

MR. DEPUTY-SPEAKER : The result* of the division is : Ayes 15; Noes 72.

The motion is not carried by the requisite majority

The motion was negatived.

15-33 hrs.

ABOLITION OF CAPITAL PUNISHMENT BILL

MR. DEPUTY -SPEAKER : We take up the next Bill by Shri N. K. Sanghi to provide for the abolition of capital punishment.

SHRI N. K. SANGHI (Jalore) : Sir I move :

“That the Bill to provide for the abolition of capital punishment be taken into consideration.”

Mr. Deputy-Speaker, Sir, I am bringing forward this Bill not out of any sentiment, religious or merciful attitude. But, I think, today, in the present context of our society, this is a vital matter agitating the minds of the people, and in India also we should go ahead and abolish capital punishment.

15-34 hrs.

[SHRI K.N. TIWARI *in the Chair*]

This matter has been agitating the minds of sociologists, psychologists, criminologists, judges, lawyers and politicians for more than 200 years. Many countries in Europe and other continents have already abolished capital punishment. This matter has also been discussed in his country for a very long time now. If I recall, in India also, this matter came up for discussion in the old Legislative Assembly in 1931 and that was raised by Shri Gaya Prasad Singh. There was the Rohtas case in Bihar prior to this matter was brought in the old Legislative Assembly. Five persons were sent to gallows and, later on, it was found out that with the connivance of the doctor and the sub-inspector of Police,

these persons had been committed to the crime and sent to the gallows for no fault of theirs. This had created a great heart-burning and a feeling of remorse throughout the country. Shri Gaya Prasad Singh was prompted to bring this Bill for the abolition of capital punishment.

Thereafter also, both in the Rajya Sabha and in the Lok Sabha, this matter came up four times. In 1958, Shri Prithvi Raj Kapur moved a Resolution in the Rajya Sabha which was withdrawn after a debate. Another Resolution was moved by Shrimati Savitri Nigam in 1961 in the Rajya Sabha. That was negatived after a discussion. In 1962, Shri Raghu Nath Singh moved a Resolution in the Lok Sabha and a lot of discussion took place and, on an amendment moved by Shri Harish Chandra Mathur this matter was referred to the Law Commission.

Then, we had the Report of the Law Commission in 1967. Today, I would like to start this matter from where the Law Commission has ended . . .

SHRI SHANKERRAO SAVANT (Kolaba) : Sir, I rise on a point of order. It is not only that the Law Commission has considered it, but the matter is before the Joint Committee on the Indian Penal Code Bill. When they are considering this matter, it is not necessary to discuss it here.

Mr. CHAIRMAN : There is no point of order.

SHRI N. K. SANGHI : This is not a matter of law. I am only referring to the Report of the Law Commission. They have made out various salient points. I would like to quote what the Law Commission says. It says :

“It is difficult to rule out the validity of, or the strength behind, many of the arguments for abolition. Nor

*The following Members also recorded their votes :

Ayes : Sarvashri P. G. Mavalankar and Mahadeepak Singh Shukla ;

Noes : Shri Ram Chandra Vikal.

does the Commission treat lightly the argument based on the irrevocability of the sentence of death, the need for a modern approach, the severity of capital punishment, and the strong feeling shown by certain sections of public opinion in stressing deeper questions of human values."

But finally they say :

"Having regard however to the conditions in India, to the variety of the social-up-bringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital 'punishment.'"

This is the vital point that they have made in their Report.

What have the hon. judges and lawyers said in the Law Commission's Report ? The very idea that the capital punishment should not be abolished is based entirely on the social disparity. Our society is divided into two classes, well-to-do and the poor, the down-trodden, people. The Commission thought that possibly the poor, the down trodden, people are more amenable to crimes. Would it be right to continue this punishment because a large majority of people are down-trodden ? Is that the reason that capital punishment should not be abolished ? Then, they say that there is the vastness of our country ; that we are a large country. There are small countries who have done away with capital punishment. If it is good for a small country, it can also be good for a large country.

Further, they say that for maintenance of law and order, the capital punishment should not be abolished. I feel, all these arguments do not have any validity. I would say, the high dignitaries who have been looking into this matter have possibly

been looking into this matter with the high-brow and feudalistic outlook, not from the common man's point of view.

What is the history of it ? The capital punishment is a very old idea. More than 2000 years ago, there was a theory of "Eye for eye; blood for blood". But today the capital punishment is an anachronism. We have changed our values; we have changed our thinking. Now the demand of the time is that the capital punishment should be abolished.

Again, they say that this is to get the revenge; this is for the retribution of society. Whose retribution are we talking of ? Today, to kill somebody or to murder somebody is a heinous crime. I think, to punish that man by hanging or by sending him to the gallows is more heinous. Does the society have that right ? Even if we think that there has got to be some retribution, what happens is that our judiciary is reluctant to award this punishment. Even then, there have been cases where people have been sent to the gallows without the crime being committed.

I would like to draw your attention to the Chessman case in California where the person was sent to the gallows after 12 years of legal battle when he had not killed anybody.

We have such cases in India also. I would like to draw attention to the fact that if, after somebody has been sent to the gallows something is found out or some doubts are created in the minds of the people that he has been wrongly sent to the gallows, I am sure the society in India would like to hush up the matter rather than raising it again because the man has already been killed and does not exist in the society.

Many people have advocated capital punishment because it serves as a deterrent, such a punishment would create fear in the minds of the people, would debar people from committing such crimes. Here I would like to quote what the *Encyclopaedia Britannica* has given about abolition of

capital punishment. As you know, *Encyclopaedia Britannica* is a volume which has all the knowledge and background. This is what they say :

"Regarding deterrence, it is well established by statistical studies that (1) when comparisons are made between contiguous states with similar populations and similar social, economic and political conditions—some of these states lacking and other retaining capital punishment—homicide rates are the same and follow a same trend over a long period of time regardless of the use or non-use of capital punishment, (2) the abolition, introduction or reintroduction of this penalty is not accompanied by the effect on homicide rates that is postulated by the advocates of capital punishment; (3) even in communities where the deterrent effect should be great because the offender and the victim lived there and trial and execution were well publicised, homicide rates are not affected by the execution (4) the rate of policemen killed by criminals is not higher in abolition states than in comparable death penalty states. Capital punishment, then, does not appear to have a influence on the amount or trend of the kind of crime it is supposed to deter people from committing."

This is the opinion of learned people, as has been given in *Encyclopaedia Britannica*. I think, the theory of deterrence and retribution has fallen to the ground.

In India, the people are of non-violent nature. Ours is a land of Budha, Ashoka and Mahatma Gandhi. Therefore, we have a particular thinking on this particular subject. We have always taken a non-violent attitude - *ahimsa* ; we have followed that path. It would not be out of place to mention here that Asia has produced almost all the religious leaders of the world - Jesus Christ, Budha, Mahavira. We belong to that continent. We must go a step ahead in this matter. (*Interruption*)

Capital punishment has been abolished in many countries. I have the statistics with me. In Luxemburg it was abolished in 1822 ; in Belgium in 1853 ; Portugal 1867 ; Netherlands 1870 ; Italy 1890 ; Norway 1905 ; Sweden 1921 ; Denmark 1930 ; Switzerland 1942 and Britain 1965 (as an experimental measure) ; but now in Britain this punishment has been abolished finally in 1969 by parliament.

We have to think of the social conditions today. We are today developing social conditions in which we are going beyond times. The Supreme Court gave a judgment which hurt millions of people as far as property right was concerned ; to debarred people from having social justice. The Supreme Court also gave judgment regarding retention of the privileges and privy purses of princes, which went against the interests of people. And we have made Constitutional changes because of the demand of time. We must abolish the capital punishment also to be in tune with the idea of developing a higher society and value for life.

I would also like to bring to your attention the fact that in Ceylon also capital punishment was abolished. The Commission which looked into it had said :

"In deciding on the wisdom of retention or abolition of capital punishment reliance cannot be placed on there being any greater deterrence to potential murderers by imposing capital punishment on a few than by imprisoning all convicted murderers."

THE MINISTER OF STATE IN THE
MINISTRY OF HOME AFFAIRS
AND IN THE DEPARTMENT OF PERSONNEL (SHRI RAM NIWAS MIRDHA):
Clon re-introduced it.

SHRI N. K. SANGHI : Sir, the modern trend in India is that we must have penal reforms. We have today accepted the policy that the criminal has to be reformed. He has to be improved. To-day we are improving our jails. We are seeing that a better treatment is given to them and to

[SHRI N.K. SANGHI]

day, in case we abolish the capital punishment, I am sure, we will go a step forward and see that the theory of improving the derelict is improved.

Sir, how does the murder take place? We have seen that most of the murders are not premeditated. They come up in the heat of temper. Because of certain social circumstances, people get charged up; that is why they commit murders and it is under those circumstances that murders take place. Certainly, it is the responsibility of the society to see that the criminal or the murderer is improved and he is not sent to the gallows. To-day, whom you are punishing by sending him to the gallows? It is not the criminal who has committed the offence and who is being sent to the gallows. It is his family; it is his parents and it is his children who will suffer. I will remind you as to what happens on the day when a man is sent to the gallows. The man is told that he is being sent to the gallows. The family people are called. They are supposed to meet. Every body weeps in the night. The children are made to weep and the last twelve hours become an era for him and every hour becomes a year for him. This is the way the whole life is taken and this is how the tragedy of life takes place and this is how the importance of life is destroyed. And, I feel, Sir, it is high time that we give some thoughtful consideration to this very serious matter.

What is our judiciary doing in this particular matter? We have seen heinous crimes taking place in India. But we find that when the case comes up before the Judges, they are also very lenient. Possibly, they have no mental attitude to send the criminal to the gallows. In most of the cases they say 'All right, we give you life imprisonment' and they are let off. In case somebody is really sentenced to death what do we see? They go in appeal to the High Court and there again, if they fail, they go to the Supreme Court and more often, the punishment of death penalty is

commuted to one of life imprisonment. Latter on, even if there are some unfortunate people who are sent to the gallows by the Supreme Court, under Article 72 and 161 we have provided the prerogative of the President and the Government to see that clemency is given to them. These Articles are being utilised effectively in this country. In case of many people who are being sentenced by the Supreme Court to be sent to the gallows, we find that clemency is given to them and life imprisonment is given to them.

So, we see an undercurrent that is running through the minds of the people, whether it be Judges or lawyers or common people or the criminal or the family of the criminal or it is the respected President or the Governor, that the man should not be hanged.

I have got here figures from the Home Ministry's report. In 1968, there were 225 people who were sentenced to death and 154 were commuted by the President and the Governors. In 1969, there were 7 mercy petitions. All of them were granted and the sentence commuted to life imprisonment. In 1970, there were 33 mercy petitions and seven were given clemency. So, this is the situation in the country and if this is the situation, what is wrong if we abolish the capital punishment. We do not have to go step by step. What we really do not do in practice, we should do it effectively by law. Let everyone feel that he will not be sent to the gallows. You can certainly change the law, keep him in jail for a longer period, make it 14 years or 20 years. This is what we should do.

