

Mr. Deputy-Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Constitution of India".

The motion was adopted.

Shri D. C. Sharma: Sir, I introduce the Bill.

14.36½ hrs.

INDIAN PENAL CODE (AMENDMENT) BILL—contd.

(Amendment of Sections 405 and 406)

Mr. Deputy-Speaker: The House will now proceed further consideration of the following motion moved by Shri Diwan Chand Sharma on the 8th June 1962:—

"That the Bill further to amend the Indian Penal Code, 1860 be taken into consideration."

Twenty-three minutes still remain. The hon. Minister may continue his speech.

The Minister of State in the Ministry of Home Affairs (Shri Datar): Sir, last time I pointed out to my hon. friend the sponsor of this Bill that it was unnecessary for the reason that the word "entrustment" had been used in its non-legal or general sense and therefore all trusts whether they were specifically so created by the Act or not will all be covered by the present section in the Indian Penal Code dealing with criminal breach of trust. In the circumstances, I would suggest to my hon. friend not to bother himself so far as such cases are concerned. I read last time certain portions of section 405 where the words used are of general application and they included not only express trusts, but as I stated implied and also contingent trusts. They were all covered by the very wide word used in this connection. They have

purposely used the expression "trust" in section 405; they have used the expression "entrusted with property" Such entrustment of property can arise from different circumstances, on account of combination of certain circumstances a trust is bound to follow. Whenever the terms either expressed or implied are not complied with, or rather violated, naturally there is a criminal breach of trust.

Such contingencies, as you are aware might follow not only in the case of a trustee and the beneficiary—these are the common expressions—but also in other cases like those of a bailor or bailee, a master and a servant, a pledger and a pledgee and a guardian and a ward—in other words, as I pointed out last time, all the relations of a fiduciary character are covered by the expression "entrustment". That is the reason why I suggested that whatever the hon. Member had in view is fully covered by the expression used. It must be remembered that the Penal Code was passed nearly a hundred years ago. Even though it was passed a hundred years ago, it has stood the test of time. Only a few amendments have been found necessary bringing within the purview of the offence certain types of circumstances or violations which require to be dealt with. Under these circumstances, criminal breach of trust was a matter which was very clearly defined in the Indian Penal Code. Therefore, so far as the first objection of the hon. Member is concerned namely, even the implied condition also should be included, it does not stand at all.

Secondly, if the wording is read, you will find that there are certain expressions which deal with express or implied condition. So far as trusts in general or the relations amounting to trusts in general are concerned, they need not be further made specific, because they already cover the wider grounds of all types of trusts, either specific, implied or resulting

[Shri Datar]

trusts. You will find that the wording is extremely clear: "whoever being in any manner entrusted with property...." That expression has been purposely used in its wider field. "With any dominion over property, dishonestly misappropriates". So, that constitutes the first category of criminal breach of trust. "Or converts to its use that property." That also has to be done dishonestly. Then, "Or dishonestly uses or disposes of property in violation of any direction of law." Whenever there are directions of law, and if they are violated, and further, that violation is done out of dishonest intention, then only it will amount to criminal breach of trust. "Prescribing the mode in which such trusts are to be discharged or of any legal contract express or implied." The hon. Member will see that the words "express or implied" have been used in connection with legal contracts. When there has been a contract between the parties certain matters are made clear and certain matters follow as a matter of course. That is the reason why the original legislation itself has used the expressions, "express or implied." Then it says: "...discharge of such trusts or wilfully any other person to do, commits a criminal breach of trust." So, if the hon. Member has followed me, so far as the legal implications not only of this law but of the law on trusts are concerned, there are a number of Acts. In particular, as I have pointed out, we have got the Indian Trusts Act, and the last chapter in it—as most of the lawyer Members of this House will, know—deals with conditions which are in the nature of trusts. That means, though apparently or on the face of it they may or may not be trusts, there are certain relations in the nature of trusts. That is why that chapter has been called "The obligations or relations in the nature of Trusts." Therefore, they are all covered by the expression "entrustment" used in this Act.

So, I would point out to my hon. and learned Friend, the professor,

that whatever object he has in view is fully dealt with and is covered by the present wide expressions used in the provisions of section 405.

The next point that he has in view is to enhance the sentence. So far as the question of penalty is concerned under the criminal law, may I point out to the hon. Member again that after it is found on evidence that a particular offender or accused person has committed the offence, the question of actual penalty to be awarded or the punishment to be inflicted on him has to be left to the judge who might be presiding over the court or the magistrate or whoever it may be. In other words, he would agree that the question of punishment has to be with reference to the facts proved, and therefore the quantum of punishment should be ultimately left to the judge in his—and this is known as—judicial discretion. Therefore, that discretion should not in anyway be affected at all.

What my hon. friend wants to have is, he wants that the highest penalty to be provided in section 406 of the Act should be five years. Three years is the penalty that has been provided for, and in proper cases it would be open to the magistrate or to the judge to give the highest punishment of three years.

Secondly, so far as the scheme under the Indian Penal Code as also other criminal laws is concerned, it will be open to a judge either to pass the sentence of imprisonment or of fine or of both. What the hon. Member wants us to do is, the maximum punishment should be enhanced to five years and then he has put in the expression, "and". That means in all cases where there is criminal breach of trust, he is not satisfied only with imprisonment. He also wants an additional infliction of fine. There might be cases where a particular criminal breach of trust might be interpreted from the conduct of the parties. There might also be what you call extenuat-

ing circumstances. Therefore, in all these cases, the wording that has been used in the Indian Penal Code is, "with imprisonment or with fine or with both." What the hon. Member has in view is, what you call, a cumulative punishment, namely, a punishment of imprisonment plus fine. You will find that it departs from the scheme of the Indian Penal Code under which it is always within the judicial discretion of the court to either pass a sentence of imprisonment or a sentence of fine or pass a sentence of imprisonment plus fine. Therefore, I would submit to my hon. friend that it is not necessary to increase the maximum punishment under the law to five years nor to have a cumulative punishment consisting of both imprisonment and fine.

