

# PARLIAMENT OF INDIA

## RAJYA SABHA

### DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON HOME AFFAIRS

#### ONE HUNDRED AND ELEVENTH REPORT

ON

#### CRIMINAL LAW (AMENDMENT) BILL, 2003

(PRESENTED TO RAJYA SABHA ON 02, March 2005)  
(LAID ON THE TABLE OF LOK SABHA ON 04, March 2005)

RAJYA SABHA SECRETARIAT

NEW DELHI

FEBRUARY, 2005/PHALGUN, 1926 (SAKA)

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#### COMPOSITION OF THE COMMITTEE (Constituted on 5 August 2004)

1. Smt. Sushma Swaraj - Chairperson

#### RAJYA SABHA

2. Shri V. Narayanasamy

3. Shri Rishang Keishing
4. Shri R.K. Dhawan
5. Shri S.S. Ahluwalia
6. Shri A. Vijayaraghavan
7. Shri N. Jothi
8. Shri Janeshwar Mishra
9. Shri Satish Chandra Misra
10. \*Shri Vidya Nivas Misra

### **LOK SABHA**

11. Shri L.K. Advani
12. Shri S.K. Bwiswmuthiary
13. Shri C.K. Chandrappan
14. Shri Biren Singh Engti
15. Shri Rahul Gandhi
16. Shri Tapir Gao
17. Shri T.K. Hamza
18. Shri Naveen Jindal
19. Shri Ajit Jogi
20. Shri Tek Lal Mahato
21. Prof. K.M. Kadar Mohideen
22. Shri Sachin Pilot
23. Shri Ashok Pradhan
24. Prof. M. Ramadass
25. Shri G. Karunakara Reddy
26. Shri Bajuban Riyan
27. Dr. H.T. Sangliana
28. Choudhary Bijendra Singh
29. Shri Brij Bhushan Sharan Singh
30. Shri Braja Kishore Tripathy
31. Shri Beni Prasad Verma

### **SECRETARIAT**

Shri Tapan Chatterjee, Joint Secretary

Shri N.S. Walia, Deputy Secretary

Shri Rohtas, Under Secretary

Shri Ashok Kumar Sahoo, Committee Officer

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\* Nominated w.e.f. 5<sup>th</sup> September 2004 vice Shri Manoj Bhattacharya. Expired on 14<sup>th</sup> February 2005.

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### **INTRODUCTION**

I, the Chairperson of the Department-related Parliamentary Standing Committee on Home Affairs having been authorized by the Committee to submit the Report on its behalf, do hereby present this One Hundred and Eleventh Report of the Committee on the Criminal Law (Amendment) Bill, 2003. \*

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha referred\*\* the Criminal Law (Amendment) Bill, 2003 (Annexure I), as introduced in Rajya Sabha on 22 August 2003 and pending therein, to the Committee for examination and report.

3.0 The Committee held nine sittings in all spreading over 14 hrs on the Bill. In its meeting held on the 9 September 2004, the Committee heard the presentation of the Home Secretary, Government of India on the Bill and held preliminary discussion thereon. The Committee, then, decided that a Press Communique, inviting the views/suggestions

of the individuals, organisations, experts, institutions, etc. interested in the subject matter of the Bill, be issued. Accordingly, a Press Communique dated 25 September 2004 was issued. The Committee also decided to hear the views of some of the legal luminaries, representatives of statutory bodies and eminent experts on the subject and also to request them to submit their views on the Bill.

3.1 In response to the Press Communique, 116 written memoranda were received, out of which thirty-nine memoranda (List at Annexure-III) were found to be relevant to the subject matter of the Bill.

3.2 In its sittings held on 6,7,18,19 & 20 January 2005, the Committee heard eight witnesses (Annexure-IV) on the various provisions of the Bill.

3.3 In its sitting held on 2 February 2005, the Committee held a discussion on the Bill in the light of submissions of its Members, memoranda received, evidence tendered by witnesses and responses of Ministry of Home Affairs. The Committee took up clause-by-clause consideration of the Bill on 3 February, 2005.

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\* Bill published in the Gazette of India Extraordinary, Part II, Section-2, dated 22 August, 2003.

\*\* Rajya Sabha Parliamentary Bulletin Part II No. 41563 dated 17 August, 2004 (The Bill was also referred to erstwhile Committee on Home Affairs, vide Rajya Sabha Parliamentary Bulletin Part II No. 40919 dated 18 September 2003.)

3.4 The Committee considered the draft Report in its sitting held on 18 February 2005 and adopted the same. It also decided that the evidence tendered before the Committee may be laid on the Table of both the Houses of Parliament.

