

available. It is being collected and will be placed on the Table of the Sabha in due course.

Sports Goods

2978. **Shri Hem Raj:** Will the Minister of Commerce and Industry be pleased to state:

(a) the various kinds of sports goods produced in India during the years 1956 and 1957 State-wise; and

(b) the quantity and price of sports goods exported to the foreign countries during these years?

The Minister of Commerce and Industry (Shri Lal Bahadur Shastri): (a) and (b). A statement is placed on the Table of Lok Sabha. [See Appendix VIII, annexure No. 67.]

PAPER LAID ON THE TABLE

AMENDMENT TO COTTON TEXTILES (PRODUCTION BY HANDLOOM) CONTROL ORDER

The Minister of Commerce (Shri Kanungo): I beg to lay on the Table, under sub-section (3) of Section 6 of the Essential Commodities Act, 1955, a copy of Notification No. S.O. 487, dated the 12th April, 1958, making certain further amendment to the Cotton Textiles (Production by Handloom) Control Order, 1956. [Placed in Library. See No. LT-680/58].

MESSAGE FROM RAJYA SABHA

Secretary: Sir, I have to report the following message received from the Secretary of Rajya Sabha:—

"In accordance with the provisions of sub-rule (6) of rule 162 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to return herewith the Finance Bill, 1958, which was passed by the Lok Sabha at its sitting held on the 23rd April, 1958 and transmitted

to the Rajya Sabha for its recommendations and to state that this House has no recommendations to make to the Lok Sabha in regard to the said Bill."

ESTIMATES COMMITTEE

EIGHTEENTH, TWENTIETH AND TWENTY-SECOND REPORTS

Shrimati Benuka Ray (Malda): Sir, on behalf of the Chairman of the Estimates Committee, I beg to present the following three reports of the Estimates Committee:—

- (1) Eighteenth Report on action taken by Government on the recommendations contained in the Nineteenth Report (First Lok Sabha) of the Estimates Committee on the Ministry of Railways—General Administration.
- (2) Twentieth Report on Budgetary Reforms.
- (3) Twenty-second Report on the Ministry of Steel, Mines and Fuel—(Department of Mines and Fuel—Oil Division)—Oil and Natural Gas Commission, Oil Refineries etc.

PROBATION OF OFFENDERS BILL—Contd.

Mr. Speaker: The House will now take up further clause by clause consideration of the Probation of Offenders Bill, 1957 as reported by the Joint Committee. Out of 8 hours allotted to this Bill, one hour and 26 minutes now remain. Clauses 2 to 17 and 19 were adopted yesterday. The House may continue discussion on clause 18 which was deferred.

Shri Jaganatha Rao (Koraput): Mr. Speaker, yesterday I moved an amendment to clause 18 for the deletion of the words in lines 86 and 37, "or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947".

My object in moving this amendment is to see that persons found guilty or who were charged under sub-section (2) of section 5 of the Prevention of Corruption Act also come within the purview of the Probation of Offenders Bill. Government servants who are charged with this offence will be denied the right of probation if this clause is allowed to remain as it is. There are several kinds of cases coming within the purview of the Prevention of Corruption Act. Some persons are hauled up, in some cases clerks are hauled up and the subject matter involved in some cases is trivial. In some cases, it may amount to a technical commission of this offence. In such cases, it would not be correct to deprive them simply because the charge is under the Prevention of Corruption Act. Clause 4 of the Bill is wide enough to attract all offences under the Penal Code, which are not punishable with death or transportation for life. I see no reason or logic why these people who are charged with offences under the Prevention of Corruption Act should be excluded from the operation of this Bill.

Shri Raghbir Sahal (Budaun): On a point of order, Sir,...

Mr. Speaker: Let him finish. I will hear the hon. Member.

Shri Jaganatha Rao: This clause was not in the Bill as it was introduced. The Joint Committee, after some discussion, included it. Some Members wanted its inclusion. Some Members have written minutes of dissent that it should not be there.

Mr. Speaker: How does it happen that if it was not there, there is no marking.

Shri Jaganatha Rao: I may point out that in the original Bill this clause was not there—these words 'or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947' were not there.

Mr. Speaker: Clause 18 was new?

Shri Jaganatha Rao: Clause 18 was there. In lines 36 and 37 the words 'or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947' were included in the Joint Committee. Some Members have appended a note of dissent. I want the deletion of these words for the reasons explained by me. Clause 4 of this Bill is wide enough to include all offences which are not punishable with death or transportation for life. Under clause 18, persons who are charged with an offence under section 5 of the Prevention of Corruption Act, though the offence may be trivial or technical, would be deprived of the benefit of clause 4 of this Bill. That is the object which prompted me to move this amendment.

Again, in the Criminal Law Amendment Act, which was passed by this House last session, section 5 of the Prevention of Corruption Act was substituted and it was said in sub-section (2) of section 5 that any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to 7 years and shall also be liable to fine provided that the court may for any special reason to be recorded in writing, impose a sentence of imprisonment of less than one year. Even after this amendment, the discretion is given to the court to impose a lesser sentence. My submission is, in a proper case, power should be given to the magistrate acting under this measure to exercise discretion in proper cases.

Shri Raghbir Sahal: Now that Shri Jaganatha Rao has made his speech, I think I should be allowed to say something.

Mr. Speaker: No, no. The hon. Member only wanted to raise a point of order, while Shri Jaganatha Rao moved an amendment.

Shri Raghunath Sahal: My point of order is that Shri Jaganatha Rao was a Member of the Select Committee. The whole issue was considered by the Select Committee, and I find from the Report of the Select Committee that he has not appended any Minute of Dissent with regard to this. There are other Minutes of Dissent appended by other Members, but he stands pledged to all the clauses of the Bill. He has appended his signature to that. He should be the last man to have moved this amendment to this clause regarding deletion.

Dr. Sushila Nayar (Jhansi): I have appended a Minute of Dissent on this issue. I have even spoken about this matter in this House when the Bill was having the first reading. It makes not the least difference if I move it or Shri Jaganatha Rao does it. I was not here to move the amendment in time, Shri Jaganatha Rao has done it. So, if it makes any difference to the hon. Member, my name may be substituted for that of Shri Jaganatha Rao.

Mr. Speaker: Hon. Members will try to be very careful regarding this matter. We entrust a Bill to the care of the Select Committee, and hon. Members are entitled as a matter of right to append Minutes of Dissent. What are we to go by if Members of the Select Committee agree to the provisions of a Bill and then suddenly an hon. Member gets up here and says: "No, no, I want to introduce an amendment."? Whom are we to believe? Why should the hon. Member be in the Select Committee, give one impression there and create another impression here? I am very sorry. This ought not to take place hereafter.

Shri Jaganatha Rao: May I submit I was not present at the last session of the Select Committee? Therefore, I could not append a Minute of Dissent.

Mr. Speaker: If he does not append, he must keep quiet, he must suffer because of the majority.

Shri T. N. Singh (Chandauli): In the Select Committee there may be small differences on this or that issue, but we do not usually, or in many cases, think it important enough to submit a Minute of Dissent. In the case of those minor things, supposing we were to move an amendment, shall we be taken to task as you have stated? That is what I want to know.

Mr. Speaker: Hon. Members are agents of this House in the Select Committee. They are supposed to represent all the views here. There is no meaning in wasting the time of the House by sending it to the Select Committee if once again hon. Members, having done something there, come here and oppose it and say: "This is a smaller matter. We did not append a Minute of Dissent". I would expect every hon. Member to state what he had to say even if it is a small matter. There is no harm. We are not hesitating to print.

Shri T. N. Singh: There are some small points on which a Minute of Dissent would not be justified.

Mr. Speaker: Yes. Let us decide from time to time.

I will now accept this as an amendment moved by Dr. Sushila Nayar. I do not say that a Member of the Select Committee is bound absolutely in every minor detail, but sufficient notice must be given, or he must have had an opportunity. I would advise hon. Members who differ on particular matters, to place before the House, as far as possible, their point of view so far as essential matters are concerned, state that they do not agree and leave it to the House at the consideration stage, and thereafter move amendments.

Shri Jaganatha Rao: I spoke about it when I spoke the other day.

Mr. Speaker: We did not notice. The hon. Members did not notice.

Dr. Sushila Nayar: I wish to make one small statement, and that is this. There were a number of hon. Members in the Select Committee who disagreed with this point, but when we drafted the Minute of Dissent, some of them had left, and it was not possible to get the signature of every Member who had expressed disagreement in the course of the discussion. So, I hope we will have your indulgence. Though the signature of a particular member on the Minute of Dissent is not there, if the hon. Member feels strongly, he may not be debarred from moving an amendment.

