PROBATION OF OFFENDERS BILL—*contd.*

Mr. Speaker: The House will now resume further discussion on the Probation of Offenders Bill, 1957, as reported by the Joint Comittee. Out of 8 hours allotted to this Bill, 4 hours and 35 minutes have already been availed of and 3 hours and 25 minutes now remain. Shrimati Alva may kindly continue her speech. The motion for consideration is:

> "That the Bill to provide for the release of offenders on probation or after due admonition and for matters connected herewith, as reported by the Joint Committee, be taken into consideration".

The Deputy Minister of Home Affairs (Shrimati Alva): Mr. Speaker, Sir, I had just started replying the other day, and I had then said that though it was gratifying to note that there was a warm reception to this Bill in this House, there were still a few Members who had expressed a fear that if this measure was passed it would let loose a large number of criminals on society. I may only say that this is not justified. It is just a misapprehension in their minds. The hon. Member Shri P. R. Patel from the other side had asked us that the Bill should be circulated for public opinion. He expressed in that suggestion his ignorance that this measure has been before the country from the year 1935. When this Bill had come up for reference to the Joint Committee, the course of history was then narrated, of how it was left to the different States to bring about this enactment. Some of the States did take action and the Probation of Offenders enactment was enforced in some States and it has been working well. But the hon. Member said that it should be circulated for public opinion. There is no need for any further public opinion on this measure, because from time to time, our Jail Reforms Enquiry Committee and later on Dr. Walter Reckless, the United Nations expert who was in India had expressed after going round and observing conditions and the manner in which these enactments were working in the different States, that probation is already in the country. Dr. Reckless recommended that it should be taken up by the Central Government. After that, as recently as December, 1957, the Indian Correction Association and the All-India Conference of Correctional Officers passed a resolution. I may here, for the benefit of those who do not know the history of this measure, read out the resolution that was passed by the All-India Conference of Correctional Officers in December, 1957. The resolution ran like this:

> "This Conference congratulates the Government of India for having initiated legislation on probation of offenders according to the latest concepts and practices and the immediate requirements of the country and supports all the provisions of the Bill which are in complete conformity with the recommendations of our earlier conferences. The Conference hopes that it will be able to implement the Central Act in all the States at an early date".

After this, I do not think any hon. Member could voice an opinion that it needs a further scrutiny to be elucidated by way of public opinion.

Then, I will come to the two critics against this measure. One was the hon. Member Shri Naushir Bharucha who is not here just now, and the other was the hon. Member Shri Supakar. Shri Supakar and Shri Naushir Bharucha expressed a fear that harmful results would follow if such a measure was put on the statute-book, as a Central law. I do not understand how harmful results could follow since harmful results have not followed in those States in which this enactment has been enforced and is working very satisfactorily, especially in Uttar Pradesh, Madras and Bombay.

[Shrimati Alva]

Then, Shri Supakar has said that we are assuming too much. I want to assure this House that we have made no such assumptions. The law of probation has been exercised in different countries of the world and we do not assume anything more than what is factually observed and what has been scientifically collected by way of data. The only two main features of this Bill are firstly admonition and secondly, probation. Admonition is after a person goes through the process of law before a court, after investigations are complete and the Bench comes to a decision that here is an offender, young or old, to whom a jail term would not serve very much for rehabilitation. Then, an admonition is given, and he is sent back to society on his own bond that he would again be a useful citizen and would not be an injurious element to society. The second element of this Bill which is very important is probation. But some of the Members expressed a fear that by giving probation we would let loose a large number of offenders that are today before the police and before the courts. Nothing of the sort. If we read the measure very carefully, we would, find that very, very few cases will be really given probation. This measure only enables the courts to decide, after the whole verdict has been given—they will come to a decision after that—whether probation would serve the purpose of sending back those offenders into society and making them useful citizens. But, before I come to that, the critics on this particular point—and veteran lawyers they were all—forget the point that in the Criminal Procedure Code itself, we have a provision—Section 562—by which both admonition and probation are given. This is nothing new. I do not know how these critics, most of them being veteran lawyers, forget or overlooked this provision that is already there in the Criminal Procedure Code. The only thing that we want to do is to make it a little more effective.

It was argued that deterrence should be the main theme of correction. We have come away from that theme and we are convinced that deterrent punishment or afflictive punishment does not cure anyone. We have had jails, cruel methods, torture chambers and so on and we have seen that these only harden even an innocent man who has made a slip and these things make him habitual, rather than cure him and get him back into society as a useful citizen. Therefore, we must again find out what is probation. Probation means a suspended sentence. A suspended sentence means that the bench or the court has come to a decision that the man is guilty. After coming to that decision, the court decides that it will be of no use sending this man to the jail or for him to suffer his sentence in prison, but that he should be sent back to society on his own bond or may be on the bond of his surety or on other grounds which the court deems fit. We have given great discretion to the court to choose whichever agency it may prefer to look after him. We send him out for a certain period, so that we could observe him and without hardening the man, his heart and his soul, we could bring him back without a stigma into society; but, it is suspended sentence.

In the case of admonition, there is nothing. The man is put on his own word of honour and he goes back to society, gets rehabilitated and gets absorbed into his own group and lives happily. But in the case of probation, it is absolutely different. In the case of probation, he is found guilty and after being found guilty, it is decided that the sentence shall not be passed. He is given a chance to reform himself and if he does not reform or after all the efforts made by the various agencies that the court may appoint, if they still find that the man is incurable and that he makes slips over and over again, the same sentence which was suspended could be executed against him and he would

go to prison as any other offender does under our common law. But by not sending a youthful offender to prison, the chances of reformation are greater. The chance of his coming back to society and living in a useful way is also better. The chance of his re-employment and not losing his reputation by the stigma of conviction serves the purpose not only for him, but for the greater society that we are trying to build up, since ours is a democracy and we are trying to build up a Welfare State.

Some hon. Members expressed a fear that if we have this measure, there will be increase in crime. Taking the figures not only of other countries, but of our own various States in the country, I do not think that crime has gone up in any way. The probation of offenders enactment has had its life in a few of our States and there has been noticeable no increase in crime. In fact, it has helped both the police and the courts and the social workers to bring back people to normalcy. Without making the punishment afflictive, by making it reformative, we are able to get them back to our level more easily.

I have already said that the probation system has worked well in some of the States. It was Mr. Supakar again, who is not seen here even now, who said that we believe in blind justice. I do not know to which the hon. Member, Mr. Supakar, belongs. I do not know what he meant by blind justice. Did he mean that we should now rake up our old torture chambers, the cruel methods and humiliating courses of punishment by which a man is lost for ever even if he lives in the world? We in the world have drifted away from it. By scientific research, with the present psychological approach and the psychiatric methods, we have moved far away and we do not any more believe in keeping the prisoner as a slave; but, we want to keep him as a ward of the State.

In clauses 3 and 4, this misunderstanding of blind justice is very well explained. It is misunderstanding the very fundamentals of this measure, the fundamental basis of the Bill, and misunderstanding persistently in spite of the efforts to elucidate both in the measure as we have laid down in the clauses in black and white and as far as we have been able to convince in this House. In clauses 3 and 4, the treatment of a prisoner is described. After he is found guilty, there are various processes. He is sentenced; he is convicted and then he serves his term. But we bear in mind the provision that is already there in the Cr. P. C., namely, section 562. We now want to do away with that section and by this measure have a little more in the shape of overlooking the age limit and other factors that made it limited in its application.

It was some hon. Member, I think from the other side, who said that the Bill is premature. The Bill being premature also expresses a kind of fear in our own mind. Are we afraid of our own youthful offenders? May I ask the House, even today how many offenders who stand before the court of law are discharged? Most of them get the benefit of the doubt and they come out. In those cases in which they are sent to the prison, we have greater chances of losing them for ever, rather than getting them back into society. That is the reason why we are now trying to co-ordinate a progressive measure for the whole of our country. We do not want our States to carry on piecemeal measures. We want to centralise this provision of law and see that our States go ahead in full measure with the new measure which, at least we are confident, is going to succeed in India, because I read out the other day the opinion of Dr. Walter Reckless in which he said that the material inside the Indian prisons was far better than what he had seen in prisons elsewhere in the world. If he thought it to be so, I do not know why we, call this

[Shrimati Alva]

Bill premature or why we are doubtful and afraid that evil results will follow.

Some hon. Members here said that the machinery for the enforcement of this Bill should precede the passing of this measure. I do not see the logic of this statement, because who is going to get ready the machinery for the enforcement of this Bill, until you give them the instrument in their hands for the benefit of the young offenders who may come under the purview of admonition or probation clauses? That is why in clause 1(3), we have left to the States the date and time of enforcement of this measure. This will be a central measure giving it some measure of co-ordination and uniformity of approach, but finally it will be left to the State to enforce it and to interpret its own methods by which it is going to see that this probation law is made applicable.

