

Some Hon. Members: Yes.

Shri Nambiar: No.

Mr. Chairman: Then I shall put the motion to the vote of the House.

Shri Nambiar: We may have a voice vote.

Mr. Chairman: The question is:

"That the Bill further to amend the Indian Post Office Act, 1898 be taken into consideration."

The motion was negatived.

17:24 hrs.

INDIAN PENAL CODE (AMENDMENT) BILL

(Amendment of sections 405 and 406 by Shri D. C. Sharma).

Mr. Chairman: The House will now take up the Indian Penal Code (Amendment) Bill. Shri D. C. Sharma.

Shri Siddiah (Chamarajanagar): Sir, what is the time allotted for this?

Mr. Chairman: How much time do hon. Members think should be allotted for this Bill?

An Hon. Member: Half an hour.

Shri D. C. Sharma (Gurdaspur): Two hours.

Mr. Chairman: Let it be one hour.

Shri D. C. Sharma: No, Sir; two hours. It is a very important Bill.

Shri Sonavane (Pandharpur): Half an hour will be sufficient for this.

Shri D. C. Sharma: I will speak for half an hour.

Mr. Chairman: There are only two clauses in this Bill. I think one hour will be sufficient.

The Minister of State in the Ministry of Home Affairs (Shri Datar): Let us have one hour.

Shri D. C. Sharma: I am going to speak for half an hour.

Mr. Chairman: He should begin and then we will think of the time.

Dr. L. M. Singhvi (Jodhpur): Sir, on a point of order. If only one hour is going to be allowed for the entire discussion of the Bill, then the Mover cannot be allowed half an hour.

Mr. Chairman: It is not a point of order.

Shri D. C. Sharma: I request you, Mr. Chairman, to give two hours for this Bill, because there are so many persons who are going to take part in the discussion.

Mr. Chairman: As we proceed, we shall see whether there is any necessity to extend the time.

Shri Datar: "Extend the time" means how much time has been given already?

Mr. Chairman: One hour.

Shri Sonavane: Sir, the next Bill is very important. Half an hour is enough for this.

Mr. Chairman: I have already said that as we proceed we shall see whether it is necessary to extend the time.

Shri D. C. Sharma: If it is important, that Bill also will get time.

Mr. Chairman: I beg to move:

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

Sir, I come to the subject of this Bill with a very heavy heart. The first reason for my sadness is this, that in spite of the fact that we have now got a Law Commission, some of the laws of this land have not come under

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review on the part of this Law Commission. And this is one of those, though I think it does need some kind of change or revision or amendment.

I also wish to bring to your kind notice that this refers to 1860, and I am speaking about this amendment in the year 1962. Sir, one hundred and two years have passed, and I think there is some necessity for amending or changing even those laws which have stood the test of a century.

I think law is a dynamic thing, and law is always adjusted to new social conditions and new social environments. I believe that law has to move with the spirit of the times and also with the spirit of the people whom it serves. But unfortunately, in our country we show a great deal of allergy to the amendment of any law. I think we are, in the field of law, very much past-dominated. I know, there is no end of gratitude for Lord Macaulay who gave us this Indian Penal Code. It was, I should say, a combination of the features of the Penal Codes of so many countries, and particularly of the United Kingdom. But it did reflect the social conditions to some extent. Now things have changed. India was at that time a colonial dependency of the British Empire. The stranglehold of colonialism was making itself felt at that time.

Colonialism had not spread its tentacles wide in this country. It was just in an initial stage. After that, colonialism had its heyday in our country. Then came the Freedom movement. The Freedom movement brought us Independence. Independence has changed so many things. Free India is not the India of Lord Macaulay. Free India is not the India of the Indian Penal Code of 1860. Free India is living in a different social set-up, in a different atmosphere. We the inhabitants of Free

India breathe a different kind of air and that is fresh air as we know. This statute has been there for the last 102 years. Unfortunately, there are some persons who will get up and support it because it is old and ancient. We Indians are, in many ways worshippers of what is old and ancient. We set too much store by what is of the past. Of course, there are some good things in the past also. But, I believe, our Ministry of Home Affairs or whatever Ministry is going to deal with this Bill, would do very well if they tried to give us a new Code. There was Revolution in France and one of the good things that that Revolution brought about was the Code Napoleon. New things; new codes; changed times; changed laws; that is what happened. Here, we have been in the midst of an economic revolution, a social revolution, a political revolution and yet the great pundits of the Ministry which preside over these things, think these things to be as sacred as anything contained in any revealed book of India. This is something which breaks my heart. This is something which makes me very, very unhappy. We should have a new Code. As Napoleon gave a new Code to France, similarly, the Members of the Cabinet—there are so many of them—should give us a new Code. Even if they cannot give us a new Code, I would plead very vehemently and very humbly—I am a very humble person—that we should have a new Code to meet the changing circumstances of my country.

