हजारों रुपयों का दंड होता है, ऐसे केसेज 5 वर्ष, 7 वर्ष या 10-12 वर्षों तक चलते हैं। गरीब

लोगों की जमानत कराने वाला कोई नहीं होता। सैंकड़ों-हमारों लोग इसलिए भी जेलों में बंद हैं कि उनकी जमानत कराने वाला कोई नहीं होता।

गृह मंत्री जी कह रहे थे कि एक कानून पास हुआ कि किसी केस में उसे जितनी सजा होनी है, अगर वह उससे अधिक समय तक जेल में रह गया है, तो उसको सरकार छोड़ देगी। यह अच्छी बात है कि उसको सरकार छोड़ देगी। मुकदमे का ट्रायल शुरू होने में तो 4-5 वर्ष लग जाते हैं, जब तक कोई आदमी हाई कोर्ट में जाकर मुकदमे के सम्बन्ध में जानकारी नहीं करे, ऑफिस में जो लोग बैठे होते हैं, जो सरकारी वकील होते हैं, उनसे मिलकर सारी बातें नहीं तय करे, जब तक ट्रायल शुरू नहीं होता। यह इस देश में गरीब लोगों को न्याय मिलने का तरीका है। इसमें कहा गया है कि मजिस्ट्रेट के सामने उसकी गवाही और उस पर उसके हस्ताक्षर होंगे। मगर क्या मजिस्ट्रेट के सामने पुलिस वाले उसका डरा-धमका कर या भय दिखाकर नहीं ले जा सकते कि उसे यह गवाही देनी है। मैं नहीं समझता हूं कि इससे कोई बहुत बड़ा काम हो जाएगा। सबसे बड़ा सवाल यह है कि गवाहों की सुरक्षा कैसे हो? जो कमजोर वर्ग के लोग हैं, गरीब लोग हैं, उन्हें लोभ-लालच देकर गवाही देने के लिए जो मजबूर किया जाता है, मैं इसे मजबूरी कहता हूं, उसे कैसे रोका जाएगा? मेरा यही मानना है कि निश्चित रूप से गवाह की सुरक्षा की व्यवस्था होनी चाहिए।

महोदय, इसमें सौदेबाजी की बात लिखी है, अगर प्रोसीक्यूशन और एक्यूज्ड, इन दोनों के बीच में किसी तरह का समझौता हो जाय। समझौते की तो पहले भी गुंजाइश थी। हमने देखा है कि अगर आपस में दोनों मिल जाते हैं, तो निश्चित रूप से कोर्ट में कोई न कोई रास्ता निकल आता है। गवाह बदल जाता है या फिर दूसरी तरह से गवाही देता है। समझौते का उपाय तो पहले से भी था। पेंडिंग मामलों की जो इतनी बड़ा संख्या है, उसे हम कैसे कम करेंगे? यहां फास्ट ट्रेक कोर्ट की बात आई, हमारे यहां लोक अदालत भी हैं। पंचायती राज व्यवस्था में छोटे-छोटे मुकदमे का निपटारा हो, पंचायती राज व्यवस्था में सरपंच होते हैं, एक न्यायिक व्यवस्था होती है, उसी स्तर पर अगर इन छोटे छोटे मुकदमों में सुलह-समझौता करा लें, तो इससे समाज में एक अच्छा वातावरण बनेगा, वहीं लड़ने वाली पार्टियों के बीच में भी अच्छा वातावरण बनेगा और मुकदमों का निपटारा भी जल्दी से हो जाएगा। इस बारे में विचार करना जरूरी है कि कोर्ट में करोड़ों की संख्या में लंबित मुकदमें हैं, उनको आप कैसे कम करेंगे?

महोदय, गरीब आदमी तो मुकदमा लड़ नहीं सकता। डिस्ट्रिक्ट कोर्ट में जाते-जाते ही उसका सब कुछ खत्म हो जाता है। अगर उसके पास थोड़ी बहुत जमीन होती है रहने के लिए, घर के लिए, तो वह भी डिस्ट्रिक्ट कोर्ट में जाते-जाते बिक जाती है। इसके बाद हाईकोर्ट या सुप्रीम कोर्ट जाने की उसकी ताकत नहीं रहती। मेरा कहना यह है कि अभी हमारी जो न्यायिक प्रक्रिया है, उसमें गरीब को न्याय नहीं मिलता। विचारधीन कैदियों के बारे में, जैसा मैंने कहा, बड़ी संख्या में विचाराधीन कैदी जेलों में बंद रहते हैं, उनके पास जमानतदार नहीं होते, उनकी जमानत देने वाला कोई नहीं होता। उनके बारे में भी सरकार देखे कि कैसे हम उन्हें जेल से बाहर निकाल सकते हैं? यह बात बेल हो जाती है, मगर उनको जमानत देने वाले नहीं मिलते, जिसकी वजह से, मैं अपने अनुभव के आधार

पर कह रहा हूं, वे जेलों से नहीं निकल पाते हैं। मैं चाहता हूं कि मुकदमों की संख्या कम हो और गरीबों को न्याय मिले, ऐसी कानून में व्यवस्था होनी चाहिए। इसमें एक और बात आई है कि महिलाओं के प्रति जो अन्याय होता है, जो क्रूरता होती है, उसके लिए कानून में नॉन-बेलेबल से बेलेबल ऑफेन्स बनाया गया था, उसे सरकार वापस ले रही है। यह एक बहुत अच्छी बात है।

महोदय, जैसा मैंने पहले भी कहा है कि मैं कानून की बारीकियों और गहराइयों को नहीं जानता। मेरे अपने अनुभव हैं। अभी भी गांवों से हमें टेलीफोन कॉल्स आती हैं, रोज तो नहीं, मगर दो-तीन दिन में कॉल्स आ जाते हैं, हमें थाने में झूठे मुदकमें में फंसा दिया है। थानों में मुकदमों की संख्या, खासकर ग्रामीण क्षेत्र के थानों में मुकदमों की जितनी संख्या होती है, उनमें बहुत सारे मुकदमें ऐसे होते हैं, जो गरीब लोगों के खिलाफ झूठे मुकदमें दायर किए हुए होते हैं। इस चीज को रोकना होगा। इस देश में कानून ऐसा होना चाहिए, जो गरीबों के हित में हो। अगर कोई कानून बनता है, वह बनता तो गरीबों के हित के लिए है, मगर गरीबों का उससे हित नहीं होता है और इस देश के जो ऊंचे, रसूख वाले, पैसे वाले लोग हैं, वहीं दस कानून का उपयोग करते हैं।

मैं कुछ पंक्तियां कहकर अपनी बात समाप्त करुंगा। भारत में गरीबों को न्याय नहीं मिल पा रहा है। लाखों-करोड़ों मामले निचली अदालतों में लम्बित हैं और उनका निष्पादन कच्छप गति से हो रहा है, यह बात राष्ट्र के हित के लिए ठीक नहीं है। न्याय पालिका इस राष्ट्र का अभिन्न अंग है, कुछ इस प्रकार के कदम उठाए जाने चाहिए कि इस स्थिति से उभरा जा सके।

इन्हीं शब्दों के साथ मैं इस बिल का समर्थन करता हूं। बहुत-बहुत धन्यवाद।

SHRI RAM JETHMALANI (Maharashtra): Thank you very much, Sir, for your kind indulgence. I have no objection to a Government borrowing wisdom for a Government that is no more. But, this is not borrowing wisdom, this is borrowing the worst from that Government. And, I am very happy that my friend, sitting there, also has found something absolutely undersirable in these provisions. According to me, the whole of this Bill should go. It should be withdrawn; it should be considered properly. I don't think enough attention has been devoted to this Bill at all. My friend, there, says that a Committee of Parliament had considered this Bill. Yes, I remember, I had myself appeared that Committee and given evidence before that Committee. It was presided over by our colleague, Shrimati Sushma Swaraj. I had strongly opposed it. And, I was, at that time, at least, was of the opinion that the Committee was never going to recommend that Bill. But somehow the recommendations have come and the Bill has been introduced.

