

[Shri Kanungo]

be allowed to be repatriated, but could be invested in approved projects in India. Earnings on such investments would, however, be allowed to be remitted to West Germany in accordance with the current exchange control regulations. Amounts of the claims whose value is up to Rs 5,000 will be allowed to be repatriated. The magnitude of such repatriation will be of the order of Rs 6 lakhs.

**Shri Panigrahi (Puri)** Will the repatriation be in Indian rupees or in German currency?

**Shri Kanungo:** It will be in international currency.

**Mr. Speaker:** Will we be perpetually allowing the out-flow of interest and the return on investments?

**Shri Kanungo:** Yes, that is the normal procedure. Because, profits on investments are allowed to be repatriated.

**Shri Panigrahi** What is the rate of interest?

**Shri Kanungo:** There is no question of the rate of interest.

**Shri Panigrahi.** Once it is invested, are we not going to pay

**Shri Kanungo:** It is not Government security that they are going to invest. It can be on shares.

12.32 hrs.

#### INDIAN PENAL CODE (AMENDMENT) BILL—contd

**Mr. Speaker.** The House will now take up further consideration of the following motion moved by Shrimati Violet Alva on the 23rd November, 1959, namely

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

**The Deputy Minister of Home Affairs (Shrimati Alva):** Mr Speaker, yesterday I was saying that this was a specific measure to amend the Indian Penal Code for a specific purpose. Many hon Members gave valuable suggestions, but some of the suggestions were not necessary and, therefore, I had explained, or had started to explain, that the bigger background had to be kept in view when we viewed this problem of beggary.

In this particular measure we are looking at it from one particular angle, namely, how effectively to control the kidnapping of children and how effectively to punish the criminals who, with their criminal tendencies, not only inflict injuries but show cruelty of all kinds to the extent of not only deforming but maiming and leaving marks of gruesome wounds and injury which will remain till their death.

**Shri Nathwani (Sorath)** The proposed amending Bill deals not only with the kidnapping of minors for the purpose of employment or utilising them for beggary but also with obtaining the custody of the minor. Therefore, it is not correct to say that it deals merely with the question of kidnapping minors only.

**Shrimati Alva:** I had suggested that the whole background has to be kept in view, because there are Children Act already in force in most of the States. A Children Act dealing with the Union territories will be placed before Parliament very soon for consideration and passing. Then, for offences against minors there are very many other sections not only in the common laws but in other laws. Especially where girls are concerned, we have recently passed the Suppression of Immoral Traffic in Women and Girls Act. Now, this amending measure has to be taken in that broad perspective. Here we are considering only how a child should not be exploited and made an object of pity so that some one may make a livell-

hood by exposing the child as an object of pity

Very rightly, hon Members have said that it is not the passing of a measure of this sort that will help social reform but it is the administrative enforcement and the legal powers that the police would use that would really bring the required and desired results that we look forward to. It is very important to note here that we have taken up this question with the various State Governments. We have told them that laws for the benefit of children should not only be enforced but they should institute Missing Persons' Squad in every district straightaway. Also, special police force for children have been suggested for every district, like the flying squads. Some hon Member suggested that police dogs should be used. In our country we do not use police dogs on a large scale, and it is still in the experimental stage. Only one or two States have started using them. Recently I have had the benefit of watching the police dogs in other parts of the world and they are very useful indeed. But, then the type of dogs that are seen elsewhere are not suitable for the climate of India. In any case, this suggestion is a very valuable one and will be analysed, examined and looked into and acted upon, if it is found suitable.

Mr. Speaker I suppose there are already provisions here against kidnapping for purposes of prostitution etc.

**Shrimati Alva:** Yes, there is the Suppression of Immoral Traffic in Women and Girls Act, and the Penal Code has very many other sections which cover this subject. We are amending this section only for a particular purpose. In 1956 we had a conference and then a brief census was called for from the sub-committee formed by DIG (CID), and they said that there was a gang operating in this country which kidnapped children for the purpose of making

them objects of pity by inflicting cruelties on them. So, this measure became absolutely imperative and that is why we have undertaken it.

