Lok Sabha Debates
Discussion On The Code Of Criminal Procedure (Amendment) Bill, 2005. ... on 9 May, 2005
an> Title: Discussion on the Code of Criminal Procedure (Amendment) Bill, 2005. (Bill passed).

14.24 hrs CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL,2005 MR. DEPUTY-SPEAKER : The House would now take up Item no. 12 – Code of Criminal Procedure (Amendment) Bill, 2005. The hon. Minister may move that the Bill be taken into consideration.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI SHRIPRAKASH JAISWAL): Sir, on behalf of Shri Shivraj Patil, I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1973, as passed by Rajya Sabha, be taken into consideration[snb14] ." The need for amending various provisions of the Code of Criminal [bru15] Procedure, 1973 has continued to be felt for toning up of the investing machinery and process, strengthening the prosecution related machinery, streamlining and improving procedures, specially from the point of view of expediting trial court procedures, tackling problems of undertrials and matters connected with the grant of bail and effective miscellaneous improvements. Accordingly, the Code of Criminal Procedure (Amendment) Bill, 1994 was introduced in the Rajya Sabha on the 9th May, 1994. The Bill was referred to the Parliamentary Standing Committee which considered the Bill and submitted its report on 28th February, 1996. The report was examined in the Ministry of Home Affairs. The previous Government could not finalise their views on the recommendations of the Committee. Our Government further examined and considered the recommendations of the Parliamentary Standing Committee and based on its recommendations, a list of official amendments to the Bill, which has already been introduced and passed in the Rajya Sabha, is being moved. The recommendations of the Committee have been largely accepted.

The thrust areas of the Bill are:

(i) Toning up the investigative machinery and process;

(ii) Strengthening the prosecution and related machinery;

(iii) Streamlining and improving procedures, especially from the point of view of expediting trial court procedures;

(iv) Tackling the problem of undertrials and matters connected with the grant of bail; and

(v) Effecting miscellaneous improvements.

s Important proposals contained in the Bill are as follows:

(a) Prohibit arrest of a woman after sunset and before sunrise except in exceptional circumstances.

(b) Police is being required to give information about the arrest of a person as well as the place where he is being held to any one who may be nominated by him for sending such information;

(c) Mandatory judicial inquiry in case of death or disappearance of a person or rape of a woman while in the custody of the police. In case of death, examination of the dead body to be conducted within 24 hours of death;

(d) Mandatory provision that if the arrested person is accused of a bailable offence and he is indigent and cannot furnish surety, the court shall release him on his execution of a bond without surety;

(e) An undertrial prisoner, other than the one accused of an offence for which death has been prescribed as one of the punishments, should be released on his personal bond with or without sureties when he has been under detention for period extending to one half of the maximum period of imprisonment provided for the alleged offence.

(f) In no case will an undertrial be detained beyond the maximum period of imprisonment provided for the alleged offence.

(g) Bail and anticipatory bail provisions are being made stringent for hardened criminals;

(h) The State Governments are being empowered to establish a Directorate of Prosecution under the administrative control of the Home Department of the State;

(i) Strengthening of legal provisions to ensure peace, harmony and tranquillity in the society.

Sir, since this Bill mainly addresses urgent social issues and will help improving the functioning of the criminal justice system of our country, I commend the Bill for consideration and passing by this august House.

MR. DEPUTY-SPEAKER: Motion moved:

"That the Bill further to amend the Code of Criminal Procedure, 1973, as passed by Rajya Sabha, be taken into consideration. " SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, I think the Home Minister is preoccupied.

This is a very important Bill changing the criminal system in the country. The Criminal Procedure Code was amended in 1973 making some drastic changes to suit the conditions available at that time[bru16] .

Last time when the NDA Government made an attempt towards this, it was a futile exercise. Why was it so? It was because the amendments which were brought before the House were opposed to the interests of the legal fraternity. Legal fraternity, throughout India, including the lawyers of Delhi, was on a warpath. The Government was forced not to proceed with the amendments as such. So, it did not fructify. Those amendments were detrimental to the interest of the legal community. Hence, it was not implemented. Now, this is the third attempt. Generally speaking, I support the amendments.

It is a fact that the Indian system is having some inherent weaknesses which could not be rectified in the last one hundred years. On an analysis, it is seen that all our prosecutions end in failure. The rate of conviction is poor. When compared with developed countries, the situation in India is alarming. To see as to how to get out of this difficulty is the most important thing. Mere cosmetic changes in the criminal system will not be sufficient.

I think the Government of India was also aware of this fact. So, it appointed a Commission under Justice Malimath. Justice Malimath Commission conducted very wide ranging inquiry and collected evidence to the extent possible. It submitted a Report, but it is lying in the library. The recommendation of that Commission is basically against the fundamentals of our criminal jurisprudence. We all know that the Indian criminal jurisprudence is based on the system that the accused is presumed to be innocent till he is proved guilty. Justice Malimath recommended that the onus of proof should lie on the accused. When a man is charged with an offence, the basic presumption now is that the accused is presumed to be innocent. Justice Malimath recommended that it is for the accused to prove his innocence and not the prosecutor, shifting the burden of proof on the accused. It is against all canons of criminal jurisprudence. Hence, it was not implemented. It is still lying in the library.

Our hon. Home Minister brought the Bill before the Upper House and got its approval. These amendments relate to four or five basic features of the criminal jurisprudence. They are: (1) arrest; (2) custody; (3) bail provisions; (4) appeal provisions; and (5) prosecution. In the Principal Act, there is no specific provision for the appointment of prosecutor for conducting criminal cases. Now, it is found essential that there must be a State prosecutor. He is called the Director of Prosecution. As per clause 4, there is a provision for the appointment of Director of Prosecution. Here I find that there will be some difficulty for the State Governments. It is because the Director of Prosecution is to be appointed with the concurrence of the Chief Justice of the State. There can be no appointments as it is. We have our own bitter experience. We have been contemplating and even agitating for a Judicial Commission for appointment of judges and to deal with their service matters. The Judicial Commission could not be appointed because of the stand taken by the Supreme Court. Without a constitutional amendment it is not easy to appoint a Judicial Commission[r17] .

The Constitution has provided that for the appointment of the Chief Justice of India, it is to be consulted with the existing Chief Justice. They have given interpretation to the effect, that ‘consultation’ means ‘concurrence’. Lastly, they have said consultation amounts to ‘consent’. So, without the consent of the Chief Justice of India, no Chief Justice can be appointed by the

President. No Judge of the Supreme Court or High Court can be appointed without the concurrence of the Chief Justice of India. They themselves decide their age of superannuation. They themselves decide when they have to retire. They themselves decide under what conditions they should work. All these matters have become the exclusive powers of the Supreme Court, because of this word 'concurrence', so also the State Government will definitely find it difficult to appoint a Director of Prosecution with the concurrence of the Chief Justice. If a Chief Minister is going to get the concurrence of the Chief Justice of a particular State, it will not be possible because Director of Prosecution is appointed in the interest of the party, in the interest of the Government. It is in the interest of the Government to conduct the Government cases and if the Government cases are to be conducted according to the interest of the Government, the appointment must be with the Government itself. I can understand that it can be consulted. But 'concurrence' is high-handed, because it will create difficulty in the future. It will not be possible for any State Government to appoint a Director so easily.

Apart from that, there is another provision in this also, that is, Section 6. It deals with the powers of the Advocate-General. The appointment of Advocate-General is a political appointment. He has to function as a prosecutor also. In certain cases, he has to act as a prosecutor. He has to do the work of a prosecutor as well as the legal advisor to the Government. It is a political appointment and the Advocate-General cease to hold office when the party in power vacates. So, it is clearly a political appointment. From whom the Director of Prosecution would take orders? These are the difficulties which may come. I would like to know whether the Director of prosecution will have to work under Advocate-General or the Advocate General will have to work under the Director of Prosecution. Both the things are difficult. It is not clear in the Amendment. We should make it explicitly clear to each and everybody as to what are the powers of the Director of Prosecution and the powers of the Advocate-General. Advocate-General is cent per cent a political appointment. The Government should also have a voice in the appointment of a Director of Prosecution. This is not fair. Why should you write the word 'concurrence'? There are a number of Deputy Directors under him, who are not appointed in consultation with the concerned judiciary. There are a number of Public Prosecutors and APP. Now, they are appointed by the Public Service Commission (PSC). What will be the net result? The Government will have to consider this aspect. Moreover, there is a provision in the Bill giving 'retrospective effect'. The appointment of a Prosecutor will have effect from 18th day of December, 1978. Now, we are passing a Bill giving effect to Criminal Procedure Code from as early as December, 1978. I do not understand it because some Service Conditions may arise. This must be explained. Why is this so long a 'retrospective effect' given in this statute? That is another matter. We will have to think over it. I will take some time because I am the only one speaking from my party. I have to cover the entire procedure. ... (Interruptions)

MR. DEPUTY-SPEAKER: Your party has two more speakers[k18] .

SHRI VARKALA RADHAKRISHNAN : Regarding that aspect, the Government will have to make the real position clear so far as the powers of the Advocate-General and the Director of Prosecution are concerned because the Director of Prosecution will also come before the High Court. He has to take orders from the head of the Home Department. The Advocate-General will also have to take orders from the head of the Home Department. Who will provide it when there is a case in which the

State's interest is uppermost? Who has to appear in such a case? Is it the Director of Prosecution or is it the Advocate-General? There will be some difficulties. So, it must be made clear in the statute itself. That is my view. Or else, we will have to make another amendment in future due to practical difficulties. So, I would leave it to the hon. Minister's wisdom.

