

will be present when their Bills are taken up on that date, and after that has been ascertained, six Bills that come in the order will be put down in the agenda, and the other Bills need not be there, because it will be unnecessary and Members will not be in a position to know as to which of the Bills would be taken up.

So in order to facilitate hon. Members to prepare themselves for the Bills as also to make the agenda a sizable one, containing only Bills which will probably be taken up, it has been decided that only six Bills should be indicated in the agenda.

I beg to submit that this Report be accepted by the House.

Mr. Deputy-Speaker: The question is:

"That this House agrees with the Fiftieth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 18th April 1956".

The motion was adopted.

INDIAN PENAL CODE (AMENDMENT) BILL

(AMENDMENT OF SECTION 429)

Mr. Deputy-Speaker: As regards the Bill to be introduced, Shri T. B. Vittal Rao is absent.

The House will now proceed with further consideration of the following motion moved by Pandit Thakur Das Bhargava on the 6th April 1956:

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

Out of 2 hours allotted for discussion of the Bill, 33 minutes were taken up on the 6th April 1956, and 1 hour and 27 minutes are still available.

Shri R. D. Mishra may now continue his speech.

श्री. आर० डी० मिश्र (जिला बुलन्दशहर): उपाध्यक्ष महोदय, मैं गत दिन इस बिल की मुसालिफत कर रहा था। मैं समझता हूँ कि यह बिल पबलिक इंटरैस्ट (लोकहित) में नहीं है, हालांकि इसके स्टेटमेंट आफ आबजेक्ट्स एंड रीजन्स (उद्देश्यों और कारणों) के विवरण में यह कहा गया है यह पबलिक इंटरैस्ट में है।

जहाँ तक जानवरों के साथ हमदर्दी करने का सवाल है, मैं ठाकुर दास जी के साथ सहमत हूँ कि उनके साथ बेरहमी नहीं होनी चाहिये। लेकिन अगर दफा ४२८ इस प्रावीजन (उपबन्ध) को बढ़ाया जायगा तो उससे इस देश में बहुत खतरनाक नतायज पैदा हो जायेंगे। उस दिन मैं सुन रहा था कि "शैल प्रीज्यूम" के इस्तेमाल करने से कुछ ज्यादा फर्क नहीं पड़ता है क्योंकि इंडियन एबीडेंस ऐक्ट (भारतीय साक्ष्य अधिनियम) के अन्दर जहाँ "मे प्रीज्यूम" और "शैल प्रीज्यूम" शब्द इस्तेमाल किये गये हैं वहाँ वह रिबर्टबिल प्रिजम्पशन (निराकरणीय धारणा) हो जाता है। लेकिन मेरा कहना यह है कि जो प्रोवाइसो (परन्तुक) श्री ठाकुर दास साहब बढ़ा रहे हैं उसमें उन्होंने वे शब्द इस्तेमाल नहीं किये हैं कि जो इंडियन एबीडेंस ऐक्ट में हैं। जहाँ तक इंडियन एबीडेंस ऐक्ट का ताल्लुक है, उसमें जहाँ दफा ४ में "मे प्रीज्यूम" और "शैल प्रीज्यूम" शब्दों को इस्तेमाल किया गया है, वहाँ उनके बाद में यह लिखा गया है "अनलैस एंड अन्टिल इट इज डिस्पूब्ड" यानी जब तक कि उनका सबूत रद्द न कर दिया जाये उनको मान लिया जायेगा कि साबित हो गये हैं। लेकिन ऐसी बात में इस प्रोवाइजो में नहीं देखता, जिसका नतीजा यह होगा कि जब कोई मुकदमा दफा ४२८ में किसी अदालत में जायेगा तो उसमें मुल्जिम को खिलाफ प्रीजम्पशन कर लिया जायेगा। चाहे डाक्टर ने किसी जानवर अच्छा करने के लिए जहर दिया हो लेकिन वह मर गया। अब उसका मालिक चाहे तो डाक्टर पर मुकदमा चला सकता है कि डाक्टरने जहर देकर मेरा जानवर मार दिया। ऐसी हालत में प्रीजम्पशन डाक्टर के खिलाफ होगा, चाहे यह बात बिल्कूल सही है कि उसकी नीयत मारने की नहीं थी और उसने जो जहर दिया था वह अच्छा करने के लिये दिया था। लेकिन चूंकि वह नीयत लाजमी मानी हुई है, तो डाक्टर को सजा हो सकती है। अगर किसी के मोटर से कोई जानवर मर गया, चाहे उसकी नीयत जानवर को मारने की नहीं थी, लेकिन फिर भी यह मान लिया जायेगा कि इसकी नीयत नाजायज तरीके पर नुकसान पहुंचाने की थी। इस प्रोवाइसो की यही मंशा हो जाती है।

इसके बाद दफा ४२५ और ४२६ के अन्दर अगर खुद मालिक भी अपनी चीज को नुकसान पहुंचाता है तो यह समझा जायगा कि वह जुर्म कर नवाला है। अगर वह उस जुर्म में सजा पा

[श्री आर० डी० मिश्र]

सकता है। अगर कोई आदमी अपने किसी जानवर को स्लाटर हाउस (वधशाला) में दे दे, जैसे कि बहुत से गोशत खानेवाले अपने जानवरों को मरवा देते हैं, तो इसमें यह मान लिया जायेगा कि उसने देश को नुकसान पहुंचाने के लिये अपने जानवर को मरवा दिया है। चाहे वह आदमी कहे कि उसने ऐसा इस गरज से नहीं किया लेकिन उसके खिलाफ यह चीज मान ली जायेगी। तो मेरे कहने का मतलब यह है कि इससे बहुत खतरनाक नतायज पैदा हो सकते हैं। चूंकि इसमें “अनलैस एंड ग्रंटिल इट इज डिस्प्रेब्ड” नहीं लिखा है जैसा कि इंडियन एवीडेंस ऐक्ट में है, इसलिए इंडियन एवीडेंस की डेफीनीशन (परिभाषा) यहां लागू नहीं हो सकती। इंडियन एवीडेंस ऐक्ट में कुछ दफात में शब्द “मे प्रीज्यूम” इस्तेमाल किये गये हैं और कुछ में “शैल प्रीज्यूम” शब्द इस्तेमाल किये गये हैं। अगर कुल एवीडेंस ऐक्ट को देखा जाये तो मालूम होगा कि “शैल प्रीज्यूम” वहीं इस्तेमाल किया गया है जहां कि तीस साल स ज्यादा पुराने डाक्यूमेंट्स (दस्त-एवेज या गजट्स वर्ग का सवाल है। ऐसे पुराने दस्तावीजात के बारे में यह कहा गया है कि अगर उनको गलत साबित न कर दिया जाये तो उनको सही मान लेना चाहिये। लेकिन वे डिफ्यूब भी हो सकते हैं। वहां पर इंटेशन (अभिप्राय) का ताल्लुक नहीं है। जहां रोजमार की बातें हैं, जैसे कि सूरज निकलता है तो धूप होती है, यानी जहां कि नेचुरल प्रीजम्पशन किया जा सकता है वहां दफा ११४ में “मे” का शब्द इस्तेमाल किया गया है। उस हालत में अदालत के हात खुले होते हैं कि अगर वह यह समझती है कि ऐसा होना चाहिए तो वह यह प्रीज्यूम कर ले। लेकिन अगर वह समझती है कि लाजिमी तौर पर यह बात साबित नहीं है तो उसको अस्थितार है कि वह उसको प्रीज्यूम न करे। वह सबूत मांग सकती है और कह सकती है कि पहले साबित करो उसके बाद हम प्रीज्यूम करेंगे। लेकिन जहां “शैल प्रीज्यूम” होगा वहां पर तो अदालत मजबूर हो जायेगी और उसके लिये और कोई रास्ता खुला नहीं रहेगा। अगर आप अपील में भी जायेंगे तो यह कह दिया जायेगा कि इसमें “शैल प्रीज्यूम” लिखा हुआ है। अगर इस प्रोवाइजो में भी इंडियन एवीडेंस ऐक्ट की तरह “शैल प्रीज्यूम” के बाद यह लिख दिया जाये कि “अनलैस एंड ग्रंटिल इट इज डिस्प्रेब्ड” तब तो यह प्रीजम्पजन रिबटेबिल हो सकता है। यह

