

RAJYA SABHA

*SYNOPSIS OF DEBATE

(Proceedings other than Questions and Answers)

Monday, August 26, 2013/Bhadrapada 04, 1935 (Saka)

Felicitations to Indian Sportspersons

MR. CHAIRMAN: Hon'ble Members, on behalf of the House and on my own behalf, I congratulate the Indian Women's Recurve team for winning the Gold medal in the World Cup Archery (Stage IV) held in Poland and the India's Under-23 Cricket Team for winning the Asian Cricket Council Emerging Teams Cup in Singapore on the 25th of August, 2013.

The entire House wishes the Indian Women's Archery team and the India's Under-23 Cricket Team the very best and hope that they will continue to bring many more such laurels to the country and also inspire the youth of this country to emulate them.

SUBMISSIONS BY THE MEMBERS

(i) Ban on 84 Kose Parkarma and Arrest of 1700 Hindu Saints in Ayodhya

SHRI VINAY KATIYAR: The Yatra called in Ayodhya was not called by BJP or VHP but it was called by the Saints. This *Yatra* was to be performed for 20 days and daily 150-200 saints were to

*This Synopsis is not an authoritative record of the proceedings of the Rajya Sabha.

attend it. Our country is a country of *Yatras* and these *Yatras* can be performed any time. Today the whole Ayodhya has been converted into a cantonment. Temples are being sacrilegged. Whether Samajwadi Party want to create 1990 like situation? Several people have been arrested and detained in temporary jails and they are being harassed. This '*Yatra*' is constitutional and not illegal. Several riots have taken place during this Government in Uttar Pradesh and they have prepared a list to release terrorists. Hence, I would urge upon the Government to impose President's Rule in the State.

SHRI NARESH AGRAWAL: First of all I would congratulate the Uttar Pradesh Government for taking this historical decision for upholding the unity and communal harmony of the country. On behalf of my Government, I would like to say that whoever will try to harm this unity and communal harmony will face the serious consequences. No such *Yatra* is performed during the month of '*Bhadrapada*'. This *Yatra* is not belonging to Saints but it is the *Yatra* of BJP, VHP, RSS and others. Our Saints teach religion and harmony to us. We have not shown any disrespect to any Saint. We have arrested them respectfully.

KM. MAYAWATI: This '*84 Kosi Parikarma*' is being performed because of internal tie up between BJP and Samajwadi Party. The meeting of VHP leaders and Saints with Samajwadi Party Supremo two-three days before this '*Parikarma*' indicates that both these parties are trying to fulfil their political interest under the garb of this '*Yatra*'. But I am happy to note that the people of Uttar Pradesh have understood this game plan. Neither the Hindu community is supporting this '*Yatra*' nor is the Muslim community supporting the Samajwadi Party. This game plan can damage the social harmony in the country. So, I would urge upon the Government to impose the President's Rule in the State.

SHRI SHIVANAND TIWARI: There is an age old tradition of '*84 kosi Parikarma*' between the months of *Chaitra* and *Vaishakha* in India. But during the month of *Bhadrapada* no pious work is done. In my view the whole agenda behind this '*Yatra*' is the communal

polarization of votes before the coming election. The main objective of this 'Yatra' is to create an atmosphere of hatred in the society. Hence, I would urge upon the Government to take stringent action against it.

SHRI SITARAM YECHURY: I rise with a sense of very deep concern and anguish because what has been happening in the name of this *Parikarma* is actually a sort of sharpening a communal polarization. In the last five years, we have never heard of this *Parikarma*. Yes, religious freedom is there. That is something that we will respect and we will, according to law, allow that to happen. This sort of polarization which is sought to be whipped up for political purposes has destroyed the secular fabric and the unity and integrity of our country in the past.

Now the atmosphere is being disturbed for electoral gain. This is not in the interest of the country. If anybody tries to spread communalism in our country on the basis of laws, a stringent action should be taken against him. This is the unanimous demand of the entire House.

SHRI SATYAVRAT CHATURVEDI: Supreme Court's order is to maintain status quo at that place. Change in this situation will be the violation of the order of the supreme court. Some people in this country think that they are the only custodian of Hinduism. Are we not Hindu? There is no dispute in the country on the construction of temple, but dispute is on, whether we should construct our place of worship destroying the place of worship belonging to others. I salute the people of Uttar Pradesh that they are not ready to support them. This is not 1991, rather it is 2013. Now the people of Uttar Pradesh and India are not ready to accept this polarisation at all.