13·00 hrs.

Then, Sir, there were again doubts expressed and ignorance shown that there is no probation system working anywhere in India. I have to take back hon. Members to the various States in which the probation law is effective, especially in the realm of Children Act. I have seen the Children Act operating in Bombay. It is the most perfect method by which our youthful offenders—shall we call them 'delinquent juveniles'—'delinquent' is a bad word while 'juvenile' is a good word—are corrected. One will be struck by the manner and the wonderful way in which our probation officers have handled the cases of these little children, the amount of effort that a probation officer takes, even though the work-load is heavy. I have watched this operate in Bombay for not less than five years, how each probation officer follows the child to his house, to his school, to his play-ground, to his village and then builds up a case law. Can we not imagine the benefit the child derives in this fashion, rather than he being branded as a delinquent for the rest of his life and hardened into a criminal before he attains his majority. The whole object is to make his a healthy juvenile in our midst. Therefore, sub-clause (3) of clause one says—

> "It shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different parts of the State."

Some hon. Members may feel that this is a very discretionary measure and we have given a long rope to the States. But the States are willing. We have already corresponded with the States that this measure is going to be put on the statute-book and they will have to be ready. Limitations are there, as limitations we find in all our projects of welfare. These limitations will continue. Therefore, we have worded the measure in such a way that after a certain period we may be able to come back again and remove some of the phrases like 'if any' and others that we have put in the Bill today. After we have seen how it works in the whole country we should be able to make it tighter.

Then some hon. Member from the other side said that a probation officer will not be sufficient for a district which covers an area of 5000 square miles.

Mr. Speaker: With regard to the improvements suggested to the clauses, the hon. Minister may withhold her comments till we come to the clause by clause consideration stage. I hope she has covered everything in a general way.

Shrimati Alva: I want to say two more things before I resume my seat. A point that was made was about after-care. Even you the other day

said that you had come across someone inside the prison and I replied that I too had come across a woman inside the prison. These people come under a different category altogether. Those who are already in institutions of correction cannot be covered by this measure. After-care is a separate item under our Second Five Year Plan. On a certain date the persons have to be released, whether they are good, bad or indifferent. Whatever they are they have to be out of the prison walls, or correction institutions. Then what happens to them? That is why we have now got a special programme for after-care which is not to be confused with this measure at all.

Under the Second Five Year Plan for probationers who may not be able to go back into their own group or section, we want to provide probationers' hostels. That will be in very rare cases, but we have to avoid pitfalls by putting them in any institutions, as far as possible. We want them to come back to their own society, to their own folk and get corrected by some effort by the probation officer and by the society at large.

Then it was Shrimati Renu Chakravartty I think who referred to the lack of suffcient homes for rehabilitating prostitutes. I do not know how she brought this point in this debate, because Suppression of Immoral Traffic Act is excluded completely from the scope of this Bill.

I shall not take further time of the House.

Mr. Speaker: The question is:

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

The Motion was negatived.

Mr. Speaker: Let us now proceed to the clause-by-clause consideration. There are no amendments to clause 2. I shall put it to the House.

The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3

Shri Raghubir Sahai (Budaun): Sir, I beg to move:

Page 2, line 9,—

After "offender" *insert*—

"and also the fact that he has made a clean breast of the whole thing concealing nothing."

Shri Supakar (Samalpur): Sir, beg to move:

Page 2, lines 2 and 3,—

omit "punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code or any offence."

Page 2, line 16,—

add at the end "or under section 562 of the Code".

Shri Naushir Bharucha (East-Khandesh): Sir, I beg to move:

Page 2, line 1,—

after "person" *insert*—

"below the age of twenty-one".

Page 2,—

after line 13, *add*

"Provided that for any special reasons to be recorded in writing the court may pass an order under this section in case of a person above the age of twenty-one years."

[Shri Naushir Bharucha]

Sir, the object of my moving my amendments is to rationalise the system of probation of offenders. It will be observed that so far as clause 3 is concerned, the scheme of it is that when any person is found guilty of having committed an offence punishable under section 379 or section 380, or section 381 or section 404 or section 420 of the Indian Penal Code or any offence punishable with imprisonment for not more than two years, provided that there is no previous conviction against him he could be admonished and released. My submission is that the system of admonition would work well and have some effect on impressionable minds. At the same time I do see the force of the argument, namely that there may be cases where by reason of the circumstances of the case or the nature of the offence and the character of the offender, admonition may have to be administered to a person exceeding twenty-one years. Therefore, I have moved my second amendment. No. 9, namely that "provided for any special reasons to be recorded in writing the court may pass an order under this section in case of a person above the age of twenty-one years."

The object of my amendment is this. While it makes admonition restricted to persons of 21 years of age, in exceptional cases it may be extended to persons beyond 21 years. I have left some reserve powers where a person above 21 is to be admonished, but that would be sparingly used and only in exceptional cases. Therefore, my amendments have got this merit that while they fulfil the purposes and objective which the reformers have in view, namely that any person who is eligible in the opinion of the court for admonition may be administered admonition, it does away with admonition as a matter of course, and that is what is very important. If you restrict it to offences which are punishable with imprisonment for not more than two years, then there are many offences which will come under this. It is only in very rare cases that imprisonment extends beyond two years I think 76 per cent. of the offences would fall under this category. When we are dealing with people who have committed nearly 75 per cent. of the offences of all categories, then we have got to proceed a bit more cautiously. The amendments have this merit that while they retain the purpose of the Government in view, they proceed more cautiously and the public also will know that only in exceptional cases, the procedure of admonition will be used.

Shri Supakar (Sambalpur): The purposes of the amendments proposed by me are very obvious. My first amendment says that certain sections which are included within the scope of the admonition should not be included in clause (3), and they are sections 379, 380, 381, 404 and 420 of the IPC. I submit that these offences can well come within the ambit of offences which involve moral turpitude. Unfortunately, in no legislation in force in our country there is anything to show which sections involve moral turpitude. But it is generally understood that the offences which are mentioned in these sections, namely, sections 379, 380, 381, 404 and 420 are very notorious in the sense that the commission of these offences involves certain mortal defect in the person who goes to commit these offences. It is specially so in the case of offences under sections 379, 380 and 381, because we find provision for higher penalty in cases where the offence is repeated. Therefore, my submission is that all these five offences which, in my opinion, involve moral turpitude in the case of delinquents should not be included in the category of offences which deserve admonition instead of sentence in a particular case. Especially, I could not understand why the Select Committee substituted section 404 in place of 403, when an offence under section 404 is much more serious than an offence under section 403. Therefore,

I submit that these offences should be excluded from this category.

I now come to my second amendment. The Explanation to clause (3) reads as follows:—

> "For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4."

There is provision for admonition also under section 562. A person who is entitled to admonition will be excluded in the case of previous conviction in the case of clauses 3 and 4 of the Bill. But, in the case of persons who have been previously let off with an admonition under section 562 of the Cr. P. C. an exception is being made. My submission is that clauses 3 and 4 of this Bill and section 562 of the Cr. P. C. stand on the same footing. They are at par. Therefore, I think that this second amendment which is proposed by me is also equally reasonable.

Shri Raghubir Sahai (Badaun): Mr. Speaker, I have given notice of three amendments of a similar nature. Now with your permission, I would like to make some remarks with regard to amendment No. 8 in clause 3. Similar amendments have been given to clauses 4 and 6. I would request that whatever I say in regard to this may be taken as my argument in regard to those two other clauses as well. My amendment suggests that in page 2, line 9, after the word "offender" the following words may be inserted:

> "and also the fact that he has made a clean breast of the whole thing concealing nothing".

When these words are inserted the whole clause would read like this:

> "When any person is found guilty of having committed an offence punishable under section 379....or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, and also the fact that he has made a clean breast of the whole thing concealing nothing, it is expedient so to do ..."

I only wanted that when the court takes into consideration so many factors such as the circumstances of the case, the nature of the offence, the character of the offender, and his age in some cases, it may also take into consideration the fact that he has made a clean breast of the whole thing. I want to add only one consideration more. As would be apparent from the section; after having taken into consideration all these things, the court then, if it is expedient to do, then and then alone would pass an order, either with regard to the release of the offender on due admonition, or his release on probation. As is apparent to everybody, after having taken into consideration all these things, it rests with the discretion of courts to take such action or not. It is not mandatory that after having taken into consideration all these things he has to discharge him or release him on due admonition or release him on probation. The powers are discretionary. He can still refuse and say that he is not going to release him on due admonition, or he is not going to release him on probation. So, when this consideration is added, no harm can be done; no harm will be done. I do not know on what ground an objection can be taken to this reasonable amendment.

Some fear has been expressed that if this thing is added to the clause, then forced confessions would take place. Now, that is an unfounded fear, because even when confessions are made in the ordinary course of business, we find that courts often do not attach any value to those confessions and after having made those confessions, the courts hold those people guilty and sentenced them te imprisonment for various years. There are a large number of offenders who are on bail. As soon as they are arrested by the Police either for

[Shri Raghubir Shai]

bailable offences or for non-bailable offences, they are released on bail and are in the hands of their lawyers, if they have got the aid of lawyers. Now, why prevent them from stating the whole truth. The benefit of this section would be taken by those persons who are not released on bail and also by those persons who are on bail.

My most important point is that by adding these words, you will be attaching some importance to truth speaking. As I pointed out yesterday, though perjury is rampant in law courts—that has been admitted by everybody, by responsible persons, hon. Ministers and everybody and there are no two opinions with regard to that—I want to urge before this House to take some positive steps to do away with perjury. Until and unless some provision is made in some law that if truth has been stated by an offender, his statement would be looked upon with certain amount of sympathy....

Shri Supakar: Who will judge the truth?

Shri Raghubir Sahai: The court is there. Otherwise it is no use appointing these courts and these magistrates

I also yesterday drew your attention to the remarks of a very distinguished judge of America, who has faith in the provisions of probation and who has also faith in truth telling. Now, without repeating all those things....

Mr. Speaker: Hon. Member spoke mainly on this point. I will not repeat that, but I want to submit that very distinguished foreign judges have attached very great importance to truth telling in law courts. Where is the harm if our Parliament also determines that truth telling should be given more scope in law courts? I do not think that heavens would fall if this amendment is accepted by the hon. Minister.

Shri Jaganatha Rao (Koraput): May I oppose the amendment?

Mr. Speaker: I have no objection. Hon. Member may reserve his comments for some other occasion. If he is particular about it, then I have no objection.

Shri Jaganatha Rao: Mr. Speaker, Sir, my hon. friend, Shri Sahai has moved this amendment that in section 3, one more clause be added, *viz.*,

> "and also the fact that he has made a clean breast of the whole thing concealing nothing"

is also to be taken into consideration before the court comes to a decision that admonition should be administered. As I said yesterday, this would be fettering the discretion of the magistrate. The whole object of the Bill, as it was the object of section 562 of the Criminal Procedure Code, is that every accused whether he admits the guilt or defends himself, denies the offence and is ultimately found to be guilty will be entitled to this admonition in proper cases provided the magistrate came to that conclusion. Therefore, adding this condition and the circumstances, according to my hon. friend, would be fettering the discretion of the magistrate.

Shri Raghubir Sahai: How?

Shri Jaganatha Rao: If the accused does not make a clean breast of the offence, the magistrate might feel that he is not entitled to exercise the discretion of administering the admonition. The circumstances of the case, the offence and all that are sufficient to give the magistrate power to exercise a judicial discretion and in coming to the conclusion whether admonition should be administered under section 3.

Regarding my hon. friend, Shri Supakar's amendment that sections 379, 380 and 420 should be omitted from clause 3 because they involve offences of moral turpitude, my submission is that these sections were there in section 562 of the Criminal Procedure Code. When they have been there in section 562, I see no

reason why these sections should now be deleted and why should the magistrate not exercise his discretion in administering admonition to offenders who come within the purview of these sections.

Secondly, the whole object of this measure is to reform offenders, whatever be the nature of their offences, which are punishable with a sentence of two years not only under the Indian Penal Code but under any other law for the time being in force. So, I see no reason why this amendment should be accepted.

Then my hon. friend, Shri Bharucha wanted that this admonition should be exercised only in cases where the accused person is under 21 years of age. He also wants special reasons to be recorded as to why admonition should be granted.

Shri Naushir Bharucha: That is for persons above 21 years of age.

Shri Jaganatha Rao: He wants special reasons to be recorded by the magistrate when administering admonition in cases where the accused person is 21 years of age and above. As I submitted, the whole enactment is based on the principle that reformation is the basis of punishing crime and not imprisonment as the only mode of correcting an offender. So, the age of the offender is of no significance or importance in cases coming under the purview of this Act so that the magistrate, in proper cases, can exercise his discretion.

So, I submit that all the three amendments do not merit any consideration.

Sardar Hukam Singh (Bhatinda): Mr. Speaker, Sir, I only want to say a few words about the amendment which Shri Sahai has moved. He feels that this would encourage the speaking of truth. He has also said that many judges have emphasised the importance of truth speaking in courts. Nobody can deny that. Not only the judges have emphasised that, but every hon. Member of this House certainly would emphasise the importance of truth speaking. But whether this amendment, if accepted, would encourage the accused to speak the truth or not is a doubtful matter.

It has two aspects. An interruption was made, perhaps by Shri Supakar, as to who would judge that the truth has been told and Shri Sahai replied that the courts would do that. When a case goes to the court, at the outset it is considered that perhaps whatever the Police has said is the truth and if the accused confesses the guilt then perhaps that is the truth. Nobody brothers in that circumstance whether that is really the truth or not. Even when only section 562 was there, lawyers, who have been practising at the bar, must have experienced that as soon as an offender was charged with a trivial offence that could admit of some discretion for the magistrate to take action under section 562, the Police from the very start induced that accused to confess the guilt straightaway. They would say that they would help him in getting released after admonition under section 562. Many an accused, though they were not guilty—that is my experience at least. I do not know whether it is the experience of others also—succumbed to that temptation and confessed the guilt. It is not only so with the Police. This temptation, as I shall say, persuaded even the magistrates to take action under section 562. They have sometimes been made parties on this count and they feel that perhaps it would be a speedier disposal of the case. So they have also become parties to that and have given an indirect undertaking or just a promise that if he confesses, certainly they would consider his case. That was enough temptation for the accused and whether he was guilty or not, whether he had committed the offence or not, he would confess his guilt and the magistrate would give the benefit that is allowed under section 562 Cr P. C. If this was also made one of the considerations, as Shri Raghubir Sahai says, it would open out a chance for the police to induce the accused person to straightaway confess it and have no botheration whether he would be

[Sardar Hukam Singh]

acquired or convicted. The police also will see that their case has been proved and the magistrate would also find that he can dispose of the case very easily.

Shri Raghubir Sahai: His Lawyers would be there to advise him.

Shri Naushir Bharucha: Lawyers would also like to be finished with it.

Sardar Hukam Singh: I was very reluctant to say that having got their fee, they may think, let it be disposed of if that can be done. The lawyer has also to depend on the facts that are given to him. If, on the one side there is a little advantage, I think the danger would be greater as compared with the convenience or advantage to be derived. Therefore, I do not feel that such an amendment should be acceptable.

Shri Sinhasan Singh (Gorakhpur): Sir, after having heard our Deputy-Speaker that this will lead more to confession and that would be initiated by the police, by the magistrate and by the lawyer, I feel myself that I should also say something about it. This amendment of Shri Raghubir Sahai, if it is adopted, it is not going to detract from or taken away anything from the powers of the magistrate. If a man is made to confess only to get a warning, he is making himself open to all the world that he has committed an offence. What is going to happen if there is a case in which after due trial he is going to be warned and let off and the trial is finished by a mere confession? I think that would be adding something to the glory of the man also.

13-33 hrs.

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

If the clause is there, there may be a temptation for persuading him to confess. If the clause is not there, there is prolongation of the case also and after due trial that matter may come one way or the other. It even comes to this that the man is let off with a warning only if he confesses. But, if he confesses, I am certain he will feel that he has done a wrong. After confession, he will feel also that he is going to be debarred for all times to come from getting a job. He will be considered guilty. No innocent man who has been caught in a case will confess unless he is in some way or other connected with the offence. In my view, if this amendment is accepted, it is not going to detract from the powers of the magistrate. As you pointed out, there is a force and there is a danger. If there is a force and a danger we cannot pass a law which is absolutely free from any danger. In every law, in every word, there will be some advantage and some disadvantage will follow. When we are passing a law, when we are making the people feel that they should be honest in their behaviour, let the man who is guilty have the courage to say I have done a wrong, irrespective of this clause whether he will be let on probation or not, and you will please let him go on probation or warning or punish me. I think it would lead to the same thing. The addition of the amendment would rather enlighten this section more and make it more effective on the moral side than on the criminal side. I think if it is accepted, it will in no way take away the power of the magistrate to release or decide otherwise. That would be merely an additional consideration for the Magistrate to see whether a man who has done a wrong is coming before the court and makes a clean breast of the case and he is sorry. In my view, if it is accepted it will be better.

Shrimati Alva: None of these amendments are acceptable to us I shall begin with the amendment of Shri Raghubir Sahai. Shri Jaganatha Rao has explained there is great difficulty. You yourself, Sir, explained how are we going to find out whether the man is admitting his guilt or innocence if you give him a right to admit or confess in the court. We may encourage even habituals to come forward and say, I am guilty, taking advantage of this very discretionary measure. We do not want to en-

courage any one to confess. The court is in possession of all the evidence before it. Where is the need for this confession? The probation provision comes in only after all the evidence is before the court. Therefore, the amendment is not acceptable to us.

