

in April and it may be convenient to my hon. friend if he were to connect his Bill with that Bill, and it may be that the House may decide two ways. Either my hon. friend on further consideration may say that his object having been served, he would withdraw his Bill and let the bigger Bill go before the Joint Select Committee, or, if he so desires, his Bill and the Government Bill may both be referred to the same Joint Select Committee so that there may be no divergence of opinion—one Select Committee working on one Bill and another Select Committee working on another Bill for the same purpose. So I would suggest to my hon. friend, the Mover, that he may ask the House to let this motion stand over, and I undertake that on the Government day for disposal of legislative business, when the Government motion for reference of the Government Bill to a Joint Select Committee comes up, his motion will also be tagged on to the Government motion so that both matters may be disposed of at one and the same time. That will enable the House to discuss the matter in a connected way, and a co-ordinated way, and I imagine it will also save some time of the House. That was the suggestion I wanted to make.

Shri S. V. Ramaswamy: Sir, I am deeply thankful to the hon. Home Minister for the kind reference he has been pleased to make to me and to the Bill. I wish I could accept the first alternative, namely, not to press the Bill, but I find this difficulty. In the opinions that have come (5 Papers in all), while the opinion is unanimous with regard to the abolition of the system of trial with the aid of assessors, I find, on an analysis, about 80 per cent. of the opinions are for the abolition of the jury system also. It is only about 20 per cent. who want the retention of the jury system. That is my only difficulty.

With regard to the second alternative, of course, I am thankful to the hon. Home Minister that this will also come on the official day so

that it may be committed to the same Joint Select Committee. I have no objection to accept that. But, you will please allow some other Members also to express their opinions on the opinions received so that we may know which way the opinions of hon. Members be. So far as I am concerned, I am prepared to accept the hon. Home Minister's suggestion, that this may be sent to the Joint Select Committee along with the official Bill.

Mr. Chairman: Virtually the speech of the hon. Minister is tantamount to a motion that further consideration of the Bill be postponed. I take it that the Mover of the Bill accepts it.

Shri S. V. Ramaswamy: I accept it on the understanding that this will be referred to the Joint Select Committee along with the other Bill.

Mr. Chairman: Is it the opinion of the House that further consideration of the Bill be postponed?

Hon. Members: Yes.

Mr. Chairman: The Bill is postponed.

INDIAN PENAL CODE (AMENDMENT) BILL.

(AMENDMENT OF SECTION 302)

Mr. Chairman: Mr. Kazmi. Does the hon. Member propose to move a motion about his Bill, item No. 11?

Shri Kazmi (Sultanpur Distt.—North cum Faizabad Distt.—South-West): I beg to move:

“That the Bill further to amend the Indian Penal Code, 1860 be circulated for the purpose of eliciting opinion thereon by the 15th of May, 1954.”

So far as this Bill is concerned, on a previous occasion when I placed this before the House—that was a motion for a Select Committee—I had an assurance from the Government that if I were to move for its

[Shri Kazmi]

circulation, then it would be acceptable. I may very briefly state the position as to what I want by this amendment.

Under section 302, only two alternative sentences are provided, (i) death sentence and (ii) sentence of transportation for life. So far as clear cases are concerned, the sentence of death is the usual sentence that is passed by all the courts. But, there are certain cases where, by the application of section 149 or by section 34, a number of persons may be involved. You know that offences under sections 395 and 379 involve a considerable amount of 'moral turpitude'. So far as section 302 is concerned, it may be moral turpitude or it may not be moral turpitude, because in a certain fit of anger or for certain reasons—a person may be in the right—a person might have committed that offence. When a person has killed another—whether the person who killed is a very good man and the person killed is a very bad man—the sentence of death will be passed on him, because he had no right to take the law into his own hands. So far as that aspect is concerned, there is no difficulty. But, in actual practice, what we find is that in certain cases members of one family fight with each other. Ten persons on one side and nine persons on the other and one person is killed. They may be relations amongst themselves. The result is that it is possible that all the nine members of the family who are stated by the eye-witnesses to have been present on the spot might not have taken any active part in the affair, yet they would be liable to be sentenced to death. But, generally that is not passed on them and the only alternative is transportation for life. I do not say that in the right cases a sentence of transportation for life should not be given—it must be given—but what I say is that it must be left in the power of the courts to determine the amount of sentence in