As far as brothels and prostitution go, we have a special enactment. As far as children are concerned, most of the States have got laws operative in their States, and they are taking action in the proper way. As far as beggary goes, it is an item in the Concurrent List in the Constitution. On beggary also there are very many laws. As Shrimati Ray pointed out yesterday, Bombay has really been a pioneer State. I agree with her, because in Bombay they have tackled this problem of beggary. But what is specifically mentioned in this measure is not beggary as such but beggary in a particular form. In different States they have anti beggary laws. I do not think we could now extend the scope of this Bill to bring in many more things that are not in this measure for the simple reason that this is a specific measure. It is an amendment of the Indian Penal Code. As has already been stated, this Bill was over-due, and we have now given thought to all aspects.

Some hon Members suggested that it should be circulated for public opinion. I do not see why it should be circulated for public opinion, because already public opinion has expressed itself in this very House in the form of questions. Further, every State has been consulted and its opinion taken. Everyone has concurred with the object of this measure and said that it should form part of the statute-book. Therefore, I do not think the amendments that have been tabled for the circulation of the Bill are necessary.

**Shri Naldurgkar (Osmanabad)** Do the Government propose to penalise the act of the guardian for giving the custody of such child?

**Shrimati Alva:** He says that for any mutilation of the child the guardian should be held responsible.

[Shrimati Alva]

I think the other laws cover this. The Indian Penal Code as well as the other specific laws which are already there on the statute books of the various State Governments deal with these offences. Therefore it is not necessary to accept this suggestion.

**Shri Naldurgkar:** As far as the act of the guardian is concerned

**Shrimati Alva:** It is not necessary in this measure. It is already there.

**Mr. Speaker:** But this does not appear to be here. It is only a person who kidnaps a minor or obtains the custody of the minor.

**Shrimati Alva:** But it is covered not only by the common law but also by the Children Acts that are enforced in the various States.

**Mr. Speaker:** I am asking the hon. Minister with regard to another matter. This phrase "Whoever kidnaps any minor or obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging" does not cover the case where without either kidnapping or obtaining the custody any person uses a minor for the purpose of begging. He can pay half-a-rupee or quarter-rupee and send him in the streets for begging without obtaining possession or custody of the minor or even without kidnapping.

**Shrimati Alva:** That is covered by the Children Act. Any child who is exploited in this fashion can be taken charge of by the Police. Therefore it is not necessary to go into those details in this particular amending Bill.

**Mr. Speaker:** But that man is not punishable.

**Shrimati Alva:** He will be punished under the common law. When the child is taken the adult goes with him. Therefore the case.

**Mr. Speaker:** What about an orphan?

**Shri Narayanankutty Menon (Mukundapuram):** Which is that common law?

**Mr. Speaker:** I am not able to see any common law under which any person who uses an orphan for the purpose of begging comes. He comes neither under this law nor under the common law.

**Shrimati Alva:** He comes under the Children Act. If an orphan or any child is found a destitute or a waif or is being exploited for beggary, he comes under the Children Act and offences against children.

**Shrimati Renuka Ray (Malda):** What if he is maimed?

**Shri Narayanankutty Menon:** He cannot be penalised under the Children Act.

**Shri Easwara Iyer (Trivandrum):** May I submit that under sub-section (2) of the very same section, if any person maims a child.

**Mr. Speaker:** That means, maiming in order to be used for the purpose of begging.

**Shri Easwara Iyer:** That is what I am submitting. Unless he maims the child, he will not come within the mischief of this Act. This is the whole difficulty.

**Mr. Speaker:** 'Employs or uses for the purpose' comes also under sub-section (1).

**Shrimati Alva:** This is for a specific purpose.

**Mr. Speaker:** I will get the Children Act also.

**Shrimati Alva:** But you will have to get many Children Acts as they operate in the various States. But amongst all of them the Bombay Act is the most up-to-date. We have also suggested to the States that where the Children Act is not up-to-date the Bombay Children Act be made a model and accepted.

