

LOK SABHA

JOINT COMMITTEE

ON

**THE CRIMINAL LAW
(AMENDMENT) BILL, 1980**

EVIDENCE



**LOK SABHA SECRETARIAT
NEW DELHI**

June, 1982/Asadha, 1904 (Saka)

Price : Rs 24.15

LOK SABHA SECRETARIAT

CORRIGENDA

to

the record of evidence tendered before the Joint
Committee on the Criminal Law (Amendment) Bill,
1980.

- Page (if), line 12, for "Ragbir" read "Raghbir"
Page (vii), line 1, for "Vibhaq" read "Vibhag"
Page (viii), lines 2, 22 and 27 for "Spokesman" read "Spokesmen"
Page (xi), Line 11, for "Guputa" read "Gupta"
Page 2, Col. 2, line 18, for "public" read "police"
Page 3, Col. 1, line 18 from bottom, for "suggestion" read "suggestion"
Page 17, Col. 2, line 1 from bottom, for "relevant" read "reluctant"
Page 23, Col. 2, line 6, for "हकम" read "हुकम"
Page 29, Col. 2, line 17 from bottom, for "-Witness" read "witnesses"
Page 30, Col. 1, line 28, for "convinced" read "convicted"
Page 39, Col. 1, line 10 from bottom, for "Remember"
read "Remembrancer"
Page 59, Col. 1, (i) line 1, for "woman" read "women"
(ii) line 6, from bottom, for "चाहूगी" "
read "चाहेगी" "
Page 60, Col. 1, line 1, for "PRULEKAR" read "PARULEKAR"
Page 61, Col. 1, line 13, for "AIZIZ" read "AIZAZ"
Page 63, (i) Line 3, After "10.00" insert "to 14.00"
(ii) Line 6 from bottom, delete "Shri S.C. Bablani,
Under Secretary
(iii) After line 8 from bottom add "Shri S.C. Bablani
Under Secretary"
Page 67, (i) Col. 1, line 18, for "thing" read "think"
(ii) Col. 2, line 19 from bottom "for" consistent"
for read "consistent"
Page 69, Col. 2, line 12, "140 are there. If that is so, what
are" read "tion -111 (a) you
said that this pro-"

P. T. O.

Page- 72, Col. 2, line 25, for "SHRI AMARPROSAD CHAKRA"
read "SHRI GOVERDHAN LAL SHUKLA"

Page 76, Col. 1, line 23 for "explicitly" read "explicitly"

Page 77, Col. 2, lines 22-24 for "violation, a delinquency."
It is puni-"

read "SHRI NARESH KUMAR: It is a "

Page 85, Col. 2,

(i) line 3, for "Secretary" read "Secretary"

(ii) line 20 for "substantive" read "substantive"

Page 86, Col. 2,

(i) line 6, for " एकजीविशान
read " एकजीवशान

(ii) line 8, for "दिया " ' read " लिया "

Page 87, Col. 2, line 31, for "five" read "five"

Page 88, Col. 1

(i) line 12 for "irrat" read "izzat"

(ii) line 12 from bottom for "dtered" read "deterred"

Page 90, Col. 2, line 10 from bottom

for " इन्वेस्टिशन " read " इन्वेस्टिगेशन "

Page 104, Col. 2, line 15 from bottom, for "Principals"

read "Principles"

Page 105, Col. 2, line 15 for "present" read "percent"

Page 107, Col. 1, line 13 from bottom for "-judgs" read "judges"

Page 111, Col. 1, line 2, for "तटनी " read " पटनी "

Page 112, (i) Col. 1, line 21, for " पल्ये " read " लिये "

(ii) Col. 2, -line 6, for " एक्टर " read " एक्ट "

Page 114, Col. 1 from bottom,

for " सास " read " साल "

Page 116, Col. 2, line 10 from bottom for "जब" read "जज"

Page 12, Col. 1 line 23, for "Camera" read "camera"

Page 125, Col. 2,

(i) Lines 7-8 from bottom delete "authority concerned does offence is proved that there was"

(ii) line 5 from bottom for "provided" read "proved"

Page 127, Col. 1,

(i) line 3 for "He servant or in the custody of a" read "law unexceptionable. While formu"

(ii) line 6 from bottom, for "and" read "and"

(iii) lines 13-15 from bottom for "pub law unexceptionable. while formu public servanz" read "public servant"

Page 128, Col. 2, line 23, for "mater" read "matter"

Page 131, Col. 2, line 2, for "certainty" read "certainly,"

Page 137, Col. 2, line 6, for "mentiosed" read "mentioned"

Page 143, Col. 2, line 19

(i) for "mus" read "must"

(ii) for "conuveted" read "conducted"

Page 150, Col. 2, line 1 : for "yea s" read "years"

Page 151, Col. 1, line 16, for "BABUSAHEB" read "BAPUSAHEB"

Page 175, Col. 2, line 30, for "INDRA JAI SINGH"

read "INDIRA JAI SING"

Page 182, Col. 2, line 9 from bottom, for "have" read "gave"

Page 193, Col. 2, delete Lines 20-22

Page 201, Col. 1, After Line 30, add "particular provision has not been in-

Page 207, Col. 1 line 13 from bottom for "insection" read "insertion"

Page 214, Col. 1, line 6 identify" read "identity"

Page 215,

(i) Col. 1, line 17 from bottom for "submis:ion" read "submission"

(ii) Col. 2, line 18 for "Pupa" read "Reopa"

(iii) Col. 2, line 20, for "were" read "was"

- Page 225, line 3 from bottom for "REPRESETATIVES"
read "REPRESENTATIVES"
- Page 235, Col. 1, -line 15 from bottom, for "SHRIMATTI"
read "SHRIMATTI"
- Page 245, Col. 1, line 18, for "give" read "given"
- Page 297, Col. 1, line 18 for "cays" read "says"
- Page 307, Col. 2, line 18 from bottom, for "aggrived"
read "aggrieved"
- Page 308, Col. 1, -lines 17-18 from bottom,
for "disappered" read "disappeared"
- Page 342, Col. 1, line 7 from bottom, for "-on" read "one"
- Page 353, Col. 2, line 5 from bottom, for "superflous"
read "superfluous"
- Page 365, Col. 1, line 5 from bottom, for "srealy" read "already"
- Page 370, Col. 2, line 1. from bottom, for "judical" read "Judicial"
- Page 376, Col. 1, line 19, for "1978-80" read "1979+180"
- Page 383, Col. 1, line 9 for "digning" read "singing"
- Page 388 () line 9 for "(Leader of Opposition Asunachal Assembly)"
read "TV-Shri Tomo Kiba, MBA"
- (ii) line 14, for "Ghivastava" read "Shrivastava"
- (iii) Col. 1, line 6, for "Worgers" read "workers"
- (iv) Col. 1, line 8, for "seats" read "sets"
- Page 394, Col. 1,
 (i) line 2 for "hive" read "give"
 (ii) line 11 for "witness that even though they might
 desire their evidence"
read "witnesses that even though they might
 desire their evidence"
- Page 407, Col. 2, line 19 from bottom, for "eame" read "same"
- Page 414, Col. 1
 (i) line 28, for "complictions" read "complications"
 (ii) line 29, for "PURULEKAR" read "PARULEKAR"
- Page 416, Col. 2
 (i) line 29 for "mele" read "male"
 (ii) line 32 for "describing" read "describing"

Page 417, line 1 from bottom for "Owcar" read "Officer"

Page 420, Col. 1, line 10 for "चल्लेन" read "चिल्लेन"

Page 457, Col. 2, line 6 for "investigation" read "investigator"

Page 463, Col. 2, lines 43-44,

for "is liable to be made available to the treated
as confidential such evidence."

read "treated as confidential such evidence is liable
to be made available to the"

Page 466, Col. 2, line 7 from bottom, for "regorous" read "rigorous"

Page 470, Col. 2, (1) delete line 1 from bottom

(ii) line 2 from bottom, for "BORTY"

read "SHRI AMARPROSAD CHAKRABORTY"

Page 477, Col. 1, line 4 from bottom, for "health" read "health"

Page 486, Col. 1,

(i) line 12 for "proceed" read "proceed"

(ii) line 28, for "liabe" read "liable"

(iii) line 30, for "be" read "to"

(iv) line 7 from bottom, for "proscribed" read "prescribed"

Page 488, Col. 2, line 3 from bottom, for "giltr" read "girl"

Page 491 (1) Col. 1, line 12 from bottom, for "alsho" read "also"

(2) Col. 2, line 2, from bottom, after "DAS" add "Ir"

Page 497 (1) Col. 1, line 16, for "separtion" read "separation"

(ii) Col. 2, line 8, for "suborinate" read "subordinate"

Page 498 (1) Col. 1, line 23, for "paymens" read "payment"

(2) Col. 2, line 27, for "alwful" read "lawful"

Page 501, Col. 1, line 1 for "NAVAYAUR" read "NARAYANA"

Page 506, Col. (1) line 2 for "custedial" read "custodial"

(2) line 17 for "therefore" read "Therefore"

Page 509, Col. 2, line 1 from bottom, for "publiah" read "published"

Page 509, Col. 2, line 15 for "embarras" read "embarrass"

Page 510, Col. 1 (1) line 2 for "latter" read "later"

(2) line 8 for "आग" read "भाग"

Page 513, Col. 1, line 10 from bottom, for "nit" read "not"

Page 519, Col. 2, line 2 from bottom, for "medi-" read "modi"

Page 528, Col. 2, line 16 from bottom, for "reasonabled"
read "reassembled"

Page 584, Col. 1, line 7 for "be" read "be"

JOINT COMMITTEE ON THE CRIMINAL LAW (AMENDMENT) BILL, 1980

COMPOSITION OF THE COMMITTEE

Shri D. K. Naikar—Chairman

MEMBERS

Lok Sabha

2. Shri K. Arjunan
3. Shri Rasa Behari Behra
4. Shrimati Gurbrinder Kaur Brar
5. Shrimati Vidyavati Chaturvedi
6. Shri V. Kishore Chandra S. Deo
7. Shrimati Susheela Gopalan
8. Shrimati Mohsina Kidwai
9. Shrimati Madhuri Singh
- *10. Shri N. K. Shejwalkar
11. Shrimati Geeta Mukherjee
12. Shri K. S. Narayana
13. Shri Ram Pyare Panika
14. Shri Bapusaheb Parulekar
15. Shri Amrit Patel
16. Shri Qazi Saleem
17. Prof. Nirmala Kumari Shaktawat
18. Shri S. Singarvadival
19. Shri R. S. Sparrow
20. Shri Trilok Chand
21. Shri V. S. Vijayaraghavan
22. Shri P. Venkatasubbaiah

Rajya Sabha

23. Shri Lal K. Advani
24. Shri Ramachandra Bhardwaj
25. Shri Amarprosad Chakravorty
26. Shri S. W. Dhabe
27. Shri B. Ibrahim
28. Shri Dhuleshwar Meena
29. Shri Surendra Mohanty
30. Shri V. P. Munusamy

*Appointed w.e.f. 16-4-1982 vice Shri R. K. Mhalgi expired.

@Ceased to be member of the Committee w.e.f. 2-4-1982 on the expiry of his term in Rajya Sabha. Re-appointed w.e.f. 5-5-1982

^Ceased to be member of the Committee w.e.f. 19-10-1981 on the expiry of his term in Rajya Sabha. Re-appointed w.e.f. 17-12-1981.

231. Shri Leonard Solomon Saring
22. Shri Era Sezhiyan
23. Shri Hukmdeo Narayan Yadav

SECRETARIAT

1. Shri S. D. Kaura—*Chief Legislative Committee Officer.*
2. Shri Ram Kishore—*Senior Legislative Committee Officer.*

LEGISLATIVE COUNCIL

1. Shrimati V. S. Rama Devi—*Joint Secretary and Legislative Counsel.*
2. Shri R. B. Agarwal—*Deputy Draftsman, Ministry of Law, Justice and Company Affairs, Legislature Department (Official Language Wing).*
3. Dr. Ragbir Singh—*Assistant Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri P. K. Kathpalia—*Additional Secretary.*
2. Shri S. V. Sharan—*Joint Secretary.*
3. Shri M. P. Khosla—*Officer on Special Duty.*
4. Shri S. C. Bablani—*Under Secretary.*

WITNESSES EXAMINED

S. No.	Name of Association/organisation/individual etc.	Date on which evidence taken	Page No.
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SIMLA			
1	Government of Himachal Pradesh,	30-6-1981	2
	<i>Spokesmen :</i>		
	1. Shri Jai Chand Malhotra, Secretary (Law)		
	2. Shri Inderjeet Singh Sodhi, Inspector General of Police		
	3. Shri K.C. Chauhan, Director, Welfare		
2	Society to Ensure Proper Treatment of Women, Chandigarh	30-6-1981	9
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	1. Shri J.P. Atray, General Secretary		
	2. Shri V.N. Negi		
3	Union Territory Administration of Chandigarh	1-7-1981	20
	<i>Spokesman :</i>		
	Shri M.S. Nagra, Legal Remembrancer		
4	Government of Punjab, Chandigarh	1-7-1981	29
	<i>Spokesmen :</i>		
	1. Shri Aftab Singh Bakshi, Law Secretary		
	2. Shri S.V. Singh, Superintendent of Police, Special Branch		
5	Government of Haryana, Chandigarh]	1-7-1981	41
	<i>Spokesmen :</i>		
	1. Shri L.C. Gupta, IAS, Financial Commissioner and Secretary to the Govt. of Haryana, Home Department		
	2. Shri B.S. Yadav, Legal Remembrancer and Secretary to the Govt. of Haryana, Legislative Department		
	3. Shri Manmohan Singh, IPS, Inspector General of Police, Haryana.		

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LUCKNOW			
6	All India Crime Prevention Society, Lucknow	3-7-1981	52
	<i>Spokesman :</i>		
	1. Shrimati Rani Lila Ram Kumar Bhargava		
7	All India Seva Samiti, Allahabad	3-7-1981	56
	<i>Spokesmen :</i>		
	1. Shri S.P. Pande, Organising Secretary		
	2. Shri Gopal Krishna Misra, Advocate		
8	Uttar Pradesh Rajya Kalyan Sahakar Board, Lucknow	3-7-1981	58
	<i>Spokesman :</i>		
	Dr. (Km.) Kanchan Lata Sabharwal, President		
9	Begum Aizaz Rasul, M.L.A. Uttar Pradesh, Lucknow	3-7-1981	60
10	Govt. of Uttar Pradesh, Lucknow	4-7-1981	63
	<i>Spokesmen :</i>		
	1. Shri Goverdhan Lal Shukla, Judicial Secretary/Legal Remembrancer		
	2. Shri Nareah Kumar, Inspector General of Police		
	3. Shri R.C. Takru, Home Secretary		
BHOPAL			
11	Shri G.S. Nihalani, Advocate, Bhopal	6-7-1981	99
12	Shri L.S. Sinha, President, Bar Association, Bhopal.	6-7-1981	104
13	Madhya Pradesh Mahila Kalyan Samiti, Bhopal.	6-7-1981	106
	<i>Spokesman :</i>		
	Shrimati Vimla Sharma		
14	Baner Wheel Club, Bhopal	6-7-1981	107
	<i>Spokesman :</i>		
	1. Shrimati Saroj Lalwani		

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15	Bhartiya Grameen Mahila Sangh, Indore <i>Spokesman</i> Shrimati Krishna Aggarwal	6-7-1981	109
16	Bal Niketan Sangh, Indore <i>Spokesman :</i> Shrimati Shalini Moghe	6-7-1981	113
17	Bhartiya Vidya Pracharni Sabha, Indore <i>Spokesman :</i> Shrimati Nirmala Devi Podar	6-7-1981	115
18	Gangwal Mahila Kala Niketan, Indore <i>Spokesman :</i> Shrimati Indumati Jain	6-7-1981	116
19	St. Marks School, Indore <i>Spokesman :</i> Shrimati Florence Jacob	6-7-1981	115
20	Nari Sahakari Samiti, Gwalior <i>Spokesman :</i> Shrimati Mandakim Wakanker	6-7-1981	115
21	Association for Social Health in India, Gwalior <i>Spokesman :</i> Shrimati Kamala Devi Jadhav	6-7-1981	115
22	M.P. Mahila Kalyan Parishad, Bhopal <i>Spokesmani :</i> 1. Shrimati Pragma Mukherjee 2. Shrimati Prakash Kumari Harkavat	6-7-1981	115
23	All India Women's Conference, Jabbalpur <i>Spokesman :</i> Shrimati Chandra Prabha Pateria	6-7-1981	116
24	Association for Social Health in India Gwalior <i>Spokesman :</i> Shri Ram Sanchi	6-7-1981	121
25	Shrimati Jayaben, M.L.A. Madhya Pradesh, Bhopal	6-7-1981	122

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20 Government of Madhya Pradesh Bhopal	7-7-1981	124	
<i>Spokesmen :</i>			
<ol style="list-style-type: none"> 1. Shri Brahma Swarup, Additional Chief Secretary and Home Secretary 2. Shri K.K. Singh, Deputy Inspector General of Police 3. Shri J.A. Khare, Deputy Secretary, Law Department 4. Shri R.N. Sangani, District and Session Judge, <i>Bhopal</i> 5. Dr. (Smt.) Gidwani, Superintendent, Sultania Hospital <i>Bhopal</i> 6. Shrimati Sushma Nath, Collector, <i>Narsimhapur</i> 7. Shri R.S.L. Yadav, Superintendent of Police, <i>Bhopal</i>. 8. Shri R. N. Vaidya, Director of Panchayat and Social Welfare, <i>Bhopal</i> 9. Shri Vijaya Singh, District Magistrate, <i>Bhopal</i> 10. Shri B. S. Acharya, Additional District Magistrate, <i>Bhopal</i> 11. Shri Heeresh Chandra, Director Medico Legal Institute. <i>Bhopal</i> 			
BOMBAY			
21 Government of Maharashtra	7-7-1981	146	
<i>Spokesmen :</i>			
<ol style="list-style-type: none"> 1. Shri A. D. Tated, Secretary, Law and Judiciary Department 2. Shri P. G. Salvi, Secretary, Home Department 3. Shri S. K. Chaturvedi, I. G. P. 			
22 Shrimati Sushilata Athavale, Principal, Mugutrao Sahebrao¹ Kakade College, Sumeshwar Nagar, Pune	27-7-1981	172	
23 Lawyers Collective, Bombay	27-7-1981	175	
<i>Spokesmen :</i>			
<ol style="list-style-type: none"> 1. Ms. Indira Jai Sing 2. Shri Anand Grover 			
24 National Federation of Indian Women, Maharashtra Branch, Bombay	27-7-1981	183	
<i>Spokesmen</i>			
<ol style="list-style-type: none"> 1. Shrimati Manju Gandhi 2. Shrimati Kusum Nadkarni 			

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25.	Uttar Vibhaq Stree Sanstha Sanyukta Samiti Matunga, Bombay	27-7-1981	185
	<i>Spokesman :</i>		
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	2. Shrimati Tara K. Shar		
	3. Shrimati Kastur Manjrekar		
	4. Shrimati Shalini Mantri		
26.	Indian Council of Social Welfare, Bombay	27-7-1981	187
	<i>Spokesman :</i>		
	Shri H. S. Ursekar, Legal Consultant and Ex-Session Judge, Bombay.		
27.	Congress (I) Mahila Front, Thane District	27-7-1981	192
	<i>Spokesman :</i>		
	Shrimati Shakuntala Paranjpe, President, and Notary Public Advocate		
28.	Government of Gujarat, Gandhinagar	28-7-1981	198
	<i>Spokesmen :</i>		
	1. Shri R. V. Chandramouli, Secretary, Home Department		
	2. Shri K. M. Satwani, Secretary, Legal Department		
29.	Shramik Mahila Sangh, Bombay	28-7-1981	206
	<i>Spokesmen :</i>		
	1. Shrimati Ahilya Rangnekar,		
	2. Shrimati Tara Valamu		
	3. Shrimati Subhashini Ali		
30.	Lawyers for Democracy, Bombay	28-7-1981	208
	1. Shri Arun Sathe		
	2. Shri Harish Jagtanre		
	3. Shri Mahesh Jethamalani		
	4. Shri Raj Purohit		
	5. Shri M. D. Angal		
	6. Shri Milind Sathe		
	7. Shri Nitin G. Raut		
31.	Dr. Roopa Kulkarni, Lecturer, Nagpur University, Nagpur	28-7-1981	215

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32.	Bhartiya Janata Party (Mahila Agadi) Bombay	28-7-1981	217
	<i>Spokesman :</i>		
	1. Shrimati Jayawantiben Mehta, MLA		
	2. Shrimati Malti Nanawani		
	3. Shrimati Chandra Kanta Goyal		
	4. Shrimati Shalini Kulkarni		
	5. Shrimati Pushpa Wagale		
	6. Kumari Sudha Gandhi, Advocate		
	7. Kumari Chanushila Azgaonkar		
	8. Shri Ramdas Nayak, Ex-MLA		
	HYDERABAD		
33.	National Federation of Indian Women, Hyderabad	29-7-1981	226
	<i>Spokesman :</i>		
	Shrimati Rita Seth, President		
34.	Hyderabad Women's Democratic Association, Hyderabad	29-7-1981	227
	<i>Spokesman :</i>		
	Shrimati Fatima Alam Ali		
35.	Bhartiya Grameen Mahila Sangh, Hyderabad	29-7-1981	230
	<i>Spokesman :</i>		
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36.	Indian Council of Social Welfare, Hyderabad	29-7-1981	232
	<i>Spokesman :</i>		
	1. Shrimati Prema Malhotra		
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37.	A.P. Mahila Samakhya, Hyderabad	29-7-1981	235
	<i>Spokesman :</i>		
	1. Shrimati Sarla Devi		
	2. Shrimati Brij Rani Goud		
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38.	All Indian Women's Conference, Hyderabad	29-7-1981	238
	<i>Spokesman :</i>		
	Shrimati Daya Devi		

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39.	Government of Andhra Pradesh, Hyderabad	30-7-1981	244
	<i>Spokesmen :</i>		
	1. Shri E. Ayyapu Reddy, Law Minister		
	2. Shri Jayakar Johson, Secretary, Home Department		
	3. Shri M. N. Rao, Secretary, Law Department		
	4. Shri T. Ponnaiya, Additional Inspector General of Police (Crime)		
40.	Dilsukh Mahila Mandal, Hyderabad	30-7-1981	265
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	1. Shrimati Yamani Choudhari		
	2. Shrimati Jamulu Nisha Begum		
	3. Shrimati Gayatri Devi		
41.	Association of Democratic Lawyers	30-7-1981	167
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	Shri Manohar Lal Saxena		
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42.	Government of Karnataka, Bangalore	31-7-1981	272
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	1. Shri Shankara Reddy Director of Prosecution		
	2. Shri B. N. Garudachar, Additional Inspector General of Police		
	3. Shri A. Venkat Rao, Secretary, Law Department		
43.	Government of Kerala, Trivandrum	31-7-1981	283
	<i>Spokesmen :</i>		
	1. Shri C. Subramaniam, Deputy Inspector General of Police		
	2. Shri G. Sreedharan Nair, Additional Law Secretary		
44.	Union Territory Administration of Goa, Daman & Diu, Panaji	31-7-1981	286
	<i>Spokesmen</i>		
	1. Shri U.D. Sharma, Secretary Law and Judiciary Department		
	2. Prof. S. D. Sharma, Director Incharge Psychiatry and Human Behaviour		
	3. Dr. J. M. Sharma, Prof. Forensic Medicines-cum-Police Surgeon		

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45.	Young Women s Christian Association, Bangalore	. . . 31-7-1981	301
	<i>Spokesmen :</i>		
	Shrimati E. V. Mathew		
46.	Shri C. Iyengar, <i>Bangalore</i>		
47.	Government of Tamil Nadu, Madras 1-8-1981	305
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	1. Shri Herbet Chelliah, Deputy Secretry, Law Department		
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48.	Union Territory Administration of Pondicherry 1-8-1981	309
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	1. Shri A. John Ambiroise, Chief Judicial Magistrates, Pondicherry.		
	2. Shri S. G. Bhatt, Principal, Govt. Law College, Pondicherry .		
49.	Shanthi Seva Samaj, Bangalore 1-8-1981	316
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50.	Baze Niswan, Bangalore 1-8-1981	321
	<i>Spokesmen :</i>		
	1. Shrimati Sharkat Qureshi		
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51.	Dakshina Bharatha Mahila Sangham, Bangalore 1-8-1981	322
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	1. Shrimati Padma Srinivasan		
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52.	Government of Karnataka, Bangalore 1-8-1981	322
	<i>Spokesmen :</i>		
	1. Shri A. Venkat Rao, Law Secretary		
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53.	Anges Villa for destitutes, Bangalore 1-8-1981	324
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	1. Shrimati Lillian Xavier		
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	2. Thiru K. Chockalingam, Second Secretary-cum-Home Secretary.		

JOINT COMMITTEE ON THE CRIMINAL LAW (AMENDMENT) BILL, 1980
RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CRIMINAL
LAW (AMENDMENT) BILL, 1980

*Tuesday, the 30th June, 1981 from 10.00 to 12.30 hours Conference Hall of
the H. P. Institute of Public Administration, Fairlawns Mashobra, Simla.*

PRESENT

Shri D. K. Naikar—*Chairman*

MEMBERS

Lok Sabha

2. Shri K. Arjunan
3. Shri Rasa Behari Behra
4. Shrimati Susheela Gopalan
5. Shrimati Mohsina Kidwai . .
6. Shri R. K. Mhalgi
7. Shri Ram Pyare Panika
8. Shri Bapusaheb Parulekar
9. Prof. Nirmala Kumari Shaktawat
10. Shri S. Singarvidival
11. Shri V. S. Vijayaraghavan

Rajya Sabha

12. Shri Lal K. Advani
13. Shri Ramchandra Bhardwaj
14. Shri Amarprosad Chakraborty
15. Shri S. W. Dhabe
16. Shri B. Ibrahim
17. Shri Dhuleshwar Meena
18. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—*Senior Legislative Committee Officer.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

Shri M. P. Khosla—*Officer on Special Duty.*

Shri S. C. Bablani—*Under Secretary.*

WITNESSES EXAMINED

I. Government of Himachal Pradesh, Simla
Spokesmen

- (1) Shri Jai Chand Malhotra—Secretary (Law).
- (2) Shri Inderjeet Singh Sodhi—Inspector General of Police.
- (3) Shri K. C. Chauhan—Director, Social Welfare.

II. Society to Ensure Proper Treatment of Women, Chandigarh

Spokesmen

- (1) Shri J. P. Atray—General Secretary.
- (2) Shri V. N. Negi.

At 10.00 a.m., the Committee unanimously decided to elect Shri Lal K. Advani to act as Chairman of the Committee since Shri D. K. Naikar, Chairman arrived a little bit late.

SHRI LAL K. ADVANI: Friends, I am grateful to you for asking me to act as Chairman. I hope that Chairman would arrive soon although there is no communication. Now, we can go ahead with the schedule. I now ask the Law Secretary to the Government of Himachal Pradesh, who is here, to appear before us. We did not have Himachal Pradesh Government comments on the Bill itself. But the comments that have been received on the Law Commission's report that itself kept a basis for our purposes.

I. Government of Himachal Pradesh,
Simla.

- (1) Shri Jai Chand Malhotra Secretary (Law)
- (2) Shri Inderjeet Singh Sodhi Inspector General of Police.
- (3) Shri K. C. Chauhan, Director Social Welfare.

(The witnesses were called in and they took their seats)

SHRI LAL K. ADVANI: Before we proceed, may I draw your attention to Direction 58 of the Directions by the

Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

SHRI J. C. MALHOTRA: He is Mr. Sodhi Inspector General of Public. And Mr. Chauhan, our Director of Social Welfare.

Mr. Malhotra, the Members of the Committee would like to ask some clarifications and elucidations. We would like to know from you if you have any comments to offer on the proposed Bill. Against the background of the Law Commission Report, against the background of the general demand, there needs to be an amendment in the Criminal Law in respect of these problems. I am sure you must be familiar with the whole issue.

SHRI J. C. MALHOTRA: Sir, I would like to make two or three suggestions on the Bill. Firstly, I take clause 3 and Section 375.

SHRI LAL K. ADVANI: Before you go to the specific provision of the

Bill itself and make your suggestions, do you have any general comments to offer—whether the present law is adequate or inadequate. Whether it calls for an overall change or not? There is no obligation. Do you want to offer general comments?

SHRI J. C. MALHOTRA: I don't want.

Sir, with your permission, I may draw the attention of this Hon'ble Committee to Section 375 of the I.P.C. In this Section in clause "Seventhly" "With or without her consent, when she is under sixteen years of age". My respectful submission is that the "sixteen years of age" may be substituted by the word "eighteen years of age". For this, I may give two reasons.

Firstly, under Section 363 of the Indian Penal Code, for the offence of kidnapping, the minimum age is 18 years. And here the minimum age is prescribed as 16 years. Suppose a person takes away a girl of 17 years of age with her consent, and then has had sexual intercourse with her, he will not be guilty of the offence of "rape", the purpose for which the girl goes with him but he may be guilty of "kidnapping".

SHRI J. C. MALHOTRA: Sir, the first suggestion that I would respectfully submit before this Hon'ble Committee is that age should be 18 years instead of 16 years.

Second suggestion I would like to make on explanation under sub-clause (b), sub-section (2) of Section 228A, which reads "The printing or publication of the judgement of any High Court or the Supreme Court does not amount to any offence within the meaning of this section." In my opinion, Sir, the purpose of insertion of Section 228A should be fulfilled so that the reputation of the victim could not be spoiled or tarnished by publishing the information that she is the victim of rape. But if after the judgement in a rape case is given by the High Court or the Supreme Court and on the next day the same very judgement with her name is printed in the

newspaper, the purpose of the section to some extent will be defeated. So, in the circumstances, I would very respectfully submit before this Hon'ble Committee that after the words "Supreme Court" appearing in the second line of the explanation, we may add the words "in any approved law journal". The judgement of the High Court or the Supreme Court may be published or printed in an approved law Journal but not in the newspaper so that the purpose of this section 228A which is being inserted may be fully achieved.

The third suggestion that I would like to make is on the insertion of Section 111A in the Indian Evidence Act which reads like this; "In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse is proved and the question is whether it was without the consent of the women alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent." Though the objection behind this new clause is laudable, but it can be mis-used because the addition of this clause is general. It will apply in all cases of rape of any female of any age. If the word 'shall' is substituted by the word 'may', the court may draw this presumption under the provision of this rule. If, however, the situation does not warrant then the presumption may not be drawn. If the word 'shall' is allowed to remain, the provision may be abused or misused.

(The Chairman joins the Committee)

Then another suggestion that I want to make is on the explanation No. 1 at page 3, 36th line, which says, "here a woman is raped by three or more persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section." My suggestion is that the word 'three' may be substituted by the word 'two' because a woman

can be made helpless even by two persons, and if two persons commit such an offence then the word 'three' may be substituted by the word 'two'. These are my four suggestions.

MR. CHAIRMAN: There are some suggestions made by legal experts—even prohibiting the publication is wrong.

SHRI J. C. MALHOTRA: The publication of the proceedings should be prohibited because if the name of the girl i.e. the victim is published, her image is tarnished and she gets a taboo on her character, she cannot get good match and she loses her prestige in the society and social atmosphere.

My respectful submission is that the publication of the name of the victim should be prohibited.

MR. CHAIRMAN: If that is the position, then what will happen in the judgement of the Supreme Court or High Court is prohibited later on.

SHRI J. C. MALHOTRA: Sir, the High Court report or Law Reports are not read by people or majority of the population in this country. Only the persons in legal profession, lawyers or judges read the report. And so there is very little possibility of her reputation being harmed by publication of the judgements of the Supreme Court and High Court in the approved law journals.

MR. CHAIRMAN: But there is another type of the victim. Even after the trial takes place in the presence of some of her relations and they also make sufficient propaganda in respect of the offence committed. There, her reputation in the society, as it was will not be the same.

SHRI J. C. MALHOTRA: The publication is published throughout the country. If the relatives make a talk about it, they will talk among their relatives and friends at the most. So the chances of her reputation being tarnished in the community at large will be minimised by not publication of her name.

SHRI S. W. DHABE: I would like to put one or two questions. What is your experience about rape cases in Himachal Pradesh in the last two years? Has any case happened in the police custody? How many cases reported in the last two years? Whether any of them happened under police custody or hospital or judicial custody?

SHRI INDRAJEET SINGH SODHI: Sir, so far as Himachal Pradesh is concerned, we are quite lucky that the incidence of rape cases is very very less. In the year 1978-79, only 30 cases of rape reported throughout the Pradesh. We do not have any case of rape in the police stations. Rather in my view, here we do not have incidence of crime on large scale.

SHRI S. W. DHABE: There are no cases under police custody.

SHRI K. C. CHAUHAN: These areas have been traditional since long time relatively free from crime of this nature.

SHRI S. W. DHABE: First point. Of late, during the last two or three years, as compared to other States, no doubt, your State is free from this kind of crime. Compared to this within the last span of 5 years or 10 years, has there been any conspicuous increase?

SHRI INDERJEET SINGH SODHI: Sir, we are bound to have increase is due course. Previously the Himachal Pradesh had maintained its insular character and it had been completely cut off but now that the roads are opening up and there is much amount of floating population and big projects are coming up, the incidence of crime is bound to be on the increase.

SHRI S. W. DHABE: Mr. Malhotra, Secondly, you have said the word "shall" may be substituted by the word "may". Under the Indian Penal Code the definition of consent given under Section 90 is very vague. Do not you think in view of the condition of Section 90, this Section is necessary for the presumption of her consent.

Section 90 of the I.P.C. says— A consent is not such a consent as is intended... if the consent is given by a person under fear of injury, or under a misconception of fact... May be consent—it is possible to find out from the evidence whether it is free consent or consent under duress. It is necessary to allow this presumption under the new clause of Section?

SHRI J. C. MALHOTRA: In my view, section 111(A) needs to be inserted. Because, suppose, there are under the general law of today, the onus of proof is on the prosecution and to prove that the accused has committed the offence. So, it is for the prosecutor to prove. If the female is more than 16 years of age or 18 years of age, whichever will be the prescribed minimum age, then the prosecution is to prove that it is without her consent.

SHRI S. W. DHABE: It is likely to be misused.

SHRI J. C. MALHOTRA: So, I suggest that the word "shall" may be substituted with the word "may". Under Section 14 of the Indian Evidence Act, if the word used is "may", the court may probe certain circumstances relating to a particular person. If you use the word "shall", it may be interpreted as mandatory. So, this is my suggestion.

MR. CHAIRMAN: "may" is, I would say, construed as obligatory according to some of the High Court and Supreme Court decisions, if the statute has conferred certain obligations on the statutory authority, even if the word appears as "may", it shall be construed to be "shall". That is under the particular circumstances, the meaning of "may" should have been taken as "shall"—but not always.

SHRI J. C. MALHOTRA: I would submit Sir that when in a statute a word, is used in the many Sections, then it has to be interpreted in the same way unless contrary intention appears. Under Section 114 of the

Indian Evidence Act, the word "may" is interpreted as not obligatory. The court may probe the circumstances or the facts of the case. So, the word "shall" in Section 111(A) also would be interpreted likewise unless it is contradictory.

SHRI S. W. DHABE: Secondly, about printing and publication. The Chairman of Press Council has said specifically in communication to the Committee that publication prohibited is more dangerous than wide publicity—mobilising public opinion etc., and that is more important than a stigma on the prosecutrix and her life.

That is one who wants to marry is certainly bound to find out a copy of the judgement and that copy could be available. So, so far as the problem of marriage is concerned, the problem will be still there. Because those who want to marry, they will certainly find out all the facts and circumstances. Therefore, the question is whether the prohibition of publication will be useful in the largest interest of the society.

SHRI J. C. MALHOTRA: Sir, my submission is in the Indian society, majority of people cannot have much access in finding the name of the victim from the Law, Reports or by obtaining a copy of the judgement.

SHRI S. W. DHABE: From the court itself, they can get a copy of the judgement.

SHRI J. C. MALHOTRA: Very few people in the villages have this access. But if the name is printed, everybody would know of it.

SHRI BAPUSAHEB PARULEKAR: I welcome your suggestion of age from 16 to 18 years. It will go a long way—for 18 instead of 16 years. You say that the proposed clause 111A of the Indian Evidence Act may be misused under some circumstances that you have just stated. Can you cite any instance in which such a presumption could be misused?

