

जहां तक कम्पनी का सवाल है गवर्न-मेंट खुद आजिज़ है, परेशान है। जो बात गवर्नमेंट कम्पनी से कहती है उसको वह ठिकाने से सुनती नहीं है। उसके मुताबिक चलती नहीं है। लेकिन आगे चल कर मैं समझता हूं कि सारी दिक्कतें दूर हो जायेंगी।

इन अलफ़ाज़ के साथ मैं फिर इस बिल को होलहार्टडली सपोर्ट करता हूं। ]

SHRIMATI LAKSHMI MENON: Sir, I have nothing more to add. I am very glad that the previous speaker realises the difficulties of the Government and appreciates the work that is being done. And when I read the Prime Minister's letter this morning, it was only an additional assurance that the Government is most concerned about the facilities provided for the pilgrims and would increase these facilities according to the funds available and also according to the success with which we negotiate with other shipping companies if at all a ship for pilgrim traffic is there.

Regarding facilities at Calcutta, the assurance is given by the Government that when facilities are available and the Government is able to open the Port for Haj traffic, perhaps a Calcutta Haj Committee also will be constituted to look after the needs of the Haj pilgrims.

Sir, one of the speakers complained about lack of charity in saying that no point was made. I do not want to discuss these things. It is open to the House to find out how Members behave and it is for all of us to realise that we should not hurt the feelings of others, that here we are discussing legislation and not personalities.

Thank you.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

*The motion was adopted.*

## THE INDIAN PENAL CODE (AMENDMENT) BILL, 1959

THE DEPUTY MINISTER OF HOME AFFAIRS (SHRIMATI VIOLET ALVA):  
Mr. Deputy Chairman, Sir, I move:

"That the Bill further to amend the Indian Penal Code, as passed by the Lok Sabha, be taken into consideration."

Sir, it is a small measure which will have a far-reaching effect; it is a specific measure brought in for a specific purpose. Even though the Indian Penal Code has very many sections and punishments prescribed for the offences of kidnapping, abductions, maiming and the rest of it, we still needed some amendment to the Indian Penal Code to bring in a section which would serve the purpose, as we thought there was a grave situation in the country, namely, the kidnapping of children for the purpose of beggary and the more aggravated forms of kidnapping for the purpose of maiming so that the children may be made objects of pity for the source of livelihood of others.

Sir, this amendment was long overdue. It was considered in 1956 first by a conference and later by the D.I.G., C.I.D. Sub-Committee. A sample survey was made and it was thought that the situation in the country was bad, that here were gangs operating that carried away children for the purposes not only of exploiting them for simple beggary, but also for the purposes of inflicting such grievous injury and cruelty on them that left marks on them not only for the rest of their lives, but something that society in a welfare State could not tolerate any more. Therefore, we have brought in this measure before this House so that we could satisfy ourselves and see that kidnapping of children, especially making them objects of pity with untold cruelty inflicted on them, should come to a stop in the fashion that we want it to stop. Sir, the sample survey revealed that gangs were operating. And therefore drastic and deterrent

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punishment has been laid down in this measure. The reasons as to why children are exploited in all kinds of fashions in the country must be borne in mind. It is mainly poverty. There may be parental disharmony, there may be traits of delinquency not only in children but in adults too, in guardians or parents also, and that aggravates the whole situation and the problem in the country. Nevertheless one should not forget the main point, the background, that there is a professional kidnapper, there are professional kidnappers, and this however continues in our society. I need not here give instances of how children are blinded or their limbs are twisted or their bones broken, which makes rather sadistic reading, and it makes gruesome reading to go through the reports of our police and the reports even in our press of how children are being played with in this manner. No civilised society should tolerate this kind of situation and therefore we are making this attempt to arrest it, if not eradicate it completely, because eradication would need vigilance on the part of each one of us, vigilance on the part of each one in the society outside, as to how to apprehend this gang or this professional kidnapper who brings into play all his sadistic tendencies for making a child, who has absolutely no defence, an object of pity. Therefore, Sir, when the D.I.G., CID's sub-committee report was presented to the Government of India, we felt that we should ask or request all the State Governments for their opinion. We have now received the opinion from the various States and Administrations and along with our own suggestions we came to the conclusion that a penal measure should be put on the statute book. In this view we also had the support of the Central Social Welfare Board, which is the main organisation that carries on welfare work in this field and other like fields, and along with the public opinion that is already there in the country—because there have been many questions on this subject in both the houses of Parlia-

ment and especially kidnapping of children has figured every now and then in both the Houses—I think it is not a date too early when we have brought this measure in this House.

Now on the salient features of this Bill there may be some hon. speakers who may say that the question of age has not been seriously considered, that the Bill lays down the age of a minor girl as under eighteen years and that of a minor boy as under sixteen years. May I submit here, Sir, that we have retained the ages as they are in the Indian Penal Code. I also would like to admit that there is disparity in the fixation of ages in this regard in our various laws. For instance, in the Children Acts there are disparities between State and State and between region and region. Nevertheless we have preferred to keep them as they are existing in the Indian Penal Code.

Then, Sir, I would just explain one or two salient features of this measure. The first is that the offence of kidnapping, or obtaining the custody of, a minor for exploiting him for begging is made punishable with imprisonment up to ten years and with fine. More than that a drastic and a very deterrent punishment is prescribed when any person including the lawful guardian maims a child for the purpose of exploiting him or making him an object of pity, and for that the punishment has been laid down as one of life imprisonment and fine. I think this is deterrent enough and if we can make an example of the real kidnapper who does this sort of things, then I think we would be able to bring about the salutary effect that we are desiring to have by introducing this measure. Then I would like the House to bear in mind that the liability of the guardian is not brought under the purview of this measure. I mean, except for maiming a child, we have left the liability of the guardian as being outside the purview of this amending Bill for the simple reason that there are other Acts in different States, especially the Children Acts,

and most of the States have it. Some of the States do not have it but we have left it to the legislation that is already existing and is enforced in most of the States in the field of child welfare, which is known as the Children Act in the different States. Even in this the Central Government is of the opinion that the Bombay Children Act is a model Act and those States that want to enforce the provisions of this amending measure or to bring in a new measure may make the Bombay Act their model before they frame their legislation or before they amend their existing law. If it were done, then the chief purpose of this Bill as to the punishment to be meted out to kidnapper of children for exploiting them would have been served. This then is the chief purpose of this amending measure. Even a lawful guardian is not excluded if he maims a child for employing him for begging, and the punishment is laid down in section 363A(2). The Indian Penal Code has a number of sections in which abduction, kidnapping and all the rest of it have been defined and the punishments laid down. The definition of beggary or begging is made comprehensive enough in this little measure, and the ages, as I have said, are being retained as they are in the Indian Penal Code because we do not think that changing the age from eighteen years in the case of a minor girl to one of sixteen as in the case of a minor boy, or *vice versa*, is necessary or imperative at this stage. Many hon. Members who perhaps will participate in this debate will say: All this is all right, laying down laws for the welfare of the children and placing them on the statute book, but how are you going to enforce them and what is going to be the result ultimately of this law that will go on our statute book? It is quite legitimate for Members to have these fears and doubts, because making a law is one thing, but enforcing it purposefully, enforcing it in a manner in which we can see the results and feel the results, is another thing. Therefore

we have asked the different States to bring forward proper legislation in the field of child welfare. We have also asked the different States that the Women's and Children's Institutions Licensing Act of 1956 be enforced straightway so that it would help us after this amending measure goes on the statute book.

Then, Sir, as far as administration of the law is concerned, we have also instructed the States that a missing persons bureau be established at the C.I.D. headquarters; not only that but also that missing children's bureaux be established even at the district level and that a regular register be kept so that, especially when children are missing, a proper account is kept, and where the children are found, a proper handing over is done. We are absolutely sure that the States will take this up as something very serious and they will consider these things. We are also assured by the States that they welcome this measure and also that they will fall in line with us to do the rest, namely, in enforcing the Women's and Children's Institutions Licensing Act of 1956, and also in enforcing the Children Acts where they exist at present and in enacting and enforcing such Acts where they do not exist at present. I may here say that the Ministry of Education will shortly be introducing a measure, the Children Act, for the Union Territories. There was a suggestion made some time ago that there should be a Central Act for the children. But we find that every State has different conditions and therefore we have left it to the States for the present to make their own laws as the conditions prevailing in their own society and in their own districts and in their own States warrant. Therefore it remains at that.

Sir, I do not wish to say anything more except to say that this is a small measure and though small, I hope, it will have far-reaching effects, and of course with our co-operation I hope it will be effective enough to control

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not only kidnapping but also kidnapping for maiming a child and making him an object of pity so that somebody earns on this object of pity.

Thank you, Sir. I commend this Bill.

*The question was proposed.*

SHRI AKBAR ALI KHAN (Andhra Pradesh): Mr. Deputy Chairman, Sir, I think this measure is already very late; it was long overdue. I feel, Sir, that in a welfare State, when we are moving for the welfare of the people, the attempt to beg and beg through maiming a child or an infant is such a heinous offence that it could well be bracketed with the most heinous and serious offences that could be committed against a society. Some of us may even view this as worse than man slaughter. Anyhow, I am glad that the Government has come out with a measure to increase the punishment for persons who use infants for begging, or rather maim them for such purposes to create pity to get more money.

Sir, apart from one or two suggestions that I am going to put forward, this question has got several other aspects. The most important of them is the social aspect. If we, as a society, encourage begging in the present circumstances and do not divert our charitable disposition to useful institutions, unless that change comes, notwithstanding this and other measures, begging and begging through these undesirable means will continue.

Sir, in any religion the idea of charity in our society was that you should give it fully satisfying yourself that it is being given in a deserving case and it is given in such a way that your left hand does not know what your right hand has given. I can understand that position. But now the position is that all of us who go to a mosque or a temple on Fridays

or Saturdays are in such a habit that we dole out something to such persons who are sitting in a long queue. So I would request that it is the duty of everybody particularly those who stand in a representative capacity, to see that begging is not encouraged, particularly begging of this character. We should see that whatever we want to give out of a charitable disposition should be channelled through proper institutions.