**Mr. Speaker:** Does the hon. Minister mean to say that the Bombay Act, which seems to be a model, imposes a penalty upon the person who uses an orphan for the purpose of begging without maiming him and without taking him in his custody?

**Shrimati Alva:** Yes, Sir. In a court the adult is prosecuted when the child is taken. An adult, if he is exploiting a child, is also prosecuted.

**Shrimati Manjula Devi (Gopalpara):** Will all these Children Acts be brought in conformity so that they will be worked together?

**Shrimati Alva:** This is a suggestion from the hon. Member that there should be a uniform Children Act from the Centre. Most of the States have got Children Act. The suggestion has been coming to us from time to time that we should have a Central measure in the sense that it would bring a kind of uniformity in the whole of the country. For the present we have a Bill which will be introduced by the Ministry of Education in this House very soon. That will only be for the Union territories. The other measure we shall have to consider because we find that every State has its own prevailing conditions and they must make their own laws. Most of them have made them. I do not think there are very many States who do not have it. I do not know whether Assam has a Children Act or not. But we have suggested to the States that they should accept the Bombay Children Act as the best so far.

**Shri Easwara Iyer:** May I clarify a doubt?

**Mr. Speaker:** Let her finish. Then I will allow a number of questions.

**Shri Easwara Iyer:** If a lawful guardian employs a child for the purpose of begging, will he come within the mischief of this Act?

**Shrimati Alva:** As regards this question of begging let me take the larger aspect. In a country where there is so much socio-economic maladjustment this will continue. The lawful guardian or the parents or the child's own mother for all the love she has may make a child beg. It is a very large issue. We are trying to do as much as we can. But unless the larger issue of economic development is tackled, we cannot make it more stringent nor can we make it more deterrent than what has been put here, namely ten years' imprisonment or life imprisonment. I do not think one can make it any more deterrent than what we have tried to do. But the problem of beggary, whether by a child or by a grown up, is a problem of socio-economic development and how far we can go ahead with that, in a welfare state, as Shrimati Nehru pointed out yesterday, in the course of her remarks.

I will now come to the question of punishment. Rigorous punishment according to the I.P.C. is ten years for kidnapping, slavery, prostitution, immoral purposes and for other offences like murder and so on. I will not give the whole list. Therefore here in this measure we have kept ten years and fine. For maiming of a minor or where there are injuries or cruelties inflicted or a loss of limb of the child, it is imprisonment for life. He shall also be liable to fine. We have made it as deterrent as possible though some hon. Member said here that even capital punishment would be too little. True, capital punishment would be too little, but when we are going away from this idea of brutal punishment, I think we need not accept that idea of capital punishment. We can treat even those who have inflicted injuries in a

[Shrimati Violet Alva]

speciased way and see how their sadistic tendencies can be put right and they can be brought back to normalcy

Then there was a question raised about the definition of a minor. Minor is denned in the IPC, section 361 for the present we have kept to those ages, that is, 16 in the case of boys and 18 in the case of girls. There is admittedly a disparity in several laws in the country. I do admit that this disparity exists, but for the present we have accepted the ages as laid down in the IPC. We have laid down those ages in this amending Bill also. Therefore the ages of 16 and 18 shall remain. I personally feel that girls need more care for a little longer time. At the age of 16 a boy is a young man and he can look after himself. Nevertheless, it is a matter of opinion and hon Members' suggestions will be kept in view. However the ages remain as laid down in the IPC.

Some hon Member from the other side talked of grievous hurt and spread in the offences of slavery of boys and also of eunuchs. This is all provided for in the IPC. If it is grievous hurt, it would come under injury and maiming and already the punishment for that is prescribed as up to ten years imprisonment. So we do not need a special provision in this Bill.

