

15.13 hrs.

GIFT-TAX (AMENDMENT) BILL—Contd.

(AMENDMENT OF SECTIONS 22, 23 ETC.) BY SHRI S. C. SAMANTA

MR. DEPUTY-SPEAKER : Now we shall take up further consideration of the Gift-tax (Amendment) Bill. I think, Shri Samanta is to reply to the debate.

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI K. R. GANESH) : Sir, before Shri Samanta replies, I have a submission to make. With your permission, for the information of the House and of Shri Samanta, I would submit that as far as clause 3 of Shri Samanta's Bill for doing away with the procedure of arbitration for purpose of Gift-tax is concerned, this has been broadly accepted by the Government and this will be included in the proposed Taxation Laws (Amendment) Bill for which approval has been given to be introduced in this House. Since this broad principle has been accepted and the Government itself is bringing about on a comprehensive basis this amendment, I would request Shri Samanta to withdraw his Bill.

SHRI S. C. SAMANTA (Tamluk) : Sir, I am thankful that my Bill was considered by the Government and also by the Select Committee on Taxation Laws (Amendment) Bill. I would like to know when this Select Committee on Taxation Laws (Amendment) Bill was busy considering my Bill, why I was not called.

A similar thing happened with the Mulla Committee about land reforms. I had a Bill the Land Acquisition Bill. I think, it has been considered. But the Member who has introduced the Bill should be consulted, so that I would not have pressed for this Bill to be considered by the House because the Government has taken it up. In future, I would request the Government to call the Members whose Bills are considered by the Government, by the Select Committee or by any Committee which is constituted by the Government.

About the other things which I have mentioned in clauses 4, 5 and 6, the Government is unable to accept them. It would have been

better if I would have been informed whether they were considering as to what were the defects. Now, when the Government is going to have a second look into the Bill, as has been mentioned by the hon. Minister, I would not like to press the Bill for the acceptance of the House because some portion has been accepted by the Government and, I hope, other portions will be considered by the Government.

MR. DEPUTY SPEAKER : The question is :

"That leave be granted to Shri S. C. Samanta to withdraw the Bill."

The motion was adopted

SHRI S. C. SAMANTA : I withdraw the Bill.

The Bill was, by leave, withdrawn.

15.17 hrs.

INDIAN PENAL CODE (AMENDMENT) BILL.

(AMENDMENT OF SECTION 309) BY SHRI S.C. SAMANTA

SHRI S. C. SAMANTA (Tamluk) : Sir, I beg to move :

"That the Bill further to amend the Indian Penal Code, 1860, taken into consideration."

Under Section 309 of the Indian Penal Code, an attempt to commit suicide is an offence and any act towards commissioning of such an offence is punishable. The purpose of the present amendment is to make such a provision so that whoever resorts to hunger strike or undertakes fast with an ulterior motive may be duly punished and a criminal action may be taken against him.

15.17½ hrs.

[SHRI K. N. TIWARY *in the Chair.*]

The reasons for my bringing this thing in the form of a Bill is that already an attempt to commit suicide is an offence and is punishable under the Indian Penal Code, and, if

that is punishable, why not punish the person who resorts to hunger-strike and compels others either to accept his demands or he would die. That is not an offence, at present. I have brought it to be included here. I may plead that either Section 309 should be omitted or this act of hunger-strike should be added to it.

That is my contention. When a man tries to commit suicide, is it a pleasure? No, he is driven to commit suicide and the fault may lie in him or the fault may lie elsewhere. If a man is incessantly maltreated in the family, in the house, his brain gets deranged and he goes so far as to commit suicide. Who is responsible for it? We are making him responsible but he is not responsible. Others are responsible.

In legal terminology, this sort of attempt to commit suicide is called *mens rea* or guilty intention and the particular result intended to be achieved should be to destroy oneself, which in legal terminology is called *actus reus* or the determined act of the person concerned. Unless both these elements are present, merely an attempt to commit suicide does not constitute an offence for the simple reason that attempt is not attempt until the act of destruction is not followed. Preparation of committing suicide does not become an attempt for the simple reason that preparation alone cannot necessarily lead to the result of suicide.

But there are cases where the guilty intention and the act of the person concerned are present and yet the offender escapes punishment because the provisions of Section 309 IPC either have not been interpreted correctly or not clear enough to bring the offender to book.

For Example, there is a person who declares that he will fast unto death until and unless certain of his demands are acceded to or accepted. Now, so far as the declaration of his intention to fast unto death is concerned, it is not an attempt to commit suicide, but when he actually sits at a certain place in pursuance of that object, both *mens rea* as well as *actus reus* are present, and, as such, an offence can be deemed to have been committed.

