

which have carried the news regarding our yesterday's deliberations on the Aligarh Muslim University Enquiry Committee Report. Sir, all of us agree that the Press has full freedom to criticise any party, including my own party. But, Sir you will agree that while disseminating the news with regard to the proceedings of the House they have no business to high-light accusations against our party and play down our answers or our denials. However, Sir, we hope you will kindly give us an opportunity to discuss with you these distortions concretely, particularly in respect of 'The Hindustan Times'.

MR. DEPUTY CHAIRMAN: If you have any objection, you can put it in writing and bring it.

DR. R. B. GOUR: We shall certainly do it, Sir.

MR. DEPUTY CHAIRMAN: You cannot raise it on the floor of the House.

#### RESOLUTION RE. LEGISLATION FOR ABOLITION OF CAPITAL PUNISHMENT

SHRIMATI SAVITRY DEVI NIGAM (Uttar Pradesh): Sir, I move:

"This House is of opinion that Government should take immediate steps to undertake legislation for the abolition of capital punishment in India."

Sir, at the very outset I would like to make it clear that I have not been motivated by sentiments of mercy or religious beliefs or any type of sentiments whatsoever when I table this Resolution. This is an age of intellectual renaissance and scientific advance. So my approach towards this problem is nothing but rational.

Sir, almost in all the countries, whether they have abolished capital

punishment or are still retaining it, it has been very much discussed whether it is right to keep this kind of punishment on their Statute Book or not, and there have been almost two groups of public opinion, namely, those, who have favoured the retention of capital punishment on the Statute Book, whom we may call the retentionists, and those who have favoured the abolition of capital punishment, or abolitionists. There has been a lot of controversy between these two groups. Sir, I hate to be associated with either of these groups or their sentiments because, unfortunately, many of the abolitionists have been motivated by religious sentiments or religious beliefs. The same way, Sir, I do not want to associate myself in any way with the retentionists because most of them have been motivated by a childish and primitive fear. They have the misapprehension that with the abolition of capital punishment the number of murders and capital crimes will increase. It has been proved by all the committees which have been set up to investigate into this matter thoroughly and scientifically that retention of capital punishment does not have any deterrent effect on the criminal population whatsoever. Sir, this fear complex is a most dangerous thing not only for individuals but also for nations.

DR. R. B. GOUR (Andhra Pradesh): Is it childish fear or is it feminine fear?

SHRIMATI SAVITRY DEVI NIGAM: Childish fear. Sir, the fear is not only childish but very primitive. In the primitive age when people invented death punishment, they just wanted to keep people suppressed and they wanted to keep them under their thumb and domination. That is why in order to terrify people they invented capital punishment. That is why I have contended that the retentionists have been motivated by the childish and primitive fear that if capital punishment is abolished, it will

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create a sort of risk to the society. The society will be unsafe and these murderers will murder everybody. But this fear is not at all based on facts.

Sir, the theory of punishment of criminals is based on one or more of the following ideas; retribution, deterrence and reformation. Now, we must very coolly examine which of the ideas have motivated the people to keep it on their Statute Books.

Sir, let us first take retribution or revenge. Revenge, as I have mentioned, is a very primitive and barbaric instinct which unfortunately still exists, though in very subtle forms and in various persons. Now civilisation has advanced and culture has restrained this instinct to a very great extent. That is why we say that gradually and slowly this inhuman practice is fading away in country after country.

Sir, it is not at all justified that this law should be kept on our Statute Book for the sake of retribution or revenge. If we try to find out the reason and the causes, many people say that many countries which abolished it have reintroduced it. But when we go deeply and scientifically into the causes as to why this law, which is based largely on retribution, has been reintroduced in the countries after its abolition we find very surprising yet very interesting evidence. In most of the countries where this has been reintroduced, it has not been reintroduced during the abolition period when the number of murders increased, but it has been reintroduced, firstly because of political controversy and, secondly, because some brutal murder aroused public sentiment and created so much sensation and public sentiment became so strong that they had to reintroduce it. Sir, a very living example of this very fact is before us in Ceylon. After they had abolished capital punishment, they reintroduced it only to execute the murderers of the ex-Prime Minister of Ceylon, Mr. Bandaranaike. Similarly, it has

happened in most of the countries. Take the case of England. The Royal Commission was appointed to find out whether capital punishment had got any deterrent effect on the psychology of the criminals or not and all the evidence, which I am going to quote, has proved that it has got no deterrent effect on the psychology of the criminals whatsoever. In spite of that, it has been on the Statute Book of England for so many years. So the argument of retribution as being the main reason for keeping this law on the Statute Book is very primitive and very barbaric, and I hope that we are going to take this country towards intellectual renaissance and progress and non-violence, we should not keep this law on our Statute Book. We are the guardians of this democracy and as Members of this sovereign body we should make every effort that the country and the people of this country should gradually and slowly go towards intellectual renaissance and scientific approach towards life.

Sir, the principle laid down by Beccaria, embodied in the French Declaration of the Rights of Man is defined very clearly. It says:

"The intellectual renaissance inspired a new humanitarian sentiment on the side of penology. While this amelioration of policy was due primarily to the increase of humanitarian sentiment it was also in part an outgrowth of the contemporaneous secularization of thought, with the elimination of the ideas of sin and retribution and the increasing acceptance of the utilitarian principle laid down by Beccaria embodied in the French Declaration of the Rights of Man that 'the right to punish is limited by the law of necessity'. This principle has become the controlling factor in modern penological theory and practice."

I do not think anybody will support this idea of retribution or that it should be the guiding factor of our Penal Code in any way. The second theory

which is being advanced is that capital punishment has got a deterrent effect in reducing crime. The very fact that through capital punishment has been on our Statute Book since the last 200 years, the number of murders has been on the increase is an emphatic proof that it has no deterrent effect. Let us examine it on the historical basis:

"Historically, capital punishment has failed as a deterrent. According to Hume, the historian, 72,000 thieves were executed in the reign of Henry VIII; and 19,000 criminals of one sort or another perished at the end of a rope during the reign of Queen Elizabeth. These are truly appalling figures and yet we can find no evidence that these extreme measures caused crime to diminish . . .

The idea of punishment solely as retribution, which is merely a polite word for revenge, is gradually disappearing. This idea is yielding to the more modern, progressive and scientific attitude that retribution is not justification for any system of punishment, nor are its results beneficial . . .

From all available statistics we must conclude that Capital punishment, as applied today, still fails as a deterrent . . .

श्री किशोरी राम (बिहार) : यह कौन सी किताब पढ़ रही है क्या बालाने की कृपा करेंगी ?

SHRIMATI SAVITRY DEVI NIGAM: This is from "The Reference Shelf". In this all the theories and all the research done on this subject have been mentioned.

SHRI GOPIKRISHNA VIJAIVAR-GIYA (Madhya Pradesh): Name?

SHRIMATI SAVITRY DEVI NIGAM: 'Capital Punishment', edited by Grant S. McClellan. Then it says:

"Finally, in defence of abolition, we must realise that innocent per-

sons have been executed. We don't know how many. We only know of a relatively few cases where by some stroke of fate, the innocence of a wrongly convicted and executed person has been established . . .

Although it may appear that the death penalty should be the most effective deterrent, there is no proof that it is. On the other hand, there is no proof that it is not. It gives us all proof that capital punishment has been responsible for creating a very brutal sort of psychology . . .

