

SHRI GOVIND BALLABH PANT: I was saying that traffic at that particular spot is not generally heavy. But I have asked the police to examine the position further and to post regular traffic police there and to set up, if necessary, a box for that purpose. I have also directed the D.I.G. to seek the permission of the authority who is in charge of motor vehicles so that the police officers may examine the vehicles in which the school children are taken and see that they are sound. We will try to do what we can. As I said, it is a matter of profound sorrow and all that we can do now is to express our sympathy with the guardians and parents of the children and to resolve to take such steps as are open to us to guard against the possibility of a recurrence of such a tragedy.

I would just mention that the police here have not been generally indifferent. In the course of the year 3,451 drivers were prosecuted for driving above the prescribed limit. The proportion of fatal accidents in Delhi to its total population is also less than it is in some other cities but that is no consideration to us. So long as there is even one fatal accident, it is indication of the fact that there is room for improvement and for further care. So we express our sorrow and our sympathy, and, as I have said, I have given necessary instructions to the police. I was perhaps dealing with this very subject in the Lok Sabha at the time when this question was raised here. That, I think, explains my inability to be here but all the same I apologise to the House for my unavoidable absence.

SHRI V. K. DHAGE (Bombay): May I know from the hon. Minister the cause of this accident? We are thankful to him for the statement that he has made at the earliest opportunity but in the statement we did not get from him what exactly was the cause of this accident and what the police findings primarily have shown.

SHRI H. N. KUNZRU: Before he replies, may I also ask him whether

the Government propose to take any action against the lorry driver?

SHRI GOVIND BALLABH PANT: The lorry driver has already been arrested and is in custody. The case against him will be put up, I hope, very shortly. The matter is under investigation; as to the exact cause of this accident, I think it will be possible to reach definite conclusions after the enquiry has been completed. It will not be proper for me to make any statement at this stage.

SHRIMATI T. NALLAMUTHU RAMAMURTI (Madras): Is it not possible to prevent heavy traffic during the rush hours of school in school areas, prevent access to school areas? We have done that in Madras for some of the schools where children attend schools.

SHRI GOVIND BALLABH PANT: I do not know. I will convey the suggestion to the police authorities. But that is a matter of detail and if we were to stop others from making use of the road at any particular hour, that may interfere with the ordinary traffic, trade, business and other matters. So, all these things have to be considered carefully with due regard to the interests of all concerned.

SHRIMATI YASHODA REDDY (Andhra Pradesh): If any lives have been lost, do Government propose to pay compensation?

SHRI GOVIND BALLABH PANT: I have not been able to get your words. Well, I do not know if anyone would like to take compensation in cases of this type. We are very sorry, and we would like to help, if any help is needed.

RESOLUTION REGARDING ABOLITION OF CAPITAL PUNISHMENT— *continued*

SHRI B. K. P. SINHA: Mr. Chairman, I rise to support the Motion of Shri Prithviraj Kapoor and commend

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my amendment to the acceptance of this House. Mr. Kapoor's Resolution pinpoints an issue which is both old and new. For the last two centuries this issue has agitated the best minds of the world and there has been an increasing recognition of the fact that the capital sentence is barbarous and outmoded. Only two days back a news item appeared in the daily press that in Ceylon the House of Representatives . . .

SHRIMATI YASHODA REDDY: (Andhra Pradesh): But the Upper House rejected it.

SHRI B. K. P. SINHA: They have passed for the second time, after once having been rejected by the Senate which is usually a conservative body, a law to abolish capital punishment for five years as an experimental measure. In 1935, the Select Committee of the British Parliament also reported to the same effect and in 1941 the Latin American Conference on Criminology, at which fifteen States both of the continents of Europe and America were represented, endorsed the view that capital punishment should have no place on the Statute Book of a civilized country. The case for capital punishment or for the matter of that any punishment was based on two premises, one, that man is a free moral agent and, two, that punishment, especially capital punishment has a deterrent effect on future law breakers. If man is a free moral agent capable of choosing between right and wrong, good and evil, then if he opts for evil, he should take the consequence. Modern psychology, however, has increasingly come to the realisation of the fact that man, to a substantial extent, has no free will, that man's will is determined by environments, circumstances and factors outside his personality and control. If that is the case, if a man is compelled to some action by forces exterior to his own personality, the responsibility is not his. The responsibility is that of the exterior or external forces. In the circumstances there is no reason why he should be punish-

ed, for responsibility for crime and punishment go together.

(Interruptions.)

MR. CHAIRMAN: There is some noise from that side. It must stop.

SHRI B. K. P. SINHA: The problem that modern society faces is not that of the murderer, but of murder. It is the social and economic forces that create crime, that produce crime. It is the concern of society to eliminate the breeding spots of crime, for society is responsible for those breeding spots. Society cannot absolve itself by transferring its responsibility to the shoulders of a person who has had nothing to do, in a philosophical sense, for the commission of that crime.

The next weighty argument advanced in favour of retention of capital punishment is that it has a deterrent effect on criminals. I hope the hon. Leader of the House is sitting here to support that view.

SHRI V. K. DHAGE: How do you know?

DR. R. B. GOUR (Andhra Pradesh): These are Congress party secrets.

SHRI B. K. P. SINHA: But experience belies this theory. It is known that in the United States of America there are certain States in which there is no capital punishment; and there are certain States in which they have capital punishment for certain serious types of crime. The United States Department of Commerce collected statistics for ten years, for the years 1919 to 1928 and the statistics prove that the homicide rate in the States with capital punishment was 8.3 per lakh of population, while in States where there was no capital punishment, the rate was less than half, that is, 3.6 per lakh. We have before us an impressive list, a big list of countries in which capital punishment has been abolished by law. There are thirteen Latin American States, then

on the continent of Europe in Sweden, in Portugal—which we consider a barbarous country—in Switzerland, Finland and Norway. And then in one or the Dominions of Great Britain, New Zealand, there has been no capital punishment since September, 1941. I do not think that the crime situation in these countries is worse than the crime situation in those countries where we still have capital punishment on the Statute Book nor are there any indications to prove that the crime situation in these countries deteriorated after capital punishment was abolished. Then two centuries back there were at least two hundred crimes that were punishable with death in the United Kingdom and the United States of America. But in the course of a century and a half only three or four crimes now remain which are punishable with capital punishment. They are murder, treason, piracy with violence, and destruction of dockyard. But though for many of the crimes, as Mr. Kapoor showed, capital punishment has been abolished, the figures do not indicate so far as those crimes are concerned, that after the abolition of capital punishment for those crimes, those crimes increased largely in number.

Therefore, this theory of deterring the wrong-doer does not hold good on a close analysis. It is a matter of calculation that 70 per cent of those who go to the gallows or the electric chair or the lethal chamber are men who have had no previous conviction. They are men who have committed the crime in the course of a heated argument, in a fit of insane jealousy, or neophyte robbers who, when they were fearful of discovery, unwittingly pulled the trigger and became murderers. Now when such people commit the crimes, they do not think of the consequences. They possibly could not think of the consequences. It is futile then to speak in such cases of capital punishment—and such cases make up 70 per cent of those who go to the gallows—having a deterrent effect.

Sir, there are some other interesting facts. More than a century back

forgery was made punishable with capital sentence in the United Kingdom. But within two or three days of enactment of that law a forged note was presented before the Bank of England. In the United Kingdom pick-pocketing was a capital offence for some time and the pick-pockets were hanged publicly. The executions were public and not private as today, and it was discovered that when the pick-pockets were being hanged for picking pockets, many other pick-pockets were plying their trade in the crowd. What remains then of the theory of deterrent punishment? (*Interruptions.*) These are weighty reasons why capital punishment should not be retained. My friend, the mover, thought of the redeemability of the criminals. There is one school of criminologists who are of the view that crime is a product of atavistic or degenerative tendencies, that it has a biological origin and that criminals are irredeemable. But modern criminology repudiates that view and it has veered round to the view that every criminal is capable of redemption, for modern criminology recognizes what our saints recognized thousands of years back that man is essentially good and that it is only environment and circumstances that sometimes lead him astray to the path of crime or violence. When we sent the Probation of Offenders Bill to the Select Committee, a Bill which was sponsored by this Government, we recognized or confirmed or gave approval to this theory of criminology that man is capable of redemption, that a criminal is capable of redemption. Now, to retain capital punishment in the circumstances on the Statute Book would mean that we think that, while man on the whole, by and large, is redeemable, if he commits a crime which is punishable with capital sentence, he is not redeemable. That is, we limit and circumscribe the theory of redeemability. The capital sentence, Mr. Chairman, is by nature irreparable. We know of important cases in which innocent people have been sentenced to death and their innocence has been proved after the sentence has

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been executed. This sort of sentence therefore leaves no scope for righting a wrong in the future. Moreover, this sentence in the context of the present society operates in a discriminatory manner. Whoever has a long purse, whoever can borrow or hire the services of great talents, has a reasonable chance of escaping the gallows though he has really committed a murder. It is only the poor, the resourceless people who have nobody to support them who usually go to the gallows. Therefore, death penalty in its operation is discriminatory. Moreover, the presence of death penalty leads to the acquittal of many a criminal. Man abhors murder. Man abhors to pass a sentence of death. Therefore, it is a matter of experience that even in good cases, because one does not like to pass a sentence of death, one gives the benefit of doubt to the accused where the benefit of doubt should not be given, and the man is acquitted.

In England forgery was made a capital offence more than a century back, but since it was made a capital offence many forgers began to be acquitted by the courts because the sentence and conviction would have meant their execution, and therefore a body of one thousand bankers of England petitioned to the British Parliament to take forgery out of the list of crimes which entailed capital punishment. (*Time bell rings.*) Sir, I have spoken only for ten minutes.

MR. CHAIRMAN: I have noted the time. You have got another minute or two.

SHRI B. K. P. SINHA: I thought I would get twenty-five minutes because my friend got thirty.

MR. CHAIRMAN: You go ahead. Why are you discussing?

SHRI B. K. P. SINHA: Sir, there is a strong case for the abolition of capital punishment. But human inertia is there and therefore the danger is that if the choice is between the aboli-

tion of capital punishment and its retention, conservative people may throw their weight in favour of its retention. I would therefore plead that the Committee which is to be constituted should go into the question whether, if it is to be retained, for what sort of crimes it should be retained and what defence should be open to an accused in a crime which entails capital punishment. In India, Sir, the death sentence is passed only for eight crimes which are by and large treason or murder.

Now I will briefly deal with the case of murder. The law regarding murder is archaic. It is more than a century old. It is based on what in England are known as the McNaughton Rules. The murderer is not punished with death if only he can prove that his reason was paralysed. But modern psychology has discovered that insanity has a wider horizon than paralysis of reason. There may be cases in which a man's reason may be intact. He may know what he is doing and what consequences are to follow, but then his will power is paralysed. In many countries this type of insanity is considered a good defence against capital punishment. There are many people who suffer from insane delusions, who suffer from the delusion that they have a divine mission to murder somebody. Even in that case while reason remains intact, will is paralysed. Therefore, modern criminology recognizes the fact that the defence that is open now to an accused under the McNaughton Rules should be open in those cases also where the reason is intact and the will is paralysed. I hope that this Committee would go into this question and widen the area of insanity in conformity with modern psychology. I do not have much time . . .

MR. CHAIRMAN: Say: 'With these words, I conclude.'

SHRI B. K. P. SINHA: We must go into the question of insanity and the defences that are open to the accused.

I would refer to the case of mercy murders. There have been many cases in India and in foreign countries where people, out of mercy, have given poison or some injection to their near and dear ones to end their agony. We know how poison was administered by Gandhiji to a calf. Now, should such actions be treated as murders and should such persons be sentenced with capital punishment?

Lastly, I would like to deal with the manner of execution. Here, the conventional practice is, sending to the gallows. But then, in America they have discovered a more humane method of execution, if execution is to be retained, that is, electrocution. By that process, death is painless. Therefore, I would urge that capital punishment should be abolished and the Home Minister should accept this Resolution of my friend, Shri Prithviraj Kapoor. But, if at all it is to be retained, the defences that are open to the accused should be widened and if death penalty is given, we must adopt the method of electrocution.

DR. A. N. BOSE (West Bengal): May I ask the speaker whether he can testify that death by electrocution is painless?

SHRI B. K. P. SINHA: It is not for me to testify.

SHRI P. S. RAJAGOPAL NAIDU (Madras): Mr. Chairman, I rise to support the Resolution that now stands before us for consideration. But while supporting the Resolution, I should not be understood that I am for total abolition of capital punishment. Sir, the mover of the Resolution has, in a theatrical way, appealed to the sentiments of this House.

SHRI V. K. DHAGE: Artistic way.

SHRI P. S. RAJAGOPAL NAIDU: Yes, artistic way.

Sir, sentimentality should not weigh while dealing with such important problems like the abolition of

capital punishment. Human passions he had roused very ably. But the primary consideration that one should have while dealing with problems of this sort should be the maintenance of law and order in the country. The life and property of the individual should be made secure. That should be the motto of the Government while dealing with this matter and also that should be the consideration which should weigh with the Members of the House while dealing with such an important matter as this. Members should not be motivated by merciful notions when dealing with this problem. At the same time, I would also urge that one should not revert back to that old barbaric and prehistoric saying that there should be an 'eye for an eye, a tooth for a tooth and a nail for a nail' and all that. We should consider this problem in a way that should enable the Government to make the property and life of the individual secure. We all know that, since the middle of the last century, there has been a move throughout the Western world to abolish capital punishment for murder. Sir, the abolition of capital punishment has been achieved in several countries, as has been narrated by my friend, Shri Sinha. But there are also instances where they reverted back, after experimentation for a few years. I remember that, in the case of nine American States, they had restored the death penalty. My friend had referred to New Zealand and if I remember aright, New Zealand which had abolished death penalty has recently restored it once again. Sir, in the United Kingdom, we all know that the House of Commons had passed, probably it is a Resolution, for the abolition of death sentence, but the House of Lords did not agree to it. Similarly, my friend referred to the case of Ceylon where the House of Representatives had passed a Resolution for the abolition of death sentence but the Senate did not agree to it. But once again, the House of Representatives had passed the same Resolution for suspension . . .

(Interruptions)

SHRI B. K. P. SINHA: May I ask one thing?

SHRI P. S. RAJAGOPAL NAIDU: ...for three years.

SHRI B. K. P. SINHA: My hon. friend said nine countries restored death penalty. Yes. But it was after they passed under the domination of either Fascist Germany or Communist Russia.

SHRI P. S. RAJAGOPAL NAIDU: Sir, if I enter into this detail, I think, my time will be robbed by my learned friend. But I will talk to him across in the Lobby.

MR. CHAIRMAN: We are not interested in what you do in the Lobby.

SHRI P. S. RAJAGOPAL NAIDU: Sir, in Czechoslovakia, they went a step further. They not only abolished the death sentence, but they had gone to the extent of abolishing the life sentence. I feel that the death sentence should be retained, though not in every case that comes under the Indian Penal Code, but only under two cases. If we go through the provisions of the Indian Penal Code, we find that there are eight sections dealing with punishment by way of death or life imprisonment. Two sections deal with punishment by way of death alone and there is no alternative punishment at all. Sir, let me analyse, for a moment, and compare the murders committed in our country with similar crimes that had been committed in other countries.

Sir, as I said before, we have two sections in the Indian Penal Code—section 303 and section 307—where it is imperative, compulsory, on the magistrate to award death sentence. Section 303 deals with a person who, while undergoing life imprisonment for murder, commits murder again. The punishment that is awarded to him under the Indian Penal Code is death and there is no alternative for the magistrate to award any other kind of punishment. Under section 307, if anybody undergoing life im-

prisonment for attempt to murder commits murder there is no option left for the judge except to give him death sentence. Now, I want to ask the Mover of this Resolution or anybody in this House, whether even in such cases, the death sentence should not be awarded. A person who has committed a murder and is given life imprisonment, commits another murder while undergoing life imprisonment. Should law go to the extent of giving only life sentence to such people? I wonder, Sir, and I do not think any Member of this House and the learned Mover of the Resolution would agree to this.