It is strange that no person having been alleged to have committed such offence has been called upon by a magistrate or any other com-

petent judicial authority for trial in a court of law. I am sure that if the provisions of section 309 of the IPC are not amended suitably this offence may continue to be committed in future also and the person concerned may be escaping punishment.

The Indian Penal Code (Amendment) Bill, 1971, as introduced by me in a previous session of the House, and which is now under consideration, is the proper remedy. Here, I may mention that in 1967 I had introduced this Bill, but in that Bill I did not demand that hunger strike should be brought in, but I wanted to omit it. In this Bill, I seek to add after the words 'such offences' in section 309 of the IPC the following words namely :

"or threatens to undertake fast unto death for acceptance of any of his demands".

There have been frequent instances now and then of persons who threaten to fast unto death and sometimes sit for the purpose of acceptance of demands, be they frivolous or otherwise. This kind of attempt to commit suicide should not go unnoticed by courts. Cognizance of offences of this nature should also be taken.

The House is aware that Sant Fatch Singh and other people had already resorted to such kinds of acts, and if action might not have been taken in time in the direction of fulfilment of their demands by assurances or actual acceptance, the act of suicide might have materialised. So, either all attempts to commit suicide should be exempted from the jurisdiction of the courts of law, or this particular kind of attempt which I have in mind should also be brought within the purview of the courts of law so that the offenders may not be able to escape punishment.

Before I conclude, I would like to mention that all should be equal in the eye of the law. Distinction should not be made between persons and persons. In the case of *Girja Bai Ram v. State* (vide 1960 M. P. L. S.—Notes), where the accused had jumped into a well to avoid the police and afterwards come out of the well of his own accord, it was held that he could not be convicted for an attempt to commit suicide. From the case it is clear that *mens rea* not having been present, it was not

[Shri S. C. Samanta]

an offence, but even such a case been tried in a court of law. But there are glaring instances where the alleged offence has not been taken cognizance of. The case of Shrimati Tarkeshwari Sinha is well known. She had taken an overdose of sleeping pills so much so that she lay unconscious for several days in the hospital. Nobody can say that the overdose of sleeping pills was not a deliberate act.

In the same way, one general manager had got constructed a full-fledged housing colony in Bombay named after him. When asked to explain from where he got the money, he took some kind of poison to commit suicide. He was admitted to hospital and was saved. But what punishment was awarded to the gentleman in the court or departmentally has not been known.

These are cases already covered by section 309. But a new device or attempt to commit suicide is coming into being. It is the threat or resort to fast unto death with some motive or other.

Therefore I commend my amendment to the House. I move.

MR. CHAIRMAN: Motion moved :

"That the Bill be further to amend the Indian Penal Code, 1860, be taken into consideration".

SHRI M. C. DAGA (Pali) : I beg to move :

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 30th October 1971". (1)

MR. CHAIRMAN : Both the motion and the amendment are before the House.

SHRI G. VISWANATHAN (Wandiwash) : Shri Samanta has brought forward an interesting Bill. Among offences in the IPC, sec. 309 is the only offence where the offender is not punished if the attempt is made.

SHRI R. D. BHANDARE (Bombay Central) : When the crime is completed, he is no more.

SHRI G. VISWANATHAN : But he is not punished legally.

Shri Samanta wants to include hunger strike within the meaning of sec. 309. I think most of the old guard including Shri Samanta know that it was Mahatma Gandhi who started satyagraha and hunger strike. Of course, it may be misused many times.

SHRI R. D. BHANDARE : Not satyagraha, but it is hathagraha.

SHRI G. VISWANATHAN : But it cannot be denied that hunger strike owes its origin to Mahatma Gandhi. I am not enamoured of hunger strike, nor do I believe in it. At the same time, we have to consider this question from many angles.

As he was pointing out, I do not think when a man goes on a hunger strike, he has *mens rea*. He must be punished when he has a guilty mind. I do not think all those undertaking fasts or hunger strike have a guilty mind. Secondly, there are occasions when a miserable minority has to resort to it to get justice. In a democracy, heads are counted. Even if the minority has a good case, it will lose it because it has a smaller number. Then it has to resort to fast or hunger strike to get justice from a road-roller majority. This is specially so in trade unions where the laws are in favour of the capitalists or employers.

SHRI R. D. BHANDARE : Or the Centre.

SHRI G. VISWANATHAN : I am not going into that.

In such cases, the employees have to adopt this method ; they are compelled to go on hunger strike to get justice from the employer. Suppose we include this within the meaning of sec. 309, immediately there is a hunger strike, the employer will ring up the police and the man will be arrested and punished with imprisonment for one year and/or fine. I do not think the intention of the Mover is to punish those employees who go on hunger strike.

SHRI M. C. DAGA : If it is accompanied by a threat, not mere hunger strike.

