

[Shri Datar]

Bill—in the first instance it should be for a period of 48 hours. Let him say that it should be for a period of seven days. Why should we have an outer limit of two months, which I am opposing? If it is to be extended beyond two days or, if he chooses, beyond seven days, then there must be sufficient reasons. If there are sufficient reasons, as I have already mentioned, like danger to human life, danger to property, if such things are there, then I concede there can be an extension. But if on the report of a police officer or a report of any other officer an *ex parte* order is to be issued, the matter is no longer in the hands of the executive and it must go to an impartial person. That is why I have suggested the State Government. I am not saying that every issue must come to the Central Government. If you see the wording of my clause carefully, I said the State Government must come into the picture and that the High Court, the judiciary, must come into the picture and then if they are satisfied, then and then only the order can be extended.

16 hrs.

That was the purpose. So, as I have stated, because these four sections have been used for suppressing legitimate and lawful agitations and for suppressing even political parties, modifications and safeguards are necessary. That is the limited purpose with which the Bill has been brought before the House.

I am really happy to see that five or six hon. Members who participated in this debate have welcomed it except the hon. Minister who chose to play some other tune.

Mr. Chairman: I shall now put the motion to the vote of the House.

Shri Braj Raj Singh: Sir, at least when the motion is put to the vote of the House there must be quorum.

Mr. Chairman: There is quorum. Anyway, I am having the bell rung. Now there is quorum.

The question is:

“That the Bill further to amend the Code of Criminal Procedure, 1898, be taken into consideration.”

The motion was negatived.

16.04 hrs.

ARREST OF MEMBER

Mr. Chairman: Before we proceed with the next item of business, I have a brief announcement to make.

I have to inform the House that at 1.50 P.M. today the Speaker received the following telegram from Bombay dated the 24th February, 1961 (the name of the sender not stated in the telegram):

“Shri Prabhu Narain Singh, Member, Lok Sabha, courted arrest defying Police Commissioner’s prohibitory orders banning processions and unlawful assemblies to Raj Bhavan on 23rd instant at 7.40. P.M. Details follow. Refused to go on bail on his personal bond.”

Shri Braj Raj Singh (Firozabad): The name of the sender is not there?

Mr. Chairman: It has perhaps been mutilated in the course of transmission of the telegram. We will know when we receive the confirmation copy.

16.05 hrs.

HINDU MARRIAGE (AMENDMENT) BILL

(AMENDMENT OF SECTION 23)
by Shri Ajit Singh Sarhadi:

Mr. Chairman: We shall now proceed with the next item on the Order Paper. Shri Subiman Ghose..Absent. Shri Ajit Singh Sarhadi,

Shri Ajit Singh Sarhadi (Ludhiana): Mr. Chairman, Sir, I beg to move:

That the Bill to amend the Hindu Marriage Act, 1955 be taken into consideration.

This Bill is very simple and short. It seeks to amend section 23 of the Hindu Marriage Act, 1955 (Act 25 of 1935). The amendment which I propose is incorporation of sub-section (3) in section 23 of the Hindu Marriage Act. The new sub-section which I propose runs as under:

"In any proceedings under this Act, whether defended or not, if the court comes to the finding that the ground of the petition is the ground specified in clause (f) of sub-section (1) of section 10, or in clause (i) of sub-section (1) of section 13 and that such ground is false, it shall grant damages by decree in favour of the person defamed thus in the same proceedings upto a maximum of five thousand rupees, whatever be the fate of the petition on other grounds."

16.07 hrs.

[SHRI MULCHAND DUBE *in the Chair*].

As the House knows very well, there are two provisions in the Hindu Marriage Act, 1955, which deal with judicial separation and divorce. Section 10 deals with judicial separation and one of the grounds on which a spouse can claim judicial separation is given in clause (f) of sub-section (1) of section 10. It reads:

"Every party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the district court praying for a decree for judicial separation on the ground that the other party—

* * * *

has, after the solemnization of the marriage, had sexual intercourse with any person other than his or her spouse."

Of course, there are other grounds too, for example, grounds of desertion, grounds pertaining to disease and other things. But this is also one of the grounds on which a spouse can claim judicial separation. Similarly, in section 13 as at present you will find

that beside other grounds on which divorce can be claimed one of the grounds is that the other party, namely, the defending spouse, is living in adultery.

It has been seen from experience during the last five years that generally in a petition for either judicial separation or divorce, the party claiming such relief also puts in the ground that the other party is either living in adultery or has committed adultery. This ground is used so loosely that generally it defames the other person. I expect you to consider the effect of this. I believe this Parliament, while passing the Hindu Marriage Act and having this enactment in its supreme wisdom, did appreciate this and brought one of the sections here. That section is section 23, sub-section (2), which lays down:

"Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do, consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties."