SHRI J. C. MALHOTRA: Sir, suppose there are certain marks of injury on the person of the victim according to medical report, then the Court should draw this presumption. If there are certain marks of injury on the person of the victim, the court should draw this inference. In an event if there is a hue and cry and neighbours are attracted to the scene then the presumption should be drawn. We cannot foresee all the circumstances, but the judge while sitting in the court can see whether this presumption can be drawn or not. When there is a girl, eight or nine years old, and there is no injury, the court should draw this presumption because she is helpless and weak.

SHRI BAPUSAHEB PARULEKAR: Bill says that when the woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent. You say that the word 'shall' should be substituted by the word 'may' for giving discretion to the court. Suppose discretion is not given to the court how the provision by insertion of word 'shall' shall be misused.

SHRI J. C. MALHOTRA: Sir, in some cases it happens. Suppose, a lady is willing and consenting to the act of sexual intercourse and is caught red handed. She then in the court says that it is without her consent. I have not come across a case in my life where a victim of rape says that the act was with her consent. But generally in all cases woman says I am not a consenting party. The presumption and the onus will be on the accused that she was a consenting party. In such cases I think there is a very remote possibility of removing this presumption.

SHRI BAPUSAHEB PARULEKAR: My first question will be with reference to your suggestion No. 2 about the explanation. Now that explanation only refers to the judgment of the High Court and the Supreme Court, the provisions of the Bill have not taken into consideration the judgment of the Sessions Court. Everybody

will publish the judgment of the Sessions Court and, as you know, local people are more interested in the judgment of the Sessions Court. Do you think that the judgment of the Sessions Court also not be published.

SHRI J. C. MALHOTRA: Sir, the printing and publication of any judgment of the Sessions Court, High Court or the Supreme Court in any newspaper or journal will be prohibited.

SHRI BAPUSAHEB PARULEKAR: That is being added.

SHRI R. K. MHALGI: Now if you kindly see this Section reads "Who ever prints or publishes the name or any matter which may make known the identity of any person against whom". Now according to this wording 'against whom', the name of the victim or offence can be published. Thereby the people will come to know. We may not know, but the people around Simla will come to know. Do you think it is necessary that after the words 'against whom' the words 'by whom' is necessary.

SHRI J. C. MALHOTRA: If the words 'by whom' is inserted then the law does not prohibit crime.

SHRI BAPUSAHEB PARULEKAR: The identity of the victim would be disclosed by publishing all other details excepting the name of the victim.

SHRI J. C. MALHOTRA: Suppose in Simla rape is committed. Every neighbour or the person will be knowing it whether it is published or not. If it is published in the papers then everybody in Himachal Pradesh will be knowing it.

SHRI BAPUSAHEB PARULEKAR: If the local people know about the rape, there will be more difficulties. How can you plug that?

SHRI J. C. MALHOTRA: Sir, that we cannot check. If the offence is committed, everybody can know it through his personal knowledge irrespective of the fact whether it is published or not.

SHRI BAPUSAHEB PARULEKAR: In the memorandum you have said that your Government is not in favour of interrogation of women by female police officers. But, in the Law Commission Report it is said that as far as possible statements of girls should be recorded by female officers.

SHRI I. S. SODHI: Sir, at the present about 65 ladies are police officials and none of them is ASI or above. We have kept them at the Headquarters only excepting in the border districts of Lahaul and Spiti and Kinnaur. At other district Headquarters we have got women police. We have been associating women police with the ladies for enquiries etc., but in some cases which happen in the interior, it is not possible to associate the women police.

SHRI BAPUSAHEB PARULEKAR: A questionnaire should be prepared and given to the female officers. They are simply to ask questions.

SHRI I. S. SODHI: For this when we have time, we have interrogation by the lady police.

SHRI R. K. MHALGI: What is the total strength of constables in your State?

SHRI I. S. SODHI: Sir, total strength of police is about 8,000. Out of that, about 7,000 are constables and Head constables.

SHRI BAPUSAHEB PARULEKAR: Coming to the clause 8 of the Bill, two or three things I would like to know from you. Now the first thing is that the presumption is to be drawn, and that the presumption is to be rebutted by the accused. The fact as to how the presumption is to be rebutted, we will come to that later on. But in case the consent is obtained by fraud or otherwise, medical evidence would be of no use as in such a case there would not be external injury. Now in such cases what you have to say is that this presumption should be applicable not in all cases of rape bringing in the offence of rape is committed by public officers or per-

sons in fiduciary relationship. For example, the offence committed in the police station, hospital etc. Do you want to make any suggestion in this connection?

SHRI J. C. MALHOTRA: As if an individual commits rape it is different. But if a person commits in the police station or in the hospital, in that case the presumption should be drawn. That is point.

SHRI BAPUSAHEB PARULEKAR: Don't you think that this will amount to discrimination under Article 14.

SHRI J. C. MALHOTRA: It will be a reasonable classification that is Clause 11A. It will not be made applicable to all, Sir. Your honour may kindly see that this clause 11A perhaps will be applicable in cases of offences which come within the purview of clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (2) of Section 376 of IPC. Clause (a) being police officer clause (b) public servant, clause (c) superintendent or manager of a jail, clause (d) being management or staff of a hospital. So this presumption is to be made applicable only to a particular classes of offence and not all the classes of rape. And in my opinion, this has been a proper proposition. It should not be made applicable to all classes. And where there is corroborative evidence of the prosecutrix, then alone the presumption should be withdrawn. That is why, I propose to introduce the word "may" instead of "shall". But if the judge from the facts of the case come to the conclusion that the circumstances warranted him he should change the presumption. It should not be mandatory, it should be discretionary with the judge depending upon the circumstances of the case.

SHRI S. W. DHABE: In the police custody, if the rape takes place then there shall be no purpose of categorisation. The presumption is not made applicable to all. They are made applicable to certain cases under custody or under the police custody. If

you make it "may", there is no meaning of this Section. That is under ordinary law. Therefore, the word "shall" has got a special significance because it is under the police custody, or public servant where she is helpless.

SHRI J. C. MALHOTRA: No Sir. I am submitting that clauses (a), (b), (c), (d), (e) and (f) do not relate to custody for your kind information. I may read:

(a) being a police officer, commits rape in the local area to which he is appointed, or in any police station...

Suppose a police officer is posted in police station A and his jurisdiction extends to whole of tehsil or taluq when he goes to the village and commits an offence of rape or sexual intercourse with a woman, then he will be guilty under clause (a) and the presumption will be drawn under Section 111A, irrespective of the fact that whether the woman is under the custody or not.

Clause (b)—being a public servant takes advantage of his official position and commits rape... Clause (c) being the superintendent or manager of a jail...

SHRI S. W. DHABE: How can there be a custody in clause (c). The whole idea is that if a public servant or officer commits such a heinous crime and therefore a special provision has been given. There is no choice for the court. If the word "may" is accepted then there is no categorisation.

SHRI J. C. MALHOTRA: No Sir. In those cases the court cannot draw such presumption even under the general law.

SHRI S. W. DHABE: It has been made applicable for 4 categories. Only it concerns four categories and in those categories, when an officer commits heinous crime where she is helpless, the law says that the court must presume.

SHRI J. C. MALHOTRA: But this can be misused and abused.

MR. CHAIRMAN: The question put by the Hon'ble Member was discrimination under Article 14. Because such provision did not contain in the draft Bill. He quoted that there is difference between common rape and custodial rape. Policeman is also put in a different way and also referred to the presumption made available to the particular provision of the Bill—not to all. Therefore, he has put a specific provision whether he agrees for discrimination or not. He replied that classification is reasonable. After all, it is known.

SHRI BAPUSAHEB PARULEKAR: Now do you not think in this Section 111A, the clause (e) of Section 376(2) should also be included as it is also a serious crime—rape of a pregnant woman? Because there are opinions of some jurists who have suggested that (e) should go along with (a), (b), (c) and (d).

SHRI J. C. MALHOTRA: It may be included. There will be no miscarriage. It is also a serious offence because sexual offence committed on a pregnant woman, there are chances of abortion and her life being in danger.

SHRI BAPUSAHEB PARULEKAR: Then, with reference to punishment, do you agree that it should vary with the type of victim? Such as when 4 or 5 years old child is raped, or even very old women of 60 or 70 years are raped.

SHRI J. C. MALHOTRA: In case a child is raped, the sentence should be severe, if the child is below 10 or 8 years.

MR. CHAIRMAN: In respect of a child, the punishment should be greater, you mean.

SHRI BAPUSAHEB PARULEKAR: Now you see, in the new definition of Section 375, thirdly, with her consent, when her consent has been obtained by putting her in fear of death or of hurt or of any injury or by criminal intimidation as defined in Section 503.

This is only with reference to her and not to any other person. Do you think the scope should be enlarged as far as clause (3) is concerned, so as to cover threat or criminal intimidation to near relation of victim?

SHRI J. C. MALHOTRA: Sir, in gang rape, if it is included then it will serve the purpose of justice. But there is only one victim and only one accused, then it will not. That is what I would submit.

SHRI BAPUSAHEB PARULEKAR: There is one more question. The Explanation 2 to Section 375 says that a woman living separately from her husband under a decree of judicial separation shall be deemed not to be his wife for the purpose of this Section.

Now you may be aware of the provision in the Hindu Marriage Act. During the period of judicial separation, there is an opportunity to live together and cohabit and then that decree becomes nullity. So, do you not think that this provision of explanation 2 is totally inconsistent with the personal law?

SHRI J. C. MALHOTRA: Sir, this will be, I think a fit case because generally she will be more than 10 years old. If she gives the consent then she does not come within the definition of rape.

SHRI BAPUSAHEB PARULEKAR: Do you mean to suggest that if there is cohabitation between the two persons even with consent when they are living separate under a decree of judicial separation, the case should be treated as rape?

SHRI J. C. MALHOTRA: No, Sir. Because the intercourse will be with her consent so it will not be a rape.

SHRI BAPUSAHEB PARULEKAR: What should be the punishment if we are to retain this clause. Assume for a moment that marriage has taken place and the woman is below 16 years, and because of their husband-

wife relationship, sexual intercourse takes place. Should there be less or severe punishment for this? When we make the law, people must feel that we have applied our mind.

SHRI J. C. MALHOTRA: Sir, it should be less. But there should be some distinction between ordinary case and sexual intercourse with wife. So, it should be less.

SHRI BAPUSAHEB PARULEKAR: With reference to this deterrent punishment for custodial rape also you wish to make any suggestion?

SHRI I. S. SODHI: Sir, we definitely agree with you.

(The witnesses then withdrew)

II.—*Society to Ensure Proper Treatment of Women, Chandigarh.*

Spokesmen:

(1) Shri J. P. Atray, General Secretary

(2) Shri V. N. Negi.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament." ●

SHRI J. P. ATRAY: It can be recorded as public. Only thing which I want to explain is that both of us happen to be Government servants also. Our views are private representing the Society. That is not on

behalf of the Government. That is the only exception.

MR. CHAIRMAN: Now you have given your memorandum also. What more you want to add to that? Have you got anything to be supplied in detail in addition to that?

SHRI J. P. ATRAY: One thing which I want to add is that there is no doubt that this is sought to make the law more stringent and deterrent. But we still feel that this is an area where the law including the criminal law, law of evidence law of procedure which are not as strict as in other crimes and offences. So, our view is, Sir, that it would be probably better to have a separate sort of an Act on sexual offences like for example, in Britain, you should have a Sexual Offences Act which should take care of not only the penal aspects of the law which are covered here but the law of evidence and procedure relating to these offences. Now for example, the stress in the Amendment Bill is mostly on the evidence of rape etc. Sections like 354 and even kidnapping for sex is not given the same treatment. Sir, our feeling is that in the Indian social conditions, the stigma which is attached to a woman whether she has been raped or molested, is more or less the same. Physical assault—not amounting of rape—is also more or less the same offence as far as the social treatment is concerned. The stigma would still be there and therefore even in this assault offence, we need stringent treatment and that can be had by making a separate Act on this.

MR. CHAIRMAN: You mean to say that outrage of modesty. What is the punishment—deterrent according to you.

SHRI J. P. ATRAY: Sir, U.K. has got a different social set up. We should formulate the law in the light of social consequences in our country. For example, the Law of Evidence etc., while it may be easier to say that ingredients like resistance and

consent, penetration etc., they can be proved. But in practice, our experience is, it is very very difficult. The corroboration of these things is almost impossible. In the light of these, the law of evidence needs a sort of change to make it more stringent for these offences. And this may be clubbed with offences generally related to that kind.

MR. CHAIRMAN: So, according to you, even if there is no corroboration, you mean that there should be a conviction.

SHRI J. P. ATRAY: According to me, if the woman stands up and says she has been molested, raped, I think it should be given much more credence than saying that theft has been committed in my house. The crime of theft and crime or rape should be treated differently.

MR. CHAIRMAN: No, no. Exception is not always correct. If you say, a particular woman is chased, or modesty is outraged, then there should be a case of stern punishment—And generally, in almost in all cases of outrage of modesty or indecent assault on the woman, courts put some sort of exercise to see corroboration not because of rule of law but as a rule of prudence to satisfy their conscience.

SHRI J. P. ATRAY: Woman will not wrongly testify on such matters especially if one has better character. What I am saying is unless it is proved that the woman is of such low moral character that she is a professional woman, her evidence alone should be given enough weightage and a sort of shifting of the burden of proof to the accused—to at least prove that she is of bad character. If he proves this the onus is discharged. When she stands up and says that, she has been raped the onus is on the accused to prove that he is innocent and this is nothing new as far as Indian laws are concerned. There are strong presumptions, in some other laws against the accused and onus is there on him. So,

this will not be a sort of exception to the legal system.

Another aspect about the memorandum which I want to say is about the case of persons in authority while the law has covered persons who under the law or otherwise can hold custody of women. It has not covered journalists. We have started with a sort of misuse that authority to obtain consent and things like that. That is why, Sir, I proposed that this definition of Section 375 should be that "with her consent, when her consent has been obtained by putting her in fear of death or of hurt, or of any injury or of loss or by criminal intimidation." It is connected again with Section 376 (2) (b) also. The proposed Bill does not cover the person involved who may misuse the authority to obtain the consent for sexual intercourse.

MR. CHAIRMAN: But in the memorandum, you have given—it is the same in the Bill. Definition of 375 has further been revised as follows:—After the word injury, "or by criminal" force.

SHRI LAL K. ADVANI: The main objection against shifting the burden on the accused has been this change to blackmail and abuse all that. Don't you think that if you bring in this provision, it will result in reforms. It is not related to persons like police officers or Superintendents of Police or Superintendents of Hospitals, but the custodial authority. We are bringing a senior officer in the Government and subordinates to him. He can be accused of taking unnecessary advantage. Don't you think that this is the objection against the whole thrust of the Bill, namely, it is likely to be abused. I am not questioning the authority of the persons.

SHRI J. P. ATRAY: Sir, I know that the main objection against the whole Bill is this and that the objection becomes stronger when we try to bring everyone under it. Under

the practical conditions, there have been cases of rape and they are increasing, and instances of this type are also not lacking. Sir, this is a practical situation which we are experiencing. In order to deal with this situation, we are to find a remedy though there may be violations in the process of this remedy. For example, there is a medicine which is used for curing a particular disease, but it may also be used for committing suicide. So, it does not mean that the medicine should not be prescribed.

SHRI LAL K. ADVANI: Victim of the rape is subjected to some medicine. A person who is a police officer, or a person who is a Superintendent of Medical Institution, or a person who is the Head of the Educational Institution, he is abusing his authority, and a person who happens to be an official commanding supreme position does not necessarily give that authority. Is not it a different category altogether. I mean to say the whole purpose of the Bill will be defeated if we do not cover all the cases of rape.

SHRI J. P. ATRAY: Sir, in the present time, the fear of loss of job is sufficient as a sort of threat for her to agree to this sort of thing. As far as the custody part is concerned, the same thing applies there.

SHRI LAL K. ADVANI: Loss of job. You have made a specific point that this particular category should be extended. Have you come across any such case?

SHRI J. P. ATRAY: Sir, I have come across such cases. There are written complaints involving not only loss of job, but even transfers also.

SHRI S. W. DHABE: In whose custody or in what case do you think that this should be extended? There are many complaints that landlords commit atrocities on poor people.

SHRI J. P. ATRAY: The landlord is not a person in authority in the sense in which we are considering like public servants.

SHRI S. W. DHABE: Also exempting other categories where these offences take place in the office where employees are working as stenographers or otherwise, there are other cases in the rural areas where landlords, for example, in Bihar and U.P. commit atrocities on women. Number of such cases is larger. Do you think that this Section should be extended to the category of landlords.

SHRI J. P. ATRAY: I personally feel that as far as that tendency is concerned, the women are protected under other laws also. So, landlord cannot at least be on paper a person in authority. As far as land is concerned, the landlord cannot go to the tenant and say that I will deprive you of the land because he can take recourse to available legal remedies.

MR. CHAIRMAN: Suppose, there is landlord. Can he not take advantage if such a Section is extended to them also.

SHRI J. P. ATRAY: I don't think it should apply to anyone except Government employees. If a woman is employed on a particular Government job and she stands to lose that job, there can be chances that she will consent because if she loses the job of Government, she cannot get it again. Further, a woman who is doing this particular type of job cannot do the job of a coolie as an alternative.

SHRI S. W. DHABE: We are going to make a comprehensive law. Do you think that in the comprehensive law, such things should be added.

SHRI J. P. ATRAY: I will not object if it is added on a short term basis. The problem of landlord and tenant is a different thing. If that aspect is otherwise taken care of, this problem will not arise. I only want as far as possible all persons in authority should be covered. As far as police officers are concerned,

they can be covered by the proposed amendments. I also want to go to the basic question of this problem because law alone, even if it is made hundred per cent deterrent, is not going to deal with the problem as the problem lies elsewhere. To my mind, the basic sense of insecurity in the women taken as a separate sex is behind it. This insecurity is not because of physical weakness; that may be one of the facts. But such factors are often pointed out against women, as reason that they do not find themselves in a position to protect themselves. Women as a separate sex, find some sort of insecurity. To my mind reasons for this are economical reasons. If we want to strike at the root of this problem, we are to provide a sense of security to the women as far as economic aspect is concerned. To ensure economic backing, some facilities should be given, and one of the facilities that I suggest is that there should be proportional reservation of jobs for women. But this is not to distribute jobs to women; it can be limited by other factors but whenever a woman needs economic backing, it should be provided to her. For example, a man is murdered. His whole family is in economic problem because the man has been murdered and the family has been deprived of the economic means. A man has been murdered. The family has been deprived of the economic means and the wife of the accused also. Some sort of economic assurance like an assured family income to the woman should be provided so that when she is in need of bread and butter that should be provided.

Child victims. I am afraid, this crime is very much on the increase. Sir, we both happen to be police officers, senior police officers, it is almost every day that in our experience, in our day to day working, we have seen this kind of child victims. Children of the age of 1—15 years there is no sort of age limit. Children of even one or two years have been subjected to a crime of

rape. There are several instances. So the seriousness of the offence. And this is an area where there is no provocation at all. Sometime people say women provoke by their dress, this kind of argument does not apply here. These cases are one sided—unprovoked—this is an area where the strongest measure should be taken. They are no less than murderers. In fact, most of these cases, children normally die.

SHRI S. W. DHABE: Mr. Atray, have you made any study of the last two years about the child rape or other rapes in police custody at Chandigarh or any document shows or any statistics prepared on this.

SHRI J. P. ATRAY: We have made studies. But I have not brought figures here.

MR. CHAIRMAN: Do you remember some of the figures? You can quote here also.

SHRI J. P. ATRAY: Figures, in the sense, there are so many rape cases.

SHRI S. W. DHABE: I would like to know whether your society has made any study on it, especially about child crime.

SHRI J. P. ATRAY: Yes, Sir. Here I may also add that this is the Society, mostly of Government officers, and people from professions—lawyers, journalists. We have started with a view to exchange ideas. It is a society for collective thinking and individual action.

SHRI S. W. DHABE: If you are aware the child rape, you can give the particulars.

SHRI J. P. ATRAY: I can quote several instances of rape. Child rape. I have two categories broadly. One is in the rural areas. Lot of children mostly female children go to the field for cutting grass and the things like that and while on the way to the field or back home or working there, neighbourers in the field or by-pas-

sers or some body overpower them and assault them. There have been several instances. I can quote the figures and a sort of 100 in a year in a small State like Haryana with a population of about a crore or so. So, you can take up that also, and Haryana is a place where communication etc., are well developed and people should normally be afraid. So all the talks about that there can be a resistance, there is hardly a time for it as they just catch hold of a young girl of 10—12 years, gag her mouth with her own chunni. Half of the cases have not been reported also. No statistics which I may say can be reliable.

SHRI S. W. DHABE: Any case of conviction.

SHRI J. P. ATRAY: Well Sir, I will certainly say the conviction in these cases has been very miserable till recently. But the hue and cry in the press and all that, it definitely led to a change—I mean in the judiciary also. There have been recently some cases of conviction of even 10 years. Even in one case, life imprisonment was given. But again Sir, the problem is there. Though there is conviction in the lower court, the person concerned without much passage of time, gets released on bail and court cases remain pending in the High Court and higher courts. And it takes a lot of time. And this crime is committed by mostly neighbourers, persons in the same village, resident of that particular area and when the accused is also a sort of nearby it is very very difficult for the woman.

SHRI S. W. DHABE: You say that employment given to women will reduce the incidence of offences, sexual offences?

MR. CHAIRMAN: What he has said is economic security.

SHRI J. P. ATRAY: A sense of security backed by economic means which is very relevant today. There the reasons are different.

SHRI S. W. DHABE: Even after passing of Sexual Offences Act, 1976 in Britain and employment and social security and everything is there, why the offences are going on?

SHRI J. P. ATRAY: That is a different thing.

MR. CHAIRMAN: He says if economic security is given, it will reduce one way or the other. There may be some possibility in curtailing the crime.

SHRI S. W. DHABE: The object of punishment is to improve the human beings and not to condemn them. Do you support the principle of minimum punishment which is given for any crime?

SHRI J. P. ATRAY: I support the principal of minimum punishment. While I myself am against capital punishment, I suggest capital punishment as long as it holds good, should be invoked in child rape also.

SHRI S. W. DHABE: Provision of minimum punishment of 7 years may also result in acquittal.

SHRI J. P. ATRAY: To arrest the trend, I would suggest minimum punishment—at the moment. To arrest the fast increasing trend.

SHRI LAL K. ADVANI: Have you anything to say about this last clause of the Bill which is in a way crucial, namely, presumption. 111A.

SHRI J. P. ATRAY: This proposed Bill provides that on the question of consent, the presumption is raised. If she stands up and says, then it should be admitted.

SHRI LAL K. ADVANI: Of course, you are here in a personal capacity. Would the police officers accept this?

SHRI J. P. ATRAY: Yes, Sir. Actually, the police officers are all concerned. Because, when a crime is

committed and during the course of investigation and even during trial, it is the police officer, and even after their trial etc., police is the only agency which is connected right from the beginning till end. Other agencies come and go. And if there is no conviction in an offence the policeman feel concerned. I think the policemen will definitely accept.

SHRI R. K. MHALGI: The offence depends on how the police acts. If there is no efficiency, real blame will be put on investigation by police. Can you make or suggest improvement in the investigation or sexual offences, especially rape.

SHRI J. P. ATRAY: I certainly disagree because as far as investigation is concerned, speaking from my personal experience, as I said in the beginning, this offence and the related offences of the dowry death are private offences. Once an offence is committed in privacy, even if there is a private witness, it is an interested witness. That is one thing. Secondly, regarding ingredients of evidence like consent, resistance, actual intercourse, etc., it is almost impossible to prove them. The question of proving resistance the lack of resistance or the lack of signs of resistance, I don't think, is related to the actual consent or offence. For example, in what you call children rape cases, she does not know what to do. She only realises after the rape has been committed.

MR. CHAIRMAN: Perhaps, there is a weakness of the police officers in collecting evidence and at the time of investigation they may forget certain things. For example, if there is a commission of offence and complaint is filed in the police station, and the victims is required to be taken to the hospital while there are marks on the body. But the police officer purposely neglects it. What is your view in that connection if the police officer derelicts his duty.

SHRI J. P. ATRAY: He may neglect his duty in this case as in any other case. A police officer may neglect his duty to investigate. There are so many things responsible for this, like question of recruitment, question of scientific aid to the police officers and the question of motivation for the policemen to investigation, which is a broad thing; which is a very general subject. But I would like to say that one thing which helps is that we should encourage more and more women police officers to be associated. I have no doubt on it.

SHRI BAPUSAHEB PARULEKAR: Are you satisfied with the statements that are recorded by the investigating agency?

SHRI J. P. ATRAY: The problem is there about what that though they have been doing, I don't deny. There have been several cases in which policemen have been faulty. Now it is a problem which is a human problem. We are to deal with it differently.

SHRI BAPUSAHEB PARULEKAR: When the offence is registered at the police station, the constable goes to the spot, but he does not understand how to proceed in the matter and makes perfunctory investigation. Do you agree?

SHRI J. P. ATRAY: I am of the other view. Actually, we are running a major part of the police force totally without any duties, and they have been made useless by not giving them any work. A constable does not do any work independently. There are many reasons for this. So, I would suggest that we should improve standards of the constabulary so that they could take more and more part in the work. I have a practical problem. In our State we have made it obligatory on the police officers that whenever a crime is reported by a woman, whether it is a crime of murder or dowry, it must be recorded even if there is no complaint or grie-

vance, for example, relating to dowry, murder in suicide cases, all suicide cases by women are registered in the State of Haryana U/S 306 IPC. On investigation, they may be found mere suicide cases. All cases where a woman dies an unnatural death must be registered. We have made obligatory on the gazetted officers to go and visit the spot. As a result, the number of reports has gone up thrice. It is a considered opinion that solution to the problem is to be found at the lower level.

SHRI S. W. DHABE: Women should be associated at the time of recording statements. What do you think about this?

SHRI J. P. ATRAY: Sir, assistance should be obtained from them by the police but the investigation responsibility, recording of F.I.R., etc., should remain with the police.

SHRI S. W. DHABE: Don't you have sufficient number of organisations who can detect and check this problem?

SHRI J. P. ATRAY: Sir, there are certain areas where we have got this assistance, but that should be more or less left to the police. Assistance of these organisations is to help girls in being questioned by the police. If it is obligatory, then there will be a sort of confusion on the part of investigation. One may blame the other.

SHRI LAL K. ADVANI: Mr. Atray, you have suggested an amendment in the Bill, to Section 375, in which it is not being under 15 years of age, may be omitted in the clause. Is it on theoretical consideration that this can be abused in case of child marriage etc., etc., or is it in actual experience that has come to your notice?

SHRI J. P. ATRAY: About the age of wife, my consideration in saying this was that we have a corresponding law lays down that. Once we have

something on the statute, if we had something—I believe the interpretation of that law—that these days it is voidable but not void. This is the diffusion of the statute and as a result, we have not been able to enforce this. Child marriages are taking place. Even now the legal interpretation lays down that the age is 18. That means below 18 cannot be married. Police are now finding themselves hampered. If we have that then everything else should be enlightened. This is my way of thinking that there is no wife below age of 18 years.

SHRI LAL K. ADVANI: It is only a theoretical consideration.

MR. CHAIRMAN: Customs and usages forbid such things.

SHRI J. P. ATRAY: You are aware probably the law which we have made is against custom, it is impracticable to implement.

MR. CHAIRMAN: You said that below 18 years even wife is not recognised under the law after marriage. It is only marriage that gives a right to woman to shift into a term of wife. Even according to the customs, you say in certain areas, there are certain marriages and she is entitled to property. So, in such cases what are your suggestions?

SHRI J. P. ATRAY: That is what I have been saying. We have a statute which lays down an age of consent and we have a practice. The interpretation of this statute made by the court says that even if there is no consent, the marriage is not void, it is voidable. It can be considered void but this is not always void.

So, this is only diluting an existing law to bring down to reality. I think, that is not a good way of legislation or enforcement.

MR. CHAIRMAN: There, the idea of legislation was to provide some obligation in raising the age of marriage concept. The law is not stringent. You know our Indian society

is very peculiar. Many customs and usages are there and unless you teach them morally they cannot adopt to the condition. Therefore, something is to be provided that the marriage could not take place without the consent.

SHRI J. P. ATRAY: That is there on the statute for long time. I am not sure whether there is any case where it has been enforced and Sir, there may be one or two cases where it might be misused. If you want to enforce, you can. Otherwise, not. In that sense, the statute should not be rigid. If the child marriage is to be prohibited, there can be social solutions. But once the law, the respect for law goes away, the statute remain dead law and by making a suggestion in another law there can be a sort of consent below 18 years etc. We are probably taking away the other statute.

MR. CHAIRMAN: To awake a social consciousness, such provisions might have been brought.

SHRI LAL K. ADVANI: With reference to evidence clause 111A, I would like to ask whether a provision should be made that no presumption should be drawn unless during investigation, statement of the prosecutrix...

SHRI LAL K. ADVANI: In some other context a suggestion was made by another witness saying that Clause 8 which deals with 111A of the Evidence Act in consultation with the court shall presume that she did not consent.

SHRI J. P. ATRAY: Certainly Sir. In practice, the suggestion is very valuable indeed. But the general experience is that if 'may' is introduced then the presumption will never be given—never be there.

SHRI S. W. DHABE: Mr. Atray, it has been experience of trial of offences men lawyers ask indiscriminate questions to discredit the credi-

bility of the witnesses. So she does not give the correct version which results in acquittal.

SHRI J. P. ATRAY: It applies to the whole system. It is not that it is the intention of the law. They ask all sorts of questions make gestures. There is no doubt about that. If you allow. Presumption that will take care of it.

SHRI S. W. DHABE: Whether any improver of trial is desirable. Can we take any improvement in the trial system?

SHRI BAPUSAHEB PARULEKAR: Whether past character of prosecutrix is, according to you, relevant or not especially when the provision like 111A is being made.

SHRI S. W. DHABE: It will take place in many cases. We are concerned with the reasoning.

SHRI J. P. ATRAY: In that case, as the law at present is, we are concerned with only one act which has to be independently proved. The Past character can be raised by the accused to rebut the presumption.

SHRI BAPUSAHEB PARULEKAR: If you kindly see Section 111A which only refers to the offences under clause (a) or clause (b) or clause (c) or clause (d) or clause (f), whether this presumption should be made applicable only to these categories or to all persons who indulge in such crime irrespective of the authority which he holds.

SHRI J. P. ATRAY: As far as the presumption is concerned, it should be applicable to all. This is only a part of the consent that we have taken care of separately.

MR. CHAIRMAN: In this connection, so far as the question of consent is concerned, I am referring particularly to rape cases. There are married women and unmarried women; these are two categories. So far as the unmarried woman is concerned whether the age should be 16 years?

SHRI J. P. ATRAY: Sir, it should be raised to 18 years.

MR. CHAIRMAN: You say it should be upto 18 years. Suppose, there is sexual intercourse without the consent of the victim or the consent is obtained under duress. I may quote some example here. There is an unmarried woman. In such cases, prostitute is a complainant and her statement is taken in a court of law. Then what happens if her statement is taken as it is, without looking into the cross-examination or other aspects, then so far as the presumption is concerned, her statement should be accepted.

SHRI J. P. ATRAY: As it is, we do not recognise prostitute in law. As far as the prostitute is concerned, she is also a woman, but that may help in rebutting the presumption.

MR. CHAIRMAN: At the time of making statement, age is not ruled out in such cases.

SHRI J.P. ATRAY: Take a case of prostitute. If she is 18 years old and files a complaint that a particular person has committed rape, entered her house, even her evidence has been recorded for investigations and in the court of law proceedings her statement is accepted as true. The presumption should be raised as it is raised in any other case. But it has always been discussed that if the woman making a statement is of not good character, then this presumption or effect of the presumption will have to be taken away. To rebut presumption by proving bad character the bur of proof falls on them.

SHRI R. K. MHALGI: You have said something about the camera trial. Would you give reasons?

SHRI J. P. ATRAY: Sir, in case of a trial, a woman is to come out and make a statement, go through the investigation and go through the trial and if it is done in public, firstly, she will be relevant to come.

Secondly, though the person is accused and is convicted, but it will probably create social complications for her if the trial is open. Trial in camera will only be encouraging her to come out with an evidence, more freely and to save her, social status.

SHRI LAL K. ADVANI: Nothing should be published which reveal the identity of the women. There are objections to that on the ground that in these cases unless the social climate is built up or till the social climate is not built up, only some certain facts are brought out.

SHRI J. P. ATRAY: There is a corresponding trial in camera in espionage cases. We want atmosphere to be built for or against that also but we still have camera trial. In camera trial, as far as the publicity aspect is concerned, there is no publicity.

SHRI R. K. MHALGI: If she wants that it should be open, should that option be there?

SHRI J. P. ATRAY: Yes, Sir. That option should be with her.

MR. CHAIRMAN: Regarding camera trial, the question is that there should be a general move. General move is important.

SHRI J. P. ATRAY: Seeing that almost 90 per cent of the witnesses would ask for camera trial, there is no harm in making these rules. It is certainly advantageous. But the rule can be reversed if she wants open trial.

SHRI J. P. ATRAY: As far as the publicity of the trial is concerned, I do not think it is much relevant, As far as immediate area is concerned, the publicity is already there whether it has come in the press or not. Now in the press, naturally, far away area could be concerned. As far as the local publicity is concerned, that performance would be sort of—whether there is this much publicity or that much publicity. And now there is much more awareness of this sort of a crime against

woman, and publicity has never had a smaller part and the people generally feel about it.

SHRI K. ARJUNAN: Don't you think that in 111A, the Police officer could also be exempted due to his jurisdictions.

SHRI J. P. ATRAY: I don't think it is.

SHRI B. IBRAHIM: I would like to know your sincere views with reference to this revision of 111A about a Police officer. Whether this would be misused by the police officer.

SHRI J. P. ATRAY: This clause does not come in the police because it only presume a sort of consent or lack of consent. If a person is able to prove that there is a consent as it is there is no sort offence if other ingredients were not there.

MR. CHAIRMAN: Question of presumption will arise only while the evidence is appreciated by the presiding judge.

SHRI LAL K. ADVANI: First of all, it is heard that the rape has taken place. Second one is, whether she has given consent or not.

MR. CHAIRMAN: That presumption will arise only after the establishment of rape. They must prove first that whether sexual intercourse has been committed.

SHRI LAL K. ADVANI: Is there any possibility of blackmailing in this particular presumption?

SHRI J. P. ATRAY: No women will like to blackmail against her own personal interest.

MR. CHAIRMAN: Thank you very much.

SHRI LAL K. ADVANI: May I ask your designation?

SHRI J. P. ATRAY: Sir, Atray, D.I.G. (CID) Haryana. He is Mr. Negi SSP, Rohtak.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CRIMINAL LAW
(AMENDMENT) BILL, 1980

Wednesday, the 1st July, 1981 from 10.00 to 13.15 hours, Conference Hall of the
H.P. Institute of Public Administration, Fairlawns, Moshabra, Simla

PRESENT

Shri D. K. Naikar—*Chairman*

MEMBERS

Lok Sabha

2. Shri K. Arjunan
3. Shri Rasa Behari Behra
4. Shrimati Suseela Gopalan
5. Shrimati Mohsina Kidwai
6. Shri R. K. Mhalgi
7. Shri Bapusaheb Parulekar
8. Shri Qazi Saleem
9. Prof. Nirmala Kumari Shaktawat
10. Shri S. Singarvadival
11. Shri V. S. Vijayaraghavan
12. Shri P. Venkatasubbaiah

Rajya Sabha

13. Shri Lal K. Advani
14. Shri Ramchandra Bhardwaj
15. Shri Amarprosad Chakravorty
16. Shri S. W. Dhabe
17. Shri B. Ibrahim
18. Shri Dhuleshwar Meena
19. Shri Leonard Solomon Saring
20. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—*Senior Legislative Committee Officer.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

- Shri M. P. Khoala—*Officer on Special Duty*
Shri S. C. Bablani—*Under Secretary*

WITNESSES EXAMINED

I. Union Territory Administration of Chandigarh.

Spokesman:

Shri M. S. Nagra, Legal Remembrancer

II. Government of Punjab, Chandigarh

Spokesmen:

1. Shri Aftab Singh Bakshi

2. Shri S. V. Singh, Superintendent Police, Special Branch

III. Government of Haryana. Chandigarh

Spokesmen:

(1) Shri L. C. Gupta, IAS, Financial Commissioner and Secretary to the Government of Haryana, Home Department

(2) Shri B. S. Yadav, Legal Remembrancer and Secretary to the Government of Haryana, Legislative Department

(3) Shri Manmohan Singh, IPS, Inspector General of Police, Haryana

I—Union Territory Administration of Chandigarh Spokesman

Shri M. S. Nagra, Legal Remembrancer.

(The witness was called in and he took his seat)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their

evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Now what is your view on each proposed amendment?

SHRI M. S. NAGRA: Sir, first of all, I would like to take up the insertion of the proposed Section 228A. In it the words used are "Whoever prints or publishers". I would like to suggest that the word 'publish' should be defined, otherwise there is risk of taking what is not defined. Then if there is any communication, even official communication, even from a police headquarters to the State headquarters through different modes of communication, whether by telecast or telegram, disclosing the identity of rape, that may amount to offence to my mind. So, I would like to suggest that this word should be defined and there should be exception for the

official communication so that they may not come in the ambit of this offence. This is my first point.

Secondly, as far as the explanation of sub-section (2) of Section 228A, page 2, is concerned, I will draw your attention to the statement of objects and reasons. Under clause (4) of para 2, the object is given as "the prosecutrix should be protected from the glare of embarrassing publicity during the investigatory as well as trial stages and any information leading to identification of the victim should not be disclosed." I would like to suggest that even after the trial is over, the reproduction of the judgement in the newspapers has to be prohibited. Now come to explanation under sub-section (2) on page 2. It reads, "The printing or publication of the judgment of any High Court or the Supreme Court does not amount to any offence within the meaning of this section." This thing happens after the trial has come to an end. It may be beyond the objects and reasons. I personally would like that this printing or publication shall be exempted only for law reports and journals, not the newspapers. After the judgment is given, he obtains a certified copy of the judgment and prints the whole of the matter in the newspapers. Then the whole purpose is defeated. So this is my second point. Publication only in law journals and law reports should be done and not in the newspapers. There should be some safeguards for this also.

My third point, Sir, relates to the fifth clause of Section 375, page 2, which reads "with her consent, when her consent is given under a misconception of fact, when the man knows or has reason to believe that the consent was given in consequence of such misconception." This should be made more clear. It should be clarified. To my mind, it is a little vague. Even about misconception of facts, we should be more clear as to what we would like to convey.

Sir, my next point is regarding punishment proposed in Section 376, page 3. In this, the object seems to be that there shall be some minimum sentence. The quantum of minimum sentence shall be there. This seems to be the object. But I find here that the sentence is diluted by the provision. Now according to law as, at present, it is, if the offence is punishable with imprisonment for life, the accused can even be released on bond. If you have that object in mind that minimum sentence should be there, then its provision should be carefully studied. Under the provision as it stands, the punishment is reduced by the proviso. Would you like it to be left to the discretion of the trial judge that whatever is being achieved in the first part is diluted by the proviso. Similar is my submission regarding clause (f) inflicting minimum sentence, but it stands diluted by the proviso that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment of either description for a term of less than ten years. Then, a judge may sentence a man for 7 years while another judge may punish for less than a year. I would like to suggest that if the accused is above 21 years, the minimum sentence for a period say 2/3 years shall be there. So, once a judge convicts a man, then minimum sentence must be there.

Regarding sub-clause (2) of Section 376, page 3, I find that you want stringent punishment for a police officer or a hospital Superintendent or a Manager of an institution. Now an S.H.O. in a big city, for example, in Chandni Chowk Police Station calls a lady for interrogation and during interrogation, the complaint is there, lady is there and commission of theft is alleged. Now he is taking undue advantage of his position. You are restricting this within local area which comes under his jurisdiction. It may be different that when SHO, Chandni Chowk, goes back to his home District and commits rape in the District, then he deserves the

same punishment which an ordinary man deserves.

SHRI M. S. NAGRA: Taking undue advantage, my opinion is that it should also be incorporated here so that this mischief is also covered and that we want to achieve. So, this is the humble suggestion.

Now, I come to what I said earlier; it should be treated as confidential.

What is required, what I find is a change in the judge. What I mean by that is change in his approach to the appreciation of the evidence. Now, so far as we are working on that old principle maxim of law that let guilty be acquitted but one honest, innocent man should not be convicted. This has been going on. As the proposal stands, you want a legal presumption to be drawn. A legal presumption will be by expressly using the word "shall", the court presume. I personally think that it overwhelmingly goes against the accused. We have to see the Society in which we are living. There are circumstances where a woman of easy virtue, makes a complaint and walks into the court. There are two means. One is going to the Police and the other to the court alleging rape or any of the offences.

So, it should not be left like that—that the legal presumption should be drawn by a simple statement of the lady. Nobody will be safe in the society because of the society will believe it. Once we know that one can produce a woman of easy virtue to alleged anything against the opponent, the whole society will be unsafe. The officer will be able to go against subordinate not to speak of officers in public servants in any walk of life.

I would like that the presumption, the expression used "shall", may be

**Expunged as ordered by the Chairman.

substituted with the expression "may" I am personally against this legal presumption being introduced that a mere statement 'presumption' should be there.

MR. CHAIRMAN: What is your opinion in favour or abolition?

SHRI M. S. NAGRA: I am in favour of substitution.

MR. CHAIRMAN: Then, our Members will ask certain questions.

SHRI M. S. NAGRA: Welcome, Sir.

SHRI S. W. DHABE: You have given here the memorandum Document No. 58. You are giving personal evidence. Chandigarh Administration says you are agreeing with all the proposals.

SHRI M. S. NAGRA: This is my personal.

SHRI S. W. DHABE: I would like to know only this. Is the discretion is given to the court "may" presume, you say it is very difficult for a judge to the appreciation of evidence. Is it not possible that the discretion is misused by the judge? Generally, in all these cases there are acquittal. Because the prosecutrix is not able to stand and the cross examination the lawyers confused. And under the normal rules, the evidence will not be accepted. Therefore, instead of "shall", It 'may' be used as it is not possible that the discretion would be misused by the Judge. And this is not for all. This is only for special categories like police officers and others.

SHRI M. S. NAGRA: Sir, the damage done will be much greater than the damage done now. That is my submission.

SHRI S. W. DHABE: Secondly, I would like that presumption is there. Complete right of liberty is there. Right of rebuttal will be there.

SHRI M. S. NAGRA: Right for rebuttal will always be there. In every

accused there is no legal provision against that.

SHRI S. W. DHABE: The principle of presumption is not new to the Evidence Act.

SHRI M. S. NAGRA: My humble view is that, the damage is much bigger than otherwise.

SHRI S. W. DHABE: Second, the category which has been specified in 376 to which presumption is made or applicable, this is not general. This is only restricted to clauses (a), (b), (c)..... These are special categories to which made applicable. I would like to know your view on this matter whether this category should also be extended to employers and landlords. Because in many cases employer in big houses in big offices take undue advantage of the position. And in many cases in rural areas atrocities are taking place on Harijan women. Will this category be extended to landlords and employers?

SHRI M. S. NAGRA: I personally do not agree that the presumption to be there.

SHRI S. W. DHABE: Whether it should be extended to employer?

SHRI M. S. NAGRA: If it is extended to employer, I think that 90 per cent of we people all are employers. I personally feel, it should not be extended.

SHRI S. W. DHABE: Some witness said, the age of 16 years should be extended to 18 years.

SHRI M. S. NAGRA: Perfectly, it should be increased to 18.

श्री हुक्म देव नारायण यादव जो कुछ इन्होंने बताया, वह अंग्रेजी में बताया मैं पूरा समझ नहीं पाया

श्री एम० एस० नागरा : उसके लिए मैं माफी मांगता हूँ। मैं हिन्दी में भी, जो कुछ मैंने कहा, उसको रिपोर्ट कर सकता हूँ। अगर चेयरमैन साहब हुक्म करें तो मैं हिन्दुस्तानों में भी रिपोर्ट कर सकता हूँ।

श्री हुक्म देव नारायण यादव : तो मैं कुछ प्रश्न ही करूंगा उसका स्पष्टीकरण ही यदि आप दे देंगे तो उसी में मैं पूरा समझ लूंगा, यदि नहीं समझ पाया हूँ। जैसा कि आपने अखबारों में प्रकाशन के बारे में बताया, जितने भी कोर्टस के फैसले होंगे, उनको अखबार वगैरह में प्रकाशित करने से कुछ अच्छे परिणाम नहीं निकलेंगे, इसे आप अच्छा महसूस नहीं करते हैं। इसके पीछे भावना क्या है, क्यों आप ऐसा महसूस करते हैं। यदि अखबारों में इसको प्रकाशित किया जाता है तो क्या यह सार्वजनिक हो जाने से अधिक लोगों पर इसका असर पड़ेगा . . .

श्री एम० एस० नागरा : इसमें बात यह है कि जिस औरत के साथ जुर्म किया गया है, जिसके ऊपर जुर्म किया गया है, यदि उसका नाम अखबारों में आता है तो समाज में कई औरतें या लड़कियां ऐसी होती हैं जिनकी कुछ समय बाद शादी होने वाली होती है, इससे उनके सामने दिक्कत पैदा हो जाएगी। क्योंकि इस वक्त हमारे सामने एक महद्द सवाल यह है कि जिस औरत के साथ अन्याय हुआ है, जुर्म हुआ है, उसका नाम अखबारों में आना चाहिए या नहीं आना चाहिए, तो मैं यह कहना चाहता हूँ कि जिस वक्त उस युक्तदमे में तफतीश चल रही हो, जांच चल रही हो, उस वक्त उस औरत का नाम नहीं आना चाहिए। साथ में हमने यह कह दिया कि जो फैसले छप सकते हैं, हमने उनको बीच में से निकाल दिया है। यदि कोई अखबार फैसले की नकल लेकर उसका नाम छाप देता है तो फिर हमारा जो मुद्दा है कि उसका नाम

न भावे तो वह डिफीट हो जाता है। मेरी आशा यह है कि इसको हटा दिया जाए

श्री हुसम देव नारायण यादव : मुझे तो ऐसा लगता है कि यदि कोई मुकदमा अदालत में जाता है तो उससे पहले पुलिस के पास वह केस दर्ज होगा और उसके बाद अदालत में उसकी सुनवाई भी होगी। पुलिस की जांच के क्रम से लेकर अदालत में सुनवाई होने तक, किसी न किसी समय तो लोगों को पता उस केस के बारे में लग ही जाएगा, कुछ न कुछ जानकारी दो लोगों को हो जाएगी। फिर हम उसको पूरे का पूरा गोपनीय कैसे रख सकते हैं।

श्री एम० एस० नागरा : उस कस्बे या शहर के जो रहने वाले हैं, उनको तो हो सकती। यदि उसका नाम प्रखबारों में आ जाता है तो छोटे शहर में तो बात हुई, लेकिन प्रकाशन के बाद वह सारे हिन्दुस्तान में, सारे राष्ट्र में फैल जाती है क्योंकि फिर वह नेशनल न्यूजपेपर में आ जाती है। इसलिए मेरा कहना यह है कि थोड़ी बहुत उसी इलाके तक बदनामी तो होगी, उसको कोई रोक नहीं सकता, मुहल्ले में जहां यह बाक्या होता है, वहां तो लोगों को पता चल ही जाता है। मगर जहां उसका नाम प्रखबारों में आ जाता है तो जहां 200 को पता लगा, वहां दो लाख को पता लग जाता है। मुहल्ले में तो कोई रोक हो नहीं सकता है, उनको तो पता लग ही जाता है।

श्री हुसम देव नारायण यादव : यह बात ऊपर के समाज के लिए भले ही हो। लेकिन हमारे यहां तो लड़कियों की वहीं आसपास कहीं शादी होती है उसके लिए दूर कहीं जाया जा सकता। यदि वहां उसके साथ बलात्कार आदि जैसा केस होना है, तो उस मोहल्ले या गांव

में उसकी जानकारी हो जाती है, उधर हलके में जानकारी हो गई, तो फिर उस लड़की की विवाह शादी नहीं हो सकती है। क्यों कि विवाह शादी का भी एक दायरा होता है। बिहार की किसी लड़की के बारे में हिमाचल में कोई जाने या न जाने, यदि मेरे जिले दरभंगा में उसके साथ रेप हुआ है, तो उसका विवाह आसपास के थाने में या जिले में ही होगा। उसकी सामाजिक प्रतिष्ठा बगैरह विवाह शादी से जुड़ी हुई होती है। जितनी दूर तक उसकी बदनामी नहीं होनी चाहिए, वहां तो हो जाएगी बाहर हो या न हो, लेकिन उस इलाके में तो हो ही जाएगी।

श्री एम० एस० नागरा : मगर यह आपकी तजवीज है। मैं भी यह कहता हूँ कि उसके बाद भी उसका नाम शायद न किया जाए, प्रकाशित न किया जाए।

श्री हुसम देव नारायण यादव : दूसरा आपने 375 की धारा के सम्बन्ध में, पांचवीं उप-धारा "मिस-कन्सैप्शन आफ फैक्ट्स" के बारे में भी कुछ सुझाव दिया कि इसको और स्पष्ट किया जाना चाहिए; इसके स्पष्ट करने के बारे में आपने कुछ बताया नहीं कि इसको किस तरह से कैसे स्पष्ट किया जाना चाहिए।

श्री एम० एस० नागरा : इसके ऊपर तो मिनिस्ट्री ऑफ लॉ एक्सरसाइज कर सकती है। क्यों कि मेरे विचार में यह नई धारा कि मैं कोई काउन्टर प्रोपोजल दूँ, इसीलिए मैंने यह कहा कि इसका क्या सबस्टिट्यूशन हो सकता है या क्या अल्फाब होने चाहिए, जिससे इसका स्पष्टीकरण हो। वह तो लॉ मिनिस्ट्री एक्सरसाइज कर सकती है।

श्री हुसम देव नारायण यादव : जब आपका इसके बारे में कोई स्पष्टीकरण

नहीं आया कि आपके दिमाग में इसके सम्बन्ध में क्या विचार हैं तो हम जैसे कानून की ज्यादा जानकारी जिन लोगों के पास नहीं है, उसको कैसे समझ सकते हैं कि आप किस तरह की तरमीम चाहते हैं। यदि आप कुछ सुझाव देते तो हम इस कमेटी में उस पर बहुत करके किसी नतीजे पर पहुंच सकते थे।

श्री एम. एस. नागरा : इसमें जो कुछ कहा गया है, सैरा कहना यह है कि वह इतना ज्यादा क्लिअर नहीं है। इस क्लोज में "मिस-कन्वैणन प्राफ फेक्ट्स" में यह क्लिअर नहीं है कि क्या एचोव किया जा रहा है। तभी मैं चाहता हूँ इसको और क्लिअर करते हुए स्पष्ट किया जाए कि इस क्लोज को लाने का क्या प्रोजेक्ट है, किस टाइप के केसिबल में कवर किये जाने चाहिए।

श्री हुकम देव नारायण यादव : तीसरे, आपने सजा के प्रावधान के बारे में कहा कि जो 10 साल का प्रावधान इसमें है, उसको भी कम से कम तय किया जाना चाहिए। फिर 21 साल से ज्यादा उम्र के लोगों के बारे में भी कहा कि उनके लिए सजा कुछ कर लोजिए, दो साल कर लोजिए। क्यों कि जो 21 साल से ज्यादा उम्र का मुलाजिम होगा, उसको भी नियमों के अन्दर कुछ सजा रख दी जाए तो अच्छा होगा

श्री एम. एस. नागरा : मैंने कहा था कि दो साल कर लोजिए, 3 साल कर लोजिए, जो 21 साल से ज्यादा का मुलाजिम हो, उसके लिए कम से कम कोई सजा जरूर तय कर लोजिए। उसको जज के ऊपर न छोड़ दिया जाए। ऐसा न हो कि जज यह कहे कि मैं 4 वर्ष तक अदालत में बैठा हूँ और जब तक मैं बैठा हूँ, तब तक अदालत में रहो, और इसके बाद जाओ।

श्री हुकम देव नारायण यादव : इसको कम से कम करने के बारे में आपकी यह राय है कि इसको जज के स्वविवेक पर न छोड़ दिया जाए। नियमों में कुछ प्रावधान जरूर कर देना चाहिए ताकि फैसला सुनते समय, निर्णय देते समय उसके स्वविवेक का सवाल ही न रहे। कानून को इतना पुष्टता कर दिया जाए कि 10 वर्ष का प्रावधान सभी के लिए रहेगा। वह किसी को अपने विवेक से कम न कर दे।

श्री एम. एस. नागरा : मैं, सर, इस बात से मुतफाह नहीं हूँ, मैं इसको नहीं मानता हूँ। मुलाजिम ने किन हालात में ऐसा काम किया, उसको भी ध्यान में रखना चाहिए कि मुलाजिम के सामने कैसे हालात रहे, क्या इन्टीडेंस रहे, क्या सर्कम्स्टान्सेज रहे। हमने आखिर जज को इसलिए बिठाया है कि वह सारे फेक्ट्स को देख कर फैसला दे। उसको सजा के कम ज्यादा करने का डिस्क्रिशन होना ही चाहिए। यही मेरी राय है कि उसकी हालात को मद्देनजर रखते हुए सजा को कम या अधिक करने का विवेक जरूर रहना चाहिए। क्यों यह चीज ऐसी है, जिसमें हालात पर अवश्य ध्यान दिया जाना चाहिए। अगर इजाजत हो तो मैं आपको एक वाक्या सुनाता हूँ: करीब 7-8 साल पहले पालम ऐयरपोर्ट पर एक जर्मन लड़की रात में प्लेन से उतरी और उस को एक टक्सी वाला लाया। रास्ते में टक्सी वाले की नियत बराब हो गई। यह बात अलग है कि रेप पहले होगा और मर्डर बाद में आता है। टक्सी वाला उसको ब्लॉकस की तरफ कण्ठे में, फोल्ड में ले गया बाद में उसने बीवार पर लिखा हुआ था कि—ई भगवान मैंने वही चखा है जो तेरा बनाया है। तो फुल्टे प्रोजेक्ट बाज सेटिस्फैक्शन

मार्फत लस्ट काहम को उसने कमिट कर दिया ।

SHRI M. S. NAGRA: It was done to satisfy his lust, and to conceal that crime, he strangulates himself to death. It is not rape. But the Judge while awarding sentence for the death keeps in mind that prime crime is the rape. What was his mode to commit rape. After his mind cools down, then the second thought comes. The Judge may appreciate all these things, what led to crime and how it was done. इसलिए मैं इस राय का हूँ कि कोई न कोई इसमें डिस्क्रेशन जज के ऊपर जरूर होना चाहिए । चाहे आप इसको 3 साल या कुछ और कर दें । उसमें मार्जिन जज को होना चाहिए कि वह सारे सर्कमस्टान्सेज को देखकर सजा दें, भदना निर्णय दे सके । उसे यह विवेक रहना चाहिए कि वह किसी की सजा को कम कर दे या ज्यादा कर दे ।

SHRI B. IBRAHIM: Are you in favour of 'may' or 'shall'?

SHRI M. S. NAGRA: Sir, 'may'.

SHRI B. IBRAHIM: In whose favour the legal presumption is drawn at present?

SHRI M. S. NAGRA: At present, legal presumption is in favour of the prosecutrix.

MR. CHAIRMAN: Now, you propose to replace it by "may". What is the advantage of putting "may" instead of "shall"?

SHRI M. S. NAGRA: That is what I say. Then the judge has the discretion of presumption or not?

SHRI B. IBRAHIM: That is what "shall" also.

SHRI M. S. NAGRA: No, "shall" has the obligation.

SHRI AMARPROSAD CHAKRA-BORTY: First you said printing and publication. Can you impose a ban by a legislation on the publication of judgement in journals, newspapers because you have maintained exception regarding law journals. But if the newspaper publishes, how do you restrict it? Under what law? How do you propose to impose a ban by legislation?

SHRI M. S. NAGRA: Certainly, we can do it. But during the pendency of the proceedings, judge can say because you know under Section 327, judge can hold in-camera hearing.

SHRI AMARPROSAD CHAKRA-BORTY: My position is that whether you can impose a ban whether under the articles of the Constitution and law, every citizen of the community has the right to publish it.

MR. CHAIRMAN: You are posing a question of constitutional provisions. Whether he is aware of all those things, I am afraid.

SHRI AMARPROSAD CHAKRA-BORTY: Next, regarding the age. Child Marriage Act has raised age upto 18 years. Do you agree that here also the age is to be raised from 16 to 18 years.

SHRI M. S. NAGRA: I support it.

SHRI AMARPROSAD CHAKRA-BORTY: Then, regarding what do you mean by change in the judge? I cannot follow. You have suggested a change in the judge in the appreciation of the evidence.

SHRI M. S. NAGRA: You are changing the judge by amendment. Change in the concept of appreciation of evidence. Appreciation of evidence under the Evidence Act. This is the amendment under 111A. Not literally meaning—I mean the approach of the case in appreciation of the evidence, that is to be changed.

SHRI AMARPROSAD CHAKRA-BORTY: Once, the judge is appointed, he is conferred the powers by the State. Can this committee, by an amendment, change the approach of the case by the judge?

SHRI M. S. NAGRA: Not that. Only change in the amendment in the Indian Evidence Act—Section 111A.

SHRI AMARPROSAD CHAKRA-BORTY: In the Law Commission's 84th Report, there are certain questions raised. Whether you can put the question. That is in 15, you can base the veracity. You are not aware of that.

Now regarding the word "shall" if somebody suggests, discretion will not affect by giving "may". If there is "shall" definitely there shall be change in the judicial process. But even by putting the word "may", do you think that the judge in that case may presume, because most of the words are now interpreted in the interests of the case "shall". Do you suggest deletion of the entire section?

SHRI M. S. NAGRA: No, I do not suggest.

SHRI AMARPROSAD CHAKRA-BORTY: Now, I cannot put other questions because your main evidence is limited to some points.

MR. CHAIRMAN: What I mean is by giving the provision 111A, you are arming the judge with weapons. Therefore, he may change in his approach.

SHRI LAL K. ADVANI: One or two questions. Firstly, about this—suggestion has been made and I am inclined that the area of the police officer need not be confined to his own area. Take the example of Delhi. It is quite possible that Chandni Chowk official takes her to Darya Ganj. The same question which has been used under Section 370A—in respect of taking undue advantage by the police officer. That is for sections not amounting to rape. I think, for rape, regarding police officer, we use the same wording.

SHRI M. S. NAGRA: Interrogation or recovery of some article, incriminatory thing. I think, it should take the same position.

SHRI LAL K. ADVANI: Secondly, about the suggestion of minimum punishment. Somehow the whole Bill has been conceived on this basis that proving rape is difficult. Is it not that the judges have been wanting in giving adequate punishment because the difficulty lies in proving rape. Therefore, this presumption and all these clauses have been introduced. For example, I would say, even culpable homicide. The punishment prescribed is life imprisonment or 10 years. We have not come across any judge who give punishment till rising of the court. The approach of this question is in a way detracting the judiciary in not raising whatsoever. If there is any evidence of rape has been proved, and the punishment has been only one month—I do not know of any such case. I know most cases where rape has been committed but it has not been proved and the person goes scot free. The whole approach of the Bill seems to be that once rape is committed, that guilty person is punished.

And the other view-point is that if you prescribe the minimum punishment there is always a tendency on the part of the judge to consider the circumstances and feel that after all he has not been found guilty and all that. Again, let him go scot free.

SHRI M. S. NAGRA: I will come to that Sir. I am of the opinion that courts have been awarding very lenient punishment for serious crimes including the rape. Those punishments do not come to light. If two months' punishment is given, the accused does not go in for appeal. What comes before the nation is only the High Court case or the Supreme Court case and not moffusil cases. I would try to lay hand in two cases. I may succeed in finding a case where for rape, very lenient punishment and I will forward it to the Committee.

I personally hold that opinion. What is happening in the interior or the distance place and the District Judge there, I mean, awards punishment of two months, three months, even rising of the court, probation of good behaviour....

SHRI M. S. NAGRA: These are not reported in the Press. They don't appear in the Press. Since you are going to introduce punishment for life, otherwise the benefit of doubt was given. If it was only 10 years, people had been releasing after the judgements have been released for favour of 2-3 years. But they are rare.

SHRI LAL K. ADVANI: Once we put this proviso that provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment of either description for a term of less than ten years, but not less than 3 years, the tendency on the part of judges would be that they give 3 years punishment and, therefore, the purpose for minimum punishment will be defeated.

SHRI M. S. NAGRA: Sir, I come to the Food Adulteration Act. In the first amendment, the minimum punishment was prescribed and then a proviso was made that for special reasons, the Judge may award lesser punishment. Now, again minimum quantum has been prescribed because that did not succeed. Again, the Judge will find arguments.

SHRIMATI SUSEELA GOPALAN: Is it not necessary to give punishment. Many cases are being acquitted where the public prosecutor is taking a stand in favour of the accused. That is what we have seen. So, if we want to curb this, is it not necessary to give maximum punishment.

SHRI M. S. NAGRA: If it is maximum punishment, then it is fixed punishment. In some cases, maximum punishment is deserved, but no maximum punishment in all cases. I personally don't like that fixed punishment.

SHRI R. K. MHALGI: With regard to clause 8 of the Bill, i.e. 111A of the Indian Evidence Act, you have stated that the word 'shall' will do more harm to the accused. Will you please elucidate your observation?

SHRI M. S. NAGRA: Sir, we are leaving to the mercy of any person taking revenge. A woman can be purchased for alleging anything against any police officer, public servant or whatever categories you have mentioned. The police officer in the police station deals with bad characters. A woman can be employed for levelling allegations against any police officer, whether he be D.I.G., A.S.I., or Head Constable.

SHRI BAPUSAHEB PARULEKAR: You have given four/five suggestions. Now come to suggestion No. 1. You say that the word 'publish' in Section 228A should be defined. Would you give reason for the same?

SHRI M. S. NAGRA: I find in the proposed amendment that this word deserves to be defined, otherwise, it will be subject to the matter of court adjudication. It will be very vague. In publishing common things, there is common man thinking. Not it is a technical word. When you use it under some law, this word 'publish' should be defined. It appears under Defamation Act. They are publishing oral statements. Would you like oral statements to make an offence?

Sir while sending such messages even through official telegrams, people come to read them. They are published in the communication system. People read them. You send a telegram, it is published.

SHRI LAL K. ADVANI: This is not a public defamation. There is a difference between activities coming in the law and pertaining to law that if an official communicates, it is not a defamation. If it is published then it is a defamation. These are the points

to be examined by the Law Minister as to whether the word 'publish' needs to be defined.

If the word includes the identity of the victim, the point has to be noted for action.

SHRI BAPUSAHEB PARULEKAR: Second point is with reference to your statement about the printing or publication of the judgement. Do you mean to suggest that even in printing or publishing judgements, the name of the victim should not be stated?

SHRI M. S. NAGRA: It is only high court and Supreme Court when the trial is over.

SHRI BAPUSAHEB PARULEKAR: The judgement of the trial court may be published and such publication according to you should be protected.

SHRI M. S. NAGRA: 354 can also be published as it is.

SHRI LAL K. ADVANI: So, according to you, the matter can be published in the Law Report except the name of the victim.

SHRI M. S. NAGRA: No. In law report, it may give.

SHRI LAL K. ADVANI: But once it is published...

SHRI BAPUSAHEB PARULEKAR: Then about 111A. The word "shall" has been used with reference to some of the offences only in clause 376(2) and not 375. Taking into consideration, do you feel that the word "shall" be retained?

SHRI M. S. NAGRA: My humble suggestion is, it should be substituted even for clause 376(2), with the word "may". Not relevant for sub-clause (1). It is only for "2".

MR. CHAIRMAN: I will put only one question. About this publication whether you have got in your mind about the dignity of a woman or otherwise, in prohibiting the publication.

SHRI M. S. NAGRA: We go irrespective of dignity.

MR. CHAIRMAN: You should also view the fact that past record with regard to dignity of a woman in this connection.

SHRI M. S. NAGRA: Pardon Sir.

MR. CHAIRMAN: When you are thinking of reputation or dignity of the woman, at the same time, you should also think of fair trial of the accused. How do you consider this aspect?

SHRI AMARPROSAD CHAKRABORTY: He says, he has not gone into it.

MR. CHAIRMAN: O. K. Thank you very much.

II Government of Punjab, Chandigarh—spokesmen:

(1) Shri Aftab Singh Bakshi, Law Secretary (2) Shri S. V. Singh Superintendent Police Special Branch.

The witnesses were called in and they took their seats.

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they

might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

MR. CHAIRMAN: Kindly introduce yourself to the Committee.

SHRI A. S. BAKSHI: I am A. S. Bakshi Law Secretary, Punjab. Previously, I was Sessions Judge.

Sir, the first thing, I would like to suggest—I have been a Sessions Judge and I have tried so many rape cases. One thing, I find is the medical test, medical examination of the accused. In one particular case, which I tried, it was rape and murder. In that case, what the doctor did—it was a rape of 13 year old girl. According to the view formed by me as a Court what the accused perhaps did was to apply some kind of cream or something over the glans of penis and the doctor made the report that something like smegma was present and therefore he did not do the rest of the examination. The result was—well I found him guilty for murder and convicted him for death—But he was not convicted for attempt to rape because the evidence was insufficient regarding any proof of injury on his glans of penis. Because it was 13 years old girl, rape could have been proved. If it had been proved medically that there were certain abrasions on the glans of penis. Then certainly it would have been proved that the penetration had been there. So, what I would suggest Sir, is that in all cases, it must be necessary for the doctor to clean the glans of penis and examine it thoroughly to find out if there are any injuries or abrasions on the glans of penis. And if he omits to do the job, there should be some penalty because I have seen many cases being acquitted because of this—because there is no proper examination of the accused to find if there are certain abrasions or injury marks on the person of the

accused. This is a great piece of evidence that he has indulged in this act and therefore this is most important to examine the private parts of the accused. Generally, what the doctors do—they simply say that he is capable of committing intercourse.

SHRI AMARPROSAD CHAKRABORTY: On which provision of this amendment you are speaking.

SHRI A. S. BAKSHI: Generally, I am told that I have to give my suggestions.

Sir, I have some past experience. Therefore, I thought fit to place before the Hon'ble Committee. This is one thing Sir. So, what I would suggest is, it should be made incumbent—necessary—for the doctor to examine the private parts of the accused closely and make a report definite as to whether there is any injury on the private part or not.

MR. CHAIRMAN: You mean that in cases of post-mortem of body, certain doctors are not examining the injury internally or externally.

SHRI A. S. BAKSHI: They generally examine the accused medically and opine that he is capable of performing sexual intercourse. This part of the duty of the doctor as suggested by me is not the requirement of the law. As a Sessions Judge, I have been giving instructions to the Civil Surgeons to ask the doctor to make this report definitely. But this is not being implemented because there is no law to make it incumbent on the doctor to do this. There is thus a lacuna in the law. It should be made incumbent for him to examine the private parts of the accused and make a definite report as to whether there is injury or not, on the private parts of the accused.

SHRI A. S. BAKSHI: This is a lacuna in the law. It should be made incumbent on the person examining the private parts of the accused that

he should make a definite report, whether he has seen any injury on it or not.

MR. CHAIRMAN: If it is disclosed by the police officer that it is a rape case, then a doctor should have certain directions.

SHRI A. S. BAKSHI: In rape cases, firstly, the girl is examined medically by a lady doctor and when that girl is examined, the accused is also required to be examined medically and a report is to be submitted. This is a part of the evidence which influences the court to a great extent. If the injuries are found on the private part of the accused, it means there has been resistance. For example, a girl has been raped for the first time, there are supposed to be abrasions on the private parts of the girl, as also the accused.

MR. CHAIRMAN: So far as the internal examination is concerned, I presume that everything is expected to be done by the doctor.

SHRI A. S. BAKSHI: That is why I say medical examinations are not thorough and proper. I sentenced a man to death for murder and rape. But he got lighter sentence because of that report of the doctor. The doctor did not examine the accused properly. It was 13 years old girl and there ought to have been injuries or abrasions on the private parts of the accused.

MR. CHAIRMAN: Whether that judgment was challenged in the High Court or Supreme Court?

SHRI A. S. BAKSHI: There is a lacuna in the medical report. It was therefore, only considered as an attempt and the accused got lighter sentence. This is my personal experience as a court.

Next, I would suggest, Sir, about the consent, and evidence regarding her

(i.e. prosecutrix) previous affairs or intercourse with the accused or with other persons. In this respect, I would submit that there should be some kind of distinction in different kinds of cases. All rape cases should not be taken alike. Distinction should be made of rape cases in which the girl has been assaulted for the first time. Generally, lady doctors make a report whether the girl was used to sexual intercourse or otherwise if the assault has been made for the first time this kind of opinion of the doctor is possible after examining the private parts of the girl. If there is evidence of fresh rupture of hymn the court can infer that girl has been molested for the first time. Here, of course, question of consent or no-consent of a minor girl should not be considered material. The accused should not even be allowed to ask questions regarding her previous affairs. This is the first time that she has been assaulted and in such cases neither consent of a minor girl nor any question regarding her previous affairs either with the accused or with any other person should be allowed to be asked. Now, there is another case in which the doctor reports that she has had previous sexual affairs; she is used to sexual intercourse. In that case, the accused may be permitted to ask this question regarding his previous affairs with her and not regarding her affairs with the third persons. I would like to make three different compartments, Sir. In other cases also, the discretion should be left to the court to permit the accused to put questions regarding her previous affairs. But, I feel that we can safely put down in law that no question regarding previous affairs should be allowed to be asked in the court because it is embarrassing to the lady. Even if she is a prostitute, nobody has got the right to violate her person without her consent. Therefore the court should not allow such questions to be asked by lawyers. I have the experience as a Sessions Judge and find that generally the lawyers cook up & coin imaginary

stories for purposes of cross examination. Sir, I have experience of 30 years in the courts, I have tried rape cases for the last 13 years. I don't want to cast aspersions on the lawyers. It is their duty to demolish the evidence by impeaching the credit of the witness. They pick up imaginary stories, like you had affairs with such and such person, etc. The girl is embarrassing. The girl cannot answer "yes or no". She is generally dumb-founded and the lawyers ask the court to raise the presumption against her because she is not giving any answer. And because of her demeanour, the courts are biased that there must be some truth in it.

MR. CHAIRMAN: As a Judge you have delivered some judgments. They have been given powers. Why are they not preventing irrelevant questions?

SHRI A. S. BAKSHI: Sir, some Judges are doing their duty while others not (in the sense that they are not preventing irrelevant questions being asked).

SHRIMATI SUSEELA GOPALAN: I can give you so many judgements in which the accused have been allowed to ask such questions.

SHRI A. S. BAKSHI: This is the right of the accused to ask. We still give him this right. There are two stages in the Criminal Procedure Code. First is the conviction and then the sentence. Under the law, we allow the accused to lead evidence which might go to reduce his sentence.

SHRI A. S. BAKSHI: I suggest Sir, that it is at that stage after conviction and at the stage of sentence that he may be allowed to adduce any amount of evidence regarding her previous affairs. This is only in those cases where it has been found that she had previous affairs or she was used to previous sexual intercourse. Not in cases where it is found that it is for the first time she was molested, no question regarding her previous affairs should be allowed to be asked.

SHRIMATI SUSEELA GOPALAN: If a married girl is molested, then what is the remedy?

SHRI A. S. BAKSHI: There also, no question should be allowed to be asked regarding her previous affairs during the initial trial. But at the time of sentence the accused may lead defence and prove that she has had affairs with other persons also. Then the court has got discretion to give him a lenient sentence in regard to that. Once it is established that she has been raped whether married whether prostitute or girl who has had previous affairs. If the evidence established that she had been molested then he must be convicted. Thereafter, at the time of giving sentence, the court has another power given in the Cr.P.C. to hear evidence of circumstances which may mitigate the offence. It is at that time, the accused may be heard and he may be allowed to lead evidence, regarding her previous affairs.