Mr. Speaker: I shall try to devise a method to make the differences of opinion known even without appending a Minute of Dissent which must be taken advantage of only in case of essential differences, on essential matters. The Minutes appended are circulated to hon. Members here, except in a particular matter where an hon. Member does not think it important to append a Minute. In any particular case where an hon. Member wants to say: "Let it not appear that this is unanimous", it will be said "carried by majority". in which case those hon. Members who wanted to reserve their right to move amendments will take advantage of that position. If, even there they keep quiet and do not express dissent, then I do not think they should come up here. It must be left to other Members to take up that matter. I will give instructions that such a provision may be made that without appending Minutes of Dissent on smaller things their disagreement may be indicated that way.

I shall treat this as an amendment moved by Dr. Sushila Nayar.

Shri Sinhasan Singh (Gorakhpur): On a point of order. Yesterday Shri Jaganatha Rao moved an amend-

ment. This was considered a very important amendment, and as no notice was given to the House, the Deputy-Speaker ruled that proper notice should be given. That amendment of his is not being moved, and now Dr. Sushila Nayar's name is being substituted. That becomes a new amendment today. How can there be substitution of a name in an amendment? I move an amendment, it is ruled out, then how can my name be substituted by that of somebody else?

Mr. Speaker: I shall divide this into two portions. Substantial injustice to the House by taking it by surprise is one thing. If this matter has not been circulated to hon. Members . .

Sardar Hukam Singh (Bhatinda): Now it has been.

Mr. Speaker: I suppose it has been circulated to hon. Members.

Some Hon. Members: Yes.

Mr. Speaker: Therefore, whoever might move the amendment, so far as the House is concerned, there is no surprise. As a matter of fact, until the point of order was raised, hon. Members must have been ready to get along with this amendment. I am only allowing it because of a technical objection as it was said that this matter was raised there or included in the Select Committee Report. We need not be too technical. I can allow another hon. Member, and if necessary, I will ask her to repeat what Shri Jaganatha Rao has said. There is no want of notice. Let us not stand on too much of technicalities. If occasion arises, I will allow Shri Sinhasan Singh to do the same thing.

Pandit K. C. Sharma (Hapur): I rise to oppose this amendment, and my reason is that there is a difference between a private man or citizen as such and a man holding a Government office. The difference is this that the Government officers are mature men, experienced persons expected to have been trained

[Pandit K. C. Sharma]

in what is called rationalised discipline. They contract not only for the efficient discharge of their duties, but also for good conduct and a reputation for integrity. Therefore, dereliction on their part is deliberate and wilful and as such cannot be treated with leniency and sympathy. Therefore, in no case can the principle that is applicable in other cases be applied in the case of Government servants.

With these words I oppose this amendment.

Shri Kasiwal (Kotah): I rise to oppose the amendment.

When the Criminal Law Amendment Bill was under discussion, an amendment which had been moved by me was unanimously accepted by the House. The purport of that amendment was that a corrupt officer, whatever the offence he committed, was liable to at least one day's imprisonment and fine, or whatever it was. That amendment was unanimously accepted and by this amendment it is today said that that corrupt officer will not get even that one day's simple imprisonment. For that reason I oppose this amendment. It is absolutely contrary to the spirit of the Criminal Law Amendment Act.

Shri Sinhasan Singh: The hon. Minister who was piloting the Prevention of Corruption Bill, in respect of which the amendment of Shri Kasiwal was accepted, gave an assurance in the House that the matter will be looked into on the Probation of Offenders Bill. When it was mooted, he agreed that provision should be made so that corruption cases should not be governed by this Probation of Offenders Act. There was probably the only one dissenting voice at that time. Having given that assurance, how can Government accept this amendment

now? After Government have accepted, this thing is coming up again. With what face can we say before Parliament after passing that Bill in which we provided a minimum sentence to an officer who was guilty of corruption, that we are going to apply to him also the Probation of Offenders Act so that he may be warned off or he may be put on probation and we can do these things somehow or the other? I humbly submit that this is an amendment which Government should not accept here. Moreover, it is an amendment which has been moved by a private Member and not by Government. Therefore, I would urge that the *status quo* of the Bill should be allowed to prevail.

Shri Raghbir Sahai: This amendment, according to your direction, has been considered to have been moved by Dr. Sushila Nayar. With your permission, I would invite your attention to a few lines from the minute of dissent that she has appended to the report of the Joint Committee.

Mr. Speaker: Let us go into the merits of this amendment, instead of going into what she has said. Has the hon. Member got anything to say as to how it is derogatory or it is not good.

Shri Raghbir Sahai: I am just coming to that. She states in her minute of dissent:

"If those guilty of dacoity and murder can be treated under the probation of offenders Act under certain circumstances, there does not seem any reason to treat a Government servant guilty of corruption which may not be of a serious nature at all as a criminal beyond redemption."

In the course of her speech on the Probation of Offenders Bill also, she referred to minor offences committed by Government servants.

I think she is labouring under misapprehension that the Prevention of Corruption Act also refers to minor offences, which it does not. Minor offences may be under section 161 or 165 of the Indian Penal Code. For instance, acceptance of illegal gratification by a public servant or obtaining any valuable thing by a public servant etc. may be minor offences, but the offence under section 5(2) of the Prevention of Corruption Act is a serious and an aggravated form of crime.

Mr. Speaker: Has the hon. Member got a copy of the Act? What does section 5(2) say?

Shri Raghunir Sahai: Section 5(2) of the Prevention of Corruption Act reads:

"Any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which may extend to seven years or with fine or both."

And what is criminal misconduct? It has been defined as follows:

"A public servant is said to commit the offence of criminal misconduct in the discharge of his duty—

- (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification as a motive or reward such as is mentioned in section 161 of the Indian Penal Code;
- (b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any valuable thing without consideration or for a consideration which he knows to be inadequate;
- (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his

own use any property entrusted to him or under his control as a public servant;

- (d) if he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage."

And the punishment has been prescribed to be seven years. So, my humble submission is that it is not a minor offence. It is a more aggravated form of offence. From your vast experience, Sir you will agree with me that such offences are rarely detected, and still more rarely are they punished. So, whenever any such offence is detected, and the court comes to the conclusion that the offender has to be sentenced, and the offender is sentenced, then, to say that the provisions of the Probation of Offenders Bill should be made applicable looks absurd.

Only last February, we considered an amendment of the Criminal Law (Amendment) Act, which was sponsored by the Home Minister, when this issue was thoroughly discussed; and after that, this particular section, namely section 3 was passed. In that section, it has been stated:

"2. Any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which will not be less than one year, but which may extend to seven years, and shall also be liable to fine:

Provided that the court may for any special reasons recorded in writing impose a sentence of imprisonment of less than one year."

Then, the court will have all the facts before it. And these cases, let it be remembered, are to be tried by special judges and not by ordinary magistrates. And the special judge will have to take all these facts into consideration.

[Shri Raghubir Sahai]

If this kind of amendment is accepted, then what will it amount to? It will amount to this, namely that when a Government servant is found guilty of corruption, and he has been convicted by the court, the provisions of the Probation of Offenders Bill will be invoked, and the judge would say, "On due admonition or on probation, you can be released". And what will happen to his service? After a conviction under this provision, he would lose his service. But if the Probation of Offenders Bill comes into operation, he cannot lose his service.

Pandit K. C. Sharma: Why?

Shri Raghubir Sahai: How will you go on watching him as to how he behaves until and unless he is put in service? So, that reduces it to an absurdity. As has been pointed out by my hon. friend Shri Sinhasan Singh, when the original Bill was before this House, Shri Datar gave an undertaking that this matter would be sympathetically considered by the Joint Committee, and when the Joint Committee has come to the conclusion that this provision should be embodied in the Bill, I do not think there is any occasion for the deletion of this provision.

Mr. Speaker: Now the Minister.

Dr. Sushila Nayar: May I have my say?

Mr. Speaker: The hon. Member has already spoken.

Dr. Sushila Nayar: No, I have not spoken at all.

I wish to say that there seems to be a lot of misunderstanding on this question. In the first place, the hon. Member who has spoken just now seems to think that there has to be a conviction first, and after the conviction, the Probation of Offenders Act will come into operation. That is not so at all. The truth of the matter is that instead of the conviction proceedings, the Probation of

Offenders Bill provides for a different procedure for dealing with the case.

The second thing that he said was that a man who had been continuously taking illegal gratification and thereby committing criminal misconduct in the discharge of his duties and son on and was liable to seven years' imprisonment should not be let off on Probation. Does the hon. Member seem to think that the Probation of offenders Bill is going to be applied ipso facto to every case that comes before the court? That is not so. The court is supposed to give due consideration to the character, to the circumstances, and to all kinds of other details, before deciding whether the benefit of probation be extended to the man or not.

Another hon. Member stated here that a Government servant—or, rather he used the words 'Government officer'—is not like an ordinary citizen. First of all, I wish to say that all Government servants are not Government officers. A peon is also a Government servant; and a big officer is also a Government servant; a petty clerk is also a Government servant. A case has come to me, which I have given to the Railway Minister, where a man has been suspended and dismissed for the alleged fault of taking four annas' illegal gratification; he is a compounder. The man has gone after that to the court and the court has set aside his sentence and he had to be reinstated. He rejoins duty, and within 3-4 days is again dismissed.