The object of this is that divorce or judicial separation should not be given easily and the competent court should at the outset try to bring about reconciliation between the parties. My respectful submission is that in actual practice it has been extremely difficult to bring about any reconciliation between the parties because of the false and frivolous allegation of the kind which I have just now mentioned. Therefore I submit that if the object of this Act is that divorce should be the ultimate remedy and relief and the court should first try to bring about a compromise and reconciliation between the parties, there should be a deterrent in the Act. That deterrent I have proposed, namely, that wherever an allegation of the kind postulated in clause (f) of sub-section (1) of section 10 or in clause (i) of sub-section (1) of section 13 is made and is proved to be false and

[Shri Ajit Singh Sarhadi]

frivolous by that forum, namely, the relevant court, then whatever the result of a petition otherwise be the person who makes such defamatory allegations in a false and frivolous manner should be burdened with damages to the extent of Rs. 5,000.

Here it may be stated that the provisions of the Civil Procedure Code apply under section 21 of this Act. The Civil Procedure Code has a provision, Section 35A, which entitles the court to fix compensatory costs where the suit or application is false and frivolous. I concede that position. But, the application of Section 35A would only come in if the suit or the application fails whereas we have got to meet a contingency in circumstances where such a ground is put in or such an allegation is made along with other grounds and the petition may succeed on other grounds. Where a ground of a defamatory nature, which affects the character and the future career of the other defendant comes in, a deterrent is necessary and the power of granting deterrent damages should be given.

It can also be said that there is no bar to other remedies. I am taking a different contingency. It can also be said that a person who is aggrieved, against whom an allegation of the kind is made and has failed and has been held to be false and frivolous, he or she can go to a court of law and criminally prosecute under the law of libel. As the hon. House knows very well and as the hon. lawyer Members know, it will be very difficult. Firstly, it is a sort of a judicial proceeding. Secondly, to establish malice would be very difficult. Thirdly, it would be going to a different forum. It is having a sort of multiplicity of suits. To avoid that, the relevant and the very appropriate forum would be the one that has tried the petition. Because, it will be in a better position to judge whether an allegation of the kind is false or frivolous or not by seeing and appreciat-

ing the demeanour of the witnesses and others. If it comes to the conclusion that an allegation of the kind is false and frivolous, which pertains to the character of the other party, or the defending co-respondent, then, the courts should be vested with the power as proposed by me in my amendment, to give a decree for damages, whatever the result otherwise might be.

It may also be stated that there may be a suit for damages. The arguments that I have submitted about the first that is for taking out criminal prosecution equally apply to the suit for damages. Therefore, my respectful submission is that a person who is defamed in an allegation of the kind has got no other remedy except to bear this insult.

We have got to see it from another point of view, from the social aspect. It is very unfortunate that conditions have come to a stage where it is found that we should have an Act of the kind for judicial separation or divorce in Hindu society. For Hindus the marriage tie is sacred and indissoluble. This has been the practice for a long time. It has stood the test of time. But, with change and progress of society, it has been found that in certain circumstances there should be a release between the two on account of the eight reasons that have been given in sections 10 and 13, that is, in regard to judicial separation and also in regard to divorce. I do not contest that. I appreciate that justifiability and the reasonableness of the grounds that have been provided. These should be the grounds. My respectful submission is that it has been seen in our experience, and I believe the hon. Deputy Minister, an eminent lawyer that he is, with all the experience and judicial approach that he can bring to the case, would be aware, that allegations are made indiscriminately, not with a view to get judicial separation or divorce, but with the object of bringing in coercion so that there may be compromise or something of the kind. Therefore, my sub-

mission to this House is that we ought to make a provision of this kind in the Act whereby a person who is defamed in this manner should be protected and there should be a deterrent provision.

There is another aspect to which I have to draw the attention of the hon. House, that is, the set up of the society and the future of the persons who are concerned in such an unfortunate allegation. We have got a provision which says that proceedings of that kind should be *in camera*. As I have already said,—I may repeat with the indulgence of the House—we have also got a provision that there may be an attempt at reconciliation. If there is no deterrent of the kind which I propose, the reconciliation would become impossible. At least, in my experience, I have seen this wherever, in a case of the kind, an allegation of that nature is made in the petition either by the husband or by the wife, despite all efforts by the court, there has never been reconciliation, simply because it is considered, as hon. Members know very well, a sort of mental torture to make an allegation of the kind against the other spouse. Wherever that allegation is made, the relations between the parties get so much estranged, they get so much apart, that the provisions of section 23 subsection (2) become redundant, because of the allegation. Wherever in a petition such an allegation is not there, we have found that there is possibility of a compromise. Without taking much of the time of the House, I submit that the amendment which I have proposed is very simple and tries to meet a lacuna in the Act and it deserves considerations.