Then there are six sections in the Indian Penal Code where death is the punishment that is awarded, or in the alternative, life imprisonment. Section 121 deals with waging or attempting to wage war or abetting waging of war against the State. Section 132 is 'abetment of mutiny, if mutiny is committed in consequence thereof.' Then, we have section 194 "for giving or fabricating false evidence" and "if innocent person be thereby convicted and executed." Then, Sir, there is the famous section 302—punishment for murder. We have then section 305—abetment of suicide of child under eighteen years of age or insane person. Then we have section 396—dacoity with murder. We have got to separate the first two sections which I mentioned, viz. sections 303 and 307, from the other six sections where under option is given to the judge to give death sentence or to award life imprisonment.

SHRI AMOLAKH CHAND (Uttar Pradesh): May I point out that recently in the Navy Bill both the Houses have agreed to provide capital punishment for some of the offences committed in the Navy.

SHRI P. S. RAJAGOPAL NAIDU: I am sure that will come under section 121 of the Indian Penal Code because it deals with offences against the State. Recently, we all remember, section 367 of the Criminal Procedure Code was amended in a suitable

manner. Before the amendment of section 367 of the Criminal Procedure Code, the law was that in the six instances which I had mentioned, the magistrate should give death sentence and for reasons to be recorded in writing by him, he can in the alternative, give transportation for life. Now that section has been amended and it is left to the entire discretion of the judge to give life imprisonment or death sentence, whatever he pleases. Even if death sentence is awarded by the judge, that has got to be confirmed by the High Court—mostly by two senior judges of the High Court. And there is a referred trial also and they can go into all the details. It is only then that the death sentence is confirmed. Even if a person is poor and cannot defend himself by engaging a lawyer of the High Court, the State nominates a lawyer and defends the case of the poor accused who cannot defend himself. Then, Sir, the right to reprieve is vested in the Government. Pardons are asked for and in a number of cases pardons are given and death sentences are commuted into life sentences. All these things are there, and the life of the prisoner is safe in the hands of the judges of the High Court and in the hands of the Government.

Now, Sir, we shall examine whether the conditions are favourable in our country for the abolition of death sentence. Let me give some figures. Let us take the two years, 1953 and 1954. In the year 1953, the number of murder cases reported in our country, is 9,802 and the number of cases where prosecutions have been launched is 6,446. The number of cases undetected is 3,356 and the number of cases committed is 3,042. Appeals for pardon were made in 263 cases, and in the case of 68 persons the death sentence had been commuted into life sentence and the number of persons hanged is only 195 in the whole country in the year 1953 where 9,800 murders were involved. Similarly in 1954, where there are 9,765 murders only 175 persons were hanged. That only shows how carefully the law is observed when the life of the person

who is sentenced to death is involved. His life is safe in the hands of the magistrates, judges and the Government.

Then, Sir, let us compare the murder offences committed in our country to the population in our country. In 1953, 27.1 per million is the proportion of crimes punished with death, and in the year 1954, the rate is 26.9 per million. Now let us compare these figures with a country like the United Kingdom where for the past 50 years of this century the proportion of crimes punished with death was only 3.89. In Scotland, it is only less than 3 per cent. But with all that, a country like the United Kingdom is still retaining death sentence. (*Time bell rings.*) Sir, in India where we have got a population of 38 crores, the number of crimes is about 9,000 per year. In Great Britain the population is only 6 crores and the number of murders is only 150 per year. In India where the population is nearly six times that of Great Britain, the number of crimes committed is sixty times that of Great Britain. And if that is the case, we shall not compare ourselves with any advanced countries in the world and say, let us also follow the example of other countries and let us not award death sentences for these crimes.

Sir, in conclusion, my point of view in this case would be that death sentence should be there in the case of only offences that come under two sections, i.e. 303 and 307. In the case of offences that come under other six sections where the judge is given the option to give death sentence or life imprisonment, we may suspend it for the time being, say, for five years or ten years and see how it works and whether the number of murders committed is on the increase or on the decrease, and if the number of murders is on the decrease, certainly we can give up awarding death sentences in the case of those six offences also. The committee that goes into this matter can take into account all these things. Then, Sir, the Law Commission is dealing with

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this matter and with the report of the Law Commission and with the report of the committee that will come up before us, we will certainly be able to tell the country, Sir, whether the time is ripe for the abolition of death sentence in our country or not.

SHRI H. P. SAKSENA (Uttar Pradesh): Sir, if the total abolition of capital sentence is going to be recommended by this resolution, may I know if high treason will also be included in death sentence?

MR. CHAIRMAN: Mr. Pant.

THE MINISTER OF HOME AFFAIRS (SHRI GOVIND BALLABH PANT): Sir, I am thankful to you for allowing me to intervene in this debate at this stage. My colleague, the Deputy Minister, will reply to the speeches that have been made or may be made hereafter at the conclusion of the debate.

Sir, I have listened to the eloquent and moving speech of the mover of the Resolution with rapt attention. In fact, I could not help doing so. He lives in a dream-land for the most part and has the capacity of entrancing people with the special, unique and artistic skill that he possesses and which we all admire. But I live in this mundane world. So I have to look at things from a somewhat realistic angle. Well, so far as the general desire that nobody should be hanged is concerned, I think everyone would wish that nobody was killed, nobody died and nobody could be hanged, and that no occasion would arise for awarding capital sentence or for sending anybody to the gallows. But we have to look at the question from a practical angle, and apart from any other considerations, I would address a question to myself and I would ask other hon. Members to place themselves in a similar position to put a question and to answer it. Men are murdered, there is no doubt. Some of the cases are most brutal. It would put an immense strain on the hon. Members of this House, if the

details of the inhuman atrocities that are sometimes committed were given in this House. Now if we stop and discontinue this capital sentence, would more men be killed, or would the number of the men killed go down? I wonder if any one can give the answer that if we abolish this sentence, then the number of murders would go down, because nobody seems to commit murder with a view to being hanged. That is not the motive. Every one who commits murder wants to escape from the sentence which he has earned. So, if there is no such sentence, in all likelihood, the fear that comes in the way of people's committing murder will be removed. So do we want more of murders in our country or do we want less in them? That is the simple proposition. If we want more, then one of the methods perhaps would be found in the abolition of capital sentence. If we want less, then we have to maintain the sentence and find out other ways. I fully agree that in this age we do not stand for the dictum 'a tooth for a tooth and an eye for an eye' and even when culprits are sentenced it is not in a spirit of vindictiveness or vengeance, but according to modern science of penology, all sentences are awarded only for the security and protection of society so that every individual, so far as is possible, may live in peace. I also look forward to the millennium, but I do not know when it will come. The hon. mover referred to the Sputniks. He also mentioned that science and technology had, in a way, made a great advance. That is all accepted. But even in the land of Sputniks capital sentence is still maintained and I think awarded in many more cases than in our country. It is true that man's mind has become richer and his ingenuity has explored many avenues which were closed to his predecessors. But still his heart has not kept pace with the flight of the mind and it is because of that disharmony between the two that we see so many tragedies in the world. It is not a question of the refinement or rather the enlightenment of the intellect but the refinement of the

spirit. And that unfortunately, happens to be lacking even today. If we concentrate more on that, I think a day may come when the need for awarding capital sentence may cease. We have to work for that. It is not by abolishing the sentence that you approach your ideal. It is by creating that atmosphere in the country, that atmosphere for which as the mover said, our soil is more congenial than any other, of non-violence in thought, word and deed. If we have that, then I think murders will be found only in the story books and gruesome tragedies will not be witnessed by anyone. So we must try to produce that atmosphere and work for that and see that there is more of understanding, more of fellow-feeling, more of commiseration, more of pity, more of sympathy and more of a rational approach towards problems. If we concentrate on that, then that would provide a really abiding cure for the malady.

Some references have been made to other countries. The problem that has been posed here is not altogether a new or novel one. It has been the subject of discussion in many other countries and it has been raised in our own Parliament more than once. But when reference is made to other countries where capital sentence has been abolished, you have to remember two things: One that wherever capital sentence is abolished, the proportion of murders to the population was not more than 4 to a million, at any place, but in our country it comes to roughly 26 to a million. Well, if it reaches that infinitesimal figure of 4 to a million, there will be time for us also to consider the desirability of a change. But so long as the figure is high, about 700 per cent high, it is difficult to rely on these analogies. They do not fit in at all. Then there is another factor. There are several countries which abolished this capital sentence; but after some experience, they had to revert to the old system and to revive the capital sentence that they had abolished. In Austria, for example, they abolished capital sentence, but they had to reintroduce

it. A reference was made by Mr. Sinha, I think, to New Zealand. It is true that in New Zealand they once abolished capital sentence in 1951; but I think they revived it. A reference was made also to the United States of America. There six States had abolished capital sentence. They also, after some unfortunate experiences, had to reintroduce the capital sentence. In England, as hon. Members know and as they had been told, there was once a resolution passed in the House of Commons, though it was rejected in the House of Lords, and some changes were made, not that capital sentence was abolished completely, but it was restricted to certain offences and it was abolished in the case of certain other offences. It was, however, found that the result was rather disastrous and now, so far as I am aware, the law is going to be revised and capital sentence is going to be restored again. So, are we going to make an experiment which will result in the deaths of many more persons through violent means and then learn a lesson like others and then revive capital sentence? That would not, I think, be a proof of our wisdom. We must learn from the experience of other people. As hon. Members are aware, we stand for a humane system of punishment. We fully subscribe to the basic fundamentals of modern penology. We have abolished the sentence of whipping as hon. Members know, though it still finds a place in the statutes of many other advanced countries. We have introduced a Bill which would enable us to extend the benefits of probation and to release culprits accused of minor offences and that Bill will be coming before this House in due course. We have also amended the Criminal Procedure Code. Formerly no sentence of death in cases in which such sentence was admissible could be replaced by one for transportation for life, except for special grounds.

The judge was expected to justify the lesser sentence but that has now been amended and it is open to the judge either to award the sentence of hanging or of transportation for life.

[Shri Govind Ballabh Pant.]

In our country, we have many other safeguards. No sentence for hanging can be regarded as final until confirmed by the High Court and then there is an appeal in most of the cases to the Supreme Court. There is also the right of submitting mercy petitions to the State Government as well as to the President here and reprieve is granted free wherever there is the least doubt or wherever there is the least ground for holding that the murder had not been committed in a cold, atrocious manner. In such cases, a lenient view is taken. We allow the man who is charged with murder to be defended by a lawyer at the cost of the State. So, every precaution is taken to see that no innocent person suffers. (*Time bell rings.*) Wherever possible, instead of the capital sentence, the other sentence is given.

A reference was made to certain sections of the Penal Code. The only two sections in which the only sentence is that of hanging, are those in which a man who is serving a sentence of transportation for life commits a murder. It is only in those cases that the death sentence is the solitary sentence that can be awarded. I do not see what other sentence can be awarded in those cases. In all other cases, the judge has the option either to award one or the other sentence. So, I submit, Sir, that our present system is rational and not, in any way, I think, lacking in the human approach which should guide the State and those who administer the affairs of the State or who preside over our tribunals.

There is also one other minor point. Law and order, as you all know, is regulated by the States. It is their function and their responsibility in their respective States. We often hear of dacoity. The States are criticised, and not without reason, that they cannot put an end to foul crimes of this type. We also hear of other crimes where little children are butchered. I was yesterday informed about a case in which a child was kidnapped, his arms and legs were

fractured and his eyes were deliberately blinded so that he might be taken about to collect alms. Well, there are offences like that and I sometimes think perhaps if we were not particularly scrupulous, we might extend the capital sentence to cases of this type where men are treated in such a manner that their life becomes more than a burden to them and such inhuman atrocities are committed out of a sordid motive. However, we do not think that we should go to that length and, so long as we have the present law, there is no need for any change and I do not think that any sort of public opinion exists in the country in favour of the abolition of the capital sentence. Really, the general feeling is that we are lenient and our courts are still more lenient so that the criminals prosper and thrive because of the liberality of view which is shared by all of us. I would like to maintain that spirit, to look at things from a human angle but not in such a manner as to provoke cases of murder and other offences which would sap the very vitality of our society.

SHRI B. K. P. SINHA: I wish to ask one small question of the hon. Home Minister. I pointed out the imperfections in the law of murder as it stands today. In many other countries, the horizon of insanity has been extended in conformity with modern psychology but in India there is a hiatus between legal insanity and factual insanity. Shall that hiatus be removed? This is a very small concession that I seek.

SHRI GOVIND BALLABH PANT: If a person is proved to be insane, he is not sentenced to hanging. He is kept under observation and he is often released or given asylum in the proper place.

MR. CHAIRMAN: Sanity is abnormal. Insanity has several degrees and we are all victims of it.

SHRI V. K. DHAGE: Mr. Chairman, it is a difficult task for me to speak after the Home Minister has spoken

on the subject. Very little is left for me to say after an artist has dealt with this matter, after a lawyer of the Supreme Court and another lawyer of the Supreme Court who began by saying that he supports and yet had certain riders to it, have dealt with this matter. Above all, the Home Minister has come and said how magnanimous the law in India has been or how liberal it has been and that there is no scope for further reform.

[MR. DEPUTY CHAIRMAN in the Chair.]

After having listened to his speech, Sir, I begin to feel that the very arguments which he used really are the arguments employed by the sociologists to say that capital punishment should be abolished. If there are only a very few people who are really hanged and if many of them go scot-free, then why maintain this punishment? The danger that he has pointed out is that it will encourage or give an impetus to murder. The sociologists have considered this otherwise. They consider that in the matter of the consideration of this punishment, what must be paid attention to is not the crime but the criminal. You have to go to the root cause that prompts a person to commit a crime. And modern sociologists think that punishment meted out to a person is not one which brings out the objective desired by the State. On the contrary, punishment has ceased to operate in a manner as to further the objectives that are desired. The hon. Home Minister referred to a case of a child having been mutilated. The reason why this child had been mutilated is that the parents of the child who did it wanted to exhibit the child in public in order that they might be able to earn their living by exciting the sympathy of the public. The reason therefore to my mind, if you look at the criminal, is not that he intends to mutilate the child but that he intends to make that child a source of income. Therefore, Sir, if you were to remove the cause, then probably the crime will stop. That is

the point of view which the sociologists maintain. You must look to the criminal and not to the crime itself. To say that there are few people who do commit the crime and are hanged and that therefore the law should be maintained in the same manner cannot at all be supported. It has been found that that view does not hold good, the reason being that the people who are really the culprits are not hanged—they go scotfree.

DR. P. V. KANE (Nominated): No.

SHRI V. K. DHAGE: My point is that if you can be definite about the persons who commit the crime, then maintain the punishment of a capital nature but, if you are not able to be very sure about him, then I would say: Don't have capital punishment rather than have an innocent man hanged. There is the legal procedure that you now follow and the hon. the Home Minister also did give a hint of that type to us, that we do provide free defence to the people, we do provide advice, etc. whereby the people may probably be able to go scotfree. Now if that be the case, I do not understand, Sir, why capital punishment should be maintained.

We should not look at the point of one person but look at the point from a generality of the cases. It has been noticed, Sir, that the murders that are committed are for three reasons. There is a well-known saying in Hyderabad listing three reasons for murder, *Zan, Zar, Zamin* meaning a woman, wealth and land respectively.

SHRI PERATH NARAYANAN NAIR (Kerala): *Kanchan* and *Kamini*.

SHRI V. K. DHAGE: I do not know whether it is Sanskrit or Tamil or Malayalam. What I said was Persian. Anyway if you are supporting me, I don't object.

SHRI GOPIKRISHNA VIJAIVAR-GIYA (Madhya Pradesh): Do you mean there will be no crime after socialisation?

SHRI V. K. DHAGE: I am very glad the hon. Member has forestalled my argument.

So far as the cause of *zamin*, land is concerned we have passed various laws whereby crimes committed on account of *zamin* seem to be more or less completely extinguished. Land is being socialised. At least it is intended to be socialised and various reform measures are being passed.

SHRI V. PRASAD RAO (Andhra Pradesh): Nowhere is socialisation found here in India.

SHRI V. K. DHAGE: That may be your point of view, but my feeling is that there are laws that are being passed whereby socialisation of land is taking place, probably not in the way you desire. In the other way it may be. But my point is that land is to be given to as many people as possible provided it is available for them to be distributed. Anyway this ground which used to exist for the purpose of crime does not seem to be there now.

