

15:29 hrs.

**CHILD MARRIAGE RESTRAINT
(AMENDMENT) BILL***

(Amendment of sections 2 and 3) by
Shri D. C. Sharma

Shri D. C. Sharma: (Gurdaspur):
Sir, I beg to move for leave to intro-
duce a Bill further to amend the Child
Marriage Restraint Act, 1929.

Mr. Deputy-Speaker: The question
is:

"That leave be granted to intro-
duce a Bill further to amend the
Child Marriage Restraint Act,
1929."

The motion was adopted

Shri D. C. Sharma: Sir, I introduce
the Bill.

15:29½ hrs.

MINES (AMENDMENT) BILL*

(Amendment of sections 12, 64, 66, 67,
70, 72C and 73) by Shri S. C. Samanta.

Shri S. C. Samanta (Tamluk): Sir,
I beg to move for leave to introduce
a Bill further to amend the Mines Act,
1952.

Mr. Deputy-Speaker: The question
is:

"That leave be granted to intro-
duce a Bill further to amend the
Mines Act, 1952."

The motion was adopted

Shri S. C. Samanta: Sir, I intro-
duce the Bill.

15:30 hrs.

**UNTOUCHABILITY (OFFENCES)
AMENDMENT BILL***

(Amendment of sections 3 and 4) by
Shri Siddiah.

Shri Siddiah (Chamrajanagar): Sir,
I beg to move for leave to introduce a

Bill to amend the Untouchability
(Offences) Act, 1955.

Mr. Deputy-Speaker: The question
is:

"That leave be granted to intro-
duce a Bill to amend the Un-
touchability (Offences) Act, 1955."

The motion was adopted

Shri Siddiah: Sir, I introduce the
Bill.

15:30½ hrs.

**CODE OF CRIMINAL PROCEDURE
(AMENDMENT) BILL—cont'd.**

(Amendment of sections 342 and 562)

by Shri M. L. Dwivedi.

Mr. Deputy-Speaker: The House
will now take up the Code of Criminal
Procedure (Amendment) Bill moved
by Shri M. L. Dwivedi.

**The Minister of State in the Minis-
try of Home Affairs (Shri Datar):**
How much time remains, Sir?

Mr. Deputy-Speaker: 36 minutes
remain. Any Member wanting to
speak? No one. The hon. Minis er.

Shri Datar: Sir, this is not the first
time that a Bill of this nature was
sought to be introduced. On two for-
mer occasions and especially when
there was before the House a detailed
consideration of the exhaustive
amending Bill, a similar attempt was
made by an hon. Member, member
then in Lok Sabha but ultimately the
withdrew it. Subsequently, he brought
forward a Private Member's Bill
which was circulated for public
opinion. When it came up for consi-
deration on 18th April, 1959 after
full consideration the hon. Mover
withdrew it.

The question that arise; is very
clear. My hon. friend wh, so ably
moved this Bill found that 'here was
more opposition to 'he provisions of
this Bill than what he had bargained

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for. It is true that on theoretical considerations he desired that there ought to be no scope for what he said fought to be no scope for what he said 'false statements' on records of a case, as the ethical aspects are concerned. When a case has been launched against an accused person and when he comes before the court and when he is tried by a Magistrate, we have to take into account certain supreme considerations based on the law of criminal jurisprudence—the consideration that ought to weigh predominantly is the one of allowing him the fullest liberty of defending himself. The question of truth or otherwise has to be taken into account. But the question of defence that ought to be open to the accused person must assume priority as against other considerations. It is the reason why it has been made very clear that so far as such accused person is concerned he should have absolute liberty; he should not be under any sense of nervousness that whatever he speaks might be used against him in the particular proceedings or that he might even be punished therefor. The nervousness of being subjected to a punishment is a matter which is to be avoided or provided against. That is the reason why when the Criminal Procedure Code Amendment Bill was before this House and when certain questions of a general nature were raised the recommendation of the Joint Committee was that nothing should be done to affect adversely the absolute right of an accused person to put any defence that he likes regardless of all other considerations. That is the reason why a commentator has clearly pointed out here that there was vehement opposition for the amendment on the ground that after the removal of the safeguard, examination in some cases on that ground would be of an inquisitional nature for the purpose of entrapping the accused. Therefore, that amendment was not accepted at all. It was laid down very clearly that accused's right to defend himself was absolute. If this principle is accepted, my hon.

friend will see what has been done is perfectly proper even after taking into account the needs for safeguarding the rights of the accused for defending himself as he likes."