Now, Sir, I would start with the clause 2. Now, clause 2, in its original form, I would have opposed on the ground that it was useless, it served no purpose. Whoever, either by allurement or by compulsion, induces a person to speak falsehood in court, abets the offence of perjury, which was always

an offence, and that person was punishable in the same manner as the person who commits the perjury himself. So, this provision was useless, anyway. Now, I am afraid my friend, the Home Minister of the present Government, has converted it from 'useless' to 'absurd'. See, how he has converted it from 'useless' to 'absurd'? He says, "If an innocent person is convicted and sentenced, in consequence of such false evidence, with death or imprisonment or more than ten years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent that such innocent person is punished and sentenced. Now, Sir, this means that a court had heard the testimony, found it reliable, and, then, convicted a person. Now, when do you find out that he gave false evidence, as a result of some previous threats which were administered, you can only find it out after the conviction, because the condition is that some innocent man should be convicted. So, first of all, you should set aside the conviction of an innocent person. Before you punish the other fellow who induced and brought about the giving of that false evidence. I must say this is an absurdity. Nobody seemed to have applied his mind to it. And, this provions must go on that ground alone. Then, no thought has gone into the consideration of these attempts. Then, Sir, fortunately many of the clauses has been dropped. And, I am happy to note that my friend argued that half of the Bill has gone, anyway.

Now, Sir, let us talk of the main provisions of the Bill. The main provision is the chapter which deals with 'plea bargaining'. Sir, I am sorry that it has not been realised that how complex this institution of 'plea bargaining' is. You require trained prosecutors; you require prosecutors of the highest probity, honesty and integrity. You require trained magistrates who know how to administer this law. Now, the present magistrates have suddenly been asked to deal with 'plea bargaining' chapter. It is going to produce confusion, it is going to produce corruption, it is going to produce a new class of offences which will arise only out of the misuse of this plea bargaining provision. And, Sir, the whole chapter is, anyhow, useless. And, I will tell you how.

[MR. DEPUTY CHAIRMAN in the Chair]

Sir, see the major cases which are the subject matter of plea bargaining either in the English courts or in the American courts where these two systems have been in operation for a long time. A person is prosecuted for murder. He says, "Well, I committed this offence under some provocation." Now, that provocation may not be enough to reduce it to manslaughter. But, the courts take a lenient view in some situations and say, all right, if

you are pleading guilty to a charge of manslaughter, we will reduce your offence to manslaughter and give you a slightly less punishment. Now, why is this sacrifice made? This sacrifice is made to avoid the long ordeal, the expense, and the inconvenience of a long drawn out trail, getting 12 jurors in the court and keeping them occupied with court work. So, the speed with which the criminal justice is to be administered is served by plea bargaining in these marginal cases. And this happens in the most serious of offences. The most serious offences, you have already excluded from plea bargaining. You have said that no offence can be the subject matter of plea bargaining if it is punishable with death, life imprisonment or seven years. In other words, cheating, which is, primarily, a civil offence, actually, connected, usually, with civil transactions, which is punishable with seven years, cannot be the subject matter of plea bargaining when under the law it is compoundable with the permission of the court. Now, Sir, this is the *reductio ad absurdum* of the plea bargaining system that has been introduced here. And, as I said, we do not have sufficiently trained officers, and officers of sufficient probity and intelligence to conduct this system, who we can trust to intelligently carry out this purposes of plea bargaining.

Then, there was a provision that what was non-compoundable before between husband and wife has now been sought to be made compoundable. Sir, I think, democracy requires that we must, at least, consult the women's organisations and, I believe, that all women's organisations, which have a voice to raise, have raised their voice against this provision, and have said, 'No, even if husband and wife, ultimately, make up in the interest of domestic peace, you can go to the High Court under 482, and, Sir, the High Courts are helping people to settle their matrimonial differences and to rebuild a broken home. But the High Court are doing it after having carefully scrutinised that material and they see the genuineness of a compromise, the genuineness of a husbands' real reformation in character, then, they permit the proceedings to be quashed. They are not allowing it like a compoundable offence. Once you make it compoundable, the original cruelty will continue through the compounding process and produce the composition also as a result of the original misbehaviour. Therefore, Sir, that provision also has to go. Sir, if all these go, nothing in this Bill survives. I do not see, Sir, why it is being pressed. Please allow a new Committee to consider it in its minuteness. And, then, if they still find that there is some wisdom in it, it can be brought, Sir, you must require some evidence from England and America; those who have

worked with this plea bargining system for ages. Here some people have read it in the books that there is something like plea bargaining, so, introduce plea bargaining! It will never work. Sir, I have a lot to say, but there is a time constraint and I do not want to take your indulgence. Thank you.

MR. DEPUTY CHAIRMAN: Thank you. Shri Vayalar Ravi.

SHRI VAYALAR RAVI: Sir, let me confess first that I am not a criminal lawyer. (*Interruptions*).

MR. DEPUTY CHAIRMAN: It is not necessary that everybody should be a criminal lawyer.

SHRI VAYALAR RAVI: Sir, I say this because ...(*Interruptions*). I know certain ground realities. There are some ground realities which I understand. That is why, I would like to begin with what Shri Ram Jethmalani has said that some people read it somewhere, and copied its theory. But, in practice, the situation is different. I quote from the Statement of Objects and Reasons:

"To reduce the delay in the disposal of criminal trials and appeals as also to alleviate the suffering of under-trial prisoners—I lay emphasis on, Sir, 'under-trial prisoners'—it is proposed to introduce the concept of plea-bargining as recommended by the Law Commission..."

So, we are more concerned about two things. One is the pendency of cases and the other is the ordeal of prisoners, not the accused. Sir, there are many accused, but accused are not prisoners. Today, the situation is that very few detenues are in jail; criminal case accused, and even murder accused are on bail. That is the situation. The prisoners are there. You want to help this kind of prisoners.

AN HON. MEMBER: Under-trial prisoners.

SHRI VAYALAR RAVI: Under-trial prisoners, yes. Where are they? Many of them are on bail, almost all. Even today, according to the Indian jurisprudence, til he is convicted, innocence of the accused should be accepted. The burden of proving the crime is on the prosecution. These are the basic norms of the criminal law. So, here, I will mention only two, three issues especially with regard to plea-bargaining. Sir, I do not know what the whole purpose of this Bill is. Sir, I would like to mention one fact that Shri Ravi Shankar Prasad said two things, one is, he takes credit for introducing the Bill by his Government, yet, he could not find an answer to his point which is given in this Bill itself. He asked a question: what will

happen to the candidates who have been punished under this Act?" The answer is 12F. There is no ban, they can contest. So, when you take credit for introducing the Bill, I am afriad, half the Bill has, already gone, and the other half has to go. That is a different matter. But the point is this. He said that acquittal was more, only ten per cent conviction was there. It means, acquittal is more, only ten per cent is conviction. Sir, the real punishmet to an accused is dragging the case. He goes up and down for two, three, or, four years, and gets fed up. In that process, the deterrent effect will be that these criminals will not commit another crime. If he commits another crime, definitely, he wil be punished. So, Sir, a kind of punishment is the long trial or pendency of the cases. According to me, from my practical experience, I can say that this itself is a punishment, because, acquittal is 90 per cent and conviction is ten per cent. So, don't worry about them. Why do you worry about the criminals who are on trial? We should not worry about all this. So, plea-bargining is a concept which we are borrowing from some developed nation. Sir, who are in jail? Who was the accused? Sir, this country is a country of law-abiding citizens. Only few people are habitual criminals who go to jail. Otheriwse, Sir, if you look at the whole situation of this country, you will find that only a very few people indulge in this kind of criminal action. So, of course, we have some human rights laws, I am not getting into that. Here, my point is, Sir, plea-bargining is for those who can afford to bargain. It is a very serious thing. Sir, who can afford to bargain? Those who can afford to pay compensation. And, in this country, people live below poverty line. Of course, they never involve in criminal cases, Who are involved in criminal cases? Those who can afford to have lawyers, who can argue the cases and have all luxuries. Sir, there was a proverb in Kerala, once upon a time, before I was born. If you have Rs. 10,000 and if Mallur Govinda Pillai is available, you can kill anybody. It means, Mallur Govinda Pillai was the most brilliant criminal lawyer. So, this was the talk in Kerala once upon a time. So, if compensation is there, then you will get the money, and you can do anythig. This is one point, Sir. Today, what is happening is that people are going to Supreme Court and High Court, filing a petition, quoting the Fundamental Rights of a citizen. They are the biggest criminals. Those who have killed hundreds and thousands of people, are saying that they have been subjected to mental torture by questioning by more than two police officers. People are capable of invoking even Constitutional guarantees to protect their criminal action. This plea bargining is easily available today. We are seeing it. I am not blaming any court or anybody. Luckily, the wisdom of the High Court saved the Police Officer. I saw it on T.V., Sir. They used the

words, 'Judicial Harassment'. This kind of situation is also developing now. The lawyers are also capable of finding out new methods and ways of saving their clients. The Government enactment shall not leave room or any loophole for money power to play any role in the committing of more and more crimes. That is the only plea I want to make.