My hon. friend Shri Chuni Lal has sent an amendment that this Bill should be circulated for eliciting public opinion. I have not got the least objection and I accept that amendment also. I hope the hon. Minister would also accept it. This Bill may be circulated for eliciting public opinion.

Mr. Chairman: Motion moved:

“That the Bill to amend the Hindu Marriage Act, 1955 be taken into consideration.”

Shri Ajit Singh Sarbadi: I have said that I accept the amendment for circulation.

Shri Chuni Lal (Ambala-Reserved-Sch. Castes): Mr. Chairman, I move:

“That the Bill be circulated for the purpose of eliciting opinion thereon by the 15th July, 1961.”

Mr. Chairman: Both the amendment and the Bill are before the House.

Pandit K. C. Sharma (Hapur): Mr. Chairman, I oppose the Bill and the amendment thereto.

Shri Harish Chandra Mathur (Pali): How can he oppose without listening to the hon. Member who has put in the amendment?

Mr. Chairman: If he does not want to say anything, what can we do?

Shri Harish Chandra Mathur: He wanted to speak.

Mr. Chairman: Do you want to speak?

Shri Chuni Lal: Yes. I want to speak.

Shri Harish Chandra Mathur: Let us listen to his arguments.

श्री चूनीलाल : सभापति महोदय, यह जो हिन्दू मैरिज अमेंडमेंट बिल मेरे लायक दोस्त सरहदी साहब ने इस हाउस में रखी है, उसका मंशा मैं समझता हूँ बड़ा नेक है। लेकिन चूँकि इसका सम्बन्ध पब्लिक से है इसलिये मैं यह समझता हूँ कि इसको सरकुलेशन के लिये भेजा जाना चाहिए।

मुझे कानून से तो वाकफियत नहीं है लेकिन इस तरह के क्वेश्चन मेरे सामने आए हैं जिनमें पार्टीज इस तरह के इल्जामात लगाती हैं और उस सूत्र में कोर्ट को उनमें समझौता कराना भी कठिन हो जाता है। जब इस तरह के एलीगेशन किये जाते हैं करैक्टर के बारे

[श्री चुनी लाल]

में तो फिर आपस में समझौता नामुमकिन हो जाता है। इसलिए मैं यह समझता हूँ कि इस बिल की मंशा नेक होने हुए भी मैं यह ज़रूरी समझता हूँ कि इसको पब्लिक प्रोवीनियन के लिए संकुलित कर दिया जाना चाहिए। मुझे ख़ुशी है कि बिल के मूवर साहब ने मेरे इस अमेंडमेंट को मान लिया है।

Mr. Chairman: The Bill and the amendment are both before the House:

Pandit K. C. Sharma: I oppose the Bill, and I oppose the amendment. My reasons are these.

Marriage in India, particularly among the Hindus, has been considered for ages a spiritual tie, and as such, there has been, all through attached to it, a certain kind of sanctity which in other human relations is seldom found. It is common knowledge that the more a thing a valued, the more zealously it is guarded. You do not guard a storage of grain, but you guard, and perhaps with an armed guard, a storage of gold or jewels. So, it being a sacred tie between two persons, it has all through been zealously guarded. It is not only the legal duty of a partner to give the other partner his or her legal due, but it is also a social duty, it is also a part of the marital bond that it should appear to be so. He should give no cause for suspicion that he has been unfaithful.

My hon. friend says that allegations are made wildly. Allegations are never made wildly. The thing is that the situation is changing. What has been spiritual in origin, what has always had something inherently sacred in it has been reduced, in modern conditions, simply to a contractual bond. During transition, many unpleasant things happen, and the woman is generally the sufferer. It is too much to say that the woman sufferer will have the resources to prove the allegation. She is wronged, she feels it, she knows that it is true, but to establish the truth in a court of

law is a difficult problem, particularly for a helpless woman. So, to say that the woman should be forced to pay Rs. 5,000 is to say that justice should be denied to her.

It is, I think shocking for any thinking man that such a proposition should be accepted, or seriously considered. Therefore, with these few remarks I request my hon. friend to withdraw the Bill, not to press it, because it would be an almost inhuman act given the shape of legislation.

16.24 hrs.

Shri Achar (Mangalore): I support this Bill, and I feel it a very necessary amendment also.

The previous speaker brought in the idea that marriage is a sacrament under Hindu law.

Pandit K. C. Sharma: Everywhere it has been so.

Shri Achar: Yes, but unfortunately we have got an Act already. You have to remember this fact. If it had remained a sacrament, as my hon. friend wants to think, and there was no law on the matter, I can understand the argument. But when there is a specific Act on this branch of law, and when that gives an opportunity to make an allegation, absolutely baseless sometimes, in fact, to coerce the other party—I know it with my own experience.....

Shri Harish Chandra Mathur: The hon. Member's own experience, or his experience as a lawyer?

