

[English]

MR. DEPUTY SPEAKER: That which is beyond the text may not form part of the record as per rules.

[Translation]

(v) Need to open a school and a hospital for railway employees in Jahanabad (Bihar)

SHRI RAMASHRAY PRASAD SINGH (Jahanabad): Jahanabad junction comes under the Eastern Railway. Due to absence of primary school and hospital, the railway employees posted there are facing much hardship. I would like to demand from the hon. Minister of Railways that a middle-level school and a 15 bed hospital should be opened for the benefit of the railway employees of Jahanabad and their families.

(vi) Need for effective measures to control the monkey disease rampant in different parts of Karnataka State

[English]

SHRI G. DEVARAYA NAIK (Kanara): The Monkey Disease originate in the hilly area of Kysanlir (Karnataka) and now it is rampant in Uttara Kannada, Dakshina Kannada and Shimoga districts. Unfortunately, the affected people are the downtrodden sections of the society who go to the forest to fetch firewood. They depend upon firewood for their livelihood. Since 1970 this disease has affected the people in the above mentioned districts and so far it has claimed more than 300 lives. At present it has taken a serious turn. Hence it is high time for the Centre to rush all kinds of relief measures to the above districts including medicines.

In Shimoga there is one medical research centre to manufacture serum. Such research centres must be set in both Uttara Kannada and Dakshina Kannada as

Shimoga is too far from these two districts.

13.21 1/2 hrs.

CODE OF CRIMINAL PROCEDURE
(AMENDMENT) BILL

**Amendment recommended by Rajya
Sabha**

MR. DEPUTY SPEAKER: Now, consideration of Rajya Sabha Amendments. The Minister may move the motion for consideration of the amendments made by the Rajya Sabha and will speak briefly.

THE MINISTER OF HOME AFFAIRS (SHRI MUFTI MOHAMMAD SAYEED): I beg to move:

"That the following amendments made by Rajya Sabha in the Bill further to amend the Code of Criminal Procedure, 1973 be taken into consideration:

Amendment

Clause 2

1. That at pages 1 and 2, lines 10 to 18 and 1 to 9 respectively be *deleted*.
2. That at page 2, line 10, for the brackets, figures and words "(2) Notwithstanding anything contained in sub-section (1)" the figures, brackets and words "166A (1) Notwithstanding anything contained in this Code" be *substituted*.
3. That at page 2, line 24, for the brackets and figure "(3)" the brackets and figures "(2)" be *substituted*.
4. That at page 2,

[Sh Mufti Mohammad Sayeed]

- (i) line 26, for the brackets and figure "(4)" the brackets and figure "(3)" be *substituted*
- (ii) line 27, the words, brackets and figure "or sub-section (2)" be *deleted*

Sir, the Code of Criminal Procedure (Amendment) Bill, 1990 to replace the ordinance promulgated by the President was passed by the Lok Sabha on 21 3 1990

The Bill, as passed by this House, was then transmitted to the Rajya Sabha for consideration and passing. The Rajya Sabha has now passed the Bill with some amendments. It is now back in the House for consideration of the amendments made by the Rajya Sabha.

The Members will notice that the first amendment adopted by the Rajya Sabha seeks to delete sub-section (1) of Section 166A and is the main amendment, the other amendments being consequential ones.

The police officers have ample powers under the Code to collect evidence in the course of investigation within the country. For collection of evidence outside the country, they have to depend on competent authorities in those countries who will collect the evidence, in accordance with the provisions of their own laws. Moreover the evidence collected from foreign countries during the course of investigation is to be deemed as evidence collected during the course of investigation and is to be utilised for preparing the police report and filing it in a court having jurisdiction. It will have to be proved in accordance with the provisions of the Indian Evidence Act as in the case of evidence collected in India.

The Rajya Sabha took the view that power should not be given to the investigation authorities to issue letters of request to collect evidence in foreign countries during investigation and thus deleted sub-

section (1) of Section 166A. The Government have decided not to press for restoration of the provision at this stage, as it is keen to ensure continued availability of the power conferred on judicial courts in India to issue letters of request to foreign courts during the stage of investigation for collection of evidence.