Next with regard to wealth. The Congress Government is wedded to the socialist pattern of society, if not the entire socialist system, and they have brought about various laws whereby equalisation of wealth is taking place. There is a lot of argument that is being used from the other side to say that the Expenditure Tax, the Income-tax, the Wealth Tax and the various other taxes that are there . . .

SHRI H. P. SAKSENA: And the Gift Tax.

SHRI V. K. DHAGE: Yes, and the Gift Tax, as Mr Saksena says, and they are all there effecting an equitable distribution of wealth, and therefore that reason for committing crime also seems to be vanishing.

Thirdly there is the question of *Zan*, the woman. If there is a murder with regard to a woman . . .

SHRI V. PRASAD RAO: Divorce law is there and that the third cause also is not there.

SHRI V. K. DHAGE: The point is this, Sir, that these crimes are committed not in a premeditated manner. The crime with regard to a woman is, on account of a passion at the time.

SHRI J. S. BISHT (Uttar Pradesh): Not on account of jealousy?

SHRI V. K. DHAGE: May be jealousy, may be anything, but it is a factor of a different nature altogether, where there is no premeditation, where there is no thought that there must be a murder committed over it. It is incited by a passion and the crime is committed.

DR. W. S. BARLINGAY (Bombay): That is not wholly correct. In certain cases there is premeditation.

DR P. V. KANE: In many cases.

SHRI V. K. DHAGE: I do not know whether there will be such a premeditation in the matter of the commission of crime over a woman. It is held by sociologists that it is done on the spur of the moment. Anyway, you can refute that argument when it comes to you.

But the point is this, Sir, that there are two ways in which the crime of murder is committed. One is where premeditation or deliberation is not there and the other is where there is deliberation.

And where there is deliberation required, the causes of that crime are now being removed, whereas where there is no deliberation the causes are entirely different. We see that when we read the papers in Delhi city, for instance. We find, invariably, in any paper we read, that there is a story written with regard to a murder and that story of murder contains somewhere a woman. But the same is not the case if you go down to the south. You don't come across in the newspapers you read in the south, the

'Hindu', the 'Times of India' or any other paper, the story of a murder over a woman. What is the reason? Are not the people the same in the south and in the north? The reason seems to be that there is a different sociological system existing in one place and which is not the same as in the other. There is some segregation of women in the north probably due to *purdah*, etc., and there is less of frequency of mixing with women, and that possibly is the reason which excites people to commit murder over a woman or to run away abducting a woman or to do other things. Whereas, it is not so in the south. What I am trying to say is that even with the institution of a death penalty murders that are taking place or the abductions that are taking place in north India have not been less; they are still continuing. Therefore, for you to say that because we are maintaining capital punishment these abductions are not taking place is not correct. What you are required to do is to treat the problem in a different manner.

(Time bell rings.)

Have I taken fifteen minutes?

MR. DEPUTY CHAIRMAN: Two minutes more.

SHRI V. K. DHAGE: Anyway, Sir, I shall close it at that. You will please give me five minutes. If I would have been warned five minutes before instead of two minutes, I would have compressed my observations.

MR. DEPUTY CHAIRMAN: Every Member goes on exceeding his time.

SHRI V. K. DHAGE: I will not take more than five minutes if you just give me that, that is to say, three minutes extra.

Anyway, that is my point of view. My friend the artiste and others maintained that there have been countries in which death penalty has been abolished. I must refer here to the State of Hyderabad and it will surprise Members here to know that

in the Hyderabad State during the last forty years no death sentence was executed, and every sentence of death was commuted by the Nizam of Hyderabad. And there has been no instance to show that it required the revival of this execution of death sentence in Hyderabad.

SHRI RAGHAVENDRARAO (Mysore): It has been revived.

SHRI P. S. RAJAGOPAL NAIDU: On payment of *nazrana*.

SHRI V. K. DHAGE: It is not correct. Sir, I do not want these interruptions.

There was a case in Hyderabad last year where a woman was to be hanged for a certain crime and no less than five Members of Parliament including Mr. Akbar Ali Khan, the Deputy Minister of Civil Aviation, Mr. Ahmed Mohiuddin, people from the Opposition like Dr. Raj Bahadur Gour and others appealed to the Government to maintain the tradition of Hyderabad of not executing the death sentence. Not only this, but in every newspaper—I can show you the various cuttings—editorials were written saying that the tradition of Hyderabad must be maintained. Nevertheless, the very first fruit we had after the reorganisation of the States was the murder of this tradition that was in existence in Hyderabad for the last forty years. I would like to know from the Home Minister what evidence he had to show that in Hyderabad, as he maintained just now, it required the restitution of an archaic and barbaric law with regard to the execution of the death sentence. I would like to know from the hon. Minister whether he made any kind of enquiry in Hyderabad in the matter of the execution of death sentence and came to the conclusion that no reprieve should be given as has always been done in Hyderabad. Thank you, Sir.

SHRI PERATH NARAYANAN NAIR: Mr. Deputy Chairman, from this side of the House I rise to accord our general support to the Resolution.

[Shri Perath Narayanan Nair.]

Now, I have been brought up in a part of India, that is, the former State of Cochin, where through the definite desire of the Maharajah for over 20 years there was no capital punishment. Again in that neighbouring State of Travancore, which now forms part of Kerala, capital punishment was not in existence for a number of years and from what I know the incidence of crime in those areas was no higher than in other parts of India. At any rate the law and order position in those areas does not at all provide any reason to our friends opposite to create any hullabaloo about it, because the incidence of crime, if any, was very low. I am just stating this fact and not adducing it as a conclusive argument for my case for the abolition of capital punishment. The whole problem has to be viewed from a broader point of view, from a moral aspect and I have more valid arguments. I am not approaching this from the sentimental point of view though it has to be noted that so much of sentiment has gathered round this. All sorts of concepts of moral values and religious beliefs have been brought in to bog the issue and abstruse points have been raised. After all, when you cannot give life, how can you take away life? All those are unexplored regions so far as I am concerned and therefore I am not entering into those things. As a practical man living in this mundane world, I would just look at this problem from the day to day practical point of view. The hon. Minister raised a simple question: Do you want more murders in this country or do you want less murders in this country? And he referred to the experience of various other countries. He very much made a point of the conditions obtaining, say, in Scandinavian countries. He said that there the incidence of murder per population worked out to about four in a million whereas he said that the incidence in India was very much higher. That argument seems plausible enough but I want to raise this question; what is it that has brought down the incidence of murder

in the Scandinavian countries to four per million and what is it that has kept up this incidence of crime in India at 6 or 7 times that figure? That must make us think; that must make us pause. Can it be the argument of the hon. Minister that we in India are of a special mould given to atrocities, more wild in character, more barbaric? Can it be his argument that in Norway and other places people are more humane and refined? No. It is this disparity in the position that proves what modern criminology, what modern psychology has proved, that after all you cannot consider crime, you cannot consider punishment, unless it be in the broader context of environments. There are so many inhibitions round us; all sorts of laws, property laws, moral laws, marriage laws, all those things make for inhibitions. Through rigid customs and moral laws and concepts, where you prevent the full flowering of the personality of the individual, there crime flourishes. Not only that; modern criminology has brought out another point that you have to take into consideration, the biological and the physiological make-up of the individual also. For all these things, modern science has also worked out methods, how through more progressive legislation, through enriching the living conditions of the people, the cause for crime is taken away. It is by training the emotion, the impulses and through proper education that you can reclaim these people. So that alone is the reason. Because of better living conditions, because of more liberal laws, because of conditions obtaining in Norwegian countries, you can have a better flowering of humanity and there the crime is reduced. Look at the position in India. All these sections, 302, 307 and other sections to which reference was made by my friend, Shri Naidu, have been there ever since the days of Macaulay but have murders gone down? I have got the figures. Shri Naidu himself and Shri Sinha also referred to all these things.

SHRI V. K. DHAGE: It is 9,000 a year.

SHRI PERATH NARAYANAN NAIR: Yes; roundabout 10,000 a year. Now, my friend Shri Naidu was very much concerned that only 197 people were hanged.

SHRI V. PRASAD RAO: As if it is a very small figure.

SHRI PERATH NARAYANAN NAIR: My point is, all these sections have been there but did they in any way make for the reduction in crime? If you really want to bring down the incidence of crime, you have to think of other methods; you have to improve the social and material environments. You have to train the impulses and emotions of people . . .

SHRI T. S. PATTABIRAMAN (Madras): What about political murders; murders for political reasons?

SHRI PERATH NARAYANAN NAIR: Even the hon Minister referred to the land of the Sputniks and said that it is retained there. Comrade Saksena also raised that point about the abolition of capital punishment on all occasions. Let us not think in terms of days of great social upheavals and political revolutions. When the security of the country is threatened, by all means, as an emergency measure you have this. But here let us take the normal periods. The whole point is this; civilised countries are proceeding in a direction which takes into account that after all crime and punishment have to be viewed from a different point of view. Time was in England when even for petty larceny and thefts people were hanged but the country is advanced to such an extent that today they are thinking in terms of abolition of capital punishment. Let us not go the whole hog; but we can take a definite step. In India, if we are to be guided by the experience of Kutch, by the experience of the former State of Travancore, by the experience of Hyderabad, we can make a start on this question and do away with this as a temporary measure. You can have it for major crimes. In the United States as a result of experience of

centuries the number of items of crimes for which there was capital punishment has been reduced from 200 to a very few items.

MR. DEPUTY CHAIRMAN: You would take more time?

SHRI PERATH NARAYANAN NAIR: Yes, Sir. Five minutes.

MR. DEPUTY CHAIRMAN: You can continue after lunch.

The House stands adjourned till 2.30 P.M.

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

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

SHRI PERATH NARAYANAN NAIR: Sir, I was trying to follow the arguments of the hon. the Home Minister and as a practical man, was trying to draw some logical conclusions from out of those arguments. I am sure the Deputy Minister, when she replies to the debate, would point out if and where I go wrong in drawing these logical conclusions. The hon. the Home Minister pointed out that capital punishment had been abolished in countries where the incidence of crime among the population was very low, say, four per million and he pointed out that in India the conditions were different and that the incidence of murder was very high. He wanted us to wait till this incidence was brought down to think of abolishing capital punishment. Now, let us note this fact that even in countries where capital punishment has been abolished, since its abolition, the incidence of crime has not gone up. Again, during the course of more than a century of British rule, we had this capital punishment on the Statute Book. In all sections of the criminal law they were there and still we have about 10,000 murders every year in the

[Shri Perath Narayanan Nair.]

country. My point is, if you want to reduce the incidence of murder by the retention of capital punishment under the Statute Book, it cannot be the most effective way; it cannot be the only way. The whole modern trend in criminology, in psychology goes to prove that, after all, man is not a free agent of his own will. He is circumscribed by environments, by political, social and economic conditions in the country. If you change these conditions, these environments and enable the common people to better express their own personality, naturally the crime will come down. There are legislations and laws regarding property rights, lands, marriages and divorce and all these things and if you go on liberalising these, the tendency to crime will be there. So far as psychology, biology, and the inhibitions of the individuals are concerned, you can overcome them through a patient process of training and education. There is no other way for it and so you have to look to other methods. Simply retaining this capital punishment on the Statute Book does not help these things. If we are to make a turn in our attitude towards crime, I think, from my point of view, India is the best country to make a start. Repeatedly we have been told about our own traditions of compassion, tolerance and regard for human life and human dignity. For once, I was disappointed very much at least on this point. The Home Minister had different conceptions about our traditions and all that. Speaking from our own limited experience in parts of our own country—in Cochin, Travancore and in Hyderabad where this capital punishment was not in force during the course of 20 to 25 years—can it be said that the incidence of crime was higher there? We have no figures. Our own experience is different. As a matter of fact, in our own State, there were other experiences also. During the time of one Maharajah, you know, Sir, there had been incidents such as this. When a cow was butchered by a certain Christian gentleman, the Maharajah, acting on

the principle of 'a tooth for a tooth and an eye for an eye', caused that Christian gentleman to be butchered in the same manner as the cow was butchered. Recorded history shows that at that time the incidence of crime was not lower; it went up like anything. Then, we have got a different experience during the time of a Maharajah who stayed capital punishment for long. Then the incidence of crime did not go high. Now, with the formation of the new Kerala State, we have been brought into line with the rest of India. This thing has been reimposed and it cannot be the contention of my friends opposite that the incidence of crime has gone down in that part of Kerala because capital punishment has been restored there. That is not so.

So, the whole trend of modern criminology is that you have to approach the whole problem of crime and punishment from a scientific point of view. Environments have to be taken into consideration. The psychological and biological make-up of the individual has to be taken into account. In that respect, Ceylon has already taken a lead. Britain is almost taking the lead, taking into account the changed circumstances and the modern outlook towards crime. Why should we, in India, allow them to steal a march over us in regard to this matter? After all, this Resolution only suggests that the whole problem should be examined in broader aspects. I, for the life of me, cannot understand why even such a Resolution which only seeks that this problem be examined in all its various aspects . . .

DR. W. S. BARLINGAY: It speaks of the abolition of capital punishment not a general consideration of the question in all its aspects.

SHRI PERATH NARAYANAN NAIR: . . . including abolition; we can consider it.

We, in India, can really take a step further because the whole modern world is travelling along that line and

unless we bring to bear upon the whole question a scientific outlook, we will not be any nearer our ideal of reducing the incidence of crime in our country.

SHRI P. N. SAPRU (Uttar Pradesh): Mr. Deputy Chairman, the House is discussing a grave question affecting the foundations of our legal system. The sanctity of human life is important and the question posed by the Resolution is, in a way, one of principle and conscience. Speaking for myself, my emotional reaction is in favour of the abolition of the death sentence. I know that legal opinion and judicial opinion will be shocked by this expression of mine. But there is a point to which I have not been able to get a clear answer. Judges decide cases on evidence and the material before them. It is said that circumstances do not lie, but we know that circumstances can sometimes lie. I was reading in British papers reviews of a book which has been recently published—"Not guilty men". In it, an American lawyer has given instances of cases where the judicial verdict has erred, has gone wrong and where, admittedly, the person had not committed murder. Now, we know that here we have got the sessions judge, the High Court and then the Supreme Court. Then there is the Governor and the President to review mercy petitions. But the possibility of a margin of error is there. Therefore, the question which has troubled many people is whether it is right that a sentence should be passed which is irretrievable. I mean, if the man is executed, then there is an end to the matter; we cannot revive life. Therefore, I am not venturing to express a dogmatic opinion one way or the other. I do not say that the death sentence should be abolished overnight. I know the terrible menace that the problem of dacoity poses for us in Madhya Pradesh, in parts of Uttar Pradesh and in parts of Bihar. But the question for consideration before us is whether this matter should not be considered by a commission of jurists and sociologists. Now, we have the Law Commission

functioning and the work of the Law Commission is to revise our laws. I think that a reference can be made to the Law Commission, but the difficulty with the Law Commission is that it is a Commission of pure lawyers, and though I am a lawyer myself, I think the legal mind is inclined to view questions from a rather restricted point of view. Therefore, I would like the Law Commission—when it is considering this question—to co-opt for the purpose of examining this question, some sociologists and social workers.

May I say, Mr. Deputy Chairman, that the question of the death sentence has been the subject of repeated discussions in the House of Commons? There, they had a Royal Commission on Capital Punishment. The Labour Government appointed it in 1949 and Lord Gowers' Commission reported in 1953. Then, there have been several debates in the House of Lords and in the House of Commons. Eminent men, who cannot be described as revolutionary in any sense of the term, men who have had experience as Home Secretaries, Ministers of the Government in Britain, have supported the abolition of capital punishment, of the death sentence. I am particularly referring to the consistent efforts in this behalf of Lord Templewood, better known as Sir Samuel Hoare. He was Home Secretary of Britain at one time and he has been a consistent supporter of the abolition of the death sentence. Now, the objects of punishment are reformatory, deterrent and retributive. The question which the Royal Commission had to consider was whether the death sentence had deterred people from committing murder. That can be the only justification of its continuance. And the conclusion the Commission reached was that there was no evidence that it had actually deterred people from committing murder. There are countries where the death sentence has been abolished and there is no evidence that in those countries the incidence of murder has gone up. I know that conditions differ in every country. We have to examine

[Shri P. N. Saprul]

for ourselves conditions in this country. We have to examine for ourselves the limits to which we can go in our country.

