

INDIAN PENAL CODE (AMENDMENT) BILL

(Amendment of Section 497)

Mr. Deputy-Speaker: The House will now proceed with further consideration of the following motion moved by Shri Dabhi on the 27th July 1956:

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

Out of 2 hours allotted for discussion of the Bill, 47 minutes were taken up on the 27th July 1956, and 1 hour and 13 minutes are still available.

Shri K. K. Basu may continue his speech.

Shri K. K. Basu (Diamond Harbour): Mr. Deputy-Speaker, Sir, the other day when we were on this Bill, my objection for opposing this Bill was mainly in view of the condition in our country, where we have not come to that stage where we can apply the principle of equality without any reservation. Nobody in the House wishes that this social crime should be indulged in by any member of the community. But we have got to realise the conditions—the social conditions—prevalent today. It is true, as I was saying the other day, that even in the case of the Hindu law of succession, when we have tried to lay down the law of succession of illegitimate children, we have tried to debar them generally from inheriting the property of the persons who were responsible for their birth. We have restricted it to mother's property.

Apart from this, we know full well that in spite of a provision in the Constitution that there is no difference recognised on account of sex, in society today because of our past

backwardness or past condition, we still find there are differences. Let us take the composition of the House. Out of 500 Members, how many women Members are there? It is not because they are incompetent, but because we have not come to that stage wherein many of our sisters and mothers find time or have the inclination to come to this Parliament to represent the country or the constituencies of the States from where they come. Take the case even of the ever-mounting geometric progression of the members of the Cabinet. Even today, they have only one Cabinet Minister and one Deputy Minister representing the fair sex. It is not because there is a dearth of talent, but because of the condition of our society which has grown in such a way that apart from the initial appointments made in 1952, when new appointments are made, we hardly find any representation from that section of the community.

Similarly, among our Ambassadors, we find only one woman has been selected so far.

Shri Tek Chand (Ambala-Simla): On a point of order. What has all that got to do with adultery?

Mr. Deputy-Speaker: He is trying to connect it in this way, that conditions in this country have not come to that stage where women can be treated equally with men. We are not treating them in other spheres equally. Why should we enforce this equality here? This is the argument of the hon. Member.

Shri Tek Chand: Is it not an offence for men?

Mr. Deputy-Speaker: He may differ from him.

Shri K. K. Basu: Thank you very much. I was saying that we have not come to that stage when there can be this sort of equality for punishment between man and woman.

[Shri K. K. Basu]

Let me give one more example. If my hon. friend, Shri Tek Chand, had gone—before the new law was passed—and remarried or married a second time—I do not mean to say that he would do it—against the wishes of society, what would have happened? On the other hand if any woman would have done so, what would have happened? So, the condition of our women has not come to that stage when there can be equality of this kind.

Then take the case of widow remarriage. This law was passed 30 years ago. What is the number of widows who have remarried, in spite of the fact that this law has been there for such a long time?

We are all against this social vice. But if we want to extend this theory of equality of sexes, we must realise the background of our society and the background of the environment prevalent in our country. Therefore, I would like to tell the Mover, Shri Dabhi, that the time has not yet come when we should have this particular legislation in the statute-book of our land. Of course, these social vices and aberrations should not be indulged in. But we cannot base our argument on the theory of equality of the sexes for inflicting a punishment of this character.

Therefore, I would urge Shri Dabhi to withdraw the Bill. When the time comes for it, Parliament will certainly take notice of it considering all the prevalent conditions, and make the necessary amendment in the law, needed at that time.

Shri M. D. Joshi (Ratnagiri South): I have given notice of an amendment.

Mr. Deputy-Speaker: I will come to that.

Shri Raghunir Sahai (Etah Distt.—North-East cum Budaun Distt.—East): Mr. Deputy-Speaker, Sir, I am very grateful to you for having given me an opportunity to speak on this Bill. I admire the pertinacity of my hon. friend, Shri Dabhi, for having brought

forward this Bill once again before the House. It was in 1952 that he introduced a similar Bill in this House and, as he said in his opening speech, it was at my suggestion, as well as that of Shrimati Jayashri, that he was pleased to withdraw that Bill. And, we are grateful to him for having made that response. I may have to make a similar request on this occasion as well that he may be pleased to withdraw the Bill.

In introducing this Bill, he gave us certain very strong reasons according to him, for the adoption of this Bill. One of his reasons was that the authors who framed the Indian Penal Code, at the time of the introduction of the Code, gave certain reasonings with regard to the enactment of this clause; also with regard to the sub-clause that was introduced in section 497 that women should not be held guilty of any offence under section 497 or that they may not be punished. Those reasonings do not hold good now.

Another reason that he put forward was that now polygamy has been abolished and monogamy has been introduced and that the system of divorce has also been introduced.

Lastly, he referred to the provisions in the Constitution whereby it is strictly enjoined on us that there should be no discrimination between one sex and the other.

I would take these arguments seriatim. So far as the authors' commentary goes, I have no hesitation to say that many of the reasons that had been advanced by them then do not hold good now. But that cannot be said with regard to all the reasons that they had given. For instance, the state of literacy so far as our women are concerned in India at present is not satisfactory. Even now, although we have advanced to a very great extent, it can be said that our womenfolk, especially in rural areas, are not educated enough and the argument then advanced holds good even now.

It is true that by the enactment of the Hindu Marriage Act of 1955, polygamy has been abolished and monogamy introduced and the system of divorce has also been introduced. But, how many months have elapsed since that Act was passed and have we seen the reactions of that Act or have we seen the effects of that Act in the country? Has that Act changed our social customs, manners or ideas about social reforms? Let us wait and see how the Act is going to be enforced, whether it produces any social change in our habits and in our customs or not.

Then, he also brought forward the provisions of the Constitution. It is quite true that in articles 14 and 15 it is provided that there should be no sex discrimination. But I would request that the articles of the Constitution should not be stretched too far. With your permission, I will invite the attention of the House to the provisions of article 15 of the Constitution. You will find that in clause (3) it is provided that—

“Nothing in this article shall prevent the State from making any special provision for women and children.”

Now, what for has this provision been introduced, if not for the consideration that women require protection? Even in the Indian Penal Code we find a similar provision with regard to children. Before law courts, there may be no sex discrimination. But it cannot be said that our females or womenfolk have acquired all those qualities which menfolk possess. The state of literacy, as I said just now, is deplorable amongst women. Their helpless condition, their being of a weak nature, and their dependence all these things require such protection.

My hon. friend, Shri Tek Chand, in his usual vigorous and vehement style, the other day, quoted one example. I do not wish to repeat that example. But even if that example is said to be correct, does he mean to

say that adultery is so prevalent in this country as he makes it out to be?

Shri Tek Chand: Sir, it was not an example; it was an illustration to support the logic of my contention.

Shri Raghbir Sahai: That was only one example. I say that from that one example it cannot be inferred.....

Mr. Deputy-Speaker: The hon. Member (Shri Tek Chand) gave here only an illustration and yet the hon. Member took it as an example.

Shri Tek Chand: It was not a precedent.

Pandit K. C. Sharma (Meerut Dist.—South): It was not a fact.

Shri Raghbir Sahai: I stand corrected. It was an illustration. But that does not prove the rule, that adultery is so common in this country or that in a case of adultery it is always the woman who lures. I think that illustration.....

The Minister of Defence Organisation (Shri Tyagi): Talking from personal experience!