I think there was one gentleman who said something like this about education. What does education do for us? Education makes us sophisticated. That is to say, we can find arguments for proving any case. That is one of the good things that has been done. Here I stand and I am going to prove my case. There are other educated Members and they will speak against me and they will bring forward very good arguments. Education is the school of argumentativeness.

Sometimes we argue for the sake of argument. Education is also, if I may say so, the school of ingenuity. New methods are coming forward to do old things. Nowadays, we have scientific methods. We have got what is called scientific crime. God forbid if scientific crime makes its appearance in my country to the extent to which it has made its appearance in some other countries. All this is the result of education. There is no question of saying that one should not be educated. Education has its bright side and also its dark side. Education is a double-edged weapon. In the hands of the good, it is an instrument of human welfare. But, in the hands of the evil, it is a weapon destructive of human happiness and human solidarity. That is what happens.

Shri Hari Vishnu Kamath (Hoshangabad): It is in good hands here.

Shri D. C. Sharma: Education has taught us new ways of criminal breach of trust. Gone are those days when our people had a few ideas about criminal breach of trust. Now, on account of our vast experience, on account of the study of newspapers, we are learning new methods, new techniques and embarking on new adventures in this field. Therefore, I would say that the time has come when we should do something to adjust ourselves to this new atmosphere which is surrounding us.

I need not go very far, but here is today's Order Paper which contains the starred questions and the unstarred questions for today. In the list of starred questions for today, there is question No. 1363 about a mill.

Shri Hari Vishnu Kamath: By my hon. friend?

Shri D. C. Sharma: No, I had not asked that question. I am very sorry. **Shri Daji** asked that question, and it

stands also in the name of **Shri S. M. Banerjee**. The question reads thus:

"Will the Minister of Home Affairs be pleased to state:

(a) whether Special Police Establishment has searched the premises of New Central Jute Mills Company;

(b) if so, the reasons therefor;

(c) how many times these have been searched;

(d) whether some documents have been recovered; and

(e) if so, what are those documents?"

I do not know what this New Central Jute Mills Company is, and where it is. I know nothing about it. But I am referring to it only to prove my point that something like this is happening in my country.

I found two questions about this kind of thing in the Order Paper for today, one a starred question and the other an unstarred question. The answer to the starred question reads thus:

"(a) Yes.

(b) The search was made in the course of investigation of an alleged offer of criminal breach of trust of the funds of the New Central Jute Mills by persons connected with its management.

(c) Once, but the search continued for three days."

So, a big criminal breach of trust required a bigger chunk of time.

Then, the answer goes on to say:

"(d) Yes.

(e) Vouchers, Account Books relating to the transactions which are the subject-matter of the investigation."

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What I mean to say is that here is a limited company, and here is somebody who wants to do a criminal breach of trust. Of course, you may say 'Oh, all these things happen in business'. Business is not always very clean, though it is very clean in many ways, and therefore, these things happen there.

But, now I come to the field of education which is thought to be the cleanest field in this world. But what do I find? An hon. friend of mine, Dr. L. M. Singhvi, has put unstarred question No. 2829. What is this question about? This is not a question about any mill, but this is a question about an educational institution. This question reads thus:

"Will the Minister of Education be pleased to state:

- (a) whether any financial aid or grant has been given by Government of India or any Central body to Rajasthan Vidya-peeth in Udaipur..."

I do not know what this Vidya-peeth is; I know nothing about it; I know nothing about its history or whatever it is. But I believe that it must have a good name in Rajasthan.

Dr. L. M. Singhvi: It does not have a good name; that is why I have tabled the question.

Shri D. C. Sharma: The question further reads:

- "(b) if so, to what extent since 1957 to date;
- (c) whether it is a fact that an investigation was made into the affairs of the said Vidya-peeth, disclosing misappropriation and malfeasance to the extent of about Rs. 5,30,000..."

Generally, the schoolmasters do not go beyond a few hundreds of rupees.

but here you see that things have changed, and my hon. friend is talking of the changed circumstances. Here, the amount is supposed to be of the order of about Rs. 5.30 lakhs. So, we teachers also are doing things on a big scale now, because we are getting big grants.

The question then reads:

- "(d) whether the Central or the State Government are in possession of any report revealing a distressing state of affairs;..."

Shri Nambiar (Tiruchirapalli): Let my hon. friend come to the point and say what the amendment that he is proposing is.

Shri D. C. Sharma: The question then continues:

- "(e) if so, why the report is not being made public; and
- (f) what action is being taken against the culprits?"

I may tell my hon. friend Shri Nambiar that I am coming to my point. My Bill is about criminal breach of trust, and I am giving the fundamentals of that thing. But my hon. friend will have the same fate on this Bill also as he had in regard to the other Bill that was discussed earlier.

