

"It is desirable, however, to constitute State Public Service Commissions in such a manner as to ensure that these bodies are not affected by particularist trends. This objective can be achieved to some extent by constituting so far as possible, one Public Service Commission for more than one State. Under the Constitution, appointments to Public Service Commissions serving more than one State are made by the President. We recommend that this principle be extended even to Public Service Commissions serving only single States. This arrangement, we are sure, will give these bodies a higher stature and more independence."

These are the two suggestions made by the States Reorganisation Commission, one, that there should be joint State Public Service Commissions so that no linguistic minority may be placed at a disadvantageous position and, even if there is *one* Public Service Commission for one State, the appointments to it may be made by the President so that those persons who are filling the posts of Members of the Commission may be able to exercise absolutely independent judgment and their appointments may not be based on considerations of language or any such thing. This is an important suggestion made by the Commission and I think the Government might well consider adopting this suggestion.

SHRI AKBAR ALI KHAN: Sir, I thank through you my hon. friend, Mr. Kapoor, for the compliment he has paid to Hyderabad but, Sir, regarding bilingual or multi-lingual or unilingual States, I am reminded of a couplet from Shakespeare and I shall quote it:

"There is a tide in the affairs of men

Which taken at the flood leads, on to fortune

Omitted, all the voyage of life

Is bound in shallows and miseries."

SHRI B. N. DATAR: I have nothing to add, Sir

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): The question is:

"That the Bill be passed."

The motion was adopted.

THE PROBATION OF OFFENDERS BILL, 1957

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

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill to provide for the release of offenders on probation or after due admonition and for matters connected therewith, and resolves that the following Members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

- (1) Shri Surendra Mohan Ghose
- (2) Shri K. Madhava Menon
- (3) Shri Ahmad Said Khan
- (4) Shrimati Lilavati Munshi
- (5) Shri B. M. Gupte
- (6) Shri R. U. Agnibhoj
- (7) Shrimati T. Nallamuthu Ramamurti
- (8) Shri N. R. Malkani
- (9) Prof. A. R. Wadia
- (10) Shri Abdur Rezzak Khan
- (11) Shri Rajendra Pratap Sinha
- (12) Shrimati Violet Alva (the Mover)."

This measure is before this House today. It might look rather new and rather strange, but it is neither, for it has been before the country far nearly three decades or more. For the first time, this subject of probation of offenders was discussed in 1931. Since then, the then Government discussed it from time to time and resolved and contemplated from time to time to bring it as a Central measure. However, because of the preoccupations of the then Government at that time, this measure was sent to the States and

[Shrimati Violet Alva.] they were asked to have their own legislation on this subject. The various States have this legislation on the Statute Books, but the legislation in the various States has neither been uniform nor adequate. Besides that, the time has come and the time is ripe, because we as a country have taken part in international conferences and regional seminars on this subject of how to treat our offenders in this country. If we go to the children, we already have on our Statute Book Acts as to how we deal with children. The idea of torture and punishment is a thing of the bygone days. Today as we treat the children socially—we also experiment and treat the offenders, the first offenders especially and even the second and third time offenders—we shall try to reform them and rehabilitate. This then is the underlying thought and the ideal in this Bill. The Bill no doubt is going to a Select Committee. The Bill was originally to be passed in the other House and then come to this House. But we accepted the idea that was given to us, and the arguments that were advanced by the Members of the other House, that it should go before a Select Committee. Because of certain sections of the Criminal Procedure Code, which may have an impact on this provision—and the Code has stood the test of time—we feel now that we should study it more and people who are interested and who know law should sit together and revise, if possible, the clauses of this Bill to make it more amenable in practice" and also more reasonable to work out.

In the Statement of Objects and Reasons, the object of this Bill is very clearly given and the intentions are known. Even States where there are probation laws, they are not uniform nor are they adequate to meet the present requirements. Lower down, it is said that by this measure we propose to empower courts to release an offender after admonition in respect of certain specified offences. Members will talk of a number of offences— which do not fall within the provisions of this Bill—as they did in the other

House. But here there are only certain offences for which we are making the provisions, we give probation and keep the offenders at large under strict surveillance of the court and the probation officer.

