

Constitution, which is a serious matter, in this rather piece-meal way.

Mr. Chairman: After hearing the speech of the Prime Minister, may I know the reaction of the Mover of the Bill?

Shrimati Khongmen: Sir, in view of the sympathy expressed by the hon. Prime Minister, and also in view of the assurance given by him that he will look into this, I beg leave of the House to withdraw my Bill.

Mr. Chairman: Has the hon. Member leave of the House to withdraw the Bill?

The Bill was, by leave, withdrawn.

CRIMINAL LAW AMENDMENT BILL

Shri M. L. Agrawal (Pilibhit Distt. cum Bareilly Distt.—East): I beg to move:

“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.”

Sir, I consider it a privilege to have been allowed an opportunity to introduce this Bill and now to move for its consideration. Nobody can gainsay that the subject is of very great importance. Although the subject admits of making a great appeal on emotional grounds, I would refrain from doing so and try to convince this hon. House on sheer merits, and I expect this hon. House also to bear with me and consider the subject dispassionately, with due solemnity and come to a decision on the merits of the case.

In this connection, Sir, I was not a little surprised and pained to find that the hon. Minister in the Ministry of Home Affairs, Shri B. N. Datar, on the 21st April, 1956, in replying to a supplementary on Starred Question No. 1633 permitted himself to make a casual remark: “there are other noughty considerations on account of which it is not possible at this stage

to take up the question of the suspension of the death sentence when nearly 9,000 murders are taking place every year in India.” I presume that the hon. Minister knew that this Bill was pending, and it would have been better if he had refrained from permitting himself to have made this remark without hearing the views of the House. I regret this remark very much and I hope the hon. Minister would also regret it.

Before going into the merits of the Bill, I would like to say briefly the position with respect to death penalty in the world. In Europe capital punishment has been abolished or allowed to fall into disuse in Austria, Belgium, Denmark, Finland, Holland, Iceland, Italy, Luxembourg, Norway, Portugal, Rumania, Sweden, Switzerland, and West Germany; and for murder, the USSR. Six American States are without death penalty and 9 American States have restored it after they have abolished it, the abolition having remained from 2 to 28 years.

Shri Feroze Gandhi (Pratapgarh Distt.—West cum Rae Bareilly Distt.—East): Sir, there is no quorum in the House.

Mr. Chairman: The bell is being rung. Now there is quorum. The hon. Member, Shri M. L. Agrawal, may continue.

Shri M. L. Agrawal: Sir, in 12 of the South American States capital punishment has been abolished. In the British Commonwealth only Queensland is without it. New Zealand abolished capital punishment in 1941 but re-introduced it in 1950. There is again going to be a referendum to decide the position finally.

It would appear that in the American States there has been a slow progress in the movement for abolition. It is due perhaps to the influence of Great Britain that we may, in a measure, attribute the slow progress of the abolition movement in the American States.

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Penal legislative policy in England was till recently dominated largely by the same classes of well-born and well-to-do which resisted the reform of the penal law a century ago. Penal policy in the U.S.A. is in much the same degree influenced by the legal profession with its natural conservatism re-inforced by a veneration for English law and procedure. Even in those countries having capital punishment, the law was nullified by the decision of the jury who refused to convict anyone for this offence.

Before discussing the position in the United Kingdom, I may just mention why some of the States in the U.S.A. first abolished capital punishment and then restored it. In this respect, there was a Royal Commission appointed in England, in 1949, and it presented its report in 1953. It made enquiries in England and in other countries, and in America, they have recorded their decisions about this matter in these words:

"Professor Thurston Sellin of the University of Pennsylvania, Secretary-General of the International Penal and Penitentiary Commission thought that the main reason for the restoration of capital punishment was always the same. Something happened which aroused popular feeling, probably quite irrationally, and the legislature rushed into imposing the death penalty. He added that if we look at some of the States that abolished the death penalty round about 1914, we find that they restored it during the demobilisation period. There were things happening then, and it was assumed that it had been a mistake to abolish the penalty and they re-introduced it; yet, the homicidal rates of later years indicate that there was no relationship between the two".

So, the reason was not that they thought that the abolition of death

penalty has led to an increase of murders, but that there were other reasons.

In the United Kingdom, the position has had a chequered history. There were 222 offences including cutting trees, stealing five shillings, stealing a handkerchief, etc., that entailed the death penalty. In the reign of Henry VIII, there were 72,000 public hangings for theft.

