

[Mr. Deputy Speaker.]

once it has happened, it should not happen again. I have no option. I do not propose it, but I have made my observation that it would not be a good practice if it is followed like that.

We shall go to the next item. Shri Jhulan Sinha. He is not present.

Shrimati Renu Chakravartty: What is the speech going to be categorised as? Just a speech which is off the record.

Mr. Deputy-Speaker: That would be read by others.

Shri D. C. Sharma: What has happened?

Mr. Deputy-Speaker: Nothing has happened.

Shri Subiman Ghose

INDIAN PENAL CODE (AMENDMENT) BILL

Amendment of section 304 A

Shri Subiman Ghose (Burdwan):
Sir, I beg to move:

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

Shrimati Renu Chakravartty (Basirhat): What happens to Shri Jhulan Sinha's Bill?

Mr. Deputy-Speaker: He is not present. So, what shall I do? Therefore, I called the next hon. Member.

Shri Subiman Ghose: Sir, my amendment is very simple. It only seeks to enhance the sentence so far as Section 304A is concerned. Section 304A provides imprisonment for two years or with fine or with both. I want that the sentence should be enhanced to ten years and I have got my reasons.

In the Indian Penal Code there are provisions for punishing homicides of different kinds, murder which is

under Section 302 of the Indian Penal Code, and culpable homicide not amounting to murder. That is also Section 304 of the Indian Penal Code and, at any rate, Sir, you will be pleased to find that the sentence is not below ten years.

15 hrs.

But I think the offence contemplated in section 304A, for which a punishment of two years' imprisonment has been provided, is a greater offence than what is contained in section 304. Under section 304, if here is no intention to murder, but if a murder happens, even then the sentence is ten years. But as a result of the rashness and negligence of a certain person, the number of deaths might be more than one—3, 4 or 5 and even then, under section 304A, the man guilty of the offence goes away with a punishment of two years. I think this is a greater offence than what is contained in section 304. In section 304A, where the man-slaughter has happened due to error of judgment or due to mistake of fact, I do not say that the punishment should be enhanced. But there are circumstances where it has been found that rashness and negligence practically come to deliberate intention.

I might give one or two examples. A bus is running late. If he is late in a certain station, the driver or the conductor is punished. He comes near a destination at a late period and it so happens that the next destination is 8 or 10 miles away where he has to reach by a certain time and he has in his hand 10 or 12 minutes only. Then in order to save himself from the fine, he drives the bus rashly and negligently. Ultimately because of this fact an accident happens and it will be found that three or four persons have died, several maimed injured or deformed. This cannot be condoned and he cannot be let off with a punishment of two years. If the

punishment is enhanced, that will act as a sort of check on such rashness or negligence. If he finds that a deterrent punishment will be awarded, he will take care and he will face the fine rather than take away the lives of the passengers.

While I tabled this amending Bill, the Bombay State Women's Council was kind enough to support me and sent a note to this House with a copy to me requesting that I might agree to the reduction of the punishment to five years. I think there is no scope for the reduction of punishment, because these accidents are happening every day. A certain section of drivers are very desperate and also adamant that they will not check themselves and they will act in such a way that lives of several persons will be jeopardised. They will go in their own way unless a deterrent punishment is provided for. Everywhere road accidents are on the increase. Those who have experience of grand trunk roads near Calcutta or other big towns will know that even though the roads are very much congested, even then it will be found that the drivers are not checking themselves. The result is that every day these accidents are happening. In these national highways, there is not sufficient protection, because it is not possible to provide for protection and the drivers go in their own way.

One thing that happened two days before has confirmed my belief in this. On the 3rd March we were waiting in gate No. 1 and it was inclement weather. We were practically hopelessly waiting for a taxi and some employee of this House was also waiting. Some of us came to know that we were to go in the same direction in which I had to go and we became a group of four desperately trying to get a taxi. Ultimately we were successful and we got a taxi. When one gentleman had entered into it and when I myself was entering, at that time a Government's land rover came in speed and dashed against the

taxi. If that can happen here and if the driver is so very desperate, careless and disrespectful, I leave it to the House to imagine what happens when there is nobody to check their speed. I do not know whether it was a Minister's car or somebody else's, but it was a Government's land rover which dashed against the taxi damaging the car and were saved practically by the skin of our teeth. It is for this reason I am submitting that the time has come when a deterrent punishment should be provided for.