I would like to draw your kind attention to this question of clemency which is the prerogative of the Governor and the President. What has happened in the case of dacoit Tehsiidar Singh? He was a terror in the whole of Madhya Pradesh. He was a notorious dacoit. He committed a number of murders. He has committed all sorts of barbarities, but, ultimately, he was sentenced to life imprisonment. This is what we have done. What

are we doing in Madhya Pradesh now ? We find a number of dacoits have surrendered now. I am sure they will be sentenced to life imprisonment ultimately, of course we say that the laws are not being changed To-day, for the dacoits, for the average man I feel a re-thinking on punishment, on capital punishment has got to be gone into.

We have seen many people are also sent to the gallows. But about the prerogative of the President and the Governor, who does get this clemency ? The man who is affluent, the man who has got affluent relations—he is able to claim clemency. He is able to make a mercy petition and then only he gets some sort of clemency. But what about the poor, down-trodden criminal ? He has no money. He does not understand. He is illiterate. He is not able to make a mercy petition. In that case, he does not get any benefit. This is what it is.

I would like to invite Mr. Mirdha ji's attention to what the Prime Minister said. While replying to the debate on the Demands for Grants of the Home Ministry in May, 1972, the Prime Minister posed the question to the Members of Parliament and people to give thought if capital punishment is to be retained. She herself called it a controversial subject. I am sure it is still a very controversial subject. This matter has been discussed in this House and the other House more than four times and it is high time that we take a positive decision. Many countries have followed this path and there is no harm in following it.

This House is sitting for more than six months in a year and if anything goes wrong after abolition of the Capital punishment, I am sure, the Members will be quite competent to reverse the matter.

What happened in Britain, Sir. When in 1965 the Capital punishment was abolished in Britain they debated the matter and said, "We will give it a trial for five years." In 1969 the matter was re-considered and Capital punishment abolition was passed by free

conscience voting—343 for abolition and 185 against it. The bill was passed in 1969 and finally it was put on the statute book. It was being practised from 1965. I think if we have any parallel thinking with U.K.'s working I am sure, we should also see that this Capital punishment is also taken away and abolition is brought on our statute book.

Today we are celebrating 25th Anniversary of our Independence and I will appeal to the hon. Minister that it is high time we make a social reform. We do not believe in Capital punishment ; our legislature does not believe in it and our judiciary also does not believe in it. It is high time we accept this philosophy on the 25th Anniversary and do away with Capital punishment.

I would also like to draw your attention to the Supreme Court judgement in Jagmohan Singh vs. the State. Jagmohan Singh was sent to the gallows. He had contended that it was violation of the fundamental rights. The hon. judges of the Supreme Court were good enough to say that it was not a violation of the fundamental rights. They said that it was entirely in the hands of the legislatures, in the hands of the Parliament to abolish Capital punishment and they would be competent to abolish the Capital punishment.

What do we find lately ? The recent Indian Penal Code Bill that you are bringing and the Indian Criminal Procedure code that you have brought you have yourself amended the Capital punishment matter. You have said that in case Capital punishment is being given to anybody will state reasons for that. In fact, if the hon. Judge does not mention any reasons for the Capital punishment that will not be taken as constitutional. You have yourself provided deterrents. You have provided deterrents for the judiciary to see that you will not award Capital punishment unless you have given valid reasons for the same. In the Criminal Procedure Code you have further said that in case the Sessions judge lays the guilt of Capital punishment on any person he will refer the matter to the High Court. Unless this is done and

confirmed he will not be sent to the gallows. This is what you have done to bring about the changes. But, I think, it is not the time to bring half-hearted changes.

Sir, we are talking always in our economic and political life about Gandhiji. I would like to narrate a very small incident about Gandhiji. Kakasaheb Kalelkar has recorded in his stray glimpses of Gandhiji, an incident in Yeravada Jail, as the jailor as was usual with him, failed to visit Gandhiji as he had to attend a hanging in that morning :

"This upset Bapu badly. His face changed and he said : "I feel I am going to be sick." Bapu knew that the gallows were situated not very far from where he lived. The moment that he heard a man had been hanged so near us only the previous day, his mind built up a picture of the whole thing and he felt so upset that I got quite frightened."

I would also like to repeat a few words that Gandhiji had written in Harijan of March 19, 1937 :

"I do regard death sentence as contrary to Ahimsa". Only he takes life who gives it. All punishment is repugnant to Ahimsa. Under a state governed according to the principles of Ahimsa, therefore, a murderer would be sent to a penitentiary and there given every chance of reforming himself. All crime is kind of disease and should be treated as such."

Sir, with these few words I feel that the House will consider the matter of abolition of Capital punishment. This is a very important matter. I think it is a social subject. Today we have a change in our thinking. We are making a social change in our country. We are bringing social changes by constitutional amendments, when we are looking to the dacoits from a different angle ; when the Indian Penal Code is undergoing change and when the minds of the people are being agitated, I am sure, you will give it a thoughtful consideration and accept this Bill as I have presented.

MR. CHAIRMAN : Motion moved :

"That the Bill to provide for the abolition of Capital punishment be taken into consideration."

SHRI M. C. DAGA (Pali) : I beg to move :

"That the Bill be circulated for the purpose of eliciting opinion there on by the 1st October, 1973."

MR. CHAIRMAN : This amendment is also before the House now.

SHRI S. P. BHATTACHARYYA (Uluberia) : I support this Bill. I support the purpose for which the hon. Mover has brought forward this Bill. He has given legal reasons for this purpose. But I am giving my support to it from a different angle. I feel that it will add to the prestige of our country, and when we are speaking of socialism, we should end this system of capital punishment because that will add to our dignity.

Now that we have accepted socialism as a principle, we must know that man is not born as a criminal. We must accept this basic fact. It is the situation that creates criminals. In our country there is poverty, unemployment, high price and therefore, there is discontent, and discontent goads a person or a number of persons into criminal activities. When we change the social system for the good of humanity so that every person in our country can have a healthy living, then there will be no crimes. But till then, if there are criminals in our country, we must make the situation which compels one to be a criminal as being responsible for it. But the situation can be changed so that people will have the right to live and live free from want, and none will be compelled to be a criminal. That situation can be created and must be created and will be created.

[Shri S. P. Bhattacharya]

With this outlook, we should abolish the system of capital punishment. There may be diseased persons in society, but provision must be made for seeing that they are treated in the hospital.

With these words, I fully support the Bill.

श्री राम रत्न शर्मा (बांदा) : सभापति महोदय, किसी भी राष्ट्र को लाइफ लेने का अधिकार नहीं होना चाहिये जिसे वह दे नहीं सकता है। मुझे एक बहुत पुराना निर्णय याद आ रहा है। मैं रेफ्रैस भूल रहा हूँ। लेकिन फैक्ट्स बताना चाहता हूँ। मर्डर के आफेंस में दो आई बिटनेसिम पेश हुई। मैगन जज ने आई बिटनेसिम पर विश्वास करते हुए कैपिटल पनिशमेंट एवार्ड कर दी। हाई कोर्ट ने उस फैसले पर अपनी मुहर लगा दी। उस आदमी का एक्सीक्यूशन हो गया। लेकिन छः महीने के बाद जिम आदमी के कत्ल पर उसको सजा हुई थी वह आदमी बाजार में घूमता हुआ दिखाई दिया। क्या आप बता सकते हैं कि जिस व्यक्ति को झूठे कत्ल के इल्जाम में हैंग कर दिया गया, उस के परिवार के पास क्या रेमेडी है? इसी लिए आज संसार के सम्मुख यह प्रश्न उपस्थित है कि कैपिटल पनिशमेंट—मृत्युदंड—को पीनल कोड में रक्खा जाये, अथवा नहीं। इस संदर्भ में श्री सांघी ने जो बिल प्रस्तुत किया है, मैं उसका समर्थन करना चाहता हूँ।

16-00 hrs.

इस सम्बन्ध में कोई भी बहस होने से पूर्व विधि के विकास पर एक दृष्टि डालना आवश्यक है। किस तरह से समाज बना और किस तरह से उस समाज में एक व्यवस्था रखने के लिए, ला एंड आर्डर के मेंटेनेंस के लिए, कानून की उत्पत्ति हुई और किस तरह से उस कानून ने ये सजायें बनाई, ताकि आदमी कोई अपराध करने

से डरे। अब समाज प्रगति करते हुए इस स्टेज पर आया है कि हम हर एक बात को सुधारना चाहते हैं। तो फिर इस में क्या आपत्ति है कि जिस आदमी ने किसी का मर्डर किया है, उस को हम मृत्युदंड देने के बजाये लम्बे समय के लिए जेल में रख दें और इस तरह उससे सुधारने का चाम दे? मेरा निवेदन है कि किसी भी बीमारी की तरह क्राइम-अपराध—भी एक बीमारी है और उमका अच्छी तरह से डाइगनोसिस होना चाहिए और यह पता लगाना चाहिए कि किसी व्यक्ति ने किन कारणों से कोई अपराध किया है। वे कारण सामाजिक और राजनैतिक भी हो सकते हैं और धार्मिक या व्यक्तिगत भी हो सकते हैं। लेकिन अगर उनका निराकरण किया जायगा, तो मुझे विश्वास है कि हम इस समस्या के मूल तक पहुंचने में सफल हो सकेंगे और एक युग ऐसा आयेगा, जब हमारे यहां कैपिटल पनिशमेंट देने की आवश्यकता ही नहीं पड़ेगी।

विश्व के बहुत से देशों ने इस पनिशमेंट को समाप्त कर दिया है और उनका अनुभव यह बताता है कि वे घाटे में नहीं रहे। इस बारे में कई देशों में जनमत संग्रह हुआ है और बड़े बड़े जूरिस्ट्स ने यह मत प्रकट किया है कि कैपिटल पनिशमेंट की आवश्यकता नहीं है और उम को समाप्त कर देना चाहिए।

मैं श्री सांघी के इस बिल का पूर्ण रूप से समर्थन करते हुए सरकार से आग्रह करूंगा कि वह इस की स्वीकार कर ले और कैपिटल पनिशमेंट को समाप्त कर दे।

श्री मूलबन्ध डाया (पाली) : सभापति महोदय, श्री सोधी ने जो बिल पेश किया है, उस के विषय के बारे में विधि-विशेषज्ञों की कई रायें हैं। मैं ने इस बिल के सम्बन्ध में यह एमेंडमेंट पेश किया है :

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st October 1973."

मालूम हुआ है कि ला कमिशन ने इस बारे में कुछ निर्णय लिये हैं। मैं ला कमिशन की रिपोर्ट में से कुछ पैराग्राफ आपकी सेवा में रखना चाहता हूँ :

"First among the punishments provided for offences by this Code stands death. No argument that has been brought to our notice has satisfied us that it would be desirable wholly to dispense with this punishment. But we are convinced that it ought to be very sparingly inflicted, and we propose to employ it only in cases where either murder or the highest offence against the State has been committed."

