

*Clauses 1, 2, and 3 and the Schedule were added to the Bill.*

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

SHRI H. M. PATEL: Sir, I move:

"That the Bill be returned."

*The question was put and the motion was adopted.*

### THE INDIAN PENAL CODE (AMENDMENT) BILL, 1972

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI DHANIK LAL MANDAL): Sir, I beg to move:

"That the Bill further to amend the Indian Penal Code, as reported by the Joint Committee, be taken into consideration."

Sir, hon. Members are aware that it was in December, 1972 that a Motion was made before this House for reference of this Bill to a Joint Committee. It will be remembered that in pursuance of its terms of reference the Law Commission had in its 42nd Report submitted in June 1971, suggested numerous changes in the Indian Penal Code, both verbal to remove ambiguities and anomalies and substantive to improve and modernise the law. Unlike the Code of Criminal Procedure, the Commission recommended an amending legislation instead of new Code. An Amending Bill, based largely on the recommendations of the Law Commission, was introduced in 1972 and because of its importance, was referred to a Joint Committee. The Committee held its first sitting on 23rd December, 1972. It invited opinions from various individuals, Bar associations, organizations including trade unions, political parties the Law Officers of the Government of India and the States, the Supreme Court, the

High Courts, the Indian Law Institute, Universities, the State Governments and others to give their views on the Bill. After examining 256 memoranda and 129 witnesses and holding 97 meetings, the Committee presented its Report to the Parliament on 29th January, 1976. Sir, I have briefly mentioned these statistics only to indicate the detailed consideration which the Joint Committee has given to the various provisions of the Bill. The Report of the Joint Committee secured a remarkable degree of concurrence from its Members and it is not worthy that although the Bill has as many as 204 clauses there are only three minutes of dissent, only one of them advocating retraction of the proposed legislation, the other two merely confining themselves to disagreement with a few clauses.

Sir, in one of these minutes of dissent a point has been made that Lord Macaulay's monumental statute should be left undisturbed as it has not only stood the test in this country for over a hundred years but has also served as a model piece of legislation for other countries. There cannot be two opinions on the excellence of the drafting of the Penal Code. For this reason, as also because the meaning of the words has been well understood and applied by the courts over a long period, changes in the wording had not been made in the Bill as introduced except where such changes had been considered necessary to remove doubt arising from conflict of judicial decisions or from other like considerations. It will, I am sure, readily be conceded that over a long passage of time, especially when the society in which these laws are being enforced is not static, changes in such a statute become necessary not merely to remove ambiguities which are discovered in the course of its application but also to reflect to the extent practicable changes in concepts of penal law as well as to meet the special needs of the times. The substantive changes in the law proposed

(Shri Dhanik Lai Mandal)

by the Joint Committee, while making improvements in the Amending Bill, as introduced continues to reflect the broad considerations set out in the Statement of Objects and Reasons accompanying the latter. Briefly these are that crimes involving the well-being of society or affecting a large number of persons should be visited with more severe punishment than those involving only the interests of individuals; that antisocial and "white-collar" criminals should be dealt with more drastically; that greater emphasis should be given to punishing crimes involving the liberty of the individual; that the limits to the quantum of fine which were fixed several decades ago should be increased and, in fact, removed as far as possible; that provision should be made for punishments intermediate between fine and imprisonment, to avoid, to some extent, the contamination of a casual or unsophisticated offender by hardened criminals in the jail; that the scope for imposing short-term imprisonment should be reduced, as such imprisonment serves no useful purpose; and that the two sexes should be given equal treatment.

In this, the expression "public servant" has been amended to include persons in the service of corporations, owned by or controlled by Government and thus bring within the purview of the Prevention of Corruption Act. Sabotage has been defined and made an offence. A new section has been added to punish public servants acting with intent to cause injury to any person. Provision has been made to punish public servants maliciously authorising payments in respect of contracts where the goods supplied or the work done is not in accordance with the contract. It is proposed to punish blackmail and to deal with false advertisements as well as certain forms of commercial corruption. Deterrent punishment has been provided for certain aggravated

forms of wrongful restraint and wrongful confinement.