Some hon Member referred to singing and dancing. Singing and dancing are offences mainly for girls. I do not think that I should now add to my comments because there is a special law under which all these kinds of offences are taken care of. The only thing is the suggestion made that there should be more vigilance by the States, more administrative tightening up and more vigilance from the Police side. That we are trying to do at our level and are also recommending to the States that they should also become alive to the issue. But as for innocent children, I think the co-

operation of every one is necessary. Innocent children are kidnapped. These cases are happening even today, after all the consciousness that we have created in society. They go on happening. Gangs are operating. Perhaps they are criminal by nature or they have other motives. Children get into their hands for various reasons, maybe disharmony at home or lack of opportunities in home life or education or play. They get into the hands of these evildoers and criminals and they are exploited and made objects of pity and useless for life by mutilation and by injuries and by loss of limb. For that I think it is necessary for every hon Member here to see that proper consciousness is created in his own district and to see that the police become vigilant. We have requested every State to have a missing persons squad. Not only that. We have told them that the case of every missing person should be investigated and the missing person handed over to the rightful guardian or parent. I am talking of minors only.

Therefore, the amendment tabled here, I do not think, is of any consequence, and hence I commend this Bill as it is to the House.

Mr. Speaker: Does Shri Naldurgkar press his amendment No 10?

Shri Naldurgkar: No, Sir. I withdraw.

Mr. Speaker: Has the hon Member the leave of the House to withdraw his amendment?

Hon. Members: Yes.

The amendment was, by leave, withdrawn.

Mr. Speaker: The question is:

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

The motion was adopted.

Mr. Speaker: We shall now take up the clause-by-clause consideration of the Bill

Clause 2.—(Insertion of new section 363A)

Shri U L Patil (Dhulia) I beg to move

Page 2, line 1, omit "unless the contrary is proved" (16)

My submission is that in order to eradicate this evil of maiming and using the children for beggary, we should not disturb the long established practice that has been observed in criminal jurisprudence, namely that 99 guilty persons may go scot-free, but one innocent person should not be punished. I quite agree that in offences like this certain sort of presumption should be made. There are presumptions under the Gambling Act for example, but then certain formalities have to be observed. For example, under the Gambling Act, the presumption only arises after getting the warrant on submitting information to a magistrate on oath. There is no such formality whatsoever in the present case to be observed.

Then there are these words "unless the contrary is proved". Supposing a maimed, destitute child goes to a beggar and begs for abode. If that particular begger is prosecuted because he has in his custody this particular maimed minor, it will be very difficult for him to prove that the child was maimed before he gave abode to it.

There are children in our society who are destitute or who have run away from their homes. In the circumstances, it will be very difficult for the person concerned to prove his case. If these words are deleted, then the question will only be one of rebuttal of the presumption. Rebuttal is an altogether different thing from proof. Therefore, my submission that these words should go

In fact, my learned friend Shri Bharucha also had some such amendment, namely to substitute these words by the words "unless contrary is made to appear". Therefore, I submit these words should be deleted. The presumption should remain, but the burden of proof should not be cast on the person concerned since it will be very difficult for him. If the presumption is rebutted by sufficient evidence, that should serve the purpose. Therefore, I submit that these words "unless the contrary is proved" should be deleted.

Shri Easwara Iyer: Regarding the deletion of the words "unless the contrary is proved", I do not think the clause in any way militates against the ordinary criminal law, namely that the accused should be presumed to be innocent unless the contrary is proved, because it only states that when it is proved that a person is in possession of a child and is not the lawful guardian and he uses the particular child or employs the child for begging, the presumption will arise. It will be clear that it is not any person who is in possession of a maimed child against whom this presumption will arise. He must first employ the child for the purpose of begging, he must also be a person who is not the lawful guardian of the child. Then only will the presumption arise. If a person is in possession of a child which is maimed and he cannot explain the possession, and if he particularly employs the child surely the law must make some sort of initial presumption.

Mr. Speaker: Suppose he uses the child only during the day and puts him in a dharmashala in the evening he can easily escape this law and say, "I have not obtained custody, nor have I kidnapped the boy. I am giving him half an anna every day." He can use the child without obtaining custody.

Shri Easwara Iyer: That is certainly a point that you have raised. Even the presumption will be defeated if

[Shri Easwara Iyer]

he uses the child only during day time.

**Mr. Speaker:** He does not obtain custody nor has he kidnapped. If he can so easily evade the law, what is the object of this presumption? He simply says that he allows the boy to go back, that he has no jurisdiction over him. The boy comes every morning, and he tells him: you get some money, I will give you a share.