SHRI G. VISWANATHAN : If hunger strike is included, this is what will happen. You cannot give explanations and provisos. So,

Sir, since the motive is not there, the guilty mind is not there, when *mens rea* is not there, he cannot be punished and so it cannot come under section 309, IPC. Hence I think that the Mover should not insist that hunger-strike should be included in section 309 of the IPG.

Therefore, I am compelled to oppose this Bill.

श्री मूलचन्द डागा : सभापति महोदय, आज दुनिया में एक हजार आत्म-हत्याएँ रोज होती हैं। आत्म-हत्या एक पाप है और हजारों वर्षों से सामाजिक जीवन में इसे किसी ने पुण्य नहीं कहा है। लेकिन दार्शनिक दृष्टि से आत्म-हत्या कोई आत्मा की हत्या नहीं होती है— एक जीवन जाता है, लेकिन आत्मा की हत्या नहीं होती है। आत्मा जीती है, कभी मरती नहीं है।

श्री आर० डी० मंडारे : यह आत्मा-हत्या नहीं है, आत्म-हत्या है।

श्री मूलचन्द डागा : जहां तक आत्म-हत्या, सूसाइड, का सम्बन्ध है, वह स्वयं कोई आफेंस नहीं है। सैक्शन 309 में कहा गया है :

“Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment....”

माननीय सदस्य, श्री सामन्त, अपने बिल के द्वारा जो कुछ चाहते हैं, वह “ऐनी एक्ट” के अन्तर्गत आ जाता है। अगर एक आदमी घोषणा करता है, थ्रेटन करता है कि वह भूख-हड़ताल करेगा, खाना नहीं खायेगा, आत्म-हत्या करेगा, तो वह सैक्शन 309 के अन्तर्गत आ जाता है। इस बारे में कमेन्टरी में साफ कहा गया है।

“Cases of hunger-strike present some difficulty in determining if the intention of the hunger striker was to kill himself, as death by starvation is a long-drawn-out process which can be interrupted or given up at any stage (except perhaps the very last). Going on hunger-strike does not, therefore, constitute this offence in all cases.

Unless there is some overt declaration by the accused of his intention to fast unto death, it is not certain that he really intended to persevere to the bitter end.”

अगर कोई आदमी यह थ्रेट देता है कि वह मर जायेगा, तो वह स्वयं एक आफेंस है। वह 1962 इलाहाबाद, 262 में होल्ड किया गया है।

इसलिए माननीय सदस्य जो एमेंडमेंट करना चाहते हैं, उससे कोई लाभ नहीं होगा। सैक्शन 309 में कहा गया है कि अगर कोई आदमी खुले तौर पर कहता है कि या तो मेरी मांग पूरी कर दी जाये, वरना मैं मर जाऊंगा, तो इसका मतलब है कि उसने अपना इरादा जाहिर कर दिया है, अपनी इच्छा जाहिर कर दी है, उसने अपना मेन्स रिया डिक्लेयर कर दिया है। इसलिए श्री सामन्त ने अपने बिल में जो थ्रेट करने की बात कही है, वह सैक्शन 309 में आ जाती है।

माननीय सदस्य ने हंगर-स्ट्राइक की बात कही है। लेकिन हंगर-स्ट्राइक तो कोई आफेंस नहीं है। हंगर-स्ट्राइक करने से पहले अगर कोई आदमी कहता है कि मेरी फलां मांग को पूरा कर दिया जाये, वरना मैं अपनी जिन्दगी दे दूंगा तो उसके खिलाफ सैक्शन 309 के अन्तर्गत कार्यवाही की जा सकती है।

इसलिए माननीय सदस्य ने जो एमेंडमेंट रखी है, वह कारगर नहीं हो सकती है और उसको लाना अनुचित है।

SHRI G. VISWANATHAN : What is your amendment ?

श्री मूलचन्द डागा : मेरी एमेंडमेंट यह है कि इस बिल को पब्लिक की राय जानने के लिए सकुलेट किया जाये।

हंगर-स्ट्राइक को तो एक वैपन के तौर पर इस्तेमाल किया जाता है। माननीय सदस्य उसको बुरा क्यों समझते हैं ? दुनिया में कभी कभी लोग कई कठिनाइयों और तकलीफों के

[श्री मूलचन्द डागा]

कारण मरना चाहते हैं। आप मरने के बाद तो उसको सजा देते नहीं हैं, अमेंडमेंट में उसको सजा देते हैं। सती प्रथा 1829 से पहले चलती थी। सती प्रथा के अंदर क्या हुआ कि जब औरतें मरती नहीं थीं, तो उनको नशा पिलाकर उनके पतियों के साथ जला देते थे और जबर्दस्ती उनके साथ बांध देते थे कि जला दी जायं। ऐसी चीज चल पड़ी थी। तो उस समय राजा राम मोहन राय ने उसके लिए कानून पारित कराया। आप यह कानून लाना क्यों चाहते हैं? क्या समाज के अंदर कुछ लोग इससे चिंतित हो गए हैं? हंगर स्ट्राइक के मामले में आपको ऐसा क्यों लगा कि कानून इसके लिए लाया जाय? आपको यह नहीं लगा कि प्रेमी और प्रेमिका कुतुब मीनार से गिर जाते हैं तो उनको भी सजा दी जानी चाहिए... (व्यवधान)...