If greater deterrence is required to meet certain crimes, more humanity needs to be shown in coping with some others. In this context, it may be mentioned that it has been provided that the normal punishment for murder should be imprisonment for life and that only in respect of certain exceptional and aggravating circumstances should the court be given the discretion to award death sentence instead of life imprisonment.

I have only mentioned illustratively a few of the amendments proposed. I would not like to take up the time of the House in recapitulating at length the various changes made by the Joint Committee as these are all contained in its Report. The Committee has after mature deliberation, given us a valuable and balanced document which Government fully supports except in regard to a few clauses for official amendment to which notice has separately been given.

*The question was proposed.*

SHRI K. K. MADHAVAN (Kerala): Sir, I shall try my best to be within my time. As is well known and as has been stated by the hon. Minister for Home Affairs, we are now seeking to make a comprehensive amendment to the well-known Indian Penal Code, which was the product of a Law Commission, headed by Mr. Thomas Babington Macaulay, who actually and literally drafted the Code and who was a man of letters, a man of learning and a man of wisdom. As has been stated by the hon. Minister, there is no wonder that such a piece of legislation, which has such far-flung application and significance, should naturally be expected to provoke encomium and criticism. This is the observation of Shri S. Govinda-rajulu who headed a team of experts, who conducted a seminar, celebrating the centenary of the Indian Penal Code in 1961. Their Working Papers and Essays that were read there were

published by no less a body than the Indian Law Institute. This is what he said and I have quoted him. That is the importance of this legislation. I would go a step forward and say—that it was a legislation introduced, enforced and implemented in a country which was ruled by the doctrine of crime and *karma*. As opposed to that doctrine of crime and *karma*, this penal code was introduced to protect the society from criminal propensities of individuals as well as collective bodies. So, that has been, subject to time from time to time. But now this is an occasion when the Government brings it as a legacy of the previous Government. This legislation has been based on the basis of the recommendations of a Joint Select Committee elected from a Lok Sabha which is no more. That is the position of the Joint Select Committee. In between the report of the Joint Select Committee and this Bill, there was something. I would simply give the history of this Committee and the history of the penal code. The drafting of the penal code was actually finished in 1857 but it was placed on the Statute Book in 1860 only. There is a time lag of three years. The British Government took three years to think over it before they wanted it to be implemented here. But then, it came into force two years later. That was on the 1st of January, 1862. These time lags are very significant.

Now I will give you the history of the Bill. The Bill was first introduced on the 11th of December, 1972. That was after the mid-term poll. Then it was referred to the Joint Select Committee only 3 days later that is, on the 14th of December, 1972. The Committee began its work and had its first sitting on the 23rd of December, 1972. They had their final sitting on the 22nd of January, 1976. In between the constitution of the Joint Select Committee which was in December 1972 and submission of their report which was in December, 1976, there is a time lag, a gap and a huge gap of four years. And those

years were eventful years in so far as this country's history is concerned. Subsequent to that, things have changed. Party politics changed; the parties have changed and the men in the parties themselves have changed. Those who were sitting in the Government those days have crossed the floor over to the other side and they have become political turn-coats and *vice versa*. The people who were agitating against the constitutionally elected regime, who made condemnable agitations against that Government, are now seated in the Government. They have very conveniently laid their hands on an instrument with which they can punish anybody in this country, to a very large extent, to punish anyone and anybody in this country, to any extent. That is the sum total of the report of the Joint Select Committee. I do not want to go into the merits of the recommendations clause by clause. That is not my business. But what I want to point out is this. The Lok Sabha has changed. The combination of political forces has changed. The political complexion of this country is changed. In this changed context, is it prudent on the part of this Government—I am not questioning their competency—is it wise on their part, is it just on their part to lay hands on these recommendations and place them before this body which is the only continuing body, which is the sovereign body in this country, to give a stamp of approval to this of comprehensive amendments? That is the crucial question. Is the Government prepared to recognise the change of time and the change of political climate? If they are prepared for that, I would request them very humbly to think over it hundred times before they got this piece of legislation passed by this body. I would request them not to proceed any further at this stage because I would like to know whether the present Government is prepared

