

shower on me. Yesterday he said I was prevaricating. I do not know whether it is parliamentary or not, but yet I think it is not quite gentlemanly to use such a word about another gentleman. Then, he said that some time ago, I think two and a half years ago or something like that, I was living a decent and honourable life. The implication, Sir, is quite clear. The insinuation may not be personal to me but for all who may be occupying this seat. Sir, if this is the attitude of Members on that side towards Members on this side, then I cannot understand how even at the command of the Chair we can take everything that comes out from those Members seriously as I should take the utterance of a particular Member. Then, Sir, today.....

MR. DEPUTY CHAIRMAN: I do not think that he wants you to take them seriously in these matters.

SHRI A. C. GUHA: Shall I read out the passages?

SHRI BHUPESH GUPTA: Yes.

SHRI H. C. MATHUR: And also the explanation which he gave afterwards.

SHRI A. C. GUHA: Here it says:

"It is no use trying to prevaricate....."

SHRI BHUPESH GUPTA: Yes, that I said.

SHRI A. C. GUHA: I am coming to the other thing. It says:

"He was a very simple man and I think he was living a very honourable and decent life at that time. Now at that time he was also....."

SHRI BHUPESH GUPTA: Sir, on a point of clarification, I was talking about thirty years ago or twenty years ago.

MR. DEPUTY CHAIRMAN: You need not clarify.

SHRI A. C. GUHA: This morning he has been pleased to say this:

"As far as the Ministry is concerned, the Finance Ministry has won the distinction in the country of shielding all types of corruption and nepotism in the country. Sir, from that Ministry I do not expect any justice or fairplay....."

Sir, today he may be the leader of an Opposition Party and I expect he will keep the dignity of the position he occupies now. But I cannot forget that some years ago he used to stand with me in a different relation. Whatever he may do now, I can particularly—because of my age and because of the past relation—I should have some generosity and indulgence towards him.

Thank you, Sir.

SHRI BHUPESH GUPTA: May I ask one question, Sir?

MR. DEPUTY CHAIRMAN: No question. The question is:

"That the Bill be passed."

The motion was adopted.

THE ABOLITION OF WHIPPING BILL, 1955

THE MINISTER FOR HOME AFFAIRS (SHRI GOVIND BALLABH PANT): Sir, I move:

"That the Bill to provide for the abolition of whipping as a punishment by repealing the Whipping Act, 1909, and further amending the Code of Criminal Procedure 1898, be taken into consideration."

I do so with real pleasure. **Man** words are not needed from me in support of this Motion. I am confident that it will be accepted and endorsed by every hon. Member of this House. The Bill purports to repeal the

[Shri Govind Ballabh Pant.]

Whipping Act and to delete the allied provisions from the Criminal Procedure Code. It virtually wipes out the references to whipping from our penal law altogether. I use the word "virtually" deliberately as there is a provision in the Prisons Act which lies outside the purview of the Parliament and consequently could not be covered by this Bill. We have, however, advised the States to amend the law on that subject and to delete that provision from the Prisons Act also.

Sir, to use a very mild expression whipping has always been regarded as a harsh sort of punishment. It has always been treated with considerable aversion. But still it has been in vogue since the commencement of British regime in this country, and perhaps that system of punishment existed even previously. A number of offences were punished with whipping up to 1909 when the Whipping Act of 1868 was amended. Many of the crimes which were liable to be punished with whipping were then taken out of this Act. The few that are left are contained in the existing Whipping Act, which is going to be repealed by this Bill.

In the olden days, a large number of persons were convicted and were sentenced to whipping. Their number has, however, been progressively declining, and those who are awarded his sentence now are no more than one-tenth of what they used to be in those times. It is a barbarous sort of punishment even for criminals. The advanced countries have put an end to this system. The British Act of 1948 abolished whipping. It is no longer allowed by the American Code either. It is not in consonance with our creed and spirit of non-violence. There are some things which bless those who give and also those who take. Whipping is just the reverse of that. It coarsens the man who is subjected to such punishment and has a coarsening effect on the society as well. The science of penology has made great advances in recent years.

Our entire outlook towards crime and criminals has undergone a far-reaching and almost categorical change. The age when punishment was inflicted out of a spirit of vindictiveness is gone. No longer do we think of an eye for an eye or a tooth for a tooth. On the other hand, punishment is inflicted more with a view to reform and rehabilitate the person who is subjected to some sort of penalty by the State. The State is interested in the reform and rehabilitation of the so-called criminal, and also in the protection of society. The triumph of a penal system lies in converting a criminal into a useful and clean citizen. The sentence of whipping does not conduce towards that end. It, in fact, aggravates the tendency towards desperation. It embitters one and makes him still more callous. So, from whatever angle one may look at it, it serves no wholesome purpose, and no remedy short of its complete eradication and elimination can suffice. Consequently we have introduced this Bill. And I am sure that every Member of this House will welcome it, and it will be passed unanimously by the House, and if possible, today.

MR. DEPUTY CHAIRMAN: Motion moved:

"That the Bill to provide for the abolition of whipping as a punishment by repealing the Whipping Act, 1909, and further amending the Code of Criminal Procedure, 1898, be taken into consideration."

PROF. A. R. WADIA (Nominated): Mr. Deputy Chairman, I have listened with very great interest to the address which was given to us by the Home Minister. Sir, it is my misfortune that I do not entirely share his enthusiasm about the abolition of whipping as a punishment. He has said, Sir, that it is a completely outmoded mode of punishment. Perhaps, it is up to a certain point. But the Statement of Objects and Reasons also goes on to say that it has been reserved in certain other countries for extremely heinous offences attended

with revolting cruelty. I think, Sir, there is considerable justification for retaining this sort of punishment.

It seems to me that after all whipping is not resorted to normally by our magistrates. It is there. No magistrate is compelled to impose whipping as a form of punishment. Along with two other forms of punishment it is there. And it should be there, because human nature is very complex, and although I fully share the enthusiasm of the Home Minister that criminal law should be used as an instrument for reforming a criminal, I am afraid, there are certain types of criminals who cannot be reformed. I shall give an example. A Solicitor who unfortunately found himself in a prison wrote his experiences of prison life and said that it was impossible for any person to enter a prison and to leave it without being coarsened—exactly the expression that the Home Minister used. Well, perhaps it is so. But that is hardly an argument for abolishing imprisonment altogether. If human beings choose to do a wrong, they must face the consequences. There is a very helpful biblical saying "Spare the rod and spoil the child". And as an educationist, I fully admit that the present tendency in education is not to use the rod. But I believe it is the practical experience of most parents, of most people, that an occasional use, and a timely use, of the rod does serve a useful purpose in the life of even a child. And, Sir, I think even whipping would be useful in connection with those people who are really bullies at heart, absolutely depraved individuals who deserve very little sympathy from respectable citizens, and in the case of such people, a timely whipping would do a lot of good and would serve to reform them really much more effectively than perhaps a long term of imprisonment, or even a very heavy fine.

I do feel, Sir, that the Government would have done better if they had not brought forward this Bill. It is very doubtful if it will do any good.

And it is almost certain that it will do a little harm. I think the fear of whipping would be a useful deterrent in several cases. And, if it is there, it is the business of the magistrates to make use of it or not. If a magistrate feels that in a particular case whipping would be the right type of punishment, I think, his hands should not be fettered, and he should be given the liberty of imposing that type of punishment. Sir, it is from that standpoint that I am not in full sympathy with the abolition of whipping altogether.

DR. P. V. KANE (Nominated): Mr. Deputy Chairman, people may say that out-moded and old folk are opposed to this Bill, but I am not entirely opposed to this Bill. I only wish that it had been placed on a lower rung of the ladder than total abolition. If you want to abolish entirely this punishment of whipping, why don't you abolish the death sentence? I know as a lawyer that there have been miscarriage of justice and the wrong men being sentenced to death and the right man being found out afterwards. You inflict the death sentence and there is no question of reforming the man. You simply hang him. Unless you reform the whole system, such piecemeal legislation is bad in the first place. In the second place, I agree with Prof. Wadia that there are occasions on which whipping will do good. I am instancing only one or two. The sentence of whipping is not given in all cases, and the Magistrates are all experienced people. And moreover only Presidency and First Class Magistrates are allowed to give the sentence of whipping. My point is this: If punishment is bad, then send them to some good place, let them drink—not in Bombay; it is not allowed there—and let them make merry. That is not the idea. What is punishment given? Society wants to protect itself against such people. A member of the society who is entitled to the protection of the society and has been dealt with in a dastardly manner has to be vindicated by the society. The reform of the offend

[Dr. P. V. Kane.]

is only a secondary object. I do not agree that the reform of the offender is the only object of punishment. The principal objects of punishment are really four: Society wants to ensure the protection of its members who are innocent. That is the first object. The second object is deterrent. This man who has done such and such a thing has suffered this punishment and so, whoever will do like that will suffer the same fate. That deterrent is there. The idea of reform of the offender is only the third, and there is a fourth objective also. Suppose I am beaten. In Bombay every day you will find at least ten stabbings. I am suspected of giving information to the police about some illicit distillery, and my life is gone. You could hire people for Rs. 200 to kill anybody. My point is this: Suppose I am beaten and at the time I have no power to beat the other man. He is a burly man of 200 lbs., and I am powerless against him and cannot do anything. I feel, however, that if I have the power, I would like to beat him ten times as much as he beat me. That feeling has to be satisfied. The law allows me to defend myself but I am not capable of defending myself. So, punishment has a retributive aspect. That is the idea of punishment. Let every individual search his heart. He will definitely feel that, if he is beaten by somebody, he should either be beaten by himself or by somebody else. So, the Statement of Objects and Reasons is only partially correct. It says: "Most countries have abolished whipping as a punishment". Many countries have abolished the death sentence but you are not doing it. Again I find that in the United States even now in Delaware a husband who beats his wife unreasonably may be whipped. This I found from the American Encyclopaedia. It is true that people are becoming a little more refined, but thieves, robbers and scoundrels don't become refined. Only their methods become more refined. What I am submitting is this: Most of the countries may have abolished whipping but we have not risen to their level. Then it is further said:

".....and where it has been retained, it is reserved for extremely heinous offences attended with revolting cruelty."

You also do the same thing, but you are abolishing whipping lock, stock and barrel.

"Whipping is a barbarous form of punishment.....".

Certainly it is but it is only for very barbarous people.

".....which has no reformative value and only degrades the offender."

