

[Shri M. S. Gurupada Swamy.]
ditional information required in regard to these steel plants because the information is already available. I do not think the hon. Minister concerned will require more time to study this question. I think it must be very easy for the hon. Minister concerned and also for the hon. Minister for Parliamentary Affairs to find time for this important motion before the House.

THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI SATYA NARAYAN SINHA): All the hon. Members who have made these remarks here have met me just now outside this Chamber and I have explained to them the difficulties. So far as I am concerned, I can tell you that I will try my best but I cannot promise anything. There is not only the difficulty, which I would like to tell them, about finding time but there are other difficulties also. All that I can say is that I will make the best of endeavours to see if hon. Member's motion can be accommodated.

THE VICE-CHAIRMAN (DR. A. SUBBA RAO): The House stands adjourned till 2-30.

The House then adjourned for lunch at two minutes past one of the clock.

The House reassembled after lunch at half past two of the clock, Mr. DEPUTY CHAIRMAN in the Chair.

RESOLUTION RE. LEGISLATION FOR ABOLITION OF CAPITAL PUNISHMENT—continued.

SHRI ROHIT M. DAVE: Mr. Deputy Chairman, when the House adjourned for lunch, I was saying that the problem which is before the House at the present moment is indeed, of a very complicated character. There are theoretical considerations, there are practical considerations, and this august House has to see that all these considerations are given their due weight before any decision on such an important subject can be taken. With-

in the short period in which I have to speak now, I have no desire to go into the profound issues of penology that are involved in the determination of this problem. To give only one example, we are very closely concerned, in determining this issue, with the question of the object of punishment. Some of the hon. Members who have already spoken have pointed out that retribution cannot be an objective of capital punishment, because that is a barbarous idea and therefore, should not be accepted by a civilized society. Reform of the individual cannot be the objective, because once the person is executed, the chance of his reform does not exist. Deterrence as an object also is not quite relevant in this issue because, as was pointed out by Dr. Barlingay, it is not fair to kill someone so that someone else might be deterred from such a crime. But there may be a fourth possibility. There may be certain types of crimes which are of such a serious nature that the community as a whole might like to disown the particular individual as a human being, because the crime committed by him is so brutal, so monstrous, so inhuman, that he has not got any right or claim to live and be called a human being. Perhaps, in such a case, capital punishment might be considered the right type of punishment. Again, this is a very serious issue which requires very dispassionate and profound consideration. Similarly, issues of *mens rea* are also involved in it, whether a particular person when he committed the crime had a sufficient sense of responsibility as a human being or whether he had reasons to lose all control of himself or was compelled to lose all control of himself, because of certain extremely extraordinary circumstances in which he was put. That might also be an issue that might have to be considered before giving capital punishment.

Quite apart from these theoretical considerations, Sir, there are certain practical considerations which also have to be kept in view. Its common knowledge that capital punishment

breeds capital punishment. The history of the many nations in the present day has shown that one capital punishment has been accepted as a normal defence apparatus by a community, because of certain abnormal circumstances that existed in that country or in that community, the public conscience becomes so dull that capital punishment, instead of being a very rare occasion, becomes the order of the day and there are what are known as liquidations, and there are what are known as punishments of death, because of certain crimes which may perhaps be of an ideological nature rather than involving some profound human values or some profound human considerations. To my mind, this is a point which all civilized communities have to take into consideration and the history of the very recent past clearly shows that these countries are taking this into consideration and are modifying their powers in the light of these considerations and to that extent, capital punishment has become rarer even in those communities in which once it had assumed rather serious proportions. Therefore, this is a point worth considering, whether capital punishment might be completely abolished or might be confined to only some very, very serious and brutal crimes for which it is quite legitimate to award capital punishment. Here again, it is only a commission of experts who can go into these issues and then come to certain conclusions.

There is another practical consideration which has also to be kept in mind. Because of the pressure on our judiciary and because of the expenses involved in present-day litigations, so many times it so happens that the consideration which is due before a particular crime is established as a crime deserving capital punishment, is not given. It does not get that treatment which it should. The law and order machinery is over-worked. Our advocates are also over-worked. They are minting money and they have to appear in a large number of cases. The courts are over-

worked. Therefore, at times there is the tendency to consider questions in a hurry and this might create a serious situation. In these circumstances, if the punishment is of any other nature, there is always the possibility to correct a mistake if one is there. But once the person is hanged, it is not possible to correct the mistake at all. And this also is a practical consideration which should be kept in mind before deciding whether capital punishment should be retained or abolished. Quite contrary consideration also is there which has to be kept in mind. Those who follow the history of important cases in our judiciary have opined that our courts are taking an extremely technical view of the case that is before them and unless a particular case is established so thoroughly that capital punishment is the legitimate punishment for it under the law as it exists at present, there is a tendency on the part of the superior court to quash the punishment of the Sessions Court and perhaps of the High Court also, in certain cases, because they find that a complete and watertight proof of the case which is a necessary requirement in such cases, when the issues involved are very grave, has not been fulfilled. They feel that all the requirements of the case have not been fulfilled and the evidence would not justify the extreme punishment. The result is that a large number of such accused are really released because there was no fool-proof evidence before the Sessions Court that awarded the punishment. In certain cases, there is too much of leniency; in certain other cases there is a little bit of haste while in certain others there is also the possibility of error. All these practical considerations require that capital punishment may be confined to extremely serious cases and in the normal circumstances other punishments such as life sentence, etc., might be awarded.

I have tried to show that the issues involved are very grave, and perhaps a Commission of the type which my hon. friend, Shri Mani, has suggested could

[Shri Rohit M. Dave.]

go into all these various issues and might recommend a course of action which, on the one hand, might try to incorporate the values which we consider to be so dear to us, values which have been inculcated in our mind by the Father of the Nation and try to preserve, maintain and strengthen it and, on the other hand, see that the main function of law, namely, securing stability and security of the community as a whole, is preserved.

श्री भगवत नारायण भागवत (उत्तर प्रदेश) : उपसभापति महोदय, इस प्रस्ताव के महत्व पर बहुत से भाषण यहां हुए हैं। मैं जिस समय श्रीमती सावित्री देवी निगम का भाषण सुन रहा था उस समय मुझे वह जमाना याद आया जब कि आर्य-समाजियों में और सनातन धर्मियों में शास्त्रार्थ होते थे और शास्त्रों के प्रमाणों के अंबार लगा दिये जाते थे। आज श्रीमती निगम ने विदेशों के शास्त्रों से प्रमाणों का इतना बड़ा अंबार यहां लगा दिया कि उनको समझना . . .

प्रो० सत्याचरण (उत्तर प्रदेश) : मैं माननीय सदस्य से पूछना चाहता हूं कि उन्होंने जो आर्य-समाजियों और सनातन धर्मियों के शास्त्रार्थ की बात कही है उसका इस प्रस्ताव से क्या सम्बन्ध है ? मैं समझा नहीं कि इस बात को कहने से उनका क्या तात्पर्य है ?

श्री भगवत नारायण भागवत : किमनोलोजी भी शास्त्र है, सोशोलोजी भी एक शास्त्र है, ये सब शास्त्र हैं, मेरा कहना यह है कि हम लोगों में ऐसा सोचने की प्रवृत्ति है कि ज्ञान का जितना भंडार, विद्या का जितना प्रकाश विदेशों में है उतना न तो भारत में रहा है और न है। आज हम अपने को इतना नीचा समझें कि सिवाय विदेशों के प्रमाणों को देने के अपने देश के प्रमाण न दें, उचित नहीं है। अपने भारत के उच्च क्रांति के व्यक्तियों का एक भी प्रमाण इस सदन में नहीं दे सके जिस ने कि यह कहा हो कि कैपिटल पनिशमेंट एबालिश कर दिया जाये।

उपसभापति महोदय, असल में हमको देखना यह है कि जिन देशों ने इस कैपिटल पनिशमेंट को एबालिश किया उन्होंने किन समस्याओं पर विचार किया। ऐसा उन्होंने क्यों किया और फिर क्यों उसे रिट्रोड्यूस किया—कई देशों ने इसे एबालिश कर के फिर इंट्रोड्यूस किया। प्रस्तावक महोदय ने कहा था कि उसे उन्होंने इस कारण से रिट्रोड्यूस नहीं किया कि जूमों की संख्या बढ़ रही थी बल्कि इस कारण से कि पब्लिक फीलिंग बड़ी स्ट्रांग थी। ये उन के शब्द थे। और मैं उन शब्दों का स्वागत करता हूं। अगर उन्होंने केवल विदेशों की नाडी देख करके भारत के रोग का निदान न कर दिया होता तो मैं समझता हूं कि सदन में एक दूसरा ही वातावरण होता। हमको देखना यह है कि इस प्रजातंत्र में पब्लिक की फीलिंग क्या है। हमारी जनता किस ओर जा रही है और इस प्रश्न के ऊपर उसके क्या विचार हैं ? यहां हम लोग अपनी व्यक्तिगत राय दे कर के एक ऐसा प्रश्न, एक ऐसी समस्या इस प्रकार से हल कर दें कि सारे देश के ऊपर एक बोझा सा साद दिया जाये, जनता की दृष्टि के विरुद्ध हम कार्यवाही करें, यह तो बड़ा अनुचित है।

सन् १९५६ में लोक सभा में इसी के सम्बन्ध में एक बिल पेश हुआ था और सन् १९५८ में इसी सम्बन्ध में इस सदन में एक प्रस्ताव लाया गया था। वहां वह बिल खत्म हुआ और यहां वह प्रस्ताव खत्म हुआ। सन् १९५६ में केन्द्रीय सरकार ने देश के सभी राज्यों से इस सम्बन्ध में राय मांगी थी और राज्यों ने एक स्वर से इसका विरोध किया था। मैं पूछता हूं कि अगर भारत की जनता चाहती थी कि यह कैपिटल पनिशमेंट एबालिश कर दिया जाये तो क्या यह एक स्वाभाविक बात नहीं थी कि जब १९५६ में यह बिल यहां पर आया और उस पर बहुत दिनों तक बहस हुई तब उन दिनों में समाचार पत्रों में इस सम्बन्ध में लेख लिखे जाते और सभाओं में प्रस्ताव पास किये जाते। उन दिनों कहीं भी

किसी भी समाचार पत्र में लेख लिखे गये हों या किसी समा में किसी प्रकार का कोई प्रस्ताव पाम किया गया हो या इस सम्बन्ध में सभायें हुई हों, ऐसा नहीं है। जनता की आवाज हमारे देश में कुछ कमजोर नहीं है। जिन प्रश्नों के ऊपर जनता स्ट्रांगली फील करती है उन के सम्बन्ध में राजनैतिक पार्टियां प्रस्ताव पास करती हैं, राजनैतिक पार्टियां सभायें करती हैं और जनता की सार्वजनिक सभायें होती हैं और एक आन्दोलन खड़ा कर दिया जाता है। हमारे श्री भूपेश गुप्त ने कहा कि हमको अपने इतिहास, अपनी परम्परा और अपने ट्रेडिशन आदि के ऊपर भी ध्यान देना चाहिये। मैं कहता हूँ कि आज कोई महा-नुभाव इस बात को बतलाये कि भारत के इतिहास में कैपिटल पनिशमेंट के एवालिशन के लिये क्या कोई नाम मात्र का भी आन्दोलन हुआ है। सन् १९५६ का बिल खत्म कर दिया गया और यहां का प्रस्ताव खत्म कर दिया गया लेकिन क्या एक भी आवाज अखबारों के जरिये से या और किसी प्रकार से उठाई गई कि यह बड़ा अनुचित हुआ। हमारी राज्य सरकारें जनता की राय के ऊपर कायम हैं। श्री पाठक ने कहा था कि हमको पब्लिक फीलिंग को देखने की जरूरत है और पब्लिक फीलिंग इस के खिलाफ है। स्टेट गवर्नमेंट्स जिनकी राय ली गई थी वे सब इस के खिलाफ हैं। एक आदर्श की बात दूसरी है, आदर्शवाद अलग है लेकिन जब हम आदर्शवाद के गगन मंडल से नीचे पृथ्वी पर उतरे तो हमें व्यावहारिक दृष्टि से देखना होता है कि होता क्या है और क्या इसका कारण है। हमारे यहां की सामाजिक अवस्था आर्थिक दशा और शैक्षणिक दशा दूसरे देशों से बिल्कुल भिन्न है। जैसा कि श्री पाठक ने कहा था कि अगर हम इस को एवालिश कर दें तो इसका यह मतलब नहीं है कि जुर्म बढ़ेंगे या घटेंगे या क्या होगा, यह देखना नहीं है, हम को देखना तो यह है कि इसका समाज के ऊपर क्या असर पड़ता है। कई महानुभावों ने कहा कि एक व्यक्ति को फांसी लग गई तो उसका समाज के ऊपर क्या असर पड़ा। अरे,