4. In the course of its deliberations, the Committee has made use of the background note on the Bill received from the Ministry of Home Affairs, 142<sup>nd</sup>, 154<sup>th</sup> and 178<sup>th</sup> Reports of the Law Commission, Malimath Committee Report on Reforms of Criminal Justice System, Twenty-Eighth Report (1996) of the Committee on Home Affairs on the Criminal Law (Amendment) Bill, 1994, memoranda received from organizations/experts mentioned at Annexure-III, replies of the Ministry to the queries raised by the Members on the Bill in the meetings and comments of the Ministry (Annexure-V) on the suggestions/observations made by organizations/experts.

5. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

6. On behalf of the Committee, I would like to acknowledge with thanks the valuable contributions made by the witnesses who deposed before it and the senior officers of the Ministry of Home Affairs and Departments of Legislative and Legal Affairs which facilitated the Committee in formulating its views on the various provisions of the Bill.

**NEW DELHI;**  
***February 18, 2005.***

**SUSHMA SWARAJ**  
**Chairperson**  
***Committee on Home Affairs***

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## **REPORT**

The Criminal Law (Amendment) Bill, 2003 seeks to amend the Indian Penal Code 1860 (IPC), the Code of Criminal Procedure, 1973 (Cr.PC) and the Indian Evidence Act, 1892 to improve upon the existing criminal justice system in the country, which is besieged by huge pendency of criminal cases and inordinate delay in their disposal on

the one hand and very low rate of conviction in cases involving serious crimes on the other, by introducing the following measures :-

- (i) prevention of the evil of witnesses turning hostile in criminal cases;
- (ii) introduction of the concept of plea-bargaining; and
- (iii) compounding the offence under Section 498A, IPC (Husband or relative of husband of a woman subjecting her to cruelty).

The Bill also proposes for inclusion of more scientific experts to give evidence in cases relating to fake currency notes, in addition to officers of the Mint or India Security Press, Nasik.

2.0 The IPC is proposed to be amended by way of insertion of a new Section 195A after Section 195 for protection of witness against threat and inducement by prescribing punishment with imprisonment which may extend to seven years or with fine or both (Clause 2). It is also proposed to amend Sections 161, 162 and 344 and First Schedule and to insert new Sections 164A and 344A in Cr.PC to prevent the evil of witness turning hostile (clauses 3, 4, 5, 11, 12 and 13). The proposed amendments in Cr.PC and the consequential amendments to Section 154 of Indian Evidence Act, 1872 (Clause 14) *inter alia* provide for the following measures to achieve the aforesaid objective:-

- (i) statement of witness to be recorded by Police in the case where punishment is less than seven years, at the very inception of investigation if reduced to writing, is to be signed, acknowledged and quickly transmitted to the Magistrate;
- (ii) recording of evidence of material witness by Magistrate in all offences punishable with death or imprisonment for seven years or more during investigation; and
- (iii) summary trial for perjury and enhancement of punishment therefor.

The measures delineated at sl. Nos. (i) and (ii) are covered by clauses 3, 4 and 5 and the measure mentioned at sl. No. (iii) is covered by clauses 11 and 12 of the Bill.

2.1 A new Chapter (Chapter XXI-A) is proposed to be inserted in Cr.PC for making the concept of plea bargaining as an essential component of criminal justice system in order to liquidate mounting arrears of criminal cases in various Courts and alleviate the plights of undertrials and easing congestions in jails (Clause-7).

2.2 Section 320 of Cr.PC is proposed to be amended for making punishment to the husband or the relatives of husband of a woman compoundable in case of cruelty meted out to her under Section 498A of IPC (Clause -9).

2.3 Section 292 of Cr.PC is proposed to be amended to enlarge the list of Offices whose expert opinion on counterfeit currency can be considered as evidence. The Officers of Bank Note Press, Dewas (BNP), National Institute of Criminology and Forensic Science Laboratories (NICFS), Kolkata and Hyderabad, in addition to India Security Press, Nasik and Government of India's Mints would be considered for giving expert opinion under Cr. PC. (Clause 8).

2.4 Amendment to First Schedule to Cr.PC as envisaged under clause 13 is consequential to amendment to IPC under clause 2 of the Bill.

3.0 The three Acts which are proposed to be amended are considered to be the bulwark of criminal justice system of the country. The proposed amendments are based on the recommendations contained in various Reports (142<sup>nd</sup>, 154<sup>th</sup> and 178<sup>th</sup> Reports) of Law Commission and Committee on Reforms of Criminal Justice System (March 2003) headed by Dr. Justice V.S. Malimath, Former Chief Justice of Karnataka and Kerala High Courts.

4.0 As already stated, the Bill focuses upon following key issues of criminal justice system:

- (i) Witnesses turning hostile;
- (ii) Plea bargaining;
- (iii) Compounding the offence under section 498A IPC (Husband or relative of husband of a woman subjecting her to cruelty); and
- (iv) Evidence of scientific experts in cases relating to fake currency notes.