cases where the transportation for life for nine members of the family would mean the killing of the whole family. The difficulty is about the words "transportation for life". What I say is these words should be substituted by "a sentence of fourteen years". The hon. Home Minister on the previous occasion said that in some States it is 20 years—it may be even more than that—and so far as that aspect is concerned, I have no dispute and let it be 20 years instead of 14 years. As soon as you put in the number of years, the result would be that the courts in awarding the sentence can reduce it in cases which they consider appropriate. If they do not think it proper, the sentence will remain. As a matter of fact, transportation for life is now an unknown thing. It could only be when India had Andamans and Nicobar outside it to which places people could be transported, but now they happen to be a State by themselves and so there is no place where the convict can be transported. Every person who is sentenced for transportation for life is still kept in jails here for a particular period. What I want is that the court itself may fix the period of sentence instead of saying transportation for life. It should not be left for the executive to determine the period, because I know that in many cases, the persons approach the Government with a petition of mercy and get a reduction of their sentence, sometimes a considerable reduction. What I want is, in proper cases, to give the power to the court to award appropriate sentence, and not to bind the hands of the court so far as sentence of transportation of life is concerned. If a man has committed a glaring murder, he must be hanged, but so far as other cases are concerned where in causing the death of one man, ten persons are involved and where there is no moral turpitude involved, then the court may consider the cases on merits and give proper sentences. It is for this reason that I have introduced the Bill.

Mr. Chairman: Motion moved:

"That the Bill further to amend the Indian Penal Code, 1860 be circulated for the purpose of eliciting opinion thereon by the 15th of May, 1954."

Shri Venkataraman (Tanjore): I rise to express a feeling of disappointment over this Bill. I am totally opposed to death penalty being imposed under any statute. The hon. Mover of the Bill has suggested that some consideration should be shown towards the persons who do not merit the sentence of transportation for life. He made it appear that there may be cases in which a sentence of transportation for life has got to be imposed under the present law, but which may be reduced in the circumstances of the individual case. If we are going to amend the criminal law of the country, let us do it in a systematic fashion. If we are going to do anything with the law that has been in existence for over 80 or 90 years, the only way we can do it is to have a separate law commission which will go into the Acts which have been passed decades and decades ago and which require to be brought into consonance with modern conceptions. Instead of that, if we try to tinker with the law which has been in existence for a long period, and make small changes here and there, it may happen that for a small offence, a great punishment is imposed and for a great offence, a small punishment is imposed. That would be totally against the concept of criminal jurisprudence. Sir, the ancient law of Indian Penal Code has stood the test of time. There are many sections in it which require modification. There are sections in the Indian Penal Code which are not in consonance with modern conceptions and modern times. As I said in the beginning, I am myself against the death penalty being imposed under any circumstances. I think, Sir, the taking away of the life of one man for a mistake, or even a crime of murder, does not in any way bring

to this society a better way of living. A tooth for a tooth and an eye for an eye is a barbaric conception. It is necessary that if we really want to have the law of this country modified, if we really want to have the Penal Code brought in consonance with modern conceptions, then, a systematic approach should be made, a law commission should be appointed and it should be asked to go into each one of the sections of the Indian Penal Code for the purpose of finding out whether it is in consonance with the spirit of the times.

Take, for instance, the punishment for adultery. I heard the other day a certain person arguing that the section with regard to adultery offends the Constitution itself, because under article 14 of our Constitution you must have equality before the law. Under the Penal Code only the man is punished and the woman is not punished for adultery. Therefore, it was argued that this is contrary to our Constitution. I am glad to say that the courts have been able to find a distinction between the offences committed by the persons and they said our Constitution itself provides for protection for women and children and therefore, it is not contrary or *ultra vires* of the Constitution.

But what I want to say in this connection is that it should not be an offence at all under the Penal Code. Adultery was in those days considered to be a criminal offence. Today it must be considered to be a civil matter. In England it is a civil matter, for which damages can be claimed. It ought not to be in the penal statute of the country. There are a number of instances which I would like to give, but the time is drawing near.

Mr. Chairman: I think the hon. Member will take some time?

Shri Venkataraman: Yes.

Mr. Chairman: Then the discussion on this Bill is adjourned to the next non-official day for Bills.