एक व्यक्ति का, एक व्यक्ति की बात का सारे संसार पर असर पड़ता है। महात्मा गांधी की जब हत्या हुई थी तब उसका रिएक्शन, उसकी प्रतिक्रिया न केवल भारतवर्ष में हुई बल्कि सारे संसार में हुई थी। तो यह कह देना कि एक व्यक्ति को फांसी दे देने से समाज पर कोई असर नहीं पड़ता है बिल्कुल गलत है। समाज के सामने एक आदर्श उपस्थित हो इस लिये इस प्रकार के जघन्य अपराधों को करने के लिये उसको यह दंड दिया जाता है।

अगर हम व्यावहारिक दृष्टि से देखें तो हमारे यहां जो अदालतें हैं, हमारे यहां जो जजें हैं उन के अधिकारों के ऊपर हमको ध्यान देना चाहिये और उन अधिकारों का किस प्रकार से प्रयोग हो रहा है इस पर हमको ध्यान देना चाहिये और तब हम देख सकते हैं कि आया हमारे हिन्दुस्तान में कैपिटल पनिशमेंट देने के अधिकार का दुरुपयोग हो रहा है या सदुपयोग हो रहा है और जनता पर उसका क्या असर हो रहा है। हमारे यहां इस बारे में इतने सेफ़गार्ड्स हैं। कई माननीय सदस्यों ने कहा, अपनी राय जाहिर की, कि जजेज इस बात को नहीं देखते हैं उस बात को नहीं देखते हैं और उनको ऐसे इंड्र-क्शंस देना चाहिये, किसी ने कुछ कहा, किसी ने कुछ फ़र्माया। मेरा कहना यह है कि आप देखें कि अभी जो प्राविजन है, जो सन् १९५५ में अमेंडमेंट हो गया है, उस के अनुसार जजेज को पूरा अधिकार है, उनको पूरा आप्शन है कि सिवाये उन कैसेज के जिन में कि कोई लाइफ सेंटेंस भुगतते हुए हत्या करता है—इस केस में तो आप्शन नहीं है लेकिन और सब कैसेज में पूरा आप्शन है कि वह लाइफ सेंटेंस दें या डेथ सेंटेंस दें। सिवाय एक केस के बाकी सब कैसेज में उनको यह अधिकार है, यह आप्शन है और वे लोग बड़ी गम्भीरतापूर्वक विचार कर के यह सजा देते हैं। इस के अतिरिक्त आप अगर आंकड़े देखें तो उन से आपको पता चलेगा कि आजीवन कारावास ही अधिकतर दिया जाता है और फांसी की सजा बहुत

[श्री भगवत नारायण भार्गव]

कम दी जाती है। एक तो यह है कि कत्ल के मुकदमों में इतनी छानबीन होती है कि बहुतों का चालान ही नहीं होता है। करीब १० हजार हत्याओं का साल भर में औसत बैठता है और उस में से ३० या ३२ प्रतिशत मामलों में तो बिल्कुल चालान ही नहीं होता है, फिर इस के बाद जिन में चालान होता है उन में से भी ३० या ३२ प्रतिशत छोड़ दिये जाते हैं और बाकी जो बचे हैं उनको भिन्न भिन्न प्रकार की सजाएँ होती हैं जिन में से फाँसी की सजा केवल ४ या ५ प्रतिशत में होती है या तो ३० प्रतिशत के ४ या ५ प्रतिशत में होती है।

इस के अतिरिक्त, जज जो फाँसी की सजा देता है वह सजा भी फाइनल नहीं होती है जब तक कि उसको हाइकोर्ट कन्फर्म न कर दे। हाइकोर्ट के पास अपील अपने आप ही जाती है। जज स्वयं उसको भेजते हैं।

पंडित दयाम सुन्दर नारायण तन्खा :
(उत्तर प्रदेश) : स्वीकृति के लिये रिकार्ड जाता है।

श्री भगवत नारायण भार्गव : रिकार्ड कन्फरमेशन के लिये जाता है। फिर सुप्रीम कोर्ट में अपील करने का उनको अधिकार है। इस के अतिरिक्त स्टेट गवर्नर और प्रेसीडेंट को मरसी पेटिशन्स भी देखने का अधिकार है। अब आप देखिये कि दरजे ब दरजे, धीरे धीरे छन कर वह चीज क्या रह जाती है? कितने मरसी पेटिशन्स एक्ससेप्ट हो जाते हैं, कितने सेन्टेस हाइकोर्ट कन्फर्म नहीं करता है? इतनी सावधानी हमारी गवर्नमेंट बरतती है कि जब कोई कत्ल का केस होता है और अभियुक्त की पैरवी करने वाला कोई नहीं होता तो उस में गवर्नमेंट अपनी तरफ से एमीक्स क्यूरीओ, (amicus curiae) करती है, अपनी तरफ से गवर्नमेंट उसकी पैरवी करवाती है। इतने सेफगार्ड, इतने प्रीकाशन्स लेकर के हमारी अदालतों का काम चलता है।

फिर भी हम इस बात को कहे कि हमारे यहां बड़ी असावधानी होती है तो यह युक्तिसंगत नहीं है। मान लीजिए, होती है और एक माननीय सदस्य ने उधर से कहा था कि सन् १९५४ का अमेंडमेंट हो जाने के बावजूद अदालतें उस पर ध्यान नहीं दे रही हैं, तो ऐसी दशा में यहां से डाइरेक्टव्ह इश्यू हो सकते हैं कि जिस नीति के अनुसार अमेंडमेंट किया गया उस नीति का पालन होना चाहिये। इस प्रकार नीति का पालन किया जा सकता है।

फिर आप दूसरे देशों की तरफ देखें। जनसंख्या के आधार पर जो वहां कत्ल के केसेज होते हैं, उनका अनुपात क्या है? दूसरे देशों में जिन्होंने इस कैपिटल पनिशमेंट को अबालिश कर दिया है, उसमें वे केसेज ही नहीं बल्कि जो हत्याएँ होती हैं, चाहे उन पर केस चले या न चले, उनका जो अनुपात है वह १० लाख के पीछे ४ का अनुपात है, अर्थात् १० लाख जनसंख्या है तो ४ मर्डर होते हैं। हमारे यहां तो १० लाख की जनसंख्या पर २६ मर्डर होते हैं। इसलिये हमको यह भी देखना है कि हमारे यहां की सामाजिक स्थिति क्या है। आपने और हम सबने सुना है और देखते हैं, पढ़ते हैं अखबारों में कि बहुत से आदमी ऐसे हैं, जो बाहर रहने से जेल में रहना ज्यादा पसंद करते हैं, उनको बाहर से जेल में ज्यादा सुख है—खाने का, पीने का, हर बात का। बहुत से लोग जेल गए और जेल से बाहर निकलने पर उन्होंने फिर जर्म किया और फिर जेल चले गये। जहां इस समय हमारे समाज में ऐसी बातें हो रही हैं, तब हमको इस बात को ध्यान में रखना होगा कि हमारे समाज में जो लोग समाज सुधार का रोज नारा लगाते हैं, कही वह समाज का सुधार न होकर समाज का अहित न हो जाये।

यह भी कहा गया कि अधिकतर हत्याएं भावुकता और आवेश में आ कर होती हैं।

यह सही नहीं है क्योंकि ऐसे केष कम होते हैं जिनमें केवल भावुकता और आवेश में आकर हत्याएं होती हैं। यदि आप आंकड़ों को देखें तो उनमें आपको पता चलेगा कि बहुत से कत्ल तो पहले से बिल्कुल पक्का इरादा करके होते हैं। प्रीडिटरमिनेशन के साथ और डेलीबरेटली मर्डर्स किये जाते हैं। हमारे देश में जो डाकुओं के गैंग्स हैं क्या वे भावुकता के कारण या आवेश के कारण कत्ल करते हैं? घरों में घुस कर पुरुषों के सामने उनकी स्त्रियों के साथ बलात्कार करते हैं, उनके पेट में न मालूम कितने हथियार घुसेड़ देते हैं, बच्चों को मार देते हैं—ऐसी बेरहमी के साथ डाके डालते हैं। क्या वे पहले सोच विचार कर नहीं जाते हैं? क्या उन्हें गुस्सा, उत्तेजना या आवेश आ जाता है जिससे वे ऐसा करते हैं? नहीं, वे पहले से सोच कर चलते हैं कि हमें इतना लूटना है, इतनी जायदाद सेठ के यहां से लेनी है। हथियार लेकर जाते हैं और हत्याएं करते हैं। क्या ऐसे जघन्य अपराधों को करने पर भी उनको क्षमा प्रदान कर दिया जाये? हम अखबारों में पढ़ते हैं, छोटी छोटी आठ, दस वर्ष की बच्चियों के साथ बलात्कार किया जाता है, उन बच्चियों के टुकड़े टुकड़े करके तालाब में फेंक दिया जाता है। यदि ऐसे प्रमाण श्रीमती सावित्री निगम के पास हों, तो क्या वे उन्हें क्षमा प्रदान करने के लिये हाईकोर्ट को प्रार्थना करेंगी कि क्षमा कीजिए, उस आदमी से भूल हुई जिसने आठ वर्ष की लड़की के साथ बलात्कार किया। इस तरह से समाज का उद्धार नहीं हो सकता। समाज के सुधार के लिये भले ही व्यक्तियों का बलिदान हो, परन्तु समाज का बलिदान कदापि नहीं किया जा सकता है। यदि हमको अपने देश को उन्नति की ओर अग्रसर करना है तो हमको जनता की आवाज को देखना होगा। मैं नहीं समझना कि भावुकता और आवेश में आ कर इस प्रकार की हत्याएं हुआ करती हैं।

PROF. A. R. WADIA (Nominated): Mr. Deputy Chairman, I listened with great interest to the speech this morning of the hon. Lady mover. I can understand her making that speech because that is what we can expect from a lady who is usually very soft-hearted but I find it very difficult to understand how my good friend and neighbour who is an eminent lawyer and whom I have always taken to be a man of robust common-sense could allow his name to be associated with a proposition of this type. This is not a question of mere sentiment; one has to look at bare facts and I happen to have very firm views on this subject. I do admit that there is one argument which is in favour of the proposition and that argument is that judges and juries alike are after all human and they may blunder. As my hon. friend, Mr. Bhupesh Gupta, pointed out this morning, it is quite possible that an innocent man may be hanged and the really guilty man may escape. I quite see that logic. On the other hand there is this to be said that there is a distinct tendency on the part of our jurists today and our legislators also to make the capital punishment as rare as possible. I am aware of a High Court Judge who would not pass a sentence of execution on any one and that was the reason why he was not confirmed as a member of the High Court. I know there are usually judges who are very tender and who would not take upon themselves the responsibility of sending someone to the gallows who might be innocent. There are cases of that type and it is a very healthy sign but my trouble is this. After all, there is a class who might be called professional murderers and why should so much sympathy be shown to them? I am not exaggerating when I use the term professional murderers. Take for example the case of the dacoits who loot our villages and whoever opposes them is shot dead relentlessly, ruthlessly. Human lives do not count anything with them. For the sake of a few rupees—maybe thousands or maybe hundreds—they would not mind killing men, women and children alike.

[Prof. A. R. Wadia.]

Do they deserve any sympathy at our hands?

SHRIMATI SAVITRY DEVI NIGAM: But they should be given life imprisonment.

PROF. A. R. WADIA: What does this life imprisonment mean? I think my hon. lady friend understands that it means only 14 years and after 14 years the man is again let loose on the society. And they are dangerous.

SHRIMATI SAVITRY DEVI NIGAM: When he is certain . . .

MR. DEPUTY CHAIRMAN: Order, order.

PROF. A. R. WADIA: Anyway it is the difficulty that I feel. Or take another case of a professional murderer, the notorious Dr. Crippin, who was in the habit of marrying wife after wife and he made use of his scientific knowledge in disposing of his wives in such a fine fashion that it was extremely difficult to find out how his wives disappeared till ultimately he was found out and hanged. Is that the man to whom my lady friend and my hon. friend here would extend their sympathies and say, 'No, no; you are a human being; you must be allowed to live'; perhaps to commit more murders, marry more women and kill them? Is it not the logic, Sir, to which we are driven? It is on this ground that I am totally opposed to the abolition of capital punishment. We can modify it certainly; we can make it as rare as possible; that I appreciate but its total abolition would be disastrous to society.

3 P.M.

DIWAN CHAMAN LALL: Mr. Deputy Chairman, first of all, I must congratulate my colleague, Shrimati Savitry Devi Nigam, for having given notice of this Resolution.

DR. R. B. GOUR (Andhra Pradesh): But she is thankful to you for having signed it.

DIWAN CHAMAN LALL: I am grateful to nobody but to the ballot, that it happened to come out in my name. But then I was very keen that she should move this Resolution and I am very happy that she moved this Resolution, in spite of what three hon. Members of the House have said. The first one was Mr. Pathak. The second one was Mr. Bhargava, who sits behind me, who made a very emotional speech on the subject. And the third one was my hon. friend Prof. Wadia, who was rather surprised that I should lend my name to a Resolution of this nature. He need not be surprised. Apparently he has not looked into the subject or studied it carefully enough, nor has he been a practising criminal lawyer as I have been for forty odd years to know that in a number of cases it is the innocent man who gets hung. What is the cure that my hon. friend would like to suggest?

SHRI SATYACHARAN: Travesty of law.

DIWAN CHAMAN LALL: And, therefore, you must hang an innocent man for travesty of law.