## **WITNESS TURNING HOSTILE**

**4.1.0 The criminal justice system is evidence based. False and fabricated evidence in the court leads to poor rate of conviction in criminal cases resulting in large scale acquittal. The Committee is made to understand that conviction rate in criminal cases is as low as ten percent due to perjury. Perjury is committed by the witness on his/her own volition or under threat/ allurement/inducement of third party.**

**4.1.1 A witness may give false statement at the initial stage of investigation or may make false statement at subsequent hearing under threat/inducement. Punishment exists for the witness who makes false statement, under Sections 193 to 196 IPC, but punishment for the person who threatens/induces the witness is not provided in the IPC. Punishment to the witness making false statement is imprisonment of seven years or more with/without fine**

4.1.2 The Bill proposes to introduce imprisonment for a term up to seven years with fine or both for the person who threatens/induces the witness to make false evidence (proposed Section 195A).

### **(i) Summary Trial for Perjury**

4.2.0 The Ministry of Home Affairs has stated that the existing general provisions under section 344 of Cr.PC prescribing summary trial for perjury have been found to be grossly inadequate. Thus, to check the witness turning hostile either out of his own volition/consideration or inducement/threat, summary procedure for trial of such witness has been provided and the maximum punishment for imprisonment has been extended from the existing three months to not less than three months but which may extend to two years with fine, under proposed Section 344A.

4.2.1 The Malimath Committee has also recommended the provision.

4.3.0 To check the witness turning hostile, host of measures have been proposed through the amendments to the Cr.PC.

- (ii) Forwarding of statement made to Police Officer to the Magistrate

4.3.1 Under Section 161 (3) of Cr.PC a police officer can reduce into writing summary of statement made to him/her during the course of investigation which has no evidentiary value<sup>[1]</sup> in the court of law and which is also not required to be signed by the witness. However, under Section 164, a person can make statement before the Magistrate for any offence which has evidentiary value. Thus, the existing procedure leaves scope for the witness to change his/her statement made to the police officer in the court of law.

4.3.2 As per the amendments proposed to Sections 161, 162 of Cr.PC and insertion of Section 164A into the Code, the following provisions would be put in place in the criminal justice system:-

- (a) Police Officer has to acknowledge statement made to him/her by the witness and signed by the latter for the offence for which punishment is less than seven years and quickly transmit the same to the Magistrate; and

- (b) recording of evidence of material witnesses by Magistrate for all offences punishable with death or imprisonment for seven years or more during investigation.

4.3.3 It is pertinent to note that the signed statement made to police officer would not have evidential value in the court of law which may help check perjury. Therefore, punishment for perjury is intended to be enhanced under proposed Section 344A of Cr.PC. Further, for cognizable offence punishable with seven years imprisonment, the Magistrates are empowered to record statement of the material witnesses instead of police officer.

4.3.4 These amendments to the Cr.PC are suggested on the recommendations of the Law Commission as contained in their 154<sup>th</sup> and 178<sup>th</sup> Reports. The Law Commission (under the Chairmanship of Justice K. Jayachandra Reddy) had recommended in its 154<sup>th</sup> Report<sup>[2]</sup> reference of all cases to the Magistrate which was further mellowed down by the Commission (under the Chairmanship of Justice B.P. Jeevan Reddy) in their subsequent Report (178<sup>th</sup> Report<sup>[3]</sup>) taking into account the physical and economic difficulties in appointing more Magistrates, by confining the procedure to cases where punishment was more than ten years. However, the Bill has proposed a mid course between two recommendations by confining offences punishable to seven years.

## PLEA BARGAINING

4.4.0 “Plea Bargaining” or “mutually satisfactory disposition” in criminal cases in its general sense refers to pre-trial negotiations between the defendant (accused) through his/her Counsel and the prosecution (complainant), during which the accused agrees to plead guilty in exchange for certain concessions by the prosecutor. Thus, plea-bargaining can be described as an agreement by an accused to plead guilty in return for the promise of some benefit.

4.4.1 The concept is in vogue in several western countries for a long period and in the United States of America for a century, where over ninety five percent<sup>[4]</sup> of criminal cases never go to trial because of the bargaining struck between the prosecution and the accused’s attorney well before the trial commences. So much so in American Criminal Justice, plea-bargaining is the norm rather than an exception. This helps in getting rid of weak prosecution cases and lesser number of trials, thus making available more time to the courts for other cases.

4.4.2 The Law Commission (under the Chairmanship of Justice M.P. Thakkar) in its 142 Report<sup>[5]</sup>, considered the concept of plea-bargaining to overcome the problem of mounting arrears of criminal cases<sup>[6]</sup>. It adduced following five reasons as expressed by a large section of public opinion in support of this provision:-

- (i) Most people arrested, are guilty anyway; why bother with a trial;
- (ii) Why waste public money;
- (iii) “Plea bargaining” is a compromise; both sides give a little and gain a little;
- (iv) Trials consume time and cost; and
- (v) It is best (for both sides) to avail it since on the one hand there is always a chance that even if the accused is guilty and the evidence is adequate there is a chance of a slip up. On the other, the accused saves time and money and earns a concession in the form of a less serious offence or sentence.

4.4.3 After considering the previous report, the Law Commission in its 154<sup>th</sup> Report<sup>[7]</sup> was of the strong view that plea-bargaining can be made an essential component of administration of Criminal Justice.

4.4.4 The previous Committee of Home Affairs had also discussed the issue of plea-bargaining in its Eighty fifth Report<sup>[8]</sup>.

4.4.5 The Committee on Reforms of Criminal Justice System<sup>[9]</sup> (March 2003) had also recommended introduction of plea-bargaining in India

4.4.6 It is pertinent to note that the proposed plea-bargaining is not a replica of the system prevalent in USA. Under the scheme available in USA, the settlement is out of court whereas in India it is proposed to involve the court as adjudicator between the accused and the prosecutor by providing time and opportunity to them to decide quantum of concession mutually and fix a date for hearing thereafter. Further, the Court has to judge whether the application for plea-bargaining has been made voluntarily or not. The distinction between compounding of offence and plea-bargaining of offence is that conviction is exempted in the former situation and lesser conviction/punishment is awarded in the latter situation.

4.4.7 It would not be available for habitual offenders, serious socio-economic offences, offences against women and children and other offences punishable with imprisonment of seven years or more.

### **COMPOUNDING OF OFFENCE IN SECTION 498A OF IPC**

4.5 Section 498A is intended to protect the women from cruelty of husband or his relative. It has been widely reported that this provision has been misused and is also harsh as it is non-bailable and non-compoundable. It is desirable to provide a chance to the estranged spouse to come together and therefore it is proposed to make the offence under Section 498A IPC, a compoundable one by inserting this Section in the Table under sub section (2) of Section 320 of Cr.PC, wherein it can be compounded with permission of the Court. The provision has been recommended by the Law Commission in its 154<sup>th</sup> Report<sup>[10]</sup> and Malimath Committee Report.<sup>[11]</sup>

### **EVIDENCE OF SCIENTIFIC EXPERTS IN CASES RELATING TO FAKE CURRENCY NOTES.**

4.6 Presently only officers of the Mint or India Security Press, Nasik can give opinion on fake currency notes. Evidence from other scientific experts suffers from legal infirmity as they are not included in Section 292 of Cr. PC. The provision in the Bill is based on the recommendations of Ministry of Finance.

### **HOME SECRETARY'S DEPOSITION BEFORE COMMITTEE**

5.0 The Home Secretary in his deposition before the Committee *inter alia* mentioned that prosecution of cases fall through because of false evidence given by the witness either out of fear or allurement. The witness often turns hostile, where the accused person is influential or a member of criminal gang. The proposed legislation has been brought in to check the propensity amongst influential people/criminals/gangsters to influence the witness to change his statement.

#### **Views of Members of the Committee**

5.1 A section of Members in the Committee wanted to know from the Home Secretary the methods used to arrive at the conclusion that the witness has been influenced. In that context, they mentioned that the witness can be misused against influential people to settle political/caste rivalry and pointed out that no safeguard has available in the Bill to protect such misuse. Those Members instead emphasized on the enactment of a separate law on protection of witnesses and better facilities to the witnesses in the court of law.

5.2.0 *Amendment of Section 162 and insertion of Section 164A in Cr.PC was opposed by a majority of Members due to the following reasons: -*

- (i) *Such power may be misused by Investigating Officer (I.O.) by forcing the witness to sign the statement without knowing fully the implication of it. Furthermore, police officer may force the witness to sign on blank paper which can be manipulated by the former later on;*

- (ii) *In some cases the material witness may be the accused and in that circumstance it would violate provisions of Article 20 (3) of Constitution (self-incrimination);*
- (iii) *I.O. has discretion to decide who would be material witness in a criminal case, where punishment is more than seven years. The professional/fictitious witnesses available in police station can be turned as material witness by the police, which may increase corruption;*
- (iv) *Since the power available with the police officers is already being misused, it was apprehended that enhancement of power of the police may lead to more misuse and resultant corruption; and*
- (v) *Since the Magistrates are already overburdened and by making the recording of statement mandatory will increase their burden.*

5.2.1. A Member supported the proposed amendment to Section 162 and desired that statement signed by the police officer should be forwarded within twenty-four hours & forty eight hours in urban & rural areas, respectively, to the Magistrate.