This is only partially true. It may degrade the offender but it gives society a strong weapon to protect itself and gives it the retributive force that is required. Exempt it, if you want, in the case of children. Prof. Wadia said, "Spare the rod and spoil the child." That I fear, does not apply to magisterial punishment. It applies only to punishment at home. You may remember that the Headmasters of Eton and other public schools had beaten half a dozen Prime Ministers of England when they were boys.

SHRI BHUPESH GUPTA (West Bengal): And they made up for it later on by beating the colonial peoples.

DR. P. V. KANE: What I was going to say is this: If the Home Minister agrees, certain offences may be specified for which whipping may be given. I shall mention one or two. Take, for example, the kidnapping of a minor. This is a very big offence. Also assaulting a minor with malicious intent. In such cases, there should be very severe punishment, and whipping should be given. That is one case. If you give them ten whippings, there will be an indelible mark on their backs which they cannot hope to remove even after several years. Again, if an offender commits the same offence two or three

times, it shows that imprisonment has not reformed him. He should be whipped. Let him suffer. I refer to habitual offenders. In Bombay, there are people who have committed the same heinous offence seven or eight times and still no whipping is administered. That is the difficulty. These magistrates also have become lukewarm and soft people.

DR. RADHA KUMUD MOOKERJI (Nominated): May I ask a question? What light is thrown on whipping as a punishment in the Dharma Shastras?

DR. P. V. KANE: Dharma Shastras are different. They are very Draconian in character. An eye for an eye and a tooth for a tooth. If a man stole, his hand was cut off. If a purse was stolen then two fingers were cut off.

“उत्तपकगृन्थभेदो करसन्दंशहीनको ।
कायाद्वितीयापराधं करपादंहीनको ॥”

That was the ancient law. I am only talking of the twentieth century law. The Dharma Shastras are gone, never to be revived. I am only writing a history of them. The two cases I have mentioned deserve whipping. Confirmed offenders—you may fix the number of the offences at three, four or seven as you like—particularly involving moral turpitude should be whipped. Where people like children or girls or women—at least in India most of the women are helpless—are assaulted, such a fellow also should get whipping. Similarly sexual offences and so forth. I am not here setting out all of them in detail. I am prepared to accept the Bill if three or four categories are put in beyond the ban of this Bill.

SHRI RAJENDRA PRATAP SINHA (Bihar): Mr. Deputy Chairman. I welcome this measure that is before us today and I would take this opportunity to congratulate the Leader of this House that he has taken an early opportunity to introduce this very good measure soon after his assuming the charge of the Home Min-

istry. Sir, whipping for punishment had a chequered career in our country. It has been abolished several times and again put on the Statute Book. If we look only to the history of past 200 years, we find that it was in existence during the Company's regime here and in 1834 it was abolished by Lord William Bentick in Bengal. But the Prison Discipline Committee went into the entire question and in order to enforce prison discipline, whipping was re-introduced in the Statute Book by Act III of 1844 but it is very interesting to note that the Draft Criminal Code that was prepared by the Law Commission in 1837 did not recommend the adoption of whipping as one of the forms of punishment in this country. The Law Commission early in 1837 recorded as follows:

“We have not thought it desirable to place flogging in the list of punishments. Being satisfied that the punishment of flogging can be proper only in a few cases and not being satisfied that it is necessary in any, we are unwilling to advise the Government to retrace its steps and to re-establish throughout the British territories a practice which by a policy unquestionably humane and by no means proved to have been injudicious has recently been abolished through a large part of those territories.”

I am quoting at length all this in order to prove my point against the points raised by two eminent Members of this House. Again, a Select Committee was appointed when this Draft Code was being discussed in the Legislative Council at that time, and the Select Committee did not agree with the view of the Law Commission and they re-introduced this form of punishment in the Criminal Code but the then Administration did not accept the recommendations of the Select Committee and the whole matter was referred to the local officers and the local bodies in those days for submitting their opinions on the

[Shri Rajendra Pratap Sinha.]
question. No decision on this point was taken till 1862 and till then whipping was not on our Statute Book and in 1862 another report was invited from the local authorities and the local officers.

In 1862 they reported like this:

"All Local Governments expressed a very strong opinion on the subject and advised on grounds of necessity, the retention of that form of punishment. It was pointed out that during the year 1862 nearly 20,000 persons had been committed to jail for various terms of imprisonment, for offences for which they might have been flogged and discharged. The Select Committee in charge of the Bill of 1862, in view of the strong opinions expressed by the various local administrations about the necessity of the retention of whipping as a form of punishment, the attitude taken by Lord Canning on the then condition of the country, and the defective system of jail administration came to the conclusion that a Bill embodying suitable provisions was necessary, nay, indispensable."

Sir, you will find that whipping, as a form of punishment was introduced because of the jail administration and because the local authorities who were callous to the needs of the society at that time thought it better not to send people to prison but to flog them and let them go. They were not anxious to take upon themselves the burden of administration of the jail and they wanted an easy thing. Therefore the Local Authorities recommended and this Whipping Act was put on our Statute Book.

Now the main arguments that have been advanced against whipping are that it creates a pain and brutality upon the people to whom it is inflicted. Not only that, but it brutalises the executor of the order and also all the spectators who happen to witness an act of whipping, because it awakens sadist tendencies and demoralises

the finer sensibilities of all concerned. Therefore whipping has been abolished in all the civilized parts of the world. Modern psychology has proved that whipping.....