Shri Sinhasan Singh: It does not apply to habituals. You have put in a proviso whereby the moment it is seen that he has previous conviction, he will not get the benefit.

Shrimati Alva: I have explained, Sir.

Mr. Deputy-Speaker: He should take into consideration all the circumstances. Under section 562 also, this circumstance of the accused having made a clean breast of the guilt is also ordinarily taken into consideration. Is there any need to put it specifically?

Shrimati Alva: As far as the other amendment No. 7 is concerned, I think it is reactionary because it is restricted and does not even apply to section 562 Cr. P. C. I do not know how it can be acceptable.

Then, Shri Naushir Bharucha's age: I think this was very much discussed in....

Mr. Deputy-Speaker: Shri Naushir Bharucha's amendment as to age?

Shrimati Alva: Shri Naushir Bharucha's amendment as to age only the other day, in his speech, he referred to a man of 70 and asked, what is the charm in admonishing a seventy year old person. In reply I ask, what is the charm in sending him to prison? He wanted admonition to be restricted to persons under 21, probation up to 25 and only in exceptional cases to elder persons. No such strict age limit has been provided in the Criminal Procedure Code or even in the other State Acts. I oppose all these amendments.

Shri Supakar: What about amendment No. 2?

Mr. Deputy-Speaker: It goes along with the others. May I enquire whether any particular amendment is to be put separately? No. I will put all the amendments to the vote of the House, Nos. 1, 2, 7, 9, and 8.

Mr. Deputy-Speaker: The question is:

Page 2, lines 2 and 3,—

Omit "Punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code or any Offence".

The Motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 2, line 16

add at the end "or under section 562 of the Code"

The Motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 2, line 1

after "person" *insert*—

"below the age of twenty-one"

The Motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 2,—

after line 13, *add*

"Provided that for any special reasons to be recorded in writing the court may pass an order under this section in case of a person above the age of twenty-one years."

The Motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 2, line 9,—

After "offender" insert—

"and also the fact that he has made a clean brest of the whole thing concealing nothing."

The Motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 3 stand part of the Bill."

Some Hon. Members: 'Aye'.

Some Hon. Members: 'No'.

Mr. Deputy-Speaker: The 'Ayes' have it.

Some Hon. Members: The 'Noes' have it. Nobody said 'Aye'.

Some Hon. Members: We have said.

Mr. Deputy-Speaker: I will put it again. I can certify this much that somebody did say 'Aye'; but it was too low.

Some Hon. Members: Half-hearted.

Mr. Deputy-Speaker: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4 -(*Power of Court to release certain offenders on probation of good conduct*)

Shri Naushir Bharucha: I beg to move:

Page 2, lines 17 and 18,—*for* "when any person is found guilty of having committed an offence not punishable with death or imprisonment for life" *substitute*—

"When any person under the age of twenty-five years is found guilty of having committed an offence mentioned in section 3, or such other offence punishable under such other Central or State Act or sections thereof as the Central or State Government may by notification prescribe as fit and proper to be brought within the scope of this section, and no previous conviction is proved against him."

Page 2, *after* line 28, *add*—

"Provided that for any special extenuating circumstances only, to be recorded in writing, the court may exercise its powers under this section in respect of a person above the age of twenty-five years.

Provided further that the court shall not exercise its powers under this section in the following cases:—

(i) where offence relates to creation of ill-feelings or discontent among or between communities;

(ii) causing grievous hurt, as defined in the Indian Penal Code, unless in the opinion of the court the party aggrieved is reasonably compensated for loss or injury sustained by it as a result of the offence;

Explanation:—'reasonably compensated' means compensated by award of such damages as a civil court would, in the circumstances of the case decree and payment of such damages.

(iii) where offence is dacoity, or causing of injury to human being by fire-arms, or deleterious substances."

Shri Raghubir Sahai: I beg to move:

Page 2, line 21,—after "offender" *insert*—

"and also the fact that he has made a clean breast of the whole thing concealing nothing."

Shri Naushir Bharucha: In this case, clause 4, as I view it is only one step removed from abolition of jails because clause 4 includes all offences except those punishable with death or imprisonment for life. If the dream of the hon. Minister is fulfilled that the Act should be implemented 100 per cent, the jails are practically as good as abolished. Because, the people who are hanged, they do not require the jail. The people who are imprisoned for life, are sent somewhere else. What I want to point out is, are we prepared to lump up all these offences whatsoever and say that even if a man is convicted several times, still he must be given a chance? And the mischief is not only confined to that. In this case please remember that this is applicable to any Act which the State Legislature may also pass. I have yet to know if State legislatures have passed Acts condemning people to death or imprisonment for life. Not to my knowledge. There might be a very exceptional case. Therefore, this clause affects all the Acts of the States.

What is more, even if in the future a State feels that a minimum punishment should be prescribed for certain types of offences which are rampant in that particular State clause 4 comes in and nullifies that legislation. For instance, offences of dacoity may be rampant in a State and it may think that some example should be made, and it may even prescribe by some special legislation the minimum punishment for such an offence. This clause 4 will nullify that legislation.

Let us understand the full implication of it, that no State in future will be able to pass legislation prescribing any minimum sentence. That is going to be the effect because this is applicable to all offences under any Act excepting death. Are we prepared to go as far as that and virtually nullify the powers of the State legislatures and Parliament to prescribe minimum punishment?

The reason why I have in my amendment stated that probation should be confined to persons under 25 years of age and may be extended to those beyond 25 years of age in exceptional cases is this, that my amendment preserves the objective of those who want to reform. There is no bar for a magistrate to say in a really deserving case that for such and such reasons he is letting an accused off so, the purpose which the Government have in view is achieved. I am not so very reactionary as the hon. Deputy Minister thinks because I am extending probation even to people of 75 or for the matter of that 100 if the court thinks fit.

The second point to remember is this. You, Sir, with your experience of Law courts, have rightly pointed out the invariable temptation to the court to resort to this Bill but you have used very cautious language, and said that sometimes it happens and idirectly the court suggests. May I tell you that the court directly and repeatedly suggests it?

The other day I made a reference to a murder trial in which I was holding a brief. At one stage the court point-blank told the lawyer of the accused: "Well, if your clients are going to plead guilty to a charge of hurt, I am prepared to deal with them leniently, Nothing can be more glaring than that statement.

If each and every offence under the Sun can be brought under the purview of clause 4, what will happen is this Magistrates being human and pressed for time, and lawyers being anxious to get their clients let off with as little of time as well as punishment, all will be tempted to say: "Let us resort to clause 4".

The amendment which I have made is that it makes probation as a matter of course probation available to people under 25,—twenty-five is fairly large age—and in exceptional cases only above that. The emphasis is being shifted from probation being made available to all and sundry for the mere asking to a select few under 25, and in exceptional cases to those above 25. I am not also reactionary because I am not suggesting anything which the hon. Deputy Minister has not in view. I am saying: have your purpose served by a different emphasis. That is all.

In my amendment No. 12 I say that before a man is let off, at least he must be made to feel some pinch of his guilt. The other day I pleaded, and I am afraid I pleaded in vain, that too much sympathy is shown to the accused and too little to the victim. If a man has caused death to somebody else, has stabbed him which may not directly amount to murder, but the man dies, then what happens to the stranded wife and children? Some provision must be made for them. Or, should the stranded wife and children, because of their proverty, resort to crime and then become eligible to the sympathy and the generosity of the Deputy Minister?

Therefore, I say: let us have some sort of check; if it is not a check of jail, at least let it be the check that

[Shri Naushir Bharucha]

the man will have to fork out some money from his pocket. This is all I am pleading for.

I do not think that what I am pleading for in my amendments is something reactionary at all. My amendment does, in fact, carry the position much farther than section 562 of the Criminal Procedure Code.

Mr. Deputy-Speaker: Shri Raghbir Sahai.

Shri Raghubir Sahai (Badaun): I will not make another speech because the arguments are the same.

Mr. Deputy-Speaker: Shri Shree Narayan Das.

Shri Shree Narayan Das (Darbhanga): I support some of the points made in the amendment moved by our friend Shri Naushir Bharucha.

The principle has been accepted by the House that in certain cases persons having been found guilty should be released on probation, but I think that looking to the present conditions of our society we are going to make an experiment after passing this measure, and the experiment is this that such persons as have been found guilty by court should be released on probation of good conduct. I think there will be no harm if this measure is, for the present, limited to persons of the age of 25 years or below as has been put forward by Shri Naushir Bharucha, and after having experience with regard to those cases the position could be judged as to whether the persons who, having been found guilty, were released on probation have behaved in such a way that we can come to the conclusion that this is a really good measure.