Shri Raghbir Sahai: I think that illustration does not make the case for the adoption of this Bill a strong one. In my own humble view, our womenfolk require protection still. If the worst happens and if, in a particular case, it is proved that it was the woman who was responsible for the case of adultery, well, now, under the Hindu Marriage Act, it is open to her husband, after getting that culprit convicted, to divorce that woman. By making this change, why do you compel the woman also to be convicted and be sent to jail? If she is divorced, she will have all the public opprobrium upon her and I think that will be sufficient punishment for her.

Sir, I do not think that the time is yet ripe for making this change in the Indian Penal Code. And, I would ask my friend Shri Dabhi who is very sober, very wise and very discreet, to think a hundred times

[Shri Raghuraj Sahai]

before he insists on the adoption of this Bill.

I hope he will be pleased to withdraw it this time as well as he did last time.

Shri M. D. Joshi: My amendment is that the Bill be circulated for the purpose of eliciting public opinion thereon by the 10th November, 1956.

Mr. Deputy-Speaker: I have seen the hon. Member's amendment, but my difficulty is that it is too late now to allow the amendment. The hon. Member perhaps gave notice on or about the 7th because it is printed in the list dated the 8th.

Shri M. D. Joshi: Two days back.

Mr. Deputy-Speaker: We started the discussion of this Bill last time and five Members have already spoken—Shri Dabhi, Shrimati Jayashri, Shri Sharma, Shri Tek Chand and Shri K. K. Basu, who continued his speech today. In that case, I can only allow this amendment if the Government is prepared to accept it; otherwise it will not be permitted.

The Minister in the Ministry of Home Affairs (Shri Datar): I am not accepting it.

Mr. Deputy-Speaker: I am sorry then the amendment is ruled out.

Shri M. D. Joshi: I would like then to speak on this Bill.

Mr. Deputy-Speaker: He will have his turn and he will be called.

Shri Dabhi (Kaira North): Before the discussion commenced today, he has given notice of his amendment. Can he not be permitted to move his amendment?

Mr. Deputy-Speaker: Suppose it is already discussed and only the reply is to be given, does the hon. Member mean that he has a right to send in a motion to have it circulated for eliciting public opinion thereon? That is not the case. I now call on Pandit

Bhargava. As time is short, let hon. Members be brief as I wish to accommodate four or five speakers on this Bill.

पंडित ठाकुर दास भार्गव (गुड़गांव) :
मिस्टर डायी साहब का बिल पढ़ कर मुझ को यह खयाल हुआ कि हम ने अपने कांस्टी-ट्यूशन (संविधान) में जो श्रौतों और मर्दों की बराबरी का सिलसिला रखा है वह बहुत दूरी तक जाने वाला है। लेकिन जब मैं ने दफा (घारा) ४९७ ताजीरात हिन्द को गौर से पढ़ा तो मैं ने देखा कि इस में तो ईक़्वालिटी (समानता) की कोई ऐसी चीज़ नहीं है जिस के लिये कि डायी साहब कानून में तरमीम करवाना चाहते हैं। जनाब अग़र दफा (घारा) ४९७ को देखें तो मुलाहिजा फरमावेंगे कि यह एक अजीब तरह की दफा है। इस में शुरू में ही लिखा है :

"Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man..."

इस में जो ज़ुर्म दिया गया है उस के साथ जो नाभिनेटिव है वह मर्द है। वह ऐसा ज़ुर्म है जिस को मर्द ही कर सकता है, वह ऐसा ज़ुर्म नहीं है जिस को कि औरत भी करे।

Shri Tek Chand: Is it a unilateral offence?

पंडित ठाकुर दास भार्गव : आप मज़ कीजिये मैं बतलाता हूँ। आज कानून क्या है ? आज अग़र एक शक्स, चाहे वह ब्याहा हुआ हो या बिना ब्याहा हुआ हो, किसी दूसरे की बीवी के साथ एडल्टरी (व्यभिचार) करे तो वह मुजरिम है, लेकिन अग़र कोई ब्याहा हुआ आदमी किसी अनमैरिड गर्ल या विडो के साथ बेसुअल इन्टरकोर्स (सम्भोग) करे तो कोई ज़ुर्म नहीं है। जह तक मैरीटल रिश्तेन्स (बैवाहिक सम्बन्ध) का मवाल है यह बीवी के बिनाफ ज़ुर्म

कि एक धादमी वैडलाक (विवाहित धवस्था) में होते हुए भी किसी गैर धौरत के साथ जा कर मुजामअत (सम्भोग) करे। लेकिन धमी तक मेरे दोस्त ने ऐसी कोई तरमीम पेश नहीं की है कि जिस में यह कहते कि एक धौरत और एक मर्द में एक तरह का मुआहिदा है कि जब तक उन की शादी कायम है एक मर्द दूसरी धौरत के पास नहीं जा सकता। लेकिन यह उन का बिल नहीं है। उन का बिल तो यह है कि कोई शस्स जोकि चाहे शादीशुदा हो, अग़र वह जा कर किसी विडो के साथ या अनमैरिड गर्ल के साथ इंटरकोर्स (सम्भोग) करे तो कोई जुर्म नहीं है। तो मैं अदब से अर्ज करूंगा कि कोई चीज ईक्वालिटी (समानता) की नहीं है। ईक्वालिटी (समानता) के लिहाज से अग़र कोई विवाहिता स्त्री रंडवे या कुंवारे से अडल्टरी (व्यभिचार) करे तो जुर्म न होना चाहिये। और फिर क्या जुर्म है ? लिखा है :

“Without his consent or connivance”

यानी अग़र उस के खाविद की मर्जी हो तो भी कोई जुर्म नहीं है।

श्री त्यागी : धरे क्या बात करते हो।

पंडित ठाकुर दास भार्गव : हमारे त्यागी जी को इन रमूज से क्या मतलब। उन को क्या खबर कि दुनिया में क्या होता है। लेकिन सेक्सन (धारा) में यह लिखा है : “without his consent or connivance” अग़र आप को यह चीज पसन्द नहीं है तो इस सेक्सन ४६७ को हटा दीजिये। लेकिन जब तक यह कायम है तब तक तो इस के मानी यही है कि एक शादीशुदा धौरत के पास जाना उस के खाविद के खिलाफ जुर्म है, धौरत के बखिलाफ नहीं है न सोसड्डी के बखिलाफ है। तो मैं निशयत अदब से अर्ज करना चाहता हूँ कि जहां तक ईक्वालिटी का सवाल है, दफा ४६७ में ईक्वालिटी का

सवाल पैदा ही नहीं होता। और इस का उक्त न करे तो अच्छा है।

मैं जानता हूँ कि हमारे धर्म शास्त्रों के अनुसार धौर हिन्दू और मुसलमानों के परसनल ला के अनुसार पुराने जमाने में अग़र कोई धौरत इस तरह से बिहेब करे यी तो उस को सजा दी जाती थी।

Shri Tek Chand: Punishable with death.

पंडित ठाकुर दास भार्गव : अग़र आप यह कहते हैं तो मैं आप की तबज्जह फ़ाइस्ट साहब की एक मशहूर कहानी की तरफ़ दिलाना चाहता हूँ। एक दफा एक ऐसे शस्स को उन के पास लाया गया और कहा गया कि इस धादमी ने अडल्टरी (व्यभिचार) का जुर्म किया है इस को सजा दी जाये। उन्होंने ने कहा कि इस को पत्थर मार मार कर मार दिया जावे, लेकिन इस के वही धादमी पत्थर मारे जोकि कभी इस जुर्म का मुर्तकिब न हुआ हो। और नतीजा यह हुआ कि उस को पत्थर नहीं मारे गये।

इस को छोड़ दीजिये कि पहले जमान में क्या होता था। अग़र आप ईक्वालिटी की ही बात करते हैं तो मैं कहता हूँ कि सैकड़ों धौर हजारों वर्ष तक हमारे देश में धौरतें अपने मरे हुए पति की चिता में जलती रही हैं। अग़र आप ईक्वालिटी की बात करते हैं तो सिर्फ़ ५० साल तक ही अपनी मरी हुई धौरतों के साथ जल के दिखा दीजिये। इस के अलावा हजारों बरस से आप जानते हैं कि धौरतों की फाइनेन्शल पोजीशन क्या रही है। अग़र आप ईक्वालिटी चाहते हैं तो कुछ अर्से के लिये लड़कों के बजाय लड़कियों को कोपासोनर (समांथी) बनने का हक दे दीजिये और फिर देखिये कि क्या होता है। तो जहां तक ईक्वालिटी का सवाल है, कभी धौरत और मर्द में न ईक्वालिटी

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थी और न अभी बहुत बरसों तक आने वाली है ।

अब सवाल यह पैदा होता है कि आखिर इस जुर्म को किस निगाह से देखा जाये । इस हाउस में कोई ऐसा शस्त्र नहीं होगा जोकि यह कहे कि ऐसा फेल करने वाला, आदमी या औरत जुर्म नहीं करती । लेकिन सवाल यह है कि औरत को इस जुर्म में सजा दी जाये या नहीं । मेरा यह कहना नहीं है कि यह फेल कर के वह जुर्म नहीं करती । सवाल सिर्फ यह है कि उस को अब्बेटर (दुस्साहक) करार दिया जाये या नहीं । इस के बारे में मैं सब से पहली चीज यह अर्ज करना चाहता हूँ कि ६६ केसेज में औरत की तरफ से जुर्म की शुरूआत नहीं होती, बल्कि मर्द की तरफ से होती है । बहुत कम केसेज ऐसे होंगे जिन में कि औरतें ऐसे फेल के initi tive की मुर्तकिब होती हो । मैं जानता हूँ कि इस गिनती में कुछ प्रास्टीट्यूट्स (वैष्यायें) आ सकती हैं या वे औरतें आ सकती हैं जिन को कि उन के नीचे आदमी अपना कुछ काम करवाने के लिये दूसरों के पास भेज देते हैं । लेकिन इन एक्सेप्शन्स (अपवाद) के लिये आप क्यों उस कानून को जो बहुत बरसों से हमारे यहां चला आ रहा है तबदील करवाना चाहते हैं । सवाल यह नहीं कि यह फेल जुर्म है या नहीं । मैं नहीं कहता कि यह कोई बुरा फेल नहीं है । सवाल यह है कि जो चेंज करवाना चाहते हैं वह चेंज जरूरी है या नहीं ।

मैं जनाब की तबज्जह (ध्यान) एक और चीज की तरफ दिलाना चाहता हूँ । हमारे हाउस ने एक कानून पास किया है, हिन्दु ला आफ मैरिज । उस के अन्दर एडल्टरी (व्यभिचार) को काफी अहमियत नहीं दी है । उस में यह करार दिया गया है कि सिंगिल ऐक्ट आफ एडल्टरी (व्यभि-

चार का एक कार्य) डाइवोर्स के लिये काफ़ी बजह नहीं है । मैं अदब से अर्ज करना चाहता हूँ कि जब आप अपने सिविल कानून बनाने में एडल्टरी को इतना बुरा नहीं समझते और एक सिंगिल ऐक्ट आफ एडल्टरी को डाइवोर्स (विवाह-विच्छेद) का बेसिस नहीं मानते, तो फिर आप किस तरह से कह सकते हैं कि इस जुर्म में औरत को अब्बेटर (दुस्साहक) करार दे दिया जाये । जब आप ने यह ऐक्ट बनाया तो आप ने इस चीज को तबदील नहीं किया और यह चीज अब भी हिन्दू ला आफ मैरिज में मौजूद है कि : If a person is living in adultery. : उसी वक्त डाइवोर्स का बेसिस (आधार) बन सकता है, एक सिंगिल ऐक्ट काफी नहीं है । आप ने जब शादी का कानून बनाया तो आप ने यह शर्त नहीं रखी कि औरत वजिन (कंवारी) होनी चाहिये और आदमी ब्रह्मचारी होना चाहिये । इसलिये मैं अदब से अर्ज करना चाहता हूँ कि क्या इन हालात में यह वाजिब है कि इस कानून को जोकि इतने बरसों से चला आता है हम चेंज कर दें ।

मैं उन बज्जहात को नहीं मानता जोकि आथर्स आफ इंडियन पीनल कोड ने पीनल कोड बनाते वक्त लिखी थीं । उन्होंने ने जो बज्जहात लिखी हैं वे आज ठीक नहीं हैं । मैं जानता हूँ कि चाइना में, फ्रांस में, पंजाब के फ्रंटियर्स में, बलोचिस्तान में और दूसरी जगहों पर ऐसा जुर्म बनाया हुआ है, लेकिन मेरे वास्ते यह चीज काफी नहीं है । जब ६ जगह में बतलाते कि ऐसा है तो उस के मानी यह हुए कि सारी दुनिया और हिन्दुस्तान में यह जुर्म नहीं है । जो लोग कहते हैं कि फलां फलां जगह है, वे यह भी कहते हैं कि दूसरी जगह यह जुर्म नहीं है । मैं बतली करता हूँ तो मैं बाक़ी सारी दुनिया के साथ गलती करता हूँ जहां कि इस तरह की चीज को जुर्म नहीं करार दिया गया है । ऐसा

जुर्म आम्र तौर पर साबित होना मुश्किल है और अगर यह साबित भी हो तो हम को देखना यह है कि आज औरत को कोई सजा होती भी है या नहीं। मर्द को तो ७ साल तक को बंद हो सकती है, औरत को क्यों छोड़ देते हैं, यह प्रोग्रामेंट (तर्क) बन सकता है, लेकिन मैं पूछना चाहता हूँ कि उस फेल के बाद औरत का क्या हाल होता है इस का भी आप को पता है? पहली बात तो यह है कि बायोलाजिकल अर्ज (आकांक्षा) आम्र तौर से औरत को पहले नहीं आती, दोयम उस को कंसेप्शन (गर्भ) हो सकता है और उस के बाद वह अपने जिस्म पर कितने अर्से तक बंड एफैक्ट्स (बुरे प्रभाव) को रखती है और बच्चा अगर उस के पैदा हो जाय तो वह मेंटेनेन्स (संभारण) की जिम्मेदार है। मर्द तो यह कह देगा कि मेरा उस से कोई वास्ता नहीं है और मुझे कुछ पता नहीं है।

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इस के अलावा जैसे हमारे सोशल (सामाजिक) हालात हैं उन को देखते हुए हमारी सोसाइटी (समाज) में ऐसी औरत को कोई जगह नहीं मिलेगी, रिस्पेक्टबल सोसाइटी (सम्मानित समाज) में ऐसी औरत को कहीं जगह नहीं मिल सकेगी और उस की सोशल इम्प्रेस (अपमान) काफी होगी और ऐसी औरत को कोई भी रिस्पेक्टबल लाविंग अपने घर में नहीं रखेगा और ऐसी औरत की हालत नागुफताबेह (अवर्णनीय) हो जायगी। अलबत्ता ऐसे आदमी जोकि बहुत नीचे होते हैं और खुद अपनी औरतों से पेशा कराते हैं उन लोगों के वास्ते अगर आप यह कहें कि उन पर सख्ती हो तो मैं उस को मानता हूँ लेकिन सारी सोसाइटी के रूल्स चेंज करने के वास्ते, इतने वर्षों से जो हमारा कानून रायज है उस में इस तरह की एक बेसिक (मूल) तबदीली करने के वास्ते मैं तैयार नहीं हूँ। इस वास्ते मैं अदब से अर्ज करूंगा कि जहाँ

तक इस बिल का सवाल है मैं चाहता हूँ कि इस को यहाँ पर ही खतम किया जाय और सारे हिन्दुस्तान भर में इस को सर्कुलेट न किया जाय। कोई जरूरत देश से इस बारे में राय पूछने की नहीं है। क्या हमें पता नहीं है कि इस तरह के बिल का लोगों के दिल पर क्या असर होगा। मैं श्री डाभी का मशकूर हूँ कि वह ऐसा बिल हमारे सामने लाये और इस बिल के लाने में उन की मंशा यह है कि देश के अन्दर वह जुर्म न हो और इसी वास्ते उन्होंने यह बिल मजूरी के लिये हाउस के सामने पेश किया है। मुझे उन के साथ हमदर्दी है और मैं भी वही चाहता हूँ जो वे चाहते हैं लेकिन मेरे सामने सवाल सिर्फ यह है कि मैं अपने देश के कानून को जो इतने वर्षों से चला आया है और जिस के बिना खलाफ कोई सख्त शिकायत नहीं हुई, उस को मैं चेंज करूँ या न करूँ और आर्थर्स आफ दी कोड (संहिता के लेखकों) ने ज़रूर लिखा है सोसाइटी में औरतों की कंडीशन्स (परिस्थितियों) के लिहाज से पैनल बेट (दंड सम्बन्धी जोर) डालू या न डालू, आर्थर्स आफ दी कोड ने ऐसा लिखा है। अभी हमारा देश में ऐसी हालत नहीं बनी है कि औरत और मर्द बिलकुल बराबर हो गये हों, औरत अभी तक मर्द के मुकाबले में नहीं आ पाई है। अगर मुकाबले में हो, तो मैं अर्ज करूंगा कि पहले आप उन लाज (विधियों) को चेंज कर दीजिये कि अगर मैरिड (विवाहित) आदमी कोई ऐसा फेल करे जो बीबी के मैरिटल राइट्स के खिलाफ हो, तो उस को सजा हो जानी चाहिये। आप इस तरह का ला बनाइये कि अगर कोई शादीसुदा आदमी किसी औरत के साथ सेक्सुअल इंटरकोर्स करे, तो उस को सजा होनी चाहिये

संसद, कार्य मंत्री (श्री सत्य नारायण सिंह): जिस की शादी नहीं हुई है वह अगर ऐसा जुर्म करे तो क्या होगा ?

पंडित ठाकुर दास भार्गव : मैं जानता हूँ कि मंत्री महोदय किस गराज से इस तरह का सवाल मुझ से पूछ रहे हैं। ऐसी सूत्रत में कि जब एक मैरिज मैन है और दूसरी अनमैरिज गर्ल है या विडो है और उन का आपस में ताल्लुक हो जाय तो वह जुर्म है या नहीं, तो इस की बाबत मैं उन को बड़े दुःख के साथ यकीन दिलाता कि कानून यह है कि वह जुर्म नहीं है, मोकि मोरेली (नैतिक दृष्टि से) वह उतना ही रॉग (बुरा) है। हालांकि यह कानून की निगाह में जुर्म नहीं है लेकिन यह मोरेली और सोशलली उतना ही रॉग है। हम सारे सोशल रॉस और मोरेल रॉस को लेजिस्लेशन (विधान) के जरिये ठीक नहीं कर सकते, इस वास्ते मैं भर्ज कहेगा कि बेहतर यह है कि इस बिल को वापिस ले लिया जाये।

Mr. Deputy-Speaker: These words have been addressed to Shri Satya Narayan Sinha; it should not be shown that they were addressed to me.

Pandit Thakur Das Bhargava: In one of the criminal cases, I found that one of the defences was that old men are not capable of these things.

Shri Satya Narayan Sinha: That is perhaps his personal defence.

Mr. Deputy-Speaker: We accept that.

Shri M. D. Joshi: I rise to support the Bill brought by my friend, Shri Dabhi. Much has been said especially by the last speaker, Pandit Bhargava, about the condition of society in India. When the I.P.C. was first framed, the law commissioners took up a particular view. They were actuated by considerations of humanity towards the condition of Hindu women in general. They say:

"They were married while still children; they are often neglected for other wives while still young. They share the attention of a husband with several rivals."

They were subject to the aristocratic and arbitrary rule of their husbands and therefore, it was very easy for them to be enticed by other men and to be the objects of attention of other men. Therefore, they said that it would not be proper to make a wife punishable for an act of adultery because she was so situated that it was impossible for her to resist the temptations offered by the third person. I shall quote another remark of the law commissioners:

"We are not visionary as to think of attacking, by law, an evil so deeply-rooted in the manners of the people of this country as polygamy. We leave it to the slow, but, we trust, the certain, operation of education and of time. But, while it exists, we are not inclined to throw into a scale, already too much depressed, the additional weight of the penal law."

They considered polygamy to be an evil and so long as that evil subsisted in society, they were not willing to make the wife a party to be punished. That was the condition when they tried to draw up a code, one hundred years ago.

What is the condition today? Have we not made any advance at all? Is the condition of our sisters the same now? Education has advanced. I do not hold the view that education makes a man virtuous. On the contrary, I would say that it makes men and women more sophisticated, and the percentage of virtue and vice is practically the same. Perhaps vice is more among the educated than among the uneducated. There are very religious and very virtuous people, people who have not swerved from the path of virtue, among illiterate and uneducated people and it is the pride of Hindu society that virtuous men and women abound even in illiterate classes. So education has got nothing to do with this. It was only a question of child marriage. Child marriage has been abolished practically, at least among the literate

and the so-called higher classes, Child marriage has not been completely abolished in the rural areas. Still, when we look at this law, I feel that this remark is a standing slur on Indian society. It was the Englishmen who took pity on the Indian woman and her condition. They came to her rescue. It was all very well, But, should the law stand as it is now? I do not agree with my good friend here, Shri Raghubir Sahai, when he says that it is a question of education. It is not a question of education. It is a question merely of child marriage.

Mr. Deputy-Speaker: Members of Parliament may be referred to as 'hon. friends' and not 'good friends', because there is a danger that some Member might be referred to as 'bad friend.'

Shri M. D. Joshi: I meant only 'hon. friend' Sir.

Then, Sir, I would like to draw the attention of the House to the remarks of the commentators on the law of crime. Messrs. Rattanlal and Tirath Ram say:

"The reasons given above for not punishing a wife as an abettor seem neither convincing nor satisfactory. It would be more consonant with Indian ideas, if the woman also were punished for adultery. Manu has provided punishment for her, and in France and China she is punished."

I do not know the present condition of China, but in the China of old she was punished. Then, they further point out:—

"In the Punjab Frontier Districts" The District from which my hon. friend comes.

Mr. Deputy-Speaker: But he does not come from the Frontier District.

Shri M. D. Joshi: I thought he was connected with Punjab. They say:

"In the Punjab Frontier Districts a married woman is punishable for adultery."

I, Sir, in all humility, would urge that when we allow a law to remain in the statute-book, it should be our attempt to see that it is perfect or that it is ideal; not that it should depart from the ideas of humanity but that it should be perfect, equitable and equal to all. Here it is not equal to all human beings and equal to all Indians. Therefore, I would urge that this last sentence, namely: "In such cases the wife shall not be punishable as abettor" is rightly sought to be dropped from the section by my friend Shri Dabhi and I think that it would be only just and proper for Government to accept this Bill.

Pandit K. C. Sharma: Mr. Deputy-Speaker, Sir, I am rather amazed at the logic of my friends who support the motion and I am much more amazed at the enthusiasm and the vigour with which they put their arguments. As my hon. friend Pandit Thakur Das Bhargava has said, it is a measure which is bad in conception, because the offence originates from the man going out of the wedlock and disturbing the sanctified relation of man and wife in another partnership. It is not that the woman is going to the man and disturbing the sanctified relations of the other pair. Therefore, by the very nature of the offence it is only the doer, that is the man, who can be convicted, not the woman, not the passive subject thereof. So it is wrong in conception.

It is also bad in logic, because we know, as my friend put it, that in 99.9 per cent. of the cases it is the man who runs after the woman by the very nature of the structure of society and by the very nature of relations between man and woman. It is not the woman who runs after the man.

Not only that. It is biologically incorrect to say that, because biologically the woman "better evolved, more tender and more helpless. It is

[Pandit K. C. Sharma]

the man who is crude, stronger and an active force in human life, because the man later on separated from the parent united cell. Sir, it is the secret of love, why the man runs after the woman. Primarily in the old primitive cell both the female cell and the male cell lived together. It was after a further evolution that the female cell separated itself and that is why the male runs after the female.

Mr. Deputy-Speaker: The hon. Member is depending more on biology than on psychology.

Pandit K. C. Sharma: So by the very biological evolution it is the man who is active and who would be criminal in this offence and not the woman. Therefore, it is wrong to say that the woman should be punished on account of the very structure of the society, the nature of offence and the biological development of the female and male.

Then, Sir, from the practical view point also it would be useless, because it is very difficult to prove that the woman got the man into trouble. Where do the women remain? Always in the house. It is the man who runs into the house of women. The women are not going to run into the house of another man. It is simply impossible to think of such a thing.

Therefore, taking all these things into consideration I think it is an ill-advised move and I would request my hon. friend to withdraw his Bill and not to press it. It does not do any credit to talk of these sorts of things here, which have not much utility and much commonsense behind them. I would, therefore, once again request him to withdraw it and not to press it.

Shri Achuthan (Cranganur): Mr. Deputy-Speaker, I entirely agree with Shri K. K. Basu in opposing this Bill which has been brought forward by my hon. friend Shri Dabhi. Shri Dabhi is noted for his realistic approach to all problems, especially the reconstruc-

tion side of the country. In fact, if you look into the questions put by Shri Dabhi during the last 4 or 5 years, you will see that he is more fond of rural reconstruction work, Ambar Charkha, Khadi development, rural industries, hand-pounded rice and things like that.

When I look into this Bill I find that he is thinking in that light. His objective nobody is questioning, but I do not know whether he has appraised the actual situation in the country—I mean in the rural and urban areas of this big country. In fact, nobody can oppose the principle. Everybody will agree that in this life, if there is an act of moral turpitude everybody concerned must be punished. But what is the position? Womanhood in this country, even now in this 20th Century, everybody will agree is weak and out of every 100, 99 of the women, let it be from the lower, middle or upper class, are weaker by nature than men. They cannot stand on their own legs. They are not able to take any decision on their own. That being the case, if at all something happens by the manoeuvrings or by the doings of men, to say that she should be dragged to the court and made to suffer along with men is not correct. On account of the offence, if she becomes pregnant, she has to deliver as well as live in prison. That itself is a sufficient punishment for her. Therefore, Shri Dabhi, naturally, has not that sympathetic attitude to this finer sex, whom we all adore. There are a good number of ideal women from the Puranas downwards. Moreover, this is not a regular offence in our society. Very rarely we see that such cases are brought to the court and the offenders convicted.

Therefore, let us wait. Let some more time pass. If at all a case is brought to court, as pointed by my friend Shri Raghubir Sahai, there is that social ignominy; there is that discredit. If at all she is dragged as one of the co-accused, even then, she is

boycotted not only in her own family but she becomes some sort of an object of ridicule in the whole society. There after, the standard itself lowers down. That is seen in everyday life.

So, the Bill is unnecessary at this time. Even, say, after 50 years, I cannot imagine a case where a woman is dragged to the court as an accused and is punished. I beg of the hon. Member to withdraw the Bill. If he does not, this Bill must be thrown out.

श्रीमती कमलेश्वरिणी शाह (जिला गढ़वाल—पश्चिम व जिला टिहरी गढ़वाल व जिला बिजनोर—उत्तर) : मेरा इस बिल पर बोलने का कोई विचार नहीं था लेकिन जिस तरह के विचार इस भवन में प्रकट किये गये हैं उनको देखते हुये मैंने यह अपना कर्तव्य समझा कि मैं भाई डाभी जी से निवेदन करूँ वह इस बिल को वापस ले लें। मैं चाहती हूँ कि आप इस बिल पर इस दृष्टि से विचार करें कि आपकी भी बहनें होंगी, आपकी भी बेटियां होंगी, आपकी भी भतीजियां होंगी तथा आपकी भी भाजियां होंगी और इस बिल के पास होने पर उन पर क्या गुजरेगी। आजकल औरतों की जो हालत है वह आपको मालूम ही है। आज हमारे देश में इतने ज्यादा बच्चे ब्राथल्स (बेध्या गृह) हैं, उसका क्या कारण है। अगर आज वे कायम हैं तो मैं समझती हूँ कि ये पुरुषों के ही कारण कायम हैं। जब औरतों के पास खाने के लिये कुछ नहीं होता है, पहनने के लिये कपड़ा नहीं होता है और वे भूखी मरने लग जाती हैं तो ही वे ब्राथल्स की शरण लेती हैं। आप चाहना मैं ही देखिये कि किस तरह से वहां पर ब्राथल्स समाप्त किये गये हैं। वहां पर इनको खत्म करने के लिये कौन जिम्मेवार है। मैं समझती हूँ कि वहां पर इनको जो खत्म किया गया है उसके लिये भी पुरुष ही जिम्मेवार हैं। यहां पर भी यह काम पुरुष ही कर सकते हैं इतना जुल्म औरतों पर होने के बावजूद भी अगर आप यह जुल्म और उन पर डाना चाहते हैं तो आप ही बताइये कि यह