**Shrimati Renuka Ray:** Therefore, those words should be added.

**Shri Easwara Iyer:** I would even suggest that there should be stronger presumption. As it stands, it does not in any way militate against the ordinary rule of criminal law, because certain conditions have to be fulfilled in order to raise this presumption.

**Mr. Speaker:** Does he say that even if these words are not there, it will serve the purpose?

**Shri Easwara Iyer:** Even if they are omitted, the clause says "shall presume", and "shall presume" is defined in the Evidence Act, and it means unless the contrary is proved. So, the words "unless the contrary is proved" are superfluous.

**Shrimati Alva:** I do not accept the amendment at all because, as I have repeated so many times, this is a specific measure. If we carefully read the clause it refers to any person who, not being the lawful guardian of the minor, employs him for begging etc. Therefore, the onus is on the accused, and he must prove that he has not used the child or exploited the child or made it an object of pity.

**Shrimati Renuka Ray:** But you are not answering the question brought up by the Speaker himself and that is regarding the custody. If he can prove that the child is not in his custody, then the whole case falls.

**Mr. Speaker:** I feel, and our friends also agree, that this can be easily evaded by a man saying: "I merely took pity on the boy. I am myself not able to maintain this boy, and I told him that if he would go and beg and get some money, I would give him something." Therefore, every man can escape like that. He can put him every night in front of a *dharmashala* and take him the next morning. He has not obtained custody nor kidnapped. What is the object of this Bill?

**Shrimati Alva:** I do not think it is so easy for the man to escape.

**Mr. Speaker:** How? There are a number of *dharmashalas*. He will put the boy in front of a *dharmashala* every day.

**Shrimati Alva:** For that we have asked the various States that the Act licensing women and children's institutions be enforced rigidly.

13 hrs.

**Mr. Speaker:** What is the difficulty with regard to the Central Act?

**Shrimati Alva:** This is a Central Act, and this is to be enforced in the various States. If, as you have stated, the boy would be in a *dharmashala* then that would be the procedure to find out who actually is directing the boy.

**Mr. Speaker:** Why should the hon. Minister restrict it only to kidnapping and taking custody? Why not extend it to merely using the child for begging? The hon. Minister must explain this point to the House. Why should she not make the using of a child by any man for purposes of begging an offence? This is going to be a Central Act, and why should she not make this provision here, without looking to the various States to implement or not to implement it. What is the object behind this?

**Shrimati Alva:** The object of this measure is very clear. If you read

the relevant sections of the IPC and then put in this amendment there, you will see that it becomes very clear that no child can be exploited in this fashion.

**Mr. Speaker:** Where is it stated? No child can be exploited, unless the person kidnaps or takes it into his custody. So, even though he exploits it, he can still plead

**Shrimati Alva:** But it raises a presumption against him.

**Mr. Speaker:** Even though a person exploits the child, still he can easily escape by saying that he never took the child into custody nor did he kidnap, and the boy was where he was, that is, in front of the *dharmashala*

**Shrimati Alva:** In every criminal case presumptions are raised. It has to be proved that he has not exploited the child.

**Mr. Speaker:** He can say that he did exploit the child, but he never kidnapped or obtained custody of the child.

**Shrimati Alva:** Even today, we have cases where when the girls are taken from the brothels, they say that they were not in their keeping.

**Shrimati Renuka Ray:** What is the objection to widening the scope so as to include those who did not take the child into custody also?

**Shrimati Alva:** I do not think that that is necessary in this measure.

**Mr. Speaker:** I shall now put amendment No 16 to the vote of the House.

The question is:

'Page 2, line 1, omit "unless the contrary is proved" (16)

*The motion was negatived.*

**Mr. Speaker:** The question is

"That clause 2 stand part of the Bill".

*The motion was adopted*

Clause 2 was added to the Bill

Clause 3 was added to the Bill

Clause 1, the Enacting Formula and the Title were added to the Bill.