Shri Achar: Experience as a lawyer. I am talking about the allegations. I do not know why my hon. friends are intrigued about it. I say that we know it as practising lawyers that allegations are sometimes made with the sole object of coercing the other side. Now, what is the amendment that is suggested? It is that if the court comes to the conclusion that the allegation is absolutely false and frivolous and it has been made with

the sole intention of coercing the other party, then the court can make it penal and provide a deterrent punishment for that person. Of course, the benefit of doubt question is also there. It may be that the amount of fine suggested may be a little too high, namely Rs. 5000. That may be a matter for consideration.

I find that an amendment has been moved for circulation of this Bill. I do not know if circulation is at all necessary. Probably, reference to a Select Committee would have been sufficient. Whatever it be, the hon. Member Shri Chuni Lal has moved his amendment and if the hon. Mover accepts it, probably, some public opinion may be obtained on this Bill.

There are certain other things also which will have to be considered. There are other legal aspects of the question also. No doubt, in this Bill, a fine of Rs. 5000 is provided, but under the ordinary law, there are certain other remedies also which probably the party may be entitled to explore. So, an amendment may be necessary to add the words 'without barring any other remedies that the parties may have'. No doubt an averment made in a petition or in a counter-statement is privileged under our civil law. Still, the parties have the right to file a criminal complaint for defamation, for, certainly, it will amount to defamation. Such a right should not be taken away. I am not quite clear whether if we have this provision such a remedy will be barred. That also is an aspect which has to be considered. From that point of view, probably reference of this Bill to a Select Committee would have been sufficient.

So the two main aspects that will have to be considered are whether the punishment provided is too heavy and whether this will have effect on any other law. But one thing is certain, namely that this will have a very salutary effect on the parties. From that point of view, this Bill is not only useful but necessary. It will

have a salutary effect on the man or the woman who makes such allegations. More often it happens that it is the man who makes such allegations; sometimes, it may be the woman also that may make such allegations, but those cases may be exceptions. Whatever be the situation, it would have been necessary to consider this aspect of the question.

There is one more aspect which has struck me. The amendment as it has been proposed contemplates such allegations only in the petition. It does not contemplate allegations in the counter-statement that is filed by the other side. It may happen that the person who comes in defence, whether man or woman may also make such allegations. No deterrent penalty is provided for to cover such cases. Such counter-allegations also can be made by persons with the same object, namely somehow to coerce the petitioner to see that the petition is withdrawn. To avoid that contingency also, it is necessary to provide that frivolous and false allegations in a counter-statement also are penal. All these aspects will have to be considered.

No doubt, as the hon. Mover has said, to improve the position of law as it stands, this Bill is a necessary one, but I feel that the aspects which I have mentioned also will have to be considered, and probably some amendments may be necessary to deal with them.

On the whole, I support the Bill.

श्री० रणवीर सिंह (रहताक) : समा-पति जी, हिन्दू समाज में विवाह को निभाना एक बहुत बड़ा धर्म सम्झा जाता है. यहाँ तक कि एक समय था, जब कि हिन्दू समाज की बहुत सारी जातियों में जो बहनें नौजवान अवस्था में ही विधवा हो जाती थीं, वे फिर शादी नहीं कर सकती थीं और उनको सारी उम्र दुख में रहना पड़ता था। हिन्दू समाज

[श्री० रणवीर सिंह]

में विवाह को एक धार्मिक कर्तव्य की दृष्टि से देखा जाता था। मेरा सम्बन्ध किसी ऐसी जाति से नहीं है, जो यह मानती थी कि विवाह की गांठ को इनकी मजबूत समझा जाये कि भगवान भी अगर उनको तोड़ दे, तो भी उनके साथ चिपटा रहा जाये, जिसके परिणाम-स्वरूप वहमें सारी उन्म विधवा रहें। मेरी जाति और मेरे सेक्शन में शुरू से ही इन बात को माना जाता रहा है कि अगर कोई बहुत विधवा हो जाये, तो उनके दुःख को ज्यादा दिन तक जारी न रहने दिया जाये। लेकिन एक बका आया और कई कारणों से हिन्दू कोड बिल का प्रश्न उठा और इन सदन में उनके छोटे छोटे हिस्से बना कर हमने उसको कानून की शकल दी। उनमें से एक हिस्सा हिन्दू विवाह को विच्छेद करने के बारे में भी है। मैं समझता हूँ कि हमारे समाज में तलाक एक बहुत दूररे सिरे की बात है। जो समाज विवाह को इतना वजन देता हो और उसका सम्बन्ध धर्म से जोड़ता हो, वहां तलाक के बारे में मोचना कोई बहुत अच्छी बात नहीं है, और न ही कोई मोच ना है, ऐसा मैं मानता हूँ। लेकिन जिस तरह समाज में, देश में और जीवन में और बहुत सारे एक्सिडेंट होते हैं, उन तरह तलाक भी शादी के रिश्ते में एक तरह का एक्सिडेंट होता है। जिन बदकिस्मत घरों में ऐसा एक्सिडेंट होता है और खास तौर पर उन घरों में, जहां पति अपनी पत्नी पर, या पत्नी अपने पति पर अविश्वास करे यहां तक कि वह बर्न से च्युत हो गया है, मैं समझता हूँ कि वहां उन रिश्ते को कायम रखना कोई अकामन्दीकी बात नहीं है। वह पति या पत्नी अदालत में जाये, तो उन रिश्ते को किसी कानून के तहत जारी रखना आज के जमाने में अकामन्दीकी बात नहीं दिखाई देती है। इसलिए मैं मानता हूँ कि जहां तक इन विधेयक का ताल्लुक है, जैसा कि हमारे साथी, श्री सरहदी ने, महसूस किया है, वह बहुत ज्यादा बांछनीय नहीं है। मैं समझता हूँ कि थोड़े बहुत लोग ऐसे होंगे, जो