to accept the legacy of the previous

Government. They condemned the

[Shri K. K. Madhavan]

previous Government for anything and everything, but they take an advantage of a report which is ready in their hands. That is a strange contradiction of our politics in this country.

Another thing is, after the celebration of the Centenary of the Indian Penal Code there has been a lapse of 11 years, a passage of 11 valuable years in the history of this country. So many things have happened during that period. Was this Joint Select Committee taken note of the recommendations of this valuable book, "Essays on the Indian Penal Code", published and produced by the Indian Law Institute, marking the celebration of the Centenary of the Indian Penal Code. The Introduction to this book has been written by Shri S. Govindarajulu, Editor and Vice-Chancellor of Shri Venkateswara University and formerly Principal, Madras Law College. He is an illustrious educationist, jurist, lawyer and what not. Such a valuable record is here. It is a record of international importance and it should have attracted the international attention. It is available in this country. It is in the possession of this Government. Have they looked into this, leave aside the Government, has the Joint Select Committee looked into this? They have had a hundred less three sittings of the Committee. I do not question the right of the House to have a Joint Select Committee. They had their tours throughout the entire length and breadth of this country for fruitful purposes. As has been stated by the hon. Home Minister, they have collected from the different parts they visited 256 memoranda. They have interviewed and elicited evidence from 129 persons. I want to classify these witnesses. The witnesses interviewed were—certain eminent men representing the Bar Council of India, certain eminent men representing the Supreme Court Bar Association, the Bar Councils of the

States, two retired judges, one Jurist Association, the Solicitor-General, 3 advocates, one central trade union and one Kisan organisation. Out of these 129 persons, these are the people with whom they had the benefit of interview. The others were—one Advocate-General and 14 persons who were either public prosecutors or Government pleaders. Besides these, there were about 30 persons belonging to non-official bodies and others. All others were I.G.s of Police, Home Secretaries of States—officers who were inflicting punishment on the people, who were not interested in defending the freedom-loving people, in upholding the freedom of the people. If you look into this Report, that is what one has to see, reading between the lines.

I do not want to go into details. I cannot but mention the notes of dissent recorded by four eminent Members of the Select Committee. I do not want to mention their names as they are there in the Report of the Committee. Some of the dissents that they have made are very sensible. The sum total of what I have to say is this. If the Government is prepared to disown this legislation, as they usually disown everything that was done by the previous Government, and is prepared to follow the same policy of disowning this Joint Select Committee's Report, I think it will be to their credit, because this is the product of a period of tension. Soon after the mid-term elections, the Indian National Congress emerged with greater numbers in the Lok Sabha and that created all sorts of misgivings—not misgivings, I would say that created an eye-sore for the vested interests in this country—both capitalist and feudal—and they fomented agitations, they created agitations. We know where trouble is fomented. They did it in the case of the legally and constitutionally elected government in Gujarat, and they wanted to play the same dishonourable game in Bihar but that was

resisted by the then government and the people. And who led that? Everybody knows that the super-Mahatma, Shri Jayaprakash Narayan let it. Now the same bommrang is hitting him. I question the tactics of that super-Mahatma. Now where is he hiding? Recently he gave his approbation, his consent to a political rapprochement within the ruling party. But he has not a single word to say against hundreds of atrocities committed on Harijans going on in

this country \_\_\_\_ (Interruption) Sir,

I am speaking on the Indian Penal Code. I was drawing your kind attention and the attention of this House to the fact that there was a period of tension soon after the midterm polls. And during that period of tension there happened to be a Joint Select Committee. I do not question the wisdom or the desirability or otherwise of what happened or what propelled the ruler of that day to form that Joint Select Committee. But one can understand that in any period of uncertainty, in any state of tension in the country it is the vested interest and it is bureaucracy that makes capital out of this. This Joint Select Committee was, naturally dominated, as is evidenced from the list of persons who gave evidence. Barrin.3 30 persons everybody else was an official or person controlled by the government. I question the validity of the volume of records. It was a bureaucracy-oriented report. I request the government that consistent with their inconsistent stand of questioning the wisdom and achievements of the previous government they should disown this Select Committee and retrace the steps. Thank you, Sir.

SHRI SAWAISINGH SISODIA (Madhya Pradesh): Mr. Deputy Chairman, my friend, Mr. Madhavan. initiating the debate "has pointed out many changes from 1972 onwards. He mentioned that from that side people have come to this side. But he forgot to mention a very important change, namely, that the hon'ble

Minister of State for Home Affairs who piloted that Bill at that time, when the Bill was referred to the Joint Select Committee is now the Deputy Chairman of this House.

Sir, it was but rightly said that man by nature is a fighting animal and the human nature is the same everywhere not even in our country but all over the world. Therefore, Sir, the forerunner of criminal jurisprudence during those old days was a tooth for a tooth, an eye for an eye and a life for a life. The aggrieved person had law in his own hands; he was taking the revenge. This condition went on, but slowly and slowly the emergence of some law, some regulations was there and it was controlled by criminal jurisprudence and criminal laws. Certainly, Sir, it is a fact that no national character, no political regime, no system of law, no police justice punishment or any other treatment has rendered a country exempt from crime. This is a fact and we must accept it. Criminal law is a highly specialised and sensitive tool of social control useful for certain purposes but when improperly used it is capable of bringing more evil than good.

Sir, I will draw your attention to the conditions of our country. It was during the time of Manu that there were some regulations and laws based on criminal jurisprudence, and the present offences of theft, robbery, false evidence, cheating and assault on person and property were recognised during those days also. Not only this, Sir, but in the western countries criminal jurisprudence has percolated out of the Roman law. This is in short the history of criminal law throughout the world.

The most important function of the State is well recognised and it is that the State functions as the guardian of law and order prevailing and punishing all injuries and all disobediences and indisciplines. Every society which is concerned not only with law and order but also with full justice

[Shri Sawaisingh Sisodia]

for all must first decide which are the serious crimes, which crime causes the greatest social harm and then commend itself to the equal distribution of punishment—and to all classes. Why I have mentioned it here is because the Objects and Reasons which were mentioned in the Bill introduced at that time were very lofty and high, but the present Government, when they submitted this Bill for the consideration of this House, has not taken into consideration the conditions prevailing today in the country. If you look at the conditions of violence and crime in our country, we see that there are three types of major crimes being committed at large scale in our country. First of all, offences connected with property. Especially when we see the conditions of the backward people—the Scheduled Castes and Scheduled Tribes—many accounts are given here in the form of reference or Calling Attention before this House, which clearly indicates that those small persons, the economically backward people who have got very small pieces of land or house-sites, are deprived of their property forcibly by persons who are taking the law into their own hands. There are riots, killings and other offences being committed day and night in all the parts of the country. But, Sir, I would like to say here that the Government has not considered the present situation of violence

क्यों भी यदि जगड़ होता है तो  
जर, अनान, जर को लेकर होता है ।

and crime in the country. That should have been their consideration. It is said in Hindi:

Sir, I want to say that whenever a measure of this type is contemplated, serious consideration should be given by one Government. As has been said by Mr. Madhavan, this Code was prepared 111 years before under the chairmanship of Lord Macaulay who was the Chairman of the first Law Commission at that time. That Bill was introduced and passed in 1860, that is, 111

years before. And nowhere at any time so many changes and amendments were brought before this House of our Parliament. There are 204 amendments suggested by the Joint Select Committee and there are 15 to 20 amendments suggested by the present Ministry. It means, there are nearly 230 amendments, while the total number of sections in the Indian Penal Code is 511. Thus there are amendments suggested in nearly half of the Indian Penal Code—and that Indian Penal Code which has stood the test of time. No Government has ever desired to introduce so many amendments. So, when they were coming with so many amendments, it was very necessary

that some concrete amendments should have been brought. It is not every day that on such an important and substantive criminal law, amendments can be brought. If we do that every now and then, it changes the whole position. There are so many pronouncements by the Supreme Court and the various High Courts, there is a lot of interpretation of law by these Courts. So it causes many troubles and legal situation is altered. If at all they were serious about the whole aspect behind this Bill, they should have thought, in depth and brought very important amendments concerning property and person of our citizens.

The second point which I want to stress here is that there are riots, based on religious troubles, and other types of riots. (But no attempt has been made in that direction, I do not want to say anything about the Joint Select Committee. They have gone deeply into the matter—the amendments, the suggestions and the memoranda—and they have taken trouble to consider all these things for a pretty long time; and they have given valuable suggestions. But, Sir, what is the present condition? What sort of substantive criminal law do we require at present? Therefore, to check and prevent riots, and to provide for punishments for such offences, I something concrete should have been

done by the Government by bringing required amendments. But nothing has been done in this direction seriously.

/

Thirdly, what about the safety of the person of our citizens today? Sir, it has become difficult for anybody to presume that if he goes out of his house he will return safely or not. Especially against the WOEKII folk of our country, there are so many offences being committed everyday and we hear so many things that are not tolerable in a democratic society,

I want to say that these three points should have been under the serious consideration of the Government. Regarding the weaker sections, look at the offences which are committed on them and the problems which they are facing. There are criminal trespassings on their lands and they are being removed from there forcibly. The position remains the same with regard to the religious riots and other sorts of riots and the safety of the person of the citizens of our country. These are very important points in which amendments should have been brought before us, and we would have welcomed that. I do not say that because the Committee was formed during the regime of the previous Government, this Bill should have been thrown out. I am not one of those who would say that. It was very right for the previous Government to hand the Bill over to the Joint-Committee. They had requested the House to hand over this Bill to the Joint Select Committee. It was the duty of the Government to point out, now the amendments looking to the conditions which are prevailing in our country today. They should have

considered these things thoroughly. Therefore, Sir, I would like to say that the IPC is one of the most well considered measure, and it has stood the test of time. I have already mentioned regarding this. There are various sections, I do not want to go into detail. I would like to point out

four or five suggestions and lacunae from the Bill which have been produced before us, and I would like to point out, of course, that no proper attention was given by the Government.

If you look to section 40, capital offence has been defined at present like this:

'40. "Capital offence" means an offence for which death is one of the punishments provided by law . . . .'

In the original Bill, the definition was given like this:

'40. "Capital offence" means an offence for which death is the only punishment, or one of the punishments, provided by law....'

At present, if you look at the present definition. It means that punishment of death can be awarded only if one of the punishments provided by law is death. Sir, this is not the correct position.

Sir, section 53 is a section in which various punishments are provided and one of the punishments which was at that time recommended by the Government in the original Bill was *ex-terminum*. This new punishment was suggested, but the Joint Select Committee has not approved this. I am of the opinion that this punishment should remain as one of the punishments mentioned in section 53. Sir, the reason is that this punishment is awarded for offences connected with public peace. Sir, for offences connected with public peace, *ex-terminum* is the proper punishment; it is a *via media* between fine and imprisonment. The two objects of the punishment are to prevent a person from repeating the act again who has committed a crime and it is also a lesson for others.