The next point is about the arrest of an individual. I may point out that clause VI is the relevant clause. The point is that women are arrested. They can be arrested during the day time or even in the night. There is a specific order that women's arrest should be done by a woman police officer. That itself says it clearly. But, normally, a male police officer effects arrest of women with women police officers. So, the arrest is made clear in the amendment. No woman can be arrested during night time. That is the general rule. Hereafter, in India, no woman, accused of any offence, will be arrested during night time in her place of residence. It is good. But in exceptional cases, there is an exception. In exceptional cases, the arrest can be effected during night time also. The only thing is that a relative should accompany or a lady should accompany or a lady officer should go and effect the arrest. So, I agree. This is a new provision in the Criminal Procedure Code. It is good. But taking into account the other aspects, when an arrest is made, either of a man or a woman, immediate information should be provided. To whom should it be provided? There is no such provision here. A person is arrested during day time, during night time and during mid-night. Even our Minister Shri Baalu was arrested during mid-night* at 12 of the Clock. Shri Dayanidhi Maran and Dr. Karunanidhi were arrested during mid-night.... (Interruptions) So, whenever an arrest is effected, immediate information should be given to the nearest relative of the arrested person.

MR. DEPUTY-SPEAKER: The names of those persons, who are not present in the House, should not be mentioned. They are to be deleted.

DR. CHINTA MOHAN(TIRUPATI) : It was not Shri Dayanidhi Maran but it was Shri Murasoli Maran who was arrested.... (Interruptions)

SHRI VARKALA RADHAKRISHNAN : I stand corrected. It was Shri Murasoli Maran who was arrested. The point is that whenever any citizen is arrested in India, when these amendments will come into effect, it is mandatory for the police officer, who is effecting the arrest, to inform the nearest relative of the arrested person or his nominee. That must be done. It is good. But in our State, whenever a man is taken into custody during night time, the police will not disclose where he is taken, where he is lodged and where he is detained. These matters will be kept as a hidden secret and nobody will be in a position to know the whereabouts of the arrested person. This is a very high-handed situation prevailing in India. Hereafter, not only the nearest relative must be informed but also the person who is arrested should be informed[R19] .

*Not Recorded.

That is good. So, there will be no panic in the house. The family members will not be in difficulty. They know he was taken to such and such place and he was taken there. On arrest, he must also be

immediately informed about the reason for his arrest and about his rights, as an accused. All these matters will have to be disclosed at the time of effecting his arrest.

MR. DEPUTY-SPEAKER: Thank you. Please conclude.

SHRI VARKALA RADHAKRISHNAN : There are provisions with loopholes because of which this may be misused abundantly. So, we should take abundant caution in effecting the particular provision of law. This is a big thing. There are a number of amendments I have to deal with.

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MR. DEPUTY-SPEAKER: No other Member will speak from your Party. ¡
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SHRI VARKALA RADHAKRISHNAN : It will take some time. There are a number of... (Interruptions)

MR. DEPUTY-SPEAKER: Please continue and conclude your speech within two minutes.

SHRI P. KARUNAKARAN(KASARGOD) : Sir, I withdraw my name. Let him speak.

MR. DEPUTY-SPEAKER: I have already given too much time to him.

SHRI VARKALA RADHAKRISHNAN : Shall I continue?

MR. DEPUTY-SPEAKER: You should continue and please conclude within two minutes. Have you heard me?

SHRI VARKALA RADHAKRISHNAN : Now, there is a welcome provision in this Bill also. When a woman is taken into custody, she gets information about the arrest and all those things. If the woman is questioned for the purpose of investigating a rape case, she will be sent for a medical examination immediately. That is Section 7. Now, in the rape cases, when she is sent for examination, it has become obligatory for the officer concerned to take her to the medical practitioner, authorised medical practitioner, who is conducting the medical test. After completion of all the procedure, she must be given a report about the medical examination and research she is entitled to.

In the case of an accused, who is alleged to have committed a rape offence, he will also get a copy of the report, medical report for which he is charged. These are welcome methods and

welcome changes. I would request the Government to make it sure that these provisions are fully implemented. That is another aspect, which I would like to bring forward here.

Now, I would like to deal with the next topic. There are many other topics but I will leave them. The next topic I would like to deal with is Section 18 – Rape in custody. A woman is produced before a Magistrate for alleged offence. She is remanded to custody, either to police custody or judicial custody. There were instances and there were cases when in custody such women were raped. Recently, a foreign lady came here. Some Excise people arrested her and committed rape on her. So, rape in custody is a serious offence. In order to prevent that, some provision is made which is good but there is some difficulty, which we will have to tide over after implementation of the Section. Now, when rape is committed, it is mandatory or obligatory on the part of the judicial officer, District Magistrate, who is conducting the enquiry that the police investigation will be continuing but this police enquiry is no bar for conducting custodial rape[bts20] .

[c21] The District Magistrate or the Magistrate, who is taking cognizance of the offence, should conduct an inquiry along with the case being investigated by the Police. He should not wait for the completion of investigation. He can straightaway proceed with that offence. It will be dealt with seriously. This is a welcome change. I support it.

MR. DEPUTY-SPEAKER: Thank you.

... (Interruptions)

SHRI VARKALA RADHAKRISHNAN : Then, there is another provision.

MR. DEPUTY-SPEAKER: No. Please sit down.

... (Interruptions)

SHRI VARKALA RADHAKRISHNAN : I would like to bring to the notice of the House its provisions regarding anticipatory bail. Now, Section 436 of the Criminal Procedure Code provides for anticipatory bail.... (Interruptions)

MR. DEPUTY-SPEAKER: Please sit down, Shri Varkala Radhakrishan. Before I would request other hon. Members to take part in the proceedings, we have a Supplementary List of Business. Now, I would request the hon. Minister Shri Kamal Nath to introduce a Bill.

14.53 hrs. CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL,2005 – Contd.

MR. DEPUTY-SPEAKER: Now, we will continue the discussion on Code of Criminal Procedure (Amendment) Bill, 2005.

Shri Pawan Kumar Bansal.

SHRI PAWAN KUMAR BANSAL(CHANDIGARH) : Mr. Deputy-Speaker, Sir, it was exactly... (Interruptions)

SHRI VARKALA RADHAKRISHNAN(CHIRAYINKIL) : Sir, I have not completed. ... (Interruptions)

MR. DEPUTY-SPEAKER: You have completed.

... (Interruptions)

SHRI VARKALA RADHAKRISHNAN : Sir, I have not completed. About the anticipatory bail, I may be allowed to say a few words.... (Interruptions)

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SHRI VARKALA RADHAKRISHNAN : Now, what about the personal appearance of the accused in an anticipatory bail? Now, when he is charged with a serious cognizable offence, the accused will apply for an anticipatory bail either to the Sessions Court or to the High Court without himself appearing before the Court. Any criminal can apply for anticipatory bail even in a hide-out. That is the procedure now. Now, there is a slight change in the present Amendment. After a preliminary inquiry, for filing the anticipatory bail, personal attendance is not required. But, in the present Bill, if a preliminary order is issued by the Court, it is obligatory on the part of the person applying for anticipatory bail to appear before the Court. Only the Court allows and can dispense with this provision in exceptional cases.

This is a welcome change. Hereafter, people, who are hiding in far-off places and applying for bail applications before the Court, can be put an end to. With these words, I support generally all the Amendments brought in in this Criminal Procedure Code.

SHRI PAWAN KUMAR BANSAL (CHANDIGARH): Mr. Deputy-Speaker, Sir, it was exactly 11 years back that this Code of Criminal Procedure (Amendment) Bill was introduced in the Rajya Sabha by the then Congress Government. As per the practice, the Bill was referred to the Standing Committee. The Standing Committee considered it and gave its Report. Thereafter, for all these years, the Governments of the day chose somehow not to bring this Bill to the Parliament. Sir, this has always been the desire, the concern of the Congress and now of the UPA to bring about all

possible reforms in various fields, including the judicial system, more so in the cases relating to criminal justice; in fact, delivery system of criminaljustice[c22] .

And it was because of this anxiety, this concern, this desire that this Government has looked into the various recommendations of the Standing Committee and urged for the consideration of this Bill in the Rajya Sabha which has passed it and that is how it is before us here today.

Sir, at the very outset, I congratulate the hon. Minister for moving ahead with these amendments though there is much more area to be covered in the days to come, including the consideration of the Malimath Committee Report and any follow-up action thereto. But as was pointed out in this case, this piece of legislation also takes care of and addresses certain important concerns of the public. I would like to submit that the first concern that has not only been the concern of the legal fraternity but also of the public at large, is the treatment that is meted out to women accused of any offence, and for that, the first step and the right step that has been taken is to incorporate the same in the form of this legislation that no woman accused of any offence shall be arrested after sun set and before sun rise. This is a very salutary provision and must be welcomed by all sections of the society. Of course, there is a provision along with this that in exceptional circumstances where the case is such that there is a need to arrest a person who happens to be a woman accused, then she can be arrested. It is so because we now find that crime syndicates, at times, even use women to commit offences. If there is an eventuality, a special case, then certainly a woman can be arrested, but then there is a procedure laid down to ensure that there is no maltreatment and no injustice is done to her.

Sir, in this connection, when I take up one provision at a time, I would also like to give my own humble view thereon. This, as I said, is a salutary provision, but I feel that at the same time when a woman has to be arrested during that period, it should also have been made mandatory to ensure that the arrest is made by a woman police officer.

14.57 hrs. (Shri Varkala Radhakrishnan in the Chair) Sir, I know that this Bill was framed 11 years back and that is how we are here. If we had started thinking of many amendments, it would have taken a long time, and, therefore these provisions are welcome, but there are certain areas on which we have to improve in the future and that is called for.

I think, if I remember correctly, once the last Government, during the 13th Lok Sabha, was really bringing this Bill before the House for consideration, but for some reason it was not taken up and I think the reason, perhaps, was only this and I would refer to that provision. A new Section 144A is being added to the Criminal Procedure Code giving the District Magistrate powers to prohibit carrying of arms in procession or mass drill or mass training with arms. This is the need of the hour. We have seen during the last few years, much to our dismay, that there have been people who, in the name of democracy, have been arrogating to themselves the right to represent the country, the right to talk of the ethos of the country and the right to talk of the culture of the country. They took law into their own hands and used all possible means to suborn, to threaten and to even indulge in genocide - I am consciously using that word. Processions were taken out and therefore this power has now been sought to be conferred on the District Magistrate to ban such

processions where people carry arms. I welcome this provision. Along with this, there is insertion of a new section to the Indian Penal Code also to make a substantive provision regarding an offence with regard to a person who is not adhering to this. For that, there is Section 153A which is clause 44 of the present Bill. It provides for an imprisonment of six months and fine which may extend to Rs. 2,000[k23] .