When the Indian Penal Code was enacted vehicular traffic was not so very heavy. If statistics are taken regarding the loss of life when the code was enacted when vehicular traffic was not so very heavy and if statistics are taken now as to how many lives are being lost due to rash and negligent driving, I think it will come to a staggering figure. It is for this reason that I say that the time has come when this matter should be checked with an iron hand. There are, for instance, drivers who are living in a sense of security and who think that there is some bada saheb behind them and they cannot be touched. They are very rash and negligent and they do not care a tuppence for the other people. That is happening everywhere. Therefore, if in section 304 ten years can be provided for, in section 304A there should not be any leniency. In section 304, it might be that a death takes place in the spur of a moment without any intention of causing death. But when a driver is driving a bus in break-neck speed, a prudent man knows that it might cause death to several persons if the driver loses his grip over the vehicle. So, in that case, I submit there is no meaning in showing any leniency.

Therefore, for all these reasons, I have placed this Bill before the House for its consideration for enhancing this sentence to check the growing catastrophies caused by vehicular traffic driven by reckless and rash persons.

Mr. Deputy-Speaker: Motion moved:

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

No hon. Member wishing to participate? Then I have only to call the hon. Minister:

Perhaps the Members do not agree about the rashness and negligence that the Mover complains of!

The Minister of State in the Ministry of Home Affairs (Shri Datar): Mr. Deputy-Speaker, it is understandable that the hon. Member wants a severe punishment so far as the rash driving of motor cars or lorries is concerned. But while moving the consideration of this Bill he has brought within the orbit of the proposed amendment a number of things which possibly he has not got in view.

So far as section 304A of the Indian Penal Code is concerned, it is not confined only to rash or negligent driving: it deals with rash and negligent acts. That is the reason why I would like to read that portion. It says, "Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

The hon. Member has sought an amendment to this section. Though he has in view, as he has made it clear in the Statement of Objects and Reasons as also in his speech just now, and what he desires is that there ought to be a severer punishment so far as rash motor driving is concerned, what he has put down in the Bill is a severe punishment not only in respect of rash or negligent driving but in respect of all rash and negligent acts.

Therefore, I would point out in the first place that this section deals with all rash and negligent acts, and therefore it would not be advisable to change or amend the provisions or to

make the punishment severer than what it is unless there are justifying circumstances so far as such acts generally are concerned.

Now, I may invite the hon. Member's attention to the fact that if there is rashness or negligence in respect of a particular act and if it falls short of culpable homicide, then naturally the provisions of section 304A come into operation. And there the period that has, naturally, been provided is two years imprisonment or fine or both. So far as rash and negligent driving is concerned, it will be found that we have a section in the Motor Vehicles Act, 1939, and there the punishment that has been provided for is a maximum of two years; and this provision corresponds with a similar provision in an Act in the United Kingdom.

What happens now is that generally the punishment that is awarded is not even two years—two years might be considered as a fairly severe term—but in certain cases the punishment that is meted out is not two years. It falls less than two years, and sometimes only fine is awarded. Under such circumstances, whenever the State Government finds that the punishment is absolutely lenient or that a higher punishment is necessary, it is open to the State Governments to apply to the High Courts for the enhancement of the sentences. And that is what the State Governments have done.

I would therefore like the hon. Minister to take into account the implications of the provisions that he wants to introduce in section 304A. It should not apply to all rash and negligent acts. Because, when there is an element of rashness or of negligence, there is a lack of wickedness behind that act. Let us understand the position very clearly. If there is wickedness, if it has been done purposely, it would amount to culpable homicide. For culpable homicide not amounting to murder a higher punishment has been provided for; and when it

amounts to murder still higher punishment, by way of death, is also provided for.

Therefore, under section 304A we are dealing with rash or negligent acts which the perpetrator ought not to have done at all but which unfortunately he did, as a result of which there was this death. Under the circumstances the framers of the law long ago, as the hon. Member has stated, about a hundred years ago, took into account the extenuating circumstances and therefore they fixed the highest punishment at two years.

Now, correspondingly also, so far as the precise object that the hon. Member has in view is concerned, namely, rash motor driving, it is not yet clear as to whether there has been such a phenomenal increase in rash motor driving. Wherever there is, naturally, the State Governments take action, and in proper cases, if they find that the Magistrate or the trial court has not given proper punishment, they approach the High Court, and the sentence is enhanced by the High Court in suitable cases. Under these circumstances, may I point out to the hon. Member that the very object that he has in view is likely to be defeated?

Then, secondly, the hon. Member also proposes to take away the discretion of the Judge or the Magistrate so far as the award of sentence is concerned. After a criminal court comes to the conclusion that the accused has been guilty of an offence, naturally it ought to be open to the Judge or the Magistrate to use his discretion, his judicial discretion, and award punishment which is adequate and proper in the circumstances of the case. But let us see what the hon. Mover has done. He wants that in all these cases the punishment should be uniform; he wants that the punishment should be for ten years and that the person should also be liable to fine. If, for instance, the punishment is more deterrent than what the facts really warrant, then it will defeat the purpose in view. In the form in which the amendment has been brought here, the effect of the acceptance of this amendment or the change in language

in section 304A would be that all negligent acts, all rash acts will be punishable with not less than ten years' imprisonment plus fine.