In arguing that capital punishment has no deterrent value, its opponents usually appeal to statistics. Often cited is the 1953 report of the British Royal Commission on Capital Punishment, which, after a painstaking statistical study of comparative homicide rates in various countries over the years, concluded that 'there is no clear evidence of any influence of the death penalty on the homicide rates'."

I would like to read the findings of the Delaware Legislature regarding this. They have formed a Committee which has studied this problem specifically and thoroughly. They have said:

"One of the best studies of the problem has been made by a committee for the Delaware legislation."

Here are the Committee's points:

"1. The evidence clearly shows that execution does not act as a deterrent to capital crimes.

2. Except in rare instances, the serious offences are committed by those suffering from mental illness; or are impulsive in nature and are not acts of the 'criminal class' . . .

3. When the death sentence is removed as a possible punishment, more convictions are possible with fewer delays.

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4. Unequal application of the law takes place because those executed actually are the poor the ignorant and the unfortunate. On the other hand, certain famous criminal lawyers have seldom failed to keep their clients out of the chair. A high-priced Texas lawyer has defended 200 murderers, only one of whom was executed. Asked by a newspaperman if this client was any more guilty than the other 199, the lawyer said with great regret, "No, he was no more guilty. I just did not work his case right . . .

5. Conviction of the innocent does occur, and death makes a miscarriage of justice irrevocable . . .

Two of the states which have abolished the death penalty—Maine and Rhode Island—did so during a wave of public shame and remorse resulting from the discovery that they had executed innocent men . . .

6. A trial where a life may be at stake is highly sensationalised, adversely affects the administration of justice and is bad for the community."

These are the facts sufficient to prove that this has got neither any deterrent effect on the psychology of the criminal nor has it been in any way beneficial to the society in reducing the number of murderers. The people who murder do that on the spur of the moment when they are completely taken possession of by some passion. They could be forgiven. But the State, in all its sanity, the judges, the jury and the men who hang them with all the coolness of mind and sanity should never be forgiven morally and ethically. Let us accept this fact that as a theory, capital punishment was introduced only in the primitive age during the 16th and 17th centuries. Now we are living in this modern age and now it is high time that we should remove this law from our Statute Book. Why do we want to eliminate these people? Why do

we want to increase the number of murderers when we can just reform them and re-establish them and give them that human dignity which they have lost because of some circumstances? We can make them useful human-beings. When we have not got the capacity to give life or to make even one dead man alive, what right have we to kill people because they have just committed a crime on the spur of the moment? If these criminals are not given life imprisonment, some of us think that if these criminals are not executed, they will become a danger to the society. But this is absolutely wrong. They could be kept in prison and reformed because it has been seen and all the prison administrators and penologists have come to the conclusion that most of the criminals condemned in murder cases, whenever they were given life sentences, they proved to be the most docile and most obedient people. None of us is an expert in criminology or criminal psychology, but there are people like Attorney-General, Criminologists, Penologists, Prison Officials, and Chairmen of the various enquiry committees and it is surprising that they have also expressed the view clearly that capital punishment has never done any good to the society in any way. Here are a few opinions that I would like to read:

"In the United States and in most of our states, the governor is the executive officer and the chief, really of all law enforcement activity. I have listed here a number of governors in the United States who have publicly taken a stand against Capital punishment, and I would like their names to appear in the record: Governor Le Roy Collins, of Florida; former Governor Goodwin Knight, of California; Edmund (Pat) Brown, of California; Governor Robert Homes, of Oregon; Governor Mike Disalle, of Ohio; Governor Frank Clements, of Tennessee; Governor Fred Hall, of Kansas; Governor S.E. Anderson, of Minnesota, and Governor Orville Freeman of Minnesota; Governor

Caleb Boggs, of Delaware; Governor G. Mennen Williams, of Michigan; Governor M. L. Simpson, of Wyoming; Governor Lane Dwinell, of New Hampshire; Governor Vernon Thomson, of Wisconsin; Governor Edmund Muskie of Maine; Governor John Davis, of North Dakota; Governor Dennis Roberts, of Rhode Island."

"Attorneys General are very practical people about law enforcement but Attorney General Mass. of California, has come out publicly against capital punishment. The Attorney General of Massachusetts has come out publicly against capital punishment. The Attorney General of Delaware has come out publicly against capital punishment. Police and criminologists oft-times are practical people, too."

There are a number of criminologists who are totally against this capital punishment. One famous criminologist, Mr. Paul Wilson has said:

"Until capital punishment is abolished, there is little hope of the advancement of justice in murder trials."

I would very much like to quote more from these opinions of penologists, but I would content myself now with saying that the majority of penologists not only of America and England but also of the European countries have expressed their view that capital punishment should be abolished immediately. Sir, it is very surprising, but when I was going through the various tables in the Royal Commission's Report, I found and I came to the conclusion that most of the persons condemned to death, most of them who entered the death chamber, were either members of the minority community or belonged to different

racess. In America in many places I have seen proof to establish that most of the persons executed have been Negroes and coloured people. Thus it seems this law was enforced in many of the States of America because of racial discrimination. They had to establish a committee to find out whether this was so or not, and they came to the conclusion that most of the people who had been executed belonged to the very poor communities, that they came from broken homes, people who had nobody to defend them, and the Government had to employ lawyers to defend these people, and these lawyers also did not defend them properly. It has been mentioned very clearly in this report that capital punishment only serves one purpose and that is to deprave the mind of the spectators and to increase sadism and cruelty. This is very clearly stated on page 143.

AN HON. MEMBER: What are these?

SHRIMATI SAVITRY DEVI NIGAM: These are expert opinions. Further, it is stated here:—

"In the first half of the nineteenth century executions still took place in public. This, indeed, was thought to be the essential part of the deterrent value of the death penalty; but public executions, though the publicity was deterrent in intention, became in practice degrading in effect and a popular entertainment which could serve only to deprave the mind of the spectators."

It is also well known—and most of the hon. Members also must have heard of it—that in the regime of Queen Elizabeth of old, pickpockets were also executed and when a pickpocket was executed in public, a number of people collected to see that execution and so on that particular day many pickpockets did a lot of business, because there used to be a lot of crowd. So even public execution of a pickpocket never had a deterrent effect on the psychology of

[Shrimati Savitry Devi Nigam.] the public. Capital punishment, I will again repeat, is an institution to give training in sadism and cruelty. I will just cite one interesting instance. One of my friends came to me one day and said, 'Please come to my house today, because my husband is in a bad mood. He has been rebuking the children and saying, if they make mistakes they must be punished, because the law says so'. Her husband was a magistrate and when I reached her home, I found she was very much moved. She said, 'My husband has beaten me and my children today'. When I asked her what the matter was, she said, 'This always happens when my husband has to stand and witness an execution'. That is why I say I have got proof to show that this institution of capital punishment is an institution to give training to the people in sadism, cruelty and revenge.

Mr. Martin, a great criminologist has described how a number of innocent persons had been executed and after their execution it was found that they were innocent. He has cited about 200 cases where people were just executed and then afterwards it was found that they were innocent. Of course, I am not against punishing criminals. I am not against any kind of penalty theory which is based on reformation or correction of the person. All those persons who had been convicted of murder, when they were reformed, always proved to be very good citizens. There is a living example—I don't want to mention the name—of some people who were thought otherwise during the British period, but now we all know that those people are much more respectable and honest and law-abiding citizens than people living in other places. Therefore, this proves that if only proper circumstances and proper atmosphere are there, even a criminal would like to be a good citizen.

As I have already mentioned, human dignity can be restored and these people can be reformed. Why

kill them? This argument should be before our minds when speaking on this resolution. That apart, I want it to be reformative, for that is the basis of all penal systems. I would like to ask: If you execute the person, how will you be able to reform him?

Lastly, Sir, I would like to mention that we belong to a country which is quite different from many other nations. Our ideology, or the Congress ideology is based on non-violence. Not only that, that is the great ideal which the Father of the Nation kept before us, and that ideal has not affected the security of people in this country. And what is more, all the Asian countries and the nations which were suffering from colonial rule and all the civilised world are for coming towards this ideal. Then I would say, if we have any regard and respect for him, then for his sake and for proving that we are really non-violent, we must immediately remove the provision of capital punishment from the Statute Book.

One hon. Member was just now mentioning in the lobby and asking: What about Gandhiji's murder? I think if Gandhiji had been living, he would never have allowed Godse to be killed.

AN HON. MEMBER: He was never killed.

SHRIMATI SAVITRY DEVI NIGAM: I mean executed. When the bullet struck Gandhiji, we know that the words which came out of his mouth were, 'Hey Ram'. I want to submit that if you want to keep our pledge of non-violence, then this violence which is constantly done by the State, in the name of keeping the people safe and so on, which is entirely wrong and which I have proved by so many instances has no deterrent effect on people's psychology and which really never gives any security to the people, must be stopped. In spite of the fact that the provision for capital punishment is there on the Statute Book, every day murders are being

committed. I would like to support this Motion and I would like to appeal to the hon. Members of this House that they should not be guided by who is right but by what is right.

*The question was proposed.*

SHRI B. K. P. SINHA (Bihar): Sir, I am not moving amendment numbers two and three.

I beg to move:

1. "That after the words 'in India' the words 'and for the rationalisation of laws prescribing capital punishment' be added."

SHRI A. D. MANI (Madhya Pradesh): Sir, I beg to move:

4. "That for the word 'undertake legislation for the abolition of capital punishment in India' the words 'set up a Commission consisting of persons of judicial status and Members of both Houses of Parliament to enquire into and report on the desirability of undertaking legislation to abolish capital punishment in India' be substituted."

*The questions were proposed.*

SHRI G. S. PATHAK (Uttar Pradesh): Sir, I congratulate the hon. mover of this Resolution for her research and for her scholarly treatment of the subject but she would forgive me if I say that her approach is more theoretical than practical. She might have made out a case for abolition of punishment by death in certain other countries, that is to say, in England or in some parts of the United States. But I am afraid if we do not lose contact with the realities of the problem in India and if we bear in mind why death punishment was made a rule of law here and why it is necessary to continue it, then the reasons given by the hon. mover will not be held to be valid. Now, Sir, I do not say that at some stage of social development and the development of law in this country it may not become necessary to abolish punishment by

death. But the time is not yet ripe for that situation and we cannot say today that it is possible to abolish death penalty for murders because we cannot say that society does not need its continuance or that the society will tolerate its abolition. There must be accord between public opinion and the needs of the society on the one hand and the legislation that we pass on the other. Sir, there may be certain types of legislation which may be passed by reason of their educative value, which may be passed to develop a state of legislative mind, if I may use that expression. For example, you may pass legislation with regard to social reform in order to educate the people and in order to develop a state of mind in the country so that a legislative mind, after it has developed, may support that legislation. In such class of cases you may pass legislation which may anticipate a particular state of mind although that state of mind does not exist today. But the present is not a case of that type. Sir, we cannot say that public opinion is prepared to abolish the death penalty today. Cases of murder, it is well known, arouse passions, arouse feelings of injustice and when there is a feeling of injustice in the mind of the society then you cannot pass legislation which ignores that feeling. You cannot pass legislation which takes no account of such a feeling of indignation. Sir, sometimes crimes of murder have been committed by criminals without any motive. There have been gruesome and brutal murders and I will give you just one example that came to my notice a few months ago. In a certain village there was a feud between two groups of people belonging to different castes and one group of people murdered all the adult members of the other group.

SHRI N. M. LINGAM (Madras): How many of them?

SHRI G. S. PATHAK: There were four or five houses belonging to one community. The case was from Bihar.

[Shri G. S. Pathak.]

The entire family was annihilated and they were burnt to death. Wooden logs were put and fire was set to the wooden logs. The living bodies were put there and guns were also used. I am just giving you one example, and this is a type of case which you may meet here. Now, indignation naturally is aroused in the minds of people and unless society feels that it has avenged itself or the society feels that the State has taken proper steps to prevent recurrence of such events, unless that happens, law has not served its purpose. Now, Sir, it may be said that theoretically deterrence has not proved to be sufficiently effective. I agree that the modern theory still is, legal theory still is, based on deterrence. In other words, deterrence is the reason why punishment is awarded to the criminals but it will be better if we analyse how this deterrence theory works in practice. It is not the criminal alone who is intended to be deterred. It is the others also who are intended to be deterred. There are criminals of different hues.

SHRI BHUPESH GUPTA (West Bengal): In capital punishment, a criminal is despatched.

SHRI G. S. PATHAK: There are criminals of the deepest dye who can never be deterred by anything. There are many others who may not fear imprisonment but the natural instinct for living may still inspire a fear in their minds. This deterrent principle should be considered not only with reference to the former class of criminals but also to the latter type and the majority belong to that type. If the majority of criminals are deterred by the death penalty, then the law has served its purpose and you cannot eliminate this death penalty simply because you find that there is a certain class of criminals who will never be deterred even by fear of death. Therefore, we have to take into account the conditions prevailing in our country and we should not be guided merely by theory and doctrine

or decide the question whether we should have a legislation of this type without reference to the conditions here. Now, Sir, the question is whether this natural instinct for the preservation of life serves as a potent factor in the matter of crime. Education has not penetrated the masses yet. It cannot be predicated at this stage that education has been provided to correct the mind of the criminal to this extent that crime may decrease. The curve of crime is rising in certain parts of this country. This also is not to be forgotten. Therefore, Sir, contact should not be lost with the realities of the situation and we should examine what the realities are. A stage may arise when you can have an arrangement by which correctives may be applied and by which a criminal's mind may be readjusted so that he may be brought back the normal way of life and he may prove useful as a member of society. But, is there any provision for that at present? Until that is done, until you have got such laws and such provisions for correcting the criminal mind, unless education has spread to a sufficient extent in our country, until that stage arrives, it is wholly premature to think of abolishing punishment by death without involving in grave risks the safety of the society. Sir, I would have liked one amendment namely, the consideration of the question or rationalisation of death penalty. I would have liked a legal provision to the effect that when a matter comes before a judge, it should be open to him to study the psychology of the criminal and if the judge finds that the criminal possesses a mind which is capable of being corrected, then there might be some provision made for judicially laying down in the judgment itself as to how the criminal should be treated in a particular case, but there again, Sir, I would submit, that that stage has not arrived yet.

SHRI BHUPESH GUPTA: Mr. Deputy Chairman, I also congratulate the hon. mover in whose name the



motion came in the ballot and the hon. Member who, by proxy, moved it. I congratulate both of them because it is through their courtesy that we have got this thing here.

