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Title: Discussion on the Code of Criminal Procedure (Amendment) Bill, 2010. (Discussion concluded and Bill passed).

THE MINISTER OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): I beg to move:

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

With your permission, I will make a brief opening statement. Hon. Members are aware that the Code of Criminal Procedure was amended by the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009). Before we could notify the provisions of the Act, there were a number of representations from the lawyers regarding two Sections of the Cr.PC that are being amended, Section 41 and Section 41(A). This related to the circumstances under which a person can be arrested and reasons to be recorded for arresting a person.

In view of the representations from the lawyers, I consulted with the leading Bar Councils and then I requested the Law Commission to hold a consultation by calling the leading lawyers and the leading Bar Councils and give us its recommendations.

I am very happy to report that the Law Commission called a consultation and was able to evolve a consensus. Based upon that consensus we are now further amending Section 41 and 41(A). The matter went to the Standing Committee. The Standing Committee has unanimously supported the amendments. Therefore, all sections of the House has agreed upon the amendments that are being introduced.

There are only three amendments and let me explain briefly as to what the three amendments are. Perhaps, then we may not require a very lengthy discussion. But I welcome a discussion.

In Section 41 that was introduced by the previous Amendment Act what we are doing is, at the end of clause (b) we are adding a proviso and the proviso reads:

"Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest."

What it means is that if you are arresting, you must record reasons. If you are not arresting also, you should record reasons. The lawyers were asking: Why do you record reasons for arresting and not recording reasons for not arresting? There is merit in that submission. Therefore, the main part of the Section says that if you are arresting you should record reasons and if you are not arresting also you should record reasons.

Then, in 41(A), the word is "may". We are now changing it to "shall". I will read to you the original 41 (A) and I will read to you the revised 41(A). The original 41(A) reads:

"The police officer may in all cases where the arrest of a person is not required issue a notice to the person. "

Now, we are saying:

"The police officer shall in all cases where the arrest of a person is not required issue a notice."

So, I think, that is also consequential and a very relevant amendment.

The last amendment that we are making is in respect of adding a sub-clause (4) where it says:

"Where such person, at any time, fails to comply with the terms of the notice – that is already there -- or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice."

That is after a notice is issued to a person either he does not comply with the terms of the notice or he says I would not say who I am. I would not identify myself. Then, the police officer may arrest him. These are the three amendments which the Law Commission recommended. The Standing Committee has unanimously supported it.

I would request the hon. Members to support the Bill.

MR. CHAIRMAN : Motion moved:

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

श्री निशिकांत दुबे (गोड्डा): सभापति महोदय, यह 146वीं स्टैंडिंग कमेटी की रिपोर्ट है। माननीय वैकैया नायडु जी की रिपोर्ट है और वे भारतीय जनता पार्टी के नेता हैं। उन्होंने इसे स्टैंडिंग कमेटी में पास किया है, इस नाते भारतीय जनता पार्टी इसका समर्थन करती है। यह छोटा अमेंडमेंट है जिसके बारे में मंत्री जी ने बताया है, लेकिन महत्वपूर्ण है। संस्कृत का एक श्लोक है -

राजद्वारे शमशाने च यश तिष्ठति सः बान्धवः।

दुख में और सुख में जो खड़ा होता है, राजद्वार और शमशान में जो खड़ा होता है, वही आपका दोस्त है, भाई है। यदि हम चैन से सोते हैं तो पुलिस हमारे साथ होती है, यदि हम रोड पर मूव करते हैं तो पुलिस हमारे साथ होती है, हमारे साथ कोई मिसहैपनिंग हो जाती है तो पुलिस हमारे साथ होती है। इसलिए वेद के हिसाब से, संस्कृत के हिसाब से यह बहुत महत्वपूर्ण अमेंडमेंट है और हम इसका तहे दिल से समर्थन करते हैं।

मुझे पार्लियामेंट में आए हुए 14 महीने हुए हैं, मैं बहुत ही नया हूँ। जिनके सामने मैं बिल के बारे में बोलने के लिए खड़ा हुआ हूँ, वे बहुत ही एमिनेंट लॉयर हैं। कल मैंने इनका भाषण सुना। इन्होंने जो कुछ बोला, मैं इनके भाषण का कायल हूँ, देश भी कायल है। ये अच्छे, एबल होम मिनिस्टर हैं। लेकिन एक जीवन रहस्य है। जब हम पैदा होते हैं तो रोते हैं और जब हम मरते हैं तो दूसरे व्यक्ति रोते हैं। दोनों समय मरना होता है। इसमें सबसे महत्वपूर्ण यह होता है कि इन दोनों रों के बीच की कड़ी जो हंसना है, उसमें हम कितनी जिंदगी बांट रहे हैं, कितने लोगों को खुशियां दे रहे हैं और अगर इस पार्लियामेंट में भी आए हैं तो आम जनता के लिए आए हैं और यही हमारे मੈम्बर ऑफ पार्लियामेंट बनने का मूल उद्देश्य है। लेकिन मैं 14 महीने से बहस सुन रहा हूँ और खुद ही परेशान होता हूँ कि हम क्या कर रहे हैं। राष्ट्रीय स्वयंसेवक संघ के द्वितीय सरसंघ चालक हमेशा बोला करते थे कि हम शास्त्रार्थ से किसी आदमी को परास्त कर सकते हैं लेकिन उसे अपना नहीं बना सकते। इस पार्लियामेंट में केवल शास्त्रार्थ चलता है। बाहर लोग क्या कह रहे हैं, लोग हमारे ऊपर कितना हंस रहे हैं, सारी चीजों की मौकरी है। प्राइस राइज़ पर डिस्कशन हो रही थी। उसमें डीरेलमेंट हो गई, उसने अपनी गति खो दी। कामनवैल्थ गेम्स में करप्शन हो रही थी। हम उस पर हंसी के पात्र बन गए। यदि हम न्यूक्लियर बिल पर डिस्कशन कर रहे हैं, तो सरकारी पार्टी ऑपोजिशन को एक गाने के तौर पर लेती है - कुछ तो लोग कहेंगे, लोगों का काम है कहना। आप इसी उद्देश्य से चलते हैं। हमारे वेद, पुराण, लोकोक्तियों, सूक्तियों ने कहा है -

निन्दक नियरे राखिए आंगन कुटी छवाया।

बिन साबुन पानी बिना निर्मल करे सुभाय।।

हम आपसे कुछ ले नहीं रहे हैं, हम आपको जगाने का प्रयास कर रहे हैं। हम एक कंस्ट्रक्टिव ऑपोजिशन का रोल प्ले करना चाहते हैं। हमेशा कहा जाता है - क्षमा सोकती उस भुजंग को जिसके पास गरल है। आपको फलदार वृक्ष की तरह होना चाहिए, आपको झुकना चाहिए, आपको अहंकार नहीं होना चाहिए। लेकिन मैं पूरी डिस्कशन में पाता हूँ कि आपमें इस चीज की कमी है। इसलिए जब आप इन चीजों का जवाब देने के लिए उठेंगे तो मेरी रिकवैस्ट होगी कि देश के बारे में सोचिए, उस गरीब आदमी के बारे में सोचिए, लोगों को हंसी और खुशी कैसे दे सकते हैं, इसके बारे में सोचिए।

महोदय, यह अमेंडमेंट सही है, हम इसके पक्ष में हैं। लेकिन इससे पहले आप दस अमेंडमेंट कर चुके हैं और यह ग्यारहवां अमेंडमेंट है। वर्ष 1973 के बाद से सीआरपीसी में दस अमेंडमेंट पहले भी हो चुके हैं और यह ग्यारहवां अमेंडमेंट है। अब 111वीं, 128वीं, और 146वीं स्टैंडिंग कमेटी की रिपोर्ट है, माननीय सुषमा स्वराज जी, लीडर ऑफ दी ओपोजिशन, जब स्टैंडिंग कमेटी की चेयरमैन थीं, उन्होंने रिकमेंडेशन दी हैं, माननीय वैकैया नायडु जी ने रिकमेंडेशन दी हैं। रिकमेंडेशन यह कहता है कि आप पूरी सीआरपीसी के लिए कर्प्रोहेन्सिव लॉ बनाइये। वर्ष 1973 के बाद से देश में बहुत चेंजेज आ गये हैं। इस देश को नये कानून की आवश्यकता है।

आपकी होम मिनिस्ट्री के आफिशियल्स का भी विटनेस हो चुका है और आप इस चीज को स्वीकार कर रहे हैं कि पूरी की पूरी सीआरपीसी चेंज होनी चाहिए। अब सीआरपीसी क्यों चेंज होनी चाहिए? आपने दहेज हत्या का कानून बनाया। उसमें क्या हो रहा है? आप सारे अखबारों को और न्यज रिपोर्ट्स को देख लीजिए कि महिलाएं ही सबसे ज्यादा प्रताडित हो रही हैं। उस सैक्शन का सबसे

ज्यादा मिसयूज हो रहा है। हम कभी टाडा ले आते हैं, कभी पोटा ले आते हैं, कभी मकोका ले आते हैं। कोई सरकार गुजकोका ले आती है। आपको जो सूट करता है, आप उसे पास होने देते हैं और जो कानून अच्छा नहीं लगता, आप उसे पास नहीं होने देते। हम कंसीड्रेट कर रहे हैं कि हमारा पोलिटिकल एम्बिशन इसमें पूरा हो रहा है या नहीं? मेरा यह कहना है कि जब इतने लॉ अमेंड कर सकते हैं, शाहबानो का केस होता है, आप अमेंड कर लेते हैं आदि कई ऐसे उदाहरण हैं कि इस पार्लियामेंट ने हमेशा सीआरपीसी को चेंज करने की कोशिश की है।