Now, I come to the point which Mr. Premachandran and everybody has made. It is clause 265F. It enables every criminal to contest elections. There is a lot of talk about criminalisation of politics. Everybody is opposed to criminalisation of politics. But this clause will enable criminals to use the provision of plea bargining and the liability or the punishment will not follow him, and they can contest elections. It means, you go against the democratic concept of this country. The Election Commission has always applauded decisions of preventing criminals from contesting elections; but this provision will enable them to contest elections. The hon. Minister was good enough to bring enough amendments because he himself could see that many provisions are not going along with our criminal law and criminal justice. I don't know whether this has been overlooked. I hope the hon. Home Minister will look into this clause which enables even the criminals to contest elections and bring another amendment. This plea bargining, I believe, is a clause on which reconsideration is inevitable by the Government. With these words, Sir, I conclude. Thank you, Sir.

SHRI N.K. PREMACHANDRAN: Sir, as almost all the eminent lawyers, who represent this House, have already opposed this Bill on its legal background itself, so I also rise to oppose most of the provisions of this Bill. First, I would like to make a general observation because Mr. Jothi has said that the Indian Penal Code, the Criminal Procedure Code, and the Indian Evidence Act shall never be touched and shall never be amended according to the present situations, because these are well enacted piece of legislations prevailing in our country. Sir, definitely, all these three Acts require drastic amendments so as to meet the present situation and the present challenges, which our country is facing. The Criminal Justice System definitely requires drastic or basic amendments. For this, my suggestion is that we should have a comprehensive legislation so as to meet the present situation. For this, all these three enactments, namely, the Criminal Procedure Code, the Indian Penal Code, and the Indian Evidence Act require basic amendments. I am saying this because it is well accepted and well-known to everbody that there is delay in delivering justice. Delay defeats the justice. We know that so many cases are pending in various courts of our country due to so many reasons. We are not able

to deliver justice in time. That means it is accepted principle all over the world that delay definitely defeats justice. If that is the case, then in order to expedite the matter, in order to expedite the procedure of the criminal trial, conviction or acquittal, whatever it may be, definitely the procedure has to be simplified. The Evidence Act has to be simplified, and the Criminal Procedure Code also has to be simplified. I know that this Bill is intended to reducing the pendency of cases in various courts and also to help and protect the under-trail prisoners. Last time, when the Criminal Law (Amendment) Bill was brought before the House, we raised the same issue. We had cited one example of one, Mr. Abdual Nasar Madani, who is in Coimbatore prison for the last seven-and-a-half years.

SHRI N. JOTHI: Sir,the matter is *sub judice*.

SHRI N.K. PREMACHANDRAN: I am not into the merits of the case. I am only citing an example. He is an under-trial prisoner and seven-and-a-half years have already gone and still he is not able to get a bail. That is the present situation in our country. What I am suggesting is. *(Interruptions)*... Whatever it may be.. *(Interruptions)*... My point is the process has to be expedited so that he gets justice...*(Interruptions)*...

SHRI N. JOTHI: Sir, the Supreme Court has rejected the bail. It rejected the bail twice.

SHRI N.K. PREMACHANDRAN: I am not going into the merits of the case, Mr. Jothi.

MR. DEPUTY CHAIRMAN: We will look into this. He is not going into the merits of the case. He is giving an example.

SHRI N.K. PREMACHANDRAN: Sir, my point is, suppose, in future, after taking all...*(Interruptions)*...

SHRI VAYALAR RAVI: Sir, he is simultaneously raising an issue for which every body was feeling sympathetic bacause a man is jailed for more than seven years. That is the problem.

MR. DEPUTY CHAIRMAN: That is why, I would have disallowed him, if he would have gone to the merits of the case. He is only quoting the name.

SHRI N.K. PREMACHANDRAN: I am not going in to the merits of the case...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: No, no, Mr. Vijayaraghavan, he has made his point. Mr. Jothi has made his point...*(Interruptions)*... Please.

SHRI N.K. PREMACHANDRAN: My point is, suppose, after taking all the evidence, it is found that he is not guilty, then, who will be responsible for the sentence and imprisonment which he has suffered for the last eight years? Who is answerable? That is my point. My logical question is, suppose the apex court after taking all the evidence for these under-trial prisoners, finds that they are not guilty, then, who is responsible? Who is answerable for the suffering of such prisoners? That is why I said, the Indian Penal Code or the criminal system or the criminal jurisprudence requires drastic amendment. That is why I am citing all these examples.

Regarding the convictioin rate, Mr. Ravi Shankar Prasad, the learned lawyer, already has spoken. Ten per cent is the conviction rate. That means there is some lacuna. Why are people afraid of coming and deposing before the court? Because they are afraid of these mafia gangs; they are afraid of these *goonda* gangs. No witness is ready and willing to appear before the court. The treatment which is meted out to these witnesses in the courts also is a matter of concern. The treatment which they are facing before the court has to be taken into consideration. A preferential treatment, a better and a proper treatment have to be given to the withnesses to that they will be encouraged to give the truth in the court. That is also my suggestion.

Sir, coming to the various provisions of the Bill, I have spoken that half of the Bill has already been gone by way of the official amendments. No wisdom is shown in the drafting of this Bill. Its impact is not taken into consideration. Half of the Bill has gone. The amendments sought in Section 161, 162 and 164A are not applicable. I have carefully listended to the opening speech of the hon. Home Minister when he has talking about attestation, putting up the signatures and about those offences which are more than seven years of imprisonment, then, they have to be sent to a Metropolitan Magistrate and all these things which he was detailing. All these provisions have gone by the official amendments which are moved by the Government itself (*Time-bell*).

Coming to the plea-bargaining, which is an absolute fact, I am not repeating it because it is a 'give and take' policy. Such a principle, whether it is acceptable in criminal law of jurisprudence by way of give and take; and towards those offences which are punishable up to seven years of imprisonment can be compromised by giving some sort of compensation. That is when the accused has to plead guilty and the complainant has to compromise. This way the plea-bargaining is going on. And definitely, suppose section 265F is accepted and it becomes the law of the land,

then, no law is applicable, because it is not a punishment. All offences which are punisbable up to seven years of imprisonment are not offences according to the Representation of the People Act. It is not a disqualification for contesting the elections; it is not a disqualification for any other law which is being enforced in our country. That means it is encouraging the crimes. No doubt about it. Suppose, if I find that I will not be acquitted, definitely I can make a compromise with the complainant by using the prosecutor's office and appearing before the Magistrate and making a compromise means, we are not discouraging Indirectly, we are encouraging the crimes. So therefore, my submission is that the Chapter relating to Plea Bargaining has to be delected, especially, clause 365(f), I also agree with the suggestion made by the hon. Member, Shri Ram Jethmalani. My suggestion is this Bill may be referred to some other Committee, and the matter may be reconsidered fully, and then, bring the same before this House. With these observations, I conclude.

मौलाना ओबैदुल्लाह खान आज़मी (मध्य प्रदेश): सर इसमें शक नहीं कि अक्सरोबेश्तर फौजदारी मामलों में मुलज़िमीन की गिरफ्तारी हो जाने के बाद भी कई-कई बरस तक मुकदमात शुरू ही नहीं हो पाते, इस तरह फौजदारी मामलात के हज़ारों मुलज़िमीन जमानत हासिल करने में भी नाकाम रहते हैं और बरसों तक जेलों में पड़े रहते है। इनमें ज्यादा बड़ी तादाद उन मुलज़िमीन की होती है, जो गरीब होते हैं, जिनके मुकदमात की पैरवी करने वाला और जिनकी जमानत देने वाला कोई नहीं होता। ये बिल इसी गरज से लाया गया है कि फौजदारी मुकदमात और अपीलों के निपटारे में ताख़ीर को कम से कम किया जा सके।

सर, जहां तक कानून की बारीकियों का सवाल है, उसे समझने और समझने के बाद ज्यादा से ज्यादा इस बिल को पावरफल बनाने के लिए, हमारे बहुत ही दानिश्वर हज़रात ने यहां इस मसले पर गुफ्तगू की है। मोटी-मोटी बातें, जो मेरे ज़ेहन में आ रही हैं ...(**व्यवधान**)... मैं वो बातें अर्ज़ करना चाहूंगा। हमारे भाई और ...(**व्यवधान**)...

श्री उपसभापति: आपको उर्दू को वे एप्रिशिएट कर रहे हैं।

श्री रवि शंकर प्रसाद: क्या खालिस उर्दू आप बोल रहे हैं, मैं तारीफ कर रहा हूं।

मौलाना ओबैदुल्लाह खान आज़मी: बड़ी शख्सियत है उनकी। अल्फाज़ की जान को वे समझते हैं, मैं उनका शुक्रिया अदा करता हूं। तो क्रिमिनल अमेंडमेंट में जितनी बातें हमारे इंटेलेक्चुअल हज़रात ने बतलाई हैं, उनमें कितना गवर्नमेंट उस पर अमल करेगी, यह तो मुझे नहीं मालूम, लेकिन इतना मैं ज़रूर अर्ज़ करना चाहूंगा कि

"एक-दो ज़ख्म नहीं, सारा बदन है छलनी,
दर्द बेचारा परेशां है, कहां से उठे!"