Regarding her previous affairs, that she has had previous affairs, if the evidence is allowed to come at earlier stage, the court is bound to be biased. As I sometime observed, the lawyers sometime cook up stories for cross examination and embarrass the victim. The victims do not have that much experience to go into the witness box and face such kind of cross examination.

MR. CHAIRMAN: You know evidence Act in 146, that is right given to the party to cross-examine. Then, it is the duty of the counsel to shake the credit of the lady or the reputation of the lady or the character to discredit evidence. So, if you restrict this way according to your own statement the cross-examination, as the presiding officer to allow relevant questions.

SHRI A. S. BAKSHI: Then Sir, ... the lady will be taken aback, when she is asked such embarrassing questions with cooked up stories. That is why I make these suggestions.

SHRI BAPUSAHEB PARULEKAR: Mr. Chairman Sir, I now draw your attention to Section 155(4) of the Evidence Act which directly deals with the matter of rape. I am reading "Impeaching credit of witness".

The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:—

155(4) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

SHRI A. S. BAKSHI: This is the law, at present.

SHRI BAPUSAHEB PARULEKAR: You want to deal this under clause (2) of Section 155.

SHRI A. S. BAKSHI: As far as the law is concerned, it is correct. It is very much there.

SHRI BAPUSAHEB PARULEKAR: I want to know whether Section 155(2) should be asserted.

SHRI A. S. BAKSHI: This is my suggestion that some kind of amendment on this law should be made.

MR. CHAIRMAN: Very kind of you in giving very good information. You come to next point.

SHRI A. S. BAKSHI: Then, I have to suggest. As regards gang rape, my feeling is that rape by more than one person should be considered as gang rape. If there is one man and the woman, woman is slightly bold, she will have the will to resist. But when there are two men she will lose the will to resist.

MR. CHAIRMAN: Why this intention is there?

SHRI A. S. BAKSHI: If there are more than one person—three person is considered as gang. But my feeling

is two is enough, or more than one person should be considered as gang rape. This is my submission. Because when there are more than one person, the woman will have a feeling of helplessness.

MR. CHAIRMAN: What is your apprehension? Why there should not be more than two? What will be the danger in making it three?

SHRI A. S. BAKSHI: Three and two. There is no difference between two and three. But there is a difference between one and two. A woman can resist a single man, despite the fear which is there. But when there are two persons standing in front of her, she gets a feeling that she cannot do anything. Therefore, I say, more than one person should constitute "a gang rape".

MR. CHAIRMAN: Yes, next.

SHRI A. S. BAKSHI: Sir, I was surprised about this sentence in custodial rape—Punishment to persons who had the custody of woman. According to the Bill—376A says—"Whoever, being a public servant, takes undue advantage of his official position and seduces any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him...not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine."

Similarly, there are other similar cases in which punishment of 5 years is given. My feeling is that in case of custodial violation of a person of a lady—well she is already under his control. For example, a woman has been arrested by a police officer and she is already under him and her will is dominated by the officer and he is in a position to dictate terms to her. I think, this position is much more serious than an ordinary. Why there

is being given a lenency in sentence of only 5 years when others are given more. Here, custodial offence in which case, it should be more. It should be more deterrent. Persons having custody of women should be deterred from entering any ideas in their mind that they can have intercourse with her because she is already under their control and under their domination. They can bring about her consent in no time by giving a small incentive of this kind or that.

MR. CHAIRMAN: Yes.

SHRI A. S. BAKSHI: Then Sir, this one provision in this Section 376 Explanation 2 which says, a woman living separately from her husband under a decree of judicial separation shall be deemed not to be his wife for the purpose of this section. It means, during the period of judicial separation, if he approaches her and somehow manages to have intercourse with her, this will be rape.

Sir, it is not the intention of law. Under the Hindu Marriage Act, the courts are always directed to bring about reconciliation between the parties. Now, as a District & Sessions Judge, I have found and I have brought about many unions after long separations.

Here we are preventing that. It is not a legal divorce. Till a degree of divorce is passed after judicial separation it does not become a divorce and during the period it can be possible that a man somehow approaches his wife and has inter-course with her, and thereafter the estrangement ends and they are reconciled. They can reconcile themselves and live together and now we are ending that by legislating that they will not be man and wife. We are preventing that possibility of reconciliation.

MR. CHAIRMAN: In how many cases you have succeeded?

SHRI A. S. BAKSHI: At least in five/six cases after 10 years separation. Later on, they came to me and touched my feet and said; "You are our God." I told him to take her to cinema, to some holiday home or some other tourist resort and keep her with him. He did and after 7 days both of them came and touched my feet and said, "You are our God." Sometimes, parents are interfering into their lives and other affairs and as a result they are not coming to reconciliation. Chances are there of their coming together. Therefore, we are barring that one single chance which they might have.

MR. CHAIRMAN: Some legal experts say when you pass a decree for judicial separation after the application, then the relationship between them as husband and wife does exist.

SHRI A. S. BAKSHI: It is suspended, Sir. It is only after the divorce decree is passed that this relationship does not exist.

MR. CHAIRMAN: There is a provision of "whoever" in these Sections. What is your submission in that?

SHRI A. S. BAKSHI: Sir, instead of "whoever", it should be "any adult". This is my submission. Sometimes, girls are very clever, for example 16 years old girls. A few days back, a girl took my telephone No. from the Directory and just gave a ring. My servant spoke. She asked "Is there any boy". He told about my sons being there. One was studying in Engineering. Next day, she asked for the Engineer. Then she asked "Can I talk to you on telephone." She then started talking. Then, sometimes at 10.30 we went to bed, they were talking on telephone. And I thought one thing can lead to others. My sons are minor. So, I am giving you personal examples. A girl sometimes says to a boy, "You come and meet me at some place." I think there is a certain percentage of cases where the women led the men to a certain

situation. When she was caught red handed, she raised hue and cry that she has been raped. Therefore, I made those three categories of consent. Now, here is a case, both boys and girls are very young. She is under 16 years while the boy is 17½ years. By telephoning she calls him to meet her near such and such point and then where they are seen she raises hue and cry and says, "He has touched and molested me." Now according to the law, her consent does not mean anything because she is under 16 years. The boy has no defence. She asked him on phone to come and meet and lead him on to kiss her. So, here I would say it should be "any adult" instead of "whoever".

The lady doctor examines the case and she sometimes writes, she is used to sexual intercourse. Generally, she writes that the fingers are introduced very easily. She is of the opinion that she is used to sexual intercourse previously. I want to make a definite distinction that wherever there is the first act of rape of a minor girl neither consent nor that question of her previous affairs should be allowed to be asked.

SHRI BAPUSAHEB PARULEKAR: Do you want to suggest that there should be a distinction between the first rape, second rape and third rape. Is it necessary?

SHRI A. S. BAKSHI: Sir, in cases where a medical report says that she is used to previous sexual intercourse, then, of course, the accused might be allowed to ask questions regarding her affairs with him alone and not with other person. This is the second category. The third category is that no question about any third person's affairs with her be allowed because of imaginary stories that are put to girls. This may be brought at the time of sentence and at that stage he may be allowed to lead all kinds of evidence regarding her previous affairs, and then the court should be given discretion to give lenient sen-

tence that she had previous affairs and she might be a loose character girl.

SHRI AMARPROSAD CHAKRABORTY: Whether this law, as at present it is, will be sufficient to protect the girls? What is your suggestion?

SHRI A. S. BAKSHI: There is one thing. I would make a suggestion Sir. That this problem of eve-teasing, in my view, this is because of these movies. Every day what happens a movie starts like this. A boy and a girl studying in the college. The girl is going home. The hero comes on her way, appears and holds her hand, shouts at her and says all sorts of nonsense things. And then, later, he sings and dances and finally he embraces her, touches her and then he gets away with her, and also gets the girl.

Young boys get an impression, wrong impression in their mind that this is permitted by law. This is permitted by society. We can also do this, we can also tease a girl and she will eventually become theirs. Sir, this is a very very serious thing and this should be stopped and nipped in the bud. There should be censorship and then there should be no such showing of any boy barring the way of the girl, and misbehaving with her. And secondly, I would say, there should be compulsory education of these youngsters to tell them what is the law on the subject. They should be told—her consent or no consent—it is not the question—you cannot touch her. Violation of modesty can happen by a single touch of "chunny". This is the law under Section 364. The girl is 16. Modesty is outraged.

MR. CHAIRMAN: But Shri Hidayatullah Justice, when he was Supreme Court Judge, it was decided under 364, reaction of a lady is necessary.

SHRI A. S. BAKSHI: This is according to the present law. This is according to the judicial decisions. What I want is that the law should be made. We should nip the evil in the bud.

SHRI AMARPROSAD CHAKRABORTY: Section 509 of IPC is there to attract these things. This can be done by censoring the cinema.

SHRI A. S. BAKSHI: This should not be shown in the picture because youngsters would get a wrong idea about the legal position. The youngsters do not know law. A boy goes to the college or high school. He should be told what is the law—if you bar the way of the girl, if you touch her, if you hold her chunny—this, sometimes, can be interpreted as violation of the modesty. India woman's modesty is much more greater than the foreign woman. Despite some decision in the court, yet this is one way how we can check this kind of behaviour coming from the boys. Everywhere we hear eve-teasing problems and all these things.

MR. CHAIRMAN: Yes, we follow. Next.

SHRI LAL K. ADVANI: You give a concise answer to this. It seems that when you refer the public servants—376A, and let us say that you quoted public servant taking undue advantage of his position etc., and five years is too little. The practice is that in the present provision, so far as rape is concerned, being a public servant takes advantage of his official position, and commits rape on a woman, he is liable to be punished for 10 years. It is only in 376A where an act of a seduction not amount to rape.

SHRI A. S. BAKSHI: That is if she has given her consent, what I am saying is, it is very easy to get her consent. She is in such a position that she is too willing to give her consent. She is in the custody of the police officer or she is in the institution. She is slightly mentally deranged and is kept in the institution.

SHRI S. W. DHABE: Not amount to rape—consent or no consent.

SHRI LAL K. ADVANI: Mentally deranged etc., and if she is forced to

give consent because of intimidation and all that that is covered by the earlier one.

SHRI A. S. BAKSHI: My reading of this Section is—not amounting to rape—she has given her consent and it is not amounting to rape—It merely amounts to intercourse. This is my humble view Sir.

SHRI BAPUSAHEB PARULEKAR: You must have conducted many rape cases. How many ended in conviction and how many ended in acquittal?

SHRI A. S. BAKSHI: I am a convicting judge. I am known to be a convicting judge. I try to find out every piece of evidence on the file to make the conviction. I can boast to this, well more than 95 to 96 per cent of my judgements have stood in the High Court.

Therefore, with the present system of law there would be fewer number of convictions and the accused persons would go scot free. Well, I do not want to make any distinction between judges from Jats or other farming communities in our country side. Some community, say, Jats, or others big landlords they think they are privileged persons and these chamar or harijan girls going about doing menial works can be taken at will. While going into field to serve food or cut some grass or do menial job, sort of molest them and commit rape on them. And they consider it an ordinary matter of right for them and of no consequence to the harijan girl. If a person from that community is a judge, he would consider it as ordinary offence unless it happens with his daughter. He would take it very lightly. I have known cases where they have been releasing on probation. They have been given very lenient sentence of one year-two years and letting them off.

SHRI BAPUSAHEB PARULEKAR: Coming to Explanation 1 under 376 (2)—

“Where a woman is raped by two or more persons acting in furtherance of their common intention...

Supposing, there are three. According to the present section all the three must prove to have committed the rape. Then only, the section is applicable. If one commits rape and two watches, it would not be gang rape according to you?

SHRI A. S. BAKSHI: No Sir. According to my impression, this section would apply if one or two persons standing thereby to embolden him to commit the rape. If an accused is accompanied by persons, he gets emboldened and commits the crime.

SHRI BAPUSAHEB PARULEKAR: Where a woman is raped by three—that means...

SHRI A. S. BAKSHI: We have to put some new words here. “When more than one person is involved” like that.

SHRIMATI SUSEELA GOPALAN: I would like to know whether it is necessary to include these police officers only in this category—land lords also take advantage?

SHRI A. S. BAKSHI: In fact, I proposed at the time of meeting, there should be other categories also for example, teachers, lawyers and clients also. So many other categories wherever there is fiduciary relationship is there and the person is in a position to dominate the will of the woman.

SHRI AMARPROSAD CHAKRABORTY: Mr. Bakshi, one thing, I think the crime towards wife. Would you agree that these laws do not stand on the way for implementation of reconciliation of the Hindu Marriage Act. But you have said that this will stand on her way. You think so. But this is a separate section by rule. It is not contradictory to the law.

SHRI A. S. BAKSHI: The moment he has intercourse with her, it will be rape. This is in the definition of the rape itself. They are not man and wife.

SHRI AMARPROSAD CHAKRABORTY: Regarding the eve-teasing, I think you have gone through Section 509 of the I.P.C. Is it not sufficient to bring them to book?

SHRI A. S. BAKSHI: I have suggested the ways and means to nip the evil in the bud.

MR. CHAIRMAN: He felt, it is not sufficient and therefore he added.

SHRI AMARPROSAD CHAKRABORTY: I think, he has not come across 509.

SHRI A. S. BAKSHI: I said, they did one thing...

SHRI AMARPROSAD CHAKRABORTY: You said in the first about rape section. How would you define?

SHRI A. S. BAKSHI: I think this amendment is sought to be brought about because it was thought that the law, as it is at present, is not sufficient to protect them.

SHRI AMARPROSAD CHAKRABORTY: You have not made any suggestion.

SHRI A. S. BAKSHI: Regarding the first case, there should not be any defence.

SHRI AMARPROSAD CHAKRABORTY: I think the Government has submitted a memorandum and you have seen that, but your personal opinion vary.

SHRI A. S. BAKSHI: Sir, with your permission, these are my views. I have been asked to speak openly and generally to give my suggestion.

SHRI K. ARJUNAN: They want to molest young boys and not adults. They prefer the boys who are econo-

mically good. If there is an offence under Section 354A then we are exempting all the adults under Section 356.

SHRI A. S. BAKSHI: Sir, it is regarding Section 354. I want to substitute the word "Any adult" for the word "whoever". This is to protect minor boys.

SHRI K. ARJUNAN: In the offence, the Government servants are going to have two punishments. One, they are going to lose their jobs and, secondly, they are going to get punishment by the court. All the Government servants and other public servants of different categories are equal before law. All the citizens are equal before the law.

SHRI A. S. BAKSHI: I want to emphasise that he is misusing his official position to bring about the consent of the girl who is in his custody. It is a misuse of the official position. If by misusing an official position, he gets even one penny, it is a corrupt practice. Now he has committed two offences. Firstly, he has misused his official position to bring about her consent. Secondly, he has committed a rape. Therefore, his punishment should be as much as in cases of gang rape.

SHRI S. W. DHABE: I would like to know from you about Section 375, clause seven, page 2, which says "With or without her consent, when she is under sixteen years of age." Under the Child Marriage Act, will it be proper to raise the age of 16 years to that of 18 years. Would you like 16 years to be retained or it should be made 18 years.

SHRI A. S. BAKSHI: I would like 18 years.

SHRI S. W. DHABE: With reference to the Law Commission recommendations which we had sent to you, your Government has given a comment saying that under Section 375 there was no need to change the definition with regard to definition in Section 90. I would like to know from you about Section 375 whether

there is any difference between the clause third and clause fifth? Section 90 says that a consent which is obtained by putting under fear of death or injury or under misconception of fact, is not a consent. Now these are provided there. This is much broader which says fear of injury—not only put to death.

SHRI S. W. DHABE: Thirdly and Fifthly under 375. It is good—it is a parameter.

SHRI A. S. BAKSHI: What I mean to submit is, it is already covered under the Sections. But there is no harm to put under this section 375. Under section 90, it is already covered.

SHRI S. W. DHABE: Will it be better to put it here?

SHRI A. S. BAKSHI: Yes Sir. This view, I have already given.

SHRI S. W. DHABE: Lastly, under Section 376 proviso. The power is given to the court to reduce the sentence from 7 years for reasons to be recorded by the judge. The power should be there or not?

SHRI A. S. BAKSHI: This should also be there, because the court should have this discretion.

SHRI S. W. DHABE: Whether it is likely to be misused?

SHRI A. S. BAKSHI: Of course, some kind of misuse, anyway cannot be checked. But Courts should be empowered to use the discretion.

SHRIMATI SUSEELA GOPALAN: We would like your view on special court for trial of offences or presided by a woman judge.

SHRI A. S. BAKSHI: Because, there are not many women judges at present. There is no harm. Men also do justice.

(Interruptions)

Well, we have all the regard for the womanhood and there is no question of saying that the trial by man would be a sort of biased.

SHRI S. W. DHABE: Special court and you say women judges. As it has been provided in the section trial *in-camera*, is it good?

SHRIMATI SUSEELA GOPALAN: There is a demand from the women organisation, that women should not be arrested after 5 o'clock and if at all arrested there should be some safeguards.

SHRI A. S. BAKSHI: I have already suggested this. Firstly, if it is not a crime punishable, with life imprisonment, they should be released on personal bond. This is my suggestion. And if it is an offence under which it is punishable for life imprisonment then she must be brought before the Magistrate within six hours.

Then arrest, not "5 o'clock," it should be "after sun set"—that there should be no arrest.

We have provided about interrogation, in the dwelling place. But we have to consider the cases where woman is living in the dwelling place. If she is a single woman, she should not be interrogated alone. There must be some person, her relation or some lady member. In cases where she is living alone, not with any other member of the family, in those cases, the police officer should not be allowed to interrogate her singly.

MR. CHAIRMAN: Thank you very much.

SHRI S. V. SINGH: Most of the points from legal point of view, our Legal Remembr has covered. I had a few suggestions. With your permission—one was about the trial in courts. As one of our Hon'ble Members of the Committee suggested about special courts. Everywhere in the country, this is taken in a routine manner and there is a lot of delay and lot of pressure is brought on her-prosecutrix—to rely on her

statement and the case ends in acquittal. So, the suggestion of having a special court, if we consider it as a grave crime, we must have a special court so that this crime is curbed more effectively and the delay is avoided.

Secondly, Sir, the onus of proof, according to the present legal norm, is on the prosecutrix and has to be proved that the crime is established beyond all reasonable doubt. But in the crime of this nature, it should be on the accused to prove that he is innocent. The presumption should go against the accused. In any case, it is not just the deposition of the prosecutrix which will decide the case. *Prima-facie*, a case has to be made out when it is put to the court. And my experience of about 15 years in the police, I feel that these false cases of age etc. are very very rare. There are circumstances, and *prima-facie* case has to be made out before FIR, before put to the court. Whatever crime is reported in this category mostly there are two cases. Because under the circumstances as such, Harijan women going to the fields and the land lords or their children catch hold of them. Now, there is no evidence. There is no eye witness. How can there be a witness? So, the onus of proof should be upon the accused. This has been done in some of the economic offences and I feel this will be good, if it is introduced here also.

Sir, we have seen some difficulty regarding lack of women police. We should have more senior women police. Now we have some women constables. If we can have senior police officers, we can transfer it to the custody of the women police officers. Then the complaint of assault on woman in police custody will be much less than what it is. So, that is my suggestion, if the Government of India could direct the State Governments to have more women police and senior women police officers. They can be very useful in offences of this nature, and in some other duties and office work.

(The witnesses then withdrew)

And these are the three suggestions, that I wanted to make.

SHRI BAPUSAHEB PARULEKAR: Will you please give the statistics of such offences in your State in last 3 years?

SHRI S. V. SINGH: Run about 100—less than 100. In 1980, it was 78, in 1979, it was 84 and in 1978, it was 81. (Interruption)

The percentage of detection is almost 100 per cent.

All these cases were worked out except a few. When they were registered, when they were sent to court, their convictions and all these things, I have not got with me. But this is a misleading figure in the sense that many cases are not reported.

SHRI LAL K. ADVANI: In the present legal system, persons can be brought to book and they can be convicted. In that sense I am asking out of how many challans, how many have been convicted.

SHRI S. V. SINGH: Sir, I don't know the figures. Actually, I wanted to collect these figures. But, these were not readily available.

SHRIMATI MOHSINA KIDWAI :

आपने कहा कि 100 परसेंट कसेज आपने डिटेक्ट किए। मैं यह जानना चाहती हूँ कि पुलिस कस्टडी में ऐसे कसे बरल एरिया में या अर्बन एरिया में ज्यादा होते हैं ..

जो यह लैंडलाइंड्स और वीरान के कसे ज्यादातर वहाँ होते हैं। दूसरे जो बर्किंग वीरान है

SHRI S. V. SINGH: Mostly, these cases are in the rural areas. In police custody, there are a very few cases. Generally, they come in newspapers. You might have read about Bhatinda. Within a week, women come with another statement. I feel there are pressures. Some money passes through

hands. She gives an affidavit that I was not raped. Women are very poor and helpless.

SHRI AMARPROSAD CHAKRABORTY: How many cases have been convicted?

SHRI S. V. SINGH: Sir, I will send this information.

SHRI AMARPROSAD CHAKRABORTY: Have you got any statistics?

SHRI S. V. SINGH: We cannot have statistics. I can cite an example. In a case which I have investigated, a woman was raped by her brother-in-law when her husband was away. When he came to know about it, he murdered his brother. Likewise, a girl was gang raped. She was with her boy friend. Some Harijans were passing that way. They attacked and raped the girl. The parents of the girl narrated the whole story. They said that we want a case of robbery against the registration because some robbery was also committed in that area. So, they registered a case of robbery.

SHRI AMARPROSAD CHAKRABORTY: How many cases are committed in the State of Punjab?

SHRI S. V. SINGH: Only a few.

SHRI S. W. DHABE: What is the time taken in the trial of these rape cases?

SHRI S. V. SINGH: The court takes these cases like any other cases. Sometimes, it is very speedy and sometimes it is slow.

SHRI S. W. DHABE: I want to know the period.

SHRI S. V. SINGH: Two to three years. Dilly-dallying tactics of the lawyers come in the way.

(The witnesses then withdrew)

III—Government of Haryana, Chandigarh spokesmen:

1. Shri L. C. Gupta, Home Secretary,
2. Shri B. S. Yadav, Legal Remembrancer;
3. Shri Manmohan Singh, I.G. Police.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

SHRI L. C. GUPTA: Sir, we went through the provisions of the Bill. In fact, I had an occasion to participate in a meeting in New Delhi also last year when this matter was discussed with the Home Secretary and Law Secretary, we, generally, agree that the various provisions now incorporated in the Bill are necessary. In fact we have certain objections. I have some of them which do not know figure in this Bill. To start with, I will give a few points. Regarding Section 375, the second clause reads "without her free and voluntary consent"; the fourth clause reads "With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be

lawfully married", and according to fifth clause when her consent is given under a misconception of fact and according to sixth clause, with her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication of the administration by him any stupefying or unwholesome substance.

Sir, when we say voluntary consent, just perhaps, it includes the possibility of any misconception of facts or any intoxicant case, because any intoxicant administered or if there is a misconception, in that case it is perhaps not a free and voluntary consent. So, where this elaboration has come in. Fifthly, this clause is absolutely necessary. This is one thing which I want to make.

Sir, the general point I would like to make is we have to keep in mind whereas one is that the law should be such that it adequately deals with the children. On the other hand, I myself being a Magistrate for long time back, we had also taken into account lot of callousness and we have to see that some people are not unnecessarily harassed. For instance, I was a Magistrate back in 1959. I had dealt with two or three rape cases in which all those cases what we could understand from the evidence was that it was really a case of consent and it was a case where the girl and boy were found out by the village folk and the family members. They did not agree—they were not in agreement in what the boy and girl were doing. That is what the case came out and in those cases also, the question of age, I would say, came and one of the things which was brought up was the girl was below the age of consent. I found regarding the age, there is no hard and fast rule—you cannot scientifically say what is the age. It is the evidence, circumstantial evidence and the evidence of the lady doctor and so on. So, we have also to very carefully consider that any amendment which we make does not also become an instrument of black-

mail. These are the two considerations, we have to see that the law has to be adequate. And then the law as such, cannot be implemented, and this is the one side.

On the other side, we have to see that people do not misuse the law for their own purposes. So taking that into account, we are wondering whether free and voluntary consent would be there. In that context, I would also like to say that law should not be weak. But at the same time, if the law is too detailed, then the lawyers find a small thing there and it is very difficult to secure a conviction. For instance, in the earlier amendment which was considered at Delhi, there was a lot of details about which, are omitted now. I think, it is a step in the right direction. So, particularly, about this misconception of fact, we consider this to be very very vague. What sort of misconception of fact—it has to be taken into account—that your husband died, got into an accident or something of that sort—and perhaps that will be included in this superfluous...

MR. CHAIRMAN: It should be more elaborate?

SHRI L. C. GUPTA: But the Fifthly and Sixthly should be got, omitted, particularly the Fifthly. Because the Fifthly is very vague—misconception of fact.

MR. CHAIRMAN: It can be clarified. Either it should be clarified in detail or deleted.

SHRI L. C. GUPTA: Sir, I will very humbly submit that too many clarifications in the law would not hold good. In fact, the object that we have in mind, tends to get out of it in too many clarifications. For instance, the time when the medical test starts the time when it ends. Too much of elaboration does not help us.

Misconception of fact is already under Section 90.

MR. CHAIRMAN: Next.

SHRI L. C. GUPTA: Another small point. The Exception Sexual offence by a man with his own wife, the wife not being under fifteen years of age, is not rape. I fully agree with that 15 years of age being mentioned here and 16 there for consent. That is the correct age and not 18. I think, that is the law which is now being corrected. It should not be raised to 18.

The word we are wondering whether instead of "offence" the word should be "sexual intercourse". Because sexual offences as such come in this part and there are various offences which should not be strictly applicable to this Exception. So, the word here should come perhaps as "intercourse". But I fully agree that it should be 15 in the case of sexual intercourse with the wife. Otherwise, age for consent should be 16.

SHRI AMARPROSAD CHAKRAJYOTI: But the Child Marriage Act has raised the age to 18.

SHRI L. C. GUPTA: Sir, we have to make a distinction between criminal offences and any other offence because here you are taking the liberty of a person. Potentially, he can be imprisoned for life. This is a different criminal offence, from what you gave in the Sharda Act or Child Marriage Act—here it should be 15. Otherwise, we will be floated in courts with technical offences.

Even when you make it 16, it is very difficult to say whether she is 16 or 17—which is depending on the climate, upbringing and so many other factors.

SHRI LAL K. ADVANI: On that account, on this very account, would you not agree that if this Exception is omitted altogether—any reference of sexual offence by a man with his own wife... If there is any contravention of the Child Marriage Act, it would be dealt with under that Act.

SHRI L. C. GUPTA: Broadly, in certain areas, I believe the girls get married at very very early age and they are first to have a life and according to the custom, it is valid. You cannot do anything about it.

SHRI LAL K. ADVANI: Violation of law is a different nature and that marriage is not illegal. It is voidable, no doubt; but it is not void.

SHRI L. C. GUPTA: Sir, it is the definition which I was trying to make. Here, we are making a criminal law. Now this law has to be very different from any social Act.

SHRI S. W. DHABE: How do you explain 361 of I.P.C. kidnapping? Principle is more or less similar.

SHRI L. C. GUPTA: It may not be similar. It is not similar. Sir, even otherwise, the principle is not the same. He is dealing with the wife. I would very humbly submit Sir, we have to keep both the things in mind. Firstly, law should not be misused that the law should be such as it is adequate to the present situation. In an area where more girls are getting married, it is very common and there also they have the custom to practice it. Everything cannot be regulated by law. Law is only to regulate certain particular things. The society has to regulate them. The society decides unmindful and not to regulate that, then law does not really help.

SHRI AMARPROSAD CHAKRABORTY: What is your view about age. Whether it should be 16 or 18.

SHRI L. C. GUPTA: It should be 16 years. We are in the year 1981. We are not in the 19th century. We are at the end of century. It should be 16 years. Particularly, in the hot climate, the women mature very early.

SHRI AMARPROSAD CHAKRABORTY: The major question is about Section 111A of the Indian Evidence Act.

SHRI L. C. GUPTA: Sir, we fully agree with you that the provision is on the correct lines.

MR. CHAIRMAN: Mr. Yadav, what is your view on the age factor?

SHRI B. S. YADAV: Sir, it should be 18 years.

MR. CHAIRMAN: How do you explain that?

SHRI B. S. YADAV: Just as in the kidnapping, it is 18 years; similarly, here also it should be 18 years.

SHRI L. C. GUPTA: We, in fact, discussed among ourselves that kidnapping, and we have differences on that. With regard to Section 111A, we fully agree that this provision is on the correct lines. When a woman is in the custody whether of a police man or a public servant or of a Head or Manager of Jails and sexual intercourse is proved, then the burden of proof should shift as suggestion in this Section.

SHRI MANMOHAN SINGH: What Mr. Gupta has said I fully endorse that because we have discussed it earlier, but so far as the age is concerned, I would say that it should be 18 years. The fact is that you will have to see the maturity of the man, not only physical, but mental also. I feel in the city when we compare the children from cities with the children from the rural areas, maturity among the citizens of urban areas comes much earlier. Thanks to cinemas and other books, etc. We can expect them to have that short of maturity which can be expected of 16 years in the city, but in the rural areas these influences are yet lacking, and, as such, we should allow them a little more time before they can be expected to give their consent. That would be rightly at the age of 18 years and it is so in the Sharda Act as well as in the Kidnapping Act and Child Marriage Act. So, I would humbly differ with the Financial Commissioner, Home. I stick to my views that it should be 18. For the rest, I fully agree with him.

We fully agree that if an intercourse has been proved to have taken place then positively the onus lies on the perpetrator of the crime. It should be he who should be responsible to explain because the first ingredient is already proved that intercourse has taken place. If the court is satisfied about it that it has taken place, then, naturally, the person responsible will have to explain. I am telling from my experience, politically also, that women of ill-repute have been used for political purposes. That has to be guarded against.

SHRI AMARPROSAD CHAKRABORTY: Is there any case in your State of this nature which you are telling?

SHRI MANMOHAN SINGH: For this I should be excused. I have made a general statement. But there are so many cases. I don't want to confine to my own State. I have known so many cases in other States also. Otherwise also, women because of their easy virtues are not difficult to exploit. Women have been brought to the police station. Normally, they are thieves. They are used to thieving or illicit distillation. Those people come to us. They also know that they have been held up for certain offences. People of easy virtues come forward and say, "Look, we will also teach them a lesson." So there should be safeguards. When the intercourse is probed before the trial Magistrate, then, of course, we have nothing to say because the court is satisfied.

MR. CHAIRMAN: You said some safeguards should be provided. What are your suggestions for safeguarding the interests.

SHRI MANMOHAN SINGH: That is what you have to do in the court. That a woman of easy virtue has come forward with a statement implicating certain leaders or some other—even you can say the policemen. I would say some caution shall have to be used by the trial Magistrate to see and for that I would say

that police may have an executive jurisdiction. Police should be asked to bring forward and file the antecedents of the women concerned—the prosecutrix. Those antecedents should be properly brought on the file so that the court also knows as to what is the background of that lady so that they can decide the case.

MR. CHAIRMAN: In such cases of easy virtue, there are some other witnesses who said that past history of the victim should not be allowed to be asked by the advocate. At the same time, the presumption should be there also. Even in cross-examination, rebuttal evidence cannot be brought in to presume or to get a rebuttal of presumption when the consent was not there. Therefore, how do you safeguard the interest against malpractices in such cases?

SHRI MANMOHAN SINGH: What I would say Sir, the court should know as to what is the history of the prosecutrix so that the court can take a decision as to what question to be allowed and what not. I would not say the rebuttal should not be allowed. I say the questions should be allowed. But in cases, where there is no history and all that—of course, there is one or two borderline cases—the questions should be limited. There are proven cases that such and such was of low character. So one cannot say, prostitute cannot come forward for rape. She can also complain of rape, then it has to be seen in different perspectives.

MR. CHAIRMAN: I want to ask, if you have any positive suggestion.

SHRI MANMOHAN SINGH: Positive suggestion is only that this is a matter of decision by the court itself. We cannot do otherwise excepting bringing all these things on the antecedents of the woman on record.

SHRI L. C. GUPTA: Sir, you are aware that Law Commission suggested amendment of Section 53(9). That is not found in the Bill.

MR. CHAIRMAN: Law Commission suggested much more. So that is on the right line, the past history should be relevant.

SHRI LAL K. ADVANI: Mr. Gupta has suggested to the Committee in respect of Section 111A about presumption. Instead of making it obligatory for the court to presume, the court "may" presume. This is one of the suggestions. The rest come to this that it should be left to the court to decide whether the burden of proof should or should not lie? How do you react?

SHRI L. C. GUPTA: I think that will be better.

SHRI LAL K. ADVANI: We give to the court the discretion.

SHRI L. C. GUPTA: "may" will be better. For instance, you are giving the minimum sentence at the same time you are giving the power to court to give a lesser sentence for adequate and special reasons. That lesser sentence should not be given without adequate reasons. And it is given the minimum should be prescribed in that but not less than three years. Court must have a power. When you substitute the word "may" then you are giving power to the court.

SHRI AMARPROSAD CHAKRABORTY: Whether you agree to that?

SHRI L. C. GUPTA: Yes, Sir.

SHRIMATI SUSEELA GOPALAN: If the antecedents of the girl are asked, then naturally, let us say, most of them are coming from the villages, from backward area and if they are brought to the witness box and asking so many questions like that, naturally, she would be perplexed.

SHRI MANMOHAN SINGH: That the court decide very honestly about it, rightly about it as to what questions should be allowed.

SHRI L. C. GUPTA: You can have provision that it will be in camera.

SHRIMATI SUSEELA GOPALAN: People coming from the landless family and all that. Recently so many incidents are like that and it is against the interest of girls.

SHRI L. C. GUPTA: You have provided that it should be in camera. When you are trying to curb the life and liberty for somebody for 10 years, then certain exposure is absolutely unavoidable. You cannot have it both ways. So the girl has to come and give the evidence. What we have to see is that the exposure is not of such a nature which is humiliating or harassing unnecessarily. That is a broad principle.

MR. CHAIRMAN: Another witness not less than a District Judge who tried some of the rape cases—was of the opinion that in such cases, omit questions relating to past history—should not be allowed. As it is, there is a discretionary power given to the judge in allowing relevant questions. He said, even many of the trial judges misused the position. Therefore, he was very positive in his statement that provision should be contained in the Draft Bill prohibiting the cross-examination.

SHRI L. C. GUPTA: What I would say that there are judges who are coming from the strata of landlords and all that. We start from the very conception that people are not honest in this country. But I would object. You see we have to presume unless one proves it otherwise. After all, Constitution, provides a sort of that everyone is an honest person unless and until it is proved otherwise. It is not that we should trade everyone "Badmash". I am looking at the police side also. Previously in the other regime, in the British time, you take everyone as Badmash till he proves himself as a sort of good person. Now, it is the other way round. We should take every man to be 'sharif' person.

SHRIMATI SUSEELA GOPALAN: There are many number of judgements are like that.

SHRI LAL K. ADVANI: The Committee would like to be enlightened about the dissemination of the case. If you have any statistics pertaining to Haryana as to the number of rape cases that have been reported to the police during the year, number of cases moved to the court, and what happened in the court-conviction etc. How many people are convicted or is it generally rape cases are not proved and therefore the guilty go scot free. Any idea?

SHRI MANMOHAN SINGH: I would say, I have not come prepared with these figures as to what are the statistics. I can give only some figures which have been provided earlier. Some figures we can provide later on. About the Scheduled Castes and Tribes, in Haryana they are like this:

1975	1 case
1976	5
1977	4
1978	14
1979	20
1980	18

SHRI LAL K. ADVANI: In respect of various categories which have been identified in Sub-Section 2 of Section 376 what are the figures?

SHRI MANMOHAN SINGH: I would give that information later on. The study is to be undertaken which we have not undertaken in the Police as yet.

SHRI LAL K. ADVANI: Mr. Chairman, I think we should have the dimensions of the problem so that specific recommendations are made.