Section 74A was proposed in the original Bill. The suggestion deserves reconsideration.

mill "TTMlj iin li Sisodia]

Similarly the new section proposed by the Joint Select Committee is proper. The amendment No 4 proposed by the Minister in this respect will prove harsh on the offender. It should be only three years.

Another point is that a new section was recommended by the Government in the original Bill and that was section 63B. In this clause 20 it was suggested in the original Bill that the new section 53B should be added and the provision suggested that a sentence of death shall not be passed against a person convicted of capital offence if at the time of committing the offence he was under 18 years of age and death is not the only punishment provided by law for the offence. This was for those persons, for those offenders, for those accused who were minors and were under 18 years of age. This was the recommendation of the Government, but the Joint Select Committee has not accepted this amendment and it is no more in its recommendation.

Some other instances also I want to place for your consideration. One of them is regarding clause 27, insertion of new section 74A. A new sort of punishment which has been inserted by the Joint Select Committee is the Community Service Order. The court will be competent to pass a Community Service Order by way of sentence. After that, there is a provision for modification or revocation of the Community Service Order. The court will be competent to review its order. But, Sir, before reviewing or cancelling the previous order, no opportunity is given to the accused. Sir, it is a very serious matter and it is against natural justice. If you are going to revise or cancel the previous order, an opportunity should be given to the accused to explain as to why the Order of Community Service passed against him should not be revoked. Therefore, Sir, this is a point for the consideration of the Government.

Then, on page 21 of this Report at the Joint Select Committee, a new section, section 123A has been inserted. Section 123 deals with "concealing with intent to facilitate design to wage war." For such offences, the punishment is 10 years' imprisonment. But in another section, the punishment for the offence of 'assisting in any manner an enemy at war with India' is also ten years' imprisonment. For persons who conceal any information with a design to wage war against our country, the punishment is ten years' imprisonment. And for our enemy at war also, the punishment is ten years' imprisonment. There are so many instances like this. It is a services offence and the sentence should have been imprisonment for life because the freedom and independence of our country is very important and the punishment here should be more as compared to the other offences which have been mentioned here.

So, there are so many other anomalies and contradictions. I think the Government has not gone into this question at length. They had no time because they have got inner contradictions and inner troubles among themselves. They are busy in party wranglings and have got no time to think over the violence and crime situation in our country. They have no time to think for the upliftment or development of our country. Sir, you know very well—I shall not take up the valuable time of the House—that they are busy only with their inner quarrels and inner contradictions. Therefore, Sir, I will agree with my friend, Mr. Madhayan, that if they have brought this measure in a hurry and they have had no time to devote to this measure, they might consider postponing it; they may then take into consideration the whole situation prevailing at present in our country and then bring a Bill which will suit our requirements of maintaining discipline and law and order in the country.



SHRI L. R. NAIK (Karnataka): Another Joint Committee should be appointed?

SHRI SAWAISINGH SISODIA: I am not for a Joint Committee. It is for the Government to consider whether there should be a Joint Committee or not. But this Bill is not in a proper form; not in a suitable form, not in a form which will suit the conditions of our country at present.

Lastly, I want to say that the greatest blow has been in the matter of dangerously regulating measures regarding the right of private defence of person and property. On this score, more power, protection and privileges are going to be given to the police and the bureaucracy. That is not desirable and that should not remain part of this measure,

There are some other important points for consideration. Regarding section 462 also, they have inserted a new provision regarding employees employed in the private concerns. This will cause hardship to the employees. Therefore, I will request the hon. Minister that this should not be a point of prestige for them. This should be an eye-opener. They should consider the present conditions which require many; many changes and amendments to the Indian Penal Code. As far as a person's property is concerned, safety and protection to the weaker sections is concerned, violation of these should be made offences of a serious nature and severe punishment should be awarded for such cases so that such things cannot happen again and again, so that such things are not repeated. The Bill should have been more progressive.