Now, Sir, to come to the subject again, one has again to go back to a study of penology and to the study of prison administration and what we have produced in the past years from the prisons that we have had, not only in this country but in other countries. The penal system has to a large extent failed and other countries have made an experiment in the manner in which we are now contemplating. England has a law. There is the Probation of Offenders Act, 1907 in England. Elsewhere also in the European countries there are measures by which they give the first offenders a chance; sometimes the first time the offence is committed, sometimes even after several times. Each individual is from now on to be dealt with as an individual and not as a criminal. If we accept that a man or woman, a child or an adult, is the outcome more or less of his environment, it becomes very easy to understand this measure. This is an age of psychologists and psychiatrists and the human mind is handled in a different fashion. There was a time when we tried to pattern the human being with fetters and handcuffs; with tortures and floggings. We have abolished whipping. We have abolished the cruel torture chambers that used to be, we have taken the psychologists' and the psychiatrists' attitude in society and we want to try out with not prisons, but probation with confidence in the man, sympathy with him. Help of every kind, mental and physical, could reform a man. Nevertheless, we have not undertaken very big steps to reform people who are charged for dacoity or rape or forgery or murder. We have left that out for the present. We are dealing with offences which hon. Members here who have read the Bill are well aware. It is to a large extent a discretionary measure. That should not be lost sight of. This

measure is a discretionary measure. You may then say, if it is a discretionary measure, where are you going to find the probation officers? Certainly, when such a measure is launched, it is for the States and the Centre to see and for the society also to come forward, to give us the right type of men and women who will look after these probationers, who will see that they can be reformed and rehabilitated or they cannot be. Each case must be a case law, and not collectively decided as we used to send our criminals who came sometimes by accident, sometimes by evil design, sometimes deliberately and sometimes casually, before the courts of law.

We are revolutionising our outlook and to that purpose Members of this House shall debate whether this measure is going to suit our country or not. There are three stages before a person goes into a correctional institution. There are three degrees. First is the pre-committal stage. We are dealing with the pre-committal stage. We leave it to the magistrate. We leave it to the probation officer who will be following up the case and recommending to the magistrate that it is a good case for probation. It is not for such a thing that we are giving sweeping powers to the magistrate or sweeping powers to the probation officer that a criminal, a criminal so to say before the bar, should be left at large. It is not *so*. Each case shall be decided on its own merits and that fact should not be lost sight of. Today in our juvenile courts we take the child as an individual. We have a case-book for every child. We do not huddle them and say that all these children are of the same type. Likewise we are now stepping a little more forward to deal with the adults also.

Sir, before I come to the general clauses, I want to refer to Dr. Walter Reckless. Dr. Reckless was here in India in 1950-51. Before that there were a number of our own conferences with the prison administration personnel and the Inspectors-General

of Prisons, and they came to certain conclusions. Nevertheless, it crystallised when this famous criminologist visited India and produced a report. In his report Dr. Walter Reckless has remarked:

"The prisoners in Indian jails which were visited by the expert—that is himself—including even some police lock-ups seemed to the expert to represent good human material which could readily be fashioned into good citizens. In spite of poverty there seemed to be absence of a pronounced element of derelict and degenerate individuals. The expert feels that this must mean that the police and the courts are remanding and sentencing persons to jail who are just about as good human material as exists outside the jails. Whereas in some countries—and this is more important—one man may find that the human material which the police and the courts send to jail is much poorer in the sense of degradation than exists generally outside."

Sir, no matter whatever be the explanation, the impression made by the prisoners on the expert was distinctly favourable. If this be the opinion of an expert, and if this be the opinion of even our experts, then certainly it is the bounden duty of the Government of India to come forward with some sort of legislation to bring out this good material before it becomes bad, as through the ages we have seen that once a man becomes a convict, he gets hardened, coarse, he becomes cruel, and our attitude to such a man or woman also has to be revolutionised.

With this background, Sir, this measure is absolutely appropriate for the Centre to sponsor and for the country to adopt and for the States to put in practice. Now, I do not want to be very long on this non-controversial measure of a discretionary nature.

Sir, clauses 3 and 4 empower the court to release offenders after

[Shrimati Violet Alva.] admonition and on probation of good behaviour. Everyone has to be of good behaviour. What is true of the offenders very often becomes true of the citizens who are not offenders. We all have to be of good behaviour. Good behaviour begets good behaviour as courtesy begets courtesy, and very many times the offenders are the victims of society, and we should now take their question in our hand and see that they do not suffer for the sins that surround them, which drives them to commit themselves.

SHRI AKBAR ALI KHAN (Andhra Pradesh): I hope you are not referring to the Opposition.

DR. R. B. GOUR (Andhra Pradesh): Does she mean that all the citizens will be under probation including Congress M.Ps.?

SHRIMATI VIOLET ALVA: I said it was very often true. It is for the hon. Member to put his hand on his heart and say whether he deserves the probation.