SHRI MANMOHAN SINGH: Regarding successes and failures of the cases, majority of the cases fail in the court because, as it is, an offence is committed in privacy. Offence is al-

ways committed in privacy, where you don't find witness. There are other factors which contribute to the failures. One of the factors is long time taken in trial also, and giving time to the witnesses also. Seeing prosecutrix they also know from their experience, I know from the record. More than 15 per cent of the prosecutrices are pressurised, firstly on account of social strata, and secondly, on account of the modesty of the women and harassment in the court, and they reconcile. Thirdly, there is a delayed reporting of the cases which also results in failure. But in those cases where the delayed reporting, is done, even the medical evidence does not help. It does not help because after 24 hours, true picture might not be known. Thereafter, the witness, as I said earlier, stand. Another factor which contributes to the failure of cases is unfortunately frequent transfers of the investigating officers and SHOs, etc., who are unable to conduct the follow-up. Longer data is given to the people and they win over. Another factor is the problem to prove the case of sexual intercourse. Now that is very difficult thing to prove. All these factors taken together contribute to failures of the cases. This is what I say.

SHRI LAL K. ADVANI: With the adoption of this Section 111A, the presumption will be with reference to the offence of the rape. The rape has to be proved with evidence and that is established, and when it is not with the consent, witnesses give statements which are not true, but false.

SHRI MANMOHAN SINGH: For that, we have to raise the general standards and for that ideal or a utopian type of moral will have to be developed. This is where the evil lies. We see all around and we know what our standards are.

MR. CHAIRMAN: Investigation of such cases, heinous cases, should be entrusted to high ranking officers so that there is an effective investigation. What is your view?

SHRI MANMOHAN SINGH: Sir, it is a very ticklish question of reposing faith and not reposing faith. Basically, we start with the view that our people down below at certain level all corrupt, or are all bad people I would say we should not presume that. Even the Evidence Act does not allow the evidence to be recorded under certain conditions. If we are to entrust all these cases to the gazetted officers, true, we are labelling our junior officers as incompetent and as untrustworthy which I would not like to accept for the morale of the force.

MR. CHAIRMAN: Investigations are entrusted to certain senior officers. What is your view?

SHRI MANMOHAN SINGH: Sir, at least, in my State, investigation is not entrusted to the gazetted officers. As soon as information of a murder or robbery or dacoity, etc., comes, instructions are issued that the gazetted officers should supervise and reach the spot at the earliest possible and not that they should investigate. All the cases will be supervised by them, but not the investigation part. Here another thing that I would suggest is that recruitment has to be improved, and the whole structure of the police has to be improved. We should recruit certain people of the strata. Persons join by undertaking training for 9/10 months and this training does not change their basic character. They need some sort of change in the basic character. If you have to keep the law and order correct in the country, then only you can think of other developments and for that reason my intention is that this Department should be treated on par with other Departments as is done in the Secretariat.

SHRI MANMOHAN SINGH: Because I would say and when we say anything, the pay should be raised, this facility and that, what will happen to other Departments. They will also come forward for that. I say no. They do not play that much vital

role in the society of today as the police play.

SHRI L. C. GUPTA: With your permission, I would now revert back to one question about the evidence before the District Judge. My experience is that during cross-examination, all sorts of questions are asked, which are very embarrassing and harassing to the women. I believe, that this is in fact the situation. Now on the one side, we do this suggestion of the Law Commission to insert Section 53(9) which would categorically bar the previous sexual experience and history of the prosecutrix. So, barring it perhaps is very difficult. But on the other hand, it is also very true that lot of many embarrassing and harassing questions were asked and very often that the accused will engage very senior lawyer and he would insist upon such questions and try to overpower the court saying that this is relevant. Perhaps, something could be put in the Act itself so that these things pointedly not remain at the level what is relevant or irrelevant—only that the court may bar, just as we have done, considering the circumstances. Of course, the wordings have to be carefully thought of, regarding that the court may bar reference or cross-examination to the previous history of sexual experience of that woman.

SHRI BAPUSAHEB PARULEKAR: How do you reconcile your statement with section 155(4) of Evidence Act?

SHRI L. C. GUPTA: We are on the positive point. His statement about asking past character and history—right is given to the accused under 155(4) of the Indian Evidence Act. You say the credit of the witness could be impeached in the following ways. When a man is prosecuted for a case and attempt to ravish, it may be shown that the prosecutrix is generally of immoral character. That right is given long back in the Evidence Act.

That right was proposed to be taken away completely in certain sections 53A. That is what it is said. So what I am suggesting is...

SHRI BAPUSAHEB PARULEKAR: Your suggestion is that it should be deleted.

SHRI L. C. GUPTA: There can be a proviso to that. Similar change should be made in 154. We should not bar them putting questions regarding previous history experience. At the same time, the court should have the right to decide the questions to be allowed, considering the circumstances of the case because undoubtedly in many cases, the cross-examination will be very very harassing. If the presumption is to be rebutted, this method will have to be resorted.

MR. CHAIRMAN: There is also a suggestion from the Law Commission that the cross-examination should be restricted to the past history in relation to the accused himself and not other persons.

SHRI L. C. GUPTA: That is what I was referring to. In fact, questions cannot be restricted only in relation to the accused. The other past history will be relevant. But as I said, the court should have the power. Should it so desire in a particular case, to bar further cross-examination on that point. The court should have the discretion.

SHRI S. W. DHABE: I want to ask two questions. Firstly, Section 111A, presumption is there. Here the additional clause is given and she states in her evidence before the court she did not consent. Medical evidence is there for intercourse. Her statement is recorded...

MR. CHAIRMAN: Under 111A, there are two things. One is statement recorded that she did not consent. *Prima-facie* evidence is there from the medical report that intercourse has taken place. Punishment

for "under police custody" under 376 (2) (a).

SHRI S. W. DHABE: Intercourse has taken place. Under 376(2) (a) that the intercourse has taken place under the police custody. It is punishable.

SHRI L. C. GUPTA: Both these clauses have with reference to the presumption. As a matter of fact, what we are suggesting is even with these two clauses shall may be substituted with...

SHRI S. W. DHABE: I was asking the reverse question. Whether this word, if there is a *prima-facie* case should be deleted?

SHRI L. C. GUPTA: I think it should remain.

SHRI S. W. DHABE: How many women officers are there in Haryana?

SHRI MANMOHAN SINGH: There are only one A.S.P. in the investigation side, one D.S.P. and one Sub-Inspector. Only three ladies among the investigation staff. Of course there are women constables.

MR. CHAIRMAN: Have you got any other point?

You have nothing to say more.

श्री हुसैन देव नारायण यादव : मैं यह पूछना चाहता हूँ कि 375 की जो पांचवीं धारा है, जिसमें मिसकन्सेप्शन ऑफ फैक्टस के बारे में कई बातें आई हैं, मैं एक उदाहरण की मारफत, जो कि सत्य घटना है, कमेटी की जानकारी में लाकर यह जानना चाहूंगा कि इसको किस धारा में और कैसे रखा जाएगा। मेरे यहाँ एक लड़की की शादी हुई और जिस लड़के के साथ हुई, उसकी शक्त से मिलता-जुलता एक दूसरा लड़का भी था। यह मेरे बहुत नजदीक में घटना हुई है। उसके

बाद लड़के की समुराल में जो घटना हुई, वह सुनिष्ट। संयोग ऐसा था कि वे दोनों लड़के एक ही कम में रहते थे। हमशकल वाला लड़का उसका सारा भेद लेकर उसकी समुराल में चला गया और 7 दिनों तक उसकी समुराल में रहा और समुराल वाले भी समझते रहे कि यह वही लड़का है जिसके साथ लड़की की शादी हुई थी।

श्री मनमोहन सिंह : वह तो चार उपघाग में आ जाएगा। इसमें है कि उसको कह यह कर कि तेरा हसबैंड मर चुका है, कोई कार्य किया जावे

श्री एल० सी० गुप्ता : जो घटना आपने बताई, वह कुछ तो दो में और बाकी चार में तो सारा ही आ जाएगा। यह उसमें कवर हो जाती है

श्री हुकम देव नारायण यादव : लेकिन जैसा धारा 4 में कहा गया है, मैं समझता हूँ कि कानून की भाषा जो कुछ भी हो, साधारण अंग्रेजी जाने हुए लोग भी यही समझेंगे कि "अन्डर मिस कन्सेप्शन आफ फैक्टस" में अगर किसी औरत को कोई प्रादमी किसी तरह से गलत तथ्यों के आधार पर, कोई गलत प्रमाण साबित कर के, उसकी कन्सेट लेता हो तो किसी तरह का गलत प्रमाण मान लीजिए, कोई वादा खिलाफी की बात हो, किसी की गलत आश्वासन के देना किसी को, झूठा बयान देना और किसी तरह से उसको लोभ में ले लेना, यह सारे हालात ऐसे हैं, जिनके लिए कोई न कोई धारा इसमें रहनी चाहिए। यदि ऐसी कोई धारा इसमें नहीं रहेगी तो जो इस तरह की घटना घटेगी, उसमें उसको कैसे दण्डित किया जाएगा। जो तथ्यों को तोड़ मरोड़ कर, झूठ बना कर किसी तरह से उसकी कन्सेट ले लें

3027 LS-5.

श्री एल० सी० गुप्ता : अगर बुराकन मानें तो मैं कहूँ सर, कि औरतें आजकल प्रादमी से ज्यादा होशियार हो गई हैं।

श्री हुकम देव नारायण यादव : ऐसा मैं नहीं मानता हूँ। चेयरमैन महोदय, दूसरे जैसा इन्होंने बताया है कि गलत तरीके से, इस तरह से झूठ बनाकर और राजनीतिक आधार पर प्रतिष्ठित लोगों को फंसाया जाता है, उसके लिए भी इस कानून में कोई बचाव का इंतजाम होना चाहिए।

* * * *

श्री हुकम देव नारायण यादव : इसलिए यह जो केस बाद में चला, उस केस को फिर विदवा किया गया। लेकिन वह पोलिटिकल केस था, अखबारों में बताया गया। दो साल तक कोर्ट में चलता रहा। लेकिन मैं यह कहना चाहता हूँ कि इस तरह के जितने केसेस होते हैं और यह घटना भी एक सच्चाई है तो उस तरह से लोगों को बचाने के लिए इस कानून में किस तरह से कौसा प्रावधान किया जा सकता है, जिससे कि लोगों को बचाया जा सके। यह तो आपने कहा कि कुछ बचाने का प्रावधान हो। लेकिन उस में ऐसा प्रावधान किया जाए, उपबन्ध किया जाए।

श्री राजचन्द्र नारायण : इसका दूसरा रूख भी है। जैसा मेरे मित्र ने कहा। एक बड़े प्रादमी पर एक लड़की आये और केस कर दे। यह भी हो सकता है। बच्चा-बच्चा उस पर विश्वास करे या न करे तो ऐसे प्रभावशाली लोगों पर मुकदमें चलते हैं, वे रेप भी कर लेते हैं और बच भी जाते हैं। उसके तो दोनों रूख हैं

****Expunged as ordered by the Chairman

SHRI B. S. YADAV: The law can be revised for the generality of the situation. It cannot provide for every situation. Every conceivable situation cannot be provided in the law. It has to be provided rarely.

SHRI BAPUSAHEB PARULEKAR: Is Section 111A not applicable?

SHRI L. C. GUPTA: Yes, Sir.

That is why we are balanced the opposites particularly in a case like this.

SHRI BAPUSAHEB PARULEKAR: You have suggested that some technical safeguards should be provided in the Section itself, i.e. in Section 11A. Whether you have anything in your mind.

SHRI L. C. GUPTA: Sir instead of 'shall' we say 'may'.

The Committee then adjourned.

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE OF THE CRIMINAL LAW
(AMENDMENT) BILL, 1980

Friday, the 3rd July, 1981 from 15.00 hours to 16.30 hours in Room No. 80,
Vidhan Sabha Secretariat, Lucknow

PRESENT

Shri D. K. Naikar—*Chairman*

MEMBERS

Lok Sabha

2. Shri Rasa Behari Behra
3. Shrimati Suseela Gopalan
4. Shrimati Mohsina Kidwai
5. Shri R. K. Mhalgi
6. Shri Ram Pyare Panika
7. Shri Bapu Saheb Parulekar
8. Shri Qazi Saleem
9. Prof. Nirmala Kumari Shaktawat
10. Shri R. S. Sparrow
11. Shri Trilok Chand
12. Shri V. S. Vijayaraghavan
13. Shri P. Venkatasubbaiah

Rajya Sabha

14. Shri Lal K. Advani
15. Shri Ramchandra Bhardwaj
16. Shri Amarprosad Chakraborty
17. Shri B. Ibrahim
18. Shri Dhuleshwar Meena
19. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—*Senior Legislative Committee Officer*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

Shri S. C. Bablani—*Under Secretary*

WITNESSES EXAMINED

I. All India Crime Prevention Society, Lucknow.

Spokesman:

Shrimati Rani Lila Ram Kumar Bhargava

II. All India Seva Samiti Allahabad

Spokesmen:

1. Shri S. P. Pande, Organising Secretary

2. Shri Gopal Krishna Misra, Advocate

III. Uttar Pradesh Rajya Kalyan Sahakar Board, Lucknow

Dr. Kumari Kanchan Lata Sabharwal, President

IV. Begum Aizaz Rasul, M. L. A.

I—All India Crime Prevention Society, Lucknow

Spokesman

SHRIMATI RANI LILA RAM KUMAR BHARGAVA:

(The Witness was called in and she took her seat)

MR. CHAIRMAN: Kindly introduce yourself.

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: I am Lila Ram Kumar Bhargava representing All India Crime Prevention Society.

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence

is liable to be made available to the Members of Parliament."

Now please start.

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: Section 228(a) and Sections 375 and 376 have a common point to be discussed, i.e. the provisions regarding the imposition of reduced sentence may be left to the discretion of the Judge. These provisions should be deleted as no reduction should be made in the sentence.

Section 375, Explanation 1, The Law of Evidence regarding medical check-ups to prove rape, should be amended suitably. Except in the case of virgins, the point raised in Explanation 1, cannot be proved. Therefore, the victim's evidence on oath should be accepted even without medical corroboration.

Sir, I would like this second point to be kept confidential and not to be published.

Section 376(a), page 4, the word 'subordinate' should either be accompanied by 'senior' or else it should be deleted; and the phrase should read as: 'In the custody of any public ser-

vant' instead of 'a public servant'. He may be senior or junior.

Section 376 (b) and (c)—who will be the complainant in the case of sexual intercourse not amounting to rape? The section itself should stipulate categorically.

These two I would like to be published.

Now, this is general. The law of Evidence must be amended suitably to align itself with the proposed amendments in the Criminal Panel Code. The onus of proof should shift on the accused to prove his innocence and not *vice-versa*, as observed on page entitled 'Statement of Objects and Reasons'.

Secondly, the capital punishment should be considered a suitable sentence in the case of Government Servants and all categories of professional and educated people who commit the offence of rape. Our Conference had already sent some recommendations. There can be a special court with women judges in majority, to judge cases arising out of injustice against women. All other amendments are very good.

SHRI AMARPROSAD CHAKRABORTY: You have spoken only about Section 228(A). You have not made any specific recommendation.

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: It is just a suggestion. There is no special recommendation.

SHRI AMARPROSAD CHAKRABORTY: Have you got any special reason for speaking about Section 228A? About the amendment suggested in the Bill, you have spoken about the discretion of the judgement regarding punishment.

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: That is a suggestion regarding reduction of punish-

ment. It should be left to the discretion of the judge.

SHRI AMARPROSAD CHAKRABORTY: Do you say there should be no publication of the names of the cases in the papers? Suppose Government have to go by the advice of the Supreme Court; can there be any law to restrain it from doing so?

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: It is for the person concerned or the woman to go to the High Court.

SHRI AMARPROSAD CHAKRABORTY: Suppose it is published subsequently by the Supreme Court or the High Court; what will be your reaction?

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: I am not in a position to give any concrete suggestion about it.

SHRI AMARPROSAD CHAKRABORTY: Some organizations have said that it should not be published—especially the name of the accused.

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: If it can be avoided, it would be very nice. Otherwise, it will be very embarrassing for the woman, and many problems will arise out of it.

SHRI AMARPROSAD CHAKRABORTY: You say that during the pendency of the trial, nothing should be published. After the decision on the case, if the Supreme Court or High Court publishes it, do you want them to be restrained?

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: I am giving a social worker's point of view. I am not a lawyer. There is no harm in publishing the whole judgement; but you just leave out the name of the girl. *In camera* session is all right.

SHRIMATI SUSEELA GOPALAN: Do you want some representatives of women's organizations to be present during the trial, to ensure this?

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: Representatives of women's organizations should be included.

प्रो० निर्मला कुमारी शक्तावत :— मैं आपसे यह पूछना चाहूंगी कि कभी-कभी यह भी होता है कि किसी व्यक्ति या पुरुष को बदनाम करने के लिए इस प्रकार का एक षडयंत्र रचा जाता है, तो क्या ऐसी स्थिति में महिलाओं से पूछ-ताछ करने के लिए इन्हें कोर्ट में न लाया जाए?

श्रीमती रानी लीला राम कुमार भार्गव : कोर्ट में पूछ-ताछ के लिए लाना है तो उनमें तो कोई हर्ज नहीं है। आपका जो यह अभिप्राय है कि कभी कभी पुरुषों को बदनाम करने के लिए ऐसा षडयंत्र रचा जाता है तो ऐसे केसेज तो बहुत ही कम हैं। लाखों में एक-दो ही होंगे। इसको महत्त्व नहीं देना चाहिए, बल्कि महिलाओं के प्रोटेक्शन की बहुत ज्यादा आवश्यकता है, उनकी सुरक्षा की ज्यादा आवश्यकता है। इस तरह के षडयंत्र तो वैश्यायें ही रचती हैं।

श्रीमती निर्मला कुमारी शक्तावत : परन्तु एक इन्फ्लाइंट भी किया जा सकता है, वैश्याओं को किया जाता है, उनको डिफेंसिबल नहीं कर सकते, प्रिवियस हिस्ट्री देंगे।

श्रीमती लीला राम कुमार भार्गव : मेरे ज्वाल से, अध्यक्ष महोदय, अगर इसके लिए कुछ रूखेंगे तो शायद क्राइम और अधिक्त बढ़ जायेंगे क्योंकि जिन महिलाओं को रेप किया गया है उन को यह कह कर बदनाम किया जाता है झूठा षडयंत्र रचा जाता है और उसमें बहुत से कम्प्लीके-शन हो जायेंगे।

श्री लाल कृष्ण झाड़वानी : आप झाल इंडिया क्रिमिनल प्रिवेन्शन सोसायटी की तरफ से हैं।

श्रीमती रानी लीला राम कुमार भार्गव : मैं एक समाज सेवी हूँ लखनऊ में रहती हूँ।

श्री लाल कृष्ण झाड़वानी : मेमोरेन्डम तो कानपुर का है। इस मेमोरेन्डम में एक ही बात कही गयी है किस्की और माननीय सदस्या ने ध्यान दिनाया है। इस बात की संभावना हो सकती है कि कोई इस कानून का दुरुपयोग करे तो उस की व्यवस्था भी होनी चाहिए।

श्रीमती रानी लीला राम कुमार भार्गव : परिपूर्णानन्द जी ने मुझे पत्र लिखा था कि इस प्वाइन्ट पर विचार कर लीजिए। इस को मैंने देखा और इस पर विचार किया। मैं इस नतीजे पर पहुंची कि यदि इस को हम ग्रहमित्यत देंगे तो इस का प्रसर उल्टा होगा। इस से बहुत कम लोग एफेक्टिव होंगे और इससे जो हमारी बहनें हैं, हमारी जो महिलायें हैं, उन को बहुत कष्ट पहुंचेगा और उनकी प्रवहेलना हो जायगी। जो क्रिमिनल ला को ग्रमेन्ड करने का हमारा लक्ष्य है हम उसमें सफल नहीं हो पायेंगे। यह मेरा व्यक्तिगत विचार है।

श्री काजी सलीम : मेडिकल चेक अप के बारे में आप ने कहा कि ग्रमेन्ड करना चाहिए, इस पर आपके क्या सजेसन्स हैं।

श्रीमती रानी लीला राम कुमार भार्गव : मैंने सेक्शन 375 एक्सप्लेनेशन वन को रेफर किया था "दि ला ग्राफ एविडेन्स शुड बी ग्रमेन्डेड स्पूटेबल रिगारडिंग मेडिकल चेक अप"। मैंने यह

नहीं कहा कि मेडिकल चेक-अप नहीं होना चाहिए। क्योंकि कन्ट्राडिक्टरी है, इसलिए मैंने यह प्वाइंट रेज किया था।

SHRIMATI SUSEELA GOPALAN: In many of the cases public prosecution is not taking up the case seriously. In order to avoid such a thing, I would like to know is it necessary from the victim side to prosecute the other side simultaneously?

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: Madam this point is not very clear to me. Just now I have mentioned that I am not a lawyer. I am a humble social worker and I have put forward my Ideas.

SHRI QAZI SALEEM: Just now you said the law of evidence regarding medical check up is to be amended. You have not given any suggestion, but only said that it should be amended.

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: I think it is very obvious. I have mentioned that Section 375, Explanation 1, the Law of Evidence regarding medical check-ups to prove rape should be amended suitably.

SHRI QAZI SALEEM: How? You have given no suggestion. But you feel it should be amended.

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: That I leave to the law makers.

SHRI R. S. SPARROW: Madam, rape is a criminal act and it is a social evil. Now this is a question for your organisation. As one sees generally, every rape case starts through or with an F.I.R. reported to the police. Now, in that context what measures do you think should be adopted to make certain that the version recorded is correct? we are looking at it from the social angle. Do you think there should be something more stringent?

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: I don't think so.

SHRI BAPUSAHEB PARULEKAR: You have said that the statement of the victim on oath should be accepted even without medica corroboration. Supposing the woman comes before the court and says "I have been raped by this man." You mean to say that the Courts you have to accept her statement as correct.

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: You have to trust her. If the medical evidence is contradictory, still her words should be accepted. Regarding the Act, I have already spoken either you amend it, otherwise it becomes contradictory.

SHRI LAL K. ADVANI: I heard you as saying earlier that capital punishment should be a suitable sentence for rape offenders. Do you suggest capital punishment for all cases of rape or is it in cases of specified groups or in special circumstances? By and large, you may be aware there is a general movement in the country as well as in the World all over that capital punishment should be abolished. And here we are introducing this same higher punishment for certain specific categories of persons found guilty of rape; and for them it is ten years.

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: It should be life imprisonment actually.

SHRI LAL K. ADVANI: I heard you saying that there should be capital punishment for rape.

MR. CHAIRMAN: She means capital punishment is life imprisonment.

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: I have not mentioned capital punishment.

SHRI LAL K. ADVANI: You said towards the end perhaps at one stage that it should be for public servants.

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: I said that capital punishment should be considered, and that suitable sentences should be provided for in the case of Government servants and all categories of professionals and educated persons under whose custody the woman is kept—for example, Superintendents.

SHRI LAL K. ADVANI: At present, the Bill provides for greater punishment for such categories.

SHRIMATI RANI LILA RAM KUMAR BHARGAVA: I withdraw the words 'capital punishment'.

SHRI R. K. MHALGI: Does the witness want a victim to be medically examined or not? It appears that according to her, it is not necessary.

MR. CHAIRMAN: She says that even in the absence of medical evidence, her statement should be accepted. Even if there is a conflict between her statement and the medical evidence, she says her evidence should be accepted.

Thank you, Madam. That is all you can now enlighten us

(The witness then withdrew).

II. All India Seva Samiti Allahabad Spokesmen:

(1) Shri S. P. Pande (2) Shri Gopal Krishna Mishra, Advocate.

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the

witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

श्री एस. पी. पांडेय : सबसे पहले मैं यह निवेदन करना चाहता हूँ कि इसमें इन्वेस्टिगेशन का जो पीरियेड है उसको फिक्स कर दिया जाये। इन्वेस्टिगेशन में बड़ा समय लग जाता है, और उससे बड़ी परेशानी हो जाती है।

दूसरी बात मैं यह कहना चाहता हूँ कि एन्टीसिपेटरी बैल जो कि रद्द कर दी गई है उसको फिर से चालू कर दिया जाना चाहिए।

तीसरी बात यह है कि ऐसे क्रिमिनल केसेज में यदि किसी के ऊपर केस चल रहा हो और अगर वह फिर से दूसरी बार प्रोफेन्स करता है उसको बैल नहीं देनी चाहिए। कहने का तात्पर्य यह है यदि फर्स्ट केस में बैल हो गई हो और सेकन्ड टाइम में वह फिर से प्रोफेन्स करता है, तो बैल नहीं होनी चाहिए।

श्री सभापति : इसके प्रलावा कुछ बोलना चाहते हैं ?

श्री एस. पी. पांडेय : मुझे यह तीन ही सुझाव देने हैं।

श्री काजी सलीम : क्या आप यह चाहते हैं कि फर्स्ट केस में बैल होनी चाहिए ?

श्री एस. पी. पांडेय : सेकन्ड टाइम में अगर वह प्रोफेन्स करता है तो बैल नहीं होनी चाहिए।

श्री काजी सलीम : मर्डर के केसेज में जिस तरह से ट्रायल होती है और जिस

तरह से उसमें प्राज बिल होती है, क्या आप चाहते हैं कि उसी तरह से हो ?

श्री एन. पी. पांडेय : जैसे दायज होती है वैसे ही हों ।

SHRI GOPAL KRISHNA MISHRA:
The prosecution should be subjected to the condition that there should be a time limit on the conduct of the cases. I have seen that for petty theft cases, trials have been pending for ten years.

There should be a rider that they should complete the trials within 2 or 3 dates. They should not be prolonged.

MR. CHAIRMAN: Have you got the draft Bill? On the provisions contained in the Bill, have you got anything to say?

SHRI GOPAL KRISHNA MISHRA:
Rider should be put on the delay in prosecution.

MR. CHAIRMAN: Next.

SHRI GOPAL KRISHNA MISHRA:
The prosecution in petty cases must finish within six months. Some limit should be there.

MR. CHAIRMAN: Next point.

SHRI GOPAL KRISHNA MISHRA:
So far as the question of bail is concerned, mere challan in two cases should not be a ground for refusing bail, because if a person is once arrested, he is implicated in a number of cases.

MR. CHAIRMAN: Next.

SHRI GOPAL KRISHNA MISHRA:
The identification of the accused must be done positively within some time fixed by law. It should be one month, ten days, fifteen days, anything laid down by law.

MR. CHAIRMAN: Next.

SHRI GOPAL KRISHNA MISHRA:
Then there should be something in the Criminal Procedure Code to stay the proceeding when he shows his intention to move a transfer application.

MR. CHAIRMAN: Next.

SHRI GOPAL KRISHNA MISHRA:
Regarding search and seizure of property of the accused, the accused must be furnished with the list of things. That is all.

SHRI AMARPROSAD CHAKRABORTY: For how long have you been practising?

SHRI GOPAL KRISHNA MISHRA:
Since 1952.

MR. CHAIRMAN: Have you seen the Bill.

SHRI GOPAL KRISHNA MISHRA:
Yes.

(The witness then withdrew).

SHRI LAL K. ADVANI: Mr. Chairman, before the next witness arrives, I would like to draw the attention of the Committee to something that struck me on the very first day in Himachal Pradesh. When we were in Himachal Pradesh, on the first day I got the impression that our proceedings were being tape-recorded. I presumed that Lok Sabha Secretariat has done it. But when I enquired from the Lok Sabha Secretariat staff, they said: It is not our arrangement. We have nothing to do with it. It is the Himachal Pradesh Police which might have done it. If this is so, it is serious and I would like you as Chairman of the Committee to take cognisance of it and see why it has happened. If it is Parliament Secretariat which has done it, it is a different thing. But if it is some other agency which has done it, then it is certainly a serious breach of privilege.

MR. CHAIRMAN: I am also not aware of it.

SHRI LAL K. ADVANI: But all of us saw that tape.

SHRI BAPUSAHEB PARULEKAR: We saw it, but I was under the impression that it was arranged by Parliament Secretariat, but later on our Parliament Staff told us: "we have nothing to do with it."

SHRI LAL K. ADVANI: In this particular case it happens that several officials who appeared as witness before us, were police officials of various State Governments and some of them said we would not like this to be recorded. But for the point of view of Parliamentary practice and procedure and Parliamentary conventions, I feel this matter should be taken seriously by the Chairman of the Committee with that State Government.

SHRI BAPUSAHEB PARULEKAR: Sir, the State Government should be asked to return the tape.

श्री हुक्म नारायण यादव : हम लोगों की स्पीचेज का टेप यदि संसद् के द्वारा नहीं हुमा है और उन्होंने बिना हमारी जानकारी के कर लिया है, तो यह ठीक नहीं है। उनसे हमारा सारा टेप मंगवा लिया जाए।

MR. CHAIRMAN: I will consider what is to be done.

III—*Ottar Pradesh Rajya Kalyan
Salhakar Board, Lucknow*

Spokesman:

Dr. Kumari Kanchan Lata Sabharwal, President

(The witness was called in and she took her seat)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

DR. KUMARI KANCHAN LATA SABHARWAL: Whatever I say, I would not mind if it is published. So far as the Act is concerned.

I think is not unsatisfactory. There is provision for punishment, but the implementation should be, I think, in a better way. I am not a jurist, I am not a legal expert, but I think the evidence part of it should be a little different. It should be the responsibility of the man to prove himself innocent. This is one point.

Another point is a little beyond the scope i.e. no woman should ever be put in lock-up, specially at night. I know in all police stations there is not a separate lock up for women. And I know that in some cases, it is not possible to send the woman to shelter home. Still there should be some provision made everywhere somehow or other, I don't know how it can be done, but it has to be done, that no woman should ever be put under lock-up in police custody for more than two hours and that may be only in day time.

The procedure to go into all such cases should be shorter.

If possible more woman lawyers should be associated with such cases. I don't know if it would be feasible, but it would be better if we have women presiding officers in such cases, because often the victim women do not actually understand the implications of law and they give evidence which may sometime hamper their case. Otherwise the law is not insufficient.

If you like, I can also say that the punishment should be stricter still.

श्रीमती निर्मला कुमारी शक्तावत :
आप सोशियल वर्कर हैं, आप ने स्टडी किया होगा, आप का यू० पी० बहुत बड़ा प्रदेश है, आप ने क्या यहां पाया कि रेप केसेज के अपराध बढ़ रहे हैं।

डा० कुमारी कंचनलता सभरवाल : मैं प्रखबारों में पढ़ती रहती हूँ। मैंने कोई तुलनात्मक अध्ययन सारे देश का नहीं किया है। इस में कोई संदेह नहीं है कि इधर समाचार पत्रों में बलात्कार की घटनायें बढ़ती जा रही हैं।

श्रीमती निर्मला कुमारी शक्तावत :
यह सही हो सकता है कि पुराने समय में इस प्रकार के केसेज हुये हों पर सामने न आये हों।

डा० कुमारी कंचनलता सभरवाल :
बिल्कुल हो सकता है।

श्रीमती निर्मला कुमारी शक्तावत :
आप इस के लिये क्या सुझाव देना चाहेंगी कि इस को कैसे कम किया जा सकता है।

डा० कुमारी कंचनलता सभरवाल :
इस के लिये ज्यादा प्रच्छा होगा कि स्वीच्छक संस्थाओं को अधिक से अधिक कानूनी या किसी स्वीकृति के ढंग से ग्राम

सभा के साथ, महिला मंडलों के साथ, संलग्न किया जाय। इसमें कोई संदेह नहीं है कि बहुत से ऐसे भी मामले होते हैं जिनमें जिस विचारी पर अपराध किया गया है वह कहना नहीं चाहती समाज की लज्जा के कारण या छोटे बच्चों का विवाह होगा उस में दिक्कत हो जायगी इस कारण भी नहीं कहती। किन्तु महिला मंडल, स्वीच्छक संस्थायें महिलाओं के प्रति इस प्रकार के अपराधों के विषय जनमत तैयार करें और यदि ऐसी घटनायें हों तो वे तुरंत वहां पहुंचायें जहां न्याय मिल सके। इस के आगे यह भी होना अत्यन्त आवश्यक है कि पुलिस भी इन घटनाओं के गुह्यत्व को समझे।

SHRIMATI SUSEELA GOPALAN:
What is your concrete proposal for organizing these women's organizations?

DR. KUMARI KANCHAN LATA SABHARWAL: To begin with, it will be better if we establish family courts. They will encourage some cases to be settled within such courts. There must be small committees of women consisting of psychiatrists, lawyers and social workers. They should be made responsible for enlightening women regarding law.

SHRIMATI SUSEELA GOPALAN:
Should they not be involved in the proceedings of cases?

DR. KUMARI KANCHAN LATA SABHARWAL: It will be a very difficult and complicated affair, if we allow them to be involved in the proceedings.

SHRIMATI SUSEELA GOPALAN:
Do you think that it will be good if the victim is allowed to proceed against the culprit simultaneously with the State?

DR. KUMARI KANCHAN LATA SABHARWAL: It will be good.

SHRI BAPUSAHEB PRULEKAR: Do you suggest that 7 years' punishment is not sufficient? How much exactly should it be?

DR. KUMARI KANCHAN LATA SABHARWAL: It should be ten years or life imprisonment. To my mind the law is sufficient.

श्री काजी सलीम : आप ने यह कहा कि ज्यादा से ज्यादा घोरतों को लौक अप में न रखें। आजकल घोरतों के काइम बढ़ रहे हैं। वे स्पर्गलिंग में इनवाल्व हैं, डकैतों में हैं। तो ऐसी घोरतें आयें, जो क्रिमिनल हैं, उन को क्या आप चाहती हैं कि फ्री रखें।

डा० कुमारी कंचनलता सबहवाल : फ्री के लिये नहीं कहा। पुलिस कस्टडी में, कोतवाली में रखने के बजाय शेर होम में रखा जा सकता है इनवैस्टीगेशन के लिये। जहाँ शैल्टर होम प्रवेलेबल न हों तो यह संभावना देखी जाये कि कोई प्रतिष्ठित नागरिक के घर में उन को रखा जाये पुलिस के कस्टडी में ही।

सभापति महोदय : थैंक यू, मंडम

(The witness then withdrew)

IV—*Begum Aizaz Rasul M.L.A.*

(The witness was called in and she took her seat).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they spe-

cifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

BEGUM AIZAZ RASUL: No; I don't want them to be.

MR. CHAIRMAN: Now you can tell us what you want to.

BEGUM AIZAZ RASUL: I was not aware earlier, as to what we were supposed to give evidence here on. I just received an invitation for this purpose. On arrival here, I was told that this matter of rape was engaging the attention of this Committee. I am here; and I would like you to please ask me any questions that you like. Otherwise, it will be difficult for me to drift about.

MR. CHAIRMAN: Madam, if you have not read the draft Bill, it is all right; but you must have read a number of cases reported in the Press. What have you to say about rape offences committed and about the present position of the Law?

BEGUM AIZAZ RASUL: As far as the provisions of the law are concerned, I don't think there is much lacuna, but it is in the working of the whole thing i.e. the implementation part.

On this question of rape, my own idea is that the woman should be protected more than she is being protected now. If she is produced before the Judge, all kinds of questions are put to her. Then police is there to harass her in everything. Therefore I say, I don't think there is much need for any change or amendment in the Law itself, but as far as procedure is concerned, I think there should be some provisions to protect the woman,

and also to help her in giving evidence regarding the circumstances in which she underwent this unfortunate experience. My own view is that if law is worked properly and if it is followed properly it is all right. There is no need for amending the Criminal Procedure Code itself.

MR. CHAIRMAN: What are your suggestions for the protection of woman in such cases? Kindly enlighten us.

BEGUM AIZIZ RASUL: Many things can be done in such cases. There are mostly men as Judges. There are mostly men in the Jury, if it is there. Police consists of men. With social conditions in our country being as they are and the kind of women who are victims of this kind of experience, it is very difficult for them to give evidence according to what they have experienced. She is so intimidated by all those. I think there should be some help provided to the woman. From that point of view I say there should be more women connected with the whole procedure of the case.

Secondly, there should be special courts for this kind of cases, because unfortunately the procedure of law in our country is so long drawn and the sentence if it to be pronounced comes after such a long time that the whole happening goes away from the people's mind. I think if the public knows that the person who has committed this crime has been brought to book, it will be a sort of deterrent for other people.

And then we have to keep in view the social conditions that exist in our country. That is the main thing. In Europe these things are happening all the time, but their social conditions are different. You are sitting here and we are Members of the public, must realise that we must give special facilities and special protection to the woman to give evidence in her case.