इनका नाजायज़ फायदा उठाते हैं। लेकिन समाज में हर एक कानून का नाजायज़ फायदा उठाया जायेगा। अगर उसकी रोक करनी है, तो हिन्दुस्तान जैसे मुल्क में पांच हजार जुराना रखना कोई समझ की बात नहीं है।

जहां तक इस बिल को सफुंजिट करने का सम्बन्ध है, आप जानते हैं कि जो भी बिल सफुंजिट किया जाता है, उनमें सरकार और देश का हजारों रुपया खर्च हो जाता है। मुझे यह ऐसा अहम चीज नहीं मालूम होती कि इनके बारे में लोगों की राय पूछी जाये। श्री आचार को इन बारे में जती तजुर्मा है, लेकिन वह तजुर्मा एक वकील के नाते है, परमन्तल लाइफ में जाती तजुर्मा नहीं है। इसी तरह और बहुत सारे साथी वकील हैं, जिनको ऐसे केमिज का तजुर्मा होगा। इसलिए मैं इनकी राय जानने के लिये बाहर भेजने की ज़रूरत नहीं समझता।

Shri Achar: I want to clarify a point. I said I have personal experience of such allegations,

Mr. Chairman: That is what he is saying.

Shri Achar: I am afraid I am totally misunderstood.

Ch. Ranbir Singh: He has totally misunderstood me.

हमारे मित्र, श्री सरहदी साहब, पंजाब हाई कोर्ट के माने हुए वकील हैं। और भी मेरे साथी हैं, जैसे श्री प्रताप सिंह दौलता हैं और दूसरे स्टेट्स के माने हुए वकील हैं। उनको ऐसे केमिज का तजुर्मा है। इसलिये इस बिल को बाहर लोगों की और वकीलों की राय जानने के लिए सफुंजिट करने की ज़रूरत नहीं है।

मैं इस बिल को प्रवर समिति को भी भेजने की ज़रूरत नहीं समझता। अगर इसमें

कोई जर्मनी रखना है, तो चार पांच सौ पये का फौसला किया जा सकता है। इसको किसी सिलेक्ट कमेटी के सुझाव करने, या देश में जनमत जानने के लिए भेजना कोई समझ की बात नहीं है और न ही यह इतनी अहम बात है

जहां तक इसके उसूल का ताल्लुक है, जिन्की मुखालफत श्री आचार ने की, उस को यह सदन और यह देश मान चुका है। एक चीज, जो जो समाज के लिए किसी तरह से अच्छी नहीं है, देश और समाज में फैलाना अच्छी बात नहीं है, हितकर नहीं है, अहितकर है। वैसे तो इस बिल की खरूरत नहीं है लेकिन अगर सरहदी साहब और दूसरे वकील बाहते हैं, तो दो तीन सौ जर्मनी रख दिया जाये और इसके मुताबिक जज साहब फौसला कर दें, तो कोई बड़ी बात नहीं है।

हमारे दोस्त ने कहा कि इस जर्मनी को इसलिये खरूरत है कि इससे समझौता हो जायगा। मैं समझता हूँ कि यह बात बिल्कुल गलत है। अगर समझौता होने लगे, तो चार हजार रुपया देकर कौन समझौता करेगा। श्री चुनीनाल जी कहते हैं कि झूठी-इल्जाम-तराशी नहीं होगी। इस देश में विवाह को धर्म के नाते बहुत ऊंचा स्थान दिया जाता है और इस तरह के इल्जाम के सिवाये कोई भी भाई विवाह के रिश्ते को तोड़ना नहीं चाहता। जब उसके टूटने का सवाल आता है, तो ऐसे झगड़े की वजह से ही आता है। एक दूसरे पर अविश्वास होता है, तभी लोग तलाक के लिये आते हैं। इसलिये इस बारे में सोच-समझ कर फौसला करना चाहिये, अगर इसको इस शकल में मन्जूर किया गया, तो वह पहले बिल के उसूल के विरोध में जायगा। इसलिये मैं इसकी मुखालफत करता हूँ।