Shri Raghubir Sahai: He will not be guilty of criminal misconduct.

Dr. Sushila Nayar: In terms of what the hon. Member has said just now, acceptance of any amount is also criminal misconduct.

In pursuance of the post that he holds, if a Government servant takes money, that is criminal misconduct

I do not want to change that definition. It should be deemed as criminal misconduct. But what we want to be considered is cases like the one I have cited. That man was reinstated. After three days, he was dismissed again. He went to the High Court. He was reinstated for the second time. After seven days, he is dismissed again. Now that man comes and asks: 'Am I to go to the Supreme Court? And if they set aside the judgment of the Supreme Court also, what am I going to do?' Uptil now, you could dismiss a man, but tomorrow for that petty 4-anna piece, you could send him to prison for one whole year and ruin his career for the rest of his life. Is that fair? Feelings are all right. Sentiments are all right. I am not behind anyone of the hon. Members in fighting corruption. I want the country to be free from corruption. I do not want even 4-anna corruption to exist. I had to deal with a government servant for petty corruption. After full investigation, we dealt with him seriously. What was the offence? The man had taken a seer of *barfi* as illegal gratification. He was a petty clerk in the Rehabilitation department. I did not dismiss him. I did not throw him out of his job. But I gave him a very serious admonition and we kept him under careful watch. We also changed his duty from one section to another. We thought that even acceptance of one seer of *barfi* was serious enough to take action on. We do not want any of our government servants to accept illegal gratification of any kind.

Therefore, I am not behind anyone of the hon. Members in feeling very strongly and very deeply that corruption is a very bad thing and we must do everything possible to put an end to corruption. But resort to drastic remedies always is not necessarily the way to deal with that problem.

The court is there to decide, that he is not a habitual offender, that he is or is not capable of behaving well.

The court is there to see to the character of the man, whether that man was deliberately misusing his place and his power and was dealing with cases in a manner detrimental to the country.

But if there is an occasion when an *ayah* or a miserable peon with a sick child in the hospital takes 8 annas from some one for arranging medicine or a penicillin injection for his seriously sick child is that miserable man or woman to be sent to jail, are you going to deny her the benefit of this Bill? Are you going to send that woman to jail for a year? I think if you do, that it will be callousness heartlessness and it will not lie becoming of the dignity of this House. Government servants are our kith and kin. They are as much citizens of this country as we or anybody else. To discriminate against them and say that under no circumstances shall they escape the penalties imposed by the Criminal Law Amendment Act is, I submit in all humility, not right, and I beg of the House that the amendment that has been moved be accepted.

Mr. Speaker: Why not that person take advantage of the provisions of clause 19, section 562 of the Code of Criminal Procedure? If the special provisions of the Bill are not made applicable under clause 18, the general provisions under section 562 of the Code of Criminal Procedure will apply all the same. Why should he not take advantage of that? Is it wrong for hon. Members to say that the special concession which is given to certain classes of persons ought not to be extended to persons who hold a position of responsibility and who can come under the general law, under section 562 of Cr. P.C.?

Sardar Hukam Singh: I was also a party to the decision that was arrived at by the Joint Committee. Therefore, I owe an explanation why did arrive at that conclusion. It is not the case that we will be discriminating against the public servants

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when we exempt them from the benefits that are being given by this Bill. It is a matter of principle, whether any class of persons who are burdened, as you were just now pleased to remark, with such heavy responsibilities can be given the advantage of it or not. Hard cases can be cited as the hon. lady Member has done. But the law is not to be made simply by keeping those hard cases in view. It is the generality of cases that we have to consider.

It was argued before the Committee that in those classes of cases where minimum punishment is prescribed, normally our Indian Penal Code prescribes punishment that it would not exceed such and such. That is the usual way of prescribing punishment under the IPC. But there are certain offences in which it is not the maximum that is prescribed but the minimum. In fact, in cases under the IPC where it is said that the punishment may extend to 7 years or 10 years or 2 years, it is only for guidance of the Magistrate that the maximum limit is prescribed. He is free to give anything less than that, whatever he likes. Sometimes if ten years are prescribed, he may feel that the ends of justice would be served if only one day's imprisonment is awarded. There may be cases. But there is a class of cases where that procedure has not been followed even under the IPC. I would refer to section 302 of the IPC, though that is not covered under the present Bill. This is only to illustrate that there are certain offences where the actual punishment is prescribed. The punishment is death or transportation. No other punishment can be given.

This is not the only case. There is section 397 which says 'the imprisonment with which such offender shall be punished shall not be less than seven years'. Similarly, there is section 398—'shall not be less than seven years'.

Under other laws that are outside the Indian Penal Code, we have many a time, and particularly during recent years, prescribed particular punishment for offences. It was argued in the Joint Committee that when a particular punishment which is the minimum—an extraordinary thing to do under our criminal jurisprudence—when that has been prescribed, these cases should be excluded from the benefit that are to be given to the ordinary offenders under the Bill we are just now considering. There was a precedent for it. Even in the Criminal Justice Act of UK, we see in section 3(1) :

"Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law . . ."

Here the sentence is fixed by law. Even under the U.K. Act, all those offences have been taken out for which the sentence has been fixed by law because they are peculiar, a class by themselves. Once the legislature thinks that at least this punishment must be given if the man is found guilty, then he would not get without having this punishment. This would be the least that he would get.

We passed our Prevention of Corruption Act in 1948. But we thought that it was necessary that it should be amended and the minimum prescribed, because there is a feeling that as a corruption increases in our country, and people talk so much of it, all those offences for which sentences had been prescribed and the minimum set by the legislature, should not be covered by the present Bill. A compromise was reached at that time that at least offences relating to these public servants who are guilty of misconduct should be excluded. Therefore, this amendment was made by the Joint Committee. And I was under the impression that the Minister in charge too had agreed to that amendment. Certainly, when that is

the objective, I do not feel that the Government shall be persuaded so soon to accept the present amendment and restore the original position that we considered so thoroughly.

I beseech the hon. Minister that he should consider it again and take out at least those cases of misconduct of public servants. Our ideas was that the public servants who are guilty of misconduct should not get away with any less punishment. These two would be contradicting each other. There, we have said—Notwithstanding anything contained in any other law—and now again, if we say: Notwithstanding anything contained in any other law the court may discharge the accused and give him only admonition or release him on probation. That is why I have to oppose the amendment that has been moved now.

Shri Jaganatha Rao: Sir, you ruled that a Member of the Select Committee who did not append a minute of dissent is not entitled to move an amendment contrary to the report of the Select Committee. I invite your attention to a decision from the Book, *House of the People—A Selection from the Decisions of the Chair—1921—1950*, page 81. We find therein:

“During the discussion on the clauses of the Motor Vehicles Bill, an amendment was moved on behalf of Government to a clause which had been agreed to in Select Committee whereupon objection was taken that the amendment did not find any place in the dissenting minutes of the Government to the report and could not therefore be moved on behalf of Government, but the Deputy President ruled:

‘As the point of order is pressed, I have got to give my ruling. I hold that there is no convention or practice like that and that reason also does not justify any such practice or convention. A

member of the Select Committee may very honestly change his opinion after the Bill has been brought here. I, therefore, hold that the Honourable the Mover of this amendment is perfectly in order.’”

The practice has been—and my experience of one year is—that the Members are not required to put their signatures in the report. I have also been observing hon. Members speaking against the Bill though they are Members of the Select Committee. I feel that the amendment is not out of order and it is perfectly valid. But I leave it to the sense of the House. If the House is not prepared to accept my amendment, I am prepared to withdraw it. I want a clarification.

Mr. Speaker: So far as this point of order is concerned, this single decision so early as 1938 has been brought to my notice. We have not had any further rulings till now. I am really surprised at what would happen if, when 30 Members of the Select Committee have been entrusted with the task of looking into a matter which the House as a whole has no time to look into in detail, after they have considered and spent as much time as possible, merely taking advantage of this everyone were to come and speak as he likes and move an amendment he likes. Then, why should it be sent to the Select Committee at all? I am really afraid that this ruling is so wide and liberal that it practically makes it useless to send any particular thing to any Select Committee.

I can easily understand cases where when a Government brings a Bill, when there is a body of opinion contrary to a particular provision in it—after the Select Committee has gone through it—it ought to be open to the sponsor of the Bill to say that in view of what has happened in this House since the Select Committee, he is prepared to change the provision. At one time, though the

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Select Committee technically represented everyone, it did not represent everyone. That is an exceptional matter.

But it is quite different for every Member who is there on the Select Committee and who does not say a word about it in the Committee to come here and say that he has got the privilege because he is a Member of the House and this ruling applies to him. I do not know whether the House will be in agreement with the view that every Member of the Select Committee can get up and say that he takes umbrage under this ruling of 1938. I am really sorry that I cannot accept it. Whatever might be the decision that is reported here, that is a casual one. I would not restrict the right of the sponsor of a particular Bill to change his opinion, whatever might have happened in the Select Committee, in pursuance of a general desire on the part of the House, for that is a matter of policy and so on. But this ought not to apply to every trivial matter; nor should it apply to every hon. Member who is a Member of the Select Committee to come and say that he takes umbrage under this ruling and proceed as he likes.