5.3.0 On the issue of plea-bargaining, a section of Members felt that the provision was absolutely unnecessary as there were other provisions (Section 320 coupled with Sections 357, 358 and 359) in Cr.PC under which compromise and compensation could be made/given in criminal cases. Furthermore, it would give enormous power to public prosecutor, who is considered to be the agent of the state, which can be misused by him and may lead to corruption.

5.3.1 It was pointed out that if the quantum of concession was mutually accepted by both the parties, and was not acceptable to the Magistrate, trials would commence. In that situation, the extra judicial confession made before the public prosecutor can be used against the accused which may prejudice the delivery of justice.

5.3.2 Some Members welcomed the concept as it appeared to be advantageous and could be experimented after removing technical difficulties.

5.4 Under proposed Section 498A, the offence against the relatives of husband may also be made compoundable.

5.5 As to the proposed amendment to the Indian Evidence Act, 1872 for providing opportunities to the parties to examine, re-examination and cross-examine the witness who turn hostile, some Members felt it would further delay the disposal of the case. Furthermore, the provision was unnecessary as provision for re-examination of witnesses/ hostile witnesses by the prosecutor was available after cross-examination by the Chief Examiner.

### **Views of Witnesses**

6.0 Witnesses who deposed before the Committee have expressed the following major viewpoints/suggestions on the issue of witness turning hostile:-

- (i) *Offences under proposed Section 195A have been made cognizable as the Magistrate would cause filing of complaint with police straightaway. In that context, it was suggested that the complaint against threat/inducement to the witness for giving false evidence can be lodged with police by the witness himself or by any third party who has the knowledge of such act instead of the Magistrate lodging complaint with the police. It was apprehended that the fate of the proposed Section 195A may be the same as the case with Chapter 11 (Sections 191-229) of IPC, which was rarely used in the administration of justice because of increasing overburden of Magistrate. Further, making 195A cognizable may result in incongruity in criminal law since giving false evidence under Sections 193 to 195 is a non cognizable offence;*

- (ii) Attempt to threat/inducement to make false statement may be included in the proposed Section 195A;
- (iii) Punishment may be provided to the person who facilitates threat/inducement to the witness for changing statement;
- (iv) The Bill does not take care of those persons who threaten/induce the witness 'not to give evidence'. Therefore, provision may be made in the clause to include such situation;
- (v) Punishment for making false statement in the Court of Law is equal for both the witness as well as the offender. Therefore, the punishment for the person who threatens/induces the witness should also be equal with the offender under proposed Section 195A;
- (vi) *If an innocent person is convicted and executed in consequence of false evidence given by the witness, the person who threatens or induces the witness to give such false evidence should be punished either with death or with some stringent punishment;*
- (vii) Provisions under proposed Section 195A are bodily lifted from Section 503 of IPC without the element of *mens rea* which should be reflected in the proposed Section;
- (viii) Sub clause (b) of clause 2 is redundant, as those provisions are covered by Sections 107 and 109 of IPC;
- (ix) Enactment of law regarding witness protection was needed under which the witness can approach the authorities for his protection, which would help fulfil the objectives behind proposed Section 195A;
- (x) As to signing of statement by the witness before the police officer, it is very difficult to understand which part of the statement is voluntary. Thus, it was suggested that the witness may not be required to sign his statement before police as there would be enough scope for convicting him for perjury;
- (xi) A person in police custody has the fear of arrest and element of coercion which may not allow him to understand the implication of the statement made and signed by him. The accused can be one amongst the material witnesses. In that case, the requirement of signature on the statement made to the police officer may lead to self-incrimination of the accused which is unconstitutional {(Article 20(3)};
- (xii) *While recording the statement of witness, the witness may be allowed to sign the statement in the presence of his counsel;*
- (xiii) *If the witness is not satisfied with the recording of statement by the sub-Inspector, he may be given a chance to approach the Inspector/SHO for review of the same;*
- (xiv) If the witness feels that the statement has been got signed under duress, he can approach the Magistrate within specified time frame for instituting an inquiry;
- (xv) Recording of statement by the Police in the case of serious offences, sometimes also requires secrecy but by taking everybody to the Magistrate, secrecy of investigation will be lost;
- (xvi) Recording of statement under Section 164 Cr.PC by an independent body or agency consisting of retired Judges, high ranking police officials will have more probative value than recording of statements of witnesses by Magistrate and it will certainly save the time of the Magistrate;
- (xvii) The Magistrate may be required to remind the witness about oath to speak truth which would act as a deterrent to him which is not within the ambit of the Bill;
- (xviii) *Maximum punishment under proposed Section 344A of Cr.PC has been prescribed as seven years; there*

*should be mention of some minimum punishment (three months);*

- (xix) Apart from obtaining the signature of the witnesses on the statement, signature of two independent witnesses authenticating the recording of statement should also be taken, which would add weight to the value of the statement; and
- (xx) There is over emphasis on confessional statement and under emphasis on various aspects of investigation. Systematic changes in police administration and investigation procedure are the need of the hour since the entire foundation of criminal justice system is based on investigation. It was suggested to develop forensic evidence in a big way for improvement of investigation.