15.00 hrs. It is for a person who, in a procession, carries arms. The wording, I suppose, one could not really improve upon that:

"Whoever knowingly carries arms in any procession or organises or holds or takes part in any mass drill or mass training with arms in any public place in contravention of any public notice or order issued or made under Section 144 A -- which is also being inserted -- of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to six months and with fine which may extend to two thousands rupees." That was necessary.

I hope, this will, to an extent, help the Government check the communal menace that threatens the beautiful fabric, mosaic of our polity, of our society. But, here again, I would feel that when you give an explanation about the definition of arms, I do not find anything wrong with the definition as such, but when we talk of dandas and sticks to be arms, some over-zealous officer may interpret the law in his own way and may book the person. The cases are not wanting, the cases are not few and far between. There are many cases and there could be many more cases. If I, in a procession, am carrying the flag on a stick, well I could be booked that I was carrying a lathi. That is there.

I know that everything cannot be provided for, but it all depends upon the discretion of the person, who is given the charge, who is charged with the responsibility to implement the law. It really comes to his discretion, to his sense of goodwill that he has to interpret the law. But there can be cases where such a provision can be misused. That care has to be taken in the implementation of it or in the issuance of the guidelines that when the political processions are taken out, if people are carrying their flags on sticks that should not be interpreted that sticks are being carried and these two provisions should not be invoked in such matters.

Sir, the third thing which I really welcome in this Bill is an effort to expedite the procedures of the trial courts and because of the time limit, I would leave that matter here only. But I would say a few words about under-trials. We have often seen in the past that because of the excruciatingly slow pace at which the trials in the courts move, there are many cases where people undergo the major part of the punishment prescribed for a particular offence and yet the trial does not begin. Now, care has been taken to address that problem and there are two good provisions, which would now become the law.

One is that if a person, during investigation or during trial or otherwise, has undergone, at least, half of the total period of punishment, which he could be sentenced to in case of conviction, then he must be released on bail. That is a good provision. Along with that, there is also a provision taking into account Sections 428 and 433 A, which perhaps he has referred to while speaking from here even in

case of lifers. The provision earlier in case of section 433 A was that in case where the sentence was life imprisonment, a person shall not be released before he had undergone a sentence of 14 years.

Now, for the first time, through this Amendment, a provision is being sought to be added to the Statute Book to say that a person who has undergone some sentence, that period shall be set off against that period of 14 years. That was not there earlier. The case of remission was there in other cases, but in case of a person who was undergoing life imprisonment, that is, who was mandatorily supposed to be undergoing a period of 14 years, for him also this period of set off is provided.

But having said that, when I say that these are two good provisions, particularly, the first one, I think, if we take a case where a person say on the very first day of his trial – I am talking of a very hypothetical case – if he were to be convicted and sentenced to, say, five years imprisonment, during this period when he is incarcerated, he would earn some remissions also[r24] .

So, he would not really undergo punishment for five years. That is the position, as we all know. But here, when we are talking of the remission, of the setting off of the period, I think, some consideration should have been given to the period which he could have earned as remission. When you set off the period which he has undergone during investigation or during trial etc., he should also be given the benefit of the period which could have been given to him as remission. It is because our basic purpose is to reform the people. Remission is a means of doing it. The effort is reformation. For that, this provision is there. I think, that could be considered at a later stage that the benefit of the possible remission period should also be incorporated therein.

The problem of custodial deaths and rape of women in custody has been the cause of concern for a very long time, and despite our expression of strongest feelings on that, the problem goes on unabated. As I said, again law alone cannot really help on all these matters; but law has to be framed for this. Here again, I welcome this that after these 11 years, perhaps it was left to this Government alone where the Congress has its part to carry forward the process. Therefore, this should have been done during this period of 11 years or, at least, I would say, when we were out of Government for 8 years. We often heard of these major debates across the country on these things, and even in the Houses here, our Members expressing their concerns for many years. Never did this occur to the NDA Government to really incorporate these provisions. They had not really to work on it. There was no need to work on it. Something was ready there. They had to just bring it to the House for discussion and passing, but now it was left to us. It was left to the hon. Minister Shri Shivraj Patil to again take up these provisions, after his distinguished predecessor. Therefore, now an effort has been made. This would become the law. In case of the death of a person in custody, or a woman being raped while in custody, there would be a mandatory requirement for a judicial inquiry into this matter. The Magistrate would inquire into this matter.

THE MINISTER OF STATE OF THE MINISTRY OF TOURISM (SHRIMATI RENUKA CHOWDHURY): As a Minister I may not be allowed to talk but as a woman I should be allowed to talk. If women are raped in custody – men who protect these women are given special training of how to look after and how to uphold the law – if they violate it, it should be capital punishment for them.

SHRI PAWAN KUMAR BANSAL : I share the sentiments of Shrimati Renuka Chowdhury. I share the sentiments from the core of my heart; but whenever we have considered this matter in the past, I think, when we talk of capital punishment for rape, this would harm the interest of women. It is because the accused in those cases would also ensure that he not only rapes the woman, he finishes off the woman.

SHRIMATI RENUKA CHOWDHURY: That is one aspect. If you look at the Middle East etc. there is no rape there because they know what will happen.

SHRI PAWAN KUMAR BANSAL : In any case I fully share the sentiments on this point; we have to be really strict on this. Today what happens is that 99 per cent of the cases go unreported. That is the position. There were huge articles in the newspapers only yesterday about this. The country keeps quiet on it. It keeps silent on it. The victims slowly and painfully suffer the agony thereof. They become the laughing stock thereafter. That is the position. Therefore, we have to take the strongest measures on this. To begin – here I would like to repeat – after 11 years it again falls on this Government to take this step that in case there is any of these two offences committed in custody, there has to be a judicial inquiry. The matter cannot be just put under the carpet. In case of death, the body has to be sent for medical examination, autopsy etc. within 24 hours. Along with this, there is one other provision. There are again two good provisions in the case of rape. The accused has to be examined immediately within 24 hours or so, if not in the Government hospital, in any hospital nearabout a radius of 16 kilometres. That has been provided for. It is in the law itself that a sort of pro forma is prescribed that this is what the examining doctor has to report.[r25]

Along with that, in case of the victims also, the examination has to be conducted with her consent. I do not know why it is there. But, well, maybe, that is a good provision, but firstly we have to see again that there must be no subsequent harassment after the rape. You can understand the trauma in which the victims would be put to. Thereafter, there should be no harassment to or no hassle for her. It becomes the bounden duty of the State to protect her. It becomes the bounden duty of the society to protect her, to take care of her. It is no charity. It has to be her right and that right is being recognised here. That is what I welcome.

But here again I feel that when we talk of the medical examination of the victim, I think again a provision could have been there that that medical examination must be conducted by a woman or a lady doctor. That has not been provided. I would leave it for the future that that should be done.

Sir, I am sure as long as you are sitting there, I will have my full say.

Now, I am talking in case of another good provision again. We have seen that in the past that there are many, many cases, instances where petty cases against poor people are booked there. They have no means to furnish security. Nobody comes forward for them whereas on the other side there are syndicates working there are professional people to furnish the security one after the other. If you were to look into the record, one person may be furnishing security for hundreds and hundreds of people. The obvious conclusion that you would derive is that perhaps this man may be responsible for getting all these people booked in different offences. Now both these matters have been taken care of. In case of indigent person, the person who is just unable to furnish the security, to come out

on bail after seven days, if he cannot furnish the security within seven days, the judge would infer that he is a poor person and on certain offences, he would be let off. In other cases, any person who furnishes a security has to give a statement about the past whether he has furnished security for other people also in the past or not. That is again a good provision that we have in this Bill.

Sir, when you were speaking, you referred to the anticipatory bail. With due respect, I would slightly differ on that. The provisions that have been made here for anticipatory bail are good, I must say, excepting the last one where I would differ. We have seen in the past that this provision of anticipatory bail was often misused by the people. Therefore, certain stringent guidelines have been laid down in the law itself that while dealing with the case, the hon. the learned Session Judge or the hon. High Court would consider this aspect. That is fine. But the last one, as you said, a person can approach either the Session Judge or the High Court for an anticipatory bail. If a person were to approach a Session Judge first, as the High Court would except him to do, and the Session Judge were to ask or require his presence there on the last date of hearing and in a given case, the anticipatory bail were to be declined, the man would be arrested then and there only. Will he be able to then go to the High Court after that? It will no longer be an application for anticipatory bail. So, the anticipatory bail application would come to an end. This is the procedure. The system would come to an end.

As I said, we are taking up this after 11 years. These are the things on which, maybe, a wider debate is required. Maybe, it is experience which will give the correct picture. ... (Interruptions) He has a right to go to the High Court also for the anticipatory bail. That right should be granted to him because for anticipatory bail, one can go either to the Session Court or to the High Court. So if he is arrested immediately after that, that means he does not get the chance. It is not that the man must not be arrested. After all the Session Judge applies his mind and then declines it. Or, you delete the provision relating to the High Court, and provide that one can go to only one court or maybe, only to the Session Court. Then take this power from the High Court. I am saying it hypothetically for the sake of argument. I am not arguing that. I want it at both the places[m26] .

Once [e27] that provision is there for the High Court, the provision relating to the moving of an application to the High Court would become futile.