I listened to the speech of Mr. Pathak with very great care and attention because he happens to be one of our leading lawyers, but as I listened to him, I felt that he was really conceding in principle the contentions that had been made by the hon. Mover of this Resolution. For example, he accepted that a time may come when it may be necessary to abolish punishment by death. According to him, that time has not yet come. I take this as an acceptance of principle and the only difference between him and Shrimati Savitry Nigam is that Shrimati Nigam is slightly ahead of him in this matter or, if you put it the other way, he is lagging behind her. Then, Sir, he has accepted another principle that it may be left to the judiciary to study the psychology of the criminal or the accused and find out whether a deviation from capital punishment should be made. That introduces the element of consideration. That is to say, it makes it necessary to create a situation where the criminal is not executed. He may say that in the course of the trial the judge will find this out but others may say that even after the trial it may be necessary to study the mind in order to arrive at the conclusion. Therefore, if the person is executed, that process becomes inoperative. This is another point which he indirectly conceded. He gave certain horrid examples in Bihar where an entire family was murdered. I think we can give more examples of that type. With all that, such things do happen and one can ask as to how such things happen when the provision of capital punishment is already there on the Statute Book. Obviously, in relation to those cases he cited, the capital punishment provision was of no avail, it had no deterrence whatsoever. Otherwise, these people would not have gone and committed the murder in such a

manner as they seem to have committed knowing full well the consequences that are likely to follow such a crime. Therefore, these examples also to some extent contradict the proposition. If he had shown by statistics and otherwise that in a situation where capital punishment existed the number of such crimes had declined and in another situation where there was no such provision the number of crimes had increased, it would have been different. To my knowledge, no jurisprudence has pointed this out. On the contrary, the statistics are inclined to support the view that this really has no deterrence as far as capital crimes are concerned. Therefore here again his example is a contradictory proposition.

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Then he comes to the question of public opinion. He is prepared to enlighten public opinion on the question of social reform but here he would not like to take a step because he feels that the public indignation that is roused against murders is far too big to be treated in this manner and that public opinion is not ready at all for it. I think in that case he should have suggested that this motion be circulated for eliciting public opinion instead of stating his position as he did. After all, who are we to judge public opinion unilaterally? Now public opinion is also reflected to some extent by the motion of the mover and we will be supporting it and others will also be supporting it. Therefore the fact is that public opinion is divided over this matter to say the least.

Now, the question arises whether it is really deterrent. Let me first of all state very clearly that there was a time when criminal jurisprudence was based on the principle of eye for eye and tooth for tooth. Civilisation forged ahead and that kind of concept of jurisprudence was given up in the process of time as civilisation

[Shri Bhupesh Gupta.]

unfolded itself. In the 16th or 17th century, even in early 18th century, if I am not wrong, ordinary felony in England made one liable to serious punishment including capital punishment. The hon. Lady Member who moved this motion gave the example of the pickpocket case. As you know in British law there are indications of how small offences, petty offences, are to be treated. At that time they used to be called felony. That again has undergone change even in England where this subject of capital punishment has also been very hotly debated recently in the House of Commons and in public life. Therefore things undergo change. It is not as if they are static; they are dynamic. Now we do not accept that capital punishment has any deterrent value because if it were so then murders would be less and less since capital punishment has been on the statute book for many many years. The trend or curve would be a declining one but it is not so. Then again is it a right principle? Today the broad principle in criminal jurisprudence is—and the world is veering round to it slowly—reformation, correction and so on. And then you find two types of murders taking place; one set of murders take place on the spur of the moment. Even very important and honourable men commit murders. Even the Commander of the Indian Navy, very much liked by this Government, put a pistol in his pocket, walked into a flat and shot a fellow dead. Of course a telephone had to go in the processes of law so that he could be let off. The Government felt so highly of him and sanctioned Rs. 10,000 out of its funds in order to defend him. I am not going into the question of whether it was right or wrong but the Government took that view of that particular case. It was not a premeditated murder by criminal; it was committed on the spur of the moment due to certain compulsions or impulsions, whatever you may call it. Are we to treat him in the same way as somebody who is a

habitual murderer? Certain other murders take place by pre-planning. It is for the law and the lawyers to state exactly how many murders take place on the spur of the moment when otherwise normal men commit such crimes, men who would be amenable to improvement and correction and who perhaps would shudder to think later on that they committed such crimes. As far as the other category is concerned, that is, the premeditated calculated murders, I think the deterrents have no effect at all. After all it is not as if the hon. mover has suggested that there should be no punishment. Life imprisonment is there. The question is to what extent the capital punishment has a greater impact on the mind compared to the other sentence of life imprisonment. Has Mr. Pathak calculated and found out that 90 degrees of deterrence will be created by the provision for life imprisonment in the Indian Penal Code or the Criminal Procedure Code and 100 degrees will be created by the provision of capital punishment? Has he settled it? It is not a settled question of jurisprudence at all. Nobody has done it. I can understand such an argument if she had suggested that all criminals should be allowed to go scot-free to contest elections and to come to Rajya Sabha and Lok Sabha. I can understand that. But that is not at all the contention. She only says capital punishment should be taken away and the other punishment should remain, that is to say, life imprisonment. So that is not a very valid argument to be put forward. Therefore we should go by progressive jurisprudence. Let us make an experiment with this. Some countries some day should make it. And if any country were to make this experiment, today which country with its great tradition is more fitted to make this experiment than our country, India? This is what I say. I know that in many western countries such things would not be understood but our philosophy, our way of life, our culture, our tradition, our history, our mental make-up, our psychological posture, all these things

point to the importance and significance of having a measure of this kind on our statute book not only for ourselves but to tell the world that this is the thing that we have taken up. Let India be the testing ground to a measure of this kind. Now, if it is contended that crimes will go up, well, Parliament will be sitting for seven months every year and if we see that the crimes have gone up, if we see that the effect of this measure is an increase in the number of crimes committed, then of course we can strike off this thing and restore capital punishment. Therefore, Sir, we can proceed with this provided we accept it in principle. I say that these arguments do not seem to be very valid and I was a little upset when Mr. Pathak gave these arguments because in such matters we have to attach importance to what he says. The trouble with our friends at the courts is that they think that all others are theoreticians and they are the only practical men. That is not so. There may be theoreticians in courts and practical men outside. He may be a theoretician and practical both; I am not denying it but let it not be thought that we oppose larger social questions.

Now, what happens if a man is wrongly punished. I know of cases; as you know many of us were connected with what used to be called the terrorist movement in West Bengal. It was not a terrorist movement; it was a violent movement. There was a bit of killing and bomb throwing at Englishmen. Our friend here, Mr. Surendra Mohan Ghose, sitting there was a part of it; in fact an early apostle of it. I do not know how many murders he committed but he is hale and hearty. But then I can tell you from my experience—not that I committed murder; I was charged with murder but I escaped. I did not commit any murder; I can tell you frankly—the British used to haul us up. I know of a case where a person in Dacca was hanged. I knew the person who was hanged and also the person who committed the murder. He was a political

prisoner but then the wrong person was hanged and the person who committed the murder later on spent 14 years in Andamans on a charge of attempting the life of the Governor of West Bengal. That happens. And he could not go to the court and say, 'I have committed that murder; do not hang him but hang me'. Nobody does that. The result was he escaped but he became involved in another attempt to murder Governor Anderson at Darjeeling. He did not succeed and he was given 14 years transportation. I can give you a number of such cases. And our friend sitting there quiet and silent can also . . .