एक माननीय सदस्य : उन्हें बीच में रोकना बड़ा मुश्किल है।.. (व्यवधान) ..

श्री मूल चन्द डागा : तो वह आपसे नहीं होता। यह जो आपका हंगर स्ट्राइक का है मेरा ऐसा ख्याल है कि समाज के अंदर जो आज कल इसके लिए कानून है वह काफी है। कई बार कानून सामाजिक स्थिति और सामाजिक प्रथा के अनुसार चलते हैं। भूख हड़ताल कई बार आत्म-पश्चाताप के लिए होता है। भूख हड़ताल केवल यह थोड़े ही हैं कि किसी के विरोध में ही होता हो, या किसी से कोई बात मनवाने के लिए करते हों, कई बार पश्चाताप के रूप में भी भूख हड़ताल करते हैं। तो इसके मामले में पुलिस को पावर दे देना ठीक नहीं होगा। ऐसा हो गया तो किसी ने भूख हड़ताल करने की घोषणा की और उसके साथ में लोग जाते ही हैं, तो पुलिस कहेगी आल शुड गो ऐज अवेटर्स। यह ठीक नहीं है। इसलिये 309 में हंगर स्ट्राइक को जोड़ने की आवश्यकता नहीं है। ऐसी बात भी नहीं है कि समाज में कोई ऐसी बात पैदा हो गई हो कोई ऐसी व्यथा

पैदा हो गई हो हंगर स्ट्राइक को लेकर जिससे लोगों को चिंता हो गई हो, ऐसा तो है नहीं। मेरी समझ में तो आजकल हजारों लोगों के लिये जब कोई उनकी बात सुनता नहीं है, मानता नहीं है, किसी आदमी का हृदय उनकी बात से पसीजता नहीं है, तो उसके लिये उनके पास एक यह हथियार रह गया है जिससे वह अपनी बात कह सकें।

एक माननीय सदस्य : इम्मोलेशन के लिये क्या होगा ?

श्री मूल चन्द डागा : उसके लिये तो साफ है, दैट इज ऐन आफेंस।

इसलिये आत्म-हत्या का जो मामला है, इसमें इस अमेंडमेंट की आवश्यकता नहीं है। यह सैक्सन 309 इटसेल्फ सफिश्येंट है। हंगर स्ट्राइक को इसमें लाने की आवश्यकता नहीं है। This itself is an offence under 309 and he can be freely punished.

और मैं तो कहता हूँ अगर कुछ लोग जाना चाहते हैं तो जाने दीजिए। जो दुनिया में तकलीफ पाते हैं और वह दुनिया छोड़ कर जाना चाहते हैं तो जाने दीजिए। कोई आदमी कहता है कि मैं मरना चाहता हूँ और आप उसको कहते हैं कि नहीं, वह जीये, तो यह भी तो उसकी आजादी में एक दखल है। कोई कहता है कि मैं मरना चाहता हूँ तो उसे मरने दीजिये। अगर कोई आदमी जिन्दगी में निराश हो गया है, जिन्दगी में उसे कुछ आशा ही नहीं रही है तो मरा हुआ है ही, वह केवल एक जिन्दा लाश ही तो है। जिस आदमी के अंदर उत्साह नहीं होता है, क्योंकि जीवन का नाम ही उमंग और उल्लास है, अगर जीवन में उमंग और उल्लास न रहे और केवल लाश चलती रहे तो वह तो मरा हुआ ही है...

SHRI R. D. BHANDARE : You plead for the right to die, freedom to die ?

SHRI SHYAMNANDAN MISRA (Begu-sarai) : Freedom to die should be one of the basic freedoms ?

श्री मूल बन्द ड़ागा : सभापति महोदय, यह एक बड़ा सवाल है . . .

सभापति महोदय : आप इस तरह से पापु-लेशन को कम करना चाहते हैं ?