Having said all this, I would like to make only one point more regarding the information about the arrest to be provided to the families or anyone associated with the accused. That is again a good provision. Here, I feel, we should have gone a step forward and said that besides the information, a copy of the FIR should be given. The copy of the FIR should be provided to the person. That is the only way in which we could ensure that no provision would be misused by any person. We find that there are instances where to wreak personal vendetta there is misuse. If you are critical of the actions of a person in high authority enjoying high government position, he is offended. This is happening in a democracy. If he is offended, he immediately orders your arrest. If a person is arrested on a Friday after office hours, there are two holidays and that person cannot move an application without a copy of the FIR. There are provisions for malicious prosecution but I would

say that along with the information, a copy of the FIR should be given. ... (Interruptions)

MR. CHAIRMAN : Mr. Bansal, your time is already over.

SHRI PAWAN KUMAR BANSAL : Sir, I have put away my papers. I am concluding but let me say two or three words.

There are certain provisions where the pecuniary limit for money matters have been raised substantially. Where it was Rs. 100, it has been raised to Rs. 1,000; where it was Rs. 250, it has been raised to Rs. 2,000; and where it was Rs. 500, it has been raised to Rs. 5,000. The reason given in all those matters was that the value of money had eroded substantially, from 1973, when the Cr.P.C. was enacted, to 1994, when this amendment was introduced. During these 11 years again, the value of rupee has eroded further substantially. Therefore, there is need to consider all those matters. Wherever there is a pecuniary limit, it should be raised substantially in the interest of justice.

With these words, I support this Bill.

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SHRI SURAVARAM SUDHAKAR REDDY (NALGONDA): Thank you, Mr. Chairman, Sir.

I think, the amendments to the Code of Criminal Procedure are the need of the hour. For the last one decade or so, it was kept pending and ultimately it has come now. But I would like to say that many more amendments are necessary because the Code of Criminal Procedure itself was prepared during the British period. Many amendments that were necessary did not come. Hence, a comprehensive Bill may be necessary and I hope the hon. Home Minister may think of this in the near future.

Before going into the amendments which are proposed, I would like to bring to the notice of the Minister, through you, Sir, that today in The Indian Express, a news items has appeared regarding these amendments to Code of Criminal Procedure. It is said that a police officer trying to apprehend a proclaimed offender has now been empowered to use all force including the right to kill him (clause 7). I do not find this in the amendment. I am surprised how this type of news has come in the Press and that too, it has been written in a way that as the main Opposition is not in Parliament, the remaining Parties are making laws which are going against the interests of the nation. I would like the Home Minister to clarify as to what exactly is the position. After going through the entire sheet of the amendments, I did not find anywhere this type of amendment. Though, clause 7 is also there. This type of things should be clarified so that the people should not misunderstand about the necessity of this type of amendments.

Regarding the other type of amendments, I would like to mention about the arrest of women. In exceptional cases, a provision is made that women can be arrested after sunset also by a woman officer. I would like to amend this provision like this: a woman officer, not less than the rank of Circle Inspector of Police. The higher the officer, more will be the security.

An amendment is necessary in the case of rape. The hon. Minister, Shrimati Renuka Chowdhury was telling, that at least in rape cases or custodial rapes, there should be capital punishment. This is also very much necessary and I request the hon. Minister to think of it.

Regarding bail and parole, before me, several other important hon. Members spoke. The personal presence of the person for the anticipatory bail, I think, is not a good provision. This will be taken advantage of to arrest some people. Actual anticipatory bail is requested to avoid the arrest and that too in extraordinary circumstances only, anticipatory bail will be given. Before getting into the court, they may be arrested. If it is rejected, then outside the court, they will be arrested. So, this type of provision is not going to help instead it will harm.

MR.CHAIRMAN : For anticipatory bail, few conditions have been imposed in the present amendment.

SHRI SURAVARAM SUDHAKAR REDDY : That is all right.

Regarding under-trials, unfortunately a large number of cases are pending for a very long time. In many places, the posts of Judges are not filled up[R32] . In many places, posts of the judges or the magisterial posts are not filled up. Justice delayed is justice denied. It is rightly suggested that since they have undergone half the punishment that is expected to be given to them for that type of crime or mistake, they should be released.

There is also another provision. If the court believes that after the prosecution, it can be continued, then also, I think, half the punishment is over. It is a very serious punishment. I think, under trials should be given proper justice and it can be treated as one-third of the punishment.

Many such people will be let off or sometimes there will never be a case and they remain in jail for years together. There are a very large number of under trials without exception, in almost the whole of the country. There should be some better law that will help the under trials.

Regarding bail and parole, this should be made a little simpler. Presently, the bail provisions are very difficult particularly for the people who cannot provide security. The poorer people are facing the difficulty. The provision regarding bail and parole should be made simpler depending on case to case basis.

SHRI S.K. KHARVENTHAN (PALANI): Sir, I rise to support the Code of Criminal Procedure (Amendment) Bill, 2005. First of all, I want to congratulate our hon. Home Minister for bringing this Bill. He has taken up this task for the speedy disposal of criminal cases, helping under-trial prisoners and for safeguarding the interest of women.

Actually, this present Bill was brought before the House by the former Home Minister Shri S.B. Chavan in the year 1994. Then it was vetted by the Committee in the year 1996. After 1996, the Congress Government was not in power. Now, our hon. Home Minister has presented this Bill with certain modifications.

First of all, I want to welcome the amendment to section 46. Section 46(4) says:

“Save in exceptional circumstances, no women shall be arrested after sunset and before sun rise...”

My suggestion is that males should also be added to it. I want to mention about two cases. The former Chief Minister of Tamil Nadu Dr. M. Karunanidhi was arrested at midnight around 1 o’ Clock and he was taken round to the police stations throughout night. Police authorities failed to follow Section 50 Cr PC. Then, Kanchi Mutt Chief, Shankaracharya was arrested in Andhra Pradesh at midnight on 11th November, 2004. After one month, the junior Pontiff was arrested. My suggestion is, except in exceptional circumstances, even no man should be arrested after sunset. It is a welcome

step taken by the Government.

Another important section is section 50. It is a new provision based on the report of the Joint Committee. Now this has been amended as section 50A(1) to 50A(4). Article 21 about human dignity is covered by this amendment. In the present amendment, the police officer must immediately bring the fact about the arrest of a person and place where he was kept to the family members, relatives and friends of the person so arrested. Secondly, the police must inform the rights of the accused. While remanding him to the Judicial Custody, the Magistrate must check up whether the police has complied with section 50(A)(2), 50A(3) or not before remand. It is a welcome step taken by our hon. Home Minister.

Other important sections are section 53, insertion of 53A and also section 164 and insertion of164A[s33] They relate to examination of accused as well as victim by medical practitioners. Previously, Registered Medical Practitioners, serving in a Government hospital or a local-body hospital, were permitted to examine the victim as well as the accused. Now, any Registered Medical Practitioner, within an area of 16 kms., can check up the accused and can check up the victim also. But, my request is, and it has to be clarified also, whether an Ayurvedic or a Homeopathic Registered Medical Practitioner is eligible to examine the accused or not.

Another important amendment is with regard to Section 176. This Section deals with inquiry by Magistrate into custodial death. Now, the present amendment provides that the words "where any person dies while in the custody of the police or" shall be omitted. Sir, I may be permitted to speak two or three minutes more. Now, the following is being added:

"(a) any person dies or disappears, or

(b) rape is alleged to have been committed on any woman..." In this amendment, sub-section (5), is being added. There is a lacunae in this that is why I want to mention it.

"(5) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under sub-section (1A) shall, within twenty-four hours of the death of the person, forward the body with a view to its being examined to the nearest Civil Surgeon...." But, it does not mention about rape victims - whether they are sending them for examination immediately or not. It is not there. The present Bill is intended to prevent the rape cases. In this country, for example, two rapes take place every hour. One out of five victims is a child below the age of 12 years. Nineteen out of 20 rape accused were let free. In 2002, 132 policemen were tried for custodial rapes, of whom only four were convicted. The punishment must be stringent. Death punishment must be given to rapists; it cannot be reduced.

I would also like to mention the amendments to Sections 292 and 293. These are very good amendments to avoid any delay in counterfeit coinage and explosive cases. For expert opinion, it is taking number of years. It leads to unnecessary harassment to the accused also. So, it is a welcome thing.

An important amendment is being made to Section 436. Now, it is amended as 436(A). Suppose the case of a person, who is in jail and completed one half of the period of imprisonment specified for the offence under law. He can be released with or without surety. This is a very good amendment. Why I am saying is because 2.17659 lakh people were undertrials, who were in prison as on 31-12-2003. Most of them are the people booked for petty and small cases. Mr. Chairman, you better know the case of Sayyed Nazar Madani. He was arrested in April, 1998. He is in Coimbatore Jail. No bail has been given to him. I contacted the Jail authorities. I asked one Mr. Selvin, Assistant Superintendent of Jail, "You please tell me as to when Shri Madani was remanded in your Central Prison." He refused to tell. He said, "I do not know." This is the situation. I am not supporting Madani's case but his case has not been completed the trail till date. So, this is a very good amendment and would help the undertrial prisoners. Then, another important amendment is with respect to anticipatory bail.

MR. CHAIRMAN : You see, there are two types of detentions. One is detention without trial and one is detention without arrest. People are detained in police stations and their arrest is not recorded. That is in case of detention without arrest. The other is detention without trial.

SHRI S.K. KHARVENTHAN (PALANI): I am talking about detention without trial.

MR. CHAIRMAN : You know we really are experienced.

SHRI S.K. KHARVENTHAN : Yes Sir.

MR. CHAIRMAN: You know, while taking people in custody, these people won't record the arrest.

SHRIMATI TEJASWINI SEERAMESH : But, Sir, so far as detained arrest is concerned, my concern is how the dreaded terrorists and the underworld dons would be arrested if they do not operate in the midnight. I beg differ on this. It is a serious concern. We must definitely protect the rights of political leaders. We must ensure certain measures to protect them. But, at the same time, we cannot make it a common thing. Otherwise, our Forces will not be able to function properly[pkp34] . National security is under threat.

MR. CHAIRMAN : Since you are a woman, I have allowed you to speak.