SHRI R. P. N. SINHA (Bihar): Does the hon. Member mean that the giver of an alm also should be punished?

SHRI AKBAR ALI KHAN: No. That is why I said in the beginning that it has a social aspect. These things cannot be done through legislation. This will have to be brought about through our conduct, through publicity and through bringing home to the people that begging is as much of an insult to a giver as it is to the receiver. We have to take it in that spirit. A beggar is an insult to the whole society.

The other aspect that I wanted to bring to the notice of the Government was that some measure should be brought about to stop this kind of begging. We tried such a measure in the erstwhile State of Hyderabad. Of course, it implied heavy financial commitments, because if you ask someone not to beg, you have to provide something for him. This aspect is particularly important in relation to persons suffering from contagious diseases. When lepers and all sorts of persons come and extend their hands before you, it is derogatory not only to them and to the society, but it is very injurious to the good health of the society. I think, Sir, it is high time that Government considered a measure under which begging is made a crime.

The third aspect that I want to place before the House is this. It is very good to enact laws. We have got a very good Penal Code to which

we propose to add one more section. But unless you have an effective administrative machinery, it is no use making these laws. We have seen in different newspapers news of some miserable and pitiable cases, how a child was killed, how the lady was assaulted and things like that. It is something not to ponder over only, but I think Government should also tighten up its administrative machinery to see that such things are effectively checked. There is a great deficiency in our machinery to trace out a crime. It would not be inappropriate if I mention that a big theft was committed in Mr. P. N. Saprú's house about two months ago but nothing yet has been traced.

SHRI N. M. LINGAM (Madras): How big was the theft?

SHRI AKBAR ALI KHAN: Theft involving jewellery worth thousands of rupees. You have read of several attempts being made in the running trains but nothing has been traced yet. So there is something seriously wrong with our police administration. I would urge upon the Government, through you, Sir, to look into the matter very carefully. Complacency is not good. In many ways we are moving on progressive lines, but what is your police administration doing when you cannot find out these dacoits and robbers?

SHRI N. M. LINGAM: This is the duty of the State Government.

SHRI AKBAR ALI KHAN: They should send directives to the State Governments. So far as the police is concerned, it is the concern of the Centre as well as the States. They should be seriously taken to task.

Coming to the Bill, I would have been very happy if they had made it life imprisonment instead of ten years. I am glad that in some cases they have made it imprisonment for life.

AN HON. MEMBER: You would make it for life?

SHRI AKBAR ALI KHAN: So far as I am concerned, I would not mind making it for life provided you first publicize it to let the people know that this is such a serious crime that the society looks at it very seriously. If somebody attacks me, I can understand that. I am in a position to defend myself, but could you imagine anything more disgraceful than the maiming of an infant child, taking out his eyes and all sorts of things? I am sure such a thing will not be found in any of the modern countries except in our Asiatic countries.

THE DEPUTY MINISTER OF EXTERNAL AFFAIRS (SHRIMATI LAKSHMI MENON): Not even all Asiatic countries.

SHRI AKBAR ALI KHAN: That is a matter which should upset everybody and we should take into consideration the situation very seriously. So what I was saying was that apart from the point that I have referred to about punishment, I feel that you should also define maiming. So far as I know, this has not been defined in the Penal Code or any other enactment. It ought to have been defined at least here. It is possible that in the absence of a definition somebody could save himself from the mischief of the technical definition of maiming.

SHRI LAVJI LAKHAMSHI (Bombay): There is no definition of maiming.

SHRI AKBAR ALI KHAN: You will not find a legal definition but you will find it defined in every 3 P.M. dictionary. It ought to have come in to cover up cases as otherwise little maimings may not be covered.

DR. W. S. BARLINGAY (Bombay): What harm is there if they are not defined?

SHRI AKBAR ALI KHAN: Somebody takes a child and injures it in such a careful way that maiming

[Shri Akbar Ali Khan.]  
does not happen; then he will go scot-free.

DR. W. S. BARLINGAY: That is why it has not been defined.

SHRI AKBAR ALI KHAN: 'Maiming' should be defined legally to cover all these cases. That would be more definite, exact and a more pointed thing. When we are prescribing a serious punishment, why do we have it undefined?

SHRI B. B. SHARMA (Uttar Pradesh): Any kind of physical injury . . .

SHRI AKBAR ALI KHAN: I would not enter into a discussion but what I say is that the dictionary meaning of 'maiming' is something different from what my hon. friends are presuming to be the meaning of 'maiming'. Anyhow, that is a point that I would like the Deputy Home Minister to think over.

Then, of course, you have exempted so far as custody is concerned, the lawful guardians, but in certain cases a man may take a child from the lawful guardian, pass the child on to somebody and he may do something. So, there may be cases where the people try to get rid of these technical things and then obtain the child. In big *melas* it is known that the child is taken through the lawful guardian in this way, that the lawful guardian is a little indifferent or he is told that he would be helped, etc. There have been cases where such lacunae have been found and people had gone scot-free. I hope our courts will not let them go free but still that is the position obtaining. That should be further scrutinized.

So far as begging is concerned, of course, it has been defined here, but really I cannot understand this. It may not be for maiming or some such thing but if somebody wants to beg through singing or through selling something why should it be a crime

under this? You have defined begging as:

"soliciting or receiving alms in a public place whether under the pretence of singing, dancing, fortune-telling, etc."

We have seen in some countries that the poor people sell a few things and get something. Mere selling is not an offence.

(Interruptions.)

DIWAN CHAMAN LALL (Punjab): Begging under the pretence of singing.

SHRI AKBAR ALI KHAN: You have included . . .

MR. DEPUTY CHAIRMAN: Begging under the pretence of singing, dancing, etc. That is what it says.

DIWAN CHAMAN LALL: He may be making use of the minor for begging.

SHRI AKBAR ALI KHAN: "Begging" means:

"soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise."

"entering on any private premises for the purpose of soliciting or receiving alms."

Of course, the word 'pretence' might save him but it is possible that a person who has been doing these things only by singing might also come under this definition.

SHRI B. B. SHARMA: 'Singing for begging'—that is the point.

SHRI AKBAR ALI KHAN: Supposing there is somebody singing for begging, what happens?

**SHRI N. M. LINGAM:** It is not an offence.

**SHRI AKBAR ALI KHAN:** I want this matter also to be looked into more carefully.

As regards age, it would have been better if you had brought it in line with the other age, namely, 18. There would be no harm. There may be some idiots and children like that. You have put 16 for the boys and 18 for the girls. If you bring both of them to 18, I do not think there will be any harm. With these observations, I support the motion.

**DIWAN CHAMAN LALL:** Sir, I have listened with great interest to my hon. friend. He always makes his points very clear. He has been taking a point of view which is important. May I, in reference to this measure, disabuse his mind completely in regard to the apprehensions that he has with respect to singing and dancing? Singing and dancing, to come within the purview of this measure, have to be under the definition of begging and under the definition of kidnapping and under the definition of maiming. If you put all these things together, then you will be able to connect the desirability of including everything that is possible. It is not only singing and dancing. The expression is 'performing tricks or selling articles or otherwise' which is wide enough to ensure that there would be no escape whatsoever for any person who uses a minor for the purpose of begging or kidnapping or for the purpose of maiming, or who even, merely employs a minor. The presumption is that he has already kidnapped that child. That is the reason. I hope he will now agree that it was very wise on the part of the drafters of this measure to have included these things. There is no doubt about the fact that there are all types of beggars. There are political beggars, there are social beggars, there are religious beggars, there are all types and conditions of beggars but there is only one type and condition of beggars . . .

**SHRI N. M. LINGAM:** What is political begging? Is it begging for tickets?

**DIWAN CHAMAN LALL:** My hon. friend has vast experience as a politician and he understands the expression that I am using. But we are not concerned with political beggars, lest my hon. friend should be unnecessarily anxious about it. We are not concerned with political beggars, stock-exchange beggars, commercial beggars, social beggars, etc., but then there are just beggars. This measure is confined to just beggars, beggars who make use of minors for a very heinous purpose, the purpose being to make money out of the misery, sorrow and unhappiness of these minors.

There is one lacuna in this measure. It deals with three particular aspects of this problem. The first aspect is the kidnapping of the minor and using the minor for begging purposes. The second is kidnapping or maiming a minor and trying to use that particular minor, to evoke sympathy on the part of the public and make money out of the sorrow and misery of the minor. The third aspect is just making use of or employing the minor for begging. Now there is one lacuna. What happens if the lawful guardian makes use of the minor for begging? You rightly condemn a person who is not the rightful guardian otherwise, who makes use of the minor and parades the minor by any means, singing or dancing for begging, but what happens when a lawful guardian himself does it? I hope my hon. friend will realise the importance of this particular matter that I am raising because in the generality of cases, it is the cruelty of the lawful guardian that operates in making use of the minor for these purposes. Therefore do not let go the lawful guardian, if the lawful guardian is doing an unlawful thing or makes use of the child for these purposes.

**DR. W. S. BARLINGAY:** Under sub-section (2) of section 363A you

[Dr. W. S. Barlingay.] find that lawful guardian or otherwise is not mentioned. It covers the lawful guardian also.

SHRI B. B. SHARMA: But it is only in sub-section (2), not in the first and third sub-sections.

DR. W. S. BARLINGAY: There is no question of lawful guardian.

DIWAN CHAMAN LALL: My hon. friend is not reading the measure. It deals with three aspects. The first aspect is mentioned in section 363A(1). (Interruptions.) I want him to follow me.

DR. W. S. BARLINGAY: Sir . . .