SHRI H. C. MATHUR (Rajasthan):
In all countries?

SHRI RAJENDRA PRATAP SINHA.
In most of the countries. In all the civilized countries, I said. Modern psychology has proved beyond doubt that there are real dangers to personality development when we inflict such a brutal punishment as whipping. Apart from that, resentment is built up within the victim of whipping. Then there is a deep-seated hatred which develops in the victim towards the State and towards the society and these two tendencies go into the sub-conscience of the victims of whipping and therefore they constitute a real danger to the society when they come out of the prison. Now my hon. friends raised the questions that we must retain whipping as a form of corporal punishment for some kinds of offences. They also quoted a few offences for which whipping could be retained. Now in other countries, particularly in the United Kingdom and in the United States, extensive investigations and studies have been made on the results of corporal punishment, particularly whipping and flogging. The Government of Britain appointed a Departmental Committee on Corporal Punishment which reported in 1938. They investigated in detail all kinds of punishments which were mentioned by our friends—criminal—assaults, robbery and other heinous types of crimes and they have come, after investigating in detail all types of crimes, to a unanimous decision and have said that:

"After examining all the available evidence, we have been unable to find any body of facts or figures showing that the introduction of a power of flogging has produced a decrease in the number of the offences for which it may be imposed or

that offences for which flogging may be ordered have tended to increase when little use was made of the power to order flogging or to decrease when the power was exercised more frequently."

And speaking of the effects of corporal punishment, the Committee says:

"It is essentially an unconstructive penalty. At the best, it can exercise no positive reformatory influence: at the worst, it may produce reactions which make the individual who receives it less willing, less able, than he was before, to lead an honest and useful life in the community."

So, they have condemned corporal punishment tooth and nail. Every form of corporal punishment they have investigated and found them completely useless, both in the United Kingdom and in the United States of America.

Sir, hon. friends have urged that the punishment should be either deterrent or reformatory. They have also urged that the harder criminals cannot be corrected otherwise than by the infliction of corporal punishment. But the results of investigations have shown that no kind of corporal punishment produces the desired result. Far from being reformatory, they produce such tendencies in the person which make him more bitter and convert him into a hardened criminal. Sir, in every person there is both the devil and the angel. Whipping encourages the devil in the person. What we do while inflicting the corporal punishment is to encourage the devil in him and when he comes out of the prison or court, he becomes a greater danger to society. He will not come out corrected as is expected by our friends here. On the other hand, if you consider a man as beyond repair, then it is much better, as has been proved in this book, to segregate the man. That would be better than inflicting such punishments on him and

then letting him loose on society and allowing him to play the devil with greater vengeance.

Sir, there is another book—The History of Corporal Punishment—which has analysed the modes of punishments practised all over the important countries of the world. The eminent writer of this book has come to his conclusions after close analysis. It is a very interesting book. After analysing the different modes of corporal punishments inflicted in the different countries for different kinds of offences, he has come to the conclusion that it is doubtful if flogging can ever, under any circumstances, prove to be a reformatory agent. He says:

"In this respect it fails with the professed hardened criminal as it does with the first offender."

I would like Prof. Kane and Prof. Wadia to note this carefully. The criminal cannot be reformed, nor can the pathological case:

"Some time ago", says George Ivy, "I received a letter from an eminent criminal lawyer in Melbourne alluding to a prisoner who had five times been flogged for five separate sexual offences."

Therefore, you see, even in sexual offences, flogging has no reformatory result or effect:

"In the case of the first offender, not only does flogging in nine cases out of ten fail to prevent a repetition of the offence, but nearly always succeeds effectively in ensuring such repetition. From being an individual who is most likely to respond to treatment destined to bring about reform he is turned into an enemy of society, a danger, disgrace, discredit and an outcaste."

So, Sir, it will be seen that whipping can never achieve the end for which it is inflicted. This has been proved beyond all doubt and I hope my hon. friends will agree. I am sure they have experience and they

[Shri Rajendra Pratap Sinha.]

have great learning in the field of legal profession. But even then they must keep themselves abreast of the times, with the knowledge that may be available to us from the investigations of such crimes in other countries and we should derive benefit out of the experience and the knowledge gathered by such studies in other countries. Therefore, Sir, I very much welcome this measure and I endorse whatever has been said by the hon. the Mover of the Bill. I do hope that his advice will be taken up by all the States as well and that all the States will soon take early steps to remove the whipping clause from the Prison Act. I discussed this matter this morning with the hon. the mover of the Bill and he assured me that he had investigated this point and it is not possible for us in this House to legislate on this question of the removal of the whipping clause from the Prisons Act because it forms a States Subject under our Constitution.

Sir, I know that this report which I have referred to—The Report on Corporal Punishment in England—has recommended retention of whipping in some form so far as prison offences are concerned. But, Sir, we have not to follow blindly all the Acts of the United Kingdom and as the Leader of the House very correctly said, we have a different philosophy to guide our way of life and our legislation. We are wedded to a policy of non-violence and as far as possible it should be the State's policy to implement these lofty ideals to which we are wedded. As I said, in every man there is the devil and the angel and with our reformed ways of managing prison life, we should be in a position to encourage the angel in our fallen brethren and we should see that when they come out of the prison, they are better men, they are more useful persons in society. As I said, in the ultimate analysis, we have found that whipping does not produce the effect which it is desired to produce. On the contrary, it degrades

the man and makes him a useless man and a danger to society.