These are the restrictions which I would put upon this ruling which is cryptic and which has been reported here, with all respect to the Deputy President who was in the Chair then. He did not evidently mean that it ought to apply to every hon. Member of the Select Committee—possibly the matter did not arise—and that he could come along with any amendment on which he did not speak at the Select Committee at all

The hon. Minister.

The Minister of Home Affairs (Pandit G. B. Pant): Sir, the arguments advanced by the hon. Deputy-Speaker seem to me to carry considerable weight. In the original Bill, as it was introduced in the House,

this exception has not been made. When the Bill went to the Select Committee, the Members of the Select Committee, who had undoubtedly great opportunities for thrashing out the details of the measure, considered it necessary to introduce this amendment. I find the following in the record of the proceedings: for paragraph 21, substitute,—

“The Committee are of opinion that where any public servant commits criminal misconduct in the discharge of his duties and is punished under sub-section (2) of section 5 of the Prevention of Corruption Act, 1947, the provisions of this Bill should not apply to such a case. This clause has, accordingly, been amended to include sub-section (2) of section 5 of this enactment.”

The Committee, accordingly, introduced this clause by way of amendment.

I personally feel that while there may be some hard cases, some marginal cases—as there always are—in the enforcement of any penal law generally, the provision that had been made initially in the original Bill should be preferable to the amended one that is now before the House. And there are, I think, adequate reasons for our maintaining the Bill in its present form.

It is only a few months ago that we passed the Criminal Law (Amendment) Bill and we thought that it was necessary to prescribe the minimum term of imprisonment for cases coming within the purview of that Act. So, our view then was that persons found guilty of offences under that Act should not be sentenced to a term of less than one year. We somehow softened the rigour of that by providing that for special reasons the court may reduce the term of imprisonment. But, the

normal rule was laid down that it should not be less than one year. While the reasons which weighed with the House in making that provision would, certainly, to a large extent go against the spirit of the present amendment, what we then did was based on certain principles. I need not enunciate or recapitulate them now.

So far as I know there has hardly been any complaint of unduly severe sentences having been passed on public servants. On the whole, they have been treated by the courts in a just and fair manner. So, there is no reason to apprehend that the courts will take an unduly harsh view of the offences when they are committed by public servants. Dr. Sushila Nayar referred to some case where a peon may take a bribe of four annas or so. It is the taking of the bribe and not the amount of the bribe that matters; nor is the position of the bribe-taker really very relevant so far as the application of the law is concerned. But in determining the sentence the courts take a reasonable view and take into account all relevant aspects which have a bearing on the particular question of punishment to be meted out to the culprit.

So it is open to a court where it so finds that a man should not be sentenced to a long term of imprisonment. But one may extract four annas from a beggar who collects four annas in four days and starves for most of the time. So it is not only the amount that is taken, but the person from whom it is extracted which is also a relevant factor. Then other circumstances may have also to be taken into account. So, no hard and fast rule can be laid down for that.

The fact is there that in this House as also outside there is a keen and widespread desire that corruption should be put an end to. We all share that laudable view, and in our country which has placed before itself, or at least thinks that it has placed before itself, high ideals and lofty principles, it is extremely degrading that any-

one who carries the respectable title of a 'public servant' should stoop low and indulge in corruption regardless of the manner or the amounts involved.

So I do not see anything that goes against the amendment that was accepted by the Select Committee and in the circumstances when opinion in this House, and probably the consensus of opinion is in favour of the amended clause, it is but fair that so far as possible it should be adopted unanimously, or with the least number of dissentient votes. So, I would request the mover to withdraw the amendment.

Mr. Speaker: What is the attitude of the hon. mover?

Shri Jaganatha Rao: I take it that the amendment stands in my name?

Mr. Speaker: It stands in his name, though I allowed Dr. Sushila Nayar to move it. I take it is not pressed. So, it is not necessary for me to put it to the vote of the House.

*The amendment was, by leave,
withdrawn*

13 hrs.

Shri Naushir Bharucha (East Khandedh): May I point out that there is an amendment (No. 16) in my name to clause 18, and I may be permitted to move it?

Mr. Speaker: Why did he not move it yesterday?

Shri Naushir Bharucha: Clause 18 was held over.

Mr. Speaker: The clause was taken up yesterday. As soon as a clause is taken up hon. Members are asked to indicate the amendments which they would like to move.

Sardar Hukam Singh: As soon as I took up the clause Shri Jaganatha Rao moved his amendment and all attention was directed to that side. Therefore there was no chance for Shri Bharucha.

Shri Naushir Bharucha: Sir, I beg to move:

Page 7,—

(i) line 35, before "Nothing" insert "(1)"; and

(ii) after line 39, add—

"(2) Notwithstanding anything contained in this Act, the provisions hereof shall not apply to offences under such Acts passed by Parliament or any State Legislature wherein a specific provision exists or is made, excluding the application of this Act."

The object of my amendment is this. Just now we had a long discussion in connection with the provision as to what would happen in cases where minimum sentence is prescribed. Now in the course of the discussion of this Bill, particularly discussion of clauses 3 and 4, attention was drawn to the words "notwithstanding anything contained in any other law".

Now, supposing tomorrow Parliament decides to enact legislation providing special minimum punishment, or a State legislature decides to enact a law providing special minimum punishment. Then there will be no meaning in enacting such a law, because even when that law prescribes such a punishment, on account of the wordings of clauses 3 and 4 that particular section prescribing minimum punishment will be nugatory. Supposing after six months this House considers that some sort of punishment is required for a particular type of offence and we prescribe a minimum punishment of one year for that, it will be no use our passing that legislation because it will be over-ruled by the wordings of clauses 3 and 4.

In other words, as the provisions of the Probation of Offenders Bill stands, it takes away in effect the rights of Parliament and of State Legislatures to enact any law providing for a minimum punishment and as the Deputy-Speaker rightly pointed out, there will be a conflict and very probably the provisions of the Probation of Offenders

Bill will prevail. The object of my amendment is to reserve this right of prescribing minimum sentence in case of future legislation by Parliament or State Legislatures. Therefore, I desire that a particular clause like this should be incorporated—

"Notwithstanding anything contained in this Act, the provisions hereof shall not apply to offences under such Acts passed by Parliament or any State Legislature wherein a specific provision exists or is made, excluding the application of this Act."

Supposing tomorrow we desire to pass a special legislation prescribing minimum sentence and in that we say that "notwithstanding anything contained in the Probation of Offenders Act this shall prevail" still there will be a conflict. Therefore, in order to avoid conflicts and reserve to Parliament and State Legislatures the right to pass Bills enacting minimum sentence, I am moving this amendment. It does not detract from the existing scope of the Bill.

Mr. Speaker: The amendment is before the House.

Shri M. C. Jain (Kaithal): Mr. Speaker, Sir, I rise to support the amendment of Mr. Bharucha and I congratulate him for bringing this amendment before the House. It is very necessary, as pointed out by my hon. friend that Parliament should have the right in future legislation to exclude the application of this Act to future Acts and if this amendment is not accepted, if this amendment is not in the Bill, in future measures Parliament will not be able to exclude the operation of this Act. Therefore, I plead with the hon. Home Minister to accept this amendment.

The Minister of Law (Shri A. K. Sen): Sir, I think I must say a few words.

Mr. Speaker: Do they have the power?

Shri A. K. Sen: One does not have that power. To start with it is a futile amendment for the simple reason that Parliament is going to legislate in

future on the subject. It is the real object of the present Bill. Parliament considers that the State should not be affected by the present Bill. It can easily provide so in future. So far as the State legislature is concerned it can legislate because it is a concurrent function.

Shri Naushir Bharucha: The words are "notwithstanding anything contained....."

Mr. Speaker: We may say again: "Notwithstanding anything contained in the previous law..."

Shri Naushir Bharucha: That means conflict. Which is to prevail?

Shri A. K. Sen: The latest always prevails. So far as a State legislature is concerned, it can negative the effect of a Parliament's statute if it legislates in the concurrent field and gets the assent of the President. When those conditions have been fulfilled, I do not see how it can be said that this Parliament abdicates its competence in relation to some other State legislature to legislate. I think it is not the intention.

The Minister of Home Affairs (Pandit G. B. Pant): The Law Minister has stated in his usual lucid way what I wanted to say. I was somewhat perplexed to see an amendment of this character in the name of hon. Shri Bharucha who has a very strong legal sense. Look at this amendment. It reads:

"...the provisions hereof shall not apply to offences under such Acts passed by Parliament or any State Legislature wherein a specific provision exists or is made, excluding the application of this Act."

This Bill will be passed today, I hope, by this House and it will have to go to the other House and will be passed there later. So, no specific provision can possibly be found in any Act today excluding the application of this Act—I mean—taking the words of the amendment as they are. The operation

and application of this Act cannot be specifically excluded in positive terms with regard to any existing statute because it is passed only today.