I do not agree with all the points that have been raised in this amendment, but the principle of this clause should be limited to such persons as are below 25 years, and it should be left to the discretion of the court to see whether the provisions of this clause can be made applicable to others above the age of 25.

As has been pointed out by so many friends in this House and elsewhere, although this measure is a good one and the principle on which it is based is a very good one, we should proceed with caution. If this clause is limited to persons below 25, I think that would be a very good precaution, and after having some experience of the working of this clause, I think the time would come when this could be made applicable generally to persons of all ages. Therefore, I support this point.

Although the Deputy Minister is not in a mood to accept any of the amendments, I hope that she will at least take into consideration the views of the Members and for the time being limit the provisions of this clause to persons below 25.

श्री सिंहासन सिंह (गोरखपुर) : उपाध्यक्ष महोदय, श्री नौशीर भरूचा ने इस विधेयक के क्लाज ४ पर जो अमेंडमेंट्स पेश किये हैं, मैं उनके भाव की ताईद करता हूं। उनके अन्दर जो भाव हैं वह इस विधेयक को देखते हुये ऐसा है कि जिस पर अगर हम ध्यान से गौर करें तो यह मालूम होगा कि यह अमेंडमेंट्स अगर स्वीकार कर लिये गये तो हमारे रास्ते में जैसा कि उन्होंने कहा कि इस विधेयक के पारित हो जाने के बाद कुछ ऐसा प्रतीत सा होनेल गेगा कि शायद जेल की कोई जरूरत ही नहीं रह जायेगी। अभी शायद वह अवस्था हमारे देश में नहीं आई है और वह दिन नहीं आया है जब कि हर एक आदमी को खाने को रोटी और पहनने को कपड़ा और जरूरी चीजें मिलें। इस विधेयक के पास करने से ऐसा समय आ सकता है और हो सकता है कि आत्म सुधार से ही काम चल जाये। लेकिन जब तक

हमारे समाज में छोटे बड़े और गरीब अमीर का भेदभाव रहता है तब तक हमें कुछ रोक थाम करके चलना चाहिये

जैसा कि श्री नौशीर भरूचा ने कहा यह दफा हर प्रकार के अपराधों को अपने अन्दर लेती है, केवल मौत और काले पानी की सजा इसमें नहीं है। ३०२ और और दफायें जिसमें कि सीमित सजायें होती हैं वे और ऐसे अपराध भी जिनमें कि १०, १२ वर्ष तक की सजायें वर्णित हैं वह भी इसमें आ जायेंगी, १४ वर्ष की सजा भी आ जायेगी। लाइफ़ इमप्रेज़ेनमेंट २० वर्ष का माना गया है। लाइफ़ इमप्रेज़ेनमेंट से जितने नीचे के अपराध हैं वे इस दफ़ा में आ जाते हैं। इस दफ़ा में कोर्ट्स को यह पावर दी गई है कि अगर वह मुनासिब समझें तो आफ़ेंडर्स को गुड कंडक्ट के प्रोबेशन पर छोड़ सकते हैं। मैं समझता हूं कि यहां पर जो प्रीवेंशन आफ़ करप्शन ऐक्ट पास हुआ है उसमें कोई एक ऐसा क्लाज़ है कि मिनिमम सेंटेंस ज़रूर देना पड़ेगा और एक वर्ष की सजा ज़रूर होगी। मैं समझता हूं कि इसके अन्दर भी आपने कुछ इस किस्म की व्यवस्था की है . . . .

एक माननीय सदस्य : नहीं हुई है।

श्री सिंहासन सिंह : मैं समझता हूं कि हुई है। ऐनीवे, ज्वाएंट कमेटी में ऐसा ज़रूर विचार किया गया था और यह खयाल किया गया था कि ऐसी कुछ व्यवस्था ज़रूर की जाये।

कभी कभी कोर्ट्स के सामने कुछ दिक्कतें हो सकती हैं। ऐसी अवस्था में अगर कोई फ़ेहरिस्त उन अपराधों की बने कि इन अपराधों के अन्दर कोर्ट्स अपराधियों को छोड़ दें तो इससे शायद सहूलियत होगी क्योंकि समाज की अवस्था हम देखते हैं कि ऐसी है कि जिसके कारण दफ़ा ५६२ के अन्दर छुड़ाई नहीं हुई है। इसके अन्दर जो सबसैक्शन २ है उसके सम्बन्ध में मेरा ऐतराज़ है। उस सबसैक्शन २ में यह व्यवस्था है कि सबसैक्शन १ के मातहत कोई आर्डर करने से पहले कोर्ट उस केस से सम्बन्धित प्रोबेशन आफ़िसर की रिपोर्ट को कंसिडर करेगा। वह जज या मजिस्ट्रेट प्रोबेशन आफ़िसर की रिपोर्ट को अपना आर्डर करते वक्त कंसिडर करे। कोर्ट्स के सामने अब तीन तरह की चीजें होंगी, एक तो गवाहों के बयान, दूसरी पुलिस की डायरी और तीसरी चीज यह प्रोबेशन आफ़िसर की रिपोर्ट भी रहेगी। अब आज जो अवस्था हमारे समाज की है और जब बड़े बड़े अफ़सरों के ऊपर भी एनक्वायरी कमेटी बैठ रही है तो इस विधेयक द्वारा जो प्रोबेशन आफ़िसर्स मुकर्रर होंगे वे भी अपना एक अलग दरबार लगायेंगे और उनकी रिपोर्ट मुआफ़िक जाने पर ही अपराधी छूट सकेंगे और मुझे आशंका है कि कहीं उनका दरबार कोर्ट्स से अधिक न बढ़ जाये। इसलिये सबसैक्शन २ अगर न रहे और उसके मातहत अगर प्रोबेशन आफ़िसर की रिपोर्ट की आवश्यकता न हो तो शायद अच्छा रहेगा। इन शब्दों के साथ में मंत्राणी महोदया से अनुरोध करूंगा कि वे श्री नौशीर भरूचा के पहले अमेंडमेंट को मान लेवें। उनका दूसरा अमेंडमेंट तो २५ वर्ष से ऊपर वाला है। यह प्रोबेशन आफ़िसर की रिपोर्ट की आप क्यों ताईद करते हैं? किसी को छोड़ना न छोड़ना कोर्ट्स के डिस्क्रिशन पर रहे और प्रोबेशन पर छोड़ने वालों की देख रेख प्रोबेशन आफ़िसर करे लेकिन किसी आफ़ेंडर को छोड़ना न छोड़ना प्रोबेशन आफ़िसर की रिपोर्ट पर निर्भर करे यह शायद हमारे भ्रष्टाचार में जिसका कि आज काफी शोरगुल है उसमें बढ़ोतरी ही करेगा और उसको कम नहीं करेगा। इन शब्दों के साथ में अनुरोध करूंगा कि मंत्राणी महोदया इन चीज़ों के बारे में विचार करें।

Shri Balasaheb Patil: I rise to oppose clause 4 as a whole. My first reason is that the jails will continue to be there, the jail staff, the jailors, the police etc. would continue to be there, and there will be expenditure on them. Secondly, the clause as it stands, would create a new machinery, namely probation officers and their staff, probation houses for the education of those persons who will be on probation etc.; furthermore, there will also be some machinery to give them jobs. That will be the second type of expenditure that will have to be incurred by the State. At present, we find that everybody is saying that there is shortage of money, and there is no money for the Second Five Year Plan. Under these circumstances, we have to consider whether we can afford to have both these two systems side by side, the jails and the probation houses.

Mr. Deputy-Speaker: The hon. Member is opposing the Bill on its principles.

Shri Balasaheb Patil: No. I am opposing the principle of clause 4 because it sets up a new machinery, and expenditure will have to be incurred on that machinery.

Mr. Deputy-Speaker: It is not only in clause 4 that there is a reference to probation officers. There are many other clauses also where they are referred to. Therefore, I said that he was opposing the Bill as a whole and not only a particular clause.

Shri Balasaheb Patil: In a sense, that is true.

Mr. Deputy-Speaker: Then, he is too late.

Shri Balasaheb Patil: There is again an opportunity in the third reading also. Here, I am opposing clause 4 as a whole.

I have seen certain persons who by habit and by nature are dacoits and thieves for the whole of their lives. Those persons will take advantage of this clause. They will gather together some young persons who are amenable to them, and they will form a gang. They very well know that by themselves they will not come under the purview of clause 4, but only their associates. And as for the associates, for the first offence of theft under section 379, there will be a warning administered to them. For the second offence there will be a warning; and for the third offence, they will be put on probation, and the period that would intervene would be only three years. These persons being very intelligent will follow it, after the first two attempts, they will have their friends and get money from them, and they will send their followers saying 'Look here. there is no possibility of your being charged with the offence. Therefore, go on with these things'; and before any offence is committed, they will also prepare for the surety and other things that are required under clause 4.