(ii) **RE. SITUATION IN ANDHRA PRADESH OVER THE
ISSUE OF CREATION OF SEPARATE TELANGANA
STATE**

SHRI Y.S. CHOWDARY : Seemandhra Advocates were beaten by local people. There is no governance in Andhra Pradesh.

We are demanding to restore peace immediately and put the decision in abeyance. First they have to restore peace in Andhra Pradesh. I demand that the Government should come to the House and make a statement regarding restoration of peace as well as the safety of the people in Andhra Pradesh. There is no law and order at many places in the State of Andhra Pradesh. Should it not be the concern of the Central Government and this Parliament? It is a constitutional breakdown. This Government does not have any moral right to continue. The Government has to make some commitment.

WITHDRAWAL OF THE MEMBERS

MR. DEPUTY CHAIRMAN: Hon. Members, under the authority conferred on me by Rule 255 for Rules of Procedure and Conduct of Business of the House, I am hereby invoking Rule 255 of the Rules of Procedure and Conduct of Business of the Council of States, and under that authority, I am directing Shri Y. S. Chowdary and Shri C.M. Ramesh to leave the House immediately.

GOVERNMENT BILLS

The Nalanda University (Amendment) Bill, 2013-*was introduced.*

The Representation of the People (Amendment and Validation) Bill, 2013-*was introduced.*

The Marriage Laws (Amendment) Bill, 2010-*Contd.*

DR. NAJMA A. HEPTULLA: When we bring a legislation, we must be clear about it. Marriage has special status in our culture. In Indian culture divorce is a taboo. This is not a luxury for us but helplessness. Nobody goes for a divorce by choice. We must try to keep the family structure intact. We cannot compare ourselves to the western culture. Our society is different from theirs.

I can say it with responsibility that this Government do not think anything about 100 million Muslim women of India. Not a single

legislation was presented regarding them. No work was done for their betterment. Do you think that all Muslim male are very good? Should you not speak for the Muslim women? Are they not citizen of the country? Were any reforms done after Shabano Case? Have you ever thought whether they have some problems? I hope that when you reply, you would tell as to what will you do for Muslim women in this Bill? Promise, that you will bring an uniform law for all women.

DR. RAM PRAKASH: Today, the need has arisen that if the marriage is not going okay, there should be permission to end it. I support that life should not get destroyed. I think, if the hon'ble Minister is able to make a provision in this Bill that solution regarding the long pending divorced cases come out, then what we have thought would be fulfilled immensely. There is huge misuse of dowry law. Those who are breaking their marriages thinking it a failure, let them do so. But there should be a condition for them that their children should not become orphan rather they too have their future. I would like to know what would be the share of left behind children in divorce property. What would be of dependent brother-sister and old parents? The migrant woman labour is the most miserable in India. There should also be some arrangement for migrant women labour in this Bill.

SHRI NARENDRA KUMAR KASHYAP: This Bill would affect the maximum population of the Country. If any woman or man is deaf, dumb or illiterate and they don't have good relations, how would the process of divorce be implemented for them? We can say the arrangement to give share to wife from husband's property is a good thing of good law. Would the hon'ble Minister also think over to fix percentage share for the children from the father's property after divorce? If the husband does not have resource for livelihood and wife is the owner of the property, in that case, will this law give the husband legal right to take his share from the wife's property? I would like to ask from the hon'ble Minister as to whether women of other religions would also get legal right for share after divorce or not?

SHRIMATI JHARNA DAS BAIDYA: We are moving the main amendment to the official amendment. Our amendment is that the

property acquired during the subsistence of marriage be divided equally between the husband and wife because of the three reasons. First, equal share on the property is woman's right. Second, leaving the decision to court to fix the quantum of the share would create adverse effects. Third, by clubbing the share of wife and children together the equal share of the wife gets reduced.

We will move the amendments for equal share as we cannot be party to liberalization of divorce laws without necessary protection of women and safeguarding of their equal rights.