ला कमिशन ने इस सम्बन्ध में ये रीजन्स दिये हैं :

I death sentence is removed, the fears that come in the way of people committing murders will be removed. Do we want more of murders in our country or do we want less of them? Death sentences are awarded for the security and protection of society so that every individual, so far as it is possible, may live in peace. Taking a realistic view, so long as society does not become more refined...."

I stress this point—

"death sentence has to be retained. The security of the society as well as individual liberty of every person has to be borne in mind. Capital punishment is needed to ensure the security. Moreover, many countries or States had to reintroduce capital punishment after abolition."

Again they have reintroduced it.

श्री सांघी और जनसंघ के माननीय सदस्य ने कुछ भावुकता और आदर्श की

बाते कहीं हैं। हिन्दुस्तान में करोड़ों टन गीता और बाइबल बिक चुकी हैं, लेकिन सवाल यह है कि क्या उन के अनुसार रस्ती भर भी आचरण होता है या नहीं। लोगों ने मध्यता का मूलम्मा लगाया हुआ है और वे ऊपर से बड़े रिफाइन्ड हो गये हैं, यह अच्छी बात है, लेकिन क्या उन के हृदय में सौन्दर्य निखरा है, क्या हमारे समाज में ऐसी स्थिति पैदा हो गई है कि मानव-मानव के परस्पर सम्बन्ध इतने गहरे और सुन्दर हो कि हर एक आदमी उस सौन्दर्य का आनन्द उठा सके? यह ठीक है कि हमारे यहां एक सिविलाइज्ड सोसायटी है, लेकिन हम सब अन्दर से खाली हो रहे हैं, हम में मारल बैकरप्टसी आ गई है और हम सब भौतिकतावादी बन गये हैं।

आज आदमी गाड-क्रीयरिंग नहीं रहा है। पहले जो आदमी कोई कुर्म या अपराध करता था, उस को बहुत ग्लानि होती थी और वह प्रायश्चित्त करने के लिए अपने जीवन का अन्त कर लेता था। आज ग्लानि का तो कोई सवाल ही नहीं है, लेकिन अगर कोई मरना भी चाहे, तो दफ्ता 309 के अनुसार उस पर आत्म-हत्या के आरोप में मुकदमा चलाया जाता है। आज आत्म ग्लानि जैसी कोई वस्तु नहीं रह गई है और हमारा समाज भौतिकतावाद की तरफ जा रहा है। आज हमारे देश में केवल 22 परसेंट एजुकेशन है और वह एजुकेशन भी अंग्रेजों की है। अगर हमारी अपनी एजुकेशन होती, अगर हम अपने शास्त्रों, ग्रन्थों और अपनी नीति के अनुसार पले होते, तो हम गाड-क्रीयरिंग होते और हम समझते कि हमें अमुक बुरा काम नहीं करना चाहिए। लेकिन वर्तमान एजुकेशन का परिणाम यह है कि आदमी डर से बिल्कुल खाली हो गया है।

[श्री मूल चन्द डागा]

मर्डे भी कई तरह के होते हैं। राज-कल लोगों को विश्वास और मुहब्बत से भी मारा जाता है। वे लोग भी लाशों के समान हैं, जो समाज में कुछ नहीं कर सकते हैं। मवान यह है कि आज हमारे देश में जो स्थिति है, उस को देखते हुए क्या हम को एकदम यह कदम उठा लेना चाहिए। कल अखबार में यह समाचार था कि एक आदमी फांसी की इन्तजार करते करते पागल हो गया। मर्सी पेटीशन वगैरह देने में दो वर्ष में अधिक समय हो गया और वह अपना मानसिक संतुलन खो बैठा।

मैं समझता हूँ कि हमें इस बारे में डीटेल में अध्ययन करके यह सोचना चाहिए कि किन किन मामलों में मृत्युदंड को रखना चाहिए और किन किन में इस को एवालिश कर देना चाहिए। यह नहीं सोचना चाहिए कि एकदम यह निर्णय कर के हम कोई बड़ा क्रान्तिकारी कदम उठा रहे हैं। श्री सांजी ने कहा कि हम अपनी आजादी की रजत-जयन्ती मना रहे हैं। उन्होंने बड़े बड़े लोगों की बात कही। इस कैपिटल पनिशमेंट को सुप्रीम कोर्ट ने कई तरीके से समझाया है। जेजेज जब कोई कैपिटल पनिशमेंट देते हैं तो वह अपनी कलम तोड़ देते हैं। वह उस निब को तोड़ कर फेंक देते हैं।

एक माननीय सदस्य : अब कलम मढ़ाया हो गया है, अब नहीं करते।

श्री मूल चन्द डागा : कुछ भी हो, लेकिन वह इस को बहुत बड़ा समझते हैं। अगर कुछ सर्वमस्टसेज ऐसी आती हैं जिस के अन्दर जेजेज को करना पड़ता है। आप को मैं कुछ छोटे छोटे जजमेंट्स सुनावा हूँ जिस से आप यह सोच सकें कि ऐसी हालत में क्या करना चाहिए :

"In one case, *Begu v. the King Emperor*, the Court pointed out that where the murder committed is particularly a cruel and revolting one, it is necessary to examine the evidence with more than ordinary care, lest the shocking nature of the crime might prevent a dispassionate judicial scrutiny of the facts and law."

एक माननीय सदस्य : यह 1947 से पहले का है।

श्री मूल चन्द डागा : नहीं यह उसके बाद का है।

मैं यह बताना चाहता हूँ कि वह इस तरह से आसानी से यह पनिशमेंट नहीं देते हैं। बहुत सोच समझ कर के जब कोई रास्ता नहीं रहता तब आखिरी कैपिटल पनिशमेंट वह देते हैं। एक और छोटा सा उदाहरण मैं आपके सामने रखता हूँ :

"Sentence of death was, in this case replaced by the sentence of transportation of life, having regard to the time that had elapsed since the offence and to the fact that the probable motive was one of prevention of cruelty to a helpless woman—to a wife who was ill-treated by her husband. (In this case, the husband was murdered by the accused. The husband used to ill-treat his wife. The accused murdered the husband for protecting her from this cruelty."

इस आफेंस में उन्होंने उसे ट्रांसपोर्टेशन आफ लाइफ दिया है। तो आप जो यह कहते हैं कि कैपिटल पनिशमेंट बिलकुल इंडिया में खत्म कर देनी चाहिए, अगर आप हाई कोर्ट के और सुप्रीम कोर्ट के जजमेंट्स को देखें तो बहुत एक्सेप्शनल केसेज से वह यह पनिशमेंट देते हैं। जहां बिलकुल कोल्ड ब्लडेड मर्डर होता है वहां देते हैं। इसलिए इस प्वाइंट को हमें बैठ कर अच्छी तरह विचार करना चाहिए। सारे जनता के बड़े बड़े विशेषज्ञ यहां बैठे हुए हैं, अभी

हमारे समाजवादी नेता मधुदण्डवते साहब इस बात पर बोलेगे। तो इस पर हमें अच्छी तरह विचार करने की आवश्यकता है क्योंकि समाज के अंदर आदमी बड़े क्रूर और दुष्ट भी है। कई कई आदमी ऐसी क्रूर और दुष्ट प्रकृति के होते हैं कि उनको कितना भी उपदेश दो गीता का उपदेश दो कुछ भी करो वह अपनी आदत प्रकृति नहीं छोड़ते। कुछ प्राणी समाज के अंदर ऐसे हिंसक होते हैं कि अगर यह बिल्कुल ही हटा दे और वह हत्या करने का नगा ताण्डव शुरू कर दे तो वह किसी तरह ठीक नहीं होगा। इसलिए सारी स्थिति को देख कर हमें कैपिटल पनिशमेंट के बारे में निर्णय लेना चाहिए। इस प्रकार एकदम निर्णय नहीं लेना चाहिये कि बिल्कुल फासी की मजा हटा दी जाय। आज कल तो एकोनामिक आफेंस लोग करते हैं। (व्यवधान)। तो यही मेरा निवेदन है कि इस पर एकदम निर्णय नहीं लेना चाहिए।

भी बसत साठे (अकोला) समा-पति महोदय, यह जो बहुत सुन्दर प्रस्ताव साथी जी लाए हैं उस के लिए मैं उन का अभिनन्दन करता हूँ। यह प्रस्ताव विचार करने लायक है और विवाद-ग्रस्त प्रश्न भी वह है।

एक बात मेरी समझ में नहीं आई। साथी जी ने यह कहा कि ज्यादातर इस तरह के जो गुनाह होते हैं खून के वह प्री-मेडिटेड नहीं होते हैं। और यह बात सच है। हम लोग जिन को अनुभव है अदालतों में प्रीकटम करने का और जिन के सामने ऐसे मौके आए हैं इस तरह के मुल्जिमों के लिए पेंचरी करने के उन्हें इस के बारे में जानकारी है। मैं आप से कहता हूँ कि ज्यादातर इस तरह के गुनाह उस मौके के जोश या आवेश में हो जाते हैं या आदमी अपने को खो बैठता है, उस हालत में हो जाते हैं

और ऐही हालत में उस को मौत की सजा हो जाय यह ठीक नहीं, नहीं होनी चाहिए। लेकिन जहां जानबूझ कर सोच समझ कर या किसी राजकीय या अन्य सामाजिक दुष्टता के हेतु कोई किसी की जान ले ले तो फिर उस व्यक्ति को समाज में रहने का अधिकार क्या होना चाहिए? यह जो कहा गया कि व्यक्ति का आप जीवन देते नहीं तो लेने का अधिकार नहीं है, गांधी जी को कोट किया मैं समझता हूँ कि यह आउट आफ काटेक्स्ट है। गांधी जी तो बहुत महान आत्मा थे। लेकिन मैं इस के आगे जा कर पूछता हूँ कि क्या यह व्यक्ति जो समाज में रहना है वह पैदा हो सकता था यदि समाज न होता? दो व्यक्ति का भी समाज होता है स्त्री और पुरुष का भी समाज होता है, अगर यह दो न हात ता तीसरा व्यक्ति पैदा न होता। वह पैदा जा हुआ वह भी समाज है इसलिए हुआ और समाज में उसे रहना है तो समाज की सृष्टि को भी उसे ख्याल में रखना चाहिए। उसे यह अधिकार नहीं है कि वह समाज के किसी व्यक्ति का जीवन ले ले और वह लेता है तो फिर समाज का भी अधिकार है कि उस को कहे कि तुम भी समाज में नहीं रह सकते। जानबूझ कर तुम किसी की हत्या करते हो तो तुम खतरे के आदमी हो। तुम्हें जीने का अधिकार नहीं है।

जहां तक तत्वज्ञान का विचार है तो हमारा तो तत्वज्ञान इतना ऊंचा है कि जीव के बारे में बताया गया कि न तो कोई जीवन लेता है और न देने का कोई सबाल है। आत्मा तो अमर है। यह हमारा सिद्धान्त है।