Mr. Chairman: The hon. Member may proceed with his argument; he need not reply to the interruptions.

Shri D. C. Sharma: My Bill deals with criminal breach of trust, and it is proved because there are two questions today about it, one a starred question and the other an unstarred question. The Starred Question deals with a mill and the Unstarred Question with an educational institution in Rajasthan where there has been alleged defalcation to the extent of

Rs. 5,30,000. How that has happened, I do not know.

I was submitting very respectfully that education and all those things have taught us new ways of doing these things. We have been, as you know, in the midst of two world wars and those two cataclysmic wars have also led to lowering of moral standards. Therefore, these things are happening. There are contractors who do not abide by the terms of the contract. There are carriers who carry your goods but do not deliver the right kind of goods. There are businessmen who do not give the specified kind of things. It is not only between individuals that these things are taking place. Our Minister of Rehabilitation—now he is Minister of Works, Housing and Supply—went to some country to bring back lockers and all that kind of things. Those lockers contained many precious things. They were delivered to the persons who owned them. These came after so many years. It was found that some of them were empty and others contained articles which were not those kept by the owners. So this can happen on an inter-State level, inter-country level.

Shri Hari Vishnu Kamath: International level.

Shri D. C. Sharma: We hear of inter-state gangs. What do these inter-State gangs do? They are doing all these things.

I would say this is happening in the world of transport. This is happening in the world of education...

Shri Hari Vishnu Kamath: Commerce.

Shri D. C. Sharma: ...in the world of commerce. In commerce, it is much more than in any other department of our life. I am not talking of the Ministry of Commerce, but of commerce.

I go to my constituency. I want goods of a particular variety. But I get goods of another variety. There

is a poor man in one of the villages of my constituency. He came here. He wanted cut pieces of cloth. He went to some market to get those pieces. He got them. They were all very good. They were going to be sent to him at the place he lived. He got the railway consignment and when he opened it, he found that it did not contain those cut pieces of cloth which he had bought but something else.

Shri Hari Vishnu Kamath: That is cheating.

Shri D. C. Sharma: It is cheating. I am thankful to my hon. friend, Shri Kamath, for drawing my attention to this, that there is some difference between cheating and criminal breach of trust. But criminal breach of trust is also there, because those persons promised to give something but did not give it.

I am now talking about criminal breach of trust. I submit very respectfully that this disease is eating into the...

Shri Hari Vishnu Kamath: Vitals.

Shri D. C. Sharma: ...vitals of our society, and there is hardly any department of our life where you do not find it. Drastic diseases require drastic remedies. This has ceased to be a mild disease. Somebody executes a will in favour of somebody else. The executor does not carry out the will—criminal breach of trust. Somebody keeps a warehouse and somebody else goes to him and wants to get something from him. But the owner of the warehouse is a dishonest person and does not give the stipulated goods for the stipulated sum of money. I am living in Delhi. I send some money to Calcutta to somebody who is my partner, and ask him to invest the money in a bank. He invests it in his own bank. That is what is happening. So, I can multiply these instances. I entrust a carrier with the job of carrying some of my property, and he takes hold of that property. This is what is happening.

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in some of the transport companies, in some of the ventures engaged in transport. A revenue officer—such cases we come across very often—gets money, but instead of depositing it in the proper place, bolts away with that money. What I am submitting respectfully is this, that this criminal breach of trust has become a kind of racket which is being practised now on a very big scale. Of course, I do not have facts and figures with me... (interruption) You kindly go to your place, and you will have your Bill very soon.

Shri Sonavane (Pandharpur): My learned friend said that criminal breach of trust had become a racket. I said those committing criminal breach of trust together form a racket. I just wanted to correct him.

Shri D. C. Sharma: He is right. He does not know that I also studied English at some college at one time, and that a racket can be applied to persons and also to some kind of institutions. Therefore I am perfectly right, and I am glad that this gentleman also read English somewhere, though he did not read in the same place, and therefore there is some confusion in our application of the meaning of this word.

Anyhow, I want that section 405 should be made so specific and clear that anyone who is guilty of this very anti-social thing cannot get away with it. Our difficulty is that we catch people, but on account of some loop-hole in our law, on account of some imperfect wording of the law, on account of certain omissions in the law, those persons are able to make good their escape. Therefore, I am asking for a very simple thing. I am asking that after the words "direction of law", the words "or of any condition, express or implied" be inserted. Why? Because express and implied conditions are also there. It is not only law that is the primary thing in life, it is not only

law that is the sovereign thing in human affairs, there are also conditions, and those conditions are sometimes express and sometimes implied, and any one who is honest can understand the implications of those conditions which are not expressed very directly. So, I say that this thing should be added so that it does not remain only a matter of legal jugglery, only a matter of legal argument. It should also become a matter of social obligation. Whether it is implied or explicit, I want to broaden the scope of the measure so that it does not remain merely a matter of legal argument but it becomes a matter of social conscience. That is what I want it to be.