It is nearly 90 years ago that a Royal Commission was appointed, that is, in the year 1866, and it was manned by 12 persons. Five of them recommended the abolition of capital punishment while all the 12 recommended degrees of murder to be introduced so that in every case there may not be hanging.

Public executions were abolished in 1868. By a series of enactments like the Infanticide Acts of 1922 and 1938, Sentence of Death, Expectant Mothers Act of 1931 and the Criminal Justice Act of 1948 and the granting of reprieves by the Home Secretary, capital punishment has become very rare.

Between 1866 and 1949, several Parliamentary committees and Royal Commissions have been investigating into this matter and made their recommendations including abolition and suspension of death penalty for an experimental period of five years.

It was in 1948 that during the course of discussion of the Criminal Justice Bill, Mr. Sidney Silverman had introduced what has become now his famous clause, namely, that death penalty should be suspended for five years. He was a private Member. That clause was not agreed to by the Lords and the Commons did not insist upon its retention. In the meanwhile, the Royal Commission had been appointed. It was appointed only to consider the policy of death penalty, and it assumed that the death penalty

would remain. But, they were to find out whether it could be modified so as to reduce the number of hangings. Their report was discussed in 1955 on a motion made by the Government. At that time also, an attempt was made to introduce the abolition of capital punishment but that also failed. Then, Mr. Sidney Silverman again introduced a one-clause Bill. That also was not admitted. Finally, the Government introduced a resolution in 1956 and to that resolution, Mr. Ede moved an amendment, and that was carried by virtue of which it was decided by the Commons that the death penalty would be suspended. The Government promised that it would respect the decision and introduce legislation. Later on, they said that it will be done through a Private Member's Bill.

Mr. Sidney Silverman again introduced a Private Member's Bill for abolishing the death penalty and that was passed by the Commons. But the Lords rejected it. Of course, they can delay it but not kill it. They can delay it for one year, and I am sure that after one year, the Bill would be passed by the British Parliament as a whole.

Very recently, on 9th May, 1956, a new Penal Code for Poland was published, by virtue of which death penalty was abolished in Poland.

Coming nearer home, I might mention Ceylon. The Ceylon Government decided to suspend death penalty for three years. On the 16th February, 1956, Mr. S. N. Evans twitted this country and its Prime Minister in the House of Commons on this question. He said:

"Let me turn to what, in ideological jargon, is now described as the uncommitted part of the World India. How many times have I heard my Right hon'ble Friends assert that Mr. Nehru is the most enlightened humanitarian statesman in the world today? But Mr. Nehru has not

done away with capital punishment".

Speaking in this House, during the last session, the hon. Home Minister said:

"Our country is more peaceful than any other country in the world. The number of cognizable crimes committed in this country was the lowest in the world. It was 1,407 per one lakh of the population in U.S.A. 980 in the United Kingdom, 802 in France, 235 in Ceylon and 154 in India. The number of murders per one lakh of the population came to 3.7 in France, 5.9 in Ceylon, 4.2 in USA and 2.7 in India.

In the matter of serious thefts, the figure for India was 48.8 as against 364 for the USA and 171 for the U.K."

With this state of affairs, it is a challenge to our Government to show why if any country, even a country physically and morally in shambles as Germany was in 1948 could abolish the death penalty without any ill effects, this country of ours, the land of Lord Mahabir and Buddha—and of Mahatma Gandhi, the apostles of peace and Ahinsa and of humanitarians like Shri Nehru and Pandit G. B. Pant and a country which the hon. Home Minister only the other day proved to be the most peaceful and civilised among the nations of the world, should need the continued protection of the hangman. The greatest argument against the abolition of death penalty is that it is a deterrent. It is no doubt a deterrent, but we have to see if it is a deterrent which is unique and which cannot be replaced by any other punishment. Persons who have considered this problem have come to the conclusion that, just as is found in the countries in which death penalty has been abolished, life imprisonment is equally a good deterrent. That it is not a deterrent, but on the contrary it is a slight encouragement for murder, has been found by many authorities. The

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greatest of all living psychologists, Dr. Jung, is of opinion that on the whole, capital punishment is a slight encouragement to murder rather than a deterrent. During the debate on the Criminal Justice Bill, Lord Stansgate said "public hangings were abolished in Great Britain in 1868, because it was found that instead of preventing murder, they actually incited people".

It will be clear that death penalty is not the unique deterrent that it is made out to be. A hundred years ago, the Select Committee of Parliament reported in 1836 as follows:

"We are induced to believe that selection of a few culprits who alone are to suffer death out of a greater number convicted for the same offence does not diminish but on the contrary tends to increase the number of offenders."