I hope and pray that with the influence that the Home Minister wields with the different States he will be able to persuade them soon to enact measures repealing the whipping clause from the Prisons Act.

SHRIMATI MONA HENSMAN (Madras): Mr. Deputy Chairman, Sir, after what has been said and after the very important passages read out by the hon. Member opposite, I have no need to repeat his arguments. I do not know if any woman is going to speak on this subject but I am proud to be the first of my sex to be able to congratulate the Home Minister on his courage in bringing forward this Bill. According to one or two speakers who have had experience of the law courts and who have had experience of hardened criminals, the hon. Home Minister would be failing in his duty if he did not make some exceptions to this Bill abolishing whipping but, Sir, I would remind them that in spite of what they might have seen and heard this does not help the country at all. It has been my privilege to be on the juvenile courts and police courts in Madras as an Honorary Magistrate since 1930. I have had cases not only of young but of older people who have, according to the law, deserved this disastrous and drastic punishment. In each case that I have investigated I have found that it has been the way of impatience, the way not of patience or of control that leads to lack of control on the part of the person who has suffered the punishment and this does not teach further control. With all due respect to the hon. Dr. Kane with his gentle face and still more gentle manner, I am sure he hardened himself in order to say what he did this afternoon. It was his duty and he performed it nobly but I do believe that there is a very strong point to be put forward for those who say that fear as a deterrent is probably something which does some good, the more timid may be tamed but I agree

with the hon Minister that the primary forces of law and order must work on reform. Reform is a thing which is elastic, it is not a sudden lightning flash or a thunder clap that turns the criminal into an angel. It is a slow process of feeling that having gone beyond the bounds of citizenship, having broken the common law of humanity, still, there is a way to go back. The punishment in the case of those who are criminals even with three or four disastrous convictions is not whipping. The punishment for them is not to take them, tie them to a tree or to a whipping post, and barbarously flog them. The punishment is to segregate them, to let them feel the loss of that humanity that they have wronged, to keep them away from their homes. After all, there must be something that they must value, either their comfort or food or leisure or their people in the home or some sort of society and they must be kept away from such things for six months. Let them be alone. God help us, our prisons at this moment are not so free from wrong that any person need not fear from the poking of a stick or the helpless thrusts of somebody who is a warder or who is in a thoroughly authoritative position. Brutality exists everywhere and why should we have a special law to enforce and encourage a form of brutality which breaks the spirit. Now, Dr Kane also said "why not abolish hanging as a punishment?" But then Sir, capital punishment is given to those who have taken something that they cannot give back. Here, a broken back or a broken body can be healed although—again I must refer to his words—he may bear all his life the memory of his criminal act by some lasting mark on his back. Why then, Sir, did we abolish branding? Why have we forbidden all brutalities? Why do we not go back to the time of the Chengez Khan and such strong men? Why do we talk of laying down a syllabus to teach children in our schools the Gandhian way? Why do we talk of not overcoming force by force of arms but by force of the mind? I would

ask the whole House—in spite of some of the difficulties that there may be in accepting everything in this Bill that it is everything or nothing—would it not be better to put aside from our Statute Book the law that deals with the enforcement of whipping not, as has been shown, precluding a certain amount of punishment for the children in the home or in the school for correction purposes but in the spirit of vengeance, in the spirit of vindictiveness? Here we have a person who is being taken to punishment weeks after, or months after the crime and is being dealt with in a manner of hate for a matter of his fate.

I searched the whole list of Legislators of our country and I have not found even one member representing the butchers. I have found cobblers, I have found tailors and I have found every other trade and class but none of us, openly or secretly, have voted for a butcher, a man who has taken blood from a living thing, and who has steeled himself against the more gentle arts of life. We are now living in what we call a civilized world and let us leave behind things that do not savour of that civilisation.

Again, Sir, let me congratulate the hon Home Minister not on bringing forward a lighthearted or a simple or a general Bill but one that needs courage and conviction, qualities that he has shown always in deed and in the words that he has placed before the country. As a nationalist, I congratulate him for bringing forward this national Bill.

SHRI H P SAKSENA (Uttar Pradesh) Sir, I rise to give my wholehearted, enthusiastic and complete support to the Bill repealing the Whipping Act. Whipping or flogging is an abhorrent and revolting form of punishment and no person who has got that spark of divinity known as conscience in his physical frame can have any sympathy with the retention of that sort of punishment. Howsoever heinous and howsoever abominable the crime or the offence

[Shri H. P. Saksena.]
 may be, flogging as a punishment is no remedy for that sort of crime. This, as a matter of fact, should have gone out of the Statute Book long long before, but then we have got to remember to our utter shame that we were living under a foreign Government which had absolutely no regard for our sentiments or for our self-respect.