May I also say a word about the theme of 'diminished responsibility', to which reference was made by some speakers who spoke of the hardships caused by what is known as the rule in *Macnaughton's case*? Now, I am not prepared to stress this psychological argument too far. I have some difficulties with this theory of diminished responsibility. I think that our law, in so far as it gives discretion to the judge to award the lesser sentence or the sentence of death, meets with the situation which has confronted British courts. Therefore, while I think that in regard to cases of insanity or cases where you have to deal with manifestation of abnormal psychology a judge has to take a humane view, it is not necessary for us or it may not be necessary for us to emphasise it in very specific terms in any amendment that we make in the law of our country. You know that in England they have made a distinction between capital murder and murder. Capital murder is, broadly speaking, murder which is of a pre-mediated character. For that capital murder, the punishment of death has been reserved. Here, since we have given a discretion to our judges, it will not be necessary for us to proceed on the same lines as they have done in Britain.

May I also, Mr. Deputy Chairman, say a word about public opinion in this matter? Now, I do not know what the state of public opinion in regard to death sentence in this country is. Many people have expressed horror at the death sentence; but many others have said that the death sentence is vital for preventing people from committing murders. I know that there were parts of the country where they did not have the death sentence or if they had the death sentence, the death sentence would not be executed. Some of our feudal

States had a great objection to the death sentence. It is a matter to be ascertained whether as a fact the number of murders in those States was greater than in those parts of the country where we had the death sentence. It is also a question of fact to be ascertained whether public opinion in certain parts of the country is not ripe for the abolition of the death sentence.

Mr. Deputy Chairman, I therefore think that the question deserves consideration. I do not say that we should commit ourselves here and now to the abolition of the death sentence. That is not my point. But I think that the question deserves consideration. I am not, however, prepared to support the language of this Resolution. I think that the object that Mr. Prithviraj Kapoor has in mind can be served by an assurance that the matter will be considered by the Law Commission and that in considering this matter the Law Commission will co-opt sociologists and social workers who can throw light on this question. Thank you very much.

SHRIMATI YASHODA REDDY: Mr. Deputy Chairman, it is with a very great sense of responsibility that one as junior as myself and as inexperienced as myself in comparison with the hon. Member, Mr. Saprul, who has just spoken, would like to say something about this matter. I feel in my humble way that the abolition of capital punishment should not come, at least for the present. After all, the ends of the law which we have are two: One, is the reformatory character of the law; and the second is the deterrent aspect of it. The second aspect, the deterrent aspect, I think, is very important in the case of capital punishment. We have heard quite a lot about this aspect. More murders would have been committed, I am sure, if this capital punishment had not been there. If the death penalty had not been there, I am sure, the number of murders committed in India would have been greater. . . .

SHRI V. PRASAD RAO: Question.

SHRIMATI YASHODA REDDY: It is commonsense, and it is not for me to say things which need commonsense to understand. One of our hon. friends, Mr. Sinha, was saying that in some countries after the abolition of the capital punishment the crime has gone down by 50 per cent. But, Sir, I would like to say a few words from the Report of the Royal Commission of 1956, page 2547: "There has been no clear evidence of any influence of death penalty on the homicide rates in these States".—meaning the U.S.A. But here we should not misrepresent or read too much into the words. What it says is that there is no reliable evidence one way or the other, it does not prove this way or that. That is what I want to say. Statistics do not prove anything either this way or that way. Most probably the crime has not increased in some countries where the capital punishment has been abolished, but that does not mean that in India it is necessary at the present time to abolish capital punishment.

Somebody said, Sir, "You convict a person for murder and then he is hanged. He is not a professional murderer. He has committed the murder for the first time. Why don't you give him a chance? Why don't you send him to some reformatory school and give him a chance for reforming himself? We are having the Probation of Offenders Bill, we are having the reformatory schools". But these people who are committing murder are far beyond the age of reformation. These are hardened criminals. The reason why we are not having professional murderers today is because of the death penalty. Once a person commits a murder deliberately, we are not permitting him to escape and come back into the society. Some Members argue "we are not having murderers who are professionals in this crime in the sense that they commit murders one after the other. We do not have professional murderers. Why do you hang them"? That is what one Member was saying. We are not having professional murderers because we take care to see that murderers do not escape.

Another thing I want to say. What are the problems we are going to face when we abolish this capital sentence? I could number many, but there are one or two which are of particular concern to us. What will happen to these professional criminals when they are let off? Some friends say "why do you put him in the jail? After sometime he will reform himself". When he knows that after every murder he will be sent out of jail after a term, there is nothing to prevent him from committing the crime again. If he is let off, will the prison officials be safe? Will there be law and order in the prison? What will happen to the law and order position of the country when there is nothing to deter these people from committing murders? After all the Government's duty is to see to the security of the life and property of the whole society, and the responsibility of the State to the society is more than the responsibility of the State to one single person. Sir, most of these friends who are arguing for the abolition of the capital punishment adduce human considerations. They say that it is very barbarous, that it is not very good to take the life of a person because he has committed a murder. But I want to ask them what is the alternative they suggest. The alternative would be that they should be put in the prison for life. Is it more human to do so? Do they fully realise the implications of a real life sentence? I ask the Members to consider the question of the gradual deterioration of the man—who knows, he has to stay all his life in the prison however human be the conditions there—I think mentally, morally and physically the deterioration of the prisoner will be greater, and the suffering that will be caused to him thereby will be greater than putting him to death.

SHRI V. PRASAD RAO: All the more so in Congress jails.

SHRIMATI YASHODA REDDY: Do not speak about the Congress jails. We know what is going on in the Communist countries. We at least

[Shrimati Yashoda Reddy.]
give a fair trial to the prisoner. We allow the prisoner to have a defence for himself. If he cannot defend himself, the State arranges somebody to defend him . . .

(Interruptions)

SHRI BHUPESH GUPTA (West Bengal): What about detention without trial?

SHRIMATI YASHODA REDDY: Here they are detained for sometime, mind you. The Government has been very considerate and our Indian laws have been very considerate . . .

(Interruptions)

MR. DEPUTY CHAIRMAN: Order, order.

SHRIMATI YASHODA REDDY: One of my hon. friends said that there is a moral sense in the man and that we do not need capital punishment. He said "our Shastras have declared that the divine spirit is there in the man and the man will not be immoral". It may or may not be true. If there was such a moral sense in man, why should we have so much of legislation, why should a Parliament exist here today passing so many laws? Human nature being what it is, we do need laws, we do need to have punishment to deter people from committing crimes. (Interruptions) I am only quoting. I am not an authority on Shastras, for your information.

Sir, somebody referred to what they have done in England, but I can tell you that when I read through this report of the Royal Commission, it was said that when the Bill was circulated, more than 71 per cent. of the population gave their opinion in favour of retention. I hope in India also if this question is put to the public, the public opinion will be not for the abolition of the capital punishment but for its retention. Whatever it is, I feel it was not for any private Member to feel the necessity for abolishing it, if the Government had

felt the necessity for such a law. Personally I feel the Government should not have allowed this resolution to come up before this House for discussion.

SHRI V. K. DHAGE: I think this is not called for from the hon. Member. It is the right of every Member to bring up resolutions. I do not think that a Member can curtail our rights . . .

(Interruptions)

MR. DEPUTY CHAIRMAN: Order, order.

SHRIMATI YASHODA REDDY: I said that the Government should not have allowed it.

SHRI V. K. DHAGE: It is not within the right of the Government to disallow any resolution.

SHRIMATI YASHODA REDDY: I do not think it is right to say that we are not allowing it on the floor of the House.

DR. R. B. GOUR: You are an official Member.

SHRIMATI YASHODA REDDY: I hope to be some day. Now, all that we are trying to do by abolishing the capital punishment is, we are giving a sort of right to kill without punishment. Our hon. Home Minister was saying that there was a case where a small child's limbs had been cut off and eyes had been removed just to make a profession of begging out of it, and even such cases do not come under the Indian laws. Mr. Naidu spoke about one or two sections on death penalty which are absolute. Otherwise discretion is given to the Judge in the case of most of the offences where he could give a lesser punishment, and we have got several Courts of appeal, and there is also the right to appeal to the President for mercy. When the law is liberal and when the number of murderers who

are hanged is comparatively very very small—somebody said that for 9000 and odd murders which were committed, the number of those hanged was not even 160—that itself goes to show how considerable the law is and how reasonable the law of our country is, and so I do not think we should do anything to abolish the present system. I feel personally that we are trying to take away from the Judge, from the Jury, from the criminal judiciary of the country, from the learned men who sit and administer the law the right to sit in judgment and pass sentences according to law. It is not just. Let us leave this aspect to the learned men and let us not pass laws which may not bring about much benefit but which may do more harm to the country than you can visualise.

Thank you, Sir.

3 P.M.

श्रीमती सावित्री निगम (उत्तर प्रदेश) :

उपसभापति महोदय, जो प्रस्ताव सदन के समक्ष विचाराधीन उपस्थित है मैं उस का हार्दिक समर्थन करना चाहती हूँ। मैं ने होम मिनिस्टर महोदय के वक्तव्य को बड़े ध्यान और बड़ी श्रद्धा से सुना और उसे सुनने के पश्चात् मुझे यह विश्वास हो गया कि पूरे देश की क्राइम्स पोजीशन का पूरा असेसमेंट रखने के पश्चात् भी वे स्वयं इस बात से कनविस्ड हैं कि कैपिटल पनिशमेंट ने नती अत्र तक क्राइम की दशा में कोई सुधार ला पाया है और न इस से लोगों को कोई ऐसा भय हुआ है कि लोग ऐसे क्राइम्स और मर्डर्स करने से किसी प्रकार पीछे हटें। उन के वक्तव्य को सुनने के पश्चात् मुझे यह भी विश्वास हो गया है कि शीघ्र ही ऐसा समय आयेगा जब स्वयं होम मिनिस्टर महोदय कैपिटल पनिशमेंट अबालिश करने के लिये एक बिल इस सदन के समक्ष पेश करेंगे।

श्रीमान्, मैंने पिछली बार इसी सम्बन्ध में एक रिजोल्यूशन इस सदन में मूव किया था और वह इस प्रकार था कि :

"Capital punishment should be abolished because it is a legalised,

revengeful and cruel destruction of God's most wonderful creation, human beings."

यह न समझिये कि मैं अपने इस विचार, इस निर्णय और इस विश्वास से किसी प्रकार पीछे हटी हूँ। मुझे अब भी विश्वास है कि कैपिटल पनिशमेंट शीघ्र ही और अवश्य ही अबालिश होना चाहिये। लेकिन मैं नहीं चाहती कि जल्दी में कोई काम मैं सैल्फ विल द्वारा करूं। मैं चाहती हूँ कि सदन में जो अनेकानेक बड़े सुयोग्य सदस्य हैं वे सब बैठ कर इस पर विचार करें कि कैपिटल पनिशमेंट किस प्रकार अबालिश हो और किस प्रकार वे लोग जो बेचारे गुनाहों में फँस कर अपराध कर बैठते हैं उन को साइकालाजिकली ट्रीट किया जाय और किस प्रकार उनको अच्छा इंसान बनाया जाय, उन के लिये क्या दूसरा आल्टरनेटिव ढूँढ़ा जाय, किस प्रकार उन को समाज में रिहैबिलिटेड किया जाय। इस बात का विचार कर के मैंने अपने रिजोल्यूशन को, जो पिछला रिजोल्यूशन था, उस को एमेंड किया था। मैं ने सोचा :

"Democracy first dies in the hearts of democrats, then it dies in the hearts of dictators."

हर एक काम चाहे वह कैपिटल पनिशमेंट अबालिश करने का हो या ऐसे अपराधों के सुधार का हो, हमें बड़ी सजीदगी से, सदन में गंभीरतापूर्वक इस पर राय लेने के पश्चात् ही करना चाहिये। श्रीमान्, इसीलिये मैं ने अबकी बार अपने रिजोल्यूशन को इस प्रकार से पेश किया और मुझे पूरा विश्वास था कि यह रिजोल्यूशन जो इस बार सदन में पेश हुआ है जिस में यह मांग की गई है कि 'संसद्' के सदस्य और दूसरे लोग गंभीरतापूर्वक विचार करें कि . . .

MR. DEPUTY CHAIRMAN: I am told, you only gave notice of the Resolution. You did not move the Resolution.

SHRIMATI SAVITRY DEVI NIGAM: Yes, Sir. I have not moved my Resolution. I only gave notice of the Resolution.

[श्रीमती सावित्री निगम]

श्रीमान्, जैसा कि होम मिनिस्टर महोदय ने पूछा कि क्या जो मर्डरर हैं वे इस बात के लिये तैयार हो कर मर्डर नहीं करते कि वे फांसी पर लटकना चाहते हैं, मैं उन से बड़ी विनम्रतापूर्वक यह भी बताना चाहती हूँ कि वे लोग मरने से बिल्कुल नहीं डरते। १९ फी सदी क्रिमिनल्स इस बात को जानते हैं कि हत्या करने के बाद उन को मौत की सजा जरूर मिलेगी, लेकिन यह जानते हुए भी उस वक्त इतने इम्पलसिव होते हैं, इतने पागल होते हैं, और इतने डैस्परेट होते हैं कि काम कर डालते हैं। इसलिये मैं बताना चाहती हूँ कि कैपिटल पनिशमेंट के अबालिशन से इस प्रकार की वारदातों में न कोई रोक लगने वाली है और न वह बढ़ने वाली है। यदि हम कैपिटल पनिशमेंट के सौ वर्ष के इतिहास को देखें तो हमें पता चल जायेगा कि सौ वर्षों से, जब से यह पनिशमेंट स्टेट्यूट बुक में रहा है तब से बराबर एकजीक्यूशन होते जा रहे हैं और साथ ही साथ क्राइम की पोजीशन बराबर वर्सन (worsen) होती जा रही है। इसलिये, श्रीमान्, यह इस बात का सबूत है कि कैपिटल पनिशमेंट क्राइम को किसी प्रकार कम नहीं करता है और न इस का डेटेरेट होना मर्डर को रिमूव करता है। तो फिर उस को अबालिश करने में होम मिनिस्टर महोदय को क्या ऐतराज हो सकता है। जब वे यह मानते हैं कि कैपिटल पनिशमेंट न तो क्राइम कम करता है और न उस के प्रभाव से हत्यायें कम होती हैं तब फिर उसे अबालिश क्यों नहीं कर देते यह मैं स्वयं उन से पूछना चाहती हूँ। श्रीमान्, जहां तक सिक्यूरिटी की बात है, जहां तक हम समाज को सिक्यूरिटी दिलाना चाहते हैं वहां हम कैपिटल सेंटेंस की पूर्ति लाइफ सेंटेंस द्वारा कर सकते हैं। जो लोग सोसाइटी को बर्बाद करने के लिये घनघोर अपराध करते हैं और उस में दिलचस्पी रखते हैं उनको जेलों में रखिये, करेक्शनल इंस्टीट्यूशन्स में रखिये, और इस प्रकार