प्रीजम्पशन आफ ला हो जाता है “शैल प्रीज्यूम” जो कानून क अन्दर प्रोवाइड किया जाता है, इसलिए मैं समझता हूं कि पंडित ठाकुर दास भागव का जो प्राविजो है वह उस मंशा के खिलाफ जाता है जो कि उन्होंने बतलाई थी। जहां पर जिस कानून का मतलब होता है, वह मतलब उसी कानून के शब्दों से निकाला जाता है और अदालत उसी के मुताबिक काम करती है। उन्ही शब्दों से वह मतलब निकालती है और उनसे बाहर वह नहीं जा सकती। इसलिए जरूरी है कि वह मंशा साफ तौर पर उन शब्दों से जाहिर होनी चाहिये और इसमें वह मंशा कि यह प्रीजम्पशन जो इसमें खड़ा किया जा रहा है कि वह रिबटेबिल है, ऐसा नहीं है। जहां पर नया कानून बनाते वक्त कोई ऐसा प्रीजम्पशन रक्खा जाता है वहां पर साफ मंशा जाहिर की जाती है। ताजीरात हिन्द की किसी दफा के अन्दर कोई ऐसा प्रीजम्पशन नहीं है, हालांकि यह बात एविडेंस ऐक्ट की थी और उसमें आनी चाहिए थी, या इसको क्रिमिनल प्रोसीज्योर कोड (दंड प्रक्रिया संहिता) में भी डाल सकते थे, लेकिन ताजीरात हिन्द में जो सिर्फ पेंनेल क्लाजेज (दंड खंड) बतलाता है कि फलां जर्म की यह सजा होगी, वहां पर यह एविडेंस क्लाज प्रीजम्पशन का बड़ा देना, गलत चीज है और वहां पर यह नहीं आना चाहिए था। मेरा कहना यह है कि जब कोई नये कानून में यह ऐसा प्रीजम्पशन रखना चाहते हैं उस समय देश में कोई ऐसी मुसीबत आई होती है कि उस वक्त अदालत के भी हाथ बांध देना चाहिए ताकि वह कोई और बात सोच ही न सके और वह लाजिमी तौर पर यही बात प्रीज्यूम करे जो हम कहते हैं तो वहां पर साफ तौर पर कानून में लिख दिया जाता है। जैसे कि प्रीवेशन आफ ब्राइबरी एंड करप्शन ऐक्ट (रिस्वत तथा भ्रष्टाचार निवारण अधिनियम) पार्लियामेंट में पास किया गया। कई लोग बहुत रिस्वत लेते हैं लेकिन उसका साबित करना बड़ा मुश्किल हो जाता है और उसके बारे में यह सोचा गया कि अगर कोई आदमी रिस्वत लेता है और उसके पास बहुत सी जायदाद वर्गरा पायी जाती है और जिसको कि वह एक्सप्लेन नहीं कर सकता वहां अदालत को यह प्रीज्यूम कर लेना चाहिए और उसको यह मान लेना चाहिए कि उसने रिस्वत ली है और इसके लिये वहां पर साफ तौर पर लिख दिया गया है। इस सिलसिले में मैं आपको उस ऐक्ट की दफा ४ को पढ़कर सुनाना चाहता हूं जहां यह शब्द लिख दिये गये हैं

"An Act for the more effective prevention of bribery and corruption"

१९५७ की दफा ४ में इस तरह लिखा हुआ है :

"*Presumption where public servant accepts gratification other than legal remuneration*—Where in any trial of an offence punishable under section 161 or section 165 of the Indian Penal Code (XLV of 1860), it is proved that an accused persons has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said section 161, or, as the case may be,—"

यहां पर "Until the contrary is proved" यह शब्द लिख दिये गये हैं। यह डिफेंस के ऊपर जिम्मेदारी आती है कि वह एक्सप्लेन करे कि उसने रिश्वत नहीं ली है, कोर्ट तो प्रीज्यूम कर लेता है कि उसने रिश्वत के लिये रुपया लिया है। अब यह मुलजिम पर भार सबूत पड़ जाता है कि वह उस प्रीजम्पशन को डिस्पूब कर दे और डिस्पूब कर देने की हालत में वह रिश्वत का प्रीजम्पशन उस पर से हट जाता है। इस ऐक्ट में "अनटि डिस्पूब" शब्द लिख देने से मंशा साफ होगई लेकिन जहां पर यह बात नहीं लिखी जाती है वहां ऐसा नहीं होता।

इसी तरीके से मैं आपको बतलाऊं कि यू०पी० के लैड रेवेन्यू ऐक्ट (यू० राजस्व अधिनियम) में "शैल प्रीज्यूम" यह शब्द लिखे हुए थे कि अदालत में जब कोई प्रोपरायटरी टाइटिल का क्वैश्चन पेश आयेगा और अगर रेवेन्यू रेकार्ड्स के अन्दर किसी की एंटरी पाई जाये तो अदालत मान लेगी, "Shall presume that it is true". अदालत उस इंटर्री के खिलाफ नहीं जायेगी और अगर किसी को कोई राइट है तो उसके लिए वह सिविल कोर्ट में जाये। इसी मामले का एक केस हाईकोर्ट तक पहुंचा और ३३ इलाहाबाद, पेज ७६६,

Durga Prasad and other versus Hazari Singh, 911 June 2, June 10

के केस में फुल बैच ने तय किया कि यह शब्द "शैल प्रीज्यूम" के मानी यह है कि अदालत कोई और चीज नहीं सोच सकती। रेवेन्यू कोर्ट उस प्रीजम्पशन के करने के लिए पाबन्द है जो कि कानून में है और अगर अदालत की कोई और मंशा होती या एविडेंस ऐक्ट की डेफीनीशन उसपर लागू होती तो उसमें "अनटिल कंटरेरी इज प्रूब" यह शब्द लिख दिये जाते.....

Mr. Deputy-Speaker: I will request the hon. Member to be short because some other hon. Members also would like to speak.

Shri R. D. Mishra: I am moving fast.

फुल बैच ने यह तय कर दिया कि "शैल प्रीज्यूम" के माने यह है :

"It is conclusive; no other presumption can be taken."