So, it is wrong; it is a prejudice in the minds of the people that death penalty is a deterrent which has no equal. There have been many examples in England about such incitement. I would not go into details; I will give only a few names: Majoram, Rhodes, Heath, Thomas Wicks etc. Those were the persons who were led to commit murder by incitement by witnessing public hangings and executions. According to Rev. Roberts of Borstal, out of 167 convicts under the sentence of death, whom it had been his duty to visit, with the exception of 3 only, the rest admitted to have been present at and having witnessed at least one execution. So, it is not a fact that a man is deterred by seeing public execution or hearing about it.

The next point is that death penalty is an extremely severe penalty. Punishment should be severe, but it should not be over-severe. Severity defeats its own purpose. In the reign of Henry VIII, 72,000 thieves were sent to the gallows. In the reign of Elizabeth, the virgin, 19,000 criminals perished at

the end of the rope. But there is no record in contemporary chronicles of any diminution in the incidence of crime. There is an interesting example. In 1830, when death was the penalty for forgery, a petition signed by 725 bankers from 214 cities and towns was presented to the Parliament praying:

"That your hon. House will not withhold from them that protection to their property which they would derive from a more lenient law."

Capital punishment is, after all, a selective penalty. We do not hang boys; women are immune generally from this punishment. Drivers on the roads commit so many murders, but they are not hanged. Then, there are persons who attempt to commit murder and fail; those persons are equally dangerous, but they are not convicted and put to death. Therefore, it is after all a selective remedy and it cannot have that effect which death penalty should have.

The next point is about certainty of punishment. If it is certain that all offenders would be hanged, then it may have some deterrent effect; but it is not so. When death penalty was inflicted for minor offences, people preferred to get themselves tried on capital charges, because the chances were that they would be let off when they were tried for a capital charge and they were certain that the juries would not convict them to death. There are many examples to illustrate this point, but I would not take up the time of the House by giving all these examples. The hon. Home Minister said that 9,000 murders are committed every year in this country. Every murder committed and every man hanged is an argument to show that death penalty is not a deterrent; because, if it were a deterrent, he would not have committed that murder. Therefore, I submit that it is a totally wrong argument to say that death penalty is a deterrent.

We have to see what is the percentage of the persons who commit murder. If you abolish the death penalty and even give a reward for committing murder, a vast majority of the persons would not commit murder. The vast majority of the people are such that they will never commit murder. Only a small fraction of persons are of that nature as to commit murder for gain. Mostly, people get suddenly provoked, fly into passion and without considering the consequences, commit murder. The percentage of such murders is very high. When a man is in that state of mind, how can he consider the effect of death penalty? He would not consider it. Mr. M. J. Sethna, Ph.D., Bar-at-law, has found that psychopathic and emotional people accounted for 73.72 per cent. of the murders while 26.28 per cent. of the murders were accounted for by the professional murderers. This is a small fraction. Let us also see how many of such murderers are actually brought to book. Mostly they escape detection. Some of them are acquitted and some get transported for life and ultimately only a limited number—a very small number—of them suffer the death penalty. We should not, for this small number, continue this penalty which, I think, is a vestige of barbarism and disgrace to this country.

It is said that fear of death prevents men from committing murder. The fear of death should be of immediate, certain and irrevocable death and not of death at some undefined period of time, because the difference between the two is of great proportion. Everybody knows that he will die when he is doomed to die, but should he then always go about in fear of death? During the air raids in London, there was no wholesale evacuation of towns and cities. Therefore, the risk and fear of death is only of immediate death which comes about when a man is about to be hanged; not before that. Before that he thinks he can escape detection as that is his only hope. If he cannot

escape detection, he will not commit that crime.

Then it is said that people do not unnecessarily risk death. People do risk death. They may risk death for ideals, from patriotic fervour, in the cause of achieving some form of fame and in a personally hedonistic pursuit. We have heard the stories of many such peoples. We have examples of people who have risked death in climbing high mountain peaks, in arctic exploration, in flying aeroplanes etc. Recently, we had the example of one English frogman who risked death and the other French birdman M. Leo Valentin who also risked death. Then we see that in unlawful assemblies people face bullets for some objects. We have the recent examples of the Kaika firing and the Ahmedabad firings. They show that persons are not afraid of death and they do risk death. They face bullets. Death is not such a frightening thing that man would not face death. So much for the fear of death.