SHRI DEREK O'BRIEN: I want to appreciate the Minister for including those amendments. The one about inheritance and inheritable immovable property and the other one about minor children, and now the adopted children are also included in that. This is a wonderful idea to empower women but while empowering women, why leave the men out. Replace the word 'wife or husband' with 'spouse'.

SHRI ARVIND KUMAR SINGH: There should be definitely law that a wife can live properly after divorce. After the divorce a wife will be having a share in the acquired property of husband. For divorce, a husband has been held completely responsible. If a wife is doing a job and has applied for divorce and the husband is unemployed, whether the divorced wife would pay maintenance to the unemployed husband? What measures would be taken to prevent the misuse of the law. The separated couple should get benefit by the law after the divorce.

SHRIMATI KANIMOZHI: So much is happening, and still, misuse and women using it as revenge against husband and mother-in-law is the only concern that we have. We all welcome a gender-neutral Bill when our country becomes equal. When we have achieved 50 per cent, then, we can talk about women's empowerment and gender-neutral things. This Bill is really progressive and I welcome the Minister for including adopted children along with minor children. The maintenance is completely left at the mercy of the judge. There are no standards to be followed. There is no mechanism put in place that it should be paid at what interval. Everything else is restricted for women. She completely depends on her spouse for her income or maintenance. Maintenance to

the boys who have not finished their education, should also be paid. The value of the ancestral property will be decided in court but that also is very ambiguous.

SHRIMATI RENUBALA PRADHAN: I support this Bill which is for consideration before this august House. Section 13B provides a better safeguard to wife inserting Section 13D by which the wife may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage. New Section 13E States that a court shall not pass a decree of divorce under Section 13C unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.

SHRIMATI VANDANA CHAVAN: The most welcome provision in this Bill is that the maintenance and upkeep of wife and children have been given supreme consideration while granting divorce under Section 13C. The families are now becoming more and more democratic and more egalitarian. It is unfair that, under this Bill, a man cannot at all challenge a divorce petition filed by his wife. As per the Law Commission Report an amendment may be introduced for inclusion of irretrievable breakdown of marriage as another ground for grant of divorce which we are doing now. And the court, before granting the decree of divorce should examine whether adequate financial arrangements have been made for the parties and children.

DR. BHARATKUMAR RAUT: This Bill seems to be taking only the women into consideration. Also, it relates only to the Hindu marriage. Women belonging to other religions should also be covered under this law. In the same way, the expression 'spouse' should have been used instead of 'husband'. I fear that because of the provisions in the Bill, many broken marriages would remain intact only on paper. Though I say that this Bill is good, the right to challenge the divorce should remain equal. When they are separating, they should be given equal rights for separation. 18 year boy or girl who have not completed their education should be defined properly.

DR. GYAN PRAKASH PILANIA: I stand for supporting this Bill, which is a progressive Bill. When married life becomes hell, then we call it irretrievable ground for divorce. No women will go in for divorce without reason. Divorce is a curse for a woman. This Bill should be applicable to all Indians irrespective of their creed, castes, and place. It should not be applicable only to Hindus.

SHRI PYARIMOHAN MOHAPATRA: This particular law is not for the poor women, the lower middle class women and the Muslim women. What is the ground for irretrievable breakdown of marriage? It can be in the hands of the judiciary.

This is perhaps to make it for rich and professional who keep on changing their spouses. Think coolly about cooling-off period. Why do you again hand it over to the judiciary that it can reduce? Please cut out the word 'grave'. It is liable to be misused. It should be 'financial hardship' only and it should be available to both, husband and wife. Wife's property should also come in this.

SHRI THAWAR CHAND GEHLOT: I support the Marriage Law (Amendment) Bill, 2010, but it has so many discrepancies. The Supreme Court has so many times held that there should be a common civil code in this country. The Government has not so far taken any steps in this regard. Now that the period which has been extended upto 1.5 years is also painful. Again there is a condition that if the husband-wife do not have good relationship and if they do not live separated for three years, then it would not be valid. When such divorces take place the condition of the children becomes very pitiable. On this occasion I would like to submit that keeping in view the various decisions of the Supreme Court and the provision of the Constitution, a common civil court should be there in the country.