Shri Naushir Bharucha: There may be State laws which may have a clause to the effect that no law relating to probation may be applied....

Pandit G. B. Pant: I do not think that there is anything like that and no such law could have been anticipated. (Interruptions.) You have, at any rate, not perhaps framed it so as to give effect to your intentions. Then the other part is that it shall not apply to offences under such and such Acts. So far as the future is concerned, the Parliament is free to repeal this Act tomorrow and it is competent to amend this Act in any way...

Mr. Speaker: and amend the Constitution also.

Pandit G. B. Pant: It can say that notwithstanding anything contained in this Act, such and such procedure will be followed and that this minimum sentence will be inflicted on a person found guilty of such an offence. The future freedom of the Parliament is not being mortgaged by means of this Bill. It continues as it has been in its ample plenitude. There is hardly any substance in the amendment.

Mr. Speaker: Is it necessary to press this amendment. That is the view of the hon. Home Minister and also the hon. Law Minister.

Shri Naushir Bharucha: With due respect to both of them, I still do not agree. It means an amendment of this Act every time.

Mr. Speaker: All right. I shall put the amendment to the vote of the House.

The question is:

Page 7,—

(i) line 35, before "Nothing" insert "(1)"; and

[Mr. Speaker]

(11) after line 39, add—

“(2) Notwithstanding anything contained in this Act, the provisions hereof shall not apply to offences under such Acts passed by Parliament or any State Legislature wherein a specific provision exists or is made, excluding the application of this Act.”

The motion was negatived.

Mr. Speaker: The question is:

“That clause 18 stand part of the Bill.”

The motion was adopted.

Clause 18 was added to the Bill.

Mr. Speaker: There is an amendment—No. 17—to clause 1.

Shri Balasaheb Patil (Miraj): Sir, I beg to move:

Page 1, line 6,—

after “come into force in” insert
“or withdrawn from”.

Mr. Speaker: The amendment is before the House.

Shri Balasaheb Patil: Sir, this Act seems to confer certain powers on State legislatures. The probation officer who is the pivotal figure under this Act is to be appointed by the State Government under clause 13 and his activities are also to be supervised by the State Government. Under clause 17, we confer certain powers on the State Governments to make rules in respect of the probation officers. Even if we pass this Bill, the right is given to the State Government to apply this Act under clause 1(3). It says that it shall come into force in a State by a notification on such date as the State Government may appoint.

Supposing the State Government, taking into consideration the law and order position, does not want to apply this law, what is the position? We have given wide power to the State Governments to enforce it. Certain more powers to withdraw its application should also be given. An emergency may come in this form when certain offenders in a certain part may take into their hands the law and

order situation. So, the power to withdraw the application of this Act shall also be given to them.

Mr. Speaker: What is the legal position? If the State Government has got the right to apply this Act by a notification, has it not got the right to withdraw its operation by a similar notification?

Shri A. K. Sen: It has got that right under the General Clauses Act.

Shri Balasaheb Patil: My amendment will make it more specific.

Mr. Speaker: Whatever law there is, why shall it be made more clear?

Shri Balasaheb Patil: Parliament confers powers on the State Government. So, when there is a question of withdrawal, I hope naturally that this power may rest with the Parliament and not with the State Government and therefore, I am insisting on the addition of these words here.

Pandit G. B. Pant: It seems to me to be superfluous.

Mr. Speaker: Need I put it to the vote of the House?

Shri Balasaheb Patil: No, Sir.

The amendment was, by leave, withdrawn.

Mr. Speaker: Under the General Clauses Act, he who has got a right to appoint has got a right to dismiss, if he so chooses. I shall now put clause 1 to the vote of the House. The question is:

“That clause 1 stand part of the Bill.

The motion was adopted.

Clause 1 was added to the Bill.

The Enacting Formula and the Title were added to the Bill.

The Deputy Minister of Home Affairs (Shrimati Alva): I beg to move:

“That the Bill, as amended, be passed.”

Mr. Speaker: Motion moved:

"That the Bill, as amended, be passed."

Need we have a third reading? We have already exceeded the time.

Some Hon. Members rose—

Mr. Speaker: Three minutes each.

Shri S. M. Banerjee (Kanpur): Sir, make it five minutes. I congratulate the Home Minister and the Government for bringing this piece of legislation. I have heard with patience the discussion on the amendments moved by the various friends. There is some fear that this Bill may lead to more crimes. But I am one of those who feel that human nature is apt to change. It is not that in this particular country we have got the history of a dacoit who ultimately became Valmiki. We know that in this House Lord Buddha was mentioned, Gandhiji was mentioned and it was said that they failed to change these people. I have tried to understand the psychology of these criminals while in jail. There is a strong feeling in them that once they become a criminal and go to the jail, the door of the entire world is closed to them and it is the reason why once they go to the jail they want to make jail their permanent house.

I may remind my hon. friends of that famous book of Alexander Dumas, *Count of Monte Cristo*. When Dantes was deprived of everything in this world and he got a good fortune, do you know what he said to the other people? He said: "Overturn the world, change its character, yield to mad ideas and even be a criminal to live". So, Sir, we want to live; the lust for life is there. Therefore, I would request my hon. friend to see that it is given a fair trial. Let us not think that the human mind does not change. We believe that instinctively people are good.

That is my feeling. With this, Sir, I request the hon. Home Minister to kindly see that there is some reform in the jails also. When I think of the

jail I simply shudder. I have seen that there are very good words written.

‘हर एक से प्यार से बोलो’

Exactly in the same place they are beaten. I have seen the wonderful new slogans written in the jails, but we do not find any reforms in the jails. I feel that with the passage of this Bill we must also see that our brothers who are in the jail, who are today unfortunately criminals, are given better facilities.

I feel that a prison is actually meant for the unsuccessful criminals. The successful criminals are never sent to a prison; they remain outside. Let us analyse who is the worst criminal, a small boy or a young man of 21 years who has pick-pocketed something, or a big businessman who has cheated the L.I.C. of a crore of rupees. Therefore, let us see the gravity of the crime. That particular man who has swindled one crore of rupees cannot be changed because it is a calculated crime against society, but this young man who has pick-pocketed a thing can be changed.

Mr. Speaker: While cases are pending on any person, whether rich or poor...

Shri S. M. Banerjee: I have not named anybody.

Mr. Speaker: Anybody can understand what the hon. Member is saying. Let us not say anything about that here.

Shri S. M. Banerjee: I am sorry. I have only said 'swindled'.

Mr. Speaker: That is true.

Shri V. P. Nayar (Quilon): Swindling as such is not a definite offence under the Penal Code.

Mr. Speaker: L.I.C. has been mentioned, 'crore' has been mentioned, 'swindler' has been mentioned—what more is necessary? I have absolutely no interest in the matter. All that I am interested in is, whoever he may be, so long as the law of the land

[Mr. Speaker]

stands let him have an opportunity to say what he likes; let us not prejudice the issue.

Shri S. M. Banerjee: Sir, I have been given only five minutes. I would only request the hon. Minister to consider the other aspect of it. It is a very progressive Bill. This aims at social reform, and this Bill has a moral force. Therefore, I would request that after the passage of this Bill there should be a radical jail reform. It is not enough if there is a reform like changing iron *tashlas* to brass *tashlas*. There must be something more than that. We must actually ask the people there to improve. Let it be an institution to reform those unfortunate persons who have become anti-social elements due to anti-social activities of a selected few in this society.

Sir, this is all my submission. I once again thank and congratulate the Minister for bringing this piece of legislation. As a citizen of India and a Member of Parliament, I will see that the correct spirit is implemented in all its letter and spirit.

Shrimati Ila Palchoudhuri (Nabad-wip): Mr. Speaker, Sir, I thank you for giving me this opportunity for congratulating the hon. Home Minister on bringing this Bill. This has the support of everybody who has the good of the delinquents at heart (*Interruptions.*) Certainly, we have the good of delinquents at heart because, if the Government has a duty towards the victims of crimes, surely, Government has also a duty to the people who have been forced into this crime. And, probation, Sir, has been regarded as the modern method of looking at crimes.

There is one thing—there is also a Minute of Dissent on this point—and I hope even at this late stage the Minister will consider it. That is, the mention of “if any” in sub-clause (2) of clause 4 as well as in sub-clause (2) of clause (6). “If any” has no place in this Bill, because the report of the

probation officer is an absolute necessity and without that report probation will hardly work properly.

Apart from probation, one thing that is vitally necessary in India today is the after-care to see that they are trained in various ways of earning a livelihood so that those people may not feel that all doors are being closed to them. This training should be given in such a form that as soon as they are out of prison or have finished their probation they can take their place in the world with a feeling of confidence, and they need not go back to the ways that led them into prison and probation in the past. We need a net-work of such institutions that will train them properly and give them confidence.