SHRI SURENDRA MOHAN GHOSE (West Bengal): I know of a case where an innocent man was hanged and the really guilty person who committed the murder escaped.

SHRI BHUPESH GUPTA: So, such things may take place. As far as deterrence is concerned I can say this. When I was in jail—all of us have been there young boys charged with murder, dacoity and what not—a person was executed. We were taken there along with others to see the execution in the Central Jail of the place from where Shri Surendra Mohan Ghose comes, that is, Mymensingh. Did it have any effect on us? Not in the slightest.

DIWAN CHAMAN LALL (Punjab): You mean you were quite ready to commit another murder?

SHRI BHUPESH GUPTA: It did not have any effect on us. Only thing was it roused our pity.

That poor chap, a skeleton, was dragged there in a most gruesome manner, put on the scaffold and hanged and the British Government wanted to deter us from the kind of thing that happened. Nothing of that kind happened. And I am sure it did not happen even when ordinary people were there, who were not politically-minded. Even when such things took place in the jails of Bengal, when execution

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took place, they did not have any deterrent effect whatsoever. Therefore, I think the hon. House might consider this in a little more serious mood with a deeper sense of urgency behind this, not merely from the point of view of what we achieve, but also from the point of view what example we set before us and the rest of the world. This is a live issue today being debated in many parts of the world and, as I said before, the country where we can enshrine abolition of capital punishment on our books of law is India and people will appreciate a just move of this kind coming from this country. We can judge the results and later on, if necessary, revise the opinion.

DR. W. S. BARLINGAY (Maharashtra): Mr. Deputy Chairman, the subject of this Resolution is not free from difficulty, but I must say for my part that I am strongly inclined to the view that capital punishment, whether in this country or in other countries, should be abolished. At the same time, so far as the various amendments are concerned, I must say that in the interests of prudence it would be a good thing to accept the amendment that has been proposed by Mr. A. D. Mani. The amendment reads thus:—

“That for the words ‘undertake legislation for the abolition of capital punishment in India’ the words ‘set up a Commission consisting of persons of judicial status and Members of both Houses of Parliament to enquire into and report on the desirability of undertaking legislation to abolish capital punishment in India’ be substituted.”

I think on the whole the amendment proposed by Mr. A. D. Mani is a very sensible proposal and should be accepted by this House. As I said, this subject is not free from difficulty. Just as in the other cases and in other matters we suffer from a lot of superstitions, there are superstitions even in their field amongst educated people.

For instance, I think it is one of such superstition to say that if capital punishment is on the Statute, then, on the whole there will be less tendency to commit crime in society. I think that it is a sort of educated superstition.

Some time ago in England a Royal Commission was appointed to go into the whole question of capital punishment, not indeed, as the Resolution suggests, whether capital punishment should be abolished, but to borrow the words of my hon. friend over there, whether rationalisation with regard to capital punishment was possible. And I would read to this House only a small passage from that Report and a very enlightening one:—

“There is some evidence that abolition may be followed for a short time by an increase in homicides and crimes of violence, and *a fortiori* it might be thought likely that a temporary increase of this kind would occur if capital punishment were abolished in a country where it was not previously in abeyance but was regularly applied in practice; but it would appear that, as soon as a country has become accustomed to the new form of the extreme penalty, abolition will not in the long run lead to an increase in crime. The general conclusion . . .

and this is important,

“ . . . which we have reached is that there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate, or that its reintroduction has led to a fall.”

Now, this is the considered opinion of a very important Commission appointed in England. In this connection, it would also interest the House to know that, at any rate so far as the Western countries are concerned, capital punishment has actually been abolished or kept in abeyance in the

various countries. Now, I will give facts and figures. In Austria capital punishment was abolished in 1950. In Denmark, capital punishment was in abeyance since 1892 and it was abolished in 1933. In Finland, capital punishment is in abeyance since 1862. In Iceland capital punishment is abolished. In Netherlands capital punishment was abolished in 1870. In Norway capital punishment was in abeyance since 1875 and abolished in 1905. In Portugal—and it is very curious—capital punishment was abolished in 1867, although there are a number of murders in Goa. In Sweden capital punishment was in abeyance since 1910 and abolished in 1921. In Switzerland capital punishment was abolished in 1874. In Italy capital punishment was abolished in 1890. In the case of Commonwealth countries and the U.S.A., several U.S.A. States and Commonwealth countries abolished the death penalty and later reintroduced it; others never abolished the death penalty; yet others stuck to abolition. In New Zealand capital punishment is in abeyance since 1935. In Queensland it is in abeyance since 1911. In New South Wales capital punishment was never abolished. However, these are the various facts and figures and there is no evidence, not the slightest evidence, to show that on account of the abolition of capital punishment in the various countries, the crime curve so far as murders are concerned has gone up in any way. Therefore, I suggest that the argument that if capital punishment is abolished, the crime curve so far as murders are concerned will go up, really falls to the ground. I am inclined to this view. And this view is supported by great many psychologists. I feel that in this I will be supported by the Freudians mainly. The point is that between normal psychology and abnormal psychology, which leads to murder, there is no very wide gap. It is only a question of degrees. The mind of a criminal does not qualitatively differ from the mind of the ordinary man in the street. For that matter a good man is known to become insane at

certain moments of his life. Suppose he is agitated, in those agitated moments he is as good as an insane person and we all become insane sometimes I suppose. Therefore, between a neurotic and an ordinary person, the science of psychology says there is no very violent gap. It is only a matter of degrees. There is no qualitative difference between the two. Now this supports my argument that the crime curve, so far as murders are concerned, and the existence on the **Statute Book** of the capital punishment are not related in any way. Both these things are virtually independent of one another. If I am right in this, then the argument that the existence on the Statute Book of this capital punishment is necessary for deterring crimes falls to the ground. This is so far as the so-called practical consideration is concerned.

So far as the theoretical considerations are concerned, it seems to me that there is not the slightest justification for awarding capital punishment to any one. Sir, as everybody knows and as every student of penology knows, there are three theories with regard to punishment; retribution, deterrence and reformation. Now so far as the theory of reformation is concerned, that is perfectly consistent with the view that I am taking of the matter. If the object of punishment is the reformation of the individual, then quite clearly this capital punishment has got to be abolished because once a man loses his life there is no question of reformation at all. Even in the cases of those people who have committed brutal murders, as the hon. mover of the Resolution pointed out, and very correctly pointed out, even those people whom you consider brutal can be reformed. They are not after all so very bad people. As I said, there is not a violent gap between the normal people and them. Therefore, if you accept the theory of reformation, then it is quite clear that on that theory there is no justification at all for capital punishment of any kind.

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As the hon. Member, Mr. Pathak, pointed out, however, usually the lawyers accept the theory of deterrence. Personally I think there is no moral justification at all for this theory of deterrence. You cannot punish a person, you cannot punish me simply because by punishing me you are going to reform the society. There is no moral justification for that. If I am to be punished, that must be because I am responsible for some crime. I cannot be punished because the society or somebody else has got to be reformed or deterred from committing crimes. As Kant pointed out some time ago, there is no moral justification at all for the theory of deterrence.