Of course, we are not going to pass this measure just now. It may go to the next Session. I would request the honourable Minister kindly to consider all these suggestions carefully, I have many more suggestions also but due to paucity of time I am not mentioning them now. All

these suggestions in—i fuTf n —  
deration. Thank you.

SHRI K. B. ASTHANA (Uttar Pradesh): Mr. Deputy Chairman, no doubt in the annals of codification of laws, the Indian Penal Code, drafted by Lord Macaulay, has a preeminent place in respect of both the sweep of its concept and the precision and exactitude of the language. But that should not deter us, as the times have changed, to bring in suitable amendments to the Indian Penal Code which was originally drafted, I think, more than a century back. Of course, the human nature, the emotions of anger, greed, and aggrandizement have not changed. None the less, as a result of new knowledge, based on scientific developments, newer methods, have been adopted to fulfil what I would call, the evil designs by the human being who sometimes for his own benefit, tries to perpetrate through acts of commission and omission which it is the duty of any civilised society, orderly society, to suppress. I have gone through the report of the Joint Committee and I share the disappointment of my friends Mr. Madha-van and Mr. Sisodia. I do not discern any idealism or any direction in the report of the Joint Committee. When you are out to amend a code which has stood the test of a century though some defects in its application to modern conditions have been experienced by the prosecuting agencies the magistrates and judges of the courts, I expected some kind of a direction, some particular objective to be achieved by the Joint Committee. It appears the Joint Committee went on section by section of the Indian Penal Code, and I find that it has contradicted itself when it says that they disapprove of externment as punishment for the reason that it goes against the reformatory principles of punishment, namely, you will deprive the person to be externed of any opportunity to reform himself. But when they come to death penalty for capital offence, this very principle is given a go-by because if you take the life of an

[Shri K. B. Asthana]

offender, then you are depriving him of the chance to reform. But I welcome whatever little the ponderous labours of the Select Committee have produced. There are many improvements particularly in defining and expanding the definitions of the common offence of cheating. They have also tried to bring in the modern penological concepts in regard to certain other offences. But I am disappointed that from the Indian Penal Code they have not removed adultery or bigamy as an offence. The whole world is thinking of making it only an action of civil liability. Further, I would give expression to my feeling of disappointment on another decision of the Select Committee. The Committee which was deliberating in the seventies of the century did not think it fit to abolish the death penalty. I very much wish that death penalty was abolished. I cannot understand their objection to codify a provision in the laws of the land that in no case if a murder is committed by a person below eighteen years, he will be sentenced to death. I share the view which has been expressed that this shows they were contradicting themselves and instead of being progressive they were rather regressive on this subject.

Then, I will point out one thing in clause 58 which the hon. Home-Minister may take note of. I find that the Select Committee by expanding section 154 of the Indian Penal Code, they will create trouble for people who are working in a very subordinate position of authority. Now they say that for the words "owner or occupier of the land" the words "owner, occupier or the person in charge of the land" shall be substituted. Who is this person in charge? This relates to the offence of rioting and trespass. There are many educational institutions and others having vacant lands in this country. What is happening all round this country is that a political party approaches the manager or

the owner of a vacant plot in the township to hold its meeting. Suppose in the course of the meeting a riot takes place. Up to this time, if there was any liability it was only on the owner or occupier. Take the case of a public trust temple. Only a chowkidar will be left for managing it, the lands. He will be the person in charge of the land. Now he would also be liable. Take the case of an ordinary educational institution. It is the Manager or Secretary or President of the Managing Committee who allows the land attached to the school to be used by any political

organisation. Then a riot 6 P.M. takes place or some distur-

bance takes place. The school teacher and the principal would be liable as person in charge of the land and building. I do not think that this expansion, "the person in charge of the land", should be permitted. I would have thought that even "the Liability of the owner or the occupier" should not be there. We are now at a time when it is the fundamental right of the people to gather, to form associations, and to make speeches, political speeches. Now, there are many towns where there are no such places where Government or municipal land is available for this purpose. So, everybody has to go to some private land. Now, the owners of that land will be held responsible. They do a good thing and they will be held responsible. So, it serves as a brake on many an owner or occupier of lands just to give his land readily for public meetings. That has been the very experience of many an organiser of meetings. Therefore, I should have thought that this expansion is against our system of democracy. What will happen now is that the big men would escape and some chowkidar or some servant or some small school teacher would be forced to face prosecution.