Secondly, Sir, we have also to put them under really good psychiatrists, people who will really look into the causes; because even in medicine today prophylaxis is thought to be better than curative medicines. Therefore, in crime also we must look at the antecedents of the offenders and their prevention. Bertini Scallo, the famous Italian lawyer always said: “*Studiare il delinquente Ecco il bescogno*”. You must study the delinquent before you punish him; study his antecedents and give him every sympathy. This Bill, I am sure, will produce this atmosphere.

I hope the scope of this Bill will be possible to be extended even to political prisoners in future, to those who are rotting in jails for many years. There is good material and, perhaps, they might at some time be let out on probation. I hope the scope of this Bill can be widened to include them also.

Lastly, Sir, I earnestly hope that the spirit of the saying will be filled—“if in the day of adversity your strength failed, then your strength was small”—that those whose strength in the days of adversity had failed will feel that the strength of the Government is not small in aiding them in the day of

adversity, and the strength of the Government is beside them to help them to a better life once they come out of probation and out of prisons.

With these words, Sir, I support the Bill.

श्री मू० बं० बंस : अध्यक्ष महोदय, इस बिल के बड़े रीडिंग के मौके पर होम मिनिस्टर साहब को खास तौर से बधाई दी जा रही है। जहां तक मेरा ताल्लुक है मैं उन मेम्बरों में से हूँ जो कि अपनी पार्लियामेंटरी लाइफ में हमेशा प्राप्रेसिव लेजिस्लेशन का स्वागत करते आये। लेकिन यह एक ऐसा लेजिस्लेशन है जिसके कि बारे में मेरी भ्रन्तरात्मा यह गवाही देती है कि यह कानून प्रीमैर्योर है। इससे ऐसे बुरे नतायज बरामद हो सकते हैं और इस कानून से ऐसी टेंडेंसीज और ऐसे र्हमानात इस देश के अन्दर पैदा हो सकते हैं जो कि जरायम की ओर ले जाने वाले हों और मैं ऐसा डर महसूस करता हूँ कि इस कानून से उनको बढ़ावा मिलेगा।

जहां तक इसके प्राप्रेसिव होने का ताल्लुक है इसमें कोई शक नहीं है कि यह प्राप्रेसिव जरूर है लेकिन इस मौके पर मैं आपके द्वारा होम मिनिस्टर साहब की सेवा में इसके सम्बन्ध में जो २ एप्रीहेंशंस (apprehensions) हो सकते हैं इस कानून के पास होने में, उनकी वरफ इशारा करना चाहता हूँ ताकि उनके सम्बन्ध में ऐहतियात किया जाय। इस कानून के पास करने में क्या २ एप्रीहेंशंस हो सकते हैं उनको मैं एक दो मिनट में आपकी इजाजत से कहना चाहता हूँ।

पहली चीज तो यह है कि २१ वर्ष से कम उम्र के भ्रादरियों को हेबिचुएल प्रीफंडर्स जुर्म करने के लिये भालाकार बनाने

दूसरे इससे यह डर पैदा होगा जैसा कि मैं समझता हूँ होम मिनिस्टर साहब को इसका तजुर्बा होगा और हम में से जो लोग बकालत करते आये हैं या करते हैं उनको और जिनको पब्लिक लाइफ का तजुर्बा है वे जानते हैं कि प्रासीक्युशन को पुलिस केसेज में बहुत कम शहादतें मिलती हैं और गवाह शहादत देते हुये डरते हैं। इस कानून के पास होने से यह भ्रंदेशा और बढ़ जायगा। मुझे याद है कि डिप्टी होम मिनिस्टर साहब ने इस प्वाएंट का जवाब देते हुये कहा था कि इसमें कोई बचन नहीं है क्योंकि अब भी ८०, ८५ फ्रीसदी मुजरिमान बरी हो जाते हैं या डिस्चार्ज कर दिये जाते हैं और अगर २, ४ फ्रीसदी को इस कानून के तहत और प्रोबेशन पर छोड़ दिया जाय तो क्या फर्क पड़ेगा। लेकिन मालूम ऐसा होता है कि डिप्टी होम मिनिस्टर साहब इस हिन्दुस्तान में एक दुनिया में रहती हैं और हम एक दूसरी दुनिया में रहते हैं। वह कैसे इस बात को भूल जाती हैं कि इस कानून के पास होने से यह खतरा और बढ़ जायगा कि सजा होने के बाद भी किसी मुजरिम को प्रोबेशन पर छोड़ दिया जायगा तो उस हालत में गवाह कैसे गवाही देंगे? वह तो आज भी गवाही देते हुये डरते हैं और इस कानून के पास होने से उनका यह डर और भी अधिक बढ़ जायगा। उस टेंडेंसी को उन्होंने क्यों नहीं अपने ब्याल में रक्खा? कानून पास होने के बाद सरकार की ओर से कुछ इंस्ट्रक्शंस जारी किये जाते हैं कि कैसे उस पर भ्रमल किया जाय और किस ढंग से उसको लागू करें। यह इंस्ट्रक्शंस स्टेट्स की तरफ से जारी किये जाय या हिन्द सरकार उनको जारी करे, इस सम्बन्ध में जो भी ऐहतियात की जा सकती हों वे की जायें वरना एक खासा खतरनाक नतीजा निकलेगा।

[श्री यू० चं० जैन]

एक धीर वलील दी गई है कि मुजरिम को बीमार समझा जाना चाहिये। ठीक है मैं भी मानता हूँ कि एक मुजरिम को बीमार समझा जाय लेकिन क्या इसका यह मतलब है कि एक प्लेग धीर हैजे के बीमार को हम सोसाइटी पर लैट लाज (jet large) कर दें ? ऐसे मरीजों को कोरनटाइन किया जाता है और बाकी धीर लोगों से उनको अलग रखा जाता है। स तरह के रोगियों को अस्पतालों में भी अलग रखा जाता है। मुजरिमों को जो कि सोशल बीमार है उनको भी अब तक अलग रखा जाता रहा है लेकिन इस कानून की रू से यह बात हटाई जा रही है। कहा जाता है कि इससे सोसाइटी को बहुत ज्यादा फायदा होने वाला है। लेकिन बाबजूद इस बात के कि मैं हमेशा हर प्रोबेशन लेजिसलेशन का हिमायती रहा हूँ, इस कानून के बारे में मेरे मन में अन्देशा है। पहले ही हमारे देश में करप्शन के बारे में बहुत चीन्गीयाँ हैं। करप्शन बढ़ा है, कम हुआ है या उतना ही है, इसके बारे में मुस्तलिफ राय है। लेकिन करप्शन देश में है इस में कोई शक नहीं है। अब जुर्मों में पैसे वाले भी फंस सकते हैं और गरीब भी। यह जरूर है कि पैसे वाले कम फंसते हैं, वह किसी न किसी स्टेज पर छूट जाते हैं। अगर कोई पैसे वाला फंस गया तो इस एक्ट की वजह से प्रोबेशन आफिसर की सिफारिश पर उसको दूसरा चांस मिलेगा और इस तरह से उसको फायदा होगा, और जो गरीब आदमी फंसेगा उसको बहुत कम फायदा होगा। तो मेरा प्वाइंट यह है कि जो आलरेडी देश में करप्शन है इस कानून की वजह से और बढ़ेगी। यही मुझे अन्देशा है।

आखिरी बात में यह कहना चाहता हूँ कि हमारे यहां पब्लिक में पहले से ही एक खास फीलिंग है। हमारी संस्कृति में

ईश्वर के तीन रूप माने गये हैं, यानी ब्रह्मा, विष्णु और महेश। ब्रह्मा पेश करने वाला समझा जाता है, विष्णु पालन करने वाला और महेश ईश्वर का बहु रूप है जोकि संहार करता है। ऐसे ही हुकूमत के भी तीन रूप होते हैं और हुकूमत के तीसरे रूप के मानी यह होते हैं कि वह गलत काम करने वालों को सजा देती है, न-डिसिप्लिन (indiscipline) करने वालों और unsocial elements को सजा देती है। तो जो लोग हमारे देश में गलत तरीके से पनप रहे हैं उनको हुकूमत को स्ट्रॉंगली डील करना चाहिये। इस बारे में देश में आम लोगों में यह भावना फैल रही है कि इन गलत किस्म के लोगों को जितनी मजबूती से डील करना चाहिये वैसा नहीं किया जा रहा है। यह भावना आम लोगों में गांबों में रहने वालों तक में फैली हुई है। उनमें यह फीलिंग न बढ़े हमको ऐसा भी यत्न करना चाहिए। इस कानून से यह feeling और बढ़ेगी ?