Then the question is with regard to the theory of retribution. So far as the theoretical aspect of this matter is concerned, I would remind the House that there are two different questions which have got to be distinguished. And these questions we often mixed up. Who is responsible for the crime, that is one. The second, granted that he is responsible for the crime, then what is appropriate punishment to be meted out to that person? Now when you distinguish clearly between these two questions, you will find that although it is quite true that so far as the first question is concerned it is the man himself who is responsible for the crime, who has got to be punished none the less it does not follow that because that particular person has committed that particular crime, therefore the punishment must be in the nature of a tooth for a tooth and a nail for a nail or something of that kind. There is no justification for that. Sir, the entire history of penology will show that as civilisation advances we change our ideas with regard to punishment. Formerly as we all know, in primitive society and in our own society, in Hindu society and in other societies also that sort of thing was prevalent, a tooth for a tooth and so on. But our ideas have changed and we have even abolished

whipping. Therefore, the point is that once you make a distinction between these two questions, you see almost immediately on *a priori* grounds that there is no justification that because a person has committed a murder, therefore that crime has got to be met by another murder by society.

Sir, since there is not much time at my disposal I resume my seat.

SHRI A. D. MANI: Mr. Deputy Chairman, I have great sympathy for the humane purposes of this Resolution. But I must say that the mover of the Resolution has not made out a convincing case for immediate legislation to be undertaken to abolish capital punishment. She quoted a number of authorities, but not one of them was maintainable. We are not very much concerned with what happened in California, with what happened in Europe and with what happened in England. She made a reference to the Congress ideology of non-violence. I would like to mention here as a matter of relevance that in Madhya Pradesh we had an experimentation in this Congress ideology of non-violence. Acharya Vinobha Bhave toured the dacoit-infested districts of Madhya Pradesh and tried to preach the gospel of non-violence, the result of which had been that there had been more dacoities in Madhya Pradesh. There is more danger to the security of human life in Madhya Pradesh as a result of what was done by Acharya Vinobha with the best of motives.

The mover of the Resolution referred to the fact that in Ceylon the capital punishment has been abolished, and she also cited Goa. In our Indian Union before 1947 Travancore had abolished capital punishment. But, Sir, I would like to draw the attention of the House to what happened in Ceylon. When the Commission which was set up to enquire into the desirability of retention of capital punishment or restoration of capital

punishment reported, they said that if the killings during the communal riots in 1956 and 1958 were included, there had been a slight increase in the homicide trend in 1956 and 1957 followed by a more substantial increase in 1958, and that the main cause for this increase was the riots themselves. The Ceylon Commission tried to keep out the riots from the picture and wanted to consider the homicide trend in respect of other offences. But if we have to see the effect of the removal of capital punishment, we have got to take into account all offences, whether ordinary offences, felonious offences under the law or offences as a result of the riots. The position in our country today, as the House is aware, is that communal riots are taking place in some parts of the country. We have yet to secure the integration of the Indian community. The linguistic issue has brought to the fore the serious differences among ourselves, and at a moment like this when there is violence abroad, it is extremely imprudent for us to think of abolishing capital punishment.

[THE VICE-CHAIRMAN (DR. A. SUBBARAO) in the Chair.]

But I would like to keep this issue as an open issue on which no final decision can be taken at the present time.

Sir, on the question of deterrence, the matter has been gone into by a number of Commissions in New Zealand. They tried to have the abolition of capital punishment sanctioned by law, and after some time the Minister had to move the Legislature for the restoration of capital punishment; and the bulk of the evidence has been that as far as deterrent value is concerned, nothing can be said either way—whether as a result of removal of the capital punishment crime rate has gone up it is not possible to say.

But as far as capital punishment is concerned, the matter has been put in

a very precise fashion by Sir James F. Stephens who had much to do with the framing of Indian law. What he said one hundred years ago has not been bettered by any other witness. He said, if you want to know whether it has got a deterrent effect, the question that you have to ask is this: When capital punishment is going to be executed, when a person is to be hanged, how many mercy petitions are submitted to the Crown? Why is it that in respect of one offence alone there are so many who come forward to ask for mercy being given to a prisoner? Sir, he argued that it did have a deterrent effect. It has been said that murder is the gravest of all crimes and capital punishment is always referred to as the extreme penalty and I think that in a society like ours where we have yet to show a measure of communal toleration, where we have to show a measure of linguistic toleration, it would be unwise for us to think in terms of the immediate abolition of capital punishment. Sir, on this point of what should be regarded as capital offence, I think there is a real case for an enquiry to be conducted into the matter. I trust that because this amendment has been moved from the Opposition Benches the Government would not oppose the amendment on that ground alone. There are substantial grounds for feeling that this matter should be enquired into thoroughly. We would like to have men of judicial status on a commission to go into this matter. We would like to have Members of Parliament also and when I say men of judicial status, I mean that these are the persons who have had much to do with the administration of law; they have seen in the courts a number of cases for murder being brought; as my hon. friend, Shri Pathak, mentioned his own experience of one case of Bihar which had come up. They will be competent to give informed opinions on this subject.

One question was raised by Shri Pathak and that was the necessity of rationalisation of punishment. Sir, in this matter, it would not be proper

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for the executive to take a decision on its own initiative. This matter was gone into at great length by the Commission which was set up to report on capital punishment in the United Kingdom and one and all, the judges said that they would not like to undertake any responsibility of making a recommendation to the Government that in such and such a case the sentence should be imprisonment for life and should not be for murder. They, in fact, wanted the responsibility to be thrown on the jury to recommend to the Government whether there should be capital punishment for certain offences, and the argument was that the juries represented the social conscience of the Community and that the juries were, therefore, the most competent authorities to make such recommendations. But the judges said that they did not want to take part in this question of recommendation to the executive for commutation of the sentence of murder to life imprisonment. Sir, on this point I would like to mention that the State in India as well as elsewhere has always taken extenuating circumstances into account in judging applications or petitions for mercy. I believe that it is the practice in the United Kingdom that out of ten cases of murder, three or four get the relief of commutation of the life sentence to one of imprisonment for life. I believe that the Government also goes into the record very carefully and tries to find out whether there is any extenuating circumstance and I think that it is a practice in India that as far as women are concerned, the capital sentence is never executed; it is always commuted into one for transportation for life.

DR. W. S. BARLINGAY: Not always.

SHRI A. D. MANI: Generally the practice is that for women, they always try to take into consideration the fact that they are the weaker sex and that they require a little consideration, and sentences for murder are

very often commuted to those for life imprisonment.

Sir, I must mention here that as far as capital offences are concerned, there should be no discrimination between sexes, and this was one of the findings of the Royal Commission in England also. They said that the sexes should be treated on the same footing and they should have the same equality of treatment in respect of capital punishment.

Sir, the question remains whether we can really straightway abolish capital punishment in India. I understand the humane purpose behind this demand. We do not like anybody to die, and it has been found that in a large number of cases, the men who do the executions themselves suffer from neurotic ailments and they feel that they have some burden on their conscience. All these are matters which we all know, and when it was suggested to the Royal Commission on Capital Offences in Great Britain, one of the persons suggested a humane form of killing a person, namely, applying intravenously some drug by injection. But the medical profession said that they did not want to take part in this matter. On this ground, the proposal was dropped. We realise the humane purpose and we would like to do something to see that capital punishment is not given to persons who are likely to be innocent. Even in England, Mr. D. N. Pritt who appeared before the Royal Commission said that there was always a risk of an innocent man suffering and that, therefore, the executive had got to go into all the applications and petitions for mercy with the greatest possible care. My appeal to the House is that we should try to keep an open issue on this subject. There is certainly a demand which has been voiced with a good deal of passion and emotion that there should be no capital punishment in India. I would not like it to be correlated to the Congress philosophy of non-violence because if there is to be an application of this philosophy of non-



violence, we would like it to be seen in the political field, in fighting elections and in retaining the Ministers in their seats. I am not trying to upset them. But we would like to see the Congress philosophy of non-violence in action in the Legislature and in the political field. We should not get burdened by this philosophy of Gandhiji, and I do not think that there is any statement of Gandhiji that capital punishment should be abolished. If any such statement had been mentioned, it would have been mentioned by the Mover of the Resolution.