कहां का न्याय है। यदि आज वे किसी के चंगुल में फँस जाती हैं तो जो उनकी बदनामी होती है, जो उनको सोसाइटी की तरफ से सजा मिलती है मैं समझती हूँ वह दंड बहुत काफी है। इस सब के ऊपर कानूनी सजा और उनको देना मैं समझती हूँ न्यायसंगत नहीं होगा। आज हमने कई विधेयक पास किये हैं। एक कानून हमने यह पास किया है कि घूस लेने वाले को तथा घूस देने वाले को, दोनों को ही सजा होगी। इसका क्या नतीजा हुआ है? अब न तो घूस लेने वाला ही बताता है कि मैंने घूस जी है और न घूस देने वाला ही बताता है कि मैंने घूस दी है। तो मैं समझती हूँ कि इस विधेयक का भी यही हाल होगा यदि इसको पास कर दिया गया।

अन्त में इतना ही निवेदन करना चाहती हूँ कि आप इस विधेयक को सोच समझ कर पास करें। आज औरतों को पहले ही से सजायें मिल रही हैं और उनको ज्यादा सजा देने की कोई जरूरत नहीं है। इस बिल को इस बात को ध्यान में रख कर, कि आपकी भी मातायें हैं, आपकी भी बहनें हैं, आपकी भी बेटियां हैं आपकी भी भाजियां हैं, और उनके ऊपर इस बिल का क्या असर होगा, पास करना चाहिये। मैं तो यही प्रार्थना करूंगी कि भाई डाभी जी इस विधेयक को यदि वापस ले लें तो बहुत अच्छा होगा और मुझे पूर्ण आशा है कि वह ऐसा कर भी लेंगे।

श्रीमती शिवराजबायी नेहू (जिला लखनऊ—मध्य) : मैं इस बिल का विरोध करने के लिये खड़ी हुई हूँ और मैं अपने भाई डाभी साहब से यह आशा करती हूँ कि वह इसको वापस ले लेंगे। जहां तक समानता की बात कही जाती है, मैं मानती हूँ कि आज समानता का युग है और यदि कोई पाप स्त्री तथा पुरुष दोनों करे, तो उसकी सजा भी दोनों को ही बराबर मिलनी चाहिये। परन्तु इसके साथ ही साथ मैं यह भी कहना चाहती हूँ कि यदि स्त्री बड़ी उम्र की है और

[श्रीमती शिवराजवती नेहरू]

वह फिर ऐसा पाप करती है तो वह इस तरह की सजा पाने की भागी है और उसको सजा मिलनी चाहिये। परन्तु इसके साथ ही साथ मैं यह भी कहना चाहती हूँ कि बहुत सी ऐसी घटनायें भी होती हैं कि छोटी छोटी लड़कियों की शादियां हो जाती हैं और उनके पति चूँकि दुष्ट होते हैं इस वास्ते उनको वे तंग करना शुरू कर देते हैं। साथ ही साथ स्त्री चूँकि अबला होती है इस वजह से भी उसके साथ बलात्कार हो जाती है। जब कभी कोई ऐसी घटना हो तो मैं समझती हूँ पुरुष को ही सजा मिलनी चाहिये न कि स्त्री को और उसे माफ कर दिया जाना चाहिये।

आपने बहुत बार अखबारों में भी पढ़ा होगा कि स्त्रियां स्टेशनों पर घ्राती हैं और वे रास्ता भूल जाती हैं और लोग उनको बरगला कर ले जाते हैं और उनकी इज्जत खराब कर देते हैं। जब इस तरह से स्त्री को कमजोरी का फायदा उठाना जाता है तो मैं समझती हूँ कि उसको माफ कर दिया जाना चाहिये और पुरुष को ही सजा मिलनी चाहिये। इन सब चीजों को ही ध्यान में रखते हुये पहले कानून बनाया गया था और उसमें संशोधन करने की कोई आवश्यकता मुझे प्रतीत नहीं होती है।

मैं आपको यह भी बतलाना चाहती हूँ कि आज हमारे यहां इस प्रकार का एक कानून बना हुआ है कि यदि कोई बड़ी उम्र की स्त्री भी जो कि शादी शुदा है किसी के साथ प्रेम करती है और यह सिद्ध हो जाता है तो पुरुष को अधिकार है कि वह उसको तलाक दे दे तथा घर से निकाल दे। जब कभी कोई स्त्री ऐसी बात करती है तो जैसा कि भार्गव साहब ने कहा कि जिस तरह की उसकी दशा होती है, वह सब को मालूम ही है। इसके साथ ही साथ स्त्री भी यदि उसका पति पर-स्त्री से या किसी लड़की से प्रेम करता है तो उसको भी यह अधिकार है कि वह अपने

पति को तलाक दे दे। अगर इतनी बात होते हुये भी कोई पुरुष अपनी स्त्री को घर से नहीं निकालता है तो आप को क्या ज़रूरत है कि आप उस स्त्री को सजा दें, मियां बीबी राजी तो क्या करेगा काजी। तो जब दोनों को ही तलाक देने का अधिकार है तो मैं समझती हूँ इस कानून की कोई आवश्यकता नहीं है। कानून की यदि आवश्यकता है तो अबलाओं के लिये है। इम वास्ते इस एब्टमेंट की बात को जो स्त्रियों पर भी लागू करने के लिये इस कानून में संशोधन करने का विचार प्रकट किया गया है, वह गलत है। जो मैं मांग कर रही हूँ यह निहायत वाजिब और ज़रूरी है और मैं डाभी साहब से प्रार्थना करती हूँ कि वह अपने बिज को वापिस ले लें।

श्री २० ६० मिश्र (जिला बुलन्दशहर) :

जिस वक्त यह ताजोरात हिन्द बना था उस वक्त इस बात को तसलीम किया गया था कि एडल्टरी (व्यभिचार) एक जुर्म है और स्त्री पुरुष दोनों पर एक ही तरह से लागू होती है। जुर्म बुरी चीज है, यह नहीं होना चाहिये। लेकिन जिन लोगों ने उस वक्त कानून बनाया उन्होंने इस में यह भी लिख दिया कि एब्टमेंट (दुरुत्साहन) के जुर्म में से स्त्री को निकाल दिया जाये। स्त्री को निकालने का उन्होंने एक कारण यह लिखा कि हिन्दुस्तान में पोलोगेमी है और औरत की पोखीशन जरा गिरी हुई है। क्योंकि हिन्दुओं में एक आदमी तो जितनी शादियां चाहे कर सकता है लेकिन उसके बाद उसे अपनी औरत को डाइवोर्स (विवाह-विच्छेद) करने का कोई हक हासिल नहीं था। इस चीज को देखते हुये औरत मजबूर हो जाती थी, क्योंकि ख़ाबिन्द तो उसके पास उसकी नैचुरल (प्राकृतिक) स्वाहिष को पूरा करने के लिये नहीं आता था, और उसको वह डाइवोर्स भी नहीं करता था। ऐसी सूरत में अगर वह इस तरह का जर्म करती थी तो

उसको बर्खा किया जाना चाहिये लेकिन मर्द को नहीं। इस तरह से यह कानून उस वक्त बना जब कि हिन्दुस्तान में पोलोगेमी (बहु विवाह प्रथा) थी। इस प्रकार एडल्टरी के लिये मर्द को मुजरिम करार दे दिया जाता है लेकिन धीरत को मुजरिम करार नहीं दिया जा सकता है। अब हम ने पोलोगेमी की प्रथा को हिन्दुओं में समाप्त करने का बिल पास कर दिया है और मौनोगेमी राज्य कर दी है। अब वह सूरत नहीं रही जो कि पहले थी। अब तो सब के लिये वहीं सिद्धान्त लागू होता है कि "आचार परमो-धर्मा"। यह स्त्रियों पर उसी तरह से लागू होता है जिस तरह से कि आदमियों पर होता है। या तो आप मुल्क में एडल्टरी की पूरी छूट दे दें कि मर्द भी कर सकता है और स्त्री भी कर सकती है और यह कोई जुर्म नहीं है। लेकिन अगर आप इस तरह से नहीं करते हैं तो यह जो सिद्धान्त मैंने बताया है यह दोनों पर एकसा लागू होता है और दोनों को इसका पालन करना चाहिये।