Reference was made to Dharma Shastras. I am here to tell you, Sir, that even if the Dharma Shastras enjoined that whipping should be retained as a form of punishment, I will revolt against that Dharma Shashtra and go against it and recommend its repeal just as I would have revolted against it if it had enjoined us that to live as a slave of an alien and more powerful Government was a virtue which should be retained. In the same way, I am not going to have this punishment on the Statute Book of my country even for a single day and that is perhaps why the hon. Home Minister recommended that the Bill should be passed today, if possible, we are the descendants of a very very ancient civilization. Is it a symbol of our civilization to be flogging people and whipping them as certain forms of punishment for certain offences which they might have committed? Surely not, Sir. We are the descendants of Gautama Buddha who renounced his kingdom, his worldly pleasures and all, for the sake of alleviation of human suffering. And now here we are inflicting inhuman suffering on people who are suspected of having committed some offences—may be true, may be wrong. Sir, this savage and barbarous form of punishment can never serve as a deterrent or a reforming measure and therefore the only course open to a Government is to abolish it altogether.

I was surprised at the speech of my very eminent, learned and honourable friend, Prof. Wadia. I have always held—because I myself belong to that fraternity of teaching people during the prime of my life—that a teacher had always had a soft, tend-

er and compassionate heart. Now, Sir, these are not the qualities of a coward. These are not the qualities of a person who does not differentiate between justice and injustice. Now, in spite of his being a teacher, he thought that punishment of some form or nature must be inflicted in order to correct a wrong-doer. I know that in my period of teaching life I had also, mistakenly perhaps, inflicted some corporal punishment, but I always found that it never served as a deterrent. It was my way of teaching that converted dullards into bright and smart students. I tell you, Sir, from my personal experience, that the saying that pain repels and pleasure attracts, proved immensely helpful to me and I always found that the more mild and the more tender the treatment that I extended to my students the more it converted them more speedily to become bright and smart students, to be intelligent and to be attentive to their studies. That is the practice which proved successful in my experience. My friend Prof. Wadia's experience may be different—I do not know.

Sir, as the hon. the Home Minister said in his speech, this whipping produces a sort of coarsening effect, and definitely so, it cannot produce any other effect whatsoever. If we want to reform the evil-doers, if we want to convert our society into a society where there is very little of evil and misdeeds, we have got to adopt other methods of reforming and making the society better. This form of punishment or similar and identical forms of punishment will never succeed in reforming the society.

Sir, Prof. Wadia said that there are certain specimens of human beings who are depraved, who are bullies at heart. I take the entire responsibility of such specimens of human beings on my shoulders and put it on the shoulders of those who are still engaged in the profession of teaching. Why not create a sort of society in which there is no depraved man, in which there is no bully at heart—it all depends upon those who are in-

vested and entrusted with the task of making the citizens good and useful. Now there must be a reason why these people became depraved and bullies at heart. Someone must have erred; someone must have committed a mistake—either it was the parents or the teachers or both combined together brought about that state of affairs in a particular individual, and therefore . . .

SHRI KAILASH BIHARI LALL (Bihar): May I put a question to Mr. Saksena?

SHRI H. P. SAKSENA: I am not prepared to yield to any interruption. Whatsoever the interference I am continuing.

SHRI AKBAR ALI KHAN (Hyderabad): There is a fight between teachers.

SHRI H. C. DASAPPA (Mysore): This is a kind of bullying.

SHRI H. P. SAKSENA: This flogging is a punishment which is unworthy of any civilized Government and this should have no place in a statute book of any Government whatsoever. I am conscious of the fact that there are some sorts of offences and crimes which are very cruel, which are very heinous, which are uncivilized. They are tortuous; they are repugnant, but, holding all that, I am all in all for the abolition of the form of flogging as a punishment and I therefore wholeheartedly support this Bill.

SHRI AKBAR ALI KHAN: Mr. Deputy Chairman, I have no experience of teaching, but I have a little experience of law, not exactly of whipping but the law on the point and the consequences that, in my humble experience, this kind of punishment brings.

Really it was a surprise to me when I heard Prof. Wadia and Dr. Kane, two eminent educationists for whom we have really very great regard I think, the only explanation

that we can give for the two speeches is that they belonged to an age when really that maxim 'Spare the rod and spoil the child' was in the air, and as such we have just to respect them but differ and differ emphatically from them in this matter.

Now, Sir, the only thing that I would like to place before this hon. House in connection with these speeches and in support of what the hon Minister and other Members have said is this. True, there are cases where corporal punishment may be needed, but, when we want to legislate, we have to think about the *general thing and the cumulative effect* that such punishment would produce. Now I would like to ask my learned friends: What is the basis of their conclusion that this punishment is necessary and inevitable? Have they carried out any investigation? Has there been any enquiry into this matter?

(*Interruption*)

I am just coming to that. There are several Reports in modern countries and the Report of 1939 of the Law Commission in India was referred to by my friend Mr Sinha. The Law Commission strongly gives its opinion against this punishment and, in addition, in the Reports in England and in the United States, where a thorough enquiry has been made into this subject, where evidence has been recorded, where all aspects of the question have been fully investigated, they have come to the conclusion that this punishment, is not a correct punishment, is not one which even brings out that result which is being contemplated by some and here by the two learned speakers. It is on the basis of this material—the reports and the enquiry—that they have come to the conclusion that corporal punishment is something which is not only against the moral and civilised notions but that it also does not achieve the object for which it is inflicted. I would say that it is high time that we did away with it and we are really grateful to the hon.