एक माननीय सदस्य आत्मा अमर है लेकिन गरीब मरता है।

श्री बसंत साठे : इसीलिए मैं ने गरीब के लिए कहा कि गरीब अगर जोश में ऐसा कर दे तो उस के लिए नहीं लागू होना चाहिए । लेकिन जहां प्री-मेडिटेटेड है वहां सवाल आता है इस का दूसरी बात-गीता की बात मैं कह रहा था तो गीता में तो कहा —

वामासि जीर्णानि यथा विहाय नवानि
गृह्णाति नरोपराणि ।

तथा शरीराणि विहाय जीर्णान्यन्यानि
संयाति नवानि देही ॥

यह आत्मा शरीर को वस्त्र सरीखा छोड़ देती है । वह तो अमर है । आप क्या छीन रहे हैं ? आप तो वस्त्र छीन रहे हैं क्योंकि वह वस्त्र का इस्तेमाल समाज के खिलाफ कर रहा है ।

दूसरा गीता में यह भी कहा कि —
नैनं छिन्दन्ति शस्त्राणि नैनं दहति पावकः
न चैनं क्लेदयन्त्यापी न शोषयति मातृतः ॥
तो फिर आप कौन से तत्वज्ञान की बातें कर रहे हैं ? इस से ऊपर आप क्या करने वाले हैं ? आत्मा को कहाँ आप सजा देने की बात कह रहे हैं ? सजा तो उस शरीर को दी जाती है जिस का गलत इस्तेमाल वह व्यक्ति करना चाहता है ।

एक आखीरी बात मैं यह कहूँ कि आप रेलवे को जला दें, रेलवे की फिश प्लेट्स उखाड़ दें किसी बात के लिए जो आप को जायज लगती हो, माना कि बात आप की निगाह में जायज हो लेकिन उस के लिए आप फिश प्लेट रेलवे की उखाड़ कर सैकड़ों और हजारों निरपराध लोगों की जान ले लें, उन के बाल बच्चों

का जीवन खतरे में डाल दें, इतना भयंकर गुनाह आप करें और आप को छोड़ दिया जाय ? आप को कुछ न किया जाय ? (ध्यवधान) ट्रीटमेंट किस का करें ? वह तो जानबूझ कर कर रहा है । ट्रीटमेंट तो पागल आदमी का होता है, बीमार आदमी का होता है । जैसे गोडसे ने गांधी जी की हत्या की ? वह क्या पागल था ? इसलिए ऐसे व्यक्ति को समाज में रहने का अधिकार नहीं है जो मारा मर्द करे, जो एडल्टरेशन कर के लोगों की जान के साथ खिलवाड़ करे । लोग मेडिसिन में एडल्टरेशन करते हैं, तेल में एडल्टरेशन कर दिया और गरीबों को मार दिया । सैकड़ों लोग जिन्दगी भर के लिए डिसेबल्ड हो गए । आप इन लोगों के लिए क्या करने वाले हैं । इन लोगों को सजाये-मीत नहीं देंगे तो कौन सी सजा देंगे, जो हजारों लोगों को निजी स्वार्थ के लिए मार डालते हैं—आप उन के लिए क्या करने वाले हैं । समाज में उन को जीवित रहने और लोगों को मारने का क्या अधिकार है ? वह तो स्वार्थ-वश, मदाध, जैसे के लोभ से पीड़ित हैं, उनके लिए क्या करने वाले हैं, उन के लिए कोई बिल नहीं लाये है ।

मैं सधी जी से कहूंगा कि—यह ठीक है कि इस तरह का प्राचीजन नार्मल ला में नहीं हो और इसी लिए वह शायद क्रिमिनल प्रोसीजर कोड में ध्रमेण्डमेन्ट ला रह हैं, लेकिन जहां इस तरह की हत्यायें होती हैं उन के लिए तो प्राचीजन रखना ही पड़ेगा । इस में जो जान-बूझ कर न हो, प्रीमेडिटेटेड न हो, वहां तो यह ठीक है, इस को एवालिश कर देना चाहिए, लेकिन जहां प्रीमेडिटेटेड हैं वहां सजाये मीत होनी चाहिए, ऐसे व्यक्ति को समाज में रहने का कोई अधिकार नहीं है

*SHRI E. R. KRISHNAN (Salem) : Mr. Chairman, Sir, my hon. friend, Shri N. K. Sangi has moved. The Abolition of Capital Punishment Bill before this House and I rise to say a few words on this Bill

The objective of this Bill is that death penalty should be abolished. The argument advanced by Shri Sanghi is that in many countries of the world capital punishment has been abolished. While I agree with this statement, I have also to point out that in some countries capital punishment has been revived. Another argument of Shri Sanghi is that reformation of the offender, which is held to be the paramount aim of punishment,^{*} is defeated, if a person is punished with death. I am unfortunately unable to appreciate this argument. A criminal who has committed a murder has nothing to reform, as there is nothing to reform for a blackmarketeer whose sole aim in life is to cheat the gullible people. In this very House, Jawaharlal Nehru used to say that the black-marketeers should be hanged to death in public. You know, Sir, that sometimes heavy penalty is imposed on tax-evaders and yet other times they are sent to prison. Has this resulted in any appreciable decrease of tax evasion in our country? In fact, tax evasion has gone up. It is a fact that death penalty awarded to a murderer is a warning to other intending criminals. It might create a sort of fear in their minds, which will prevent them from committing such heinous crimes. To put it fairly and correctly, death penalty is justice rendered to the murdered and we should not interfere in the dispensation of justice by trying to abolish capital punishment through and law of this House.

In England the move for abolishing capital punishment was created in 1750 and an Act was passed by the House of Commons on 4th December, 1964. In America this movement started in 1950 culminating in the abolition of capital punishment in many of the States in America. In South America,

capital punishment has been abolished in Argentina, Dominican Republic, Brazil, Columbia, Venezuela, Uruguay and some other countries. But, even in these countries capital punishment is awarded for acts of crime against the security of State. This is the position obtaining in Europe, Australia and New Zealand. This issue was also discussed in great detail in the United Nations.

In Sections 121, 132, 194, 302, 303, 305, 307 and 396 of India Penal Code, death penalty is awarded for acts of crime against nation's security, for murder and for dacoity with murder. As used to be pointed out with all the emphasis at his command by Pandit Jawaharlal Nehru, the I.P.C. should be amended for awarding capital punishment to black-marketeers, black-money dealers and tax-evaders who are in fact committing crimes against the nation's well-being.

While moving the Bill, my hon. friend Shri N. K. Sanghi stated that our country is the birth-place of so many religious leaders—like Buddha and he also quoted profusely the philosophy of Ahimsa of Mahatma Gandhi. I would say that we should not equate crimes against the nation's security against the innocent mass of our country with religiousity. This question should be discussed dispassionately in an atmosphere of rationalism, and humanitarianism. Such an important measure like this cannot be treated lightly in half an hour or one hour. I would suggest that this Bill should be referred to a Select Committee of this House where it should be considered from angles taking into consideration all the aspects—humanitarian, social and political—involved.

With these words, I conclude.

SHRI C. H. MOHAMED : KOYA (Manjeri) : Sir, I oppose the Bill on the very grounds suggested by the Law Commission, which are quoted by the mover. I am sorry to say that the Mover was not able to contradict the arguments of the Law Commis-

*The original speech was delivered in Tamil.

sion. First of all, he quoted only the conclusions of the Law Commission. The Law Commission took pains, collected much evidence, pondered over the question for months together and then came to some conclusions, and the Mover has in half an hour brushed aside all the arguments of the Law Commission.

One of the arguments of the mover was that mistakes are committed by certain judges in awarding capital punishment. That should not be a reason for giving up capital punishment. In fact, I do not stand in the way of sending even these judges to the gallows if they wrongly send somebody to the gallows. I am not against the amendment of the IPC for that purpose.

SHRI VASANT SATHE : That would be justice with a vengeance.

SHRI C. H. MOHAMED KOYA : That would be injustice with a vengeance. Simply because in a particular case a judge has erred, we should not jump to the conclusion that capital punishment is bad and should be abolished.

The main argument of the Law Commission was that capital punishment is a deterrent. The mover was speaking about ahimsa and the land where Mahatma Gandhi was born. I would say that the same apostle of this country, Mahatma Gandhi, was murdered in this very country. In Calcutta, the Naxalites behead people and keep the body and head at different places. He was very sorry for the children of those who are hanged. What about the children of those who are murdered ? He has no tears to shed for those innocent children whose parents are murdered.

He says that the deterrence does not work. I cannot even think of a day when there is no capital punishment. There will be more murders. Now people are not taking law into their hands because they know that government will take them to task. People desist from murdering others because they are afraid that they will be hanged. If the capital punishment is abolished, then there will be no such deterrent. Now political

murders are increasing. In my State many political murders took place when the NOs were on strike. If there is no capital punishment, then people will take law into their own hands.

Shri Bhattacharyya was saying that it is the present social order that is responsible for the present position. I want this punishment as a deterrent step. But, even according to him, the social order has not changed. According to him, I think, even if one were to support the Bill, the conclusion would have been, we will have to wait till the social order in the country changes.

Sir, the Law Commission pondered over this question for months together and came to a conclusion, and Parliament—this House—cannot jump to a conclusion by discussion for half-an-hour or one hour. Therefore, I hope the Member will withdraw the Bill. If he is not kind enough to do so, I hope the House will decide.

SHRI P. G. MAVALANKAR (Ahmedabad) : Mr. Chairman, Sir, I rise to support the Bill so ably moved by my honourable friend, Shri Sanghi.

Sir, the objective of the Bill is laudable. It is timely. In fact, we should have already had such a measure on the statute book long ago. I lend my support to this Bill, not only on ethical and moral grounds and human considerations, but also on legal factors and practical grounds. Sir, I must at the outset say that this debate is not only a long debate; this is a world-wide debate. As many hon. friends pointed out before I rose, this also has been a very controversial debate. To an extent, this is a healthy controversy.

I suppose even those, who are saying that death penalty ought to be retained, are in the heart of their hearts, convinced that eventually, in the ultimate analysis, the death penalty must go; but that, the time is not yet ripe. In other words, Sir, the question is not now whether capital punishment is good or bad, but, whether it is to be removed right now or we should wait for some more time.

[Shri P. G. Mavalankar]

Now, some hon. Members have argued that unless you have a very good society, persons and individuals—moral individuals—how can you afford such a risk, of abolishing death sentence. Well, Sir, this is almost like arguing that because, we have not got a democratic society first, we should not establish a democratic Government. So, we must necessarily wait for a democratic Government to be established, until we have first established a democratic society. After all, this kind of argument, will not hold water. What is important is that, once you have accepted a particular ideal, and if you want to reach that ideal, you must constantly move in that direction, and while doing so, take the risk, have the spirit of adventure and go ahead in that direction. Even if a large number of people are not behind you—some of them may be behind—you should go ahead with the conviction and with the faith, that after all if you are moving in the right direction, people will ultimately rally round and be good citizens. You cannot say that nobody is fit for freedom. All people in the world are fit for freedom. You do not have to deserve to be free. We are born free and there is no question of deserving to be free. When we are born alive, how can an agency, extraneous to ours, the State in this matter, have the right to take away our life? This is the point on which I want to stress, more than other points.