श्री प्र० सि० बौलता (अज्जर) :
जनावे चेरमैन साहब, मैं सरहदी साहब के इस बिल की दाईद करने के लिये खड़ा हुआ

हूँ। हम जो वकील लोग हैं, और लेजिस्लेचर भी हैं और पब्लिक की राय लेकर भी आए हैं, समाज में हमारी एक अहम पोजीशन है। जुडिसरी और लेजिस्लेशन में जो कनेक्शन है, वह हमारे खरिये ही है। हमें तजुर्बा है कि इन केसिज में, जो हाई कोर्ट और सेशन्स कोर्ट में आते हैं—उससे नीचे तो वे आते नहीं—जज साहबान बार बार यह कहते हैं कि यह क्या ला बनाया हुआ है, अपने आपको सुपीरियर बताने के लिये आपने यह लास किया हुआ है, यह कैसा ला है, जिम में सुपरफ्लुअस एलीगेंसन्स लगाने के लिये कोई सजा नहीं है। अगर किसी पर कोई एलीगेंसन्स लगाई जाती हैं, तो उस बेचारी, या उस बेचारे, के लिये यह रास्ता खुला है कि वह दावा करे, लेकिन मुकदमे के दौरान लगाई गई एलीगेंसन्स के लिये डीफेंशन और हर्जनी की बात बनती नहीं है। जिन लोगों को जुडिसरी का तजुर्बा है, सरहदी साहब ने यह बिल लाकर उनकी तजुर्मानी की है। जज साहबान बार बार इस बात को प्वाइंट आउट करते हैं। अभी मुकदमा शुरू होता नहीं कि, जो एक शरीफ घर की औरत है, उस को कहा जाता है कि प्लेंट में, आर्जी-दावे में यह शिकायत है कि वह बदचलन है। इसका नतीजा यह होता है कि उसके मां-बाप फौरन अननर्ब हों जाते हैं प्लेंट में जो फालतू की इल्जाम-तराशी की जाती है, वह इन्साफ रास्ते में हायल हो जाती है। उस औरत क मां-बाप पहले ही डर जाते हैं और खाविन्द कहते हैं कि हम इसको ले जाते हैं। और आप इसे अदालत में ज्यादा न कीजिये। तलाक कई बार ऐसे भी हो जाता है, और इस तरह के इल्जामों को साबित करने की खरूरत नहीं होती है, किन्ही और वजूहात पर जो केस होता है वह दिस वे और दैट वे डिसाइड हो जाता है और इसका सबूत देना या न देना बेकार हो कर रह जाता है।

चेरमैन साहब मैं तजवीज करता हूँ कि यहां यह जर्मनी एकसेट कर लिया

[श्री प्र० सि० दीलता]

जाये तो बड़ी अच्छी बात है या कुछ न कुछ सजा फ़िवोलस इल्जामीवादी की हो जाये वर्ना यह सक्थुनेट हो जाना चाहिये ।

श्री बाल्मीकी (बुलन्दशहर-रक्षित- अनुसूचित जातियाँ) : सभापति महोदय, सरदार अजीत सिंह सरहदी जी ने जो एक छोटा सा बिल सदन के समाने रखा है और हिन्दू विवाह एक्ट की धारा २३ में संशोधन करना चाहा है, यह बहुत साधारण सा है । आर्य जाति ने विवाह को एक संस्कार माना है, धर्म माना है । किन्तु सदियों के बाद सारे देश की अवस्था और समाज की अवस्था बदल रही है और बदलती जा रही है । हिन्दू समाज में जो परिवर्तन आ रहे हैं उनके कारण एक प्रकार से हिन्दू विवाह कानून में समाय के अनुसार परिवर्तन करने के उद्देश्य से अनेक बार बिल यहां लाये गये हैं और पास किये गये हैं । किन्तु मैं समझता हूँ कि सम्बन्ध विच्छेद कई कारणों से होता है । उनमें से एक कारण सम्बन्धी आचरण लांछन है जिसके आधार पर विच्छेद सम्बन्ध हो सकता है । इस तरह का लांछन एक निर्बल पक्ष पर लगाया जाना बहुत ही हीन कार्य है । उस निर्बल पक्ष के बारे में ही मैं कुछ कहना चाहूँगा ।