मेरा यह कहना है कि आज इस देश में जब हम डायरेक्ट टैक्स कोड ला रहे हैं, मैं स्टैंडिंग कमेटी फाइनेंस का मैम्बर हूँ, जो कारपोरेट लॉ है, पूरा कम्पनी लॉ हम बदलने की बात कर रहे हैं। हम वेट ला रहे हैं, जीएसटी ला रहे हैं। जब हम सारे कानून को बदलने की बात कर रहे हैं, तो सीआरपीसी क्यों नहीं चेंज होनी चाहिए। मैं इसके उदाहरण दूंगा कि सीआरपीसी कितनी बड़ी बात है।

माननीय सभापति जी, जब मैं चुनाव लड़ने के लिए गया, तो मैं बड़े फ्लॉ के साथ कहता था कि मेरे, मेरे परिवार, मेरे दादा, परदादा, नाना, परनाना, भाई और बहन के ऊपर धारा 107 का भी एक केस नहीं है। आज मेरे ऊपर कम से कम दस केस हैं। ...(व्यवधान) पिछले चौदह महीने में मेरे ऊपर दस केस हैं। अब ये केस कैसे शुरू होता है? चुनाव का दिन था। ...(व्यवधान)

SHRI P. CHIDAMBARAM: Which Government? Was it the State Government? Please tell it.

SHRI NISHIKANT DUBEY : It was your Government, the Central Government. When I was fighting election, that was your Government ruled by Shri K. Sankaranarayanan. He was your Governor, not mine. It was your Government.

आप देखिये कि केस कैसे हुआ? अब 2008 बूथ हैं और उन 2008 बूथों में कैंडीडेट का चुनाव के दिन जाना कितना इम्पोर्टेंट होता है, यह सब जानते हैं। आपको जानकर आश्चर्य होगा कि मैं एक भी बूथ पर विजिट नहीं कर पाया। आपके पास यह अधिकार है, इसलिए मैं आपको बताना चाहता हूँ कि सीआरपीसी में अमेंडमेंट की क्या आवश्यकता है? अब केस क्या होता है? मुझे मेरा पोलिंग एजेंट मिलता है और कहता है कि मेरा हाथ तोड़ दिया, आप मेरे साथ चलिए। उस समय मैं और मेरी वाइफ दोनों गाड़ी में थे। उसके अलावा हमारे साथ और कोई नहीं था। हम वहां जाते हैं, तो चारों तरफ से हमें घेर लिया जाता है, क्योंकि मैं भारतीय जनता पार्टी का हूँ और जिस सेक्युलर समाज की बात करते हैं, मुस्लिम समाज की बात करते हैं, भारतीय जनता पार्टी ने हमेशा उसे अपने कांफिडेंस में रखा है। हमारा कोई भी रिलिजन से कोई लेना-देना नहीं है। वह पूरा का पूरा बूथ मुस्लिम होता है। हमें चारों तरफ से घेर लेते हैं।...(व्यवधान) आप सुनिये। ...(व्यवधान) मुझे और मेरी पत्नी को घेर लिया जाता है और केस यह होता है कि हम बूथ लूटने आये थे और एक आदमी को, मेरे पूरे खानदान में आज तक किसी ने रिवाल्वर नहीं देखा है, कि हमने रिवाल्वर सटाय़ा और मैंने और मेरी पत्नी ने गोली दिखाने की कोशिश की। इस तरह मेरे और मेरी पत्नी के ऊपर धारा 307 का केस है। सबसे पहला केस यह है। दूसरा केस यह है कि मेरे चुनाव के समय जो मेरे अपोनेट चुनाव लड़ रहे थे, उस गांव में आज तक किसी पोलिटिकल पार्टी को वोट नहीं मिला, लेकिन गलती से मुझे मिल गया। अब गलती से वोट मिला, तो जिस लड़के ने वोट दिलाया, उसके ऊपर 20 केस लादे गये। जब उस पर बम बनाने, मर्डर करने, रेप करने आदि सारे केस लगे, तो कार्यकर्त्ताओं ने रोड जाम कर दिया।

17.00 hrs.

संयोग से उस दिन मैं अपनी कांस्टीट्यूंसी में था। मैंने पूछा कि यह क्या है? पुलिस से मैंने पूछा कि यह बताओ कि मेरे चुनाव से पहले इस लड़के के ऊपर क्या कोई केस था? चूंकि मैंने प्रिविलेज मोशन दिया हुआ था, उसकी कॉपी आपके पास है, जो झारखण्ड पुलिस ने आपको रिपोर्ट दी है, वह यह कहती है कि उस लड़के पर जो एलिगेशन था, मेरे चुनाव से पहले उस पर एक भी केस नहीं था, लेकिन चुनाव के बाद उस 20 केसेज लगा दिए गए। पुलिस एक्सेप्ट कर रही है कि पहले उसके ऊपर धारा 107 का भी कोई केस नहीं था। यदि मेरा कार्यकर्त्ताओं ने रोड जाम कर दिया, तो मेरे ऊपर धारा 353 के तहत केस हो गया। मैं कोर्ट गया बेल कराने के लिए, कहा अरेस्ट कीजिए।

17.01 hrs.

(Shri Arjun Charan Sethi in the Chair)

मैंने कहा कि मैं एक लॉ एबाइडिंग पर्सन हूँ, मेरे ऊपर कोई केस नहीं है, मेरे दादा-परदादा, नाना-परनाना किसी ने भी कोर्ट नहीं देखी थी, मैं अपने परिवार का पहला व्यक्ति हूँ जिसे कोर्ट आना पड़ा है। जब सरकारी वकील ने कहा कि एमपी साहब ठीक कह रहे हैं, यह एक लॉ एबाइडिंग पर्सन है, तो जज साहब ने कहा कि मैं इसको कोर्ट कर दूँ कि आप ऐसा कह रहे हैं कि इनको बेल दे दी जाए। उन्होंने कहा कोर्ट कर दीजिए। इस तरह मुझे उस केस में बेल मिली। मैं बता रहा हूँ कि Cr.P.C. की खामियां कितनी हैं। मेरे चचेरे भाई का मर्डर हो गया, उसके लिए मैंने प्रिविलेज मोशन दिया हुआ है, आपके पास रिपोर्ट आई है। पुलिस का कहना है कि वह शराब पीता था, इसलिए उसका मर्डर हो गया। कल आपने सोहराबुद्दीन के बारे में बहुत अच्छी बात कही। क्रिमिनल कौन है, कौन नहीं है, यह फैसला कोर्ट करेगी। यदि कोई क्रिमिनल भी है, तो उसे भी गोली मार देने का किसी को अधिकार नहीं है, लेकिन आपकी पुलिस कर रही है कि वह दारु पीता था, इसलिए उसे मार दिया। आपके पास इसकी रिपोर्ट है, स्पीकर मैडम के पास भी यह रिपोर्ट है और

होम मिनिस्ट्री से वह रिपोर्ट आई है। चिदंबरम जी, मैंने आपको भी चिट्ठी लिखी थी कि एक क्रिमिनल जिसके ऊपर 20 मर्डर का केस है, वह मुझे थ्रेट टू लाइफ दे रहा है। पुलिस की ओर से उसकी रिप्लाइ यह आती है कि उसने भी आपके खिलाफ थ्रेट टू लाइफ की शिकायत दी है। यह जवाब आपकी होम मिनिस्ट्री की ओर से आता है। इसलिए Cr.P.C. में इसकी आवश्यकता है। जब हम अपनी न्युक्लियर पॉलिसी बदल सकते हैं, अपनी विदेश नीति बदल सकते हैं - गुटनिरपेक्षता की नीति त्यागकर अमेरिका-परस्त हो सकते हैं, यदि आप कश्मीर की ऑटोनोमी की बात कर सकते हैं, डीटीसी बदल सकते हैं, तो आप Cr.P.C. को पूरा का पूरा रि-राइट क्यों नहीं कर सकते हैं? अभी आप ग्राम न्यायालय बनाने की बात कर रहे हैं। मैं अंत में कहना चाहता हूँ कि जो राजा होता है, वह भी एक हेल्पलेस बेबी की तरह पैदा होता है। यह पार्लियामेंट अगर कभी बनी होगी, तो वह भी कभी प्लान हुआ होगा। आज आप इस देश के गृहमंत्री हैं, आपको समय दिया है भगवान ने। Sir Edwin Arnold said in 'Light of Asia':

"We are the voices of the wandering wind which moan for rest and rest can never find, Lo! as the wind is, so is mortal life, a moan, a sigh, a sob, a storm, a strife."