The next question that arises is whether this particular immunity is absolute. Section 342(2) reads that the accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them. All that has been provided for is that even if it is found that the answer is false, he will not be liable to punishment in respect of that false statement. That is all that has been provided for.

So far as section 342(2) is concerned, some hon. Members also pointed out that there were other provisions according to which if an accused person makes a false defence or puts in a statement which is false, it can be taken into account. I am to invite the attention of the hon. Members to section 342(2):

"The accused shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them."

That is the most important provision. One hon. Member in the course of his speech pointed out that these words were there which would show that he is not completely immune otherwise; the immunity only relates only to the question of punishment by a criminal court. It says further:

"...but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just."

That is point No. 1 which takes away what my hon. friend called the absolute immunity.

There is a second place where the absolute immunity has been taken away—clause 342(3):

"The answers given by the accused may be taken into consideration in such enquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed."

Therefore, you will find that the immunity against false statement relates in respect of one consideration: for safeguarding his defence if it becomes necessary for him to make a false statement, he will not be liable for punishment thereof. That is all the immunity granted to him. There are two weighty considerations which clearly point out that in case the accused were to make a false statement that would be taken into account. It means that there might be in a proper case if the trial court thinks and comes to the conclusion that he has made a deliberately false statement with a particular defence of his, that can be taken into account. These are judicial expressions which may be taken into account. But the court and the jury if any may draw such inference from such refusal as he thinks fit.

Secondly, there is no immunity in respect of any other proceeding or any other offence that might be started against him, provided there are other materials. Therefore, my submission is that the immunity is not complete or is not absolute, but it is only there to a limited extent, so far as the immunity from punishment in that particular proceeding is concerned.

The hon. Mover would agree with me that in this case, so far as the provisions are concerned, they do not necessarily encourage false statement. They do not necessarily encourage perjury but in order to place the right of the accused for his defence on an absolute footing, it has been made very clear in these expressions. Therefore, when the question of defence has to be taken into account,

we have to allow the defence the absolute right as against any other rights based on theoretical considerations or even on political considerations, because the man ought to have an absolute right to defend himself as he likes. That is the reason why after a full consideration these words have been put in.

I may point out that nothing has come out in the course of the various judicial decisions during the last century, because we are having a similar law during nearly one century. Nothing has come out by which my hon. friend can come to the conclusion that this section has the effect purposely of encouraging perjury. The real objects have to be taken into account. A comparative view has also to be kept before us. If, as we agree that there ought to be an absolute right of the accused person to defend himself or herself as he or she likes, that right ought to be supreme, and other considerations which might be important or might have some value ought to be subordinate to the main consideration. This is so far as the amendment that the hon. Mover has suggested to section 342.

In the Bill, there is also another amendment that he has introduced in respect of section 562. There also, the hon. Member's object is perfectly understandable. He desires that in case an accused person is entitled to the benefit of section 562—who is generally a first offender—he ought to be entitled to that benefit of getting out by way of probation, provided, as he has put it, he makes a completely true statement without concealing anything. So far as these expressions are concerned, I should like to point out that they are redundant in the first place, apart from the fact that such expressions are not entirely of the type in which legal expressions have to be put in. It may be very difficult in a particular case for a judge, in the course of his enquiry under section 562, to go into all these questions. The

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words that he has used are: "completely true statement." That means it should be true cent per cent in regard to details. So far as the details are concerned, some of them are likely to be important and some of them are of a minor character. But the hon. Mover wants that it ought to be a true statement, completely true, cent per cent. He has also tried to make this more specific and clear by stating "without concealing anything."

So far as these expressions are concerned, I should like to point out to the hon. House that section 562 of the Criminal Procedure Code has used very wide expressions which would include what the hon. Member has in view. Three expressions have been used in this section. Regard is being had, firstly, to the age; then to the character; and then to the antecedents of the offender. Out of these three expressions, the character of the offender and his antecedents are there to embrace what the hon. Member has in view. The character includes also truth-telling and antecedents would include those cases where a man, even though there was a temptation to speak lies, did not speak lies. Therefore, the words "character and antecedents" are already there.

On the other hand, if we assume that these expressions are used in a particular case—these expressions are in the Act itself—and if in a particular case, on account of the advice or any other circumstance, the man does not make such a statement, then, even if the case is otherwise strong for a release on probation under section 562, he is likely to be placed at a disadvantage and a handicap. Therefore, in the interests of the accused, for the purpose of enabling the accused to get himself released on probation under section 562, I should like to point out to the hon. Mover that already there are two expressions, namely, character and antecedents, which would include

what he has in view, namely, the purpose of truth-telling, and there can be no greater safeguard. If, for example, a man purposely goes on telling lies, that would show an absence, so to say, of truth or correct character. Similarly also, if the man's antecedents have to be looked to, it would be open to the court to find out whether he withstood the temptation of telling lies. That also includes the expression "antecedents". Therefore, these two expressions are of a comprehensive nature. They include what the hon. Member has in view. Therefore, I would like to see that this matter should be left to judicial discretion. The courts would consider the question of truth-telling so far as they consider that it is relevant and they might find out as to whether the man was truthful or had been indulging in lies by amplifying the expressions which, under the law, they are entitled to, in the exercise of their judicial discretion. Therefore, while I appreciate the motive that the hon. Member has, in putting these things....

Shri M. L. Dwivedi (Hamirpur):
Motive or intention?

Shri Datar: We need not quarrel about the words "intention" or "motive". The hon. Member's intention is to see that even an accused person does not tell lies. That is his point. In case he is a truthful person, it means that he has a good character and that his antecedents are good. Therefore he will be entitled, even in the light of the present wording of section 562, to the relief that he wants to be extended to the truly accused person or rather the truthfully-convicted person. Those circumstances will have to be taken into account. Therefore, I would submit that while the hon. Member's object is perfectly understandable, it is not necessary to pursue it in the interests of the accused himself.

In case he so desires to have this, I might point out that the Law Commission has now been examining the Code of Criminal Procedure. It is perfectly open to that body, in the light of the discussion that we had in this House, to consider this question, and give us valuable advice in this respect. I hope the hon. Member will accept this assurance and will not press this to a division.

श्री म० ला० द्विवेदी : उपाध्यक्ष महोदय, मन्त्री महोदय ने शायद मेरे इस विधेयक का उद्देश्य ठीक तरह से नहीं समझा है क्योंकि वे कहते हैं कि मैं यह चाहता हूँ कि अपराधी भी केवल सत्य बात ही लाये। मेरा उद्देश्य विधेयक लाने में यह नहीं है। विधेयक में यह स्पष्ट रूप से बतला दिया गया है कि मैं केवल उन शब्दों को निकालना चाहता हूँ जहाँ यह लिखा गया है कि वह झूठ बात भी बोल सकता है। कानून में जो आज्ञा दी गई है कि उसे झूठ बोलने का अधिकार है ही, मैं सिर्फ उसको निकालना चाहता हूँ। इस लिये यह कहना कि मैं केवल यह चाहता हूँ कि अपराधी झूठ न बोले, सत्य ही बोले, यह गलत है। मैं तो केवल यह चाहता हूँ कि कानून द्वारा उस को यह आज्ञा न मिली हो कि वह झूठ भी बोले। झूठ तो वह बोलता ही है, नित्य प्रति मैं देखता हूँ कि कचेहरियों में लोग झूठ बोलते हैं। वहाँ केवल झूठ का ही व्यापार पनपता है। जहाँ तक आपने कैरेक्टर या एन्टिसीडेन्ट्स की बात कही, कितने हमारे देश में ऐसे सम्मानित वकील हैं, जो झूठ बोलने को प्रोत्साहित नहीं करते? उनका कितना ऊँचा कैरेक्टर है? मैं नहीं कहता कि जो उनका चरित्र है वह ऊँचा नहीं है लेकिन क्या आप समझते हैं वे लोग अपराधियों को झूठ बोलने के लिये प्रोत्साहित नहीं करते, गवाहों को झूठ नहीं सिखलाते? हम नित्य प्रति क्या देखते हैं? जिन के चरित्र ऊँचे हैं, जो साधारणतया झूठ बोलने की बात नहीं सोचते हैं वे भी क्या अपराधियों को झूठ बोलने के लिये नहीं कहते? हमारे मन्त्री महोदय स्वयं भी वकील रहे हैं, वे

भी समझते हैं कि कितने वकील ऐसे हैं जो गवाहों को झूठ बोलने के लिये प्रोत्साहित नहीं करते।

Shri Datar: Why should the hon. Member put it in such general manner? There are lawyers and advocates of the unfortunate type he has pointed out, but he cannot malign the whole class.

श्री म० ला० द्विवेदी : मेरा मतलब पूरे क्लास से नहीं है। उन लोगों से है जो ऐसा करते हैं मैं समझता हूँ कि ऐसे ईमानदार लोग हैं जिन्होंने ऐसा नहीं किया। महात्मा गांधी ने भी वकालत की। उन्होंने कभी भी असत्य का सहारा नहीं लिया। उन को मैं ऐसे व्यक्तियों में शामिल नहीं करता हूँ। लेकिन जो सत्य बात हो उसे कहना गलत बात नहीं है। अगर मैं सही बात नहीं कहता तो अपने देश के प्रति अपराधी होता हूँ। किसी देश के जूरिज्-प्रूडेन्स का मतलब यह है कि ऐसा विधि विधान तैयार किया जाय जिससे लोगों को न्याय मिल सके और अपराधी को दण्ड मिल सके। जिस देश में ऐसी व्यवस्था हो कि झूठ बोल कर भी अपराधी दण्ड से बच निकलने का अवसर पा जाता है, मैं समझता हूँ कि वहाँ का विधि विधान और विधि विज्ञान पूरा नहीं है और वह देश न्याय देने में समर्थ नहीं है। मैं समझता हूँ कि वहाँ जितने न्यायालय हैं उनमें अधिकांश ऐसे हैं जहाँ पर गलत कार्रवाई होती है, झूठ के आधार पर निर्णय होते हैं और बहुत से अवसरों पर अपराधी छूट जाते हैं या गलत लोगों को सजा मिल जाती है। इसलिये आवश्यकता इस बात की है कि हम शनैः शनैः अपने देश के विधि विज्ञान में और विधि विधान में, कानूनों में ऐसे संशोधन लायें जिससे कि सचमुच अपराधी पकड़ा जा सके और उसे दण्ड मिल सके, तथा झूठ बोल कर वह बचने का साधन न इकट्ठा कर सके। मेरा उद्देश्य यह है। मेरा कोई दूसरा उद्देश्य नहीं है।

[श्री म० ला० द्विवेदी]

झूठ तो हर अपराधी बोलता है लेकिन उसके लिये उस को सजा नहीं मिलती। अधिकांश गवाह झूठ बोलते हैं लेकिन उन्हें इसके लिये सजा नहीं दी जाती। इस का मतलब यह नहीं है कि हम उस को इजाजत दें कानून के अन्दर कि वह झूठ बोले। मेरी मंशा है कि कि यदि उसे झूठ बोलना ही पड़े तो वह झूठ बोले, लेकिन कानून के अन्दर ऐसी आज्ञा न हो। मेरी यह भी इच्छा नहीं है कि झूठ बोलने को सजा दी जाय, लेकिन कानून द्वारा हम उसे ऐसा अधिकार न दें। इसलिये मन्त्री महोदय ने जो दलीलें दी हैं वे उपयुक्त नहीं हैं। हम इस देश में अंग्रेजी कानून को नकल करते आये हैं और हमारे सचिवालय में अंग्रेजी कानून की ही नकल की जाती है। इसलिये वहां पर जो कुछ बना हुआ है वह हम आज भी इस देश में संजोये रखना चाहते हैं। आज हमने स्वतन्त्रता अर्जित की है, हमारे देश का पुरातन इतिहास है, हमारे देश में अपनी सम्यता है। इस देश में अपना विधि विज्ञान था, हमारा अपना विधि विधान था। हमें आवश्यकता इस बात की है कि हम अपने विधान को इस तरह से बनायें कि वह किसी विदेशी विधान के मातहत न हो। उसमें हम ऐसे संशोधन प्रस्तुत करें, हम उन को लकीर के फकीर न बने रहें। अंग्रेजी कानून में दिया है कि मैजिस्ट्रेट प्रश्न नहीं कर सकता, आपने प्रश्न करने की व्यवस्था रखी लेकिन साथ ही साथ यह भी रखा कि अपराधी झूठ बोल कर अपना बचाव कर सकता है। आप की यह बात युक्तिसंगत नहीं है। वैसे आप मन्त्री हैं, जो कुछ आपको समझाया जाता है उसके मुताबिक आप उत्तर यहां पर दे देते हैं, क्यों कि आप को अपनी बचत में कुछ कहना है, लेकिन मैं जनता की बात कहता हूं, मैं ऐसी बात कहता हूं जिससे अपराधी को सजा मिल सके, मैं ऐसी बात कहता हूं जिससे हमारा विधि विधान न्याययुक्त बन सके। इसलिये जो उपाय इस विधेयक का था, उससे आगे मैं

और भी विधेयक लाना चाहता हूं और संसद् के सदस्यों से भी चाहता हूं कि वे इस तरह के विधेयक लायें। अगर आप चाहते हैं कि संसद् के सदस्य यह काम न करें, केवल न्यायालय पर छोड़ दें सच बलवाने का काम, तो ऐसी संसद् की कोई आवश्यकता नहीं है।

कानून संसद् में बनते हैं और न्यायालय उनका पालन करते हैं। न्यायालयों पर उत्तरदायित्व इस बात का है कि जो विधि हम बनायें उसका वे पालन करें। संसद् का यह अधिकार आप नहीं छीन सकते कि हम विधियों को बना कर न्यायालयों के पास भेजें और वे उनको लागू करें। जब भी न्यायालयों के न्यायाधीश ऐसे किसी कानून का गलत मतलब निकालते हैं तब हम उस पर संशोधन लाते हैं और उन को ठीक तरह से रास्ते पर ले आते हैं।

मन्त्री महोदय ने जो जो दूसरी बात कही उससे मैं सहमत हूं। वे कहते हैं कि यदि इस विधेयक के मूवर, यानी मैं, चाहूं तो वे इस विधेयक को ला कमीशन के पास भेज सकते हैं। मैं चाहता हूं कि यह जरूर ला कमीशन के पास भेजा जाय क्योंकि ला कमीशन में ऐसे लोग हैं जो सोच सकते हैं कि इस कानून में तरमीम करने की कहां तक गुंजाइश है, और यह कितनी अच्छी बात है। यदि वे इस नतीजे पर पहुंचें कि मेरा संशोधन उचित नहीं है और वे इस को तर्क कर दें तो मुझे कोई ऐतराज नहीं होगा। लेकिन अगर व स्वीकार कर लें तो मन्त्री महोदय को चाहिये कि वे यहां पर विधेयक प्रस्तुत करें और मेरे संशोधन को ज्यों का त्यों स्वीकार कर लें। अगर यह बात मन्त्री महोदय स्वीकार कर लेंगे तो मैं इस सम्बन्ध में उन की बात मानने के लिये तैयार हूं।