SHRI P. N. SAPRU (Uttar Pradesh): Dr. Barlingay has developed the art of interruption into a fine art.

DIWAN CHAMAN LALL: First of all what is an offence? The offences are three under this particular measure.

DR. W. S. BARLINGAY: They are two.

DIWAN CHAMAN LALL: He must listen to me. Whoever kidnaps any minor or not being the lawful guardian of a minor, obtains the custody of the minor in order that such minor may be employed or used for the purpose of begging, shall be punishable with imprisonment. Here the question is of the kidnapping of the minor from lawful custody of the lawful guardian. The second is, whoever maims any minor in order that such a minor may be employed or used for begging, shall be punishable.

DR. W. S. BARLINGAY: Even a lawful guardian . . .

DIWAN CHAMAN LALL: Under sub-section (2) a lawful guardian can be punished for maiming. Whoever maims a minor, no matter whether that person is a lawful guardian or whether it is a person who is not

the lawful guardian, is punishable. But look at the proposed sub-section (3) where it is stated:

"Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging."

Here it is a question of a third person, but not the question of the lawful guardian of the minor himself. If the lawful guardian employs the minor for purposes of begging, such a case is not covered in this particular measure and that is the lacuna that I am pointing out.

MR. DEPUTY CHAIRMAN: Anyway, we are not concerned with that now.

DIWAN CHAMAN LALL: Yes, and that is why I suggest that they should amend this measure.

MR. DEPUTY CHAIRMAN: But this Bill is of a limited nature, to deal with the employing of minors and maiming minor children for purposes of begging.

DIWAN CHAMAN LALL: This Bill proposes a particularly enhanced punishment, for whom? That is the question. The lawful guardian is not there. If the lawful guardian himself exploits the minor child in this manner, then what happens?

MR. DEPUTY CHAIRMAN: There is no kidnapping.

DIWAN CHAMAN LALL: And so I am suggesting that it should be amended.

MR. DEPUTY CHAIRMAN: The main emphasis here is on kidnapping for the purpose of begging.

DIWAN CHAMAN LALL: As I pointed out, when there is maiming



etc., there is the presumption of the child having been kidnapped from the lawful custodian. It is only a presumption and the onus is on the man to prove that he had not kidnapped the minor child, if he uses the minor for the purpose of begging. But what I suggest is that in a large number of such similar cases it is the lawful guardian who makes use of the minor child for the purpose of begging.

MR. DEPUTY CHAIRMAN: That will be a different offence.

DIWAN CHAMAN LALL: What I suggest is that it should come in here and there should be no distinction between the lawful guardian who makes use of the minor for the purpose of begging and any other person who is not the lawful guardian of the minor.

SHRI P. N. SAPRU: There might be a separate clause.

DIWAN CHAMAN LALL: Yes, there can be a separate clause. That was my contention.

SHRI AKBAR ALI KHAN: Will that not amount to indirectly making begging also a crime?

DR. W. S. BARLINGAY: It is making it a crime.

MR. DEPUTY CHAIRMAN: Let us not go beyond the scope of the Bill. Let us confine ourselves to the Bill only.

DIWAN CHAMAN LALL: May I submit that my reading of this measure has led me to think that the point that I am raising is well within the scope of this particular measure. The hon. Minister will see that this is a penal measure. It is a purely penal measure and you are, by virtue of the powers that are vested in you, trying to prevent by punishment or rather by the threat of punishment, certain things happening or being done to the

minor. The time has come when we who boast that we are building up a Welfare State should not merely rely upon these negative powers of punishment. We must try and make it impossible for human beings to make use of minors for the purpose of enriching themselves and make our standard of life such that these things will be impossible. Make provisions for homes where these children can be taken and kept and protected. This is a positive aspect of this negative measure. I do wish my hon. friend had taken a little longer over this measure and brought in a comprehensive measure of this nature in order that full protection may be given to the children.

It is very important that we who pride ourselves on attempting to build a Welfare State, should realise this. You know how this Government and this Administration and the leaders of our people are functioning for the purpose of bringing into being as quickly as possible this Welfare State. It is very very important that we do not lose contact with that particular aspect of this problem. After all is said and done, what does a Welfare State imply? It implies decent housing. It implies full employment. It implies free medical assistance and it implies higher and higher wages and salaries for our people and a better standard of life. It implies free education. I am quite certain that if we pay attention to this aspect of the problem, the problem would solve itself. There would be none left then who would be willing to exploit little children in order to make a living out of the miseries of these little children. Therefore, I would ask the hon. Minister, through you, Sir, to ask the Government to look into this matter, because the boast that we have been indulging in with regard to a socialist society and with regard to a Welfare State will sound rather hollow if we do not take immediate steps, quick steps, to bring about the essentials of a Welfare State.

SHRI P. N. SAPRU: Mr. Deputy Chairman, I think I am right in saying that it is not the case that there is no provision against kidnapping of minor children. If you look at section 363 of the Indian Penal Code, you will find the punishment for kidnapping. I will just invite your attention to that section. It says:

"Whoever kidnaps any person from India or from the lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine."

And in section 359 of the Indian Penal Code, you will find that two types of kidnapping are recognised. There is kidnapping from India and there is kidnapping from the lawful guardian. The maximum sentence for kidnapping is seven years. It is a fairly heavy sentence and the sentences under the Indian Penal Code as originally framed by Macaulay err on the side of severity. In that respect they are against the trend of modern thought. But I am not raising any question as to that. What I wanted to know, or what I thought the hon. Deputy Minister would do, is this. She should have given us some material which would enable us to form a judgment as to the extent of the evil in this country. We should have liked to know whether action had been taken under section 263 of the Indian Penal Code and, if so, with what result. In how many cases in the various States, was action taken under section 363, in how many cases was conviction recorded and in how many cases acquittal was recorded, and if so, for what reasons. We should have liked to have some information from the surveys taken of these maimed children, of the gangs who maimed these children and who kidnapped them. Some material should have been placed before us to enable us to form a correct judgment in regard to the extent of this social evil. Well, that has not been done. Therefore, we have in order to form a

judgment, to fall back upon our own experience. I can say that it is a disgusting sight in this country to see maimed children begging in railway stations, in the streets and coming to private houses for alms and that sort of thing.

DR. W. S. BARLINGAY: And in temples.

SHRI P. N. SAPRU: Yes, in temples, mosques and places of pilgrimage. I do not find begging in churches though I find it in temples and mosques.

I think Government should endeavour to have an accurate sample survey of this evil taken and circulate or place the results of that survey before the public because by doing so it would be rousing the public conscience in regard to this matter.

Then I shall come to the provisions of this Bill. Before I do so, I would like to say that the question of the future of the child is a very important question for all social workers. It is a very important question for those who are aspiring to build a socialist society in this country. The future of our country is bound up with the future of our children. The child is the man and, therefore, the United Nations has been devoting some thought to the question of what the fundamental rights of the child are. Apart from that, I should like to point out that article 39 of our Constitution makes a special mention of children. This is what that article says:

"The State shall, in particular, direct its policy towards securing—

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(f) that childhood and youth are protected against exploitation and against moral and material abandonment."

Therefore, the protection of children from exploitation of all forms is a directive principle of our State policy. It is something which the founding fathers intended that we should take up in earnest.

Then, Sir, I should like to take up the actual clauses of the Bill. The first point that I would like to raise is about clause 2. Whereas obtaining the custody of the minor or kidnapping of minor for employment or use for the purposes of begging has been made an offence, there is nothing which would enable courts to punish the parent or the lawful guardian who employs a child for this purpose. I would like to draw the attention of the House for a minute to this point. It says: "Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment" and then they go on to define what that punishment shall be. Now, supposing I am the parent or the lawful guardian of a minor, then I can employ or use him for the purposes of begging and if I do so, I shall not be liable to any punishment. This is the interpretation of this clause. Surely, this could not have been the object of the draftsmen.

DR. W. S. BARLINGAY: Yes, it is.

SHRI P. N. SAPRU: I would like the lady Minister to tell us whether that is the object and whether a lawful guardian can employ a child without any punishment for the purposes of begging.

DR. W. S. BARLINGAY: That is the meaning.

SHRIMATI VIOLET ALVA: It has been kept out of the purview of this measure because that is included in the other Act, namely, the Children Act, which looks after the particular offence that the hon. Member is now citing.

SHRI P. N. SAPRU: Then, we should have been given that provision of the Children Act which deals with this matter because, as the Bill stands, I take it that the guardian has been exempted from any responsibility for the care of the child.

DR. W. S. BARLINGAY: Begging itself is not an offence. How can you prevent it?

SHRI P. N. SAPRU: Begging itself should be an offence.

DR. W. S. BARLINGAY: Then it is all right.

SHRI P. N. SAPRU: Another difficulty which I find about this clause is that a person who kidnaps a minor comes and takes shelter behind this clause. If a person who is not a lawful guardian obtains the custody of the minor, he comes under the mischief of this clause only for the purposes of begging but a person who engages the services of a minor for the purposes of begging does not come within the mischief of this clause. I may find a child of about 10 or 12 and I may say: "Look, I want to have someone who will assist me so far as my begging profession is concerned. I will give you at the end of the day eight annas or ten annas or twelve annas but you have to get as much as you can." Now that is not an offence under this clause. I think it should have been made an offence under this clause.

SHRI B. B. SHARMA: Under sub-clause 3, it comes because he would be presumed to have kidnapped.

SHRI P. N. SAPRU: How can he be presumed to have kidnapped? I know that the presumption of law that a man is innocent until he is proved guilty has been reversed by the last clause. Now a man will have to prove that he was, in fact, not guilty.

The Courts will start with the presumption that he is guilty until he proves the contrary.

SHRI SANTOSH KUMAR BASU (West Bengal): Or, until the Legislature otherwise decides.