I would, therefore, request the hon. Member not to press this Bill. A similar Bill had been brought forward in the last Parliament with exactly the same words. Ultimately, either it lapsed or it could not be moved. The hon. Member has more or less out of friendly considerations brought forward this Bill. I am putting it in a rather lighter vein. I would submit that the purpose of the Bill has been fully served already. The wording is wide enough; and I request my hon. friend, the learned professor, not to press this Bill.

Shri D. C. Sharma (Gurdaspur): I have been treated to a very learned discourse this afternoon by our learned Minister of State in the Ministry of Home Affairs. I must submit very respectfully that though he has argued his case very ably and very eloquently, I do not feel convinced. I had certain points to offer so far as this Bill is concerned. One was that the content of this Bill should be made as clear and specific as possible. After all, the magistrates and judges in India will not have the good fortune which I have had today of listening to the able exposition of the hon. Minister of State in the Ministry of Home Affairs. This question forms part of the legal knowledge that is

there. Therefore, everyone will feel handicapped. I wanted that this Bill should be made so clear as to be understood not only on the floor of this House as the hon. Minister was expounding it, but also in a small tehsil or in a small sub-divisional headquarter. This was my idea. But my learned friend has refused and said that everything is there in the word 'entrustment'. What is this word 'entrustment'? Is it a magic word? It is an omnibus word and it applies to so many things. I do not believe in words of magic or in omnibus words. I want words to be clear and to have a precise and definite meaning. Therefore, I wanted that the whole thing should be clarified and made very simple. That was my idea, but the Minister does not agree with me.

My idea was, as you know, Sir,—you were in the Chair at that time also—that the punishment should be enhanced. Are not criminal breaches of trust on the increase? What is the proportion of increase? What is the percentage? I cannot get any statistics. Perhaps my lawyer friends may be able to know that. But I know from my reading of the newspapers and from my contacts with my advocate friends that criminal breach of trust has become something in the nature of an epidemic because more and more money is accumulating in our hands and more and more persons are interested in that money. All types of trusts are created in my country and all types of persons are being entrusted with the management of those trusts, with the result that sometimes those trusts do not succeed in those objectives for which they were created.

There is a tendency today to misappropriate money, which is on the increase. I, therefore, wanted that the punishment should be enhanced. But my friend does not want to do that. My hon. friend is very compassionate so far as this Bill is concerned. I wish he were as compassionate in other matters also as he is today.

[Shri D. C. Sharma]

As I said last time, he is suffering from an occupational disease. That disease is that our Ministers do not always try to see the viewpoint of the persons who want a change. They show some kind of allergy to change. He does not want a change. What can I do? It is a pity that that day the House was very thin and some of my lawyer friends, like Shri Trivedi, did not take part in the discussion. They would have expounded this Bill much better than I was able to do and supported me that day. But I was left alone to fight this battle of legal reform. I am not a lawyer myself, but I have sat at the feet of lawyers like Shri Datar, Dr. Aney and others. It is they who told me that this law needs reform. But my friend says that what was good in 1860 is good today in 1962. What is this law? Is this law an archaeological monument, a fossil, which is a part of those remains which we have dug up at Harappa and other places. I want law to be a living thing.

Shri C. K. Bhattacharya (Raiganj): Is it the opinion of the hon. Member that everything old is bad?

Shri D. C. Sharma: I cannot say that, because people think I am myself growing old. But this is not old; this is ancient. A thing which is one hundred years old is not old, but ancient. I want to plead with the hon. Minister, who is so compassionate to persons who commit breaches of trust, that he should enhance the punishment and make it deterrent. But he does not do it. I feel myself all alone in this House and nobody supported me that day. The Home Minister does not think there is need for any change. But I know a day will come when this code will be changed. I think somebody will take it upon himself, saying there was somebody who wanted to make a change in this law, but it was the Minister of Home Affairs who stood in the way. I know that day is going

to come. I know the verdict of history is going to be in my favour. With these words, I withdraw the Bill.

Mr. Deputy-Speaker: Does the hon. Member have the leave of the House to withdraw the Bill?

Some Hon. Members: Yes.

The Bill was, by leave, withdrawn.

14.55½ hrs.

*CONSTITUTION (AMENDMENT) BILL

(Amendment of the Eighth Schedule)

Shri U. M. Trivedi: I beg to move
rose—

Mr. Deputy-Speaker: You were not here when I called you. I am allowing it as an exceptional case.

Shri U. M. Trivedi: I beg to move: for leave to introduce a Bill further to amend the Constitution of India.

Mr. Deputy-Speaker: The question is:

“That leave be granted to introduce a Bill further to amend the Constitution of India.”

The motion was adopted.

Shri U. M. Trivedi: I introduce the Bill.

14.56 hrs.

HINDU SUCCESSION (AMENDMENT) BILL

(Insertion of new Section 23A)

Shri J. B. S. Bist (Almora): I beg to move:

“That the Bill further to amend the Hindu Succession Act, 1956 be circulated for the purpose of eliciting opinion thereon by the 31st December, 1962.”

The amendment proposed is: