(2) Report of the Inspector of Explosives, South Circle, Madras into the explosion at Katpadi. [*Placed in Library. See* No. LT-361/57.]

(3) Report of the Inspector of Explosives, East Circle, Calcutta, into the explosion at Asansol. [*Placed in Library. See* No. LT-362/57.]

(4) Report of the Inspector of Explosives, North Circle, Agra, into the explosion at Kanpur. [*Placed in Library. See* No. LT-363/57.]

(5) A note indicating steps taken to eliminate possibilities of such explosions on Railways. [*Placed in Library. See* No. LT-364/57.]

Shri S. M. Banerjee (Kanpur): On that day when questions were put, the hon. Minister said that the matter of compensation to the victims will also be embodied in the report.

Mr. Speaker: The hon. Member will look into the report. The report is merely laid on the Table. We are not discussing it. The hon. Member will kindly look into it.

PROBATION OF OFFENDERS BILL

Mr. Speaker: The House will now take up further consideration of the following motion moved by Shri Datar on the 14th November, 1957, namely:

> "That the Bill to provide for the release of offenders on probation or after due admonition and for matters connected therewith, be taken into consideration."

Out of seven hours allotted for all stages of the Bill, 2 hours and 15 minutes have already been availed of, and 4 hours and 45 minutes now remain. Shri Shree Narayan Das may continue his speech.

श्री श्रीनारायण दास (दरभंगा) : पहले सप्ताह जब सदन आज के लिये स्थगित हुआ था, उस समय इस विधेयक पर विचार हो रहा था, जिसका उद्देश्य है कि अपराधियों को दण्ड देना स्थगित करके उन्हें निरीक्षण के लिये किसी अभिभावक की देख-रेख में छोड़ा जाये और उनके सुधार की व्यवस्था की जाये । अब दण्ड विधान के विशेषज्ञों में ऐसा विचार उत्पन्न हो गया है कि अपराधियों को जेल में भेजने के साथ साथ ऐसे भी उपाय किये जायें कि वे बाहर रह कर किसी सरकारी या गैर-सरकारी अभिभावक या समाज-सुधारक की देख-रेख में अपने जीवन में सुधार कर सकें और समाज के उपयोगी अंग बन सकें । अब वह समय नहीं रहा जब कि केवल बदला लेने के ख्याल से, या भय पैदा करने के ख्याल से अपराधियों को जेलखाने में रख कर डराया धमकाया जा सके । इसी भावना से प्रेरित हो कर केन्द्रीय सरकार ने यह विधेयक सदन के सामने रखा है । इस विधेयक के मुख्य दो अंश हैं । एक के द्वारा मजिस्ट्रेट या जज को यह अधिकार दिया जा रहा है कि वह अभियुक्त के अपराध पर विचार करते वक्त, उसके चरित्र और दूसरी सम्बद्ध बातों का ख्याल रख कर और उसने किस परिस्थिति में अपराध किया है, इस बात को ध्यान में रख कर, अगर मुनासिब समझे तो दण्ड देना स्थगित रख कर उसको किसी अभिभावक की देख-रेख में छोड़ दे । ऐसा कुछ शर्तों के अधीन और बांड लिखवा कर किया जायेगा । कुछ खास खास अवस्थाओं में, कुछ अपराधों के लिये, जिनके लिये दो वर्ष से कम की सजा है, उसको यह भी अधिकार दिया गया है कि वह अभियुक्त को तनबीह के साथ छोड़ दे । जैसा कि कुछ माननीय सदस्यों ने विचार प्रकट किया है, और अन्य लोगों का भी यह ख्याल है कि अगर हर एक अपराध में इस का व्यवहार किया जायेगा, तो समाज को खतरा होगा, इसलिये इस बात की आवश्यकता है कि इस बिल में ऐसा संशोधन किया जाय कि सभी अपराध इसके दायरे में न आयें ।

[श्री श्रीनारायण दास]

यद्यपि मैं इस बिल के सिद्धान्त का पूरी तरह से समर्थन करता हूं और चाहता हूं कि अधिक से अधिक अपराधों में इस कानून को लागू किया जाये, फिर भी वर्तमान अवस्था में मैं इस बात की आवश्यकता समझता हूं कि इस बात पर गम्भीरतापूर्वक विचार किया जाय कि कौन कौन से अपराध इस कानून के दायरे में लाये जायें, जिन में तनबीह के साथ अपराधी को छोड़ दिया जाये और किन में बालिग अपराधियों को बांड के साथ किसी अभिभावक के निरीक्षण में रखा जाये। यह जरूरी है कि इस विषय में पूरी तरह से छान बीन की जाय कि भारतीय दण्ड विधान के अन्तर्गत आने वाले किन किन अपराधों का इस विधेयक में समावेश किया जाये। माननीय सदस्य, पंडित ठाकुर दास भार्गव ने प्रस्ताव पेश किया है कि इस विधेयक को प्रवर समिति के सुपुर्द किया जाय। मैं इस प्रस्ताव का समर्थन करता हूं। जरूरत इस बात की है कि कुछ तजुर्बेकार सदस्य और दण्ड विधान के अनुभवी लोग इस पर गम्भीरतापूर्वक विचार करें कि जिन अपराधों के लिये इस विधेयक में समावेश किया गया है, क्या उनमें से किसी को हटाने की आवश्यकता है और अगर आवश्यकता हो, तो उन अपराधों को हटा दिया जाये।

मैं यह भी निवेदन करना चाहता हूं कि अपराधियों को निरीक्षण में रखने की जो पद्धति है, वह नई है और उसके विषय में हमारे देश में अनुभव नहीं है। दूसरे कुछ देशों में इसका अनुभव प्राप्त किया गया है, लेकिन उसकी पूरी जानकारी हमको नहीं है। इसलिये यह जरूरी है कि जरा सोच समझ कर कदम उठाया जाय : अगर सोच समझ कर कदम उठाया जायेगा, तो मेरा ख्याल है कि इस विधेयक का उद्देश्य बहुत अधिक पूरा होगा बनिस्बत उस अवस्था के कि बिना पूरी तरह विचार किये हुये तमाम अपराधों के लिये इस तरह की व्यवस्था कर दी जाय। इसलिये यह अच्छा होता कि माननीय मंत्री और यह सदन इस प्रस्ताव को स्वीकार कर लेते कि इस विधेयक को प्रवर समिति में विचारार्थ भेज दिया जाये।

प्रोबेशन अफ़सरों की नियुक्ति का विषय भी बहुत महत्वपूर्ण है। अगर विभिन्न राज्यों में प्रोबेशन सर्विस की अच्छी व्यवस्था नहीं हुई, अच्छे अच्छे आफ़िसर प्रोबेशन आफ़िशर नियुक्त नहीं किये गये और सरकारी और ग़ैर-सरकारी समाज-सुधारकों का अच्छा संगठन नहीं हुआ, जो कि इस बिल के उद्देश्य को पूरा करने के लिये सरकार के साथ सहयोग करें तो जिस प्रकार इस विषय की क्रिमिनल प्रोसीजर कोड की धारा ५६२ निकम्मी रही है और किसी भी राज्य में उसके अनुसार काम नहीं किया गया है, उसी प्रकार यह विधेयक भी निकम्मा हो जायेगा।

यद्यपि यह कानून हम केन्द्रीय संसद् में पास कर रहे हैं, लेकिन इसको कार्यान्वित करने का भार विभिन्न राज्यों पर पड़ने वाला है। यह पता नहीं है कि विभिन्न राज्यों का इस विषय में क्या ख्याल है। माननीय मंत्री ने इस सम्बन्ध में विचार प्रकट नहीं किये हैं कि किन किन राज्यों ने इस कानून को जल्द से जल्द लागू करने का विचार प्रकट किया है। उत्तर प्रदेश इस विषय में बहुत दिलचस्पी ले रहा है और अपराधियों को दण्ड देने के बजाय दूसरे उपायों से उनको सुधारने की कोशिश कर रहा है लेकिन दूसरे राज्य आगे नहीं बढ़े हैं। इसलिये इस बात की आशंका है कि शायद वह कानून पूरी तरह से लागू न हो सके। इसलिये मैं कुछ सुझाव माननीय मंत्री जी के सामने रखना चाहता हूं।

एक अच्छी और सुसंगठित प्रोबेशन सर्विस का संगठन किया जाय जिसमें सरकारी और ग़ैर-सरकारी लोग नियुक्त किये जा और उनके प्रशिक्षण की व्यवस्था की जाये

ताकि यह कानून पास होने के साथ साथ तमाम प्रान्तों में लागू किया जा सके। जैसा कि मैंने अभी कहा है यह विषय नया है और हमको इसका अनुभव कम है इसलिये जरूरत इस बात की भी है कि विभिन्न राज्यों के कार्य को सुसम्बद्ध रखने के लिये एक केन्द्रीय संस्था स्थापित की जाये जो कि समय समय पर राज्य सरकारों को इस सम्बन्ध में राय दे सके। अच्छा होता यदि केन्द्र में एक बिरकौंसिल बनाई जाती जिसका यह काम होता कि वह अपराधियों के सुधार के लिये व्यवस्था करे और केन्द्रीय एवं राज्य की सरकारों को इस विषय में परामर्श देती रहे।

संसार के अनेक देशों—संयुक्त राज्य अमरीका, स्वीडन, नारवे इत्यादि—में इस तरह के कानूनों की व्यवस्था है और वहां की सरकारों को इसका अनुभव है। अच्छा हो यदि जल्द से जल्द एक अन्तर्राष्ट्रीय गोष्ठी—सेमिनार—की जाय जिसमें अपराधी के साथ कैसा व्यवहार किया जाये और उसको कैसे सुधारा जाये इस पर अन्तर्राष्ट्रीय स्तर पर विवेचना हो और उस गोष्ठी के निर्णयों पर केन्द्रीय सरकार और राज्य सरकारें विचार करें।

जेल सुधार के लिये जो प्रयत्न किये गये हैं वे अभिनन्दनीय है लेकिन अभी तक हमारे देश की जेल प्रणाली में वह सुधार नहीं हो पाया है जो कि होना चाहिये था। इस मामले में दूसरे देश हमसे आगे हैं। मैं माननीय मंत्री जी से कहना चाहता हूं कि उन्होंने क्रिमिनालोजी के अन्तर्राष्ट्रीय ख्याति के विशेषज्ञ मिस्टर रैकलेस को यहां पर बुला कर ठीक किया था लेकिन अब जरूरत इस बात की है कि संसार के सभी देशों के तमाम जेलों के सम्बन्ध में अनभव रखने वालों का एक सम्मेलन किया जाये और इस बात पर विचार किया जाये कि किस प्रकार आधुनिक ढंग से—मार पीट या डरा धमका कर नहीं—समाज में रख कर अपराधियों का सुधार किया जा सकता है।

अध्यक्ष महोदय, अधिक बोलने के लिये मेरे पास समय नहीं है। लेकिन एक बात मैं अन्त में कहना चाहता हूं और वह यह है कि इस वैज्ञानिक युग में अब वह समय आ गया है जब कि हमें साधारण से साधारण अपराध के लिये कड़ी से कड़ी सजा देना बन्द करना होगा। अब वह समय नहीं रहा जब कि हम डर दिखा कर या भय दिखा कर अपराधों को रोक सकते हैं। आज हम अपराधियों को खराब जीवन में नहीं रख सकते हैं, गन्दी स्थिति में नहीं रख सकते हैं। आज आवश्यकता इस बात की है कि बराबर उन लोगों को यह अनुभव कराया जाय कि उनका सुधार हो सकता है। अब वह जमाना नहीं है जब कि लोगों को डराया जा सकता था। आज वैज्ञानिक युग है। इस युग में जैसे किसी शारीरिक बीमारी से पीड़ित लोगों का अस्पताल में दवाई दे कर इलाज किया जाता है उसी तरह से जरूरत इस बात की है कि जो लोग समाज के कानून को तोड़ कर चाहे वह नैतिक हो या दूसरी प्रकार का कानून हो समाज के खिलाफ काम करता है तो उनको समझाया जाना चाहिये कि वे मानसिक रूप से बीमार हे और जिस तरह से शारीरिक बीमारी से पीड़ित व्यक्ति का अस्पताल में इलाज किया जाता है उसी तरह से यह जो व्यक्ति है जो कि मानसिक रूप से बीमार है उसकी बीमारी का इलाज करने की जो व्यवस्था होनी चाहिये वह भी आधुनिक से आधुनिक तथा वैज्ञानिक होनी चाहिये। मैं समझता हूं कि यह जो विधेयक है यह स्वागत किये जाने योग्य है। मैं माननीय मंत्री जी को जिस उत्साह के साथ उन्होंने इसको पेश किया है उसके लिये बधाई देता हूं। लेकिन साथ ही साथ मैं यह कहना चाहता हूं कि यह जब कानून बन जायेगा तो इसको चलाने की जो जिम्मेदारी है वह राज्य सरकारों की है। इनको केवल इसको पास करके

[श्री श्रीनारायण दासगुप्त]

ही सन्तोष नहीं कर लेना चाहिये बल्कि उनको यह भी देखना चाहिये कि राज्य सरकारें इसको अमल में भी लाती हैं। केन्द्रीय सरकार को ऐसा संगठन यहां पर स्थापित करना होगा जो कि बराबर विभिन्न राज्य सरकारों को इस कानून का परिपालन करते रहने के लिये प्रेरित कर सके। उच्च वैज्ञानिक तथा दूसरी तरह की जो प्रणाली हम जारी करने जा रहे हैं तथा जिसके अधीन हम अपराधियों को दण्ड देने की बात को स्थगित करके उनको किसी के निरीक्षण में रखने और उसके जरिये उनको समाज का एक लाभदायक प्राणी बनाने का आदर्श सामने रख रहे हैं मैं आशा करता हूं कि हमारे माननीय मंत्री उसको सफल बनाने में कोई भी कसर उठा नहीं रखेंगे।

इन शब्दों के साथ मैं निवेदन करता हूं कि इस विधेयक को प्रवर समिति को भेज दिया जाये।

Mr. Speaker: Before I call the next speaker, I would like to know one thing from the House. In view of the fact that there are only 4 hours and 45 minutes left, and we have spent about 2-1|2 hours the other day, and we have in all 7 hours for this Bill, we may go on till five o'clock today. We started at about 12-15 P.M. today. And 4 hours 45 minutes would mean that we go on with this up to 5 P.M. How shall we divide this time between the consideration stage and the clause-by-clause consideration?

Shri Sinhasan Singh (Gorakhpur): 2 hours more for the general discussion and the rest for the consideration of the clauses.

Mr. Speaker: There are as many as 83 amendments. Therefore, we may have 2 hours 45 minutes for the clauses.

Shri Easwara Iyer (Trivandrum): May I submit that the Business Advisory Committee has recommended that one more hour, if necessary, may be taken?

Mr. Speaker: No, no. I am not prepared.

Shri Easwara Iyer: This is a very important Bill. It is most important.....

Mr. Speaker: Everything is important.

Shri Brij Raj Singh (Firozabad): That is the recommendation of the Business Advisory Committee.

Mr. Speaker: I have always noticed this. A judge used to say that if within fifteen minutes or half an hour, an hon. Member or a lawyer is not able to convince the judge, he would not convince at all. Therefore, fifteen minutes to half an hour should be sufficient.

Shri Tyagi (Dehra Dun): You used to take longer time, I am sure.

Mr. Speaker: The hon. Member has forgotten the previous history.

So, 2 hours 45 minutes will be left over for amendments, and the balance of the time will be devoted to this. Hon. Members will try to take not more than half an hour at the most.

Pandit Thakur Das Bhargava (Hissar): This is an important Bill, and even half an hour will not be sufficient, if all the pros and cons are to be stated. I think more time should be allowed to Members. Previously, the practice was that in Bills, hon. Members used to take as much time as they liked.

Mr. Speaker: If one hour is taken during the consideration stage, then the same thing will be repeated on the clauses also. Therefore, hon. Members may divide the time between the consideration stage and the clause-by-clause consideration. So, the hon. Member will have an opportunity on the clauses also. We shall devote 2 hours and 45 minutes to the clauses.

Shri Tyagi: Clauses deserve better attention.

Mr. Speaker: Very good.

पंडित ठाकुर दास भार्गव : यह बिल उन चन्द बिलों में से एक है जो कि बहुत ज्यादा अहमियत रखते हैं और मैं तो यहां तक कहना चाहता हूं जितना क्रिमिनल प्रोसीजर कोड बिल जरूरी था उतना ही यह बिल भी जरूरी है । मैं यह चाहता था और अब भी मेरी यह ख्वाहिश है कि इस बिल को ला कमीशन के पास भेज दिया जाय । यह बिल, जो कि हर स्टेट के साथ ताल्लुक रखता है, इसके ऊपर पूरी राय जान लेनी चाहिये थी । इस बिल को न तो सर्क्युलेट किया गया है न इस पर पूरी राय ही ली गई है । जैसा कि आनरेबुल मिनिस्टर साहब ने फरमाया इसको चन्द स्टेट्स के पास भेजा गया था और इसमें भी मुझे डर है कि इसको इस शक्ल में उनके पास नहीं भेजा गया जिस शक्ल में कि इसको आज यहां पेश किया गया है । मैं समझता हूं कि जो स्टेट्स की राय ली गई है वह इसके उसूलों के बारे में ही ली गई है । मैं समझता हूं कि किसी आदमी को भी इसमें कोई एतराज नहीं होगा कि जो उसूल ५६२ में हैं या प्रोबेशनरी सिस्टम में हैं उनको अमल में लाया जाय या उन पर तजुर्बा किया जाये । जैसा कि मैंने कहा अगर यह बिल इसी शक्ल में स्टेट्स के पास गया होता तो मुझे यकीन है कि स्टेट्स भी इसके हक में राय न देती । मैं जानना चाहता हूं कि क्या इस बिल को सुप्रीम कोर्ट, हाईकोर्ट के जजों, बार एसोसिएशंस और दूसरे रिस-पांसिबिल आदमियों के पास उनकी राय जानने के लिये भेजा गया है या नहीं । इस बारे में हमारे मिनिस्टर साहब ने कोई रोशनी नहीं डाली है । मैं तो इसी नतीजे पर पहुंचा हूं कि इसको न तो इन लोगों के पास उनकी राय जानने के लिये भेजा गया है और न ही रिसपांसिबल मैम्बर्स आफ दी कम्युनिटी के पास भेजा गया है । इस पर राय आम्मा को मालूम किये बगैर ही पेश कर दिया गया है और इसके खिलाफ़ मैं अपना अम्बल प्रोटेस्ट जाहिर करना चाहता हूं । मैंने दो मोशंस के नोटिस दिये हैं । एक तो सर्क्युलेशन की है और दूसरी सिलेक्ट कमेटी के सुपुर्द करने की । मैंने इन मोशंस को यों ही पेश नहीं कर दिया है । मैं इनके बारे में बड़ा सीरियस हूं । अगर माननीय मंत्री महोदय सर्क्युलेशन मोशन को मानना नहीं चाहते तो कम से कम सिलेक्ट कमेटी के सुपुर्द करने वाली मोशन को अवश्य मान लें । अगर हमने ऐसा न किया तो मैं आपको बताना चाहता हूं कि बाद में इसके अन्दर से आपको इतनी खामिया मालूम होंगी कि कंट्री आपको माफ नही करेगा । खामियों को अगर छोड़ भी दिया जाये तो भी जो उसूल की चीज है उस पर भी पूरा गौर होना चाहिये —

Mr. Speaker: I would like to know from the Minister whether any opinions have been gathered from the country at large?

The Minister of State in the Ministry of Home Affairs (Shri Datar): We had consulted the State Governments at two or three stages. This question was also considered by the Conference of the Inspectors-General of prisons and also by the Probation Officers' Conference. We have got all those things.

Pandit Thakur Das Bhargava: May I just ask one question of the Minister? He may kindly reply. Was this Bill sent to the State Governments, or only the principles of this question?

Shri Datar: Even this Bill was sent to the State Governments.

पंडित ठाकुर दास भार्गव : इस तरह का बिल हिन्दुस्तान की चन्द एक स्टेट्स में ऐटेन्युएटिड फार्म में मौजूद है । यह बिल उत्तर प्रदेश में है, बम्बई में है, बंगाल में है । अगर और भी किन्हीं स्टेट्स में है तो इसका मुझे इल्म नहीं है । मुझे तो लाइब्रेरी से इन तीन स्टेट्स के बिल ही मिले हैं । मैं

[पंडित ठाकुर दास भार्गव]

जानता हूं कि इन तीन स्टेट्स में किस तरह से इस पर अमल हो रहा है और होता रहा है। लेकिन यह जो बिल है यह उन बिलों के मुकाबिले में बहुत वसीअ है और इसको अगर कोई भी स्टेट कबूल करेगी बगैर इसकी इम्पलीकेशंस को जाने हुये तो उस स्टेट् में डिसास्टर होगा। मैं जो ये सख्त अलफाज इस्तेमाल कर रहा हूं, जान बूझ कर कर रहा हूं। बगैर इसकी इम्पलीकेशंस को जाने बूझे, मैं समझता हूं, इसको सारे हिन्दुस्तान में लागू नहीं करना चाहिये।

अब में बतलाना चाहता हूं कि इस बिल में और पुराने बिलों में आम तौर पर क्या फर्क है। पहला सवाल तो यह पैदा होता है कि अब तक देश के अन्दर दफ़ा ५६२ मौजूद है। उसके अन्दर एडमानिशन का जिक्र है। लेकिन यह उसूल कोई नया नहीं है। एडमानिशन का जिक्र ५६२ में भी है और प्रोबेशनरी बिल में भी है। इसको यहां मान कर हम कोई नई चीज को मानने नहीं जा रहे हैं। जिन स्टेट्स के अन्दर यह प्रोबेशन का बिल मौजूद है वहां यह इतनी छोटी फार्म में है, इतने संकुचित फार्म में है कि कुछ कहना ही नहीं। इस बिल के जरिये से हम बहुत ही जबर्दस्त जिम्मेदारी गवर्नमेंट आफ इंडिया पर डालने जा रहे हैं।

मेरे विचार में इस हाउस को यह देखना चाहिये था कि हम क्या करने जा रहे हैं और जो तबदीली हम आज करने जा रहे हैं उससे देश को क्या फर्क पड़ता है। मैं समझता हूं कि हम बहुत भारी तबदीली करने आ रहे हैं। इस जिम्न में मैं अर्ज करना चाहता हूं कि जो मसला है वह मसला ५६२ के अन्दर मौजूद है। लेकिन उसके अन्दर इस चीज को इतना फैलाया नहीं गया है। इस बिल में प्रोबेशन के उसूल को हम नये तौर पर पकड़ने जा रहे हैं। पहले यह उसूल बड़े ही संकुचित रूप में था। यहां पर क्लाज ४ में, जिस पर मैं बाद में आऊंगा, कहा गया है कि प्रोबेशन सिस्टम में एक सुपरवाइजर मुकर्रर होगा और वह इस तरह से कार्य करेगा जैसे कोई गार्डियन करता है या उसका मौनीटर हो। वह उसकी खबर रखेगा और वह खबर इस तरह की होगी जिस तरह से कि क्रिमिनल ट्राइब्स के ऊपर सुपरवाइजर मुकर्रर होते हैं। उस सुपरवाइजर की क्या पावर्स होंगी, उसकी क्या हैसियत होगी, उसका कुछ जिक्र दफा १६ में किया गया है जो कि नामुकम्मिल है। उस दफा १६ के अन्दर इसका जिक्र नहीं है कि उसकी क्या पावर्स होंगी, किस तरह से वह रिलीफ दे सकेगा उन लोगों को जो उसके गार्डियनशिप में जायेंगे। इन सब चीजों के बारे में यह बिल साइलेंट है।

जहां तक इसके अन्दर दूसरे सवाल आते हैं, मैं उनके बारे में बाद में अर्ज करूंगा। लेकिन पहले जो इसके लीगल एसपेक्ट्स हैं उनका मैं जिक्र करना चाहता हूं। बाकी चीजें फिर देखी जायेंगी। कम अज कम अगर लीगल ऐस्पेक्ट्स में कोई नुक्स है तो मुझे उम्मीद है कि आनरेबुल मिनिस्टर उनकी तरफ तवज्जह देकर कम से कम उनको दुरुस्त तो कर देंगे। यहां से ऐसा तो बिल बन कर जाये जो वर्कबुल हो।

मैं सब से पहले दफ़ा १७ और १८ की तरफ़ तवज्जह दिलाना चाहता हूं। दफ़ा १७ और १८ में जो इस बिल की हैं और उनमें जो लीगल प्वाइंट्स हैं उनकी तरफ तवज्जह दिलाना चाहता हूं।

दफ़ा १७ में लिखा है : "Nothing in this Act shall affect the provisions of section 31 of Reformatory Schools Act, 1897, or the Suppression of Immoral Traffic in Women and Girls Act, 1956, or of any law

in force in any State relating to juvenile offenders or borstal schools."

दफ़ा १८ में लिखा है : "Section 562 of the Code shall cease to apply to the States or parts thereof in which this Act is brought into force."

इसके मानी हुये कि कोड की दफ़ा ५६२ Suppression of Immoral Traffic in Women and Girls Act में जो ५६२ दफ़ा का हवाला है उसकी जद के अन्दर जो शख्स आयेंगे उनको जैसा उसी ऐक्ट में लिखा हुआ है डील किया जायेगा । ५६२ की दफ़ा की रू से हम इस तरह से उनको डील कर सकेंगे । अगर दफ़ा ५६२ को आप खारिज करते हैं तो मैं नहीं समझता कि सप्रेशन आफ़ इम्मॉरेल ट्रैफिक इन वीमेन में जो उसका प्राविजन है वहां उस ५६२ का क्या बनेगा ? इस वास्ते यहां दोनों एक दूसरे के मुखालिफ हैं । एक तरफ तो आप यहां पर ५६२ दफा को खत्म करते हैं और दूसरी तरफ उन ऐक्टस में इसको क़ायम रखते हैं जो मैं अर्ज़ करना चाहता हूं कि या तो आप दोनों जगह तबदीली कीजिये . . .

May I just have the attention of the hon. Minister? I am stating legal points and unless he hears them there is no chance of his accepting any of my amendments. I would respectfully request him to hear them.

Shri Datar: I shall hear all the points of my hon. friend, not only the legal points.

Mr. Speaker: Both of them are Ministers connected with the Home Ministry.

Pandit Thakur Das Bhargava: I do not doubt that. But I would kindly request him to hear my points.

In clauses 17 and 18 there is a conflict. In clause 17 it is said that this shall not affect the suppression of Immoral Traffic in Women and Girls Act. But if you consult that Act you will see that in certain sections it is stated that such and such persons will be subject to section 562 of the Code. If you do away with section 562 of the Code in those States how will you give effect to the provisions of the Act. The hon. Minister must either get it corrected or he may introduce something here that section 562 will ensure so far as this Act is concerned, and that clause 18 will not have any effect.

Another legal aspect. I have already submitted in regard to clause 16 that it does not deal with the powers of the Probation Officers. It is absolutely necessary. If you want to give effect to this Bill you must see that the powers are defined. The power to examine certain persons is absolutely necessary.

There will be many Probation Officers in one district because according to clause 11 you contemplate that in place of a Probation Officer another can be appointed. So, I understand there will be a good many Probation Officers in one district. They will have absolutely no connection with the courts except that they may go to court for getting certain concessions for those under them. At the same time, they will be under the District Magistrate. They will be appointed by the Court and yet the courts will have no authority over them. They will be subject to the District Magistrate. If there is any conflict between the Probation Officer and the Court, how will that be decided? I would like the appointing authority to have control over the Probation Officers also. That is not to be found there. We should see some nexus maintained between the Court appointing him and the future actions of the Probation Officer.

As regards the report of the Probation Officer. I would like the Minister to look at it from a rather more realistic view. Before final orders are passed, the Court must get the report of the Probation Officer.

[Pandit Thakur Das Bhargava].

'The Court shall get', these are the words. The person is before the Court. The Court has to pass a final order and before that the Court must be furnished with a copy of the report. How will that report be obtained? The man is in jail. The Probation Officer goes and takes evidance at his back. Supposing the man has committed 20 other offences, the Probation Officer will have to take evidence of all these and make a report behind the back of the person. After getting the evidence he will send the case to the Court.

I would beg of the hon. Minister to look at this question more closely. The Court has to pronounce a final order whether the person is guilty or not. The Court gets the report of the Probation Officer. The Court has not got watertight compartments in its head. The court is open to be influenced by the report this way or that. This is something entirely novel to judicial system. You get a report from the Officer. Before you adjudge the person as guilty or not you take this report into consideration. What is the nature of the Report? The Report of the Probation Officer is to be treated as confidential. This is absolutely mysterious. Confidential from whom? From the Police Officers or from the accused? I have never heard of any judicial system in which a report is to be kept confidential from the accussed as well as the prosecution. There is absolutely nothing in the Bill to say that the prosecution shall have it or know what the report is. So far as the accussed is concerned, there is some concession and it is said that the Court may, if it so thinks fit, communicate the substance thereof to the offender and may give him an opportunity of producing such evidence as may be relevant to the matter stated in the report. It is confidential. Yet it is made available. I have no objection. At the time when the report is made and when the witnesses are to come and make statements against him, he has no right to cross-examine. Subsequently, when the document is brought to the court, the court is invested with the discretion to make the confidential report available to him and he is allowed to produce rebutting evidence. Is it possible for any person to rebut the evidence given behind his back unless by producing those persons again and cross-examining them? That is impossible. How will it work?

Clause 7(2) says that the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender. I do not know wherefrom this information will come. Perhaps the persons interested in the accused or who are against the accused will make such information to the court.

The court has not pronounced the guilt or otherwise. At this stage you allow such information. It may be prejudicial to the accused or it may be very favourable to him. Such evidence may be cooked up by him or his relatives may come to the court without the prosecutor or the aggrieved person knowing anything of it or having any opportunity to rebut it. This information will also be there. There is provision for making the confidential report available to the accused. There is no provision for making that information available to the accused and giving him an opportunity to rebut it nor is the prosecution given an opportunity to rebut such favourable evidence.

Therefore, I say that this lacuna in the Bill spoils the entire Bill. What would happen to the provisions of the Evidence Act—Section 45. It says that the evidence of bad character is irrelevant unless evidence of good character is given and rebutted. That will no longer apply in a case of this nature. We are abrogating section 54 without even giving the House a chance to see whether it should be

allowed to stand because it has stood the test of time.

There is another section—section 15 —of the Evidence Act and we do not know whether you are enlarging the scope of that Section. My submission is this. There should be two judgments. I shall submit my solution to this question for the consideration of the hon. Minister but he shall have to take it to the Select Committee and the solution lies there. You make two parts of the order of the court. One will relate to the question whether a man is guilty or not. The second part should be, if he is found guilty, whether clause 3 or 4 should be allowed to come into operation. For that purpose, I can understand that the report of the probation officer may be useful and other evidence may be useful. But you say that he will not pass the final order before he takes the report into consideration.

Supposing I were a judge and I had come to know that in twenty cases, a person had misbehaved involved in cases of rape, I will certainly be influenced by his antecedents. I am bound to come to the conclusion that he is guilty while he may not be guilty in that particular case at all. After all it s human nature and there are no two compartments in the human brain to set apart for two different sets of things. It is impossible in practice. n the interest of justice alone, you nust see that the judgment is bifurated into two parts—judging the guilt ndependently on the evidence on ecord. That is one. Secondly, if you vant to give the advantage of clause or 4, proceed further and go on with he proceedings and decide whether he hould take advantage of this or not. f you give the benefit to a large numer of people in a large number of ases, you should see that the attenion of the magistrate is concentrated n this point: whether it is a fit case r not.

I have studied all these Acts in the arious States and I shall refer to one f them. One of these Acts says that rst of all you should decide the guilt. Subsequently, when you come to the second portion, you confine yourself to the report. The report is only called when he is found guilty. But if you call the report and find him guilty, you will be inflicting the greatest injury on the accused whom you want to serve.

That is one aspect of the legal question. There is again a principle of law. Should you have a provision like the one here which looks just and equitable but which reduces the crime from its present gravity to a mere commercialised thing. Clause 5(1) reads:

> "The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence and such costs of the proceedings as the court thinks reasonable"

The whole idea of the Government punishing the offenders is this. While it takes away the desire to take immediate revenge it is thought that the crime is against the community and not against particular persons. Therefore, the community comes in and punishes. But what are you doing? First of all, this provision is unprecedented and unheard of. It is something which I for one cannot in any way support. Are you going to recover some cost from the accused? What are these proceedings? Are they in court? Is the cost to be given to the aggrieved person because he engaged lawyers or he has called persons for evidence and so on? Is it the pay of the judges, the police and so on? What is the cost of the proceedings? I have not been able to understand. How will you determine? Is it the pay of the judge, or the public prosecutor or the police? Is there any meaning in saying 'the cost of the proceedings'? In one instance, you

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want to help him and give him all the relief you are capable of. On the contrary you want even to recover from him what could not be recovered from any person. I have not seen such a provision in any law of any other country though I know that in these Probation Acts these words are there.

I take very strong exception to commercialising the crime and to take from the accused person the cost of the proceedings. Then, how will you determine? What will be taken? What will not be taken? I cannot also understand this compensation affair. This is too much for a criminal court to go into. Then there is compensation for loss or injury. Perhaps in every criminal case, the party injured is entitled in civil law to compensation. But this is not the usual custom for aggrieved persons to go after the accused and recover damages. Suppose a person is killed by another, in civil law he is entitled to compensation. If these cases are allowed to be brought, I do not know what will happen to our courts. Now, in respect of civil courts in so many cases, it will be very difficult to recover anything from the accused. If you make, at the same time, the criminal court as a court of adjudicating the amount of compensation and then recovering it, it will be an endless procedure, and you will be complicating criminal matters in such a way that you will not be able to get out of them.

Mr. Speaker: Is there no provision of law at present to give a portion?

Pandit Thakur Das Bhargava: To give a portion out of the fine; something can be given in proper cases. Supposing a robbery takes place at my house where thousands of rupees are taken away and there is a law like this making the Government pay the amount to me from the Treasury, I would be very happy. But here the court has to find out how much money is to be given. It is a question of compensation for damages.

Mr. Speaker: If it does not interfere with the civil remedy, what is the objection?

Pandit Thakur Das Bhargava: There is a civil remedy in every case, and I am not objecting to it. As a matter of fact, there should be a remedy and a person should be allowed to be recompensed. My only submission is that in every case if you are going to complicate matters like this, there will be evidences and the cases will be prolonged. You want that criminal procedure cases should be completed in two months, whereas it will take years and years here to find out the amount of compensation. Where the court imposes a fine it is not recovered and they proceed under sections 386 and 387. Here also the provisions are similar. Compensation will be determined and then action under sections 386 and 387 taken for years together. We know what is the procedure under the Criminal Procedure Code. If imprisonment is undergone by the accused in lieu of fine then no further proceedings should be taken. Therefore, the civil court remedy is there. Why should you complicate matters in this way?

So far as appeal provisions are concerned, which are contained in clause 10, they are not very clear to me. According to the present position, you know very well that an aggrieved person has practically no right of appeal. If the sentence is not to the satisfaction of the injured person, he has no right of appeal, he can only go in for revision. If the Public Prosecutor files an appeal within six months then the Government allows him to make an appeal. So far as revision is concerned, the revisional authority can only recommend to the High Court and the High Court can enhance the punishment if it so desires; otherwise the Appellate Court has no right of enhancing punishment on appeal. If you see clause 10 here, the real mean-

ing of the words is not clear. It says: in sub-clause (4):

> "When an order has been made under section 3 or section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law:"

If the Appellate Court is also given powers of revision, then I can understand. The Appellate Court can then set aside the order and just enhance the sentence also. I do not know if that is the meaning of the words here. I would very much like that to be the meaning, because I want in such cases, especially when there is a question of personal injury or offence relating to women where the person is satisfied only when the other person gets some punishment, there should be powers of revision. If the accused is let off with an admonition, so far as the aggrieved man is concerned the grievance will remain and he will wait for an opportunity to take revenge. In such cases the aggrieved person should be given some remedy. If the Appellate Court gets the power of revision, then it is all right, and I am satisfied to a certain extent.

So far as sub-clause (3) is concerned, it appears that even the power of revision has been taken away from him. This sub-clause says:

> "In any case where any person under twenty-one years of age is found guilty of having committed an offence and the court by which he is found guilty declines to deal with him under section 3 or section 4, and passes any sentence of imprisonment on the offender from which no appeal lies or is preferred, then notwithstanding anything contained in the Code or any other law, the court to which appeals ordinarily lie from the sentences of the former court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the records of the case and set aside the sentence and in lieu thereof make an order under section 3 or section 4."

It means that even the power of revision has been taken away, which is a very serious action. Either give him powers for appeal and powers of revision that he even now enjoys, or do not take away anything and do not give anything. In the present case, when an order is passed under this law the sense of wrong of the aggrieved person is bound to get added sensitiveness, because every person who is guilty gets off under an admonition or probation. That is a very serious matter.

So far as these legal questions are concerned, they are all of very great importance, and unless the matter is taken to a Select Committee all these matters will not be gone into. If we pass it here in a huff it will not be right for the country and the country will never excuse us for passing a measure of such an importance by sitting in this House and passing in few hours a Bill of this nature.

Let us look at this important question from another standpoint. I have here with me the Acts of Bengal, Madras and Uttar Pradesh. I am sorry I could not get others from the library. In all these three Acts only in cases of first offenders some concession is given, and not in the case of all offenders. This is a departure of very great importance. According to the present Bill, whether there is any conviction or not, according to clause 4 every person who may have even got ten convictions may take advantage of this probation. We are departing from the accepted rule which has been obtaining in this country for the last so many years. In all these Acts the Bill are known as "First Offenders Probation Bills". This departure by itself is a very great departure, and I do not know whether the country shall like it.

So far as I am concerned, I do not object to this Bill being enlarged on this subject. I would rather like that

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the question of a person being a first offender should not be a pre-requisite for the application of the provisions of clauses 3 and 4. At the same time, the country is not ripe for it. Whatever may be my personal opinion, I like the provision in clause 4 and I congratulate the hon. Minister for having brought it forward, and having taken away the question of first offenders. I do not think it is the fundamental right of every citizen to be let free unpunished on the first offence. That impression will be wrong. Therefore, in proper cases, even in very bad cases involving the highest punishment, if the circumstances are such that admit of the case being treated under Section 562, I would rather like every case being so treated.

Mr. Speaker: Order, order. The hon. Member may resume his seat. How long will the Minister take for his reply?

Shri Datar: 30 minutes to 45 minutes.

Mr. Speaker: We started at 12.15. Pandit Thakur Das Bhargava has already taken 36 minutes and the Minister wants 45 minutes. There are about ten or eleven Members who want to speak, even though I propose restricting their number to six or seven. It was suggested by Shri Easwara Iyer that the time for this Bill may be extended by an hour. I have no objection to it, if the House is willing to sit till six o'clock.

Some Hon. Members: Yes.

13.00 hrs.

Mr. Speaker: Therefore, the time for discussion will be extended by one hour: instead of till 2.15, we shall carry on til 3'15. Pandit Thakur Das Bhargava is exhausting all the sections for the benefit of the whole House. So far as the other Members are concerned, they will not take more than fifteen minutes, each.

Shri V. P. Nayar (Quilon): Is it a justification for his taking longer time?

Mr. Speaker: An hon. Member ought not to repeat himself and also not repeat what others have said. Therefore, if Panditji exhausts everything there will be little or nothing for others to say. Therefore, I expect others would not take more than ten minutes, or fifteen minutes at the most. How many minutes more, does the hon. Member want?

Pandit Thakur Das Bhargava: I would gladly submit to whatever suggestion comes from you, because whatever is in the interest of the debate is to the benefit of the whole House. I would certainly resume my seat and not speak a word more, if that is your wish.

But in a Bill of this nature, the previous rule was that any Member could take any time and if there was any repetition, the Chair would stop him.

Mr. Speaker: May I make a suggestion? What is the harm if this Bill goes to Select Committee. All hon. Members, and I am sure the Government, are interested in seeing that this is made a workable measure. We understand the spirit in which it was brought forward, but it should be made workable in practice. What is the harm, if after a week we take it up?

Shri Naushir Bharucha (East Khandesh): The Bar Associations should also be consulted.

Mr. Speaker: The hon. Member is a sufficiently good representative of the Bar Associations. One-third of our Members are lawyers; therefore, we need not refer it to Bar Associations; it will be practically dilatory. The House can consider the report of the Select Committee when it comes after a week and dispose of it. Much of the spade work can be done in the Committee. I have gone through the amendments tabled by Members. The Indian Penal Code is a measure which has not been adversely commented upon all these years from 1860. The Criminal Procedure Code has been amended. Unlike the civil law which

has undergone so much of change, nobody has interfered with the Penal Code. So long as this is a kind of departure, would it not be better to refer it to a Select Committee. There are several hon. Members who are interested in this subject and who have bestowed some thought on it. The hon. Minister may consider whether it would not be desirable to refer it to a Select Committee.

Shri Sinhasan Singh: We shall take it next session.

Shri Naushir Bharucha: This is a very important piece of legislation. Let it be thoroughly discussed. My submission is that one week is too short a time for the Select Committee to report on. It is very necessary that Bar Associations must be consulted and their point of view ascertained.

Mr. Speaker: The hon. Member is an eminent member of the Bar. In any Bar Association, it is only one or two people who read the Bill. I consider hon. Members who have come to this House equally authoritative, if not more.

Shri Sinhasan Singh: I submit this Bill may be taken up next session. We are making a vital departure, as the hon. Member who was just now speaking, pointed out. This measure requires thorough study. What is the hurry about passing it so soon?

Mr. Speaker: What is the hurry for this Bill? I do not want, sitting here, to make any suggestion which will embarrass Government. Having regard to the importance of the Bill, why should it not be circulated?

Shri Datar: Circulation will take a number of months and the matter will not come up soon; it will take one more year.

Some Hon. Member: No, No.

Shri Datar: But I am considering the question of a Joint Committee.

Mr. Speaker: May I make one more suggestion. After reference to Joint Committee, Government itself may place before the House such of those opinions which it has gathered. I will get them printed for the benefit of the House.

Shri Datar: Does circulation and appointment of a Joint Committee go together? That will not.

Mr. Speaker: Circulation motion cannot go with Joint Committee motion. Joint Committee is one thing. In the meanwhile, Government itself can in many cases send it for opinion and place it before the House.

I shall make myself clear. Reference to Select or Joint Committee is independent of circulation; when once it is referred to a Committee, circulation motion will disappear. The Committee will take some time; it may not come back in the same session. In the meantime, before the Committee finalises its conclusions, Government itself may send it to the various High Courts to gather opinion from bar associations. I am not making this a condition.

Shri Datar: My difficulty will be this. The Joint Committee may meet some time after the session and the report may come before the House during the next session. If, for example, the matter is referred to the Bar Associations and High Courts, they will take at least two or three months and then the Bill may go to the June or July session.

Mr. Speaker: Government may write to them that the opinions should be submitted expeditiously. If they send their opinions well and good; if they are indifferent to us, we shall be indifferent to them.

Shri Datar: Then we shall not have the advantage of their opinions.

Mr. Speaker: Does not matter.

Shri Narayanankutty Menon (Mukandapuram): The Joint Committee can invite the opinions of Bar Associations and other bodies.

Mr. Speaker: It will take time. I want to avoid time being taken, so that this matter may be disposed of in the next session.

Pandit Thakur Das Bhargava: Supposing we pass it in the next session, what is the harm? There are three months yet.

Mr. Speaker: I am anxious that we get the opinions of the Bar Associations and others early. Immediately the measure is referred to a Committee, I am particular that Government itself should take sufficient steps to get the opinions. If they get them well and good; if not, the Committee will proceed with its work.

The hon. Member may proceed. We will conclude at 3-15. The Joint Committee motion will be made in the meanwhile.

Pandit Thakur Das Bhargava: I thank you very much for having interceded on behalf of the country in an important matter. I also thank the hon. Minister of State of Home Affairs.

[MR. DEPUTY-SPEAKER *in the Chair.*]

मैं चेयर का और साथ ही आनरेबिल होम मिनिस्टर साहब का, जिन्होंने ऐसी रीजनेबिल एटीट्यूट दिखलायी है, शुक्रिया अदा करता हूं, लेकिन मैं एक छोटी सी अर्ज फिर भी किये बगैर नहीं रह सकता।

उपाध्यक्ष महोदय : और ये सब आपका शुक्रिया अदा करते होंगे।

पंडित ठाकुर दास भार्गव : यह आपकी मेहरबानी है। जो कुछ हम करते हैं उसमें हमको ब्लैसिंग पहले ही मिल जाता है।

तो मैं यह अर्ज करना चाहता था कि जो स्टेट्स की ओपीनियन आती है वह भी एक आदमी की ही ओपीनियन आती है . . . .

Shri N. R. Munisamy (Vellore): Let him proceed in English. He was speaking in English, he should continue in English.

Pandit Thakur Das Bhargava: I began in Hindi.

Mr. Deputy-Speaker: He began in Hindi; switched over to English because there were some legal points; now he is resuming his old language.

Shri Narayanankutty Menon: Shall we make a request, because the hon. Member is very competent to speak in English.

Mr. Deputy-Speaker: Therefore, he should not speak in Hindi? If he is very proficient in English, then he has the privilege to speak in English or Hindi. I cannot compel him to speak in English.

Shri V. P. Nayar: Nobody questions his right. I appeal to him.

Mr. Deputy-Speaker: That is an appeal to him; he has to respond, not I.

An Hon. Member: Let him proceed in Hindi.

Pandit Thakur Das Bhargava: My difficulty is this. Some of my friends want that I should speak in English, though I do not wish to speak in English. I have got no mastery over the English language, which is foreign. There are other friends who want me to speak in Hindi. I would prefer to speak in Hindi. But, if friends are very insistent, I would never think of not obliging them.