In the limited time, it will be very difficult for any one, not only in this House, but anywhere in the world, to say pointedly and dogmatically that this should happen or this should not happen. I freely concede that the arguments in favour of retention of the capital punishment are many and valid. But, I also want to suggest to this House that the arguments in favour of abolition are equally many and valid, and on balance—I wish to submit with all the sincerity and authority at my command—the argument tilts in favour of abolition of capital punishment. Apart from the fact that this question of death sentence involves the matter of life, which is very sacred and pure, this also

involves, as I said earlier, certain practical difficulties and legal considerations.

Can we be sure that with the best of intentions and with the most perfect institution that we may devise that the person whom we are condemning to death is a person who really deserved to be condemned? Can there not be even a possibility of an error of judgment? If so, I would just ask, why hang him? If we have already taken a decision, and he has gone, it is too late. That is one aspect of the matter.

Why is it that some countries in the world have progressively tried to reform their modes of punishments? A couple of centuries ago, even for a small theft, in England, a man was committed to death sentence, was sent to gallows. But nobody would think of doing it now. It will be considered ridiculous and absurd. Indeed, even those countries which say that death penalty should be retained, they still say: Do it in as humane a manner as possible; do it nicely; do it without giving too much botheration and trouble to the person who is condemned. In other words, the humane considerations have crept in.

So, my point is that this is not a question of having death sentence; and even those who are for death penalty, they only say, do not do away with it right now. I ask: Why? If you do it now, you will save not only posterity but you will save even many criminals of today because you give them a chance to improve while they are under detention, if necessary, for life-time.

Then, I want to go into another aspect of the matter. The people who have been favouring death sentence either for some time or for a long time argue that the abolitionists are arguing because they are doing so out of some sense of sentimentality. I agree that there is a sentiment involved here. But I want to ask: It is a crime to have a sentimental approach on matters pertaining to human affairs?

In a book entitled "The History of Capital Punishment" by George Ryley Scott, the author in his preface quotes one

very interesting paragraph. With your permission, Sir, I would like to read it. I quote:

"Much has been made, and, I think in the main unjustly, of what is termed the exuberant and misplaced sentiment of the abolitionists. It seems to me that the world as we know it today, as well as in the ages that are now durably buried, has displayed too little, rather than too much sentiment. If there is one thing that history proves all too clearly, it is that a Government which dispenses with sentiment is a pretty callous Government. In the House of Lords debate on the Criminal Justice Bill, Lord Douglas of Kirtleside, in a memorable speech, said: "I am not so nervous of being accused of being a sentimentalist as some of your Lordships appear to be. After all, sentiment and practical common sense are not necessarily anti-pathetic and, in fact, they do exist side by side in the make-up of every decent human being. It is only Nazism and totalitarian doctrines which rule out all sentiment as a reason for human action."

So, it is no use arguing that the abolitionists are taking a purely sentimental or emotional attitude. Of course, it is an emotional and sentimental attitude. But it is not sentimental nonsense. It is sentimental sanity.

I would conclude by saying that if a number of countries in the world and many of them, the smaller countries, can have the guts to abolish death penalty, not in this century but as some of them did it in the last century, I do not see why such a country like ours with a good and long background, with a good and long past, be afraid. After all, if the Government feels that they cannot take the risk for all time to come let them do

something by way of a trial. As a matter of fact, no law is for all times. Even if you make a law and, if you think there is something wrong in it, you can always come forward with an amendment.

SHRI VASANT SATHE : What have you to say about deliberate and calculated crimes against society, like, mass murders by merchants in the form of adulteration, etc. ?

SHRI P.G. MAVALANKAR : My hon. friend is talking about deliberate and calculated crimes. But for those crimes, the punishment need not be the last punishment that of death sentence.

You can stop at the last but one, i.e. life imprisonment. After all, this is a very dangerous argument. What is deliberate and mischievous for one set of people and one establishment may not necessarily be true for the other set of people. Let this House not forget that a good number of spirits rebellious and dissentors in this world have been murdered, have been sentenced to death by the governments of their countries precisely on the ground that they were persisting on certain matters which they thought were right according to them.

If death penalty is there, what is the ultimate advantage? The only advantage is that you have some satisfaction that you have taken away the life of the fellow who took the life of somebody else, much against the tenets of civil and good society. But it is merely taking revenge. I want to ask this House, all the members present here, whether we are progressing in terms of culture and civilisation when we still thrive on the idea of taking revenge. What we want today is not taking revenge, but teaching a criminal a lesson, giving him an opportunity to improve himself and change his course of action. It is from this angle that I feel that we ought not to go ahead with the retention of death penalty.

My hon. friend, Mr. Daga, has moved for eliciting public opinion. As Mr. Sanghi himself pointed out, this question has been

[Shri P. G. Mavalankar]
agitating the minds of Indian legislature for a pretty long time. As Mr. Sanghi said, it was in 1931 that, for the first time, in the Legislative Assembly of this country, a Bill was moved by a Private Member. Since then, a series of attempts have been made. In conclusion, I want to quote a couple of sentences, so beautifully said, by a late Shri Prithvi Raj Kapoor. He had moved a Resolution for abolition of death sentence in the Rajya Sabha in 1958. The Resolution was withdrawn after some debate but before the matter was over, the Mover, Shri Prithvi Raj Kapoor, observed thus:

‘The purpose of my Resolution is served. The ripples are created. It is in the air. By votes such delicate things are not decided. Let that tomorrow be there which I have been promised.’

From 1958 to 1972 a good deal of time has passed. I do not see any reason why further time should be wasted by suggesting that the Bill be sent for eliciting public opinion. Let us discuss and decide it right now. Let us tell the Government the mind of the House, that we are for abolition of death sentence, ‘Please go ahead, bring your own Bill and put it on an experimental and on a trial basis.’ Let us, by all means, move towards the direction which we think is right legally as well as ethically.

श्री नाथूराम अहिर्बार (टीकमगढ़)
मान्यवर, मैं माननीय साधु ने जो बिल पेश किया है उस का विरोध करने के लिए खड़ा हुआ हूँ। उस के कुछ कारण हैं। आज भावुकतावश हम कुछ भी कह ले कि आदमी को जब कोर्ट में फासी की सजा सुनायी जाती है और जब उस को फासी के तख्त पर लटकाया जाता है तो कोई भी कह सकता है कि इस के मा, बाप, बीबी, बच्चे रो रहे हैं। लेकिन क्या कभी यह भी देखा है कि ज़िम की हत्या उस व्यक्ति ने की है उस के बच्चों की क्या हालत है? मध्य प्रदेश के डाकूओं का उदाहरण

दिया गया। लेकिन उस के पीछे परिस्थिति क्या थी वह भी तो सोचिये। चारों तरफ से मध्य प्रदेश पुलिस ने उन लोगों को घेर लिया था। इन 25 सालों में उन्होंने न मालूम कितनी बहनों की मांग का मिट्टर लूटा, कितने बच्चों को अनाथ और अपाहिज किया, कितने लोगों के घर बर्बाद हुए। उन को अगर फासी की सजा दी जाय तो कोई बड़ा ज़ल्म नहीं है। अगर वह समय रहते अपने जीवन को सुधारना चाहते हैं तो सरकार ने उन के मामले एक पहलू रखा, उन्होंने एक बात रख दी कि हम हाज़िर हो सकते हैं और अपने जीवन को अच्छे ढंग पर लाना चाहते हैं, तो सरकार ने उन को एक मौका दिया है। लेकिन यह उदाहरण नहीं बन सकता है कि सब को ऐसा ही मौका दिया जाय।

आज जगह जगह हरिजनों के मकान जलाये जा रहे हैं उन्हें कमरों में बन्द कर के ज़िन्दा जलाया जा रहा है, गोली में मारा जा रहा है बादा में सब से ज्यादा यह घटनायें हो रही हैं। भारत में उत्तर प्रदेश में बादा जिले में सब से ज्यादा मर्डर होते हैं। वहाँ हर माल कम से कम 25-30 हरिजनों की हत्या की जाती है। कारण क्या है? कारण यह है कि वे लोग उच्च जाति के बड़े लोगों के यहाँ काम पर नहीं जाते हैं। उन की ज़मीने छीनी जाती है।

एक माननीय सदस्य ने कहा कि हत्याएँ गरीबी के कारण होती हैं। मेरा कहना है कि ऐसा नहीं है। 80 प्रतिशत वह लोग हत्या करते हैं जो पैसे वाले हैं और वह लोग गरीब आदमी को मरवा देते हैं। कुछ लोगों ने कहा कि दूसरे देशों में इस कानून को उठा लिया गया है। लेकिन आप ने इस बात पर ध्यान नहीं दिया कि वहाँ की जनता कितनी शिक्षित है।

वहां 95 फ्रीसवी लोग बाग पड़े लिखे हैं जब कि हमारे यहां 23 प्रतिशत ही पड़े लिखे लोग हैं। तो जहां लोगों को कानून का ज्ञान नहीं है वहां हत्या करने वाले लोगों को अगर सजा नहीं देंगे तो क्या करेंगे ? हम यहां कोई भी कानून पास कर लें लेकिन हम को देखना यह है कि जब वह व्यवहार में आयेगा तो हमारा देश कहां जायगा।

मी० पी० एम० के माननीय सदस्य ने भी हम प्रस्ताव का समर्थन किया है, लेकिन जब वेस्ट बंगाल में उन की सरकार थी तो रोजाना कितनी हत्याएँ होती थी, कभी इस बारे में भी सोचा है। कितनी बहनों को रास्ते में चलते हुए पकड़ लिया जाता था, लोगों को बीच बाजार में गोली मार दी जाती थी। मौत की सजा को समाप्त कर के अगर फिर इस तरह की अराजकता पैदा करनी हो तो जरूर इस प्रस्ताव को पास कीजिए। अभी जब कानून में कैपिटल पनिशमेंट है फिर भी हमारे देश में हत्याएँ होती हैं, अगर इस सजा को समाप्त कर दिया तब तो यहां अराजकता का साम्राज्य हो जायगा। इसलिए आवश्यकता है कि यह सजा न केवल बनी रहे बल्कि इस बारे में जो कानून है उस को और मजबूत किया जाय ताकि हत्याएँ न हों। यह मैंने माना कि कुछ केसेज में पुलिस झूठी गवाही पेश कर के कुछ लोगों को फंसा देती है। लेकिन ऐसे केसेज केवल 5 परसेंट हैं, जब कि 95 परसेंट सच होते हैं। कोई आदमी किसी को बंदूक से कर मार जाता है तो क्या पागल हो गया है ? सरकार को इस बारे में गम्भीरता से सोचना चाहिए, और एक घंटे की बर्बाद से कोई ऐसे फ्रीसला न कर लें जिससे आगे चल कर हमारे देश की शांति व्यवस्था को खतरा पैदा हो। हमारे देश के उमर कोई हमला करता है वह तो खतरनाक स्थिति है ही, लेकिन उस से

भी खतरनाक बात तब हो जाती है जब देश के भीतर ही बुंसे हुए लोग हमारे देश की सेक्योरिटी को खतरा पहुंचाते हैं। उन को क्या सजा मिलनी चाहिए ?