SHRI P. N. SAPRU: That, of course, is not the intention of our jurisprudence. We know that in the case of stolen property, for example, if it has

[Shri P. N. Sapru.]

been recovered recently from a person the presumption is that he knew that the property was stolen and it is for him to prove lack of knowledge. I do not take the view that the burden is an impossible burden. I think the honest man who is employing a child for purposes of begging will be able to prove that he has not obtained unlawful custody or that he has not kidnapped the child but that the child came of its own accord or with its parents' consent or that the parents handed it over to him and that they wanted him to get some money from its actions as a beggar. That is not an impossible burden to prove and, therefore, it should have been made clear that it is not open to a guardian to allow his ward to be exploited in that manner. I regret that there is no provision of that nature in this Bill. It may be said that the matter will be taken up at a future date. That is all right but why postpone things to a future date when you can settle them today? I think the principle that we should follow so far as legislation is concerned is that we should bring in comprehensive Bills; we should not leave it to the future for the lacuna in this Bill to be made up. Therefore, this Bill is defective so far as that point is concerned.

I am not quite clear about another clause, a reference to which was made by Mr. Akbar Ali Khan, and that is the clause which deals with the definition of begging. "Begging" here means:—

"(i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;"

I have found in Connaught Place and other places children selling newspapers and I have myself bought newspapers from them. I think some of the great leaders of England started their lives as sellers of newspapers. The question which I want to pose is whether the selling of a newspaper

would be covered by this clause and whether it would depend upon whether the proceeds to a beggar or not. I suppose that will be the criterion which will have to be applied but I am not sure that the drafting of this clause could not have been improved upon.

I come now to the definition of a "minor". The word "minor" will have two interpretations under this Bill. In the case of a girl or a female child, the age mentioned is under eighteen and in the case of a male child or a boy, it is under sixteen. I do not know what the principle behind this differentiation is. Is it suggested that male children need less protection than female children? Or, is it suggested that male children mature earlier than female children? The female child matures, so the doctors say, earlier than the male child. In this matter, Sir, we should have followed one consistent rule; the age of majority should have been eighteen for both the male and the female child. In England, the word "minor" is unknown; the word used there is "infant" and until a child has reached the age of 18 or 21—I am a little confused about this age of majority . . .

SHRI SANTOSH KUMAR BASU:  
Some people do not grow out of their infancy.

SHRI P. N. SAPRU: And they are more or less wards of the Courts of Chancery.

I think there is no solid basis, no rational basis for this differentiation between the male child and the female child. The age of minority should be eighteen for both; it should be raised to eighteen in the case of the male children. I think a girl who is below the age of eighteen is not capable of looking after herself. I also think that a boy who is below eighteen is not capable of looking after himself and, therefore, both of them deserve the protection of the law. I hope that before this Bill leaves

this House, this defect in the Bill will be corrected by this House.

Sir, it is a disgusting sight to find maimed children entering private premises for soliciting or receiving alms. They are victims of our social system; they are victims of our economic system. They are victims of the acquisitive society to which we give our love and adherence.

While I have a lot of sympathy for this Bill, I should have liked it to be more liberal in some ways.

May I just say a word about the sentences which are to be found in this Bill? For the first offence of taking away the child, the sentence is ten years' imprisonment and fine.

And for maiming a minor, the sentence is imprisonment for life and fine. Now, Mr. Deputy Chairman, as I said, the question of sentence is a very very difficult one. We have today in the Penal Code a provision for a sentence of 7 years for kidnapping a child from lawful guardianship. That, I think, is not a small punishment; I think it is a sufficiently deterrent punishment. Is it imagined that by raising the maximum punishment to 10 years a new heaven on earth will draw on this country? Is it seriously thought that by raising the sentence to 10 years crime will disappear? If you follow that argument to its logical extent, then you have got to go back to the early days of the 18th or the 17th century when for even the most minor offences the punishment was death. The tendency in modern countries, in countries which have a democratic background, which pride themselves on humane laws, is to have in many cases indeterminate sentences. Sometimes a judge has to give deterrent punishments. I remember a case which has just come to my mind. In the case of the Teddy boys, Mr. Justice Solomon of the London High Court gave four years for a comparatively minor assault and he gave that very heavy sentence because he wanted other young men to be deterred from taking that path. This question of

sentence is, generally speaking, one for the judge to decide. No question is more difficult for a judge than this question of sentence. I know the tendency of judges is to look upon cases as types of cases. They award sentence not to the individual but they award sentence to the types from which he comes. If he comes from an ex-criminal tribe, the sentence is heavy; if he comes from a fairly respectable stock, consideration is taken of the fact that it is his first lapse. So I am not for fixing the minimum sentence at all. The sentence should be left to the discretion of the judges but what I say is, we must not delude ourselves by the idea that just because we have prescribed transportation for life or imprisonment for 10 years as punishment, we have cured the evil. Much effort is required to deal with this big problem and it is a problem in the solution of which we shall need the co-operation of all sections of the community. The State must be prepared to work with social service organisations and the social service organisations too must be prepared to give full co-operation to the State in building up a society which shall be free from these evils. Thank you very much.

**SHRI BIBUDHENDRA MISRA** (Orissa): Mr. Deputy Chairman, Sir, I rise to support the Bill. The Bill has only one object and that is to provide for a more deterrent punishment for the offence of kidnapping under certain circumstances. It is a nightmare since the number of kidnapping cases even from remote villages has appalled people but I am afraid that the procedure that has been laid down in this amending Bill—I refer to the amendment of Schedule II of the Criminal Procedure Code—that it can be tried by a Court of Session, Presidency Magistrate or Magistrate of the first class, will defeat the object of the Bill. It is said that for the offence of kidnapping the punishment will be imprisonment of either description for 10 years and fine and for the offence of maiming, the punishment provided is imprisonment for life.

[Shri Bibudhendra Misra.]

Now, the question is, by bringing in first class magistrates into this amendment, by giving them power to try such cases, whether the object of the Bill will be achieved or not. As hon. Members are aware, the powers that are conferred on the Presidency Magistrates and first class magistrates are statutory. Sections 30 to 32 of the Criminal Procedure Code deal with them. It is well known that a first class magistrate cannot inflict a sentence of imprisonment which extends over a period of two years. Two years is the maximum period of imprisonment which he can award. Now, I would request the hon. Minister to consider whether it will serve the purpose of the measure if the trial of such offences is given to first class magistrates particularly when there is a provision here for imprisonment for life under certain circumstances.

I would also, Sir, point out in this connection to another aspect, and say that this provision is very lenient. I would refer to sections 364, 366, 366A, 366B and 367 of the Indian Penal Code. Those are sections which deal with punishment for kidnapping for certain specific objects, and they provide for imprisonment for a period of 10 years, and so far as those sections are concerned, such cases are only triable by a Court of Session. So there is no reason why here in this case these offences should be allowed to be tried by first class magistrates, and not exclusively by a Court of Session. That would be my point.

Then some hon. Members raised the question that the lawful guardian of a minor should also have been brought under the purview of sub-section (1) I do not know, if it is desirable to punish the lawful guardian of a minor. If it is considered desirable, the House can legislate on that matter, but I am afraid that that cannot come under section 363 or under the categories of those offences starting from section 361 of the Indian Penal Code which deal with kidnapping, abduction and allied offences. The very definition of

kidnapping, as has been given in section 361 of the Indian Penal Code, is that it is taking away from the lawful guardianship. So no lawful guardian can come under the purview of the offence unless it is intended to change the definition itself.

Then Mr. Sapru has raised another question and that is about the age of the minor that has been given here. I would only point out with all humility that it is no new innovation; it already exists in the Indian Penal Code and that is there in section 361; which gives the definition of kidnapping. There the age of the minor has also been stated in similar terms. I would therefore consider that since in the definition of kidnapping given in section 361 the age has been stated, it is unnecessary to reproduce it again here because it would undoubtedly be guided by the definition given in section 361 of the Indian Penal Code. With these words, Sir, I support the Bill.

श्री ब्रज बिहारी शर्मा : उपसभाति महोदय, श्रीमान, मैं दो तीन बातें कह कर इस बिल का समर्थन करना चाहता हूँ।

पहली बात, जैसा कि मेरे लायकदोस्त ने अभी कहा है प्रस्तावित सेक्शन के अंदर ट्रायल के लिये मजिस्ट्रेट को जो अधिकार दिया गया है वह सही नहीं है। हमेशा इंडियन पीनल कोड में यह प्राविजन रहा है कि जहां स्ट्रिक्टर पनिशमेंट हो, सात साल से ज्यादा की पनिशमेंट का सवाल हो, वहां सेशंस कोर्ट में ही ट्रायल हो सकता है। इसलिए इसमें जो सात साल की पनिशमेंट प्रोवाइड की जा रही है तो उसके लिये यह आवश्यक है कि ऐसे केस सेशंस कोर्ट में ही ट्रायल के लिये भेजने को उपयुक्त माना जाय और उसी को इसका अधिकार दिया जाय क्योंकि सेशंस ट्रायल में साधारणतया यह समझा जाता है कि जजों ज्यादा कायदे कानून के मुताबिक चलते हैं। इस से यह मेरे कहने का अभिप्राय नहीं है कि मजिस्ट्रेट की अदालत में कोई गैर कानूनी बातें की

जाती हैं, फिर भी उन मजिस्ट्रेट्स की उतनी योग्यता नहीं समझी जाती जितनी कि सेशंस कोर्ट के जज की समझी जाती है।

दूसरी बात, हमारे लायक दोस्त चमनलाल ने यह प्वाइंट रेज किया था कि इस में लाफुल गार्डियन को क्यों एक्सक्लूड किया जाता है। वे यह भूल गये थे कि यह सेक्शन किस चैप्टर में और किस सेक्शन के अंदर जोड़ा गया है, किडनैपिंग के अन्तर्गत जो क्लॉज है उस में यह एक और प्राविजन जोड़ा जा रहा है। हर किस्म के किडनैपिंग के लिये पहले से ही कानूनन सजा दी जाती है, कानून की दृष्टि से मद्दा ही किडनैपिंग को बुरा समझा जाता है। लेकिन यहाँ पर उस केस में जहाँ बेगिंग परपज के लिये किसी लड़के को किडनैप किया जाता है ताकि उसके द्वारा भिक्षा मंगवाई जाय, उसके लिये यह दफा अलग से बढ़ाई जा रही है।