SHRI K. SANTHANAM (Madras): May I know, Sir, if an innocent person can be sentenced to penal servitude?

DIWAN CHAMAN LALL: What I am saying is about innocent men who are hanged. I am not speaking of penal servitude. My hon. friend did not listen to what I was saying. I say that innocent men have been hanged and repeatedly hanged because of the existence of this particular law.

SHRI N. SRI RAMA REDDY (Mysore): Can he be sentenced at all?

DIWAN CHAMAN LALL: I know he is an innocent man. My hon. friend may not know that he is innocent, because he has not handled such cases. I have and I know in the cases which I have handled that many an innocent man has gone to the gallows in spite

of all the efforts that I could make. Now, my hon. friend says . . .

PANDIT S. S. N. TANKHA: May I ask the hon. Member whether he says that in the majority of cases those who are convicted by the courts are all innocent persons? Does he mean to say that?

DIWAN CHAMAN LALL: I never used the word 'majority'. I said that in a number of cases innocent people are hanged. If there is one innocent man who is hanged, even if you send one innocent man to the gallows, you are committing a crime against society.

Now, my hon. friend said, 'Why not sentence him to life imprisonment'? Now, I have been a prisoner, as you, Mr. Deputy Chairman, have been a prisoner. Many of my colleagues here have been prisoners. I do not think my friend, the Professor, has been a prisoner at all in any period of his life.

PROF. A. R. WADIA: Unfortunately.

DIWAN CHAMAN LALL: Unfortunately because if he had been, he would have changed his opinion. He would not have said this: I would rather that a man went to life imprisonment than he be hanged. I assure you if I were a prisoner and the choice were given to me to be hanged and killed rather than go to life imprisonment, I would choose being killed than choose life imprisonment. You do not know, Mr. Professor.

DR. R. B. GOUR: He is a prisoner of his ideas.

DIWAN CHAMAN LALL: We are all prisoners of our ideas. Otherwise there would not have been this particular dispute on the floor of this House. I should have thought that a measure like this would have obtained

the unanimous support of everybody on the floor of this House.

Now, let me take my friend, Mr. Pathak, who does not happen to be here just now. I am sorry he is not here now. He is a very eminent lawyer, a very well-known lawyer. And I was astonished to hear from his lips the statement that death penalty is a deterrent and that as a deterrent it must be employed. Surely, as an eminent lawyer, he should know that this matter has been gone into repeatedly not only here but in other countries, where they have had Royal Commissions appointed, Commissions appointed for enquiring into the matter of capital punishment as in Great Britain and Ceylon. And what have they found? In the Royal Commission's Report in England in 1953, they say to this effect that there is no clear evidence of any influence of the death penalty as a deterrent on the rate of homicides. There is no clear evidence of capital punishment being effective as a deterrent against the commission of similar crimes. Similarly, in many other cases it has been stated clearly and all the statistics show that deterrence has no effect whatsoever. I only wish that my learned friend had read the book Capital Punishment, edited by Grant S. McClellan, from which my friend, Shrimati Savitry Devi Nigam, quoted. He will find in this well-documented book all the evidence that he needs for the purpose of coming to a firm conclusion that deterrence is the last thing that affects the matter of murders being committed by individuals. It is not affected in any matter whatsoever. There are many countries, as my learned friend who spoke earlier said, where this has been abolished. The only countries in Europe, as far as I know, which have retained it are Great Britain, Spain and France. In France they use the guillotine, and a similar practice is employed in Spain. England recently tried to circumscribe the ambit of the death penalty and provides it now for only four types of crimes. One of them is killing a policeman on duty. The second one is repeated attempts

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of that nature. I have no objection whatsoever to the amendment moved by my friend, Mr. Mani, where he wants this particular matter to go before a Commission composed of judicial experts as well as Members of both Houses. I have no objection whatsoever to that. Let us go into this matter. Let us not say, as my friend, Mr. Bhargava, has said, that because the Sastras do not talk about the abolition of the death penalty, let us not have it.

SHRI B. N. BHARGAVA: I did not say that.

DIWAN CHAMAN LALL: Something to that effect. Nobody in India has said it. Therefore we must not assert this view.

SHRI SATYACHARAN: Rather I would say that there is explicit sanction for imposing death penalty on recalcitrants.

DIWAN CHAMAN LALL: Quite right, on recalcitrants. I hope it will not apply to my hon. friend, who is being recalcitrant over this particular matter. I hope he is giving his support in this particular matter and is not recalcitrant. He should be a little more concerned about the penalty that awaits him as a recalcitrant. The fact of the matter is that this is a subject of vital importance. There was my friend, Mr. Bhupesh Gupta, who talked about *lex talionis*, namely, an eye for an eye and a tooth for a tooth. The old, ancient society was based upon violence and the entire object of that society, in order to be able to exist, was to put an end to violence, or so circumscribe violence that violence would be minimised. Otherwise, its own existence was in danger. It is because of that, when a person committed a murder that it became a sort of free for all. Then, the relative of the murdered person had the right to take his revenge and if he did not take it, society took revenge by hanging the

man or killing him or guillotining him or taking action of a similar nature. An eye for an eye, a tooth for a tooth and life for life—that was the ancient society. Surely, in 1961 we have advanced far enough to know that that is not the principle that should govern society at all, not the principle of *lex talionis*, but the more humane principle of trying to do something to better the condition of human beings, so that they do not indulge in these crimes.

Now, there are three objectives in taking action against a criminal. The first objective is deterrence. As I have shown to you now, deterrence has no value whatsoever as far as the commission of these crimes is concerned. I think my friend, Shrimati Savitry Devi Nigam, mentioned the case of a pick-pocket, who was hanged and how in the old days they used to hang them publicly. In view of the deterrent value of hanging, they used to hang them publicly. Pickpockets used to be hanged. Little children used to be hanged. A child of thirteen who stole a spoon was hanged. A child of nine who stole a few coppers was hanged in those days. But we are not living in those days. We are living in 1961 and we know deterrence has no value.

The second objective of punishment is not deterrence, but let us say reformation. Now, if you want to reform a man, you can hardly reform a man who is already hanged. That is not a possibility. Now, if you want to reform a man, you can reform him by taking proper steps for it.

The third reason for punishment is retribution, taking revenge. And I suggest that this method of capital punishment, which has come down to us from the middle ages, and even earlier from the Roman times, is in the nature of retribution. You are taking not only your revenge, but some payment for the crime that the man has committed. It reminds me that you are not only punishing the man. You are punishing the whole

family. The widow who remains is punished. The children who become orphans are punished. Therefore, must you continue to commit the crime? My whole object is, do not continue to commit the crime, do not go on adding suffering to suffering for humanity, but try your best to reform the individual. Generally, as my hon. friends know, a murder is very seldom committed in cold blood. It is just done, but very seldom it is committed in cold blood. (*Interruption.*) There are not many people who commit dacoities, but some do unfortunately, but that is no reason to bring in capital punishment even for them. There is a chance for reformation even for a dacoit. For the worst individuals and eminent ones including my hon. friends who spoke against this measure, there is a chance for reformation, and it is for their benefit I am speaking now. I am quite convinced in my mind that other countries have tried this, many countries have tried this. In Europe, as I said, there are only three countries where capital punishment still remains, and that too in a limited manner. The rest of Europe has abolished capital punishment. In Latin America there is a large number of countries—I do not know if my hon. friend mentioned the countries—there is Guatemala, there is Cuba, there is Argentina, there is Brazil, all sorts of countries have abolished this. Am I to think that where they have for years, decades and generations abolished capital punishment and never wanted to go back to it again, they have committed a crime against humanity? I am amazed at the revengeful attitude of one or two Members of this House, how they are so eager and keen to see that the criminal is hanged, how they are eager to take their revenge against an individual. I am quite certain that hon. Members who in their own private lives are very humble, very meek and very mild suddenly become, when a subject like this crops up, the most militant individuals like my friend behind me. I am amazed . . .

SHRI K. K. SHAH (Maharashtra): They are not sentimental.

DIWAN CHAMAN LALL: I wish businessmen were also sentimental, a little sentimental, because they would also see the justice of what I have said. After all it is not a question of sentiment.

SHRI K. K. SHAH: I am also a lawyer.

DIWAN CHAMAN LALL: Therefore, as a lawyer he will agree with me, there is not the slightest doubt about it. As a sensible lawyer, he must agree with me. I have not the slightest doubt that as a sensible lawyer . . .

SHRIMATI T. NALLAMUTHU RAMAMURTI (Madras): There are vital edifices built on sentiment, where allegiance is built on sentiment. Are you going to deny that?

DIWAN CHAMAN LALL: I do not know where national allegiance comes in. I am quite certain that my friend over there who interrupted me is a great patriot and owes allegiance to her country as I do to my country. But where does the question of allegiance come in? It is a question of common-sense that comes in. It is a question of intelligence that comes in. It is a question of modernity, it is a question of civilisation, those are the questions which should be always uppermost in the consideration of this particular matter. I suggest, Sir, that in view of what has been said already, I do not think that there is the slightest basis for opposing this particular Resolution. I am quite willing, as I said, that public opinion should be asked about this matter, and I do hope that hon. Members who have given their voices in favour of this Resolution, including those who have tried to oppose it, will agree with me that the time has come when we must march with the times. Even though nobody in India has really seriously considered this matter, the time has come when we should really

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seriously consider it and take a decision which is in tune with the modern times and in tune with the ways of civilisation.

SHRI K. SANTHANAM: Mr. Deputy Chairman, the mover of this Resolution started with saying that she wanted to avoid all sentiments and base her case on pure reason. Sir, all my sentiments are for the Resolution but my reason is not convinced.

SHRI BHUPESH GUPTA: Let us go by your sentiments.

SHRI K. SANTHANAM: Sir, I disapprove of all killings, private as well as public, of men as well as animals, whether it is for pleasure or punishment, whether it is for food or revenge. But we cannot consider this question absolutely in isolation. Capital punishment does not stand alone. It is only one item of a scheme of punishment, and therefore we have to examine what exactly this philosophy of punishment is, whether we should support it at all, and under what conditions and subject to what limitations we should support it.

Sir, it has been said that penal punishment is either retributive or deterrent or reformatory. I think it is none of these at all. I do not think my friend, Mr. Chaman Lall, will think that sending a man to jail is reforming him. I have not come across any prisoner who, by being in jail, has been reformed, and I have watched the so-called ordinary criminals.

SHRIMATI SAVITRY DEVI NIGAM: On a point of information. I do not know if the hon. Member is aware that in all the prisons this reformatory system has been started and introduced, and especially in U.P. in almost cent. per cent. of the prisons correctional and reformatory methods being applied.

DR. R. B. GOUR: Let us not quote U.P. There is no reformation there.

SHRI K. SANTHANAM: I do not believe in the forcible reformation of the human soul. Force and reform cannot go together. They are spiritually contradictory and inconsistent. Therefore, whatever reformatory methods they can apply, they can only degrade individuals. Every prison degrades individuals unless we feel that in spite of its degrading effect imprisonment is socially necessary, there is no justification at all for punishment.

SHRIMATI T. NALLAMUTHU RAMAMURTI: Are you against compulsory education? People are being compulsorily educated.

SHRI K. SANTHANAM: If I thought education was a punishment, I would be against compulsory education. (Interruption.) I think my friend should allow me to develop my argument. What exactly is the justification for punishment? It is to enforce the rule of law. We want every citizen to have some kind of social expectation as a result of social actions. It is to fix responsibility for actions. Sir, the question whether fear of punishment and expectation of discomfort should come to the aid of public order and morality is certainly a question of high moral philosophy. Ultimately if we adopt the Gandhian principle of non-violence, it is wrong to have any truck with any kind of fear or any possibility of force and discomfort. We should be prepared to say: Let a criminal come and murder me or my family or any member of society, finally his own conscience will prick him and he will get reformed in his own way. If we are prepared to adopt that extreme philosophy, I have nothing to say, and of course, then capital punishment automatically ceases to exist. But we are living in a society in which fear of punishment and expectation of discomfort have a vital place. Otherwise there is no question of rule of law, there is no society, there is no State, there is no

Government. Therefore, assuming that people should expect some discomfort, some punishment, if they infringe the law, then certainly the question arises as to what kind of punishment, what kind of discomfort they should expect. Now, Sir, is it absolutely necessary or is it absolutely right that the person who goes about to commit a deliberate murder should feel secure that his life will be considered so sacred by society that he can commit that murder with impunity? Should he feel that security? That is the point. It is not a question of whether he should be put to death by hanging or otherwise. Where a man goes about doing heinous things, raping children, committing murder, upsetting society and committing arson, should he feel so secure that the whole society considers his life so sacred that he will not be put to death? I think, Sir, that security cannot be given to any individual. But under what circumstances, under what limitations and in what manner this capital punishment should be exercised are all matters on which we should be able to think dispassionately. I agree that in regard to crimes of passion and others, there should be mitigation, there should be more mitigating circumstances and the circumstances under which this capital punishment should be inflicted may be restricted as much as you like. And I also strongly protest against the brutality of the punishment. That is no argument for or against capital punishment. When I read the Trial and Death of Socrates, I was amazed at the civilization of the Greeks. Of course, they made a hopeless and tragic blunder in putting him to death. But they put him to death in a proper, civilized manner. They gave him poison and the whole scene looks so beautiful. In the same way, today medical science is so perfect that there should be no fear at all and if capital punishment should be inflicted, it should be inflicted in private and it should be inflicted in a manner which does not cause pain, which is consistent with our human feelings.

SHRI SATYACHARAN: Is the hon. Member in favour of capital punishment? It is all a question of the variation of the process. If it is not by hanging, it is by giving a cup of poison.

SHRI K. SANTHANAM: No, it can be by an injection; it may be by giving a heavy dose of an anaesthetic.

SHRI SATYACHARAN: What you said was in favour of capital punishment.

SHRI K. SANTHANAM: Yes, Sir, under certain circumstances. A person may be a pervert. Nothing but death will secure society against that man. Then I say that it is a fit case for capital punishment. I say that no man should feel so secure that whatever he may do in this world, whatever crimes he can commit against children or women, against our society, he should feel that his life is safe. No man's life is more sacred than that of another and no man should be allowed to feel that in the penal law system his life will be secure irrespective of all consequences. He must be prepared to take the risk that, under certain circumstances, society will not consider his life sacred and he should face death. That feeling must be there. How far it is deterrent or not are all minor questions. We can never calculate how far the punishment of death is deterring people from killing. Why do we want to punish them? It is because the existence of this punishment creates an inhibition; the punishment creates a climate of social opinion. It is for the creation of social opinion that all the penal laws are justified, all punishments are justified. It is not because B is punished that C is deterred but C is brought up in a climate of social opinion in which he thinks that if he kills, he is likely to be punished and this feeling somehow deters a large number of people from committing crimes. We are not perfectly civilized, we are only partially civilized. We are partially animals. We shoot a mad dog. Similarly, if a

[Shri K. Santhanam.]

man becomes morally mad, morally irresponsible, nothing can be done with him, other than that we must shoot him, in the same way as a mad dog is shot. But at the same time, let us get rid of the feeling of vengeance and of all kinds of barbarism with which this is associated. When he agreed to put to death a calf, Mahatma Gandhi said, we are entitled to kill provided the feeling behind it is one of mercy, one of love.

Sir, we can put certain bad criminals to death without feeling any antagonism against him and simply because life is valueless to him, and his life is valueless to the society. In those circumstances, it is right that the society should have the power to put a man to death. It should not get rid of this punishment. But, Sir, I agree that it should be exercised only in unavoidable circumstances. I go further and say that it should be confirmed not only in the High Court, but the death sentence should be confirmed by a Bench of not less than three judges of the Supreme Court. It is only then that the man should be put to death. Let us take all kinds of precautions but this ultimate penalty we should have.

We are objecting to judicial murder. I sympathise with the arguments but we do not object to the police going out and shooting people. We were willing the other day to march to Goa and kill the Portuguese in order to get Goa. I do not say that it is wrong. I am not claiming that. But we are willing that we should commit murder for many purposes. But when it comes to hanging a criminal who has been convicted of grave crimes, we become ideal proponents of exalted human feelings. Sir, is there any person today, is Diwan Chaman Lall or Mrs. Nigam, prepared to say that he or she will allow anybody to come into India, any Pakistani for hostile purposes, and will not kill him? Why should he be

killed? Is he a greater criminal than a murderer? How is it right to kill him? No, not on the point of principle of non-violence. But we want to preserve our society and we are prepared to kill in order to preserve our independence and our culture and on the same grounds, in order to preserve our society, it may be right—it may not be wrong—to kill judicially particularly individuals. Sir, with these words, I hope that the hon. Mover will not press this Resolution but press for proper penal reforms.

SHRI M. P. BHARGAVA (Uttar Pradesh): Mr. Deputy Chairman, the debate has turned into a very controversial one. I must congratulate my respected friend, Diwan Chaman Lall, for the great advocacy he has given to the Resolution. He is a reputed criminal lawyer and he has brought out all kinds of arguments in support . . .

DR. R. B. GOUR: What does he mean by saying criminal lawyer?

SHRI M. P. BHARGAVA: You know what it is meant by criminal lawyer. And he has brought out all kinds of arguments to support his cause. I want to congratulate Shrimati Savitry Devi Nigam also for the great study that she has done of the subject. If the House will allow me, I will give a little history about this subject.

Only about two years back on the 25th April, 1958, a Resolution was moved in this House by our friend, Shri Prithviraj Kapoor. The Resolution read:—

"This House is of the opinion that the Government should appoint a Committee consisting of Members of Parliament and other persons having a special knowledge of the subject to examine the question of the abolition of capital punishment in India and submit a report thereon."

That Resolution was debated in this august House for one full day and it

was even put to vote. It was thrown out by a big majority of the Members present and voting at that time.

DR. R. B. GOUR: Mr. Deputy Chairman, it was talked out, for the information of the hon. Member.

SHRI M. P. BHARGAVA: Well, probably, my friend is not aware of it. He has not read through the whole proceedings. If he goes up to the end, he will find that it was not talked out. Shri Prithviraj Kapoor had replied, and it was put to the vote of the House. Shri Prithviraj Kapoor had his say in reply. So much about that.

That was the condition in the country at that time, in 1958. Now we are in 1961. May I ask my learned friends, Diwan Chaman Lall and Shrimati Savitry Devi Nigam, to point out to us whether any circumstances have taken place in our country since that Resolution was thrown out to enable this Resolution to be brought before this House again, whether crimes in the country have in any way gone down and whether a social atmosphere has been produced in the country for the abolition of capital punishment? If we look to the present situation, we find that the circumstances are entirely different in India as well as in some places abroad also. You have heard about two days back of the ghastly murder of our Secretary in Canada. May I know what you would like to do with the murderer of our Indian Secretary in Canada?

SHRIMATI SAVITRY DEVI NIGAM: I think he was an insane man.

SHRI M. P. BHARGAVA: 'Insane' comes in handy for everything.

DR. A. SUBBA RAO (Kerala). If he is proved an insane man, he will not be hanged.

SHRI M. P. BHARGAVA: Well, that question of insanity was also raised at that time, and the then Home

Minister had something to say about it. I shall just quote him:—

"If a person is proved to be insane, he is not sentenced to hanging; he is kept under observation and he is often released or given asylum in the proper place."

And the Chairman was pleased to remark:—

"Sanity is abnormal. Insanity has several degrees and we are all victims of it."

Now that is about sanity and insanity. You cannot come to the rescue of every criminal by saying that he was insane. What would you have done to the murderer of the Father of the Nation. Somebody took it into his head to murder him. And what would you do, may I ask Mrs. Savitry Nigam? What would you like to do with that man? Yesterday we were talking about that Naga Leader. He was shot at in a most barbarous fashion in his own town and later on he succumbed to the injuries. Was it not an intended and pre-planned thing, his being shot at? Will you say that he was insane and so he did it? These are all things which require consideration. We have not to be washed away by sentiments. If I may say so, Mrs. Savitry Nigam's Resolution looks very innocent and at first sight everybody would like to support it and he will be considered an abnormal man who opposes it. It is so innocent because it does not say anything else except that capital punishment be abolished. Without taking into consideration the circumstances in the country, without taking any other thing into consideration the Resolution has been brought forward. Well, I will be the happiest man if circumstances can be created in the country—by social education—where we can come to that decision that capital punishment is no more required, that it can be done away with. Create conditions and do away with it—I will have no objection. But today what do we find everywhere? Crimes

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are increasing. Murder has become a matter of play almost. For political reasons there are murders; for land disputes there are murders; for other things there are murders, and murders everywhere. Look at U.P. In one district there have been 17 murders within a very short period. In Punjab there are murders almost every third day. In Maharashtra murders are taking place for very trifling reasons. Now if that is the position in the country, how can you do away with capital punishment? In fact, I will go a little further and will suggest that capital punishment should be awarded in some other cases also, where the people are anti-national or where the people are a nuisance to society. Now take the case of adulteration in medicine. You fall ill and you take a medicine in good faith, that it will cure you, and now, when that thing is adulterated, what would you like to do with the people who do so, or take to adulteration in food? Now these are most heinous crimes which go without notice at the moment, because our laws are such. So I would even plead that capital punishment should be awarded in cases of adulteration of medicine and adulteration of food if it is proved beyond doubt.

Now my friend, Mr. Pathak, made it out very clearly and very ably—a great lawyer as he is—that capital punishment is awarded in most cases where safety of the society will be jeopardised if the accused is let loose. So I do not think anybody will disagree with that approach.

Then my friend, Mr. Bhupesh Gupta—he is here—wanted an experiment to be made by abolishing capital punishment, to try it . . .

SHRI M. GOVINDA REDDY (Mysore): Yes, capital punishment of death by hanging, not by shooting.

SHRI M. P. BHARGAVA: Well, that was his proposition that an experi-

ment should be made. Now I will again quote from the speech of the then Home Minister while a discussion of this subject was on. He said certain things and then he said:—

“So, are we going to make an experiment which will result in the deaths of many more persons through violent means and then learn a lesson like others, and then revive capital sentence? That would not, I think, be a proof of our wisdom. We must learn from the experience of other people.”

He was referring to those countries where capital punishment was first abolished and then reintroduced for reasons which Mrs. Savitry Nigam very lightly brushed aside and said that it was for political reasons that some countries had to bring that back on the statute book. I refute this statement that in all the places it was brought back for political reasons; it was for reasons which were very obvious, namely, that after the abolition of capital punishment in those countries murders and other heinous crimes went up and the situation came to a pass where it was impossible for them.

(Interruption).

You have had your say. You have the right of reply. Now let me have my say.

SHRIMATI SAVITRY DEVI NIGAM: I just want some information. Which countries is the hon. Member referring to where there had been an increase in crime?

SHRI M. P. BHARGAVA: Well, I am referring to England, the country which you have in mind . . .

SHRIMATI SAVITRY DEVI NIGAM: That is wrong.

SHRI M. P. BHARGAVA: . . . and you say that it was a question of the Whigs and Tories altering, for political reasons, the provision of the capital

sentence of death for murder. It was not that; I may tell you with all the emphasis I can command that it was not for that reason that death sentence was reinstated.

SHRIMATI SAVITRY DEVI NIGAM: That is wrong.

SHRI M. P. BHARGAVA: It was because the crimes went up; it was a situation where they felt that the capital punishment must be brought back.

Take the case of Ceylon—a heinous crime was committed by somebody—and what you like to do with that person? The Prime Minister of the country was assassinated. Would you like that person to be left free? Well, it is not for political reasons if they reimposed the capital punishment in that country. Every nation has some pride. They want to protect their rights, and if the Prime Minister of the nation is murdered, is assassinated, they have every right to feel indignant and bring back some punishment which will meet the ends of justice to the murderer.

Now there are two amendments which have been moved—one by my friend, Mr. B. K. P. Sinha, whereby he wants that at the end of the Resolution the words “and for the rationalisation of laws prescribing capital punishment” be added.

Well, as the House is aware, a Law Commission is sitting and is going through the laws from time to time, and I do not think there is any necessity for any other committee or any other commission to go into this question or to consider the matter. Then Mr. Manj moved his amendment for the setting up of a Commission. As I read to the House a little earlier, the same proposal was brought forward two years back and was thrown out. Moreover, the argument about the existence of the Law Commission holds good in this case also. This question can be referred to the Law Commission and they can be asked to give their opinion in the matter.

Sir, Prof. Wadia has opposed the motion but he has his doubts about the Judges and juries going wrong and giving capital punishment in wrong cases. Prof. Wadia is probably aware that there can be no death sentence by hanging unless the High Court gives its approval to the judgement of the lower court. Therefore, there is the provision that the High Court has to confirm the death sentence. Then, there is the Supreme Court. And finally there is a petition to the Governor and a petition to the President in all these cases. So, the chances of wrong execution are minimised by all these safeguards. I do not think there are several cases in sight where wrong people have been punished. Of course sometimes special circumstances may be there. An innocent person may be hanged because of the force of circumstances, because of the evidence produced against him and all that. That is the fault of the law if it is there and the remedy is not abolition of the capital punishment but reform of laws wherever they are thought necessary.

Sir, I find that no case has been made out so far for the abolition of capital punishment. On the contrary, conditions in the country are such that this cannot be removed at present. The measure was debated two years back. It has been debated fully today and I hope the House will throw out the proposition before them.

PANDIT S. S. N. TANKHA: Mr. Deputy Chairman, I am sorry I have to oppose this Resolution in spite of the fact that the honourable mover would have liked me to support it.

SHRIMATI SAVITRY DEVI NIGAM: If you are not convinced, do not.

PANDIT S. S. N. TANKHA: Sir, I would compliment her on the study of the subject which she has done and on the manner in which she presented her case. But I am afraid that the conclusions which she has drawn from the effect of abolition of the death penalty from countries in Europe or America will not be applicable for the

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determination of this question in our country. In comparison to our country those countries are very small and I do not know exactly what the incidence of this crime in those countries has been, whether it is in comparison at all with the incidence of murder in our country. My friend here tells me that the incidence there is 4 in a million while it is 26 in a million here. So a comparison with those countries does not hold good in the determination of this question in our country.

Unluckily, Sir, we in this country are still steeped in religious bigotry and superstition. Every day we see so many cases in which the life of another person is taken because of a certain belief by the person that his religion demands that the non-believer or believer in any other faith be killed and that if he commits such a crime he would be rewarded in heaven.

Then, Sir, there is a superstition that the Gods or Goddesses would be pleased if a certain person, even if it be the child of that very person, is killed. In such a state of affairs where all these conditions prevail, can we make a comparison of this country with those countries which are much more advanced and educated, and which have much less superstition among its people than among our people?

Life, Sir, in India is very cheap and the man who murders for his personal gain or vendatta does not think that he has committed any wrong whatsoever. Then, I do not dispute the fact that the world is advancing towards the goal of reform of the criminal and modern penologists advocate that rather than the punishment being retributive it should be reformatory. This principle has been partly or to a great extent accepted in our country too in offences of minor character or in cases of children or women where they are put in the prison for a particular period. The children are sent to reformatory school and given educa-

tion there. In the case of other persons also we find that instead of being placed in the prison they are let out on parole and placed under a guardian for a particular period. So, we are taking all these steps in the reformatory direction but in cases where a murder is committed, it would be wrong on our part to let the guilty man go only because we think that reformatory character of the criminal should be adopted. What guarantee is there that after he has committed a murder, and if instead of giving him the death penalty he is placed in a reformatory jail, on his return from jail he will not commit another murder? There are so many cases in which hardened criminals, even though they return after several years, commit the same crime even that very day. It surprises me to hear an eminent lawyer like Diwan Chaman Lal state before you that innocent persons are given the penalty of death in a very large number of cases. I do not remember what his actual words were, when I put a question to him, but he did not tell me if that is what he intended to say.

SHRIMATI SAVITRY DEVI NIGAM:
It is a fact.

PANDIT S. S. N. TANKHA: Certainly not. I deny it absolutely.

AN HON. MEMBER: It is just the other way.

PANDIT S. S. N. TANKHA: There may be one or two cases in a hundred or a thousand cases where a wrong person is punished, but to say that in a number of cases, during his criminal practice, Diwan Chaman Lal has found that courts have convicted innocent men or women to death is absolutely a wrong statement and I feel that no man of his integrity and eminence of practice should have made such an incorrect statement. Sir, in support of her Resolution the learned mover has relied upon the observations of the Royal Commission of 1953. I do not

know whether she has tried to pick out only such passages from it which suited her convenience or she has made a real effort to see what the Royal Commission really has said in its Report. I took the book from her last night and went through it and found that the Royal Commission has clearly stated that they were not entrusted with this question. There was no term of reference authorising them to determine whether death penalty should or should not be retained.

SHRIMATI SAVITRY DEVI NIGAM: I have not quoted from the Royal Commission report.

PANDIT S. S. N. TANKHA: They themselves stated that they were not authorised to go into this question.

SHRIMATI SAVITRY DEVI NIGAM: They have stated very emphatically that capital punishment has no deterrent effect on the number of criminals. Can you deny that?

PANDIT S. S. N. TANKHA: Yes, I deny that. They have specifically stated in Chapter 10—I am sorry that I do not have the book with me now but they have stated—that is true that death penalty has a great deterrent effect but we have no evidence before us to conclude whether on the removal of this death penalty the incidence of murder will increase or will not increase. That is what they have stated. They have nowhere stated that murder has gone down or will go down on the abolition of the death penalty. They had also stated that in India they found a very large number of murders taking place and in such circumstances the courts should see what method they should adopt for not inflicting as large a number of death sentences as may be consistent with the incidence of the crime. That is what they said.

SHRIMATI SAVITRY DEVI NIGAM: That is a good support for abolition.

PANDIT S. S. N. TANKHA: They have not supported but have stated "that they recommend this, but merely recommend that some steps should be taken by the Government whereby instead of inflicting death penalty in all cases, they might try to minimise the number of death penalty cases by providing some other punishment or form of punishment." That is what they said. In our penal laws we find that there are already several exceptions to the crime of murder. For instance where a murder is committed in a sudden heat of the moment, in that case, no death penalty is given. We also find that children or adolescents of the age below 18 are usually not sentenced to death by courts except in very special cases. I am aware of the fact that one or two death sentences have been awarded in the case of adolescents but that has been where it had been found that such persons of 15 or 16 or 18 were specially cruel and they did it in a premeditated manner, then alone death penalty was given to them. Thus the Government has provided a machinery whereby death sentences will not be invoked in such cases. In practice there is also a formula by which women in most cases are not punished or awarded a death penalty. We have therefore ample safeguards to avoid death penalty. As some other Members have stated, provisions of the law require the report on each murder case being brought before a High Court for confirmation and that is enough to give the guarantee that wrong persons will not be punished. Further, we find where High Courts have inflicted death penalty, criminals are allowed to come before the Supreme Court. The Supreme Court goes into their cases and determines whether the person is a culprit or not and whether instead of death penalty, the lesser penalty of transportation for life can be awarded. There is also the provision of the right of mercy to the Governor of a State and the President of India under our Constitution. So we have ample opportunities to and safeguards to see that no

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wrong sentences are awarded to innocent persons. But in spite of all these precautions it is possible that one or two innocent persons are hanged just as one or two offenders go scot-free in spite of having committed the murder. But this does not justify the view that the death penalty should be done away with. Everybody has said, at least most people have said so, that if the death penalty is removed, there will be a greater number of murders in the country and I am afraid that is the correct view and that is also my view. My hon. friend, the mover calls this a childish fear but submit that this is not at all a childish fear but is a fear based on greater experience by a person who sees how the world moves, who has himself conducted so many criminal cases and who has a good knowledge of all these facts. It is based on that that I am of the view that the death penalty should not be abolished in this country at the present stage.

DR. R. B. GOUR: Mr. Deputy Chairman, I feel that we have had enough discussion on this and this is the second time that we are discussing this Resolution. Therefore I move:

"The the question be now put."

MR. DEPUTY CHAIRMAN: The question is:

"That the question be now put."

(After taking a count)

Ayes : 6

Noes : 15

The motion was negatived.

SHRI J. C. CHATTERJI (Uttar Pradesh): Mr. Deputy Chairman, Sir, the Indian Penal Code was made under the guidance of Lord Macaulay in 1860 and in 1872 the Indian Evidence Act was made under the guidance of Sir James F. Stephens. For these hundred years, a full century, this Penal Code has been working. There has been some changes in a constitutional way but the whole thing is there. There are 611 sections in the

Penal Code and out of them there are only 3 sections which give the capital or death sentence. One is section 121. That is rather a political section. When there is a war against the State, the persons waging 4 P.M. the war may be given a death sentence. The other two sections are section 302 and section 303. Section 302 is the real section for capital sentence. Under section 303, a man who is undergoing life imprisonment in jail, if he commits a murder, then the only sentence for him is the capital sentence. And that comes under section 303. So these three sections are there. For our purpose, section 302 is the only section that is applied for giving death sentence to a person who has committed murder.

If we go to the principle of criminology, we see there were two old methods as was mentioned here during the discussion. There was the method of taking revenge, an eye for an eye and a tooth for a tooth. That no longer exists in civilised countries. There is the other principle of checking crime for the future. There are two more principles. One is to do social justice. When a criminal is punished it is not as if an individual is giving the punishment to another individual. The man is not considered fit enough to live in society and he is such an element that he is a danger to society and so in that case, the man is given capital sentence. And then there is the reformistic idea which says that even if a man commits a heinous crime, he may be given a chance to live and reform himself and live in society. These are the principles. But what do we find in practice? The hon. Member, in whose name also the Resolution came before the House, has, when delivering his speech, made a big case for the abolition of capital punishment. He even vehemently attacked two hon. Members,—Mr. Pathak, who is a very eminent lawyer of India, and Prof. Wadia. But what was his substance? He accuses them of not having certain experience, the per-

sonal experience of living among criminals that they had not been to Jail. If that be the criterion, I suppose there are few persons in this House who can compete with me, because I have spent nearly a quarter of a century inside prisons. Not only that, I have mixed with and I had occasions to mix with the worst criminals, because when once for our political rights we had undertaken hunger strike in Jail, the authorities then were so very vindictive that they classified us as habitual convicts. I was myself a lifer, a life sentence prisoner and therefore I had the occasion to live among hardened criminals for some years. And what has been my experience? These hardened criminals had full confidence in me. In Agra Central Jail, when I was living in a cell, there were many hardened criminals near about that cell. One day, one of them told me in confidence, "Tomorrow is the parade day and I shall strike the Superintendent". I tried my utmost to persuade him not to do so. I asked him, 'What will you gain thereby? You will give him a slap, but in return you will be beaten brutally. Not only that, afterwards you will be given caning, that is to say, whipping, which is the worst punishment in a Jail'. But the man would not hear me and next day, during the parade, he got the opportunity to strike the Superintendent and he gave him a single slap. But what was the result. When he was being taken to his cell, I saw he was bleeding profusely. Later on he was also given thirdly stripes. Such is the psychology of criminals. In the same Jail on another occasion, another person approached me and said, 'Tomorrow is the visit of the I.G. of Prisons and on that occasion I shall attack the Head Jailer'. This Head Jailer was an Anglo-Indian and not a very bad man. Well, this prisoner was determined and he would not hear me and he did it and as a result he received severe beating and whippings. Such is the psychology of criminals. Recently there was a case in the district of Lucknow from where I

come. A Congress man there had given evidence in a court, true evidence, against some persons of the locality. What was the result? His three-year old son was taken away one day and done to death. After that, the child's carcass was being thrown into a well. Those were Mohammadans and the Congressman was a Hindu. Just at that moment a Mahammadan lad of sixteen saw them from a distance and he asked them, "What were you doing there?" The men got alarmed. They took hold of the lad also and he was done to death and thrown in. This is only a recent case. Such persons, when they commit such heinous crimes, can they live in our society? Is society safe in such circumstances? I say emphatically that it is not. Such persons deserve capital punishment. In this case, both of them have been hanged and it is good for society. Of course, the modern idea of reformation is a good idea. Along with the progress of society, this idea is also being developed and is making strides. That is the reason why the Mover of the Resolution could quote so many things about so many small countries on this subject but in a country like India, in our social circumstances, murder is a daily affair, almost a daily affair in our society. There was a news item the other day in the papers of an entire family being wiped out in Shahjahanpur District. Such things are happening almost daily. Under these circumstances are we to adopt the methods of other countries, countries which are small but which are very much advanced in civilisation. They can afford to do things like that but we cannot do the same thing. I was astonished to hear Diwan Chaman Lall saying that in his forty years' experience as a criminal lawyer he came to know that almost all or the majority of cases where people were hanged for murder happened to be innocent persons. That is a thing which is hard to believe. He spoke of these things perhaps in a fit of sentiment. It cannot be the experience of a crimi-

[Shri J. C. Chatterjee.]

nal lawyer of forty years' standing and I cannot believe it. Very fine quotations were read out by Mrs. Nigam but they are not for our country, as Mr. Pathak said, and that is the correct fact. We are not living in a society where the crime position is such that we can just now abolish capital punishment and live peacefully. Even with this provision in the Penal Code, life of citizens especially in the villages, is absolutely uncertain. That is the reality.

SHRI BHUPESH GUPTA: As far as the hon. Member's case is concerned, the Kakori case, one stray bullet went off and four people were hanged.

SHRI J. C. CHATTERJEE: I am coming to that. In that conspiracy case four persons were hanged. It is a very serious fact no doubt. There was the Kakori train dacoity in which one passenger, a Mukhtyar was killed. He was travelling in the train and his wife was travelling in the ladies' compartment. He came out of his compartment to see his wife even though the passengers had been warned not to come out of the train. His wife, on seeing him, asked as to why he had come out. Somehow this man died and nobody knew how he died. Long afterwards, his dead body was found in the fields. In the judgment also, the Judge wrote that it was not known as to by whom the shot was fired. All the same, four persons were hanged. It was a political case, a case of conspiracy to wage war, to deprive the King Emperor of his sovereignty of British India. It was a fight between a nation and a nation. In the Lahore Conspiracy case in which Sardar Bhagat Singh and his friends were hanged, there was no law. Under the Penal Code, there was no provision for trial *in absentia*. An ordinance was passed and *ex parte* judgment was given and three persons were hanged. This happened in the British days. It was a fight between a nation and a nation but it is not a

common thing. My friends should understand that.

SHRI K. K. SHAH: Mr. Deputy Chairman, it is a good thing that one who is not a lawyer has been able to study a question which has been very hotly debated all over the world. Sir, when we talk of murders, we must remember that so far as our law is concerned, every killing is not homicide and every homicide is not murder. Homicide must be culpable and culpable homicide must amount to murder. Then and then alone is the capital punishment awarded. For example, if a murder takes place, unless it is culpable homicide without grave and sudden provocation, it is not murder. If culpable homicide takes place for defending one's property or body, it is not murder. Therefore, when we talk of capital punishment, we must remember that the framers of criminal law took into consideration all the aspects. For example, if a man is insane and commits homicide, it is not murder. Therefore, this punishment is a question of degree, and, in spite of all these exceptional circumstances, if a man in cold blood, knowing what he does, having enough time to think about it, still chooses to commit murder, the question is whether it is desirable for the society to have such a man amongst the society. My hon. friend, Diwan Chaman Lall, asked, "What crime save his children committed? What crime has his wife committed"? May I ask him a question? Is he obliging the wife and children by forcing on them a criminal who in cold blood commits a murder and who has developed a mentality from which he cannot get out? Is he obliging them by forcing them to associate with such a man? When you talk of capital punishment, please remember that capital punishment is not awarded in a number of cases even though life is taken. Such cases are very rare but they depend upon circumstances.

SHRI BHUPESH GUPTA: Why? This man may be in jail for life. He may be awarded life imprisonment

and his wife may be separated for twenty years.

SHRI K. K. SHAH: I am coming to that, whether life imprisonment is desirable or whether capital punishment is desirable. I shall touch that point. All along, the argument has been as to what will be the effect of punishment and the argument has not touched the question of necessity of punishment. Unluckily, Mr. Pathak, in fifteen minutes had to finish his arguments just as I have got to finish my argument and it is not possible to do justice within that time, but he did touch the point and the point was whether law and order should be maintained, whether society should develop a psychology where a man can go scot free after committing a murder and say, I will come back after some years. *Mens rea* is a very important ingredient of murder and unless *Mens rea* is proved, no capital punishment is awarded. In all these cases, *Mens rea* is important. I was surprised to find my hon. friend, having forty years' practice, making a statement in all seriousness that in majority of cases innocent men have been hanged. Either there is something wrong with the man who conducted the case or it is an aspersion on the judges. It has never happened. I have also been in practice, all along criminal practice, for 30 years and without boasting I can say I had good practice and it is very rarely that . . .

SHRI BHUPESH GUPTA: Successful?

SHRI K. K. SHAH: . . . that an innocent man is hanged. I won't say that an innocent man is not hanged. Sometimes the depraved police mentality is responsible for cooking up certain evidence but that happens in very rare cases. In 90 per cent. of the cases it is found out. Now, I will give the type of cases in which a man is hanged so that you can decide for yourself whether it is safe from any point of view to allow them to escape this punishment. They have been

talking of reformation. Reformation is possible only up to a point; unless science so develops itself that you are able to peep into the mental working of a criminal you cannot do that. There are criminals who, when they look at a woman, lose all their sense; there are criminals who, when they look at a good thing even on a child, will commit murder and take that away. This is criminal mentality. When you talk of murder you are not thinking of a real criminal. I can give you the type of cases which are typical.

SHRI BHUPESH GUPTA: Kleptomaniacs are not criminals.

SHRI K. K. SHAH: Take the dacoits. My hon. friend is from Calcutta, and he knows that there are gangs in cities. If one gang murders the member of another gang, whatever happens a man from the other gang will be murdered unless the police catches hold of them in the meanwhile. Now, take the murder cases where witnesses have to give evidence. The moment you remove capital punishment, every witness will be murdered by these gangs and it will be very difficult to get evidence. If these gangs are there the people will be afraid to come and give evidence. Once you remove capital punishment no witness will be safe in the witness box. The law of jurisprudence provides that unless you bring home the guilt of the accused beyond a shadow of doubt, he gets the benefit of doubt. Absence of evidence will give the accused the benefit of doubt. You are called upon to prove by positive evidence the guilt of an accused person in a murder trial or a rape trial or in a case where a man has been responsible for 20 murders. There are cases of knifing and gangsterism and in such cases it is difficult to get evidence. What do you propose to do? It is all right to say that capital punishment should be done away with. That is why I told Diwan Chaman Lall with the high regard that I always had for him and the Lady

[Shri K. K. Shah.]

Member who had studied these cases so well that they should take this aspect into account. We have been dealing with this question on sentimental grounds and not on grounds of reason. You have to deal with the development of a particular psychology in the society in which we live. Do you want a psychology to be developed in the society in which any man can feel, 'If I commit a murder and even if there is a conviction I can come back after 20 years and have my revenge?'

SHRI J. S. BISHT (Uttar Pradesh): After ten years; it is only 14 years.

SHRI K. K. SHAH: If you are going to sentence a man for life, still he likes to live. Instead of life imprisonment it is better that he dies. Why do you take that responsibility?

SHRIMATI SAVITRY DEVI NIGAM: That is the business point of view.

SHRI K. K. SHAH: I do not want to be harsh because you are a lady. But if you want a reply, I will say that it is not in your way that the world is managed. The world is a world of hard-hearted people. It is good that there are good people like you it is good that there are sentimental people; it is good that there are people who take life very easy but life is not so easy as you are thinking. I will give a few cases so that it will be possible for my friends to find out whether it is right to deal with these cases in such a soft manner. Take the case of a wife, these are actual cases, not something out of imagination. Because she is in love with somebody, if she takes divorce she does not get the property of her husband and the only way to enjoy the property and the man is to kill the husband, poison the husband. What do you want to do with this case? Do you want to create an assurance, 'All right, go to jail for 20 years and come back and have the man and the property?'

SHRI T. S. AVINASHILINGAM CHETTIAR (Madras): Man may be there; the property will not be there.

SHRIMATI SAVITRY DEVI NIGAM: All that will disappear.

SHRI K. K. SHAH: Now, take the case of professional murderers. Such cases are well known because they have come up to the High Courts and doctors will forgive me; it does not apply to all the doctors. Doctors have been utilising their knowledge of medicine for the purpose of committing murders. Is it not cold-blooded murder? Is it not a depraved mentality? We are dealing with that depraved mentality. We are not dealing with human being. When they talk of reformation and other things they forget that they are not dealing with the human being but they are dealing with a sort of mentality which is so depraved that in spite of the several exceptions that you find in section 302 the court is obliged to come to the conclusion that the man is not safe for the society. In spite of all these exceptions if they feel that it is not in the interests of the safety of the society it is not in the interests of the development of a right type of psychology in the society, it is not in the interests of maintaining certain standards that this man should be in the society, then unless you make out a strong case you cannot think of taking away this capital punishment. Take other cases. Take the case of a traitor who acts as a spy. Now, can you say that this man does something against his country out of grave and sudden provocation? Can you say that he is innocent? The man has been plotting for ten years, carrying information from your country as a spy, very valuable information which ultimately might result in the death of hundreds of thousands of people in your country. Is that something wrong with the human being or is that a type of mentality which can never be cured? Those professors of reformation and humanity and human sympathy like my Lady friend who is prepared to take up the responsibility of reforming the whole world—I hope she feels equal

to the task—propose to propagate something without knowing the consequences of what they are doing. You must be prepared to take the responsibility for what you are doing and it is not so easy. Those who have done away with capital punishment have done so at their risk. Take the case of illicit distillation. We have been enforcing prohibition. Whoever gives evidence in a prohibition case, the moment he goes out of the court he is murdered. And this happens outside the court in the court premises. It is well known to those who have been concerned with prohibition cases. You remove capital punishment and there will be no witness to give evidence at all and it will be safe for lawyers to appear for criminals who can go scot-free without any evidence. When they were talking of retribution, when they were talking of deterrent punishment, when they were talking of reformation, they were only talking of what should be done with a criminal. They never thought about the depraved mentality behind the whole thing. Sir, I hope I have made out a case and therefore my hon. friends will be good enough to withdraw this Resolution.

ज्ञानी जेल सिंह (पंजाब) : उपाध्यक्ष महोदय, लेडी मेम्बर के रिजोल्यूशन पर जो कुछ मैं कहना चाहता था, उसके बारे में यहां पर काफ़ी कहा जा चुका है। मगर कुछ बातें अब भी बाकी रह गई हैं, जिन्हें मैं आपके सामने अर्ज करना चाहता हूँ। सोसाइटी में जो कानून बनते हैं अगर उसका पहले से रिवाज न हो तो वह कानून देर तक नहीं ठहर सकता है। जब भी कोई कानून बनाया जाता है तो पहले लोगों का दिमाग उस कानून को मानने के लिये तैयार करना पड़ता है। हर जगह पर एक ही बात भी लागू नहीं हो सकती है। एक मुल्क के अन्दर बहुत से इलाकों में फ़र्क होता है। अगर हम किसी दूसरे मुल्क की स्थिति को अपने मुल्क की स्थिति के साथ मिलायें या वहां के कानून को अपने यहां पर लागू

करें, तो मैं इस चीज़ को मुनासिब नहीं समझता हूँ इसलिये मैं यहां पर इस चीज़ की डिटेल् पर नहीं जाऊंगा कि बहुत से मुल्कों में सजायें मौत को ख़त्म कर दिया गया है हो सकता है कि उनकी हालत ऐसी हो जिसकी वजह से वहां पर सजाए मौत को ख़त्म कर देना पड़ा। लेकिन जहां तक हिन्दुस्तान का ताल्लुक है और जैसी यहां की हालत है, उसको देखने हुये सजाए मौत ख़त्म करना निहायत ख़तरनाक और मुल्क के लिये एक बुरा नतीजा हो सकता है जब तक हमारे देश का आर्थिक और सामाजिक ढांचा नहीं बदलता है, तब तक यह कानून हम नहीं बदल सकते हैं; क्योंकि बग़ैर आर्थिक और सामाजिक ढांचे को बदले हम लोगों के दिमागों पर इस बात का असर नहीं डाल सकते हैं अब देखना यह है कि हमारे यहां जो कत्ल होते हैं, उनका कारण क्या है, जिनकी वजह से हम एक दूसरे को कत्ल करने हैं। आज के जमाने में, ग़ुलाम हिन्दुस्तान को छोड़ कर मैं आजाद हिन्दुस्तान को लेता हूँ १४ साल से अब तक एक इंसान को कत्ल करने की जो रफ़्तार बढ़ी है, वह आगे बढ़ती जा रही है, पीछे नहीं जा रही है। उसके वजूहात कुछ भी हो सकते हैं। चूँकि हमारा आर्थिक ढांचा इस तरह का है कि बहुत लोग एक दूसरे को चालाकी से लूटते हैं, अमीर गरीब को लूटता है, कारख़ानेदार मजदूर को लूटता है, लैंडलार्ड मज़दारे को लूटता है, इस वजह से बहुत से कत्ल होते हैं। अगर यह ढांचा कायम है और सजायें मौत ख़त्म कर दी जाती है, तो कत्लों की भरमार इतनी हो जायगी कि हम उनको रोक नहीं सकेंगे। शेख़ सादी का यह कहना है कि 'अक्लमंदों का इशारा काफ़ी अस्त'। जो लोग अक्लमंद हैं उनको इशारा कर देना काफ़ी है और वह उससे रुक सकते हैं, मगर गधा इशारे से नहीं रुक सकता। वह डंडे से रुक सकता है। मैं यह तो नहीं कहता कि हिन्दुस्तान का हर एक आदमी एक दूसरे को कत्ल करने पर दरप रहता है।

[ज्ञानी जैल सिंह]

मगर यह बात मैं कहे बगैर नहीं रह सकता कि हमारे जितने झगड़े हैं और जितनी लड़ाइयां हैं वह नाबराबरी की वजह से हैं। इसलिये जब तक हम अपने ढांचे को सोशलिज्म के ढांचे में नहीं ढाल लेते और इस नाबराबरी को खत्म नहीं कर लेते और हमारे जो सोशल रिवाज हैं, उनको हम नहीं बदलते तब तक इस सजाये मौत को खत्म करना हमारे लिये निहायत खतरनाक साबित होगा।

दूसरी बात जो मैं इसमें नुकायस की समझता हूं वह यह है कि हिन्दुस्तान के कितने ही गांवों के रहने वाले, शहरों के रहने वाले और दूसरी जगहों पर रहने वाले जो लोग हैं उनके जुदा जुदा हालात हैं। जो कि हमारे बहुत से लर्नेड और विद्वान लौइयर हैं, उनके खयाल से मैं नहीं कहता। मैं एक फ्रील्ड वर्कर की हैसियत से यह बात कहता हूं, क्योंकि लोगों में जाकर हम उनसे मिलते जुलते हैं और बात करते हैं तो उनसे पता चलता है। हमारे यहां खाने पीने की चीजों में मिलावट होती है, मगर उसके लिये सजा क्या है? कुछ भी नहीं है। लाखों आदमी इस वजह से मर जाते हैं कि हमारे प्रेक्टिशनर डाक्टर और हमारे वैद्य खाक डाल कर दवाय वगैरह बेचते हैं। इसी तरह से मासूम औरतों, गरीब घरों की औरतों को अमीर आदमी रेप करते हैं, मगर उनको सजा नहीं मिलती। मैं समझता हूं कि हमारे कानून में इन जरायम के लिये सजाये मौत का प्राविजन होना चाहिये और मौत की सजा मिलनी चाहिये, उन लोगों को जो नाबालिग लड़कियों को रेप करते हैं, जो खूराक की चीजों में मिलावट करते हैं, जो मुल्क में स्मगलिंग करते हैं। हमारे सामने यह बात है कि करोड़ों रुपये का सोना स्मगल हुआ। उससे कितना मुल्क को नुकसान हुआ और कितना इंडिविजुअल को फायदा हुआ, उसका अगर हम हिसाब