SHRI S.K. KHARVENTHAN : Being a criminal lawyer, I would like to raise one point with respect to section 438 regarding anticipatory bail. It says, "The presence of the applicant seeking anticipatory bail shall be obligatory". A number of conditions have been imposed. Suppose, the accused is a Government servant. Nowadays, it is very easy to file false cases. You, Sir, also know that a false case can be filed under section 506(a) or 326 IPC. He can move a District Court for the anticipatory bail. He will have to appear before the District judge as per new provision in 438 and if bail is rejected, he will be arrested. If he is remanded for 48 hours, he will lose the job. He will be suspended and then he cannot go to the High Court or the Supreme Court. Accused are deprived of their rights. So, this has to be reconsidered as it will affect the entire Criminal Justice Delivery System of the country.

Moreover, a large number of cases are pending in various Magistrate Courts. All the Magistrate Courts do not have the buildings or clerks. One of the magistrates in Tamil Nadu had staged an agitation for want of a typing machine. They do not have much facility. There is a provision to amend the Directorate of Prosecution. It is very good. Prosecutors must be given all the facilities.

Another humble submission is, most of the police officers are recording statements contrary to the FIR. If the statements are contradictory then the benefit automatically goes to the accused. So, all the State Governments must be requested to appoint one junior advocate with less than five or ten years of service as a police prosecutor in the police stations to file the charges. This will not only give job opportunity to young lawyers but also will improve the criminal justice delivery system. I support the Bill and thank you for the opportunity given.

PROF. M. RAMADASS (PONDICHERRY): Thank you for giving me the opportunity to speak on this momentous Bill relating to the Code of Criminal Procedure. On behalf of my Party, I support this Bill. I think this is one of the series of the Bills and measures taken by the UPA Government to bring changes in the society, economy and in the political system.

As far as this Code of Criminal Procedure Bill is concerned, it is clothed in sound principles of jurisprudence. The objects of the amendment Bill are good and are consistent with the needs of the Indian contemporary society. As you have remarked during your intervention, today a large number of cases are pending before the trial courts, High Courts and the Supreme Court. My learned colleague, Shri Kharventhan has just now quoted that there are 2,17,673 under trial cases and the period of pending of these cases is running to a number of years. A number of innocent under-trial persons are languishing in jails without a judgement being passed on the criminal offences committed. If you look into the social composition of the people who are suffering or languishing in the jails, you would note that they all belonged to the suppressed, oppressed community, weaker sections, Scheduled Caste and Scheduled Tribe community who are being denied even the normal justice for a long time. Therefore, today, what we need is that the judicial delivery system has to be radically restructured in such a way that it is able to provide justice at the right time and to the right person.

Other learned Member has rightly said that this system, which was clothed in the legacy of the British, has not wiped out all the social evils connected with the criminal judicial system which was perpetuated in this country by the Britishers. This Code of Criminal Procedure was brought in 1973. We tried to bring about changes in 1994 but could not do it. We again tried it in 2003. At least we are now bringing it before the House. It is a radical measure and the most fascinating aspect of this Bill are the objectives of the Bill. It tries to tone up the investigation process and the investigation machinery. The second objective is that it tries to strengthen the prosecution machinery. Therefore, in the contemporary society where justice is delayed and denied, the Bill tries to provide a delivery mechanism by which we can expedite it and, therefore, I welcome it on behalf

of my Party. Another salient feature of this Bill is the creation of the Directorate of Prosecution[R35] .

Now this is a good idea. But at the same time, I wish to draw the attention of the hon. Home Minister to the fact that no detailed guidelines have been given about the functions of this Directorate and no guidelines have been given about the appointment of the members. Therefore, I would urge upon the hon. Home Minister that detailed guidelines should be given by the Centre. The Directorate of Prosecution has been created by the Centre but the operative part of it is left to the State Government. You know the manner in which the State Governments are functioning now-a-days. They are working according to their whims and fancies. Therefore, the functioning, the powers, and the jurisdiction of the Directorate of Prosecution must be specifically made by the Central Government itself so that there is no heterogeneity or variation in the use of the powers and functions of the prosecution among different states. The people of impeccable integrity and the men guided by the spirit of objectivity alone must be posted there.

The third important feature of this Bill is with regard to the arrest of women after Sun set and before Sun rise except in exceptional circumstances. As has been stated by the other hon. Members, the officer who effects this arrest must be above the rank of Inspector of Police and it should be a woman police officer. But I also feel as to why this specific provision has been made for woman alone. There are cases where men are also arrested without even a sign of committing a crime by them. We still remember the arrest of Dr. Kalaignar in Tamil Nadu in the mid-night and the case has not yet been proved. Therefore, it should be uniformly applicable. We are now emerging into a system where there is an equality of law whether it is man or woman. Let us develop a system where a person should not be arrested after Sun set and before Sun rise. I would feel that we should ensure equality before law.

Another important provision of this Bill is relating to the examination in rape cases. This is a welcome move. This Bill also tries to avoid a situation where witnesses turn hostile. The provision of compounding of offence which has been made here may be treated very cautiously because it may lead a person to commit himself and then land himself in trouble.

Another important provision which fascinates is with regard to the obligation of a person making the arrest to inform about the arrest to a nominated person. Now this provision will try to ensure human rights to the people which are very often trampled in the case of poor and down trodden people.

Now the power to prohibit carrying arms in procession or mass training with arms would try to curb the communal forces who are heading for a disaster in this country. Then, the maximum period of punishment for under trials has been reduced to half of the maximum period. But one provision is regarding personal bond with or without surety. Now most of the under trials happen to be poor and they may not have the ability to provide sureties either in terms of money or kind. Therefore, the word `with' may be deleted from that provision. Therefore, on all these aspects the Bill merits our serious consideration and approval.

I congratulate the hon. Minister for bringing this Bill and also congratulate the Chairman of the UPA who has been tirelessly working to bring about radical reforms in this country on the economic side, social side and on the constitutional side. In view of all these merits, on behalf of my Party, I support this Bill.

SHRI P. KARUNAKARAN (KASARGOD): Sir, this Bill was discussed and passed by the Rajya Sabha and now this Bill has come before this House for discussion and approval.

This Bill had come before Parliament in 1994. In the last 11 years, our country was silent as far as this issue was concerned. It means that the justice was delayed. We say in the judicial terms, `justice delayed is justice denied'. So it is very clear who is responsible for the delay of 11 years. Now, you have come forward with positive suggestions. Therefore, first of all, I congratulate you for bringing such positive amendments[r36] .

The most important features contained in this Bill are in regard to death in police custody, missing from police custody and rape in police custody. As far as issues like death in police custody and missing from police custody are concerned, it has been stated in the Bill that in the event of such a thing happening, there would be a judicial enquiry ordered. Also, in cases of allegations of rape in police custody, there would be a judicial enquiry.

On the issue of arrest of women during night time, it has been stated that it should not be done during night time, but at the same time it has also been mentioned that a women could be arrested at night under extraordinary circumstances. But such an arrest could be effected only with the prior permission of the officers. If officers are not available, such arrest could be effected by persons who would take the responsibility to give an explanation about the extraordinary circumstances under which such an arrest of a woman was made during night time. This is a dangerous clause. It is because we all know that our police officers are capable enough to change very ordinary circumstances into extraordinary circumstances. We have had the experience of police officers coming from Chandigarh to arrest Shri Shibu Soren in a case that was 25 years old. But the case was made out to be an extraordinary one. Why can we not avoid including such clauses in the Bill? Some police officers are capable, with or without reasons, of using this clause against women. It is not essential to have such a provision to strengthen the hands of the policemen, particularly in regard to women.

We have reports day in and day out, from all parts of the country, about atrocities being committed against women. This House also discussed this issue last week. In the newspapers there appeared a report about a case in Lucknow where a woman was raped by policemen. When the husband of the woman objected to this he was shot dead and the child was abused. We are coming across such reports almost everyday. So, under the changed circumstances, we have to change the course of our action in regard to such crimes and take into consideration all such factors when we are giving shape to a law. I fully agree that maximum punishment should be meted out to the culprits, particularly in rape cases. Many cases of rape are not reported to police. So, if the

Government make stringent provisions in the law, then it would have some deterrent effect on the culprits. Therefore, I fully agree with the views of the hon. Minister and with other hon. Members when they say that maximum punishment should be given to people accused of rape.

Sir, there are many good suggestions in this Bill regarding improving the law and order situation and about maintaining the communal harmony in the country. But the moot question is, who will implement all these provisions of the law? That is the main issue. Even if we have enough laws, many of the provisions of these laws are not implemented. Political will is the main issue. When we get reports, there should be instructions from the State and the Central Government to take stringent action on such cases. Otherwise, even if we pass good laws, the provisions of those laws would not be implemented properly.

The other thing that I would like to mention here is that apart from passing good laws by the State Assemblies and the Parliament, we would need to strengthen the infrastructure. In the 112th Report of the Law Commission, which was published some time back, it was mentioned that manpower planning in the Judiciary has to be examined in detail. I think, the report has been submitted to the Government but no action on the recommendations of the Law Commission has been taken till date. The Report reveals that in India there are 10.5 judges per million of our population. Whereas, in Australia, which has lesser population than India, there are 41.6 judges per million of population; in Canada, which has even lesser population, has 75.2 judges per million of population; England has 50.9 judges per million. Population of almost all other countries in the world are less as compared to India. Thousands of cases are pending before the courts. We can give many such examples[snb37] .

16.00 hrs. But I would [bru38] like to give the example of Kerala. In Kerala, as on 30.9.2004, in district and sub-district courts, 2,54,204 cases have been pending and in Magisterial courts, 4,06,308 cases have been pending. The total comes to 6,60,522 cases. You see the magnitude of the cases which are pending! And one of the clauses deals with human rights in detail. I am really very happy because some safeguards are included.

One of my friends mentioned about Madhani's case. He is stated to be in custody for seven years and my party is in no agreement with his policies. If he has committed mistakes, the police should bring him before the court, conduct a trial and then put him behind the bars. But without trial, the case is dragging on and it is because of the wrong report which the police has given to the court. As a result, due to his ill health, he is not able to come out of jail. When his mother-in-law had died, he was not granted bail. You may see that in Kerala, there is no law and order issue.

My humble request is, when we pass the legislation, we should see that there should be no lack of political will from the side of the Government to implement the provisions of the Bill. We have to monitor the mistakes and correct them. We should strengthen our Judiciary and other infrastructure which we need in order to implement the provisions of the Bill.

With these words, I conclude my speech.

DR. SEBASTIAN PAUL (ERNAKULAM): Sir, I rise to support the Bill.

The Code of Criminal Procedure is a product of the great era of Indian legal codification and, despite de novo legislation in 1973, the CrPC is still suffering from colonial hangover. Many drawbacks in our criminal jurisprudence have been pointed out by several hon. Members. This is a humble attempt on the part of the Government to correct some of the anomalies because from our experience, we can see that we are going back in time beyond the period of Magna Carta where the prisoners' right to bail was proclaimed. We know that bail is the rule and jail is an exception, but, nowadays the courts are reluctant to grant bail or the prisoners are unable to obtain bail and many are languishing in jails for want of bail.

Many hon. Members have mentioned the name of Abdul Nazar Madhani who is languishing in Coimbatore jail for the last more than seven years. The trial is going on and the case is not yet over. I think, taking the spirit of the new amendment and after the passage of this Bill, Abdul Nazar Madhani will be released forthwith because he has already crossed the possible period of punishment. For seven years, he has remained in jail without bail.

In our country, the arrests are mostly unwarranted and custody is meant for torture and humiliation, trial is protracted, and it has become a never-ending process. It is in this context that I am supporting the amendments moved by the hon. Minister in the hope that in the near future, the Criminal Procedure Code will be subjected to further amendments or modifications because we have to take into account the developments in technology. We can harness technology for speedy trials and administration of justice. All these things further require detailed examination. I hope that with the acceptance of many basic principles of criminal administration like plea bargaining which is prevailing in the US, pendency will decrease in our country. If plea bargaining is accepted, many cases will come out of the files of courts[bru39] .

[r40] People can plead guilty on the assurance of lesser punishment. In the present system, the dockets of the criminal courts are bulging. There is no end to this painful process. Many of the valuable rights are neglected. In this connection, I do remember the Ten Commandments of the hon. Supreme Court in the famous Basu case. Even those mandatory rules are being violated by the police. Giving statutory recognition to those rules is most welcome. I welcome this amendment with the hope that this is only a beginning and more drastic overhauling of the Code of Criminal Procedure will be forthcoming.

MR. CHAIRMAN : The hon. Minister may please reply.

THE MINISTER OF HOME AFFAIRS (SHRI SHIVRAJ V. PATIL): Sir, I am grateful to the hon. Members who have supported this Bill wholeheartedly. ... (Interruptions)

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MR. CHAIRMAN: Shri Ram Kripal Yadav wants to speak. Mr. Minister, what do you say?

SHRI SHIVRAJ V. PATIL: I have no objection.

MR. CHAIRMAN: If you agree, I will allow him.

SHRI SHIVRAJ V. PATIL: I agree to that.

MR. CHAIRMAN: Shri Ram Kripal Yadav, as a special case I allow you. You can speak for two minutes.

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MR. CHAIRMAN : Please conclude.

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MR. CHAIRMAN : Nothing will go on record except Shrimati Tejaswini.

(Interruptions)* * Not Recorded.

SHRIMATI TEJASWINI SEERAMESH (KANAKAPURA): Sir, I would like to raise two objections in this page No.2, Clause (25) (A) as far as Director of Prosecution is concerned. It has been suggested in the amendment to appoint a practising advocate with 10 years' experience. ... (Interruptions) Sir, I feel that instead of practising advocate ... (Interruptions)

MR. CHAIRMAN : Nothing will go on record except Shrimati Tejaswini See Ramesh.

(Interruptions)* SHRIMATI TEJASWINI SEERAMESH : Sir, instead of practising advocate, I appeal to the Government to appoint a Sessions Judge. Otherwise, these days, in every field, there is politicisation or they were misusing this opportunity. So, as far as the appointment of Director of Prosecution is concerned, I object to the ordinary advocate with 10 years' experience. It is incorrect. I appeal that there must be Sessions Judge to examine these things.

As far as rape cases are concerned, here it is given that one registered medical practitioner can examine. Here, I appeal that a Government doctor is proper because these days rape cases are very sensitive. The ordinary medical practitioners may not be able to supply or produce certain

details. It is very sensitive as far as DNA facility is concerned. That is why, to provide justice, I appeal again that Government doctor is so much necessary to examine these things[k41] .

*Not Recorded.

SHRI T.K. HAMZA (MANJERI): Sir, I thank you for giving me this opportunity to speak on this Bill.

First of all, I would like to congratulate the hon. Minister for bringing forward this Bill at this stage. Ten years have lapsed. It was first initiated in 1994. Even the Standing Committee reported in 1996 that we had delayed that measure for eight clear years. So, our genuine complaint is regarding delaying the justice in the court; the backlog has increased. Now, the legislature backlog is this. Anyway, it has now been brought before the House. For that, I would like to congratulate the hon. Minister.

I want to say only one or two words regarding two or three clauses. One is about clause 6, Section 46. It says that women may not be arrested after sunset or before sunrise. Why do we not extend the same facility to men also? Of course, this provision has been kept to prevent misuse of power. I can understand that. The point is that arrest and bail is a question of dignity. Men also have got the dignity. So, my point is that nobody may be arrested in the night. At the dead of night, an ex-Prime Minister is arrested. Such things may not be allowed. Therefore, that can be made as "any person may not be arrested after sunset and before sunrise." Likewise, there is clause 19, Section 202(1). It has been stated that a Magistrate, on a private complaint, can conduct inquiry himself to satisfy whether it has to be taken cognisance or not. He can send for the police also. The suggestion here is that if the alleged accused is beyond the jurisdiction of the Magistrate, it is very well that at his satisfaction he can do anything as he pleases. I agree to that amendment.

Next, my humble submission is about amendment to clause 36, Section 436A which is about bail matter. In that matter, the hon. Minister may consider my suggestion. A trial prisoner should get maximum justice. It may not exceed the custody half the punishment prescribed in the law. That is true. We have to protect the interest of a man, the fundamental rights of a man. In the police custody, if a man dies, compensation is suggested, a judicial inquiry is suggested. If a man dies in the judicial custody, what is the way out? Where is the justice?

Many hon. Members said that Abdul Nazar Madhani is in jail for eight years without trial. The trial is going on. But he is not given the bail. Suppose, ultimately, the highest judicial authority in the country finds that he is innocent – he has been undergoing judicial custody for eight years – who will compensate for that? So, the Government should think of that. Therefore, justice cannot be denied. If it is the intention of the Legislature, the Parliament which is the highest authority of the country, which is the supreme body, above all the constitutional bodies, then, we have to consider that. A person is undergoing jail custody pending trial for more than eight years. No bail has been granted so far. I do not know for what purpose it is done. If he dies there, how can the State compensate? If he dies in judicial custody, how can he be compensated? So, this fact may also be

taken into consideration. The hon. Minister may introduce some comprehensive amendments to the Criminal Procedure Code as well as, in certain aspects, the Indian Penal Code in order to avoid harrasment.

Finally, I would like to congratulate the hon. Minister for bringing forward this Bill. I stop here.

MR. CHAIRMAN : Now, the hon. Minister will reply.

... (Interruptions)

SHRI KINJARAPU YERRANNAIDU (SRIKAKULAM): Sir, kindly permit me for a minute to speak.

MR. CHAIRMAN: The time is over. Anyhow, if you can say one or two words, I will agree because you represent the Opposition.

SHRI KINJARAPU YERRANNAIDU : Sir, I rise to support the amending Bill. I am fully supporting whatever amendments that have been proposed by the hon. Minister[R42] .

I am requesting the hon. Home Minister through you for two amendments.

MR. CHAIRMAN : So, you mean to strengthen.

SHRI KINJARAPU YERRANNAIDU : So, you are mentioning about women. In place of women, it should be any person. It is because in the Article 21 of the Constitution, the dignity of a person is written. Normally, in the midnight the arrest of a male is also not correct. What is the hurry? If there are any extraordinary circumstances, they can go and arrest the male person. Instead of woman, a person whoever he maybe, should not be arrested after sunset, before sunrise.

Secondly, regarding maintenance under Section 125 of the CRPC, previously, we have given very limited amount of compensation to the wife and children. Now, we have to give powers up to Rs. 5,000 to the Magistrate. If the Magistrate is satisfied, he will award maintenance up to Rs. 5,000 to the wife or the children. So, these are the two suggestions I am giving through you to the Home Minister.

THE MINISTER OF HOME AFFAIRS (SHRI SHIVRAJ V. PATIL): Once again, I would like to thank the hon. Members for the support they have given to this Bill. The first point which was made by your goodself, Sir, is related to the Directorate of Prosecution. I think in your speech you said that the Directorate of Prosecution would be subordinate to the Attorney-General or Advocate-General. The position today provided in this law is that the Director would be appointed

by the Home Ministry of the State and he would be under the control of the Home Ministry and not the Advocate General. There is not going to be any difficulty.

The second point which you made in your speech is related to the duties to be performed by the Director. It is provided in the law, it will be prescribed by the Government. That means the rules will be made and as per the rules the Director would function. So, there is no difficulty. One more point was raised with respect to the qualification of the person who can be appointed as the Director of Prosecution. That was made by a lady Member.

MR. CHAIRMAN : It is provided that there should be 10 years practice.

SHRI SHIVRAJ V. PATIL: Yes, Sir, 10 years' practice. It was suggested that a Judge should be appointed and not a practising lawyer. Even to appoint a Judge or if a District Judge has to be appointed, it is seen how many years' practice he has put in. A person, only after 7 years' practice as a lawyer, can be appointed as a Judge. So, the same number is being applied at the time of selecting a person to function as a Director and we should have no difficulty in this respect also.