अब इस में जो यह कहा जाता है कि लाफुल गार्डियन को क्यों न लिया जाय, तो उसके लिये तो हमें भिक्षा मांगने यानी बेगरी को खुद ब खुद कानूनी तौर पर बुरा करार देना होगा। वह दूसरे विधेयक का काम होगा। इस विधेयक के द्वारा यह नहीं हो सकता है। यह एक छोटा सा विधेयक है और पीनल कोड में एक दफा बढ़ा कर कानून की सूरत में हमारे पाम आया है। लेकिन इस में एक चीज यह आती है कि जो आदमी लाफुल गार्डियन है और अपने लड़के से बेगरी कराता है तो वह दोषी नहीं कहा जाता। इसका कारण यह होता है कि उस में किडनैपिंग की बात नहीं आती क्योंकि वह लड़का चोरी कर के भगा के नहीं लाया गया है। बेगरी कोई क्राइम नहीं है, अपराध नहीं है, इस वास्ते उसको इसमें लाना उचित नहीं होगा।

**श्री प्रकाश नारायण सन्नू :** क्या ब्राह्मण लोग बेगिंग नहीं करते हैं ?

**श्री ब्रज बिहारी शर्मा :** जी नहीं, ब्राह्मण बेगरी नहीं करता, ब्राह्मण तपस्या करता है। बेगरी करने वाले दूसरे ही लोग होते हैं जिनको पैसे का लालच होता है वे ही बेगरी ज्यादा करते हैं, वह पैसे का लालच चाहे किसी रूप में हो। बड़े आदमियों में भी पैसे का लालच होता है। वे चोरी करते हैं, बेईमानी करते हैं, घूस लेते हैं, मुनाफाखोरी करते हैं। ब्राह्मण को पैसे का लालच नहीं होता है, इस वास्ते ब्राह्मण तपस्या करता है, नहीं तो वह ब्राह्मण ही नहीं है।

इस में एक चीज और है कि मेल और फीमेल का डिस्क्रिमिनेशन किया गया है। सोलह वर्ष से नीचे का होने पर मेल को माइनर करार दे दिया है और बालिकाओं को अठारह वर्ष की उम्र में जबकि हर एक लॉ में हमको इसके विपरीत मिलता है। मोहमडन लॉ में प्यूबर्टी होने पर बालिग करार दिया जाता है, हिन्दुओं में भी पुराने लॉ के अनुसार चौदह या सोलह वर्ष की उम्र में लड़की बालिग करार दे दी जाती है लेकिन इस में उसकी उम्र १८ वर्ष कर दी गई है। इसका जो अभिप्राय कुछ समझ में आता है वह यह है कि लड़कियों को अठारह वर्ष की उम्र तक भी अगर भगाया जाय तो वह किडनैपिंग में स्वतः आ जायगा, लेकिन लड़कियों की ज्यादा सम्भावना होती है कि उनको भगा कर ले जाया जाय, चाहे किमी भी गर्ज से ऐसा क्यों न हो और इसलिये अठारह वर्ष तक की उम्र की लड़कियों को भगा कर ले जाना अपराध करार दिया जाता है इसी वास्ते यह डिस्क्रिमिनेशन किया गया है और मैं समझता हूँ कि यह उपयुक्त है और उस में कोई बुरी बात नहीं है।

इन शब्दों के साथ मैं इस विधेयक का समर्थन करता हूँ।

**SHRI LAVJI LAKHAMSHI:** Mr. Deputy Chairman, I rise to support

[Shri Lavji Lakhamshi.] broadly the provisions of this Bill, and I submit my remarks with regard to certain portions as under. My hon. friend, Mr. Sapru, very rightly said that in this Bill there is no provision for punishing a lawful guardian who engages his child in the trade of beggary. What is sought to be . . .

MR. DEPUTY CHAIRMAN: We are not concerned with it now. If you want, you may bring forward a separate amending Bill to the Penal Code.

SHRI LAVJI LAKHAMSHI: Nevertheless, I feel . . .

MR. DEPUTY CHAIRMAN: We are concerned now with kidnapping of minors or maiming a minor with the object of beggary. The main emphasis is on kidnapping.

SHRI LAVJI LAKHAMSHI: If you will bear with me for a minute, I shall just point out how my remarks are relevant. If it is the argument that the present amending clauses are only in relation to kidnapping, that is, provisions relating to kidnapping in the Indian Penal Code, then I would submit that maiming would not come as a part of it either. Maiming itself will be an independent section, independent offence. So, if an independent offence is brought or shoved into this kidnapping, most rightly, engaging in the trade of organised beggary could be made punishable, so far as the lawful guardians are concerned. There is nothing wrong in it. Therefore, I feel that what I am submitting is perfectly relevant. As a matter of fact, the hon. Mr. Sapru pointed out the Directive Principles of the Constitution also, wherein it is enjoined as a Directive Principle that minors should be prevented from being exploited by anyone. If the main object is to make this organised trade in beggary punishable by a heavy punishment, even by putting an amending section in the Chapter which deals with kidnapping, then most certainly this engagement in

beggary or utilising or exploiting these minors should have and could have found a place in this amending clause. It would have been most proper, and I would say very relevant, for carrying out the objectives of our Constitution also, if it was the objective to make this organised beggary a punishable offence. So far as 4 P.M. it goes, Sir, I support this particular section. But I do find that the language is rather involved. Now, Sir, kidnapping itself is made an offence. It is defined under section 361. It is punishable under section 363 and the maximum punishment that could be awarded is seven years' imprisonment. Here under section 363A, what is sought to be provided is that whenever a minor has been kidnapped and his custody has been obtained by persons other than the lawful guardians, and when that minor is being used for the purposes of begging, the punishment is ten years and fine. What I am trying to submit is that in this section the language is first of all unconnected.

"Whoever kidnaps any minor or obtains the custody of the minor in order that such minor may be employed or used for the purposes of begging shall be punishable" etc.

It is not a direct punishment saying that whoever kidnaps or whoever obtains the custody of a minor from the hands of the lawful guardian and uses or employs the minor for the purposes of begging will be given such and such punishment. Instead of doing that directly, the provision is that if a person has been kidnapped or a minor has been kidnapped with a view to doing this thing, etc., etc.

Then, in sub-clause (3) it is provided that whenever such a minor who is not in the lawful custody of a guardian is used, etc.—the presumption is that he commits the offence of kidnapping. This is involved language. Rather than that I would submit that there should have been a direct language, and the reason for this direct language was very ably and clearly



pointed out by my hon. friend Mr. Sapru. In that escape provision that he pointed out, it is possible for a legal guardian or a lawful guardian not only to engage himself in this trade of begging through these children but he can transfer the custody of these minors lawfully and give them to some one so that that man may utilise these minors for the purpose of begging, and he goes scot-free. That is why the indirect language is harmful. I should have thought it much better to have a direct language in the very first section, that is, section 363. If it is not sought to make a lawful guardian directly punishable for employing a minor ward under his charge for the purpose of begging, most certainly this sort of crime should not be so indirectly permitted by this involved language. Therefore, Sir, I would submit that this language follows the same pattern because it appears that the care is more towards sticking to the language of the Indian Penal Code, particularly the sections about kidnapping and similar other sections, where the aggravated forms of a particular offence are defined and made punishable. Here, if the object was to see that this organised trade in begging is punished or stopped by providing for deterrent punishment, then a direct sentence, a direct provision and a direct definition ought to have been employed rather than this indirect language.

So far as the Schedule is concerned, I entirely agree with my hon. friends Mr. Mishra and Mr. Sharma. We find that in the whole scheme of the Indian Penal Code and the Criminal Procedure Code, wherever the punishment is beyond five years or seven years, such offences are not triable optionally by First Class Magistrates, because First Class Magistrates cannot impose any punishment of more than two years' imprisonment unless they are specially empowered under the Criminal Procedure Code. No such power is sought to be given here. Under the general pattern of the Criminal Procedure Code, it is said that wherever the punishment is below five

years and above 2 years, even in such cases the offences are optionally triable by Magistrates of the First Class or by a Court of Session. Here the option is left to the First Class Magistrate. Supposing an offence of this type comes before a First Class Magistrate, if he feels that he is able to give punishment in the circumstances of the case adequately, he can proceed with the trial rather than the committal proceedings, and the punishment that he can award will be not more than two years. Our intention here is to treat this offence as a more grievous, a more heinous and a more serious offence. We want to treat the offence as punishable with ten years' imprisonment. My submission would be that the option should not have been left with the First Class Magistrates to try them themselves. As it is sought to be provided in the case of maiming, this offence should also have been triable exclusively by the Court of Sessions. I commend these remarks to the hon. Minister for making suitable provisions in this regard.

So far as the maiming part is concerned, my hon. friend Mr. Akbar Ali Khan has suggested that the word 'maiming' has not been defined. I understand, Sir, that the dictionary meaning of the word is more or less clear. Maiming is sort of inflicting a permanent injury which deforms the body of a person. That is sufficiently clear. After all the punishment is sought to be awarded for the infliction of an injury which is sought to be made permanently to a minor, and I do not think that any further definition is called for.

