

**CRIMINAL LAW AMENDMENT
BILL***

Shri Pocker Seheb (Malapuram): I beg to move for leave to introduce a Bill further to amend the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1898.

Mr. Deputy-Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1898".

The motion was adopted.

Shri Pocker Saheb: Sir, I introduce the Bill.

**SALARIES AND ALLOWANCES OF
MEMBERS OF PARLIAMENT
(AMENDMENT) BILL****

(AMENDMENT OF SECTION 6)

Shri Keshavalengar (Bangalore North): I beg to move for leave to introduce a Bill further to amend the Salaries and Allowances of Members of Parliament Act, 1954.

Mr. Deputy-Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Salaries and Allowances of Members of Parliament Act, 1954".

The motion was adopted.

Shri Keshavalengar: Sir, I introduce the Bill.

**APPOINTMENT OF INDIAN EM-
PLOYEES IN FOREIGN EMBAS-
SIES BILL*****

Shri Krishnacharya Joshi (Yadgir): I beg to move for leave to introduce a Bill to help and provide facilities for the appointment of Indian employees in Foreign Embassies in India.

Mr. Deputy-Speaker: The question is:

"That leave be granted to introduce a Bill to help and provide facilities for the appointment of Indian employees in Foreign Embassies in India".

The motion was adopted.

Shri Krishnacharya Joshi: Sir, I introduce the Bill.

**CRIMINAL LAW AMENDMENT
BILL—concl'd.**

Mr. Deputy-Speaker: The House will now resume further discussion of the following motion moved by **Shri Mukund Lal Agrawal** on the 24th August, 1956:

"That the Bill further to amend the Indian Penal Code, 1860, and the Code of Criminal Procedure, 1898, to provide for the abolition of capital punishment, be taken into consideration."

Out of three hours allotted for the discussion of the Bill, one hour and forty-five minutes were taken up on the 24th August, 1956, and one hour and fifteen minutes are now available. Was some hon. Member in possession of the House? I think not.

Shri Raghbir Sahai (Etah Distt.—North-East cum Budaun Distt.—East): There are some amendments.

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**Published in the Gazette of India dated 23-11-1956, pp. 1002—004.

***Published in the Gazette of India dated 23-11-1956, pp. 1005—007.

Extraordinary Part II—Section 2,

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Mr. Deputy-Speaker: Let us dispose of those amendments. Mr. Raghubir Sahai submitted last time that he wants to move an amendment for the circulation of the Bill for eliciting public opinion. The difficulty was that it had come very late and I said that if the Government's reactions were known and if they were agreeable I had no objection at all and I would waive the notice. But so far as I have learnt, the Government is not prepared to agree to that.

Shri N. C. Chatterjee (Hooghly): I hope they have changed their mind today.

Mr. Deputy-Speaker: May I know the reaction of the Government?

The Minister of Legal Affairs (Shri Pataskar): The position has already been stated by the hon. Minister who was then in charge and he opposed it. I do not think I can take up a different attitude.

Pandit Thakur Das Bhargava (Gurgaon): Do the Government not want that the notice should be waived because they want to pass the Bill at once, or because they want to oppose it?

Mr. Deputy-Speaker: They are sure that it would not be passed.

Pandit Thakur Das Bhargava: Or that it is sure to be passed?

Mr. Deputy-Speaker: One of the two.

Pandit Thakur Das Bhargava: May I submit that the motion should be taken to be in order? Why should it be outside the scope of the rules?

Mr. Deputy-Speaker: The decision whether it was in order or not when it was given, that decision was to be given that day. But we postponed the decision. Can it be said now that because the decision was not given, therefore we should entertain it? More than half the time has already been taken. That is the only difficulty. Several speakers have given their opinions. It would not be possible for

them to express themselves on the amendment that would be before the House if the motion is allowed just at this moment. -

Shri Raghavachari (Penukonda): In that connection I wish to submit for your kind consideration just a few words. This is coming from the last session. We have given amendments in time. As you know very well, the practice was that when a motion went and was being considered, amendments could also be moved. No doubt this point that you have just now mentioned arose a few days ago, and the Speaker said that he would make a change in the practice; and yet he permitted similar amendments to be moved. I am one of those who have given amendments for circulation for eliciting public opinion in connection with this Bill. Therefore, even if the original motion of our friend was exposed to the criticism of its having come late, my amendment is in time and in view of the longstanding practice the matter may be considered on its merits.

Mr. Deputy-Speaker: I am afraid the hon. Member has placed some obstacles in my way really. When he has reminded me that the Speaker said two days ago that hereafter he would not allow this practice, how can I do it?

Pandit Thakur Das Bhargava: May I make one or two submissions? So far as the amount of time is concerned, it is true that so much time has been taken already and so much time remains, on paper, to be taken. At the same time, the House and the Chair can certainly prolong this time. And, considering the importance of the matter—when it took four years for a Parliamentary Commission in England to decide about this matter, and even now the matter is going on in many other countries—, two or three hours' time is not sufficient, in my humble opinion. I would therefore, first of all, submit that the time may be increased by one hour.

And the second question which I beg very humbly to submit for your consideration is that the Chair has got a discretion in the matter. Even if the Speaker was pleased to say in a particular case regarding a particular matter that in future this practice will be changed in a certain direction, it does not take away the discretion of the Speaker or the Deputy-Speaker to apply his mind in a particular way in regard to a particular Bill. Considering the importance and the consequences involved in deciding whether there should be abolition of capital punishment or not, I submit that it would be a very wise exercise of your discretion if you kindly admit this motion. Because, I feel many Members want to speak and, at the same time, want to see that it is circulated. I would therefore request you to reconsider your decision—as a matter of fact, you have not given it yet. You were pleased to say that it was postponed for the purpose of making a decision. So the decision has not been given. I would beg of you to consider the matter from all these points and kindly agree to give us more time by increasing it by one hour and also permit amendments to be moved by the hon. Members.

Shri N. C. Chatterjee: I am endorsing this appeal.

Shri Raghavachari: As regards the objection I only wish to say that the Speaker wanted to change the practice hereafter. But he did make an exception and allowed the motion to be moved on that day. Therefore, that practice need not be misunderstood.

Mr. Deputy-Speaker: He allowed that motion on the understanding that after that he would not allow it.

Shri Raghavachari: Hereafter he will not allow it.

Shri N. C. Chatterjee: I am also appealing to you to accede to both the requests made by Pandit Thakur Das Bhargava. It is a very important matter of social planning and also a penal reform which is of outstanding importance and, as you know, it has

been agitating the jurists and Parliaments throughout the world. Therefore, I submit this is a matter where we should not allow any technicality to come into play specially when the House has got specific notice that these three amendments have been put forward and it is a very apposite thing that this Bill should be placed before the public for eliciting public opinion. As you know, there are regional considerations which should come into play. Therefore, I am appealing that you should allow this motion to be adopted; and I am still hoping.

Mr. Deputy-Speaker: May I know from the Government why they are so insistent in opposing?

Shri Pataskar: I will explain why Government are opposing it. I find from the records that last time the hon. Minister, Mr. Biswas, who was here, has very clearly stated as to why he would not agree and he then said:

“As a matter of fact, Government consulted the States and we have got the opinions of the different States. Most of them are against the proposal. Now the House has got to consider, and Government have also to consider whether having regard to that it would be worthwhile circulating it for opinion generally, not merely to the States—that has been done—but to the different High Courts, to the other different bodies..... I would in this connection state that the Law Commission has been approached....”

It is under these circumstances, not on the merits, that it was opposed. Nobody wants that such an important issue should be settled in this manner. All the State Governments have been consulted. So let us put the matter before the Law Commission. They can take into consideration not only the practice but so many other aspects. It will not be possible for us to do it. We have ourselves passed a resolution on the subject. Then this Law Com-

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mission is presided over by an eminent jurist, as my friend Mr. Chatterjee will agree. That is the course which was suggested which, I am sure, the Government will follow and that would be the right thing. Then we will get the public opinion also. There is no question of hustling through or trying to suppress any opinion. We, all of us, along with the people all over the world, are concerned with this proposition and I think that is a good suggestion which has been made by my friend. From that point of view, having been once committed to that position, I do not think it would be proper for us to change that now.

Shri M. L. Agrawal (Pilibhit Dist. cum Bareilly Dist.—East): About the point of order regarding the delay in moving the amendment the hon. Speaker ruled on the motion that was given notice on that day. But this is a pending matter and I think the hon. Speaker, in view of the decision in regard to that matter, would have decided similarly in regard to this amendment. Its notice also was given much before. Mr. Raghur Sahai has given notice some three or four days ago. Therefore, it should be considered in order.

Mr. Deputy-Speaker: There are two points. One is that the time be extended and the other is that the amendments be allowed and notice waived. So far as time is concerned, I have no hesitation in granting time if the House wants it. Then many hon. Members will get a chance to speak. So far as the other question is concerned, I will leave it to the House and if the House so desires then I shall have no objection at all to waive the notice. Government is still opposing it.

Shri N. C. Chatterjee: Half-heartedly.

Mr. Deputy-Speaker: That perhaps would be a guess by one hon. Member of the mind of the other; and opinions might differ. We cannot say. But I leave it to the House to decide. If the

House is willing to take it up there will be no harm because, I presume, even the Law Commission would be benefited by the opinion that we express. Now, do I take it that it is the sense of the House that notice should be waived?

Some Hon. Members: Yes.

Mr. Deputy-Speaker: I find the sense of the House is that notice should be waived and the amendments should be allowed.

Shri Raghur Sahai: I am very grateful to you for having given an opportunity to this House to discuss at length the point of order and having decided that, this motion of mine be taken into consideration.

Before I formally move and speak on the motion for the circulation of this Bill for eliciting public opinion thereon, I would like to congratulate my hon. friend, Shri M. L. Agrawal, for having made a studied speech on a very vital problem such as capital punishment.

By introducing this Bill he has given this august House an opportunity to express its opinion one way or the other. By introducing this Bill he means to say that capital punishment should be abolished here and now. The main points that he made out in his speech were firstly that in many countries of Europe and America death penalty has been done away with. His second point was that capital punishment has no deterrent effect. His third point was that in the land of Lord Mahavir, Lord Buddha and Mahatma Gandhi where all of them were preaching non-violence, death penalty would be an anachronism.

Shri Pataskar: It is the land where Mahatma Gandhi was murdered. That fact also should be gone into.

Shri Raghur Sahai: I will elucidate it. His fourth point was that wherever death penalty has been abolished, there the offence of murder has not increased. In my humble

opinion they were all very good arguments. But personally I feel that they do not make out a very good case for the abolition of capital punishment here and now because in considering this matter we have to consider also the conditions in which a particular country at a particular time is. It is quite true that capital punishment has been abolished in many countries and there the crime of murder may not have increased. But to apply that argument in India in the year 1956 when still we find that there are vast tracts of country where gangs of Man Singh, Tehsil Singh and Girend Singh are roaming about will not be proper. The leaders of those gangs may be dead. But their followers are still there. They do all sorts of havoc. They play with life. It will not be discreet on the part of this august House to entertain this Bill for the abolition of capital punishment here and now. The conditions in our country are entirely different. We also find, from the example of other countries where capital punishment has been abolished, they are now reverting to capital punishment. Only recently, Hungary which had abolished capital punishment before, is reverting to capital punishment because they found that in the existing conditions, the abolition of capital punishment would not be in the best interests of that country.

My hon. friend said that it has got no deterrent effect. That may be the experience of other countries. But, I can say that if any punishment in India has got a deterrent effect, it is the capital punishment. I have had opportunities, during the days of non-co-operation and satyagraha, to be in several jails where there were cells for people condemned to death. I have seen these people with my own eyes. It was a sight to see how these people trembled. It was a question of life and death. Throughout the jail it appeared as if a reign of terror was prevailing. So, the contention of my hon. friend that it has got no deterrent effect does not convince me. It has got a very great deterrent effect.

The next contention was that this is the country of Lord Mahavir, Lord Buddha and Mahatma Gandhi. We do admit that every one of them tried their best to preach the gospel of non-violence. Every one of them, we ought to confess, did not succeed in making everybody in the country non-violent. As the hon. Minister for Legal Affairs pointed out, Mahatma Gandhi himself was brutally murdered. When the trial of that offender took place, not one voice in the entire country was raised that he should not be sent to the gallows. That showed the resentment of the people and if I may say so, that also showed the justification for this punishment being retained. It is no doubt an extreme penalty. But, simply because, it is an extreme penalty, it should be scrapped from the statute-book will not be a good argument. I am reminded of a very old saying of the late lamented Gokhale when he was speaking in the old Imperial Legislative Council. The British Government then was here. He then observed that he would be satisfied if the Government possessed a giant's power but did not use it like a giant. The same argument applies today. This Government should possess in its armoury a giant's power and capital punishment is really an extreme penalty and is a giant's power. But, it should not use the power like a giant. Everybody should not be sent to the gallows. We find in our Criminal Procedure Code, there are so many stages. When capital punishment is awarded, the Sessions Judge says, you can file an appeal before the High Court. We find that the High Courts and the Supreme Court are very very cautious and they are very reluctant to maintain the capital punishment. Only in extreme cases, they would award that punishment. Still, mercy petitions are being filed and sometimes, the prerogative of mercy is being exercised by Governors and by the Rashtrapathi. We find that in very few cases—they are very unfortunate—capital punishment is being awarded. This is what happens in other countries also. After the capital punishment is awarded, the

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cases are being scrutinised and efforts are being made to see that capital punishment is not enforced. The argument that simply because it is an extreme penalty, it should be scrapped from the statute-book, as I said, is not good.

As I was saying in the beginning, we ought to see the state of the society in which we are living. The present state of society does not permit us to say that the abolition of the capital punishment will be to the good of the country and to the society in which we live. Gruesome murders are taking place every day. Only a few months back, two Members of the Legislative Assembly were murdered in the district of Barabanki in the U.P. in broad day light by persons of desperate character. In my district of Budaun, an Assistant Sessions Judge was murderously assaulted. Thank God, he was saved; he escaped death by a hair's breadth. As soon as he was transferred to another place, Rae Bareilly, there was another murderous assault on him by a revolver. Thank God, he was again saved. When society is like this, when things are going on like this, to say that capital punishment should be abolished, I think, will be something very indiscreet.