दूसरी चीज में यह कह रहा हूँ कि उस प्रीजम्पशन के रखने के बाद देश का जो हमारा नार्मल कानून है कि हर एक मुलजिम इन्फोर्सेट है, यह इंग्लिश ला भी मानता है और इंडियन ला भी इसके ऊपर बेस करता है। इस प्रीजम्पशन को हटाने के लिए प्रासीक्यूशन पर यह वार रक्खा गया है कि वह इस बात को साबित करे, हालांकि कुछ दफात एविडेंस ऐक्ट के अन्दर ऐसी हैं जिनमें कि बार सबूत कुछ बातों का जिनका कि इल्म मुलजिम को हो, उस पर जा पड़ता है लेकिन इसका मंशा यह नहीं हो जाता कि अगर मुलजिम अपने एक्सप्लेनेशन की ठीक साबित न कर सके तो वह उस जनरल ला का फायदा न उठाये क्योंकि अगर सबूत ने अपना मुकद्दमा साबित नहीं किया कि उस में मुलजिमको इस तरीके की नीयत थी कि वह किसी को नुकसान पहुंचाना चाहता था, तो मुलजिम को भ्रम सबूत का पूरा फायदा उठाने का हक रहता है। जो हमारा नार्मल कानून है वह इस कानून से हट जाता है। यहां पर इस दफा के आ जाने के बाद एक मामुली सी बात रह जाती है कि हमने यह कह दिया कि मोटर चल रही है और सड़क पर जाते हुए बैल की उससे टक्कर लग जाती है और बैल मर जाता है। मोटर-वाला गांव वालों से कहता है कि भाई बैल तुम्हारा मर गया है और बैल के मरने से तुम्हारा नुकसान हुआ है, तुम मुझ से उस बैल

की कीमत २०० रुपये ले लो, गांव वाले सोचत है कि मोटार वाला है, बड़ा आदमी है, इससे हजार रुपया लिया जाये अब सिबाय उनको रुपया देने के उसके पास कोई चारा नहीं रह जाता है क्योंकि बैल मरा हुआ मौजूद है और वह खुद मानता है कि यह मोटार ने मारा गया है और उस इलाके में अपने बचाव के लिए उसको कोई गवाह नहीं मिलेगा और साफ जाहिर है कि मुकद्मा चलने पर उसको पांच साल की सजा होगी। अब वह हालात कि जिनमें उस बैल की टक्कर लगी कौन साबित करेगा और कहां से उसके लिए गवाह आयेगे और में पृच्छता हूँ कि "दी कोर्ट शैल प्रीज्यूम" के आ जाने के बाद अदालत कुछ और सोच ही नहीं सकती। अकेले मुल्जिम ने जो कहा है कि उसकी नियत नाजायज नुकसान पहुंचाने की नहीं थी उसके इस डिफेंस को अदालत उन तमाम गवाहियों के मुकाबले में कैसे मान सकती है। अदालत मुल्जिम की बात को तो तभी मान सकती है जब की उसके हाथ खुले हुए हो लेकिन हमने तो उसके हाथ यह लिख कर कि "दी कोर्ट शैल प्रीज्यूम" बांध दिये हैं और बात खतम हो जाती है। मैं इस बारे में बहुत सी रूलिंस कोर्ट कर सकता हूँ लेकिन बक्त की कमी से लाचार हूँ। मैं इसकी वाबत सिर्फ एक सरकमस्टांस बयान करना चाहता हूँ कि फर्ज कर लीजिये कि एक किसान के खेत में बहुत से ढोर घुस गये और वह किसान अपनी फसल बचाने के लिए उन ढोरों को डेल मारता है। अब कोई पत्थर किसी जानवर के लग जाता है और इतफाक से वह मर जाता है, किसीने मुकदमा चला दिया, तो यह बात प्रिज्युम कर ली जायेगी कि उस की नियत नुकसान पहुंचाने की थी, जब कि उसकी नियत है अपने फसल को नुकसान से बचाने की। चांदनी चौक में दो बैल लड़ रहे हैं और एक दुकान में घुस जाते हैं। उनसे किसी को चोट लग जाने का डर है। इस लिये किसी ने एक लाठी मार दी। उन में से कोई एक जानवर मर गया, या एक की टांग ही टूट गई। मारने वाले पर किसी ने मुकदमा चला दिया तो उस को सजा हो जायेगी। असल में इन्टेन्शन इन्फर किया जाता है, और इन्फर किया जाता है फॅक्ट्स से (तथ्यों) फॅक्ट्स डिस्टाइब होते हैं दूसरे फॅक्ट्स से। तो ऐसी सूरत में जो भार सब्त पहले प्रोसिक्युशन (अभियोगी) पर था वह इस एग्मेन्डमेंट (संशोधन) के जरिये से मुल्जिम पर सिफट हो जायेगा। मैं पृच्छता

हूँ कि मुल्जिम निगेटिव एविडेन्स कहां से लायेगा कि उस की नियत ऐसी नहीं थी? मैं इसको मानता हूँ कि कोई भी आदमी साधारण तरीके पर इन्टेन्शन प्रूव नहीं कर सकता ऐसी सूरत में यह समझता हूँ कि हमारे भाई पंडित ठाकुर दास जी भागवत अपने इस अग्मेन्डमेंट को वापस ले लेंगे क्योंकि जिस मंशा से वह इस कानून को अग्मेन्ड करना चाहते हैं, वह मंशा इस से पूरी नहीं होती। इस से हम एक खतरनाक सूरत यहां पैदा कर देंगे जो कि मैं समझता हूँ मुल्क के मफाद के खिलाफ है।

Shri D. C. Sharma: (Hoshiarpur): There has been a lot of legal battle over this Bill, and since I am not one of the legal luminaries in this House, I would not like to base my remarks on the findings of courts or on the findings of which happen to be in force all these Acts years.

To me it presents a very simple problem, and I could never have been aware of the gravity of the problem if I had not become a member of a committee appointed by the Government of India for the prevention of cruelty to animals. I have toured through many States of India in connection with that committee; we have examined many witnesses; we have taken a great deal of written evidence from so many persons, scientists, humanitarians, doctors, Members of Parliament and the public, and after doing that, one lesson has been burnt into my mind as into the minds of the other members of that committee and it is this, that our conscience with regard to the animal wealth of the country or the cattle wealth of the country is not as sensitive as it should be. What is the result of the blunting of that conscience on the part of the public in general in regard to their attitude towards the animal wealth of the country? All these things which are given in section 429 of the Indian Penal Code of 1860 are being practised with a great deal of callousness. I read modern Indian language papers as all Members do and sometimes I read that a cattle has strayed into the field of somebody and if my friend, Shri Misra, is to be believed, the cattle should, of course, be driven out, and if while the cattle is being driven out, it receives some injuries or it dies, the person should be given very high marks for his intention in trying to protect his filed. But I ask one question: What is the proportion between the damage to the field and the punishment inflicted

on the cattle? I would say that the proportion is something which is very very extravagant and which is a reminder of the fact that we do not have any feeling towards the cattle that are there. If you walk through the streets of Delhi or any other town, you will find that so many of the cattle are maimed and so many of the cattle are rendered useless. I think our Commissioner for Livestock will be able to give us a large number of details about the way in which we are treating the cattle at this time.

I would, therefore, say that on moral grounds I would support the Bill which Pandit Thakur Das Bhargava has brought forward. It is not by taking gentle measures that we can preserve the cattle wealth of this country. I have come definitely to believe in that.

Shri Tek Chand (Ambala-Simla): What about the human wealth that goes to jail?

Shri D. C. Sharma: It is not by taking gentle measures; it is by taking only drastic measures that we can develop some kind of a better outlook towards animals.

Shri Raghuraj Sahai (Etah Distt.—North-East cum Buadaun Distt.—East): But is he not satisfied with the provisions against cruelty to animals?