कानून इसलिये बनाये जाते हैं कि लोगों को डर रहे और वे जुर्म न करें। अगर सब अच्छे हो जायें और सब को ठीक शिक्षा मिल जायें और सब का आचरण ठीक हो जायें तो कानूनों की कोई आवश्यकता ही नहीं रह जायेगी और कोई जुर्म ही नहीं करेगा। अब भी जितने भी लोग हैं वे तमाम के तमाम जुर्म नहीं करते हैं। थोड़े से आदमी या धीरतें होती हैं जो जुर्म करती हैं और उन्हीं के लिये कानून बनाये जाते हैं। उनको डर रहता है कि अगर उन्होंने जुर्म किया तो उनको सजा हो जायेगी।

अब जुर्म क्या है। एबेंटमेंट की सूरत में स्त्रियों पर तो कोई जुर्म नहीं लगता है लेकिन आदमियों पर लगता है। अब अगर आप एबेंटमेंट (दुफ्लसाहन) की तारीफ को सुनें तो आपको पता लगेगा कि दफा १०७

ताजौरात हिन्द (भारतीय दंड संहिता) में दिया हुआ है :

"to instigate any person to do that.."

यानी अगर वह इन्स्टीगेट करे या बरगलाये जब कि दूसरा आदमी न चाहता हो। लेकिन अगर स्त्री दूसरे को जुर्म करने के लिये बरगलाये तो क्या वजह है कि उसको सजा न हो।

इसलिये अब अगर कोई धीरत बिल्कुल मिसरिप्रेजेंट (भ्रम फैलाना) करे और कहे कि मैं किसी की ब्याहता धीरत नहीं हूँ—और आदमी को यह मालूम न हो—और वह आदमी को अबल्ट्री के जुर्म करने के लिये इन्स्टीगेट करे, तो उस सूरत में उसको भी मुजरिम करार देना चाहिये। मैं समझता हूँ कि कानून का डर स्त्री और पुरुष दोनों पर होना चाहिये ताकि हमारे देश में अच्छे आदर्श स्थापित हों। मैं अर्ज करना चाहता हूँ कि इस मामले में ईक्वेलिटी (समानता) का कोई सवाल नहीं है। हमारा देश अब आजाद हो चुका है। अब जितने भी कानून बनाये जा रहे हैं, देवियों की मर्जी से और उनके हितों का ख्याल रख कर बनाये जा रहे हैं। इन हालात में अगर यह अर्मेडमेंट (संकोषण) मंजूर कर ली जायें, तो कोई नुकसान होने वाला नहीं है। मैं समझता हूँ कि सब इस बात से सहमत होंगे कि हमारे देश का कैरेक्टर (आचार) और आदर्श ऊंचा होना चाहिये, पुरुषों और स्त्रियों का आचार बहुत ऊंचा और उल्कृष्ट होना चाहिये और दोनों के साथ मुनासिब और बराबर का व्यवहार होना चाहिये। अगर किसी केस में यह साबित हो जायेगा कि किसी देवी ने इन्स्टीगेट किया है या मिसरिप्रेजेंट किया है, तब ही वह अबल्टरी की तारीफ (परिभाषा) में वह आ सकेगी और तब ही उसको सजा हो सकेगी। माननीय सदस्य श्री भार्गव के कहने के मुताबिक यह साबित करना बड़ा मुश्किल है। मैं यह कहना चाहता हूँ कि

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अगर यह मुश्किल है, तो उसको सजा भी नहीं होगी और अगर साबित हो गया, तो सजा हो जायेगी। इस प्रमेडमेंट को मंजूर करने का फायदा यह होगा कि स्त्रियों पर कानून का कुछ डर हो जायेगा। अगर होम मिनिस्टर साहब डाभी साहब का यह बिल मंजूर कर लें, तो अच्छा है और अगर न करें, तो हरि अच्छा।

Shri Datar: It is not possible for me to accept this Bill at all for a number of reasons. In the first place, the time has not come for changing the law as it stood about 100 years ago. It is said by hon. Members who support this Bill that there ought to be equality before law. I would point out to this House that even in the Constitution, it has been definitely stated that so far as the women and the children are concerned, it is perfectly open to this Parliament and the State Legislatures to make special laws regardless of the general principles of equality or non-discrimination laid down there. Even as late as 1950, the Constituent Assembly was of the opinion that Indian women deserved a larger measure of consideration than perhaps the women in other countries or men in this country. We have to take this particular circumstance into account.

We are also told that women are educated and enlightened to a large extent and that they stand on a par with the men in India. That is not correct. So far as the urban conditions are concerned, it might be true that there is a large measure of education spread among women; but, if we go to the large rural side, we find that the conditions of women are far from satisfactory and they are almost miserable to a large extent. The law that is sought to be made or changed would be applied to the people in the rural areas also. In all such cases, we have to take into account the correct viewpoint and not be misguided by theoretical considerations.

It is true that in the Indian society, as in other societies, constancy or a sense of faithfulness in life to the other partner in life is always essential. That is the reason why in India, great stress is laid on maintaining the highest fidelity not only among women, but also among men. Often times we say that पतिव्रत्य is a great virtue; but, we know that एक पत्नी व्रत was also an

injunction that was laid down upon us by our ancestors. Therefore, in all these cases, whenever the question of fidelity arises, it is more a matter for the society to take the circumstances into account, rather than for the law to intervene in such cases, because the intervention of the law might lead to certain evil consequences. So, for the preservation of the purity of the family, fidelity has to be maintained by men as well as women. In case of infraction of this social law, the question arises as to whether we should make it a part of the penal law of the land. But in such cases, the best course would be to leave it to the society. That is the experience not only in India but in other countries as well. When a particular person—man or woman—is guilty of such an offence against the other partner, naturally it is the society which takes the particular circumstance into account and the greatest punishment would be by way of social obloquy. That is the principle which has been followed everywhere, and in the majority of the nations of the world, adultery is not an offence at all, except in France and China. Perhaps in old China, as my friend pointed out, adultery is an offence so far as men are concerned. In all the other advanced countries of the world, adultery either by men or women has been left to the society, because social sanctions are more effective. We know of cases where persons guilty of such offences had to suffer greater obloquy from the social restraints than from proceeding to the court of law.

It might be understood that when the first draft of Indian Penal Code was prepared, adultery was not included as an offence at all. In fact, there is now a trend in some countries that adultery should not be an offence at all even so far as men are concerned. The guilty persons—men and women—should be left to the injunctions of the society and the punishment afforded by the society would prove to be highly effective. But, when the first draft of the Indian Penal Code was prepared adultery was not recognised as an offence even by men. In those days about 100 years ago, it was considered that the penal law of India would be complete without providing for the offence of adultery so far as the men were concerned and therefore, the framers of the Code did not include adultery as an offence punishable under law. The matter was then referred to the second Law Commission. As my lawyer friends will find, this matter was considered a number of times very carefully and ultimately, in regard to a certain measure of public opinion. It was of adultery—not in the extreme form considered that a limited form in which we find it in France and a few other countries—should be recognised as an offence under the Indian Penal Code. This offence was recognised for the sake of maintaining the social purity of the particular married family. Therefore, what was done was this. Adultery was not recognised as an offence when it was committed with a virgin or an unmarried woman or a widow. If adultery has been committed with a widow it is not an offence.