Mr. Deputy-Speaker: If it is difficult for the hon. Member to weigh the insistence on both sides—

Pandit Thakur Das Bhargava: Therefore, I should prefer these requests being cancelled. I should prefer to speak in Hindi.

तो मैं यह अर्ज कर रहा हूं ये देदी हैं। अभी गवर्नमेंट्स ने इस के हक में राय दी कि कई स्टेट यह सवाल भी उठाया गया कि बार एसो-

सिर्देशन्स की राय भी पूछी जानी चाहिए तो स्पीकर साहब ने फरमाया कि बार एसोसियेशन्स में भी एक दो आदमी ही काम चलाते हैं । यह स्टेट गवर्नमेंट की राय भी चीफ सेक्रेटरी या होम मिनिस्टर की राय होगी । हो सकता है कि यह उन की जाती राय हो । लेकिन में अदब से अर्ज करूंगा कि उनकी जाती राय में और एक क्रिमिनल प्रैक्टीशनर की जाती राय में फर्क होगा और उसकी राय ज्यादा ठीक होगी क्योंकि उसको रोजमर्रा का तजर्बा है ।

Shri D. C. Sharma (Gurdaspur): Are practitioners criminal?

Mr. Deputy-Speaker: They often come into contact with them as we do here.

Shri Datar: Without becoming one.

पंडित ठाकुर दास भार्गव : तो मैं अदब से अर्ज करूंगा कि यह जो सवाल है वह ऐसा सवाल नहीं है जिनको प्रोफेसर साहिबान टैकिल कर सकें । यह दुनिया की तजुर्बेकारी व प्रेक्टिस का सवाल है ।

मैंने चन्द मामले कानून के अर्ज किये जनाब की खिदमत में । मुझे उम्मीद है कि अगर यह मामला ज्वाइंट कमेटी के सामने गया तो वे नकायस दूर हो जायेंगे । लेकिन जो असली मामला है उसकी तरफ में तवज्जह दिलाना चाहता हूं आज हिन्दुस्तान की हालत यह है कि एक बूढ़ी औरत आकर होम मिनिस्टर साहब के सामने वही अर्ज कर सकती है कि जो एक बूढ़ी औरत ने सुबुक्तगीन के सामने अर्ज किया था, यानी यह कि अगर आप किसी इलाके का इन्तिजाम नहीं कर सकते हैं तो उस के उपर हाथ न डालिये । आज मध्य प्रदेश में, उत्तर प्रदेश में और राजस्थान में ला एंड आर्डर की क्या हालत है ? वहां दिन दहाड़े डाके पड़ते हैं और उनका कोई इन्तिजाम नहीं हो पाता । कल अखबार में मैंने पढ़ा था कि डाकू एक सेठ के लड़के को ले गये और उसको छोड़ने के लिए ५ लाख रुपया मांगते हैं । इस तरह के ४११ अमवात, हमारे चीफ मिनिस्टर ने बतलाया है, अकेले पंजाब में हुए हैं । इसलिए मैं चाहता हूं कि प्राविन्सेज की बार एसोसियेशन्स की राय मालूम की जानी चाहिए । हमारे भरूचा साहब को चौथाई सेंचुरी का तजर्बा है और मुझे भी कोई आधी सेंचुरी का तजर्बा है यह मिलाकर ही तीन चौथाई सेंचुरी हो जाता है । मैंने देखा है कि अगर कोई किसी के दादा को मारता है तो उसके पोतों तक से बदला लिया जाता है । जो लोग बाहर से यहां आये हैं वे इस बात को शायद न जानते हों । मैंने तो खुद इस किस्म के मुकदमे किये हैं जिनमें १२ बरस बाद तक कत्ल का बदला लिया गया है । अभी एक महीना हुआ कि एक मुकदमा आया जिसमे १६ बरस हुए एक शख्स ने एक दूसरे शख्स की मा के एक लाठी मार दी थी । उस आदमी ने जिसकी मां के लाठी मारी गयी थी उस मारने वाले को कत्ल कर दिया उसके दो बेटों को कत्ल कर दिया और दो औरतों को जख्मी कर दिया । इस लिए मैं अदब से अर्ज करूंगा कि कानून देश के हालात के मुताबिक बनना चाहिए । आप अमरीका और विलायत के पीछे मत जाइये वहां रिफार्म का उसूल डेटेरेंसी से ज्यादा बढ गया है । हमारे देश मे ऐसी हालत नहीं है । अभी हम हिन्दुस्तान में डेटेरेंसी के उसूल को इस कदर नहीं बदल सकते ।

मैं अदब से अर्ज करूंगा कि जो कानून आप बना रहे हैं मैं उसके लिए आपके नेक इरादों को दाद देता हूं । आप चाहते हैं कि मुजरिम का रिफार्म हो । एक आदमी जिसने जुर्म किया है उसको बतौर एक मरीज के देखा जाये । अगर कोई आदमी किसी लालच की वजह से कोई जुर्म करता है तो इसकी यह वजह है कि उसकी सारी जिन्दगी ऐसी रही है कि उसकी वजह से वह क्रिमिनल हो गया । वह जिस हालत में रहा है उसकी वजह से वह एक तरफ चलता है और वह उस जुर्म के लिए जिम्मेवार नहीं कहा जा सकता । इसलिए सोसाइटी जो कि उसकी जिम्-

[पंडित ठाकुर दास भार्गव]

के लिए सजा देना चाहती है वही उसको सुधारने के लिए भी जिम्मेदार है । लेकिन हमको हालात को देखकर ही कोई कदम उठाना चाहिए । मेरा कोई साल डेढ़ साल के अर्से तक जेल के मामले से ताल्लुक रहा । मैं ईस्ट पंजाब जेल कमेटी का चेयरमैन था । इस हैसियत से मैंने बहुत से पंजाब के जेलों को जाकर देखा, इत्तिफाक से मै पार्लियामेंट के डेलोगेशन के साथ विलायत गया तो मैंने वहां के जेल इस खयाल से देखे कि हम अपने यहां क्या रिफार्म कर सकते हैं । मैं ने वहां बहुत से बोर्स्टल जेल भी देखे । मुझे ऐसा मालूम होता है कि हमारी सरकार ने इस मामले में जरूरत से ज्यादा उजलत की है । उसके पास जो सेंटीमेंट का मजमूआ है उसने उसको मजबूर किया कि चाहे आप अनरियलिस्टिक हो जायें पर जो आप देश के भले के लिए ठीक समझते हैं उसे करें । लेकिन अगर आप अनरियलिस्टिक होंगे तो जो आप चाहते हैं वह नतीजा नहीं निकलेगा क्योंकि जो दवा एक खास मरीज के लिए है वह आप हर मरीज को देना चाहते है । आज देश के अन्दर वह हालात नही है जो कि विलायत में हैं ।

जब मै विलायत गया तो मैंने वहां के बोर्स्टल जेल देखे । मैंने देखा कि एक जेल के सुपरिन्टेन्डेंट ने किस तरह मेरे सामने कैदियों की दरख्वास्तो का फैसला किया । उसने एक घंटे में ३० या ४० दरख्वास्तों को ओरल फैसला कर दिया और वही मामले ते कर दिये । लेकिन उनकी दरख्वास्तें ऐसी नहीं थी जैसी कि हमारे यहां होती हैं जिनमें बहुत सारे झगड़े रहते है, जैसे कि किसी को नमक नही मिला, किसी को कपड़ा नहीं मिला वगैरह । वहां तो मुजरिम इस तरह की दरख्वास्तें करते हैं कि हमको फलां इंस्टीट्यट में भेज दिया जाये, हमको फलां मशीन में काम करने के लिए भेज दिया जाये ? मैं देख कर हरान रह गया कि हमारे मुल्क में और उस मुल्क में कितना फर्क है । मैंने वहां लड़कों को बोर्स्टल जेलों में खेल के मैदानों में देखा । जब उनको खेलने के लिए छोड़ा गया तो मैंने उनको इतना खुश देखा कि मैंने अपनी उम्र में इतना खुश छोड़े जाने वाले जानवरों तक को नहीं देखा । वे लड़के इस तरह से छलांगें मारते हुए खेलने के लिए आ रहे थे कि मैं देख कर हैरान हो गया । मैंने सोचा कि एक आजाद मुल्क में वे लड़के जिनको जरायम में कैदी करार दिया गया है वे भी कितने खुश है । लेकिन वहां के हालात मुख्तलिफ हैं, यहां के हालात मुख्तलिफ हैं । यहां पर वैसे बोर्स्टल जेल कहां हैं ? जो किताब आनरेबल मिनिस्टर ने मुझे पढ़ने को दी थी उसे मैंने देखा और मै खुश हुआ कि हमारी गवर्नमेंट इस तरफ भी तवज्जह दे रही है । लेकिन जो १४ बरस तक की उम्र के लड़के रिफारमेटरी में जाते है और १६ से २१ तक बोर्स्टल जेलों मे जाते है उनके लिए कोई खास अच्छा इन्तिजाम हमारे देश में नही है । आप डाक्टर तो मुकर्रर करते है लेकिन उस डाक्टर के पास औजार नही हैं, दवायें नही है । अभी आपके पास वे इंस्टीट्यूशन नही है जहां कैदियो को ठीक तरह रखा जा सके । अभी आपके पास उनके काम सीखने के लिए वर्कशाप कहां हैं । अगर आप इन कैदियों को किसी प्रोबेशन आफिसर के सुपुर्द कर देंगे तो अगर लडकी हुई तो स्कैंडल होगा और अगर मर्द हुआ तो वह उस आफिसर का गुलाम हो जाये और हर तरह का करप्शन होगा । और जो आप पुलिस के करप्शन के बारे में सुनते है वह उसके आगे कुछ नहीं होगा । उस आफिसर के हाथ में उसकी आजादी होगी और वह उसके साथ चाहे जो कर सकेगा । इससे करप्शन बहुत बढ़ेगा और जुर्म भी बढ़ेंगे । इसका इलाज तो तभी हो सकता है जबकि इन कैदियों को ऐसे इंस्टीट्यशन्स में ले जाया जाये जहां जाना उनके लिए मुफीद हो । लेकिन अगर वगैर इस इन्तिजाम के आप इन लोगों

को किसी आफिसर के सुपुर्द कर देंगे तो यह सिस्टम इतना खराब हो जायेगा और आपको इतनी परेशानी हो जायेगी कि जिसका ठिकाना नहीं । इसलिए मेरी अदब से गुजारिश है कि हलके हलके चला जाये । मैं चाहता हूं कि एडमोनीशन के अन्दर फर्स्ट आफेंस की बात नहीं होनी चाहिए । आपने इसके अन्दर बहुत से जुर्म रख दिये हैं । जब यह बिल ज्वायंट कमेटी के सामने जायेगा तो वह यह तै करेगी कि किस किस्म के मुकदमात में एडमोनीशन दिया जा सकता है । दो बरस से कम की सजा के तो बहुत से जरायम हैं । मैंने इंडियन पीनल कोड की ५११ दफायें देखीं, उनमें से १५० ऐसे जुर्म है जिनमें दो साल से कम सजायें होती हैं । उन सब में आप एडमोनीशन करना चाहते हैं ।

इस सिलसिले में एक और बात, जो कि सबसे जरूरी है, मैं बाद में शायद भूल जाऊं, इसलिए अभी कह देना चाहता हूं । पहले दफ़ा ३७९, ३८०, ३८१, ४०३ और ४२० के मातहत आने वाले पाच जरायम के लिए और उन केसिज़ में, जहां दो बरस से कम की सजा हो, दफ़ा ५६२ के मातहत एडमोनीशन हो सकती थी । लेकिन अब आप ने क्या किया है ? आपने उस मे दफा ३८१ को तो शामिल किया है, दो बरस वाली शर्त भी शामिल की है और उन के साथ ही यह लिख दिया है कि एनी अदर ला । यह लफ़्ज़ दफ़ा ५६२ में नही थे । इसका मतलब यह है कि किसी भी ला में चाहे जो कुछ लिखा हो, उस पर इस ला को प्रिसिपडेंस होगी, जो कि हम पास करने जा रहे हैं । इस सिलसिले में बाकी जितने भी स्पेशल लाज़ है, जो भी कानून हैं, वे सब ओरो हैं । दुनिया के और लाज़ कुछ ही हों, लेकिन इस के मुताबिक उन सब जुर्मों में प्राबेशन हो सकती है, जिन में डैथ या इम्प्रिज़नमेंट न हो । इस बिल के स्कोप को इतना लम्बा चौड़ा न करना मोस्ट इन्जुडिशियस है । कल नेवी बिल आ रहा है । एयर बिल आ रहा है । उस में म्यूटिनी, अफ़सरों पर हमला करना वगैरह जो जरायम हैं, वे सब इस में आ जायेंगे । उन बिलों के वे प्राविज़न म्युटेटरी हो जायेंगे । क्या आप चाहते हैं कि रेप और राबरी के केसिज़ में प्राबेशन हो जाय ? क्या आप चाहते है कि जिन को गिल्टी पाया जाय, वह फ़ौरन छूट जाये ? मैंने इस सिलसिले में एक फेहरिस्त बनाई है, लेकिन अब मैं उस को पेश करना ग़ैर जरूरी समझता हूं, क्योंकि यह मामला सिलेक्ट कमेटी में जा रहा है । उस में ऐसे ऐसे जरायम है, जिन में कोई भी सेंन आदमी एडमोनीशन नहीं देगा । लेकिन हम जानते हैं कि कोर्टस् सेंन भी होती हैं और इनसेंन भी । भरूचा साहब ने इस तरफ़ ज़रा जब तवज्जह दिलाई, तो कई लोग हंसने लगे और श्री साधन गुप्त तो नाराज़ भी हो गए । उन्होंने कहा कि कई कोर्टस जब देखती है कि केस लम्बा हो जायगा, लम्बे लम्बे बयान दर्ज करने होंगे, तो वे कम्प्रोमाइज करने के लिए कहती हैं । हम भी पहले कोर्टस मे फ़ैसले करवाया करते थे । मैजिस्ट्रेट से कहा जाता था कि थोड़ी सज़ा दे दीजिए, हम कनफ़ेस कर लेते हैं । जो लोग प्रैक्टिस करते हैं, वे जानते हैं कि कनफेशन कैसे लिए जाते हैं । इस में कोर्टस का कोई सवाल नहीं है तो ह्यूमैन नेचर है । अगर संगीन जुर्मों में भी सज़ा नहीं मिलेगी, तो लोग उनका पूरा बदला लेंगे । और जो बदला लेकर जुर्म करेंगे, वे भी इस एडमोनीशन का फ़ायदा उठायेंगे । इस तरह जरायम बढ़ेंगे, घटेंगे नही ।

मैं ने इस तरह का केस देखा है । एक पंद्रह बरस का लड़का, जो देखने में निहायत खूबसूरत था, सेशन कोर्ट में पेश हुआ । एक शख्स ने उस की बहिन के साथ ज़िना किया था । उस लड़के ने उस को कत्ल कर दिया । सेशन कोर्ट के सामने उस लड़के ने इकबाल किया । सेशन जज ने कहा कि क्या करें, या काला पानी है, या फासी है, मैं और कुछ नहीं कर सकता हूं । उस ने यही किया और लोकल गवर्नमेंट को इसलाह के लिये लिख दिया कि उस की सज़ा कम कर दी जाय । सज़ा कम कर दी गई ऐसे केसिज़ बहुत मिलेंगे ।

[पंडित ठाकुर दास भार्गव]

श्री साधन गुप्त ने जो मिसाल दी, उस पर मुझे बड़ी हैरानी हुई । उन्होंने बताया कि रूस में अठारह बरस की एक लड़की ने आउट आफ जेलसी अपने खाविन्द को मार दिया । वह कहते है कि उस मे प्रोबेशन या एडमोनिशन काफ़ी था । मै पूछना चाहता हूं कि वह ऐसे केसिज में प्रोबेशन से फ़ायदा उठाना चाहते हैं । मैं यह गुजारिश करना चाहता हूं कि जिस किस्म के केसिज का उन्होंने ज़िक्र किया है, उन के लिए दफ़ा ४०१ है । हमारी गवर्नमेंट और प्रैज़िडेंट को डिवाइन राइट है कि अगर कोई बेगुनाह आदमी सजा पा जाए, तो उस को सैट राइट किया जा सकता है ।

एक मौके पर हमारे प्रेज़िडेंट ने मेरे रिप्रेज़ेन्टेशन पर एक आदमी को, जिस को फांसी का हुक्म हुआ था, छोड दिया, कतई बरी कर दिया । तहकीकात करने पर मालूम हुआ कि उस के सगे भाई ने कत्ल किया था । बारह गांवों की पंचायत कराई गई, जिस ने फ़ैसला किया कि वह बेगुनाह था ।

मुझे एक और केस का भी जरूर ज़िक्र करना चाहिए । आनरेबल मिनिस्टर साहब सामने बैठे हैं इन की मेहरबानी से एक शख्स की फांसी की सज़ा कम कर के काला पानी कर दिया गया । उस ने फ़िलवाकया कत्ल नही किया था । मै कातिल को जानता था । मेरे रिप्रेज़ेन्टेशन पर उस को काला पानी कर दिया गया । मै ने माना कि और सर्कमस्टांसिज़ की वजह से वह उस का मुस्तहक भी था ।

मै यह अर्ज़ करना चाहता हूं कि दफ़ा ४०१ इस वजह से बनाई गई है कि यह एग्ज़ेक्यूटिव का डिवाइन राइट है कि वह सही तरीके से इन्साफ़ करे, जहां कोर्ट फ़ेल हो जाय । जिन केसिज़ का उन्होंने ज़िक्र किया है, वे उस के नीचे आयेंगे । लेकिन रीयली गिल्टी को—हमारा प्रेमिसिस यह है कि रीयली गिल्टी है—संगीन जुर्मों में, जैसे दफ़ा ३५४, ३७६ वगैरह हैं, इस में इन्क्लूड करेंगे, तो सारे देश में कोहराम मच जायगा । यह मोस्ट रेवोल्यूशनरी बिल है । इसे आप को नही पास करना चाहिए, जब तक कि आप जेनेरल पापुलेस से राय न ले लें । मैं खुश हूंगा कि इस मौके पर शिड्यूल्ज़ रख दिये जायेंगे कि उन जरायम में, सज़ा ख्वाह दो बरस हो, ख्वाह ज्यादा हो, न एडमानिशन होना चाहिए और न प्रोबेशन होना चाहिए ।

इस के अलावा आप ने एक नई तरह का रूल पास किया है, जो कि सिवाय यू० पी० के सारे कंट्री में नही था और यू० पी० में डाइलइयूटिड फ़ार्म मे था । उसूलन वह दुरुस्त हो या गलत हो, लेकिन मै तवज्जह दिलाना चाहता हू कि संगीन जुर्म कौन करता है । अठारह से इक्कीस साल तक, या ज्यादातर पच्चीस साल तक के लोग जुर्म करते हैं । इस उम्र मे लोगों में बहुत पेशन होता है, लहू गर्म होता है । इसी उम्र में फ़ोर्म के सैक्सुअल क्राइम्ज़ ज्यादा होते हैं । आप ने इक्कीस बरस से नीचे के लोगों को चार्टर दे दिया है कि पहला जुर्म हो, तो वह इस का फ़ायदा उठा सकते है । जब तक कोर्ट के ऊपर बर्डन है—कोर्ट कहां से एविडेंस लायगी—जब तक कोर्ट सर्टिफ़ाई न करे कि नाट डिज़ायरेबल टु प्रोसीड अंडर बिल, उस वक्त तक कोर्ट मजबूर है, उस का इन्टलेक्ट बंधा हुआ है और वह तीन बार दफ़ा का फ़ायदा जरूर देवे । इससे ज्यादा गलत लैजिस्लेशन और कोई नहीं होगा । अगर आप कंट्री की पीस और सिक्योरिटी को एनडेंजर करना चाहते हैं, तो इससे बर्स कानून आप नहीं बना सकते । बारह, पंद्रह परसेंट ऐसे आदमी हैं, जो इस उम्र मे ऐसे क्राइम करते हैं । इस का नतीजा क्या होगा ? अगर वह छूट जायगा, तो वह जिस मुहल्ले, जिस शहर में रहेगा, वहां के सारे लोग फ़ाइट में रहेंगे । अब

प्राबेट आफ़िसर उस को कहीं जंगल में अकेला उसको मिल जावेगा, तो वह दो मिनट में उसे भी ठीक कर देगा ।

Shri Datar: Say "probation officers", not probate officers.

Pandit Thakur Das Bhargava: I am sorry. In fact, it would have been better if we use the words "probate officers" instead of probation officers. Probate officers are ineffectual. They do certain things in respect of wills. These probation officers will be much more effectual and dangerous. मैं इस मेरी गलती की तरफ तवज्जह दिलाने के लिए आपका मशकूर हूं ।

मैं निहायत अदब से अर्ज करना चाहता हूं कि इस का नतीजा यह होगा कि हर एक नौजवान आदमी यह समझेगा कि पहली दफ़ा जुर्म करने पर कोर्ट कुछ नहीं कर सकती है । क्या आनरेबल मिनिस्टर साहब को मालूम है कि ऐसे इलाके उन की जूरिसडिक्शन में हैं, जहां पर आफ़ेन्डर्ज एब्सकांडर्ज हो जाते हैं । जहां पचास रुपए के वास्ते किसी आदमी की जान ले लेना एक गैर-मामूली चीज़ नहीं है । मैं अर्ज करना चाहता हूं कि सन् १९५२-५४ में हिन्दुस्तान में जरायम कम हुए । हम खुश थे कि हमारी गवर्नमेंट के वक्त यह भला काम हुआ । लेकिन १९५५-५६ में जरायम की तादाद पहले से ज्यादा बढ़ गई है । जब कालिज के लड़कों को यह पता लगेगा कि अगर उस्ताद को पीटें या प्रिंसिपल को दो थप्पड़ मारेंगे, तो पहली दफ़ा छूट जायेंगे । तब देखिएगा कि क्या हालत होती है और डिसिप्लिन का क्या हाल रहता है । हम अखबारों में पढ़ते हैं कि पाकिस्तान में नौजवान लड़कियां बाजारों में नहीं चल सकती हैं । वही हालत यहां भी पैदा हो जायगी । हर एक नौजवान यह सोचेगा कि पहली दफ़ा तो कुछ नहीं होगा, देखेंगे कि अगली दफ़ा क्या होता है । ऐसे हालत में इस तरह का कोर्ट ढांचा देना अक्लमन्दी की बात नहीं है ।

मेरे सामने यह १९३६ का यू० पी० ला है । जब यह पास किया गया, तो वे भी किसी कद्र तेजी से चले । मैं और किसी ला को नहीं जानता । दुनिया के लाज़ का मुझे पता नहीं है, जो कि इससे आगे बढ़े हों । अगर इस किस्म की चीज आप रखते, तो शायद इस के मुकाबले में हाउस में आप को ज्यादा स्पोर्ट मिलती ।

I am quoting from section 4 of the U.P. Act:

> "Provided also that if a person under 21 years of age, is convicted of any offence under the Indian Penal Code or any of the enactments prescribed in this behalf, under rules made by the provincial Government, which is punishable with imprisonment not exceeding six months, the court shall take action under this section unless for special reasons to be recorded in writing it is not considered proper so to do."