There is so much written in papers sometimes that evidence of the rape victims in rape cases should be taken in camera. Well, I do not agree with that view at all because there is no question of woman's evidence being taken in camera. She can at least be assisted by one or two women. That, I feel, would be more helpful for her to come out of the real circumstances of the case. I think these things must be kept in mind more than changing the Criminal Procedure Code or the law itself.

SHRIMATI SUSEELA GOPALAN: I think you have gone through the Judgments of the Mathura as well as Ramiza Begum's recent cases which had come up before the Supreme Court and the other before the Sessions Court. Do you think, after reading these cases that there are loopholes in the Legislation? Do you think some legislative changes are necessary?

BEGUM AIZAZ RASUL: Yes. I agree there should be some changes.

(The witness then withdrew).

SHRI LAL K. ADVANI: I think they don't have any idea, except that this is a Joint Committee on Criminal Law Amendment Bill. In fact, when one witness was saying that there should be a stricter punishment, we thought he was speaking about rape. But we found that he was talking generally.

MR. CHAIRMAN: Normally, no advocate will play such a game. He cannot say irrelevant things—which he has done.

SHRI BAPUSAHEB PARULEKAR: In the Bill, in Clause 7(b) Section 376-A, B and C have been referred to. It has been mentioned that these offences have to be tried by the Magistrate and not by Sessions Judges. Do you agree?

SHRI R. K. MHALGI: For that purpose, a committee has been appointed.

SHRI BAPUSAHEB PARULEKAR: There should be some reason for it.

SHRI L. K. ADVANI: Mr. Parulekar wanted to know the rationale behind amendment to Section 376-A. Has the Home Ministry got some rationale for every amendment? Various witnesses have referred to the fifth description under Section 375. We can consider some remote cases. But where is the need for a change in the definition? Has the Home Ministry or Law Ministry got a rationale for this?

MR. CHAIRMAN: Whatever proposal had been brought before the House, has been referred to you here. It is for you to take a decision and submit your report to the House. So, you cannot find fault with the Bill. I have said that I am making an enquiry as to how it has come.

SHRI BAPUSAHEB PARULEKAR: It may be that in order to have an expeditious disposal of the matter, this is being done.

MR. CHAIRMAN: What are mentioned under Section 376-B are serious offences. They are to be disposed of, without cross examination.

SHRI BAPUSAHEB PARULEKAR: We can say that the offences should be made triable directly by the Sessions Judge. Is it possible, Mr. Chairman, to give us a copy of the Sexual Offences (Amendment) Act 1976 of the United Kingdom, because our Bill is based on it? Yesterday, I was trying to get Sexual Offence (Amendment) Act, 1976 of U.K. I could not get it. It is a small one. This Act may please be obtained and its copies prepared and circulated to us.

MR. CHAIRMAN: We have already made a request to the Home Minister and he has agreed to do so.

We are waiting because three more witnesses are yet to come. I think we can wait till 5 p.m.

SHRI LAL K. ADVANI: What is the practice in this regard? Are the witnesses told that they can come any time between 3 and 5 p.m.? Or do they have specific time allotment?

MR. CHAIRMAN: It is not necessary. We intimate the time to the witness. If somebody says we have some more urgent work, then they are given first time.

The remaining three witnesses are of Akhil Bharat Serva Seva Sangh, Varanasi. They are: Shri Sharadh Kumar, Prof. Nageshwar Prasad and Shri Narinder Bhai.

My suggestion is we can ask them to come tomorrow, if they come and if other Members have some urgent work they can attend to them. Unnecessarily we cannot detain them.

SHRI BAPUSAHEB PARULEKAR: For tomorrow, there is only one Memorandum i.e. No. 3 received from Mr. Goverdhan Lal Shukla.

SHRI AMARPROSAD CHAKRABORTY: We also have Mr. Naresh Kumar, Inspector General of Police.

MR. CHAIRMAN: We can ask the Varanasi people to come tomorrow. If they come later to-day, we may request them to come tomorrow. We can now disperse.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE OF THE CRIMINAL LAW
(AMENDMENT) BILL, 1980

Saturday, the 4th July, 1981 from 10.00 hours in Room No. 80,
Vidhan Sabha Secretariat, Lucknow

PRESENT

Shri D. K. Naikar—*Chairman*

MEMBERS

Lok Sabha

2. Shri Rasa Behari Behra
3. Shrimati Suseela Gopalan
4. Shrimati Mohsina Kidwai
5. Shri R. K. Mhalgi
6. Shri Ram Pyare Panika
7. Shri Bapusaheb Parulekar
8. Shri Qazi Saleem
9. Prof. Nirmala Kumari Shaktawat
10. Shri R. S. Sparrow
11. Shri Trilok Chand
12. Shri V. S. Vijayaraghavan
13. Shri P. Venkatasubbaiah

Rajya Sabha

14. Shri Ramchandra Bhardwaj
15. Shri Amarprosad Chakraborty
16. Shri B. Ibrahim
17. Shri Dhuleshwar Meena
18. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—*Senior Legislative Committee Officer*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

WITNESSES EXAMINED

Shri S. C. Bablani—*Under Secretary.*

GOVERNMENT OF UTTAR PRADESH, LUCKNOW

Spokesmen:

- (1) Shri Goverdhan Lal Shukla, Judicial Secretary/Legal Remembrancer
- (2) Shri Naresh Kumar, Inspector General of Police
- (3) Shri R. C. Takru, Home Secretary.

Government of Uttar Pradesh, Lucknow Spokesmen

1. Shri Goverdhan Lal Shukla
Judicial Secretary/Legal Remember-
ancer.

2. Shri Naresh Kumar, Inspector
General of Police.

3. Shri R. C. Takru, Home Secre-
tary.

*(The witnesses were called in and
they took their seats)*

MR. CHAIRMAN: Kindly introduce
yourselves one by one to the Commit-
tee Members.

SHRI R. C. TAKRU: I am R. C.
Takru, Home Secretary.

SHRI GOVERDHAN LAL SHUK-
LA: I am Goverdhan Lal Shukla,
Judicial Secretary.

SHRI NARESH KUMAR: I am
Naresh Kumar, Inspector General of
Police.

MR. CHAIRMAN: Before we pro-
ceed, may I draw your attention to
Direction 58 of the Directions by the
Speaker which reads as follows:

"58. Where witnesses appear
before a Committee to give evi-
dence, the Chairman shall make it
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dence to be treated as confidential
such evidence is liable to be made
available to the Members of Parlia-
ment."

SHRI GOVERDHAN LAL SHUK-
LA: The State Government had made
certain recommendations on the
receipt of the 84th Report of the Law

Commission. Most of our recommen-
dations have found their way into the
Bill, which shall be presented to Par-
liament. Some of them, of course,
have not been accepted.

Since we made our last recommen-
dations, we had further thought over
the matter and have formulated one
or two more suggestions. The most
important thing that has been vexing
our minds is about the presumption,
for which a new provision is being
made in Section 111 of the Indian
Evidence Act. We consider it, in the
present set-up of social conditions, a
step which is fraught with very great
dangers. Before we go through it, it
would be better if we had more of
discussion and consideration on this
point.

At the moment, the burden rests on
the prosecution, but by the mere
statement of the prosecutrix that she
had been raped, the burden would
instead be shifted to the accused who,
in most cases, would find it very diffi-
cult to discharge this negative burden.

The anxiety of all of us to resort to
this technique of shifting the burden
from the prosecution to the accused,
has been there because of our failure
to tackle adequately this crime
which is no doubt most ignominious,
and over which a many sections of
our society are very much perturbed.
But if we do not get success in the
prosecution of the accused for such a
grave crime, it is because of many
factors. If we directly—instead of
getting better of them—try to import
this concept of shifting of the burden
from the prosecution to the accused,
greater injustice is likely to result
therefrom. In economic offences we
have already tried to shift the bur-
den, in some cases, from the prosecu-
tion to the accused. Under the Pre-
vention of Corruption Act also, we
have tried to shift that burden on 1
or 2 scores from the prosecution to
the accused. But my experience in
the courts and of deliberations
amongst ourselves have led me to

believe that perhaps our social conditions are not yet ripe enough to import this French concept into our society, in connection with this particular crime. This august body may like to consider whether it would be better to shift the burden on the accused, in order to achieve the avowed objective of getting success in such trials, or to resort to other suggestions put forth by the Law Commission itself. They have suggested the amendment of Section 146 i.e. a new Section to be inserted after Section 53 and some amendments in like manner in Section 155 to the Indian Evidence Act. Our experience has been that in most cases, when the accused faces a trial under Section 376, he tries to dig into the past of the prosecutrix. Because this right has been made available to him under the Evidence Act, he has been trying to misuse it. Even if he could not exactly establish that the prosecutrix had been leading an immoral life or had been involved in sexual scandals in her past. So, the accused had been pretty often succeeding in at least creating some sort of doubt, so that the Judge may not be morally convinced that the guilt had been brought home against him. So, instead of straightway resorting to the technique of shifting the burden from the prosecution to the accused, it would be better if the other suggestions made by the Law Commission in that regard, viz. amendment of Section 146, insertion of a new Section after Section 53 and some necessary consequential amendments in Section 155 are ushered in. They are likely to lead to better results, for which all of us are very much concerned; because, in that case, the moral conviction of the court while trying such an offence would not be easily shaken by such unwarranted suggestions made by the accused. The accused may not be able to prove to the guilt, the past character of the prosecutrix; but even if he gives some suggestions—they may be just half-way truths—the court is somehow influenced indirectly and a psychological impact is

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created on the mind of the court. As a result, it does not lead to that level of moral conviction where the guilt may be found established against the accused. This is the most important suggestion for your consideration.

MR. CHAIRMAN: The Bill contains Section 111-A only in respect of cases where persons of authority are involved. The reason or justification behind this is that the officer is already in some authority, and there is a probability of his having dominance over the woman. In that case, there may not be any violence. A passive submission of the lady would be there. So, in such circumstances, there is no justification to insist upon seeing whether there was consent or not. So, in view of the peculiar circumstances, the provision has been made in the Bill.

What are the disadvantages which will be faced by the police officers or others in authority—who will be harassed by this provision, according to you?

SHRI GOVERDHAN LAL SHUKLA: That is the second thing I wanted to say. As regards the first, by this new Bill we are introducing new sections after Section 376; and there, the element of force, as it has been commonly understood in the case of rape, is not there. Domination, as you have rightly said, has been incorporated in those new Sections. But its effect on the implementation of those Sections has got to be very much clearly appreciated. It would, in my opinion, deter the forces of law and order in performing their duties properly. For instance, in cases of immoral traffic, if certain women of easy virtue are rounded up and brought to police custody, any one of them may like to implicate any of the officers at the police station, or even in the Department; and that would certainly deter the police officers from making any effort to curb this crime. Not only in cases of immoral traffic, but even in other cases where

a woman is involved in an offence and if she is brought to the police custody, she may raise a similar question and her mere suggestion that intercourse had been had with her without her consent would be sufficient to implicate the Police officers. And this will bring a sort of indifference in the mind of Police officers to perform their lawful duties to maintain law and order.

As regards hospitals, there also we would like to suggest that there may be other cases. Virtually it is not the patient who is so much victim on this score; as our common experience goes, the nurses, the sisters, ward boys—if there are females—who are attached to the hospitals, they are also subjected to such treatment and pretty often things are brought to public notice about it. But we have excluded them from the orbit of the present new section. Similarly so far as the scope of the Bill is concerned, that may be extended there even to other places. We have excluded them and at the present moment we have only confined to these three bodies—rescue homes, police custody, hospitals and jails. These are the three places to which we have confined the purview of the Bill, but it attended the risk that the persons in charge of these institutions on whom the duties are enjoined to do Public Service may be deterred to discharge their Lawful obligations and duties.

MR. CHAIRMAN: Now, when you are speaking of hospital, I may tell you I had the privilege to know a hospital case. In that case the doctor was in charge of the Civil Hospital and some young girl was advised to have a surgical operation. If it was done, no difficulty would arise at the time of consumation. With the consent of the mother, because she had no father, she was admitted for surgical operation. The doctor saw the beauty of the girl and convinced her of the need for surgical operation. He took her to the operation theatre. There he made the girl lie on the table and penetrated his organ. There-

fore, even the girl after 18 years of age, never thought she was doing an illegal act. It is a separate point whether protection should be given to officers who discharge a public duty or not. But here what I want to suggest is that men in authority have a chance to commit rape. Still you insist that there should not be a presumption. Then what is your justification, I want to know?

SHRI GOVERDHAN LAL SHUKLA:

I share the anxiety of the Hon. Chairman. The question is that if the persons in authority, anywhere, not only in hospital, dominate the will of those serving under them, they must be brought to book. But the question is whether the malady has grown to such a proportion at the moment that this device should be adopted and that the presumption should be raised. Normally the law of the land is quite sufficient to meet. Offenders in such cases have been punished and they are likely to be punished again if they are brought to the notice of the Court and if sufficient evidence is brought in support of that charge. But if you straightaway prescribe a presumption under the law itself, and if we are not yet perhaps sure as to what is the proportion of this disease. There may have been cases which have come to limelight and on which public conscience has been agitated, but their proportion to other crimes may not be as much as to shift the burden from the prosecution to the accused.

Secondly, the farmers of the Bill had been anxious that the name of the prosecutrix may not be disclosed in such cases, as it is likely just to put her to disrepute and to expose her to graver risks in her social existence. But in explanation to Section 228(a) there is a provision that the printing or publication of the Judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this new section. I may point out that in the new section itself, the sub-section

(1) provides whoever prints or publishes the name or any matter which may make know the identity of any person against whom the offence under sections such and such is alleged or found to have been committed, subjects himself to prosecution. We think that if in the Explanation also while publishing the judgment of the High Court or the Supreme Court, the same precaution is taken, it would be much better. The idea behind the publication of the Judgment is to let the public know the law of the land. Public should not be concerned to know the identity of the person involved in the particular case. Therefore, I think precaution taken in sub-section should be logically drafted to this explanation, which is being introduced in the Statute Book.

MR. CHAIRMAN: Do you agree with the present provision?

SHRI GOVERDHAN LAL SHUKLA: Certainly, we agree with it. The same language which has been used in Explanation (1) may be lifted and brought here.

I would suggest one verbal change in the definition contained in Section 375 where age has been fixed as 16. It may be raised to 18. Then perhaps our purpose will be served better.

In Explanation (1) to sub-section (2) of Section 376, there is a new provision which says:

"Where a woman is raped by three or more persons acting in furtherance of their common intention..."

Even two persons can act in furtherance of common intentions. It can be made more than one.

We think that there is some drafting error. It may perhaps be corrected, if the Committee thinks it

proper. There is an exception to Explanation 2 of Section 375, on the top of page 3 of the Bill. It says there: "Sexual offence by a man with his own wife..." etc. The word 'offence' may not be there. That word can be changed into 'intercourse.' In the Act it has been described so. We cannot say it is an offence.

SHRI BAPUSAHEB PARULEKAR: Coming to your first suggestion about presumptions—if I have got you correctly—you said that the burden shifts on the accused no sooner the prosecutrix says that she had been raped by the accused. In fact, the burden does not shift at that time, but when the intercourse is provided. When here is a question of consent or otherwise, then only the burden shifts. We will come to consent later. The first ingredient of the intercourse has to be established by independent evidence by the prosecution; and after that is established she makes the statement and then alone it will be established.

SHRI GOVERDHAN LAL SHUKLA: The solitary testimony of the prosecutrix is sufficient to say that intercourse has been committed.

SHRI BAPUSAHEB PARULEKAR: If medical evidence is totally inconsistent—Then also according to you the statement of prosecutrix should be accepted.

SHRI GOVERDHAN LAL SHUKLA: If injuries are not there, a presumption may be involved against the accused; but in cases of women about whom there are reports that they are used to sexual intercourse, injuries may not be there. Secondly, even where mere rupture of the hymen is found, a statement by her, uncorroborated by medical testimony, may lead to the establishment of guilt against the accused.

SHRI BAPUSAHEB PARULEKAR: Suppose the safeguards are included in Section 111-A i.e. an exception added that it will not apply when the

medical evidence is totally inconsistent with the act of intercourse, will it serve the purpose?

SHRI GOVERDHAN LAL SHUKLA: It will be an improvement, no doubt; but as I pointed out, in those cases medical evidence may not be material in view of the circumstances of the particular case.

SHRI BAPUSAHEB PARULEKAR: How is it?

MR. CHAIRMAN: The hon. Member is right; here, in the case of rape the complaint will be filed by the victim, and there will be an investigation and charge-sheet. Thereafter, during an enquiry, evidence will be recorded, including medical evidence. Thereafter, there will be an examination. Then, on the basis of the total investigation, the question of presumption will arise—whether prosecution has proved intercourse or not, in corroboration with other evidence. Suppose her statement is already there in the court. Then, if medical evidence discloses that there was no intercourse, do you mean to say that even in spite of that, that presumption should be there—i.e. where intercourse has not been proved?

SHRI GOVERDHAN LAL SHUKLA: So far as I know, medical evidence does not rule out the possibility of intercourse, but only injury of private or other parts, when resistance is offered. Injuries may not be there, if the presumption of consent is there.

MR. CHAIRMAN: Consent is the next factor to be taken into account. First, the prosecutrix must prove that there was intercourse. If it is established, then it is open for the court to presume whether there was consent or not—i.e. either way. Of course, if medical evidence comes in the way to show there was no intercourse at all, then her testimony should be ignored by the court.

SHRI GOVERDHAN LAL SHUKLA: Sir, in the case of minor girls it may be all right. But in case of grown-up ladies either because they are married or otherwise accustomed to sexual intercourse, this presumption about consent would lead to corruption in a large measure. If there are injuries, then there is no question. But in the absence of injuries, it does not positively lead to the presumption of rape.

SHRI BAPUSAHEB PARULEKAR: I remember a case conducted by me. A woman came and said that she was raped. The medical report said there was no rupture of hymen. It was in total negation of her statement that she was raped. Because we are to take into consideration even the exceptional cases. Do you mean to suggest even in such exceptional cases the uncorroborated testimony of prosecutrix should be accepted?

SHRI GOVERDHAN LAL SHUKLA: In the case of minor girls in whose case rupture of hymen is most relevant to establish whether there was rape or not. But after certain age generally hymen does not exist. It goes out after intercourse. If there is evidence that hymen is intact, obviously it is proof whatever the statement she makes, that will be disproved. It cannot be a rape. But even there, as definition of rape stands, mere penetration, hymen may or may not be there, will be considered as rape. How do you safeguard that case when there is false implication.

MR. CHAIRMAN: On which authority are you basing your evidence, so far as medical evidence is concerned?

SHRI GOVERDHAN LAL SHUKLA: I rely on Modi and Taylor, both.

SHRI BAPUSAHEB PARULEKAR: You said the Law Commission in its report made provision of presumption of sexual intercourse under Section 143 and in view of that provision

like 111(a) is not necessary. I invite your attention to the recommendation of the Law Commission. They don't refer to the question of consent.

SHRI GOVERDHAN LAL SHUKLA:
I don't mean they were connected with the question of consent. My simple emphasis was that Law Commission depended on both the things. In the Bill, other suggestion of the Law Commission has not been incorporated. The suggestion about presumption has been incorporated. My humble submission is that instead of incorporating the presumption provision, if the other suggestion of the Law Commission is accepted and incorporated in the Bill, perhaps it would lead to better results without any danger being for false implication.

SHRI BAPUSAHEB PARULEKAR:
That is exactly what I say. Section 155(4) gives right to the accused to cross-examine the previous character of the prosecutrix. Section 53 speaks about the cross-examination of all the witnesses irrespective of sexual offences. Section 146 is similar as 53. Therefore, the question before the Law Commission was whether right should be given to the accused to challenge her character and bring on record her past record? Are you in favour of deletion of Section 155(4) of the Evidence Act?

SHRI GOVERDHAN LAL SHUKLA:
I did not suggest this as an alternative to taking out from the proposed Bill the provision about presumption. My only concern was just as I pointed out earlier, if the accused is permitted to cross-examine on the character of the prosecutrix and on the past sexual life of the prosecutrix, it is more often than not that they indulge in imaginary stories and confront her with such questions that she gets bored about those suggestions and more often it leaves a mark on the mind of the trial judge as has been the experience that if so many suggestions are thrown out, then he may think there may have been something

shady about the character of the prosecutrix. This is connected with moral conviction of the court and it shakes the moral conviction of the court. And that was my purpose.

SHRI BAPUSAHEB PARULEKAR:
Mr. Chairman, I would request the witness not to mix up the question of presumption with previous character of prosecutrix.

We are only at the point of Sec-140 are there. If that is so, what are vision of presumptions is not necessary because Sections 53(a) and 155 and 146 are there. If that is so, what are your reasons for not supporting the recommendation of the Law Commission?

SHRI GOVERDHAN LAL SHUKLA:
My view is that the provision about the presumption should not be there.

SHRI BAPUSAHEB PARULEKAR:
Why?

SHRI GOVERDHAN LAL SHUKLA:
It is fraught with danger. They will shy away from taking any female into custody even if she might be involved in a very heinous crime. They will certainly keep themselves aloof from rounding up women, who are engaged in immoral traffic. These are the reasons. The law and order forces will shirk their duty, because they may be innocently implicated. Than that would bring more harm to the society than our attempt to punish the offenders with such crimes.

Then the question arises when the public conscience has been agitated about such incidents, it should be other way. The Law Commission has recommended that you may be able to get over the problem of presumption. I would suggest that the success in such cases would be larger if those amendments suggested by the Law Commission itself in those sections, as Hon. Member has pointed out, may be incorporated, because in that case the Defence Lawyer may not be able to

make an abuse in the present set up of Law. I would suggest here also that so far as the prosecutrix's own involvement with the accused, it should only confine to that.

SHRI BAPUSAHEB PARULEKAR: Instead of making the provision mandatory it is made discretionary and instead of word 'shall' the word 'may' is put in the provision, do you agree?

SHRI GOVERDHAN LAL SHUKLA: Of course. There I think it would be good. It would obviate too many risks that are there at the moment.

MR. CHAIRMAN: The witness says that providing such a presumption in the Act will impair the efficiency of the police.

SHRI BAPUSAHEB PARULEKAR: That means he is not in favour of this.

SHRI GOVERDHAN LAL SHUKLA: It should not be a mandatory presumption. I don't represent the State Government's view in this suggestion because we have not discussed it among our colleagues in the Government. But this suggestion may be considered.

MR. CHAIRMAN: Now about Section 228. Some suggestions were made the other day. The word 'publish' has been used. Don't you think that even official correspondence will be governed by this?

SHRI GOVERDHAN LAL SHUKLA: No, Sir; unless it is brought to the notice of the whole public.

SHRI BAPUSAHEB PARULEKAR: If you read Section 228A you will find:

"Whoever prints or publishes the name or any matter which may make known the identity of any person against whom...."

Unless you add the words "or by whom" here, the purpose will be defeated. If the name of the accused and

other particulars are not allowed to be published, the purpose will be defeated.

SHRI GOVERDHAN LAL SHUKLA: I agree; the name of the culprit should be published.

SHRI BAPUSAHEB PARULEKAR: Suppose in the market area of Lucknow, a rape is committed. If you say that at that place rape was committed by X, and if this is published, do you think the victim's name will be known to all?

SHRI GOVERDHAN LAL SHUKLA: If a description is given, it would give an indication of the victim. It can be done in some other manner.

SHRI BAPUSAHEB PARULEKAR: Coming to the offence, under Section 375:

"Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death or of hurt or of any injury..."

It is with reference to the victim and not to others. Suppose the police officer or anybody else gives a threat to her life or to that of her husband or son. Of course, the Law Commission has referred to intimidation to anyone present in the police station at the time of recording the statement. I feel that in this case, there will be a lacuna—where a threat is given by some one other than the accused.

SHRI GOVERDHAN LAL SHUKLA: I think that would be harmless. It is necessary to incorporate a provision to meet this.

SHRI BAPUSAHEB PARULEKAR: Kindly refer to the sixth description which says:

"Sixthly.—With her consent, when at the time of giving such consent, by reason of unsoundness,

of mind or intoxication or the administration by him of any stupefying or unwholesome substance...."

A distinction has been made between administration to her, and her voluntarily drinking. Regarding stupefying drinks, it has to be proved that it has been administered by the victim. Don't you think that these two provisions should be brought on par?

SHRI GOVERDHAN LAL SHUKLA:
She may not be in a state of mind where she may understand the implications.

SHRI BAPUSAHEB PARULEKAR:
No. There is the agency for administering alcohol, and there is also the agency for administering stupefying drugs. In one case, the agency is the accused, and in the other, he is not. Because of the present provision, the accused will come out of the clutches of the law.

SHRI GOVERDHAN LAL SHUKLA:
Intoxication is the effect of the intoxicant. It will cover even if she has taken it. In the case of stupefying drugs, they have got to be administered by the accused.

MR. CHAIRMAN: Even in the case of intoxication she may take some amount voluntarily. After she has taken some quantity—drinking may be voluntary or involuntary—it can be forcibly offered. A stupefying substance can also be taken by her; or it can be administered by the culprit.

SHRI BAPUSAHEB PARULEKAR:
The Section says that stupefying drugs have to be administered by the culprit.

MR. CHAIRMAN: We can discuss this separately.

SHRI BAPUSAHEB PARULEKAR:
Now about Explanation 2 viz. "A woman living separately from her husband under a decree of judicial separation..." etc. The Home Secretary knows that under the marriage

law, cohabitation is allowed between spouses who live separately under a decree of judicial separation. Do you think Government agrees with this provision?

SHRI GOVERDHAN LAL SHUKLA:
Sir, we agree with this provision.

SHRI BAPUSAHEB PARULEKAR:
Why?

SHRI GOVERDHAN LAL SHUKLA:
The only objection you have pointed out is that if there is separation.

SHRI BAPUSAHEB PARULEKAR:
If the personal law allows sexual relationship permissible, should that be made penal under this provision? That is the point I want to make.

SHRI GOVERDHAN LAL SHUKLA:
It is a question of rape against her consent.

SHRI BAPUSAHEB PARULEKAR:
Even if there is judicial separation, she continues to be wife. With all this, do you say it should be retained?

SHRI GOVERDHAN LAL SHUKLA:
Yes.

SHRI BAPUSAHEB PARULEKAR:
What do you say about the exception as far as the husband-wife relations are constrained. Whether it should be deleted taking into consideration the conditions in our country? Very recently we have an instance of marriage of girls below 18 in rural areas. You referred to environmental and social conditions in the country, do you think intercourse by husband with his wife only because she is below 15, it should be treated as rape and even for that penalty should be prescribed for five years?

SHRI GOVERDHAN LAL SHUKLA:
Here the girl will be of 15 years of age.

SHRI BAPUSAHEB PARULEKAR:
If she is under 15 years of age, then should it be treated as rape?

SHRI GOVERDHAN LAL SHUKLA:
Yes, Sir.

SHRI BAPUSAHEB PARULEKAR:
And the sentence should be for five years?

SHRI GOVERDHAN LAL SHUKLA:
Yes, Sir.

SHRI BAPUSAHEB PARULEKAR:
Then about the punishment—do you think that the punishment should vary *vis-a-vis* the victim? Suppose the rape is on a child of seven years, a pregnant woman, or an aged woman.

SHRI GOVERDHAN LAL SHUKLA:
Sir, theory of punishment is always according to the circumstances of the particular case, gravity of the charge. Here the minimum is prescribed.

SHRI R. K. MHALGI: In regard to Section 111(A), you have stated that the present social conditions of our society are such that such types of presumptions which is contemplated now in the proposed section is not desirable. That is according to you. Will you please specify what you have to say about the present social circumstances?

SHRI GOVERDHAN LAL SHUKLA:
The Hon. Members know there may not be dearth of persons who would like to falsely implicate men in authority, whether they are in political life or in administrative authority i.e. those who are enjoying power. There may be persons also who may like to make abuse of this.

SHRI R. K. MHALGI: In what way they make abuse?

MR. CHAIRMAN: He has already given his remarks so far as deletion of this provision is concerned.

SHRI GOVERDHAN LAL SHUKLA:
If you permit my friend, Mr. Takru, he will demonstrate how it will affect.

MR. CHAIRMAN: That we will have separately.

SHRI R. K. MHALGI: A number of women's organisations feel Section 228, Criminal Procedure Code is a kind of censorship and a blanket ban on printing the proceedings of the rape trial. They proposed that they have no objection if we have the proceedings of the trial to be published. What is your opinion?

SHRI GOVERDHAN LAL SHUKLA:
If the identity of the female is not disclosed, there should be no harm.

SHRI AMARPROSAD CHAKRABORTY: You have stated that in the social concept, burden shifting should not be changed. You kindly look at Section 90. It defines what is consent. Legal provisions are given there. Even assuming that burden is shifted, which are offences or consent comes under Section 90. The Court cannot presume automatically in violation of the provision of the Statement. What is your opinion?

SHRI AMARPROSAD CHAKRABORTY:
I think what you say is correct.

SHRI AMARPROSAD CHAKRABORTY: Then whether any provision of the amending Act can override the provision?

SHRI GOVERDHAN LAL SHUKLA:
Certainly, if Section 90 defines consent in a general way.

SHRI AMARPROSAD CHAKRABORTY: The consent does not come under the provision of Section 90, if it becomes a voluntary consent. So, what remains is only voluntary consent. So whether the Court can presume against the failure of this Section assuming that burden is shifted?

SHRI GOVERDHAN LAL SHUKLA:
Section 90 generally describes consent known to be given under fear or misconception. Its scope is there. But the special provision would override the general law.

SHRI AMARPROSAD CHAKRABORTY: This is an amending Act. Amending Act cannot override the main provisions.

SHRI GOVERDHAN LAL SHUKLA: Special provisions can always do.

SHRI AMARPROSAD CHAKRABORTY: What is your opinion if onus in that case is shifted by the word 'may'. Whether any harm would be made to anybody?

SHRI GOVERDHAN LAL SHUKLA: If the matter is left for decision by the Court the chances of harm will be less.

SHRI AMARPROSAD CHAKRABORTY: You want discretion of the court. Secondly, you have seen that the provision regarding age will indicate this.

SHRI GOVERDHAN LAL SHUKLA: We have said it should be made 18.

SHRI AMARPROSAD CHAKRABORTY: Can you restrain the Supreme Court from publishing names? You have said that publication can be made only by omitting the name of the accused or of the prosecutrix.

SHRI GOVERDHAN LAL SHUKLA: The name or identity of the victim should not be disclosed. All precautions should be taken.

SHRI AMARPROSAD CHAKRABORTY: But in page 2, it is said that the publication of the judgment in the Law Journal of the Supreme Court does not amount to an offence. How can you impose a ban on the Supreme Court when it is published in other papers?

SHRI GOVERDHAN LAL SHUKLA: Supreme Court's records are official records, but they should not be published outside. Judgments can be published, but precautions should be taken during the interlocutory and final stages. The same precaution which has been mentioned earlier, should be taken here.

SHRI AMARPROSAD CHAKRABORTY: Even if the Supreme Court or High Court judgments are pub-

lished you suggest the name of the victim should not be published. What are the statistics regarding rape cases in UP?

SHRI GOVERDHAN LAL SHUKLA: I do not know; I cannot say off-hand.

SHRI B. IBRAHIM: Will restriction on publication be violative of the Articles of the Constitution?

SHRI GOVERDHAN LAL SHUKLA: Any reasonable restriction will not be violative of the Articles of the Constitution.

SHRI QAZI SALEEM: What do you mean by moral conviction? Regarding publication of details, sometimes we go to the police officer and he refuses to take cognisance of such offences. As a public representative, I have had to approach DIG of Police and others. All of them refused to take cognisance. Then I wrote out a complaint that a certain act had been committed. Will Section 228 cover this and put into trouble anybody acting in good faith?

SHRI GOVERDHAN LAL SHUKLA: So far as I understand it, Section 228A does not bar the publication or bringing to the notice of the public, any incident but it only says that the identity of the victim should not be disclosed, so that she does not suffer socially.

SHRI QAZI SALEEM: In that case, how can I get justice for her?

SHRI GOVERDHAN LAL SHUKLA: For official records, the name of the victim will be there. But publication is not allowed.

Next about moral conviction. In civil cases, there is no moral conviction for a Judge to decide a particular matter in a particular way. But in criminal matters, a particular offence has been found to be legally proved, only when he thinks that there is sufficient evidence, and at the same time he is morally convinced that the guilt has been brought home. With regard to moral conviction, if a series

of questions are directed against the prosecutrix when she is in the witness box, it would affect her mentally. If it is about the relationship of the prosecutrix with the accused, it may not be barred. But questions on her past life with others should be barred, because they will influence the court in the matter of moral conviction.

SHRIMATI SUSEELA GOPALAN: You know the background in which this Bill has been brought. Hundreds of cases now go unpunished. Recent cases like that of Mathura have come up, in which public prosecutors have themselves actually helped the police personnel to save them from punishment. You say that it will be very difficult for the accused to prove that he has not committed the crime. But especially in States like U.P. where illiteracy and backwardness of the people is very high, do you think it will be possible to punish the culprits and save the victims, if the onus of proof is not on the accused?

SHRI GOVERDHAN LAL SHUKLA: As far as I know, till now such cases used to be punished quite frequently. If they are not being punished now as frequently or if more cases of acquittal are there, the causes therefor may be more deep; and they may not be obviated by this shifting of burden.

SHRIMATI SUSEELA GOPALAN: In Himachal Pradesh, we were told that many cases went unpunished. I think it should be the position here also. If so, the victims will never get justice. That is why so much agitation was there from the social welfare organisations for enacting a legislation so that some loopholes are plugged.

SHRI GOVERDHAN LAL SHUKLA: I share the anxiety of the Hon. Member that the guilty should not go unpunished, but for that we may try to find out some other way—through improvement of administrative machinery. There are problems where witnesses are won over. For these various reasons all combine together and they are leading to that.

SHRIMATI SUSEELA GOPALAN: That is still there. You see in Andhra itself, in Ramiza Begum's case it was only after the demonstration before the Assembly and the Chief Minister came out and spoke to them and said if you pursue the case, we will give all help. And you are stating even victims will get justice from these people and you are going to save the accused.

SHRI GOVERDHAN LAL SHUKLA: No madam.

SHRIMATI SUSEELA GOPALAN: We are worried when this statement comes from the Legal Secretary of the State where the majority of the people are illiterate.

श्रीमती निर्मला कुमारी शक्तावत :
मैं आपसे यह पूछना चाहूंगी कि जुडीशियल सैपरेशन के बाद यदि परिपक्वता का सम्बन्ध होता है तो क्या आप उसको रोक मानेंगे ?

SHRI GOVERDHAN LAL SHUKLA: When she is not wife, then of course.

श्रीमती निर्मला कुमारी शक्तावत :
यह भी तो सम्भव है कि उनके सम्बन्ध फिर से सुधर जाये ।

SHRI GOVERDHAN LAL SHUKLA: Here a woman living separately from husband under decree of judicial separation, shall not be deemed to be wife under that Section. That is all that section says. She will not be wife. She will be like any other woman.

श्रीमती निर्मला कुमारी शक्तावत :
मेरा मतलब यह है कि जुडीशियल सैपरेशन के बाद भी फिर से दोनों पति-पत्नी के रूप में वे रहने लगे ?

SHRI GOVERDHAN LAL SHUKLA: Under the law she would continue to be wife, but for the purposes of this

Section, she will not be wife. That is why Explanation had to be added.

श्रीमती निर्मला कुमारी शबदावत : मैं यह भी पूछना चाहती हूँ कि यदि 18 साल से पहले कोई व्यक्ति अपनी वाइफ के साथ इन्टरकोर्स करता है तो क्या आप उसकी श्रीकेस मानेंगे ? आपका जो शारदा एक्ट है वह प्रभावशाली नहीं है । मैं राजस्थान से संतद उदस्य हूँ और मैं जानती हूँ कि वहाँ पर 7 साल और 10 साल की उम्र में शादी हो जाती है । तो ऐसी दशा में आप उनको सजा देंगे ।

श्री गोवर्द्धन लाल शुक्ल : एक्ट में तो 15 साल है ।

श्री हुक्म देव नारायण यादव : मेरा एक सवाल है । इस कानून में लिखा है कि पुरुष का अपनी पत्नी के साथ बलात्कार नहीं है लेकिन अगर उसकी पत्नी 15 साल से कम उम्र की है और वह कोर्ट में जाती है और कहती है कि इन्होंने मेरे साथ मैथुन किया है तो आप उसको बलात्कार मानते हैं लेकिन अगर वह 15 साल से ज्यादा उम्र की है और कोर्ट में जाकर कहती है कि मेरे साथ मैथुन किया गया है तो क्या आप उसको बलात्कार मानेंगे ?