हम देखते हैं कि हमारे समाज में पुरुष वर्ग आज भी नारी वर्ग पर हावी है और नारी समाज आज भी एक विकट अवस्था में है, निर्बल स्थिति में है । मैं एक वकील की तरह से नहीं बल्कि एक साधारण जन की तरह से और एक ऐसे मनुष्य की तरह से जिसने इस तरह के वाक्यात को, इस तरह की घटनाओं को बहुत करीब से देखा है, अपने विचार प्रकट करना चाहता हूँ । आज कोई नहीं कहता कि विवाह का जो रूप बहुत पहले था वही आज है । उसमें परिवर्तन आ रहे हैं और परिवर्तन लाये गये हैं । लेकिन यह देखा गया है कि आम तौर पर अदालत की जो धारण लेता है, वह पुरुष ही होता है । कोई ही नारी यह हिम्मत

करती है कि वह कोर्ट में जाये । अगर कोई नारी इस तरह की हिम्मत करती भी है कि सम्बन्ध विच्छेद हो जाये तो पहले तो, इसको इसमें सहायता नहीं मिलती है, समाज उसकी मदद नहीं करता है, और फिर ऊसको गवाह नहीं मिलते हैं । पहले तो वह अदालत में मामला ले जा ही नहीं सकती है और अगर किसी तरह से ले भी जाये तो उसका पक्ष इतना प्रबल नहीं हो पाता है कि उस में किसी प्रकार का सारांश दृष्टिगोचर हो सके ।

हमारे समाज में नारी की क्या स्थिति रही है, उसको कितना आदर का स्थान प्राप्त रहा है, यह मैं आपको बतलाता हूँ । कहा गया है :—

यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवता :

यत्रतास्तु न पूज्यन्ते सर्वास्तत्र अफलाः क्रिया

इसका अर्थ है कि जहां नारी की पूजा होती है वहां सुख चैन रहता है, और जहां उसकी पूजा नहीं होती है वहां सुख चैन नहीं रहता है । समाज में महिलायें सारा दिन काम में लगी रहती हैं, काम में जुटी रहती हैं, सिसकती रहती हैं, उनकी ओर हमें देखना होगा । वे अगर नई दिल्ली के किसी कोने में रहती हैं जहां का वातावरण शांत वातावरण है, वहां पर भी वे सताई जाती हैं, फिर भले ही उसका रूप दूसरा ही हो । वे पढ़ी लिखी नारियां हो सकती हैं और दूसरा रूप धारण कर सकती हैं लेकिन वे नारियां जो आज भी बे बसी और मजबूरी की हालत में रहती हैं, घरों के अन्दर देवियां बन कर रहती हैं, गृहणियां बन कर रहती हैं, बच्चों का पालन करती हैं सारी गृहस्ती को चलाती हैं, अनेक कष्ट झेलती हैं, उनका भी हमें ध्यान रखना है । उनके साथ भी सम्बन्ध विच्छेद के अनेक कारण हो सकते हैं । एक कारण जिस की ओर हमारे सरहदी साहब ने ध्यान दिलाया है, वह आचरण सम्बन्धी लांछन है । इस के

अलावा ये कारण भी हो सकते हैं कि उसके बच्चा नहीं होता है, लगातार बीमार रहती है, या लड़ती झगड़ती है। ये बातें समझ में आ सकती हैं लेकिन जब यह कहा जाता है कि उसके आचरण खराब है, उसका दूसरे पुरुष से सम्बन्ध है, वह व्यभिचारिणी है, तो यह एक गम्भीर आरोप है। पुरुष तो व्यभिचार की दृष्टि से बहुत ऊपर उठ जाता है और कई उल्टे सीधे काम कर सकता है। हमारे यहां एक कहावत है कि आदमी हजार दीवारें लांघ सकता है लेकिन एक देवी एक छोटा सा ओटा नहीं लांघ सकती है। ओटा होता है एक छोटी सी दीवार। आदमी तो बड़ी बड़ी दीवारें कूद सकता है लेकिन नारी छोटी सी दीवार नहीं कूद सकती है। कोई किसी को भी डराये, कोई किसी को भी धमकाये, लेकिन जिस के अन्दर जरा सा दुःख दर्द को समझने की शक्ति है, नारी के हृदय को समझने की शक्ति है, उसी तरह से जैसे नारी नारी के दुःख को समझती है, उसके दर्द को समझती है, वह पुरुष ऐसा व्यवहार नहीं कर सकता।

श्री० रणवीर सिंह : आदमी के खिलाफ इल्जाम लगाया जाये तो ?

श्री काल्मीकी : अगर आदमी के द्वारा नारी के खिलाफ इल्जाम लगाये जाते हैं और मामला अदालत में पेश किया जाता है, उसमें सभी कारण लिखे जाते हैं और यह सिद्ध हो जाता है कि उसने आचरण सम्बन्धी जो लांछन लगाये हैं वे गलत हैं तो कोई वजह नहीं है कि उस पर कोई जर्माना इस तरह का न लगाया जाये और नारी को हरजाना न दिलाया जाये। नारी के पास कुछ भी नहीं है सिवाय अपने सम्मान के, सिवाय अपनी इज्जत के सिवाय अपनी प्रसन्नता के, अपनी आबरू के। चौधरी रणवीर सिंह साहब कह रहे थे कि जो नारी है. . . .