Sir, the ordinance which this Bill seeks to replace expires shortly. I am confident that the Members of this House are equally keen to ensure that this legislation is brought on the Statute Book without delay. I commend the amendments made by the Rajya Sabha in the Bill for acceptance by the House.

MR DEPUTY SPEAKER: Motion moved.

"That the following amendments made by Rajya Sabha in the Bill further to amend the Code of Criminal Procedure, 1973 be taken into consideration:

Amendment

Clause 2

- 1 That at pages 1 and 2, lines 10 to 18 and 1 to 9 respectively be *deleted*
- 2 That at page 2, line 10, for the brackets, figures and words "(2) Notwithstanding anything contained in sub-section (1)" the figures, brackets and words "166A (1) Notwithstanding anything contained in this Code" be *substituted*
- 3 That at page 2, line 24, for the brackets and figure "(3)" the brackets and figures "(2)" be *substituted*
- 4 That at page 2,
 - (i) line 26, for the brackets and

figure "(4)" the brackets and figure "(3)" be *substituted*.

- (ii) line 27, the words, brackets and figure "or sub-section (2)" be *deleted*."

Now, I have the names of two hon. Members who want to speak, on this. Now Shri Lodha.

[*Translation*]

SHRI GUMAN MAL LODHA (Pali): Mr. Deputy Speaker, Sir, I would like to support the decision of the Minister of Home Affairs regarding the amendments made by the Rajya Sabha in the Code of Criminal Procedure Bill in which it seeks to delete sub-section (1) of section 166 (A), to place the amendment before the House for consideration in order to avoid any kind of controversy in this regard. The Rajya Sabha has been of the view that power should not be vested in the Police Officers to issue letter of request to collect evidence in foreign countries during the course of an investigation.

Much power has been conferred on the judiciary. It is natural because we would like that as far as possible after a judicial decision or a *prima facie* decision is given by a Magistrate, it would not be proper to empower the investigating authorities with the authority of issuing letters of request to collect evidence outside the country. I would like to congratulate the hon. Minister of Home Affairs for having accorded due respect to the judiciary. The possibility of misuse of this power by the administration or the police officers has been done away with. I also feel it proper to submit at this stage that the *Criminal Procedure Code (Amendment) Bill* in the current context has been brought mainly to end the stalemate arising out of the Bofors issue in which crores of rupees paid as commission have been stacked in the Swiss Banks and in this way the nation's hard earned income has been siphoned off and deposited in secret accounts in the shape of the com-

mission paid in the deal. With these words, I would like to submit that this Bill may be passed.

In this regard, I would like to say two things. Today itself, we had a discussion in the forenoon that a person from America issued threats and orders for assassinating our present and former Prime Minister. The same person also issued orders from there for the heinous murder of the Vice-Chancellor of the Kashmir University and two of his colleagues. What I want to say is that there is no provision in our laws that empowers us to arrest him and bring him here. It is necessary to remove the flaws and shortcomings in our laws. What I am saying is that, when you are making amendments, you should bring about comprehensive amendments, so that there is no need to make amendments again and again. I would like to remind you that when Veer Savarkar jumped from the British ship and when Udham Singh threw a bomb on some people in England, they were extradited and brought here. Our laws should not be so deficient that in order to get a person extradited, we have to file an F.I.R. again and then on the basis of the decision taken, we request the other countries for the extradition of these persons, because we do not have any such provision in our law. I would like to request you to definitely bring about changes in such laws. No outsider whether he be a Prime Minister or anybody else should be allowed to attack the sovereignty, integrity and honour of this country. A person sitting in America issues an order and a vice-chancellor is killed, but for want of adequate law, we are unable to do anything. It is really distressing.

Mr. Deputy Speaker, Sir, before I conclude, I would like to say one more thing. There are many lacuna in our *Criminal Procedure Code*. There are thousands of such cases pending in the Lok Adalats wherein both the parties would like to reach a compromise, but section 147 of the *Criminal Procedure Code* stands as an obstacle in their way. I request you to think about it.

[Sh Guman Mal Lodha]

Section 147 which is non-compoundable should be made compoundable off the court. Though it may look irrelevant because it involves a very small amendment concerning the Criminal Procedure Code, but there are lakhs of cases in this country in which people cannot reach a compromise, because of the lack of such a provision. Therefore, I would like to say that it should be made compoundable or compoundable off the court so that in future, people in the villages do not get ruined and are able to reach compromise in the cases pending in the Lok Adalats.