श्री मूल बन्द ड़ागा : मेरा कहना यह है कि जो आदमी आत्म-हत्या कर लेता है उसको तो सजा होती नहीं है तो कोई आदमी जो इस बात को लाता है कि वह सूसाइड करने वाला है, सूसाइड करने वाला कहता है कि मैं अपने शरीर को छोड़ना चाहता हूँ, मैं तो भगवान से मिलना चाहता हूँ, तो आप बीच में क्यों अड़चन डालना चाहते हैं ? एक आदमी उपवास करता है और आप उसको दवा दिला देते हैं तो फिर तो वह 309 में नहीं आता । तो 309 में सजा हार्डली वन परसेंट केसेज में होती है । खुद मरने को आज कल कोई तैयार नहीं है, दुनिया में गरीबी में रहनेवाला भी मरना नहीं चाहता है । दुनिया में जीने का मोह सब में है कोई ऐसा त्यागी नहीं है जो मरना चाहता हो ।

गृह मंत्रालय में राज्य मंत्री (श्री कृष्ण चन्द्र पंत) : आपको फैमिली-प्लानिंग वालों ने खड़ा किया है ।

श्री मूल बन्द ड़ागा : यह फैमिली प्लानिंग का सवाल नहीं है ।

इसलिये मेरा सुझाव है कि इस सैक्शन में जो अमेण्डमेंट आप लाये हैं, वह ठीक नहीं है ।

SHRI MANORANJAN HAZRA (Arambagh) : I oppose the Bill because what is contained in it does not carry sense. The Mover of the Bill wants to punish the hunger strikers but why? In a society where injustice flourishes, where opposition and negligence are the order of the day, if a man, to get rid of this state of affairs, resorts to hunger strike, why should he be punished? This is not justice. If this Bill had been brought during the life time of Gandhiji, I can say emphatically that Shri Samanta would not have come forward to punish him. I therefore, request him to withdraw the Bill.

If he wants to punish a man who is going to commit suicide, it is already provided in our criminal law, but where a man for a lofty ideal and cause resorts to hunger strike, he should be supported. In this Bill contrary ideas are expressed. So, I oppose this Bill.

श्री भोगेन्द्र झा (जयनगर) : सभापति महोदय, जहां तक धारा 309 का सवाल है, यह मानवीय मूल्यों पर आधारित है, जिसके अनुसार आत्म हत्या का अधिकार किसी भी मनुष्य को नहीं है । ऐसा इसलिये है कि यदि कोई व्यक्ति अपनी आत्म हत्या कर लेता है, तो वह सिर्फ खुद ही नहीं मरता है—किसी का भाई मरता है, किसी का पिता मरता है, किसी का पुत्र मरता है, किसी समाज का नागरिक मरता है । इस तरह से एक ही व्यक्ति कितने प्रकार से दूसरों से सम्बद्ध है, पूरे समाज से सम्बद्ध है । इसीलिये हमारे कानून में, समाज में, आत्म हत्या को एक जुर्म, एक पाप गिना गया है । इस लिहाज से धारा 309 बहुत ही उचित मूल्य पर आधारित है ।

लेकिन, सभापति जी, अभी हमारे सामने जो विधेयक प्रस्तुत है, उसका उद्देश्य—कम से कम विधेयक की भाषा से, मैं प्रस्तावक महोदय की समझ की बात नहीं करता हूँ—लेकिन जो भाषा इस की है, उसका मतलब इतना ही है कि जो किसी मांग की स्वीकृति के लिये जनतन्त्रीय आधार पर एलान करता है कि मैं भूख हड़ताल करता हूँ, अनशन करता हूँ, उनको सजा दी जाय, उनको रोका जाय—मुझे यही उद्देश्य इसका मालूम पड़ता है । इस स्थिति में कुछ सदस्यों ने ठीक ही कहा है कि अगर हम इसको मान लें तो मरने के बाद भी मुकदमा चलाया जा सकता है । हो सकता है कि गांधी जी पर भी मुकदमा चलाया जाय—राजकोट के राजा ठाकुर साहब ने जब बचन भंग किया था तो उस पर गांधी जी ने आमरण अनशन किया था । यह ठीक है कि वह पांच दिन ही चला । बाद में गांधी जी ने हिमालय के समान अपनी गलती को कुबूल किया, लेकिन उन्होंने उस समय आमरण अनशन किया ।

[श्री भोपेन्द्र झा]