सर, हमेशा इसी तरह से बिल पास होते रहते हैं। बिलों को पास करवाने के लिए तो यहां से इंप्लिमेंटेशन करवा लिया जाता है, मगर खुद उस कानून की रूह को अवाम तक पहुंचाने के लिए

और मज़लूम इंसान को इंसाफ दिलवाने के सिलसिले में जब इंप्लिमेंटेशन का वक्त आता है, तो बजाय इसके कि हमें खुशी हो, मायूसी और महरूमी हाथ लगती है। इस मायूसी और महरूमी का नज़ारा अगर आपको करना है, तो आप देहातों का दौरा कीजिए, गरीब लोगों के एरियाज़ में जाइए। चलने वाले मुकदमात में उन गरीबों के घर के बर्तनों को बिकते हुए देखिए, उन गरीबों को मजदूर और बंधक बनते हुए देखिए। ये सारी वो खामियां हैं, जिन खामियों की बुनियाद पर हमारा कानून आज तक इस लायक नहीं हो सका है कि गांधी जी के स्वराज का सपना हमारे देश का मज़लूम और गरीब इंसान अपना बना सके। सर, सच्चाई यह है कि आज भी लोगों को इंसाफ नहीं मिल रहा है कानून चाहे जितने भी बने हुए हों, इंसाफ के लिए 'जिसकी लाठी उसकी भैंस'' आज भी इस कानून पर इस मुल्क में अक्सरोबेश्तर अमल हो रहा है। गरीब आदमी कैसे इंसाफ पाएगा, यह बिल उस मज़लूम इंसान के हुकूक की हिफाज़त कैसे करेगा? जिन हाथों में हुकूक की हिफाज़त है, उन हाथों को हम क्रिमिनल लोगों की मदद करते हुए देखते हैं मिसाल के तौर पर हर चीज़ का इंप्लिमेंटेशन अगर मुल्क में इंसाफ दिलवाने के लिए भी होता है, तो वह पुलिस के ज़रिए होता है। अदालत का जहां तक सवाल है, अदालत किसी को इंसाफ दे भी देती है, एक आदमी के मकान के मामले में अदालत ने इंसाफ दे दिया कि इसका मकान खाली होना चाहिए। हकदार को उस का मकान मिलना चाहिए, मगर पुलिस implement नहीं करवा पाती। मुकदमा जीतने के बाद भी वह आदमी अपने मकान से वंचित और महरूम रहता है। ठीक, इसी तरह से और भी दूसरे मामलात को आप देख सकते हैं। मेरा कहना यह है कि सब से पहली जरूरत इस बात की है कि बिल बनाते वक्त पुलिस वालों को नजर में रखकर बताए कि उन के अंदर पारदर्शिता, उनके अंदर इंसाफ को implement कराने का जजबा आप किस तरह से पैदा करेंगे। इसलिए कि खाही-न-खाही हमारे मुल्क में जो भी काम होता है, वह पुलिस के जरिए होता है, पुलिस ही के जरिए इंसाफ implement करवाया जाता है और पुलिस हमारी इतना अच्छा इंसाफ करती है कि आजकल जाड़े का जमाना है अगर होम मिनिस्टर साहब को हारून रशीद की तरह अपनी कोई तारीख बनानी है इतिहास में तो मैं उन से कहना चाहूंगा कि सादे कपड़े पहन लें, दो-चार एम०पीज० हर पार्टी के ले लें और हिंदुस्तान के किसी भी हाइवे पर चले चलें। आप रात में देखें कि पुलिस पार्लियामेंट के अंदर बने हुए कानून की धज्जियां किस तरह उड़ाती है, किस तरह डाकुओं जैसा कारोबार पुलिस हाइवे पर करती है, किस तरह से वह ट्रक का मालिक लूटा जाता है, किस तरह से ट्रक का क्लीनर लूटा जाता है, किस तरह ट्रक का ड्राइवर लूटा जाता है। उनको रोककर बाकायदा चारों तरफ से ऐसा लगता है जैसे डाकुओं को पकड़ने के लिए एक अभ्यास जारी है। वहां सब से पैसे रात के अंधेरे में दिन के उजाले की तरह लिए जाते हैं।

आज भी बहुत सारी बातें चली हैं कि लोग पैसे लेते हैं, बड़ा जुर्म करते हैं। पुलिस छुपकर पैसा नहीं लेती है, छपकर पैसा लेती है। मगर उस छपे हुए जुर्म पर अंकुश लगाने के लिए आज तक लगता है हमारी पार्लियामेंट success नहीं हो पाई है। आज तक हमारे कानून में इतनी पावर पैदा नहीं हो सकती है। कि हमारा कानून उस पावर के जरिए पुलिस वालों को कानून के दायरे में लाए।

मेरा मानना यह है कि मुल्क में जब भी इंसाफ की रोशनी किसी के घर में पहुंचेगी तो वह पुलिस के हाथों से ही होकर पहुंचेगी। मैं पुलिस का दुश्मन नहीं हूं। मेरे घर में भी पुलिस वाले हैं, मेरे घर में भी फौज वाले हैं, और मुझे इस बात की खुशी है कि मैं फौजी और पुलिस घराने से वाबस्ता रहने वाला एक आदमी यहां बोल रहा हूं। मगर मुझे दुख इस बात का है कि आज तक हम अपनी पुलिस को ईमानदारी की डगर पर चलाने के रवादार नहीं हो सके हैं। मेरी गुजारिश होगी कि इस कानून को संशोधन और तरमीमी बिल की हैसियत से जो पेश किया जा रहा है, उस में इस चीज को भी मजबूती के साथ रखा जाए, इसलिए कि उन हाथों के जरिए आप इसे implement करवाएंगे। आप के पास दूसरे हाथ नहीं हैं – न होम मिनिस्टर साहब वहां फरियाद सुनते हैं, न होम मिनिस्टर साहब जाकर वहां मदद करते हैं और न हम करते हैं । वहां अगर होती है तो पुलिस होती है, वहां अगर होता है तो थाना होता है।

सारे लोगों ने बताया है और मेरे भी एहसासात वहीं हैं कि ''रिश्वत लेकर मुकदमें में फंस गया है, दे दे रिश्वत छूट जा।'' रिश्वत अब ऐब नहीं है, हुनर बन चुकी है, रिश्वत अब पाप नहीं है, पुण्य बन चुकी है और इसका रास्ता थानों से होकर गुजरता है। अपराध में पुलिस लथपथ है आज। आवामी एतबार से आप सर्वे करवा लीजिए तो सब से ज्यादा हिंदुस्तान में अगर किसी के खिलाफ वोट पड़ेगा तो वह पुलिस के खिलाफ पड़ेगा जिल के हाथों से इंसाफ का implementation होना है, उन के खिलाफ जन भावनाएं हैं।''हवा यही जो रहेगी तो ए नकीबे बहार कहां से आएंगी रानाइयां चमन के लिए।'' गलतरवी से मनाजिल का बोझ बढ़ता है। मुसाफिरों रबिशेक कारवां बदल डालो। इंसाफ अगर आप वाकयी दिलाना चाहते हैं, उसमें सक्षम होना चाहते हैं, ईमानदारी के साथ आप पुलिस के रवैये पर गौर कीजिए और पुलिस को इंसाफ की डगर पर चलने वाली हिंदुस्तान की वह फौज बनाइए, हिंदुस्तान का वह सेवा दल बनाइए कि पुलिस वाले को लोक देखें तो उन्हें खौफ न हो, खुशी हो। पुलिस वालों को जब लोग देखें तो उन्हें परेशानी न हो, उन को अपनी परेशानियों को आसानियों मे तब्दील होते हुए रोशनी दिखाई दे।