My motion wants that this important matter should be placed before the country, and public opinion should be elicited. I cannot possibly understand on what strong grounds the Law Minister opposed this motion for circulation and on what strong grounds my hon. friend will oppose this motion for circulation. In England, so many commissions have been set up every now and then to enquire into this matter. Even after comprehensive enquiries, the people there have not been able to come to a definite finding whether this punishment should be abolished or not. A Private Member's Bill was passed in England. We saw that the House of Lords turned it down. We see that another Bill is going to be sponsored by the Govern-

ment in regard to the retention of the capital punishment. Where such comprehensive enquiries have been made, where such important commissions have gone into this question, where the whole question has been discussed threadbare, the people have not come to any definite conclusion. How on earth can we do that when we have not enquired into the matter and when public opinion has not been elicited? The hon. Minister Shri Biswas may have in his possession the opinion of the State Governments or all the High Courts. But, they are not with us. You may be remembering that in the case of the amendment of the Criminal Procedure Code, what Dr. Katju did was to elicit public opinion in regard to the amendment of the Criminal Procedure Code. Every State Government was consulted; every bar association was consulted; all M.L.As. and M.Ps. were consulted and the question was thrown open to the public. Every person interested in Criminal Procedure Code was given an opportunity to express his opinion and we, who were in the Select Committee knew how much we were benefited by those opinions. To say on this fundamental question that public opinion should not be consulted, I think, is something absurd.

15 hrs.

The Bihar Government, I find, was consulted on this Bill and it said:

"Conditions in the State are not favourable for the abolition of death penalty. The abolition will have adverse effects on the crime situation in the State.

A Commission should be appointed by the Central Government to find out whether the death penalty should be totally abolished or whether the suspension of capital punishment for murders should be limited".

These are some of the opinions of some Governments.

It was said that Shri Sampurnanand, Chief Minister of U.P. was in favour of the abolition of capital punishment. I submit that is his personal opinion. The U.P. Government as a whole was opposed to the abolition of this capital punishment. So, we will attach more weight to the opinion of the Government, then to the opinion of a single individual.

Mr. Deputy-Speaker: The hon. Member need not dilate now upon the opinions that have been received. We are wanting to elicit his opinion.

Shri Raghbir Sahai: I will not quote any further opinions. In the end, I submit there is great room here in our country for the reform of the system of criminal administration. We ought to see that everything should be done in our country where those who are really guilty of serious offences are punished and deterrent punishment should be given to such offenders.

If we go to our constituencies what people say mostly is that we are not awarding deterrent punishment to people like dacoits, robbers and murderers; that is the public demand. So, if this Bill is sent up for eliciting public opinion, I think, a very great object would be served.

I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the end of April, 1957."

Mr. Deputy-Speaker: Amendment moved:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the end of April, 1957."

Shri N. C. Chatterjee: All sections of the House should be grateful to Mr. Agrawal for bringing up this very important matter for our consideration. There is a good deal to be said on

either side, and you know that capital punishment has been abolished in a large number of countries in Europe. Holland, Belgium, Denmark, Norway and Sweden have abolished it; West Germany, after a good deal of discussion and deliberation has also abolished it. Switzerland abolished it in 1874. Last year, when I was there, I had a discussion with the Chief Justice of the Zurich High Court and he assured me that there has been no increase of crimes since the abolition of death penalty in Switzerland.

It seems that they are satisfied that there has been no increase in the homicidal rate after that. Otherwise, a progressive nation like the Swiss would have altered it. Austria has already done it and some other countries. Six American States have abolished death penalty. I must admit that there are a number of American States which have restored it. If they abolished it, 9 American States have restored death penalty. In South America about a dozen States have abolished death penalty. In the British Commonwealth, New Zealand abolished it in 1941, but again restored it. In England, you know, the Royal Commission was appointed in 1949 and they went on deliberating and taking evidence of jurists and psychologists and also men interested in penal reform and they presented their report in 1953 and they came to the definite conclusion that the re-introduction of death penalty really has no relationship to homicidal rates in other countries, that is, in those countries where death penalty had been abolished, there had been no immediate increase in murders and also where it has been restored, it has been due to some occasional popular upsurge and not because of a sudden aggravation of serious crimes. I maintain it is not correct to say that if we abolish death penalty, there would be an increase of murders in India. In England criminal law was very, very feudal, medieval and brutal. There were 222 offences which merited death penalty. Even as anyone who

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has studied English law knows a man who has committed larceny in respect of 5 shillings was sent to the gallows. Cutting a tree or stealing a handkerchief was a capital offence and the man would be sent to the gallows. I think Zachraih, Macaulay and Mackintosh were pleading for the mitigation of this very harsh kind of penal law and ex-Lord Chancellor said that it will be a bad day for England and God knows what will happen if law is altered in this fashion.

I, personally, would like to have a suspension of death penalty in India for a definite period, say for 5 or 10 years and see how it works. This Parliament is supreme and sovereign. When the Criminal Procedure Code Amendment Bill was introduced by Dr. Katju, he was impressed by the deferent Members of Parliament and I was one of them who said that there was no point in merely changing the procedural code without changing the substantive law. Macaulay was the President of the Law Commission which drafted the Indian Penal Code. He was assisted by some English jurists; the times have altered and it is no good having a change in the adjective law without having a change in the law of crimes. Now the world has moved forward. The old concept of the state being a Police State has fundamentally been altered. We are now trying to develop a Welfare State, a socialistic pattern or any other pattern. Fundamentally, the socialistic concepts are coming into play and therefore, our system of penal laws require a radical reform. I hope you will agree with me and my other friends that it is no good simply to abolish death penalty, unless you have radical reform of our present system of jail administration.

I had the privilege of being a prisoner in the Delhi District Jail three times in connection with our movement. I was simply aghast at the torture which those condemned criminals were undergoing, and especially even those who have been transported for life were kept in solitary cells for months

and months. I came out of the jail and reported to Dr. Katju about the pitiful condition of some of the condemned prisoners from Pakistan, who were sentenced to death. They were condemned in Pakistan after the trouble started there and were sent over to India and their death penalties were commuted to transportation for life. They had absolutely no fair trial and had no lawyer to demand them. Their condition was simply horrible. There was no need pursuing the death penalty only as a deterrent.

At the same time a complete reformation of your present system is imperative. You, yourself were a judge and had the experience of the administration of justice. After spending so many years in law and having been associated with the administration of justice, I want to make one statement; I shall say this with a full sense of responsibility. No wrong door is in the least influenced by considerations of legal consequences because of his wrongful act. He will never think: "What is the section in the Indian Penal Code by which I will be actually hanged by the neck or transported for 20 years or whatever it is?"

He does it and he takes the consequences. My hon. friend Shri Agrawal was right in saying that people like to face bullets and death. It is a psychological upsurge which takes place at certain times.

I want to say this after having spent more than 30 years in law, and I hope my friend Pandit Thakur Das Bhargava will also agree with me. The more a man matures in law, the more he finds it difficult to justify capital punishment, because I am not convinced of the infallibility of the Judges. I remember when I was a student in the London University there was case. I reached England on the 2nd October, 1922. Within a few days thereafter, the notorious or the celebrated Ilford murder took place and the murderer was hanged. Along with him the

wife of the murdered man was hanged because there was some illicit love between the murderer and that woman, and the whole legal world was simply aghast that that could be done. I do not know how it happened. There was no suggestion that that lady was at all responsible for the crime, but prejudice works and many things happen, and the jury, swayed by many passions and many considerations, some relevant and some irrelevant, pushed the doctrine of constructive crime to such a degree that it is very difficult to justify that capital punishment.

We respect our Judges. They are all honourable, they are all learned, they are all impartial, but even then there have been gross miscarriages of justice in some cases. Remember the Adolf Beck trial which completely shocked England, the Dreyfus trial which shocked France and a good bit of the civilized world. These things do happen.

Shri Tek Chand (Ambala Simla):
How many did you hang?

Shri N. C. Chatterjee: I know the Punjab is talking through Shri Tek Chand. The Punjab suffers from a peculiar psychology. I have talked with some of the distinguished Judges and lawyers of the Punjab and they say: "God help the Punjab if capital punishment is abolished." But I think they will not lament the abolition of death penalty. But I am very cautious and I am supporting my friend Shri Raghubir Sahai's suggestion. Although I do not agree with him and my attitude is fundamentally different, still I am supporting him that the Bill be circulated for the purpose of eliciting opinion. It may be that in regard to the abolition of the death penalty, Parliament will not enact *ad hoc*. It may be we shall leave it to the States and if the Punjab is determined to kill, let them have the pleasure of having capital punishment, nobody will stand in the way. I am not saying we should dogmatise for the whole of India, but I would like to have a trial

or experiment in India. That will be in consonance with the spirit of the times, with the spirit of our civilisation. It is not merely paying a lip tribute to Lord Buddha because we are celebrating the 2500th year of his great revelation. It is not that, but it is something more fundamental.

If you are a lawyer briefed for a criminal, you would like to have the client sentenced to death, rather than anything else. Then you have a much easier time. As a matter of fact, in England people wanted to be convicted of capital punishment because then they know in the appeal courts they would have a better time.

In Poland in 1955 there was a great discussion in their Parliament and they ultimately abolished death penalty. Ceylon also has decided to suspend it for three years, and it would be, I think, a proper step to take if we emulate the example of Ceylon and other States. Let us try this experiment and find out whether it works or not.

Some psychologists have taken the definite view that capital punishment affords a very slight encouragement to murder, and it is not so deterrent as some people think. But Shri Datar has said that 9,000 murders are taking place in India: how can you abolish death penalty. The question is not 9,000. The question is: has your death penalty reduced the rate of 9,000. If the figure is steady at 9,000 year after year, it will show the futility of pronouncing it as effective and finally deterrent. You cannot really do away with human nature as it is. The question is whether in spite of the death penalty the number of homicidal cases remains the same. It is entirely wrong to say that fear of death prevents a man from committing culpable or wilful homicide.

I may point out that there are different theories. The theory of elimination is a horrible theory. You have taken the name of Mahatma Gandhi. He believed in the cardinal principle of the Indo-Aryan civilisation, namely

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the essential divinity of man, the potentiality of every human being for ultimate redemption. That was the cardinal principle of Hindu civilisation on which Mahatma Gandhi's life was based and which he was preaching. Is death penalty consistent with that principle?

Then there is the theory of retribution which is really still haunting us, but that is a medieval and barbarous theory, a cruel theory, a theory of the Romans, the code of Hammurabi, a theory of the Israeli school, namely an eye for an eye and a tooth for a tooth, and therefore we must have a life for a life. That should go and we must have some respect for the Indian theory, the Hindu theory, the Vedantic theory, namely the essential divinity of man, and try to reform him. If you like, you can make some conditions. Therefore I am submitting that it is not a very easy problem on which to say either way or to make a final pronouncement.

I do not know whether the Law Commission is doing anything, or whether the Law Commission will be able to do anything before it receives its final capital punishment from Parliament. But let all the States give us their considered views. May be Shri Sampurnanand is in favour of capital punishment. His opinion is entitled to the highest respect. Let us know their views, let us know the views of the High Courts, the Bar Associations and other associations who take cognizance of sociological problems. I am appealing to Shri Pataskar. He is a great lawyer, and I am appealing to the lawyer in him, to the votary of Themis, to the jurist in him, not to take the Home Ministry's point of view but to take the reformer's point of view, the legal revolutionary's point of view and accept this motion for circulation of the Bill. I hope he will be good enough to accept it and that the coun-

try will have a chance of pronouncing its final and definite opinion and then we shall be in a position to decide it ultimately.

Some Hon. Members rose—

Mr. Deputy-Speaker: Shri Tek Chand. Let us hear Punjab first.

Shri Raghunath Singh (Banaras Distt.—Central): Then U. P.

Shri Tek Chand: It may sound paradoxical but it is nevertheless true that the author of this Bill is motivated by the most merciful notions when he thought of introducing this Bill, but this is a most merciless Bill, because by letting off the killers, the butchers and the murderers, he will be letting loose murderers amuck, the result of which will be that neither life, nor liberty nor honour will be safe.

I should have thought that the learned author should have been more than satisfied when only few months ago we passed the Criminal Procedure Code (Amendment) Bill whereby section 367 was substantially amended. According to section 367, sub-section 5, as it previously stood before the amendment, the rule of law was that if the accused is convicted of an offence punishable with death and the court sentenced him to any punishment other than death, the court shall in its judgement state the reason why the sentence of death was not passed. This provision is no longer the law. The change is this. Originally, if a murder had been committed, the ordinary normal sentence was the sentence of death. And, if, for special reasons or extraordinary reasons, the Sessions Judge thought that the sentence of death was not merited and a more lenient sentence was called for, he had to specify the reasons in support of his being more lenient. Now, it is his discretion whether to award the extreme penalty known to law or a lesser one. Therefore, it will leave

the Sessions Judge with an absolutely free hand to make a distinction between murders which were pre-planned, designed and brutal and murders which were not pre-planned perhaps, and which were as a result of the impulse of the moment, or what are known in France as *Crimes passionales*.

Before Shri Chatterjee were to leave this House (*Shri N. C. Chatterjee: I am not leaving*). I would have been anxious to put one question to him. He had adorned the Bench of the premier High Court with great distinction. I should have liked to have known whether throughout his period of judgeship, did he always commute sentences of death whenever a murder reference came up before him, or whether his record was in consonance with pretensions of today or of his practice of yesterday. (*Interruption*).

He tells us that in Belgium, a country the size of which may be, perhaps, equal to one district of ours or may be a little less, and in Holland, capital punishment has been abolished. When he was giving that information I should have liked also to have asked him what is the average number of murders committed in Belgium or Holland.

Take the case of England, where, as a result of considerable debate and considerable doubts being expressed, the House of Commons was of the view that the death penalty ought to be abolished. But the House of Lords turned that down. It is necessary to remember that in England there are 150 murders a year with a population of 6 crores. In my country, accepting the statistics furnished by the preceding speaker, there are 9,000 murders a year. I thought there were 15,000; may be my information was wrong. I am willing to accept the figure of the preceding speaker—9,000 murders a year in a population of 36 crores. India has six times the population of England and our murders are 60 times the number of murders in England according to the statistics of Shri Chatterjee.

Mr. Deputy-Speaker: Would it not supplement the schemes for birth control?

Shri Tek Chand: If you view it from that point of view, it would, perhaps, be more desirable to have a Bill allowing infanticide.

This is the state of affairs in our country. When we say that in other small countries like Belgium, which can be put away in some small pocket of India, this is not so, the analogy is unconvincing; it is illogical.

In one district of ours, I believe, Sir, your constituency, in Ferozepur—no, it is the constituency of my learned colleague to the left Sardar Iqbal Singh—the average is one murder a day. Twenty-four hours do not pass without one person losing his life as a result of some murder at the assassin's hand. Now, to tell all those gentlemen with gory and sanguinary predilections, from now onwards they can carry their trade *ad libitum* and if they are caught and convicted, then, for the rest of the days they will be guests of the taxpayers of this country and will be lodged in comfortable lodgings for the remaining period of their lives and their daily meals and raiment will be assured is not good.