श्रीमद्भागवत् गीता कहती है :

नैनं छिन्दन्ति शस्त्राणि, नैनं दहति पावकः। न चैनं क्लेदयन्तापो न शोष्यति मारुतः॥

अर्थात् आत्मा अजर-अमर है। मैं सोचता था कि हिन्दू धर्म आत्मा की बात करता है, वह यह बात नहीं करता है। वह कहता है कि हम आप जब पैदा होते हैं, तो इस समाज के लिए, इस देश के लिए कुछ करते हैं। अकबर के बारे में आप सुन रहे होंगे, बुद्ध के बारे में आप सुन रहे होंगे, महात्मा गांधी के बारे में आप सुन रहे होंगे, हमारे-आपके पास भी मौका है, आपके पास भी आज मौका है, ऐसा कंस्ट्रक्टिव अपोजिशन मिला है, मैं आपसे यही रिक्वेस्ट करूंगा कि जो भी 111वीं, 128वीं और 186वीं रिपोर्ट कहती है कि नई Cr.P.C. बनाइए, तो आप कृपा करके उसे मानते हुए नई Cr.P.C. लाइए, हम आपका सपोर्ट करने के लिए तैयार हैं। इन्हीं शब्दों के साथ मैं अपनी बात समाप्त करता हूँ।

SHRI VIJAY BAHUGUNA (TEHRI GARHWAL): Mr. Chairman, Sir, I thank you for the opportunity given to me.

Sir, for the success of our vibrant democracy, it is very necessary that we have a very strong and independent judicial system supported by a procedure of law which is fair and just so that the rights and liberties of the citizens are protected. Our sacred Constitution, under Article 21, confers a very valuable fundamental right that we shall not be deprived of our life and personal liberty except by a procedure established by law. The Code of Criminal Procedure is a code by itself. Over the years, it has been our bitter experience that the prosecuting agency has not lived up to the standards of which it was expected.

There have been a number of cases and instances where the police officers have acted on extraneous considerations and for *malafide* reasons.

Section 40 of the CrPC gave a power to the police officer that without a warrant or without an order from a Magistrate he could arrest a person, if he has committed an offence which was cognisable and punishable up to seven years. This power was a very uncanalised power and it was a very arbitrary power.

I would like to congratulate the hon. Home Minister, who is a legal luminary of our country, that the first amendment was brought in 2008 by which this power was canalised and it was provided that if you are arresting a person without an order from the Magistrate or without a warrant, then you must record your reason in writing and communicate to the person concerned so that he knows why you are taking that particular action.

Once this amendment was made, further suggestions came from the Bar Council of India and various Bar Associations that law should be more exhaustive and more deterrent for the police officers to exercise their powers. Now, under the present amendment which has been moved and which we all support, if you arrest a person you will have to give reasons why you are arresting him. Now, even if you are not arresting a person, then too you will have to give reasons why you are not arresting him. This provision has been mandatory, and it is not at his discretion. So, once this power is exercised and you apply your mind, you have to record reasons and there is always a judicial review of all orders. It is not a quasi judicial but an administrative order, which impinges on our liberty. So, certainly, we expect some check on the exercise of police powers by the States.

The other question that I would like to submit with great respect is that there are certain provisions which I would like to bring to the notice of the hon. Home Minister. हमारे सीआरपीसी में और संशोधन की जरूरत है। खास संशोधन की जरूरत है कि जो ट्रायल होते हैं, उनमें कोई सीमा आपने नहीं लिखी है कि केस कितने समय में खत्म होगा। अनंतकाल तक केस चलते हैं, दस, 15

और 20 साल तक केस चलते रहते हैं। इसलिए यह जो इनआर्डिनेट डिले हो रहा है हमारे ज्यूडिशियल सिस्टम में, जिसकी वजह से अंडरट्रायल्स इतने समय तक जेल में रहते हैं कि जो मेक्सिमम सेंटेंस प्रिस्क्राइब्ड है, वह उनकी जेल में ही बीत जाती है। इसके लिए बहुत आवश्यक है कि सीआरपीसी में संशोधन करके आप प्रावधान करें कि ट्रायल कितने समय में समाप्त होना चाहिए।

एक और खेद की बात है कि जब हम विकसित देशों को देखते हैं, पश्चिम देशों को देखते हैं, तो उनका जो खर्च अपने ज्यूडिशियल सिस्टम पर, वह हमसे कहीं ज्यादा है, जनता के अनुपात में और मुकदमों के अनुपात में। हमारा देश इतना बड़ा है, जहां लोगों को अपने अधिकार के लिए लड़ना पड़ता है और उनके अधिकारों की सुरक्षा के लिए हमने इतने कानून बना रखे हैं। उनके जो मुकदमे चलते हैं, उनमें बहुत विलम्ब होता है। जीडीपी का आप जो कंटीब्यूशन ज्यूडिशियल सिस्टम के लिए कर रहे हैं वह बहुत कम है। मैं होम मिनिस्टर और लॉ मिनिस्टर से अपील करूंगा कि आप अपनी जीडीपी का अधिक पैसा लीगल सिस्टम पर खर्च करें। और ज्यादा मजिस्ट्रेट्स और जजेज की नियुक्ति करें ताकि लोगों को न्याय मिल सके और जो लोग अदालतों में जा रहे हैं, उन्हें राहत मिल सके।

मेरा गृह मंत्री जी से दूसरा अनुरोध है, कानून मंत्री जी से भी, आप तो विशेषज्ञ हैं। इसमें एक और पहलू है, जो बहुत जरूरी है। जो एंटीसिपेटरी जमानत है, कई राज्यों के हाई कोर्ट में एंटीसिपेटरी जमानत का प्रावधान है, कई में नहीं है, जैसे उत्तराखंड है। आप भारत के गृह मंत्री हैं, देश में कानून एक सा होना चाहिए। पूरे देश के हम लोग एक संविधान से गर्वित हैं, Why can we not have a uniform provision in all the States? एंटीसिपेटरी बेल का प्रावधान जो है, यह हर नागरिक को उपलब्ध होना चाहिए ताकि किसी भी प्रकार से, किसी भी राजनैतिक द्वेष या विद्वेष से आप किसी को परेशान न कर सकें। इसलिए एंटीसिपेटरी बेल का प्रावधान बहुत जरूरी है।

मेरा तीसरा और अंतिम अनुरोध आपसे यह है कि आज हम अपने राजनैतिक और सामाजिक जीवन में देखते हैं कि अपराध का भी बहुत बड़ा डायरेक्ट और इनडायरेक्ट इन्फ्लुंस बढ़ रहा है। मजिस्ट्रेट जो केस करते हैं, उनसे कभी गलत इक्वेटल होता है। अगर पब्लिक प्रोसिक्यूटर अपील करना चाहे, इक्वेटल के खिलाफ तो उसे डिस्ट्रिक्ट मजिस्ट्रेट की अनुमति लेनी पड़ती है। लेकिन जो कम्प्लेनेंट है, जो इन्फारमेंट है, अगर वह मजिस्ट्रेट के आदेश के खिलाफ अपील करना चाहे तो उसे हाई कोर्ट जाना पड़ता है। हर व्यक्ति के पास इतने साधन नहीं होते कि वह हाई कोर्ट जाए और वहां वकील करे। इसलिए आप सीआरपीसी में ऐसा संशोधन करे कि अगर इक्वेटल होता है मजिस्ट्रेट के द्वारा, तो सरकार की तरह कम्प्लेनेंट और इन्फारमेंट भी सेशन में जाए। सेशन जज के पास अधिकार होता है कि समरली डिसमिस कर सके।

इस तरह उसे हाईकोर्ट में जाना नहीं पड़ेगा और सेशन कोर्ट के स्टेज पर ही उसे एक्वेटल के खिलाफ राहत मिल सकती है। इन तीन सुझावों के साथ मैं इस बिल का समर्थन करता हूँ क्योंकि अब आदेश में कारण देने पड़ेंगे, मेरा यह भी अनुरोध होगा कि जो इंवैस्टीगैटिंग ऑफिसर है, जो पुलिस एजेंसीज हैं,

they should go and undertake a crash course on some legal principles and guidelines of our jurisprudence because the reasons have to be recorded in writing. I do not think our investigating agencies, our IOs are so well-informed about law that they will be able to exercise their mind independently, fairly, and in accordance with law.

I support the Bill and I expect the hon. Home Minister to bring more amendments in the Cr.PC to make it more effective. हमारे सामने वाले मित्र ने जो अपनी व्यथा कही है, उसके लिए भी हम माननीय गृह मंत्री जी से अनुरोध करेंगे कि चाहे किसी भी दल के सांसद महोदय हों, उनका कानून द्वारा या न्यायालय द्वारा किसी भी प्रकार से उत्पीड़न नहीं होना चाहिए। इन्हीं शब्दों के साथ मैं बिल का समर्थन करता हूँ।

MR. CHAIRMAN : Hon. Members, there are 10 more speakers; but we have to pass this amending Bill by six p.m. So, please confine your speeches to five minutes.

SHRI B. MAHTAB (CUTTACK): It was decided in the BAC meeting to allot two hours to this Bill.

MR. CHAIRMAN: It is a fact, no doubt; but there is some time constraint so it is being reduced. Please confine your speeches to five minutes.