मगर मैं आप से सही अर्ज करना चाहता हूं कि हालात ये हैं कि उन के पास इतना भी धीरज नहीं होता है कि अगर किसी को रोका है तो उससे जरा तहजीब से बात कर लें। एम॰पी॰ भी गाली सुनता है, एम॰एल॰ए॰ है वह भी गाली सुनता है और होम मिनिस्टर साहब भी अगर अपनी शिनाख्त दिए बगैर पहुंच जाएंगे तो ये भी गाली सुनेंगे। पुलिस की यह जुबान है, पुलिस की यह तहजीब है। बाद में जब पुलिस वाले को पता चलता है कि साहब ये तो होम मिनिस्टर साहब हैं, ये तो एम॰पी॰ साहब हैं, एम॰एल॰ए॰ साहब हैं तब उस के बाद पुलिस का तौर-तरीका भी देखने लायक होता है। मैं यह अर्ज करना चाहता हूं कि चाहे बलात्कार का मामला हो, चाहे बच्चों पर जुल्मों-सितम का मामला हो, चाहे बूढ़ों की परेशानियों का मामला हो, तमाम चीजों का दायरा पुलिस के महवर पर गर्दिश करता है। इसलिए इस बिल को कामयाबी की रूह तक पहुंचना चाहिए, वरना फिर तो ऐसे बिल को पुलिस बिल में घुसा देती है, वह ऐसे बिल की कोई हैसियत नहीं रहने देती है। अगर इस बिल को पावरफुल बिल बनाना है, तो उस बल को सही कीजिए, जिस बल के जरिए हिन्दुस्तान का दल अपनी मंजिल पर पहुंच सके। दूसरी बात महोदय, मैं यह अर्ज करना चाहूंगा ...(व्यवधान)... इस

बिल को इम्पिलमेंट करवाने के लिए ईमानदाराना बल की जरूरत है। हमारे पास जो सुरक्षा बल है, उसमें ईमानदारी चालीसवें हिस्से के बराबर बतौरे खैरात-ओ-ज़कात भी अगर होती है, तो हम समझते कि बहुत बड़ी बात होती है। इसलिए हमारी मुअद्दिबाना गुजारिश है कि आप उस सिस्टम को सही कीजिए, जिस सिस्टम की वजह से तमाम लोग इंसाफ से महरूप दिखलाई दे रहे हैं।

सर, दूसरी बात मैं यह अर्ज करना चाहूंगा कि औरतों की मज़लूमियत का मसला आज की सुबह हमारी बहन ने उठाया था। वह मसला बहुत जबर्दस्त था, जब आपने कहा कि साहब, आप लोगों ने परमिशन नहीं ली है, तो हमारे एक साथी ने कहा कि आप ही परमिशन दे दीजिए। रहमानो रहीम के नाम से आपने भी एक नाम पाया है। हम लोग आपसे रहमत की ही उम्मीद करते हैं, जहमत की उम्मीद नहीं करते। इसलिए औरतों के सिलसिले में भी वह हमारी मां है ...(व्यवधान)... मैं अर्ज करूंगा कि यह हमारी मां-बहनों की जिन्दगी का सवाल है। यह एक औरत की इज्जत का सवाल है। यह महान देश, जिस देश में श्री राम की कहानी कण-कण की जुबानों पर मौजूद है कि रावण जैसे आतंकवादी ने उनकी बीवी, पवित्र सीता, का हरण किया था और उनको बचाने के लिए बजरंग बली जी जैसे महान व्यक्ति ने जाकर लंका फूंकी थी। इसका उद्देश्य क्या है? इसका उद्देश्य यह है कि किसी भी दौर की औरत को सीता के रूप में देखा जाना चाहिए। सीता के रूप में देखी जाने वाली लड़की, बेटी, बहू, उसकी इज्जत-ओ-आबरू इतनी महान है कि एक मुल्क फूंका जा सकता है, सोने की लंका में आग लगायी जा सकती है, रावण का वध किया जा सकता है, तो इसका मतलब यह हुआ कि एक औरत की इज्जत पर हाथ और डाका डालने वाला इंसान अपनी जिन्दगी को मौत के हवाले करने पर खुद सिग्नेचर कर देता है। हम कहते हैं कि कड़ी-से-कड़ी सजा देंगे। आप क्या कड़ी-से-कड़ी सजा दीजिएगा! औरतों की इज्जत भी लूटी जाती है, उनके बच्चों की हत्या भी होती है और वह पूंछ पर ताव देकर बाहर आता है और कहता है कि तुमको भी देख लूंगा और तुमको भी देख लूंगा। जहां ये हालात बने हों, सर, वहां मैं आपके माध्यम से भरपूर गुजारिश करना चाहता हूं कि कम-से-कम ज़िनाकारों और बलात्कारियों के लिए कानून में संशोधन करके आप ऐसा कानून बनाइए, जिससे उसे लगे कि ऐसा करके वह अपनी मौत पर सिग्नेचर करता है। उसे सजा-ए-मौत दी जानी चाहिए। वह किसी रहम का, किसी करम का मुस्तहिक नहीं है। अगर इस तरह से अपराध को रोकने के लिए दो-चार उदाहरण भी हमने पैदा कर दिए, तो यकीन मानिए कि यह सोने की चिड़िया, हिन्दुस्तान, जिसका अपनी पवित्रता में तारीख का एक अहम हिस्सा रहा है, जहां सीता की इज्जत को बचाने के लिए मुल्कों पर आक्रमण करने को पुण्य कहा गया है, जहां द्रौपदी की इज्जत को बचाने के लिए महाभारत जैसी जंग हुई है, वहां आज की द्रौपदी की साड़ी खींची जा रही है और उसे इंसाफ नहीं मिल रहा है। आज की सीता का हरण किया जा रहा है और उसे इज्जत और सम्मान नहीं मिल रहा है। हमारे देश में, जहां औरतों की पूजा होती हैं कहीं लक्ष्मी देवी के नाम पर, कहीं सीता देवी के नाम पर, कहीं राधा देवी के नाम पर और वहीं उन्हीं की बेटियों की इज्जतें लूटी जाती हैं। क्या मैं यह कहने में हक बेजानिब नहीं हूं कि राम-भक्ति का नारा लगाने वाले लोग अगर रावण की एजेंटी करने लगेंगे तो

राम के मुकद्दस नाम को बचाने के लिए कौन खड़ा होगा? ...(व्यवधान)... मैं आपको नहीं कह रहा हूं। आप मत घबराइए। राम आपकी प्रॉपर्टी नहीं हैं, राम सारे हिन्दुस्तान, सारी इंसानियत की प्रॉपर्टी हैं, राम आदमियत की प्रॉपर्टी हैं, राम तहजीब की प्रॉपर्टी हैं, राम संस्कृति की प्रॉपर्टी हैं।... .(व्यवधान)... राम रहमत का एक-एक नाम और उस कंसप्ट की प्रॉपर्टी हैं। राम एक ऐसा उजाला हैं, जिससे अंधेरा भागता है। राम एक ऐसी ठंडी हवा हैं, जिससे गर्म हवा सर्फ-ए-नज़र कर लेती है। ...(व्यवधान)... नहीं, नहीं, अहलुवालिया जी कुछ नहीं कह रहे हैं।...(व्यवधान)... अहलुवालिया जी कुछ नहीं कह रहे हैं। आप उनको प्रोवोक मत कीजिए।...(व्यवधान)... इसलिए मैं आपसे अर्ज करना चाहता हूं कि निहायत ही संजीदगी के साथ इस मसले पर बहस का इखतिताम होते हुए इस बिल को इतना पावरफुल बनाना चाहिए कि देश की गरीब और मजलूम जनता को इंसाफ मिल सके।

खूब की सैरे चमन, फूल चुने शद रहे।

बागवां जाता हूं, गुलशन तेरा आबाद रहे।

थैंक यू। शुक्रिया।

†**मولانا عبیداللہ خان اعظمی "مدھیہ پردیش"** : سر، اس میں شک نہیں کہ اکثر و بیشتر فوجداری معاملوں میں ملزمین کی گرفتاری ہو جانے کے بعد بھی کئی کئی برس تک مقدمات شروع ہی نہیں ہو پاتے، اس طرح فوجداری معاملات کے ہزاروں ملزمین ضمانت حاصل کرنے میں بھی ناکام رہتے ہیں اور برسوں تک جیلوں میں پڑے رہتے ہیں۔ ان میں زیادہ بڑی تعداد ان ملزمین کی ہوتی ہے، جو غریب ہوتے ہیں، جن کے مقدمات کی پیروی کرنے والا اور جن کی ضمانت دینے والا کوئی نہیں ہوتا۔ یہ بل اسی غرض سے لایا گیا ہے کہ فوجداری مقدمات اور اپیلوں کے نپٹارے میں تاخیر کو کم سے کم کیا جا سکے۔

سر، جہاں تک قانون کی باریکیوں کا سوال ہے، اسے سمجھنے اور سمجھنے کے بعد زیادہ سے زیادہ اس بل کو پاور فل بنانے کے لئے، ہمارے بہت ہی دانشور حضرات نے یہاں اس مسئلے پر گفتگو کی ہے۔ موٹی موٹی باتیں، جو میرے ذہن میں آ رہی ہیں.....مداخلت.....وہ باتیں عرض کرنا چاہوں گا۔ ہمارے بھائی اور .....مداخلت.....