जहां तक दूसरे सदस्यों का सवाल है, दो, चार सदस्यों ने इस सम्बन्ध में कुछ विरोध भी किया है और मन्त्री महोदय ने भी कहा कि इस विधेयक का विरोध अधिक था। मैं कहना चाहता हूं कि जिन लोगों ने विरोध किया

वे एक पेशे के लोग थे। उनके ऊपर जो चोट की गई इस सदन में, उन्हें वह बुरी लगी और इसलिये उन्होंने जो इस विधेयक का विरोध किया है वह कोई तर्कसंगत विरोध नहीं था। उन्होंने दूसरी बातों में बहके बहके किया। पर ऐसा अवसर आया, अध्यक्ष महोदय जो उस समय बैठे थे उन्होंने प्रश्न किया और सब बातों को उन्होंने स्वीकार भी किया, और जो विरोध में बोलने वाले थे उन्होंने कहा कि "आई कंसोड"। जहां तक श्री डी० सी० शर्मा का सवाल है वह तो कहते हैं :

"There should be all avenues open to him so that he could get himself acquitted."

उनका निशान यह है कि वह ऐक्विट हो सके। चाहे उसका जुर्म कितना ही बड़ा हो लेकिन सब साधन दिये जायें जिससे वह ऐक्विट हो सके। मैं चाहता हूँ कि ऐसे सब साधन जुटाये जायें जिससे कि अपराधी को दण्ड मिल सके और वे चाहते हैं कि सब साधन जुटाये जायें कि अपराधी छूट जायें। तो अपराध की वृत्ति बढ़ाने की बात जो मन में है वह कहां तक तर्कसंगत है और आप इस विरोध को कहां तक सहो मानते हैं ? मैं नहीं समझता कि इसमें कोई विशेष विरोध था। जो विरोध था वह वास्तविकता पर आधारित नहीं था, वह केवल कल्पना पर आधारित था। मैं समझता हूँ कि श्री शर्मा को इस देश के विधि विधान का, जूरिज्प्रैडेन्स का ज्ञान नहीं है, वरना वह जरूर समझते कि जिस देश में न्याय की व्यवस्था स्थापित करनी है वहां की न्याय विधि ऐसी बननी चाहिये कि वह अपराधी को दण्ड दिलाने में समर्थ हो न कि झूठ बोल कर बच निकलने में।

इन शब्दों के साथ में विधेयक को पुनः आपके सामने रखता हूँ। अब तो इसे पास किया जाय, लेकिन यदि मन्त्री महोदय इस को विधि आयोग के पास भेजना चाहें तो मैं इसको वापस लेने के लिये तैयार हूँ।

Mr. Deputy-Speaker: Does the hon. Member have the leave of the House to withdraw his Bill?

Some Hon. Members: Yes... ..

The Bill was, by leave, withdrawn.

15:58 hrs.

PUBLIC EMPLOYMENT (REQUIREMENT AS TO RESIDENCE) AMENDMENT BILL

(Amendment of section 5) by Shri J. B. S. Bist

The Minister of State in the Ministry of Home Affairs (Shri Datar): So far as Shri J. B. S. Bist's Bill is concerned, it proceeds from one misunderstanding. The original Act was passed in 1957. He has been of the view that the five years' period mentioned therein is likely to expire this year. That is not correct. In the Act itself, it has been made clear that the period of five years is from the date of the notification. The notification was issued in 1959. So, it will continue in force till 1964 and there is sufficient time for us to consider this special savings so far as Himachal Pradesh and other places are concerned. What has been done by this Act is that the requirement about domicile ought to be maintained in certain cases. There is sufficient time. This aspect may be considered before the hon. Mover moves his Bill for consideration.

Shri J. B. S. Bist (Almora): It is true I have said in my Bill that this Act is going to expire in 1962. When I checked up the rules, I found that the notification was issued in 1959.

Mr. Deputy-Speaker: Does he want to move the Bill?

Shri J. B. S. Bist: Yes, I will not take much time.