मैं अर्ज करूंगा कि यह प्राविजन जो मैं ने कोट किया मुझे मुनासिब जंचता है और इसको बर्त करके देखा जाय । चन्द जरायम ऐसे हैं जिनके कि बारे में मैं यह जरूर अर्ज करूंगा कि उन जरायम के अन्दर हरगिज हरगिज यह प्रोबेशन नहीं होना चाहिए और न यह ऐडमोनीशन होना चाहिए ।

इस बिल में एक नई चीज मिनिस्ट्री ने की है । "ऐनी अदर ला", स्पेशल लाज आप लाते हैं, उनको आर्डिनेरी लाज में नहीं लेते । जब आप देखते है कि जहा पर कुनैन थी वहां पर चाक है और आटे के अन्दर खराबी और घी और दूसरी खाद्य चीजों में मिलावट है तो उसको डील करने के लिए आप स्पेशल फुड ऐक्ट बनाते हैं और यह ठीक बात है भी । आप ला के अन्दर यह प्राविजन रख देते हैं कि दूसरी दफ़ा जुर्म होगा तो दो वर्ष से कम सजा नही होगी, पहली दफ़ा इतने से कम नहीं होगी । आप अलग से नैवी बिल और आर्मी

[पंडित ठाकुर दास भार्गव]

बिल लाते हैं क्योंकि जाहिर है कि वहां की कंडिशंस डिफेंट हैं और हलकी सजा का किसी पर असर नहीं होगा । आप अनटचेबिलिटी आदि इविल्स के खिलाफ़ स्पेशल क़ानून बनाते हैं । आप इस बिल में जो यह कहते हैं कि चाहे दूसरा कोई भी क़ानून हो और कुछ भी लिखा क्यों न हो, वह सब इस बिल के मातहत होगा । अगर सब इस बिल के मातहत होंगे तो जितने आपके ऐयरमेन सोल्जर्स और नैवी के जवान लोग हैं और २१ वर्ष की उम्र के नीचे हैं वे सब के सब झगड़ा और गड़बड़ करेंगे और आप देखेंगे कि आप ऐसा इसमें प्रोवाइड करके उन स्पेशल लाज पर पानी फेर देंगे । मैं यह सब देखने पर इस नतीजे पर पहुंचा हूं कि यू० पी० का वाइज डिसिशन है और उस लेजिस्लेशन को हमें बर्त करके देखना चाहिए ।

इस बिल की दफ़ा ७ जब मैं ने पढ़ी तो उसी वक्त मैंने यह फ़ैसला कर लिया था कि मैं उसकी बाबत ज़रूर बोलूगा । दफ़ा ७ को आप बिलकुल कर्टेल कर दीजिये । पहले शैडयूल बनाइये और फिर यह रखिये कि खास खास जरायम में और स्पेशल लाज में यह मौजूदा लेजिस्लेशन उसी हद तक आपरेटिव होगा जहां तक कि देश के अन्दर गड़बड़ी और खराबी न फैलने पाये । अगर ऐसा न किया गया तो काफ़ी गड़बड़ी फैलने का इमकान है और ठीक से हम इंतज़ाम क़ायम नही रख सकेंगे ।

मैं जानता हूं कि आजकल जेलों की कैसी बुरी हालत है । जिस गरज से हम ने जेलें बनाई थी और जो जेल रिफ़ार्म्स किये थे और जेलों का इंतज़ाम ठीक से चले और वे सही मानों में रिफ़ार्म हाउसेज साबित हों उसके लिए बीसियों कान्फ्रेंसेज भी की लेकिन मुझे अफ़सोस के साथ यह कहना पड़ता है कि हमारी मशा पूरी नहीं हो पायी है और आज भी जेलों के अन्दर बहुत कमियां हैं और उनमें काफ़ी हद तक सुधार किये जाने की जरूरत है । जेलों के अन्दर आज भी इतनी खराबियां मौजूद हैं कि लोग अक्सर यह कहते सुने जाते हैं कि अगर एक नया लड़का जेल में पहली दफ़ा जाय तो वह वहां से एक खराब शहरी बन कर निकलता है और वह क्रिमिनल बन जाता है । अब जेल जिसको कि यह कहा जाता है कि "इट इज ए टेम्पुल आफ़ करैक्शन" और जेलों को करैक्शन हाउसेज का नाम दिया जाता है लेकिन प्रैक्टिस में हम दूसरी बात देख रहे हैं और मालूम ऐसा होता है कि शायद गवर्नमेंट की भी यह फीलिंग है कि जेलें उनके हाथ से निकलती जाती हैं । फ़ीरोज़पुर जेल का वाक़या अनप्रीसीडेंटेड है । और जो कुछ वहां पर हुआ वह अभी तक पहले कभी सुनने में नहीं आया था । वहां पर बन्द कैदियों को इस क़दर मारा पीटा गया और घायल किया गया जिसकी कि मिसाल मिलना मुश्किल है और यहां पहले सेंट्रल गवर्नमेंट के एक मिनिस्टर ने जो एक आला मियार क़ायम किया था कि मद्रास में रेल का पुल टूट जाने पर उन्होंने इस्तीफ़ा दे दिया था उसकी जगह पर हमने देखा कि हमारी गवर्नमेंट ने सिर्फ यह कह कर खत्म कर दिया हां फ़ीरोज़पुर की जेल में जो कुछ हुआ उसमें जेल अधिकारियों का कुसूर है । जेलो में जो जराय होते हैं वे इसी वजह से होते हैं कि तमाम आबोहवा खराब है वरना यह जरायम मुमकिन नही है और मेरी राय में उन जरायम के लिए गवर्नमेंट की उतनी ही ज़िम्मेदारी है जितनी कि और किसी की । गवर्नमेंट इसको नहीं मानती और इससे इंकार करना ग़लती करना है ।

सन् १९२९ में हिसाब फैला कर देखा गया था कि क़रीब २० करोड़ रुपया जेलों पर खर्च किया जाता था । हमारे पंजाब में जहां कि लोग इतने मेहनती और किफ़ायतशार हैं और जहां के लोग दौलत पैदा करना भी जानते ह, वहां पर ४०लाख रुपया हम अपनी जेलों पर खर्च करते हैं । हालांकि एक

क़ैदी पर ७००, ७०० रुपये तक खर्च होते हैं लेकिन तब भी जेलों का इंतज़ाम ठीक नहीं है और जो हालत जेलों के अन्दर होनी चाहिए वो वह देखने को नहीं मिलती है। जेलों की अभी तक सही मानों में करैक्शन हाउसेज में तबदील नहीं किया जा सका है और उस काम में हमें अभी पूरी कामयाबी नहीं मिली है। अब चंकि उस तरह से हमें कामयाबी नहीं मिल पायी है इसलिए वह सिस्टम तो हम छोड़ दें और इस प्रोबेशन के नये सिस्टम को हम बरतें, मेरे खयाल में ऐसा करना हमारी ग़लती होगी। या तो आप कहिये कि हमारी सब जेलें फेल हो गई हैं और इस प्रोबेशन के सिस्टम को हम ट्राई करना चाहते हैं वरना सही चीज यह होगी कि जो सिस्टम हमने अपनाया है और जिसने डिविडेंड्स दिये हैं उसको हमें छोड़ना नहीं चाहिये।

कल यहां पर हमारे एक भाई ने ज़िक्र किया था कि उत्तर प्रदेश में कनविक्ट्स और एक्स कनविक्ट्स की जो कान्फ्रेंस हुई थी उसमें उन्होंने पहली चीज यह रखी थी कि जेल का क्लासिफ़िकेशन ठीक रखा जाय। जेल रिफ़ार्म्स कमेटी के अन्दर भी सही क्लासिफ़िकेशन की मांग की गई और वहां पर भी इस बात की शिकायत की गई कि क़ैदियों को कैटिल्स के मुआफ़िक़ रखा जाता है। हर एक जेल कमेटी की रिपोर्ट में यह बात दर्ज रहती है कि माकूल इंतज़ाम नहीं हो रहा है। आज ही एक साहब ने बतलाया कि जेलों के आपके इंतज़ाम की हालत यह है कि सरदी के मौसम में आप जेलों में सब कैदियों को कम्बल नहीं दे सकते। आज पंजाब के अन्दर हिन्दी मूवमेंट जो चल रहा है उसमें क़रीब ६, ७ हज़ार आदमी क़ैद हैं और आप अन्दाज़ा लगा सकते हैं कि जेलों के अन्दर बदइंतज़ामी देखते हुए उनकी कैसी हालत होगी। मैं अदब से पूछना चाहता हूं कि जेलों की बाबत जो रिपोर्ट सन् १९४९ में शाया की गई थी और उसके अन्दर जो बात लिखी थीं उनके ऊपर कहां तक अमल किया गया है? मुझे पता नहीं कि कब तक आप जेलों की हालत को सुधार सकेंगे।

हमने एक सिफ़ारिश यह की थी कि किसी शख्स को एक महीने की सज़ा न दी जाय क्यों कि हमने जेलों में जाकर देखा कि सात, सात दिन की सज़ा लोगों को दी हुई है। उनके खाने पर १०, २० रुपया खर्च होगा और सात दिन की सज़ा देकर वहां पर लोगों को भेज कर एक तमाशा बनाया हुआ है। मैं समझता हूं कि किसी को जेल की सज़ा कम से कम तीन महीने की देनी चाहिए, तीन महीने से कम की जेल की सज़ा नहीं देनी चाहिए। आपको यह देखना चाहिए कि आप उसको ऐसी सज़ा न दें जो आपके मक़सद को डिफ़ीट कर दे। आज हज़ारों आदमी इसी तरह जेलों में पड़े हुए हैं और लाखों रुपया बेकार में खर्च हो रहा है और कोई उसकी पर्वाह नहीं करता। गवर्नमेंट की तवज्जह इस तरफ़ होनी चाहिए और इस चीज को देखना चाहिए कि जेल वाक़ई सुधार गृह साबित हों। आज जुवैनाइल औफेंडर्स की हालत हम देखते हैं कि कैसी खराब है। ऐसे नन्हे नन्हे बच्चे जिनके कि पास गुज़ारे का कोई साधन नहीं, न ही उन के मां बाप कुछ छोड़ गये, इनहैरिटेंस के अन्दर उनको कुछ नहीं मिला, उनके लिये रिफ़ार्मेटरी होम्स् नहीं हैं और लाखों बच्चे इधर उधर मारे मारे फिरते हैं।

यह सात से बारह वर्ष के बच्चों का जो ज़िक्र आया है तो मैं बतलाना चाहता हूं कि १२ वर्ष का बच्चा सफिशिएंटली इंटेलिजेंट है और वह जान सकता है कि जुर्म की नौअय्यत क्या है और १२ वर्ष का बच्चा कानून की रू से ज़िम्मेदार है। मैं आपको बतलाना चाहता हूं कि एक दफा मैं बदकिस्मती से एक बिल इस सदन में लाया था कि ऐसे बच्चे जो छोटी उम्र के हैं उनकी मैरिजेबुल ऐज लड़कियों के केस में १४ से १५ और लड़कों की १८ से बढ़ा कर २० वर्ष कर देनी

[पंडित ठाकुर दास भार्गव]

चाहिये तो उस मौके पर एक गवर्नमेंट आफ इंडिया के एक रिसपौंसिबिल मिनिस्टर ने मुझे कहा था कि आप कहते क्या हैं । १७ वर्ष के लड़के को तो हम नेवी में रेक्रूट करते हैं और १८ वर्ष का बच्चा अपनी जायदाद को बेच सकता है और उस उम्र का अपनी शादी कर सकता है । मेरा कहना है कि ऐसे बच्चे जो फुल्ली डीवेलप्ड हैं और डेलिबरेशंस में सीरियस क्राइम्स करते हैं, उनके साथ ऐसी सीरियस क्राइम्स में इस तरीके की रिआयत करना और सोसाइटी पर छोड़ना कहां की अकलमंदी होगी । मैं अदब से अर्ज करूंगा कि सोसाइटी इसको कभी बर्दाश्त नहीं करेगी । ऐसा करने से ऐसे खराब नतायज पैदा होंगे जिनका कि आज हमको शुबहा और गुमान नहीं है । मुझे इसमें एक नया उसूल लगता है और वह यह है कि किसी शख्स को अगर छोड़ा जाये, उन हालात में जिन हालात का कि इसमें जिक्र है, तब उसके बाद उसके ऊपर एक सुपरवाइजर हो जिसे कि मैं गलती से प्रोबेट कहता रहा हूं । वह क्या करता है । जहां तक उम्र का ताल्लुक है, उसके बारे में तीन चीज कही गई हैं । पहले तो २४ बरस के नीचे का हवाला दिया गया है । उसके बारे में कहा गया है कि अगर आप चाहें तो उसको मेंटली मैच्योर समझें और उस पर सुपरवाइजर कायम कर दें । इसके आगे जब २५ बरस का हो तब उसके बारे में दूसरी तरह प्रोवाइड किया गया है । कम से कम १८ बरस में वह बालिग होता है फिर उसके बाद २१ में होता है । अगर आप गार्डियन ही मुकर्रर करना चाहते हैं तो यहां पर २५ साल की उम्र रख दें, उसके आगे नहीं । लेकिन इस बिल के अन्दर उम्र का कोई लिहाज नहीं रखा गया है । अगर कोई ६० बरस का भी हो तब भी वह सुपरविजन में रहेगा । यह ह्यूमन नेचर के खिलाफ है । सुपरविजन का आर्डर आज के हालात में अच्छा नहीं होगा । लेकिन अगर आप तजुर्बा ही करना चाहते हैं तो आप २४ बरस से आगे न बढ़ें और दो बरस की लिमिट रखें । बड़ी उम्र या ज्यादा देर के लिये सुपरविजन की बात को जो आपने रखा है, वह तो उसको स्लेव बनाने के बराबर है ।

मैं ने चन्द एक बातें अर्ज की हैं । मैं समझता हूं कि मैं ने कुछ ज्यादा वक्त ले लिया है और जो आपने मुझे यह ज्यादा वक्त दिया है, उसके लिये मैं आपका धन्यवाद करता हूं । मैं मिनिस्टर साहब से अर्ज करूंगा कि वह मेहरबानी करके इसको अगले सैशन तक के लिये मुलतवी कर दें और इन तीन महीनों के दौरान में वह हाई कोर्ट के जजों, सुप्रीम कोर्ट के जजों, बार एसोसिएशंस तथा दूसरे अच्छे अच्छे आदमियों की ओपिनियन इनवाइट करें । इस बिल को पास करने में हमें जल्दबाजी से काम नहीं लेना चाहिये । इससे बाद में झगड़े पैदा होंगे और दिक्कत पेश आयेगी । जब आपके पास ओपिनियंस आ जायें तो उसके बाद आप इस बिल को सिलैक्ट कमेटी के पास भेज दें । सिलैक्ट कमेटी में जिन लोगों की गवाहियां लेनी जरूरी समझी जायें उन की गवाहियां ली जा सकती हैं और सिलैक्ट कमेटी को आप इस बिल पर पूरी तरह से गौर करने का मौका दें । हम इस बिल के जरिये से रेवोल्यूशनरी चेंज लाने जा रहे हैं और जब तक हम उस रैवोल्यूशनरी चेंज के बारे में पूरी तरह से बाखबर न हों, तब तक हमें इसको पास नहीं करना चाहिये । हमें देर की परवाह नहीं करनी चाहिये बल्कि यह देखना चाहिये बाद में गड़बड़ पैदा न हो । दो तीन महीने बाद अगर हमने इस बिल को पास किया तो इससे कोई फर्क पड़ने वाला नहीं है । इससे हमारे एसेंशियल इंटिरेस्ट को कोई धक्का नहीं लगेगा ।

मुझे कुछ और अर्ज करना नहीं है ।

श्री ब्रजराज सिंह : उपाध्यक्ष महोदय, मैंने पंडित ठाकुर दास भार्गव का भाषण बड़े गौर के साथ सुना है और मैं समझता हूं कि उनकी जो आशंकायें है वे बिल्कुल निराधार हैं । मैं तो समझता हूं कि इस बिल के पीछे जो उद्देश्य है वह निहायत ही उम्दा हैं और उसकी सराहना की जानी चाहिए । मैं समझता हूं कि हमारे माननीय मित्र भार्गव जी ने जो कुछ कहा है उसको बहुत बढ़ा चढ़ा कर कहा है । इस विषय में जो कुछ प्रयत्न भी सरकार ने १९३८ से अब तक किए हैं उनमें जिन आशंकाओं की तरफ माननीय भार्गव जी ने इस सदन का ध्यान दिलाया है वे आशंकायें, मेरे विचार में कतई सच्ची साबित नही हुई हैं । यह कहना कि आज डकैतिया पड़ रहीं है, बच्चे उठाये जा रहे हैं, इस समय मध्य प्रदेश में यह हो रहा है, वहां पर बच्चों को उठा कर ले जाया जा रहा है, राजस्थान में उठा कर ले जाया जा रहा है, मैं समझता हूं उससे इस बिल का कोई सम्बन्ध नही है । हमारे समाज में कुछ विषमतायें है, कुछ नाबराबरी है, कुछ इस तरह का हमारी समाज का ढाचा है, कि इन जुर्मों की तरफ लोगो का ध्यान जाता है । मैं समझता हूं कि ऐसे जुर्मों में जिन में मृत्युदंड होने वाला नही है या आजीवन कारावास होन वाला नही है, अपराधियों को प्रोबेशन पर छोड देने से समाज की कोई हानि नही होने वाली है ।

उत्तर प्रदेश में हमने देखा है कि अपराधियों को प्रोबेशन पर छोडने का प्रयोग किया गया है और सफलता भी वहा पर प्राप्त हुई है । वहा पर खुली जेलें भी बनाई गई हैं । यह सरकार की रिपोर्ट है कि इन खुली जेलों में ३७ अपराधियों को छोड़ कर और कोई आदमी वहा से नही भागे और इन ३७ में से भी ज्यादातर बाद में पकड़ लिए गए हैं । इसके विपरीत हमारी जेलों की क्या हालत है इस ओर मैं माननीय मंत्री जी का ध्यान दिलाना चाहता हूं । मैं चाहता हूं कि लोगों को अनिश्चित काल तक के लिए जेलों में बन्द न रखा जाए । पिछले दिनों सोशलिस्ट सत्याग्रह में मैंने देखा है कि आगरा की जेल में ऐसे ऐसे कैदियों को आज भी बन्द रखा हुआ है जो कि सन् १९४२ से पहले कैद किए गए थे । १९४२ के जमाने में इस सरकार के बहुत से मिनिस्टर आगरा में मौजूद थे । उस समय उनको लोग कहते थे कि उन्हें जल्दी ही छोड़ दिया जाएगा । आज उनको कैद में पडे २५ और ३० साल हो गए है । उनकी बात पूछने वाला आज कोई नहीं है । ऐसी सूरत में उनको रिहा करने का तो सवाल ही पैदा नहीं होता है । जेल पर लोगों को रखकर हम उनके साथ कैसा व्यवहार करते हैं .....

पंडित ठाकुर दास भार्गव : इसके बारे में तो यह बिल नहीं है ।

श्री ब्रजराज सिंह : इस बात को मैं मानता हूं लेकिन मैं तो जेलों में जो व्यवस्था है उसके सम्बन्ध में माननीय मन्त्री जी का ध्यान दिलाना चाहता हूं । मैं यह बता रहा था कि २५–२५ और ३०–३० साल से लोग जेल में पड़े हुए हैं और अनेकों प्रकार के संकट झेल रहे है । मैं चाहता हू कि उधर भी हमारा ध्यान जाए ।

जिन चीजों की इस बिल में व्यवस्था है उनसे मैं समझता हूं कि समाज को कोई विशेष नुकसान नही होने वाला है । हो सकता है कि कोई मैजिस्ट्रेट जजमेंट देने में कोई गलती कर जाए, लेकिन उसको दुरुस्त करने का अधिकार भी उसको इस बिल में है । इस बिल की दफा ३ और ४ में कहा गया है कि अगर कोई गलती होती है और प्रोबेशनरी आफिसर को अपराधी का निरीक्षण करने का हक़ देते हैं तो बाद में भी उस अपराधी को सजा दी जा सकती है । अगर किसी को दो साल के लिए या तीन साल के लिए प्रोबेशन पर छोड़ दिया जाता है और उसको सजा नही दी जाती है और इस दौरान में अगर अपराधी का चाल-चलन, उसका चरित्र

[श्री बजराज सिंह]

ठीक नहीं रहता है, उसका आचरण ठीक नहीं रहता है तो इस बिल में यह व्यवस्था है कि मैजिस्ट्रेट उसको पूरी सजा दे सकता है। किसी प्रकार की आशंकाऐं अपने दिल में रखना ठीक नहीं है। आखिर हम इस बिल में क्या करने जा रहे हैं? इस बिल में हम अपराधी को यह मौका देने जा रहे हैं कि अपने आप को वह सुधारे और अच्छा नागरिक बने। जब हम किसी अपराधी को सजा दे देते हैं। तो उसका बाद में क्या नतीजा निकलता है। जैसा भार्गव साहब ने कहा कि जेल में कैजुअल्स और हैबिचुअल आफेंडर्स को अलग अलग रखने की कोई व्यवस्था नहीं है। वहां पर जब एक अपराधी एक बार जाता है तो वह वहा से नई नई बातें सीख कर वापिस लौटता है। किस तरह से जेबें काटी जाती हैं तथा किस तरह से घरों में चोरी की जाती है इत्यादि से सब बातें वह वहा से सीख कर लौटता है। आजकल की जो जेलें हैं उनमें हम अपराधी की मनोवृत्ति को बदलने का प्रयत्न नहीं करते। इसके विपरीत वह और भी अधिक अपराध करने लग जाता है और वह जुर्म करने का आदी बन जाता है। ऐसी सूरत में समाज को ऊंचा उठाने के लिए तथा उसका विकास करने के लिए जिन उद्देश्यों की हम पूर्ति करना चाहते हैं, वह सम्भव नहीं है।