इन शब्दों के साथ मैं इस प्राप्रेगिबव लेजिसलेशन के नाते तो समर्थन करता हूँ यूनाइटेड नेशन्स संस्था ने भी इसकी सिफारिश की है। इन्स्पेक्टर्स जनरल की मीटिंग हुई उसमें भी यह सिफारिश की गई थी तभी यह एक्ट पेश किया गया लेकिन जो मुझे अन्देशा है उसकी तरफ भी सरकार को ध्यान रखना चाहिये यह मैं चाहता हूँ।

श्री सिंहासन सिंह (गोरखपुर) : अध्यक्ष महोदय, इस विधेयक को यहां प्रगतिशील कहा जा रहा है, लेकिन वास्तव में इसका क्या परिणाम होगा यह कुछ विचारणीय वस्तु है। हम देखते हैं कि हमारे देश में कुछ राज्यों में इस तरह के उन के अपने विधेयक भी मौजूब हैं। वह भः वहां लाबू रहेंगे और वह राज्य चाहे तो इस विधेयक

को अपने यहां लागू करें या न करें। हम इस विधेयक को यहां पास करते हैं और राज्यों को यह छूट देते हैं कि वे इस को अपने यहां जब से चाहें लागू करें। अब उत्तर प्रदेश में जो विधेयक मौजूद है उसकी धारार्ये इस से भिन्न हैं। हो सकता है कि उत्तर प्रदेश इस को लागू न करे। बम्बई में भी यह मौजूद है और मद्रास में भी है। यानी बड़े बड़े राज्यों में इस तरह के कानून मौजूद हैं। वे चाहें तो अपने यहां इसको लागू न करें। ऐसी हालत में जो इस प्रगतिशील विधेयक के लिए हम यहां धन्यवाद दे रहे हैं वे ज्यों के त्यों अपने स्थान पर रखे रह जायेंगे। अच्छा होता यदि इस विधेयक को पास करने से पहले सब राज्यों से अनुमति ले ली गई होती और यह सब राज्यों में समान रूप से लागू होता। यह अधिक उचित होता। अब राज्यों में अपने इस तरह के कानून हैं और यह भी कानून है। इन की धाराओं में भिन्नता है। तो यह कोई अधिक शोभनीय बात नहीं मालूम होती।

दूसरी बात यह है कि जैसा कि मेरे पूर्व बक्ता ने भी कहा है, इस से २१ वर्ष के नवयुवकों को एक स्वतंत्र छूट मिल जायेगी कि उन को सजा नहीं होगी। अब यह होगा कि अगर अफसर सजा करना चाहे तो वह रीजन दे कि वह क्यों सजा करना चाहता और क्यों छोड़ना नहीं चाहता। अब तक तो यह होता था कि अफसर को छोड़ने के लिए रीजन देना होता था कि वह क्यों छोड़ रहा है और सजा क्यों नहीं कर रहा है। अब उस सजा देने के लिये रीजन देना पड़ेगा। तो जैसा इंग्लैंड में है उसको देखते हुए यह ज्यादा दुभा करेगा कि अफसर भी ज्यादातर छोड़ ही दिया करेगा क्योंकि अगर वह सजा करता है तो उस को उस के लिए रीजन देना होगा। तो इस तरह से २१ वर्ष के युवकों के लिए आप एक तरह की छूट दे रहे हैं।

अभी मेरे भाई ने कहा कि जो विभाग के रोगी होते हैं या और रोगी होते हैं उनको भ्रमण रखकर इलाज किया जाता है इसी तरह से इन लोगों का भी सुधार किया जाये। लेकिन हम ने देखा यह है कि कहीं कहीं बड़े बड़े प्रादमी अपराध करवाते हैं। मैंने एक बार गोरखपुर जेल में एक १४ बरस का लड़का देखा जो कि १३ बार जेल में आ चुका था। उसका काम यह था कि रेलवे स्टेशन पर जाकर माल उठा लाया करता था और उस को किसी के यहां रख दिया करता था। तो बहुत से महाजन इस प्रकार की चोरी करवाते हैं और वे खुद पकड़े नहीं जाते। अब आप ऐसे लड़कों को प्रोबेशन पर रखिये तो फायदा नहीं हो सकता। उनको तो रिफारमेटरी स्कूल भेजा जाना चाहिए तो उनका सुधार हो सकता है।

इस तरह से भी बहुत से अपराध होने कि नवजवान लोग एक दूसरे पर हमला करेंगे। हम ये परिवर्तन करने जा रहे हैं पर हम ने यह विचार नहीं किया है कि इस प्रकार के कानून के लिये अभी समाज तैयार है या नहीं। आज भी यद्यपि हम सोशलिस्ट पैटर्न की बात कहते हैं, समाज में उतना ही शक्तिम मौजूद है जैसा पहले था। आज भी बनी और गरीबों, भूलभरो और ज्यादा खाने वालों में पहले जैसा ही अन्तर मौजूद है। आज भी इस देश में ऐसे लोग मौजूद हैं जो खाना पचाने के लिये दवा खाते हैं और दूसरी तरफ ऐसे लोग हैं जो खाने के बिना मर रहे हैं। हमको पहले अपने देश के आर्थिक स्तर को ऊंचा करना चाहिए था। आखिर आप देखें कि प्रादमी चोरी करता ही क्यों है। चोर दो तरह के होते हैं। एक तो वे हैं जो बेजा तौर से धन इकट्ठा कर के बड़े प्रादमी बनना चाहते हैं, जैसे ब्लैक मारकेटियर और दूसरे बड़े बड़े प्रादमी।

[श्री सिंहासन सिंह]

प्रायः सवेरे सवाल उठा था कि मोटर वालों को क्यों लाइसेंस दिया गया। तो कुछ बड़े बड़े भादमी ज्यादा धनी होने के लिए चोरी करते हैं। दूसरे वे हैं जो खाने के लिए, अपना पेट भरने के लिये चोरी करते हैं। ऐसे चोर भी बड़े लोगों के यहां कम पहुंच पाते हैं, छोटों के यहां ही चोरी करते हैं। इन चोरों को जो अपने पेट के लिए ही चोरी करते हैं जरूर कुछ रियायत मिलनी चाहिए। ये लोग छोटे लोगों के लिए ही चोरी करते हैं यहां ही चोरी करते हैं, एक छोटा मोटा भादमी दूसरे के यहां चोरी करता है। अगर समाज की धार्मिक अवस्था ठीक हो और इस लोगों को शिक्षा हो और इन को खाने को मिले तो ये अपने आप चोरी करना बन्द कर देंगे।

अभी हमारे भाई ने रूस के बारे में कहा। पता नहीं वहां पर यह कानून है या नहीं। वह कहते हैं वहां चोरी नहीं होती। उसका कारण यह होगा कि वहां दंड कठोर है और दूसरे सब को खाने पीने को मिल जाता है। इसलिए वहां चोरी नहीं होती। लेकिन वहां प्रोवेशन का कानून नहीं है। तो राज्य का काम ठीक तरह से चलने के लिए दो एनीमेंट बहुत जरूरी हैं एक तो यह कि न्याय की भाषा हो और दूसरा यह कि दंड का भय हो। न्याय की भाषा का तो यह हाल है कि चारों तरफ लोगों को यह ब्याल हो गया है कि सिफारिश से ही काम चलता है और दंड के भय को हम इस विधेयक के जरिये कम किये देते हैं। फिर कोई दंड का डर ही नहीं रहेगा।

प्रायः कल भी बहुत से लोग समझते हैं कि जेल तो स्कूल हो गया है। वहां खाना अच्छा मिलता है। जिन लोगों को बाहर खाना नहीं मिलता वह समझते हैं कि जेल

में खाना तो मिलता है। वह सोचते हैं कि अगर बाहर खाना नहीं मिलता तो जेल में चलो। तो ऐसे लोगों को भी आप प्रोवेशन देकर जेल की रियायत से महकूम करेंगे। जहां तक इस विधेयक को लागू करने का सम्बन्ध है वह काम स्टेट्स पर छोड़ दिया गया है। मैं सरकार का ध्यान इस बात की तरफ दिलाना चाहता हूँ कि इस विधेयक के अधीन जो नियम बनेंगे उन को स्टेट्स बनायेंगी। उन नियमों के बनाने में कभी कभी तो इतनी देर हो जाती है कि कानून ही बेकार सा हो जाता है। इसलिए यह जरूरी है कि नियमों को जल्दी से जल्दी पार्लियामेंट में या राज्यों की विधान सभाओं में रखा जाय। सर्वाडिनेट लेजिस्लेशन कमेटी में हमारे पास ऐसे केस प्राये कि केन्द्रीय सरकार ने किसी विधेयक के जो नियम बनाए वे चौंदाई साल के बाद इस सदन के टेबल पर रखे गए। नियमों को भवन के सामने रखने में कभी सात महीने लग जाते हैं कभी आठ महीने लग जाते हैं और कभी दो दो बरस लग जाते हैं। इस तरह बहुत दिक्कत होती है। इस वक्त यहां पर ला मिनिस्टर भी बैठे हैं डिप्टी होम मिनिस्टर भी बैठे हैं और दो चार दूसरे मिनिस्टर भी मौजूद हैं। मैं उन को कहना चाहता हूँ कि जो विधेयक यहां पर पास किये जाते हैं उन के जो नियम बनाए जायें उन को जल्द से जल्द भवन के सामने लाया जाय ताकि सर्वाडिनेट लेजिस्लेशन कमेटी को उन्हें देखने और अपनी राय प्रकट करने का मौका मिले। आप दो दो बरस मौन धारण कर लेते हैं और पार्लियामेंट कुछ नहीं कर पाती है।