My submission at this stage is that if we pass this clause as it stands, then it will only encourage this sort of thing. As we know very well, already, in certain parts of this country, there are arch villains and arch dacoits. Therefore, we have to be very careful.

Shri Supakar: I agree with my hon. friend Shri Sinhasan Singh and I support the points that have just been made by him. I would refer here particularly to the point which I emphasised during the course of the discussion yesterday, namely the mandatory nature of the provision that the court shall take into consideration the report of the probation officer.

Sub-clause (2) of clause 4 reads:

> "Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.".

This provision, I am afraid, will pollute the conscience and the judgment of the magistrate or create an atmosphere where the magistrate will not

be able to bring to bear on the case his dispassionate mind for taking into consideration the facts and the evidence in regard to the case as made out before him.

The reports of the probation officers, as made out in clause 7 later on, shall be confidential reports, and neither the accused nor the complainant will be in a position to know the nature of those reports. They will be just like the report of the inspectors in sales-tax and income-tax cases, but with this difference that in the case of sales-tax and income-tax, the man has only to take some money, but in this case, if the court does not go in for probation, the accused will have the misfortune of suffering a heavier penalty than he would otherwise.

Possibly the probation officer, being a human being, may be prejudiced by the social and moral environments and the circumstances of the accused when he committed the offence, and the surroundings in which he lives, and that prejudice, unrebutted and unchallenged, will be allowed to influence the judgment of the court or the Magistrate, as the case may be. That, I believe, is the most unfortunate state of affairs that is going to happen in future and that will outweigh a hundred times the benefit which we propose to give to the delinquents by means of this piece of legislation.

Shrimati Alva: Shri Naushir Bharucha while moving his amendment, has forgotten his own Bombay law. In his own Bombay law, this age limit does not exist. More than that, the Bombay probation law permits probation in case of women for all offences. This measure is restrictive, a little more restrictive than even some of the measures that are still in existence in the various States.

Mr. Deputy-Speaker: It is not known that he was in favour of that legislation in Bombay also.

Shri Naushir Bharucha: That is the point.

Shrimati Alva: But he was there. I know it. He has been there long enough in that legislature.

Mr. Deputy-Speaker: He might have been there.

Shri Naushir Bharucha: I was in the Opposition all along.

Shrimati Alva: We have kept out offences for which punishment of death or life imprisonment is given. I do not know how there is so much ignorance about it. We have kept these heinous offences out of the purview of the Bill. In any case, why should we not give the discretion to the court? I do not know why this word 'probation' is not understood in the proper light. He wants the States to list the offences. The purpose of this measure is to bring about uniformity. We do not want to give the States the discretion of listing these offences for the simple reason that this is going to be a Central measure. They will only interpret. We want uniformity in the country. We have had discussions at length in the Joint Committee, of which Shri Bharucha was a Member, and we came to an agreement. Now he has again raised the point.

Shri Naushir Bharucha: I did not come to any agreement.

Shrimati Alva: He might have voted against, but the opinion of the Committee was that it would not be advisable to give the States this discretion. Therefore, I oppose this amendment.

Amendment No. 11 is by Shri Raghubir Sahai. It is the same thing as was previously answered, about confession, making a clean breast of the whole thing concealing nothing. 'Concealing nothing' is a very difficult phrase; while revealing, one may conceal something. This amendment is also opposed.

[Shrimati Alva]

As regards amendment No. 12, concerning age, we want to leave the discretion to the courts who will exercise their own judgment. I do want to impress on the House that we want to give the courts full discretion to come to any decision. If the offences are so heinous, the court will decide. Probation is not going to run amuck in the country. There will be hardly one in 100 or 500 or may be even less who will get probation. We are leaving it to the discretion of the courts. Therefore, this amendment also is not acceptable to Government.

Shri Shree Narayan Das: I would like to have some information.

Mr. Deputy-Speaker: After the Minister has replied?

Shri Shree Narayan Das: The hon. Minister has just said that Government are not going to give any discretion to the State Governments. I would like to know whether there is anything in this Bill to compel State Governments to adopt this measure.

Mr. Deputy-Speaker: She was speaking about uniformity, that the body of the Bill would not be allowed to be interfered with. Whether it will be enforced now or after sometime or a year after is a concern of the States.

I shall now put amendments Nos. 10, 11 and 12 to the vote of the House.

The question is:

Page 2, lines 17 and 18,—for "when any person is found guilty of having committed an offence not punishable with death or imprisonment for life" substitute—

"When any person under the age of twenty-five years is found guilty of having committed an offence mentioned in section 3, or such other offence punishable under such other Central or State Act or sections thereof as the Central or State Government may by notification prescribe as fit and proper to be brought within the scope of this section, and no previous conviction is proved against him."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 2, line 21—after 'offender" insert—"and also the fact that he has made a clean breast of the whole thing concealing nothing."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page , after line 28, add—

"Provided that for any special extenuating circumstances only, to be recorded in writing, the court may exercise its powers under this section in respect of a person above the age of twenty-five years.

Provided further that the court shall not exercise its powers under this section in the following cases:—

(i) where offence relates to creation of ill-feelings or discontent among or between communities;

(ii) causing grievous hurt, as defined in the Indian Penal Code, unless in the opinion of the court the party aggrieved is reasonably compensated for loss or injury sustained by it as a result of the offence;

Explanation:—'reasonably compensated' means compensated by award of such damages as a civil court would, in the circumstances of the case, decree and payment of such damages.

(iii) where offence is dacoity, or causing of injury to human being by fire-arms, or deleterious substances."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 4 stand part of the Bill".

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5 was added to the Bill.

Clause 6— (*Restrictions on imprisonment of offenders under twentyone years of age*)

Shri Naushir Bharucha: I beg to move:

Page 3, line 29,—*for* "twenty-one years" *substitute* "eighteen years".

Page 3,—*for* lines 32 to 37, *substitute*—"person is found guilty shall sentence him to imprisonment unless it is satisfied that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would be desirable to deal with him under section 3 or section 4, and if the court does not pass any sentence of imprisonment on the offender, it shall record its reasons for not doing so".

Shri Supakar: I beg to move:

Page 3, *for* lines 32 to 37, *substitute*—"person is found guilty may, if it is satisfied that having regard to the circumstances of the case including the nature of the offence and character of the offender, it is desirable to do so, instead of sentencing him to imprisonment deal with him under section 3 or section 4".

Page 3, lines 36 and 37, —*omit* —"and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so".

Shri Naushir Bharucha: With regard to clause 4, I stated that it comes very near to abolishing jail. This particular clause virtually abolishes jail for people under 21 years of age. My amendment says that instead of 21, this benefit should be extended to people of 18 years of age. Here again, it is not as if I am reactionary and I am saying.....

Mr. Deputy-Speaker: That might not be exchanged everytime that the hon. Member and the Minister stand.

एवज मद्भावजा गिला नदारद

Let it remain where it is.

Shri Naushir Bharucha: The scope of the clause is this, that anybody under the age of 21 is entitled as of right, because it says that the 'court shall not sentence him to imprisonment'. My amendment says that people under 21 need not necessarily be sent to jail, but if the court does not sentence him to imprisonment, it must record its reasons why it is not sentencing him to imprisonment.

I shall give my reasons as to why I want this to be done. 21 years of age is a very mature age, and any type of offence can be committed by a person under 21 years of age. But the biggest danger, as has been put down very aptly by Mr. Justice Chaturvedi of the U.P. High Court, would be that real offenders, the brains behind the crime, will be using people under the age of 21 years as their tools. Today, actually our experience in Bombay City has been that for transport of illicit liquor, they employ little children. Little children have not got that mature judgment. They commit blunders and are very quickly detected. Once they are detected and sternly asked, they reveal the whole gang. Bootleggers and organisers of organised crime will be able to select people of 18, 19 and 20 years who are less capable of resisting cross-examination by the police. What does that person lose? Nothing. It means either admonition or at the most probation. What is the type of probation that he will get? My own feeling is that the brains behind the criminal organisations will not only

[Shri Naushir Bharucha]

organise gangs under 21, they will also provide probation officers from among themselves. There won't be any difficulty about that whatsoever.

In the first place, it is very difficult to detect a crime. Secondly, it is very difficult, even if it has been detected, to frame proper charge and lead evidence, and even if that happens, one does not know whether there will be conviction. After conviction, we do not know what is going to happen. Who is going to take the trouble of going to a court of law? Let us say there are some people who are keen on having prohibition properly implemented. Why is it that people come forward? Because they know that the man will be convicted and the society will be benefited. If I know that a gang of bootleggers has organised the whole thing and persons under 21 years of age have been employed to distribute the illicit liquor and I go and make a complaint, I know it for a fact that they are going to be admonished or let off in probation. Am I such a fool that I will go and help the court to see that the man is found guilty if, in the bargain, all that I am going to get is the satisfaction of the man being released on probation or let off and my life being threatened?