Now the question remains that we should have some machinery to consider in what way the punishment could be rationalised. This is a matter which cannot be decided by a debate here, this is a matter which has got to be decided by a careful and sifting enquiry. Fortunately, in our country psychiatric offences are not there, thanks to the fact that our people do not eat dexedrine or benzedrine and they do not take pathedine injections as quite a large number of people do in the United States. We are a fairly normal people; we are not a neurotic people. In the United States, psychiatry has advanced so much because the population there needed psychiatric treatment also. In our country we are a fairly healthy people. We may be undernourished, but we do not suffer from what shall we call the excesses of modern civilization as the people of the United States and of other countries are doing. Sir, we should like to have an enquiry—the judge himself or the Division Bench in a High Court could go into the matter—and where there is a certain possibility of doubt or where there is an extenuating circumstance, the Division Bench can recommend to the Government that in this case, the question of the commutation of the sentence can be considered. As I said, in Britain the judges are unwilling to bear the responsibility but here in India our High Courts may take a different view and it is from that purpose that I have suggested an enquiry. But it is one of the factors too and that

is, when we think of capital punishment and commutation, we must have psychiatric clinics in our country. I believe that in answer to my questions the other day the Minister said that there was not much need for mental hospitals in our country. If we want to have psychiatric treatment, we must have psychiatric clinics where the murderers can be left and restored as normal beings in an orderly human society. I do not think that we have such clinics and I, therefore, suggest for the consideration of the House—and I believe that Shri Pathak also would support my motion—that in this matter we should have a Commission of Enquiry to go through this question and take evidence of all concerned persons so that this House and the other House may have the necessary material while considering whether legislation should be undertaken on this subject.

Thank you.

SHRI B. K. P. SINHA: Sir, it has been my privilege this week to be ranged against the hon. Member from U.P. Shri Pathak, outside this House, and it is my privilege today to be ranged against him inside this House. Sir, though we think differently both outside this House and inside this House, we tread considerable ground together.

SHRI BHUPESH GUPTA: But how are you faring against each other outside?

SHRI B. K. P. SINHA: I am glad that Mr. Pathak recognises that in theory there is considerable justification for abolition of capital punishment. He also concedes, and rightly so, that there is considerable force in the argument that the law relating to capital punishment should be rationalised. But then he bases his opposition to this Resolution on a pragmatic ground. In his opinion the country is not ripe for the abolition of capital punishment, the times are not propitious for the abolition of capital punishment, and he supports this by referring to the preventive aspect or the

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deterrent aspect of capital sentence. It seems he is of the view that unless we have capital punishment, there will be an increase in the incidence of crime. But then, this matter has been probed into not in India, but in some other countries of the world, and after the probe the conclusion has been that the abolition of capital punishment does not lead to any appreciable or any increase whatsoever in the incidence of crimes involving a sentence of death. Then he seems to think that our people are not very educated. But then the previous speaker rightly pointed out—at least that was the implication of his speech—that crime is not only a result of ignorance, of lack of education, but that crime is also based on so many other things. There may be plenty of education in the country, but the pace of life may be so fast, the contradictions of life may be so great that the environment, a country's environment operates as a breeding ground for crimes of violence. In India our people may not be educated, but I can say with justification that our people are the most law-abiding people in the world, a people who, by temperament, by training, by a culture which goes back ten thousand years, have been trained to live in peace, strive for peace, to whom violence in any form is abhorrent. Therefore opposition on this ground, in my opinion, is not a very proper opposition. Again it is asserted that, if we do not have capital punishment, there will be more violent crimes. It is murder mostly which involves a sentence of death. There are other crimes also, like mutiny, waging war against the country and so on, but then, by and large, a sentence of death is inflicted in India today in cases of murder.

Now, Sir, let us see what occasions murders in this country. I find from the figures given by the various States that land disputes are a very potent cause of murder, that martial infidelity is another potent cause of murder—illegal love affairs. Then there are mur-

ders—very few murders—which are really committed by those who fall in the class of homicidal maniacs, and if we retain the death sentence, murders which are committed for property, murders which are committed because of land disputes or because of sex infidelity or marital infidelity, the retention of a sentence of death in such cases will not have any appreciable effect on the incidence of such crimes on such matters.

Sir, I am reminded of a case which was argued before a very eminent Judge of the Patna High Court. Five murders had been committed by a husband who doubted the fidelity of his wife, involving the woman and four people who were, in a sense, responsible for that infidelity. Ultimately, the High Court confirmed the sentence of death on him. But then one of the most eminent Judges, Justice Noor, remarked that we might sentence to death thousands of people for such types of murders but still murders in such cases would go on. Murders in such cases are committed because the man convicted develops a particular psychology, a particular mentality, and in that mentality the fear of retaliation by the State or the fear of retaliation by the judiciary has no meaning for him.

Therefore this pragmatic approach leads us nowhere. In substance Shri Pathak concedes that the theory is right. In the circumstances the onus is high on him, and those of his way of persuasion to prove that the circumstances in India are of such a character that this Resolution should not be accepted.

The lady who moved this Resolution pointed out that even pickpocketing was a crime which was punished with death in mediaeval England. Then she quoted from the books on penology or criminology which said that men sentenced to death for pickpocketing were hanged publicly—every hanging was public in the mediaeval ages—so that it might act as a deterrent to others. Now, Sir, while the

hanging was going on in public, thousands of people collected to witness it, as if it were a *tamasha* and even when the hanging was going on, the pick-pockets among them plied their trade, and many people who had gone to see the *tamasha* later cleared out with their pockets lighter. So really speaking, a sentence of death does not act as a deterrent, in my opinion. Moreover, it is an irretrievable punishment. If a lighter punishment is wrongly inflicted and a man is imprisoned, or a man is fined, and if later on his innocence is proved to the satisfaction of the authorities—executive or judicial—he gets a reprieve. But then if a sentence of death is passed and the man executed within a certain time, there is no turning back. We know, Sir, of the cases that were put before the 20th Congress of the Communist Party of the U.S.S.R. One of the important figures of the Russian State said that many people—their number ran into dozens—had been tortured to death, for alleged crimes, in a certain period in Soviet history, and then the 20th Congress posthumously reprieved them. Their reputation was established posthumously—as free from any guilt—but then the men were dead and this posthumous reprieve offered no consolation to them physically, did not bring them back to life. A sentence of death is of such a nature that it cannot be corrected later on. We know that in many cases there has been miscarriage of justice—I know of a few cases. There was a case in which the man who really committed the murder was never prosecuted and a man who was innocent of the crime was sentenced to death and later on hanged. Recently there was a case. In Punjab three or four people were prosecuted for the alleged murder of a woman and the case was going on for over a year, and while the case was going on for over a year there, just about the time, the alleged victim—the woman—appeared in some court in U.P. and thereafter the cases against the alleged murderers were withdrawn. And we know how the police operates in this country; we know how the