श्री शैलेन्द्र कुमार (कौशाम्बी): माननीय सभापति महोदय, आपने मुझे दंड प्रक्रिया संहिता संशोधन विधेयक, 2010 पर बोलने का समय दिया, इसके लिए मैं आपका आभारी हूँ। जहां तक हम लोगों ने अभी यह विधेयक देखा, 1973 का अमेंडिड यह विधेयक है, जिसकी उपधारा 41(क) के विषय में संशोधन पर माननीय मंत्री जी ने अपनी बात कही है। यह बात सत्य है कि आज का पुलिस एक्ट, जो आरपीसी और सीआरपीसी की धारा है, वह केवल कमजोर व्यक्ति के लिए है। जैसे अभी माननीय निशिकांत जी ने कहा, यह बात सत्य है और मैं भी इसी परिप्रेक्ष्य में कहना चाहूंगा कि मेरे परिवार में चार पीढ़ियों में कोई मुकदमा नहीं था, चार पीढ़ियों में कोई असहला नहीं और चार पीढ़ियों से प्योर वैजिटेरियन, लेकिन अब की बार क्या हुआ कि एक जाम लगा हुआ था और जिस महिला के साथ बलात्कार हुआ, दो बच्चे मारे गये। मेरे क्षेत्र प्रतापगढ़ में जाम लगा हुआ था, मैंने जाकर जाम को खुलवाया, लाश को पोस्टमार्टम के लिए भिजवाया। मेरे ऊपर चार-पांच धारा और 7 क्रिमिनल एक्ट की धाराएं लग गयीं। मैं इस धारा को स्वीकार करता हूँ,

जमानत नहीं कराऊंगा और न ही स्टे लूंगा और मैं देखना चाहूंगा कि कानून क्या करता है? जैसा अभी माननीय निशिकांत जी ने कहा कि हम उसी अंग्रेजों के बनाए कानून को आज भी ढो रहे हैं। जो उन्होंने सीआरपीसी और तमाम ऐसी धाराएं बनाई हैं, उन्हीं धाराओं को आज भी हम ढो रहे हैं। तब की परिस्थितियां अलग थीं, तब इतनी जनसंख्या नहीं थी, इतना क्राइम नहीं था, ईमानदार लोग थे लेकिन आज परिस्थितियां बिल्कुल बदल गयी हैं। जो कानून बना है, मैं इसका भरपूर समर्थन करता हूं और सीआरपीसी धारा का फिर से मूल्यांकन करते हुए उसमें व्यापक बदलाव की जरूरत है। इस धारा पर तमाम वकीलों ने हड़ताल की, लेकिन मुझे याद है कि वकीलों के विषय में, महात्मा गांधी जी ने "हिंदू स्वराज" नामक अखबार में लिखा कि वकील समाज में विवाद चाहते हैं ताकि उनका व्यवसाय चल सके।

जबकि वह बहुत बड़े वकील थे, लेकिन उन्होंने अपने मन की बात कही। जैसा कि विधेयक में कहा गया कि इसमें पुलिस अधिकारी को मैजिस्ट्रेट के बिना आदेश एक व्यक्ति को गिरफ्तार करने की विशेष परिस्थितियों में वारंट की अनुमति देता है। मैं कहूंगा कि पुलिस को ज्यादा अधिकार मत दीजिए। आज आम जनमानस में पुलिस के प्रति अविश्वास है। जनता में भय और आतंक फैला हुआ है। कोई भी शरीफ आदमी थाने में जाना पसंद नहीं करता है। किसी कारण अगर उन्हें जाना भी पड़ता है, तो सबसे पहले बाहर खड़ा पहरेदार उसे हड़का देता है। वह दरोगा, एसएचओ तक तो बहुत बाद में पहुंचता है। वह पहले ही बेइज्जत हो जाता है। इसलिए मैं कहता हूं कि पुलिस को इतने अधिकार मत दीजिए कि कानूनों का दुरुपयोग हो सके।

THE MINISTER OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): Sir, I think, the hon. Member has misunderstood. The existing Cr. P.C. under 41(A) and (B) allows a Police Officer to arrest any person without a warrant of the Magistrate. What we did a year and a half ago was to amend it to say that where the punishment is less than seven years, you can arrest only if you record reasons. We have restricted the power. This House has passed the law restricting the power.

What we are doing today is not touching that. We are saying that just like when you are arresting you have to reasons, if you are not arresting a person also you must give reasons. We are not expanding the power. On the contrary we have restricted the power of a Police Officer where the punishment is below seven years. And where the punishment is above seven years, of course, you must arrest because those are heinous offences. Where the punishment is below seven years, the normal rule is that you cannot arrest but if you want to arrest, there must be special circumstances and you must record the reasons.

श्री शैलेन्द्र कुमार : सभापति महोदय, यह बहुत अच्छी बात है। निशिकांत जी ने जो कहा है, मैं भी वही कह रहा हूं कि बहुत बड़े बदलाव की आवश्यकता है। मेरे इलाहाबाद क्षेत्र के हाई कोर्ट में कम से कम लाखों की संख्या में स्टे हैं। वहां कम से कम 126 जज होने चाहिए, केवल 73 जज आज वहां हैं। लाखों की संख्या में मुकदमे हैं। आज आवश्यकता इस बात की है कि कैसे आम आदमी को सहजता से न्याय मिल सके। यही बात विजय बहुगुणा जी कह रहे थे कि कई ऐसे लम्बित मामले हैं, जिनकी एक-एक, दो-दो पीढ़ियां मुकदमों में बीत जाती हैं।

ग्राम न्यायालय के बारे में कहना चाहता हूं। मैं भी पर्सनल पब्लिक ग्रिवेंस लॉ एंड जस्टिस कमेटी में हूं। मेरे खयाल से यह अभी तक लागू नहीं हुआ है। इसे जल्दी से लागू कीजिए। हुकमदेव जी और हमारे तमाम पुराने साथी यहां बैठे हैं। उन्हें मालूम होगा कि पहले पंचायतों को भी कानूनन अधिकार था कि वे छोटे-मोटे झगड़ों में फैसला दिया करते थे। आज छोटी-छोटी बात को लेकर हाई कोर्ट से स्टे ले लिया जाता है। यही कारण है कि आज फैसला जल्दी नहीं हो पाता है और सही आदमी को न्याय नहीं मिल पाता है। इसी कारण अपराध बढ़ रहे हैं। आज जरूरत इस बात की है कि माननीय मंत्री जी जो संशोधन ले कर आए हैं, इसका मैं पुरजोर समर्थन करता हूं और कहता हूं कि आप ऐसा अमेंडमेंट कीजिए कि पूरा सीआरपीसी धारा का एक बार बैठ कर चाहे सदन में चर्चा हो, चाहे एक्सपर्ट समिति का गठन किया जाए, हमारे जितने एक्सपर्ट रिटायर जज हैं, उनकी समिति गठित करके पूरा मूल्यांकन इस धारा का होना चाहिए।

इन्हीं शब्दों के साथ इस बिल का समर्थन करते हुए मैं अपनी बात समाप्त करता हूं।

श्री गोरखनाथ पाण्डेय (भदोही): सभापति महोदय, दण्ड प्रक्रिया संहिता (संशोधन) विधेयक, 2010 पर आपने मुझे बोलने का समय दिया, इसके लिए मैं आपका आभार प्रकट करता हूं। माननीय गृह मंत्री जी की बात मैं सुन रहा था। उन्होंने शुरुआत में ही कहा कि वे विधिवेत्ताओं और वकीलों से परामर्श करके यह विधेयक लाया है। निश्चित रूप से सरकार की मंशा होनी चाहिए कि सर्वे भवन्तु सुखिनः, सर्वे संतु निरामयाः। इस बिल के अंदर कुछ बातें उभरकर आई हैं, वे दहेज प्रकरण से लेकर, बलात्कार से लेकर यौन शोषण इत्यादि तक हैं। ऐसे अनेक उदाहरण समाज में आते रहे हैं कि जो बलात्कार की पीड़ित महिला होती है, वह शर्मवश अपनी बात कहने में संकोच करती थी क्योंकि प्रक्रिया इतनी दुरुह थी जिसकी वजह से कठिनाइयां आती थीं। इसी तरह से दहेज कानून का भी दुरुपयोग हुआ है और उसमें उस कानून के तहत जिनको दंड मिलना चाहिए था, उनको दंड नहीं मिलता था और जिनको दंड नहीं मिलना चाहिए था, वे उस प्रक्रिया में आ जाते थे। लेकिन मैं आपका ध्यान आकर्षित करना चाहूंगा।

अभी हमारे माननीय सदस्य जी अपनी बात बता रहे थे। उसी से संबंधित मैं कुछ कहना चाहूंगा कि पिछले दिनों चुनाव के समय मेरे छोटे भाई की हत्या कर दी गई। डे लाइट मर्डर हुआ। उसे सारे देश ने, सारे समाज ने देखा और वह हत्यारा जिस पर मुकदमा चला, मुकदमे में गवाहियां गुजरीं और जो छोटा भाई जिसमें आई वितनैस था, उसने भी गवाही दी लेकिन किन कारणों से जज प्रभावित हुआ और उसे निर्दोष साबित किया। हाइकोर्ट में मामला गया। आज भी वह मामला लम्बित है। सुनवाई नहीं हो रही है। उस समय सपा की सरकार थी। मैं आपके माध्यम से माननीय मंत्री जी का ध्यान आकर्षित करना चाहूंगा कि इन धाराओं में आप संशोधन करके समाज को एक व्यवस्था देना चाहते हैं। पुलिस की निरंकशता जो आज व्यापक रूप से घर कर गई है, जहां उस पर आप

अंकुश लगाना चाहते हैं, वहीं आज जरूरत है कि न्यायपालिका पर भी अंकुश लगाया जाए। रोज अखबारों, मीडिया और हमारे टी.वी. पर दिखाया जाता है कि रोज ऐसी घटनाएं हमें सुनने को मिलती हैं जहां इस तरह की घटनाएं होने के बाद भी अगर न्याय नहीं मिलता तो वहां एकट में संशोधन करने की आवश्यकता है। उधर आपका ध्यान जाना चाहिए। हम जैसे लोग जो समाज सेवी हैं, जब उनके साथ यदि ऐसी घटनाएं होती हैं और न्याय नहीं मिलता तो आम समाज पर क्या बीतेगी? मैं कहना चाहूंगा कि जहां इस तरह के एकट में आप संशोधन ला रहे हैं तो इस तरफ भी आपका ध्यान जाना चाहिए। जो डे लाइट मर्डर हो, जहां गवाहियां हो रही हैं, उसके बाद भी किसी वस्तुधन से प्रभावित होकर यदि फैसला विपरीत जाता है तो वहां के लिए आप क्या व्यवस्था दे रहे हैं? इसके बाद भी हाइ कोर्ट में वर्षों मामला लम्बित है, सुनवाई नहीं हो रही है, हियरिंग स्टेज पर केस नहीं आ रहा है, किन्तु कारणों से उसे प्रभावित किया जा रहा है? इसलिए मैं माननीय मंत्री जी से कहना कहूंगा कि टाइम बाउंड होना चाहिए। कानून में संशोधन की जरूरत वहां है। मैं माननीय मंत्री जी से आग्रह करना चाहूंगा और इस पर जवाब भी चाहूंगा।

SHRI KALYAN BANERJEE (SREERAMPUR): Mr. Chairman, Sir, in support of the Code of Criminal Procedure (Amendment) Bill, 2010, I am going to make my submissions and statements.

Firstly, I would like to congratulate the hon. Home Minister who has really responded to the demands made by the Lawyers and the Bar Councils all over India in respect of existing Code of Criminal Procedure. Within a very short period of time, in just one year -- in fact, the earlier amendment was in 2009 -- the corrective measures have taken place. If I remember correctly, on all India basis, there was cease work of the lawyers at the time when the earlier Act was there and the amendment was sought for.

The reason is the link between the mind and the Act, and it is a Constitutional obligation and implicit in Article 14 of the Constitution of India itself, which has been brought by this amendment. In fact, by this amendment, to certain extent, the uncanalised and unbridled power of the police has been restricted. It is really an aid to Section 157 of the Code of Criminal Procedure, which has been stated in Chapter XI of the Code of Criminal Procedure.

Violation of law by the police in our country is countless. Everyone is having his experience. Police is violating the law. That is a normal practice of our country. No one can prevent them. No Government could have done it. It is the normal rule now. Non-registration of an FIR itself is a common phenomenon. It is known to everyone. It is not unknown.

My good friends have sought for bringing up one new Code of Criminal Procedure. Before that, what is needed in our country is a new Police Act that is required and not the old Police Act. Although all the duties and responsibilities have been given to the police, they are under the old Act of 1851 or 1861, if I correctly remember. New amendments are being brought but we have not yet amended the provisions of the Police Act which has given responsibilities and duties to them, which is very significantly required. Therefore, first I support this Bill because this unbridled power of the police, to a certain extent, has been controlled by this Act itself.

Another part is that a mandatory provision has been made under Section 3A of the new amendment Bill, which is Section 41A (i). Earlier it was a directory. It has been made mandatory. This is needed. Unfortunately, in our country, the police is having such a discretionary power which is required to be controlled. More amount of control is needed. Sir, today in our country that we are having this experience, irrespective of the places where we are, whether you are a poor man or a rich man, whether you are a politician or a non-politician, either police highhandedness or police inaction is a regular feature. Everyone is knocking the door. Unfortunately, it has not yet been decided as to which is the real forum where the people will go. Which is the forum? Is it under Article 226? Or, is it complaint under Section 190 or 200? Under what forum affected citizen of this country get the relief?

I would request the hon. Home Minister, who is an erudite lawyer, who is really a model to us--as a lawyer I am requesting to apply his own mind to this extent. Section 190 and Section 200 of the Code of Criminal Procedure are not sufficient for getting protection. When one after another criminal is committing crime preventing you from entering into places or harassing your family, you can lodge a complaint under Section 190 or Section 200. Whether cognizable offence is there or not, it is for the investigation authorities to make out. But to prevent them, where is the power? Even a civil court passes an injunction, who will execute it?

Everyday, police has a tremendous role in our everyday's life but, unfortunately, these powers are being exercised incorrectly, I am not saying anything on political line. It has been thoroughly abused. It has been done in the interest of so many persons. Therefore, today a new Police Act is needed, before the amendment of the new Code of Criminal Procedure. New Police Act is essentially needed. It was pointed out also. Judges are really needed. So many criminal courts are there. Fast track courts have been created, and this is only done by the Central Government.

The Central Government is spending money for fast track courts. We are aware that much time is taken to dispose of the criminal cases.

I am giving my heartfelt thanks to the hon. Home Minister for bringing about this type of a legislation which will really control the power of the police. I will be waiting for the day when a real law will come which will control the entire police system of the country and they will be answerable in any place. We are waiting for the day.

SHRI R. THAMARASELVAN (DHARMAPURI): Mr. Chairman, thank you for allowing me to take part in the discussion on the Code of Criminal Procedure (Amendment) Bill, 2010. This Bill aims to improve the administration of the criminal justice system. I rise to support the Bill. At the same time, I feel it is my bounden duty to express my views on this Amending Bill before this august House.

Sir, the provisions which existed before the amendment of the Code of Criminal Procedure in 1973 were subsequently expanded and liberalized in certain class of cases by the Code of Criminal Procedure (Amendment) Act, 2008. Now a days, police officers are misusing the power of arrest in cognizable cases. Hence, the new provision provides the power to the investigating officer or Station House Officer to issue notice inviting the persons concerned to cooperate with the investigating agency in finding out the truth. In certain cases due to innocence, ill-advice or fear some people used to avoid such notices from the police. The present amendment which is now proposed gives the power of arrest in two circumstances. Firstly, where such a person at any time fails to comply with the terms of the notice, and secondly, is unwilling to identify himself, the police officer may, subject to orders as may have been passed by the competent court in this behalf, arrest him for the offence mentioned in the notice.

In both the cases, the police officers are vested with more powers as against innocent citizens. These powers were earlier given to a Magistrate; now it is shifted to the prosecution side. Hence, as a lawyer, I would like to say that some people fear that this may be used as a tool to compel an individual or a group of persons to abide by the dictate of the police officers; otherwise, he will be sent to jail. We cannot understand whether the police officers are mature enough to understand the liberal provisions of this law, by training and experience. Therefore, I can only submit at this stage that the superior officers of the Police Department should oversee in such cases and try to implement the law to the need of the modern society and this law should not be misused by the authorities concerned.

With this, I conclude my speech and support the Bill.

SHRI M.B. RAJESH (PALAKKAD): Mr. Chairman, at the outset I would like to congratulate the hon. Minister for positively responding to the concerns raised by the legal fraternity and various sections of our society. At the same time, I do agree with some other hon. Members that instead of piecemeal amendments, the Cr.PC has to be reformed and amended comprehensively.

This Bill states that if police officers are not required to arrest under the provisions of the Act, they have to record reasons in writing not making the arrests. In this context, I would like to draw the attention of the hon. Minister to one very important aspect. In a number of cases related to the harassment of women, the imprisonment is not up to seven years.

Sir, for example take the cases registered under Sections 354 and 498(A) of IPC, the accused are not arrested. Even this Bill is not enough to ensure that those accused in cases against women, especially in which imprisonment is below seven years, will be arrested. I urge upon the hon. Minister to take special note of this aspect also.

I do agree that the law has to be amended from time to time in order to make the law more effective with changing times. However, not only the law but the law enforcement agencies also have to be strengthened and improved. I feel that we have to be cautious in giving more powers to the police. Giving more powers to the police and merely amending those will not prevent crimes. Along with changes in the laws, police reforms are also to be brought in. There has to be some mechanism to monitor how the police is using the powers they are exercising and also to ensure that police is not misusing its powers. In this regard, the police authorities, at the State and the District levels, can deal with complaints against police excesses.

I would like to cite this example from our Kerala experience. In Kerala we have already formed this Police Complaint Authority with a High Court Judge as Chairman and the ADGP and Home Secretary as Members at the State level and at the district level, a retired District Judge is the Chairman and the District Collector and the Superintendent of Police are the Members. In addition to this, Kerala has also set up a Security Commission as per the directions of the hon. Supreme Court in Prakash Singh vs. the Union of India case. The Leader of the Opposition, the Home Minister, the Minister of Law and three members

nominated by the Government are included in this Security Commission.

Sir, I am concluding. I will take one more minute. Further, strengthening of community policing can also, to a great extent, prevent the misuse of powers by police. Community policing can also ensure that the law is implemented in a more efficient manner and crimes are prevented in a better way. In Kerala we have also implemented student policing.