अब जहाँ तक यह सवाल है कि कोई व्यक्ति आमरण अनशन का एलान करता है तो यह स्पष्ट है कि वह मरना नहीं चाहता है। उसकी नीयत मरने की नहीं है, आत्म-हत्या की नहीं है उसकी नीयत समाज को या समाज के किसी हिस्से को या प्रशासन में कहीं पर कुछ भ्रम है, तो वह प्रशासन को हिलाना चाहता है, उसको चेताना चाहता है, जमाना चाहता है, उसको प्रभावित करना चाहता है ताकि उसकी मांगें मान ली जाय। इसके अलावा जहाँ आमरण अनशन का एलान भी होता है उसमें मरने की नीयत नहीं होती है। अगर यह विधेयक मंजूर कर लिया जाये तो नीयत से सम्बन्ध नहीं रहेगा .. (व्यवधान) ... जो भाषा है या पुलिस को ब्याख्या उसके ऊपर सजा मिल जायेगी। और जो व्यक्ति जान देने के लिये तैयार होगा उसके लिए सजा का देना कुछ बेतुका मामला हो जाता है। एक साल की सजा दीजिए या न दीजिए वह एक बेतुका मामला हो जाता है। अभी तक जो धारा 309 है उसके मुताबिक, मैं बीसों व्यक्तियों को जानता हूँ जिन पर, आमरण अनशन का एलान किए बिना ही मुकदमा चला है। मुझ पर खुद भी मुकदमा चला है। .. (व्यवधान) ... यह बात अलग है कि बाद में कुछ हुआ नहीं। तो जो मैं कहना चाहता हूँ वह यह भाषा है क्योंकि जहाँ कहीं किन्हीं मांगों को लेकर, जनहित को लेकर भूख हड़ताल का एलान एक खास हालत में समाज को जागृत करने के लिए हो और वहाँ पर इसको इस्तेमाल किया जाये तो यह विधेयक जनहित विरोधी बन जाता है—इस भाषा के आधार पर—इसलिए मेरा आग्रह है कि अगर उनकी नीयत यह है कि कोई आत्महत्या न करे तो वह बहुत ही मुनासिब है और दंड संहिता की धारा 309 से उस नीयत की पूर्ति हो जाती है परन्तु यह जो विधेयक है वह अनावश्यक है क्योंकि जैसा मैंने शुरू में कहा कि आमरण अनशन का एलान हुए बिना ही मुकदमे चलाए गए हैं।

तो जो यह शब्द है वह जनहित विरोधी है। यह जो रास्ता है वह एकबैध रास्ता है, समाज को जागृत करने के लिए है और इसमें कोई अनुचित बात नहीं है। इसलिए वे इस विधेयक को वापिस ले लें, यह मेरा आग्रह है।

SHRI M. SATYANARAYAN RAO (Karimnagar) : Sir, I am really surprised that this Bill has been brought forward by a person who belongs to the Gandhian era. I am sure he is a great revolutionary and he must have participated in the freedom movement. But I oppose this Bill because it is against the fundamental rights enshrined in the Constitution. To go on hunger-strike is not a crime and it should not be brought under section 309. Otherwise, it will be very difficult to draw the attention of the Government whenever an occasion arises. There are several things which cannot be achieved unless one is in a position to draw the attention of the leaders. If people resort to violence, they can be punished. But without committing violence, if one wants to draw the attention of the Government to redress some grievance, this is the only alternative. It is a great right which should not be curbed. Mr. Daga was saying that *atma* is never killed. If that were so, then section 302 also should be removed, because even if a man is killed, the *atma* is not killed. Of course, philosophically it was an interesting argument.

With these words, I oppose the Bill.

SHRI MALLIKARJUN (Medak) : Sir, I stand here as a victim of section 309. In 1969 the people and the students revolted against the Andhra Pradesh Government for bifurcation. But unfortunately the movement was taking a violent turn. Our earnest desire was to lead a peaceful movement, on the basis of which lakhs of people offered satyagraha and went to jail. Yet, no justice was done to us by the government and the demand for separate Telengana has not been conceded. Then the students were on the streets. They never returned to classes for not less than ten months, something of a record in the history of the world. At that time it was the responsibility of the leaders who were leading the movement to see that peace is restored, normalcy is restored, and appeal to the students to return back to

the classes and then try to focus the attention of the Central Government and the State Government. Though we tried that we failed to get justice from either of them. Then, ultimately in order to press the demand for a separate Telengana I myself undertook a hunger strike. To my surprise and amazement, after 25 days of fast I was arrested, taken to the hospital and forcible feeding was given to me. When I was produced before the magistrate I argued what instrument the people have to attract the attention of the government in a democracy. On the one hand, you utilize the entire power with you to suppress any movement, be it peaceful or violent, and on the other hand you never allow a peaceful shape of demonstration to attain the object. Even though hunger strike is only a logical thing it is not permitted. Since the Government pleader did not find any other section, he charged me under section 309.

I feel that in a democracy hunger strike should be there to protect the rights of the individual. Now there are many industries where the management with the help of the government put the workers in a difficult position. The workers are suffering and they are oppressed. If in order to press their demands or focus the attention of the public on their demands if they take to hunger strike it is not a crime at all. So, I feel that section 309 must not be applied to hunger strikes. Hunger strike is only self-purification. A person who undertakes hunger strike self-purifies on the one hand and on the other hand he draws attention to an injustice so that justice would be done. Therefore, I oppose this Bill.