लगायें तो पता चलता है। मगर मुकदमात चले और उन मुकदमात में किसी को छः महीने की सजा हुई, किसी को दो साल की सजा हुई और किसी पर पांच सौ रुपया जुर्माना हुआ। इससे ज्यादा किसी की सजा नहीं हो सकती। क्या बात है कि जो लोग हमारे मुल्क के साथ गद्दारी करते हैं उनके लिये भी हमारे यहां इतनी कम सजा है? हमारे पड़ोस में बहुत से मुल्क हैं जिन्होंने ऐसे जरायम, जिनको हम बहुत छोटा समझते हैं, उनकी सजायें बढ़ाई और उसकी वजह से वह सारी चीज समाप्त हुई, लेकिन हमारे यहां सजायें बहुत कम हैं, इस वजह से ऐसा होता है।

जब मैं जेल में एक सेल में था, तो उसमें खाना खिलाने के लिये एक कैदी मेरे पास आता था। मैंने एक दिन उससे पूछा कि भाई, तुमको किस जुर्म में सजा हुई है? उसने कहा कि मैंने अपने एक भाई को जहर देकर मरवाया था और मुझे तीन साल की सजा हुई है। फिर मैंने पूछा कि तुम्हारा क्या फायदा हुआ? इस पर उसने कहा कि मेरा फायदा यह हुआ कि मेरे भाई की औरत मर चुकी है, मेरा भाई बूढ़ा हो चुका है और उसके बेटे के मरने की वजह से मुझे ४० बीघा जमीन मिलेगी और मैं तीन साल की कैद को क्या समझता हूं। इस तरह अगर लोगों के दिमाग पर यह असर हो जाय कि हमें सजाये मौत नहीं मिल सकती, तो लोग एक दूसरे को कत्ल करने पर दरपै हो जायेंगे। ज्यादातर लोग अपने रिश्तेदारों को कत्ल करते हैं। बहू अपने हसबैंड को कत्ल कर देती है। खाबिन्द अपनी औरत को कत्ल करते हैं। बेटा अपने बाप को कत्ल कर देता है। हमारे मुल्क में जायदाद और मिल्कियत का ऐसा मामला है कि उसकी वजह से लोग एक दूसरे को कत्ल कर देते हैं।

इन्हीं बातों के साथ साथ मैं समझता हूँ कि आज जितना हमारे भाइयों ने डिसकशन किया है उसमें अक्सर हमारे भाई इस राय के थे कि इस सजाये मौत को दूर नहीं करना चाहिये। मगर मिस्टर मणि जी का जो अमेंडमेंट है, जो उनकी तरमीम है, उसके लिए मैं समझता हूँ कि गौर जरूर करना चाहिये। हमारे जितने क्रिमिनल ला हैं उनमें काफी नुकायस हैं। गुलाम हिन्दुस्तान में यह चीजें आई और तभी से चली आ रही हैं। आज अगर एक नौजवान बीस साल का है और वह किसी ८० साल के बूढ़े को कहीं गुस्से में आ कर कत्ल कर देता है तो उसको भी सजाये मौत हो जाती है। इस तरह से इसमें कुछ ऐसी तरमीम की जा सकती है कि जो लोग किसी बिना पर, किसी वक्ती तौर पर गुस्से में आ कर किसी को कत्ल कर देते हैं, उनको सजाये मौत नहीं होनी चाहिये। ऐसा तो अब भी है कि अगर कहीं कोई आदमी बगैर किसी दुश्मनी के, वक्ती तौर पर गुस्से में आ कर, किसी को कत्ल कर देता है तो वह छोड़ दिया जाता है। इसके साथ साथ हमारे गवर्नर और हमारे प्रेसिडेंट रहमदिली की दरखास्तें भी सुनते हैं। अगर कोई बूढ़ा आदमी कत्ल हो जाय और उसके बदले में एक नौजवान फांसी पर चढ़ रहा हो और वह नौजवान अपने घर में अकेला हो, उसकी जवान बीवी हो, उसके छोटे छोटे बच्चे हों, तो ऐसे केसेज में, ऐसे मामलात में, रहमदिली का इस्तेमाल किया जाता है। मैं समझता हूँ कि इसको आप किसी कानून में भी में ला सकते हैं। लेकिन बिलकुल सजाये मौत को खत्म कर देना इस बात को दावत देना है कि लोग एक दूसरे को कत्ल करने पर आ जायें।

साथ ही इसके मैं यह दरखास्त करूंगा कि हमें इस बात का भी ध्यान रखना चाहिये कि आजकल जो हमारा आर्थिक और सामाजिक ढांचा है, उसको हम जिस रफ्तार से बदल

रहे हैं, वह काफी हद तक ठीक है, मगर और तेज रफ्तारी से हमें उसको बदलना चाहिये। चूंकि दुनिया का काम आज बड़ी तेज रफ्तारी से चलता है और अगर हम एक तस्वीर किसी को दिखलाते हैं और उस तस्वीर के फायदे भी दिखलाते हैं, मगर वह फायदे उस तक पहुंचाते नहीं, तो उससे बैचेनी पैदा होती है। आज के जमाने में यह समझा जाता है कि हम मजदूरों के लिये बहुत कुछ करेंगे, उसके लिये हमारा निशाना बड़ा शानदार है और वह उस निशाने के लिये तैयार बैठा है मगर साथ ही वह जो कि कारखाने का मालिक है वह यह खतरा समझता है कि पता नहीं हमारे साथ क्या होगा, उसके सामने यह तलवार लटकती रहती है। इसी तरह से लेंडलार्ड और मुजारे की बात है। उनके ऊपर यह तलवार लटकती रहे कि हम सुधार करेंगे और उसे आशा है कि मेरे लिये सुधार किये जायेंगे, तो इसकी बजह से लड़ाई झगड़े और कत्ल होते हैं। जूमों को कम करने के लिए लोगों के दिल व दिमाग को साफ करना, ठीक करना निहायत जरूरी है। जितनी ही सोसाइटी में नमी, मुलामियत और बारीकी आयेगी उतने ही जूम कम होंगे। मैं इन बातों के साथ साथ इस रेजोल्यूशन का विरोध करता हूँ और इसको नामंजूर करना हूँ—बल्कि नामंजूर करने के बजाय मैं लेडी मेम्बर से दरखास्त करूंगा कि वह इसको वापस ले लें और मुझे आशा है कि उनका दिमाग दुरुस्त हो गया होगा, औरतों का स्वभाव भी होता है कि वह नर्म दिल होती हैं, जहां उन्हें फांसी पर लटकने वालों के लिये तरस आया है वहां उनके दिल में यह रहम भी आयेगा कि अगर इस सजा को हमने दूर कर दिया तो कितने लोग कत्ल हो जायेंगे। जय हिन्द।

श्री देवकीनन्दन नाशायण (महाराष्ट्र) :
उपसभापति जी, यह प्रस्ताव जो कि सदन के सामने है काफी पेचीदा है और जब कि बड़े बड़े वकील और बैरिस्टर मैदान में कूद

[श्री देवकीनन्दन नारायण]

पड़े हैं तो उसमें साफ पता चलता है कि यह कोई साधारण बात नहीं है ?

इसके कई पहलू हैं, आर्थिक है, सामाजिक है, राजकीय हैं, नैतिक हैं। आर्थिक कारणों से कत्ल होते हैं, सामाजिक कारणों से कत्ल होते हैं, पोलिटिकल कारणों से कत्ल होते हैं, नैतिक कारणों से कत्ल होते हैं और यह कहना कि कुछ लोगों में एक ऐसी क्रिमिनल मेनटेलिटी होती है जो कि बदली नहीं जा सकती है इसको मैं नहीं मानता हूँ। यदि मनुष्य की क्रिमिनल मेनटेलिटी बदल नहीं सके तो फिर वह मनुष्य ही नहीं है।

पंडित श्याम सुन्दर नारायण तन्खा : वह मनुष्य नहीं होता।

श्री देवकीनन्दन नारायण : मैं यह नहीं मानता कि वह बदल नहीं सकता। मनुष्य सुधर सकता है परन्तु जिन हालतों में मनुष्य आज पैदा हुआ है उन हालतों को नहीं बदलेंगे तो मनुष्य भी नहीं बदलेगा। जब तक आर्थिक अवस्था नहीं बदलेंगे, जब तक सामाजिक अवस्था नहीं बदलेंगे, जब तक हमारी राजकीय व्यवस्था नहीं बदलेगी, जब तक हमारी नैतिक कल्पनायें नहीं बदलेंगी तब तक आप कैसे मान सकते हैं कि हमारी आत्मा बदल जायेगी, मनुष्य बदल जायेगा। ये अपराध जो होते हैं वे समाज की कमजोरियों के व्यक्त बाह्य रूप हैं।

They are the manifestations of the weaknesses of the body society.

हमारी सोसायटी के अन्दर जो बहुत सी आंतरिक बीमारियाँ हैं, आर्थिक, सामाजिक, राजकीय, नैतिक, इन तमाम बीमारियों के दोषों के ये जो अपराध हैं, वे एक व्यक्त रूप हैं, दर्पण हैं। तो जब हम इस बात को सोचते हैं तब हमें सोचना चाहिये कि हमारे समाज की

स्थिति क्या है और जब हमें समाज की हालत का पता चलेगा तब हमें यह भी पता चल जायेगा कि आज इस तरह का प्रस्ताव पास करना ठीक है या नहीं।

फिर, आपको सिर्फ अपराधी की निगाह से ही देख कर नहीं चलना चाहिये। अभी मेरे भाई दीवान चमन लाल ने कहा कि जब अपराधी को फांसी दी जाती है तब उनके बाल बच्चों का क्या होता है ? मैं पूछता हूँ कि जिसकी हत्या होती है उसके बाल-बच्चों का क्या होता है ? इस सवाल से तीन संबंधित पहलू हैं, एक हत्यारा, दूसरा जिसकी हत्या होती है वह और तीसरा समाज। हत्यारा फांसी पर चला जाता है और यह बात सच है कि उसके घर वाले भूखे मरते हैं परन्तु जिसके घर का आदमी मरता है वे बेचारे भी तो भूखे मरते हैं और दोनों से जो परिणाम निकलता है वह समाज को भोगना पड़ता है। हर एक अपराध का समाज पर परिणाम होता है क्योंकि अगर अपराधी छूट गया तो भी परिणाम होता है और नहीं छूटा तो भी होता है। तो तीनों दृष्टि से हमें इसको देखना चाहिये। सिर्फ अपराधी को ही या, हतित को ही देखें और उसके साथ ही साथ समाज को न देखें तो इस मामले को तय नहीं कर सकेंगे।

तीसरी बात मुझे यह कहनी है कि जो खून करता है, हत्या करता है वह किस लिये करता है और किस मनोवृत्ति से करता है ? दो बातें होती हैं। एक तो यह कि 'आन दि स्पर आफ दि मोमेंट' क्रोध में आकर, गुस्से में आ करके मारता है। कुछ लोग ऐसे होते हैं जो कि खुद को काबू में नहीं रख पाते।

SHRI P. N. SAPRU (Uttar Pradesh): In such cases a sentence of transportation can be awarded.

श्री देवकीनन्दन नारायण : क्षणिक क्रोध में जो ऐसा करते हैं उनको समझ नहीं पड़ती कि वह क्या कर रहे हैं। दूसरे

ऐसे लोग हैं जो कि समझ बूझ कर, सोच समझ करके ऐसा करते हैं। प्रिप्लांड उनका काम होता है। परन्तु जिनका काम प्रिप्लांड होता है उनकी समाज के खिलाफ बहुत सी शिकायतें होती हैं। इस प्रकार जो इन बातों को करते हैं वह समाज के खिलाफ बगावत है। मेरे भाई वाडिया साहब ने कहा कि प्रोफेशनल मर्डरर्स होते हैं। मैंने तो आज तक नहीं सुना कि इस देश में, इस दुनिया में कहीं प्रोफेशनल मर्डरर्स भी हैं।

श्री किशोरी राम : हैं।

श्री देवकी नन्दन नारायण : प्रोफेशनल मर्डरर्स के क्या माने होते हैं यह आप समझिये। डैकोयट्स होते हैं, राबर्स होते हैं। डैकोयटी करने जाते हैं तो अपनी डैकोयटी को काम-याब करने के लिये मर्डर करते हैं, उनको मर्डर करना पड़ता है मगर वह प्रोफेशनल मर्डरर हैं या उनका रोजगार ही मर्डर करने का है यह कहना गलत है।

पंडित श्याम सुन्दर नारायण तन्खा : मैं आपको एक केस बताऊं ...