सोसायटी को विचलित न होने दीजिये। लेकिन क्या उन को मार कर आप किसी प्रकार उनको सुधारते हैं। मेरा तो विश्वास है कि कैपिटल पनिशमेंट एक प्रकार का ऐसा इंस्टीट्यूशन है जो लोगों को हार्डन करता है, लोगों को क्रुअल बनाता है, लोगों में रिवेंजफुलनेस बढ़ाता है। आप यह देखिये, एक मर्डर होता है तो जो आदमी मर्डर किया जाता है उस के साथ पहले सब की सिम्पैथी होती है, उस की बिरीड फैमिली के साथ सिम्पैथी होती है, लेकिन जिस वक्त थोड़ी देर बाद वह सिम्पैथी खत्म हो जाती है वह आदमी जो मर्डर करता है उस के प्रति सब की सिम्पैथी चली जाती है कि भाई उस की वजह से एक फैमिली आफन तो बनी लेकिन अब कम से कम यह बच जाय। लेकिन जब जज हुकम देता है और वह उस क्रुअल काम के लिये उस आदमी को पनिश करता है, वह आदमी जो ४५ साल तक अच्छी पोजीशन बिताता आया है, लेकिन एक बार गुस्सा आ गया, थोड़ी देर के लिये इन्सेन पोजीशन में, इम्पलसिव पोजीशन में आकर उस में एक दम क्रुअलिटी आ गई और उस ने कोई मर्डर कर दिया, और जब वह जज सेन (sane) तरीके से, तमाम कांस्टीट्यूशन और लाज के अनुसार अपने दिमाग को तैयार करता है और कहता है इस को फांसी दे दो, तब लोगों का काशंस और सब काशंस माइंड उस क्रुअलिटी से और हार्डन होता है। जब मर्डर करने वाली की फैमिली के लोग इस फैसले को सुनते हैं तो वे हार्डन हो जाते हैं और उन सब के दिमाग में आता है कि क्रुअलिटी का बदला क्रुअलिटी होना चाहिये। इस प्रकार कैपिटल पनिशमेंट का इंस्टीट्यूशन लोगों में हिंसा, बर्बादी, बदले की भावना, रिवेंजफुलनेस बढ़ाता है। इस के अतिरिक्त इस का कोई मतलब नहीं है। जितने भी माननीय सदस्यों ने श्री डांगे और श्री सिन्हा आदि जितनों ने भी इस सम्बन्ध में भाषण दिये उन्होंने बताया कि कैपिटल पनिशमेंट स्टेट का जो परपज है,

इंटेन्शन है कि हम काइम को रोकें, उस इंटेन्शन को किसी तरह से सर्व नहीं करता। श्रीमान्, पनिशमेंट तीन प्रकार की होती है, एक तो एग्जैम्पलरी और दूसरा होता है रिफार्मेंटिव। कैपिटल पनिशमेंट रिफार्मेंटरी तो हो नहीं सकता क्योंकि उस में आप अपराधी को एग्जीक्यूट करते हैं, उस का गला काटते हैं। एग्जैम्पलरी इसलिये नहीं हुआ क्योंकि सौ साल से हम देखते आये हैं कि कैपिटल पनिशमेंट के रहते अपराधों की संख्या में कमी नहीं हुई है। तो यह केवल विडिक्टिव पनिशमेंट ही रहा क्योंकि एक आदमी जो इनसेनिटी में आ कर किसी को मार डालता है उस को मौत के बदले आप मौत की सजा देते हैं। लोगेलाइज्ड स्टेट की तरह हम इस वे आफ मर्डर को रिकगनाइज करते हैं।

इसलिये, श्रीमान्, मैं मिनिस्टर महोदय से रिक्वेस्ट करती हूँ कि अब भी कोई देर नहीं हुई, यह रिजोल्यूशन बिल्कुल इन्फोर्सेंट है, इस को मान लिया जाये और इस के अनुसार कमेटी बनाई जाये जो इस प्रश्न पर गम्भीरतापूर्वक विचार करे और उस के बाद सचमुच यह जो हमारे देश का कलंक है कैपिटल पनिशमेंट, उस को दूर किया जाय। हमारा देश एक अहिंसावादी देश है, हमारा आदर्श 'पंचशील' है जो हम लोगों को कोएगजिस्टेंस सिखाता है, जिस के द्वारा हम "पीस" के अग्रदूत बनते हैं। तो हमारी विदेश नीति में और अंदरूनी नीति में इतना बड़ा अन्तर नहीं होना चाहिये जब कि हम अपने आप को एक बड़े स्टेट की तरह रिकगनाइज करते हैं। ऐसी हालत में यह एक ऐसा इन्स्टीट्यूशन है जिस का मतलब कुछ नहीं है सिवाय इस के कि वह रिबेज करना सिखाता है, बदला सिखाता है, मौत के बदले मौत—Tooth for a tooth and eye for an eye— सिखाता है एक subtle way में हर एक आदमी को ट्रेनिंग देता है कि मौत का बदला मौत से लिया जाये।

श्रीमान्, जब कि संसार की निगाह में दंड विधान अपना महत्व खो चुके हैं, जब कि स्कूलों

में और घरों में बच्चों को किसी प्रकार की सजा देना अनुचित ठहरा दिया गया है जब कि सारा मनोवैज्ञानिक दृष्टिकोण बदल गया है तब यहां भी हम को दंड विधान बदलना पड़ेगा। मनोवैज्ञानिक शास्त्र के अनुसार जब किसी बच्चे को दूसरे बच्चों के सामने दंड देते हैं तो उस को हम क्रिमिनल माइंडेड बनाते हैं। हमारे अहिंसावादी देश की सरकार के लिये हत्याओं पर कानून की मुहर लगाना बहुत अनुचित है। आप देखिये, सब डिमोक्रेटिक कंट्रीज में डिमोक्रेसी पर लोग फेथ लूज कर रहे हैं in a very very fast way. केवल हम दूसरों को प्रीच करते हैं, उस के अनुसार काम नहीं करते। There is such a great disparity in our actions and in our preachings. इसलिये, श्रीमान्, जब कि हम अहिंसा का दम भरते हैं, जब कि हम एक शांतिप्रिय देश हैं, तब हम को जरूर ही कैपिटल पनिशमेंट को अबालिश करना चाहिये और उस क्रिमिलिटी के काम को, जिस में कि स्टेट शामिल होता है, रोकना चाहिये।

श्रीमान्, मैं आपको बतलाना चाहती हूँ कि गृह-मंत्री महोदय ने कहा कि इंग्लैंड में कैपिटल पनिशमेंट एबालिश किया गया था मगर वहां पर फिर से लाद दिया गया है। मैं उन से नम्रतापूर्वक यह कहना चाहती हूँ कि हम अपने देश की तुलना दूसरे देशों से नहीं कर सकते हैं। यह पहली बात है। दूसरी बात यह है कि किस तरह पार्लियामेंट में, सरकारों में, निश्चय किये हैं, यह भी हमें नहीं भूलना चाहिये। आम तौर से ऐसे निश्चय इस बेसिस पर नहीं लिये जाते कि "वाट इज राइट बट हू इज राइट"। किस के साथ मैजोरिटी है और गवर्नमेंट के वोटर्स क्या चाहते हैं, इस तरह के एक हजार कंसीडरेशंस होते हैं। अगर सिर्फ यह कंसीडरेशन हो कि कोई भी देश कैपिटल पनिशमेंट को एक बार खत्म कर के दोबारा फिर से लागू कर रहा है, इसलिये इसे समाप्त नहीं करना

[श्रीमती मा.वेत्रो निगम]

चाहिये तो यह ठीक नहीं है। इस के लिये यह कोई कारण नहीं है कि कैपिटल पनिशमेंट को उन्होंने गलत समझा या उस में कोई नुकसान हुआ या उस से बराबर फायदा नहीं हुआ। जो मारा जाता है वह तो मारा जाता है और अधिकांश बेगुनाह लोग लटकाये जाते हैं। इस का मैं सबूत दूंगी।

श्रीमान्, कैपिटल पनिशमेंट किसी भी प्रकार से क्रिमिनल टेन्डेन्सी को नहीं रोकती है यह तो हमारे गृह-मंत्री जी मानते हैं। १९६० के इंडियन पीनल कोड के इतिहास में भी हम जान जाते हैं कि किसी प्रकार भी क्राइम्स और मर्डर में कमी नहीं हुई है। फीरोज़पुर में जहां सन् १९४५ में एक साल में एक एग्जीक्यूशन हुआ करता था वहां महीने में एक या दो एग्जीक्यूशन होने लगे हैं। इस प्रकार ये एग्जीक्यूशन बढ़ते चले जा रहे हैं। इसलिये मैं आई० पी० सी० और सी० आर० पी० सी० में किसी प्रकार के बंधन की सिफारिश नहीं करूंगी।

श्रीमान् आई० पी० सी० या आर० पी० को हम न तो पूरा बदलने जा रहे हैं न हम उस की निन्दा करते हैं। पर इन में जितने टाईप के पनिशमेंट बतलाये गये हैं उन में और कैपिटल पनिशमेंट में यह अन्तर है कि बाकी पनिशमेंट रिफार्मेंटरी है या कुछ कम्पेनसेटरी है पर कैपिटल पनिशमेंट बिल्कुल विन्डिक्टिव है। श्रीमान् इस आई० पी० सी० कानून में बहुत सी बातें अच्छी भी हैं लेकिन कुछ ऐसी धारायें भी हैं जिन से किसी को कोई मदद नहीं मिलती है। जिन धाराओं से क्राइम कम होने की उम्मीद थी रिफार्म होने की उम्मीद थी उन से कोई नतीजा नहीं निकला और न किसी प्रकार का सुधार हो हुआ।

श्रीमान् अगर आप आई० पी० सी० के क्लाजेज को गौर से पढ़ें तो आप को यह देख कर आश्चर्य होगा कि हमारे कानून

ऐसे बने हैं कि हर एक कत्ल या डकैती करने वाले अभियुक्त को न्यायाधीश एक तरह से कैपिटल पनिशमेंट की सजा देता है। अगर न्यायाधीश लाइफ सेंटेंस की सजा देता है तो उस को यह सफाई देनी पड़ती है कि उस को लाइफ सेंटेंस क्यों दी गई है और फांसी की सजा क्यों नहीं दी गई। हमारे सदन के कुछ सदस्य जज और अच्छे वकील हैं उन्हें इस चीज के बारे में अच्छी तरह से जान होगा। श्रीमान् इन बातों को देख कर इस तरह के कानून को शीघ्र बदलना चाहिये।

श्रीमान् आज हमारे देश में एक मिलियन में २६ आदमी क्रिमिनल होते हैं। इस का कारण हमारे सामाज की गरीबी और इग्नोरेंस है और इसी की वजह से कैपिटल पनिशमेंट लोगों को मिल रहा है। मैं यह नहीं कहती कि कैपिटल पनिशमेंट खत्म कर देने से क्राइम न घटेंगे और न बढ़ेंगे। हां लाखों मनुष्यों की सरकार द्वारा जो निर्मम हत्या होती है वह रुकेगी और अपराधियों के साथ जो बेगुनाह भी फांसी पर लटकते हैं वह रुक जायेगा।

श्रीमान् जिस आदमी को मर्डर या कत्ल पर फांसी की सजा होती है उस के बीबी बच्चे मां बाप बूढ़े सब तबाह हो जाते हैं और कोई भी उस की परवाह नहीं करता है। हमारे देश में जो कैपिटल पनिशमेंट दिया जाता है उस से लोग और परिवार डिसप्लेस्ड हो जाते हैं।

श्रीमान् हम ह्यूमन नेचर को चेन्ज कर सकते हैं क्योंकि हमारे देश को जो स्वतन्त्रता मिली है वह इसी बेसिस पर मिली है। महात्मा गांधी ने पूरे विश्व के और ब्रिटिशर्स के ह्यूमन नेचर को चेन्ज कर दिया। उन्होंने ने इसी आधार पर आजादी की लड़ाई लड़ी और इसी आधार पर आजादी की लड़ाई लड़ कर देश को आजाद किया और दुनिया को एक नई रोशनी दिखलाई कि शांतिमय तरीकों से बड़े बड़े लोगों को बदला जा सकता

है, ह्यूमन नेचर वेन्ज हो सकता है। इसलिये हम क्यों नहीं इसी नीति को यहां पर चलायें और उन लोगों को वेन्ज करने की कोशिश करें।

(Time bell rings.)

MR. DEPUTY CHAIRMAN: Mr. Bhupesh Gupta.

SHRIMATI SAVITRY DEVI NIGAM: Two minutes more, Sir.

MR. DEPUTY CHAIRMAN: No.

SHRIMATI SAVITRY DEVI NIGAM: Only two more minutes.

MR. DEPUTY CHAIRMAN: Please resume your seat. Mr. Bhupesh Gupta.

SHRI BHUPESH GUPTA: Sir, I am extremely sorry that the hon. lady Member who was making a very effective and eloquent speech did not have ample time to make the other points she had in mind. I am grateful to her because she has touched on very vital and relevant considerations in regard to the proposition before us. I shall come to them later. Before I say anything more on the subject, I should particularly like to thank Shri Prithviraj Kapoor for sponsoring this Resolution and giving us an opportunity to discuss so important and so vital a social question as the question of capital punishment.

I was a little puzzled, I must confess, when I heard the hon. lady Member Shrimati Yashoda Reddy speaking from the other side with almost her heart closed to compassion. She is a very kind-hearted person and I do not know why that kindness was failing when she got up to speak on this subject. Perhaps, being a lawyer she took a rigid legalistic view of the matter. I am not reflecting on lawyers, because we have here other lawyers stating that capital punishment is not serving the social aims it has in view, and those who gave very favourable interpretation to the capital punishment, to the retention of capital punishment.

Mr. Deputy Chairman, we are discussing this question in the context of a new situation. We have a past to look back upon, we have a future to look forward to and we have a present through which we are passing today. If you take the past into account, you will find that there was a time when in many countries of the world, in their criminal jurisprudence, tooth for a tooth was regarded as the motto for punishment. In England, Sir, there was a time when even for ordinary felony, theft, there was provision for capital punishment. In our country too, in the past regimes we had very cruel punishments meted out to the criminals or other persons suspected of crimes or those who were apprehended and charged with certain offences. We had all these things. Then coming to the British regime you find capital punishment used not merely against criminals and others of that kind, but against the freedom fighters. Sir, many of our people who fought for freedom had to lay down their lives on the gallows. I am not making this point with a view to justifying one or the other thing. All that I wish to say in this connection is that this measure, this capital punishment had been used for certain things in our country. That story we all know. Many of our valiant fighters for freedom had to lay down their lives. If we had not this provision for capital punishment, we might have had amongst us today the brave Bhagat Singh and others, the heroes of immortal memory. We know how vindictive judges under the British gave orders for mass hangings and how people were hanged. That also we have seen. But they did not succeed by such methods in suppressing the political movement and the flame of patriotism began to burn still more fiercely and the martyrdom was carried forward. They did not succeed and their whole scheme completely failed.

As far as ordinary crimes are concerned, capital punishment again has not achieved its objective. Under the

[Shri Bhupesh Gupta.]

British, capital punishment had been used and yet murders had gone on increasing and dacoities had become in certain places the order of the day, and I would say, Sir, the so-called sentinels of law and order, those minions of the police, they became directly or indirectly participants in criminal activities, even in murders and dacoities.