Therefore, I am confident that if the hon. Member takes into account all these circumstances he will find that his amendment has gone farther than what he has imagined. Under the circumstances I would submit to him that he might withdraw the Bill, if he is so pleased, otherwise, I would request the House to throw out the Bill, because it brings in a number of circumstances which possibly he has not got in his view.

So far as the evil of rash motor driving is concerned, that is a matter which has been considered by the Government. We consulted the State Governments as to whether more severe punishment should be provided for in the law. They are all agreed that so far as the punishment provided by the law, namely, the Motor Vehicles Act or the Indian Penal Code, is concerned that is quite sufficient and in proper cases they always move the High Court for the enhancement of the sentences.

Under these circumstances I would submit that it is not possible to accept the provisions of the Bill.

Shri Subiman Ghose: Perhaps I had been misunderstood by the hon. Minister. And if the speech of the hon. Minister be read in its true perspective, I am afraid that he will put a premium to rash and negligent acts; he is perhaps in an encouraging mood, so to say. At the outset I would like to tell you that the ten years' punishment is the maximum punishment, and according to the facts and circumstances of the case the Court can award any punishment, from one day to ten years. Or, if the court thinks that awarding of a fine will meet the justice between the parties, he is not handicapped, it could be done. It is not that I have drawn a dead-line that ten years' punishment should be given in each and every case. The hon. Minister has done injustice to me. I have not done anything of that sort.

[Shri Subiman Ghose]

What I want to say is, maximum punishment should be ten years according to the facts and circumstances of the case. There are rash and negligent acts arising out of the mistaken facts.

Shri Datar: May I request the hon. Member to read the Bill?

Mr. Deputy-Speaker: The words that he has given are: "In section 304A of the Indian Penal Code, 1860, for the words "of either description for a term which may extend to two years or with fine or with both", the words "for ten years and shall also be liable to fine" shall be substituted. He wants the imprisonment to be uniform, and then he wants, "for two years", "the words 'ten years' shall be inserted"; it would have brought out the wishes of the hon. Member. Then it would have meant that he wanted to have the maximum punishment of ten years instead of two years. What he wants to substitute is that the punishment of one description—he does not specify it—should be given. It does not leave any discretion to the magistrate to give any lesser punishment. The hon. Minister was right in interpreting his amendment.

Shri Subiman Ghose: That is an unfortunate mistake. It can be rectified even at this moment.

Mr. Deputy-Speaker: For "two", substitute "ten".

Shri Subiman Ghose: It may extend to ten years. I did not want to draw a dead-line that it should be so in each and every case. That is far from my mind.

Mr. Deputy-Speaker: But his amendment conveys that.

Shri Subiman Ghose: I admit that it is an unfortunate mistake. In the case of rash and negligent acts, some of the acts arise out of mistaken fact, some arise out of error of judgment, and some arise out . .

Mr. Deputy-Speaker: Then the purpose would have been better served if

he had made an amendment to the Indian Motor Vehicles Act.

Shri Subiman Ghose: Only the hon. Minister makes a finer distinction. The Act is the genus and rash and negligent driving is a species. That is in every Act. I have only cited an example of what rash and negligent act means. But if any other act be like that, which is also rash and negligent, in that case, the punishment should also be provided, because, in culpable homicide not amounting to murder, the punishment is up to ten years. So, why not be so in this case also, and why should an exception be made in this case because there is *mens rea*? When a driver drives his car or his lorry or his truck in a break-neck speed, knowing fully well that if he loses his grip, by chance, it will cause the death of several persons whom he is carrying, his offence is greater.

Anyway, in view of the fact that I have committed some unfortunate mistake in this Bill, I beg to withdraw the Bill.

Mr. Deputy-Speaker: The question is:

"That leave be granted to withdraw the Bill."

The motion was adopted.

Shri Jhulan Sinha (Siwan): May I seek permission to introduce my Bill?

Mr. Deputy-Speaker: I will allow all those hon. Members who were not present earlier, to move their Bills at the end. Now, we shall proceed to the Indian Arms (Amendment) Bill.

INDIAN ARMS (AMENDMENT) BILL

(Amendment of Section 4)

Shri P. R. Patel (Mehsana): I beg to move:

"That the Bill further to amend the Indian Arms Act, 1878, be taken into consideration".