Then, I want to add three more words, "express or constructive" after the words, "such trust", so that either it is expressed or it is inherent in the case. I want these two amendments to be made so that this law becomes a little more tight and also it becomes a little more clear and explicit.

Of course, I am doing all this for safeguarding the interests of society. I have no animus against anybody. I have been taught even to forgive the sinner and forgive the criminal. Forgiveness has been instilled into me ever since I was a child, but there are certain crimes against one's own self which one cannot forgive and there are certain crimes against society which I cannot condone. I am referring to those anti-social things.

In section 406 of the principal Act, for the words, "three years or with fine, or with both", I want the words "five years and shall also be liable to fine" to be substituted. Why do I say this? The period was three years when the expectation of life was small.

Shri Nambiar: Make it six.

Shri D. C. Sharma: Now, the expectation of life is 47. Formerly, the

expectation of life was 22 to 27. In my State, the expectation of life is 47 now. So, three years is a small instalment of one's life which enables you to overcome the defects of this law. The period was three years at that time when the expectation of life was small. It should be five years now. Therefore, I want that anybody who commits this breach of trust should be punished for five years.

Shri Nambiar: Make it six.

Shri D. C. Sharma: You will make it six, and I am sure you are one of those persons who swear by it because you are such a good man that I have no end of regard or affection for you. I want the period to be five years with fine.

So, I want this Act to be amended not to please me, or to please anybody. It should be amended not to offend anyone or anybody. It should be amended in order to subserve the changed social circumstances. I would, therefore, request the hon. Minister to agree to what I am saying. I think if I can judge things—I think I have judged it very rightly now—there is some hope of this measure going through successfully.

Mr. Chairman: Motion moved:

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

I find no other hon. Member wants to speak. The Minister.

Shri Datar: Sir, I sympathise with the objectives of the hon. Member, but may I point out that though the circumstances have changed from 1860 to what they are in 1962, the underlying principles on which this Indian Penal Code was based in general and sections 405 and others the particular do stand and do remain as they are? My only difficulty in dealing with this subject is that my hon. friend is a learned professor and so I shall have to place before the

House certain elementary principles of law. That is my difficulty, but I should like to be as brief and explicit as possible.

So far as the law of trusts is concerned, we have got a number of them. The Indian Trusts Act is one important law on the subject, dealing with private trusts. We have other public trusts also. The word "entrustment" which has been used in section 405 is of a general character. I am trying to point out that the object which my hon. friend has in view has been completely subverted by the wording of section 405, which says: "Whoever being in any manner entrusted with property..." etc. The word 'trust' has not been used in the technical sense in which it is used in some of the laws that we have. The Indian Trusts Act is also an old Act, which was passed in 1882. Perhaps to cause some discomfiture to my hon. friend, I may say, sometimes old is good as well. Although the Indian Trusts Act contains a definition of the word 'trust', the legislature felt that apart from cases where a trust would be created specifically by the act of parties, there might be cases where they would not be specifically created, but there might be what are known as implied trusts, constructive trusts or resulting trusts, i.e., trusts proceeding from the facts of a particular case and in the eyes of the law applicable to it. It was for this purpose that after dealing with specific trusts, the Indian Trusts Act in the last chapter deals with what are known as obligations in the nature of trusts. They include implied trusts, constructive or resulting trusts. There are other types of trusts that have been defined in what is known as the law of trusts.

18 hrs.

This question has been fully considered. In fact, trust was one of the subjects dealt with in the English chancery or equity courts. They found that there may be circumstances where short of an express trust,

[Shri Datar]

Certain obligations would arise in the nature of a trust and therefore, such cases also have to be fully dealt with and covered by the law as it exists. That was why chapter 9 was provided for in the Indian Trusts Act of 1882. There are a number of provisions there and it has been pointed out that in the different set of circumstances that have been dealt with by the various sections, a trust would be forced or imposed upon a person. In law it is stated that whenever there are what are known as relations of confidence, relations creating faith or confidence between the parties apart from legal relations that might be created by a contract, there are certain obligations imposed. When the character of the relationship held

by a person who is known as the trustee is called a fiduciary relationship, it is known as a *cestui-que* trust and the trustee in whose favour certain obligations are created is called a beneficiary under our normal law.

Mr. Chairman: How long will the hon. Minister take?

Shri Datar: At least 15 minutes.

Mr. Chairman: He may continue next time.

18.02 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Monday, June 11, 1962/Jyaistha 21, 1884 (Saka).