One point has been made by many Members in this House relating to the arrest of the woman after sunset and before sunrise. They have welcomed this provision. Many Members have suggested that this provision should be available to men also. We are going to have a law which is not only humane in its approach but it is effective also. If you make a law so humane that it does not remain effective, then there is no point in having a law of that nature. This provision has to be made, the provision that a woman should not be arrested after sunset and before sunrise. It is because the Law Commission, the Jurists and many organisations have made a suggestion to this effect, in order to protect the dignity of the women. Should it be available to men also? Suppose a dacoit is hiding in his house in the night. What will happen? Will he not be arrested in the night? If that happens, it will be very difficult for the police to arrest him[bts43] .

16.25 hrs. (Shri Balasaheb Vikhe Patil in the Chair) This law is meant to deal with the persons who have committed the offences also. So, the effectiveness of the Police should not be reduced to such an extent that they would not be able to arrest the real culprit. So, I am finding it very difficult to accept this suggestion at least at this point of time. Afterwards, if you convince the jurist, the Judges, the Commissions and some of us also, we may look into it, but at this moment, it is not possible for me to accept this suggestion.

There was a point raised with respect to the medical practitioners. The law provides that a woman, who is molested and raped, should be examined by the medical practitioner. The original law provided that she should be examined by the Government medical practitioner. It was difficult to have the Government medical practitioner to do this duty at all places. That is why, the present law provides that the first priority is given to the Government hospital doctor to examine the victim. Only when the Government doctor is not available within 16 kilometres, private doctor is to be approached for examination and this private doctor has to be a registered doctor. The victim will be subjected to the examination by this registered doctor only if she agrees to subject herself to examination otherwise not. So, this provision is made in order to see that the evidence, which is

very relevant in such cases, is not lost. That is why, this provision has been made and there should be no difficulty in accepting this provision.

One of the most important things, which has been provided in this law, is that the person – if a person dies in the Police custody or is raped in the Police custody or disappears from the Police custody – the inquiry or investigation should not only be done by the Police, but it has to be done by an agency, which is independent of the Police. The original law provides that in such cases, the Police could inquire into the matter or investigate into the matter and could come to certain conclusions and could inform the authority as to what had happened. Now, we are taking a precaution. That precaution is that it is not only the Police officers who should be allowed to do that but this inquiry and investigation should be done by the Judicial Magistrate of the area in whose jurisdiction this has happened, that is, the death has happened or the rape has happened or the person has disappeared.

So, this is a very salutary provision and, I think, we have to welcome this provision. Sir, the release on bail of the persons who have been languishing in the jail, is also a very salutary provision. I have read in the Newspaper that it is a very sad commentary on the Government's performance on investigation. Such kinds of cases are not there in big numbers, only a few cases are there in which a person is kept behind the bar for a long time without being released on bail or without getting the benefit of the trial by the Judge. Sir, it happens only in a few cases. The present Criminal Procedure Code provides that bail shall be given by the Police in the bailable offences. This is a rule. In bailable offences, Police have no discretion. If the accused person makes an application for bail, the bail has to be given[c44] .

The police cannot deny the bail. In non-bailable cases, the bail is not given by the police, but it is given by the judge. But even in non-bailable cases, only in murder case or in rape case or a case in which dacoity is being investigated, the bail is refused. Otherwise, in all other cases, bail is a rule. The Supreme Court has ruled, not once but many times, that the bail is the rule and the jail is an exception. Justice Krishna Iyer had given a very long judgement on this. So, bail is generally given.

But there are cases in which it becomes very difficult to investigate, collect and produce the evidence before the court and get the trial going on and get the acquittal or the conviction for the person who is involved in the case. In such cases also, it is now being provided that if the person has remained behind the bar, in the jail, for more than half-the-period for which he could be sentenced to imprisonment, he should not be compelled to remain in the jail and he should be allowed to be released on bail. This is one of the salutary provisions.

The second provision which is a sort of corollary to this is that if the person has remained in the prison for a period for which he could have been sentenced to imprisonment, if that period is over, that case has to be dropped. The case should not continue, but the case has to be dropped. This

is also a very salutary provision and we should accept it.

Sir, among the other amendments which are likely to come before Parliament to the Criminal Procedure Code, one of the amendments is that if there is a case in which only a fine can be imposed, the person should not be arrested at all. All these steps are meant to make the criminal justice system more humane and more acceptable to the people.

There was some argument on anticipatory bail provisions which are provided in this Amending Bill. In the original Criminal Procedure Code there is no provision under which anticipatory bail can be given. The criminal courts have been using the inherent powers to give anticipatory bail. In what kind of cases anticipatory bail is generally given? If a person is prosecuted for political reasons or on the basis of the evidence which is not convincing or which is not sufficient to punish the person or for such other reasons, then the judges have come to the conclusion that in such cases the accused should not be arrested and should not be put behind the bar by the police and they have given anticipatory bail. This Bill is now accepting this principle and incorporating this principle in the Criminal Procedure Code.

It is suggesting the grounds on which anticipatory bail can be given. But it is also suggesting that the real criminal should not obtain anticipatory bail and escape and not be amenable to the arrest by the police. The law is trying to avoid that kind of a situation. That is why it is provided in the law that when anticipatory bail is given, on the final day on which the judgement will be given by the judge, the person making the application should be present in the court. The argument which is advanced opposing this kind of a provision in this House or in the other House also has been that this is making the provision relating to anticipatory bail more stringent. I think this is not making it more stringent, but it is making it more just. If the court comes to the conclusion, as per the law, that anticipatory bail has to be given, the bail will be given and the person will not be arrested. But supposing the court comes to the conclusion that bail should not be given and the person involved is involved in a serious crime, should not the police be facilitated to see that he is arrested and prosecuted also[k45] ?

Here there are two kinds of interests. One is to protect the interest of the person involved and other is the interest to see that real justice is done and the culprit is punished. So, some sort of balancing was required and that is why, in a very balanced manner this provision is included in the law.

One of the hon. Members from here spoke about lathi as a weapon. Let me submit to this House and let me try to convince my friend over there that this provision relating to the lathi is probably misread. If you read the entire Bill carefully, you will come to the conclusion that there is nothing objectionable involved in it. The possession of lathi or danda or stick is not going to be an offence or crime per se. If an old man is moving with a lathi, he will not be treated as a criminal or an offender. If a farmer is going to his farm or to his field with his lathi, he is not going to be prosecuted. He is not going to be arrested. Even in the procession, if some people are going with

sticks with flags on them and even with lathis, they will not be arrested. They will not be arrested simply because they are moving with lathis.

MR. CHAIRMAN : But this happens all the time.

SHRI ASADUDDIN OWAISI (HYDERABAD): What about RSS people, who daily hold Shakhas and carry lathis?

MR. CHAIRMAN: After he completes, you may ask questions.

SHRI SHIVRAJ V. PATIL: Let me complete. If I am not able to convince him, then he may ask questions. Half-way if they stop me, then I will not be able to convince them.

The point I was making was that an old person carrying lathi will not be treated as an offender. A person going to a field with a lathi will not be prosecuted. A person who is going in a procession with a lathi will not also be treated as an offender. But then, here the Collector, the person, the officer of the District is given the responsibility to see that law and order is maintained in that area. That officer is allowed to declare that in the procession, lathis will not be carried, in parades lathis will not be carried. If that kind of order is issued by that officer, then anybody who is carrying lathibecomes subject to the jurisdiction of the criminal justice system and he will be arrested. If there are people carrying lathis on their shoulders and trying to terrify others and the Collector comes to the conclusion that that should not be allowed, the discretion is given to the Collector to say that that should not be allowed. Anybody who violates his order will be punished with imprisonment for six months and so on.

I think, I have been able to convince the hon. Members who were having doubts on both the sides on these points. So, my submission is to please explain to your friends in Bihar and other places that this is not against lathi per se and this is not going to be an offence. This is not going to create any problem for any cowboy carrying a lathi or any farmer carrying a lathi or any old person carrying a lathi or any sick man carrying a lathi in hand. It is only when the Collector gives an order and that too relating to a procession or to a parade and all those things that the person should not carry lathi, this will become an offence, otherwise, it is not going to become any offence. So, please do not have any doubts on these points in this matter... (Interruptions)

MR. CHAIRMAN: Let him complete first and then you may ask the questions.

SHRI SHIVRAJ V. PATIL: The points I was trying to make on this issue is that this Amendment has two objectives to achieve. One is to make the law more humane and the other objective is to make the law more effective[r46] .

It has to be humane against the innocent persons, and it has to be effective against the culprits. Here, these two objectives are tried to be achieved. What has been provided in the law is that the technology will be used to investigate into the offence. The old theory was that to prove that an offence has taken place, the oral evidence was depended upon. The statement of a person, who had

seen the offence taking place, was recorded, and he was produced in the court. Sometimes it was found that he was compelled or he was not bold enough to stick to his own statement. It is suggested, do not depend only on oral evidence but depend on circumstantial evidence also. In circumstantial evidence also, technological evidence is more important more reliable. It is provided in this law that in order to prove that an offence has taken place, the DNA test can be used. If DNA test of a blood drop is used, it becomes a convincing evidence, whatever the witness who has seen or watched the offence taking place says. If it is proved that the DNA test is not tallying with that, the judgement given by the court will be different. So, on the one hand, we have tried to make this law more humane, on the other hand, we have tried to make this law scientific and more effective also.