I would like to give one more advice that is while talking on the amendment to the Criminal Procedure Code I am reminded of the words of the late Shri Ram Manohar Lohia, who used to say that Sections 197, 109, 119 and 51 are the most misused sections of the Criminal Procedure Code. Under these Sections, the Police officials take away and put behind the bars the poor, the weak, the destitute and the exploited people who are pavement dwellers.

MR DEPUTY SPEAKER: A discussion on the Demands for Grants of the Ministry of Home Affairs is on the agenda.

SHRI GUMAN MAL LODHA: As you know, there is always a shortage of time in the discussion on the Demands for Grants of the Ministry of Home Affairs and I may or may not get time but I have already given an indication to this effect. I have reminded you of the words of Dr Ram Manohar Lohia. I hope that this Government, which is an ardent supporter of Dr Lohia and which has a great reverence for him would at least make some amendments in the Criminal Procedure Code this time in order to provide some relief to those people who are taken away from the villages, cities and alleys by the police saying that they have no means of livelihood, no means for food and shelter and that poverty is a curse and are, thus, put be-

hind the bars without bail. With these words, I support this Bill.

[English]

SHRI G.M. BANATWALLA (Ponnani): Mr Deputy Speaker, Sir, the Rajya Sabha in its wisdom, has deemed it fit and proper to delete from the Bill the Powers that were being given to a more police investigating officer to contact his counter-part abroad and ask for some information. It was not unexpected that such an amendment would be made by the Rajya Sabha. Sufficient warning had been given about it in this House itself. This is rather unfortunate.

THE MINISTER OF HOME AFFAIRS (SHRI MUFTI MOHAMMAD SAYEED): That is a House of elders.

MR DEPUTY-SPEAKER: He feels that some of the youngsters will be equally wise.

SHRI G.M. BANATWALLA: The youngsters also had given you a warning. But it is rather unfortunate that when the Bill originated in the Lok Sabha, the Government did not respond favourably to the pleas that were being made here. I would only request the Government that in all such matters, the Government must adopt a realistic attitude and respond to healthy suggestions which come from the House. Had the Government's response been there in this House itself, today we would not have been called upon to agree to the amendment made by the elders. However, that is only one aspect.

Another Member who—was speaking before me had also been kind enough to congratulate the Government, though for having belatedly agreed to the amendment. I suppose his party could have also joined hands with the Opposition over here, at the appropriate time, when the Bill was being discussed here in the Lok Sabha itself. Now Sir, that is one aspect of the matter.

Another aspect that I want to place before this House is that, personally speaking, I am not very much happy with the remaining part of the Bill also in which it is said that a Criminal Court in India may call upon or may request its counter-part Court abroad to have the information and so on and so forth.

Sir, I submit that involving Courts in the process of investigation is not a very healthy attitude. In the very process of investigation I wish some other procedure had been thought of—say at the Government to Government level and not of course at the level of a police officer to a police officer level directly. I wish that in the investigations process itself, Courts ought not to have been involved. For them, it brings in several other matters with regard to the plea of Courts getting biased because of their earlier having issued the necessary instructions. Such questions can come up. I therefore, even, make a request that though the Amendment is going to be passed today, yet the Government should give its mature consideration to it still further and think of some other satisfactory manner in which we can ask a foreign country to give us information with respect to certain offences and information which may be available abroad. Bringing in the Courts in the investigation process is not a very healthy attitude. I would like to warn this particular House.

The third thing that I would like to place briefly and conclude is that, at times, we get Bills which leave much of vital matters, the rules, that may be made later on. For example, this very Bill says: "How the requests will be transmitted by our Government to a foreign Government will be a matter that will be specified." Well this leaves the whole question very vague, the House would like to know what procedure would be exactly adopted. I would, therefore, urge, that rules of such vital importance, which really can give us a complete and a full picture of the whole thing to proceed should come to the House at the time when the Bill is under consideration.

I may not challenge the right to make rules after the Bill has been passed. Yet, I feel that it would be a better and a healthier procedure, if such rules as the Government may think of are really thought of in advance and attached to the Bills so that we get a proper idea of how the Government proposes to move in any vital matter. That will help the House in its mature deliberations and will be of greater help to the Government.