This is well known. I say this thing because it is not a question so much of using a kind of deterrent but is one of preventing crimes by public education, by political education of the people, by improving their condition and so on, by taking effective preventive police measures. On both these scores, Government has not given a good account of itself. It is following the old road of capital punishment. You have had ten or eleven years of experience and yet, have you succeeded? Have you succeeded in preventing murders, reducing the number of murders appreciably by hanging people? You have not. The hon. the Home Minister simply thinks that this has to remain. I am not bringing in the question of non-violence, because I am not meaning you; the profession of non-violence by the Treasury Benches is, as everybody knows, something which does not mean very much. I am not, therefore, bringing in that point of view but I ask the Home Minister, "Can he say with his hand on his heart that it has succeeded in reducing such crimes and murders, in apprehending the murderers in the country and deterring them?" He cannot say that. Murders do take place, horrible murders took place even in this great capital of our country. How is it that with all the leaders here, with all the police force and the paraphernalia right under our very nose in this great city, murders are taking place? The murderers do not seem to be frightened by you. Therefore, I say, in the light of experience, you cannot justify your stand that capital punishment must be retained. There are murders

and murders. Some murders take place on the spur of the moment due to a momentary excitement, momentary loss of temper. This is one type of murder. This is not criminal. Sometimes a very perfect man suddenly, on the spur of the moment, having lost all bearing, commits murder. Then he comes to grief and is hanged, but there are, of course, some people who are professional criminals and murderers. These people form a different category and we would like to know from the hon. the Home Minister as to how many murders take place due to some kind of psychological and momentary imbalance and how many murders take place due to other reasons by professional incorrigible murderers whose life have to be put an end to. It is very necessary for us to know all these things. We do not get anything, any information, with regard to this question from the hon. the Home Minister. I do not know whether they maintain statistics but, in any case, it would be useful for them, from the point of view of criminology, from the point of view of sociology and from the point of view of criminal jurisprudence to study this aspect of the matter. In our country today unfortunately, many murders take place on account of momentary loss of temper or some such thing. We know these things are happening and you have got to go to the sociological roots of such things. It is very essential to go into the social background which is not at all healthy. We have not been able to create a social background in which such things become rarer and rarer. We have not done that. Therefore, it is very essential to go into this question. The theory of deterrence in criminal jurisprudence is an outmoded conception and I think many civilised countries had taken to rethinking their ideas of criminal jurisprudence. I think we shall be well-advised to take this Resolution seriously and to consider this matter, to ponder over the proposition of capital punishment and see whether such a punishment should be retained at all or not. That

is all that this Resolution wants. Why should it be opposed? Detection is important. Deterrence by any means can be substituted by detection and prevention. As far as prevention is concerned, our police—I am talking about the ordinary crimes that take place, crimes of which the hardened criminals are guilty—must be more vigilant. The people go with the intent of committing a crime and, in the process, they also commit murders. Have you succeeded in preventing this crime? Is your police force competent enough or well-trained to tackle such a situation? Not at all. Your police force is not in a position to prevent the dacoities, to come in the way of the dacoits, prevent them, hound them out, arrest them and put them in prison. You always say, "Here is the capital punishment. If one is caught, he will be hanged" but, at least, the dacoits are not frightened by it. Take the dacoits of Madhya Pradesh. Man Singh has gone but there are many others. Are they frightened by capital punishment? I do not think that the Government would say that they are frightened by capital punishment. You will see that a large proportion of murders in the country is committed in the process of dacoities and these dacoities are mostly committed by very well organised, undetected and unapprehended gangs of dacoits. I would like to know why the police force is failing on this score. Is it not necessary for the Government to furnish an explanation as to why the police force is failing in this matter. Therefore, Sir, it is no good trying to sort of paint a horrid picture of murders and all that and then say that capital punishment must be retained. If today society has to be freed from the terror of dacoits, from the fear of murderers, from the hands of the assassins, professional and hardened assassins, the fundamental and most important thing to do is to see that your police force functions properly, to see that the police force behaves properly and discharges its responsibility. We have seen unfortunately in the various

States in the country and particularly in the State from which I come, West Bengal, the police force is very active, very alert and conferences after conferences take place, when it is a question of dealing with the procession of trade-union workers, peasants and refugees. In such cases, the police force is in full array and the Calcutta streets are crowded with uniformed policemen brandishing their lathis and their rifles but the moment it comes to a question of hounding out criminals in the various regions, the gangsters and others of whom even some Ministers sometimes are alleged to be patrons, the police force does not move. It is inactive; it does not know as to what to do and what not to do. (*Time bell rings.*) That is the position and they have miserably failed. In some newspapers serious allegations have been made of complicity between the police force and the criminals. We would like to know whether such things encourage crimes or not. Such things, such callousness, such dereliction of duty on the part of the police, such perversion of leadership of police, result in encouragement of crimes of all kinds, murder, banditry, dacoity and hooliganism of all sorts. That is another aspect of the matter. The deterrence question, therefore, does not hold good. In the United States you have got the electric chair, a horrible thing. The Rosenberg couple were killed in this chair but, Sir, has it prevented crimes in the United States, crimes like murder, etc? Al Capone has flourished and the gangsters of Chicago have become famous despite the electric chair and it has not been possible to prevent them. In England too, there have been very many discussions but crimes of this nature have not gone down. In England, if you commit a murder, the only punishment is capital punishment. The Judge has no discretion. The McNaughton Rules have laid down that the Judge has no discretion. May I ask the hon. the Home Minister as to whether he has cared to find out from the British records whether, in spite of the McNaughton Rules and

[Shri Bhupesh Gupta.]
the rules which provide for capital punishment as the only punishment without any discretion to the Judge in cases of murder, murders had gone down? Not at all, Sir. Therefore, it stands condemned. I, therefore, suggest, Sir, that we consider this whole matter and accept this Resolution.

Sir, the hon. lady Member, Shrimati Reddy . . .

(Time bell rings.)

MR. DEPUTY CHAIRMAN: Your time is up.

SHRI BHUPESH GUPTA: Shrimati Reddi was talking about the Communist countries and all that. Well, I am talking in the Indian Parliament. I never thought she was fond of imitating a Communist country when it comes to capital punishment and not when it comes to other matters. Well, Sir, I am concerned with India. I am concerned with our Parliament. I am concerned with our own approaches, and here I think that we can set a good example before the nations by abolishing capital punishment, by weaning people from the propensity to murder. Let there be constant improvement in the cultural and material well-being of our country. Let there be efficiency and honesty and proper functioning of the police in order to prevent crimes. Let us free the people from the fear of murders, from the fear of the assassin's knife. With this conviction I commend this Resolution to the acceptance of the House.

DR. W. S. BARLINGAY: Mr. Deputy Chairman, there are so to say, two Resolutions before this House. One is the original Resolution by Shri Prithviraj Kapoor and then there is the amendment by Shri B. K. P. Sinha.

Sir, if we take the amendment by Mr. B. K. P. Sinha, I feel that the Resolution, as it will then become, will be much less objectionable than the original Resolution as moved by

Shri Prithviraj Kapoor. I am not going to support either of these Resolutions, but if I were given the choice I would certainly say that the amended Resolution would be a much better Resolution.

Sir, the question before us is really a very important question and a lot of good arguments have been given both from this side of the House and that side of the House. Some of the arguments, I must say, are extremely cogent and deserve every consideration. After all, as they say, much can be said on both the sides, but on the whole I am inclined to think that at the present moment at any rate this Resolution is premature and need not be accepted.

Sir, before we go on either to accept or to reject this Resolution we must appreciate the real significance of at least some of the arguments that have been given for or against this Resolution, and I must say that in the interest of clear thinking, this is very very necessary. It has been said, for instance, in connection with this Resolution that the abolition or non-abolition of capital punishment has got something to do with violence or non-violence. Now it does seem to me that in the ultimate analysis perhaps it may have something to do with non-violence or violence as the case may be. But we have to realise that, whether we subscribe to violence or to non-violence, so long as we do have a State in this country, whether it is the federal State or the various federating States, so long as we have the conception of the State amongst us, it should be quite clear that the State has a certain limited right to do violence in the shape of awarding punishment to individuals. Sir, whenever an individual commits crime, you and I can't go about punishing that individual. But it should be recognised on all hands—and this point has very little to do either with violence or non-violence—it should be recognised on all hands that the State certainly has got the right to punish that individual, and the right to punish is

a very important right vesting in the State and on that depends the maintenance of law and order in the State. Now I am sorry to say that many of the arguments which have been advanced either in favour of or against this Resolution are relevant only to the more general question as to whether there should be punishment or whether there should not be any punishment at all,—I mean the right of punishment by the State; and when people, for instance, talked of violence and non-violence and all that—somebody was talking of Dharma also—I think it was Mr. Prithviraj Kapoor—I was almost tempted to ask them the question as to whether they really wanted to go so far as to question the right of the State to punish individuals. After all, Sir, we have to recognise that so far as the State is concerned it has the right to do violence in the shape of punishment. In a civilized State all violence has got to be relegated to the State. We don't have the right to violence, but the State has. As one Sanskrit text says:

इदं ब्राह्मं इदं क्षात्रं शापादपि शरादपि

It is the State which has got the right to violence and this has got to be recognised, and this right to violence can only take the form of the right to punishment.

Now several things have been said with regard to modern psychology and several other things have been said about the statistical data with regard to increase or decrease of the crime if capital punishment is abolished or not abolished as the case may be.

Now, Sir, it seems to me, with all respect to the hon. Members concerned, that all these matters are clearly irrelevant to the question which we have before us. Take the question of the psychology adverted to by Mr. B. K. P. Sinha. He said modern psychology shows that, after all, people are not as responsible as they seemed to be for what they do and all that, that there is a large amount of

insanity in society. Now, Sir, if I may say so with all respect to Mr. B. K. P. Sinha, who unfortunately is not here, this consideration is relevant to show or not to show, as the case may be, only whether the particular person who commits the crime is or is not morally and legally responsible for the crime committed. Either he is responsible or he is not responsible. If the degree of insanity is such that he cannot be said to be responsible for the crime, well, then he simply is not responsible, is not morally and legally responsible for the crime he is supposed to have committed, and there is an end of the matter. There is no further relevancy of this argument at all to the general question regarding capital punishment. Well, either you punish the individual or you don't punish the individual. If the degree of insanity is such that it can strictly be said that he is not responsible for his action, that he was overwhelmed, so to speak, by psychological factors over which he had no control, to that extent his responsibility is diminished. I see that all this will have to be taken into account in assessing the responsibility for the crime of that particular person concerned. Or take the argument based on statistics. The argument has been put forward and it seems to me, quite rightly; and I concede that point to the hon. Members who have argued that point, like the hon. Mr. Narayanan Nair—he pointed out that there was no necessary connection between abolition or non-abolition of capital punishment and increase or decrease in the incidence of crime in society. Sir, with all respect to him I grant that there is no simple or straightforward relationship, no logical relationship between abolition or non-abolition of capital punishment on the one hand and increase or decrease in the incidence of social crimes. I grant that that argument is correct. But then what will it show? It won't show that if capital punishment is there in our statute book it may not have the tendency to decrease crime. There is no conclusive evidence on this point as was stated by Shrimati

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Yashoda Reddy. The whole point is that the evidence on these points is not quite conclusive, is not really sound. Well, as I said, much can be said on either side. The evidence may tend to show that the crime may decrease or the evidence may tend to show that the crime may increase, or may not increase or decrease at all, as the case may be. As I said, there is no straightforward relationship between abolition of capital punishment and increase or decrease of crime in society. But now what I wish to point out is this, that here we are unnecessarily confusing two very different points of view, namely the various social considerations about the incidence of crime, decrease or increase of crime and so on and so forth and the question of the responsibility of the individuals about the crime he commits. These social considerations seem, to me at any rate, completely irrelevant to the issue that we have before us. The real question before us is whether we shall or shall not punish an individual, if he has committed murder or such other heinous crime, by capital punishment. This is strictly a question relating to the individual. It has little to do—I do not say nothing—with all these various social considerations that have been pointed out. Sir, if we take any textbook on Ethics or Politics we will find that there are three theories with regard to the nature of punishment. One is, what is called, the Retributive or Atonement Theory of Punishment. The second theory is the Reformatory Theory of Punishment; and the third is the Deterrent Theory of Punishment. Now, with regard to the Reformatory Theory of Punishment, I have to say that it is true that if I have committed a crime I can be reformed to some extent but I am not punished. A punishment is not meted out to me merely because the State wants to reform me. That is not the reason and that is not a valid reason why the State should punish me. Reformation of the individual is rather only a concomitant of the punishment imposed.

In the same way so far as the theory of deterrence is concerned, the State or the Society has no right to punish me in such a way that by punishing me they will be able to deter other persons from committing crimes. There is no such social right with the State to punish me because somebody else in the society has got to be deterred from crime. There is no such right at all.

(Time bell rings.)

Sir, if I may say so, as a very eminent German philosopher once pointed out—I am referring to Kant—ultimately the proper theory of punishment is the theory of retribution or atonement. This is what he said and I will submit, with all respect, that in that he was perfectly correct. We punish a person because he has committed a crime. Suppose a person has committed a murder or some other heinous crime, let us say, like high treason or spying, the question is whether it will be out of proportion—that is the point—if in such a heinous case we inflicted the punishment of hanging or capital punishment with regard to that particular crime. It is all a question of sense of proportion and I feel that there are certain cases—I do not suggest that in every case people should be hanged or capital punishment should be awarded and after all there is such a thing as social conscience, but I do think that there are certain cases—where a capital punishment will not be out of proportion to the nature of the crime committed and therefore I would suggest that this Resolution which has been moved should be thrown out. Thank you.

DR. P. V. KANE: Mr. Deputy Chairman, my time is very short. Is it ten minutes or fifteen minutes?

MR. DEPUTY CHAIRMAN: You have 15 minutes but if you take 10 minutes I will be thankful.

DR. P. V. KANE: My own idea is that this is too early and premature a

thing. There is no use citing cases of Sweden and Germany. I do not know whether that is so in Sweden because people may have never gone to Sweden. In Sweden you will find that what may be called the slums for labour are better than palaces in India. So there will be no crime. There was no crime in that country for 100 years. So those cases are not at all applicable here where we have a humdrum existence. And as my learned friend just now pointed out, the theory of punishment is complicated. Why do we punish them? Suppose you take away this sentence of death, are you going to punish a man at all or not, with some imprisonment at least for 20 years. Our law says only two things, either death or transportation formerly and now imprisonment for life. I once told the judges that if I were charged with murder, I would prefer to be hanged rather than pass 20 years in jail like a beast and they laughed of course. You will notice that you are treating the man most cruelly, if you put him in for 20 years.

SHRI PERATH NARAYANAN NAIR: You can get away in nine years now.

DR. P. V. KANE: We are not considering that now. Now you have decided nine years. There may be another change and it may be made 20 years. It was made nine only recently. My point is, are you punishing a man or not? If you punish, what would be the better punishment? That is the point. And I may tell you positively after 45 years' work in appellate court—I have never gone for defending in the lower court and I have been engaged in several cases of murder—the judges are anxious not to send a man to the gallows. That is my experience. They will catch hold of some slight circumstance and say, 'we are not concerned here with a lesser crime; it is either murder or nothing at all.' The evidence is so flimsy that it is not sufficient, they will say. Therefore they will give the benefit of doubt and the man is

allowed to go scot-free. It is very rarely that death sentence is awarded. Unless there is direct evidence of witnesses who have seen the thing, generally no capital punishment is awarded. The judges are always afraid; they know; they are responsible people and they have taken the oath to do justice between man and man and before God. They are always anxious to find out if there is anything in favour of the accused. Therefore do not suppose that always this sentence is given. Ordinary people do not distinguish between murder and culpable homicide not amounting to murder. Suppose a man sees his wife committing adultery with another person and he kills that other person, the law says there was grave and sudden provocation. It is not murder. It is culpable homicide not amounting to murder. You must make a distinction between the two and ordinary men are not capable of that. Suppose there is a man driving furiously just as the truck drivers do here or anywhere. The truck drivers are responsible for half the killings by accidents. And suppose a man is killed because of fast driving; it is not murder; it is driving in a rash and negligent manner and causing death, and he is differently punished. Or suppose a person wants to kill but misses the fire, then it is only attempt to kill. There are so many degrees. Actually murder done with pre-meditation in my opinion should either be punished with death sentence or with a sentence of imprisonment for nine or 20 years or whatever the number of years you may want. Do you want to punish or not? That is the point. If you want to punish, then it must be of a severe kind; otherwise what is the use of punishing? If you take a thief and a murderer and place them on the same level, then what is the difference? It is better to be a murderer than to be a thief because in that case he can escape. Of course, one set of people will never accept these arguments while another set of people will accept them. I can tell you that from the days of Mahabharata this point has

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been argued. In the Mahabharata a very good case has been made out. When a man commits a murder and he is sentenced to death by the King, his wife and children suffer and they perish. So in order to avenge one murder, you kill many people. That is the plea made before the King. Then the king replies, "you are wrong. My position as a king calls upon me to maintain the wife and the children who have lost their bread winner. So, about their bread winner there is no difficulty. I shall do it." But I want that such people should not go unpunished and I want that this should be a deterrent punishment. If these people know that they may commit dacoity with murder, take the money, pass it on to their wives and children and they themselves may go to jail for nine years, that is bad for you. You and I sitting here in this well-sheltered House will say nothing. People outside will be afraid. They will say, what are those Parliamentarians doing? There, outside, even if you are suspected to be telling the police that illicit liquor is being made, you are stabbed. What protection is there for the ordinary man? The protection is that the man who stabs should be sent to the gallows, that he will get no benefit out of the murder of this man. That is the reason why this punishment is there. I do not justify it. When all of us become *sadhus*, men given to non-violence, then, no punishment will be required. But as the world goes at present, this punishment must be there. The fear must be there that by committing the murder and taking away the money you will not be there to enjoy it. You must remember that you are dealing with the common man. The law is made for the generality of men. There may be exceptions.