Now we come to the most important point, its deterrent aspect. What are the statistics? The Minister in the Ministry of Home Affairs, Mr. Datar, stated that 9,000 murders are committed every year. What of that? What does it show? Does it show that this number is due to the presence on the statute book of the death penalty? That is not the reason. Here there were no investigations. There have been investigations in other countries. First there was death penalty existing in those countries and then it was abolished. The death rates prior to abolition and after abolition were considered and it was found that there was no increase in the death rate. Therefore, it cannot be said that death penalty causes diminution.

Now I would give the authority of that same Royal Commission presided over by Sir Ernest Gower.

"We agree with Professor Sellin that the only conclusion which can be drawn from the figures is

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that there is no clear evidence of any influence of the death penalty on the homicide rates of the states. The general conclusion which we have reached is that there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rates or that its re-introduction has led to a fall."

In 1948 flogging was abolished in the United Kingdom. Mr. Eden, Home Secretary, in a later debate said in the House of Commons:

"The astounding thing is that crimes of violence which are previously punished by flogging have decreased."

I think this should be our experience also sometime hence. Regarding abolition of whipping he said:

"The prophecies that were made that this would lead to a great increase of crimes for which flogging was the punishment have been completely disproved."

As I said, in the United Kingdom, capital punishment was for 222 offences and every time an attempt was made to abolish capital punishment for some offence, there was an outcry that life and property would become insecure. But when death penalty was abolished, these fears were falsified.

It may be said that these examples which I have cited are examples from other countries and not from India. Unfortunately, we have not made any researches in this direction. We have not made any statistics over this matter. I asked for many figures and statistics from the Home Ministry. They have supplied some. But they have no bearing on this aspect of the question. But I say, if we treat murder as prompted by basic emotion that basic emotion is common to all countries, to all human beings, whether they are in England or in India and, therefore, no question

arises as to whether things would be very much different in India. I think that if investigations are carried out and figures are collected, the same experience would be obtained.

So, coming to that example, coming to that result found by the Royal Commission that death rate does not increase on abolition of death penalty, I would submit one thing for consideration. If you drive a motor car and it runs at exactly the same speed whether the brakes are off or on, surely it is an indication that the brakes are not working. Therefore, if the death rate is constant, it shows that the death penalty does not act as a deterrent. Whether the death penalty is there or not, the same result would follow.

Then, we must not give too much emphasis on the deterrent effect of death penalty because to make the results of wrong doing so unpleasant to A that B will be frightened into a negative sort of virtue, is only a poor achievement, but it is psychologically unsound, for in this way you only suppress the outward expression of the evil desire, and the desire itself remains to work itself out in other ways. The real task for society should always be to remove the root causes of crime. By placing the emphasis upon the criminal rather than upon the various forces which go to make him what he is, a retributive punishment actually hinders the accomplishment of this fundamental aim.

Then, over and above the most important point of deterrence, death penalty is defended on other grounds. There are three other grounds: theory of elimination or social hygiene argument, theory of prevention and theory of retribution. As regards the theory of elimination, I would submit that it is absolutely unscientific because we cannot eliminate all our bad persons. The theory says: why should we keep a man who is unfit to live in the society, who is a menace to the society? Should we do away with those persons? If we just extend this

theory, we will see that there are so many other persons suffering from great diseases, loathsome diseases incurable diseases etc. We do not kill all of them. We just find shelter for them in asylums and provide treatment for them. So, this is a very inhuman opinion and is not applicable to our case. Then there is the theory of prevention. I would, of course, admit that death penalty is a complete prevention. A man would not commit murder after he has been hanged. But it has been found again by the Commission that those persons are good men and the Commission has reported in 1953 that between 1934 and 1945, 156 men and women were reprieved, after having been sentenced to death. Of those only one was arraigned for a second murder.

This was the testimony also of Mr. Ede (Ex-Home Secretary of U.K.). He said:

"I hope that the experience of Mr. Lloyd George would agree with mine that the ordinary murderer who is reprieved is the mildest mannered and best behaved inhabitant of Her Majesty's prison and presents very little difficulty indeed."

Our Prime Minister Shri Jawaharlal Nehru also speaking in the Lok Sabha on 28th May, 1956, said:

"I can find an excuse for a murderer but not for a person who throws stones. A person in a fit of passion may commit murder I have lived with many murderers in the prison—rather I got to like them."

This supports the testimony of Mr. Ede.