Shri D. C. Sharma: I am not satisfied. That is why the committee has been appointed to see to it that some other measures are adopted in order to prevent cruelty to animals. It is a question of cattle wealth *versus* human wealth. Mr friend, Shri Tek Chand, put a question to me: Do you want to preserve cattle wealth at the expense of human wealth? It is a very difficult question to answer, but I would say that our human beings are not worth much if they do not realise the sanctity of our life, if they do not realise the unity of our life and they do not give a fair deal to animals in the same way as they would give a fair deal to human beings. All kinds of things are being brought forward to do this.

My friends have a soft corner in their hearts for motor drivers. Very good. I myself have a soft corner for motor drivers. They have a great deal of sympathy for farmers. They have a great deal of sympathy for doctors. I do not think a doctor is going to be punished because he has administered some kind of medicine to an animal so that it may be cured. I think that is a

consideration which has been brought in extraneously, but I must admit that motor drivers and farmers do not have the same kind of attitude towards this problem as they should have. Motor drivers are what they are. Truck drivers are what they are, and we know what they do. I think we should propose a deterrent punishment for them so that they become as careful about animal wealth, as my friend, Shri Tek Chand, says, as about human wealth. This is the moral reason why I am supporting this bill.

The second reason is this. It is an economic reason. The economic reason is this, namely, that our cattle wealth, whether it is in the form of elephants or camels or horses or any other things which are enumerated in this section, is being most ruthlessly exploited. Yesterday, in a newspaper, I found an item of news that our elephants would become extinct unless something is done to preserve them. There are so many other animals which face the same danger. I remember a speech by Shri Frank Anthony made on the floor of this House, in which he referred to the preservation of wild life. It is not only wild life which is covered by this Bill; it relates to domestic and useful animals also.

We are trying to bring into being a good society and in such a society, there should be a happy partnership between man and animal. Man should be the friend of the animal and the animal of man. I find that that kind of thing is not coming into being. People are trying to deplete this wealth of ours in a ruthless and heartless manner. If we continue that, I am sure that our cattle wealth is going to grow less and less.

I do not want to go into details about the way in which it is being used for draught purposes, etc. The hon. Members here know all that. I would only say that for the economic prosperity of our country, we should try to follow a saner course.

Now, it has been said here: "You do not presume." All this kind of legal battle has been going on. I would ask you, Sir, to view it properly. You have been the Judge of a High Court. There are other hon. Members who know something about law courts. Do you mean to say that our courts always go by the letter of the law and not by the spirit of the law? If we think that they go by the letter, we are not doing any justice to them. Our courts are enlightened. Even though the presumption is that the

[Shri D. C. Sharma]

man has to prove that he was innocent, I know that our courts will remember that the person who is dealt with by them may be the right type of person or he may not be the right type of person. They will see if a motor driver is a habitual offender or a person not of that description or if the farmer is cruel by nature and so on. I, therefore, would say that these laws should be made as humane as possible for these animals. It is not in the wording of these laws that the magic lies; it lies in administering them. Since it has been found difficult to administer it, it is intended to amend it so that the hands of the judiciary may be strengthened against persons who are wanton destroyers of our animal life and who wantonly ruin our cattle wealth. If we do not do so, I think the time will not be far off when our cattle wealth will be a thing of the past and the happy partnership which had existed would disappear.

Mr. Deputy-Speaker: I will request the hon. Members to be brief to conserve time. Only the points should be mentioned.

Shri Achuthan (Cranganur): Even though I have not had the pleasure of hearing Pandit Thakur Das Bhargava, I think there is not much purpose to be served by this small amendment. The Indian Penal Code contains many important provisions in respect of very serious offences. It is worthwhile for this Parliament to shift the burden of proof in respect of an offence against an animal. Many other serious offences are adumbrated in the Penal Code. This is only one of the many mischiefs under that chapter. A lot of other sections are there which are more harmful to human beings. What about those offences where we are not shifting those burdens? Pandit Thakur Das Bhargava is a learned man with a lot of experience. We abide by what he says. How can he pick up this particular section and say that with regard to the animal kingdom the burden and the presumption should be like this. We are also, many of us lawyers, for one or two decades. I for one do not find any reason for enacting this legislation, saying that this proviso should be there. How many such cases have been there in the first class or second class courts? Very rarely, cases of this nature go to courts. We are also having our own practice in the district courts. Occasionally, there may be one case but there will not be many cases. 99 per cent. of the cases

are automatically compromised out of the court. If a man has actually done something or has caused some injuries, the matter goes to the court. The man will be called and then action is taken. It is only in extreme cases the matter goes to the court. Then, it will be a genuine case where the prosecution will be sufficiently alert with sufficient evidence to show that the accused had the intention to do that and that the hand of law must fall upon him. I do not know why a man of Pandit Bhargava's position should think that there must be this particular amendment for this particular section to shift the burden to the accused.

Shri Sadhan Gupta (Calcutta South-East): Sir, this Bill deserves the opposition of the House, because it has introduced a very unjust, I would say dangerous, principle from the point of view of civil liberties. We have our criminal law in which there are provisions of different characters relating to offences some of which are serious and some of which are less serious and I think in very few cases have we sought to shift the burden of proof on to the accused. There are cases and offences like murder. Even there the burden of proof is upon the prosecution to prove the intention. It may be that the very nature of the crime itself proves the intention and to that extent the burden of proof can be discharged by the state, but the principle has never been in doubt that, however serious the offence may be, the burden of proof will be upon the prosecutor and not upon the accused.

Now, what Pandit Thakur Das Bhargava's Bill seeks to do is to shift the burden of proof on to the accused. And, what is that burden? The burden is the burden of disproving an intention. In most cases, when you kill some animal which comes within the scope of section 429 of the Penal Code, what you have to do is to disprove that you had not the intention or you had no knowledge that your act is likely to cause wrongful loss. As against this your act stands and to strengthen the act there is created a presumption which militates against you, a presumption that you had a particular intention, that you had a particular knowledge; or, I should rather put, the presumption is infinitely strengthened by the act itself.

Sir, that is a very unfortunate position for an accused. That is not the position which is expected even in the most serious crimes. And, what have we in

a crime like a crime under section 429, which is relatively a much less serious crime, to justify that kind of departure from the usual principles? Pandit Thakur Das Bhargava himself in many instances has pleaded for the retention of the presumption. In his speeches on the Criminal Procedure Code amending Bill, he has upheld the principle of non-interference with the civil liberties and has upheld the cause of the rights of the accused. Now, what is there to justify a departure from that principle today and in this matter? I would have expected that to justify such a principle, the killing or maiming of the animals would be so widespread and it would be so difficult to bring the accused to book. In such matters such an unusual provision would be necessary. But, I think no case has been made out that such a position exists in the country, that all the people of the country, or at any rate a substantial number of people in the country, are going about killing, maiming and disabling useful animals and are conveniently escaping the hands of justice. That is not the case that is being made out. If that is not being made out, how can we be asked to support such an unusual provision in a Bill?