6.1 Following important viewpoints/suggestions on the provisions of “Plea bargaining” were expressed by the witnesses.

- (i) Welcoming the measure, changes were suggested for out of court settlement, which would save the time of the Court. It was suggested that the public prosecutor, who is considered to be the agent of the State, may be empowered to deal with the counsel of the accused directly without the intervention of the Court;
- (ii) Considering the fact that most of the victims being illiterate may not understand the process of plea-bargaining and may go for plea-bargaining under pressure for which suitable safeguards may be provided in the Bill; and
- (iii) Plea bargaining may not be introduced without putting in place the independent Directorate of Prosecution as a prerequisite, as recommended by the Supreme Court in Vineet Narian’s case.

6.2 On the issue of compounding the offence under Section 498A IPC, following are the major views of the witnesses:-

- (i) Most of the cases instituted under Section 498A are done in conjunction with Section 405 of IPC. The latter Section makes the offence compoundable upto Rs. 250/- and Section 498A is proposed to be compoundable. Therefore, reconciliation between these two Sections was urged;
- (ii) Since offences against women are not covered under plea-bargaining, making Section 498A compoundable may contradict the provisions of plea-bargaining. Therefore, compounding offence under Section 498A was opposed; and
- (iii) Representatives of the National Commission for Women (NCW) headed by its Chairperson were of the view that three Sections viz 304B, 376 and 498A are provided in IPC specifically for the women. Dilution of Section 498A would defeat the purpose behind its incorporation. Thus, they vehemently opposed the compoundability of Section 498A.

6.3.0 Since science of identification of handwriting is imperfect<sup>[12]</sup>, the right of cross examination of Examiner of Questioned Documents by the accused should not be taken away. Therefore, inclusion of Examiners of Questioned Documents under Section 292 of Cr.PC was opposed by a witness.

*6.3.1 In the memorandum received from office of the Government Examiner of Questioned Documents, Directorate of Forensic Sciences, Government of India, Shimla, it was suggested that the Officers (Dy. Govt. Examiner and Asst. Govt. Examiner) of Questioned Documents may be included alongwith Government Examiner under proposed Section 293 of Cr.PC*

6.4 Certain witnesses and some Members of the Committee termed the Bill as half-baked, wholly unsatisfactory and unworkable. They were of the view that the proposed Bill touches upon only the fringe areas of criminal justice system.

They were also of the view that piecemeal reforms have been sought to be introduced in the criminal justice system in the face of a large number of recommendations made by several Commissions and Committees, which have not been implemented.

### **Responses of Ministry of Home Affairs**

7.0 The Ministry of Home Affairs has stated that the view expressed at sl. No (xviii) mentioned in para 6.0 may be left to the discretion of the Magistrate

7.1 On the issue of witness protection, Home Secretary informed the Committee that the Government is fully aware of the problem and the Law Commission is examining the issue to prepare a witness protection programme.

7.2 The Ministry has agreed to redraft the proposed Section 195A in the light of suggestion mentioned at Sl. No. (vi) of para 6.0

7.3 It was agreed by the Ministry to bring consequential amendment to proposed Section 195A in the light of suggestion enlisted at Sl. No. (i) of para 6.0

7.4 The Ministry agreed to the suggestion mentioned at Sl. No. (xiii) of para 6.0

7.5 In response to suggestion mentioned at Sl. No. (xii) of para 6.0, the Ministry has stated that witness may not have his counsel but giving witness in presence of an advocate or provision of legal aid could be considered

7.6 The response of the Ministry to the suggestions mentioned at para. 6.3.1 is that such details would be taken care of under subordinate legislation

### **Observations/Recommendations of the Committee**

8.0 Under the existing provisions of the IPC punishment is provided for the person giving false evidence. The proposed Section 195A is a step in the direction of giving punishment to the person who threatens/induces the witness to give false statement. The Committee observes that trial could not proceed without making investigation into the aspect of inducement when it comes to the knowledge of the Court. Therefore, the Committee is of the unanimous view that the investigation in such case should be completed within a time frame as to expedite the trial.