आप कहते हैं कि स्टेट को जान लेने का अधिकार नहीं है। मैं पूछता हूं कि समाज में जो व्यक्ति पैदा हुआ है क्या उस को जीवित रहने का अधिकार नहीं है ? आखिर राज्य को किस ने पैदा किया ? व्यक्ति ने पैदा किया है। जब मनुष्य के अन्दर कांशंस जागी तो उन्होंने समाज बनाया और समाज ने स्टेट बनायी और अपनी रक्षा का अधिकार राज्य को दिया और उस बारे में कानून बनाया ताकि हमारी रक्षा राज्य कर सके। राज्य का कर्तव्य है कि अपने नागरिकों की रक्षा करे। राज्य को यह देखना चाहिए कि किस व्यक्ति ने क्या कसूर किया है।

Human consciousness postulate liberty, liberty involves right and demands state.

उस को उसी के अनुसार दंड मिलना चाहिए। यह नहीं कि हम किसी को मार दें और राज्य उस को माफ़ कर दे। अगर मौत की सजा बन्द कर दी जाय तो जेलें लोगों से भर जायेंगी, उन में रहने की जगह तक नहीं रहेगी। अगर एक आदमी को मौत की सजा हो जाती है तो 50 आदमी सजग हो जाते हैं कि ऐसा काम न करें। इसलिए मैं कहूंगा कि माननीय सदस्य इस बिल को वापस ले लें, और साथ ही सरकार से निवेदन करना कि जो कानून के जानकार हैं उन के साथ परामर्श कर गम्भीरता से विचार करना चाहिए कि हम को इस बारे में क्या करना चाहिए। अगर कुछ सुधार करना है तो कानून में सुधार ला सकते हैं, लेकिन मौत की सजा को बिल्कुल समाप्त न किया जाय।

श्री अमर नाथ शिखारिकार (बंड़ीगढ़): सभापति महोदय, इस बिल के पक्ष और विपक्ष में काफी तर्क दिए गए हैं। दो बातें हैं जिन की वजह से फांसी की सजा का समर्थन किया जा रहा है—पहला, अगर कोई व्यक्ति किसी दूसरे की जान लेता है तो बदले की भावना उठती है, चूंकि किसी को उसने मारा इसलिए उससे बदला लेना है, इसलिए उसको फांसी की सजा होनी चाहिए या फिर दूसरों को नसीहत देने के लिए किसी को फांसी दी जाती है। दूसरों को नसीहत इस तरह से कि अगर तुमने भी ऐसा काम किया तो तुम्हें भी सजा फांसी की होगी।

जहां तक बदले की भावना का सम्बन्ध है आज समाज इतना आगे बढ़ चुका है और मानव मूल्यों की पहचान उसको इतनी अधिक हो गई है कि बदले की भावना से किसी की जान लेना, इसको वह एक अनुचित कार्य समझता है। अगर यह तर्क आप साफ तौर पर दें तो कोई भी व्यक्ति इसका समर्थन नहीं करेगा। यह पुराना तरीका था कि किसी ने किसी की आँख फोड़ी तो उसकी भी आँख फोड़ दी जाए, किसी ने किसी की जान ले ली तो उसकी भी जान ले ली जाए। यह भावना मानवता के विरुद्ध

दूसरी बात नसीहत की है। जिस आदमी की फांसी दे दी जाती है उसका सुधार तो हो नहीं सकता है। दूसरों की नसीहत देने के लिए आप एक व्यक्ति की जान इसलिए लेना चाहते हैं, दूसरो दूसरों को पढ़ाना चाहते हैं सिखाना चाहते हैं और ऐसा आप किसी की जान ले कर करना चाहते हैं तो मैं समझता हूँ कि वह बिल्कुल गलत चीज है और कोई भी व्यक्ति यह नहीं कहेगा कि शिक्षा का तरीका

यह है कि किसी की जान ले ली। आप 'इतिहास' को देखें। ज्यों ज्यों समाज सभ्य होता गया है, मानव मूल्यों और मानव लाइफ की कद्र बढ़ती गई है। एक पैमाना है जिससे हम किसी समाज की सिविलाइजेशन को, उसकी एनलाइटनमेंट को पहचान सकते हैं। ज्यों ज्यों समाज आगे बढ़ा है त्यों त्यों लोगों ने इस बात को ज्यादा ही ज्यादा महसूस किया है कि यह जो फांसी की सजा है इसको खत्म किया जाए। एक जमाना था, जब छोटे छोटे क्राइम्स के ऊपर फांसी की सजा हो जाती थी। आज ऐसा नहीं है। बहुत थोड़े जुर्म रह गए हैं जिन के लिए फांसी की सजा का प्रावधान है। मैं समझता हूँ कि जिस तरह से मानवता आगे बढ़ रही है उस में और भी कम मामलों में फांसी की सजा दी जाया करेगी और आखिर में यह हो जाएगा कि फांसी की सजा देना बेकार है क्योंकि इससे कुछ बनता नहीं है, समाज को कुछ मिलता नहीं है।

जितने क्राइम पुराने जमाने में होते थे आज समाज में उससे कम होते हैं। जान लेना पहले जमाने में मामूली बात थी। आज वह बात नहीं है। ऐसा इसलिए नहीं है कि जान लेने पर फांसी की सजा होगी या बहुत सख्त दूसरी सजा होगी। बल्कि लोगों को मानव मूल्यों की ओर समाज की पहचान होती गई है और वे अपनी जिम्मेदारी को समझते गए हैं। मैं नहीं मानता हूँ कि ज्यादा सख्त सजा देने से क्राइम कम होते हैं। जितनी सजाओं की सख्ती आप बढ़ाते जाएंगे उसने ज्यादा क्राइम बढ़ते जाएंगे। यह एक इतिहास की बात है। हमारी सरकार एनलाइटेंड सरकार है। मैं धारणा करता हूँ कि सरकार इस पहलू पर संजीवनी के साथ गौर करेगी।

एक ही बजह से किसी को फांसी की सजा हो सकती है। जो आदमी समाज के विरुद्ध विद्रोह करता है, गहारी करता है, राजनीतिक भावना से दूसरे देशों के साथ जा मिलता है, कांस्पिरेसी करता है क्योंकि वह युद्ध की स्थिति हो जाती है, समाज और उसके रम्यान युद्ध की स्थिति हो जाती है और उसको छोड़ करके बाकी सब दशाओं में यह कैपिटल पनिशमेंट बन्द कर देनी चाहिए।

मैं आशा करता हूँ कि प्रस्तावक महोदय बूँक जिस फार्म में वह इस बिल को लाए है वह सम्पूर्ण नहीं है, उसके अन्दर बहुत सुधार की गुंजाइश है और बूँक यह बक्त नहीं है कि एमेंडमेंट्स पर विचार करें, इस बास्ते इसको वापिस ले लेंगे। मैं सरकार से निवेदन करूँगा कि सदन की भावनाओं को देखते हुए वह एक ऐसा बिल लाए जो ज्यादा कमिश्नरिब हो ताकि सिवाय राजनीतिक या जैसे मैंने कहा है कि युद्ध की स्थिति को छोड़ कर बाकी सब दशाओं में फांसी की सजा को हटाया जा सके।

SHRI D. N. TIWARY (Gopalganj) : Before I speak on the Bill before the House, I have to make one appeal, namely that you or the Deputy-Speaker or the Speaker should not abolish the system of Members trying to catch your eye. On important subjects lists are given by parties, and that may be accepted. But if this system of Members' trying to catch your eye is abolished, there will be no quorum in the House, because Members will go away thinking that they are not to speak. So, I would suggest that this system must be adhered to in some discussions at least, namely that Members should try to catch your eye.

Seeing the trend of discussion in the House, I am inclined to think that this matter is very controversial, and a thorough discussion is necessary and the opinion in the

country should also be elicited. I am therefore, inclined to support the amendment of my hon. friend Shri M.C. Daga for circulating this Bill for eliciting opinion thereon.

It is a fact and also a principle of law that even though many criminals may be let off, even an innocent person should not be punished because that is bad for the law and for the society. Hon. Members have quoted many cases where capital punishment was awarded to certain persons who were later on found not to have been guilty. If any person who has not committed an offence or a group of persons who have not committed any offence are hanged and it is revealed afterwards that they had not committed any offence, then there is no way by which we can compensate them. So, I would submit that even if a hundred persons may go unpunished, we should not punish any one who has not committed any offence. So, we should think thrice before awarding capital punishment to any one.

Sociologists have said that the committing of crime is a sort of disease. No human being is born with a criminal intent or purpose; when he comes into society and his mind is influenced by some extra factors, then on the spur of the moment, without any pre-meditation, he may commit some offence. Now, jail reforms are going on to reform the culprits and not to punish them.

After all, punishments do not deter many men from committing offences. There is a law in this country now for awarding capital punishment or any other punishment for any offence. But the people in general are not deterred by this law from committing offences. For instance, there is a law against pick-pocketing, but hundreds of pick-pocket cases occur every day because nobody cares for the law, because the minds of the people have become diseased. The thinking of the person has gone that way.

Similarly, in spite of the fact that we have a law providing for capital punishment, we find that hundreds of murders are taking

place every year in our country. They know that they will be hanged under the law for capital punishment, but still they commit this crime because their bent of mind has been formed in such a way that they are not able to check themselves and they become a prey to their diseased mind and they commit offences.

Arguments can be advanced both for and against the abolition of capital punishment. Not only in the House but also outside among the people there is sharp difference of opinion about this matter. So, it is better to take the opinion of the people, the intelligentsia of society, judges and others before passing any law to abolish capital punishment.

So, I would request Government to accept the amendment of Shri M. C. Daga and circulate this Bill for eliciting public opinion if necessary, by even extending the time for the purpose. In the light of the opinions received, if Government think that the opinion in the country is overwhelmingly in favour of abolition of capital punishment, they should bring forward a Bill for that purpose themselves, instead of depending upon a private Member to bring forward such a Bill on such a great thing as abolition of capital punishment in a haphazard way.

So, my request to the hon. Minister and to the House is to accept the amendment of Shri M. C. Daga for circulating the Bill for public opinion.

SHRI C. M. STEPHEN (Muvattu-puza Puzha): Mr. Chairman, with the best of efforts, I feel unable to support this Bill. I am unable to support it for what it says and also for what it does not say. The nature of this Bill is not in the form of an amendment to the Penal Code. The Bill on the positive side makes a sweeping provision that for any offence, death shall not be awarded. On the negative side, although the Mover might not have intended it, a particular type of offence stands excluded from the purview of the Bill because the Bill says :

"Notwithstanding any law for the time being in force, no court shall punish any citizen for any offence with death".