Before concluding, I just want to say that parallel to the changes in the law, the police system has also to be reformed and reformed such a manner that the police is made more accountable to the people and also transformed into a modern, efficient and civilised force. I would like to reiterate that a comprehensive reform of the Code of Criminal Procedure is crucial in making the law enforcement agencies more effective, judicial system more efficient and in providing speedy justice to the people of our country.

SHRI B. MAHTAB (CUTTACK): Thank you Mr. Chairman. The much awaited provisions which seek to curb the power of police to make arrests are once again before us, once again open to debate in this House. This new amendment owes its existence to certain provisions of the Code of Criminal Procedure (Amendment) Act, 2008 which were vehemently opposed by certain sections of our country.

Except for Sections 5, 6 and 21(b), the Cr.P.C. (Amendment) Act, 2008 had come into force on 31st December, 2009. There are three, as the hon. Minister has said, major amendments proposed in this Bill and they are to make the police officer duty-bound to not only record his reasons for making an arrest but also for not making an arrest under Section 41.

The second amendment is to substitute the word 'may' in section 41A by the word 'shall'. The third one is to add a proviso in section 41A whereby police could arrest a person if he fails to comply with the terms of notice or is unwilling to identify himself during issuance of a notice of appearance of police. I shall deal with these three sections very limitedly.

This amendment sounds a death-knell on the arbitrariness of police to make arrests. There is no doubt about it. But we all know how the police work. The very fact that reasons shall have to be recorded in writing fixes responsibility and makes the police officers accountable for justifying the arrest, but there is every chance that less number of cases will be registered to avoid the paper work. Recording an arbitrary reason would be difficult since it would need to be substantiated and will also be open to judicial scrutiny. As a matter of fact, to have the power to arrest is one thing but to justify that arrest is something completely different.

If this amendment actually bridges the gap, then it should be welcomed, but the reality is quite different. Many of us have visited police stations and we know how the police work in the *thana*. The amendment lays considerable stress on the importance of investigation before an arrest is made or not made. This further means that the officer must be convinced about the *bona fide* of the case. A mere complaint would not be sufficient enough to exercise the power of arrest.

Insertion of section 41A pertaining to issue of notice of appearance is in line with the right to life and liberty for every Indian citizen. This would help bring down the number of arrests which would in turn decongest the crowded jails of India. Simultaneously, the innocents too can feel secured in case they stand a chance of exposure to implication in false cases. I hope by this amendment, system of administration of law and justice would become more transparent. This amended CrPC Act together with the Right to Information Act would be able to inject necessary checks and balances in the process of administration of law in India. This is the thought behind this Act, but a lot depends on how awakened the citizens are to their right to information.

Perhaps after a long time, one sees the Government and this House determined to bring about policy changes whereby innocents could be protected in its quest to apprehend the guilty. What seemed like succumbing to pressure from a section of the society has actually turned out a better methodology to reaching consensus. This deserves appreciation, but what remains to be seen is that while refraining the police to make unwarranted arrests, police will restrict itself to arrest the culprits at all or not. The women NGOs have come out vociferously in relation to this clause and they have expressed their concerns, which need to be addressed too. Kalyan *babu* had mentioned those apprehensions in a different way, but I think, it needs to be deliberated again.

The Act requires police officers to state the reasons in writing for arrest in case of offences punishable with imprisonment up to seven years, and the police officer is satisfied that the arrest is necessary to prevent further offences or for proper investigation.

This Bill states that if police officers are not required to arrest under the provisions of the Act, then they have to record the

reasons in writing for not making the arrest. Does this provision solve the ticklish issue of Ruchika Talwar's case and rectify the anomaly in the law? As far as I understand, it does not.

The Act states that instead of arresting a person, the police officer may issue a "notice of appearance" to the person, requiring him to present himself as specified in the notice. This Bill makes it mandatory for the police officers to issue notices in all cases where arrest is not required. The question is this. How will it be complied with, and at what level will it be monitored?

Under Section 41, as it originally stood before the 2008 amendment, a police officer may -- without an order of a Magistrate and without a warrant -- arrest any person who has been concerned in any cognizable offence. Now, radical changes have occurred and are being further improved upon. Here, I would like to remind the Government about what is often being said by the conscious citizen of this country. It was Lord Macaulay who had framed the Indian Penal Code, which was just a re-translation of the Irish Penal Code in the mid 19th Century. The Cr.PC is a part of it. There is an imperative need to reform and rationalise the criminal law of the country. I would like to repeat this as many Members have done. Why not introduce a comprehensive legislation in the Parliament instead of bringing amendments in bits and pieces? It seems *ad hocism* is the rule of the day.

I would urge upon the Minister to set in motion a debate on this subject both inside and outside the Parliament to formulate a national policy. There is an urgent need to have a National Criminal Justice Policy.

With these words, I conclude.

डॉ. राजन सुशान्त (कांगड़ा): सभापति महोदय, आपने मुझे बोलने का समय दिया, इसके लिए आपको बहुत-बहुत धन्यवाद। मैं थोड़े से समय में दो-तीन सुझाव देना चाहूंगा। सबसे पहले मैं माननीय चिदम्बरम जी द्वारा सीआरपीसी, 2010 का जो संशोधन लाया गया है, उसका मैं स्वागत करता हूँ। यह बड़ा सामयिक और अतिआवश्यक भी है। मैं कहना चाहता हूँ कि जैसे एक आशंका व्यक्त की जा रही है कि पुलिस को आप शक्तियाँ देंगे, तो उनका दुरुपयोग न हो। उसे रोकने के लिए मैं कुछ सुझाव देना चाहूंगा, एक तो पुलिस स्टेशन में जब भी कोई इन्कवायरी या इंटरोगेशन हो तो उसकी ओडियो और वीडियो रिकार्डिंग का प्रबंध करना चाहिए और साथ-साथ जब लॉकअप में एक्यूज डाले जाते हैं तो उनकी भी कॉस्टेंट वीडियोग्राफी होनी चाहिए तथा जो भी थर्ड डिग्री मेथर्ड हैं, वे कम हो जाएं या खत्म हो जाएं। पुलिस ट्रंसपिरेंसी से काम करे, इसके लिए भी कोई नया सिस्टम इजाद करना चाहिए।

सभापति महोदय, मेरा दूसरा सुझाव यह है, हम यह तो उम्मीद कर रहे हैं कि अपराधियों को पकड़ा जाए, उन्हें सजा मिले। जब से सीआरपीसी, आईपीसी का पुराना नियम एवं कानून चला है, तब से ही थानों की हालत भी पुरानी चली हुई है। अंग्रेजों के वक्त के ही थाने हैं और उनके वक्त का ही पुलिस बल भी है। हम निहत्थे पुलिस के अधिकारियों और कर्मचारियों से उम्मीद करते हैं कि वे आतंकवादियों और अपराधियों पर काबू पाएं। मैं समझता हूँ, आज पुलिस के विरोध में हम बातें उठाते हैं, लेकिन पुलिस की पूरे राष्ट्र में जो दयनीय हालत है, उसकी तरफ हमारा ध्यान नहीं है।

महोदय, इसलिए मैं चाहता हूँ कि शीघ्र न्याय देने के लिए जिस तरह से कोर्ट्स की संख्या बढ़ाने पर विचार किया गया है, जजेज की संख्या बढ़ाने पर विचार किया गया है, उनके वेतन और भत्ते बढ़ाने पर विचार किया गया है, उसी तर्ज के ऊपर पुलिस दल को भी मजबूत करने के लिए ज्यादा थाने खोले जाएं, पुलिस में ज्यादा से ज्यादा पुलिसकर्मी भर्ती हों। उन्हें ज्यादा साधन उपलब्ध कराए जाएं, मोबिलिटी भी ज्यादा दी जाए और हथियार भी मॉडर्न और अच्छे दिए जाएं, ताकि वे मुकाबला कर सकें। पुलिस बल की कम संख्या तथा अच्छे और मॉडर्न हथियारों के अभाव में पुलिस वाले निरन्तर निरुत्साहित हो रहे हैं, फिर चाहे जम्मू-कश्मीर हो, पूर्वान्चल हो, वनांचल हो या कोई और प्रदेश हो, हम सब जगह पुलिस को कोस रहे हैं। इससे वे डीमॉरेलाइज हो रहे हैं। इसलिए मैं समझता हूँ कि माननीय आडवाणी जी जिस प्रकार से बार-बार मांग करते हैं कि उन्हें ताकत दी जानी चाहिए, तभी वे जान और माल की सुरक्षा कर सकते हैं, उसी प्रकार से उन्हें आधुनिक साजोसामान उपलब्ध कराया जाए। जो अमेंडमेंट आया है, उसमें मैं समझता हूँ कि मान्यवर मंत्री जी इस ओर भी ध्यान दें और निश्चितरूप में एक नया आई.पी.सी. और सी.आर.पी.सी. हिन्दुस्तान के परिप्रेक्ष्य में और हिन्दुस्तानियों के लिए लाया जाए। यह सुझाव देकर मैं अपनी बात समाप्त करता हूँ।

SHRI HAMDULLAH SAYEED (LAKSHADWEEP): Mr. Chairman, Sir, thank you very much for giving me this opportunity to speak on the Code of Criminal Procedure (Amendment) Bill, 2010. First of all, I would like to state that Cr.P.C. which is a procedural law which authorizes the judiciary and the courts to deal with crimes and criminals. This law was enacted in the year 1973. When we talk about offences, briefly the offences can be divided into two – cognizable and non-cognizable offences. Cognizable offences are those offences which are serious in nature wherein the police officer does not require the permission of the Magistrate to arrest a person who is accused of a criminal activity. Non-cognizable offences are those offences wherein the police officer requires the prior permission of the Magistrate to arrest a person who is accused of a criminal activity. Therefore, these are the two basic offences which have been described in the Code of Criminal Procedure. Schedule I which is attached to the Code of Criminal Procedure deals with the offences which have been given and which are mentioned.