Pandit Thakur Das Bhargava: Only for 7 or 8 years.

Shri Tek Chand: No; transportation for life.

Pandit Thakur Das Bhargava: Transportation for life means about 10 years.

Shri Tek Chand: That interjection of Pandit Thakur Das Bhargava is most revealing. He says, 'No. Transportation for life virtually means today 6, 7 or 10 years'. If this is the result of the abolition of the death penalty, the result will be that those who are so minded will murder for the pleasure of doing so and enjoy a little holiday, may be for 6 or 7 years, at the expense of the State. It

[Shri Tek Chand]

is bewildering when my hon. friends, talented friends, experienced friends counsel in the teeth of these facts that the death sentence should be abolished. Human memory seems to be very short.

It was in 1947 that we had a spate of assassinations, human slaughter, and butchery, as a sport. During the partition days, whether they were children, women or old men, so long as they were of the other community, to kill them was not an act of sacrilege but it was almost meritorious and holy. Seven years ago.....

Shri Raghavachari: When men become beasts.

Shri Tek Chand: Yes; my learned friend is quite right. It is so when men become beasts. If you go to the Romans they would say *Homo homini lupus est*. Man upto man is a wolf. Therefore, it was not in 1947 that men became beasts, but that happens to be human nature unfortunately. That being the position, if humanity is to be saved, it can only be saved by keeping this terror in the repository of the judicial armory, to be used sparingly, occasionally and infrequently. You have already provided that. You have given full rope to your humane impulses when you passed the Act amending the Code of Criminal Procedure. That being the position, let us try this experiment, may be, for 10 years, may be, for a few years less or more and see what is the effect.

I was rather surprised when someone said that the death sentence does not deter. Examine this from the point of view of what happens among people with criminal propensities. Let us assume that some people go to commit a dacoity. They know that if the dacoity is committed their purpose is served and they will get away with the lucre, all the property. But if the fear of death sentence were not there, every dacoity and robbery in this land will be accompanied

with murders to boot. If dacoits, who have no soft feelings, spare their victims and simply relieve them of their valuables, it is because they know that if in addition to dacoity there is a murder, then the gallows are there and they may be dancing in the air suspended by the neck. These are the circumstances, these are the peculiar notions. Even people in the U.S.A., as Shri Chatterjee very rightly remarked, had to retrieve the steps they had taken. Socially, they had done something that was wrong and thereby endangered and jeopardised the security of the peace-loving people, and therefore they had to resort to the sentence of death. That being the position, I submit that it is no use saying that in the land of the Buddha, in the land of Mahatma Gandhi, in the land of Mahavir, death penalty ought to be abolished. It is better to remember that in the land of the Buddha, in the land of Mahatma Gandhi, in the land of Mahavir, 9,000 murders take place every year. The Apostle of mercy, peace and kindness had to die at the hands of an assassin. If he could not be spared, do you think that by the abolition of death penalty, there will be fear of God in the mind of the potential murderer? What peculiar feelings of mercy sway the hon. Members on behalf of a man whose hand is red, whose knife is dripping with human blood, with the blood of an innocent man, I do not know. Why is my learned friend, Shri Mukund Lal Agarwal or my hon. friend, Shri Chatterjee, who adorned the Bench with distinction, today shedding tears for the man whose hands are gory, whose knife is dripping with blood, may be of a child, a woman or a helpless victim? Why do they say, "Spare him the repetition of the death which he perpetuated and lodge him comfortably.?"

This, I respectfully submit, is not mercy, but negation of mercy; this is not justice but travesty of justice. It will be an ill day, when a potential

murderer—9,000 die in this land every year in this way—will think, "Go on with your gory business, nobody is going to hang you". I wish to oppose this Bill.

Mr. Deputy-Speaker: I am conscious of the subject before us and the hon. Members being very resourceful and that each Member can take as much time as perhaps there might be available to us, but I must bring it to the notice of hon. Members that there was only 1 hour 15 minutes with us and another one hour was asked for, and even if that is given, there will be 2 hours 15 minutes, that is, the time should expire by 4-45 P.M. Therefore, I would request hon. Members that they should be concise in their comments and there are half a dozen more to speak on this Bill. I now call on Pandit Thakur Das Bhargava.

पंडित ठाकुर दास भार्गव : मैं श्री मुकन्द लाल भ्रमवाल को मुबारकबाद देता हूँ कि उन्होंने न एक ऐसे मजमन को इस बिल के अन्दर ला कर हाउस के सामने रक्खा है जो निहायत जरूरी था और जो डिबेटेबल (बादविवाद के योग्य) भी है। मैं ने दो बड़े जोर की तक्रारों सुनीं, एक तो इधर हमारे श्री चटर्जी की और दूसरी श्री टेकचन्द की। जब मैं इन दो तक्रारों को अपने दिमाग में लाता हूँ और इन के रीजन्स (तर्कों) को सोचता हूँ तो मुझ को डर लगता है कि क्या मैं सही नतीजे पर पहुँच सकूँगा या नहीं। इसी वास्ते मैं कहता हूँ कि वकीलों में जो बड़े ओरेटर्स (वक्ता) हैं उन की बाबत यह समझ लेना चाहिय कि यह जहाँ इंसॉफ पसन्दी से काम लेते हैं और हम को ठीक गाइडिंस (मार्गदर्शन) देते हैं वहाँ अगर यह किसी खास मजमून के पीछे पड़ जायें तो वे अपने नतीजे हम पर ठूसने के लिये ऐसे आर्गुमेंट्स (तर्क) देते हैं कि वह हमारे जजमेंट को प्रीजुडिस (निर्णय को प्रतिकूल) कर देते हैं। हम को तो बही तरीका अखित्यार करना चाहिय कि न हम इस एक्सट्रीम (सीमा) को देखें और न

उस एक्सट्रीम को देखें बल्कि जो हमारा इंडिपेंडेंट जजमेंट (स्वतंत्र निर्णय) इस बारे में निकले उस को हम मानें। मैं उसी नुकतेनिगाह से जनाब वाला की खिदमत में पहले उन चन्द एक आर्गुमेंट्स का जिक्र करूँगा जो बड़े जोर शोर के साथ उन लोगों ने दिये हैं जो चाहते हैं कि इस का एबोलिशन (समाप्ति) हो जाय और इस में कमी हो। अब जो लोग इस में तबदीली करना चाहते हैं, बर्डन (दायित्व) उन पर है कि हमारे दिलों को वह तबदील करें और उन की दलील और उन के आर्गुमेंट्स इतन मुकम्मिल हों जिन से कि हम कनविंस (विश्वास) हो जायें कि वह जो फरमाते हैं वह ठीक है।

(१) पहली तजवीज उन की यह है कि बहुत से मुल्कों में यह कैपिटल पनिशमेंट (मृत्युदंड) एबोलिशन (समाप्त) हो रहा है। (२) दूसरी चीज वह यह कहते हैं कि उस का एफ़ैक्ट (प्रभाव) डिट्रैट (भयो-त्पादक) नहीं होता है, जिस को फांसी देते हैं उस पर डिट्रैट एफ़ैक्ट नहीं होगा, दूसरे लोगों पर डिट्रैट एफ़ैक्ट नहीं होता। बहुत से मुल्कों में जहाँ यह मौजूद है जहाँ पर यह कैपिटल पनिशमेंट होता है वहाँ पर जरायम (अपराध) में कोई कमी नहीं हुई और उन मुल्कों से जो स्टेटिस्टिक्स (आंकड़े) मिलते हैं उन से साबित नहीं होता है कि कैपिटल पनिशमेंट से डिक््रीज इन क्राइम (अपराध में कमी) होती है। जिन जगहों पर इस को बन्द किया गया वहाँ पर से ऐसे स्टेटिस्टिक्स भी मिले हैं कि जिन से साबित होता है कि डिक््रीज इन क्राइम हो गई है। (३) एक आर्गुमेंट (तर्क) उन का यह है कि जो शख्स मार दिया जाता है और चूँकि वह मर जाता है और हमारे पास यह चांस (मीका) नहीं है कि जो आज के दिन सही उसूल (सिद्धान्त) समझा जाता है कि जुर्म करने वाला मुजरिम दरअसल इस संसार में नहीं है जिस में कि हम समझते हैं बल्कि उस का भाइंड (दिमाग) डिक्लीज्ड (दूषित) हो जाता है और उस का ठीक

[पंडित ठाकुर दास भार्गव]

से इलाज कर के और अच्छे एनफुलसेज (प्रभाव) क्रायम कर के उस की प्रायन्दा खिन्दगी को बेहतर बनाया जा सकता है, उस चांस से हम महरूम (वंचित) हो जाते हैं। (४) चौथा आर्गुमेंट उन का यह है कि दरअसल हियुमन इस्टिट्यूशन (मानव) इतना कमजोर है कि बहुत दफा इस में गलती का इमकान (समाधान) है और कितनी दफा ऐसा हुआ कि एक आदमी को फांसी का हुकम हो गया और फांसी के हुकम के बाद एक एक्यूज्ड (अभियुक्त) अदालत के सामने आ कर पेश हो गया और कहने लगा कि खतावार (अपराधी) मैं हूँ और मैं ने मारा है और यह चीख साबित हो गई कि वह शस्त्र बिलकुल बेगुनाह था जिस को कि पहले फांसी की सजा दी गई

Shri Tek Chand: How often?

Pandit Thakur Das Bhargava: It is not so rare. If my friend wants to know, in my practice I can give several occasions or several cases in which this has been done and this has been demonstrated.

हमारे राष्ट्रपति जी ने एक ऐसे शस्त्र को जिस की फांसी का हुकम था हमारे रिप्रजेंटेशन पर उस को पाईन (क्षमा) कर दिया। एक ऐसा केस मैं जानता हूँ जिन में कि गवर्नमेंट आफ इंडिया का हुकम पहुंचा कि फलां शस्त्र को फांसी न दी जाय लेकिन उस को दस मिनट पहले फांसी दे दी गई। कितने ही कैसेज मैं अनाब के सामने अर्ज कर सकता हूँ जिन के कि अन्दर ऐसे आदमियों को जो दरअसल इस जुर्म के गुनाहगार नहीं थे उन को फांसी की सजा हुई और मैं उन को मिसालें दे सकता हूँ। मेरे लायक दोस्त का इटरप्यान भी वाजिब ही है और मैं समझता हूँ कि इस ४७, ४८ वर्ष के मेरे उमराने बकालत में जिस में मैं ने तकरीबन एक हजार सेशन कैसेज किये होंगे, पांच,

सात कैसेज ऐसे होंगे इसलिये यह कहना गलत है कि ऐसे कैसेज नहीं हैं या तादाद में बहुत काफी हैं। हियुमन जजमेंट (मानवीय निर्णय) बिलकुल फौलेबुल (भूल-चूक के योग्य) है और उस में बहुत गलतियां हो सकती हैं। (६) उन का छठा आर्गुमेंट यह है कि जिस शस्त्र को फांसी दी जाती है उस के रिस्तेदारों को बड़ी तकलीफ होती है, उस को खुद को छोड़ दें लेकिन रिस्तेदारों को बड़ी तकलीफ होनी है। (७) वह यह भी आर्गुमेंट देते हैं कि रैट्रिब्यूशन (बदला) किसी मजहब (धर्म) का उसूल (सिद्धान्त) नहीं है। महात्मा बुद्ध, ईसा मसीह और दूसरे बुजुर्गों की नसीहत (उपदेश) चली आई है कि मनुष्य मात्र के साथ दया का बर्ताव करो, मर्सी (दया) करो और किसी की जान मत लो और जान का लेना एक बारबरस ऐक्ट है। मुझे भी मुकन्दलाल जी के ये छः सात आर्गुमेंट मालूम हुए। मुझे पता नहीं कि उन का कोई और आर्गुमेंट है या नहीं, लेकिन जब मैं ने उन की स्पीच (भाषण) पढ़ी और यहां पर तकरीरें सुनीं तो मुझे सिर्फ इतने ही आर्गुमेंट मालूम हुए। जिन आर्गुमेंट्स में मुझे कुछ वजन मालूम होता है, उन के बारे में कुछ अर्ज करना चाहता हूँ। जहां तक सवाल है कि दूसरे मुल्कों में क्या यह चीख रायज (ठीक,) है, मैं अर्ज करना चाहता हूँ कि उन की स्पीच पढ़ने के बाद मैं यह नतीजा नहीं निकाल सका कि चूकि बहुत से मुल्कों ने इस चीख को बन्द कर दिया, और वाजिब तौर पर बन्द कर दिया, इसलिये हम को उन के पीछे चलना चाहिये। मैं उन मुल्कों की मिसालों को ज्यादा वजन देता हूँ जिन्होंने एक दफा इस को बन्द कर दिया और कुछ अर्से के बाद उसे फिर जारी कर दिया। उन्होंने ने तजुर्बा कर के देख लिया और फिर जारी कर दिया। लेकिन जैसा चैटर्जी साहब फरमाते हैं कि एक्स्पेरिमेंट (प्रयोग) कर के देख लो। मैं कह

सकता हूँ कि अगर एक्सपेरिमेंट कर के देखा गया कुछ असें के लिये तो देहर विल बी ए स्पेट आफ मर्डर्स (हत्याओं की एक बाढ़ आ जायगी), इस में मुझे कोई शुबहा नहीं है। श्री टेकचन्द जी ने जिस ढंग से पेश किया उस के अन्दर मुझे सच्चाई मालूम पड़ती है। आप कुछ दिनों के लिये बन्द कर के देख लें, मर्डर्स (हत्याओं) की तादाद (संख्या) बढ़ जायगी, आप हमेशा के लिये बन्द कर दें तो तादाद बढ़ेगी या नहीं, मालूम नहीं, लेकिन कुछ असें के लिये ऐसा करने का असर अच्छा नहीं होगा। मेरी राय यह है कि बहुत से मुल्कों ने बन्द नहीं किया है, और जो मुल्क बन्द कर देते हैं, हमें आंख बन्द कर उन की तकलीद (अनुकरण) नहीं करनी है। हम को अपने मुल्क के हालात को देखना है, अपने मुल्क के हालात को देख कर ठीक रास्ते का फैसला करना है। अगर सब मुल्क इसे बन्द कर देते तो मैं सब मुल्कों को साथ देना पसन्द करता, लेकिन अब भी यह चीज डाउटफुल (संदेहास्पद) है कि किन मुल्कों ने इस को जरूरी समझा है और किन्होंने नहीं। इसलिये आर्गुमेंट अपील नहीं करता कि चूंकि और बन्द मुल्कों में यह चीज नहीं है, इसलिये हमें नहीं करना चाहिये।