8.1 *The Committee recommends that if an innocent person gets convicted because of false evidence tendered under threat/inducement by anyone then the same punishment which is awarded to the convicted person should be awarded to the person who gives false evidence as also to the person who threatens/induces to do it.*

8.2 *Regarding amendment of Section 162 the Committee is of the view that the evidential value of the recorded statement before police officer does not change even after getting it signed by the witness. In some situations, it may violate the Fundamental Right of a person enshrined under Article 20 (3) as some of the potential witnesses can be accused also. The Committee apprehends that the provision can be misused by the police thereby increase corruption. Hence, the Committee entirely opposes the provision as it is not a workable proposition.*

8.3 The Committee while keeping in mind the views of the witnesses on plea bargaining feel that as a pragmatic approach to management of crime and streamlining of the criminal justice administration under a system burdened with three crore pending cases, some dispensations which are fair, just and reasonable can be considered. However, it is of the strong view that this provision of plea bargaining should be introduced only after putting in place the Directorate of Prosecution as envisaged in the Code of Criminal Procedure (Amendment) Bill, 1994 and endorsed by the Committee. It feels that there is no rationale for introducing plea bargaining in the absence of the institution of the independent Directorate of Prosecution and empowering the courts to settle the cases through 'plea bargaining' in the present set up.

8.4 To the query of the Committee whether the compromise between husband and wife under proposed Section 498A, would make the punishment compoundable for the relatives of husband, the Home Secretary clarified that the

intention of the legislation is to compound the punishment for relatives including the husband. The Committee, however, wanted express provision in the proposed Section and recommends necessary amendment in Section 320 Cr. PC.

8.5.0 It is pertinent here to mention that the Code of Criminal Procedure (Amendment) Bill, 1994 having forty nine clauses was introduced in the Rajya Sabha on 9 May 1994 which was referred to the Standing Committee on Home Affairs on 13 May 1994.

8.5.1 The Bill was introduced with a view to introducing some reforms in criminal justice system. The focus of the Bill was on the following major issues:-

- (i) prohibition of arrest of women after sunset and before sunrise;
- (ii) time bound *post mortem* examination in the case of death;
- (iii) making provisions of bail/anticipatory bail more stringent; and
- (iv) establishment of Directorate of Prosecution.

8.5.2 The Committee in its Twenty Eighth Report presented to Parliament on 28 February 1996, had suggested amendments to seventeen clauses of the Bill. The Bill is still pending for consideration of the House.

8.5.3 It has come to the notice of the Committee that the recommendations of the Committee was considered by the Cabinet. Thereafter, Legislative Department drafted a list of official amendments. It has further come to the knowledge of the Committee that due to change of Government, fresh approval is being taken to implement the recommendations of the Committee.

8.5.4 To the query of the Committee whether it would be possible for the Government to bring in a composite Bill by clubbing provisions of the 1994 Bill with the present Bill, the Home Secretary replied in the affirmative and stated that such a Bill would be introduced during the Budget Session itself or in the Monsoon Session of Parliament this year.

9.0 The Committee then undertook clause-by-clause consideration of the Bill in the presence of Home Secretary, Secretary, Legislative Department and representatives of Department of Legal Affairs.

### *Clause 2*

9.1.0 The clause seeks to insert new Section 195A after Section 195 of the Indian Penal Code, 1860 to provide punishment for any person who threatens or induces witnesses to give false evidence in court.

9.1.1 The Committee recommends insertion of appropriate provision in the clause in the light of its recommendations made in para 8.1.

9.1.2 The Committee is of the view that Section 195 A (b) falls clearly within the ambit and scope of Section 109 of the Indian Penal Code and that abetment is a separate and distinct offence. Therefore, there is no need for Section 195A (b) in the proposed amendment.

9.1.3 *Mens rea* is an essential element for constituting offences under Indian Penal Code, its absence from proposed Section 195A may lead to some unintentional/bonafide acts being covered under it. The Committee, therefore, recommends that *mens rea* should be appropriately incorporated in the said Section.

9.1.4 Subject to the above, the clause is adopted.

### *Clause 3*

9.2.0 The clause seeks to insert provisos in sub-section (3) of Section 161 of Code of Criminal Procedure, 1973 which states that any person who is required to be forwarded to the nearest Magistrate for recording his statement under sub-section (1) of Section 164 A, his statement shall not be reduced in writing under sub-section (3) of Section 161.

9.2.1 The Committee recommends deletion of the clause in view of its recommendations for omission of clause 5.

#### ***Clause 4***

9.3.0 The clause seeks to substitute sub-section (1) of Section 162 of Code of Criminal Procedure making the signature of the person mandatory, if his statement is reduced into writing during the investigation by Police and the statement as recorded shall be given to the person who made that statement, under acknowledgement.

9.3.1 The Committee recommends deletion of this clause in view of its observation narrated at para 8.2 of the Report.

#### ***Clause 5***

9.4.0 The clause seeks to insert a new Section 164A after Section 164 of the Code of Criminal Procedure, 1973 to make it mandatory for recording evidence of material witnesses by Magistrate in an offence punishable with death or imprisonment for seven years.