Coming to Section 41 of the Cr.P.C., it clearly states that a police officer may arrest a person for a cognizable offence. Now,

the person may be arrested if the police officer has suspicion or has credible information or a written complaint has been filed against a person, and other than that, if the police officer in his presence witnesses the commission of an offence, if any of these conditions are satisfied, the police officer has the right to arrest the person. But the best part about this amendment is that the word 'may' has been substituted with 'shall'. Now, any police officer who arrests an accused person for a cognizable offence has to mention, has to record the reasons in writing if he is arresting and if he is not arresting, that also he has to exclusively mention in writing. He has to give the reasons in writing. So, this is the best part about the Cr.P.C. Amendment Bill, 2010.

Section 41(a) of the Cr.P.C. which was inserted in the year 2008 gives the authority to the police officer to summon, to issue notice to a person who is accused and if the person has been asked to come before the police station or appear before the SHO, and if he fails to come and comply with the conditions, the police officer has the authority to arrest the person. This is again a commendable amendment that has been brought about.

Therefore, Section 41(a) and Section 41, both these Sections in this Cr.P.C. which is going to be amended are commendable. I would like to also state that article 21 of the Constitution gives the right to life. Right to life does not only mean mere right to live, but also means right to life with liberty, with dignity and with self-respect. There have been instances wherein innocent persons have been booked and they have been detained by the police, and filing of the charge-sheets have been delayed resulting in their being detained as under-trials. If we see the period of incarceration that they have completed behind the bars, it is more than the punishment that has been prescribed by law.

Therefore, taking all these conditions into account, I would congratulate our hon. Home Minister, who has taken the initiative to amend the law. I would also request and urge him to take further steps to amend the IPC, the Indian Evidence Act and also the Cr.P.C.

SHRI PRABODH PANDA (MIDNAPORE): Sir, I must welcome the hon. Minister for bringing this type of Bill and his attempt to restrict the arbitrary power of the police. It is a welcome step.

The Bill seeks to amend the Code of Criminal Procedure Act, 1973. The Act allows any police officer to arrest a person without an order of the Magistrate and a warrant in certain specific circumstances. That is why, the Act requires police officers to state the reasons in writing for arrest in case of offences punishable with imprisonment up to seven years. So, it is limited to seven years. So, the arbitrary power has not been removed totally. Even if the police officers do not arrest, then they have to record the reason in writing for not taking the action. They have the right to arrest or no arrest. Only one thing is there that they have to give the reason in writing. This is good that they have to give the reason in writing, but arrest or no arrest would depend on the judgment of the police officer himself. How should we substantiate his judgment or his decision? Still there is a scope of abuse of arbitrary method.

MR. CHAIRMAN : He has to give the reasons.

SHRI PRABODH PANDA : Yes, but that will be assessed, that will be scrutinized by the Court at a later stage. Secondly, the Act says that instead of arresting a person, the police officer may use a notice of appearance to the person. It is good. But my question is if any crime has occurred before the police officer, even then they will issue first the notice of appearance. And if the person does not comply with it, then the police will go for arrest. If any offence has occurred in the presence of police, this is to be defined. It should not be implemented in all cases. There are so many cases where police are becoming passive. Excess of police acquisition, of misusing the power of the police is there. This type of acquisition is also there. But even then, the police has become inactive in different cases. They are becoming passive. In front of police, several crimes are occurring and the police has become inactive. My question is that even in those cases, police will not arrest them for committing the crime. They will first issue the notice of appearance with a specific notice. And if the person does not comply the notice, then police will go for arrest. I would request the hon. Minister to explain this.

I think, it is a welcome step. All other Members have already said, I do agree with them, that this should not be done in a piecemeal manner. We should have a re-look at the Cr.P.C. and a comprehensive legislation should be brought before this august House.

MR. CHAIRMAN: There are only two more speakers. If the House agrees, the time of the House may be extended by one hour. There is 'Zero Hour' also.

SEVERAL HON. MEMBERS: Yes.

*SHRI PRASANTA KUMAR MAJUMDAR (BALURGHAT) : Hon. Chairman Sir, I want to congratulate Hon. Minister of Home Affairs for introducing this Code of Criminal Procedure (Amendment) Bill 2010. He must be praised for not only bringing this very important Bill but also for some other Bills which have been passed in this House earlier.

We must remember that once we were under the British regime. Therefore the policemen have been extremely powerful from the very beginning. The CRPC and Indian Penal Code are all fruits of that period of subordination. The concepts are very much similar to the British ideals. Therefore, things cannot be changed in a jiffy; it will take some time to change – a process needs to be followed to bring about any major transformation.

Section 41(A) of the said Act has curbed the power of the police to a great extent. They now cannot arrest or detain a person as and when they deem fit – they have to follow a certain procedure. In this manner, the high-handedness of the police can be drastically curtailed. For this reason too I thank Hon. Minister.

Another point is that IPC and CRPC should be revamped and refurbished. If that is not done then they will fail to keep pace with the democratic tenets of our society. There is a saying in Bengali – if a tiger pounces upon you, that will be less harmful than if a policeman comes in your way. People actually fear the police. They do not know when and where the police will come across them or under which sections they will be booked. This attitude of the people as well as the police has to be changed. This is the responsibility of the citizens and the administration, both.

The rule for providing anticipatory bail should be similar everywhere. It should not differ from place to place. This aspect must be taken care of. Moreover, you all know that the lawyers fleece the common people who go to courts to fight various cases and as such court proceedings have become very costly. Therefore to help the poor people more and more lawyers should be appointed by the Government. The question is that in what manner the judicial system can be reformed. We have seen what happened in case of the Bhopal Gas tragedy. After 26 long years the verdict was given and justice was denied. If this happens, people will no longer have faith in the judiciary of the country. There are a number of vacancies in so far as the posts of judges are concerned. As a result, the ordinary citizens suffer; they are harassed for no fault of theirs. This must be looked into seriously.

Once again I congratulate and thank Hon. Minister for introducing such an effective Bill which is a commendable step on his part.

DR. TARUN MANDAL (JAYNAGAR): Mr. Chairman, Sir, I find no reason not to support this amendment. Almost all the speakers before me have supported it. However, I equally want a comprehensive reform of the CrPC because many of these codes are remnants of the British period who used to treat Indians not as civilized people but as natives and it was for oppressive and exploitative reasons only they used it. We used to get the IPS Officers Association journals in our houses. In several articles they have also criticized many of the criminal procedure codes.

As far as I know, perhaps some Commission was formed earlier to reform the CrPC. I request the hon. Home Minister that if he desires he should take some initiative to form an independent Commission to reform the CrPC comprehensively.

My second point is not to stress to form or frame an Act or rule in this regard. But the main point of a good Government is not to frame or formulate only but to ensure its implementation and application for all the citizens. We know that without connivance with the police people, no major crime in this land can happen. We can see the discrimination like the dreaded criminals and murderers like Anderson are kept in guest houses but our innocent people are treated as dreaded criminals. I believe that it is the work of a good Government to implement the essence and contention of any good Acts or rules.

Regarding the women's chapter, the women particularly of the Scheduled Castes, the Scheduled Tribes, Adivasis, and the Minorities very much come under the police excesses and oppressions and malpractices. It is equally true from Lalgurh to Manipur to Jammu and Kashmir and everywhere. I want to get some enlightenment from our revered lawyer, Home Minister that some High Courts of our land wanted to withdraw the women's protection, that they would not be arrested at night time and particularly without accompaniment of women constable. I can remember that Nagpur Bench of Mumbai High Court withdrew it. One of the Women's Organisations, All India Mahila Sanskritik Sangathan also met the Prime Minister in this regard to extend protection to the womenfolk of our country. I do not know the fate of this presently. I would like to know from the hon. Home Minister on this.

I want not only this kind of reforms but also total reforms and I demand the same. Thanking the hon. Home Minister, I support this amendment.

SHRI S. SEMMALAI (SALEM): On behalf of my Party, I also welcome the Bill moved by our hon. Home Minister. It may be recorded.

THE MINISTER OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): I thank hon. Members for supporting the Bill. Under the existing Criminal Procedure Code, arrest of a person is dealt within Chapter V. It starts with Section 41 and there are a number of Sections. Section 41 (1)(a) and (b) are the subject matter of the amendment we made earlier and the amendments we are making today. A police officer can arrest a person with a warrant and with an order of a Magistrate. That does not require any explanation. This deals with the arrest of a person without an order from a Magistrate and without a warrant. That is where society feels that police officers have absolute discretion. In fact, they exercise that power arbitrarily. Section 41 is intended to reduce the arbitrariness. Existing Cr.PC says under (a) and (b) – you may arrest without an order of a Magistrate and without a warrant if the person is concerned in any cognizable offence or against whom a reasonable complaint has been made, etc. of his having been so concerned. This is about a cognizable offence. Sub-Section (b) says that who has in his possession without excuse the burden of proving which excuse lie in such person, any implement for housebreaking. From (c) to (h), there is no problem. Those are self-contained provisions which contain some restriction. In the name of (a) and (b), people were being arrested indiscriminately. What we did by the earlier Bill was, replace (a) and (b) and said, this will be the new (a) and (b) of Section 41(1).