SHRI S. A. SHAMIM (Srinagar): Mr. Chairman, much is not to be spoken against this Bill because I am not sure whether the mover of the Bill is also as serious about the Bill. This, to my mind, is one of the most elusive pieces of legislation intended to be brought before the House. But I would like to make one submission. Probably the mover of the Bill has either forgotten, or is not aware, that during our freedom struggle this was the most effective weapon. I am told that he was a participant in the freedom struggle. Gandhiji's greatest contribution to the freedom struggle and to the new values which we cherish today is that he made us able to differentiate between violence and satyagraha.

When you inflict wound or when the subject matter of the violence is somebody else, then it is violence. Satyagraha is a form of sacrifice where you choose your own self to undergo some agony so that much good is brought about to the rest of the people. In the case of satyagraha not only the person who undertakes it is benefited but on the other the society in general and the people at large are also benefited. It needs great courage and a high degree of discipline to undertake a fast. Luckily there have not been many deaths due to hunger strike. I am reminded of only two which brought about so much good. Therefore, I do not think when we have reached a stage when we cherish the values which Gandhiji stood for—Gandhiji did not preach only but he was a symbol of doing what he preached—it will be a great violence to Gandhiji's ideals if we deprive the common man of the basic right of hunger strike which does not do any violence to any man but brings moral pressure on the officials. In a democratic set-up we must have the basic right of protest and one most civilised way of bringing pressure to the Government is to suffer yourself and not spread the suffering to others.

16 hrs.

Therefore, I oppose it and I am sure the mover of the Bill will join the ranks of all those who have opposed this Bill.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND IN THE DEPTT. OF PERSONNEL (SHRI RAM NIWAS MIRDHA): Sir, the Bill before us seeks to make an amendment to Section 309 of IPC by adding these words: "or threatens to undertake fast unto death for acceptance of any of his demands".

It is not a very amusing piece of legislation as the previous speaker said. The hon. Member, Shri Samanta, who has brought forward this Bill to amend Section 309 is an old and respected Member of this House and he is very well conversant with the history of our Independence movement and it is his concern about the mis-use to which hunger-strike and similar coercive methods are put to the by all sorts of persons that has prompted him to bring this legislation. It is a very laudable thought that when we have a country, where the rule of law exists and when remedies exist for all

[Shri Ram Niwas Mirdha]

possible grievances the democratic method in the rule of law should be allowed to have its way and such methods which are not legal, which are not constitutional should not be resorted to. So, from that point of view the idea behind the Bill is very laudable and, I think, we should all appreciate it. The tendency to resort to hunger strike and similar things has grown considerably during the last few years. We have a spectacle of gheraos which also some people have sought to justify as being a satyagraha. But people forget the basic ideas behind Satyagraha, the type of moral discipline that a Satyagrahi has to adopt before he resorts to these things, and the whole concept of respect for non-violent methods in bringing about social and political change which has been handed down to us by the legacy of Mahatma Gandhi, that it is not an instrument which can be resorted to everytime at the slightest pretext with no preparation and with hardly any goodwill at the back of mind of persons who resort to it. This tendency has to be curbed and, I think, the society is gradually realising that some such methods must be adopted so that hunger strikes and coercive methods like this which might have started with a laudable purpose do not deteriorate into a political pressure tactic and similar demonstrative thing. I would not go long into the whole matter.

SHRI G. VISWANATHAN : Are you supporting this amendment ?

SHRI RAM NIWAS MIRDHA : I am not supporting. I am giving reply to some hon. Members, who doubted the motives of the hon. Member and who wanted to ridicule this Bill. It is as a reply to those hon. Members that I have to give this preface which means that the basic idea is that the hon. Member disapproves of all extra-constitutional, to put it very respectably, methods which even some Members and people at large have adopted towards the solution of their grievance or support grievance.

My short reply to the Bill would be that the Indian Penal Code was gone into very thoroughly by the Law Commission and very recently they have submitted a report. That report is under consideration. It has not even been printed yet. When it is printed and is ready, it will be circulated to hon. Members.

The Law Commission has recommended that an attempt to commit suicide should not be an offence at all but a threat to self-immolation with a view to compelling Government or a public authority or an official should be made punishable. This is just by way of a statement of what the Law Commission says. The view that the Government would take about this is very difficult to say at this stage. We will process the whole Indian Penal Code which is a very old piece of legislation.

I think, the Law Commission has done a good job to revise the whole Indian Penal Code and we will give due consideration to the suggestions that have been made by the Law Commission. I am sure, the hon. Member would not press his Bill at this stage because not only section 309 but all other sections of the Indian Penal Code, which have been reviewed by the Law Commission, are being considered by the Government and at an appropriate time we would come before this House, before Parliament, with a new piece of legislation when this suggestion of the hon. Member also would be taken into account.