There is another tribunal in the country the military tribunal who can court-martial a person and can shoot him. The definition of 'court' given in the Bill does not take in that type of tribunal, which means that whereas on the one hand, the Bill says that for no offence a person can be punished with death by implication it says where the offence is such as could be tried by what is other than court, the death punishment may continue. There is an inherent contradiction in principle in this position.

On the positive side, the question is : should it be that for any offence, death shall not be awarded ? Here in this postulation, there is one thing conceded that there is an offence. We are not taking into account cases in which offences might not have taken place. A person might have been adjudged wrongly as having committed an offence. But the presumption is that an act has been committed and is an offence and although the act is an offence, death punishment shall not follow.

I emphasise this to meet one argument of my friend who said there may be cases of misjudgement. I am afraid that is a very weak argument. Suppose there is a case of misjudgment. Suppose death penalty is not ordered but in its place life imprisonment is awarded. Merely because it is life imprisonment and not death penalty, is it justified if, as a matter of fact, it is a case of misjudgment. If the possibility of there being a case of misjudgment is an argument for dropping the death penalty, there must be a good enough argument for giving up any punishment altogether.

SHRI VASANT SATHE (Akola) : In that case, it is irretrievable.

SHRI C. M. STEPHEN : Because a person who has not committed an offence should not be punished even for a day with imprisonment. We proceed on the basis of certain assumptions. The assumptions are that the court after taking evidence adjudges a person to be an offender. It is a correct assessment and punishment must follow. We are only at the point of punishment. We are not at the point of the possibility of a

misjudgment. The question is where an offence has been committed, proved to be committed, and going by the wording of the Bill, where an offence has been committed, whether the death penalty must follow. It does not mention murder and all that. That is in the Penal Code.

When society advances, there may be other types of offence which may have to be met with the same rigorous punishment. We are going towards a social society. Public Property is there. We find vandalism being committed.

It is possible that in the social consciousness society may demand that where a person becomes the criminal to the whole society, makes society unsafe to carry on, death punishment may be awarded. It is possible that such a sort of concept can come in. Thereafter, you must not limit yourselves to the question of murder alone. The Penal Code is not the limit. This Bill is outside the scope of the Penal Code. It is not by way of amendment of the Penal Code. Is it the proposition that for any type of offence death penalty must not be given? I beg to disagree.

What is the principle on which I am entitled to live? The principle is the principle of social contract. Society protects me on a certain basis provided I become part of the society. May I put it this way? I kill a hundred people. You say death penalty shall not be given to me. Put it in another way. What is my right to expect the society to protect me? If the hand of the law is not there, I may not be allowed to live in society. A person was killed, and it may be his son who will kill the murderer. Why is it that the son does not kill him, because society protects him. What is the right to the person to be protected by society? It is not in this way only that you can put forth the question.

'What is the criminal's right to be protected by the society? What happens in society, refuses to protect him and society removes him from society. If he becomes a canker to

society, he is removed from the society. Maybe you will say you will put him in the jail. My contention is you have no right to make a claim on Society at all. The position is, live and let live. You are not prepared to let live. You have no right to be let to live either by the society. It is the obligation on society. Therefore, if society judges you as a dangerous element, as a danger to society, as a person who has contravened the basic principles of social contract, then the society becomes free from the obligation to protect you.

The society has got two choices either to leave you at the mercy of the common man to finish you up, or society as a social body, is picking you up in a civilised way and finishing you up. These two alternatives are before the society. Society does not cast you out to be picked out by an act of individual vandalism; it prefers to pick you up in a civilised way and to liquidate you. There is nothing wrong about this. That is my humble submission.

Then the question is the deterrent. Three fundamentals are there. One is retribution the other is deterrent; and then there is reprobation, a word coined by the Law Commission. Prevention is a material thing. There are two aspects which are coming in. Is the offence of such a nature as demanding any price to be paid to be prevented? Is any price worth paying to prevent that offence? Society feels that murdering a person is a thing, the prevention of which demands that any price to be paid will be justified. There may be other offences. We have seen this sort of thing during the Naxalite vandalism. We have heard of it ourselves. Society became shocked. Society could not stand it. Assuming that a person who may be any philosophy going about sowing the seeds of faith and carry on murder, if he goes about on the streets freely, unmolested and unchecked, what will be the reaction of society? The reaction would be dangerous. The joint society will become disjointed. Let us not take it in a hitherto manner. What will be the

reaction on the man ? What will be the reaction in society ? That is the way we have to approach it.

As I said in the beginning it is not a question of murder alone. Probably tomorrow we say that murder need not be met with death punishment but something else can come in. Suppose a person goes about finishing up everything that belongs to society, society may decide that he shall not exist and he should be finished. That depends upon the conditions of society, the needs and demands of society. Therefore, this postulation that under whatsoever circumstances for whatsoever crime by whomsoever committed in which-ever society death penalty shall not be awarded, is a postulation too sweeping to be considered in 1973.

There is an inherent contradiction in this Bill, because some other types of offences are kept beyond the purview of the Bill. There death punishments can be awarded, as the Bill has been framed. The only question is, if there is an offence repulsive and dangerous enough, revolting and subversive enough, even in that case should that not meet with death penalty ? My submission is that society must be let free to consider the contingency in which death penalty must be given. The sweeping provision is not acceptable to me and therefore I oppose this Bill.

श्री तेजा सिंह स्वतंत्र (सगर) .
सभापति जी, मैं इस बिल की सहमति में उठा हूँ क्योंकि तीन बातें हमें सामने रखनी होंगी। पहली तो यह कि क्राइम का ओरिजिन कहाँ से होता है ? यह एक फिलास्फी है जिस पर पहले दो सौ ढाई सौ सालों से बहस हो चुकी है कि सोशल एकोनॉमिक सिस्टम का उस में क्या हाथ है। सोशल जस्टिस जो नहीं होती, बहुत से क्राइम्स का ओरिजिन, बहुत से क्राइम्स की जड़ यह है, कोई भी हुकूमत

या सोसाइटी के जिम्मेदार जो ज़म्बू कहुलाते हैं, गाइड कहुलाते हैं अगर वह सोशल जस्टिस नहीं दें सकते और सोशियो-एकोनॉमिक सिस्टम को क्लास बेसिस पर रखते हैं जिस में कोई एक छोटी सी जमात सब को लूट कर खा जाये तो फिर क्राइम्स को कोई कानून रोक नहीं सकता। इसलिए सब से बड़ी बात यह है कि जैसे हम कहते हैं कि हम प्लैन कर रहे हैं, इतने कारखाने बढ़ा रहे हैं, लोहा इतना बढ़ा रहे हैं, कोयला इतना बढ़ा रहे है, बिजली बढ़ाना चाहते हैं, लेकिन उस के साथ साथ हम कोई नेशनल कैरेक्टर भी बिल्ड कर रहे हैं या नहीं ? सोसाइटी को सामाजिक नुक़तये-नज़र से कोई इसाफ़ दे कर उस के मुताबिक़ उन को हम ढाल रहे है या नहीं ? लूटने वाला लूट रहा है, ब्लैक करने वाले ब्लैक कर रहे हैं, बड़े बड़े सरमायेदार और बढ़ते चले जा रहे हैं और दूसरी तरफ़ कहते हैं फला बदमाश है, फला ने डाका डाला, फला ने चोरी की रोटी का इतजाम नहीं हो रहा है, कोई चीज़ लेने जाते हैं बाज़ार में तो मिलती नहीं। फिर तो यह उपवेश होना चाहिए कि चुप कर के सो जाओ। नहीं मिलती न खाओ, अगर अगले दिन भी नहीं मिलती तो फिर न खाओ, अगले दिन मर जाओ, सोसाइटी का बोझ टल जायगा। अगर इस लाइन पर हम चलेंगे तो कोई सुधार नहीं होगा। यह तो एक प्वाइंट है। इसलिए जो पुराना बिभाग था जिस के मुताल्लिक़ एक सूफ़ी ने यह कहा कि—

नेकी वही जो जीव में आई

साहब लिखी या इस आप लिखाई

[श्री तेजा सिंह स्वतंत्र]

अगर एक आदमी बदमाशी करता है, चोर बन जाता है, शराबी बन जाता है, डाकू बनता है तो या तो खुदा ने उस की किस्मत में पहले ही लिख दिया या उस के साथ यह टाक दिया कि फलां तारीख को वह यह करेगा, फलां तारीख को यह करेगा, अगर तो यह ओरिजन है तो फिर कोई इलाज नहीं। फिर परमात्मा है उस का जिम्मेदार। अगर आप यह कहे कि यह लिखी है साहब ने, परमात्मा ने तो वह पाक क्यों ऐसा लिखता? वह तो पाक कहलाता है, पवित्रात्मा है। वह किसी की किस्मत में बुराई क्यों लिखेगा कि वह चोर बनेगा, या यह बनेगा। और "अगर जीव ने अपने आप लिखाई, फिर तो उसने बुरी क्यों लिखाई खुद कहा कि हमारी ऐसी किस्मत लिख बो तो फिर तो यह उस ने खुद किया। इसलिए यह जो पुराना सिस्टम था कि किस्मत है, इस ने बुरा करना था, वह मीन राशि पर आ गया, इस का तो ऐसा ही होना चाहिए था, फिर इस पर डिपेंड करें। और नहीं तो अगर रीजन पर आना है तो उस का जो ओरिजन है, सोशियल एकोनामिक सिस्टम है जिस में जस्टिस नहीं दे पाते, सबको रोटी नहीं मिल पाती, लोगों को अपनी मेहनत का उचित फल नहीं मिलता, फिर उस को दुस्स्त करना है। उस को जितना दुस्स्त करेंगे उतना ही काइम कम होगा।

दूसरा प्वाइंट मैं यह रखना चाहता हूँ कि लाजिको हिस्टारिक मेथड अप्प्लाई करना चाहिए। मैं जानना चाहूंगा कि ला कमीशन जो है उस ने क्या पिछले सालों के

अददो शुमार लिए कि पहले तीन हजार को मर्डर या तो एक हजार को फांसी दी गई थी और मर्डर पहले 2 हजार से तो तीन हजार को फांसी देने से अगले साल मर्डर की तादाद कम हो गई। यह लाजिको 'हिस्टारिक सिस्टम' है। अगर फांसी करेक्टिव डेटरेंट आज तक साबित हुई है, इस का असर हुआ है तो इस को रखिए कोई अगड़े की बात नहीं है। अगर इस ने आज तक करेक्टिव काम नहीं किया है, इस का असर नहीं हुआ है, इस ने एक डेटरेंट एजेंसी की तरह काम नहीं किया है तो फिर इस का कोई मतलब नहीं है। फिर हमें सोशल सुधार की तरफ जाना होगा। सोसाइटी को बेहतर बनाना होगा और वह जो कैरेक्टर है उस को रिफार्म करो कैंपिटल पनिशमेंट को फिर हटा दें।