Sir, clause 4 has a proviso running which I need not point out here in detail. There are so many conditions before one goes on probation that it will not be easy for an offender to go on probation. Under clause 5, again, compensation is payable by an offender even if he is on probation, and he may even have to bear costs even if he is on probation. These are the restrictive clauses even in a good measure like this.

Then, we come to those youngsters, 21 years and borderline. What is 21 years? We talk of sweet 17 . . .

DR. R. P. DUBE (Madhya Pradesh): They are sweet at 21.

SHRIMATI VIOLET ALVA: Dr. Dube wants me to say that the boys are sweet at 21. However, at 21 we shall call them the youth. Sometimes a man or woman remains a youth even at 25. Sometimes you mature

fast mentally, emotionally and spiritually. Sometimes you do not. But here there is a provision made for 21-year-olds that they should not be treated harshly. Nevertheless there are types and types of youth who at 21 may not deserve probation and many who at 21 do deserve probation. There is clause 7 which refers to this category of youth that will be coming up before the courts of law.

Then there is clause 8 which provides how to deal with the offender. ! If he fails to observe the conditions that are laid down by the court and the probation officer, then he forfeits his probation period and the court is empowered to inflict a sentence as laid down by law.

Then clauses 11 and 12 are the two clauses by which we have to define and give a specific place to the probation officer—who shall be the probation officer, what shall be his duties, and so on and so forth.

Then, we come to clause 13. This is a very important clause because once a person is convicted he has a stigma attached to his name. Perhaps he may not be able to rehabilitate himself in respectable society. This clause is a saving clause by which a person who is on probation, who practises good behaviour, who is again reformed and rehabilitated into society, shall have no stigma attached to his name of a conviction. After this measure goes to the Select Committee this clause will remain by which we shall make rules to put it into practice in the various parts of the country. The conditions in our country vary from place to place and from State to State, and we shall have to leave it to the various States to frame their rules or to condition the rules as framed by the Centre to suit the circumstances in which those State Governments find themselves.

DR. R. B. GOUR: Is the Deputy Minister anticipating what the Select Committee is going to do?

SHRIMATI VIOLET ALVA: The States will have to make rules. I do not know whether the Select Committee will take away this right from the States and whether we shall have uniform rules from the Centre which may not succeed in all our States.

Sir, I do not wish to say anything more except that this is a discretionary measure, and it is time that we took it UP and discussed it seriously for probation of offenders may sound very small and light and may even come in for very severe criticism from different Members. But it is a subject that needs deep thought, for this subject has been discussed for long and we are acting on it not only, shall we say, in an Asian country like India, but even the other countries of Asia are contemplating such measures, and they exist in the more advanced countries of the West.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): Motion moved:

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses Dn the Bill to provide for the release of offenders on probation or after due admonition and for matters connected therewith, and resolves that the following Members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

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- (9) Prof. A. R. Wadia

- aO) Shri Abdur Rezzak Khan
 (11) Shri Rajendra Pratap Sinha
 (12) Shrimati Violet Alva *{the mover}.*"

Now, Shri Jagjivan Ram will make a statement.

STATEMENT BY RAILWAY MINISTER REGARDING ACCIDENT TO 1 DN. BOMBAY-CALCUTTA MAIL ON THE NIGHT OF 23-11-1957 BETWEEN IGATPURI AND BHUSAVAL

THE MINISTER OF RAILWAYS (SHRI JAGJIVAN RAM): Sir, it is with deep regret that I have to inform the House that there has been a serious accident to 1 Dn. Bombay-Calcutta Mail on the Central Railway. At about 22.45 hours on the 23rd November, 1957, this train derailed between Padali and Asvali stations, on the Bhusaval-Igatpuri Section. As a result, the engine and the following eight bogies were derailed, out of which four (third to sixth) capsized. The last three bogies, however, remained on the rails. Nine persons lost their lives and fifty-one were injured, most of whom, fortunately, have received minor injuries.

I proceeded by plane to Deolali on the 24th morning, accompanied by Member (Transportation), Railway Board, and then by car to the site of the accident. Brig. Sathe accompanied us from there. On arrival, I found that the Government Inspector of Railways, the Magistrate and the District Police, were carrying out their investigations. The Senior Officers of the Railway were present. I made a thorough inspection of the site accompanied by these officers.

The site of accident is 97 miles from Bombay on the Igatpuri-Bhusaval section of the Central Railway, 13 miles from Igatpuri and 16 miles from Deolali. It is also quite close to the Bombay-Agra Road. The location is in an undulating country,