I think that this provision is a most dangerous thing and will operate very harshly against the accused persons. Take the instance of a man who accidentally runs over or even negligently runs over a cow, a bull or, any other animal for that matter, say a goat, where the goat is valued at over Rs. 50. Nowadays Rs. 50 is not a very high value. If he does it negligently, it is difficult to distinguish between negligence and a deliberate act in most cases and it is very difficult if you make the court start with the presumption. How can a person give evidence of his mental state? It is only his own evidence that can be given and no other evidence can be given. Under the recent amendment to the Criminal Procedure Code, section 342-A has been introduced by which an accused person can give evidence. But, as against the compulsory presumption directed on the court, what is the use of the evidence of an accused person, who is obviously the person interested? And, minus his evidence, who can give evidence of his intention? Who can give evidence of his knowledge? The knowledge is in himself. The intention is in himself. Rather, it should be the other way. It should be the prosecutor who should allege circumstances, who should prove circumstances which show that it is proved beyond

reasonable doubt that the person concerned had the intention, had the knowledge. That is how section 429 stands at present. It provides an effective means of punishing all kinds of mischief committed in respect of useful animals and there is no ground whatever for interfering with the scheme of the section as it stands at present. By interfering you will only be doing harm. I do not know how many animals you will save, but you will endanger many human beings and that way you will perpetrate more injustice and very little justice.

The Minister in the Ministry of Home Affairs (Shri Datar): Mr. Deputy-Speaker, while it is possible to sympathise with the laudable objects of my hon. friend, I am afraid, the remedy that he has suggested is worse than the disease. All that he now desires, as he has pointed out in the Statement of Objects and Reasons, is that inhuman acts are being perpetrated against animals and that it is absolutely essential that there ought to be a proper conservation so far as the animals are concerned. In other words, he is anxious that animals should be saved from cruelty as also from destruction.

So far as these objects are concerned, it is perfectly open to this Parliament or to the legislatures in the country to have a special Act or laws dealing with these laudable objects. But, so far as we in this House are concerned, we are dealing with a Penal Law and the question is whether by an indirect manner we can introduce reforms so far as such objects are concerned. I am afraid that the Penal Law should not be resorted to indirectly for the purpose of effecting improvements so far as social conditions are concerned.

Secondly, I want to point out that my hon. friend desires that there ought to be a presumption in certain cases. He desires that there ought to be a presumption and I would read to the House the relevant portion. He desires that in section 429 a proviso shall be added saying:

"Provided that the offender under this Section shall be presumed to have possessed the intention to cause or the knowledge that he was likely to cause wrongful loss or damage to the public or to any person."

I take very strong objection to the expression "offender" because the offence itself has to be proved and, rightly or

[Shri Datar] wrongly—according to me rightly—we are governed by certain principles of criminal jurisprudence which we should not lose sight of in our desire or enthusiasm for effecting certain improvements.

Now, so far as the Criminal Law is concerned, the presumption is that the accused is not guilty; and in such a case a contrary presumption should not ordinarily be had unless the matter is extremely grave or when it is open to a court of law, a criminal court of law to come to certain or rebuttable presumptions. As the hon. Members are aware, so far as the Indian Evidence Act is concerned, they have pointed out certain degrees of presumptions. They say that the court "may presume in a *propose case*", "May presume" means it depends upon the discretion of the court. After going up a little further, and if the presumption has to be strengthened, then the statute says that the court "shall presume". I would invite your attention to section 4 of the Indian Evidence Act where it is stated that whenever it is provided by this Act that the court may presume, the fact, it may either regard such fact as proved unless and until it is disproved or may call for proof. Therefore, the degree of presumption is not very strong in this case at all. But you will kindly note the definition of the expression "shall presume".

"Whenever it is directed by this Act that the court shall presume the fact it shall regard such fact as proved".

You must kindly understand the expression "it shall regard such fact as proved unless and until it is disproved". That means in such a case in the absence of any evidence by the defence to disprove or in the absence of evidence which is held reliable by the court, it will be found that the presumption itself can be the basis or the foundation for conviction and sentence to the accused. It is, therefore, extremely difficult to agree to the contention of my hon. friend that he should have a statutory presumption.

I have cursorily looked into the Indian Evidence Act and I find that there are hardly one or two cases there, coming under the provisions in question. They are just within five, where a presumption has been laid down in the body of the provisions of the Act itself. For example, you will find that when dealing with an offence regarding the sale of a minor female for prostitution, we have

got a presumption raised in section 372 (1). The circumstances are pointed out there. Firstly, the young female is there. Secondly, she is sold to a man who has got a brothel. Then, under these circumstances, a statutory presumption is sought to be raised. That would show that the legislatures in India naturally are very slow to have statutory presumptions.

If such presumptions are not had, then, what would happen? In the Indian Evidence Act, there are cases where it is open to a court to presume a certain course of things provided certain facts have been proved, and therefore, under the Code of Criminal Procedure, a large extension of discretion is granted to the courts and the courts, after judicially assessing the evidence, might come to the conclusion that some sort of a presumption, some rebuttable presumption, shall be drawn. It is not a presumption of that type which my hon. friend desires to have.

Secondly, even here, my hon. friend has not used those ordinary expressions which have been used in the Evidence Act, namely, "until and unless it is disproved. In section 372 of the Indian Evidence Act, as I pointed out, it has been stated that there are these expressions:

"The person so disposing shall be presumed to have disposed of with intent, unless the contrary is proved".

So, these are the two points which have to be noted.

Further, a number of hon. friends have pointed out that in such cases where the cruelty occurs we have to consider whether the hardship or cruelty is so prevalent. So far as the cattle wealth of India is concerned, I agree that the cattle wealth also requires a very large degree of protection, of good nutrition, etc. It is our duty, apart from the duty of the citizens of India, to take into account the interests of the cattle wealth also. The hon. Member will note that we have got 29 crores of cattle—I am speaking subject to correction—and I agree with the object of my friend that we ought to take proper care of them. But, is the destruction of cattle or the cruelty to cattle of such a large nature as to import into the criminal law of the land a presumption of the type that my hon. friend has in view? I therefore submit that this is not a matter in which we should have any presumption of this type.

We should also note one more circumstance. So far as this offence is concerned, you will find that the offence has been defined in section 425, of the Indian Penal Code. It has been explained and described there. You will find from that section that intention is the gist of the offence. Intention is the organic ingredient of this particular offence. There might be certain offences where there may be no intentions. Also, there might be cases where intention may be an over-riding factor. I need not go into the various cases of complication to point out how in some cases there may be an intention or there may not be an intention. But so far as the offence of mischief is concerned, I would read to the House section 425:

"Where, with intent to cause or knowing that it is likely to cause"

Intention is there ordinarily, and in some cases knowledge also can be presumed from a number of circumstances. So, intention or knowledge is very essential ingredient of the offence under section 425.

Section 429 is for an offence of an aggravated nature and therefore punishment has naturally been provided. My hon. friend Shri Tek Chand pointed out an instance where a stone was thrown, because cattle trespass is more or less common. We have got Cattle Trespass Acts in various States. Now, suppose a cattle strays into my backyard or into my frontyard, and then I just throw a stone at it assuming that that particular animal is not of sufficient strength, assuming that it dies, as it did in a particular case, what happens? How is the man to prove that he had no intention?

Secondly, the House must understand that so far as this intention is concerned, when there is such a presumption which shall be a statutory presumption, then, the judicial courts would be slow to hold that that particular presumption is rebutted. That would show that the burden of proof in such cases on the accused would be far larger than the ordinary burden.

In this connection, I might point out certain instances quoted by the commentaries according to which even an ordinary instance is likely to lead to serious consequences if a presumption is made. Therefore, the point that I want to place before this House is that the interests of the accused should not be sacrificed in our supposed zeal for the protection of the cattle wealth. That doctrine on

which the whole criminal law is based, or is made to depend, should not be very lightly departed from even on account of supposed good intentions. Otherwise, it would be extremely difficult for the accused to prove, and the court might come to the conclusion that the particular presumption is there and it would act upon that presumption. As I already read to you, the Indian Evidence Act makes the whole position very clear.