MR. DEPUTY CHAIRMAN: Now, there is the half-an-hour discussion.

SHRI K. B. ASTHANA: I will finish in five minutes.

I would like to point out one more thing. The attempt to commit suicide should not have still remained an offence. Likewise, there are many things which should not have been there and that is why I say that there has been some lack of idealism and some lack of direction in the Select Committee and if they were bringing forward a comprehensive amendment to the Penal Code, it should not be directed to go against the modern penal system and modern concepts and the philosophy behind penology, as have been developed so far. But I find no idealism in the amendments which have been made. In some respects, of course, they are to be welcomed as they remove some doubts as to how the courts are to interpret. That is a very small effort, if I may say so, and I would welcome it as it is. But I should still have thought that the Government might consider a further amendment in these directions to bring all the penal laws of the country in line with the modern thought on penology. With these words, Sir, I support it.

**HALF-AN-HOUR 'DISCUSSION ON THE POINTS ARISING OUT OF THE ANSWER GIVEN TO UN-STARRED QUESTION 1362 ON THE 3RD AUGUST, 1978, REGARDING COMPLAINTS REFERRED TO THE SHAH COMMISSION OF INQUIRY.**

... DR. BHAI . MAHAVIR (Madhya „Pr,ad^^)- : .c-Jr., when, the Janata Party took over the administration of the cpuntrv, the administrative set-up had become a cockpit of corruption, high Handedness and virtual anarchy. The various steps that were initiated to clean up the mw included the gigantic t"\*k given to Mr. Justice J. C. Shah 'o take uo the big broom and cleanse the country of the filth that had accumulated over the years.

[The Vice-Chairman (Shri ShyamLai Yadav) in the Chair] That was a very good beginning, and our Government has got all the credit . for having taken this step and for

having instituted the ComrrussuJHS""\*., ry. The complaints that were .submitted to Jusl&a than or the Snan Cqmnraission, air, were categorised oy the Commission, according to its own interim report, into five categories. I am, just now, concerned with the third and the fourth categories. The third category was one in which complaints fell within the terms of reference of the Commission but were not serious enough to warrant inquiry by the Commission itself and they were to be referred to the Central/State Governments with the request to have them looked into at an appropriate level to inform about action taken, and so forth. The fourth category is one in which complaints fell within the purview of the terms of reference of the Commission, i.e., which are serious enough but cannot be handled by the Commission's stall' itself, to be referred to the Central/State Governments for inquiry by a committee to be appointed under section 11 of the Commissions of Inquiry Act, 1952, I repeat, Sir: To be referred to the Central/ State Governments for inquiry by an authority appointed u/s. 11 of the Commissions of Inquiry Act, 1952 end the findings and the recommendations of the authority to be submitted to the Commission, as and when completed.

Sir, a number of comwl.oints sent to the Commission were treated by them or categorised by them In the fourth' Category, and ?s such Ired by the Commission to 'Government also, apart from those which were referred to State Govern-merits.<sup>1</sup> Whereas the State Governments took steps to institute Ccsions of Inquiry, whichheir 'vork in a business-like what has happened with regard to complaints filed by the employees of the Central Government is, to say the least, unsatisfactory, and X am constrained to say that it conf one's understanding as to how a Minister of this Government can come up and say that proper steps are being taken, and it has been assured that those inquiries will be judicial or objection in character. In reply to 8