श्री गोवर्द्धन लाल शुक्ल : कहीं तो आपको एक लाइन ड्रा करनी पड़ेगी ।

श्री हुक्म देव नारायण यादव : आप 15 साल से कम उम्र की पत्नी है तब तो आप बलात्कार मानेंगे और 15 साल से ज्यादा की है तो वह बलात्कार माना जायेगा या नहीं ?

श्री गोवर्द्धन लाल शुक्ल : वहाँ पर तो पति-पत्नी का सम्बन्ध बना जायेगा ।

श्री हुक्म देव नारायण यादव : क्या यह नहीं कहा जा सकता कि 15 साल से ज्यादा उम्र की विवाहित औरत के साथ उसका पति जैसे मैथुन करे वह कोई अपराध नहीं होगा ?

SHRI GOVERDHAN LAL SHUKLA: If I remember correctly, there is a dictum in the Privy Council rule. It is the circumstantial evidence that is of importance.

श्री हुक्म देव नारायण यादव : एक्ट के अनुसार 15 साल से ज्यादा उम्र की पत्नी कोर्ट में कोई केस करे तो वह बलात्कार माना ही नहीं जायेगा ?

श्री गोवर्द्धन लाल शुक्ल : वह कजुगल माना जायेगा ।

श्री हुक्म देव नारायण यादव : डाक्टरों की जांच के सम्बन्ध में डिस्कशन हो रहा है । मैं जानना चाहता हूँ कि यदि कोई औरत मुकदमा कर दे कि फलां ने मेरे साथ बलात्कार किया है और उसकी डाक्टरों की जांच में भी यह पाया गया कि उसके साथ संभोग किया गया है तो इसका क्या प्रमाण है कि जिस व्यक्ति के ऊपर वह आरोप लगा रही है उसके द्वारा ही उसके साथ संभोग किया गया है बिना मर्द की डाक्टरों की जांच किये हुए ?

श्री गोवर्द्धन लाल शुक्ल : यह तो इवीडेन्स के द्वारा निर्धारित होगा ।

श्री हुक्म देव नारायण यादव : यह तो एक तरफ की बात हुई । जिसके ऊपर आरोप लगाया गया है उसके लिये तो आपने कह दिया कि उसका साक्ष्य होगा । जैसा कि आप भी कमेटी के सामने साक्ष्य दें गे हैं । लेकिन एवीडेन्स एक्ट यह भी कहता है कि उसका साक्ष्य ही सही

माना जायेगा जो चम्पदीद गवाह हों।..

SHRI GOVERDHAN LAL SHUKLA: I have tried a number of cases as a judge. So I have gathered experience from that.

MR. CHAIRMAN: You were a judge. What was the ratio of the cases of conviction?

SHRI GOVERDHAN LAL SHUKLA: Previously there was a good percentage of conviction. For that I don't hold the law responsible. But I hold certain other act responsible—presiding officer.

MR. CHAIRMAN: Now the Home Secretary.

SHRI R. C. TAKRU: The Committee may kindly hear the Inspector General of Police first and I will make my submissions subsequently.

MR. CHAIRMAN: It is all right.

SHRI NARESH KUMAR: The views of the State Government have been very explicitly enunciated by my learned colleague, the Law Secretary. If permitted, I would make certain submissions which go slightly beyond the parameters of the State Government.

The Statement of Objects and Reasons speaks of the difficulties being faced by the existing law, for the offenders to be punished. The words used here are: "...the amendment of the law relating to rape so that it becomes more difficult for the offenders to escape conviction and severe penalties are imposed on those convicted." In the body of the proposed Bill, it is not the offenders as such who are being sought to be punished, but a certain clause of the offenders. There is a clear discrimination in the substance of the Bill, which largely covers public servants, hospital staff and the managements of women's in-

stitutions, as though the bulk of the offences or the problem of this offence, is confined to this minor section of Indian society. I submit for your consideration that this provision will hold us to ridicule in international forums.

By and large, there are many other sections which are condemnable, for the kinds of offence enumerated here—like seduction, rape or offences under Section 334. For example, take colleges, universities and schools or any number of organizations like Air India, Indian Airlines etc. where the occurrence of such relationships between those in authority and those subservient to that authority is far more rampant—than what we come across in newspapers. It is quite shameful when a police officer, a public servant or a member of the hospital staff is accused of an offence of rape. It is condemnable; but I would like to submit that others too make headlines; but the former do not necessarily form the bulk of the cases that are committed in the country. The bulk are committed elsewhere. But the provisions of this Bill seek to protect them.

Having regard to the Statement of Objects and Reasons, there can be some reconsideration on the scope and parameters of this Bill. There were some discussions with the Law Secretary about this question of presumption and about relevance of the antecedent of the victim of rape. Here again, the presumption is confined to clauses (a), (b), (c), (d) and (f) of sub-section (2) of Section 376. Very clearly, all other offenders of rape are excluded from this presumption. There are two kinds of offence being created—one in which presumption, after the establishment of the offence of sexual intercourse, will be taken; the other is where the presumption will not exist. Thirdly, in regard to the question of antecedents, even a prostitute has a right not to be raped. The question of antecedents in regard

to people who have had some free or easy life, does not necessarily mean that she should be subjected to cross-examination on those points. Prejudice is created by questions on antecedents, in the mind of the court during such a trial. So, these questions on antecedents should not be permitted.

श्री हुकम देव नारायण यादव : मैं आई० जी० साहब से यह पूछना चाहता हूँ कि इनके सामने बहुत से ऐसे केस आये होंगे, समाचार-पत्रों में भी ऐसे समाचार प्रकाशित होते रहते हैं। यद्यपि यह केसिब बहुत कम होते हैं, अपवाद स्वरूप ही सही जहाँ होस्टल वगैरह में लड़कियाँ दो-चार मिलकर किसी लड़के को परुड़ ले जाती हैं और उससे रेप करवाती हैं और फिर उस लड़के को सड़कर सड़क पर फेंक देती हैं। तो ऐसी स्थिति में पीड़ित लड़का यदि कोर्ट में न्याय पाना चाहे तो क्या उन लड़कियों के ऊपर भी यह दफा लागू हो सकती है या नहीं? उन्होंने उसको मजबूर किया, तो उसने किस्मतों में ऐसा कर डाला, तो ऐसे केसेज के बारे में आपकी क्या राय है?

श्री नरेश कुमार : मान्यवर, इस प्रकार की घटनायें शायद आपके सामने आई हों, मेरे सामने नहीं आई हैं।

श्री हुकम देव नारायण यादव : मेरे सामने तो आई हैं। मैंने शिमला में भी ऐसी दो घटनायें सुनी हैं, वहाँ ऐसी घटनाएँ हुई हैं। पटना में भी हुई हैं। वहाँ पाँच-छः साल में संभ्रम रहा हूँ और वहाँ का ही रहने वाला भी हूँ। तो इसकी मुझे जानकारी है, यह अपवाद ही सही, सामान्य रूप से नहीं है?

श्री नरेश कुमार : मुझे समझा कीजिए। मेरी थोटिस में कोई ऐसे केस नहीं है।

श्री हुकम देव नारायण यादव : दूसरा प्रश्न मेरा आपसे यह होगा, आप जांच करते हैं और जांच के दौरान आपके सामने ऐसी बातें आती होंगी। वर्तमान समाज में जहाँ एक तरफ न केवल भारत में बल्कि सम्पूर्ण दुनियाँ में उन्मुक्त यौन की बात कही जाती है, और दूसरी तरफ इसको रोकने की भी बात कही जाती है तो एक तरफ इनका बूझ भी बोया जाए और दूसरी ओर बूझ का सेवन करने से भी रोका जाये तो यह दोनों चीजे एक साथ कैसे चल सकती हैं? तो क्या कानून को इस पर दृष्टि नहीं डालनी चाहिए? और मैं समझता हूँ कि इस तरह के यौन सम्बन्धी अपराधों को प्रश्रय देने वाले जो समाज में तत्व हैं और दूसरी जो सम्बन्धित शक्तिविधियाँ हैं, जब तक उनको पूरी तरह से नियंत्रित नहीं किया जाएगा, तब तक इस तरह से यौन सम्बन्धों को रोकना एकांगी दृष्टिकोण होगा सर्वांगीण नहीं?

श्री नरेश कुमार : इस समय तो मेरे विचार में केवल रेप पर और उससे सम्बन्धित दूसरे पहलुओं पर ही विचार हो रहा है। यों समाज में अन्य बहुत-सी समस्याएँ हैं जो सुझारी जा सकती हैं। इस समय तो रेप और सेडक्शन वाली ही बात है। हम उसी पर कन्फाइन्ड कर रहे हैं।

श्री हुकम देव नारायण यादव : इसे मैंने इसलिये कहा कि आप ऐसे मामलों में इवीडेंस क्लैक्ट करते हैं, तो उस क्रम में-उस दौरान में यह बात पुलिस की नजर में आती है या नहीं?

कभी-कभी ऐसी परिस्थिति बन जाती है कि जिस परिस्थिति में मजबूरी थी। कभी यह होता है कि कोई औरत कन्सेन्ट

दे दे और बाद में हल्ला-गुल्ला हो जाये, कोई देख ले और उस समय वह कहे कि नहीं यह विदाउट कनसेन्ट था। उसने कनसेन्ट दिया, उसने कनसेन्ट नहीं दिया यह तो वही जानती है और उसके अन्दर छिपा भगवान जानता है न पुलिस जानती है और न जज जानेंगे। तो ऐसा सम्भव नहीं है कि कानून बनाते समय उन सम्भावनाओं का पता किया जा सके।

श्री नरेश कुमार : वे सम्भावनाएँ तो मेरे विचार में साक्ष्य में साबित या नासाबित हो जाती हैं। उसके लिए कोई प्राविधान करना मेरे विचार में इस की कोई आवश्यकता नहीं है।

SHRI BAPUSAHEB PARULEKAR: During the last three years, what is the statistics about this offence of rape in your State?

SHRI NARESH KUMAR: Sir, I have not brought statistics on rape.

MR. CHAIRMAN: You will provide the Committee later.

SHRI NARESH KUMAR: Sir, the statistics on rape will be far more incorrect.

SHRI BAPUSAHEB PARULEKAR: We are on the point as to how many persons were chargesheeted and what was percentage of conviction.

SHRI NARESH KUMAR: Right, Sir.

SHRI BAPUSAHEB PARULEKAR: Supposing in the present Bill, instead of mentioning Police officers and Superintendent of Jail, we put the word 'public servants'—would it serve the purpose?

MR. CHAIRMAN: He has read the Statement of Objects and Reasons

where there is provision for deterrent punishment to the offenders to deal with them stringently. Here in the Bill, what he has said, severity is dealt with persons in authority. That part is discriminatory provision.

SHRI BAPUSAHEB PARULEKAR: He also made a statement that rape offence is committed by Air India officials as well as by others, but they are not included in this. Therefore, instead of mentioning (a), (b), (c), (d) and (e), We can say 'whoever being a public servant commits rape, shall be punished with ten years.' Discrimination would be only between public servant and the ordinary citizen. So, discrimination between public servants would not arise. Are you in favour of that?

SHRI NARESH KUMAR: Not at all, because a very large number of college and private institutions, professors, superintendents also enjoy authority.

SHRI BAPUSAHEB PARULEKAR: If persons in authority, wherever they are, they are included within the ambit of the Bill, will you agree?

SHRI NARESH KUMAR: Yes, Sir. Then I agree. Any person in authority.

MR. CHAIRMAN: In that connection in the Indian Penal Code public servant has been defined all covering persons in authority.

SHRI NARESH KUMAR: That is referred to only public institutions. Person in authority may be any person, say Manager of a firm. He enjoys authority more than any one of us.

MR. CHAIRMAN: Apart from public servants, you want something else?

SHRI NARESH KUMAR: Yes, Sir. The word 'public servant' will be

confined only to public servants. There are people in authority otherwise also. Either amend Penal Code or include that also. That is what I say.

SHRIMATI SUSEELA GOPALAN: Do you want to include landlords also?

SHRI NARESH KUMAR: Landlord is not a legal authority.

SHRI BAPUSAHEB PARULEKAR: You said character of the prosecutrix and her previous conduct should not be challenged in court of law. Do you mean to say the present provision in Section 155 should be deleted?

SHRI NARESH KUMAR: My submission is that in keeping with the recommendation of the Law Commission, there can be new Section in Section 146.

SHRI BAPUSAHEB PARULEKAR: Do you accept that the relationship of prosecutrix *viz-a-viz* accused, previous to the crime in question can be asked, but not the general questions?

SHRI NARESH KUMAR: Yes.

SHRI BAPUSAHEB PARULEKAR: Then coming to the provisions in Indian Penal Code, there are many questions as to how the woman should be arrested, how she should be brought to the police station. How the women should be detained. Under Section 146, Cr.P.C., mentions arrest is to be effected by actual touching the body. Do you agree as far as women are concerned, in that code some amendment should be made regarding arrest of women because it all starts from that.

SHRI NARESH KUMAR: An offender's sex at that time is not of consequence.

SHRI BAPUSAHEB PARULEKAR: I am not casting any aspersions on Police even remotely. (Kindly note. When the power has been given

under Section 146, if an offence is committed by a woman, even a Constable has got right to touch the woman. So, in order to see that this does not take place, do you agree that the provisions of actual touching of the body to effect arrest, in Section 143 should be deleted *vis-a-vis* the women when they are charged of offence?

SHRI NARESH KUMAR: Sir, I would submit that women's modesty is not outraged by touching her with hand. It is the further step that goes into the making of an offence. I would not necessarily feel inclined to agree to change in that law.

SHRIMATI SUSEELA GOPALAN: If they resist, why should they touch?

SHRI NARESH KUMAR: That is law. Merely touching a woman does not necessarily outrage her modesty.

MR. CHAIRMAN: Outraging the modesty of woman has been defined under different section.

SHRI BAPUSAHEB PARULEKAR: Supposing such a proviso is added: 'Provided that a woman is arrested, her submission to custody or arrest shall be presumed.' I am referring to the Law Commission's recommendations. As far as I am concerned, I feel all this starts from the stage of arrest. After arrest, taking her into custody, detention in the custody, then the senior officers go and the incident takes place. Therefore, the Law Commission has taken into consideration three stages and it is in this connection that I am asking these questions. With reference to Section 146, they have suggested at page 47. Law Commission has suggested the following proviso to Section 146: Provided that a woman is to be arrested, unless circumstances indicated her submission to custody, under oral intimation shall be presumed. In this the

Police Officer arresting a female, shall not necessarily touch the woman for making arrest." Do you agree to this?

SHRI NARESH KUMAR: I don't visualize any difficulty.

SHRI BAPUSAHEB PARULEKAR: Now about Section 417, i.e. about detention. Suppose the lady is brought to Police Station. Are there separate cells for them in U.P.?

SHRI NARESH KUMAR: There are separate cells for ladies.

SHRI BAPUSAHEB PARULEKAR: I am talking about women who are arrested. Instead of keeping them in police remand, you can keep them in women's homes.

SHRI NARESH KUMAR: I agree with that. But we don't have sufficient number of them.

SHRI BAPUSAHEB PARULEKAR: Do you have interrogation by women police officers?

SHRI NARESH KUMAR: We have them. Personal search is made by lady police officers, wherever necessary.

SHRI BAPUSAHEB PARULEKAR: As regards interrogation of the victims of rape is concerned, they might feel shy to give replies to such an examination when they are called upon to do so by a male police officer.

SHRI NARESH KUMAR: It will depend on the experience of the police officer. Every police officer need not be a good interrogator.

SHRI BAPUSAHEB PARULEKAR: If a questionnaire is prepared by the police officer and given to the lady police officer or a lady social worker, don't you think it will be better? You may elicit more details from the woman thereby.

SHRI NARESH KUMAR: It can be very useful if we can have women

police officers. We don't have them in good number.

SHRI BAPUSAHEB PARULEKAR: There should be a provision that a representative of a women's organization should be present at the time of recording the statement.

SHRI NARESH KUMAR: That is the usual rule in U.P.—but not that she should be from a Home or be a social leader but that some ladies should be present.

SHRI BAPUSAHEB PARULEKAR: About recording of statements, do you call the ladies to the police station?

SHRI NARESH KUMAR: That is prohibited under the rules.

SHRI BAPUSAHEB PARULEKAR: You have to do it at the place where she resides. But usually it is done at the police station.

violation, a delinquency. It is punishable, a delinquency. It is punishable.

SHRI BAPUSAHEB PARULEKAR: Where recording of the F.I.R. is refused, don't you think a complaint should be made to SP?

SHRI NARESH KUMAR: We have two safeguards against what is known as concealment of crime. We have a certain police form which is available with all village chowkidars, in which any aggrieved person can write a complaint. It is taken by the village chowkidar to the police station. It is also one safeguard against somebody not wanting to write down the report. The second provision is that a report can be written to the SP who will have the case registered and will deal with the Station Officer or whosoever is responsible for not recording the complaint correctly.

SHRI BAPUSAHEB PARULEKAR: In cases of rape, the Law Commission has specifically suggested that

not only the medical report of the prosecutrix but also the medical examination report on the accused should be furnished to the Magistrate within 24 hours, so that there can be some sanctity to it. Some such provision should be made.

SHRI NARESH KUMAR: Yes; and the report on pathological examination also should be given.

SHRI R. K. MHALGI: Yours is the biggest State in the country. What is the number of lady police officers in your State?

SHRI NARESH KUMAR: I will submit the figures and also the places of their posting. We have women constables and sub-inspectors. But we don't have them in every district. But I am sorry I don't have even the approximate number just now. We will let you know shortly.

SHRI R. K. MHALGI: Have you got any suggestions to make in regard to the defective investigation in rape cases?

SHRI NARESH KUMAR: A more expeditious medical examination is one suggestion. Often, there are delays in the pathological examination. These can be avoided. There can be a closer analysis of the circumstances. Sometimes, an investigating officer tends to overlook the importance of certain circumstances, as related to him. The totality of circumstances is usually taken into account; but there can be certain aspects of those circumstances which can really be more meaningful. This only means that a deeper analysis is required. That can improve this or any other investigation.

SHRIMATI SUSEELA GOPALAN: You said that previously, more cases used to be punished, and that recently there is a reduction. What are the reasons for this?

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SHRI NARESH KUMAR: This may go beyond the scope of our present discussion.

SHRIMATI SUSEELA GOPALAN: We must know this, when we are framing the legislation. What are the reasons that have led to the acquittal of so many persons?

SHRI NARESH KUMAR: There are many reasons for acquittal in rape cases—and for that matter in so many other cases. The foremost in my view is the handling of cases in court by our prosecutors. The prosecutors who conduct the cases in court have no stake in the case.

SHRIMATI SUSEELA GOPALAN: Thousands of cases are not reported. If they are reported, they are not punished. What is the way out? This is what we have to ask.

MR. CHAIRMAN: The question is very simple. You said at one stage that in many cases the accused have gone acquitted. What are the reasons?

SHRI NARESH KUMAR: I did not make that observation. It was the Law Secretary who made the observation. The acquittal is larger these days not only in rape cases, but in all other cases. The reasons primarily are handling of cases in court of law. The pendency of cases in courts is so much that during this period all the witnesses lose interest in the case. Which again is part of handling the case in court. Then all the investigating officers, who may have put effort in the investigation, they may have retired by the time cases come up in the court. There are many number of cases. Tampering of witnesses also is a factor.

SHRI R. K. MHALGI: That is a point of speedy investigation.

MR. CHAIRMAN: That is why I told the lady Member, he is restricted to investigation. There are so many contributory factors at the time of the trial.

SHRI P. VENKATASUBBAIAH: Mr. Inspector-General, I heard you saying that the prosecution officers have no stake in the case and that is also a reason.

SHRI NARESH KUMAR: Yes, Sir. Every client has a right to choose his lawyer. Here the State does choose the lawyer, but the police who are the investigating officers, who are actual clients, have no connection with it.

Sir, for your information there are 500 women in the Police, which includes approximately 70 Sub-Inspectors.

SHRI R. K. MHALGI: A number of police officers are otherwise busy in Bandobast and they find little time for investigation of serious cases. Do you suggest any sub-division of investigation in rape cases?

SHRI NARESH KUMAR: That involves the basic concept of division of police. One for law and order and the other for investigations. That is a concept which, with increase of time, perhaps will be put into practice. In principle it is accepted.

श्री रामचन्द्र भारद्वाज : आपका लंबा तर्जुमा है, ऐसे केसज की आप जांच करते आए हैं और जानकारी करते आए हैं, अब भी इस बारे में फीगर्स आपके पास न हों तो उससे कुछ बनता बिगड़ता नहीं है। मैं आपसे जानना चाहता हूँ, एक बात मैं मानकर चलता हूँ कि पुरुष स्वभावतः बलात्कार होता है, पुरुष आक्रामक होता है और वह पहल करता है और वह रेप करता है, दूसरी ओर उसे कहीं से थोड़ी छूट मिल जाए—यह बात बिल्कुल साफ है। आपने यह कहा कि कुछ पुलिस अफसरों को क्या करना है, तो इसमें तो न्याय देने के लिए बहुत से न्याय के रास्ते खुले हुए हैं और आप भी महसूस करते होंगे, मान लिया जाए बगल से कहीं से कोई औरत आती है सेक्सुवल इन्टरकोर्स की हुई और अफिसर मान ड्यूटी

से कहती है और शिकायत करती है तो मेडिकली तो यह प्रूव हो जाएगा। आप ऐसी परिस्थितियों से गुजरे होंगे, तब क्या उसके लिए आपके पास कोई खास सुझाव है जिससे मेल-सेक्स को भी कोई प्रोटेक्शन मिल सके? उसकी भी कानून में कोई सुरक्षा हो सके?

श्री नरेश कुमार : अभी जो ला सेक्रेटरी ने फरमाया था, मैं उसी को इन्डोर्स कर सकता हूँ। यह बात ला सेक्रेटरी ने इसी बजह से कही थी और मैं उसी को इन्डोर्स करता हूँ कि जो प्रिजम्शन क्लाज रखा है, उसमें "शैल" की जगह पर 'मे' कर दिया जाए तो यह हर दृष्टि से ज्यादा अच्छा होगा।

SHRI RAM CHANDRA BHARDWAJ: Any public servant on duty can be put to trouble any time.

SHRI AMARPROSAD CHAKRABORTY: Would you make it clear what is implied by prosecutors have no stake in the cases? Would you kindly throw some more light on this?

SHRI NARESH KUMAR: The appointment of public prosecutors who handle cases in the sessions, is done in a certain manner. By and large a very large number, usually those who have no experience of criminal law and procedure get appointed.

SHRI AMARPROSAD CHAKRABORTY: How they get appointed?

SHRI NARESH KUMAR: I will explain to you. The pittance that is paid to a criminal lawyer will never attract a good lawyer. It is only the needless, who has nothing to do, will be attracted to join for a small sum of money.

SHRI AMARPROSAD CHAKRABORTY: I think, in UP also there is a rule or test for appointment of prosecutors, because that needless man or lawyer, who goes in for that has to

undergo some interview and has some experience and then they are appointed.

SHRI R. K. MHALGI: All the competitors are needless. So choice is to be made between them.

MR. CHAIRMAN: Regarding appointment of prosecutors, what he says is correct. Different States have different procedures.

SHRI AMARPROSAD CHAKRABORTY: What is the normal period taken for investigating these cases?

SHRI NARESH KUMAR: Rape cases receive very urgent priority. By and large, they are concluded within two months.

SHRI AMARPROSAD CHAKRABORTY: How is it then that some people have said that there is unusual delay; and further that inconvenience is caused to the accused?

SHRI NARESH KUMAR: More complicated rape cases take more than two or three years, depending on the nature of the cases. With regard to embezzlement cases, they will take more time. There are a large number of documents involved.

SHRI AMARPROSAD CHAKRABORTY: Have you taken steps to remove this malady in rape cases, viz.—that the prosecutors have no stake in the cases?

SHRI NARESH KUMAR: Yes; it is under the active consideration of the Department. We had a discussion on this subject, only three days ago. I have been assured that it is under active consideration.

MR. CHAIRMAN: Cr. P. C. has provided the procedure for their appointment. Consultations take place among officers, including SPs. On this basis, the D. C. prepares a panel of names; and Government can appoint any one of them—and not any one outside it. If Government feels

that the list is not satisfactory, it chooses others.

SHRI P. VENKATASUBBALAH: We cannot off-hand say that briefless lawyers are recruited. Experienced people prepare these panels.

SHRI NARESH KUMAR: There is a provision in Section 24 of Cr. P. C. which says that where there is a cadre of prosecutors in a state, public prosecutors will be selected out of that cadre. The matter is under the consideration of the U.P. Government. We have a Directorate of Prosecution. The question whether prosecutors form a cadre or not is being determined. If it is possible, this may be the best solution—to have experienced prosecutors to prosecute cases in the sessions.

In the Criminal Investigation Department, the prosecuting officers themselves had the permission to appear in the sessions courts, and the rate of conviction used to be 80 per cent to 85 per cent. For the last 4 or 5 years, they don't enjoy that right. The rate of conviction even in CID has come down to 30 per cent or 35 per cent.

SHRI AMARPROSAD CHAKRABORTY: In the High Court, the panel of names is there. It is done with the approval of the High Court. Do you think that all the lawyers listed have no experience?

In sub-section (3) of section 24 of the Cr. P. C., it says that the State Government shall appoint a public prosecutor for more efficient performance of duties. In normal cases, you take experienced lawyers.

श्री काजी सलीम : मुझे केवल एक ही क्वेश्चन करना है, बड़ा इम्पोर्टेंट क्वेश्चन है। जब से ग्रैंडमैजिस्ट्रेट की बात चल रही है मेरे दिल में एक सस्पिशन है कि 80 करोड़ की पापुलेशन है, दो-तीन सालों से रेप केसिज पेपर्स के हेड लाइन्स पर घाने लगे हैं। आप

की इतनी बड़ी स्टेट है। आप यह बतायें कि क्या एक-दो साल में रेप केसेज ज्यादा तादाद में हो गये हैं। डाटा तो आप बाद में दे देंगे। आपका अन्दाजा तो होगा कि रेप केसेज बढ़े हैं या उतने हुए हैं।

श्री नरेश कुमार : जिस प्रकार के आफ-न्सेज आबादों के साथ बढ़ते हैं उसी प्रकार रेप केसेज भी बढ़ते हैं। उसके लिए कुछ वजूहात हैं जिनकी वजह से "विस एजोबोशन आफ सेक्सुअल अर्ज" वह बढ़ता है जैसे सिनेमा हाऊसेज हैं, पिक्चर्स हैं, नाबल्स हैं, फोटोग्राफर्स हैं, मालमोस्ट एबी नाबल, बैस्ट नाबल हो, शोली की पोएट्री की किताब क्यों न हो उसमें तस्वीरें नंगी बनी रहती है। यह सब फैक्टर्स हैं "दे इन्क्रोज सेक्स अर्ज"। लेकिन बार्ड एंड लार्ज, मेरी राय में उसी प्रपोरशन में बढ़े हैं जिस प्रपोरशन में और आफ-न्सेज बढ़े हैं।

There is some exhibitionism of sexual urges. I cannot put it in Hindi correctly, perhaps. We have the cinema houses, pictures and novels. There are very seductive pornographic photographs in every novel. These factors do increase that urge.

श्री काजी सलीम : जैसे हिमाचल प्रदेश में है, आप भी ऐसे केसेज में हायर आथोरटीज के इन्वेस्टिगेशन पर निर्भर करते हैं।

श्री नरेश कुमार : यहाँ पर लैबल आफ आफोसिस और इन्वेस्टिगेशन की क्वालिटी का शोकेस के ऊपर बड़ा असर पड़ सकता है।

SHRI BAPUSAHEB PARULEKAR: Under the prevention of Corruption Act, unless sanction is taken, no investigation could be made, why a similar provision should not be made in case of offences of custodial rapes?

श्री नरेश कुमार : आपने भी नोटिस किया होगा कि ज्यादातर केसेज में प्रमाण नैहर हो इन्वेस्टिगेशन करते हैं क्योंकि ज्यादा आफोसिस एवैलैबल नहीं होते हैं।

SHRI BAPUSAHEB PARULEKAR: There are certain reasons that some offences should be given for investigation to senior officers so that they may have perspective in the investigation.

श्री नरेश कुमार : इसको स्पिरिट तो बहुत अच्छी है।

SHRI R. S. SPARROW: With your experience, the rape case that is registered in a court of law, has the backing of the FIR. This question has been discussed previously also in a way. The recording of the FIR has experience of listening through the stories. It may be a fictitious case or a case perpetrated by the accused. And once the FIR is recorded in an honest fashion, its repercussions can be imagined. So the society has to concentrate to more on that aspect. The question has been touched by my colleague on the opposite side also. Special provision we may have. At the moment for rape cases, especially in relation to the poorer sections of the society, for the FIR recording you have to run to the Thana. You must have seen out of your experience you have to tell her "speak, speak". There the procedure is first to report the rape case to the senior officer and that he has to take down at the Thana. In that case, what do you recommend to the Chairman. If you don't have a proper analytical answer at this moment, the same can also be sent to the Chairman later that this is the considered procedure which should now be adopted to overcome this particular difficulty which has enormous and serious type of repercussions right up to the charges that it goes up the rung to the judiciary. If you want to answer right now, we will all be happy.

SHRI NARESH KUMAR: Sir, as I was mentioning briefly earlier, we have a provision in the police regulations by which the village chowkidars who exist, in all the villages in UP in the plains, they are required to carry a particular form which can be filled in by the aggrieved person right in the village itself.

SHRI R. S. SPARROW: I am sorry to interrupt. My question is with the bigger perspective in view. You know what it is. The printed form is there and the Chowkidar is there and someone can take it down. But it goes to the FIR-taking authority i.e. the police Thana. What I was trying to ask was something new, fresh, which may also form part of that where this thing may have to be taken. That is the whole subject by itself. This is what I want you to understand.

SHRI NARESH KUMAR: You are very right, Sir. We will look into this matter in greater depth, but I can assure you very implementation of this system will ensure correct recording of cases. It is because social responsibility has not been aroused, we do not make use of this thing.

SHRI R. S. SPARROW: This is our common problem. You are worried over that, so is the public.

My small question to the Law Secretary and the Home Secretary is concentrated on that. This is about the age-old problem of rape cases concerning the word 'penetration'. In our case we have to think of our background, our culture, our civilisation. Questions asked in that context are in fact, act, organ, in what direction, what time, this and that. So, what I was going to ask you is this. To overcome this, isn't it sufficient for the case of rape to modify our act in the fashion that molestation and its definition, penetration taking separately, by force, coaxing into the room and then trying to do. And then is it necessary to bring in

the question of penetration? This is what you have to answer Mr. Law Secretary. I would like to put my point, Mr. Law Secretary, if you tell me something more on that, how we apply it to the society. We live in the society and what have you to guide us in that context?

SHRI GOVERDHAN LAL SHUKLA: Sir, so far as the main offence is there, we are concerned; as this Hon. Committee is deliberating. That has got to be proved and unless we make a change in the law itself it would not be possible.

SHRI R. S. SPARROW: We have said, I am asking for the change. Is it worthwhile or not?

SHRI GOVERDHAN LAL SHUKLA: There may be substantive offence to rape and then collateral offence, attempt to rape.

If it is not proved, it will amount to an attempt, and not to rape.

SHRI R. S. SPARROW: The lady has been taken to a room through coaxing, through fear instilled in her, or by forcible methods. And then what they might have done subsequently, is supposed to be explained later in the court of law. It depends on the prosecution. But the fact remains that the lady comes and says: "I have been raped." Is it necessary to go into so many details? Is it being done to-day? In molestation cases, we may cut out the word 'rape', is necessary.

SHRI GOVERDHAN LAL SHUKLA: Then there can be hardship to those who are to-day simply guilty of molestation.

SHRI R. S. SPARROW: The Judge will have to consider it.

SHRI GOVERDHAN LAL SHUKLA: The facts will have to be stated. To-day, molestation is a crime, distinct from rape. If you combine all of them, it will be difficult.

SHRI R. S. SPARROW: In India, having regard to our culture and civilisation, we are certain that such cases should be concluded quickly. But it takes long, our judicial system being what it is. Can you suggest how it can be done quickly? The authority may have to be changed—whether it is Sessions or High Court. It may not go to the Supreme Court. Can you say that even within 3 months or so, it can be completed? Special Judges will have to be there. Having this in mind, you can fix the number of judges.

SHRI GOVERDHAN LAL SHUKLA: I agree that if the number of judges is increased, it will accelerate the disposal of cases, and they will not remain pending for long, as they do. But so far as prescribing time-limit is concerned, perhaps it would not be advisable. What will happen if they are not finished?

प्रो० निर्मला कुमारी शक्तावत : मैं आपसे पूछना चाहूंगी, यू०पी० स्टेट में क्या आपने यह पाया है कि रेप केसेज में अधिकांशतः किस प्रकार की महिलाएँ टेपड हुई हैं? क्या वह बच्चों के साथ किया गया है, युवा महिलाओं के साथ किया गया है या किस प्रकार की महिलाओं के साथ किया गया है?

श्री नरेश कुमार : मेरी नोटिस में कोई 'ग्रनयूजयल' केस नहीं आया है। बिलड्रेन के साथ भी रेप हुआ है, नामल महिलाओं के साथ भी हुआ है और एक-आध केस में 1 ट्री महिलाओं के साथ भी हुआ है।

प्रो० निर्मला कुमारी शक्तावत : तो क्या आपने यह पाया है कि जैसे जैसे अखबारों में तरह तरह के रेप केसेज की पब्लिसिटी होती है, वैसे-वैसे रेप केसेज बढ़ते जा रहे हैं?

श्री० नरेश कुमार : ऐसी बात नहीं है। सभी प्रकार के अपराध केसेज के प्रोपोरशन में यह भी बढ़ रहे हैं।

प्रो० निर्मला कुमारी शक्तावत : आपने अभी बताया कि सिनेमा और उपन्यास आदि के अधिक प्रचलन से

श्री नरेश कुमार : मैं शायद हिन्दी में अपनी बात साफ नहीं कह पाया। मैंने यह भी कहा है कि सेक्युलर अर्ज की एकजीविशन जरूर बढ़ी है। मैंने एकजीव्य शनिज्म आफ सेक्युलर अर्ज के बारे में जोर दिया है जैसे बस में जा रहे हैं किसी का हाथ पकड़ दिया।

प्रो० निर्मला कुमारी शक्तावत : यह तो ह्यूमन इंस्टिट्यूट है, मानव की कमजोरी है, भारत में ही नहीं विश्व के हर देश में यह होता है, होता आया है, तो ऐसी बात तो नहीं है कि पुराने जमाने में भी यह अपराध ऐसे हो ही रहे थे, लेकिन वर्तमान युग में अखबार आदि में इसका प्रकाशन बढ़ जाने से इनकी संख्या या दर बढ़ी हुई मालूम पड़ रही है?

श्री नरेश कुमार : यह कहना बड़ा मुश्किल है, लेकिन इतना आवश्यक है कि इधर पब्लिसिटी अवश्य ज्यादा बढ़ी है।

SHRI BAPUSAHEB PARULEKAR: During the last three years, has there been any case of rape committed by police officers—reported in U.P.?

SHRI NARESH KUMAR: Yes; quite a few.

SHRI BAPUSAHEB PARULEKAR: In those cases, is it a fact that the persons accused were not sent for medical examination early?

SHRI NARESH KUMAR: On the contrary, in most of the cases which have come to notice, police officers who were involved were not only prosecuted but successfully prosecuted i.e. ending in convictions. Almost 100 per cent prosecutions were there.

SHRI B. IBRAHIM: As regards public prosecutors, you said that briefless lawyers were appointed. At

the district level, the district magistrates, in consultation with the Judges, prepare this panel. Is this procedure being followed in U.P.?

SHRI NARESH KUMAR: Yes.

SHRI B. IBRAHIM: Do you mean to say that Judges also recommend briefless lawyers?

SHRI NARESH KUMAR: It is a question of who is coming forward to get appointed. People who have any practice, don't have any interest in this job. In U.P., applications are invited. Those who are interested in getting appointed, do apply.