मैं बड़े विनम्र शब्दों में निवेदन करना चाहता हूं कि जिस शक्ल में यह बिल इस सदन के सामने आया है उसको देखते हुए यह नहीं कहा जा सकता कि इसको यदि पास कर दिया गया तो समाज को बहुत हानि होगी। आज के प्रगतिशील जमाने में जब कि हम अपराध करने वाले की मनोवृत्ति को ही खत्म करना चाहते हैं, जब कि हम उस को इस दृष्टिकोण से देखना चाहते हैं कि वह अपराध क्यों करता है, यह मुनासिब बात होगी कि हम उसे प्रोबेशन पर छोड़ कर उसे अपने आपको सुधारने का मौका दें। अगर वह अपने आपको सुधारता नहीं है तो उसे फिर जेल भेजे जाने की व्यवस्था की गई है। आज माननीय मंत्री जी ने कहा कि वह इस कानून को ज्वायंट कमेटी के सुपुर्द करने को राजी है और देश में जो लोग इस विषय में दिलचस्पी रखते हैं, चाहे वे बार एसोसिएशन वाले हों, चाहे हाई कोर्ट के जज हों या दूसरे लोग हों वे अपनी राय जाहिर कर सकते हैं। मैं समझता हूं कि उस कमेटी में इस बिल को इम्प्रूव किया जायगा और इसका वहां पर विकास किया जाएगा और वहां से इससे भी अच्छा होकर यह बिल हमारे सामने आएगा। लेकिन साथ ही साथ में यह भी निवेदन कर देना चाहता हूं कि इस चीज को बहुत अधिक टालना अच्छा नहीं होगा। आज जो समस्याये हमारे सामने उपस्थित हैं उनको हम टाल नहीं सकते हैं। उनका हमें सामना करना ही होगा। लोगों को ऊंचा उठाने का, उनकी मनोवृत्ति को बदलने का प्रयास आज हमें अवश्य करना होगा। आज के वैज्ञानिक युग में, आज के एटमिक युग में किसी अपराधी को दस साल तक जेल में रख कर, उस पर नाना प्रकार के अत्याचार करके हम यह आशा नहीं कर सकते कि हमारा समाज आगे बढ़ेगा। मैं प्रार्थना करता हूं कि इस बिल को अगले सैशन में अवश्य ही पास कर दिया जाए। जो आशकायें भरूचा साहब ने तथा भार्गव साहब ने प्रकट की हैं, उनके बारे में मैं यह कहना चाहता हूं कि हो सकता है कि वे सही निकलें लेकिन हम जो सोचते हैं वह दूसरे ही दृष्टिकोण से सोचते हैं। जल्दी से जल्दी इस बिल को पास किया जाना चाहिए और लोगों को इस बात को देखने का मौका मिलना चाहिए कि हम अपराधी को लम्बी लम्बी सजायें न देकर उसको प्रोबेशन पर छोड़ कर उसे अपने आपको सुधारने का मौका देना चाहते हैं। हमें महात्मा गांधी के इन शब्दों को भी याद रखना चाहिए कि अगर कोई एक गाल पर एक चांटा मारता है तो उसके आगे दूसरी गाल कर दी जानी चाहिये और उसे कहना चाहिये कि वह इस पर भी

चांटा मार दे । हम डकैतियों को बढ़ावा देना नहीं चाहते, हम चोरियों को बढ़ावा देना नहीं चाहते, हम कत्ल ज्यादा हों, इसमें विश्वास नहीं करते । जहां तक कत्ल का ताल्लुक है, उसके लिए दूसरी तरह की सजा है और वह इस बिल के अन्तर्गत नहीं आते । मृत्युदंड इस बिल के अन्दर नहीं आता । इसलिए यह कहना कि इस कानून के कारण डकैतियां और कत्ल बढ जायेंगे, गलत होगा । हमारा उसूल यह है कि हम अपराधी को क्षमादान देकर सुधारना चाहते हैं । इसके साथ ही इस बिल में यह व्यवस्था भी है कि अगर किसी को प्रोबेशन पर छोड़ा गया है और वह फिर भी गलती करता है तो हम उसको जेल भेज सकते हैं । मैं समझता हूं कि यह ऐसा तजर्बा है जो कि इस देश के लिए नया नहीं है । उत्तर प्रदेश में सरकार ने ऐसा प्रयोग करके सफलता प्राप्त की है और लोगों को छोडने से कोई क्राइम के फिगर बढ गये हों ऐसी बात नहीं हुई ।

तो मैं बड़े विनम्र शब्दों में कहूंगा कि यह बिल ज्वायंट कमेटी के सामने जाये और इस पर मुल्क की राय भी मालूम की जाये लेकिन इसको ज्यादा टालने की कोशिश न की जाये । इसी के साथ हमको समाज के ढांचे को बदल कर उन कारणों को भी दूर करना चाहिए जिनके कारण ऐसे काम करने को लोग प्रवृत्त होते हैं । आजकल मध्य प्रदेश में, राजस्थान में और उत्तर प्रदेश में जो डकैतिया बढ रही हैं और जुर्म बढ़ रहे हैं अगर उनके मूल का देखा जाये तो आपको सामाजिक विषमता मिलेगी । अगर गृह मंत्रालय इस सामाजिक विषमता को दूर करने पर भी ध्यान दे तो अपराध बहुत कम हो सकते हैं । इस बिल के पास करने से हिन्दुस्तान को कोई खतरा होने वाला नहीं है जिसकी तरफ कुछ माननीय सदस्यों ने ध्यान खींचने का प्रयत्न किया है ।

इन शब्दों के साथ मैं इस बिल का स्वागत करता हूं और आशा करता हूं कि गृह मंत्रालय इसे जल्दी से जल्दी सदन द्वारा पास कराने का प्रयत्न करेगा ।

Shri Barman (Cooch Behar—Reserved—Sch. Castes): I wholeheartedly support the proposal made by some of the Members that this Bill go to the Select Committee and the Select Committee consider whether the Bill can be improved in any respect.

Mr. Deputy-Speaker: Now that it is expected that that motion might be accepted, I hope the Member would be very brief.

Shri Barman: Yes, I shall be brief. I shall just make a few general observations.

The general principle of this Bill is acceptable to most of the Members, and I also support it. It is a common saying in our parts—I do not know if it is so elsewhere—that when you cut one ear of a man as a sort of punishment for an offence committed by him, he avoids the public view, tries to hide his injured ear and to show the undamaged one, but when both the ears cut, then he walks right through the crowd because afterwards he has no shame to hide.

Mr. Deputy-Speaker: The symmetry is there then.

Shri Barman: So, this principle of not punishing the first offender is a salutary one. We know from our own experiences that the human mind sometimes works in a heavenly way and sometimes in a hellish way, and it is only those who have learnt to control their minds that behave properly in society, but there are slips in the lives of persons if we consider it deeply. But once a man is caught, he is punished. If he is not caught, he may commit several

[Shri Barman]

offences and still escape. If he commits offences but still does not injure society to such an extent as to become a menace to society, there is no harm in making a simple provision of the kind made in the Bill that in the case of first offences of a mild nature, the offender shall be let off. Only in cases of graver offences or when it is not the first offence he may be punished. Even in the latter case, the Bill provides that the Magistrate, considering all the other circumstances, may let him off on probation.

Formerly also this was provided in section 562 of the Criminal Procedure Code, but there was no other provision to take care of the person who is let off on probation, to see how he behaves later on. The term is fixed for which he has to furnish security or bond for good behaviour, and whether the man understands his mistake and reforms himself quickly or not, he has to undergo the period till it ends. Now, provision is made in this Bill that if the officer reports that considering the subsequent mode of life of the person let off on probation it is no longer necessary to stick to the period, he may be exonerated from the surety or bond, and there is thus an incentive to the person concerned to mend his way of life very quickly and not to undergo the full period provided now under section 562 of the Criminal Procedure Code So, that is a good improvement.

There are also several other provisions included in the Bill which go to improve the present section 562 of the Criminal Procedure Code very much. However, I wish to draw the attention of Government to only one point, that is whether we can give wide powers to all magistrates.

Formely, in the case of probation, in the case of the second or third class magistrate, his opinion had to be submitted to a first class magistrate and his decision obtained. Here we give power to all kinds of magistrates only providing for an appeal, but it is not to be expected that in any and every case an appeal will be made. Knowing as I do our magistracy, in the case of the second and third class magistrates at least I think it would be necessary for the High Courts to issue certain general instructions to them for administering the law under clauses 3 and 4. If they had some general direction, the second and third class magistrates will administer the law in a much improved way. I do not find that in the rule-making power any such thing is contemplated. I hope the Select Committee will consider the matter.

As you have observed, since the Bill is going to the Select Committee, I do not wish to make any more observations, and after Pandit Thakur Das Bhargava's speech I wholeheartedly support the principles of the Bill and hope that the Select Committee will make whatever improvements are necessary.

14.00 hrs.

Shri N. R. Munisamy: Since the points that arise in connection with this Bill have already been elaborated by my hon. friend Pandit Thakur Das Bhargava, I would not like to repeat them

So far as the principle of the Bill is concerned, at the outset, I am inclined to state that I am not in favour of it, for this reason, namely that we have got already several Acts on our statute-book, which are very exhaustive in nature, and we can certainly safeguard the interests of the young offenders without perpetuating further offences, with the aid of those Acts. For instance, section 562 of the Code of Criminal Procedure is wide enough to give discretion to the court to release the convicted person on probation. Therefore, I say, that there is no need to have an Act of this kind on our statute-book.

The other reason that I would like to place before you is this. Several States are already having Acts of their own, somewhat on the model of this Bill, and there is, therefore, no need to have a Central Act.

The Minister has not convinced the House of the necessity for this Bill, nor has he enumerated the inconveniences or other experiences which Government had felt while releasing the prisoners on probation. Though the principle of this Bill was in the contemplation of the Government of India for a very long time, yet they were unable to bring forward a consolidated Bill of the nature which has been introduced now. So, I hope that even at this stage, Government can consider the question of not merely not referring this Bill to a Joint Committee, but even of withdrawing it.

Now, coming to the provisions of the Bill, I find that the powers given to the probation officers are unlimited. Even before passing an order, while taking the evidence of the other witnesses, the magistrate has to call for the report from the probation officer, and on the basis of that report, the magistrate can either release the offender or convict him. Such wide powers have been given to the probation officer who has not seen the accused or the young offender. It is too much to expect of him that he should give a report when he has not seen the accused even. He has to take some extra trouble to search for the character-roll, and look into his past conduct, the antecedents of the family to which he belongs, and so on. So, I doubt whether these officers would ever be able to give genuine reports.

Even as it is, these probation officers are not able to discharge their duties very faithfully. So, I suggest that such wide powers need not be given to them.

My next point is this. There are very few offences which young boys commit. Most of the young offenders are destitutes, and they commit only common offences under sections 379 and 380 of the Penal Code, such as committing theft in a house or pilfering something from the pocket of another person, or even indulging in the sale of stolen properties. Sometimes, they are taken as accomplices for the sale of certain stolen properties. There are very few grave offences which these young boys commit.

If these young boys are convicted and released on probation, and then sent again to their homes, what will happen is that they would once again meet with the same environment and the same situation in the house, and they would be prone to get out of the house by making similar mistakes and committing similar offences.

So, I would suggest for the consideration of the Joint Committee that instead of sending them back to their own homes, it is better that they are sent to probation hostels. The probation officer may be the warden of the probation hostel, and he can associate others also, that is, people who had rendered social service, to supervise over these young boys in the hostel. If the hostel is a big one, they can also get into that hostel persons who are released from reformatory schools and other such schools.

Similarly, there are certain persons who work after they are released, but when they go to their respective homes, they are not entertained there. It is better that those people also are clubbed along with the others in the probation hostel. As I said earlier, persons who are released from reformatory schools can also be taken into the probation hostels, where they can still get some shelter and get themselves corrected. Similarly, persons who are released from the Borstal schools, and below 21 years of age can live in these hostels, and they might probably earn also some money. Instead of having separate after-care houses for them, if they are housed in the probation hostels, they can get their aptitudes and propensities towards criminal activities very much curtailed.

So, I would suggest that probation hostels are very essential, somewhat

[Shri N. R. Munisamy]

on the model of what exists in U.K. and other countries. In U.K., for instance, there are working hostels for boys and gilrs separately.

So far as the States in India are concerned, I find that in some of the States, there are some after-care houses, where not only young boys are taken in to be taken care of by the officer in charge, but even ex-convicts and confirmed convicts who are released are sent for after-care. It is quite possible that in such after-care houses, these confirmed convicts may influence these young boys to perpetuate their old offences, or they might give them wrong tuition that they need not obey certain rules. Such a thing is possible, because these prisoners who have been convicted and released are there to influence these boys. I do not think that it is right to have these ex-convicts in these after-care houses along with the young boys.

For instance, in Madras, we know that social service activities are being carried on in this manner at certain places, so as to include not only the young boys but also ex-convicts who have gone to jail more than once. So, it is better that these young boys are sent to separate hostels so that they may not be influenced badly by the ex-convicts.

It is very necessary that these young offenders, who are mostly destitutes, as I said earlier, are sent to probation hostels instead of their own homes, where they may not be satisfied with the environment, and they may, therefore, come out and commit once again the same offences, such as pilfering something from the pockets of others, and thereby go to jail once again. When these boys come out of the house, they are picked up by the other offenders. If they are sent to the probation hostels, then they can get good correctives there.

Lastly, I would like to submit that the powers given to the probation officers may not be so unlimited as they are. The report of the probation officer should be of a recommendatory nature, because before the offender is sent to the probation hostel, the probation officer does not come into the picture at all. But, according to the provision in clause 4, the report of the probation officer has to be taken into account, before the offender is convicted. My submission is that the probation officer comes into the picture only after the young offender is convicted and released on probation, and it is only then that he begins to have his sway over him and exercise supervision over him and correct him. Before that, how can we expect the probation officer to have a complete picture of the young offenders, and further, to give a report on their antecedents, character etc.?

So, my respectful submission is that this particular provision may be suitably amended, so that the magistrates need not call for the report of the probation officer who has no *locus standi* at the initial stage, when it is only a question of shifting of evidence and then convicting the person; it is for the magistrate to judge at that stage, as he ordinarily does in regard to ordinary offences, with the aid of police reports. Since the probation officer has no position at all at that stage, there is no reason why his report should be called for. So, his powers may be curtailed, and the necessary amendment may be made in the Bill.

With these few words, I commend the Bill for the consideration of the House.

श्री सरजू पांडे (रसड़ा): उपाध्यक्ष महोदय, मैं इस विधेयक का अनुमोदन करने के लिये खड़ा हुआ हूं। मैं चाहता था कि यह कानून इसी सदन में पास हो जाता, लेकिन माननीय मंत्री ने इस के सिलेक्ट कमेटी में भेजने के प्रस्ताव को स्वीकार कर लिया है।

उपाध्यक्ष महोदय: स्वीकार करने का इरादा किया है। स्वीकार तो अभी करेंगे।

श्री सरजू पांडे : इस को सिलेक्ट कमेटी में भेज देने से काफ़ी देर हो जायेगी। कांग्रेस आन्दोलन के सिलसिले में जितने लोग जेलों में रहे हैं, वे लोग और काफ़ी बड़ी संख्या में दंड शास्त्री इस बारे में एकमत हैं कि अपराधों की बुनियाद समाज में ही होती है।

अगर कोई आदमी चोरी करता है, गिरहकटी करता है, क़त्ल करता है अथवा अन्य कोई अपराध करता है तो उसके लिये समाज उत्तरदायी है, ऐसी बहुत अधिक लोगों की राय है। इस हाउस में इस बात पर बहुत ज़ोर दिया गया है और बड़ी ज़ोरदार वक़ालत इस बात की की गई है कि चूंकि क़त्ल हो रहे हैं, डाके पड़ रहे हैं और अन्य जुर्म हो रहे हैं इसलिये यह प्राबेशन आफ़ ओफेंडर्स बिल मौजूदा रूप में पास न किया जाये। मैं उन सदस्यों से पूछना चाहता हूं कि यह जो प्रोबेशन ऐक्ट पास होने जा रहा है उससे पहले जो अपराध हो रहे हैं उसके लिये कौन जिम्मेदार है। इग्लैंड, अमरीका आदि यूरोपीय देशों की और खुद भारतवर्ष की मिसालें मौजूद हैं जहां कि आंख के बदले आंख ली गई, दांत के बदले दांत तोड़े गये और चोरी के अपराध के लिये हाथ काटे गये तब भी अपराध नहीं रुके। जेब काटने के अपराध में अब इग्लैंड में खुले आम सड़कों पर फ़ांसियां दी जाती थीं तब भी एक तरफ़ आदमी फांसी पर लटकाया जाता था दूसरी तरफ वहां पर इक्ट्ठे मजमें में जेब भी काटे जाते थे। इसलिये यह नहीं कहा जा सकता है कि चूंकि सजायें नहीं दी जाती हैं इसलिये अपराध होते हैं और यह भी नहीं कहा जा सकता है कि सिर्फ थोड़े से लोग ही अपराध किया करते हैं, बड़े बड़े लोग और समझदार आदमी अपराध किया करते हैं, ऐसी मिसालें मौजूद हैं। हमारा इस दिशा में जो तजुर्बा है और जो कुछ हमने जेलों में देखा है उसके आधार पर हम कह सकते हैं कि अधिकतर ग़रीब लोग ही सजायें पाया करते हैं और वे ही लोग जेलों में रहते हैं जब कि वे लोग जिनके कि पास पैसे हैं और जो मुक़दमा लड़ सकते हैं वे हाईकोर्ट से या लोअर कोर्ट से छोड़ दिये जाते हैं। मैं इस चीज़ को बहुत यक़ीन के साथ कहता हूं कि १०० में से ७५ आदमी जो जेलों में जाते हैं वे या तो ग़रीब हैं या इस क़िस्म के लोग हैं जिनकी कि पैसों की कमी के कारण उनके मुक़दमे की पैरवी नहीं हो सकती। मैं समझता हूं कि हाउस के सामने इस तरह की बात कहना कि चूंकि सजायें नहीं दी जाती हैं इसलिये अपराधों की संख्या बढ़ती है, ठीक नहीं होगा। सजायें दे कर देखा जा चुका है, इसलिये यह सवाल नहीं उठाया जा सकता कि चूंकि अपराध बढ़ रहे हैं, इसलिये सजायें देना चाहियें। मैं समझता हूं कि ऐसे हालात आदमी के सामने आते हैं, इस किस्म की परिस्थितियां पैदा होती हैं जिनमें कि आदमी पहुंच कर अपराध करता है।

मैं कल रात को पंडित जवाहरलाल नेहरू की "मेरी कहानी" पुस्तक पढ़ रहा था। उन्होंने उसमें एक जगह पर उस घटना का ज़िक्र करते हुए लिखा है जिस समय कि वह नैनी जेल में बंद थे और जब एक जलूस के सिलसिले में उनकी माता जी के ऊपर लाठी पड़ी थी। मैं चन्द बातें उस सम्बन्ध में बताना चाहता हूं कि जब इस घटना की सूचना उन को जेल में मिली थी तो उन पर क्या प्रभाव पड़ा था।

"When the news of all this came to me some days after the occurrence (for we had a weekly paper) the thought of my frail old mother lying bleeding on the dusty road obsessed me. I wondered how I would have behaved if I had been there and how far would my non-violence have carried me. Not very far, I fear, for that sight would have made me foreget the long lesson I had tried

[श्री सरजू पांडे]

to learn for more than a dozen years and I would have reeked little of the consequences, personal or national"

इसमें उन्होंने कहा है कि मेरी मां के ऊपर लाठी पड़ी और जब कि मुझे इसकी खबर मिली तो मैं १२ वर्ष की उस तमाम अहिंसा की शिक्षा को भूल सा गया। अब आप अच्छी भांति समझ सकते है कि जब एक ऐसा आदमी जिसने १२ वर्ष तक लगातार अहिंसा की शिक्षा ली हो, वह ऐसा अवसर आने पर उस अहिंसा की शिक्षा भुला देने को तैयार है यही नहीं उन्होंने आगे लिखा है कि अगर मै बाहर होता तो चाहे मेरे व्यक्तित्व या मेरे देश पर कुछ भी असर पडता लेकिन मै पुलिस की लाठियो का जवाब जरूर देता, तब आप एक साधारण आदमी से कैसे उम्मीद करेंगे कि उनके ऊपर जो बीतेगी उसका जवाब नही देगा ?