My hon. friend Mr. Sapru and some other hon. Members have suggested that "singing" and "selling articles" should not have found a place in this definition of "begging". It appears that there is a considerable misapprehension in the minds of the hon. speakers, because here "begging" is sought to be defined not for the purpose of making begging itself an offence, but it is sought to be defined

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with a view to seeing that this particular type of begging which is taking place through the agency of minors in an organised way by persons other than lawful guardians is punished. Therefore, every way, manner or method which is being employed through the agency of the minors for the purpose of collecting alms or collecting money or making a trade of this type is sought to be made punishable. So, even on the face of it, visibly, a minor may be employed to do the most innocent thing, but if it results in bringing in money for the sake of gain of an unauthorised person, it is certainly begging, and I would submit that the word 'otherwise', which is all-embracing and very wide, is very happily put there, and I do not think that it calls for any amendment whatsoever.

Having said these words, I support this Bill and would submit that in the light of what I have said the hon. Deputy Minister may make the necessary amendments in it. Thank you, sir.

SHRI J. S. BISHT (Uttar Pradesh): Mr. Deputy Chairman, I support this Bill. It is a very welcome thing that the Government has come forward with a Bill to prevent this growing evil in this country. I will not dilate on many of the legal arguments that have been ably dealt with by the hon. speakers who preceded me. But the one point that worries me is this. We pass so many laws hoping that after the passing of the law the evil will cease. And we do not know what the result is after that. The greatest difficulty is this that these laws are not implemented in the manner in which we want that they should be implemented. Unless the police force is reorganised and made more efficient in this matter, it is no use passing these laws whatever laudable objects they may have. You will be surprised to know, Sir, that in a very law-abiding country like England there is one policeman for every 500 of the population. In India

as a whole—and in U.P. from which I come—I may inform you that there is one policeman for every one thousand of the population. There is only one policeman for one thousand of the population as against one policeman for every five hundred of the population in a country like England which is supposed to be very law-abiding. Now that means that we have to double the police force. Not only that, we have many other defects. Sir, I have had a very long connection, when I was carrying on sessions trials, with the police and know what the actual defects are. It is this that there is a police thana with a certain number of policemen—thirty, forty or fifty, whatever it may be. Now this police thanedar or the Inspector or the Station Officer is to carry out multifarious duties. If there is law and order trouble, he has to rush about to keep peace. If there is a crime, he must go and investigate it. If there is some V.I.P. coming, he must make arrangements for his coming and going. If there is a traffic problem, he must deal with it. So all sorts of complications are coming in with the result that crimes are not properly investigated and if they are investigated, at least fifty to sixty per cent. of them fail in the courts. That is the most unfortunate part of it. Especially in the sessions trial, there is a general slaughter because the sessions court, as my hon. friend has said quite rightly, is a higher court where justice is substantially done and according to law, and the law of evidence, as you know, Sir,—you have full experience of it—is so strict in our country that it becomes very difficult to get a man convicted. Now, for a police sub-inspector who has to do so many multifarious duties it becomes difficult to follow even one case properly, step by step. We hear a lot about what Scotland Yard does and does not do. There, you see, one man is after one case; he follows the procedure meticulously; he follows it step by step; he is doing no other work except following that particular case, so that he is quite prepared when the case comes before a court of law

to see that every requirement of the law is met. It is not so here. As you know, Sir, there is the First Information Report, the most difficult thing. Ordinarily, our villagers are very innocent; they do not know the niceties of law; they do not know its complications; they go and make a report. And the man who writes the report is usually a head constable. They call him diwanji. Now, he writes out a report. Many of the things are omitted. Later on, when the sub-inspector of police has made out the investigation, he finds that there are many points which are missing—missing links—and an attempt is made to fill them up when the case goes before a court of law. Immediately the defence counsel pounces upon him—here are these things; this thing was not found in the report; it is an after-thought; it is missing from the files which have been put up. I am quoting only one instance. Then there are the statements recorded by the police in the police diary and then there are statements that are made before the magistrate. Unfortunately, if the court happens to be a sessions court, then the statements are made before the magistrate and before the sessions court. In these three or four statements, it is a happy hunting ground for the defence counsel to see so many discrepancies. Even the truthful witnesses may find themselves very much involved in all these things. Unless very energetic steps are taken to deal with certain types of crime which are more heinous and from which the society must protect itself, it is no use passing merely these laws. For instance, in respect of sections 363, 363A, 366A, sections on dacoity, rape and all these sorts of things, unless you adopt some special provision and also make special provisions in your administrative machinery to see that the cases are properly traced, investigated and are made out so that they can stand the test of a law court, it is no use passing these laws. Of course, I welcome them; that is something better than nothing.

My hon. friends here had pointed out the defects in draftsmanship. Of course, there are many defects in draftsmanship. There is considerable room for improvement. It is not easy to get a Sir James Stephens to draft the Evidence Act every time. But the defect is, as I said, with the administrative machinery and the police. Now it is for the Ministry of Home Affairs to take energetic steps. The hon. Deputy Minister knows very well that the whole Criminal Procedure Code was revised in order to expedite trials, in order to see that something is done. We do not know what the actual effect was. Whether that particular provision of the law has in actual working proved to be better than the previous law or not, I do not know. We have not got figures. In this case also, I think the hon. Deputy Minister ought to have supplied us certain figures as to what were the difficulties which the police or the Government faced in bringing these criminals to book. Already in the Penal Code you have got ample provisions to deal with kidnapping. If it is kidnapping for any purpose, kidnapping itself is an offence and a very serious offence for which the punishment is imprisonment up to seven years. We do not know how many cases of this type were actually prosecuted and how many were convicted and what were the special difficulties that came in the way of the Government.

Now, there is another argument that may be advanced by the Ministry and it is this that after all, the police department is a transferred department; law and order is a transferred subject. So these are the questions which should be agitated on the State level and the Government of India can do very little in this matter except pass these laws and ask the State Governments to follow them. And the position will, of course, vary from State to State and also it will depend upon the finances of the State. But at present we are so happily situated that the Congress Party holds the reins of

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the Government at the Centre as also in the States. In economic matters, there is the National Development Council which takes certain decisions and they are implemented throughout the States. Similarly, is it too much to expect that the Ministry of Home Affairs can also call a meeting of the Home Ministers of all these States and thrash out these problems so that they can be dealt with on a uniform, all-India basis in all the States and these criminals are brought to book?

There was one point raised by my hon. friend and it is this that with regard to clauses (1) and (2) of section 363A, a certain difference has been made, namely, in clause (1), the crime is also triable by a Court of Session, Presidency Magistrate, or Magistrate of the first class and in the other, exclusively by a Court of Session. The difference is this: As far as I could judge, in clause (1), the punishment 'may extend to ten years'; it is not 'shall extend to ten years'. Under clause (1), where a Magistrate finds that he can adequately punish the guilty or if the facts of the case are such that he need not send it to a Court of Session and that he would himself try to dispose of the case, he can do so. That is why this small provision has been made. But in clause (2) there is no option—'shall be punishable with imprisonment for life'. Even the Court of Session has absolutely no option in this matter. If the Court of Session finds that the man is guilty of this crime, the court must punish him, inflict a punishment upon him with imprisonment of life, and that is why I suppose this slight difference has been made.

SHRI B. B. SHARMA: Why not make it obligatory for the sessions trial?

SHRI J. S. BISHT: But that is not exceptional in this case. There are other provisions also in which the punishment is up to seven or ten

years and yet it is triable by a Court of Session, Presidency Magistrate, or a Magistrate of the first class. It all depends on the circumstances of each case and probably on the police report, on how the police wants the matter to be dealt with. And then, Sir, there is this presumption:

"Where any person, not being the lawful guardian of a minor, employees or uses such minor for the purpose of begging, it shall be presumed unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging."

This I suppose, Sir, will lead to certain difficulties, and our hon. friend, Mr. Sapru, has already pointed out those difficulties in the case of people who are the lawful guardians and who give their children for being used in this manner. That will certainly create certain difficulties and the presumption is a very large presumption; it is a presumption of guilt and it may not be very easy at a later stage, when the matter is in the hands of the police, for a man to prove that he got the custody of the child from the guardian himself. It may cause in certain cases a certain amount of hardship. I do not know whether at this stage the hon. the Deputy Minister can do anything about it, but worded as it is, it is likely to create that sort of difficulty.

With these words, Sir, I support this Bill in the hope that steps will be taken to see that it is not merely passed but that crimes of this type are properly hunted and the criminals are prosecuted and convicted.

SHRI SANTOSH KUMAR BASU: Mr. Deputy Chairman, Sir, I welcome this Bill as also the statement of a comprehensive nature which the Deputy Minister placed before the House in moving the motion. She has indicated the necessity which has

caused the Government to bring forward this Bill and has also indicated the social measures that Government intend to take for the purpose of creating a situation which would render such begging or kidnapping or maiming absolutely unnecessary—if I can use that word. That aspect of the matter has been stressed by many other speakers, that social welfare institutions should be set up and steps should be taken in order that these penal measures might be supplemented by something concrete and constructive in that direction.

Sir, it has been suggested that facts and figures and statistics should have been placed before the House for the purpose of showing the necessity of enhancing the punishment as provided in this Bill. My hon. friend, Mr. Sapru, stressed that point, that imprisonment for seven years was sufficiently severe as provided in the present Penal Code and asked what was the necessity for increasing it to a period of ten years as provided in this Bill, and for that he wanted to be satisfied on the basis of facts and figures as to in how many cases the prosecution had failed to secure sufficient and necessary punishment which might be considered to be of a deterrent nature.

Sir, I would invite my hon. friend to pay a visit to the city of Calcutta, and the startling scenes that he will be confronted with would at once convince him that this measure has not come a day too soon. In fact the hon. the Deputy Minister prefaced her remarks by saying that this measure was long overdue, and I can bear testimony that the conditions are so appalling in a city like Calcutta that deterrent punishment of a severe nature should be prescribed to meet the situation. Sir, if I am not inflicting upon the House any personal reminiscences of my own, I may tell you, Sir, that it was in the early forties that a great effort was made, with which I was connected in a responsible manner, to round up

the beggars in Calcutta and to house them in a vagrants' home. The police went about the city and collected the beggars and vagrants scattered all over that great city. And a house or a vagrants' home was set up where they were lodged and ameliorative measures were taken for the purpose of making them useful citizens. That movement caused such a stir and scare amongst the beggars in Calcutta that many of them left the place and went to other States. Now, Sir, that vagrants' home is still there, but the numbers swelled up to such an extent that it became absolutely impossible physically to provide homes for them. The result was that gradually the beggars and vagrants again filtered into and came back to the city, and today that city of Calcutta is a den, if I may use that expression, is infested with beggars of an abominable type so far as their physical deformities are concerned. That being the position, Sir, as I have said, this Bill has not come a day too soon.