I submit that neither on the theory of elimination, nor on the theory of prevention it is good to retain the death penalty. Coming to the last question of retribution, the idea of punishment of any type solely to get even is gradually disappearing, together with the other older unscientific criminological concepts. It

is theoretically primitive and it ignores social responsibility and disregards the possibility of reformation. The further becomes our insight into the springs of human conduct, the more impossible does it become to maintain or justify this antiquated doctrine of retribution. I have tried to show to this House that these theories do not help for retaining the death penalty.

There is another aspect also. What do we do when a man commits murder? He is prosecuted. Some witnesses are produced. Some of them may be lying. Some may only be circumstantial. Sometimes, conviction takes place on circumstantial evidence. The Judges try to come to a decision on a comparison and sifting of evidence, and on the balance of evidence on either side. They try to approach to certainty. That can never be attained in practice. There have been cases in which it has been found that a man who never committed any murder, was hanged. When a man is sent to prison or some other harm is done, he may be compensated. But, death admits of no compensation because the man is not there to receive compensation. This is what Lafayette said:

"I shall ask for abolition of capital punishment until I have the infallibility of human judgment demonstrated to me."

There have been cases in other countries where a man has been convicted wrongly. I would not take the time of the House in going over all these cases. I would give only a few names: William Habron, Brighton Murder case, Timothy Evans, Derek Bentley. These men were hanged while it was found that they were innocent in the U.K. where the judiciary is highly developed and there is no chance of mistake.

There was another recent case in which a policeman was attacked. But, he did not die; fortunately he recovered. If that policeman had died, three innocent men would have been hanged. Nobody would have

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admitted that he had been concerned in the offence, if these men had been convicted or murder, as later two men did admit and the men would have been hanged. This is a great danger. These cases are not only in England; they are in other countries also: in U.S.A., in Germany, Hungary, Holland, Austria. It is true that I am not able to give any Indian cases. But, as I said before, we have not made any researches in this direction.

Here is a very interesting case given by Mr. Paget in the House of Commons. He gave a definite example. Two citizens of Brooklyn and of Massachusetts—these are two States in the U.S.A.—were charged in their respective States with the same murder. It was common ground that murder was committed only by one man. On the same evidence, Brooklyn jury found the Brooklyn citizen and the Massachusetts jury the Massachusetts citizen guilty of the same murder. This is about the limit. Such mistakes do happen and it will be a great consolation if on this and no other considerations the death penalty is abolished. It is true that such chances are rare. But, the chances are there. A witness before the Royal Commission showed prescience when she said:

“I think it would be conceded that there might be a case where nobody would get the scintilla of doubt because the fact that would give rise to that doubt was not known at that time.”

On this subject, Lord Samuel went to the heart of the matter in his evidence to the Select Committee. He said:

“I do not think that one can ever say that no innocent man has been executed for murder in the past, nor can we have an absolute assurance that no innocent man will be convicted and executed in the future. The odds are thousands to one against it, but that is no consolation for the one.”

Even if one man is wrongly executed, it is a matter of great shame.

As I began, capital punishment is due to our prejudice and due to wrong traditions. There was a time when various kinds of torture used to be inflicted to kill a man for murder—I would not mention all—stoning to death, hurling down from great height, sewing the murder in a bag with a viper, a dog and an ape and throwing into water, the spanish inquisition, flaying alive, disembowling and evisceration, drawing and quartering, etc. These are very bad things. Our conscience is shocked to hear that such things were happening in the past. They were for such petty offences like shooting a rabbit, forging a birth certificate, theft of a pocket handkerchief, association with gypsies, adoption of disguise.....

Mr. Chairman: These are things of the past.

Shri M. L. Agrawal: But, whenever any attempt was made to soften the rigour of this law, it was always opposed. I shall give only one example. In 1913, Sir William Garrow, the Solicitor General actually opposed the abolition of drawing and quartering, a cruel thing. He said:

“Can Government exist without such protection? Are the safeguards, are the ancient land marks, the bulwarks of the Constitution, thus hastily to be removed?”

In 1932, Sir Robert Peel opposed a Bill to abolish capital punishment for stealing over five shillings from a dwelling house. He looked upon this as a most dangerous experiment. In the Lords, Lord Ellenborough, the spirited defender of Warren Hastings,—he was a famous Lord Chief Justice of England—said:

“I trust your Lordships will pause before you assent to an experiment pregnant with danger to the security of property and before you repeal a statute which has so long been held necessary

for public security. I am convinced with the rest of the Judges, public expediency requires there should be no remission of the terror denounced against this description of offenders.