दूसरा इम्पार्टेंट आर्गुमेंट (महत्वपूर्ण तर्क) और सब से बड़ा आर्गुमेंट जो है उस में दो बातें हैं, एक तो डिटरेंस (भय) की और दूसरी इन्फ्लिबिलिटी आफ जजमेंट (निर्णय के गलत न होने की) की। मैं जानता हूँ कि गलती इन्सान से ही होती है, लेकिन मैं पूछना चाहता हूँ कि इस कैपिटल पनिशमेंट (मृत्युदंड) वाले जितने भारी जरायम (अपराध) होते हैं, उन में कितनी गलती होती है। मैं हर एक सजा के लिये तो नहीं कह सकता, लेकिन कैपिटल पनिशमेंट के बारे में कम गलती होती है। इस में शुबहे का फायदा दिया जाता है। अभी चैटर्जी साहब ने मिसाल दी कि लोग चाहते थे कि

अगर कैपिटल पनिशमेंट वाले जुर्म में चालान हो जावे ताकि बरी हो जावे तो यह बात सही है कि अगर बहुत सस्त सजा कायम कर दी जाय किसी जुर्म की, तो नतीजा यह होता है कि जज ख्याल करता है उस की बाबत कि चूंकि इस जुर्म की सजा बहुत सस्त है, इसलिये मुलजिम को छोड़ दिया जाय। इसलिये बहुत सस्त सजा का मुकर्रर कर देना अपने परपज को ही डिफोट (उद्देश्य को विफल) कर देता है। हमें जुर्म की नवैयत (प्रकार) को देख कर ही सजा कायम करनी चाहिये। यह उसूल ठीक है। मैं जानता हूँ कि कितने ही केसेज में ऐसा हुआ है कि बेगुनाह आदमी को फिल बाक्या फांसी की सजा का हुक्म हो गया। मैं ने एक ताजा मिसाल श्री दातार साहब के रूबरू पेश की और रेकार्ड की बिना पर अर्ज किया कि इस केस में बुगेनाह आदमी को सजा हुई है। उस को उन्होंने कम्प्यूट कर (बदल) दिया। एक केस में एक आदमी को फांसी का हुक्म हो गया, डाकू गये और लोगों की मार भाये। जहां का वह रहने वाला था वहां के लोगों को, जिन में एक कांग्रेसमैन पंडित नेको राम मरहूम भी थे, पता चला कि वह बेगुनाह है। उन्होंने तहकीकात कराई। ताहकीकात के बाद, जिस आदमी को फांसी का हुक्म हुआ था, उस का भाई गिरफ्तार कर लिया गया, जिस ने डाका डाला था और कत्ल किया था। उस ने जेल में इकबाल किया कि जुर्म तो मैंने किया है, मेरे भाई ने नहीं, वह गांव के बाहर ही नहीं गया। इस सब का नतीजा यह हुआ कि इस की तहकीकात हुई, १२ गांव को पंचायत हुई, जिस में तय पाया गया कि जिस को सजा का हुक्म हुआ वह बेगुनाह है। सुपरि-टेंडेंट आफ पुलिस ने अपनी रिपोर्ट भेजी। मैं बहुत सी मिसालें इस तरह की दे सकता हूँ। अगर इन्सान का जजमेंट (निर्णय) इन्फ्लिबिल (भूलचूक न होने वाला) होता तो यह सबाल ही पैदा नहीं होता कि सजा दें या छोड़ दें। हूँ भन जजमेंट के पास ऐसा

[पंडित ठाकुर दास भागंब]

इन्सट्रमेंट (साधन) नहीं है, कोई तरीका हमारे पास नहीं है, सिवा इन कोर्ट्स के जरिये मालूम करने का, अगर जर्म को मालूम करने का कोई तरीका बन जाये, जैसे कि साइकालोजिस्ट्स (मनोवैज्ञानिक) वगैरह क्लेम (दावा) करते हैं, तो बात दूसरी है, वरना जब तक मौजूदा तरीका चलता है, जब तक कोर्ट्स कायम हैं, हमारे पास कोई तरीका नहीं है सिवा इस के कि हम इस तरीके को ही कायम रखें। अगर आप हर तरह के जरायम के वास्ते मौजूदा तरीके को बदलना चाहते हों तो इस को भी छोड़ दें, वरना मैं इस प्रार्थना को मानने के लिये तैयार नहीं हूँ कि इस बिना (भाषार) पर कैपिटल पनिशमेंट हटा दिया जाय। मैं इस चीज को मानता हूँ कि रेग्नर केसेज (किचित्त मामलों) में फांसी की सजा होनी चाहिये क्योंकि इन्सान के जजमेंट में हमेशा ही सर्टेन्टी (निश्चितता) नहीं हो सकती। इसलिये इस सजा को उन केसेज के लिये ही होना चाहिये जिस में सर्टेन्टी हो। जनाब को मालूम है कि मर्डर केसेज के वास्ते यह बात कही गई है: "the fouler the crime: the better the evidence should be." (अपराध जितना ही अधिक गलत हो उतना ही अच्छी साक्ष्य होनी चाहिये) और क्या कहते हैं? जिस मामले के अन्दर बड़ा जर्म हुआ हो, तो हमारा सुप्रीम कोर्ट (उच्चतम न्यायालय) और जुरिज्डेंस (विधिशास्त्र) कहते हैं कि मुजरिम को बेनिफिट आफ डाउट (सन्देह लाभ) दो, सजा न हो। इस का यह मतलब नहीं है कि अगर कोई कत्ल या डाके का मामला हो जाता है और उस में डाउट हो सकता है तो सारा जजमेंट गलत होता है और इसलिये कैपिटल पनिशमेंट नहीं देना चाहिये। मैं इस प्रार्थना को कंक्लूसिव (निर्णायक) नहीं समझता। मैं तो इस की यह नतीजा देखना हूँ कि हम निहायत एहतियात से काम लें, जिस में किसी बेगुनाह को सजा

न हो जाये। मैं इस चीज के माने यह नहीं समझ सकता कि सारे जजमेंट्स को और कोर्ट्स को ही कंटेम कर दिया जाय।

अब सवाल डिट्रेंस (भय) का है और यह इतना जरूरी है कि मैं चाहता हूँ कि सिर्फ स्टेट्स और हमारी गवर्नमेंट ही इस चीज का फैसला न करें। सारे कंट्री (देश) के सामने यह बिल जाना चाहिये। हर एक भादमी के मुताल्लिक यह चीज है। हर एक बार एसोसिएशन (वकील संघ), हर एक जज और हर एक मामूली भादमी अपनी राय इस के मुताल्लिक दे सकता है कि आया डिट्रेंस होता है या नहीं और इस का असर सोसायटी (समाज) पर क्या होगा। मैं अर्ज करना चाहता हूँ कि अगर आप डिट्रेंस के सवाल को उठायेंगे तो आप को एविडेंस (साक्ष्य) नहीं मिलेगी क्योंकि यह सवाल इस कदर मुश्किल है जिस की इन्तहा नहीं है। मैं ने अपने दोस्त की तकरीर भी सुनी। मैं डिट्रेंस के बारे में अर्ज करूँ कि अगर कोई नतीजा चार काजेज (कारणों) की वजह से पैदा होती है तो जब तक आप तीन काजेज को न निकाल दें, चौथे काज को आप कनक्ट (संबद्ध) नहीं कर सकते। कत्ल क्यों हुआ करता है? मैं मानने को तैयार हूँ कि जब भादमी कत्ल करता है तो पैशन (क्रोध) में होता है। उस का अपने ऊपर काबू नहीं रहता। वह जो फेल करता है उस के कांसिक्वेंस (परिणाम) को पूरी तरह नहीं देखता है। लेकिन यह एक बहुत चौड़ा स्टेटमेंट (कथन) है कि किसी सूरत में जब भादमी फेल करता है तो कांसिक्वेंस से डरता नहीं है। मुझे मालूम है कि ८७ परसेंट (प्रतिशत) केसेज में लोग मर्डर केसेज में ऐक्विट (छूट) हो जाते हैं। लोगों को यकीन ही नहीं होता कि वह कत्ल करेंगे और श्री टेकचन्द साहब उन को बचा नहीं लेंगे। जब यह सूरत है तो डिट्रेंस एफेक्ट की बात कहाँ रही अगर

यह यकीन हो जाय कि इस जुर्म की सजा फांसी है, और कत्ल करने पर वह जरूर मिलेगी। तब तो उस को डिट्रेंस असर दिखाया जा सकता है। जब आदमी जानता है कि बावजूद कत्ल करने के मैं बच जाऊंगा, हाई कोर्ट व सुप्रीम कोर्ट तक जाऊंगा, वकील कर लूंगा, माफी के लिये जज को तैयार कर लूंगा, गवाही तोड़ने के लिये किसी को पैसा दे दूंगा। ऐसी हालत में डिट्रेंट पनिशमेंट हो या मामूली, क्या फर्क पड़ता है। लोगों ने बतलाया कि जहां ऐसी सजा नहीं है वहां जुर्म भी नहीं बढ़ा। मैं पूछना चाहता हूँ कि आप के पास क्या पैमाना है कि अगर यह सजा न होती तो यह जुर्म कितना हो जाता? यह आर्गुमेंट ऐसा नहीं है जिस को हम इस तरह से गोलबेन स्केल्स (नाजुक पैमाने) पर तोल सकें और पता लगा सकें कि ऐसी सजा डिट्रेंट है या नहीं। फिर कहा गया कि डिट्रेंस कम होती है उतना ही लोगों पर असर होता है, उतना ही लोग जुर्म करते हैं, इस की वजह से हजारों क्रिमिनल्स (अपराधी) ने इस देश के अन्दर जुर्म करना बन्द कर दिया। अगर ला (विधि) का डर नहीं होता तो सारे कोर्ट्स व पुलिस को बन्द कर दीजिये। इस में कोई आर्गुमेंट नहीं है कि कोई ज्यादा सजा क्यों पाये। इस बारे में जितनी कठिनाई पाई जाती है हम पूरी तरह से जानते हैं अगर इस डिट्रेंट न होने की बहस को माना जावे तो सब मशीनरी अदालतों व पुलिस की बन्द कर दी जावे फिर देखें क्या होता है। जहां डिट्रेंस का सवाल है, इस का हमारे पास कोई डेटा (आंकड़े) नहीं है जिस की वजह से हम इस नतीजे पर पहुंचें कि हमारा ला (विधि) डिट्रेंस (भयोत्पादन) का काम करता है या नहीं।

अभी इस हाउस के रूबरू बड़े जोर से महात्माओं की बात कही गई। मैं अपने को इस काबिल नहीं समझता हूँ कि मैं महात्माओं के मुतालिक कुछ कह सकूँ कि

उन की विउ (लक्ष्य) क्या थी। लेकिन मुझे मालम है कि महात्मा गांधी की ब्लेसिंग (आशीर्वाद) उन लोगों के लिये थी जो रेडर्स (आक्रमणकारी) का मुकाबला करने के लिये काश्मीर गये थे। मुझे मासूम है कि गीता में कहा गया है :

“परित्राणाय साधूनाम्, विनाशाय च दुष्कृताम्,
धर्म संस्थापनार्थम्, संभवामि युगे युगे।”

दुष्कृत्यों के विनाश के लिये मैं जन्म लेता हूँ। जुर्म के लिये साफ्ट हारटेडनेस (सहृदयता) नहीं है। किसी सूरत में हक नहीं है कि कोई आदमी किसी आदमी की जान ले। हमारे यहां शास्त्रों में लिखा हुआ है कि जो आउटला (आततायी) लोग हैं उन को मार देना कोई जुर्म नहीं है। यहां मिसाल दी गई यू० पी० के दो लेजिस्लेटों के कतल की, कहा गया कि महात्मा जी के कत्ल करने वाले को उसी वक्त लोग जान से मार डालते। इस वक्त जो कानून है वह यह कि जो लोग किसी को मारते हैं वह फांसी पाने के मुस्तहक (योग्य) हैं, अब क्या यह कर दिया जाय कि अब ट्रांसपोर्टेशन फार लाइफ होगा (आजीवन काला पानी) मर्डर के लिय ताकि ८ साल बाद फिर आ कर जुर्म करो। मैं ने अपने जिले में कई केस किये हैं। एक गांव के अन्दर जिस के अन्दर फ्यूड्स (घरेलू झगड़े) थे अगर एक आदमी को मार दिया गया तो जब तक कि सारे के सारे गैंग (जत्थे) के आदमी खत्म नहीं हुए और दूसरी तरफ के आदमियों को खत्म नहीं किया गया, उस गांव में पीस (शान्ति) नहीं हुआ। मैं ने ऐसे ऐसे केसिस (मामले) किये हैं जिन में जो असली मर्डर (हत्यारा) था वह मेरे पास बैठा हुआ था, मुझे इंस्ट्रक्शन्स (हिदायतें) दे रहा था, उस का चालान नहीं किया गया किसी दूसरे का ही चालान कर दिया गया। तो मैं बड़े अदब के साथ अर्ज करता हूँ कि जब इस तरह के जराइम होते हैं तो जो डर का थोड़ा बहुत एलिमेंट (तत्व) है उस को हराना

[पंडित ठाकुर दास भार्गव]

किसी भी नुकतेनखर से जायज नहीं है। मैं नहीं मानता कि कोई धर्मशास्त्र या कोई हमारा कानून हमें यह कहता हो कि eye for eye and tooth for tooth (जैसे को तैसा) किसी साहब ने कहा कि प्राइवेट रिट्रिब्यूशन (भापसी बदले) के वास्ते अगर ऐसी आर्गुमेंट हो तो शायद इस में सच्चा हो। इस के बारे में मैं यह अर्ज करना चाहता हूँ कि प्राइवेट रिट्रिब्यूशन का असर यह होगा कि एक खानदान के लोग दूसरे खानदान के लोगों को जिन्दा नहीं रहने देंगे अगर उन के साथ उन की दुश्मनी है। कोर्ट्स और पुलिस का मतलब यही है कि मजलूम आदमी रिट्रिब्यूशन नहीं करता है बल्कि बर्ष परसन (तीसरा व्यक्ति) करता है। तो यह चीज स्टेट के इंटिरेस्ट (हित) में है, कि यह प्राइवेट रिट्रिब्यूशन न हो। मैं समझता हूँ अगर आप इस पनिसामेंट (दंड) को हटा देंगे तो आप प्राइवेट रिट्रिब्यूशन को डायरेक्ट इंसैटिव (प्रत्यक्ष प्रोत्साहन) देंगे। कई केसिस ऐसे हैं जिन के अन्दर खानदानों को ही खत्म कर दिया गया है। अगर किसी को कतल किया जाता है तो उस का जो बेटा है वह इस का बदला लेगा और १२ बरस की मुद्दत खत्म नहीं होती कि कतल का बदला ले लिया जाता है। कई गांव ऐसे हैं जहाँ पर इस तरह से हुआ है और जिस के बारे में मैं जानता हूँ। बाद में वे लोग भले ही छट जाते हों लेकिन बदला वे अवश्य ले लेते हैं। ऐसी हालात में यह जो धर्मशास्त्रों की आर्गुमेंट दी गई है, इस को मानने के लिये मैं तैयार नहीं हूँ।