In the circumstances, I would request my hon. friend to withdraw the Bill. He has very large experience not only of parliamentary life but also in his professional life, and therefore, I was a bit surprised when he brought forward such a Bill. The views that this House holds have been fairly clear. My hon. friend has not been able to get the sympathy of any hon. Member who spoke on this subject in this House till now, except my friend Shri D. C. Sharma, who perhaps may not know the intricacies of the law.

Shri Keshvaiengar (Bangalore North): He unknowingly supported it!

4 P.M.

Shri Datar: It is quite likely that he unknowingly supported it. I am not prepared to argue, but Shri D. C. Sharma naturally is taking the view that this Bill has the object or the intention of protecting the cattle wealth or preventing cruelty to the cattle. For the first time, I find that on this Private Members' Bill, there has been almost universal opposition. I say almost because we have to take into account the views expressed by Shri D. C. Sharma. I therefore appeal to my hon. friend not to allow this Bill to be defeated, but to withdraw it.

श्री रघुबीर सहाय : जनाब डिप्टी स्पीकर साहब.....

Mr. Deputy-Speaker: I am appealing to the hon. Member to be brief. There are only five minutes.

Shri Raghbir Sahai: There is much time. You may extend the time to ten minutes. I shall be very brief.

Mr. Deputy-Speaker: If the hon. Member is going to be brief, five minutes should be sufficient.

श्री रघुबीर सहाय : डिप्टी स्पीकर साहब, जब मैं ने इस बिल को पढ़ा और पंडित ठाकुर दास भार्गव की स्पीच को पढ़ा, तो उसमें एक खास बात शुरू में यह कही गई है कि

[श्री रघुबीर सहाय]

यह बड़ी छोटी सी तरमीम वह पेश कर रहे हैं। मेरी समझ में नहीं आता कि अगर पंडित ठाकुर दास भागंब कोई बड़ी तरमीम पेश करते तो वह क्या होती। मुझे ताज्जुब है कि पंडित ठाकुरदास भागंब, जो इतने तजुबकार क्रिमिनल लायर (फौजदारी के वकील) हैं, जिन का तजुबा इस हाऊस में बड़ा वसीअ रहा है और जिन की तकरीरें जान्ता फौजदारी की तरमीम के वक्त में नें सुनी हैं, उन सब बातों को ध्यान में रखते हुए उन्होंने कैसे इस बिल को पेश किया। जब इस बिल को जिस तरीके पर उन्होंने पेश किया है, मैंने पढ़ा तो वह मुझे बड़ा ताज्जुब मालूम हुआ।

पंडित ठाकुर दास भागंब कहते हैं कि दफा ४२६ में यह प्राविजन (उपबन्ध) बड़ा दिया जाय कि अगर कोई शख्स किसी जानवर को हाथी, घोड़ा, ऊट, खच्चर, गाय या बैल को जहर दे दे या मार दे, उस की टांग तोड़ दे, तो यह मान लिया जाय कि उस की नियत इस की थी कि उस को खत्म किया जाय। मैं अर्ज करता हूँ कि पंडित ठाकुर दास भागंब जो बड़े पुराने जुरिस्ट हैं, क्रिमिनल लायर हैं, जिस वक्त उन्होंने इस बिल को पेश किया क्या उन को यह नहीं मालूम था कि वह फौजदारी के कानून को ही खैरबाद कर रहे हैं ?

श्री टेक चंद : इन्साफ की खैरबाद कर रहे हैं।

श्री रघुबीर सहाय : सिर्फ श्री डी० सी० शर्मा ने इस मामले में पंडित भागंब को सपोर्ट (समर्थन) करने की कोशिश की है लेकिन उन के खुद के बयान से ऐसा मालूम होता है कि वह कानून नहीं जानते हैं, हालांकि कानून के मसले में उन्होंने अपनी टांग अड़ा दी। मैं अर्ज करना चाहता हूँ कि हमारा सारा कानून जो है वह इंग्लिश ला के ऊपर बेस्ड (आधारित) है। इंग्लिश क्रिमिनल ला मैं नियत सब से बड़ी चीज है। अगर आप नियत को हटा देते हैं तो सारा क्रिमिनल ला खत्म हो जाता है। मैं पंडित ठाकुर दास भागंब और हाऊस की तबज्जह इंडियन पीनल कोड की दफा ८१ तरफ ले जाऊंगा। वह तो कहते हैं कि एक छोटी सी तरमीम है लेकिन उस से वह सारे इंडियन पीनल कोड को ही खत्म कर रहे हैं। दफा ८१ कहती है :

"Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm and in good faith for the purpose of preventing or avoiding other harm to person or property."

Mr. Deputy-Speaker: Each hon. Member should not try to go to the spot to ascertain for himself what has happened.

श्री रघुबीर सहाय : यह जनरल एक्सेप्शन (सामान्य अपवाद) है और सारे इंडियन पीनल कोड को एप्लाई करता है। जो आफेंस ह्यूमन बाडी के खिलाफ होते हैं ३०२ में ३३५ तक उन में इंटेंशन देखना होता है। उसी तरीके पर ४२६ जो कि कंटल के बारे में है, उस में भी इंटेंशन आता है। जो नियत की बात है उस को ही आप इस बिल से खत्म कर रहे हैं। इस तरीके पर तरमीम पेश करने से आप सारे क्रिमिनल ला को ही खत्म कर देंगे। इस में कोई शक नहीं है कि इंटेंशन का साबित करना मुश्किल होता है, लेकिन जो लोग फौजदारी की वकालत करते हैं। जनाब डिप्टी स्पीकर साहब, आप को भी बड़ा वसीअ तजुबा रहा है, वह जानते हैं कि इंटेंशन वाक्यात से निकाले जाते हैं। वाक्यात से साबित करना पड़ता है, और अदालत यह तसब्बर करती है कि इंटेंशन फौजदारी के कानून में असली और जरूरी चीज है। अगर आप इस इंटेंशन को ही इस कानून में से निकाल दे तो वह कानून बिलकुल ही बेकार हो जाता है।

मुझे इस में कोई शक नहीं है कि पंडित ठाकुर दास भागंब ने जानवरों के बारे में अपनी हमदर्दी जाहिर की है, हमें भी उन से पूरी हमदर्दी है, लेकिन मैं अर्ज करता हूँ कि प्रिवेंशन आफ क्रुएलिटीज ऐक्ट (निंद्यता निवारण अधिनियम) बना दिया गया है, जानवर के ऊपर अगर ज्यादा बोझा रक्खा जाय, अगर जानवर को बुरी तरह से मारा जाय या कोई ऐसी बात की जाय जो कि इन्सान को नहीं करनी चाहिये, तो वह उस कानून के दायरों में आता है और उस को सजा मिलनी चाहिये। आप ज्यादा से ज्यादा यह कह सकते हैं कि इस कानून का पूरा इस्तेमाल नहीं हो रहा है। आप कोशिश यह कीजिये कि प्रिवेंशन आफ क्रुएलिटीज ऐक्ट का पूरा इस्तेमाल किया जाय। उस में खुद यह कहा