"My Lords, if we suffer this Bill to pass, we shall not know where to stand, we shall not know whether we are upon our heads or our feet. Repeal this law and see the contrast. No man can trust himself for an hour out of doors without the most alarming apprehensions, that on his return, every vestige of his property will be swept off by the hardened robber."

This was the opposition to such small things. I think persons who oppose the abolition of death penalty are in the same tradition. They also do not like a change or innovation. But twenty years hence they will find that their decision was not proper.

5 P.M.

Apart from these things, death penalty imposes an odious and degrading work on the executioners. We shun them. We do not consider them to be of the same social status. Even those persons who like death penalty would not like to associate with the hangman and the executioner.

Pandit Thakur Das Bhargava: Even if electrocuted?

Shri M. L. Agrawal: That does not make any difference. I will come to that point if necessary.

The press publicity also is very injurious, at least mostly to the young minds, and it was for this purpose that we introduced in the House a Bill for abolishing horror comics. Young men take to these things and imitate crime. On this ground also, it is desirable to stop this kind of punishment.

I also wish to put before the House the feelings of the persons whose relation is to be executed. If you put a man to death, it does not alleviate the sufferings of the persons whose relation was killed, but it causes unnecessary suffering to the relations of

the persons to be put to death. Stacey Aumonier has described very well the feelings of the persons related to the doomed man:

"Have you ever tried to visualize the feelings of a mother on the night before her boy is to be hanged? (And no crime is going to curb maternal love; rather it will make greater claims on the protective instinct). The agony and horror which you and I representing the State must inflict on this perfectly innocent woman must be more terrible than any pain the murderer can inflict on his victims. And as with the mother, so may it be with the wife, the lover, the sister, the father, the brother, the children and the loyal friend. To all these people life must become numbed and meaningless at the time and for ever after a haunted wilderness, where the demons of revenge for ever lurk."

In the Indian epic the *Maha Bharata* there is a very interesting and excellent discussion between King Dyumatsen and his son Prince Satyavan as regards the justification or otherwise of the capital punishment. The arguments of the Prince are strong against criminal punishment. The Prince asks: "Why penalise the unfortunate wife and children, parents and relatives of the offender by killing him? Why put an end to all chance of reformation by destroying the prisoner. Again, it is seen that good children sometimes spring from wicked persons, so why deprive the world of this advantage?"

So, on whatever ground you may consider it, death penalty is not proper for this country.

Then there is the question of sanctity of life and reformation. In this connection I would like to quote one or two views. The Archbishop of Canterbury in 1948 said:

"Within the Church itself always and in the world so far as practicable, the law of love, with all its

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power to forgive, to convert, to reform and to refashion must permeate and shape the law of punishment."

So long as convicted murderers are alive in prison, there is a double chance, first that any mistake can be rectified and secondly they themselves can be reformed.

The late Archbishop Temple said:

"I believe that the example of the State taking life even when it only does so in return for a life already taken, does more to lower the value of human life in the minds of the citizen than the deterrent influence of this penalty can do to protect the lives of the citizen. In this way I believe that the main influence of the retention of the death penalty is rather to increase than diminish the number of murders."

Mr. Ede, Home Secretary in the Labour Government said:

"Those of us who believe that we live in the New Dispensation cannot get away from the emphatic repudiation of the doctrine by the founder of the Christian Faith (the doctrine of an eye for an eye and a tooth for a tooth)."

"Ye have heard that it hath been said an eye for an eye and a tooth for a tooth. But I say unto you that you resist not evil."

This occurs in the great manifesto of the Christian faith, the Sermon on the Mount.

In 450 B.C. the Roman State abolished capital punishment. Five hundred years later an attempt was made to revive it. Cicero reacted to it in this way:

"Far from us be the punishment of death, its Ministers and its instruments. Remove them not only from the actual operation on our bodies, but banish them from our eyes, our ears, our thoughts, for not only the execution, but the apprehension, the existence of

the very nature of these things is disgraceful to a free man and a Roman citizen."

This is a passage from Professor Hentig:

"The State can only put real life into the inviolability of life, which it continually and rightly advocates in its reasons for condemning murderers and in its laws, if it sticks to its own principle through thick and thin. If the unbridled despot bows down to the holiness of life, then it has found and brought into use the strongest of all suggestions. Thus I see in capital punishment a means of punishment whose advantages can be obtained by other means and whose disadvantages can be prevented in no other way than by abolishing it. It is an insufficient means of punishment to which must be added the possibility of judicial error, which we cannot exclude."