prosecution machinery operates in this country. If a man is brought as an accused, the prosecution makes it a point of prestige to see that that man is convicted irrespective of whether he is really guilty or not. Under such circumstances would it be proper to retain the sentence of death? Sir, next I would come to the question of rationalisation of the laws relating to death. When I moved my amendment, I had a particular thing in my mind. Now our law of murder is archaic. It is based on what is known as M'Naughten Rules. These rules were evolved more than a century back. They laid down that a murder would not be a murder if there is a paralysis of reason. If a man does not know that he is committing murder, 'that he is causing such injury that will in the normal course lead to death, in that case that murder would not amount to culpable homicide. But modern psychology has advanced. Human intellect has probed the secrets of the human mind and human intellect and we now know that apart from paralysis of reason, in which case exception is made in our law, there is something known as paralysis of will. That means a man is conscious all the time of what he is doing. He is conscious that he is committing a crime. He is conscious that he is committing a murder. He is conscious that he is setting fire to a house. But by some over-powering urge his will is so paralysed that in spite of this consciousness, he commits that crime. In some jurisprudence, in the law of some countries, exception is made in such a case also. It provides for paralysis of will also. It is made an exception in the criminal law of some countries. I feel, Sir, that if it is not possible to accept the proposition for the abolition of capital punishment, at least the Home Minister will see that the law is rationalised to that extent and brought in line with the laws that we have in other advanced countries of the world.

Then, again, Sir, we find that exception is made of a murder committed on grave and sudden provocation. Grave I understand but sudden is

[Shri B. K. P. Sinha.]

something which I do not very much follow. Our modern psychology says that provocation may be of such a nature that it may operate for a long period on the mind of the man, and if the man on the spur of the moment commits murder because of some provocation, then under the penal law he is supposed to have committed only culpable homicide not amounting to murder. But if there is a time-lag between the incident which gives him some provocation and the murder, in that case the Indian law makes no exception. But, Sir, modern psychology has again established that provocation may be of such a nature that it paralyses the reason. It paralyses the will of a person for a very long time and if after two, three or four days of such provocation murder is committed, such a murder comes in exception in some of the modern criminal Acts. Such a departure, or such an amendment, I feel, should be made in our legislation also.

Sir, lastly I would deal with the question of commutation. Normally in cases of murder and in a few other cases, people are sentenced to death. In the old Criminal Procedure Code there was one section, section 368(5), which said that if in a case of murder a sentence lesser than that of death was awarded, reasons should be indicated. This was interpreted in a peculiar way, in a particular way, by the various High Courts of this country. They took the view that in a case of murder the proper sentence was one of death but a lesser sentence should be awarded only if there were extenuating circumstances. It was to do away with this interpretation that the then Home Minister, Dr. Katju, by a particular section of the Criminal Procedure Code (Amendment) Act, of 1955 deleted this provision. Thereafter it was open to the courts, even in a proved case of murder, not to award the sentence of death without giving any reason. Moreover, it was not obligatory on them, after this amendment to award a sentence of death unless there were extenuating

circumstances to justify a lesser sentence. But then, Sir, it has been my experience of the judgements of the various High Courts are the superior courts that the courts are going on merrily supremely oblivious of this change in the law made in 1955. Even now we very often find the statement that since there were no extenuating circumstance, they awarded the sentence of death. Now it is for the Home Ministry to impress upon the Sessions Judges and the High Courts, who have to administer this law, that the law is changed and it is no more obligatory to award a sentence of death unless there are extenuating circumstances. This is one aspect of the case that I would like to emphasise and I feel that since the courts are oblivious of this, therefore, there is greater ground why the Governors and the President should exercise their powers of clemency and commute the sentence of death.

Sir, Shri A. D. Mani wants a Commission. There is the contention, there are some who want to have some experience based on the deletion or the omission of sentence of death. Now, if as a matter of practice for five or ten years the President and the Governors commute the death sentence, the country will judge the effect of such a commutation, whether really the sentence of death acts as a deterrent or not will become clear after this commutation, as a matter of practice, in every case goes on for several years. Therefore, while I feel that we cannot advise the President we can request the President that as a matter of practice, as a matter of routine, the sentence of death should be commuted to imprisonment for a period of five or ten years.

With these words I support the Resolution.

SHRI ROHIT M. DAVE (Gujarat):  
Mr. Vice-Chairman, Sir, I associate myself with other hon. Members in congratulating the lady Member for bringing forward this Resolution be-

fore this august House because it is a question which requires consideration by this House, by the other House and by the country also.

Sir, the lady mover has quoted extensively authorities from history, from jurisprudence, from other books and the experience in various countries to show that capital punishment has become outdated and, therefore, needs to be abolished. At the same time, Sir, Shri Pathak, who has some experience in the courts of law and some practical experience as to how such measures work in practice, has cautioned the House that mere theoretical discussions on this issue will not suffice and practical considerations should also be taken into account. I agree with both the views, and I would like to agree with my friend, Shri Mani, that a Commission might be appointed to go into the various issues involved and to see what can be done with reference to capital punishment in our country.

THE VICE-CHAIRMAN (DR. A. SUBBA RAO): You can continue after lunch.

#### ANNOUNCEMENT RE. GOVERNMENT BUSINESS

THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI SATYA NARAYAN SINHA): With your permission, Sir, I rise to announce that Government Business in this House for the week commencing 28th August 1961, will consist of:—

1. Discussion on the Third Five Year Plan on a motion to be moved by the Prime Minister.
2. Further consideration of the motion for concurrence of the House to join the Joint Committee on the Extradition Bill, 1961.
3. Consideration and return of the Income-tax Bill, 1961. as passed by Lok Sabha

#### REQUEST FOR DISCUSSION ON ANNUAL REPORT OF HINDUSTAN STEEL LTD.

SHRI SUDHIR GHOSH (West Bengal): Mr. Vice-Chairman, Sir, may I draw the attention of the hon. Minister to a motion pending before the House for a long time that the Annual Report of the Hindustan Steel Ltd. be taken into consideration by the House? The management of the public sector enterprises, in particular the steel enterprise, is in such a miserable state today that this matter of great public urgency should be discussed in Parliament. Many hon. Members of the House feel strongly about it and I do not know the reason why the Minister could not be persuaded to give his consent to it.

SHRI ARJUN ARORA (Uttar Pradesh): Sir, I join with Mr. Ghosh in his request particularly because labour conditions in the steel plants in the public sector are not at all satisfactory and even the labour legislation passed by this august House is not being implemented. Therefore, the Report should be discussed.

SHRI A. D. MANI (Madhya Pradesh): Mr. Vice-Chairman, I would like to add my support to what has been said by the other Members. In the last Session the same Report was given notice of for discussion. It did not come up in this Session. It was given notice of in a fairly advanced, early stage. Sir, the position of the Rourkela Plant is serious. The plant is not working and we would like to have a discussion.

1 P.M.

SHRI M. S. GURUPADA SWAMY (Mysore): Mr. Vice-Chairman, may I also say something? I would request the hon. Minister for Parliamentary Affairs to persuade the hon. Minister concerned in this matter to allot some time before the close of the Session. There is enough time available and I do not think that there is any difficulty in the matter of finding time. Further, I do not think that there is any ad-