यहां पर यह कहा गया है कि २१ साल के लोग अगर छोड दिये जायेंगे तो लोगो में अनुशासन नही रहेगा । लेकिन मैं कहना चाहता हूं कि आज ऐसा प्राविजन (नियम) न होने से भी लोगों में अनुशासन की कमी पाई जाती है और विद्यार्थियों द्वारा मास्टरों को मारा पीटा जाता है । इसलिये इस बिल को लागू न करने के लिये यह कोई माकूल दलील नही है ।

इस बिल में सारे अधिकार मजिस्ट्रेट को और प्रोबेशन अफ़सर को दिये गये है । जो भी कानून इस हाउस में आता है वह इस तरीके से पास किया जाता है कि या तो मजिस्ट्रेट को मौका मिलता है कि वह निकल भागे या उसमें बहुत गलतियां रह जाती हैं और जिन पर हाईकोर्ट बीसियों किस्म की रूलिंग्स दिया करती हैं। मिसाल के लिये मैं आपको बतलाऊं कि मै एक जेलखाने में बंद था । जेल मैनुएल में एक कानून है कि सुपीरियर क्लास प्रिजनर्स टहल सकता है । लेकिन मेरे इनक्लोजर का दरवाजा बन्द रक्खा गया जब मैंने कहा कि मैं कैसे टहलूं, तो मुझे बताया गया कि आप उस इनक्लोजर के अन्दर ही टहल सकते हैं और इनक्लोजर में टहलने की बात जेल मैनुएल में लिखने की जरूरत नहीं क्योंकि बंदी इनक्लोजर में तो टहलता ही है उस धारा का अर्थ साफ़ नहीं है इसलिये अधिकारी उसका गलत अर्थ किया करते हैं वही हालत इस बिल की भी होगी । अब इसमें होगा यह कि अगर मजिस्ट्रेट कनविक्टिंग नेचर का है तो वह अपराध करने वाले आदमी को इसका मौका नहीं देगा कि उसे छोड़ दे । अगर यह क़ानून इसी तरीके से रहेगा तो मजिस्ट्रेट जो भी चाहे उसका मतलब लगाते रहेंगे और इसका फ़ायदा उन लोगों को नही पहुच सकेगा जो सचमुच इसके हक़दार होंगे बल्कि वे लोग जो मजिस्ट्रेटो तथा प्रोबेशन अफ़सरो पर अपना असर पहुंचा सकेंगे या जो काफी सिफारिशें कर सकेंगे उन लोगो को इसमें फ़ायदा होगा । इसलिये मै चाहता था कि यह बिल ऐसी शकल में पास होता कि उन तमाम लोगों को जो कि प्रोबेशन पर छोड़े जाने के लायक़ हों वे आसानी से छोड़े जा सकें । यहां पर मजिस्ट्रेटों को ही अधिकार है कि वे तमाम हालत को देखें और परिस्थितियां, अपराध की भयंकरता आदि पर विचार करके लोगों को प्रोबेशन पर रिहा करे। यह मुनासिब नहीं जान पड़ता । यहां पर जुडिशएरी और एग्जीक्यूटिव अलग अलग नहीं है इसलिये लाज़िमी तौर पर मजिस्ट्रेट लोग पुलिस की रिपोर्ट पर चलते हैं । हम आये दिन देखते हैं कि जहां मजिस्ट्रेटों के ऊपर इस बात का अधिकार डाल दिया गया वहां वे कभी भी अभुक्त के पक्ष में कानून का इस्तैमाल नहीं करते । उदाहरण-स्वरूप क्रिमिनल प्रोसीज्योर कोड की दफ़ा १५१ की रू से एक मजिस्ट्रेट को

जमानत पर छोड़ने का अधिकार हासिल है और अभियुक्त को वह बेल पर छोड़ सकता है लेकिन पुलिस अगर जमानत मंजूर करने के खिलाफ़ होती है तो वह जमानत पर छोड़ने से इंकार कर देते हैं। इसलिये मैं समझता हूं कि इस तरीके से जैसे इस बिल को रक्खा गया है, ज्यादा फ़ायदेमंद नहीं हो सकेगा। मैं चाहता था कि इस बिल को फ़ौरन पास किया जाता और पास करने के बाद यह मौक़ा दिया जाता कि खुद लोगों के मन में अपराधों के प्रति एक घृणा का भाव उदय होता और इसके लिये समाज में उस तरह की चेतना लाई जाती। इसलिये मैं इस सदन से अपील करूंगा और मंत्री महोदय से भी प्रार्थना करूंगा कि इस बिल को पास करने में अधिक देरी न की जाय। मुझे इस बात का भी यक़ीन है कि अगर इस बिल को सारे देश के लोगों की राय जानने के लिये भेजा जायगा तो काफ़ी बड़ी संख्या ऐसे लोगों की मिलेगी जो यह कहेंगे कि यह बिल फ़ौरन पास कर दिया जाना चाहिये।

यहां पर मुल्क के नाम पर, आज़ादी के नाम पर, क्राइम के नाम पर, रेप के नाम पर और दुनियां भर की बातें कह करके हाउस और मंत्री महोदय को डिमौरेलाइज़ करने की कोशिश की गई है लेकिन मैं यह बात यहां पर बिल्कुल स्पष्ट कर देना चाहता हूं कि अगर यह बिल पास हुआ तो इसका देश में सर्वत्र स्वागत होगा।

उपाध्यक्ष महोदय : माननीय सदस्य ने अभी साबित कर दिया कि वे डिमौरेलाइज़ नहीं किये जा सकते।

श्री सरजू पांडे : मैं चाहता हूं कि यह बिल फ़ौरन इसी सेशन में पास कर दिया जाय। अगर मुझे मौक़ा होता तो मैं और बहुत सी मिसालें देता। चूंकि मेरा समय खत्म हो गया है इसलिये और अधिक न कह कर मैं अपना भाषण इसी अपीलटी के साथ खत्म करूंगा कि आप इस बिल को अभी पास कीजिये और सेलेक्ट कमेटी में इसको भेजे जाने का झंझट न खड़ा कीजिये और इसके पास होने में देर लगाने में उचित बात नहीं होगी। मैं आपको यक़ीन दिलाता हूं कि इस बिल के लिये आपको तमाम मुल्क में सपोर्ट मिलेगी।

श्री सिंहासन सिंह : उपाध्यक्ष महोदय यह विधेयक जो आज इस भवन के सामने है यह ऐसा विधेयक नहीं है जिस को कि हम सरसरी तौर पर पूरा गौर किये बगैर पास कर सकें। यह विधेयक हमारे कानून में बड़ा आमूल परिवर्तन करने जा रहा है।

अब तक जो प्रोबेशन पर छोड़े जाने का तरीका था उस में एक ऐसा परिवर्तन होने जा रहा है जिस की कि कल्पना हम ने आज तक नहीं की थी इस के आब्जैक्ट्स एंड रीजन्स में बताया गया है कि सन् १९३१ से सरकार इस विचार में है कि इस तरीके का कोई कानून बनाया जाय। १९३१ में यह नहीं बन सका। सन १९३४ में भी यह प्रान्तों पर छोड़ दिया गया कि अगर वे चाहें तो अपने वहां के लिये इस किस्म का एक कानून बना सकते हैं और कुछ प्रान्तों ने इस किस्म के कानून अपने वहां बनाये भी। सन १९५५ में हम ने क्रिमिनल प्रोसीज्योर ऐक्ट को अमेंड किया और उस अमेंडमेंट में इस ५६२ दफा का कुछ विस्तार किया। अब यह जो विधेयक आज भवन के सामने उपस्थित है यह बहुत अंशों में उसी ५६२ धारा की पुनरावृत्ति है। कुछ नई नई बातें इस में हैं। इस में नई बात यह है कि २१ वर्ष से नीचे उम्र वालों को मजिस्ट्रेट सजा ही न करे जब तक कि प्रोबेशन आफिसर उस के सम्बन्ध में कुछ न कहे। २१ बरस के नीचे वालों के लिये दफा ७ में प्रोवाइड किया गया है। इस में कहा गया है कि मजिस्ट्रेट को २१ बरस के नीचे के अपराधियों को डाट डपट कर के छोड़ देना होगा और अगर वह उस को सजा देना चाहता है तो वजह बयान करे कि क्यों सजा दे रहा है। २१ बरस के ऊपर वालों को वाद एडमानिशन कर सकता है और छोड़ भी सकता है।

[श्री सिंहासन सिंह]

दूसरी बात मुकदमा चलाने के बारे में है। मुकदमा दो तरह से चलाया जाता है। एक तो पुलिस की रिपोर्ट पर चलाया जायेगा और फिर फैसला होगा दूसरा किसी के निजी आरोप पर। इस में यह भी कहा गया है कि सब-क्लास २ आफ क्लाज ४ के तहत प्रोबेशन आफिसर की रिपोर्ट का भी मैजिस्ट्रेट ख्याल करेगा कोई कार्यवाही करते वक्त। २१ बर्रस के नीचे वालों के लिये भी प्रोबेशन आफिसर की रिपोर्ट मैजिस्ट्रेट को प्राप्त करनी होगी। दफा १२ के अन्दर है कि मुकदमे के दौरान में अदालत प्रोबेशन आफिसर की रिपोर्ट मांगेगा। और उस से पूछेगा कि उसे उस के बारे में क्या कहना है। मजिस्ट्रेट के सामने जो गवाहियां होंगी उन के अलावा दो रिपोर्टें रहेंगी एक तो पुलिस की रिपोर्ट होगी जिस के आधार पर मुकदमा चलेगा या मुस्तगीस की रिपोर्ट होगी जिस के आधार पर मुकदमा चलेगा और दूसरी रिपोर्ट प्रोबेशन आफिसर की होगी।

श्री श्रीनारायण दास : मैं माननीय सदस्य को बतलाना चाहता हूं कि वह रिपोर्ट तब आयेगी जब वह निर्णय हो जायेगा कि वह गिल्टी है। जब तक वह गिल्टी नहीं पाया जायेगा तब तक मैजिस्ट्रेट उस रिपोर्ट पर विचार नहीं करेगा।

श्री सिंहासन सिंह : ड्यटीज आफ प्रोबेशन आफिसर में दिया हुआ है :—

> inquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person with a view to assist the court in determining the most suitable method of dealing with him.

इस का मतलब यह हुआ कि रिपोर्ट मांगी जायेगी।

Shri Shree Narayan Das: After conviction.

Shri Sinhasan Singh: Clause 7 (2) says:

> "before passing a sentence of imprisonment on any offender referred to in sub-section (1) the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender".

इस का मतलब यह हुआ कि मैजिस्ट्रेट प्रोबेशन आफिसर की रिपोर्ट लेगा और उस के बाद उस पर विचार करेगा बिफोर पासिंग एनी आर्डर।

Shri Datar: Let the hon. Member read the first sentence which says "When any person under twenty-one of age is found guilty"

श्री सिंहासन सिंह : मैजिस्ट्रेट को. . . .

उपाध्यक्ष महोदय : आप से कहा जा रहा है कि जब आप सब-सैक्शन २ आफ सैक्शन ४ को पढ़ते हैं तो पहले आप सब सैक्शन १ को भी पढ़ें। पहले सब-सैक्शन १ आयेगा और उस के बाद ही दूसरा सब-सैक्शन आयेगा अगर पहली कंडीशन पूरी हो गयी तो दूसरी पर गौर किया जायेगा।

श्री सिंहासन सिंह : वह गिल्टी है या नहीं उस के बारे में एविडेंस मजिस्ट्रेट के सामने है। जब जजमेंट का वक्त आयेगा उस वक्त अगर वह यह महसूस करे कि वह गिल्टी है तो वह उस को सजा करेगा।

उपाध्यक्ष महोदय : जजमेंट एक चीज है और सैंटेंस दूसरी। जजमेंट तो वह है जब वह इस नतीजे पर पहुंचेगा कि आया वह गिल्टी है या नहीं सैंटेंस वह है जब वह यह समझेगा कि अब हुक्म क्या किया जाये।

श्री सिंहासन सिंह : मेरे कहने का मतलब यह है कि प्रोबेशन आफिसर से वह रिपोर्ट मांगेगा।

And the report itself will prejudice the mind of the magistrate before arriving at a conclusion whether the man is guilty or not.

अगर वह आदमी गिल्टी नहीं तो तब तो कोई बात ही नहीं है। लेकिन अगर वह गिल्टी पाया जाता है, देन ही विल प्रोसीड टू आस्क फार दी रिपोर्ट और जो रिपोर्ट है वह मैजिस्ट्रेट के माइंड को प्रेजुडिस कर सकती है। अगर वह गिल्ट फाइंड करने के लिये रिपोर्ट मांगता है तब तो पोजीशन दूसरी हो जाती है। लेकिन जब एविडेंस उस के सामने है और रिपोर्ट भी उस के सामने है ऐसी सूरत में मैजिस्ट्रेट को इंडिपेंडिंट जजमेंट पर पहुंचने में बाधा पहुंच सकती है। वह एविडेंस पर भी गौर करेगा और रिपोर्ट पर भी। इस तरह करने से मैं समझता हूं कि एडमिनिस्ट्रेशन आफ जस्टिस का सदुपयोग भी हो सकता है और दुरुपयोग भी। ऐसी हालत में जो प्रोबेशन आफिसर की रिपोर्ट है वह एक गाइडिंग फैक्टर हो जाती है जो कि अब तक नहीं थी। और मैं समझता हूं कि ऐसा होना भी नहीं चाहिये। जो पुलिस की रिपोर्ट है वह उस पर बाइंडिंग नहीं है उस की मर्जी है कि वह उस पर गोर करे [illegible]न करे। लेकिन अगर वह जजमेंट देने के समय प्रेजुडिस हो जाता है तो यह ठीक नहीं है। यह एक आमूल परिवर्तन है जो हम करने जा रहे है जिस में एक मैजिस्ट्रेट के अलावा हम एक और आदमी को भी पिक्चर में लाते हैं और उस को भी न्यायदान में अधिकार देना चाहते हैं। हमे यह सोचना होगा कि यह क्या देश हित में होगा या यह कोई अच्छी बात होगी। यह एक इतने महत्व की चीज है कि इस पर हमें ठंडे दिल से गौर करना चाहिये। हमें कोई काम जल्दबाजी में नही करना चाहिये और जल्दी में कोई चीज पास नही करनी चाहिये। अभी मेरे गाजीपुर के भाई ने कहा कि इसे हमें पास कर देना चाहिये। और सब ठीक हो जायेगा। जिस दृष्टिकोण से वह यह बात कहते हैं उस में उन का विचार है कि सब अपने आप ठीक हो जायेगा। उन के विचार के सम्बन्ध में भी यह चाहता हूं।

हम देखते हैं कि जो अपराध किये जाते हैं उन के पीछे कई भावनायें काम करती हैं। इस के सामाजिक कारण भी हैं और आर्थिक कारण भी। आज हम सोशलिस्ट पैटर्न आफ सोसाइटी की बात करते हैं और कहते हैं कि गरीबों और धनियों के बीच जो अन्तर आज विद्यमान है वह कम होना चाहिये। हम कहते हैं कि अमीर और गरीब की सीमा में कम अन्तर हो। यदि यह अन्तर कम हो जाय और लोगों को रोटी तथा कपड़ा मिलने लग जाये तो अपराध भी आप से आप कम हो जायेंगे। हमारे यहां तो आज यह हालत है कि दिन का चोर साहू बन बैठा है और जो रात का चोर है वह सजा पाता है। युधिष्ठर ने भी बहुत पहले किसी प्रसंग में कहा था कि जितना बड़ा धनी एक व्यक्ति होता है उतना ही बड़ा वह बेईमान समझा जाना चाहिये। इस का कारण यह है कि वह सामान्य तरीकों से इतना अधिक धन एकत्र कर ही नही सकता है। सिवाय बेईमानी के कोई भी बहुत ज्यादा धनी नही हो सकता है इस वास्ते कहा गया है कि दिन का चोर हमारे देश में साहू है और रात का चोर डकैत है। वह रात को चोरी करता है दिन को नही कर पाता। धन की गति भी हमारे शास्त्रों ने तीन प्रकार की बनाई है। या तो दान करो या भोग करो नहीं तो नाश होगा। नाश की भी दो गतियां है। या तो राज्य ले लेगा नहीं तो चोर ले जायेंगे। जो दान और भोग से बचेगा उसे या तो राज्य ले लेगा या फिर चोर चुरा ले जायेंगे। हम ने एक अधिनियम भी पास किया है जिस के आधीन मरने के पश्चात् कुछ हिस्सा राज्य हमारी सम्पत्ति का ले लेगी। दूसरा जो हिस्सा है वह चोर ले जाता है। अगर वह पेट का भूखा है तब तो उस को छोड़ दिया जाना चाहिये।

तो मैं यह निवेदन करना चाहता हूं कि हमें खूब सोच समझ कर इस बिल को पास करना चाहिये अगर हम ने कुछ देर इस को पास करने में कर दी तो कोई बुरा होने वाला नहीं है। चन्द महीने हुए मैं ने एक किताब में पढ़ा था "चाइना शेक्स दी वर्ल्ड"। १९५० में अमरीकी जनरल ने लिखा था कि वहां के लोगों ने . . . .

उपाध्यक्ष महोदय : समय ज्यादा नहीं है और आप गहरी फिलासोफी में जा रहे हैं ।

श्री सिंहासन सिंह : मैं गहरी फिलोसफी में नहीं जा रहा हूं । अभी खत्म किये देता हूं । मेरे दोस्त गाजीपुर के माननीय सदस्य के मुताबिक यदि यह बिल आज पास हो जाये तो समाज आप से आप सब चीजों को ठीक कर देगी । मैं यह कह रहा था कि चीन में सहायता मिली उन लोगों को जो सैटल कर रहे थे ठीक कर रहे थे उन लोगों को सहायता नहीं मिली जो उस के खिलाफ थे ।

इन शब्दों के साथ मैं इतना ही निवेदन करना चाहता हूं कि यह पहला अवसर है जब कि माननीय मंत्री ने इस भवन के अध्यक्ष महोदय की इस बात को मान लिया है कि हम इसे सिलैक्ट कमेटी मे भेज दें और वहां पर इस पर विचार हो इस बीच में हम दूसरे लोगों से जो इस में दिलचस्पी रखते है जो हाई कोर्ट के जज है जो बार एसोसियेशंस से ताल्लुक रखते है राय ले सकते है और वे अपना दृष्टिकोण इस कमेटी के समक्ष प्रस्तुत कर सकते हैं । हमें देखना चाहिये कि जो आमूल परिवर्तन करने हम जा रहे है क्या वे सही दिशा में है अथवा नही । उत्तर प्रदेश मे सन १९३८ से यह प्राबेशन ऐक्ट लागू है लेकिन वहा लागू होने से समाज में ज्यादा सुधार हुआ हो या क्राइम मे कमी हो गई हो यह बात नहीं है । क्राइम बढ़ते भी है घटते भी हैं । हां प्रोबेशन में रखे हुए बहुत से व्यक्ति सुधर गये हैं । उत्तर प्रदेश में यह प्रयोग भी हो रहा है कि कैदियों से जेल के बाहर काम लिया जाता है और उन की तनख्वाह भी दी जाती है । वह अपनी जगह पर ठीक है । लेकिन जो चीज आप के सामने है कि २१ बरस से नीचे के अपराधियों को सजा न की जाय और उन को प्रोबेशन पर छोड़ दिया जाये तो इस से जुर्म की तरफ उन की मनोवृत्ति बढ़ेगी । आज लोगों को फांसी का डर है । कत्ल जो होते हैं वे ज्यादातर सैंटीमेंट की वजह से होते हैं उन के लिये तैयारी बहुत कम होती है । लेकिन इस बिल के पास हो जाने के बाद बहुत से अपराधी यह सोच सकते हैं कि चलो यह तो पहली बार है इस में तो छूट ही जायेंगे और यह समझ कर अपराध करने को उद्यत हो सकते हैं । इन चीज पर हमें ठंडे दिल से विचार करना चाहिये । मैं यह कहना चाहता हूं कि यह बिल बहुत विचार मांगता है और ज्वाइंट कमेटी में आप ऐसे आदमी रखें जो कि इस विषय पर सही विचार प्रकट कर सकें और उचित राय दे सकें । हम को नही मालूम कि स्टेट गवर्नमेंटों की इस बिल के बारे में क्या क्या राय है । हम को नहीं मालूम कि किस ने इस मे माफिक राय दी है किस ने खिलाफ राय दी है । इस बिल पर हम अगले सत्र में विचार करेंगे । इस बीच समाज में कोई बड़ा परिवर्तन होने वाला नही है । हमारी गाडी तो धीरे धीरे चलती है । और इस के बिना भी हमारा काम चल सकता है ।

Shri Basappa (Tiptur): Mr. Deputy-Speaker, Sir, I am one of those who think that the Bill is long overdue and hence I wish to congratulate the Minister for having brought forward this Bill. Of course, I could not follow much of the discussion in this House as I know little of Hindi, but at the same time, I should pick it up very soon.

I refer to what Shri N. R. Muniswamy said on this occasion. He said that there is enough law already to safeguard the juvenile offenders and that we need not look into this Bill at all. Another justification that he gave for not having this Bill was that some of the States have already got legislation to this effect. But that very fact, namely, in some of the States we have already a legislation of this kind, and that very argument, show that we must have an all-India legislation of this type. But his plea was—and that was his fear—that the probation officers will have very many powers and they may misuse it. For that, there is the Select Committee and the Select

Committee can go into those questions and see that only such powers as are necessary are given to them.

In the second Five Year Plan we have allotted a sum of money for social welfare and the research committee of the Planning Commission has also given some attention to the human aspect of the whole problem, because everywhere we see that crimes are increasing in great degree. Take any country as a matter of fact. Thefts, murders and so many other offences are going on in large numbers. If there is an up-to-date statistics of the juvenile offenders, we will see that these offences are increasing. Therefore, something must be done to see that this is minimised and hence this Bill. If it is implemented properly, it will go a long way.

If we analyse the various causes for so many offences that are committed, we come to know that the economic insecurity in most cases is there. At the same time, there may be lack of education; there may be lack of parental control and also, now-a-days, the impact of western society like cinema-going and drinks and all these things are there, and all these have contributed a great deal to the number of crimes having been increased. Therefore, various treatments have been suggested from time to time. Apart from the probation which is included in this Bill, there are other methods also such as after-care, borstal schools, and even specialised methods in criminal procedure and so on. But every civilised country seems to think that probation is one of the important aspect in the treatment of crimes. Therefore, if we look around the world, many countries have adopted this. The United Nations have also some programmes to prevent the juvenile offenders from pursuing their crimes, by introducing the probation system. With that object, in some of our States also, they have introduced it.

Even as long back as 1931 or 1934, as stated in the Bill, there was central legislation on this subject but it could not be followed up. So, this Bill is long overdue. Therefore, it should be taken up earnestly and it should be seen that it is enacted into law.

There is a realistic approach also, a big dynamic approach, if you may call it, because, after all, everyone of us has some faith in the goodness of man. Without faith in the goodness of man, nothing can be done. That is why the Father of the Nation has told us in very big terms that after all, we hate the evil and not the evildoer. So, he has laid emphasis on that aspect. So also here, when we take the offender and the offence, we hate more the offence than the offender, and it is our duty to reform the offender. From that principal point of view, this Bill is more welcome.

When we are enacting this law, various things will have to be considered. The circumstances of the case, the character of the man in question and the nature of the offence, have to be considered. Of course, a man may have a mental standard of understanding. Suppose, if 21 years is fixed here, though chronologically, the man's age may be 21, there is another aspect which is the mental age. For instance, a person even in his early childhood may be mentally more developed than a person of 21 years of age. That aspect also should be taken into consideration when we decide this question.

Another aspect is the awareness of the criminal responsibility. One person could be aware of the criminal responsibility more than another, and another person may not be aware of it at all. So, when we are enacting a legislation of this kind, these two things must be kept in mind, as to how far the person has a knowledge of the criminal responsibility and also his mental development.

Another thing is, this probationary system must be based on a very good and sound footing. Our society is different from western society. When we try to copy those methods here

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and try to adopt them, we must remember our joint family system and caste system etc. Therefore, when we adopt the probation system, the social concepts of this country must always be kept in mind. There must be a regular training for the probation officers and they will have to move with great caution. They must be just like philosophers, friends and guides, and they must have a lot of patience and tolerance. If all these things are looked into carefully, then, this system can work well and yield good results.

This system has definite advantages, and there is no doubt about that. Now we are spending a lot of money over the prisons and jails. The reform of jails is not going with speed and so, when this system comes into effect and is effective, then a lot of money that is spent on prisons and jails can be saved and prisoners can also be reformed. That is the double advantage which we will have.

We have seen in the case of juvenile offenders that a deterrent punishment may make them more hardened throughout the rest of their lives. Suppose a man of 20 years commits theft and not put on probation and if a deterrent punishment is given, for another 40 or 50 years he will be a habitual offender and this should not happen. Therefore, at an early stage itself, this should be rectified. When we speak of probation, it is not something lenient. It is not merely that we shall have some concession or something like that. There will be an effective supervision also. Supposing there is a juvenile offender kept in a jail where there are other habitual offenders and dangerous criminals, they will teach him the technique of committing bigger thefts and bigger crimes. Of course, you may say that the jails are segregated and all that, but the environment is there.

Therefore, I plead very strongly that this Bill should be put into practice very soon and the legislation should be on the statute. I welcome this Bill and I congratulate the hon. Minister for having brought it forward.

Mr. Deputy-Speaker: Mr. Imam. Those Members who have sent in their chits do not give an indication that they are prepared to speak. Therefore I have to be content with calling other Members. I am very sorry to make this remark, but so far as I am concerned, I have said it so many times. Sending in of chits is certainly useful, so that the attention of the Chair might be drawn towards that side, so that the eye of the Chair might be caught. But the ultimate position depends upon whether the hon. Member who has sent in the chit tries to catch the eye of the Chair. Therefore, Members who have sent in chits should give an indication by trying to catch the eye of the Chair, because that would be the ultimate determining factor.

Shrimati Uma Nehru (Sitapur): I have already sent a chit.

Mr. Deputy-Speaker: I have got it and I have looked towards the hon. Lady Member at least five times. She does not give an indication.

Shrimati Uma Nehru: I never saw you looking at me

Mr. Deputy-Speaker: I have called Mr. Imam.