This is the last on this subject by Max Grunhut:

"The maintenance of capital punishment as an instrument of ordinary legal system can only discredit the declared aim of penal reform that the criminal's readjustment should be the supreme purpose of punishment. The State and community ought not to answer the criminal with his own weapon, destruction, even when they have to resort to force their action should express the higher values of law and justice. For this reason they should apply a punishment which does not *per se* prevent the culprit from overcoming a realisation of ethical values, even, if he may realise this only by strenuous work and the fulfilment of duties within the narrow world of a prison community."

I have shown that the burden is on those persons who are for retaining death penalty to show that it is

deterrent and a unique one. So far there is no evidence to show that it is deterrent. Their motto appears to be expressed in this paradox: "It is wrong to kill. The murderer has killed. Let us kill the murderer." Although they themselves say that it is wrong to kill, since the murderer has killed they want now to take revenge. That is their stand which is not logical.

I would conclude by giving a few opinions about this capital punishment, one or two from other countries and three or four from eminent jurists of our own country. Sir Ernest Gower was Chairman of the Royal Commission. He has written a book *A Life for a Life*. After the report of the Commission was presented to Parliament Sir Ernest Gower who was at first a retentionist himself became converted to the other side and he has written this book in which he has given his opinion. I think you will permit me to quote his opinion because it is authoritative:

"Before serving on the Royal Commission, I like most other people had given no great thought to this problem. If I had been asked for my opinion I should probably have said that I was in favour of the death penalty and disposed to regard abolitionists as people whose heart were bigger than their heads. Four years of close study of the subject gradually dispelled that feeling. In the end I became convinced that the abolitionists were right in their conclusions, though I could not agree with all their arguments, and that so far from the sentimental approach leading into their camp and the rational one into that of the supporters, it was the other way about. All I can say is that, to me, what I have called the 'Old Testament' dogma of 'a life for a life' makes less appeal emotionally than does the 'New Testament' dogma, which forbids the taking of life by way of retribution.

For me, therefore, the burden of proof lies with the supporters of capital punishment. It would be difficult to say just what it was that converted me to this view; it was the cumulative effect of many things, including such considerations as the right approach for a professedly christian people, the manifestly objectionable, not to say, repressive features of capital punishment, and the morbid interest, they excite, the possibility, however small, of hanging an innocent man, and the large part that the element of vengeance seems to play in the demand for capital punishment. Perhaps, the turning point was when I learned what a large number of applications there were for the post of hangman. Any State institution, I thought, that inspires ambitions of that sort in its citizens, and satisfies some of them, surely does need to justify itself on utilitarian grounds."

Mr. Justice Frankfurter of the Supreme Court of the United States of America says:

"I am strongly against capital punishment for reasons that are not related to concern for the murderer or the risk of convicting the innocent and for other reasons and considerations. When life is at hazard in a trial, it sensationalises the whole thing almost unwittingly; the effect on juries, the Bar, the public, the judiciary, I regard as very bad. I think, scientifically, the claim of deterrence is not worth much. Whatever proof there may be in my judgment does not outweigh the social loss due to the inherent sensationalism of a trial for life."

Then, Lord Templewood says:

"The death penalty surrounds with an atmosphere of unhealthy melodrama a particular form of crime and leaves the mark of Cain on the family of the executed man. However carefully the death penalty is inflicted, State execution is a repulsive proceeding.

[Shri M. L. Agrawal]

Capital punishment is objectionable, because, first, contrary to modern developments of penal reform, it abandons the possibility of reforming the murderer; secondly, being irrevocable, it gives no opportunity for reversing a wrong sentence; thirdly, it places a hateful duty on all who take part in an execution; and fourthly, it lowers the moral standard of the whole community."

Now, I come to some of the views held by prominent Indians. Dr. Sampurnanand, Chief Minister of Uttar Pradesh, speaking in the Legislative Assembly of Uttar Pradesh, recently said that he was in favour of abolition of capital punishment.

The issue of capital punishment in India was raised forcefully by the late lamented Speaker of the Lok Sabha, Shri G. V. Mavalankar, in June 1954, when he described capital punishment as the last vestige of colonialism. The opinion of the late Shri G. V. Mavalankar was enforced by the Solicitor-General of India, who held that the death penalty had never been a deterrent.

The *Hindustan Times*, a leading newspaper of this country, wrote on this subject as follows:

"There is a very strong case both on moral and criminological grounds for re-examination of the whole policy in regard to death penalty. Perhaps, in the circumstances of the country, capital punishment could be restricted to very extreme cases."

I am not certain, but I think our great jurist, Dr. Katju, the Defence Minister also, is of the view that death penalty should not be retained.