गया है कि इनफर्मरीज (Infirmarys) बनाई जायें जहाँ पर कि ऐसे जानवर रखे जायें जो काम नहीं कर सकते हैं, जिन पर बोझा नहीं लादा जा सकता है, जो किसी बिमारी में मुक्तला है, और वहाँ पर उन का इलाज किया जाय। हमारे मुक्त में इनफर्मरीज नहीं है, हमें कोशिश करनी चाहिये और गवर्नमेंट पर जोर डालना चाहिये कि इस तरह की इनफर्मरीज बनाई जायें। जिस तरीके पर जो आदमी कमजोर होते हैं, बूढ़े होते हैं, जो अपनी गुजर बसर नहीं कर सकते हैं, उन के लिये ऐसा इलम्स बनाये जाते हैं, उसी तरीके पर जनवारों के लिये बनाये जायें। अगर इस कानून का ठीक इस्तेमाल नहीं हो रहा है तो उस का ठीक इस्तेमाल हो, लेकिन दफा ४२६ में तरमीम करना इस का ठीक जवाब नहीं है।

अखीर में मैं यह अर्ज करना चाहता हूँ कि यहाँ पर मिसाल दी गई अनटचेबिलिटी प्रिवेंशन ऐक्ट (अस्पृश्यता निवारण अधिनियम) की। इस कानून में हम ने इस बात को मान लिया है कि जो भी आदमी इस ऐक्ट के खिलाफ काम करे, उस के लिये यह मान लिया जाय कि उस की नियत कानून के खिलाफ काम करने की थी। फूड ऐडल्टरेशन ऐक्ट (खाद्य अपमिश्रण अधिनियम) में भी बर्डन आफ प्रूफ बदल दिया गया है और यह भार बजाय प्रोसीक्यूशन के डिफेन्स पर डाल दिया है। लेकिन यह मिसालें वह हैं जो कि सोशल इविल्स (सामाजिक बुराइयों) के बारे में हैं, जो और किसी तरह पर दूर नहीं हो सकतीं रेम्पेन्ट ईविल्स हैं, उन को दूर करने के लिये यह जरूरी है की ला को जरा सा तरमीम किया जाये। मगर पंडित ठाकुर दास भागव ने अपनी तकरीर में यह साबित नहीं किया है कि यह ऐसा सोशल ईविल है और हर शरूस जान बूझ कर जानवरों को नुकसान पहुंचाता है, जो अच्छी बात नहीं है।

इस लिये मैं कहना चाहता हूँ कि जो हमारा मौजूदा कानून है उस में हम को गैर मामूली तरमीम नहीं करनी चाहिये और मैं पंडित ठाकुर दास भागव जी से अपील करूंगा कि वह बजाय इस के कि अपने बिल को प्रेस करें, उस को वापस ले लें।

पंडित ठाकुर दास भागव (गुडगांव): जनाब डिप्टी स्पीकर साहब मैंने अपने दोस्तों की करीरें बहुत गौर से सुनी। लेकिन मैं अबसे तअर्ज करूंगा.....

Shri Keshavalengar: On a point of order, even the first speech of Pandit Thakur Das Bhargava made in introducing the Bill was in Hindi. In fact, I know some Hindi. Still, I was not able to follow his speech. I would request Pandit Thakur Das Bhargava to speak in English.

Mr. Deputy-Speaker: Now that the request has been made, it is for the hon. Member to respond or not.

Pandit Thakur Das Bhargava: Though I do not know how to speak English well, I shall not disappoint my hon. friend. My टूटी फूटी English will do.

I was submitting that I heard the speeches of hon. Members with rapt attention especially the speech of the last speaker, because he imported more personal matters into it than the others. At the same time, after hearing him, I would only ask him to read his own speech again. He says all criminal law in this country will be lost if this presumption is made. Then, he reverts back and says, that if there is a social evil, this presumption is justified. He is greatly mistaken. Presumptions do not arise on account of any social evil or want of social evil. Presumptions arise if from a certain fact, a natural consequence flows and the connection between one fact and the inference therefrom is so proximate and inherent as if the nexus was that of parent and child. If it flows as a natural consequence in 99 cases presumptions should be made. If no such presumption arises the social evil may or may not be there; we are not entitled to make any presumption if they do not naturally arise only for uprooting social evils.

Other objections have been taken. For instance, objections has been raised that this kind of presumption is very unusual. I do say that the presumption is not very usual, but at the same time, the question is not whether it is usual or otherwise. My humble submission is that the yardstick to measure the meaning of "presumption" is quite different. As a matter of fact, some of my hon. friends began to doubt their own wisdom. My friend, Dr. Tek Chand said that he was rather surprised that a man of my eminence should bring a Bill of this nature. First of all, he condemns himself because he has got no right appreciation of me. He should not have considered me as an eminent jurist or lawyer, and I cannot congratulate him for his own estimate. I would submit in all humility

[Pandit Thakur Das Bhargava]
that the presumption raised in this Bill is quite different from ordinary presumptions. There are two kinds of presumptions. One is what is contained in the section:

"Whoever commits mischiefs by killing, poisoning, maiming or rendering useless, any elephant, camel, horse . . ."

I am sorry the hon. Minister himself has fallen into this error. He says, the word "offender" has been used. This section predicates two things. Firstly, the killing, poisoning, maiming etc. must be proved; if it is not proved, no person can be run in for this section.

Shri Datar: Does he automatically become an offender?

Pandit Thakur Das Bhargava: I am coming to it. Many of my friends have presumed that the killing also need not be proved. They have said, "Suppose I am driving a car and a dog or a bullock comes and breaks its leg." Certainly, there is no presumption. The words used are not "if an animal is maimed", but "if a person maims an animal". What is killing? Suppose I kill a man; there may be no intention at all. I would like to submit that there are exceptions provided under the Indian Penal Code to cover all accidents. Even killing, maiming, poisoning etc. is not enough. Sections 80, 81 and other sections provide the general exceptions. I maintain that if a person does not intend to kill, he is not killing; he is not maiming; he is not poisoning. There must be a direct positive act, which must be brought out. I do not say that it should not be proved.

This Act was enacted in 1860 by Lord Macaulay and the law-makers have been silent on this point all these years. I only want to change the onus of proof; I am not doing anything else only a rule of evidence is being changed. My friends have argued and said, "You want to protect the cattle, but not the man". I am very sorry I cannot understand the mentality behind it. All life is sacred and useful and that is the reason why injuring an animal has been made an offence under section 425. At the same time, all people believe in the culture of India; all life has been regarded as sacred by all religions and therefore, we are making a law like this.

I would like to submit that here there are two intentions and not one. There

is a primary intention and a collateral intention. The first intention is to kill an animal; the man who kills it does it with intention and with his knowledge. Otherwise, it is not killing or maiming. If a man destroys his own property, he commits mischief under Sections 425 and 426 of the Indian Penal Code. Therefore, the man becomes an offender even without that intention. My point is this. I do not want that this presumption should be made in relation to offences which come under Section 426. I only want to provide for cases where there is injury or loss of life of an animal. As I said before, all life, including the life of cattle, is sacred to me. In addition to the presumption provided under Section 425, I combine with that an extra presumption. What I mean is that that extra presumption need not be proved to start with by the prosecutor.

Therefore, there are two intentions and not one. The primary intention is the intention of killing and I am not dealing with it. I am not at all touching it. The only point is that the other presumption must be there according to me. I am not changing Section 425 or 426; I only want that the second intention need not be proved by an act. The intention may be proved in certain cases in the manner suggested by the illustration, but it need not be proved by any of the distinct evidence. The intention may be presumed.