And then there is that other fear, which some lady Member, I suppose, stressed, that the innocent may be sent to the gallows. I may tell you frankly that during about 45 years of my life at the Bombay

High Court appellate side, there was only one case in which the wrong men were found to be guilty of murder. And their innocence came out later on. But they were not sent to the gallows. The judges were careful and the evidence was circumstantial and it appeared to them to be rather cooked up. Therefore, they gave this punishment, transportation for life. After five years it transpired in another case that some other persons were the guilty men. You will find that there is no reviewing in such cases. When the matter came up I was among the pleaders there. The High Court was asked by the Government as to what they thought of the new evidence and the old evidence and what recommendation they would make. And the judges recommended that their former decision appeared to be wrong and the new decision was that the new fellows were the persons who were guilty. They said that those other men should be at once released and compensation paid to them.

Then, there are other remedies. Do not think that it ends with the judges. The Governor has got the right of reprieve. The President, under the Constitution, can actually condone or pass a lesser sentence. My point is that there are so many safeguards provided that it will not be in one case out of a thousand or ten thousand cases brought before the court that a wrong man will be sent to the gallows by the judicial process. Now, everywhere you kill men Government has to kill men. You fire upon a mob. Why don't you apply your non-violence? Let somebody who believes in non-violence say, "you kill me first. Don't shoot them down." Has any one man done like that? Very rarely. All profess non-violence. I do not find ten people or twenty people saying "unless you kill us first, nothing can be done, you can go and burn the buses" and so forth. This is all tall talk. I do not believe in this talk. Unless I find twenty men going when there is a riot and saying, "first kill us, then only you can go, it cannot be

accepted". Nothing has been done like that. Perhaps there may be one case; it may be an exception. My point is that people will have to live without the dread of goondas, and goondas are the people who should know that they will not be there to enjoy the fruit and they will be sent to the gallows. Therefore, this sentence has four characteristics; most of them have four characteristics. It is retributive, maybe "eye for an eye". The society requires that those who are guilty should be punished. In what way it is for the judges, it was for the King in those days and now it is for the President to decide. Then, there is the compensatory character also. Suppose a man beats me. I can file a suit for the physical trouble caused and also he may be prosecuted. So, it has, as I said, a compensatory character. Another thing is, suppose I am beaten by somebody and that man is allowed to go on paying Rs. 25. My mind feels I have suffered so much, but he pays Rs. 25 and goes scotfree. Then I also wish that there should be a retributive punishment. You may not express it. But every man feels that if he is wronged by another, that man must come to grief in some other way. That is another character. There is the fourth character, namely, preventive. Every king, ancient king, made a proclamation, "whoever does this will be punished by the king, in the same manner". So, that has got some preventive or some terrorising—if I may use a strong word—character about it. My point is that the facts have not proved sufficiently that we should jump at once. At present there are so many safeguards and therefore, in my opinion, nothing need be done.

Then, something was said that murders were not committed in Hyderabad and in some parts of Kerala . . .

SHRI V. K. DHAGE: Not murder, but capital punishment.

DR. P. V. KANE: I am wrong. The punishment of death was not awarded. That does not show that murders had

not increased. How do you know that murders had not increased? Murders were committed, I think . . .

SHRI PERATH NARAYANAN NAIR: The annual reports show.

DR. P. V. KANE: Murders were committed all the same everywhere. I do not think that you deny that no murders are committed.

SHRI PERATH NARAYANAN NAIR: No.

DR. P. V. KANE: If the people were so good, then there should have been no murder. The learned mover said he found a man who committed eight murders. That case goes against him. If he had been sent to the gallows when he committed the first murder, the other seven murders he committed would not have happened. Hon. Member, Shri Dhage, said that we have got woman, wealth and land. Now, land is taken out. He is not correct there. There is legislation no doubt. But what is it? If you yourself cultivate the land by your labourers, then you can drive out the tenant. You need not be willing to help. There has been stabbing on that ground, that this man had got these servants, and he is beating them. So, where there are tenants, murders happen. The land is still there. One of the causes is women, of course. That will always be there. Wealth also is there. I do not think that your legislation has diminished wealth. The rich have grown richer and the poor have become poorer. The rich people are there always who own millions and millions. This is only a beginning. Whether it is the beginning of the end, I do not know. But for a long time to come, wealth will be there; rich people will be there and the poor will always be wanting that their wealth should be distributed to them. (*Time bell rings.*) There is another thing. I shall stop in a minute. Cases are reported. You and I quarrel. I go home and have a private grudge. You bring in neither woman, nor land,

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nor wealth. These are there no doubt but there are various other causes. In Bombay a superior officer remonstrated with a member of the inferior staff. He got wild and he killed the officer and those who came to save him were also killed. Three people were killed suddenly. Such a man we do not want in society. Simply because he has a grievance, if he kills, such a man does not deserve to be in society. Therefore, I am suggesting, it is all sentimental, nothing else. It is all very well in this House to be good, but to those outside it would appear as pure sentiment and nothing more.

4 P.M.

SHRIMATI T. NALLAMUTHU RAMAMURTI (Madras): Sir, this is a most complex problem, this question of the capital sentence and its abolition and the constitution of a Committee to consider the matter. I would say that it is very much a social problem. Sir, remarks were made that it is an individual question, that when a person commits the crime, it is the individual that commits the murder and therefore he has to get his retributory punishment, and that society comes in very little into that. If the individual is not the society, the question does not arise at all, and there need be no law, no punishment. Conditioned as we are, we are social beings, we live in society, and very much so, and law and order is the very condition of that society. Therefore, law is very much needed if we want to live together in safety and security and progress onwards, and therefore it is that law has come down the ages in order to show a way of life to live amicably and in a friendly way together.

Law is conditioned by public opinion, that is the people, and that is where I would dispute the idea that a private member's resolution should not have been allowed. The very fulcrum of democracy today, especially ours, is the opportunity that it gives to private Members who are the

mouthpieces as it were of a vast public opinion, and on this forum of forums which is a free forum they bring to bear that opinion and contribute their share to the wealth of democratic legislation that we can surely be proud of. Therefore, Sir, I welcome our friend Mr. Prithviraj Kapoor's resolution. On this question he must have thought very deeply and, conscience-stricken as he was and emotional, a great artist himself, he painted a very fine picture and bewitched us, carrying us with him in the arguments and instances that he quoted. Others have expressed their views from various angles, and that such a free forum was possible in this House is attributable to this democracy. Another person expressed that democracy dies first in the hearts of the democrats and then at the hands of the dictators. Well, I do not think that can be said of this House. I stand here to pay my tribute to our democracy.

Now, the question of capital punishment is a very knotty question. That requires the consideration of not only the highest intellectuals in the realm of Judges and Courts but also the thinkers of our country. This question has often been mooted in all the constitutions throughout the world, and on this I am not quoting, as some of our friends have expressed, statistics of how this country or that country has so much of population and the crime is so much and whether it is on the increase or on the decrease. Each country has its own background and therefore has to proceed along its own way. The very vital question is, are we to legislate or are we to educate? Because crime is there it is very much a social responsibility, and therefore the more we educate the people the less the crime that would be committed. That I am fully convinced of. Then the question arises, are we not to legislate at all? These two can go hand in hand, and therefore it is that we have thought it necessary to have legislation on this question. Now in India—not only in

India but in other countries also, for instance in Greece which was a thorough going democracy whose example was accepted by political constitutionalists—there, Socrates takes poison and puts an end to himself because he says the laws say so. He was an individualist. He differed in certain ways from Athenian laws and said: "The laws speak to me: 'Oh! Socrates, you must sacrifice.'" There, in order to save his conscience and the state, an individualist, the first conscientious objector gave up his life. In the same way we have in Manu Dharma Shashtra a king who said that his son should be sacrificed because he drove his chariot over a calf and the cow had gone to ring the *Araichimani*, the bell that was kept there to meet out justice to those who needed it. In the same country we had an Emperor Ashoka who stopped war after Kalinga because he said "I will build my empire not on streams of blood, not for material aggrandisement, but on the hearts and the love of my people."

So, in this way progress has gone on in one way or another, and here we are to discuss this problem from the emotional point of view, from the moral point of view, as to how best to see that humanity survives, that, our legislation is humane, and at the same time to save society from those anti-social elements who are called criminals and murders and who are likely to perpetuate such murders injuring society. Hence it is a very great problem. I take this point of view, Sir, with all respect to what other countries have done, that our legislation based on our history and experience in our country has incorporated very humane ideas, that we have put a stop to whipping, that there are only very few cases where a murderer is sentenced to death and the utmost is being done, as Mr. Sapru has pointed out, in such cases of murder to see and to go into all the extenuating circumstances involved. After all, Judges are human, our Courts are very much human and so they have to find these out and go

into everything before giving a verdict. Still the question remains whether a murderer should be sentenced to death or should he be imprisoned, may be for life or for a shorter term. I feel personally that to put a man to death, to hang him is an easy way of making him escape from all the responsibilities of life. Many people go and commit suicide these days. They are not heroes or warriors. They fight shy of life and all the brunt of having to do their duty and then finish themselves off in a trice. Whereas, if you, instead of sentencing a man to death and putting him on the gallows once for all, sentence him for a certain term of imprisonment or life imprisonment, there is a chance for him to function as a human-being and, who knows, there might dawn some light in his life that would make him better during this term of imprisonment. I want to tell you a story where a young boy who had committed small thefts in the school had been put on the gallows because he had committed a murder in the prince's palace; and then his mother came crying: "Oh! my son, you are on the gallows, what shall I do without you?" He turned his back on his mother and said "Oh! King's officers, put that woman on the gallows and not myself, because had she checked me when I was young, when I stole and brought a pencil, when I brought a few little things from the school, I would not have come to this sorry situation. Therefore she is the murderer, not I". Education is a great thing in one's life. Therefore, even in prisons—especially in our democracy where many of us are on the Advisory Committees of prisons and visit the prisons—we have come to know that there are very many ways of bettering the man who might have been a hardened criminal to begin with, but slowly he improves. As most of the learned Members have expressed their view, this matter needs a thorough investigation and looking into by one and all from the legal profession's as well as from the layman's point of view. And hence I agree with Mr. Sapru that if an assur-

[Shrimati T. Nalamuthu Ramamurti.]

ance is given by the Home Minister that such consideration will be shown and eventually this kind of capital punishment will be done away with—I hope it will be done away with—then I feel that the mover of the Resolution will be satisfied. In this connection, Sir, let me point out that a number of tragedies and atrocities have been committed on the women-folk in the South—as in the North. One hon. Member was saying that passions run riot in the North and not so much in the South. But do you know that only recently we were shocked to find in the newspapers that a woman who was given a little meat to cook by her husband took a little of the cooked meat and kept it apart? And the husband came and asked her “For whom are you keeping that meat? Is it for your paramour?” And then he started beating her so violently that she collapsed. And there was another incident also of a woman who was actually taken by her husband to a forest and he told her “let us enjoy ourselves in this forest”. And there she was questioned about her chastity and ultimately she was killed by him. So, the law of the jungle is still with us. It is not only in some so-called barbarous communities. In my vocabulary there is no such thing as a barbarous community. It all depends upon the opportunities given to such communities for their education and advancement. We have got barbarians among ourselves also, and therefore I say, Sir, that this matter needs a very careful investigation. And we women would like that the idea of putting an end to a man's life, especially in this country of Ahimsa and non-violence, should be considered deeply. Somebody said that it has nothing to do with non-violence. But law is public opinion and public opinion is very much in favour of non-violence. And therefore after proper investigations, this putting an end to a man's life, of giving capital punishment because he has committed murder, the mere act of doing away with

the life of the murderer should be considered and removed by stages as and when the Home Minister thinks fit, but very soon, and we women will remain grateful to him for that.

SHRI J. H. JOSHI (Bombay): Mr. Deputy Chairman, I am very reluctant to support any move for the abolition of capital punishment. While I was listening to the speech of the hon. Member, Shrimati Savitry Devi Nigam, my mind went back to some horrible incidents that occurred six years back in my part. I may say that had she only heard about those incidents or those diabolical acts of the dacoits—who are a very big gang—that would have been sufficient to make her or any other person swoon. The narration of the story can be found in the last few issues of the ‘Times of India’. Now it has been an accepted fact that the dacoits committed about 80 murders, and what a horrifying scene it was to see each time six or seven bullets fired and innocent farmers stuck into the ground or into the walls! It was so terrifying to see that. And what was all this for? I may say that we are in the days of revolution. Political revolution does not stop at the point of attainment of Swaraj. Political revolution must be accompanied by social and economic revolutions also. Now when those changes are introduced, there are bound to be persons who are adversely affected. Some resent, some rebel, and there are some who lose their heads. Such people are encouraged by political aspirants and murders are committed. Now, Sir, as I was stating, we are not yet out of the woods. And therefore if there were any move for the abolition or capital punishment, we shall be inviting such dacoits to commit more and more murders. I have been hearing some hon. Members speak about Ahimsa. But this is not the place for that. We are not sitting in any religious *mutt*, nor are we sitting in any humanitarian organisation. We are sitting in this Parliament which is making laws for the country for the peace and prosperity of the people. In England, Sir, a Law Commission

was appointed to go into this question, and I will read out what those recommendations of the Commission are. It has been stated here as follows:

"Coming now to the Royal Commission on Capital Punishment, which has already been mentioned, its Report contains the revolutionary proposal that powers of discretion should be given to a jury to bring in a third possible verdict of 'Guilty, but with extenuating circumstances'."

Then further they say:

"The Commission proposed that future murder trials should take place in two stages. The first stage would be concerned with the issue of guilt. The second stage would be concerned with the existence of extenuating circumstances, if any."

Further it says:

"It is not possible, within the limits of these paragraphs, to go into the many complicated reasons advanced by the Commission for its several recommendations; but if the above proposal were made law, certain anomalies of the present law of murder would disappear, such as those relating to accomplices and the survivors of suicide pacts as well as the fantastic doctrine of 'constructive murder'."

Nowhere do we find any recommendation for the abolition of capital punishment.

We know that there are two types of acts or crimes which carry capital punishment. One is murder and the other is treason. As regards murder, as our leader Pantji said, the courts are very lenient. It is only if the murder is cold-blooded, if it is cruel or if it is calculated and there is very weighty evidence, that the punishment of death is inflicted. But as was stated previously by an hon. Member, with the slightest flaw, the courts or the judges are very lenient and the benefit of the doubt goes to the accused. And in the case of a mur-

der, there are only two alternatives, either a sentence of death or acquittal.

In the case of treason also, the punishment in former times was of a barbarous nature. Those who committed treason were drawn, dragged to the place of execution and they were hanged and ultimately they were quartered also. In the case of women, they were burnt alive. Compared to those days, I should say, the law is very lenient now, the law is very generous in our times.

Sir, as I stated, social changes also follow political revolutions. Our country is infested with people who have superstition in their minds. There is religious fanaticism also running high in the minds of people. Take for instance the removal of untouchability. There are still instances where if an epidemic of cholera or plague spreads out in the villages, the people go to the houses of the Harijans in the belief that it is on account of these Harijans that such an epidemic has spread and they beat them cruelly so much so that some murders are also committed. Many are killed. What should we do? I do not suggest that those who do this should also be hanged. But my suggestion is that so long as we are not yet out of the woods, as I stated, so long as the revolution has not been completed, politically, socially and economically, I think it would not be wise on our part if we were to take out of the Statute Book this capital punishment.

I was very much pleased to hear the hon. Member opposite, Mr. Bhupesh Gupta, when he stated that he was in favour of the abolition of this capital punishment. I am dead sure that if they had complete powers in their hands and if what they call "reactionary" acts had been perpetrated by any people or any class of people, or if any dacoities had been perpetrated or committed arising out of the political land reforms, as happened in Saurashtra, I am sure they would have shot down, not one, not a gang of 10 dacoits, but at least a thousand people. But there is sign

[Shri J. H. Joshi.]

of change of heart or conversion and if that conversion is of the right type, then nobody would be more happy than myself. But my feeling is that the country does not believe in words, it sees acts and the country has yet to see those acts.

The State has a duty to perform. If it has a duty to help people to reform, it has a duty to society to protect it. Law is weighty with tradition, it is fraught with the unexpected, it is stiff with parchment and pliant with humanity and sweet reasonableness. We are the humble servants of this law and therefore, my humble plea is this. Let us not be moved by emotions. This is based upon the experience of very eminent jurists of the last so many years.

(Time bell rings.)

I thank you.