Lastly, I shall give you Gandhiji's views.

Writing in the *Harijan*, on March 19, 1937, he said:

"I do regard death sentence as contrary to Ahimsa. Only He

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

I would not like to take more time of the House. So, I shall now sum up. I cannot convince myself that the people of my country are so much deterred or frightened by severe punishment, or so much more inclined to commit violent crime, than all the people of all those foreign countries, that the result of abolition would be different in this country.

I am convinced that the retention of capital punishment is a retrograde action today, and abolition would be a great step forward along the road of civilisation and humanity. I am certain that we in India shall surely follow the enlightened example of countries which have abolished capital punishment, and relegate the hangman and the horrible tools of his trade to the barbarous past.

The Home Minister abolished whipping, following the example of United Kingdom. He has introduced in this House a Bill to stop horror comics, which *inter alia* lead to imitative crime, again, following the example of Great Britain. The Home Minister, in his Bill seeking to abolish whipping, gave the following grounds in the Statement of Objects and Reasons:

"Whipping as a punishment for criminal offences is outmoded. Most countries have abolished whipping. Whipping is a barbarous form of punishment, which has no reformative value, and only degrades the offender."

"Dissemination of horror comics is likely to encourage anti-social tendencies among children, and exert a harmful influence on young persons."

These have been given as the reasons for the other Bill. I hope the Home Minister would consistently apply the same criterion to judge the necessity and reasonableness of this Bill.

When the heat of controversy has died down, this measure would be hailed as a symbol of the great moral and spiritual heritage of India. The forebodings of the people of the tribe of the notorious Lord Ellenborough, that the abolition would be followed by a flood of crimes would prove as baseless here as they did in the UK, where 220 capital offences have been abolished. I have no doubt that the doubters would court the inglorious fame of false prophets.

The abolition would lead, by its great example of acceptance of the principle of sanctity of life by the State, to a substantial and progressive diminution of murder in this country. And our Home Minister, who is a great humanitarian, shall, after the placing of this measure on the statute-book, rank among the great upholders of the sanctity of life, like Sir Samuel Romilly and John Bright, and shall be counted among the great penal reformers and humanitarians like Bentham and Beccaria.

I thank you very much for having given me this much time. At this stage, I do not want to take up more of the time of the House.

[MR. DEPUTY-SPEAKER in the Chair]

After the Home Minister replies to my motion, I hope I shall have occasion to reply to whatever he has to say.

With these words, I commend my motion for the acceptance of the House.

Mr. Deputy-Speaker: Motion moved:

"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."

WOMEN'S AND CHILDREN'S INSTITUTIONS LICENSING BILL

Pandit Thakur Das Bhargava: With your permission, I may be allowed to move that the Women's and Children's Institutions Licensing Bill be referred to a Select Committee.

Mr. Deputy-Speaker: Yes, the amendment may be moved.

Pandit Thakur Das Bhargava: I beg to move:

"That the Bill be referred to a Select Committee consisting of Her Highness Rajmata Kamlendu Mati Shah, Shrimati Jayashri Rajji, Shrimati Uma Nehru, Shri B. Ramachandra Reddi, Shrimati Tarkeshwari Sinha, Shri Nikunja Behari Chowdhury, Shrimati Amu Swaminadhan, Shri A. M. Thomas, Shri Jaipal Singh, Sardar Amar Singh Saigal, Shri Upendranath Barman, Shri Fulsinhji B. Dabhi, Shrimati Anusayabai Bhaorao Borker, Shrimati Minimata, Shri Diwan Chand Sharma, Pandit Chatur Narain Malviya, Shri Mukund Lal Agrawal, Shri Mohanlal Saksena, Shri Hari Vinayak Pataskar, Shrimati Shivrajvati Nehru, Shrimati Sushama Sen, Shri Radha Raman, Shri Raghbir Sahai, Shri Bhakt Darshan, and Pandit Thakur Das Bhargava, with instructions to report by the 10th September 1956."

I may be permitted to add that I have not included the names of Shri Biswas and Dr. K. L. Shrivastava, because they belong to the other House. But I would request them to be kind enough to help the Select Committee, by their presence, and they can do so under the rules.

Mr. Deputy-Speaker: I hope the hon. Member would have no objection if the names of Shri Datar and Dr. M. M. Das are also added.

Pandit Thakur Das Bhargava: Yes, they may be added. I have no objection. I have no objection even to the names of the Ministers who are not Members of this House. But I am informed that it is not possible under the rules.