SHRI J. S. BISHT: It does not apply to such class of persons . . .

SHRI SANTOSH KUMAR BASU: Many.

SHRI J. S. BISHT: Children?

SHRI SANTOSH KUMAR BASU: Yes, children undoubtedly.

Now, Sir, the question has been raised as to why this enhanced punishment has been prescribed, also the question of the age of sixteen years for a male child and eighteen years for a female child. Now that takes us back to a little history which is behind this provision. Sir, as far back as 1922 the Indian Legislature passed resolutions accepting the international articles of the League of Nations for the purpose of combating white slave traffic. I may also give you the dates on which these resolutions were passed by the Indian Legislature. On January 31, 1922 the Council of States passed the resolution, and on

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the 7th of February, 1922, the Legislative Assembly followed suit by accepting and ratifying those articles, the international convention for the purpose of suppressing white slave traffic, and protection was extended to girls, not boys, up to the age of eighteen years, and that was embodied in the relevant sections of the Indian Penal Code in 1923. The age was raised to eighteen from sixteen so far as the girls were concerned. Subsequently the age was raised from fourteen to sixteen, in the sections which are already in existence regarding kidnapping, so far as boys were concerned. Now, Sir, that is the position as it exists today in our Indian Penal Code, and this Bill has only adopted the same line in fixing the respective ages of the minor girls and the minor boys at eighteen and sixteen respectively. Therefore I would submit that there is nothing new, nothing strange in the adoption of that policy in this particular Bill, because that has already found a place in the statute book in the relevant sections of the Indian Penal Code.

Now, Sir, coming to the Bill itself, you will find that this Bill seeks to amend the Indian Penal Code by enacting a provision called section 363A just as in those days, in 1923, the Indian Penal Code was amended by adding a section 366A so far as abduction or kidnapping of minor girls was concerned. Today for what purpose is it that we propose to add section 363? For the purpose of penalising a kidnapper with higher punishment, not only kidnapping from lawful guardianship, but obtaining the custody of the minor, in order that such minor may not be employed or used for the purposes of begging. I shall have to say something more in regard to obtaining of the custody of the minor when I come back to sub-section (1) of section 363A.

Now clause 2 proposes to penalise a person for maiming. It says:

"Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine."

—whether that minor is kidnapped or not. Maiming of a minor for the purposes of begging is made a penal offence by itself quite apart from the question of kidnapping from lawful custody.

Sub-section (3) of section 363A has been criticised by some of my hon. friends here, Diwan Chaman Lall and Mr. P. N. Sapru, that it imposes a presumption which runs counter to the provisions of British Jurisprudence inasmuch as a person is presumed to be innocent so long as he is not found guilty by a court of law. I humbly pointed out to my friend, Mr. Sapru, that presumption can be superseded by the legislature in its wisdom. That has been done in the appropriate sections of the Indian Penal Code to which my friend, Mr. Sapru, himself later on referred. For instance, in the case of stolen properties the presumption is shifted, the burden is cast upon the accused himself to show and establish that it was not the proceeds of a theft. Similarly, in other statutory provisions also, such a presumption finds place.

SHRI J. S. BISHT: In the case of bribery also.

SHRI SANTOSH KUMAR BASU: Yes, that is in the Prevention of Corruption Act, not in the Penal Code. Now, for instance, in the Companies Act, if something is illegally done by a company, every director of the company is presumed to be guilty unless he can displace that presumption by evidence brought forward in his own defence. So, it is nothing new that the Bill seeks to provide. On the other hand, according to the special rule of evidence, it casts a severe burden, which it is very necessary to impose, upon those people who are exploiting

minors for the purpose of begging. It says:

"Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging."

Unless that is done, it would cast a very heavy burden upon the prosecution to detect and bring to book offenders who are really guilty, but against whom all these things cannot be so easily established. That is the position.

After having said that I would only refer to some misconceptions which seem to have crept in the minds of some of us when we are confusing this Bill with a Bill that penalises beggary. This Bill is not that. We have not come to that stage yet where we can penalise beggary *per se*. The State cannot provide food and shelter to every citizen of the State. Had that been the position, it could have come forward with a Bill penalising beggary. But we have, unfortunately, not reached that stage yet. What will be the case of a blind, decrepit, destitute man holding the hand of his child, going about asking for alms in order to keep their body and soul together? Will you penalise such a case of begging? We have not, unfortunately, come to that stage yet. So this Bill only seeks to penalise in a very heavy and severe manner those anti-social elements who have become a tremendous danger to our society. What is happening in Calcutta? There are regular organisations which provide food, shelter, clothing and transport to these poor, miserable, innocent, helpless creatures, these children who are exploited for the purpose of enriching these anti-social elements who exploit the pity, commiseration and sympathy of generous-minded people passing along the streets. That is the position.

Now I come back to sub-clause (1) of clause 2. My apprehension is that these anti-social elements, who are behind the scenes and manipulating the strings from there, using these boys for begging, will probably not be touched. I will appeal to the hon. Deputy Minister to consider that aspect of the matter.

Well, "Whoever kidnaps any minor", that is easy enough. If you can prove that a person has kidnapped a minor from lawful guardianship, that kind of kidnapping is easy to penalise. But "Whoever obtains the custody of the minor . . . for the purposes of begging . . ." can apply to a mere dummy and the real person behind that act goes undetected. The custody of the minor is obtained by a person who is not the real culprit, who is not so much of a social danger. He gets a few rupees and performs the heinous offence against the general law by taking away this boy, but the real person behind is left untouched because he has not obtained the custody of the minor. The custody of the minor has been obtained by the person who secured that minor perhaps when he was passing along the street, or was standing on the doorsteps of his house. That is the person who has obtained the custody. Now, that offence is completed. You cannot catch the person behind who instigated him. He is the person who has abetted or aided the commission of that offence and unless you can prove previous conspiracy, you cannot touch him because after the offence is completed, no question of aiding or abetting that offence can arise. Therefore, the person moving behind the whole drama remains safe and secure. The offence has been completed. A man has obtained the custody of the boy and this man can be certainly punished. But that does not solve the problem at all which this Bill seeks to solve. And what is more, the real culprit cannot also be convicted under section 368 of the Indian Penal Code which provides:

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"Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement."

Under this section the punishment for kidnapping would be applicable to a person who has kept that kidnapped person concealed or confined knowing that he has been kidnapped. But these kidnapped children will not be kept in confinement or concealment. They will be paraded in the streets of the city. Therefore, the person who is utilising him will not come under the mischief of section 368. He goes unchallenged and he goes undetected, he goes scot-free, even if he is detected because the obtaining of the custody was not performed by him. That is my apprehension and the law officers of the State will do well to consider the effect of this provision, so far as those others are concerned, who are the real *dramatis personae* in this nefarious drama. That is my unfortunate reaction to this provision and I hope some means will be evolved to obviate this difficulty which I have been constrained to place before the House. In any case I hope the arms of the State will be long enough to catch these people by some interpretation which probably does not occur to me at the moment. I do not know whether those other persons can be caught within the meshes of this law even with these words in the statute.

SHRI J. H. JOSHI (Bombay): Mr. Deputy Chairman, I welcome this Bill. I congratulate the hon. Minister for having brought forward this Bill at a moment when it was most needed. Since many of the points have been discussed in this House, I will not dilate on those points which have been touched. I will make one or two

observations. This offence of kidnapping has been punishable under section 363 of the I.P.C. and the punishment provided is 7 years. Now under this Bill the provision of the sentence is 10 years. It has been very well suggested in the Statement of Objects and Reasons that to put down effectively the evil of kidnapping of children for exploiting them for begging, the provision existing in the I.P.C. is not adequate and therefore this serious punishment is provided here. As has been rightly stated by the previous speaker, there are gangs of professional persons in big cities like Bombay and Calcutta and they get hold of such minors and employ them for a number of businesses like begging, singing or dancing and they are found purchasing tickets in the theatres. They buy the tickets and then those tickets are collected and then sold at very high prices. These are matters which require serious consideration and therefore the higher punishment is provided for in this Bill.

I want the Minister to clarify one point. Whenever a person kidnaps a child and that kidnapper is arrested, what happens to that child? It must be known that the kidnappers are not single offenders. They have a gang of their own and as soon as one is arrested, the child or the minor must be rescued either by the Police or by some other Department in charge of that work. Otherwise the child will fall into the hands of others who also are indulging in the same business. Then the salient feature which appears to me in this Bill is sub-clause (3) of clause 2 which says:

"Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed...."

The presumption is that if he is not the lawful guardian, then he has abducted the minor. Well, the procedure should be, in that case, that such persons when found in the company of minor children, should be put under fire or a volley of questions by



the Police and if they say that they are the guardians, then the onus of proving that they are the guardians falls on them and if they cannot prove it, then the presumption, as has been stated in this sub-clause, is that the minor has been abducted.

I would say a few words about the Bill. Our Constitution lays down certain Fundamental Rights according to which the children are to be protected. Under article 39(e) it has been mentioned that the State shall, in particular, direct its policy towards securing—

“(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.”

The more relevant part is in sub-clause (f):

“(f) that childhood and youth are protected against exploitation and against moral and material abandonment.”

It should be said in this context that this Bill is in conformity with the Directive Principles as enunciated in the Constitution of India.