Shri Mohamad Imam (Chitaldrug): Mr. Deputy-Speaker, we have had very interesting arguments both for and against this Bill. I have listened with great care to the speech of the hon. Minister for Home Affairs, but in spite of that, I feel I am not enamoured of this Bill.

Mr. Deputy-Speaker: The Home Minister also did not make any attempt towards that direction.

Shri V. P. Nayar: He could have well anticipated the result.

Shri Mohamad Imam: He has put forward a very strong case on behalf

of the offenders in a manner which is not disagreeable to the House. I have also listened to the speeches of other hon. Members Some have upheld this Bill very vehemently and some have criticised it very bitterly.

Mr. Bharucha who had had experience in court for our quarter of a century has criticised it and says that this Bill will be to the prejudice of the society. On the other hand, Shri Sadhan Gupta not only supported the Bill, but he wants that the Bill should go still further and give more leniency to the offenders. I also note the vehement support coming from my countryman, Shri Basappa....

An Hon. Member: We are all countrymen.

Shri Mohamad Imam: I am sorry: my 'statesman', who wants this measure to be introduced as early as possible. But I am puzzled between these two. There was the Lucknow Conference attended by a number of convicts and ex-convicts, some of whom were convicted for murder and dacoity, donning Gandhi caps and they were in the conference with policeman inside. I do not know if that has had any influence on the Minister. Whatever it may be, it is unfortunate that soon after the conference, some of the convicts who were on their way back met with a serious bus accident and 11 of them were killed. Therefore, they have my sympathy.

Mr. Deputy-Speaker: Has that accident anything to do with their meeting together in a conference?

Shri Mohamed Imam: If they had not attended the conference, they would not have been killed. The Minister wants to be very humane and very sympathetic towards these offenders. But I am only anxious that his abundant sympathy with the offenders should not be a misplaced sympathy and they have a duty and an obligation which they owe to the society. It is their duty to protect the members of society and they must take care to see that the sympathy which they show will not be a misplaced one.

14.47 hrs.

[SHRI BARMAN *in the Chair*].

The proposals which he has placed before the House are very far-reaching and novel. At the same time, I may characterise them as being revolutionary. While putting forward such proposals, he must know what effect these proposals will have on the offender himself and on the society when they become law. He must also take care to see that however sympathetic we may be, this law will not be a sorry contrast to the long evolution of justice which we have built up through generations.

It looks as if this is in the nature of an experiment. Experiment it may be, but it should not be a gamble. Their primary duty lies in protecting the members of the society. That they seem to have forgotten. They have not considered what effect these measures will have on the society. It must be understood that man is the chief enemy of mankind. Man is the enemy of the society. There is none else who is the enemy of mankind or of society. Whatever man does may be for the good of the society or it may be for the prejudice of the society. This must be taken care of.

Many Members have pointed out that these proposals are quite new. It is necessary to consult the Bar Association, jurists and eminent men of the judiciary. Obviously the Government have not done that nor have they taken the trouble of doing it. The Minister seems to be guided by the report of one Mr. Reckless. Since the report comes from one Mr. Reckless, his proposals also must be reckless. Such measures which affect the society, however spectacular they may look in the initial stage, must be very carefully examined and they must take into consideration what the consequences will be. It is the basic principle of jurisprudence that nobody shall be convicted unless his guilt is

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proved. Everybody is supposed to be innocent unless he is proved to be guilty. But when once he is proved to be guilty, then the penal operation or the punitive law comes into operation. He has to undergo that penal operation. He is punished with various objects. In the medieaval ages punishment was inflicted with a threefold objective. Firstly, it was retributive, a sort of vengeance. Secondly, it was deterrent. Perhaps, the reformative element was absent at that time.

Mr. Chairman: I may just inform the hon. Member that we are not discarding the Criminal Procedure Code or the Penal Code. We are just remodelling section 562 in another form, making it more liberal. So, considering the short time at our disposal, I think it would be better if he does not go into criminal jurisprudence. Since other hon. Members also want to speak, the speech should be as short as possible.

Shri Mohamed Imam: In the medieaval ages, the principle was retributive: life for life, blood for blood and eyes for eyes. It was also very deterrent. Now that retributive element is absent. Our idea is that it should be not only punitive and deterrent, but it should also be reformative Unless the punishment has got an element of deterrence, it will be of no avail. Whether it is trial, punishment or imprisonment, deterrence is necessary. It is necessary, not in the interest of the offender himself, but in the interest of the country.

Then, regarding reformation, the aim is to rehabilitate him—his social rehabilitation. Once a person is proved guilty, he must be treated in a manner which will be both deterrent and also reformative. It should be deterrent in the interest of the society; it must be reformative in the interest of the offender himself.

In the proposals that have been put forward by the Minister, I find that the deterrent element is missing. It is not found there. It seems to be his idea that he can reform the offender by not subjecting him to any punitive measure by letting him off. He seems to think that he can cure him of his ills outside the jail, without any restrictions, rather than within the jail. The punishment proposed is so lenient that I think hereafter anybody can commit the offence and escape.

For example, he has proposed three main changes from the established practice. In the first place, the Bill says that all those persons who are punished with imprisonment for not more than two years shall be released with admonition or, as the Minister calls it, gentle warning. Will this gentle warning have any effect? On the other hand, if you retain this clause, the Minister would be extending an invitation to a number of persons to commit offence because they know that this being their first offence, they are sure to be released with a mere admonition.

In this connection I am reminded of a case that took place in Bangalore. Perhaps the Minister is also aware of it. I am referring to cheating, section 420, for which offence he seeks to let off people. There was one Dharma Ratnakara Gopala Rao. He undertook a very big business. He wanted everybody to invest money with him. He used to pay them 25 to 50 per cent It went on for some time Crores of rupees were invested with him. In fact, heads of Department, even Ministers and ex-Mmisters deposited huge sums of money with him. Apart from the rich people, many poor families also deposited their earnings with him. He continued to pay 25 to 50 per cent return for a long time. He was regarded in such high esteem that the title Dharma Ratnakara was awarded to him. He gave big amounts to charities. Then there was a big crash. It was found that he was an absolute swindler. Hundreds of

families were ruined. People lost lakhs and lakhs of rupees. It was cheating.

I would like to know from the Minister what he would like to do with such a person. After all, if he is going to be punished for that offence, it would be less than two years. Will he be let off with just an admonition?

I will give you another instance Perhaps you know that there was one Lall. He came to Bangalore. People thought that he was a millionaire owning crores and crores of rupees. He lived in fashionable hotels and in high societies. Then, one day he was apprehended by the police. I think he was brought here by the police, though at least he escaped. His present whereabouts are not known.

Such cases do happen. Do you mean to say that all such persons should be let off with a gentle warning? Clause (2) is the damaging clause and it would be very detrimental to society. You want people to commit theft, cheating and other offences and they will just be given only an admonition. This is very retrograde clause and the retention of this clause is not in the best interests of the society. I suggest that this may be done away with.

Then I come to the next clause, leaving offenders on probation. Here it is contemplated that any person who is punished for an offence with a sentence other than death or life imprisonment can be let off on probation for three years. This also is a very novel procedure. I do not know how the Minister can do this and, at the same time, be responsible to the society. People who are guilty of dacoity or similar other offences will be let off on probation. I do not think that this will be in the interests of the society. So, I have tabled an amendment that if we want to let off people on probation, it must be within certain limits. It can be only for certain specific offences. On such cases only can we extend such a concession. A person who has committed a dacoity, a person who has committed rape or forgery or perjury, if we apply this concession to that person, then what will be the fate of the society and of mankind?

I will be very brief on the third clause. It relates to juvenile offenders and it stated that all persons who have committed offences and who are below 21 years of age should not be punished. They must be let off. If the court makes some order about them after releasing them, after considering the circumstances of their case, I can quite understand that. But here it is arbitrary. The Minister seems to think that a person, if he is less than 21 years of age, cannot commit any offence. Let me remind him of the Mass Murder Case of Bangalore It was a case where the entire family was pounded to death. Two innocent boys, one old woman, one old man and his wife and daughter, all the six were murdered *en bloc*. This was committed has been proved in the courts—it is no longer *sub judice* as these two people are awaiting the extreme penalty of law—by a boy of 22 years and another of 23 years, led by a third man He was a boy. One of these had undergone imprisonment. The very next day that he returned to Bangalore, he joined these persons and committed these murders which took the entire country by storm. There are some such persons is society.

15 hrs.

If you release a boy who has committed a heinous offence without making any arrangement for his detention, do you think he will be a same person and that he will be a reformed boy? Of course, I agree with you that you must be sympathetic with these young fellows. But, I am against leaving them, not making any arrangement for training them so that they may become fit citizens of society. In England also, there is such a

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provision. There also, under the Criminal Justice Act, a person who is guilty, who is below 21 years of age, should not be punished. But, there are other arrangements for him. He will be sent to a detention school or he will be sent to a borstal institution or he will be sent to an approved school or training. Or he will be taught some handicraft or he will be given some training by which he can earn his livelihood. No such arrangement is made, and no such proposal is contemplated. That is why I ask you, is it wise on the part of Government to release such young offenders, however young they may be, and send them out of jail and ask the courts to give him merely a gentle warning.

On the other hand, you will be spoiling his career. The young man will think I have had a nice ride to the jail, why not offend again. His is an immature mind. We will be spoiling the young offenders unless you make the necessary arrangement for his rehabilitation. This clause is very injurious not only to society but to the offender himself. That is why I say I am very anxious as to how you are going to deal with a boy after he is found guilty.

I am rather amused at the inconsistency of the Government. On the one side, they want to bring in the Preventive Detention Act wherein they propose to imprison all those that are possibly not guilty or who have not offended society. On the other side, they want to bring this clause according to which they want to let off persons who are guilty. On the one side, they are indifferent to the liberty of the citizen, on the other, they do not care what happens to society and they want to see that all offenders are let loose. Of course, I am as sympathetic as you are. At the same time, we owe a duty to society. You should not disturb the established practices unless you are sure of what the new measure will bring or what the future has in store. We must have mercy. Justice must be tempered by mercy. In this case, mercy must be tempered with justice.

I am glad, I believe, the Minister has agreed for this Bill being referred to a Select Committee. I am sure from what I have heard from the doyens, from Pandit Thakur Das Bhargava and others, they are not convinced about the utility and usefulness of this Bill. I am sure they will make the necessary changes in the Bill which will be for the good of society and also for the good of mankind and for the good of the offenders themselves.

Mr. Chairman: I understand that a Joint Committee Motion is going to be moved with the general consent of the House. I think it should be moved, if anybody moves it.

Shri Naushir Bharucha: It has already been moved.

Mr. Chairman: It was for a Select Committee. This is a Joint Committee motion, I understand.

Shri Datar: There is amendment No. 26.

Shri Shree Narayan Das: I have given notice of such a motion earlier. May I move?

Mr. Chairman: Yes.

Shri Shree Narayan Das: I beg to move:

> "That the Probation of Offenders Bill, 1957 be referred to a Joint Committee of the Houses consisting of *30 Members; 20 from this House, namely Sardar Hukam Singh, Pandit Thakur Das Bhargava, Shrimati Uma Nehru,

*The total number of Members of Joint Committee was subsequently increased to 36 and the time for presentation of the report of the Committee was extended to the first day of the third week of the next session.

Shri Sinhasan Singh, Shri C. D. Gautam, Shri R. Jagannath Rao, Shri T. Manaen, Dr. Y. S. Parmar, Shri Venkatrao Srinivasrao Naldurgker, Shri N. Keshava, Shri M. K. Jinachandran, Shri Bali Reddy, Shri K. S. Ramaswamy, Shri B. N. Datar, Shri Easwara Iyer, Shri S. A. Matin, Shri Yadhav Narayan Jadhav, Shri P. R. Patel, Shri Jagdish Awasthi, and Shri Shree Narayan Das (Mover) and 10 Members from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of Members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of Members to be appointed by Rajya Sabha to the Joint Committee."

Mr. Chairman: This amendment is also before the House. Shrimati Uma Nehru. She is in the Select Committee. According to the general practice of the House, I do not like to call upon that speaker. In that case, I call Shri D. C. Sharma.

Shri D. C. Sharma: Mr. Chairman, on the floor of the House today, I listened to the criminal practitioners' reports about India and I must admit respectfully that these reports are as valid and legitimate as the report or reports of some persons whom one of the greatest leaders of India described as drain inspectors. To a jaundiced eye everything looks yellow. To a person who has been conditioned by practising in a court where criminal senses are discussed day in and day out, the whole society seems to be more or less criminal or intending to be criminal. I say that this will be a very distorted view to any society in any part of the world, far less of Indian society.

On the floor of the House, I have sometimes listened to statements of the Home Minister when he has said that the incidence of crime in India is less than in any other country.

An Hon. Member: How many are reported and how many unreported?

Shri D. C. Sharma: I think all the cases are reported. Only these cases are not reported which catch the imagination of the Lok Sabha Members. Wherever one looks at it from a realistic point of view, from a practical point of view, one finds that Indian society is not in the way in which it is described. There are some troubles everywhere. India is a big country. There may be a kidnapping here or there. It does not mean that the whole nation is determined to be a nation of kidnappers. There may be a dacoity here or there. It does not mean that the whole country is infested with dacoits or robbers. I think, to argue from a few specific cases to a sweeping wholesale generalisation of this kind is not warranted by facts. My grouse with the Home Minister is not this that he has brought forward a Bill which is an advance on the socio-economic conditions of our country; my grouse against him is this, that he has taken so long to bring forward this Bill. If I had been Home Minister—thank God I am not—I would not have referred to 1931 and said that it had taken 26 years to produce this document which, it seems to me is not in any way even in harmony with the spirit of the times. It is a belated measure, an outmoded measure. India thinks that it is a progressive country, a country which wants to keep in step with other progressive countries, and here is a measure which is brought here today in 1957 which should have been here in 1931. In 1957 we should have done something much more worthy of our country and the social conditions under which we are living. I think it is a belated

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measure, and yet I find so many friends of mine have taken exception to it.

Of course, I am not a lawyer, and thank God I am not a lawyer because I can look at things from the human point of view. The human point of view must take precedence over all.

Shri Narayanankutty Menon: Does that mean that the lawyers have an inhuman point of view?

Shri D. C. Sharma: If I am not a lawyer, that is, I think, a disadvantage perhaps,.....

Shri Narayanankutty Menon: It is not so easy.

Shri D. C. Sharma: ....but I should say that when you think of it, you find that this measure is a halting, timid and half-hearted measure.

Shri Narayanankutty Menon: That is a professorial approach.

Shri D. C. Sharma: The U.P. Government is doing much better than we are doing, the other States are doing much better than we are doing. In U.P. we had recently a conference, and I think all of us have read the account of that conference, and some hon. Members have also referred to that conference. I believe that our Home Minister should have at least brought this Bill into conformity with some of the decisions which have been taken at that conference. That has not been done because this Bill was framed long ago, and it has come to us today, and find the inscription "too late" on this Bill.

It is not only U.P. that can show us the way. China shows us the way. I read about some prison house in China where I think they have no regulations which concern our prison houses. Do you mean to say China is not a progressive country, is not doing as well as we are doing? Certainly not. Other people are showing to us the way in which the so-called criminals should be treated, but we have not followed their example.

Exception was taken on the ground that this question of admonition is going to be something very injurious to society. I think every criminal should not be taken to be hardened criminal, every person should not be taken to be a criminal who is going to commit the same kind of crime over and over again. Admonition has been found to help more human beings in the world than detention or long terms of imprisonment. Admonition has been good and it has delivered good results, much more results than the other forms of punishment. Therefore, I would say that admonition is the correct psychological approach to a criminal. An approach of this kind would rid our society of its criminal tendencies to a much greater degree than anything else, because it is not a legal approach but the psychological approach which is more valid in the world of today.

Again, this provision for admonition should be as liberally interpreted as possible, because I know that it will mean that you are putting a man on his honour. Nothing is more precious to a man than his honour, and even the so-called criminal, offender or anti-social person has also his code of honour, whether you believe it or not. Therefore, this is the best thing that can happen, to put a man on his honour

It has been said that certain persons whose crimes are punishable with death or with other things will be given some kind of concession. This kind of concession is not being given in India or being given a trial in India. India is not a pioneer in this field. In other countries it has been tried, in other countries where the incidence of crime is much higher than here it has been tried and they have found that this has worked well. Therefore, we should not try to compare our country with other countries in a way which is unfavourable, and I think that this concession should also be made operative in such a way that the largest number of persons can take advantage of it. It should

not be made more restrictive as suggested by some Members. We should not try to close in the net of law on these persons much more tightly and effectively than we are doing now. No, I think it should be done in such a way that the whole thing gets humanised.

Some things have been said about young men. All my life I have served the youth of this country. I have been dealing with young men, and I have dealt with young men at the university stage. The picture that has been painted of these young men of about 20 on the floor of the House baffles my comprehension. Of what kind of young men are we talking? After all, I also know young men, I come in contact with them much more than other people do. If a young man commits a crime somewhere, we get to know about it in the newspapers somewhere else, and then we tar all the young persons with the same brush. That, I think, is not fair. It is unfair. And I tell you, no young man is a potential criminal, and no human being is a potential criminal. Young men would respond much more to a treatment which is humane than to a treatment which is punitive. Humane treatment gives better results than punitive treatment. We should deal with young men as leniently as possible. They may be led astray sometimes. All of us are liable to behave like that. Hence, if young men sometimes stray from the right path, they should not be dealt with in such a way that they become for all time enemies of society.

The purpose of this Bill is that the enemies of society should become friends of society; if anybody is a potential criminal, he should become a good citizen; if anybody can be described as a hardened criminal, he should become a reformed citizen. The whole purpose of this Bill is ameliorative. It does not matter if we quote stray instances from this place or that place to show somebody has gone wrong. A gentleman who was described to be of unsound mind came here one day and took the oath. Do you mean to say all Members of Parliaments are going to behave like that? From one single instance, we should not prove that the whole set will be like that.

Now, I would like to suggest in all humility one thing to the Minister. What kind of probation officers does he envisage? I have seen the provisions in this Bill, and I would say that the kind of probation officers that he has in view will be very difficult to find in this world. For instance, the probation officers should be a sociologist who would be able to enquire into the home surroundings of the person. He should also be a supervisor, something like the superintendent of a hostel or a boarding house. Then, he should be a career-finder for the persons. He should also be a person who would be well-versed in finances, so that he can give advice on compensation. Again, he should be a person who can give all kinds of advice on all kinds of problems.

From where are these probation officers to come? That is the point. Therefore, I say that there is something wrong with this Bill. This Bill is a step in the right direction, but the problem is where we are going to find such omnibus probation officers, who can perform such multifarious duties and such diverse duties to the entire satisfaction of the people. Therefore, I say that the Joint Committee which will go into this Bill should also see to it that definite provisions are laid down for the selection of these probation officers.

Moreover, I do not know what kind of recruiting agency is going to be there for these probation officers. I know that the State Governments want certain offices to be dealt with by the Ministries; they do not want those offices to come within the purview of the Public Service Commission, so that they can also occasionally have the pleasure of appointing some persons. There is no harm in having that provision. But I would like to know who is going to appoint these probation officers. I think there should be some agency, either the

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Public Service Commission, or some other body, which should be responsible for appointing these probation officers. The Joint Committee should see to it that a definite procedure is laid down for the appointment of these officers.

Again, three types of probation officers have been described. Firstly, there are some who will be appointed by the State Government. Then, there are others who would be appointed by some recognised societies. And there are also those who would be appointed by the court. Something precise should be said about the societies which are going to be taken into confidence, and which are going to perform this very useful function, for it is not that any society can be recognised or any society can be asked to do a thing of this kind.

Then, there is the court also. I would say that this is a very cumbrous process, and this process should be simplified. Also, in the case of the juvenile offenders, some provision should be made to turn them into useful citizens.

So, I think that this Bill is good, though it does not go very far. I would say that some of the suggestions that I have put forward should be looked into by the Joint Committee, so that this Bill becomes a Bill useful for our country.

Mr. Chairman: Now, Dr. Samantsinhar. He will be the last speaker on this Bill, since the Bill has been thoroughly discussed by now.

Dr. Samantsinhar (Bhubaneswar): I very emphatically support this Bill, because it is a very bold step and typical of a progressive welfare State like India. At the same time, we must consider the effects of this Bill on our society. My hon. friend Pandit Thakur Das Bhargava has very vividly and elaborately explained its future effect on the society. I thank the Home Minister for having accepted the proposal of the Bill being referred to a Joint Committee.

On the whole, this Bill is a progressive one, and it will help the society rather to prevent more criminals being produced than to have better men in the country. At the same time, we must also see that by this Bill we do not encourage the criminal-minded people to commit more offences thereby making the society an awful place to live in. There are certain weak moments or every person, and to err is human. Some people at some weak moments may commit certain worngs; certainly, they must be pardoned for those wrongs. But certain limitations in regard to the convictions should be categorically decided upon, and every person should not be released on probation as is enunciated in the Bill. There should be some classifications as to the stage of the conviction at which the person should be released on probation.

Secondly, such release must be only in case of the first offenders. We should not release on probation all the offenders. Some distinction should be made between first offenders and those who commit the offence several times. This point should be very rigorously considered by the Joint Committee. Otherwise, the effect of the Bill would be very bad.

Besides, we are creating a new cadre in the country, namely the probation officers. These probation officers should be of good calibre. They should be of high social status, and high moral standards. They should know also the psychology of the offender. If the probation officer happens to be a raw man, and he does not know the psychology of the offender, then he would not be useful to society, and he would rather create more trouble in the society.

We also know that we are giving more powers to the magistrates under this Bill. The magistrate would depend fully, for the character and the circumstances of the offence, on two things. He may refer to the police report of the locality, and as for the circumstances to the evidence extra-

judicial knowledge of the trying magistrate would be required for the offender's character.

We know that our magistrates and our police are not free from temptation. If this power is vested in them, we do not how far they will be able to do justice under the law. That is also a factor which must be considered.

As Shri D. C. Sharma was saying, three categories of probation officers are going to be appointed, one by the State Government, another by the trying magistrate, and the third by the recognised societies. In my opinion, the probation officer should be appointed only by the High Courts, and not by any other body like the State Government or the magistrate or the societies.

All these things should be considered by the Joint Committee, and in the light of these suggestions, the Bill should be amended and brought forward before the House again.

The Minister of State in the Ministry of Home Affairs (Shri Datar): Mr. Chairman, I am very happy to find that with the exception of 3 or 4 hon. Members, the whole House is with me so far as the fundamental priciples of this Bill are concerned.

Shri Mohamed Imam: Eighty per cent. of the House is vacant.

Shri Datar: Certain objections have been placed before us. I can understand the propriety of these objections provided they are related to facts. In certain cases, I am afraid the hon. Members who made certain comments had not gone into the provision of the Bill, especially in respect of matters against which they directed their criticism. It is not as if that, immediately after this Bill is passed all the offenders would be released on probation or after admonition. That is entirely a wrong approach. I should like to correct the misimpression in the minds of the hon. Members. We have not stated that these categories of offences, even if they are proved against certain offenders, have to go without punishment altogether. This is not an amendment of the Indian Penal Code with regard to the various methods of punishment. What we have done is this. There is the intervention by the Magistrates or the court. That is a factor which most of the hon. Members who have criticised this Bill have entirely forgotten.