Sir, the Deputy Minister has no experience of law courts. In one case in Bombay city, where a man presented a complaint that illicit distillation was going on, that he had reported it to the police and the police would not do anything and so he presented the complaint personally, the magistrate advised him: "Withdraw your complaint; you are living there; do you want to live or to die?" And the man wisely withdrew it.

If I know that the man who is employed is under 21 years of age and is going to be let off and after that he will come and threaten me, am I going to help police and the Government by seeing that the prosecution is properly and vigorously launched? That is a point we have to take into consideration. This also relates to offences punishable with imprisonment, excepting for life. Other types of benefits are also included in this section. With sturdy young men of 18, 19 or 20 years, you can organise beautiful gangs of dacoits and terrorising a whole village or a whole taluk or a district. What would happen? Nothing. The magistrate may himself feel helpless or may feel tempted to say, 'Why should I take the burden of convicting this man or sending him to prison; there is the appeal over me; some other view may be taken; so I will let him off after admonition'.

I will appeal to the House to consider this. We have not got that wide experience of probation in this country. Only three States have launched it. Even there it is implemented in a most haphazard manner. The very foundation of a probation system makes it an organisation of well-integrated probation officers service. That is lacking in our country. Proper homes are lacking in our country. And, what is more, after the man emerges from jail or after admonition or probation, there is nothing to provide him with employment. All that we have done is, as we shall find later on, the question of employment is passed on to the probation officer. He is supposed to get them employment. When the State Government cannot do it and when the Central Government cannot provide employment, what is the probation officer to do?

Taking into consideration everything, particularly the background of the organisation with regard to probation that we have—or rather we do not have—in this country, I think this is extremely dangerous. Therefore, I have been very modest in my amendment; I say, reduce the age from 21 to 18.

Shri Supakar: Amendment No. 4 which was tabled by me previously was a little defective and so I got it substituted by amendment No. 18.

Then, I have amendment No. 5 as an alternative to amendment No. 18. That is to say, if amendment No. 18 is not acceptable to Government I would request Government to accept No. 5. I shall explain the purpose of these two amendments.

Clause 6 of the Bill really prohibits a sentence of imprisonment for a person under the age of 21 years if he is found guilty and convicted of an offence. This will make the provision so widespread that it will not only let the delinquents go practically scotfree in almost all cases, but will also make necessary the appointment of probation officers in almost all parts where this Act will be brought into force.

We should not start with such a widespread measure all at once and take a leap in the dark. That is my submission. It is better, to start with, to make this provision a little optional on the court or the magistrate and so, instead of—

> "shall not sentence him to imprisonment unless it is satisfied that....."

I suggest that we should say—

> "may, if it is satisfied that having regard to the circumstances of the case including the nature of the offence and character of the offender, it is desirable to do so, instead of sentencing him to imprisonment deal with him under section 3 or section 4."

It would not make sentencing to imprisonment compulsory, which I am afraid my hon. friend Shri Bharucha suggests in his amendment; nor does it make non-imposition of imprisonment almost compulsory in almost all cases. There is an option to the court to pass a sentence of imprisonment if it thinks so, but it does not impose upon the court the additional burden of writing an explanation why it imposes the sentence of imprisonment.

Amendment No. 5 says that even if the court, in all cases, does not sentence him to imprisonment, it will not be under an obligation to give its reason. As it is the clause reads:

> "When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so."

It has been said in some of the minutes of dissent that if the clause makes it compulsory on the magistrate or the court passing the sentence of imprisonment to record its reasons for imposing the sentence of imprisonment, it should be an exception and probation should be made the rule in such cases, then the courts will be tempted to take the line of least resistance. Instead of taking the onerous responsibility of recording the reason for passing the sentence of imprisonment, they may choose not to take that responsibility and may say—to be done with the case and save a lot of time—'I do not pass any sentence of imprisonment you go and have a term of probation'. So, I submit that it is fraught with double danger. It makes the non-imposition of the sentence of imprisonment almost compulsory. It also makes it obligatory on the courts to record the reason when passing a sentence of imprisonment. Both of them should be avoided. So, I have moved my amendments and I hope the Government will be able to accept either of these two amendments.

Shri Balasaheb Patil (Miraj): Sir, I rise to support the amendments moved by my hon. friends here for the simple reason that clause 6 casts upon the prosecution and the police to prove the guilt first of all and secondly if the guilt is proved there is the question of sentence or release. The prosecution witnesses should prove the guilt beyond reasonable doubt. We find that nearly 90 per cent. of the criminal cases end in acquittal as the guilt is not proved. The witnesses do not stand the test. In the bigger bilingual State of Bombay, I have seen certain cases. The Prohibition Act is strictly implemented. The witnesses come to the court to support the case of the prosecution and in the open court they say that the bottle was found in the hands of police and not of the accused. If a person is found guilty under the Prohibtion Act, he will be punished with three months imprisonment in the first instance and not less than six months for the repetition. So, if an accused is not going to be sent to jail the witnesses will feel: what is the use of going to court and becoming an enemy of this person? This is very important because the minds of these young persons within the age of 18 to 21 are fiery and they will think of revenge and enmity. So the witnesses will have to take upon him the enmity of these persons. There will be no witnesses and the police, if they come across an offender under 21 years of age, will not file a case. Naturally this will result in the increase of offences. Under the Indian Majority Act and the Contract Act, the age of majority is 18 years and there is no reason why it should be increased to 21 years here. So, the age should be limited to 18 years.

Shrimati Alva: Mr. Deputy-Speaker, in this amendment we go again and again into the question of age. The hon. Members argue that the age-limit should be reduced. But they forget the position under the different Acts such as the Children Act. Under the different Acts, the Inspector General of Prisons, even if a young person is imprisoned, can remove such a person from the prison and send him to a borstal school or certified school. I do not see the logic in this argument. The age range is narrow.

Shri Ram Garib (Basti—Reserved-Sch. Castes): There is a tribe in U.P. Most of the crimes are committed by the young boys between 9 and 11 years of age. There is not only one community but there are so many communities and if you refer to the U.P. Government, you will get the information. I would like to know how many of these children, even if they are caught, are sent to any reformatory.

Shrimati Alva: I do not say that so many are sent or not. I have said that the Inspector General of Prisons enjoys this power of removing the children from the prison and sending them to these institutions. It is a different thing whether it is done or not. That is why the range is very narrow and we want to keep the present age level.

Shri Bharucha talked of victimisation of the young by the adults. We have seen how they become victims in the children court functioning in the country. I do not know how this provision is making the position worse. Shri Supakar has said that the witnesses will feel threatened. What happens just now? Do all the offenders that stand before the court go to prison? What happens to the witnesses? I do not see why there is this apprehension in the minds of the hon. Members.... (*Interruptions.*)

An Hon. Member: It will worsen the situation.

Shrimati Alva: Then there is the business of employment. It is not at all the intention of this Bill that the probation officers should be employment exchanges in themselves.

Shri M. C. Jain (Kaithal): You are changing the situation from bad to worse.

Shrimati Alva: No, Sir, We are trying to keep them back from doing such things and look after them as a nurse or mother would look after them. That is the purpose of this law. I do not know if hon. Members have gone through the various laws that are functioning and enforced in the States. I do not see how this provision is going to be very harmful. We are taking much that is already on the statute-books in the States.

Shri Supakar referred to the reasons being recorded in writing. We want to give this discretion to the court because there may be a question of appeal and revision. Whenever a sentence is conferred on the offender, it should be left to the court to record in writing. What harm is there? We do not want to take away the discretion from the courts.

I shall now come to Shri Bharucha's amendments Nos. 13 and 14. I have already spoken about amendments Nos 5 and 15 of Shri Supakar. Amendment No. 14 emphasises imprisonment again. Here we are trying to remove the emphasis from punishment to reformation and by this amendment we take the emphasis to the afflictive method rather than the reformative or curative. Therefore, the idea in this amendment is not acceptable because our Jail Reform Committees have examined this question again and again and we have come to this conclusion that it should remain as it is in the Bill. I oppose all these amendments.

Mr. Deputy-Speaker: I shall now put all these amendment Nos. 13, 14, 18 and 5 to the vote of the House.

The question is:

Page 3, line 29,—for "twenty-one years" *substitute* "eighteen years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 3,—for lines 32 to 37, substitute—"person is found guilty shall sentence him to imprisonment unless it is satisfied that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would be desirable to deal with him under section 3 or section 4, and if the court does not pass any sentence of imprisonment on the offender, it shall record its reasons for not doing so".

The Motion was negatived.