Objection has been taken to the absence of the words "unless the contrary is proved". The hon. Minister himself gave his support to this point, namely, that the words used mean something more than what is really implied. I will read out the quotation from the Evidence Act, which I read out the other day also:

"In cases in which a court 'shall presume' a fact, the presumption is not conclusive, but rebuttable. Of course, there is no option left to the court, but it is bound to take fact as proved until evidence is given to disprove it."

Shri Tek Chand: Then the burden is shifted to the accused.

Pandit Thakur Das Bhargava: Certainly; my hon. friend need not remind me of this. What is the use of raising a presumption if the burden is not shifted? I know it will be shifted. The presumption is not conclusive, but rebuttable. So, I though I need not put it there. If my hon. friends are so legalistic, I have

no objection to have these words included. They have taken objection to something which does not arise in this case. I have heard the speeches of the hon. Members rather carefully and I have come to this conclusion. This will not apply to cases where there are several exceptions. Members have asked, "Supposing I drive a car and a bullock or goat is killed; do I become an offender?" I say certainly this provision does not apply in that case. I only submit to my friends that they should not think that this idea is not supportable. It is perfectly supportable. If the act is proved, then there may be the presumption that the act was done with a view to cause damage to the public or the individual. That is my point. For instance, suppose this section does not exist and I kill another person's horse or I kill another person's dog; even then, I shall be liable under the civil law. Even without this criminal law being there, civilly I shall be liable, and I have to prove that the act was not intentional.

Then, the question arose as to who will prove it. The accused is the only person who will have to prove it. May I humbly ask, in ordinary cases, who will prove it? If the accused does an offence in a jungle, then who will prove it? Who will prove it in all other cases? I humbly submit that by raising this question, they are only trying to put a curtain over the whole question. They are trying to shirk from the real issue, and they are not applying their mind to the question. The real question is not how the offence will be proved. It has to be proved as in all other cases, and the offence must be there.

My hon. friend Shri Sadhan Gupta had referred to section 342-A of the Criminal Procedure Code. I do not know what possible relevancy that section can have, so far as this Bill is concerned. If an accused wants to give evidence, he can certainly give evidence in this case also. In many cases when there is a conflict between human interest and cattle interest, I know the person who decides is a human being, and he may well decide that the statement of the accused may be accepted; in that case, as in all other cases, it will be accepted. I do not see how these points which have been raised by my hon. friend come in, so far as this Bill is concerned. I am reminded of the story which has even found its way in one of the reported rulings of the old Punjab Chief Court that on a painting

being commented upon wherein a frail human being overpowered a lion, it was said that the painting would have been otherwise if the lion painted it. Like a human being the injured or the maimed animal cannot appear as a witness to tell the story of tyranny over itself.

I am very sorry that my hon. friends have not given the consideration to this question, which it really deserved. At the same time, I am not in a very unhappy position, because I had only one sympathetic heart which responded, namely that of Shri D. C. Sharma. But so far as my other friends are concerned, I am very sorry that they have not given their support to this Bill. Either they have designedly not given their support, or they have not given support because they have not faced the real question.

So, I have no option left. I am very specific in my point that this is a question which is certainly worth consideration by this House. An objection was raised, and it was said, we will consider it certainly, if it concerns a question of cruelty to animals. My hon. friend the Minister also said the same thing. He said, well, the general law is there, if it came under any special law, we shall certainly give it consideration.

May I humbly submit that so far as the question of proof is concerned, there is no question of special law or general law? It is a question of proof. It is a question of the Indian Evidence Act. It is only a question of raising a presumption. We are not concerned with whether it is a general question or a special question, or whether it is a special law or a local law or a law of a general nature. We are not concerned with that at all.

To bring in that point is really not to apply your mind to the question. The real point is not that. The real point is, as, I submitted earlier, whether if the act is proved, you are going to raise a presumption or not; and the presumption is rebuttable. My humble submission is that looking to the principles of the Indian Evidence Act and the principles under which these presumptions are shifted, my attempt was perfectly justified.

My hon. friend Shri Sadhan Gupta and my other friends have referred to my attempts are resisting the shifting of the onus of proof on to the accused. I shall go on doing that. I feel that it is

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but right that the burden must be on the prosecution. It is the prosecution that has to prove, and the prosecution must prove that the act was done. If the act is done, then only the question of presumption arises. As I have submitted already, my hon. friends have not considered this question from this standpoint.

There are two intentions here. One is the intention to kill, which must be proved by the prosecution; and the other is the collateral intention; it is imposed by law in regard to other things, but it has been wrongly put here in regard to animate objects when the question of mischief arises, it can arise in two ways, it can be mischief to animate objects, or it can be mischief to inanimate objects. So far as inanimate objects are concerned, I have not raised any presumption at all. I have raised the presumption only in regard to animate objects, really sentient beings. I have raised it only in regard to animal life.

I may submit that about one-third or perhaps more of the national income of this country is contributed by the cattle wealth of this country. All our Five Year Plans will not be able to do any benefit to this country, unless and until they pay more attention to the cattle wealth of this country. The Minister himself was pleased to say that he is alive to this fact. I would only say that a crore of persons could be employed on this job, of cattle welfare and at least Rs. 500 crores more of income will come to the Union; if only we care for our cattle wealth in the proper manner, and if only we give them food etc., we shall be able to raise our income to a great extent. This only says that a person should be more circumspect and should not lightly kill, that a person should not lightly behave, he should behave in a manner which has been enjoined on him by the injunctions of religion, Hindu, Muslim and every other religion. My humble submission is that this is a simple Bill. It was designed in order to promote the cattle wealth, and the welfare of the country. I wanted that our conduct in this matter should be according to our ancient culture, as understood by us, according to which no life should be wantonly destroyed or destroyed in the manner in which it is destroyed today.

My friends want me to produce evidence here of how the cattle are treated, how cattle are poisoned, how cattle

are maimed. I will refer them to the slaughter houses of Bombay, Madras and Calcutta. Let them see how cattle are maimed, how cattle are poisoned; let them see how designedly these and all sort of crimes are done. But I am not putting my case on the question that this is a very great social evil. I am putting it on this simple question, that according to the principles of the Indian Evidence Act a man is presumed to know the natural consequences of his act. According to these principles, my submission is that the framers of the Indian Penal Code make a mistake, in that they did not differentiate between animate and inanimate objects; in section 429, we would be well advised to put this presumption.

I am thankful to you, Sir for being pleased to give me the full time I wanted, and in view of the advice given by the hon. Minister, I do not see my way to insist upon the full pound of flesh (*Interruptions*).

Shri Kamath (Hoshangabad): Not even an ounce of flesh.

Pandit Thakur Das Bhargava: If the House agrees, I will just take the advice of the hon. Minister and those hon. Members who have opposed me and request you to kindly allow me to withdraw the Bill.

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

Several Hon. Members: Yes.

The Bill was, by leave, withdrawn.

ELECTRICITY (SUPPLY) AMENDMENT BILL

(AMENDMENT OF SECTION 77 ETC.)

Shri Sadhan Gupta (Calcutta South-East): I beg to move:

“That the Bill further to amend the Electricity (Supply) Act, 1948 be taken into consideration”.

This Bill has been necessitated by a very unfortunate decision of the Labour Appellate Tribunal in which it held that bonus to electricity workers was not an item of expenditure allowed under the Electricity (Supply) Act, 1948.