THE DEPUTY MINISTER OF HOME AFFAIRS (SHRIMATI VIOLET ALVA): Sir, this has been indeed a very interesting and instructive debate on a subject that looks so vital from the social angle. Hon. Members of this House have quoted figures, cited countries, delved into the past, looked into the future; but we have to face the situation today. Criminal statistics Sir, of any particular country, including homicidal rates, depend upon a plurality of causes.

They may be social, educational, economic, political and various other factors that count. That is why it is not always safe to cite other countries or to quote other peoples' laws. We have to basically examine our own background and, therefore, it is impossible to view such a complex position so arbitrarily and by a mere resolution moved in a Legislature. As I said earlier, the rise or fall of homicidal rates vary because of varying conditions from time to time even in a given country. In the United Kingdom, they are trying to reintroduce capital punishment. Likewise, hon. the Home Minister stated this morning that they are trying to

re-introduce capital punishment even in some other countries and some States of the United States of America where it had been the law and where capital punishment stood abolished. Now, Sir, we must not forget that we are also as advanced as other countries, that we also do believe in scientific research, we also do believe even more than most of the countries in a human and humane approach. Nevertheless, we have to assess and understand our own problems as we face them in the present-day context of Indian history. Public opinion, as far as I understand, has not yet crystallised one way or the other on this issue. As hon. the Home Minister said this morning, atrocious crimes are committed. He even suggested that for the type of crimes that we hear of, there was no reason why capital punishment should not even be liberalised. He gave the instance of a child whose bones were broken, eyes put out and the child was made the means of earning, as Shri Dhage interpreted. I have read of an authentic case which is much worse, of a little child which was kidnapped, had its eyes put out and was made to beg and a woman was shocked when she opened her purse to give him money to see that that child was hers. If this is not an atrocious crime, what else can be an atrocious crime? There are many other crimes of this nature that are not detected, that are not reported; nevertheless, they are there. Added to that, we have the menace of dacoities in this country. Our common law has laid this down very clearly and we have also got a codified law. Many countries do not have a codified law but we have the benefit of a codified law by which the wrongdoer, the offender, who is charged and convicted, can go through various processes of law and there is a procedure by which he can go finally to the President with a mercy petition. Sir, when I talk of these various processes, I would like the House to know the figures that we have in our possession about the murders committed in the last few years. Since these figures have been quoted by other speakers,

I shall devote myself only to quoting figures for the year 1956. There were 10,025 cases relating to murder, cases investigated were 17,188, cases not detected were 10,486, trials were completed in 6,702 cases, 3,212 cases ended in conviction and 3,490 cases ended in acquittal or discharge. In 1956, 192 petitions were received and in 68 cases the sentence of death was commuted. In 1957, 225 petitions were received and in the case of 178, the sentence of death was commuted and final orders are still awaited in thirty more cases. Sir, I do want the House to remember that even though it may not be possible for us to abolish capital punishment as it stands today on our statute book, we do feel that along with the growing tendency of making punishment less and less retributive and more and more reformatory, even the opinion of our people, whether they be lawyers or whether they be prosecutors or whether they be those who defend these criminals or even those who give judgment, is likely to be influenced by the research that is going on in the world. The opinions which are available to us are bound to influence us and are bound to take us to a day when we also would like to join with those other countries that have abolished capital punishment. As I said, the factors are so many and so varied and, as hon. the Home Minister said this morning, we have first of all to create the right atmosphere. Hon. the mover of the Resolution said that he found the hands of a murderer to be the hands of an artist. I quite believe that some murderers can be reformed but then the risk we run is great. We have still to build up this country. In what way are we backward? We have abolished the punishment of whipping. We are going to introduce, perhaps tomorrow, in the other House, a far-reaching and progressive measure, namely, the Probation of Offenders Bill by which offences of a lighter nature are going to be treated in a different manner.

The question of sanity and insanity was raised. I think he who commits a crime may be insane but he who

commits a crime need not necessarily be insane in every case. There are cold and calculated murders; there are murders that have been thought of and planned out months ahead. I do not think the abolition of capital punishment in such cases would be of any use to the society. Then, Sir, there is the other side of the question, namely, should we do away with capital punishment in the present-day society? As long as we are not able to have a welfare State, it will be rather premature to argue over this. The intentions of the hon. mover are no doubt sound but the time is not opportune and it is not possible to accept this Resolution. It was also argued that innocent men or women may go to the gallows. I do not know. It might be quite possible that an innocent man gets hanged but, as far as our knowledge goes, every precaution is taken to see that an innocent man does not hang on the gallows and I do not think there are so many mistakes made that innocents go to the gallows. I am reminded of frightened mothers who, when having their babies in hospitals, often have a fear that the babies are exchanged and that they bring home somebody else's baby instead of their own. But I do not think this is possible; these mistakes do not occur. It may occur one in a million. I do not think we need fear on this count that the innocent is hanged high.

Then, Sir, as I have said, we are going ahead with every possible piece of progressive legislation, but we do want our individuals in society and ourselves in legislatures to create an atmosphere of sympathy and assurance by which we could win over the wrong-doers. If economic, educational, social, political and other factors count and if the figure of crime is on increase—and we have the figure on the increase in our country at least—then the proper avenue for us would be to create such conditions wherein men and women can lead sane and satisfied lives. Crime will never go whatever you do, whether you have the Penal Code or you don't have the Penal Code, whether you have capital

[Shrimati Violet Alva.]

punishment or you don't have capital punishment. Crime will always be there because human nature is so complex. The only thing that I want to impress is that in a properly regulated welfare State you can bring it down to the minimum by giving the best and the maximum assurances of happy and contented lives for its citizens. That is the only manner in which we can try to bring down the rising figure of homicidal tendencies in the country.

Sir, the hon. the Home Minister has explained at length the various aspects, as to why this Resolution is not acceptable to the Government today. As I have stated it is not that we are in any way retrograde or that we do not want to move forward, but the time has not come. We are today on the Probation of Offenders' Bill. Yesterday we moved Abolition of Whipping. Maybe tomorrow we shall be ready for the measure that is contemplated today, but certainly not today.

With these few words I want to assure the House that the capital punishment that stands on the statute book cannot be abolished for the present. The hon. Mr. Sapru sought an assurance from us whether this measure would be examined thoroughly, especially by the Law Commission. The Law Commission is examining everything. This section in the common law wherein the punishment is capital punishment will also come under the scrutiny of the Law Commission. A questionnaire has gone round. Opinions can be expressed, and we can wait until such a day when we could come here and say, "Things are moving well in the country. Dacoity is a thing of the past. Atrocious murders are no more excepting one in a million". And then we can stand and discuss such a measure and adopt it, but not today. Therefore I urge on the hon. Mover to withdraw his Resolution.

DR. R. B. GOUR: I move closure. I move. . . .

MR. DEPUTY CHAIRMAN: There are two more speakers.

DR. R. B. GOUR: We have to give a chance to the hon. Member to reply.

MR. DEPUTY CHAIRMAN: All right.

DR. R. B. GOUR: I move:

"That the question be now put."

MR. DEPUTY CHAIRMAN: The question is:

"That the question be now put."

The motion was adopted.

MR. DEPUTY CHAIRMAN: Yes, Mr. Kapoor.

SHRI PRITHVIRAJ KAPOOR: Mr. Deputy Chairman, the purpose of the Resolution I believe is partly served even if it is not accepted by the House though I had very much hoped that it would be accepted. As my very dear friend, the hon. the Deputy Minister of Home Affairs, has said just now, it will be accepted, if not to-day, to-morrow. Life is a continuous thing, and I have not lost hope for myself or for my colleagues or for my country. So to-morrow satisfies me as much as to-day, because to-day merges into to-morrow. If there was no to-day there won't be a to-morrow and if there is no to-morrow there won't be any to-day; to-day would be something awful.

Here the Resolution says: "This House is of opinion that Government should appoint a Committee consisting of Members of Parliament" . . . The Committee has worked the whole day. "and other persons"; it is a pity they were not here but they were listening of course; "having special knowledge of the subject". Presumably most of us do have special knowledge "to examine the question of the abolition of capital punishment in India and submit a report thereon." The report may not be written. But of course friends have been writing every word that has been spoken here. I take it as a report.

The only thing which rather amuses me on such a very serious subject is that people having special knowledge of the subject have not examined the question of the abolition of capital punishment in India. I am grateful to those who have supported this Resolution, but those friends who have opposed this Resolution, I am afraid, did not read the Resolution, not to talk of examining it. To the hon. the Home Minister I have very great and sincere respect. He has been the beacon light of our life, to most of us, and I am one of those camp followers who is trodding the path trodden by him. As before, I still hold him in great respect. I have very great regard and respect for him but, I am afraid, even he did not examine this, not to talk of the Deputy Minister. On the question of abolition of capital punishment, lawyer friends have just spoken as if I want to take away from the hands of the State the right to punish. No, Sir. We want to strengthen the hands of the State for punishing the offenders. Capital punishment is such a thing that it hangs like the Damocles sword on the heads of the judges. They dread it. They are afraid to give capital punishment because they fear so many loopholes are there. Capital punishment! Everybody shudders at it. Who would do it? Has any Brahmin so far done the hangman's job in the jails? They will lose their caste if they did it. Would any Kshatriya go and do that job? He would fear to do it. They have given it to a person who is dubbed as a criminal himself. So we are all afraid of it. The result is that the criminal escapes under the shadow of the law, under the loophole in the law. If this is removed every man will be punished. We would like to punish those people who offend against the State, against a person, against the society against the order of the day. But we don't do it. We are afraid of capital punishment. There are loopholes in that capital punishment. Leave aside capital punishment, the offender escapes unhurt and the crime increases. Sir,

when I said this, that the question should be examined, it was meant that it should be examined in that context. If that capital punishment is not there, then every offender will be punished; nobody will go unpunished.

Sir, I believe the hon. Minister said, 'Do you want more murders?' No; and hence we advocate this policy. When this is abolished there will be less murders because everybody will be punished. Today, as you all know, with a little doubt of this, that or the other, people escape; they are not even sent to jail. They get the benefit of doubt; but tomorrow they will not, if this is not there. If capital punishment is not there, people will be properly punished for every crime.

Another thing I want to say. Of course, there are many things I have got noted here but there is no time. I suppose I have got full time up to 5 o'clock?

SHRI V. K. DHAGE: No; no, two minutes to five.

SHRI PRITHVIRAJ KAPOOR: Yes. Now, my hon. friend, Dr. Kane—I have got very great respect for him—said that in Sweden the slums were as good as our places. It is true we cannot compare ourselves with them. It reminds me of one thing. Once I took my theatre to a State in 1946. A very big Maharajah was there, a very nice man, a great soul. I performed a play in a certain theatre there where there was a small stage. But my other play was a big play and that could not be performed on that stage. He was very kind to me but then he blamed me for putting up my play on another stage. He asked me, 'why do you want to perform there?' I told him that my play would not fit in there. But he said, 'that theatre stinks'. When he said that, I told him: 'It is a pity, but it is in your town in your State. If it stinks you should be ashamed of it.' So if we have slums here we should be ashamed of it. But because we have slums and if we take for granted that crime is nurtured in slums, there is

[Shri Prithviraj Kapoor.]

no argument at all. I cannot understand it. Let us remove the slums and let us punish the people who are offenders. Every day crimes are committed and people are escaping punishment. That is one point.

So I would like this whole question to be re-examined, if not today, tomorrow, as was promised by the hon. Minister. You remove the 'capital punishment and you will be able to bring to book all the offenders; today you are not. Everybody is afraid of signing that sentence "To be hanged till he is dead" and all that rigmarole. Do you call it punishment? No; as somebody just said, here hanging is made a mockery of punishment. Go and see some hanging. I would request hon. Members to see some hanging, especially those who have opposed this and the lady Member who was very much advocating capital punishment. This is such a delicate point that she could not stand that. After she said that she had to go away.

SHRI V. K. DRAGL: Who?

SHRI PRITHVIRAJ KAPOOR: That young lady who advocated hanging, Mrs. Reddy, I think. She could not stand it; she had to go away. This is what is happening under our law. Once we have hanging, we cannot punish; we say, 'go away'; we acquit them. If one has committed a murder, the punishment is not hanging. Hanging is no punishment at all. Go and see a hanging. The man is garlanded when he goes there. Nowadays it has become the fashion; everybody becomes a small political leader, a little idol in the jail and people start shouting slogans and they create all this hullabaloo. The real criminals do not look like guilty people at that moment. If you go and see there, it is the officers who look guilty. They are huddled together; they are afraid; they are ashamed; they know that they are doing something ghastly. And the whole jail is ringing with slogans at that time. Whether the

other prisoners are with him or not, even if he is a criminal of the worst type, the whole jail is shouting slogans and it is in these circumstances that the man is hanged; in this hurly-burly fashion the whole thing is finished. If that man is kept for 15 or 20 years, he could be taught; he could be reshaped, as we do with the cars; as you know we. . . Give me the word.

AN HON. MEMBER: Overhaul.

SHRI PRITHVIRAJ KAPOOR: Yes; thank you. We can overhaul them; we have got to overhaul them. We have come through hundreds of years of slavery and now we have got the chance of putting them in a corner and overhauling them. But if we hang the man, we lose that chance. Really we are hanging our own children. Why can't we treat them as our own children? We are all parents; we are all fathers. I would like some fathers to hang their own sons, those who have advocated hanging and capital punishment. I want to know, how many fathers are here who will advocate the hanging of their own sons. They run to the lawyers; they go to the very corner of the world to get lawyers in order to save their children who may be the worst criminals. Why don't we save these people as we would save our children? Sir, again I would request the hon. the Home Minister, and in his absence, the hon. Deputy Minister, our hon. friends here, to reconsider and re-examine this case, if not today, tomorrow. I do not want to lose hope about tomorrow, but let us consider this question in this light that 'he is your own son, your own daughter.' You do not do such a thing at home to your own son or daughter. You just become the mother or the father when any such thing happens and you put yourself in front of your son or daughter. Here he is the son of the soil and why don't we treat him as we do our own sons and daughters? Why should we be ruthless in this case? We are talking of punishment but no mother

hits her son if he has done something wrong. They say: अपना जब मारे तो जाने Is there any mother or father who hits his son or daughter? So I would request the House to reconsider this question. Treat the children of the soil not as culprits or criminals who have been brought from elsewhere; they are all ours; they are our kith and kin, our flesh and blood. If they are bad, we should be ashamed of being here or anywhere.

Somebody referred to that person who had committed eight murders and said if he had been hanged for the first murder, there would not have been the other murders. First, he did not commit murder; he ran away because he was afraid of being hanged for a murder which he did not commit. He was in that assembly and that is why he ran away. After eight murders he was caught and again the law said, 'there is no proof' and luckily he was saved, because he is a good man, a first class man, a first class Indian child of the soil. He sings the song of the nation and when he sings people sing with him; they feel they are with a man so noble, so good. I can still claim him as my son, as my brother. So I put this before the House for your consideration and at the end I would conclude with one word, though I had noted down some more points. And that is:

अच्छा है दिल के पास रहे पासवान अक्ल

लेकिन कभी कभी उसे तनहा भी छोड़ दे।

It is all right that you judge by the brain, the head, but give your heart a chance also sometimes and have a

heart. Treat the children as your children and then decide about this question of hanging.

MR. DEPUTY CHAIRMAN: Are you withdrawing the Resolution or you want me to put it to vote?

SHRI PRITHVIRAJ KAPOOR: Why withdraw? And by votes this . . .

MR. DEPUTY CHAIRMAN: You have to say whether you want to withdraw or you want to press it to a vote.

SHRI PRITHVIRAJ KAPOOR: If it is promised to be considered tomorrow, then all right but if it is not to be considered tomorrow—and tomorrow means the day after also; it is a continuing thing then . . .

SHRIMATI VIOLET ALVA: He is an actor and he knows the meaning of tomorrow.

MR. DEPUTY CHAIRMAN: Are you withdrawing it?

SHRI PRITHVIRAJ KAPOOR: The purpose of my Resolution is served; the ripples are created and it is in the air. By votes such delicate things are not decided. Let that tomorrow be there which I have been promised.

MR. DEPUTY CHAIRMAN: It is five o'clock. The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at five of the clock till eleven of the clock on Saturday, the 26th April 1958.