Mr. Deputy Speaker: The question is:

Page 3, *for* lines 32 to 37, *substitute*—"person is found guilty may, if it is satisfied that having regard to the circumstances of the case including the nature of the offence and character of the offender, it is desirable to do so, instead of sentencing him to imprisonment deal with him under section 3 or section 4".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 3, lines 36 and 37,—*omit*—"and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 6 stand part of the Bill".

The motion was adopted.

Clause 6 was added to the Bill.

Clauses 7 to 16 were added to the Bill.

Mr. Deputy-Speaker: Is Shri Bharucha going to move his amendment No. 19 to clause 17?

Shri Naushir Bharucha: No, Sir, it is not mine.

Mr. Deputy-Speaker: The question is:

"That clause 17 stand part of the Bill".

The motion was adopted.

Clause 17 was added to the Bill.

Mr. Deputy-Speaker: Then we come to clause 18.

Shri Jaganatha Rao (Koraput): Mr. Deputy-Speaker, Sir, I have given notice of an amendment for the deletion of the words beginning from "or sub-section (2)" to "Act, 1947" in clause 18. Sir, I see no reason why offenders falling within.....

Shri Naushir Bharucha: We have not got that amendment.

Mr. Deputy-Speaker: Notice of it has been given only just now. It has not been circulated to hon. Members. But if it is acceptable to the Government, normally the question of notice is waived I have learnt that this is acceptable to the Government. I would request the hon. Member to read out his amendment.

Shri Jaganatha Rao: Sir, I beg to move:

Page 7, lines 36 and 37,—

omit "or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947".

Sir, in moving this amendment I would like to point out . . .

Shri Supakar: Sir, I rise to a point of order. I have one doubt regarding the point mentioned by you, that if an hon. Member's amendment is acceptable to the Government it is not necessary that it should be circulated. We find that even when a Minister, who represents the Government, has to move an amendment he has to get it circulated. Are we to understand that when a Minister or Deputy Minister is not ready with his or her amendment in time for it to be circulated to Members, he or she can get it moved in the House by asking any other ordinary Member to do so, so that the necessity of getting it circulated can be waived?

Shri M. C. Jain: Sir, may I make a submission in this connection? This is a very important amendment, and that is being moved in this House in a rather undesirable manner. It should have been circulated to the Members of the House. The Select Committee made a change in the Bill and this important change.....

Mr. Deputy-Speaker: Order, order There is a point of order raised by Shri Supakar. Does the hon. Member want to oppose that point of order?

Shri M. C. Jain: I am supporting his point of order, that this amendment should not be allowed at this stage. May I also submit something?

Mr. Deputy-Speaker: That is for the hon. Member to decide.

Shri M. C. Jain: The words which are now being asked to be deleted are.....

Mr. Deputy-Speaker: It is not a question of the words being substituted or being introduced, we are only dealing with the point of order. If the hon. Member has to say anything about that point of order he may say.

Shri M. C. Jain: I say, because it is a very important change, at this stage it should not be allowed without its being circulated to the Members of the House.

Shri Naushir Bharucha: Sir, may I submit further in connection with the point of order? I think the House is generally taken by surprise when at the last moment a matter like this is brought. Supposing I am against the deletion of these words, because to my mind it makes an important change in this, I have had no time to consider it. So long as the amendments are circulated, I see them and I know that

clause 18 is not going to be touched. Suddenly a surprise is flung upon us and a change in the Act is carried out. I submit, Sir, that only for very exceptional reasons where the thing cannot be avoided and an emergency is likely to be created the notice may be waived. Otherwise, what will happen is that hon. Members after reading the list of amendments are lulled into a false sense of security that nothing more is going to happen to the Bill and the amendments are according to their approval. And, when suddenly a vital change is made the Members are taken by surprise which, I submit, is not fair to the Members.

Shrimati Renu Chakravartty: Will it be circulated now?

Mr. Deputy-Speaker: Firstly, there is the point of order that has been raised and, secondly there is the question of desirability whether notice should be waived or not, which is different thing.

The point of order was that all amendments should be circulated and notice should be waived in no case.

Shri Supakar: No, Sir; the point that I raised was.....

Mr. Deputy-Speaker: Then there is no point of order. It is not a legal question then. Then it is the other matter that the amendment ought to have been circulated.

Shri Supakar: I am afraid, Sir, I was misunderstood. My point is, when a Minister wants to move an amendment it is always necessary—unless it is unavoidable—that the amendment should be circulated in the House. Can the Minister get over this difficulty by asking an ordinary Member to move an amendment without its being circulated in the House and then say that the Government agrees to the amendment moved? That is my definite point of order.

Mr. Deputy-Speaker: This aspect is well established now—there are so many precedents, and I need not go into them—that the Chair has the right to waive notice in exceptional cases. Where an amendment has been moved here in the House without it having been circulated to the hon. Members, ordinarily in cases where that amendment is acceptable to the House the Chair has seen it advisable to waive the notice. That notice has been waived. That is one thing.

The second thing is the allegation of Shri Supakar that the Minister, ordinarily when she wants to move that amendment—perhaps he is under that impression—has to circulate it to the Members, and now she has adopted this device of asking another Member to move the same so that the Government might accept and the notice may not be required That is not the case here. Even if the Minister had moved it herself, then too, certainly, the chair would have seen whether the notice should be waived and could have waived it if it was thought necessary and advisable under the circumstances. So, it cannot be said that because another Member has moved it and the Minister says that it is acceptable to the Government, this is a device that is being adopted. That is not the case here. The Minister could have moved it directly at the last moment and requested that the notice might be waived and the amendment might be allowed to be moved. That could have also been done, and it would have been equally good for the consideration of the Chair whether it is a case where notice should be waived or not. So, that does not make any difference at all.

The only question is, as some hon. Members have said, that the amendment is an important one, Members had no opportunity to think over it, and under those circumstances the notice should not be waived in this case and they should have some time to think over it. That is another question, a different question altogether, whether notice should be waived or not. So far as I can see, there is nothing queer in that.

[Mr. Deputy-Speaker]

This really surprises me also in one respect, because we had long discussions over it in the Joint Committee, certain Members were very particular over it that this should be excluded, and if after those mature and deliberate decisions it is now felt that it ought to be so amended, the Members are justified in saying that they should have some notice about it because it is the original position that is being restored. In the Joint Committee, so far as I remember, it was at the instance of certain Members that this change was made. If I am wrong, the hon. Minister would guide me in that respect.

Shrimati Alva: It is so.

Mr. Deputy-Speaker: Then, surely, the Members would be justified in asking, when the Joint Committee had made that change and another amendment is now sought to be moved, for time to consider it—I feel in the same way, because I remember the discussion that we had on that when Pandit Bhargava insisted.....

Shri Sinhasan Singh: For two days we had discussion.

Mr. Deputy-Speaker: We had long mature and deliberate discussion.

Shri Naushir Bharucha: Can it not be amended in the other House.

Mr. Deputy-Speaker: I cannot leave it there. If that be so, then I would advise that it may be held over.

Shri Shree Narayan Das (Darbhanga): Sir, I would suggest that this amendment may be considered by the House and if after discussion the House is satisfied that the amendment is necessary then it may be passed.

Mr. Deputy-Speaker: That is not the question. The question is whether I should allow the amendment to be moved at this stage or not.

Some Hon. Members: No, no.

Shri Shree Narayan Das: That is in your discretion.

Mr. Deputy-Speaker: It is in my discretion, and that is why I am saying that, because we had made this change in the Joint Committee after a good amount of deliberation, I should say mature deliberation, it should not be changed so lightly. Certain Members insisted on it, and then ultimately we adopted it. So, it should not be changed so lightly. The Members are entitled to have notice of it.

Shri Shree Narayan Das: In the Joint Committee there was a difference of opinion as far as I remember. The point was put to vote. I do not remember the exact result,—how many were for it and how many were against it. But that point was debated, and there was a difference of opinion. A vote was taken and by a majority it was passed. Therefore we must consider whether that amendment is necessary or not.

Shri Sinhasan Singh: There was a sharp debate on this point, whether there should be some clause providing a minimum sentence or not. That was an unwise one It was provided knowingly There was no division on that point, so far as I remember.

Shri Shree Narayan Das: There was also a note of dissent.

Mr. Deputy-Speaker: May I request the hon. Minister to say her views on that point?

Shrimati Alva: Whatever observations you have made are quite true. In the Joint Select Committee this was brought up This was in the original Bill. It was discussed at the Joint Committee. There was a sharp difference of opinion on this. Then this provision was put in. The hon. Member is suggesting that it should be deleted. I leave it to you to decide.

Shri Sinhasan Singh: The Minister agreed, I think, earlier.

Shrimati Alva: We have no objection to accept it.

Mr. Deputy-Speaker: That has already been conveyed to me, namely,