شری اُپ سبھاپتی : کیا خالص اردو بول رہے ہیں، میں تعریف کر رہا ہوں۔

شری روی شنکر پرساد : کیا خالص اردو آپ بول رہے ہیں، میں تعریف کر رہا ہوں۔

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†Transliteration in Urdu Script.

مولانا سید اللہ خان اعظمی : بڑی شخصیت ہے ان کی۔ الفاظ کی جان کو وہ سمجھتے ہیں، میں ان کا شکریہ ادا کرتا ہوں۔ تو کریمنل امینڈمینٹ میں جتنی باتیں ہمارے اٹیلیک چول حضرات نے بتلائی ہیں، ان میں کتنا گورنمنٹ اس پر عمل کرے گی، یہ تو مجھے نہیں معلوم، لیکن اتنا میں ضرور عرض کرنا چاہوں گا کہ ۔

ایک دو زخم نہیں، سارا بدن ہے چھلنی
درد بے چارہ پریشاں ہے، کہاں سے اٹھے

سر، ہمیشہ اسی طرح سے بل پاس ہوتے رہتے ہیں۔ بلوں کو پاس کروانے کے لئے تو یہاں سے امپلی میںٹیشن کروالیا جاتا ہے، مگر خود اس قانون کی روح کو عوام تک پہنچانے کے لئے اور مظلوم انسان کو انصاف دلوانے کے سلسلے میں جب امپلی میںٹیشن کا وقت آتا ہے، تو بجائے اس کے کہ ہمیں خوشی ہو، مایوسی اور محرومی ہاتھ لگتی ہے۔ اس مایوسی اور محرومی کا نظارہ اگر آپ کو کرنا ہے، تو آپ دیہاتوں کا دورہ کیجئے، غریب لوگوں کے ایریاز میں جایئے۔ چلنے والے مقدمات میں ان غریبوں کے گھر کے برتنوں کو بکتے ہوئے دیکھئے، ان غریبوں کو مزدور اور بندھک بنتے ہوئے دیکھئے۔ یہ ساری وہ خامیاں ہیں، جن خامیوں کی بنیاد پر ہمارا قانون آج تک اس لائق نہیں ہو سکا ہے کہ گاندھی جی کے سوراج کا سپنا ہمارے دیش کا مظلوم اور غریب انسان اپنا بنا سکے۔

سر، سچائی یہ ہے کہ آج بھی لوگوں کو انصاف نہیں مل رہا ہے۔ قانون چاہے جتنے بھی بنے ہوئے ہوں، انصاف کے لئے 'جس کی لاٹھی اسی کی بھینس' آج بھی اس قانون پر اس ملک میں اکثر و بیشتر عمل ہو رہا ہے۔ غریب آدمی کیسے انصاف پائے گا، یہ بل اس مظلوم انسان کے حقوق کی حفاظت کیسے کرے گا؟ جن ہاتھوں میں حقوق کی حفاظت ہے، ان ہاتھوں کو ہم کریمنل رکھنے والوں کی مدد کرتے ہوئے دیکھتے ہیں۔ مثال کے طور پر ہر چیز کا امپلی میںٹیشن اگر ملک میں انصاف دلوانے کے لئے بھی ہوتا ہے، تو وہ پولس کے ذریعے ہوتا ہے۔ عدالت کا جہاں تک سوال ہے، عدالت کسی کو انصاف دے بھی دیتی ہے، ایک آدمی کے مکان کے معاملے میں عدالت نے انصاف دے دیا ہے کہ اس کا مکان خالی ہونا چاہئے۔ حقدار کو اس کا مکان ملنا چاہئے مگر پولیس امپلی مینٹ نہیں کروا پاتی ہے۔ مقدمہ جیتنے کے بعد بھی وہ آدمی اپنے

†Transliteration in Urdu Script.

مکان سے دلچسپت اور محروم رہتا ہے۔ ٹھیک اسی طرح سے اور بھی دوسرے معاملات کو آپ دیکھ سکتے ہیں۔ میرا کہنا یہ ہے کہ سب سے پہلی ضرورت اس بات کی ہے کہ اگر بل بناتے وقت پولس والوں کو نظر میں رکھ کر سوچیے ان کے اندر پاور دیتے ان کے اندر انصاف کو امپلی مینٹ کرانے کا جذبہ آپ کس طرح سے پیدا کریں گے۔ اس لئے کہ خاہی نہ خاہی ہمارے ملک میں جو بھی کام ہوتا ہے، وہ پولیس کے ذریعے ہوتا ہے، پولیس ہی کے ذریعے انصاف امپلی مینٹ کروایا جاتا ہے اور پولیس ہماری اتنا اچھا انصاف کرتی ہے کہ آج کل جاڑے کا زمانہ ہے، اگر ہوم منسٹر صاحب کو ہارون رشید کی طرح اپنی کوئی تاریخ بنانی ہے اتہاس میں تو میں ان سے کہنا چاہوں گا کہ سادا کپڑے پہن لیں، دو چار ایڈیشنل ہیڈ آف دی پولیس اور ہندوستان کے کسی بھی ہائی وے پر چلے چلیں۔ آپ رات میں دیکھیں کہ پولیس پارلیمنٹ کے اندر بنے ہوئے قانون کی دھجیاں کس طرح اڑاتی ہے، کس طرح ڈاکوؤں جیسا کاروبار پولیس ہائی وے پر کرتی ہے، کس طرح سے وہ ٹرک کا مالک لوٹا جاتا ہے، کس طرح سے ٹرک کا کلینر لوٹا جاتا ہے، کس طرح ٹرک کا ڈرائیور لوٹا جاتا ہے۔ ان کو روک کر باقاعدہ چاروں طرف سے ایسا لگتا ہے جیسے ڈاکوؤں کو پکڑنے کے لئے ایک ابھیاس جاری ہے۔ وہاں سب سے پیسے رات کے اندھیرے میں دن کے اجالے کی طرح لئے جاتے ہیں۔

آج بھی بڑی ساری باتیں چلی ہیں کہ لوگ پیسے لیتے ہیں، بڑا جرم کرتے ہیں۔ پولیس چھپ کر پیسہ نہیں لیتی ہے، چھپ کر پیسہ لیتی ہے۔ مگر اس چھپے ہوئے جرم پر انکش لگانے کے لئے آج تک لگتا ہے کہ ہماری پارلیمنٹ سکسیس نہیں ہو پائی ہے۔ آج تک ہمارے قانون میں اتنا پاور پیدا نہیں ہو سکا ہے کہ ہمارا قانون اس پاور کے ذریعے پولیس والوں کو قانون کے دائرے میں لائیں۔ میرا ماننا یہ ہے ملک میں جب بھی انصاف کی روشنی کسی کے گھر میں پہنچے گی تو وہ پولیس کے ہاتھوں سے ہی ہو کر پہنچے گی۔ میں پولیس کا دشمن نہیں ہوں۔ میرے گھر میں بھی پولیس والے ہیں، میرے گھر میں بھی فوج والے ہیں اور مجھے اس بات کی خوشی ہے کہ میں فوجی اور پولیس گھرانے سے وابستہ رہنے والا ایک آدمی یہاں بول رہا ہوں۔ مگر مجھے دکھ اس بات کا ہے کہ آج تک ہم اپنی پولیس کو ایمانداری کی ڈگر پر چلانے میں کامیاب نہیں ہو سکے ہیں۔ میری گزارش ہوگی کہ اس قانون کو سنشودھن اور ترمیمی بل کی حیثیت سے جو پیش کیا جا رہا ہے، اس میں اس چیز کو بھی مضبوطی کے ساتھ رکھا جائے۔ اس لئے کہ ان ہاتھوں کے ذریعے آپ اسے امپلی مینٹ کروائیں گے۔ آپ کے پاس دوسرے ہاتھ نہیں ہے، نہ ہوم منسٹر صاحب وہاں فریاد سنتے ہیں، نہ ہوم منسٹر صاحب

جا کر وہاں مدد کرتے ہیں اور نہ ہم کرتے ہیں۔ وہاں اگر ہوتی ہے تو پولیس ہوتی ہے، وہاں اگر ہوتا ہے تو تھانہ ہوتا ہے۔

سارے لوگوں نے بتایا اور میرے بھی احساسات وہی ہیں کہ 'رشوت لے کر مقدمہ میں پھنس گیا ہے، دے کے رشوت چھوٹ جا'۔ رشوت اب عیب نہیں ہے، ہنر بن چکی ہے، رشوت اب پاپ نہیں ہے، پُنیہ بن چکی ہے اور اس کا راستہ تھانوں سے ہو کر گزرتا ہے۔ اپرادھ میں پولیس لتھ پتھ ہے آج۔ عوامی اعتبار سے آپ سروے کروالیجئے تو سب سے زیادہ ہندوستان میں اگر کسی کے خلاف ووٹ پڑے گا تو وہ پولیس کے خلاف پڑے گا جن کے ہاتھوں سے انصاف کا امپلی منٹ ہونا ہے، ان کے خلاف جن بھاونائیں ہیں۔