SHRIMATI GUNDU SUDHARANI: The definition of 'irretrievable breakdown of marriage' has not been defined anywhere. I would like to know the grounds and the percentage of deterioration of relations. It is necessary to define the phrase 'irretrievable breakdown of marriage'. The clauses, which allow divorce by mutual consent, must be linked to a social security mechanism as well. I demand that enough

safeguards have to be provided in the legislation itself to ensure that women not only get matrimonial property of her husband, there has also to be a clear stand on the children adopted by the couple. At the villages, most of the women do not know that they are granted many rights. I would like to know from the hon. Minister how he would look at it and come to the rescue of rural women. The proposed Bill is silent on what will happen to the pending cases registered under various Acts. The Bill is completely contrary to the intention of the Supreme Court's observation.

SHRI RANGASAYEE RAMAKRISHNA: You should define the 'irretrievable breakdown'. Our own Army jawans live away for a long period from their families. Do you mean to say that is a ground for an irretrievable breakdown. There is an inherent contradiction between clause 13 (c) and clause 13 (d).

SHRI M.P. ACHUTHAN: Even the social media is being used against this Marriage Bill because if this Bill is passed by the Parliament, then, all the rights of men will be lost. The first point which I wish to make is that the women and the children must get equal right to the property. People who have not registered their marriage but are living together have to be treated as couples. What will be the rights of those women and children in the property if they are separated? The Supreme Court has already accepted this concept.

SHRI MOHAMMAD ADEEB: I am sorry that there should be discussion on this Bill on merit, as it is so important. I support the Bill

SHRI BALWINDER SINGH BHUNDER: Marriage is such a knot as can be broken or joint as and when desired. The Marriage is a system based on our religion. We all want the excesses having been done to women for long should stop. Many a time, excesses are made by men and many a time by women. I, therefore, suggest that the word spouse should be inserted in the Bill so that protection to both and excesses to none should be there. The society should be integrated and not be broken by law.

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY AND THE MINISTER OF

LAW AND JUSTICE (SHRI KAPIL SIBAL), replying to the debate, said: We truly believe in the sanctity of marriage. For many, many years, we made it very difficult for parties to the marriage who were disillusioned with each other to go to court and seek divorce. There is the 217th Report of the Law Commission which also recommended that irretrievable breakdown should be a ground for divorce. Of course, this particular amendment only deals with irretrievable breakdown of marriage. It doesn't deal with other provisions of the Hindu marriage Act. It is in that context of recommendations of the Law Commission and the recommendation of the Supreme Court we have brought this provision and of course also in the context of the Special Marriage Act. The two amendments that we are talking about are amendments to the Hindu Marriage Act and amendments to the Special Marriage Act. It protects Hindu custom and usage. We can get our marriage registered under the Special Marriage Act. We want to include irretrievable breakdown as a ground for divorce. This is gender neutral. It is not that husband cannot move for irretrievable breakdown of marriage. What is not gender neutral is the division of property.

Normally, in legislations in respect of marriage the women's rights are protected more than the male rights. We are in a patriarchal society. Women are 50 per cent of the population of the world, but they own two per cent of the assets of the world. That's the reality of global civilization. These legislation are a message to the community that Members of Parliament are on the side of women in a patriarchal society. It is with this intent that we brought forward this Bill. Some distinguished Members raised the issue of why should women be not given 50 per cent. The situation in the home will differ from home to home. There will be homes in which property or land is purchased in the name of the women. The Judge will decide in the facts and circumstances of each case as to how the property should be distributed. We must trust the judiciary and in the event, a particular judge goes wrong, there is a right of appeal right up to the Supreme Court, I do believe that there are enough honest Judges sitting in the courts that they will correct the wrongs that have been committed at an earlier level. The wife has a share in the property of the husband acquired during the course

of marriage. The extent of the share will be decided upon by the Judge. The wife also has a share in the movables that have been acquired in the course of marriage. The wife has no share in the inherited property. But when the amount of compensation is to be fixed, the value of that asset will be taken into account. The other major amendment is that when the first application is made, three years past one of the parties do not cooperate, the other party can go to court and ask for a divorce by mutual consent. There is no amendment which works against women or works in favour of men. As regards the right to alimony for men, under Section 25 of the Hindu Marriage Act, men are entitled for alimony. We are trying to be fair to everybody.

The motion for consideration of the Bill, was adopted.

Clauses etc., were adopted.

The Bill, was passed.

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**Supplement covering rest of the proceedings is being issued separately.