SHRI P.R. KUMARAMANGALAM (Sa-lem): Mr. Deputy Speaker, Sir, Mr. Banatwalla rightly mentioned about a warning when the Bill originally went through this House. We had categorically requested the hon. Home Minister and the Government to delete what is now being proposed to be deleted after being deleted by the Rajya Sabha. We had informed him the reason why we sought it. There was the extreme possibility of misuse of such wide powers at the investigation stage by a police officer. We had gone into it saying that the problem would arise legally from the point of view of other matters having corresponding situations, we had also brought to his notice that we feel very strongly about it. We knew very well that this matter would come up in the Rajya Sabha and ultimately they would not have the sufficient strength to defeat an Amendment, when brought, to the Bill. Unfortunately, their intentions were not very honourable when they came to the Lok Sabha. They came to the Lok Sabha with the hope that they could get away from the law and the protection that the Judiciary affords, as an independent system in India. The reason why we insisted that at an investigation stage itself we want Judiciary to be involved, is to ensure that there was a *prima facie* reason, of course, sufficient enough, to insist that certain evidence may be collected in another country, outside our country. If the court is not involved, and an investigating officer can directly collect evidence, then, definitely without doubt, it is possible to pre-arrange evidence to meet and suit certain plans of victimisation. We are all aware with what idea in mind, Government brought two

[Sh. P.R. Kumaramangalam]

amendments It is unusual to have both the provisions, one an investigating officer doing it directly, or going through the court. The obvious reason, as I can understand it, was that they thought 'If not this, that, but if we can manage, why not this?' It is with this background that they brought both in the original Bill—Clauses 1 and 2, so that if they could manage it, they could push it in and this they could get the powers to politically victimise

Such a drafting is unusual. Never is the same power given simultaneously to an investigating officer, and also to an investigating officer through the court.

SHRI MUFTI MOHAMMAD SAYEED
We have agreed to the provision, why do you raise it?

SHRI P. R. KUMARAMANGALAM I am only clarifying what happened in the background. We had actually in this House specifically gone on record—not only from the Opposition benches, but even many of those who form your majority.

I do not wish to take too much time, but 'Better late than never' is an old saying. It is available in every language. So, it is better late now, than never. They have come forward, agreed and accepted the fact that it is advisable to have such letters requesting for evidence to be collected abroad, to go through a court initially investigating the *prima facie*.

There is another point which, I feel, is relevant. It is stated that the letter of request shall be transmitted in such a manner as the Central Government may specify in this matter. It is in Clause 2, actually clause 3 of the earlier Bill, and Clause 2 of the newly-amended submission before this House. The humble request I would like to make to the Central Government is that while they frame rules, they should ensure that it goes through the diplomatic channels, so that the possibilities of misuse are

avoided, and there are responsible persons who handle this letter rogatory or request; and if anything goes wrong, we would be able to at least hold someone responsible. After all, this would deal with that section of crime and criminals who have a reach outside India; and such people are often influential. It is better to use channels which are known, which you could be reasonably certain of.

I support this amendment being brought by the Home Minister. We only wish he had brought it in the Lok Sabha itself, without allowing the Rajya Sabha to do it.

SHRI PIYARE LAL HANDOO (Anantnag). Seeing the amendment suggested by the hon. Home Minister, one is tempted to support the recommendation to accept the amendment brought on the Statute Book by Rajya Sabha in this Bill, though on principle this is something which should not have been done. If in the country a Police officer has some powers, why do we deny those powers to the same Police officer for collecting evidence if it is to be collected outside the borders of the country?

It is a matter which deserves very serious consideration and the consideration will have to be accorded at one or the other time. For the simple reason advanced by the honourable Home Minister that the life of the Ordinance is about to expire, I do not want to say much on the points that I wish him to consider. That is, why do I discriminate? In the matter of collecting evidence from a foreign country, if it can be collected by a Police officer in my own country. And collection of evidence during investigation is in practice the prerogative of a Police Officer, not of the court.

Mr. Banatwalla was perhaps correct and very wisely did he say that we should be wary of involving courts in the matter of collecting of evidence be it in the country or be it outside the country. Perhaps it will be correct, if I say, you will be faced with another

very important matter, that is, reciprocity. What you seek from other countries, you will have to yield the same in similar nature to the foreign country as well.