ہوائیں جو رہے گی تو اے نقیب بہار
کہاں سے آئیں گی رعنائیاں چمن کے لئے

نظر روی سے منزل کا بوجھ بڑھتا ہے۔ مسافروں روش کارواں بدل ڈالو۔ انصاف اگر آپ واقعی دلانا چاہتے ہیں، اس میں سکشم ہونا چاہتے ہیں، ایمانداری کے ساتھ آپ پولیس کے رویے پر غور کیجئے اور پولیس کو انصاف کی ڈگر پر چلنے والی ہندوستان کی وہ فوج بنائیے، ہندوستان کا وہ سیوا دل بنائیے کہ پولیس والے کو لوگ دیکھیں تو انہیں خوف نہ ہو، خوش ہو۔ پولیس والوں کو جب لوگ دیکھیں تو انہیں پریشانی نہ ہو، ان کو اپنی پریشانیوں کو آسانیوں میں تبدیل ہوتے ہوئے روشنی دکھائی پڑے۔

میں آپ سے یہی عرض کرنا چاہتا ہوں کہ حالات یہ ہیں کہ ان کے پاس اتنا بھی وویک نہیں ہوتا ہے کہ اگر کسی کو روکا ہے تو اس سے ذرا تہذیب سے بات کرلیں۔ ایم پی بھی گالی سنتا ہے، ایم ایل اے سے وزیر بھی گالی سنتا ہے اور ہوم منسٹر صاحب بھی اپنی شناخت دے بغیر پہنچ جائیں تو وہ بھی گالی سنیں گے۔ پولیس کی یہ زبان ہے، پولیس کی یہ تہذیب ہے۔ بعد میں جب پولیس والے کو پتہ چلتا ہے کہ صاحب یہ تو ہوم منسٹر صاحب ہیں، یہ تو ایم پی صاحب ہیں، ایم ایل اے صاحب ہیں تب اس کے بعد پولیس کا طور طریقہ بھی دیکھنے لائق ہوتا ہے۔ اس لئے میں یہ عرض کرنا چاہتا ہوں چاہے بلاتکار کا معاملہ ہو، چاہے بچوں پر ظلم و ستم کا معاملہ ہو، چاہے بزرگوں کی پریشانیوں کا معاملہ ہو، تمام چیزوں کو دائرہ پولیس کے محور پر گردش کرتا ہے۔ اس لئے اس بل کو کامیابی کی روح تک پہنچانا چاہئے، ورنہ پھر تو ایسے بل کو پولیس

بل میں گنجائش دیتی ہے، وہ ایسے بل کی کوئی حیثیت نہیں رہنے دیتی ہے۔ اگر اس بل کو پاور فل بل بنانا ہے، تو اس بل کو صحیح کیجئے جس بل کے ذریعے ہندوستان کا ہر دل اپنی منزل پر پہنچ سکے۔ دوسری بات مجبوری میں یہ عرض کرنا چاہوں گا.....مداخلت.....اس بل کو اصلی صورت کروانے کے لئے ایماندارانہ بل کی ضرورت ہے۔ ہمارے پاس جو فگر شماری ہے۔ اس میں ایمانداری چالیسویں حصے کے برابر بھی خیرات وزکوۃ بھی ادا ہوتی، تو ہم سمجھتے کہ بہت بڑی بات ہوتی۔ اس لئے ہماری مودبانہ گزارش ہے کہ آپ اس سسٹم کو صحیح کیجئے، جس سسٹم کی وجہ سے تمام لوگ انصاف سے محروم دکھائی دے رہے ہیں۔

سر، دوسری بات میں یہ عرض کرنا چاہوں گا کہ عورتوں کی مظلومیت کا مسئلہ آج ہی صبح ہماری بہن نے اٹھایا تھا۔ وہ مسئلہ بڑا زبردست تھا، جب آپ نے کہا کہ صاحب، آپ لوگوں نے پرمیشن نہیں لی ہے، تو ہمارے ایک ساتھی نے کہا کہ آپ ہی پرمیشن دے دیجئے۔ رحمان ورحیم کے نام سے آپ نے بھی ایک نام پایا ہے۔ ہم لوگ آپ سے رحمت کی ہی امید کرتے ہیں، زحمت کی امید نہیں کرتے۔ اس لئے عورتوں کے سلسلے میں بھی وہ ہماری ماں ہے.....مداخلت.....میں عرض کروں گا کہ یہ ہماری ماں بہنوں کی زندگی کا سوال ہے۔ یہ ایک عورت کی عزت کا سوال ہے۔ یہ مہان دیش، جس دیش میں شری رام کی کہانی کن کن کی زبانوں پر موجود ہے کہ راون جیسے آتنک وادی نے ان کی بیوی، پوتر سیتا کا ہرن کیا تھا اور ان کو بچانے کے لئے بجرنگ بلی جی جیسے مہان آدمی نے جا کر لنکا پھونکی تھی۔ اس کا مقصد کیا ہے؟ اس کا مقصد یہ ہے کہ کسی بھی دور کی عورت کو سیتا کے روپ میں دیکھا جانا چاہئے۔ سیتا کے روپ میں دیکھی جانے والی لڑکی، بیٹی، بہو، اس کی عزت وآبرو اتنی مہان ہے کہ ایک ملک پھونکا جا سکتا ہے۔ سونے کی لنکا میں آگ لگائی جا سکتی ہے، راون کو ووٹ کیا جا سکتا ہے، تو اس کا مطلب یہ ہوا کہ ایک عورت کی عزت پر ہاتھ اور ڈالنے والا انسان اپنی زندگی کو موت کے حوالے کرنے پر خود سکنچر کر دیتا ہے۔ ہم کہتے ہیں کہ کڑی سے کڑی سزا دیں گے۔ آپ کیا کڑی سے کڑی سزا دیجئے گا۔ عورتوں کی عزت بھی لوٹی جاتی ہے، ان کے بچوں کی بیچ بھی ہوتی ہے اور وہ موہ بھنگ پرتاڑوے کر باہر آتا ہے اور کہتا ہے کہ تم کو بھی دیکھ لوں گا [illegible] سلینگا۔ جہاں یہ حالات بنے ہوں، سر، وہاں میں آپ کے ماوحیم سے بھرپور گزارش کرنا چاہتا ہوں کہ کم سے کم زناکاروں اور بلاتکاریوں کے لئے قانون میں سنشودھن کر کے آپ ایسا قانون بنائیے، جس سے

اسے لگے کہ ایسا کرکے وہ اپنی موت پر پہنچ رہا ہے۔ اسے سزائے موت دی جانی چاہئے۔ وہ کسی رحم کا، کسی کرم کا مستحق نہیں ہے۔ اگر اس طرح سے اپرادھ کو روکنے کے لئے دو چار اداہرن بھی ہم نے پیدا کر دئے تو یقین مانئے کہ یہ سونے کی چڑیا، ہندوستان جس کا اپنی پوترتا میں تاریخ کا ایک اہم حصہ رہا ہے۔ جہاں سیتا کی عزت کو بچانے کے لئے سمندر پر آکرمن کرنے کو پریرت کیا گیا ہے، جہاں دروپدی کی عزت کو بچانے کے لئے مہابھارت جیسی جنگ ہوئی بیہودہ آج کی دروپدی کی ساڑی کھینچی جا رہی ہے اور اسے انصاف نہیں مل رہا ہے۔ آج کی سیتا کا ہرن کیا جا رہا ہے اور اسے عزت اور سمان نہیں مل رہا ہے ہمارے دیش میں، جہاں عورتوں کی پوجا ہوتی ہے۔ کہیں لکشمی دیوی کے نام پر، کہیں سیتا دیوی کے نام پر، کہیں رادھا دیوی کے نام پر اور وہیں انہیں کی بیٹیوں کی عزتیں لوٹی جاتی ہیں۔ کیا میں یہ کہنے میں بجانب نہیں ہوں کہ رام بھکتی کا نارا لگانے والے لوگ اگر راون کی آرادھنا کرنے لگیں گے تو رام کے نام کو بچانے کے لئے کون کھڑا ہوگا؟ ...مداخلت... میں آپ کو نہیں کہہ رہا ہوں۔ آپ گھبرائیے۔ رام آپ کی پراپرٹی نہیں ہے، رام ہمارے ہندوستان، ساری انسانیت کی پراپرٹی ہے، آدمیت کی پراپرٹی ہے، رام تہذیب کی پراپرٹی ہے، رام سنسکرتی کی پراپرٹی ہے۔ ...مداخلت... جنت کا ایک [illegible] کی پیپلی ہے۔ رام ایک ایسا اجالا ہے، جس سے اندھیرا بھی ہے۔ رام ایک ایسی ٹھنڈی ہوا ہے، جس سے گرم ہوا صرف نظر کر لیتی ہے۔ ...مداخلت... نہیں، اہلووالیہ جی، آپ نہیں کہہ رہے ہیں۔ ...مداخلت... اہلووالیہ جی آپ نہیں کہہ رہے ہیں۔ آپ پریشان مت کیجئے۔ ...مداخلت... اس لئے میں آپ سے عرض کرنا چاہتا ہوں کہ نہایت ہی سنجیدگی کے ساتھ اس مسئلے پر بحث کا اختتام ہوتے ہوئے اس بل کو اتنا پاورفل بنانا چاہئے کہ دیش کی غریب اور جنتا کو انصاف مل سکے۔