श्री देवकीनन्दन नारायण : रहने दीजिये मेरा वक्त समाप्त हो जायेगा, मैं आपसे बाद में सुन लूंगा।

मैं इस बात को नहीं मानता कि प्रोफेशनल मर्डरर्स होते हैं परन्तु यह बात सही है कि हर कोई मर्डर करने वाला मर्डरर तो कहलाता ही है। परन्तु मर्डरर का विचार करते हुये जिसका मर्डर हुआ है उसका भी विचार होना चाहिये।

मेरी बहन सावित्री देवी निगम ने मुबह गांधी जी की बात कही। उन्हें वह याद आ गये, हम सबको याद आ जाते हैं। तो उन्होंने यहां तक कह दिया कि यदि महात्मा गांधी होते—मरने के बाद शायद जिन्दा हो सकते होते, उनकी हत्या हो गई और हत्या होने के बाद वह जिन्दा हो आते—

तो गोडसे को फांसी नहीं होती, वह गोडसे को माफ कर देते। मैं कहना चाहता हूं कि यह हत्या सिर्फ महात्मा गांधी की ही नहीं थी देश की भी थी। देश पर उसका बहुत बुरा असर हुआ। देश के ऊपर क्या और कंसा असर हुआ? देश के किसी भी महानुभाव ने यह कहा हो कि महात्मा गांधी के हत्यारे को माफी दे दी जाय तो वह मुझे बतायें? तो यह सवाल सिर्फ हत्यारे का या जिसकी हत्या हुई है उसका ही नहीं है बल्कि समाज का भी है। समाज में हत्या का क्या परिणाम होता है, समाज को उसका क्या परिणाम भुगतना पड़ेगा इसको भी हमें देखना चाहिये।

महात्मा गांधी की हत्या हुई—मैं नहीं पसन्द करता जिस तरह से कि उसके रिएक्शन्स महाराष्ट्र में हुये लेकिन मुझे पता है कि गोडसे के नाम से जितने घर थे वे सब जला दिये गये, कितने आदमी मारे गये, लूट मार हुई, यह अच्छा हुआ, यह मैं नहीं कहता परन्तु महात्मा गांधी की हत्या हुई, दि ग्रेटेस्ट मैन आफ दि वर्ल्ड की हत्या हुई, और उस हत्या का रज्ज, उसका क्रोध आप किस तरह से दबा सकते थे? बदले की भावना का परिणाम यह हुआ कि ५-५० आदमी मारे गये, सैकड़ों घर लूटे गये और हजारों बर्बाद हुये। समाज को ठेस पहुंची।

मैं अपनी बहन सावित्री देवी निगम से पूछना चाहूंगा कि उनके घर का कोई आदमी, उनके नजदीक का बेटा बेटी या भाई कोई कत्ल हो जाय तो उनके दिल की क्या दशा होगी इसे वह मोचें? वह क्या उस वक्त यह चाहेंगी कि उस हत्यारे को माफी कर दी जाय? ठीक है, हम यहां ठंडे दिल से बात कर रहे हैं, कानून को भी बात कर सकते हैं परन्तु जब दिल को गहरी चोट पहुंचती है तब क्या हाल होता है? मुझे याद आ रहा है कि एक दफा एक बहुत बड़े अहिंसावादी नेता से पूछा गया—वह मौजूद हैं, इस हाउस में नहीं हैं उस हाउस में आज भी

[श्री देवकीनन्दन नागायण]

हैं । उनसे पूछा गया कि आप अहिंसावादी हैं और आप रास्ते से जा रहे हैं और आपकी बहन आपके साथ हैं, उस पर रास्ते में किसीने हमला किया तो आप किस तरीके से अहिंसा से उसका विरोध करेंगे ? उन्होंने कहा कि यह सोचने के पहले ही मेरे दांत, मेरे हाथ और अपना काम करने लग जायेंगे । तो जिस वक्त मेरे घर में किसी का कत्ल होगा उस वक्त मैं इतना ही नहीं सोचूंगा कि उसे कैपिटल पनिशमेंट हो, उस वक्त न मालूम क्या क्या उसके लिये मैं कहूंगा और सोचूंगा । आखिरकार मुझे कहना है कि ये तमाम बातें जो होती हैं उसके लिये मेरे खयाल से जिम्मेदार समाज है, आज के समाज की रचना और व्यवस्था है । नान-वायलेंस की बात यहां कही गई । नान-वायलेंस का मतलब मेरी बहन कहा तक समझती हैं मैं नहीं जानता ।

Non-violence does not only mean absence of violence. Non-violence is an attitude of life, everyday attitude of life. It is to be observed in social, as well as in political life; it has also an economic bearing; it is a moral philosophy of life.

खाली वायलेंस को अलग करना, यह नान-वायलेंस नहीं है । इसलिये मैं कहूंगा कि सिर्फ यह कह देना कि बापू ने हमें नान-वायलेंस सिखलाया और हमको उसके जरिये स्वराज्य दिलाया इसलिये हमारा यह फर्ज है कि हम नान-वायलेंस की सिर्फ बातें करते रहें और करें कुछ नहीं, यह ठीक नहीं है । हमें सोचना चाहिये कि हमारी ताकत कितनी है, कहां तक हम जा सकते हैं, कहां तक दौड़ सकते हैं, कहां तक अपने साथ जनता को ले जा सकते हैं और जनता को अपना साथ दे सकते हैं । ऐसा ही काम हमें करना चाहिये जो कि हमारी ताकत के बाहर न हो । क्या आज यह बात हमारी ताकत के बाहर नहीं है कि हम हत्यारों की मुआफ़ी

नहीं कर सकते ? हर एक आदमी अपने दिल से पूछे कि अगर मेरे घर के आदमी की हत्या हुई हो तो क्या मैं हत्यारे को मुआफ़ कर सकता हूं ? यदि मेरा दिल कहता हो या दिमाग कहता हो, हां, भले ही मेरे घर में खुद मेरे बेटे की हत्या हो जाय तब भी हत्यारे को मुआफ़ी मिलनी चाहिये, तब तो मैं आप सब से कहूंगा कि सर्व सम्मति से यह प्रस्ताव पास कर दीजिये । यदि आप इतनी हिम्मत नहीं रखते हैं, तो माफ़ कीजियेगा, गांधी जी का नाम इसमें न बगीटिये । जैसे हम हैं वैसा ही काम हमें करना चाहिये । अपनी ताकत से बाहर कभी कोई बात नहीं करनी चाहिये ।

इसके बाद मुझे एक बात और कहनी है ये जो हत्यायें होती हैं, इनमें कई वक्त ऐसा हुआ है कि निरपराध आदमी को सजा दे दी गई है और अपराधी छूट गया है । मैं आपसे कहना चाहता हूं कि जो अपराधी आदमी छूट जाता है उसकी भी जिम्मेदारी समाज की है । हमने अपनी आंखों से देखा है कि अगर आपके पास पैसा हो तो आप गवाहों को मोल ले सकते हैं, आप और तरह से उर । बहुत सी बातें पैदा कर सकते हैं और जिसने अपराध किया है उसको छुड़ा सकते हैं । यह भी हो सकता है कि पैसे के बल पर और दूसरे बलों पर आप अपराधी को छुड़ा सकते हैं और निरपराधी को फांसी पर चढ़वा सकते हैं । इस तरह की बातें जो होती हैं उसका भी कारण आज का समाज है । आज के हमारे समाज में क्या वकील, क्या बैरिस्टर, यह जानते हुये भी कि हां, मर्डर हुआ है, मर्डर की पैरवी क्या नहीं करते ? जानते हैं कि हां, इसने मर्डर किया और यह बात सच है तब भी वकील और बैरिस्टर उसकी पैरवी करने के लिये पहुंच जाते हैं । क्या यह सामाजिक बीमारी नहीं है ? इसी तरह से हमारे गवाहों की स्थिति है । इसलिये मैं कहूंगा कि इस सवाल को आप सामाजिक निगाह से भी देखें । समाज

के हित को निगाह से देखे तो आपको पता चले कि आज का हालात ऐसी गिरी हुई है, जैसा कि सरदार जा न अमो कहा, कि हम किसका दोष दें ? आज श्री मणि साहब न या आर किता भाई ने मध्य प्रदेश का बात कहा और पूज्य विनाबा जो पर टाका टिप्पणा का । मैं उस बहस में नहीं पड़ना चाहता । लेकिन यह जरूर कहना चाहता हूँ कि यदि वह प्रयोग आखिर तक किया जाता तो हमें पता चलता कि उसका क्या नतीजा आता । मैं नहीं कहता कि वह कामयाब ही होता, परन्तु मैं आपसे कहना चाहता हूँ कि उसका दाखिला यहाँ नहीं देना चाहिये क्योंकि वह प्रयोग आपने चलने ही नहीं दिया । आपने शुरू से ही उसका विरोध किया । आपने उसमें हजार तरह की बाधाएँ पैदा कीं । ऐसा करने के बाद आप किसी पर दोषारोपण करें या टीका टिप्पणी करें यह आपको सोभा नहीं देता, यह मैं नम्रतापूर्वक कहना चाहता हूँ । हाँ, वह प्रयोग आखिर तक किया गया होता और वह कामयाब न होता और फिर मणि साहब या और कोई साहब कुछ कहते तो उसमें कुछ अर्थ था । मनुष्य का स्वभाव (मेंटैलिटी) जो बनती है वह वर्ष या छः महीने में नहीं बना करती । और आप भी जब किसी को सजा देते हैं तो वह आशा नहीं करते कि सजा से वह लौट कर आयेगा तो फौरन अच्छा बन कर आयेगा । यदि दस पाँच वर्ष की सजा से आदमी सुधर नहीं सकता तो क्या वर्ष छः महीने के उपदेश से सुधर जायेगा ? जो उसकी आदतें हैं पाँच पचास वर्ष की, उनके बदलने के लिये भी उतने ही समय की जरूरत है । उस मार्ग से आदमी कहीं अधिक जल्दी सुधर सकता है

(Time bell rings.)

एक मिनट और । प्रयोग कुछ वर्ष होने दीजिये, तब आप कहियेगा कि वह मार्ग अच्छा है या नहीं ।

इसके बाद मुझे इतना ही कहना है कि यह बात सच है कि मनुष्य अपराध करता है, सजा भी अपराधों को होती है, अपराध को नहीं होती । इस सजा से संकड़ो वर्षों में अपराधों का होना कोई कम नहीं हुआ है बल्कि नये नये अपराध पैदा हुये हैं । इसका कारण क्या ? नये अपराध क्यों पैदा हुये और अपराध कम क्यों नहीं हुये ? जब तक आप अपराध के कारणों को कम नहीं करेंगे, यानी सामाजिक सुधार—नैतिक, आर्थिक, राजकाय और सब तरह के—आप नहीं करेंगे तब तक अपराध कम होने वाले नहीं हैं, भले ही दस पाँच अपराधियों को आप कम करते रहें । अपराध सिर्फ सजा से कम होने वाला नहीं है ।

मैं आपसे आखीर में यही दरखास्त करूँगा कि यह सेन्टीमेंट का सवाल नहीं है, यह सिर्फ बुद्धि का भी सवाल नहीं है बल्कि यह सामाजिक क्रांति का, परिवर्तन का सवाल है ।

SHRI ARJUN ARORA (Uttar Pradesh): Mr. Deputy Chairman, the Resolution which we have discussed the whole of today deals with a subject which one has discussed all through one's life. I remember that when I was a school boy this was a favourite subject for our school debates and we find the subject being discussed by people in various stages of life. And I am not at all surprised that the subject was discussed in this House in 1958 and it has figured again. The subject is so important. The very fact that capital punishment means taking away the life of a man is so important that even if the Resolution is not passed this time and capital punishment is not abolished because of this efforts of Shrimati Savitry Devi Nigam, I hope that she will try again and her successors will do the same unless the idea is accepted.

The House has today seen various points of view expressed by people.

[Shri Arjun Arora.]

However, my hon. friend. Mr. Santhanam, while opposing the Resolution compared capital punishment to the killing that one sees during the wars. Killing during wars is bad and that is why we are a very peaceful nation but killing during a war does become necessary. It becomes necessary in the case of a country like India which is fighting for self-defence. When other people commit aggression, then one has either to yield bits of one's territory or indulge in killing the aggressor. One can never be sure that yielding of bits of territory will satisfy the aggressor because if he is a true aggressor, he will continue to be aggressive and he will go on claiming other bits of territory. That national emergency which a peace-loving country faces in its own defence cannot be compared with capital punishment which our law, our social system, may or may not provide. I am certainly in favour of the idea that capital punishment should be abolished as soon as possible. There is, of course, much in what Shri Pathak said. The law and order situation in our country today is not at all satisfactory. The number of murders and dacoities is on the increase. It is perhaps not the correct time because of the law and order situation in the country, particularly the rural parts of the country which are the

real country. It is not perhaps the correct time for us to abolish capital punishment. A deterrent as advocated by Shri Gopal Swarup Pathak is perhaps necessary because of the conditions prevailing today, but all the same it remains an evil and it may be a necessary evil because of our failings. I do however feel that the idea is a sound one and it should be examined.

The amendment moved by Mr. Mani is a very reasonable one. He has suggested the appointment of a commission which may go thoroughly into the problem, collect all necessary facts and look at it from all possible angles.

MR. DEPUTY CHAIRMAN: Will you take more time, Mr. Arora?

SHRI ARJUN ARORA: Yes, Sir.

MR. DEPUTY CHAIRMAN: The you can continue on the next non-official day for Resolutions.

The House stands adjourned till 11 A.M. on Monday.

The House then adjourned at five of the clock till eleven of the clock on Monday, the 28th August, 1961.