[Shri Akbar Ali Khan]

the Home Minister that he has brought forward such a wholesome measure—a measure which is not only in keeping with the genius of the nation but which has been adopted by even modern countries where probably non-violence is not considered in the same way as is done in India. In the United States, with great difficulty Prof Kane could refer to a case of wife and husband but he has also indirectly admitted that in other States it had been forbidden. Now, when we are trying to improve the society it would not be right to say that England is advanced, the United States is advanced, Switzerland is advanced, but we are not advanced and so we should keep the same punishment. I cannot accept such a suggestion.

SHRI KAILASH BIHARI LALL
Will Prof Kane be satisfied if the right of whipping is given to the wife?

SHRI AKBAR ALI KHAN My submission is that the very idea that has been suggested for maintaining whipping is something which does not conform to the views that are held by the present generation, by the experience of the results and enquiries made in this direction, above all because of the fact that we are now on the move to remove all such things which were kept in the previous regime for many purposes especially for purposes of keeping law and order.

So, Sir, I am sure the House will join with me in supporting this Bill with all the emphasis at its command, not only in supporting this Bill but in requesting the Government of India to see that the provisions of the previous Act—which are in the exclusive jurisdiction of the States—are soon amended so that this heinous punishment a punishment revolting to all sense of modern civilisation and humane ideas, is wiped out. Sir, I commend this Bill for the approval of the House.

श्री ईश्वरकीर्तन (बम्बई) : उपसभापति महोदय, माननीय गृह मंत्री जी के भाषण के बाद मैं यह सोच रहा था कि सदन में कोई इस बिल का विरोध नहीं करेगा। परन्तु मुझे एक बड़ा धक्का पहुँचा जब मैंने देखा कि हमारे शिक्षण शास्त्री, वाडिया साहब, और हमारे विद्वान बुजुर्ग, श्री काणे . . .

श्री अकबर अलीखान : दोनों बम्बई के।

श्री ईश्वरकीर्तन : हाँ, दोनों बम्बई के जहाँ का मैं हूँ, इसका विरोध कर रहे हैं। काणे साहब तो एक बहुत बड़े वकील हैं और आज तक काफी तजुर्बा आपने कोर्ट और कचहरियों का किया है। वाडिया साहब को बच्चों का तजुर्बा रहा है और वे तो यहाँ तक कह गये कि हाँ, बच्चों को कभी कभी पीटने से फायदा ही होता है हालाँकि वे इस बात को मानते हैं कि मानस शास्त्र की दृष्टि से बच्चों को पीटने से कभी शिक्षा नहीं दी जा सकती है।

श्री हि० च० दासप्पा : वे बैरिस्टर भी हैं।

श्री ईश्वरकीर्तन : हाँ, बैरिस्टर भी हैं। मगर कचहरियों से ही सम्बन्ध होने के कारण शायद उनको यह पता नहीं है कि व्हिपिंग की सजा क्या हुआ करती है क्योंकि उसका तजुर्बा तो उन्होंने किसी को सजा भुगतते हुए देखकर शायद नहीं लिया है। मैंने अपनी आंखों से देखा है कि किस तरह से व्हिपिंग होती है, और जिन्होंने भी अपनी आंखों से उसे देखा होगा उनमें से कोई इस बिल का पक्षपाती बनेगा ऐसा मैं नहीं जानता। मैंने अपनी आंखों व्हिपिंग होते देखा है। यहाँ बहुत से भाई होंगे जिन्होंने शायद अपनी आंखों इस चीज को देखा होगा। जिस वक्त गुनहगार को नंगा कर के खड़ा किया जाता है और जब चांडाल सिपाही हाथ में बेल लेंकर, तीन दफे उसको घुमाकर, एक एक उसके चूतड़ पर लगाता है और वहाँ से लहू की पिचकारी छूटती है, यह सब दृश्य जिन्होंने देखा है वे समझ सकते हैं कि कितनी पाशविक कितनी शोचनीयता की यह सजा है। कोई

इंसानियत उस वक्त जिंदा नहीं रह सकती, और जैसा कि माननीय गृह मंत्री जी ने कहा, इस सजा को देने वाला और इस सजा को भोगने वाला दोनों नीचे गिरते हैं क्योंकि सजा देने के लिए जो व्यक्ति बेंत मारता है उसे हर एक बेंत के लिए कुछ इनाम दिया जाता है। यानी इस काम को करने के लिए जेल में भी हर कोई तैयार नहीं हुआ करता। खास इस काम के लिए एक पुलिस का सिपाही कहिए या कुछ और कहिए तैयार किया जाता है, उसको सिखलाया जाता है और उसको बेंत मारने के लिये इनाम मिलता है। यानी इससे आपको पता चलेगा कि वह आदमी धीरे धीरे अपने मन को, अन्तःकरण को बिल को मारता है और पैसे के लिए कहिये या आदत के लिए कहिए, वह बेंत मारने के लिए तैयार होता है। मैंने तो यहां तक देखा है और सुना है कि जिस दिन उस बेंत मारने होता है उस दिन वह शराब पी के आता है। यानी बिना शराब के बिना हैवानियत खुद में पैदा किये वह बेंत नहीं मार सकता। इससे आप सोचिए कि कितनी हैवानियत की यह सजा है, इसमें कहां तक मारने वाले की इंसानियत रह सकती है या बेंत मारने वाले की इंसानियत रह सकती है? एक साधारण मानवी निगाह से भी आप देखेंगे तो आप इस बात को मान लेंगे कि यह हैवानियत की सजा बन्द होनी चाहिए। मुझे इसलिए अचम्भा मालूम हुआ कि शिक्षण शास्त्री भी ऐसी सीधीसादी इंसानियत की बात की मुखालिफत करते हैं। आज हम उस जमाने में हैं जिस जमाने में हम यह सोच रहे हैं कि सारी दुनिया के भगई और वैंर शान्तिपूर्ण मार्गों से तय हो। आप जानते हैं कि जब दो आदमियों का एक दूसरे से भगड़ा हुआ करता है या दो समाज के भगई या दो मुल्क के भगई कहिए, हुआ करते हैं, तो उस वक्त एक पक्ष दूसरे को गुनहगार तो समझता ही है। जब तक एक दूसरे को गुनहगार न माने तब तक वह न उसके खिलाफ लड़ाई कर सकता है, न उसे मार सकता है। तो एक दूसरे को गुनहगार मानना और उस गुनहगार से उसको छुड़ाने के लिए उसको