यह भी कहा जाता है कि जिस ने कतल किया है, उस के माता पिता ने उस की बीवी बच्चों ने, उस के रिश्तेदारों ने क्या कसूर किया होता है। मुजरिम को तो फांसी के तख्ते पर लटका दिया जाता है, लेकिन नतीजा यह कि उन से उन का ब्रेडविन्नर (पोषणकर्ता) छीन लिया जाता है। मैं यह मानने के लिये तैयार हूँ कि बहुत से

केसिस में हार्डशिप (कठिनाई) होती है। मैं ने एक केस किया है जिस का मैं नाम नहीं लेना चाहता और जिस के अन्दर एक बेटे ने अपने बाप को कतल कर दिया था और बचारी मां जो अपने खाविन्द का कतल नहीं चाहती थी क्या कर सकती थी। उस का वह इकलौता बेटा था लेकिन उस पर यह इलजाम था कि उस ने अपने बाप को कतल किया है। जज ने जजमेंट दिया कि बाप को बेटे ने कतल कर दिया है। अगर मैं ने बेटे को फांसी की सजा दी तो जो उस की मां है वह इस हुक्म को मुनते ही मर जायेगी और सारे का सारा खानदान बाइप आउट हो (मिट) जायगा। यह फैसले में लिखा गया है। मैं नहीं जानता कि कहां तक इस तरह का जजमेंट दुस्त है लेकिन इस के अन्दर एक चीज जरूर है जिस पर ध्यान रखा जाना चाहिये और वह यह है कि यह जो फांसी की एक्स्ट्रीम (चरम सीमा) सजा है यह एक्स्ट्रीम केसिस (चरम सीमा के मामलों) में ही दी जानी चाहिये। हर एक मर्डर के मामूली से मामूली केस में यह सजा नहीं दी जानी चाहिये।

लेकिन इस के साथ ही साथ मैं पूछना चाहता हूँ कि रिलिजस फेनेटिसिज्म धर्मान्धता की वजह से एक आदमी दूसरे को मार दे और आप उस को छोड़ दें तो इस का क्या असर होगा। इस का असर यह होगा कि जो दूसरे रिलिजन (धर्म) के आदमी हैं वे जा कर उस रिलिजन को मानने वाले आदमियों पर हमला कर देंगे और इस का जो नतीजा निकलेगा उस का अंदाजा आप लगा सकते हैं। तो एक बात है कि जो इनकोरिजिबल (जिन का सुधार नहीं हो सकता) हैं और जिन के बारे में आप जानते हैं कि जेल से जाते ही वे दूसरा जुर्म कर देंगे उन को जिन्दा रखने में कौन सा मारल प्रिंसिपल (नैतिक सिद्धान्त) है जिसकी वजह से आप उन को जिन्दा रखना चाहते हैं। अगर आप ने

भातताई को जन्दा रखा तो जो भातताई की डेफिनिशन (परिभाषा) है वहीं खत्म हो जायगी। भातताई को मारना, भाउटला को मारना कोई जुर्म नहीं है।

जब आप यह कहते हैं कि जिस ने कत्ल किया है उस के रिश्तेदारों को तकलीफ होगी तो मैं आप की तवज्जह जो मकतूल है उस के रिश्तेदारों की तरफ भी दिलाना चाहता हूँ जिन के रोटी कमाने वाले को कत्ल कर दिया गया है। तो आप को ह्यमन नेचर (मानव प्रकृति) को भी देखना होगा और दोनों को एक स्केल (तराजू) के अन्दर वे (तौल) करना पड़ेगा। आप को एकतरफा फैसला नहीं दे देना चाहिये, आप को दूसरे पहलू पर भी गौर करना चाहिये। जिस खानदान के आदमी को कत्ल कर दिया गया है वह खानदान कभी-की यह नहीं चाहता है कि वह आदमी जिन्दा रहे और वह जिन्दा रह भी नहीं सकता है। मैं ने देखा है कि जब एक आदमी किसी दूसरे घर के सामने से गुजरता है जहाँ पर रहने वाले को उस ने कत्ल कर दिया है तो वह एक खंगूरा मारता है और खांसता है। तो जब वह खंगूरा मारता है कि तो जिस खानदान के घर के सामने वह खंगूरा मारता है तो उस खानदान वालों को जो चोट एक तलवार के चलाने से लग सकती है उस से भी ज्यादा चोट लगती है। उसी दिन या उसी रात को वे लोग उस के घर पहुंच जाते हैं और जब तक उस को खत्म नहीं कर देते तब तक सांस नहीं लेते। कोई भी नहीं चाहता कि इस तरह से खंगूरे उस के मकान से सामने कोई मारे। यही चीज मैं ने दूसरी जगह भी देखी है....

उपाध्यक्ष महोदय : दूसरी जगह शायद बरदाश्त कर लिया जाता हो लेकिन पंजाब में नहीं।

पंडित ठाकुर बास भार्गव : मैं ने यू० पी० में देखा है और वहाँ भी केसिस किये हैं। वहाँ पर भी इस चीज को बरदाश्त नहीं किया जाता है। वे लोग भी पंजाब के रहने वाले लोगों की तरह इस चीज को बरदाश्त नहीं कर सकते हैं। यू० पी० में खंगूरा वही भसर रखता है जो वह पंजाब में रखता है। यही हाल राजस्थान वालों का है। वहाँ पर रोज डाके पड़ते हैं, रोज मर्डर (खून) होते हैं। मैं बाकी जगहों के बारे में ज्यादा नहीं जानता हूँ।

तो जहाँ पर इस तरह से मर्डर होते हैं उन इलाकों के लिये क्या आप कह सकते हैं कि यह जो डिट्रेंट पनिसमेंट (भयोत्पादक वंड) है इसे हटा दिया जाना चाहिये। मैं अबद से अर्ज करता हूँ कि यह पंजाब या यू० पी० का सवाल नहीं है। इस चीज को तोलने और देखने का सवाल है। तो जितना वजन इस सजा को हटाने के बारे में दिखलाने की कोशिश की गई है, मैं समझता हूँ इस में उतना वजन नहीं है।

एक के बाद दूसरी प्रागुमेंट को मैं ने लिया है और सब को मैं समझता हूँ, मैं ने डिसपोज आफ कर (निबटा) दिया है। अगर कोई रह गई हो तो मुझे मालूम नहीं।

जो दलीलें दी गई हैं उन में मेरी समझ में इतना वजन नहीं है कि इस पनिसमेंट को ही हटा दिया जाय। श्री टेकचन्द जी ने अभी कहा कि दफा ३६७ को चेंज कर (बदल) दिया गया है और अब इस बात का बोझ सेशन जज पर नहीं रह गया है कि वह बताये कि क्यों सजा फांसी नहीं दी गई। मैं इस से भी आगे जाता हूँ। उन केसिस में जो प्योरली (विशुद्धतः) ३०२ के हों उन में अगर सजा फांसी दी जाय तो यह जब के ऊपर बर्डन (दायित्व) डाल

[पंडित ठाकुर दास भागंब]

दिया जाय कि वह लिखे कि क्यों फांसी का हुकम दिया जाता है। अगर भीर भी करना चाहते हैं तो यह कर सकते हैं कि वह यह बताये कि क्यों फ्रांसी की सजा के सिवाय कोई दूसरी सजा वाजिब नहीं है। अगर यह बर्डेन आप उस पर डाल देंगे तो मैं समझता हूँ कि इस तरह के केसिस की तादाद भीर कम हो जायगी। लेकिन अगर आप ने इस सजा को बिल्कुल ही बन्द कर दिया तो मैं समझता हूँ कि, जिस तरह के हमारे यहां हालात हैं जिस तरह की रवायात चली आ रही हैं, जिस तरह से हम जजबात में खेल जाते हैं और कैसे काम कर बैठते हैं, यह ठीक नहीं होगा। आप जानते ही हैं कि ३०२ मौजूद है, ३०४ मौजूद है, ३०४ (ए) मौजूद है, ३०२ में डिस्ट्रिक्शन मौजूद है रिप्रीव (दंड को स्थगित करना) का कानून मौजूद है, पाठेन (क्षमा) का कानून मौजूद है, राइट आफ सैल्फ डिफेस (आत्म रक्षा का अधिकार) का कानून मौजूद है एक्सीडेंट (दुर्घटना) का कानून मौजूद है, इन सब चीजों के होते हुए इतने रेरेस्ट (विगले) केस होते हैं जिन के अन्दर फांसी की सजा होती है या फांसी का हुकम सुनाया जाता है। रेरेस्ट केसिस के अन्दर भी हम जानते हैं कि कितनों में रिप्रीव हो जाता है और कितनों में क्या कुछ हो जाता है।

यहां पर यह भी कहा गया कि इस में आबादी को घटाने की भी बात है। मैं पूछता हूँ कि एक साल में कितने ऐसे केसिस होते हैं जिन में फांसी की सजा होती है। इन केसिस में ज्यादा नहीं तो मैं समझता हूँ ८० परसेंट तो जस्टीफाएबल (समर्थनीय) भी होते होंगे अगर ९९ परसेंट नहीं।

अन्त में मैं इतना ही कहना चाहता हूँ, कि रेरेस्ट केसिस में ही पनिशमेंट आफ डेथ (मृत्युदंड) रखा जाय लेकिन इस को एंबालिश करना लीगली जायज (विधि की दृष्टि से

उचित) नहीं होगा, पोलिटिकली (राजनीतिक दृष्टि से) जायज नहीं होगा। और न ही मारल प्वाइंट आफ व्यू (नैतिक दृष्टि से) जायज होगा।

उपाध्यक्ष महोदय : सरदार इकबाल सिंह।

मैं यह बता देना चाहता हूँ कि अभी तक मैं ने पंजाब वालों को ही बुलाया, दूसरों को नहीं बुलाया है। इस वास्ते आप ब्रीफ (संक्षेप में) रहिये।

श्रीमती शिवराजबती नेहरू (जिला लखनऊ—मध्य) : इस बिल पर बोलन की इजाजत स्त्रियों को भी मिलनी चाहिये। आप अभी तक केवल वकीलों को ही बुलाते रहे हैं।

उपाध्यक्ष महोदय : मेरे खयाल में तो इस बिल के साथ स्त्रियों का कोई सम्बन्ध नहीं है।

श्रीमती शिवराजबती नेहरू : सम्बन्ध क्यों नहीं है, सब का सम्बन्ध है।

उपाध्यक्ष महोदय : बहुत अच्छा, आप को भी बोलने का अवसर दे दिया जायगा।

16 Hrs.

सरदार इकबाल सिंह (फाजिल्का—सिरसा) : जनाब डिप्टी स्पीकर साहब, इस से पहले जो आनरेबल मेम्बर (माननीय सदस्य) बोले हैं, वे बहुत बड़े वकील हैं और उन्होंने आप के सामने एक वकील का नुक्ता-ए-नज़र (दृष्टिकोण) रखा है और दोनों तरफ से बड़े बड़े आर्ग्युमेंट्स (तर्क) दिये गये। इस सिलसिले में मैं जो कुछ कहना चाहता हूँ, वह एक इन्सान के नाते कहना चाहता हूँ।

मैं उस इलाके का रहने वाला हूँ, जिस में मेरे खयाल में हिन्दुस्तान में सब से ज्यादा कत्ल होते हैं। एक दिन में एक कत्ल तो वहां

की भीसत है। हमारे डिस्ट्रिक्ट (जिले) में यह तादाद शायद बढ़ तो जाती हो, लेकिन कम नहीं होती है। जो भाई कहते हैं कि फांसी की सजा को हटा देने से इस देश में कुछ सुधार हो सकेगा, वे शायद कातिल की मैनटलिटी (विचारधारा) को बिल्कुल नहीं समझते हैं। मैं आप को बताना चाहता हूँ कि हमारे जिले में एक गांव में एक खानदान के अठारह आदमी कत्ल किये गये और दूसरे के बारह और पिछले तीस साल से यह सिलसिला जारी है और वह इसलिये कि आज तक उस गांव में कोई आदमी सजा नहीं पा सका है। एक गांव में यह तरीका बना हुआ है कि जो आदमी किसी को कत्ल करता है, वह उस के सिर को काट कर ले जायगा और उस के घर के सामने जा कर खुले तौर पर कहेगा कि हम ने यह कत्ल किया है। ऐसा इसलिये होता रहा है कि आज तक उन लोगों का एक भी आदमी फांसी पर नहीं चढ़ा है। हमारे दोस्त श्री भयबाल कहते हैं कि फांसी की सजा कोई इन्टेन्ट (भयोत्पादक) नहीं है। मैं उन को बताना चाहता हूँ कि अगर किसी गांव में एक भी फांसी हो गई, तो उस गांव में कत्ल कम हो गये, उस खानदान में कम हो गये। इस की वजह यह है कि जिस खानदान के किसी आदमी को कत्ल किया जाता है और बाद में कातिल को फांसी की सजा हो जाती है, तो उस खानदान के लोग समझते हैं कि अगर हम अपने आदमी के कत्ल का बदला नहीं ले सके, तो सरकार ने तो बदला ले लिया है। इस तरह उन लोगों को कुछ तसल्ली सी हो जाती है। लेकिन जिस केस में कातिल को सजा नहीं होती है, वहां जिस शख्स को कत्ल किया गया था, उस का लड़का, उस का भाई उस वक्त तक चैन नहीं लेते, जब तक कि वे बदला न ले लें।

मैं यह भी अर्ज करना चाहता हूँ कि यहां पर जिस माहौल में बैठ कर हम बातें कर रहे हैं और प्राम्युमेंटस पेश कर रहे हैं,

वह गांवों के माहौल से बिल्कुल मुहतालिफ (भिन्न) है। जिस ढंग से हम लोग सोचते हैं, गांवों के लोग उस ढंग से नहीं सोचते हैं। वहां पर जिस खानदान का कोई शख्स किसी से कत्ल किया जाता है, उस खानदान के लोगों को दूसरे आदमी उकसाते हैं कि तुम्हारे घर के आदमी को—तुम्हारे बाप को, तुम्हारे भाई को या लड़के को—फलां शख्स ने मार डाला है और उस को सजा नहीं मिली है, जब तक तुम उस को नहीं मारोगे, तुम को यहां इन्सान कहने वाला कोई नहीं है। इस तरह के सर्कमस्टांसिज (परिस्थितियों) में वह लोग बदले के तौर पर एक और कत्ल करने पर मजबूर हो जाते हैं, जिस का नतीजा यह होता है कि यह सिलसिला खत्म होने को नहीं आता।

यहां पर कहा गया है कि फांसी की सजा को हटा कर उस की जगह पर ट्रांस-पोटेशन फार लाइफ की (आजीवन काला पानी) सजा रख दी जाय। पंजाब में मरडर (खूती) कहते हैं कि हम नानके—ननिहाल—चले हैं, जबकि जेल जाने की बात होती है। वे लोग कहते हैं कि हमारे घर में न बिजली है और न पंखे हैं, लेकिन फ़िरोज़पुर सेंट्रल जेल में बिजली भी है और पंखे भी हैं—वह तो हमारे घर से ज्यादा अच्छी जगह है, क्यों न हम अपने आदमी के कत्ल का बदला भी ले लें और फिर आराम से वहां रहेंगे। इसलिये इस किस्म के लोगों के लिये जेल या कैद की बात कोई मानी नहीं रखती है।

उपाध्यक्ष महोदय : पंडित ठाकुर दास भागंब ने बहुत देर तक कोशिश कर के ये रियायतें जेल के कैदियों के लिये हासिल की थीं। क्या अब आप उन को पंजाब से दूर करना चाहते हैं ?