I had requested the hon. Home Minister when the Amendment Bill came last time for discussion, to kindly inform this House which are the countries and what is the kind of arrangement he has agreed to with them in the matter of collection of evidence about offenders or in respect of offences for which they may choose to have a feeling that evidence has to be collected within the boundaries known as 'India'. Unfortunately, even in the explanatory note today not a word has been said. How many countries are there? Which courts can issue these letters of request and how many countries are there in respect of the offences about which the evidence can be collected? In our country there are Police Officers who can do it by writing to their counterparts now.

I would like the hon. Home Minister, at his leisure, at his convenience after the Bill is passed, to have some kind of a re-thinking about the entire gamut of the Criminal Procedure Code. In fact, one Member of Parliament from the B.J.P. had brought to our notice so many matters which require a review in the matter of administration of criminal laws, inside the country and outside, in the context of kind of things and quality of things that are coming up on the agenda in the matter of collection of evidence etc., within or without the territory of India.

With these submissions I would pray that the recommendations made by the honourable Home Minister may be accepted.

MR. DEPUTY SPEAKER: Home Minister.

SHRI MUFTI MOHAMMAD SAYEED: I do not want to add anything new.

SHRI M. G. SEKHAR (Dharampur): Sir, what about my amendment?

MR. DEPUTY-SPEAKER: Your amendment will come up later. When it comes up you can speak.

SHRI MUFTI MOHAMMAD SAYEED: We had already had a detailed discussion in the Lok Sabha, about the objects of this Bill and I agree with Mr. P.L. Handoo. If we give the powers to the investigating officers in the country to investigate then why should we debar those powers to the officers investigating the same offence in foreign countries? I will answer the hon. members who just spoken, like Mr. Kumaramangalam.

Even on the 12th May, 1989, the same draft was approved by the Cabinet. That was only in case of giving powers to the courts, not to investigating officers. So, sufficient precaution has been taken that the letter of request which will be made by us, has to be transmitted in such manner as the Central Government may specify in this behalf. That will be transmitted. It is done almost in all cases through diplomatic channels.

Secondly, on the basis of reciprocity whatever the evidence will be collected here, on the request of a court from a foreign country, that will also be routed through the Government. Therefore there is no possibility for anything else. I therefore, request the hon. members that the substantive amendments made by the Rajya Sabha may be accepted. It has been passed and we have agreed about it already. I urge that the Bill may be passed.

MR. DEPUTY SPEAKER: The question is:

"That the following amendments made by Rajya Sabha in the Bill further to amend the Code of Criminal Procedure, 1973, be taken into consideration:—

Clause 2

1. That at pages 1 and 2, lines 10 to 18 and 1 to 9, respectively be *deleted*.

2. That at page 2, line 10, for the brackets, figures and words "(2) Notwithstanding anything contained in sub-section (1)" the figures, brackets and words "166A(1) Notwithstanding anything contained in this Code" be *substituted*.
3. That at page 2, line 24, for the brackets and figure "(3)" the brackets and figure "(2)" be *substituted*.
4. That at page 2,—
 - (i) line 26, for the brackets and figure "(4)" the brackets and figure "(3)" be *substituted*.
 - (ii) line 27, the words, brackets and figure "or sub-section (2)" be *deleted*.

MR. DEPUTY SPEAKER: Now, we shall take up the amendments made by Rajya Sabha.

Amendment No. 1 to clause 2

MR. DEPUTY SPEAKER: The question is:

"That at pages 1 and 2, lines 10 to 18 and 1 to 9, respectively be *deleted*."

The Motion was adopted

MR. DEPUTY SPEAKER: Now we shall take up amendment no. 2 made by Rajya Sabha. There is an amendment moved by Shri M. G. Sekhar to Amendment No. 2.

SHRI M. G. SEKHAR (Dharmapuri): I beg to move:

"That in Amendment No. 2 made by Rajya Sabha, for "166A(1) Notwithstanding anything contained in this code"

substitute—

"166A(1) Subject to the provisions of

this Code" (1).