Shri Tek Chand: It is impossible:

Shri Datar: What I am pointing out is that adultery or faithlessness committed by a man with a widow or with an unmarried girl was taken away from the purview of the definition of adultery. That is what the hon. Member should understand. He takes the word "adultery" in the Indian sense. Take it in the literal sense. The word "adultery" was brought within

the circumscribed sphere, namely, that adultery was an offence when, for example, a man had committed adultery with a married woman, while the husband was alive.

An Hon. Member: Now the definition of the word "Adultery" in the Indian Penal Code.....

Shri Datar: That is not the literal definition at all. The scope of adultery has been circumscribed in the definition of 'adultery' in the Indian Penal Code.

Shri Tek Chand: And also in English

Shri Datar: I may correct my hon friend.

Mr. Deputy-Speaker: It is not the definition of adultery that is the issue now.

Shri Datar: What I would point out to the hon. Member is that the scope of adultery is an offence on the Indian soil is of a limited nature and perhaps we might think in the other direction of taking it away—I am not here pointing out anything on behalf of the Government; I am only referring to a trend of opinion—from the purview of penal offence. It should be treated as a social wrong and naturally certain other proceedings might be taken—divorce or judicial separation or certain other relief allowable under the civil law. Therefore, if this circumstance is taken into account it would not be proper, especially in the present condition of womanhood in India, to make any change at all.

Secondly, we might also consider whether the offence is too grave and whether it is so prevalent. Adultery is not so prevalent in India as sometimes we are told it is. Then adultery is an offence which has been recognised as a social offence and, therefore, the Indian society would not tolerate adultery.

The question is, as an hon. Member put it, whether there ought to be the fear of the law. So far as the fear of the law is concerned, there is always a limit to the fear of the law. You cannot purposely

[Shri Datar]

create a society which lives always on fear. The sense of fear ought to be confined to certain acts. Therefore, I would submit that so far as this particular offence is concerned, the time has not come at all when the conditions of woman have improved to such an extent as to place man and woman on an absolutely equal footing. Under the circumstances, more harm will be done—that is why I am appealing to my hon. friend—than good. They may or may not commit an offence. But if, for example, these important words are taken away, then the section will be used as an instrument of oppression so far as women are concerned; at least it will be used as an instrument of blackmail. All these considerations will have to be taken into account and apart from all other considerations which I have pointed out—some others have also pointed out the same in a different way—I would submit that the time has not come for that and we have not progressed so much as some hon. Members think. We are told that monogamy has come. Monogamy has come only under the law. There are even now a number of husbands who have a number of wives still living. Therefore, it would not be proper to say that monogamy has come to stay. It has come to stay under the law. But it will be a matter of full fact only when all the husbands having a number of wives die. Let them live long. I and let their wives also live long. I would submit to the House that the conditions have not improved at all.

We are making very good changes so far as social legislation is concerned. We are also introducing good legislation. We have got, for example, cases where it would be open to a husband to obtain a divorce. Divorce itself is an evil, but it is considered as a necessary evil when the other party to the marriage acts in a way which will destroy happiness. Therefore, we have so much of divorces. So I

would submit that we should be extremely careful to interfere with the penal law of the land, a law which has been made about hundred years ago. It has stood the test of time. So far as this question is concerned, we should not think of making any changes because of our theoretical view that men and women are now on the same footing. Therefore, I would request my hon. friend Mr. Dabhi, who is somehow showing so much enthusiasm over this particular aspect for the last four or five years, to divert the enthusiasm to other better causes and at least out of a sense of chivalry, if not out of consciousness of the defects of the provision, and to respond gracefully to the appeal that has been made not by us but by the lady member.

Shri Tek Chand: May I seek a clarification from the hon. Minister?

Mr. Deputy-Speaker: The clarification has to be sought from Mr. Dabhi.

Shri Datar: I am prepared to answer any question.

Shri Tek Chand: Most probably the hon. Minister is aware that according to sections 99 and 100 it is justifiable homicide to kill a man who intends to disgrace his honour. A potential adulterer can be killed and it will be in the exercise of the right of self-defence. But to bring about a law whereby you can tell the adulterer: now that you have succeeded in committing the offence not only I cannot kill you but I cannot even send you to the jail....

Shri Datar: The analogy is absolutely fallacious.

Mr. Deputy-Speaker: It was only a suggestion to be brought to the notice of the Minister—not a clarification.

Shri Dabhi: At the outset I am thankful to some of my hon. friends who have supported me in this Bill.

In spite of the arguments advanced by my hon. friends who have opposed this Bill, I submit that I do not consider any one of those arguments to be sound. I congratulate some of our hon. Members who have come to the help of the fair sex. But I may remind them what my sister Shrimati Jayashri said on the last occasion. Hon. Member wants to give them special protection and want us to have some sympathy for them. But I submit that under the present circumstances it is against the self-respect of woman to ask for discrimination. These are the words which were used by my sister, Shrimati Jayashri:

"I would like to say that we are willing that man and woman should be put on an equal footing."

Mr. Deputy-Speaker: But today two ladies have spoken against it.

Shri Dabhi: Whether they subscribe to this or not, I subscribe to this view. The Minister in the Ministry of Home Affairs gave some reasons. At first he said that we not only want *ekapati vrat* but *eka patni vrat* also. Therefore, I say that if we believe in *eka patni vrat* and *eka pati vrat*, those who do not observe *eka pati vrat* should also be punished. Why do you want to punish only men? I do not understand the logic behind this. Then, the hon. Minister said that the reason or the ground given by the authors of the Penal Code was that polygamy was extensive at that time and so they did not think it was proper to punish the women. Some of the hon. Members including the hon. Minister seem to think that still polygamy exists to a very large extent, but I have here the authority of the Census report of 1951, that is even before the Hindu Marriage Act was passed. It is stated at page 75, Census of India, Volume I, Part I-A as follows:

"Polygamy though it exists is known to be very rare. Out of

every 10,000 persons in India, there are 2,353 males for every 2,357 married females."

So, practically it is non-existent.

Shrimati Shivrajvati Nehru: But men may have unmarried wives.

Shri Dabhi: Everybody knows that that argument does not hold good.

Mr. Deputy-Speaker: The time allotted has already been exceeded. We should not indulge in this.

Shri Dabhi: Anyhow, though my sisters have appealed to me to withdraw this Bill, I think they would also respect my conviction. The hon. House is at liberty to reject my Bill, but I am convinced it is absolutely necessary that this discrimination should be done away with. With due respect to them I do not withdraw my Bill.

Shrimati Jayashri said that section 497 should be done away with. The hon. Minister seems to think that as it is a social offence and as adultery as an offence does not exist in so many countries, the whole section should be done away with which makes adultery an offence. I do not quite agree with that, but let either this discrimination be removed or if the hon. Minister is amenable let them do away with the section.

Mr. Deputy-Speaker: That could be considered if the hon. Member brings a fresh Bill.

The question is:

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

The motion was negatived.

UNEMPLOYMENT RELIEF BILL

Mr. Deputy-Speaker: We now proceed to the next Bill. Shri V. P. Nayyar.