सरदार इकबाल सिंह : जनाब, मैं उन रियायतों को वापिस नहीं लेना चाहता

[सरदार इकबाल सिंह]

हूँ। मैं तो सिर्फ यह बताना चाहता हूँ कि जेल में कैद की सजा कोई डेटेरेन्ट इफेक्ट नहीं पैदा कर सकती है। जेल फांसी का इवजाना (स्थानापन्न) नहीं बन सकता है। यह एक हकीकत है कि जिस गांव में, जिस खानदान में कातिलों को फांसी की सजा नहीं दी गई, वहाँ कत्ल बन्द नहीं हुए। मैं इस तरह की कई मिसालें आप के सामने पेश कर सकता हूँ।

१९४७ में पंजाब गवर्नमेंट ने फैसला किया कि हर एक कत्ल करने वाले को फांसी के बजाय माफ कर के बीस साल की कैद की सजा दे दी। इस का नतीजा यह हुआ कि पहले साल में तीन सौ मरडर (खून) होते थे, अगले साल ५५० मरडर हो गये। लोगों ने सोचा कि पांच साल की क्या बात है, फांसी तो होगी नहीं, बाद में दूसरे को मांगें।

यहां पर मारैलिटी (नैतिकता) की बात भी की गई है। पंजाब के एक केस का जिक्र मेरे मोहतरिम बुजुर्ग, पंडित टाकुर दास भार्गव ने किया कि बारह कत्ल ऐसे हुए जहां बेटों ने अपने बापों को मारा। बेटे और बाप के रिश्ते पर इन्सानियत भुबनी (आधारित) होती है, लेकिन उन केसिज में इन्सानियत के स्ट्रक्चर (डांचे) को खत्म करने की कोशिश की गई और उस इलाके के मूतालिक यहां पर मारैलिटी की बात कही जाती है। इस के अलावा नी केसिज ऐसे हुए, जहां पर बापों ने बेटों को मारा और छः केसिज ऐसे हुए, जहां पर खाविदों ने बीवियों को मारा। यह कहना बिल्कुल गलत है कि फांसी की सजा खत्म करने से कत्ल के जुर्म कम हो जायेंगे। मैं अर्ज करना चाहता हूँ कि कत्ल वहाँ ज्यादा होते हैं, उन का सिलसिला वहाँ खत्म होने को नहीं आता है, जहां कि कातिलों को फांसी नहीं मिलती है। आदर्श के साथ ही साथ हम को प्रैक्टिकल (व्यावहारिक) पहलू पर गौर करना चाहिये।

मैं यह दावे के साथ कह सकता हूँ कि जिन इलाकों में हर रोज मरडर होता है, अगर फांसी की सजा खत्म कर दी जाय, तो वहाँ कत्लों की तादाद कई गुना बढ़ जायगी।

आप इस बात को भी देखें कि डाके के मामले में सात साल की सजा होती है। उस में माफी नहीं हो सकती है। इस के मुकाबले में कातिल को चौदह साल की सजा होती है, अगर फांसी नहीं होती है, तो नौ साल काटने पड़ते हैं और उस में भी माफी के बाद सात साल में ही रिहाई हो जाती है। इस हालत में लोग सोचते हैं कि जब डाके और कत्ल में बराबर की सजा होती है, तो फिर हम कत्ल ही क्यों न करें, कत्ल में तो हम ज्यादा बदला ले सकते हैं।

जो मैनटेलिटी कातिलों के दिलों में काम करती है, उस को देखते हुए और खास तौर पर इसलिये कि पंजाब में अभी ऐसा वायु-मंडल नहीं बना है, ऐसी हालत नहीं आई है कि इस बिल को पास किया जाय, मैं अपने तजुबों (अनुभव) की बिना (आधार) पर दावे के साथ कह सकता हूँ कि जिस तरह से आज-कल खानदानों में आपस में दुशमनियां चलती हैं, अगर फांसी की सजा को खत्म किया गया, तो कत्ल के जुर्म कई गुना ज्यादा हो जायेंगे।

श्रीमती शिवारम्भती मेहता : माननीय उपाध्यक्ष महोदय, मैं आप की बड़ी आभारी हूँ कि आप ने मुझे इस विषय पर बोलने का समय दिया। मैं इस बिल का घोर विरोध करती हूँ। मैं समझती हूँ कि अभी हमारे देश की सामाजिक और नैतिक अवस्था ऐसी नहीं है, न हम इतने सिविलाइज्ड (सभ्य) हो गये हैं कि यहां से मृत्यु-दंड की सजा हटा दी जाय। स्वतंत्रता के बाद हमारे देश का वातावरण ऐसा हो गया है, लोग ऐसे निडर हो गये हैं कि स्वतंत्रता के माने ही उन्होंने न—हमारे देशवासियों ने—कानून पर न चलने और मनमानी करने के समझ लिये हैं।

हमारे देश में ऐसे क्रिमिनल-माइंडिड (अपराधी प्रवृत्ति वाले) लोग हो गये हैं, जिन के सामने मनुष्य की जान का कोई मूल्य नहीं है। वे न जेल से डरते हैं और न ही उन्हें सूली से भय है। उन्होंने न केवल अपने हाथ में ले लिया है। आज हमारे देश में छोटी छोटी बातों पर बदला लेने के लिये, ईर्ष्या के कारण और रुपये के लालच से हज़ारों हत्याएँ होती हैं। अब तो हमारे देश में पोलीटिकल मरडर्ज़ (राजनैतिक हत्याएँ) भी होने लगे हैं। ५० पी० में कई कांग्रेसी आई इसी प्रकार मारे गये हैं।

इस परिस्थिति में देश की जनता सहमी हुई है और भयभीत है, मगर हमारी आरक्षी—हिन्दी में पुलिस का नाम आरक्षी रखा गया है—हमारी रक्षा नहीं कर पा रही है और कितने ही हत्यारों का पता नहीं लगा पाई है। अभी चन्द दिन हुए, दिल्ली के चांदनी चौक में बम फटा, सात आठ आदमी जान से मारे गये और ३३ आदमी घायल हो गये, लेकिन पुलिस अभी तक हत्यारों का सुराग नहीं लगा पाई है। अभी कुछ समय हुआ, अखबारों में छपा था कि अलीगढ़ में एक पोते ने अपनी दादी को गोली का निशाना बनाया। वह रानी आवागढ़ थी। अलीगढ़ में तो ये प्राये दिन के करिश्मे हैं। मैं पन्द्रह दिन वहाँ रही। इन १५ दिन में मैं ने वहाँ तीन कत्ल की वारदातें सुनीं। वहाँ एक न एक कत्ल रोज़ हो जाता है। वहाँ के लोगों को इस का भसावात हो गया है। मुरादाबाद में एक हत्यारे ने ऐसा बदला लिया कि सात आदमियों के एक कुटुम्ब को मय बच्चों के समाप्त कर दिया। अभी कुछ दिन हुए कि अखबार में खबर निकली थी कि हैदराबाद में

उपाध्यक्ष महोदय : ऐसे उदाहरण तो बहुत होंगे।

श्रीमती शिवराजबती नेहरू : एक आदमी ने चार आदमियों का कत्ल किया जिन में

एक दो बरस का और दूसरा चार बरस का बच्चा था और उन को मार कर उन्हीं के घर के ग्रहाते में उन के शव को जलाया। जिस देश में इस तरह दिन दहाड़े कत्ल होते हैं वह इस योग्य नहीं है कि वहाँ से मृत्यु दंड हटा लिया जाये।

कहा जाता है कि हत्या करना मनुष्य की एक बीमारी है और जो लोग क्रिमिनल मायंडेड होते हैं वे एक प्रकार के रोगी होते हैं। बहुत खूब। लेकिन मैं पूछना चाहती हूँ कि इस रोग को दूर करने वाला डाक्टर है कौन। यह जो बिल संसद में लाया गया है यह तो उस रोग से भी ज्यादा खतरनाक है। हम इस रोग को अच्छा करने की आज-माइश करने में अपने देश के निरपराध लोगों की जानों से नहीं खेल सकते।

समाचारपत्रों में प्राये दिन देश के हर कोने से ऐसे ही हत्याकांडों की खबरें मिलती रहती हैं। हमारे देश की पुलिस ऐसी बेबस व लाचार है क्योंकि वह भी डाकुओं और कातिलों के जुर्मों की शिकार हो रही है। हम मृत्यु दंड बन्द करने की बात करते हैं और उधर ये हत्यारे सारे देश में हत्याएँ कर रहे हैं। इस का कारण है। आज हमारे देश में सब प्रदेशों से अधिक जेल रिफार्म उत्तर प्रदेश में किये गये हैं जिन से कि कैदियों को जेल में अपने घर से भी ज्यादा आराम मिलता है। मैं आप को बताऊँ कि ये जेल क्या हैं खालाजी के घर हैं जहाँ कैदियों को हर प्रकार की सुविधाएँ दी जाती हैं।

उपाध्यक्ष महोदय : मैं माननीय सदस्या से विनय करूँगा कि यहाँ जेल के रिफार्म को वापस लेने का सवाल नहीं है।

श्रीमती शिवराजबती नेहरू : आप ने जिस सत्र से इतने और लोगों को जोकि बोले हैं बरदास्त किया, उसी तरह मुझे भी थोड़ी देर के लिये बरदास्त कीजिये।

उपाध्यक्ष महोदय : अच्छा जी मैं आप को भी बरदास्त करूंगा। कहिये।

धीमती शिवराजवती नेहरू : उपाध्यक्ष महोदय, इन जेलों में रेडियो हैं, वहां कभी कभी सिनेमा भी दिखाये जाते हैं, और ड्रामे खेले जाते हैं और त्योहारों पर हलवा, पूड़ी और पकवान बना कर उन को दिये जाते हैं, हमारे प्रान्त में ओपिन एअर जेल (खुला जेल) है जहां बाव्ड वायर (कंटीले तार) में कैदियों को रखा जाता है और उन को पैरोल (कारावकाश) पर अपने घर जाने की छुट्टी दी जाती है। जो काम वे जेलों में करते हैं उसकी उनकी मेहनत और मजदूरी दी जाती है। इस तरह से इन कैदियों को जोकि अपराध कर के आते हैं रोजगार भी मिल जाता है, जबकि हमारे देश में जो बेचारे निरपराध हैं उन को रोजगार नहीं मिलता।

उपाध्यक्ष महोदय, अगर फांसी की सजा नहीं दी जाती तो इसके एवज में बीस बरस की कैद की सजा दी जाती है परन्तु यह २० बरस की सजा छूट मिलने के कारण १५ बरस की या कभी कभी दस बरस की सजा ही रह जाती है। जब कोई बड़े अपराध जेल में आते हैं तो वे अच्छे आचरण के एवज में कैदियों को साल में चार महीन की या ६ महीन की या आठ महीन की छूट दे देते हैं और इस तरह से उन की सजा बहुत कम रह जाती है। इस प्रकार ये हत्यारे इस थोड़ी सी सजा से भय नहीं खाते क्योंकि ये लोग डेसपरेट (मदांघ) होते हैं। इन थोड़े से कष्टों की उन को परवा नहीं होती।

थोड़े दिन हुए कि मेरे एक मित्र ने मुझे बतलाया था कि एक जज साहब ने एक हत्यारे को लाइफ (आजीवन) की सजा दी और उस को फांसी की सजा नहीं दी परन्तु जब वह जेल से छूट कर आया तो पहला काम उस ने यह किया कि जिस आदमी को उस ने मारा था उस के १५

बरस के लडके को मार दिया और फिर जा कर फांसी पर लटक गया।

इस बिल के सपोर्ट (समर्थन) में कहा जाता है कि कभी कभी बेगुनाहों को फांसी की सजा दे दी जाती है। पर यह तो कानून का दोष नहीं है, यह तो वकीलों की पैरवी और हाकिमों की समझ और जजमेंट की बात है। इस के विपरीत बहुत से डाकू और हत्यारे, जिन्होंने वास्तव में कल्ल किये हैं वे जुर्म से बरी हो जाते हैं। वकील समाज देश में सलामत रहे कातिलों को सजा का भय नहीं है। उन की उत्तम पैरवी से वे जुर्म से बरी हो जाते हैं। मेरी समझ में तो आज देश में जो वातावरण है उस को देखते हुए क्षमा और दया के नाम पर कैपिटल पनिसमेंट (भृत्यदंड) को हटाना इन सद्गुणों का दुष्योग करना होगा। अगर आप ऐसे दयालु हृदय हैं तो बीस बरस की सजा भी क्यों देते हैं, भगवान पर छोड़ दीजिये, वह न्याय करेगा और आखिर कर्म का फल तो मिलेगा ही।

अप्रवाल साहब ने कहा कि सम्य देश इस प्रथा को छोड़ रहे हैं। यह बात बिल्कुल ठीक नहीं है। इंग्लैंड और दूसरे देशों में इस बात की चर्चा अवश्य हो रही है कई देशों ने इसे छोड़ भी दिया है। परन्तु कुछ देश, जिन्होंने ने इसे छोड़ दिया है, फिर इसे लागू करने की कोशिश कर रहे हैं। इसलिये मेरा यह मत है कि अगर आप को फांसी की सजा से ऐतराज है तो आप इस मृत्युदंड को इलेक्ट्रिक चेअर द्वारा (बिजली की कुर्सी) देने की व्यवस्था कर दें, परन्तु मैं चाहती हूं कि हत्या के लिये मृत्यु दंड अवश्य रखा जाये। इस को बन्द करना देश के लिये बहुत हानिकारक होगा।

Mr. Deputy-Speaker: I find that there are a large number of speakers who are anxious to speak. I must bring it to their notice that over and above the maximum time, we have extended it by one hour. Even that will expire by 4.45. It will not be

possible for me to extend the time any further. Within that time, the mover wants to have 15 minutes and the hon. spokesman of the Government wants to have 20 minutes. So, unless the mover also reduces his time, I cannot call any other hon. Member. I have called Shri Raghunath Singh. He may speak for five minutes.