तीसरी बात इस के मुताल्लिक मैं यह कहना चाहता हूँ कि आया हमारा जूडिशियल सिस्टम जो है, जो हम ने अपने यहां सेट किया है यह परफैक्ट है? यह सचमुच डिपेंड करने लायक है? वह जो केसेज की गिनती इतनी ज्यादा है उस में क्या पूरा पूरा इंसाफ हुआ है? या जैसे कि पहले मेरे एक साथी ने एक किस्सा सुनाया, मैं भी एक अमृतसर का वाक्या सुनाता हूँ। एक फौजी अपने गांव आया। वह वापस चला गया। इतफाक से उस दिन बाढ़ आ गई। कोई लाश मिल गई। कहा गया कि हमारे आदमी को फलां ने मार दिया। मुकदमा चला, गवाहों ने गवाही दे दी। लेकिन जब जांच पड़ताल की गई तो मालूम हुआ कि वह अपने कैम्पस में उस दिन मौजूद

या । इसलिए हमारा जूडिशियल सिस्टम परफेक्ट है या नहीं ? इन तीन बातों को मिला कर मैं तो यह कहना चाहता हूँ कि हमें कैपिटल पनिशमेंट बहुत ही एक्सेप्शनल केसेज में बूना व हीनस ट्राइप अप काइम्स में बेरी प्यू केसेज में देना चाहिए जिस में कि आदमी ने गर्भजती औरत को कत्ल किया हो, या उस के साथ दो तीन छोटे बच्चे कत्ल कर दिए, अगर ऐसे कोई हायनस काइम्स हो वहां देना चाहिए । बेरी प्यू एक्सेप्शनल केसेज में यह कैपिटल पनिशमेंट अप्लाई होना चाहिए, अन्यथा हम इस के अपोज्ड हैं । हमारी जो सोसाइटी है उस में हमें सोशियो एकोनामिक तरीके अप्लाई करने होंगे । यही कहकर मैं अपनी बात समाप्त करता हूँ ।

श्री रामजी राम (अकबरपुर)
सभापति महोदय, प्रस्तुत बिल में जो भी खामिया रह गई हो मैं उस में नहीं जाना चाहता । लेकिन यह बात जरूर है कि आज के सभ्य समाज में मृत्यु दण्ड एक अभिशाप है और हमारे मुल्क में जब कि हम विकासोन्मुख हैं और समाजवाद की तरफ चल रहे हैं तो उस में यह जरूरी हो जाता है कि हम मृत्यु दण्ड जैसे ग्रहम और बहुत ही महत्वपूर्ण विषय को इस ढंग से लें कि उस का एक हल निकल सके ।

सभापति महोदय, मृत्यु दण्ड क्यों दिया जाता है—मैं इस के ऊपर दो-चार शब्द कहना चाहता हूँ । प्रश्न यह है कि कोई व्यक्ति विशेष क्यों इस किस्म के जुर्म करता है कि उस को मृत्यु दण्ड मिले ।

किसी तरह से न आई जब चमन से तारीकी लगा दी भाग नशेमन में रोशनी के लिये ।

कुछ ऐसे जुर्म होते हैं जिन को करने के लिये इन्सान मजबूर होता है । उस के मस्तिष्क में, जो व्यवस्थित हैं, विकार क्यों पैदा होता है ? बिबि बेताओ ने, समाज शास्त्रियों ने और समाज के रहनुमाओ ने क्या कभी इस बात पर विचार किया है । आप कहते हैं कि मृत्यु दण्ड न बन्द हो, मृत्यु दण्ड हो, मगर क्या आपने यह भी प्रावधान रखा है कि ऐसे जजों, ऐसे न्यायाधीश जिन्होंने गैर जिम्मेदारी के ढंग से ट्रायल किया है, बगुनाहों को फासी पर लटकाया है, क्या उन को भी फासी पर लटकाया जायेगा । या समाज में कुछ ऐसे लोग हैं जो खाने-पीने की चीजों में मिलावट करते हैं और लोगों को घुल घुल कर जिन्दगी खत्म करने के लिये मजबूर करते हैं, ऐसे लोगों के लिये आप ने क्या किया है । सभापति महोदय, समाज में कुछ लोग हैं जो समाज की उपलब्धियों को अपने इर्दगिर्द समेट कर प्रयोग करना चाहते हैं । अब यह चीज नहीं चलनेवाली है । अगर आप इस का प्रावधान नहीं कर सकते तो यदि मृत्यु दण्ड को बन्द करना है तो उस के बदले में आप कोई ऐसा सैट-अप, सिस्टम, कोई ऐसा प्रावधान, कोई ऐसी व्यवस्था, कोई ऐसा इन्तजाम करें, जिस से वह चीज न हो । इसलिये मैं इस का विरोधी हूँ ।

SHRI B. K. DAS CHOWDHURY (Cooch-Bihar) : Sir, I rise to support this Bill, as moved by my friend, Shri Sanghi. Though the Bill is very simple in form, the force and effect of it goes very deep in to the society. In one line I can say

337 Abolition of Capital PHALGUNA Punishment Bill

[SHRI B. K. DASCHOWDHURY]

that the intention of this Bill is to outlaw capital punishment so that there will be no deaths sentence by hanging or otherwise this Bill is very simple, it is rather complex, and it leaves a very great impact on our society.

We know that people, men or women are not born criminals. If a person does something which is not permitted by the law, we call him an offender and we penalise him, either this way or that way, and in some extreme cases there is provision even for death penalty. This Bill says that there should be no death penalty.

I fully support the contention of my hon. friend because when a person goes out of the law, it means that either he does not know the law or that particular law is not suited to him. The criminal is also a member of the society and the laws are there for the convenience of the society. Further, as we know, laws are being changed from time to time. At one time during the British regime it was said in our country by our national leaders, our revolutionaries, several times that if love of a country is an offence then they would prefer to be offenders. The entire circumstances, the entire picture, has changed since the independence of the country.

In one sense the laws are for the convenience of the society, which means the convenience of people who are in the society.

That laws vary from country to country. Now, as a matter of fact, what I am emphasizing is that the society has got an obligation to make the persons fit in with the society so that they can live as happily as possible. Now, if any particular person or a group of persons are not happy with the law, that does not mean that always the law should be changed. That also means that the society has got the responsibility to make those persons suitable to an extent so that they may fit themselves in their own manner of thinking, in their own form of thinking, in their own manner of living in their own mode of living, in the said society

18, 1894 (SAKA) Charges against 338
Haryana C. M. (HAH Disc.)

where other can also had. Considering that it is the responsibility of the society to make all persons fit to live in the society, it shall not be the duty of the society or of the State or of the Government to take away their lives.

As you know, all lives are precious. Even according to our existing law, if any one tries to commit suicide, to destroy his own life, we make him an offender. What is the theory behind it? It is that he cannot destroy his own life because his life is precious like anything in the society and as such it belongs to the Society and the State. Nobody knows in future, even that particular person may contribute something good to the society and for the humanity at large. On the basis of that theory, even if one tries to take even one's own life, when one is not successful in doing that, one is tried under certain Sections of the Criminal Procedure Code.

The basic thing is that there is a four-fold theory of punishment : retributive, reformatory, preventive and deterrent. The basic theory lies there. The punishment should always be reformatory rather than retributive. It should also be preventive in certain cases. Here, if a particular person has not been given a proper chance to reform his own behaviour, to make himself amenable to society and, if the society does not come forward to give that particular person a chance to live in the society as other persons, live, then, I personally feel, it is the fault of the society, it is the fault of the State, it is the fault of the Government and not the fault of the persons concerned. We must bear that responsibility.

With these words, I fully support the Bill and, I hope the Government will come forward to accept it, and will not, in general, say, "No. We are not going to accept it". Let the Government say, "We are coming forward with a similar Bill" with almost the same idea so that there may not be a capital punishment at all in this society.

The Minister of State in the Ministry of Home Affairs and in the Department of Personnel (Shri Ram Niwas Mirdha) :

Mr. Chairman, Sir, the Bill that has been moved in this House and is now before the House for consideration has given us an opportunity to discuss a very important but at the same time a very controversial subject.

I have heard with great attention the speech of the mover of the Bill, Shri N. K. Sanghi. This matter has been discussed in this House on a number of occasions before also. Shri N.K. Sanghi comes in the line of a number of illustrious Members who have brought forward Resolutions or Bills on the subject of the abolition of capital punishment.

A number of arguments have been advanced which bring out ethics, sociology, criminology, modern concept of punishment, *Ahimsa*, Gandhiji, and various other aspects of the problems. It has even been asked : What right has the society or the State to take something which it cannot give, which means "life" ? This has been countered by another hon. Member who says that even the creation of life presupposes some sort of a social set-up that brings persons together, that brings a man and a woman together and whose association in a family context gives rise to life.

All these are not only philosophical concepts but ideas which have great relevance in discussion the problem before us. Over the past few years, or, over the past few centuries even, our concept of punishment has been changing. Why should a man be punished for particular offences and what should be the idea of giving punishment....

MR. CHAIRMAN: The hon. Minister may please continue on the next occasion.

17 30 hours

HALF-AN-HOUR DISCUSSION

CHARGES AGAINST HARYANA CHIEF MINISTER

MR. CHAIRMAN : Now we take up the half-an-hour discussion.

Mr. Shyamnandan Mishra.

SHRI SHYAMNANDAN MISHRA (Begusarai) : I would like to assure the House that we are not pursuing this matter in any spirit of witch-hunting or chasing a political opponent. In fact, the demand for the institution of an inquiry should be considered to be largely a neutral demand. The Commission of Inquiry could give an opportunity to the Chief Minister to get his name cleared.

The hon. Chief Minister of Haryana Shri Bansi Lal, is undoubtedly a unique personality, bordering on a phenomenon. He is the most resourceful of all the Chief Ministers. Shri Bansi Lal can get away with anything. He is the most useful Chief Minister to the Ruling Party and brags of the closest proximity to the Prime Minister.

Mr. Chairman, as we have Press-Lords, we have also Suppress Lords and Mr. Bansi Lal is the most prominent of the Suppress Lords. He has utter contempt for the freedom of Press and can take any repressive action against Press and against the liberal freedoms which the citizens ought to enjoy in a democratic set-up.

So, no wonder, his regime has been characterised as a regime of 'conspicuous corruption'.

Mr. Chairman, never in the history of such cases had 121 Members of Parliament demanded institution of a Commission of Inquiry. The Santhanam Committee had laid down the condition that only ten Members of Legislature could make a demand in order to oblige the Government to institute a Commission of Inquiry. And today we have a case where 121 Members of Parliament, unprecedented in the history of such cases, had demanded a Commission of Inquiry.

The corruption charges against the Chief Minister of Haryana, let this hon. House bear it in mind, were supported by no less a person than the Speaker of Haryana Vidhan Sabha who belongs to the Party to