जहां तक इस विधेयक का सम्बन्ध है इस के नियम इस सदन के सामने नहीं आयेंगे। वे राज्यों की विधान सभाओं

के सामने जायेंगे । यह भी इस में एक लाक्युना मालूम होता है कि संसद कानून बनाए और उस के नियमों पर वह विचार न कर सके । वह हमारे अधिकार से बाहर हो गया है । इस कानून के लागू करने में हमारा कोई हाथ न हो, उस को देखने में हमारा अधिकार न हो यह ठीक नहीं मालूम होता है । इस स्टेज पर तो इस बिल में अमेंडमेंट नहीं हो सकती है । इस के नियम राज्यों की विधान सभाओं में ही जायें लेकिन इस बात का ध्यान रखा जाना चाहिए कि जो नियम बनें वे जल्द से जल्द विधान सभाओं की टेबिल पर रखे जायें ताकि सर्वाडिनेट लेजिस्लेशन कमेटी यह देख सके कि कानून के उस रूप है या नहीं ।

इन शब्दों के साथ मैं अपने वक्तव्य को खत्म करता हूँ और इस बिल को सपोर्ट तो करता ही हूँ ।

Shrimati Alva: Mr. Speaker, Sir, most of the arguments advanced just now have been answered when the Bill was taken up for consideration. However, the question of age has been raised again and again. I gave my explanation yesterday how the age of 21 has been decided on, how it is a narrow age range and is an age range that falls within the rights of the Inspector-General of Prisons and how the youthful offenders could be removed from the prison and taken over to the borstal schools or certified schools.

Then, an hon. Member from the Opposition—I think it was Shri Banerjee—stated that the jails should be reformed. I do not mind giving some casual thought to the arguments that he had advanced. But this measure has nothing to do with jails and jail reform; this is the Probation of Offenders Bill. Jails are not under our discussion or under our scope today. However, let me assure him

that the jails have reformed very much. I do not know which jail here refers to, because I have also been seeing these jails from the olden days, when we saw the jails in another aspect. But we are watching the jails. In fact, we are bringing our reforms so fast in the jails that some charges are levelled that we are giving to our prisoners luxuries which they do not get in their villages when they go back. We are facing even that charge to day. So, in the face of the reforms that we are carrying forward, I do not see how these arguments could carry weight.

Shri S. M. Benerjee: I did not mention about the model jail in Delhi.

Shrimati Alva: I am not referring to the model jail either. I am referring to the other jails in the country which I have seen recently. A model jail will be better than all the other jails, which are also very good jails. We are trying to make, better and better models for our prisons.

Now, I will come to the victims of crime. The offender himself is the victim of crime in more cases than not. As it was argued by Shri Sinhasan Singh, because of the socio-economic conditions, a person is tempted, or is driven, to commit an offence. There, he himself is a victim of his circumstances, of his environment. In such a case, under the Probation of Offenders Bill, for the victims at the hands of the offender we have a clause for compensation. Of course, there was also the criticism that the compensation would not be adequate. But what kind of adequacy can be given, even if we permit under this law, for compensation, if it becomes infructuous? Because, the type of offender that we have in view may perhaps never be able to pay any kind of compensation. Therefore, that kind of argument does not hold good.

Then, again and again the question of "after-care" has been brought in. It was originally raised by you from the Chair. But after-care is not within the scope of this Bill at all. After

[Shrimati Alva]

care is for those people who come out of the correctional institutes. Probation is for those who will not go to any institutes of correction, be they certified schools, be they borstal schools, be they any other form of correctional institutes. So, this problem of after-care does not fall within our purview this afternoon. After-care is a separate thing. It has got adequate attention and money in the Second Five Year Plan. By this probation we do not want to send any offender, as far as possible, to any institution, be they correctional or educational. What we want to do is to plant him back into his own groove, where he lives; where he will be given a chance to live. We do not want to change the environment; we do not want to change his life. We only want that he must come under the control of a probation officer. The probation officer is not, as some members here feel, a CID or police officer; he is like a guardian. I do wish that members would be impressed that a probation officer is not a police officer. He is a missionary or guardian of the offender. I have at length stated how the Children Acts are working in the different States.

Then, Shrimati Ila Palchoudhuri referred to political offenders. In a free country, I do not know the meaning of "political offence". We have the rule of law and he who breaks the law must bear the consequences. So, I do not think that it comes within the scope of the Probation of Offenders Bill. If anyone breaks the law, it will be considered by the court whether he needs probation or imprisonment.

Then they said that we are bringing in something so very wide that the results would be, shall I say, widespread and rampant and the criminals would be running amuck in our streets and homes. I do not know why the House is inclined to forget that there is already a provision for probation in the Criminal Procedure Code—section 562. Having noted that,

I do not know why they go on arguing this subject, saying this is a new measure. This is not a new measure. We are trying to improve on what we have already got in our common law.

Then, some other hon. Members said that there is delay caused by the States after framing the rules in laying them on the Table of the House. Let them ask their Legislative Assemblies about the delay. Each hon. Member belongs to a constituency in a particular State. If you are so keen to know how this law is going to operate, well, the rules will be laid on the Table of the House in the State Assemblies; not here. But if any particular member wants to have any particular rule, we shall request the State to give us the rules. But you should really go to the States, as this relates to States. How can we take it on ourselves to lay it on the Table of the House? It is impossible. We can call for them. We can study them. We can mutually discuss them with the States but we cannot undertake that. Each State is given the freedom. Most of the States have this law. The probation law is already functioning. It is being enforced. It is existing in the various States. So, I do not see how this hampers the thinking of the hon. Member that the rules do not come here for two years and five years. These rules will never come here. It is for the hon. Member who is interested in the probation of offenders to see how it operates. You can go to your States and call for these rules. They are already there. In most of the States the rules are already there. They are operating. The probation officers are already there. The probationers are already there. Therefore there should be no difficulty on that count.

Then there is only one more point— I do not know how it was brought in— regarding that clause in which it is said "the report of the probation officer, if any". Now, we have kept this phrase "if any" because it is going to be a very big measure and we do not want to give a certain amount

of laxity to our States to equip themselves with the proper machinery so that they could enforce them in the best manner. "If any" we have kept because it will take a long time for some of the States and some parts of some of the States where the law is already in operation. It will take some time. In that sense we have left it to the court, and at every turn we want to leave it to the court at its discretion to give probation to an offender or not. Now a reflection has been cast on the probation officers and I regret very much that we begin reflecting on the machinery when we are going to have it for the morrow. We think that there is widespread corruption in the country and so every probation officer will be corrupt and every probation officer will bring some kind of pressure on the offender and spread corruption more and more. I do not think so. From what I have seen in practice, specially where the Children's Acts are in operation, I think the probation officer steps in as a real guardian of the child even in a more fitted manner than the parents—the father and the mother—in many cases. Here I want to assure the House, because I have seen the Children's Act operating in the city of Bombay for the last five or six years, and I do want to state in this House that without the probation officer, the Children's Act would not operate and the children would not be re-instituted in their families and rehabilitated into society. Therefore there should be no fear on the count that we are going to have probation officers that are going to be corrupt. It is true that we want to take the best element out of society and let them do the probation work. For that you have, of course, to be morally correct. You have to be physically sound and you have to be mentally alert. We do not deny these things, but then we also know that there is this element available in the country and why we should not call upon this element to take up this progressive measure and to help us

in carrying out its provisions in the various parts of the country.

Shri D. C. Sharma (Gurdaspur): The hon. Minister said that some of these probation officers are better than the parents of the children. I do not know what she means by it.

Shrimati Alva: I do say that. I have seen it.

Mr. Speaker: Hon. Member knows how mothers are treating children. A probation officer is as good as the mother.

The question is:

"That the Bill as amended, be passed."

The motion was adopted.

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BOMBAY, CALCUTTA AND
MADRAS PORT TRUSTS (AMEND-
MENT) BILL—contd.

Mr. Speaker: Shri S. K. Patil to continue his speech.

The Minister of Transport and Communications (Shri S. K. Patil): There was no speech but a point was raised when I moved that this Bill should be taken into consideration as to whether the Bill was a money bill within the meaning of Article 110. A question was asked whether the Government of India will have to give any guarantee and I said that some kind of a guarantee has to be given. The question, therefore, arose whether that brings the Bill within the purview of Article 110. Then, of course, I had to examine that guarantee and therefore I said that it should be held over till today as there were some question raised here.

I feel now on examination that this Bill in the present case seeks merely to regulate the powers of the three Port Trusts to borrow money from sources outside India. The borrowings will be made by the three autonomous bodies that these Port Trusts are the only restriction which is sought to be imposed by the Bill being that the terms and condition of