**Shrimati Alva:** I beg to move

"That the Bill be passed"

**Mr. Speaker:** Motion moved

"That the Bill be passed"

**Shri Easwara Iyer:** I would like the hon. Minister to consider at least in due course whether the age-old definition of minor contained in section 361 of the IPC could not be extended to this section also, particularly in view of the Constitution that has come into force. I fear that the definition of the word 'minor' contained in this Bill may militate against article 15 of the Constitution, because this is a case of discrimination on the ground of sex only, there being no other ground mentioned for the purpose of having a discrimination. The age has been fixed at sixteen in the case of a male, and eighteen in the case of a female, and this is a discrimination on the ground of sex only. There is no other ground mentioned here.

So, I would particularly commend to the hon. Minister that the definition of 'minor' at least for the purpose of begging be fixed at 18 years as laid down in the Indian Majority Act.

**Shrimati Alva:** I shall note what the hon. Member has said. But, nevertheless, it is not a discrimination on the ground of sex. I do not think it can be stretched to that extent.

**Mr. Speaker:** Article 15 (3) reads thus

"Nothing in this article shall prevent the State from making any special provision for women and children."

Therefore, they can make this difference. That is not a discrimination.



[Mr. Speaker]

which militates against article 15 of the Constitution.

**Shrimati Alva:** That was what I wanted to say, that it does not militate against article 15 of the Constitution.

**Mr. Speaker:** Of course, girls attain maturity earlier than this. But it is a matter for consideration whether even at this age, they are sufficiently mature enough to decide for themselves, whatever might be their physical condition. That is a matter for the hon. Minister to consider later on.

The question is:

"That the Bill be passed".

*The motion was adopted.*

#### HAJ COMMITTEE BILL

**The Deputy Minister of External Affairs (Shrimati Lakshmi Menon):** I beg to move:

"That the Bill to establish a Committee in the Port of Bombay for assisting Muslim pilgrims to Saudi Arabia, Syria, Iraq, Iran and Jordan and for matters connected therewith be taken into consideration".

The present Bill relates to the Haj pilgrims going from India on pilgrimage to Saudi Arabia, Iraq, Iran, Syria and Jordan. Last year, we had more than 19,000 pilgrims who went on the annual Haj. In order to facilitate the annual traffic, the Government of India had enacted legislation as early as 1932.

According to the Port Haj Committee Act of 1932 three Port Haj Committees were constituted at Bombay, Calcutta and Karachi. Consequent upon the Partition of the country, the Act was suitably amended to provide for the continuance of the Calcutta and Bombay Committees only, the reference to the Karachi

Committee being omitted therefrom. The Calcutta Committee, however, ceased to function from 1948, owing to the Partition of Bengal, and there is now a balance of about Rs. 15,000 lying to the credit of the Port Haj Fund of Calcutta, which cannot be utilised for any other purpose or transferred to any other Port Haj Fund unless the Act is amended.

All pilgrim traffic to Saudi Arabia, Iraq, Jordan and Iran is now concentrated in Bombay. The Government of India, therefore, have had under consideration for some time past, the question of revising the Port Haj Committee Act of 1932, to bring it in line with the present requirements of the Haj pilgrims. A committee consisting of six members, five non-officials and one official, was set up in 1955 to undertake the revision. As a result of their recommendations, certain important changes were made in the Port Haj Committee Act of 1932, and the present Bill seeks to incorporate the recommendations of the committee.

I would point out here that the important changes that are contemplated in the Act are as follows. To begin with, the scope of the Bill is being widened in order to include pilgrims not only going to Saudi Arabia but also to Iraq, Iran, Syria and Jordan. Then, the entire pilgrim sailings, as I pointed out earlier, will be concentrated in Bombay and will take place from Bombay. Then, the composition of the committee also has been changed, and we shall have six official members and three Members of Parliament to be nominated, two by the Speaker of the House of the People from amongst its Members, and one by the Chairman of the Council of States from among its Members. One Member will be nominated by the Government of Bombay and two members of the Bombay Legislative Assembly will be nominated by the Speaker of that Assembly. Two members of the Municipal Corporation of Greater