श्री० रणवीर सिंह : दोनों पर लागू होता है।

श्री बाल्मीकी : दोनों पर लागू नहीं होना चाहिये। मैं दूसरे पक्ष को लेता हूँ। मैं केवल नारी पक्ष को लेता हूँ। अगर उस पर कोई आचरण सम्बन्धी इल्जाम लगाया जाता है और वह अदालत की राय में गलत साबित होता है तो कोई वजह नहीं है कि पांच हजार तो क्या दस हजार उसको हरजाने के रूप में न पदलवाया जाये।

श्री चुनी लाल जी ने एक संशोधन पेश किया है कि इस को सर्वलेट किया जाये। उसकी कोई आवश्यकता नहीं है। मैं आचार साहब के प्रस्ताव को मानता हूँ कि कोई सिलेक्ट कमेटी हाउस के मेम्बर साहबान की इस पर विचार कर लें।

मैं यकीनी तौर से इस बिल का स्वागत करता हूँ। मेरे मस्तिष्क में दूसरी पार्टी का मतलब केवल नारी से है। नारी का मामला तो बहुत कम चलता है। मैं चाहता हूँ कि आज के वाक्यात को देखते हुये अवश्य ही उसकी ओर ध्यान दिया जाये और मैं चाहता हूँ कि यह हाउस इस बिल को मंजूर करे। मैं इसका स्वागत करता हूँ।

The Deputy Minister of Law (Shri Hajarnavis): Mr. Chairman, Sir, at the outset I may say that on behalf of Government I accept the motion for circulation of the Bill to elicit public opinion. But I would also make it very clear that Government do not regard themselves committed to any part of it either in principle or in detail. Complaints have been very often expressed in this House that we have not encouraged legislation by private Members. Whatever justification there was for any such impression till now, I intend to make it clear that Government will always view it with very great sympathy and will attempt, in so far as it lies within their power, to help the private Members in undertaking legislation. After all they have also a part to play. The activities of the Private Members' legislation would naturally be

[Shri Hajarnavis]

confined in the first instance to the personal laws. These personal laws must change so as to adjust themselves with the progressive public opinion. And how can public opinion exercise itself except through hon. Members here? Government cannot regard themselves in any manner as sensors or in any manner as the final authority so far as public opinion is concerned.

16.51 hrs.

[MR. SPEAKER in the Chair]

Therefore, where two views are possible, where Government do not *prima facie* regard that a particular legislation is something which ought not to occupy any time of the House, speaking for myself, I would regard it a good practice on behalf of Government that, we take steps to elicit public opinion on it. I am glad to say that this is the course which we have decided to follow in this particular case.

Coming to the merits of the case, again speaking for myself I find myself in very great sympathy with the sentiment behind this Bill. I am quite sure it will find an echo in every Hindu heart. As has been said, chastity of a Hindu woman is one of the noblest sentiments which has been evolved through the centuries by the Hindu culture. Chastity of a Hindu woman is not a mere obligation or duty which that individual owes to her spouse. It is something which is one of her most priceless personal possessions. It is not a mere duty or obligation, as it is sometimes vulgarly put, of keeping the bed of the husband unsullied. No one can take it from her, not even her own husband.

Personally speaking, I have very great sympathy for the sentiment expressed in the Bill. If marriage as an institution has survived, if marriage is one of the stable institutions of Hindu society, it is because it is based upon this sentiment which is the common heritage of whole of Hindu society. I

therefore, would support the principle of the Bill. But as has been admitted with great fairness by the mover, the matter is already covered by certain provisions of the Civil Procedure Code. The only question is, in this particular case, if an allegation happens to be false and frivolous, whether it should be liable to be compensated by a larger measure of damages. That is a fact which, as I said, would depend upon the general public opinion. That is the limited question which in fact would be referred to public opinion, because as I pointed out, section 35A is wide enough to cover a case like this.

With these brief remarks, I would accept the motion for circulation which has been made.

Shri Ajit Singh Sarhadi: I only rise to thank the hon. Deputy Minister and the Government, firstly, for accepting the Bill in the amended form, i.e., that it should be circulated for eliciting public opinion and, secondly for the kindness shown by laying down a policy that encouragement would be given to private members to bring forward Bills of this kind. I am also grateful to the hon. Members who have participated in the discussion and spoken in favour of it or against it.

Mr. Speaker: I will put the motion to the vote of the House.

The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 15th July, 1961."

The motion was adopted.

16.56 hrs.

ABOLITION OF SUPPLY OF LABOUR THROUGH CONTRACTORS BILL

Shri Aurobindo Ghosal (Uluberia): I beg to move:

"That the Bill to abolish the system of supply of labour through