श्री रघुनाथ सिंह : इस सदन में जो व्याख्यान हुए उनके सुनने से यह जाहिर हुआ कि तीन हजार वर्ष पूर्व हम जिस स्थान पर थे अभी भी उसी स्थान पर हैं और इन तीन हजार वर्षों में हमने कोई तरक्की नहीं की है। श्री नि० च० चटर्जी ने जो भाई फार भाई और टूथ फार टूथ (जैसे को तैसे) की बात कही वह उस कानून की बात है जो कि ३२०० वर्ष पूर्व हजरत मूसा को सीनाई पर्वत पर होने वाले यहोवा के इलहाम के फलस्वरूप बनाया गया था। यह बात बाइबिल की तीसरी पुस्तक की है। उसके बाद बहुत समय तक भाई फार भाई टूथ फार टूथ, तथा आदमी के बदले आदमी और पशु के बदले पशु की व्यवस्था रही। उसके करीब १२०० वर्ष बाद जब हजरत ईसा मसीह हुए तो उन्होंने एक दूसरी व्यवस्था दी और कहा कि इन्तकाम (प्रतिशोध) को हमारे लिए छोड़ दो। उन्होंने कहा कि अगर कोई तुम्हारे एक गाल पर चपत मारे तो तुम दूसरा गाल भी उसकी तरफ करदो, दया। करुणा। उन्होंने कहा कि १२०० वर्षों में मानव समाज ने कोई तरक्की नहीं की। उन्होंने देखा कि इस यहूदी कानून से कि भाई फार भाई और टूथ फार टूथ की व्यवस्था की जाये, कोई परिवर्तन नहीं हुआ। इसी लिए हजरत ईसा मसीह ने कहा कि हमें क्षमा सीखना चाहिए, मनुष्य के दिमाग का परिवर्तन करना चाहिए, उसके विचारों का परिवर्तन करना चाहिए, उसके दिमाग की शोधि करनी चाहिए ताकि कोई अपराध न हो।

उसके पश्चात् हजरत मोहम्मद साहब आते हैं। कुरान शरीफ में उन्होंने

जो व्यवस्था की उस व्यवस्था में उन्होंने थोड़ी और तरक्की की और उन्होंने कहा कि भाई और भाई और टूथ और टूथ तो नहीं होना चाहिए लेकिन अगर किसी की हत्या हो जाय तो उस हत्या के लिए हत्या किये गये व्यक्ति के परिवार के लोगों को कुछ रूपया दे दें या अगर हत्या किये गये खानदान का कोई आदमी हत्यारे से कहे कि हम तुमको इस के लिए क्षमा करते हैं तब उसको क्षमा करने का अधिकार होना चाहिए ...

Shri Nand Lal Sharma (Sikar): The followers of Mohomed do not spare their opponents!

Shri Raghunath Singh: I will say about your Hinduism also.

उसके पश्चात् आप देखेंगे कि ईसा-मसीह को जो सूली दी गई वह उस वक्त के प्रचलित जुड़िश ला (यहूदी कानून) के अनुसार वहां के रोमन गवर्नर ने दो लेकिन आज सारा संसार कहता है और हर कोई कहता है कि ईसामसीह के साथ अन्याय हुआ लेकिन उस वक्त यही कानून वहां पर था और उसी के अनुसार ईसामसीह को सूली की सजा दी गई गई। इसी तरह मंसूर को सूली दी गई। आज शायद ही कोई ऐसा व्यक्ति होगा जो यह कहेगा कि मंसूर को जो सूली दी गई वह ठीक थी। इसके आगे चल कर आप देखिये कि आज से ३०० वर्ष पहले इसी दिल्ली नगर में गुरु तेग बहादुर को कत्ल किया गया। उस वक्त के प्रचलित कानून के अनुसार काजी साहब ने अपने धर्म के अनुसार गुरु तेग बहादुर को कत्ल किया। मैं पूछना चाहता हूं कि क्या आज हिन्दुस्तान में कोई ऐसा भी आदमी है जो उस वक्त के कानून को मानने के वास्ते तैयार हो। उसी कानून के अनुसार गुरु अर्जन देव को जबलते तेल के कड़ाह में डाला गया और गुरु गोविन्द सिंह के बच्चों को जिन्दा दीवार में चुन दिया गया। यह सब बातें उस

[श्री रघुनाथ सिंह]

समय के प्रचलित कानून के अनुसार हुई। मेरा यह कहना है कि दुनिया ने आज तक तीन हजार वर्ष तक फांसी की सजा का एक्सपेरिमेंट (प्रयोग) किया कि क्या खून और कत्ल के अपराधी को हम फांसी की सजा देकर रोक सकते हैं। हमने देखा कि दुनिया इस एक्सपेरिमेंट में असफल हुई और दुनिया फांसी की सजा देकर खून और कत्ल का अपराध रोकने में अब तक असफल रही है और हम इसको नहीं रोक सके हैं। मेरा निवेदन है कि जिस प्रकार से इस दिशा में तीन हजार वर्ष से एक्सपेरिमेंट चलता आया है उसी प्रकार से कम से कम ५ वर्ष, १० वर्ष या २०, ३० वर्ष तक हमें यह भी एक्सपेरिमेंट करके देखना चाहिए कि हमारे इस कैपिटल पनिशमेंट (मृत्यु दंड) को उठा लेने से इस अपराध में कमी आती है कि नहीं। मैं यही आपसे प्रार्थना करता हूँ जैसा कि हमारे भाई ने कहा कि हिन्दू धर्म तो बड़ा सहिष्णु है और हिन्दू धर्म तो यह हा है कि जिसको हमें बनाने का अधिकार नहीं उसको हमें बिगाड़ने का भी अधिकार नहीं अर्थात् जिस मनुष्य को हम बना नहीं सकते उस मनुष्य को हम कत्ल भी नहीं कर सकते और उसे हम फांसी नहीं दे सकते।

Shri Nand Lal Sharma: Sir, the hon. Member has not heard my words. I said that the followers of Mohamed do not spare their opponents.

Shri Raghunath Singh: That is what I have said.

सिक्खों के बारे में मैंने कहा कि उन्होंने अपने कानून के अनुसार उनको दंड दिया। इस विषय में मेरा यह कहना है कि हिन्दू धर्म बड़ा सहिष्णु धर्म है। आर्य सभ्यता तो प्राचीन समय से इसी बात को मानती आई है कि हम जिस चीज को बना नहीं सकते उस चीज को हम बिगाड़ नहीं सकते। इसी तरह मैं आपको बतलाऊं

कि यूनानी और ग्रीक लोग क्या कहते थे। उनके अनुसार आदमी ईश्वर का टेम्पुल मंदिर है, विहावा इस ईश्वर के मंदिर को हमें बिगाड़ने का डोने का अथवा नष्ट करन का कोई अधिकार नहीं है। इस वास्ते मैं निवदन करना चाहता हूँ कि कम से कम ५, १०, २०, ५०, या १०० वर्ष तक के लिए मानव जगत को यह भी एक्सपेरिमेंट करके देखना चाहिए कि आया हम सहिष्णुता के द्वारा, प्रेम के द्वारा और स्नेह के द्वारा अपराधों को रोक सकते हैं या नहीं।

Mr. Deputy-Speaker: Pandit Fotedar.

Shri Nand Lal Sharma: The hon. Member has referred to Hindu shastras and quotations.

Mr. Deputy-Speaker: I have called Pandit Fotedar.

Pandit Fotedar (Jammu and Kashmir): Sir, it is rather unfortunate to observe that even while discussing a momentous matter like the question of abolishing capital punishment the House is functioning without a quorum. I do not know whether I should proceed or not.

Mr. Deputy-Speaker: Now that he has brought it to my notice, it must be counted. But immediately after there is quorum, I shall have to call the Minister, not the hon. Member.

Shri K. K. Basu (Diamond Harbour): He has short-circuited himself!

An Hon. Member: Suicide!

Mr. Deputy-Speaker: I am sorry, I cannot give time to any hon. Member now. I shall have to ask the hon. Minister to reply.

Pandit Thakur Das Bhargava: But the hon. Minister, it appears, is not speaking.

Mr. Deputy-Speaker: The quorum bell is being rung. Now there is quorum. The hon. Minister may now speak.

Shri Pataskar: Sir, the hon. the Mover of the Bill has certainly brought forward for discussion a problem which has been baffling jurists for several years past. No doubt, if the matter was to be considered purely on the basis of that high thinking that we should not try to destroy, or rather that man should not try to destroy which man cannot create, well, then, theoretically it is all right. Because, man has been able to produce many things but man himself. And therefore it has been that man is the creation of God. But God has created men of different varieties and qualities—good, bad and indifferent. Therefore, this problem has become a human problem. So it cannot be solved merely on that basis.

In spite of the fact that there has been this death penalty, I have known of judges who in their life, though they were authorised to pass a sentence of death, did not do so. I know of at least one judge, who was even commented upon, but he said: no, I would not do it. Because, the law as it stands, does not say that a judge must pass that sentence. It is left to him to decide whether, under the circumstances, the death sentence should or should not be passed. That is the present position of the law, on which I need not dilate because many of the hon. Members who have taken part in the discussion are themselves eminent lawyers.

This is not, therefore, a problem which can be merely theoretically solved. After all, there is no desire on the part of anybody, particularly of organised society, that it should take life for life. Whatever might have been the ideas in a certain stage of society, where life was taken as a matter of private retribution—to which reference was made by Pandit

Thakur Das Bhargava, we have passed that stage. But what does it indicate? If there is no punishment for an offence of this nature by somebody, then, as was rightly pointed out by one of the hon. Members, it is likely to produce some other psychological effects. One Member rightly pointed out that suppose the father of 'X' was murdered in a village, and there is no provision for death sentence, however heinous the crime, then, public opinion, right or wrong, is still in that condition where the son would be so treated, so chided, that probably he would be forced to have recourse to that remedy.

It is rather unfortunate that even in spite of Buddhas and Christs and what not, humanity has not made much progress. After all, the Buddha lived 2,500 years back. It is no good invoking his name. Thousands of years have elapsed in—between where his doctrines were thrown to the winds. Even now I am not sure if we look to the humanity as a whole that people have much regard for the sanctity of human life. Leaving aside this country or that country, what does the events now happening all over the world indicate? It indicates that in spite of all talk of progress, humanity does not seem to have progressed much. There is still conflict between the instinct of an animal and the higher desire, the desire to attain some higher level in life. It might be unfortunate. Therefore, this problem should not be looked at from merely the theoretical point of view but should be considered on more practical considerations. And what are they? Why is it that the State intervenes to punish? There are two objects. One is to reform the criminal. I know that in cases where the man is sentenced to death there is no question of reform and it is on that account that the punishment that we provided under the law is not invariably resorted to. If a person commits murder, so many factors are taken into consideration before the sentence of death is awarded. It is only very rarely that resort is had by judges to this extreme

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penalty. They also are human beings. I do not claim infallibility for judges or for anyone for that matter. But looking into the working of this Act and particularly this punishment, I am convinced—and I will place the figures before the hon. Members of this House shortly—that the record has been good. They have awarded this extreme penalty of law only in cases where they thought that the other aspect of punishment, namely deterring other people from resorting to this crime, has to be taken into account and then alone this punishment is awarded. It is not a question of retribution. The judge is not personally concerned with one side or the other and he awards that punishment only in cases where he thinks that the ends of justice, ends of society and the ends of public good require that this man must be sentenced to death. Otherwise, that is never resorted to. Therefore, the mere question of theoretical abolition of capital punishment because something has happened somewhere need not by itself be any justification for the abolition of this punishment.

Now, what are the present facts? I will not go into the past history because the past is past and the future is yet to come. But we have to be guided by what the present position is. What is it? In the year 1953, 9,802 cases of murder were reported throughout the country. Then, the number of cases in which prosecution could be launched was only 6,446, meaning thereby that out of 9,000 and odd murders committed, in 3,000 cases because there was no evidence, no prosecution could be launched. They might have committed the murder, but they could not be punished. Out of them, 3,042 were convicted. That means, half of them escaped any punishment whatsoever. So, out of the 9,802 reported murders in the year 1953, only 3,042 could be convicted and out of them how many must have been sentenced to death? I haven't got that figure separately. But, as hon. Members are aware, in cases where the

sentence of death is awarded, we have made a provision whereby the accused, that is, the person convicted, is entitled to send a mercy petition and in almost all cases—I can even say in all cases—efforts will be made by the accused or his relatives to save his life to the last. Now, the number of mercy petitions received in the year 1953 was approximately 263. So, out of 3,042 convictions about 263 or so were only sentenced to death. Out of that again, when the matter was examined by Government, they thought it fit to commute the punishment in 68 cases. It will, therefore, be found that it is not as if because there is a provision for capital punishment, it is being recklessly resorted to. Similarly, in the year 1954, about 9,765 cases were reported out of which in about 6,313 cases prosecution was launched. But the number of convictions was a little less; 2,885 only as against 3,042. There also, I think, the number of persons who were sentenced to death was about 225. That was the number of petitions presented for mercy. Out of that, in 55 cases the sentence was commuted. It will, therefore, be found that though theoretically it may be argued that after all why should a person be deprived of his life on the theory that we should not take away what we cannot create and what has been created only by God, as I said, it has got social and other aspects, and therefore it is from this point of view that the whole question has to be looked into.