सजा देना, यह बात आजकल के युग में कहां तक ठीक है, यह आप सोचिए। हमारी सरकार ने और हमारे इस मुल्क ने तो यह नीति मान ली है कि इंसान दुरुस्त हो सकता है और उसको दुरुस्त करने के लिए दंड की कोई आवश्यकता नहीं है। हम उस तत्व के मानने वाले हैं जो तत्व हमको यह सिखलाता है कि हर एक मनुष्य के हृदय में ईश्वर का भी वास हुआ करता है, साथ साथ शैतानियत भी हुआ करती है और वह शैतानियत जीती जा सकती है। शैतानियत के ऊपर काबू पाने के लिए यही इंसानियत एक फर्ज होता है। इस निगाह से इस बिल को देखें तो आपको पता चलेगा कि उस रास्ते पर यह हमारा एक सीधासादा छोंटा सा कदम है जिस रास्ते पर चलकर हम बड़े मैदान में भी आगे बढ़ रहे हैं। सोचियेगा कि 80 वर्ष तक, महात्मा गांधी हमको यही सबक देते रहे कि आपको यदि मनुष्य से बुराई निकालनी है तो आप उसकी बुराई प्रेम और सेवा से निकाल सकते हैं। सब से अच्छा बुराई दूर करने का रास्ता प्रेम और सेवा ही हो सकता है। यदि आप शराबी से शराब छुड़ाना चाहते हैं तो आप उसकी शराब की बोतल चाहा तो फेंक सकते हैं, शराब की बोतल फोड़ सकते हैं। शराब नष्ट कर सकते हैं। आप तो शराबी से शराब छुड़ाना चाहते हैं शराबी को नष्ट तो नहीं करना चाहते। आप शराबी को मार कर शराब नहीं छुड़ा सकते। इसी तरह से आप मनुष्य को किसी तरह से भी हैवानियत की सजा देकर उसे अपने गुनाह से अलग नहीं कर सकते हैं। उसे तो आप ज्यादा दृष्ट ही बनाते हैं उसे आप लानत भेज सकते हैं और उसका वैंर बढ़ा सकते हैं। वैंर से वैंर कभी दूर होता नहीं है। हजारों वर्षों का यह अनुभव है कि वैंर से वैंर दूर नहीं होता, द्वेष से द्वेष दूर नहीं होता। अग्नि पानी से ठंडी होती है और द्वेष प्रेम से ठंडा होता है। इसी निगाह से आपको इस प्रश्न की ओर देखना चाहिये कि हम क्या करने जा रहे हैं। हम एक ऐसा कदम उठा रहे हैं जिससे हम इंसान को इंसान की निगाह से देखते हैं, इंसान को हैवानियत की निगाह से नहीं देखते। मनुष्य

[श्री दुर्वकीनंदन.]

में से हँवानियत निकालने के लिए खुद हमें हँवान नहीं बनना चाहिये। हमें हँवान की हँवानियत निकालने के लिए खुद इंसान बनना चाहिये और इंसानियत को आगे बढ़ाना चाहिये। इस निगाह से आप इस बिल को देखें तो आपको पता चलेगा कि हम एक ऐसे रास्ते से जा रहे हैं जिस रास्ते को सारी दुनिया धीरे धीरे अपना ले रही है।

I would take 5 to 7 minutes, Sir

MR. DEPUTY CHAIRMAN: All right, you continue tomorrow.

There is a message from the Lok Sabha.

MESSAGE FROM THE LOK SABHA

THE ABDUCTED PERSONS (RECOVERY
AND RESTORATION) CONTINUANCE
BILL, 1955

SECRETARY: Sir, I have to report to the House the following message

received from the Lok Sabha, signed by the Secretary of the Lok Sabha:

"In accordance with the provisions of Rule 133 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Abducted Persons (Recovery and Restoration) Continuance Bill, 1955, as passed by Lok Sabha at its sitting held on the 23rd August 1955."

I lay the Bill on the Table.

MR DEPUTY CHAIRMAN: The House stands adjourned till tomorrow morning.

The House then adjourned at three minutes past five of the clock till eleven of the clock on Thursday, the 25th August 1955