It says:

"You may arrest a person without a warrant or without an order, if the person commits an offence in the presence of the police officer."

Then, you can arrest him. Obviously the police officer will not see an offence being committed; he has to be arrested; then, bail and others will follow.

In (b) we say:

"â€ against whom a reasonable complaint has been made â€. that he has committed a cognizable offence, punishable with imprisonment for a term which may be less than seven years, which may extend to seven years, whether with or without fine, if the following conditions are satisfied."

So, we have drafted the conditions under which, for a cognizable offence, punishable with less than seven years, these conditions must be present. They are:

"The police officer has the reason to believe that the person has committed the offence; that the police officer is satisfied that such arrest is necessary;

- (a) to prevent him from committing any further offence;
- (b) for proper investigation;
- (c) for preventing such person for causing the evidence to disappear;
- (d) for preventing the person from making any inducement, threat or promise to any person who may be a witness; and
- (e) unless the person is arrested, his presence in the court cannot be ensured."

If these conditions are satisfied, then the police officer shall arrest. Then, we added a further safeguard, 'record the reasons which are the conditions under which you have arrested'.

Now, representations were received saying that it is all right, you have said "Record the reasons for arresting." But what about the cases of which we know where the police officer colludes with the person or with someone interested and does not arrest him, even if the conditions are attracted.

Therefore, the Law Commission called this consultation at my instance and they said, "All right, record reasons, if you are arresting, if these reasons are present; and record reasons, if you are not arresting despite the fact that these reasons are present."

If reasons are recorded, the accused can go to court and say, "Give me bail, look at the reason; it is such a shoddy reason; he should not have arrested me." It is for arresting. If reasons are recorded for not arresting, the complainant can go to court and say, "Look at the reasons; he should have been arrested; he is not being arrested; poor reasons are recorded." So, either way, the arbitrariness is reduced; or rather, the scope of arbitrariness is reduced. The accused can go to court and complain about his arrest and the complainant can go to court and complain about the non-arrest. That is what we are doing. This is balancing the D.K. Basu guidelines.

Sub-section 2, which was already passed by Parliament last time says, "Subject to the provisions of Section 42, no person concerned in a non-cognizable offence can be arrested except with a warrant or an order. So, there is a clear division now. For cognizable offence, you must have reasons for arresting and for not arresting. For non-cognizable offence, you can only arrest with a warrant or an order.

We think that we must give it a fair trial. I know that the police enjoy huge powers in this country. If you ask 100 people as to what do they think of the police, they would say that yes, we want the police, but the police act arbitrarily. It is not that they say, they do not want the police. They will say that they want the police, but please restrain the police from acting arbitrarily. So, we are making an effort to restrict the arbitrariness.

But then, when you do not arrest a person, the earlier Section says,

"The police officer, may in all cases, where the arrest of a person is not required, issue a notice, directing him to appear before him at such place and at such time. Where such a notice is issued, it shall be the duty of the person to comply. Where the person complies and continues to comply, he shall not be arrested; where such person fails to comply, then the officer may arrest him."

What we are now saying is, "if you do not arrest a person and you may issue a notice." Then, that gives great room for persons who have committed offences to avoid investigation and to avoid interrogation. The whole idea of giving notice is that the person must join the investigation. But what happens is that he is not arrested; you may issue a notice to him; then, the fear is that the person will delay the investigation; he will not join the investigation.

Therefore, what we are saying is this. If the situation is such that he is not arrested, the police officer shall give him notice so that he will join the investigation and the investigation can be completed. Otherwise, there is a danger that the person who is not arrested – even for reasons to be recorded – will not join the investigation; he will drag the investigation for a year or two and the whole case will go into cold storage. Therefore, we are amending 'may' to replace it by the word 'shall'.

Now, I think, we have got a fair balance. In a non-cognisable offence, you shall have an order. In a cognisable offence punishable above seven years, you shall arrest. In a cognisable offence punishable with less than seven years, you may arrest but you must record reasons; you may not arrest but you must record reasons but if you do not arrest you shall give notice so that the person joins the investigation. Let us see how this new scheme works. We will have to give it a fair trial for about six months or a year and let us see how the new scheme works.

Now, of course, the police officer have pointed out that when he does not arrest but give notice to a person, if that person does not identify himself how can he give notice? Therefore, we are now saying that if a person refuses to identify himself, he can be arrested straightaway. Otherwise, if he does not identify himself how do you give him notice? Those are all the amendments that we are making and I am grateful to you for the support you have given.

I entirely agree with Shri Nishikant. My favourite muse, favourite poet Thiruvalluvar, 2000 years ago said:

"Idipparai illatha emara mannan

Kedupar illanung kedum"

A king without critics will face his ruin even if he has no enemies. Therefore, I welcome critics. I do not like enemies but I welcome critics. I am grateful for criticism. Please criticise us because if you do not criticise us we will face our ruin even if we have no enemies in the field. Therefore, please criticise us. I welcome criticism. I have no problem about criticism.

On the model Police Act, I think Shri Kalyan Banerjee has mentioned it, we have framed a model Police Act in 2006. This has been circulated to all the States. I am repeatedly pressing the States to adopt the model Police Act or to amend their Police Acts to bring it in line with the model Police Act. The model Police Act contains 16 chapters. It is in the library. It talks about primary ranks in civil police, armed police units, the structure of the district police, policing in metropolitan urban areas, criminal investigation, training research and development, regulation, control and discipline, police accountability – a Board has to be set up – welfare and grievance redressal for police personnel and all this is contained in the model Police Act.

Unfortunately, the States are not very forthcoming in adopting the model Police Act. It is my intention to continue to press the States for a model Police Act.

Finally, there were recommendations that we should have a comprehensive Criminal Procedure Code. I have on July 7, 2010 written to the Law Minister saying:

"The Departmentally related Parliamentary Standing Committee on Home Affairs has recommended that there should be a comprehensive review of the criminal justice system, an introduction of composite draft legislation for revamping the criminal justice system in its 146th Report.

Earlier also, in its 111th and 128th Reports recommended that there is an imperative need to reform and rationalise criminal law."

In view of the recommendations, I requested the Law Minister to request the Law Commission to examine and give a comprehensive Report covering all aspects of criminal law so that comprehensive amendments can be made to the IPC, CrPC and Evidence Act. The Law Commission may also take into account the recommendations made by the Justice Malimath Committee and the Madhava Menon Committee and other Commissions and Committees in this regard. The Law Commission may be given a timeframe of one year.

The Law Minister replied to me on 13th July saying :

"I have received your letter. I am in agreement with your view regarding the need for such a comprehensive legislation. I have asked my Ministry to immediately look into the concerns and take necessary steps to bring about a comprehensive legislation. "

So, I hope this will be followed up. In about a year, I hope we can have a comprehensive Report. With these words, I request that the Bill be passed.

श्री शैलेन्द्र कुमार (कौशाम्बी): सभापति महोदय, मैं एक प्रश्न मंत्री जी से पूछना चाहूंगा। जैसा अभी मंत्री जी ने कहा कि जो व्यक्ति पकड़ा जाएगा, उसे लिखित रूप में दिया जाएगा कि किस कारण वह क्यों पकड़ा गया है। अगर वह संतुष्ट नहीं है तो न्यायालय में भी जा सकता है। आप न्यायालयों में फिर मुकदमें बढ़ने की प्रक्रिया शुरू कर रहे हैं, क्योंकि हर व्यक्ति कहेगा कि मुझे गलत पकड़ा गया है और वह न्यायालय में जाएगा। जबकि न्यायालयों में पहले ही इतने मुकदमें हैं और ये जो मुकदमें जाएंगे, क्या उसके लिए आपने कोई फास्ट ट्रैक कोर्ट या जजों की नियुक्ति की है, जिससे उनकी सुनवाई हो सके?

SHRI P. CHIDAMBARAM: I think you have misunderstood it. You see when a Police Officer is obliged to record reasons for arresting and for not arresting, that increases transparency of his action. When I am arrested, I will normally apply for bail. Today, if the Police Officer records the reason for arresting, when I go to the Magistrate and say, see why has he arrested me, this is the reason he has given and for this reason should he arrest me? Therefore, it is not a new case and when he seeks bail, he can argue his case better citing the reasons why the Police Officer has arrested him. The prosecutor also cannot then invent reasons. He has to justify the arrest based on the reasons already recorded and the prosecutor has to oppose bail or agree to bail. The converse is when a person is not arrested and he is asked only to join the investigation. The complainant then can go and say that this man should have been arrested; look at the reasons recorded and that it is such a hopeless reason and he should have been arrested. I think this increases transparency. It does not increase the work load of courts. It simply brings about greater transparency when bail is applied for and bail is either opposed or not opposed and bail is granted or not granted.

MR. CHAIRMAN : Now The question is:

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

The motion was adopted.

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

The question is:

"That clauses 2 and 3 stand part of the Bill."

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

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

SHRI P. CHIDAMBARAM: I beg to move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.