خوب کی سیر چمن پھول چنے شاد رہے

باغباں جاتا ہوں گلشن تیرا آباد رہے

تھینک یو۔ شکریہ۔

SHRI V. NARAYANASAMY (Pondicherry): Sir, I thank you for giving me this opportunity to speak on the Criminal Law (Amendment) Bill, 2003. Sir, the hon. Home Minister, while piloting the Bill, narrated salient features of this Bill. The Standing Committee, which went into the details of this Bill has Standing Committee, which went into the details of this Bill, has also suggested some amendments. Some of them have been accepted by the Home Minister and he has come forward with these amendments. Sections 195 A, 161, 162 and 164 A have been amended. Actually we did not want to change the criminal jurisprudence. The feeling of the Standing Committee was that the investigating officer should not be given more powers, which has been accepted by the hon. Home Minister. There are two aspects. One is about the person giving false evidence and the other is about the person who has been threatened not to give proper evidence. Section 195A has been amended. The hon. Minister has clearly stated about the person who has got muscle power and money power to derail the criminal justice; who can use this for the purpose of threatening the official witness; does not allow him to give proper evidence and also compels him to give false evidence. This provision is there to safeguard the interest of the people. Therefore, this provision has been incorporated in Section 195 A. So far as Sections 161, 162 and 164 A are concerned, the original position has been retained. The Standing Committee also found that when it comes to the question of recording the statement of a witness before the Magistrate—Shri Ram Jethmalani also talked about it—the courts do not have sufficient Magistrates and proper staff. Apart from that, in all cases, if the statement of the witnesses and the accused has to be recorded before the Magistrate, it becomes a cumbersome process. Therefore, it was felt that this provision should be removed. The hon. Home Minister has agreed to it. So far as giving more power to the investigating officers and getting the signature of the witnesses in the statement are concerned, these things have been done away with.

Another salient feature, which has received criticism from various senior lawyers in this august House, is about plea bargaining. They were comparing it with Western countries. Some of them even said that plea bargaining was a very dangerous provision which should not be applicable to our country because in our country people are very innocent. Here the person who has got enough money will get away with even a heinous crime. All these things have been said here. Sir, we had an opportunity, in the Standing Committee, to hear Shri Jethmalaniji. He has also expressed his views in the House. Sir, I partially accept this provision regarding plea bargaining. I want that it should be qualified. As far as offences against

women are concerned, whether these are cases of rape or molestation,—women's organisations also had made references relating to that—there should be protection...

SHRIMATI BRINDA KARAT (West Bengal): Women and children have been kept out of this provision.

SHRI V. NARAYANASAMY: Yes, that is right. The Standing Committee also has made recommendations in this regard. Sir, plea bargaining is not a new concept; it is there in other countries also. Normally, by using money power, the convict easily gets out of the crime, and he will not even be punished. But, this is not the only course left to him. We have seen from experience as to how a person, who committed a heinous crime, got acquitted by the courts. As the saying goes, an innocent person is punished, and an accused person goes scot-free. So, we have to go in depth and find out the practical applicability of plea bargaining. Actually, if it is mutually agreed between the accused and the complainant, then, there is no question of any kind of controversy on this, because we do have this component of bailable offences. It is there in criminal jurisprudence. Now it has been made open by plea bargaining. As far as plea bargaining is concerned, in order to strengthen the system of plea bargaining, the Magistrates and the Prosecution-in-charge should be trained properly. But I do not subscribe to the theory that plea bargaining should not be allowed. this is the theory that has been expressed by some of the hon. Members in this House. Now that we have thought about bringing in the concept of plea bargaining, we can only improve upon it. Therefore, I support this provision which has been included in this Bill.

I want to make my points on two more aspects. In section 265 F, an impression should not be created that a person is not guilty of any offence after a plea bargaining has been made. That kind of an impression should not be created because the Bill states: "Notwithstanding anything contained in any law for the time being in force, the punishment imposed under this Chapter shall be considered expiatory in nature and no person punished under this chapter shall be liable to any disability under any law." Now, a message should not go that the accused has been let scot-free even after committing a crime. The Home Minister should consider this aspect.

I would also want a modification in section 265 H which says: "No appeal (except the special leave petition) shall lie in any court." Now, we cannot give some kind of a special concession. Even after the judgement, if somebody goes to the higher court, it should be a regular process. Why do we have to give special leave petition? If at all anybody wants to challenge

it, let him/her challenge it in a regular way in ths courts? Why do you give special leave concessions under 265H? I would like the hon. Home Minister to clarify this point. These are the two provisions on which I was a little doubtful.

Sir, as regards 344A, it has been in practice. In a regular judgement, if the hon. judge observes that a person has committed perjury, then, a criminal proceeding is initiated against him. This has been the practice. Now, it has been elaborated in this provision. It has been elaborated in such a way that if a person committs perjury, if he gives false evidence, and if the judge feels that because of that false evidence, a criminal has been let off by the court, and if the judge makes that observation, then, he should be summarily tried. That is the only thing that has been brought in this Bill. Of course, it has a cumbersome process. But, I do not find any kind of objection from hon. Members from the other side to it. Now, we have 200 years' old Indian Evidence Act. Then, we have the Indian Penal Code. Now, we have to codify our criminal system. Then, we have the Criminal Procedure Code of 1973. We have changed a lot of provisions. Now, codification of the criminal system, codification of the criminal jursiprudence has to take place, especially in the light of the new crimes that are coming in. Cyber crimes are coming in and a host of new crimes are coming in. In the background of all this, I would like to request the hon. Home Minister to consider the codification of the criminal law.

Now, coming to these amendments to the Criminal Procedure Code, the Evidence Act and the Indian Penal Code, several amendments have been brought forward by the hon. Home Minister. Several suggestions have been made. Recommendations have been made by the Law Commission. The Malimath Committee Report is there. I want the hon. Home Minister to codify the law, to codify the criminal system. A new Evidence Act has to be there. A new Indian Penal Code has to be there. Then, an updated version of the Code of Criminal Procedure has to be there to cope with the new type of crimes and offences that are taking place. The hon. Home Minister, the Law Minister is also present here, should consider the total codification of the criminal jurisprudence. The UPA Government has gone into the whole criminal jurisprudence and thought of changing the whole criminal law.

With these observations, I support the amendments that have been brought forward by the hon. Home Minister. I fully support plea-bargaining. There will be speedier justice. Apart from that, if the accused and the

complainant come together and agree on certain things, then justice should not be denied on them. I fully support plea-bargaining. Thank you, Sir.

STATEMENTS BY MINISTERS

Status of Implementation of Recommendations Contained in the Eighteenth Report of the Department-related Parliamentary Standing Committee on Information Technology

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI SURESH PACHOURI): Sir, on behalf of Shri Priyaranjan Das Munsi, I lay a statement on the status of implementation of recommendations contained in the Eighteenth Report of the Department-related Parliamentary Standing Committee on Information Technology.

Status of Implementation of Recommendations Contained in the Fourth Report of the Department-related Parliamentary Standing Committee on Urban Development

THE MINISTER OF STATE OF THE MINISTRY OF URBAN EMPLOYMENT AND POVERTY ALLEVIATION (KUMARI SELJA): Sir, I lay a statement on the status of implementation of recommendations contained in the Fourth Report of the Department-related Parliamentary Standing Committee on Urban Development.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11.00 a.m. on Tuesday, the 13th December 2005.

The House then adjourned at five of the clock till eleven of the clock on Tuesday, the 13th December, 2005.

MGIPMRND—6500RS(S-5)—04-05-2006.