It was pointed out—and I think that was the cause which led to the raising of this question and its discussion in this House—that in the United Kingdom last year an hon. Member of Parliament brought forward a resolution and it was passed.

Shri Raghbir Sahai: A Private Member's Bill.

Shri Pataskar: I think it was a resolution. I do not know. But before I turn to what is being done by them I would like to point out that there are certain figures which will show

as to what is the proportion of crime there and here. In 1953, the proportion of this sort of crime in our country was 27.1 per million. In 1954 it was 26.9 per million. Now, we were told by the hon. friend, Mr. Chatterjee, that in Switzerland it has been abolished. Switzerland is probably a country where people have developed certain peculiar good qualities. As we know, it has never joined any war. Then, there the figure was only 4.6 per million at the time when it was abolished while here, as I pointed out, it was about 28 per million in the years 1953 and 1954. I do not want to tire the House by giving all the figures. Then, in the case of Great Britain itself, for the first 50 years of this century, the proportion of crime punishable with death was only 3.89. That was in England and Wales. In Scotland it was still less, 2.82.

Therefore, to say that merely because something has been done by England, so we should try to do it, I think, is not justifiable on any theoretical ground. On the other hand, I have information that after the capital punishment was abolished, the United Kingdom itself has thought it necessary that again it must be introduced, at least for certain kinds of offences, and this is what they propose to do by the Bill which has been recently introduced. Now they want to provide for the retention of capital punishment in five classes of cases—murder committed in the course of the furtherance of theft by shooting or causing murder when one is apprehended; preventing lawful arrest by murder; murder in the process of escaping from legal custody; murder of a police officer while he is in the act of performing a public duty; murder by a prisoner of a prison officer acting in the execution of his duty or a person assisting the prison officer.

There are also other countries, as already pointed out, where once the Government thought it better to abolish it, but had again introduced it. This has happened in 8 or 9 States in the U.S.A. Therefore, it is not as if this question can be considered and

settled by merely theoretical considerations or by the application of juridical principles. Even then, I was glad to find that the hon. Member Shri N. C. Chatterjee, the hon. Mover of this amendment Shri Raghbir Sahai and my hon. friend, an experienced Member of Parliament and a great lawyer, Pandit Thakur Das Bhargava have all pointed out things that should give us a warning that the capital punishment must not lightly be dispensed with. They are perfectly right. Therefore, considering everything, I think that the time has not come to abolish that punishment though we may wish that society may develop in such a way that there would be no necessity for the capital punishment. As matters stand at present, throughout the length and breadth of the country, about 200 people are sentenced to death for very heinous crimes. They must have been such because, as I have said, it is very rarely that any Judge passes a sentence of death. That punishment is not awarded unless there are very very heinous crimes or there are circumstances attending on it for which he has to pass a sentence of death in order that it may serve as a deterrent preventing other people from resorting to such crimes. We should consider the proportion of crime very high. Why is this punishment inflicted? Not because of retribution: but because we find that if there is to be stability in society, if such crimes which result in wanton taking of the life of one man by another are to be prevented, it has to be there. There is no other alternative. Reference was rightly made to gangs of people in our country—I will not refer to the areas—who organise themselves and take the lives of other people who pass by in order to get some living. They are still existing. We cannot close our eyes to this fact. Government are trying their best to use humane methods to check this. Naturally, that is why some delay is caused. Are we going to serve any purpose by declaring from the house tops that there will be no capital punishment hereafter? That small amount of fear that some may have, we will remove. Looking to the way

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in which the law has provided so many safeguards, I do not think there is any justification for abolishing capital punishment. As a matter of fact, in very few cases, the sentence of death is given. The figures that I have given will convince that this punishment is not lightly given. There are also other remedies provided, appeal to the High Court, to the Supreme Court, and lastly, mercy petitions to the President.

I agree with those hon. Members who say that we must pay due regard to higher considerations of progress of humanity. True; humanity is contending for the last 3,000 years and man is trying to rise to his full stature. Unfortunately, he tries to rise for some time, but falls back again. This has been happening throughout the centuries. I agree with the object underlying this Bill. Let there be a state of society in our country where, probably, there would be no necessity for a punishment of this nature. When will that be possible? That would be possible, not by abolishing capital punishment, but by our raising the standards of social conduct, social thoughts and social activities. Only under those conditions would it be possible. That ideal has been before not only our country, but before the whole of humanity for thousands of years. Unfortunately, as the Mover of the Bill said, we seem to have made very little progress. Humanity does not seem to have made much progress not only in this. Let us look around and see what is happening in the world. I am convinced that man has ceased to have a very good regard for the sanctity of human life, not only in this respect, but in other respects also. We should not be carried away by theoretical considerations. I do not think that because something happened in England, the same should happen in all other countries. The conditions are entirely different. As I have pointed out, they are again thinking of re-introducing this punishment. Let us not rush in. From that point of view, I am convinced and I hope the information that I have given the House

will convince the Members that, whatever may have happened in other countries, the time has not come in our country for the abolition of the capital punishment, without trying to unbalance or creating wrong balance in the state of society in which we now live. Therefore, it is my painful duty to oppose the Bill and at least at the present moment I cannot accept the proposition contained in the Bill which has been brought forward.

There was a proposal made by my hon. friend Shri Raghbir Sahai that the Bill should be circulated for public opinion. That also was supported by some hon. Members. Normally, I would not have objected to that. But, having given the House all the information at my disposal, I would like to ask hon. Members, is it likely to serve any purpose? On the contrary, it will only raise a sort of public agitation over a matter for which we really feel that the time has not yet come. Why should we do it? Our country has enormous problems of different varieties. I will not dilate on that point. If the idea is that there may be a theoretical discussion in public, when we are convinced that it cannot be carried out at this stage, I ask what purpose it will serve.

There was reference to the Law Commission. I also agree with those hon. Members who said that it is not merely by the retention or non-retention of capital punishment that we are going to make progress, but also by resorting to other remedies. We have appointed a Law Commission also for changing the substantive laws of the country. This House took a decision and that Commission has been appointed. That Commission has made certain reports. I do not know if I have placed them here, I will shortly place them on the Table of the House. Their problems are numerous. They relate to the civil law, they relate to criminal law and so many things. Therefore, it naturally takes time. I am sure, the Law Commission, before it closes its labours, will have also to

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discuss this matter and report. Though normally my instinct is that, if anything is to be published for ascertaining public opinion, I would be the last person to say that I would not like it, I have to oppose this. This is perhaps the last session of the present Parliament. I myself, at any rate, feel convinced that the present is not the right time for carrying out any such reform. Why should we now place this before the country when there are so many other things agitating their minds? This would only add one more food for thought. I therefore suggest to my hon. friend Shri Raghunir Sahai that—of course he has brought forward this motion with the best of intentions—if he is also convinced, he may please withdraw the amendment which he has moved.

Mr. Deputy-Speaker: He has got only five minutes to give a reply.

Shri M. L. Agrawal: I am entirely in your hands, but I think I deserve some time to reply.

Mr. Deputy-Speaker: I entirely agree with the hon. Member that he is entitled to much more time than what we have got, but he should restrict himself.

Shri M. L. Agrawal: I am grateful to the hon. Members who have participated in this debate. As this Parliament represents a cross-section of the country, I could not have expected whole-hearted support for the Bill, but I am glad that most of the Members who have opposed the Bill have also found that there is sense in reforming the law on this point.

Punjab has spoken vigorously and in great volume, but in spite of their orations, I am still unconvinced. Shri Tek Chand who always speaks with great vigour and in his inimitable style, perhaps was not present when I moved the motion. Shri D. C. Sharma—I admire his versatility to be able to speak on any point—too perhaps did not take any notice of what I had said in my original speech. For Pandit Thakur Das Bhargava I have

got very great respect. He has laboured the point that capital punishment is a deterrent. No doubt it is a deterrent. I never denied it. The whole point of my speech was that it is not a unique deterrent. And then he says there is an aspect of the minds of the relatives of the murdered. Nobody ignores them, but capital punishment does not do any good to them, it does not alleviate their suffering. If, on the other hand, we can so arrange that the man who is sent for life imprisonment for committing murder is made to earn and support the members of the family of the deceased with his earnings, it would be a better way than imposing a merely retributive punishment.

Shri Tek Chand referred to the amendment of the Criminal Procedure Code, and he said in the face of that amendment, it is no longer necessary to go to any length about the reform of the criminal law in this behalf. I disagree with him. All that the amendment has done is that the Judge is no longer required to give reasons for giving a particular sentence, but when he gives a sentence, the High Court or the superior court can always pull him by the ear. I would not go into all the matters which I wanted to mention, but certainly on this point I shall cite one or two cases.

In 1937 Athappa Goundan was sentenced to death by a Full Bench of the Madras High Court (*I.L.R. 1937—Madras 695 F. B.*) on the basis principally of a confession made to an investigating officer. This Athappa Goundan and several others convicted under similar confessions should have presumably been executed. It was only as late as 1947, ten years later that the Privy Council in an appeal on special leave arising out of a similar case held expressly that Athappa Goundan's case had been wrongly decided and that the confessions on which Athappa Goundan was sentenced ought not to have been admitted at all in evidence (*A.I.R. 1947 P. C. 67*).

[Shri M. L. Agrawal]

Quite recently the Supreme Court on an appeal (1955 *I.M.L.J. Page 141*) by special leave granted by its own order from a conviction and sentence of death passed by the High Court set aside the sentence of death passed on the appellant and ordered a retrial on the ground that the previous Full Bench decision of the Madras High Court of 1924 (47 *Madras 746 F.B.*) on which the conviction and sentence were based was incorrect and the accused was prejudiced by the procedure indicated in that Full Bench case. The public is most unhappy at the number of executions that must inevitably have taken place on the basis of that case from 1924 to 1955.

I may just add one additional argument for the abolition of the death penalty.

16-55 hrs.

[MR. SPEAKER *in the Chair*]

There was the case of Woolmington vs. Director of Public Prosecutions in which a young man was put under trial for shooting his wife, and his defence was that the shooting was accidental. He was twice tried because the first trial jury disagreed. He was convicted by the second jury after a long deliberation and was sentenced to death. The case went to the Appeal Court and the Appeal Court held that the Judge's rulings on law were correct and proper and upheld the sentence. There, so far as the great majority of condemned criminals are concerned, the matter would have dropped, but in this case it was taken up to the House of Lords. What happened? The House of Lords threw out the conviction. It was stated by Lord Sankey in giving the judgment of the assembled Judges:

"No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England, and no attempt to whittle it down can be entertained."

The reason for that statement was that in cases where accidents was the defence of the prisoner charged, the onus of proof was lifted from the prosecution to the defence. A wrong principle of law had stood in the U.K. from 1762 and was only overturned in 1935. As a writer in the *Law Journal* said:

"It is interesting, if unprofitable, to speculate as to the number of murderers (to say nothing of innocent persons) lying mouldering in lime and ignominy within the precincts of our prisons, and who would have been respectably alive and well today if our Judges had known the law."

So, there may be mistakes. Pandit Thakur Das Bhargava said that it does not matter, human institutions are all fallible and the Judges may be fallible. I admit such cases are few. The case may be one in one thousand, but what is the consolation for the one who is wrongly put to death by the process of the law? Therefore, I think this is one of the strongest points that should be taken into account.

I have also got figures. I have calculated that in Uttar Pradesh in every 200 cases of accused who are prosecuted for murder, only three are executed. The greatest point for having a deterrent effect is certainty. Now, where is the certainty in 200 persons being prosecuted for murder but only two or three being executed? Therefore, the law as it stands is very defective and it does not lead to any lessening of crime.

The figure has been bandied about that 9,000 murders are committed every year. True, but what has your law done to it, if the murder is steady or slightly increasing or is being slightly reduced...

Mr. Speaker: The hon. Member is only replying. It appears as if it is the original speech itself.

Shri M. L. Agrawal: No, Sir. The numbers do not give any reason for keeping the death penalty as it is

because what greater reason can there be for altering the law than that it is inefficacious. If 9,000 murders were committed in spite of your death punishment, it belies its deterrent effect and should be changed.

My motion is for consideration of the Bill and I submit it should be given effect to. At any rate, there is no harm in accepting the motion for circulation that has been moved by my friend Shri Raghubir Sahai. This is a country of non-violence and Ahimsa. Even if you do not accept my motion straightaway, what harm can there be if this motion for circulation is adopted and the Bill goes before the country to elicit opinion. If the opinion is in favour of the punishment, that would strengthen the hands of the Government.

It was said by Pandit Thakur Das Bhargava that the burden of proof is on those who want to abolish it. No, Sir. I would respectfully differ and say that the burden of proof is on those who want to keep it because they cannot prove that this is a unique deterrent and that on account of its existence on the statute-book the murder rate is kept within bounds.

With these remarks I request the hon. Minister of Legal Affairs to accept if not my motion at least the motion of Shri Raghubir Sahai.

Mr. Speaker: Need I put the motion for circulation to the vote of the House?

Shri Raghubir Sahai: I beg to withdraw my motion.

Some Hon. Members: No, no.

17 hrs.

Mr. Speaker: When there is an objection even from a single hon. Member, I will have to put the motion to the House.

The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the end of April, 1957."

The motion was negatived.

Mr. Speaker: What about the other amendment of Shri Raghavachari?

Shri Raghavachari: In view of the first amendment, mine was not accepted.

Mr. Speaker: The question is:

"That the Bill further to amend the Indian Penal Code, 1860, and the Code of Criminal Procedure, 1898, to provide for the abolition of capital punishment, be taken into consideration."

The motion was negatived.

MADRAS-TUTICORIN TRAIN DISASTER

The Minister of Railways and Transport (Shri Lal Bahadur Shastri): Mr. Speaker, Sir, it is extremely unfortunate that a serious accident took place this morning between Ariyalur and Kallagam near Trichinopoly. The information received so far is incomplete and we are getting it in bits. We hope to get authentic reports by this evening. Here is the report prepared by the Railway Board.

At about 5-30 hours this morning, No. 603 Down Tuticorin Express of the Southern Railway, which left Madras Egmore last night at 21-50 hours met with a serious accident at the Trichinopoly end of the abutment of bridge No. 252 over the river Marudayar at mile 170/14-12 from Madras between the stations Ariyalur and Kallagam. The engine and seven bogies next to it fell down behind the abutment as a result of the approach bank having been washed away due to heavy rains. The eighth coach was derailed of all wheels but kept standing on the bridge. The rear four bogie coaches were safe on the track.

According to the latest information available 68 dead bodies have been recovered so far and further salvage operation is progressing. Sixty persons have been injured and were removed from the site by a special train, which left at 10-30 hours for Trichinopoly Junction. This train has