With these words I request the hon. Member kindly to withdraw his Bill.

SHRI S. C. SAMANTA : Sir, I am glad to learn that the Law Commission is busy revising the sections of the Indian Penal Code. I do not know whether they have as yet considered section 309 or not. If they have considered it, it is all right. As for myself, you will be astonished to hear that in 1967 I introduced a Bill (Bill No. 123) in which I pleaded that section 309 should be deleted, while my hon. friend, Shri Diwan Chand Sharma, moved amendment. My hon. friend, Shri Diwan Chand Sharma is no more. This time I have given his amendment for consideration of the House.

It is true, section 309 is not liked by everyone. There are difficulties. A man who goes to commit suicide is punished but by what circumstances he is forced to attempt to commit suicide is not considered. The Law Commission is giving thought to it, I have heard, and they might have submitted to the Government that section 309 should be altered in this way :—

"Whoever by persistent acts of cruelty drives a member of his family living with him to commit suicide shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine."

Then, the thing that is there will not follow. My grievance is, when that man is punished, why not the person who forcibly takes to fasting and forces others to accept his demand is punished. If that goes, I have no objection to the deletion of Section 309. All other Sections are also being examined by the Law Commission.

Only one thing I would request the hon. Minister to consider and which I pleaded before also that when such Commission or Select Committees or other Committees like the Land Reforms Committee or the Land Acquisition Committee are formed, the Members whose Bills are considered should be called to give evidence. I have not been called to give evidence before them. If I have this Bill, why not the Law Commission call me and know my intention so that I may myself withdraw the Bill? I want that such a thing should be done. As the Law Commission is seized of the matter, I have no objection to withdraw it. So, I would ask the honourable House to give me permission to withdraw the Bill.

MR. CHAIRMAN: There is an amendment in the name of Shri M. C. Daga. Are you pressing it?

SHRI M. C. DAGA: No, Sir.

Amendment No. 1 was, by leave, withdrawn

MR. CHAIRMAN: The question is:

"That leave be granted to Shri S. C. Samanta to withdraw the Bill"

The motion was adopted.

SHRI S. C. SAMANTA: I withdraw the Bill.

The Bill was, by leave, withdrawn.

MR. CHAIRMAN: Now, we take up the next Bill.

Shri B. S. Chowhan—absent; Dr. Karni Singh—absent.

Shri Bhogendra Jha.

16.14 hrs.

CONSTITUTION (AMENDMENT) BILL

*Amendment of Eighth Schedule by
Shri Bhogendra Jha*

श्री भोगेन्द्र झा (जयनगर): सभापति महोदय, मैं संविधान की अष्टम सूची में संशोधन करने वाले अपने विधेयक को विचार के लिए प्रस्तुत करता हूँ।

इस विधेयक का उद्देश्य यह है कि संविधान की अष्टम सूची में हमारे देश की तीन महत्वपूर्ण भाषाओं को जोड़ दिया जाये। हम अपने अनुभव के आधार कुछ नई भाषाओं को अपने संविधान की अष्टम सूची में जोड़ते रहे हैं। जैसा कि हम सब जानते हैं, हमारा देश एक बहुभाषी देश है और 1947 में जो दुर्भाग्यपूर्ण बंटवारा हुआ, उसके बावजूद यह एक विशाल और महान् देश है। हजारों सालों से जिन भाषाओं के द्वारा हमारी संस्कृति का बहन होता रहा है, उनमें कुछ ऐसी भाषायें भी हैं, जो हमारी राष्ट्रीय सम्पर्क भाषा, हिन्दी, से भी पुरानी और प्राचीन हैं, जिनका साहित्य भंडार बहुत प्राचीन और धनी है, परन्तु जिनको अभी तक हमारे संविधान में स्थान नहीं मिल पाया है।

यह भी सही है कि हम सब अपनी राष्ट्रीय सम्पर्क भाषा को मजबूत और पुष्ट करना चाहते हैं, ताकि हमारी राष्ट्रीय एकता और ज्यादा मजबूत और पुष्ट हो। इस सम्बन्ध में प्रयासों में जो ढिलाई और कमजोरी है, उन के स्थान पर तेजी और मुस्तैदी लाने की आवश्यकता है। परन्तु जैसा कि हम सभी जानते हैं अपने देश में हमारे कुछ नेताओं या कुछ विद्वानों की यह समझ रही कि एक ही भाषा से हम काम चला लेंगे, इसलिए दूसरी भाषाएं अगर हैं तो अनावश्यक हैं, संविधान में जितना स्थान उनका न रहे, उतना बेहतर है और अगर कहीं स्थान मिल भी गया तो जितना उनको कम इस्तेमाल होने दिया जाय उतना