There are one or two misconceptions which have been expressed here while arguing on the amending provisions of this Bill. One related to maintenance. I think, Shri Yerrannaidu raised it. Yesterday or day before yesterday also in the Rajya Sabha this issue was discussed. I would like to submit that with respect to maintenance, originally, a very small amount of money was allowed. I think Rs. 200 or Rs. 500 were allowed under Section 125 of the Criminal Procedure Code to the wife or to the children and all those things. Later on, it was thought that that amount was very small. So, it was increased to Rs. 5,000. Even after that, it was realised that even Rs. 5,000 was a very small amount. So, the upper limit is now removed. The court is given the jurisdiction to decide what amount of maintenance should be allowed to a lady or to a child in the Criminal Procedure Code. There are provisions in the civil law as well as in the criminal law for this purpose. In civil law, any amount of compensation can be given; but in the criminal law, this was the limit laid. In the criminal law, this provision was made in order to see that the expeditious justice was given to the needy that is the wife and the children; but then they have put a limit. That limit was tried to be raised to a higher level. Later on, it was found that that higher limit is also not a just limit. That is why, that limit is removed. The judge sitting in the criminal court shall have the same jurisdiction as the judge sitting in the civil court also. I am moving an amendment to this effect. So, let there be no misunderstanding on that point. I think, these were the two misconceptions, namely, the lathi and the maintenance.

Then, there is one more thing which was brought to my notice by one of the hon. Members. This write-up in one of the papers says that by amending this law, we are giving the police an authority to go to such an extent as to kill the person who is absconding from its custody. This is a totally wrong thing. I would like to submit that this should not have appeared in the newspaper and this is not a correct position in the law we are making.

Sir, earlier there was a provision in the original Bill to give powers to the police to go to the extent of killing a proclaimed offender if he runs away from arrest. But, now, on the recommendations of the Parliamentary Standing Committee, the Government has agreed to delete the provisions.[r47]

Therefore, the amending Bill before the House does not have this provision at all. It was originally there. It had gone to the Standing Committee. These kinds of provisions are there in other laws.

16.45 hrs. (Mr. Deputy-Speaker in the Chair) But the Standing Committee suggested that it should not be there and it has been removed. It is not in the amending Bill today. It

was wrongly quoted. This is one of the misconceptions.

We are discussing today the Code of Criminal Procedure (Amendment) Bill, 1994. It was introduced in the House in 1994. Since 1994 it had been pending in the Rajya Sabha because a Bill which is submitted in Rajya Sabha continues to be pending unlike a Bill pending in the Lok Sabha where, with the dissolution of the House, the Bill also disappears but it continues there. It was referred to the Standing Committee. It came back. Again, probably it was withdrawn. Again it was amended. Again it went to the Standing Committee. Again it was introduced. It is only now that we have been able to take it up and we have been able to pass this Bill. This Bill was languishing in the Parliament because of these reasons and not because of anything else. But I am very happy that this Bill, which has got very good provisions, is getting passed by both the Houses and will become a law very soon.

There is one more amending Bill pending with us. We call it the Criminal Procedure (Amendment) Bill, 2003. That Bill was also referred to the Standing Committee. Shri Pranab Mukherjee was the Chairman of the Standing Committee. He had looked into that Bill and had made many suggestions. His Committee had made many suggestions. We, in the Government, have accepted those suggestions. Eighty per cent of their suggestions are accepted. Those suggestions are going to be incorporated in the Bill. We would have been very happy to bring this Bill before this House in this Session only and pass it. If it is possible, we will be very happy, but if it is not possible, then we may pass it in the next Session. This amending Bill is also a very good Bill and it improves upon the Criminal Procedure Code that is being followed here.

Justice Malimath was the Chairman of one of the Committees. That Committee is called the Malimath Committee. That Committee has given a Report. The other House is going to discuss this Malimath Committee's Report because they said this should be discussed. We have studied the Report given by the Malimath Committee. There are very good suggestions given by this Committee with respect to the Criminal Procedure Code and the Indian Penal Code. But there are a few other suggestions given by this Committee. They are not going to be readily acceptable to the people. There are certain other recommendations given by this Committee which the Government also finds very, very difficult to accept. But what we are trying to do is to cull out the good suggestions which are given. The suggestion which I just mentioned now that a person who can be fined should not be arrested is one of the suggestions given in that Report. We can incorporate such suggestions in the law and we can bring amendments. In this fashion, we are trying to improve upon the criminal justice system in India.

One of the suggestions given was, why we had not come to the House with all these amendments together. In fact, we thought about this issue. But we thought that we had waited since 1994 to 2005 and if we had waited for this amending Bill, 2003 to be included in the same Bill and then include the suggestions given by the Malimath Committee, it may take a longer time than we are taking now. That would not be a proper thing to do. So, we thought that this Bill should come and this should be approved by this House. The second Bill and the third Bill will come later.

There is one more thing about which I would like to make a suggestion. The hon. Members and the people outside are suggesting that reforms in the police system should be brought about[m48] .

We [e49] are on that. We would like to bring about improvements in the manner in which the police system is working in our country.

There were suggestions made that the judicial reforms also should be brought about. The Ministry of Law and Justice is seriously seized of this matter and is thinking about this matter. In all the reports that have come to the Ministry of Home Affairs and the Ministry of Law and Justice and other Ministries, the same suggestions have been made. We are looking into it but we should not mix these things. The criminal jurisprudence reforms, the Criminal Procedure Code reforms and the Indian Penal Code reforms, and, to some extent, the Indian Evidence Act reforms, constitute one thing. Police reforms is another thing which has to be done by the Ministry of Home Affairs; and the judicial reforms is a third thing, which has also to be done. All these reforms contribute towards improving the criminal justice system in India but these are separate aspects and they have to be considered separately. If they are mixed up, there would be a problem. We are going about it in a systematic manner.

There is one more thing which has been coming up for discussion every now and then. I thought that I could express my views on that. It is about death sentence. There is a suggestion made that death sentence should be abolished. There is a suggestion made that in rape cases, the death sentence should be awarded. At present, it is a life sentence of 14 years in rape cases but they are suggesting that death sentence should be awarded for that also. This is something on which we shall have to take a very careful decision. In our wisdom, in our country, we have decided that death sentence should continue to be there in the Indian Penal Code but the Supreme Court and the jurists and even the politicians and thinkers have said that death sentence should be awarded in the rarest of the rare cases, but not ordinarily. That is the principle and that is the law we are following here. They have said that if death sentence were awarded in rape cases, instead of punishing the culprit, the man who commits the offence would kill the person also. So, it would be a sort of an encouragement to homicide. That is why there are some women's organisations which are opposed to this. In my opinion, we have to decide that the death sentence given has to be executed and sometimes those who have the responsibility for this also are not very comfortable. They think that if we are not able to give life, why should we take life?

The question before us which we have to decide at some time or the other is whether life imprisonment means 14 years' imprisonment or real life imprisonment as in other countries. We also have to decide in what cases death sentence has to be given. Clarity on these points would also improve upon the criminal justice system in India. These are the areas which should not be decided either by the Judiciary or by the Parliament alone but by all of us after taking into consideration the economic, social and pragmatic situation in which we live in the country, in order to see that injustice is not done and justice is done. So, the attempt at making this amendment to the Criminal

Procedure Code is to make it more humane as well as effective. I am very happy and very delighted to see that each and every hon. Member of this House has supported us in this effort.

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SHRI PAWAN KUMAR BANSAL: Mr. Deputy-Speaker, Sir, while I had welcome this provision, I had expressed only one doubt about it that in the interpretation thereof, the officer on the ground could misuse this provision. That is what I had said. There is no doubt in our mind that a person going to the field will be apprehended. No. I have read the words. The words in clause 16, which incorporate a new Section 144A, talk of procession and not of any other matter. So, if an old man is carrying a stick and going to his farm, he will not be covered under it.

We are only concerned about the arms in any procession. I must say that this has also been defined well. Subsequently, let me read that out. In clause 44, the definition of "Arms" has been given, which reads :

“Arms means articles of any description designed or adapted as weapons for offence ..... ” I agree that as such it is not a weapon of offence when I am carrying a flag. Still I had given that example. If I carry a flag on a stick, it is not a weapon of offence. What I had said was - that doubt lingers, persists - people carry their flags on sticks in a procession of a political party or any other religious function. This order is not passed immediately. Such orders are passed in writing for a period up to three months at a time, but the practice is that such orders are passed one after the other. Every three months an order is passed under Section 144. Similarly, we do expect that it would be done here and I do not object to that. It is not that if a procession has to be taken out, that very moment, the District Magistrate would pass an order, or if a procession is being taken out, then the District

Magistrate would pass an order. The orders are passed keeping in view the totality of the circumstances, overall picture of an area that no procession should be carried out for three months. After those three months lapse, another order is passed. That is how it is normally done. That is the practice on the ground.

Therefore, if sticks are used for flags, my interpretation of this provision is that it will not be covered. Our doubt still persists that when an over-zealous person is out to teach a lesson to the processionists - it may be anyone anywhere; it could be we in Gujarat and others elsewhere - then that person, acting at the behest of his political master there or any senior, would book those people for no offence[reporter52] .

That is what we had to say. What are we doing to take care of that? That was the query that I had raised.

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KUNWAR MANVENDRA SINGH (MATHURA): What is the definition of a ‘lathi’?

SHRI SHIVRAJ V. PATIL: It seems that a majority of the Members in the House appear to think that this need not be there in the law. I think, we are living in a democracy, and we will accept this kind of a thing. Let me follow the procedure to make the corrections.

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MR. DEPUTY-SPEAKER: The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1973, as passed by Rajya Sabha, be taken into consideration." The motion was adopted.

MR. DEPUTY-SPEAKER: The House will now take up clause by clause consideration of the Bill.

The question is:

"That clauses 2 to 44 stand part of the Bill." The motion was adopted.

Clauses 2 to 44 were added to the Bill.

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

SHRI SHIVRAJ V. PATIL: Sir, while moving the motion, "That the Bill be passed", I am making a statement on the floor of the House. The provisions relating to "lathi" have to be amended. There are procedural steps to do it, and I am going to take them up. It has to be done in both the Houses.

I beg to move:

"That the Bill be passed." MR. DEPUTY-SPEAKER: The question is:

"That the Bill be passed." The motion was adopted[R53] .