9.4.1 The Committee recommends deletion of the clause in view of the view points narrated at para 5.2.0 of the Report.

#### ***Clause 6***

9.5.0 The clause seeks to amend sub-section (1) of Section 195 of the Code of Criminal Procedure to widen the condition requisite for initiation of proceedings.

9.5.1 The clause is adopted without any change.

#### ***Clause 7***

9.6.0 The clause seeks to introduce the concept of “Plea Bargaining” by inserting Chapter XXIA having Sections 265A-K, after chapter XXI of the Code of Criminal Procedure.

9.6.1 The Committee while endorsing the introduction of this provision in the Code of Criminal Procedure is of the view that constitution of the Directorate of Prosecution is a *sine qua non* for the introduction of plea bargaining, which is envisaged in the Criminal Procedure Code (Amendment) Bill, 1994 which was endorsed by the then Committee. The Committee recommends that this concept could only be introduced in the criminal justice system once the Directorate of Prosecution is put in place.

9.6.2 Subject to the above, the clause is adopted.

#### ***Clause 8***

9.7.0 The clause seeks to include more scientific experts to give evidence in cases relating to fake currency notes.

9.7.1 The Committee recommends that in sub-clause (a) & (b) the words “forensic documents” should be replaced with the words “forensic department”.

9.7.2 The clause is adopted as amended.

#### ***Clause 9***

9.8.0 This clause seeks to provide an opportunity for reconciliation between the husband and the wife by making Section 498A IPC compoundable.

9.8.1 The Committee is of the view that express provisions may be made in Section 320 of Cr.PC to reflect the

availability of compounding of offence to the relatives of the husband.

**9.8.2 Subject to the above, the clause is adopted.**

*Clause 10*

9.9.0 This clause seeks to substitute clause (b) of sub-section (3) of Section 340 of Code of Criminal Procedure to enhance the power of court to authorize an officer on its behalf to sign a complaint.

9.9.1 The clause is adopted without any change.

*Clause 11*

9.10.0 The clause seeks to bring consequential amendments to Section 344 Cr. PC.

9.10.1 The Committee recommends deletion of the clause in view of its recommendation for omission of clause 12.

*Clause 12*

9.11.0 The clause seeks to provide enhanced and quick punishment for perjury.

9.11.1 Subject to the recommendations of the Committee made in clause 5, the Committee recommends omission of this clause.

*Clause 13*

9.12.0 The clause seeks to insert new Section 195A Indian Penal Code in the First Schedule of the Code of Criminal Procedure for classification of offences.

9.12.1 Subject to its observations made in this regard on clause 2, the clause is adopted.

*Clause 14*

9.13.0 The clause seeks to provide opportunities to the parties to examine/re-examine/cross-examine the witness who turns hostile.

9.13.1 The clause is adopted without any change.

*Clause 1*

10.0 Clause 1, enacting Formula and Title are adopted with some changes which are of consequential or drafting nature, namely, "2003" and 'Fifty-fourth" to be substituted by "2005" and "Fifty-sixth", respectively.

11.0 The Committee has suggested amendments to the Bill in the light of the deliberations held thereon. The Committee urges the Government to give due consideration to the observations made and amendments proposed by it. The Committee is very keen for revamping of criminal justice system and feels that Government should attempt to bring forward a comprehensive Bill particularly in the light of reports of the various Commissions, Committees and studies on criminal justice system. The Committee is of the view that if that takes long time, then at least the Code of Criminal Procedure (Amendment) Bill, 1994 and the present Bill may be merged and a composite Bill be introduced in the Parliament rather than introducing piecemeal legislation separately.

11.1 Deliberations took place in the Committee on the urgent need for introducing 'Police Reforms' in the light of the widespread allegations of corruption, inaction and politicization of the police force. The Committee urges the Government for immediate initiation of measures for reforming the police system in the country.

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• To be appended at printing stage

- [1] Statement made before police is admissible in the Court of Law in United Kingdom. In India it is admissible in exceptional cases (POTA, TADA & Custom cases).
- [2] On Code of Criminal Procedure (1996), Chapter-9, p.124
- [3] On Recommendations for Amending various Enactments both Civil and Criminal (2001) p.21 of Annexure { The Law Reform (Miscellaneous Provisions Amendment) Bill, 2002 }
- [4] Menon, Prof. (Dr.) N.R. Madhava, 'Plea bargaining', The Hindu (New Delhi), dated 24.01.2004
- [5] on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any bargaining ( 1991).
- [6] As on 1 August 2003, whopping pendency of 1,56,70,788 criminal cases at various Courts
- [7] On the Code of Criminal Procedure, 1973 ( 1996), Chapter -13, p.p. 155-66
- [8] On Law's delays: Arrears in Courts (2001) p. 2
- [9] p.289
- [10] p. 146
- [11] p.291
- [12] Murari Lal Vs State of M.P, AIR, 1980, SC, 531