The other point I want to make out is regarding those who abduct the minors and then maim their limbs. That is the most heinous and most cruel thing that a person can do. For that the punishment is imprisonment for life. I suggest that such cruel persons should have no place in this country. There are so many other countries. Such persons should be deported to, I will suggest, the borders beyond the Himalayas, to China.

AN HON. MEMBER: You mean China?

SHRI J. H. JOSHI: They will be more welcome there. They will suit the climate of those countries also.

As I stated, there are gangs in the large cities. Those gangs just chase the tourists and visitors. On the Railway Stations also such child beggars are found and they just hunt after the travellers for soliciting alms and for making money. Now this creates a very bad impression about our country, about our people, about our social customs and even about our Government. The police are just spectators and they do nothing to check this sort of evil. I would suggest that these children should be rescued from the clutches of these kidnappers and put into some rescue homes or some reformatories where they could get education and they may be trained into good and healthy citizens of this country.

श्री राम सहाय (मध्य प्रदेश) :

उपसभापति महोदय, मैं इस बिल का हार्दिक समर्थन करता हूँ। जैसा कि अभी अकबर अली साहब ने फरमाया था कि यह बिल बहुत देर से लाया गया, इस में शुबहा नहीं कि यह बिल इससे बहुत पहले आ जाना चाहिये था, किन्तु मैं उन्हें याद दिलाता हूँ कि किसी शायर ने कहा है कि “देर आयद दुरुस्त आयद”, इसके मुताबिक अगर यह अब भी आया है तो हमें इसका स्वागत ही करना है।

जब से स्वतंत्रता मिली है तब से बराबर इस प्रकार के कायदे कानून बन रहे हैं और मैं समझता हूँ कि यह बिल बहुत ही महत्वपूर्ण है। हमारे बच्चों के प्रति जो अन्याय होता था, हमारे होनहार बच्चों को वरगलाकर और अपने समाज से दूर ले जा कर जो उनसे भिक्षावृत्ति आदि का कार्य कराया जाता था, उससे बहुत कुछ निजात इस बिल के आने से मिल जायगी। इस बिल में बहुत ही अच्छी तरह से उन सारी बातों का समावेश किया गया है जिनकी आवश्यकता थी और जिनके बारे में आये दिन शिकायत होती रहती थी इसमें धारा 2 में “whoever maims” का शब्द इस्तेमाल किया गया

[श्री राम सहाय]

है। "मैम्स" के अंतर्गत अंग भंग करना, अपंग करना, विकलांग करना, ये सभी चीजें आ जाती हैं। इस तरह से जिन बालकों के साथ इस प्रकार का अत्याचार किया जाता था वह सब इस धारा के अंतर्गत आ जायेगा और इसके अन्दर जो सजा रखी गई है वह भी बहुत ही माफूल रखी गई है। मैं समझता हूँ कि इस सजा की वजह से अब बहुत कम लोग इस प्रकार बालकों को अपंग, अंगहीन और विकलांग करने का साहस करेंगे। यह जो धारा ३६२ (ए) जोड़ी गई है और इसके अन्दर जितने भी प्राविजन्म रखे गये हैं वे मैं समझता हूँ कि इंडियन पीनल कोड की असल धारा ३६१ की स्पिट के साथ ठीक ही तरीके पर रखे गये हैं। अभी इस सिलसिले में यहां कई प्रकार की बहस की गई। हो सकता है कि इस बहस में कुछ तथ्य हो, लेकिन असल में इस अमेंडमेंट का जो मकसद है वह यह है कि इंडियन पीनल कोड की धारा ३६१, ३६२ और ३६३ के अंतर्गत जो बातें आती हैं उन्हीं को कुछ बजाहत के साथ, कुछ विस्तार के साथ, इसमें बताया गया है।

यहां लाफुल गार्डियन के बारे में भी यह कहा गया है कि वे भी अगर बेगिंग करायें तो उनको भी इसके अन्दर लाया जाय। मैं समझता हूँ कि यह मुनासिब नहीं है कि इस तरह की बातें इस अमेंडमेंट में जोड़ी जायें क्योंकि ऐसे उद्देश्य के लिये और ही प्रकार का कानून बनने की आवश्यकता है। इसके अतिरिक्त जो इस प्रकार के लोग हैं जो अपनी सहायता खुद नहीं कर सकते, जो अपनी आजीविका का ठीक तरीके पर उपार्जन नहीं कर सकते, जब तक उनके सम्बन्ध में हम माफूल प्रबन्ध नहीं करते, तब तक उनके ऊपर इस प्रकार का बंधन लगाना मुनासिब नहीं मालूम होता है। इस लिये इसमें उन बातों का न रखा जाना बहुत ही मुनासिब है।

इसमें सभी प्रकार की बातों को लिया गया है। दया दान, धर्म दान, किसी बात की याचना करना, किसी चीज का बेचना इत्यादि जितने भी इस प्रकार के जरिये अस्तियार किये जाते हैं, उन सबका ही इसमें समावेश किया गया है। जो लोग इस प्रकार का कार्य करते हैं वे ऐसी टेकटिक्स इस्तेमाल करते हैं, ऐसा तरीका अस्तियार करते हैं, जिससे वे कानून की जद में बच जाते हैं। मैं समझता हूँ कि इस धारा में बहुत ही योग्यतापूर्ण तरीके से "बेगिंग" की डेफिनीशन की गई है और उसके अन्दर उन सब बातों का समावेश किया गया है जिनकी हमको आज आवश्यकता महसूस होती है। इस तरह से मैं समझता हूँ कि यह बिल बहुत ही सुचारुपूर्ण तरीके से ड्राफ्ट किया गया है और इसके पास होने के बाद इस प्रकार की जो बहुत सी शिकायतें हमारे सामने आती थीं वे नहीं आयेंगी। हमारे देश में लोग चार छः बच्चे चाहें जहां से इकट्ठा करके और उनके साथ एक बैंड या हार-मोनियम लेकर, जगह-जगह भिक्षावृत्ति करने और अनाथालय के नाम पर पैसा इकट्ठा करते पाये जाते हैं। बहुत से लोगों को इस प्रकार से भी देखा गया है कि वे किसी बच्चे को अंगहीन करके उसके नाम में भिक्षावृत्ति करते हैं। इस प्रकार की बातें देश में जगह जगह पाई जाती हैं और इनको दूर करने में यह बिल जरूर कामयाब होगा।

अभी एक माननीय सदस्य ने फरमाया था कि देखना यह है कि इस बिल के सम्बन्ध में कार्य किस प्रकार होता है। बिल तो हम बहुत से पास कर लेते हैं और ऐक्ट बना लेते हैं, लेकिन वे किस प्रकार से कार्यरूप में परिणत होते हैं, इस बारे में उन्होंने कुछ शंका जाहिर की थी। उनकी शंका ठीक भी हो सकती है, लेकिन जब तक इस प्रकार के कायदे कानून नहीं बन जाते तब तक पुलिस को कोई कार्य करने का मौका भी नहीं मिलता। जब तक कोई

व्यक्ति किसी कानून की ज़द में नहीं आता तब तक पुलिस उसकी रोक किसी प्रकार से नहीं कर सकती और हमारे समाज सुधारक इस प्रकार की सहायता करने में कभी भली प्रकार से कामयाब नहीं हो सकते । इस तरह से मैं समझता हूं कि इस बिल में जितनी बातें भी रखी गई हैं वे बहुत ही अच्छे ढंग से और आवश्यकता के अनुसार रखी गई हैं ।

यहां उम्र के बारे में भी कुछ बहस उठायी गई कि बालकों और बालिकाओं की उम्र एक ही होनी चाहिये । मेरे खयाल से यह मुनासिब नहीं है । पहले से धारा ३६१ में जो भेद रखा गया है उसको इस धारा के तहत कुछ बढ़ाना या घटाना मेरे खयाल से मुनासिब नहीं है । मेरे खयाल में बालकों की १६ साल की उम्र और बालिकाओं की १८ साल की उम्र पहले भी रखी गई थी और अब भी रखी गई है और वह बहुत ही मनासिब है । हमारे यहां बालिकाओं के प्रति या लड़कियों के प्रति जिस प्रकार के जरायम देखने में आते हैं उनको दृष्टि में रखते हुये यह निहायत ही मुनासिब है कि उनकी बालकों से कुछ ज्यादा उम्र रखनी चाहिये और उमी खयाल से इसमें उनकी १८ साल की उम्र रखी गई है । इस तरह से मैं समझता हूं कि इसमें सारी बातें बहुत ही अच्छी तरह से रखी गई हैं ।

जुरिसडिक्शन के बारे में एक बात यह कही गई है कि इस ३६३(ए) के बारे में फर्स्ट क्लास मजिस्ट्रेट का जुरिसडिक्शन रखा गया है लेकिन यह कुछ मुनासिब नहीं है । मैं यह समझता हूं कि यह इस खयाल से रखा गया है कि मुकदमात का फैसला आसानी से हो सके और मुकदमात जितनी आसानी से फर्स्ट क्लास मजिस्ट्रेट के सामने पेश किये जा सकते हैं उतनी आसानी से सेशन कोर्ट में नहीं पेश किये जा सकते हैं ।

S P. M. इस तरीके से अगर धारा ३६३-ए में सेशन जज के साथ फर्स्ट क्लास मैजिस्ट्रेट की बात रखी गई है तो वह भी बहुत ही मुनासिब है । मैं समझता हूं कि इस बिल में कोई ऐसी खास बात नहीं है कि जिसमें किसी अमेंडमेंट की जरूरत हो या किसी सुधार की जरूरत हो । यह बिल बहुत ही काम्प्रहेंसिव और बहुत ही माकूल है और मैं इसकी दिल से तारीफ करता हूं और आशा करता हूं कि यह पास होगा ।

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at one minute past five of the clock till eleven of the clock on Wednesday, the 2nd December, 1959.