Sir, when this Bill was passed by Lok Sabha, I said that this is a piece of political vendetta, a legislation brought for cheap publicity. I also cautioned this House about the dangers of providing powers to police to issue letters of request. I gave an amendment for omission of Section 166A(1). This Government did not accept my amendment. Hon. Member Shri P. Chidambaram also warned that this Section 166A(1) will not stand in Rajya Sabha. That House has omitted Section 166A(1). Today we are agreeing to their amendment. This Government, therefore, is not only weak but also lacks foresight.

Sir, I have now given an amendment to amendment no. 2 made by Rajya Sabha. Amendment No. 2 made by Rajya Sabha makes the proposed Section 166A(2), remembered as Section 166A(1), an overriding provision. Mark the words "Notwithstanding anything in this code". Why should an overriding legislative sanction be given for the Courts to exercise powers? Section 166A(2) is about exercise of powers by Courts. Do the courts in India require any such overriding provision for exercise of power? It is the executive authorities, who for fear of being questioned, require overriding powers. Courts do not require. Therefore, this amendment should not be made. Instead, the Courts must be made to function within the general provisions of the code. In a case of conflict with Section 166A(2) and any other provision in the code, the Courts are better judges as to how steer clear. For them, circumstances and natural justice are tactical tools for breaking obstructive legal provisions.

MR. DEPUTY SPEAKER: Please be brief.

SHRI M. G. SEKHAR: Therefore, I gave an amendment that Section 166A(2) should be subject to the provisions of the code. I request the Government to accept it.

Sir, there is a serious drafting mistake in

the Bill. After amendment made by Rajya Sabha, Section 166A(1) is no more in the Bill. Section 166A(1) is only in the Ordinance. If you repeal the Ordinance from the date of issue of the Ordinance, how acts done or not done under the Ordinance can be saved especially when Section 166A(1) is no more in the Bill? Therefore, consequent to Amendment No. 2 of Rajya Sabha, you cannot repeal the Ordinance from the beginning and save Section 166A(1) under the Act. Therefore, this is a serious drafting error. Clauses 1(2) and 3(2) of the Bill have to be deleted. Such an error should not be allowed. The only problem is you will have to return the Bill to Rajya Sabha which is meeting only on 30th April. It does not matter. Let the Ordinance lapse. Let there be no Act. The Courts have already issued letters of request without a law. Now the present law gives the same power to the courts which they exercise without a law. You can enact a law with retrospective effect, that is from the date of expiry of the Ordinance later.

I request the Government to reconsider what I have said.

SHRI MUFTI MOHAMMAD SAYEED: This is a very simple amendment. It simply says: "Notwithstanding anything contained in this Code be substituted. So I do not think there is anything else for me to say on this. (*Interruptions*)

MR. DEPUTY SPEAKER: Despite this Bill, the international law and the rules of diplomacy will be applicable. Now I shall put amendment No. 1 moved by Shri M. G. Sekhar to Amendment No. 2 made by Rajya Sabha, to the vote of the House.

Amendment No. 1 to Amendment No. 2 made by Rajya Sabha was put and negatived

MR. DEPUTY SPEAKER: I shall now put Amendment No. 2 to the vote of the House. The question is:

"That at page 2, line 10, for the brackets, figures and words "(2) Notwith-

standing anything contained in subsection (1)" the figures, brackets and words "166A(1) Notwithstanding anything contained in this Code" be substituted." (2)

Amendment No. 2 (2) was adopted

MR. DEPUTY SPEAKER: Now I will take up Amendment No. 3.

The question is:

"That at page 2, line 24, for the brackets and figure "(3)" the brackets and figure "(2)" be substituted." (3)

Amendment No. 3 was adopted

MR. DEPUTY SPEAKER: Now I will take up Amendment No. 4.

The question is:

"That at page 2,—

- (i) line 26, for the brackets and figure "(4)" the brackets and figure "(3)" be substituted.
- (ii) line 27, the words, brackets and figure "or subsection (2)" be deleted. (4)

Amendment No. 4 was adopted

SHRI MUFTI MOHAMMAD SAYEED: I beg to move:

"That the amendments made by Rajya Sabha be agreed to."

MR. DEPUTY SPEAKER: The question is:

"That the amendments made by Rajya Sabha be agreed to."

The motion was adopted