What we have stated here is this. There are certain categories of offences. In each of them certain rules have been provided. We have also provided for safeguards. It is absolutely essential to note that there are certain safeguards attached to every category of offences with which this Bill purports to deal.

In the first place, I should like to make it clear that extreme offences such as rape, dacoity, forgery in a serious form, etc. are completely excepted from the operation of the Bill. These serious offences are punishable with imprisonment for life or with death. We have made it very clear in clause 4. Even in those cases where a certain action of a reformative character is to be taken these offences are excepted altogether.

In spite of all these, a number of very senior and experienced hon. Members, lawyers and others, took the Government to task and they dealt with cases of rape, murders and similar cases for which the punishment is either death or imprisonment with life.

We were told very graphically, perhaps in a patronising trend, that Government are not aware of their responsiblity in respect of law and order. Government are fully aware of the responsiblity and they know that if a certain remedial measure like the ones that have been proposed in this Bill is taken, thereby there will be a better type of humanity coming out even so far as these offenders are concerned. Secondly, the incentive to crime should be cut at the root and the trends or tendencies should be properly treated. It

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has to be understood that this tendency to commit an offence has to be treated not merely by way of deterrents. A large element of deterrence still remains there because, as the hon. Members have pointed out, there are certain peculiar conditions. So, we are not prepared to go the whole hog in view of certain difficulties.

On the one hand we have this criticism that we are proceeding at a pace which seems to be far slow or far modest than it ought to be. On the other hand, we are also told by some of the hon. Members opposite that we proceed too fast. Some hon. Members on the opposite side were very good to take into account the realities and replied to some of the arguments raised by certain hon. Members.

It is true that we have to give treatment to the offence itself and have this sort of a deterrent punishment. But time has come and some of them have not appreciated the signs of time at all. They are still in a static mood from which they refuse to raise. That is my complaint about them. We should also take into account that the human element is there. The reformative element is there. Apart from treating the offence you have to treat the offender as well. I am confident that if we go along the proper lines, subject to the safeguards indicated in the Bill, a new society is likely to emerge out of this very category of persons. We cannot condemn them for all times to come.

In some cases as I have admitted there are instances where after an imprisonment, persons do not come out as proper citizens or peace-loving citizens. Sometimes by coming into contact with hardened criminals, they themselves tend to become hardened criminals. We are trying to improve the administration in the jails and a large number of States have taken steps in that direction.

Even when a man is actually convicted, can we or can we not take certain steps with a view to see whether instead of sentencing him to a particular imprisonment and sending him to jail, he cannot be reformed while we take steps to keep him out of mischief. That is the particular point which I want to press before this House.

We were told that the law and order situation would deteriorate and we were given certain facts. These statements are not correct at all. Oftentimes on the floor of the House, we are told that there has been an increase in crime. As Shri D. C Sharma pointed out rightly, I have informed the House and the Home Minister also informed the House that there has been no increase in crime, so far as the whole of India is concerned or even so far as our States are concerned.

My hon. friend, Shri Bharucha, made a reference to Bombay. He told us that there had been an increase in the incidence of crime, especially cognisable crime. I have got here figures and I would read them to the House. They relate to Bombay, Madras and U.P. We compare favourably with other States so far as the incidence of crime is concerned. Subject to these two very important points, I may point out that in Bombay the total cognisable crime for the year 1953 was 78,614. In 1954 it came down to 71,435 and in 1955 it was 69,049. There has been some decrease and no increase at all.

Shri Naushir Bharucha (East Khandesh): I was referring to Greater Bombay City and not Bombay State.

Shri Datar: You made a reference first to the whole of Bombay. (*Interruptions.*) So far as Bombay is concerned, I am prepared to satisfy this House that it is not correct to say that there has been an increase in crime either in the whole of India or in any particular part. All the same some attempts are being made.....

Pandit Thakur Das Bhargava: Is it not correct that your reports show that for the years 1952—54, there was a decrease in crime and in 1955 and 1956 the crime has increased?

Shri Datar: I have got here the official figures. I have taken three important States which are fairly big.

Pandit Thakur Das Bhargava: I have read in the reports the statement I just now referred to, that in 1955-56 the crime has increased as compared to 1954-55.

Shri Datar: Assuming that there was an increase, to what extent was that increase?

Pandit Thakur Das Bhargava: I did not give any figures. Either the reports are wrong or your figures are wrong.

Shri Datar: Let not the hon. Member merely depend upon his memory. I have got here in my hand the figures for three years, not only in respect of Bombay but in respect of Madras and Uttar Pradesh. I have purposely taken these three States by way of sample. May I assure the House that in all these three States there has been a fairly constant decrease in each case. If, for example, in any particular case, assuming for the sake of argument, there has been some increase it is not a cent per cent. increase in any case. My hon. friend stated that there was a 300 per cent. increase.

Shri Naushir Bharucha: I repeat that I was referring to Greater Bombay City. Why does the hon. Minister twist the argument. Produce the figures for Greater Bombay and then you will see. There is the Police Commissioner's Report, an official document, where in a graph all these figures are given.

Shri Datar: The hon. Member first dealt in a general way the increase in crime everywhere and then he came down either to Bombay City or Greater Bombay. I am prepared to look into this matter. But may I point out to this House that there has been no such abnormal increase as the hon. Member pointed out. All the same, I am prepared to look into this matter again.

But the question is whether there has been such an alarming increase in crimes as to make it impossible for us or to prevent us from taking recourse to reformative measures. That is the point at issue.

Then I will deal with the three clauses of the Bill against which certain criticism was directed. Take, for example, clause 3. So far as clause 3 is concerned, what has been done in respect of certain offences which might be great or small. A theft might be of a fountain pen or a few rupees, or it may be in terms of lakhs of rupees. Three or four types of offences have been referred to. Cheating has been referred to, but in respect of cheating there cannot be any release on admonition, nor in a case of the nature that the hon. Member Shri Imam referred to. He entirely forgot that there was the intervention of a magistrate or a session judge, and no magistrate or a session judge, after taking into account certain criteria which has been laid down, would release such an offender on admonition. Let not a political argument be made out of a very simple factor. What we are doing is that we are arming the criminal judiciary with this particular power and, let the House understand, we have used absolutely specific terms. We have purposely introduced the clause "when any previous conviction is proved against him", so that if there is a previous conviction then the man would not be entitled to release on admonition at all. We have put it down as a safeguard. If the man is really bad and the character of the man is proved by his previous conviction then, naturally, he would not be entitled to a release on admonition.

Then we say: "If the court is of the opinion that having regard to the circumstances of the case including the nature of the offence and the character of the offender...." So you

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will find, if the nature of the offence is heinous, as in the case that the hon. Member there pointed out, we have got judges, magistrates and courts, and they are asked to pass the necessary orders only after considering the nature of the offence as also the character of the man. In the particular case that he quoted there can never be any release on admonition. He knows that, and if that is so, that case ought not to have been thrown at us at all.

Some Members referred to cases of rape, cases of dacoity and so on. They started on the supposition that the moment this section is enacted immediately what the magistrates or session judges would do would be to release a particular offender. That is not the case at all. Only a judicial power has been given to them and they are expected to scrutinise all the circumstances and then pass final orders.

In all these cases an attempt has been made to give to the man an opportunity to improve himself. Section 562 comes into operation only after the man is convicted. Let the hon. House understand that the circumstances here are far more liberal on account of the newer approach that we have to make. Therefore, in such cases if there is a previous conviction we are satisfied that *prima facie* the man does not deserve any letting off after admonition. Now, admonition need not necessarily be gentle. My friend Shri Imam started on the assumption that admonition means a gentle advice. It may be strong and it may be powerful, but in all cases it may be effective. That is what has to be done. Therefore, let not arguments be used against us without fully realising what the particular section is.

Let the House also understand what the correct position is with regard to clause 4. We have purposely increased the scope here, but we have accepted very serious offences. I shall repeat my argument in order that the hon. Members may not be misguided by the criticism levelled against us. In such cases where the court has come to the conclusion that the person is guilty of having committed an offence, we have purposely put in the previous conviction, but we do desire that in such cases the man should have an opportunity. Here, let the hon. House understand the fundamental principles of what is known as 'probation'. In the case of probation what is done is an apportunity is given to the man to correct himself. All that is done is that there is a suspension of sentence, suspension of either the execution or the passing of the sentence. For this we ought not to be criticised. When it is found that a man has committed an offence, instead of immediately declaring a sentence of death on him what is done is that certain circumstances are taken into account with a view to see whether this equitable jurisdiction of allowing him to reform himself can come into operation.

My hon. friend Shri Sinhasan Singh and others misunderstood the whole position. So far as the main judicial trial of adjudicating upon the guilt or the innocence of the accused is concerned, that stage of trial is completely over, because we have clearly stated in both the clauses; clauses 3 and 4, that when any person is found guilty of having committed an offence, then, thereafter the question arises whether the court can take action under these reformative provisions. In that case, so far as this question is concerned, after the man has been found guilty, before he is actually sentenced, a certain new circumstance, different circumstance, has to be taken into account. It is only for this purpose that the report of the probation officer is to be taken into account.

So far as the trial of a case is concerned, as you are aware, under the Evidence Act, it is the action that has to be tried and it is not the man who is to be tried. But after the trial or action, if it is found that a particular offence has been committed, then the

question arises as to what is the nature of the offence, what is the character of the man, etc., and in order to understand what is the character of the man, some more information is necessary.

So far as the probation officer's report is concerned, that report is taken into account and you have to understand in this particular case why that has to be treated as confidential. Here, we are dealing with a class of persons who are not necessarily scrupulous but whom we desire to be scrupulous. If, for example, certain reports are made against them, it is quite likely that the probationer's life itself will be in danger, because he will believe that a particular report has been made against him. This is one of the reasons, but in a proper case, where a probation officer has made certain comments or has given a particular assessment of a man's character, it is open to the magistrate or the judge to tell him what is the particular thing and to hear him also.

In this matter, we were told that there was a violation of the principles of the Evidence Act There is nothing of that sort. After the judicial trial is over, before a man is actually punished, this is the intermediate period during which there is a suspension of the sentence and the question is whether there ought to be a suspension or there ought not to be a suspension. For that purpose only, this particular evidence is taken into account, and then it is open to the magistrate to pass what you may call a provisional order for his release after probation.

The expression "probation" itself means that the man has to prove his good character during this period which may be between one and three years and he has the opportunity of reforming himself. Ordinarily, if they are left to themselves, they may not reform. Therefore, we have got here the intervention of a probation officer, and in a proper case a formal order for a supervision can also be made. Then, within this period, if the man behaves well and good, there is no difficulty at all. It will then be a gain to the society, the gain of a good man to the society, from a man who was otherwise bad, and a man with whom we had a psychological treatment, as a result of which the man has been found to be good. This is an aspect which the House will understand. We have to deal with a man, with an erring man. Merely because he has erred, and erred in a serious manner, it does not mean that such people are beyond all bounds or bonds of redemption. That is a factor which we have always to understand.

It has to be said that a further provision has not been made note of. We have stated that if it is found that if the man, through his surety, has not behaved properly, has lapsed or relapsed into bad conduct, the magistrate can call upon him to receive the due sentence. It is a very important factor and this safeguard has been purposely introduced. That is, what you can call, not a case of release after admonition. There is no release at all. There is suspension of the passing of the sentence or the enforcement of the sentence. Then, if the man does not behave and goes in the wrong direction, he can be called upon and be lodged in jail after a due sentence of imprisonment has been passed against him.

Lastly, there is the question of an offender under 21 years of age. Here also we have taken into account that this is the period which has to be taken into account. What happens? Oftentimes, offences are committed without understanding either the nature or the implications or the effect or consequences of that offence, and especially when the offenders are of a tender age, they require a tender treatment also, because, until, ordinarily or normally, a man reaches the age of 21, it may not be possible to hold that he has attained that maturity of understanding which is required for carrying on normal functions. Under these circumstances, all that has been done is this. It is not at all the case

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that children or all those persons below 21 years have to be let off, altogether. That is a most amazing part of the argument that was addressed against us. What is being done is, in all these cases, let the magistrate or the judge understand as to whether in that particular case, after looking into the various facts which I have pointed out, a conviction and imprisonment is absolutely essential or whether that particular boy or girl ought to be released in a particular manner. This is all that is being done. A magistrate has to give his reasons.

When for example, he desires that the normal course of passing a sentence has to be followed, this is done with a view to see that in a proper case, when the abnormalities of the mind are not found, the magistrate or the judge can give proper reasons, and the man can be released only so far as that particular offence is concerned.

Under these circumstances, I do not see what wrong has been committed or what dangers are implied in the Bill that we have introduced. If all these things are not taken into account, naturally the society will move only along the direction of deterrence, and the effect of deterrence would be that certain classes of society, this class of offenders, will continue to do wrong and become hardened criminals and crooks or they go into the under-world. These are the various evils that proceed from the other view that we take. But, as I have stated, we have taken a compromise view. We have taken into account the interest or the security of the society. That is naturally most supreme, but subject to it, and for that purpose, we have introduced the safeguards.

My submission to the House is, everywhere, before taking action, we have introduced certain safeguards so that no wrong will be done to the interests or the security of the society and the interests or the security of the society will always remain unaffected.

Only one or two other minor points remain. My friend Pandit Thakur Das Bhargava contended that our order about making compensation or for costs is a commercialised matter. I fail to understand how it is commercialised at all. As I stated in my opening remarks, when it is found that a man has committed the guilt and the guilt has proved, what does it mean? It means that the person complained against, that is ordinarily, the complainant, has received an injury or a damage. If that is so, then under the general law of torts, there must be a remedy for an injury, for every wrong that has been committed. My friend just argued in a lawyer-like manner. So far as his argument is concerned, it means "let the aggrieved party go to a court of law". A summary remedy is necessary because here we are going out of the common law and we are passing an equitable order. We all know that in the world of criminal jurisprudence there is such a thing as equity. Here, when you hold an offender as having committed an offence, it means that the aggrieved person, namely, the complainant, has proved his case Under these circumstances, is it not proper that some compensation should be given to him, whatever the costs are? The costs need not be the costs of Government. Whatever it may be, the court has judicial powers; the court has a strong common sense and it will understand what are the costs incurred individually by the particular aggrieved complainant. Under these circumstances when we were introducing an equitable principle, we thought that so far as the guilty person is concerned—we cannot call him accused—there ought to be a counterbalancing advantage, so far as the complainant is concerned. There are already certain sections in the Criminal Procedure Code where this question of costs and compensation has always been taken into account and provisions have been made for granting compensation from one person to the other. Section 250, for example, is there, When a false com-

plaint has been filed, why should criminal law introduce the question of compensation for a vexatious complain? That has been introduced, because here we have a Judge or a Magistrate who has gone through the whole matter and who knows whether a particular action is correct or wrong. There are other sections also where similar provisions have been made.

17.00 hrs.

Therefore, these are summary but highly equitable matters and they are in the interests of the other party. Under these circumstances, I find there is nothing wrong. So far as the evidence and the report of the probation officer is concerned, it has nothing to do with the main trial. It is only for the purpose of finding out the antecedents of the man. In such cases, it would be some material for the Judge to be guided by, so far as subsequent questions after holding the man guilty are concerned. Therefore, you will find that all these provisions are more or less on sound lines and there is nothing wrong. Let it not be supposed that tomorrow there will be riots everywhere and the law and order situation would deteriorate. Nothing would happen. I would point out to my friends that Government have taken all these circumstances into account.

Lastly, Mr. Imam found inconsistency in certain measures being stern and certain other provisions being not so. Without calling ourselves great, may I point out one Sanskrit verse which gives what a great man has to be?

वज्रादपि कठोराणि मृदूनि कुसुमादपि

The Government of India or the State Governments ought to be strong where strength is necessary; they ought not to be strong and they ought to be persuasive where persuasion is necessary. Therefore, we have to be both. When we come across diehard or subversive elements, we cannot think of weakness; we cannot think of any soft quality. We have to hit hard. That is the reason why the Preventive Detention Act has been passed and is going to be continued. (*Interruptions*). With your goodwill, we desire to continue it for some period for dealing with only subversive elements and not with other elements at all. We have to deal strongly and sternly with those people. When, for example, there are ordinary offences and when there are elements for taking a proper equitable and human view, you ought to allow us to take a persuasive view.

Under these circumstances, I would suggest that the provisions are fairly good. But, as you are aware, the Chair suggested that because this is a new type of Bill in a new society, we might consider the advisability of agreeing to the reference of this Bill to a Joint Committee. A number of hon. Members on both sides have also made the suggestion. Therefore, I accept the suggestion on behalf of the Government.

Shri P. R. Patel (Mehsana): Can I seek one information from the hon. Minister? Under clause 4, sub-clause (3), offenders may be released on probation and they are to be put under the supervision of a probation officer. Suppose in a district there are 500 convicts on probation. How many probation officers will have to be appointed and what will be the expense?

Shri Datar: No such contingency had arisen. If it arises, then we are competent enough to take proper action in all such cases.

Mr. Chairman: I would like to enquire whether Mr. Bharucha wants his amendment to be put to the House.

Shri Naushir Bharucha: Because the reference to Joint Committee has been accepted, I do not want it to be put. I take it that the Joint Committee will report in the next session.

Mr. Chairman: I thought that was in the motion itself. The date has not been put in the motion.

What about Pandit Bhargava's amendments?

Pandit Thakur Das Bhargava: In view of the hon. Minister's acceptance to refer the Bill to a Joint Committee, I would like to withdraw my amendments.

Mr. Chairman: As regards amendments Nos. 24, 38 and 25, the hon. Members want to withdraw their amendments. Have they the permission of the House to withdraw them?

The amendments were, by leave, withdrawn.

Shrimati Uma Nehru: I only wanted to suggest that on the Joint Committee there could be more women, because I think women understand this problem more than the men do.

Shri Datar: This question can be considered when Rajya Sabha Members are put in.

Pandit Thakur Das Bhargava: There could be one or two more lady Members.

Mr. Chairman: Have you got any definite suggestion?

Pandit Thakur Das Bhargava: I suggest Mr. Bharucha's name and two or three more ladies may be included.

Mr. Chairman: The number will have to be adjusted in consultation with the Minister.

Shri Datar: There should be 20 Members from Lok Sabha and 10 Members from the Rajya Sabha.

Pandit Thakur Das Bhargava: Only the proportion should be the same; the number may be greater or less. There is no difficulty.

Shri Naushir Bharucha: We can have 24 from Lok Sabha and 12 from Rajya Sabha.

Pandit Thakur Das Bhargava: Yes. Shrimati Uma Nehru and two more lady Members may be there.

Shri Datar: We might put two more ladies. Let the hon. House decide the names.

Mr. Chairman: Mr. Bharucha's name has been suggested by Pandit Bhargava.

Shri Datar: Two more ladies can be there.

Shri Achar (Mangalore): I suggest the name of Mrs. Laxmi Bai.

Mr. Chairman: In order that it may be 24 and 12, Mr. Bharucha's name has been suggested; there can be three more names.

Qazi Matin (Giridih): I want to suggest the name of Mr. Purshotham Das Patel.

Shri Radha Raman (Chandni Chowk): I suggest the names of Dr. Sushila Nayar, Shrimati Laxmi Bai and Shrimati Mafida Ahmed.

Shri Jaipal Singh (Ranchi West—Reserved—Sch. Tribes): Does that mean that Mr Bharucha is out? Or is he still in even when the women are in?

Qazi Matin: I also suggest the name of Pandit Thakur Das Bhargava.

Pandit Thakur Das Bhargava: I am already a member.

Shri Jaipal Singh: May we have the final list of names?

Mr. Chairman: I have already read out the names. The new names suggested are: Mr Bharucha, Dr Sushila Nayar, Shrimati Laxmi Bai and Shrimati Mafida Ahmed. That makes the total 24.

Shri Datar: I have to make one suggestion so far as the report is concerned. We may say that the report should be submitted in the "third week" instead of "first week" so that we can get more time.

Qazi Matin: I want to propose the name of Kunwarani Shrimati Vijaya Raje in my place.

Mr. Chairman: The hon. Member himself cannot suggest that.

Shri Jaipal Singh: He can disagree to stand as a member. The mover must obtain his consent. He is now disagreeing to his name being included in the list.

Mr. Chairman: All right. The name of Mr. Matin will be excluded and in its place the name of Shrimati Vijaya Raje will be included.

The question is:

"That the Probation of Offenders Bill, 1957, be referred to a Joint Committee of the Houses consisting of 36 Members, 24 from this House, namely, Sardar Hukam Singh, Pandit Thakur Das Bhargava, Shrimati Uma Nehru, Shri Sinhasan Singh, Shri C. D. Gautam, Shri Jaganatha Rao, Shri T. Manaen, Dr. Y. S. Parmar, Shri Venketrao, Shri Shriniwasrao Naldurgker, Shri N. Keshava, Shri M. K. Jinachandran, Shri C, Bali Reddy, Shri K. S. Ramaswamy, Shri S. Keswara Iyer, Kunwarni Vijaya Raje, Shri Yadva Narayan Jadhav, Shri Purushottamdas R, Patel, Shri Jagdish Awasthi, Shri Naushir Bharucha, Dr. Sushila, Nayar, Shrimati Mafida Ahmed, Shrimati Sangam Laxmi Bai, Shri B. N. Datar and Shri Shree Narayan Das (Mover and 12 Members from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the third week of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of members to be appointed by Rajya Sabha to the Joint Committee."

The motion was adopted.

The Deputy Minister of Defence (Shri Raghuramaiah): Mr. Chairman, I beg to move:

"That the Bill to consolidate and amend the law relating to the government of the Indian Navy, as reported by the Joint Committee, be taken into consideration".

As the House is aware, the Bill was introduced in Lok Sabha on the 31st May 1957. The hon. the Defence Minister moved the motion for reference to the Joint Select Committee on 22nd July 1957 and the House agreed to that and referred it on the 23rd July.

The Rajya Sabha discussed the motion on the 13th and 14th August and concurred in the motion on the 14th of August 1957.

The Joint Select Committee had held 13 sittings, considered the matter for nearly 46 hours—to be more specific 46 hours and 40 minutes—and also disposed of about 350 amendments. The Committee brought to bear on the measure, not only its legal acumen but also the exhaustive knowledge which some of the hon. Members had regarding our Navy. The Chairman and members devoted their very best attention to the proceedings and have now submitted their report. That report is now before the House.

The Indian Navy has had a very chequered history. The hon. Defence Minister, when he moved the motion for reference to the Joint Committee in July, made a very exhaustive speech, tracing back the maritime history of this country, going back thousands of years, with particular reference to that part of our history wherein in about the early centuries of the Christian era, India had the unique honour of being the then greatest maritime power, with complete mastery of the seas around. We have passed through many vicissitudes of history since then. There was a time when the Navy was merely the hon. East India Company's marine,