MR. CHAIRMAN: Thank you. Now the Home Secretary will give evidence.

SHRI R. C. TAKRU: Actually I will apologise for making lot of repetitions for the reasons the points have already been discussed. With your permission, Sir, I may have to go over to certain points.

First is regarding the general question i.e. taking the Amendment Act at Section 228(a). The Law Secretary has gone over the point in considerable detail and without meaning any disrespect to the Hon. Supreme Court or High Court in regard to getting the details from the victim, the taste of terrible experience of a person, of course, I am not a lady victim, but one can try to get the feelings of the person. It is a terrible feeling. I am unable to judge Sir and such experience I have acquired in my life. It is almost a terrible situation for the poor girl who gets raped. She has just got over the traumatic experience. She does not know what to do. Her parents are in a mess. They do not know what to do with that I had experience of dealing with the cases at district level. It is more a problem of a psychiatrist, which I am not. One anxiety of the parents and that of the poor girl is to be out of the press

and publicity. The question was parents were so terribly afraid what would happen to the girl's life. I wonder if I am able to communicate the feelings that prevail at the moment when such an incident occurs. At that moment the anxiety of the parents is that somehow or other save our honour. They say for Gods sake save our honour, whatever has happened has happened. Keep us out of the mess. The idea is not that we offer any disrespect. The ruling should be quoted in respect of the law. The objective of the suggestion that my friend Shri Shukla made was and personally, Sir, I felt rather strongly about it and having seen the kind of terrible experience that the poor girl has been through, even the Collector does not know what to do with the situation He was in a mess himself.

Even in the reporting of the cases in the press, a lot of suggestive and sensational reporting is made to make the newspapers sell. That kind of reporting so far as rape cases are concerned, has to be restricted. It is not a question of selling papers, it is a question of human life, the life of the police, these three to four five human beings involved. I am not bothered about the accused. But I am saying this from the point of another person who has gone through this. So, may I most respectfully before going further say Section 228(a) has to be viewed by the august committee, and explanation has to be viewed in that context.

Now, the other point is regarding section 18. On general law of the land I have nothing to say. Law Secretary has already gone over that. I personally felt about the three cases. Perhaps Law Secretary might not have brought out the point to the Government earlier. Case of a rape by one person is bad enough. Rape by two, I personally consider is a gang rape. Rape by three, unless there is particular justification for having the number three, is terrible. I would submit, Sir, for consideration the

principle should be one or more than one. I am afraid, I am not an expert. I have given administrative angle of the police. This is one point which frankly occurred to me. I feel strongly; if it is possible, Sir, it could be considered.

Now, Sir, about Section 376(a) and (b) and (c). Impressions got, I may be pardoned, is as if this category of person has been guilty of a large number of such cases. And, if I may say so, I hold the view that any offence of this kind by a person in authority is something which I would just not excuse. Greater the authority, the greater is the responsibility. If there is a person who is in my custody, I am not talking on principle of religion, just a straight question I pose, everybody who is with responsibility, I just take the view it is all right. I wonder, Sir, if it is possible, I cannot say whether it is possible. These three sections could be put into the main Section 376 in some form of amendment. Frankly speaking I cannot say if it is legally possible. It is the legal draftsmen who can say whether they can do or cannot do. As Inspector General of Police was referring to this point, I thought I will make a couple of suggestions in regard to this that this point is something of common occurrence in this country. Of course, Sir, it is the law of the land and you are laying it down.

One Hon. Member was very kind enough during the period when the Inspector General of Police joined the discussion that in case a lady who is a lady of easy virtue has had sexual relations with somebody and comes alone and makes a complaint against somebody. That person gets into difficulties because of the fact of their having had sexual intercourse. I am mentioning this because the hon. Member mentioned such a case. When we take action against vice dens, we collect them and put them in a place. Let us visualize that case. The arrest is made in the night; and they are produced the next day. During the intervening period, the lady remains in

the custody of the police. Next day they are in the court room, and they are bailed out. After bail, the lady goes to the court and says that X raped her. Four girls might swear that this happened and a fifth lady might also say that it happened. Nearly 24 hours have passed. The girl is sent for medical examination. Since they come from vice dens, you cannot expect many signs on her body, which you can expect in a lady leading a normal life. For medical doctors it will not be an easy job. It is a very delicate thing to say whether anything was found inside. The gentleman who is put in the vice squad will be in a mess. When the case goes to the court, it puts the investigating officer in a very difficult position. Section 111A operates in this case. There are good police men and bad ones. If we put one of our people on the job, he will be in an extremely difficult situation, because a negative proof in such a case is almost impossible. I had an actual experience. I can give details of it, without quoting names as to how it happened.

A lady made a complaint that such-and-such a thing happened to her. There was a furore, and orders were issued; and the person was suspended even before he could know why it happened. It dragged on and on for months and years. I was the District Magistrate at Lucknow some time thereafter and the gentleman who had arranged it made a confession to me. He said "A certain sub-inspector whose transfer I wanted, was not transferred by the DSP. It cost me only Rs. 150." It is a bad case. I don't treat it as a normal happening.

Section 111 puts us in difficult situations as far as suppression of immoral traffic is concerned. We don't want our law enforcement agency to feel fettered. There are many evils which flow from this. This honest man has suffered. Honest men get caught, because it never occurs to them that this can be done against them. This is one reason why, apart from accepted principles of jurisprudence in India,

by and large the burden of proof in the case of Prevention of Corruption Act and perhaps also of economic offences would lie on the prosecution and not on the accused.

We have to make out a case first. Here, it is very difficult for the accused to do it. Let us not forget that all the rape cases do not come to the notice of the police. So many cases are hushed up by the parents in the name of 'irrzat' i.e. honour. I believe that that should be the experience of our hon Members. 'Izzat', as also acceptability of the girls proper and of the girls of that family are there. So, apart from official views, I personally feel that Section 111 is fraught with grave dangers.

MR. CHAIRMAN: The presumption here is only in respect of persons in position of authority. In clauses (a), (b), (c), (d) and (f) punishment is also provided. With these two checks, how will you safeguard the interests of the persons in authority?

SHRI R. C. TAKRU: This presumption, as envisaged in section 111, relates to police officers, public servants, superintendents of jails, remand homes or hospital staff—as also to gang rape. These are the persons who can easily be prevented from doing their normal duties and enforcing the law of the land if they entertain an apprehension all along that somebody can easily cook up a case against them and put them into extremely difficult spot and with this section 111(a) hanging as sword of Damocles over the head of the particular person, that would be deterred, if I may say so. One would hardly have the courage to get touch about it. I am talking of the good policemen. The bad man has to be punished. There should be no mercy for him. I do not hold any mercy for the policeman or anybody who is a public servant and who holds the police authority and stops to be honest during the whole thing. But what about the person who is honest and has been put as guilty.

Imagine a case that I built up. By the time that girl is submitted to the medical examination more than 24 hours are past. The doctor will say it is possible. We do not find stains on the clothes. It could be, it could not be. The four other people say it has been done. I would submit section 111 should not be there. I am making a submission. There should be no assumption.

Sir, the point is when we see some presumption can be used as a double-edged weapon, I would submit for your consideration, we may exercise a degree of caution in the matter. There can be other safeguards but Section 111 is an extremely dangerous weapon. It may cut both ways. There can be a few cases in which a lady of honour who has been raped and who has somehow mustered up courage to go to a court of law. It takes a tremendous amount of courage to come to the court of law. Now the poor girl took courage because there she may be able to get some justice, but the possibility of misuse is there. But totality of circumstances has to be taken into consideration.

MR. CHAIRMAN: You know there are many cases, according to the statistics reported in the press where the offence is committed by Police officers. So, in order to protect the interests of the woman and the honest policemen, what is your view.

SHRI R. C. TAKRU: Sir, the advantages may not be many. Disadvantages would be many. The suppression of immoral traffic Act would gradually become difficult. I can forecast when the amount of pushing that has to be done in this case is considerable. By for all kinds of allegations may be made against a particular person. Mostly people would try to avoid that situation. And if this possibility is there, it can be imagined what may happen. He cannot do a thing. This is likely to follow as an inevitable conclusion. The first thing that offends is this that the defence lawyer suggests did you make a complaint against this

person. He is eliminated in the first round. Who knows that case. It is a dangerous thing apart from the jurisprudence involved. You know better than I and august body is in a better position to amend this rule. There are practical constraints. This possibility that anybody can say that while in custody I was raped in this manner, the whole thing gets flashed in the paper and it gets to an extremely awkward situation and by the time it settles down, the thing is finished. Perhaps the man himself is finished. It is a dangerous situation. I have seen some of the mechanics implemented in the districts by some clever gentlemen who ultimately told me this is what they have done. The case I have mentioned is a fact.

One point I want to submit and the august committee may consider. Of course, I do not have any concrete suggestion and it has to be thought about at a very high level. These cases should not after challan taken more than a month to finish. What prevents the law to make special courts special judges, special magistrates. It is a horrible thing for the girl to have to wait for five years. It is a terrible thing when she is married to appear to prosecute. Not that I would advocate concealment of any kind from her husband, but when a gentleman who gets married finds out that his wife has been summoned to a court of law in regard to something that happened five years ago, that itself will become a mental case. He will get shocked and the girl would not know what to do. It is a very serious matter. I would go to the extent a submitting that judiciary is much too busy. It is not a question of I do, it is a question of getting things done. Human life is involved. After the challan is made, every day the thing has to be done till the thing is over. The whole thing should be finished within six weeks.

The whole thing should be over by three to four months at the maximum.

After this it should settle down. Proceedings in the High Court after bail should also be in camera. The Hon. High Court may be kind enough to hear the case forthwith and not taking up after a long time because then there is the possibility of the lady getting a terrible shock for the thing is now in the High Court. I submit that all processes of appeal and trial have to be over within 12 months, if you want to save that person.

SHRI P. VENKATASUBBAIAH: Is your opinion with regard to the completion of cases as expeditiously as possible, i.e. within a time limit, in keeping with what your Law Secretary said? He said that the time-limit would present some difficulties, and that at times there would be a possibility of justice not being meted out.

Another hon. Member also asked whether you think of appointing special courts or special judges to dispose of these cases.

SHRI R. C. TAKRU: I don't disagree with my friend here. It just cannot be done. There can be a provision in Cr.P.C. to say that certain cases must be decided within a particular time limit. There he is right. I did not submit that Cr.P.C. must be amended, and limitation fixed.

SHRI P. VENKATASUBBAIAH: It cannot be put in the Statute Book. It can only be an administrative suggestion.

SHRI R. C. TAKRU: You are quite correct. But I said that this was something which should be understood. It may not be possible to amend Cr.P.C.

SHRI P. VENKATASUBBAIAH: Cr.P.C. is already very cumbersome. What is your suggestion for expeditiously disposing them of without putting the person who is accused, to injustice?

SHRI R. C. TAKRU: The Supreme Court may like to consult the High Court. Certain directives may have to go from the Supreme Court or High Court. There is no other remedy. At the lower judiciary level, arrangements will have to be made, and the High Court will be found extremely cooperative. If there is any difficulty, Senior officers, with judicial experience can be taken on the Executive side.

SHRI P. VENKATASUBBAIAH: You said that at the investigation level, more than three months should not be taken.

SHRI R. C. TAKRU: About investigation, IG said that it normally took about a month; and in some cases, about two months. That is a situation which can be controlled by him. I trust that we should be able to adhere to the time-limit. It is not difficult, because it is not a case which requires any extensive examination of documents. It is a straight case where medical reports and a circumstantial evidence are the main evidence. Once we get the medical examination reports and the statements of witnesses, there is no reason really why cases should remain pending.

SHRI P. VENKATASUBBAIAH: The machinery concerned should be efficient. Also, the appointment of prosecutors should be done in a scientific manner. The whole thing is connected with that aspect. Can we devise a method by which we can recruit efficient people, so that the prosecution can be completed within a period of one month?

SHRI R. C. TAKRU: There can be no disagreement on this. We have to, and we shall make efforts.

MR. CHAIRMAN: Do you want to say anything on other points?

SHRI R. C. TAKRU: There was something mentioned with regard to Sections 154, 165 and 146. I took my law degree in 1947. I am not a legal expert. Can we not have a sub-section or proviso in Section 146

that this section will not apply to injuring the character of the prosecutrix in rape cases? In section 155 sub-section (4) would be restricted only to asking questions from the prosecutrix about relations of that particular accused with that particular prosecutrix, to see if that lady has been having an affairs with that person for about six months and she suddenly tries to blackmail him, and accuse him of rape. But we should not ask questions of girls or cross-examine them about what happened to them when they were in the college, how many affairs they had, etc. Now the lady has, as I submitted, already had traumatic experience. Asking her fantastic questions is very cruel. There is no disrespect to the Bar. And she cannot speak. Asking her how many affairs she had in college and all kinds of such questions, whether she lived as mistress with somebody, is just irrelevant. If I may, I can only ask a lady about my affairs with her, but not with anybody else. That is not my business, whatever her life is. That is my suggestion.

MR. CHAIRMAN: Then I may pose one question in that connection. In this case you have said that restrictions should be there so far as Section 111 and 146 are concerned. In the earlier statement you have said there may be harassment even by false case making use of a woman of bad character. How are you going to reconcile?

SHRI R. C. TAKRU: I have submitted to this august committee that this question of there being a presumption in law as in Section 111 is inevitable. At the same time attacks on the prosecutrix in the form of cross-examinations is similarly something which we have to avoid. Actually they are two distinct positions. We protect the honour of the Government servant, at the same time on the other side we protect the prosecutrix. They are two distinct questions. Section 111 has a definite sphere of applicability, Section 154 as

I submitted just now protects the prosecutrix. So, there is really no contradiction in these two. I don't see why the accused should ask fantastic questions just to embarrass them so that they are confused.

MR. CHAIRMAN: Your suggestion is that if Section 111(a) is amended, then that restriction should be there.

SHRI R. C. TAKRU: Because we must protect the honour of both sides, the good people here and good people there.

SHRI R. K. MHALGI: In nutshell, he wants to delete Section 111(A) and that restriction should be there in Section 154.

SHRIMATI SUSEELA GOPALAN: You have said that their statement should be believed. But you say you want to save officers from that presumption. There is a presumption in the present Bill, that presumption you want to avoid. I want to know, because even afterward, the evidences are there to prove there was not such an incident. Several other measures are there.

SHRI R. C. TAKRU: Madam, I had taken the liberty of mentioning a particular type of case where the facts speak for themselves. I am not protecting the officer. My submission only is restricted to the possibility of misuse of this Section against the law enforcing agency who will be going to enforce the laws enacted by this august body. Madam, let it not be forgotten that we are servants of the people whom you represent and you make the law and we comply with them. Now, certainly we ask for protection for honest government servants.

SHRIMATI SUSEELA GOPALAN: You gave the instance specially concerned with the persons in authority, but these things are increasing daily. Daily in the newspapers you see such things happen and most of the

cases we are not able to prove and the accused are going unpunished.

SHRI R. C. TAKRU: May I further submit, I am not talking of what is happening in other States, but so far as UP is concerned, we have taken extreme step in this matter. Nothing of this kind is passed unnoticed the Inspector General. We have investigated these cases most vigorously and mercilessly and almost every case is investigated.

That official duty case you have seen. I can give you hundreds of such false cases which would be taken by anybody. Later on when I got the facts I was surprised at the ingenuity of the person. Human brain is very very good as well as bad.

SHRIMATI SUSEELA GOPALAN: Can you send in writing such cases to us?

SHRI R. C. TAKRU: Madam, many of such cases are known personally and they cannot be quoted. I have not mentioned the name of the person.

SHRI AMARPROSAD CHAKRABORTY: Mr. Home Secretary, I am not putting any question on deletion of Section 111. You have expressed your position clearly. But one thing as Judicial Secretary has pointed out, that in Section 155(a) and 146 at least some protection should be given to the girl so that scandalous questions as to annoy her position should not be put. That is what I understand you.

SHRI R. C. TAKRU: You are quite right.

SHRI AMARPROSAD CHAKRABORTY: Then do you feel any amendment is necessary in the Act as per your argument? Section 150, 151, 152 gives the power to the Judge, not to put any scandalous questions to annoy the lady. I think that can be restrained by the Court.

SHRI R. C. TAKRU: It is very difficult. The question is first put. There is a question, and the girl is completely put out. There is an argument. The question arises whether the question is to be permitted or not. I am bothered about the psychology of the poor girl. For five minutes, there is an argument between the court and the counsel. Suppose a person says that the question should be put on record. The girl is shivering. There is another question, and there is an argument about its admissibility. A person might say the lady was misbehaving while at college and had dozens of affairs.

SHRI AMARPROSAD CHAKRABORTY: How would you control it? It must be controlled by the Judge, so that no scandalous or insulting question is put. Do you think any further amendment has to be made?

SHRI R. C. TAKRU: In Section 152 and 154, we should incorporate the ideas we have been speaking about. Questions should be restricted to the relationship of the prosecutrix with the accused at any time. It will effectively help the court with regard to clause 152. Otherwise, the court will be put in a difficult situation, and there will be interminable arguments. If people start objecting to every question, it will create many difficulties. Section 152 will be strengthened by an amendment to Section 155(4).

SHRI AMARPROSAD CHAKRABORTY: All these sections are interdependent.

SHRI R. C. TAKRU: From Section 155(4), the Judge will get a lot of support, by an amendment of Section 152. It should give some indication to the Judge as to what to prevent, and what not to.

SHRI AMARPROSAD CHAKRABORTY: How are we to see that scandalous questions are not put?

SHRI P. VENKATASUBBALAH: You should give the question to the Judge in writing, so that he can decide whether they are admissible or not.

MR. CHAIRMAN: The discretion is given to the Judge, not to permit a question if he feels so. Even then, in many cases the presiding officers, with or without knowledge, do allow such questions. The hon. Member says that if you make a provision in Section 155(4), you will enable the court to allow questions pertaining only to the relationship of the prosecutrix with the accused.

SHRI R. K. MHALGI: For the speedy disposal of rape cases, you suggested special courts. Do you suggest that only lady judges should be appointed to such courts?

SHRI R. C. TAKRU: Should we make any discrimination relating to sex in these matters?

SHRI BAPUSAHEB PARULEKAR: With reference to Section 111A, you said that it should be deleted, and that at the same time, amendments should be made in Sections 153, 155 and 146. Do you also agree that if this Section is retained, no amendment should be made in Section 146?

SHRI R. C. TAKRU: I have not actually made a deep study.

SHRI BAPUSAHEB PARULEKAR: When the presumption is to be raised against the accused, he has to rebut it; and for that, cross-examination is necessary. If it is to be retained, then no amendment will be necessary. If it is to be removed, then there has to be an amendment.

MR. CHAIRMAN: The witness cannot give an alternative answer, because he is in favour of deletion.

SHRI BAPUSAHEB PARULEKAR: Now about delays. Do you think that these delays will be curtailed, if we

drop committal proceedings, and straightway take up proceedings?

SHRI R. C. TAKRU : Actually, committal proceedings have, under the new Cr. P.C., lost their importance. There is no point in wasting time.

SHRI BAPUSAHEB PARULEKAR: With reference to this presumption, don't you think that if we make the cross-examination of the accused compulsory, the purpose will be served better?

SHRI R. C. TAKRU: It is a very good idea. But I cannot say whether the Supreme Court will favour it. Personally, I am in favour of the accused being given an opportunity to make a statement, and also being cross-examined.

Personally I am in favour. As an honest man if he feels honest he should come up and stand up. Personally I would favour this.

श्री हुसैनदेव नारायण थावर : समय कुछ ज्यादा हो गया है। सवाल अंग्रेजी में होते हैं तो समझ नहीं पाता हूँ। इसलिए मैं कुछ सवाल ऐसे कर सकता हूँ कि हो सकता है कि आप लोगों को बहस से बाहर हो जायें। मैं समझा हो नहीं, बाहर भी जा सकता हूँ।

पहला सवाल यह है कि क्या आप यह महसूस करते हैं या नहीं करते हैं कि जो सजा देने का प्राविधान किया गया है, सामूहिक बलात्कार का और जो अन्य लोग हैं एक से ज्यादा हैं उन को एक साथ लिया गया है। क्या इस में यह फर्क नहीं किया जा सकता कि एक मर्द एक औरत के साथ बलात्कार करता है तो वह इन्सिडेन्टल हो सकता है लेकिन एक से ज्यादा करते हैं तो वह इन्टेन्शनल करते हैं। इन्टेन्शनल जो बलात्कार करते हैं उन में और जो इन्सिडेन्टल बलात्कार करता है इन दोनों की सजा में कुछ फर्क होना चाहिए या नहीं।

मैं यह मान कर प्रश्न कर रहा हूँ कि परमात्मा ने मर्द और औरत बनाये हैं। परमात्मा की सब से पहली गलती यह भी है। तो कोई मर्द है कोई औरत है दोनों की ऐसी परिस्थिति हो जाये जिस के कारण रेप हो जाय। एक से ज्यादा मर्द कहीं जाते हैं इन्टेन्शनली, एक गैंग हैं पूर्व नियोजित कर के, प्लानिंग कर के जाते हैं कि इस औरत को रेप करना है, वहाँ पर बिल्कुल इन्टेन्शन है, गैंग बनाकर, योजना बना कर, प्लानिंग कर के जाते हैं। एक है जो सहज है, मानव की कमजोरी के कारण/दुर्घटना घटित हो जाती है। इन दोनों में फर्क होना चाहिए या नहीं।

श्री राम चन्द्र टकक :-उत्तर हिन्दी में देने के लिए क्षमा चाहूंगा क्योंकि माननीय सदस्य ने हिन्दी में प्रश्न पूछा है।

नहीं, श्रीमन्, अपराध] किसी भी परिस्थिति में किया जाता है तो क्षम्य नहीं है चाहे उस के लिए कोई योजना बनाई गई हो, अपराधी कहे कि परिस्थिति वश हो गया, इन्सिडेन्ट हो गया, आकस्मिक घटना हो गई, इस प्रकार का उत्तर एक अभियुक्त की ओर से श्रीमन् उचित समझना यह श्रीमन् के विचारार्थ है। अपराधा के विषय में यह सोचना, कल्पना करना कि आकस्मिक हो गया, श्रीमन्, बलात्कार क अपराध हुआ तो उस में उस प्रकार के अपराध की तुलना नहीं कर सकते कि जिस में किसी को फुसला दिया हो, बहका दिया हो। बलात्कार का विषय चल रहा है, कल्पना करना कि बलात्कार किस परिस्थिति में हो सकता है, आकस्मिक है। ऐसी परिस्थिति में दोनों— एक पुरुष एक स्त्री—परिस्थिति वश बैठ जायें, जहाँ एक आकर्षण हो तो कोई भूल हो जाय या कुछ मद्यपान के कारण इस तरह की कोई चीज हो जाय तो उस की शिकायत ही नहीं होगी। आप बलात्कार की कल्पना कर रहे हैं कि उस की क्या परिस्थितियाँ होंगी, इस प्रकार की कल्पना करना कि किसी अपराधी ने यह कह दिया कि यह उससे आकस्मिक

बलात्कार, दुर्भाग्यपूर्ण हो गया है, एकसीडेन्टल हो गया है, कदाचित् उचित नहीं होगा।

श्री हुकुम देव नारायण धाबव : मैंने इसलिए प्रश्न किया कि जहाँ दंड का प्राविधान किया गया है वहाँ लिखा है "परन्तु न्यायालय पर्याप्त और विशेष कारणों से, जो निर्णय में उल्लिखित किए जायेंगे, दोनों में से किसी भी भाँति के कारावास का, जिस की अवधि दस वर्ष से कम की हो सकेगी, दण्डादेश अधिरोपित कर सकेगा" यह जज के डिस्क्रिशन पर छोड़ दिया गया है कि किस परिस्थिति में अपराध हुआ वह उस पर गौर कर के छूट दे सकता है। वहाँ इन्टेन्शनल और इन्सिडेन्टल होता है तो उस पर भी गौर किया जाना चाहिए।

श्री राम चन्द्र टकर : यह जरूर माननीय न्यायधीश के विवेक का प्रश्न है किसी परिस्थिति का प्रबलोकन करने का और उस के बाद किस प्रकार से वह दंड देना चाहेंगे परन्तु श्रीमान् यह विवेक यदि हम अभियुक्त को दे दें तो इस प्रकार की एक दलील पेश करना उचित नहीं होगा।

श्री हुकुम देव नारायण धाबव : दूसरा, समापति जी, पुरुष और औरत के सम्बंध में कहा जाता है, जो प्राकृतिक, कानूनी है, जो हमारी परम्परा के नियम हैं। समाज के अंदर के नियम के प्रतिकूल बलात्कार होता है जैसे पिता-पुत्री का, भाई बहन का बलात्कार है, यह नियम कानून के तहत वर्जित है। दूसरा अवर्जित यौन संबंधी है, सामान्य रूप का, औरन मर्द का संबंध है। तो वर्जित यौन के संबंध में ज्यादा सजा मिलनी चाहिए वनस्पति अवर्जित यौन के।

श्री राम चन्द्र टकर : इस के लिए प्राविधान पहले ही कर दिया है। यदि भाई बहन से संबंधित हो, पिता पुत्री से संबंधित हो, तो कथन्य उस में दंड की मात्रा अधिक होगी। दस साल तो न्यूनतम है।

श्री हुकुम देव नारायण धाबव : एविडेन्स ऐक्ट में हम लोगों ने बहुत चर्चा की। एक प्रश्न इस में यह आया कि उस के पूर्व चरित्र के बारे में नहीं पूछा जाय। एक उदाहरण मैं यह कतलाऊँ कि कोई समाज के अंदर ऐसी महिला है जिन का संबंध समाज के प्रभावशाली लोगों के साथ है, कुछ लोग जिन को यह संबंध बहुत बुरा लगता है वह रोकने का काम करें और उस के कारण उन रोकने वाले आदमियों को रेप केस में फंसाया जाय तो क्या वह आदमी अपने प्रोटेक्शन के लिए उस महिला से कोर्ट में उस के पूर्व संबंध के बारे में चर्चा कर सकता है, सवाल कर सकता है।

श्री राम चन्द्र टकर : मैंने सुझाव मात्र दिया है। श्रीमान् यह निवेदन किया गया था कि माननीय सदन इस विषय में विचार कर ले।

MR. CHAIRMAN: There is a request by Shri S.W. Dhabe. He has said in his letter; I find from the programme of the sittings of the Joint Committee being fixed at Lucknow, Bhopal, Simla and Itanagar, apart from these places. In my opinion Calcutta should have been included in this programme, as it has got an eminent bar of the High Court and useful information can be had by a sitting there. I, therefore, request you kindly to consider the inclusion of Calcutta in the programme."

We may consider the matter when we meet in Bombay. It was the unanimous voice of the Members that Calcutta should be omitted.

SHRI BAPUSAHEB PARULEKAR: Itanagar should also be included. When are we to go to Itanagar? Calcutta is on the way to Itanagar.

MR. CHAIRMAN: I have to the discretion of the Members. But the point is that we omitted Itanagar, and taken up only three places. Bhopal is

the last place. We have also chalked out a programme for Bombay, Hyderabad and Bangalore. If hon. Members insist on going to Itanagar and Calcutta, it should be an unanimous decision. Once you take a decision, it should be adhered to.

श्री रामचन्द्र भारद्वाज : मैं यह पूछना चाहता हूँ कि यदि कोई पुलिस आफिसर इयूटी पर है और उसके बगल में होते हुए एक औरत जाती है और कहती है कि आपने मेरे साथ बलात्कार किया है। उसकी पास्ट हिस्ट्री में आप नहीं जाते हैं। उस औरत का मेडिकल एग्जामिनेशन भी हो जाता है और उसके साथ बलात्कार हुआ सही भी निकल आता है तो उस बेचारे पब्लिक सर्वैन्ट की नौकरी चली जायेगी। उसे प्रोटेक्शन देने के लिए आपने इसमें क्या प्रावधान किया है।

श्री हुकुम देव नारायण यादव : उधर के हिसाब से कानून का विश्लेषण किया जाता है।

आप हिन्दुस्तान में ही घूम-घूम कर रैप एक्ट पर जानकारी ले रहे हैं। दुनियाँ में और जगह भी यह लागू है। जहाँ जहाँ यह लागू है उन-उन देशों में जाकर उनकी भी दशा देखें कि वहाँ किस तरह से होता है।

MR. CHAIRMAN: If hon. Members insist on going to Itanagar and Calcutta, I don't think our report will be submitted during the coming session. Members should take this into consideration. Delay should be avoided.

SHRI BAPUSAHEB PARULEKAR: The decision of the Committee not to go to Itanagar will have to be rescinded.

MR. CHAIRMAN: Then I am sure the report will not be submitted in time. We have to submit the report by the first week of the next session starting in August.

SHRI BAPUSAHEB PARULEKAR: We can submit the report in the Budget session.

SHRIMATI SUSEELA GOPALAN: Delay should be avoided anyhow.

SHRI BAPUSAHEB PARULEKAR: We can expedite the discussion of the matters under this Bill.

MR. CHAIRMAN: Even if you postpone the submission of the report, the question of going to Itanagar and Calcutta will arise only after the coming session. We are returning on 4th or 5th August, to our constituencies. Within a short period thereafter, i.e. in August itself, the next session will start. We have to take a decision just now. The Chairman alone cannot be given the discretion.

SHRI AMARPROSAD CHAKRABORTY: We have to give amendment to the Bill.

MR. CHAIRMAN: I said that the Itanagar programme will not be possible before the next session; you can go only thereafter. Then you have to move for extension of time. But Government wants the submission of the report early. After our return from Bangalore, we can have discussions every day.

Discussions can be had during the next session also, because it is not a Budget session. Let us, after we take evidence at Bangalore, discuss; and let us hear the Government's views. Let us then take a final decision in the matter. Thank you. We now disperse.

(The Committee then adjourned).

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE OF THE CRIMINAL LAW
(AMENDMENT) BILL, 1980

Monday, the 8th July, 1981 from 10.00 to 13.00 and again from 15.00 to 17.00 hours
Conference Hall Vallabh Bhavan, Bhopal

PRESENT

Shri D. K. Naikar—*Chairman*

MEMBERS

Lok Sabha

2. Shri Rasa Behari Behra
3. Shri R. K. Mhalgi
4. Shri K. S. Narayana
5. Shri Ram Pyare Panika
6. Shri Bapusaheb Parulekar
7. Prof. Nirmala Kumari Shaktawat
8. Shri R. S. Sparrow
9. Shri Trilok Chand
10. Shri V. S. Vijayaraghavan

Rajya Sabha

11. Shri Ramchandra Bhardawaj
12. Shri B. Ibrahim
13. Shri Dhuleshwar Meena
14. Shri Era Sezhiyan
15. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—*Senior Legislative Committee Officer*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

Shri M. P. Khosla—*Officer on Special Duty*

WITNESS EXAMINED

- I. Shri G. S. Nihalani, Advocate, Bhopal
- II. Shri L. S. Sinha, President Bar Association, Bhopal

III. Madhya Pradesh Mahila Kalyan Samiti, Bhopal

Spokesman:

Shrimati Vimla Sharma

IV. Inner Wheel Club, Bhopal

Spokesman:

Shrimati Saroj Lalwani

V. Bhartiya Grameen Mahila Sangh, Indore

Spokesman:

Shrimati Krishna Aggarwal

VI. Bal Niketan Sangh, Indore

Spokesman:

Shrimati Shalini Moghe

VII. (1) Bhartiya Vidya Pracharni Sabha, Indore

Spokesman:

Shrimati Nirmala Devi Podar

(2) Gangwal Mahila Kala Niketan, Indore

Spokesman:

Shrimati Indumati Jain

3. St. Marks School, Indore

Spokesman:

Shrimati Florence Jacob

4. Nari Sahakari Samiti, Gwalior

Spokesman:

Shrimati Mandakim Wakanker

5. Association for Social Health in India, Gwalior

Spokesman:

Shrimati Kamala Devi Jadhav

6. M.P. Mahila Kalyan Parishad, Bhopal

Spokesmen:

(a) Shrimati Pragya Mukherjee

(b) Shrimati Prakash Kumari Harkavat

7. All India Women's Conference, Jabbalpur

Spokesman:

Shrimati Chandra Prabha Pateria

VIII. Association for Social Health in India, Gwallior

Spokesman:

Shri Ram Sanehi

IX. Shrimati Jayaben, MLA, Madhya Pradesh

I. Shri G. S. Nihalani, Advocate,
Bhopal.*(The witness was called in and he took his seat)*

*MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Kindly introduce yourself to the Committee.

SHRI G. S. NIHALANI: I am G. S. Nihalani, Advocate. I am practising for the last about 26 years.

MR. CHAIRMAN: What you have to say on this Amending Bill?

SHRI G. S. NIHALANI: After going through the Bill, I find that some of the amendments are really redundant and superficial. Just as in Prevention

of Corruption Act, there is a provision of minimum sentence of one year but Judge may not give lesser sentence. Similarly, here in this Bill the prescribed minimum punishment should mean minimum punishment. There should be no exception i.e. minimum punishment means minimum punishment. A few days back I read in 'Indian Express' that in Pakistan crimes of rapes rarely happen because such type of accused are heavily punished. The result is that girls, college-girls, ladies roam late in the night. Nobody dares to look at them. By saying this I don't mean that we should follow it totally. We can have our own type of arrangement. In 60 to 70 per cent cases innocent ladies who suffer and feel humiliation they generally hesitate to give evidence. My suggestion would be that in such cases the investigations, as far as possible, should be done by the lady police officers not below the rank of Dy. S.P. The trial should be in over 7, 10 or 15 days in view of the peculiar circumstances of the case. As far as the trial is concerned it should be conducted by the Lady Additional Sessions Judges, Lady Session Judges or Lady Judges.

My suggestion about age is that it should be raised by minimum 18 years, consent or no consent, as far as consent is concerned. I would suggest, as far as possible the offence should be investigated by the Lady Police

Officer and challan should be presented. For this there should be sufficient provisions made in the Bill. Besides this, trial should be in cameras because ladies feel humiliation.

MR. CHAIRMAN: This is in regard to the trials and presumption.

SHRI G. S. NIHALANI: Yes, Sir.

MR. CHAIRMAN: What about other provisions in respect of persons in authority?

SHRI G. S. NIHALANI: For instance?

MR. CHAIRMAN: Have you gone through the Bill?

SHRI G. S. NIHALANI: Yes, I did read draft Bill I have made some suggestions that minimum punishment should be minimum punishment, there should be no exception.

MR. CHAIRMAN: The minimum punishment has been provided in the Bill, there would be discretion to the judge.

SHRI G. S. NIHALANI: This is most abusing part of the law where the judge has been given discretion. If any judge wants to favour then he will give shelter to whom he finds guilty. Otherwise the minimum punishment, should be minimum punishment, this is my view. These days as we read papers, the atmosphere is such that we can't go in cinema with our sisters, mothers and wives because there is so much hooting, whistling and taunting on the ladies. Therefore, my submission is that there should be a deterrent sentence to the persons who commit such an act. Only two days back I read in 'Indian Express' that in all the cities of Pakistan the crime of rape has been completely wiped out there. I do not think that they are better people than we are.

MR. CHAIRMAN: For information. Say, in a case, coming from the res-

pectable family and it was tried by the court and thereafter the judge felt that there was a heinous crime and guilt was found. Subsequently, what happens, both the parties get reconciled to have a marriage settled before trial then what are you going to suggest in such a case?

SHRI G. S. NIHALANI: There is a ruling of Supreme Court in a similar case reported about two months back, where a rape was committed and the accused was punished even after marriage. I can give example, I can give citation also. Therefore, I submit that the discretion is often abused and misused.

MR. CHAIRMAN: You have nothing to say more than this?

SHRI G. S. NIHALANI: Yes, I have to say nothing. Now I am prepared to answer.

श्री हुकुम देव नारायण यादव : मैं भी आपसे एक प्रश्न पूछना चाहता हूँ। अभी आपने कहा कि अगर कोई बलात्कार का अभियुक्त है अगर उसको जांच पड़ताल के लिए थाने में बुलवाया जाता है तो उससे पूछताछ डी० एस० पी० रैंज का आफिसर करे ?

श्री जी० सी० निहालानी : मेरा तात्पर्य इन्वेस्टिगेशन से था, मेरा तात्पर्य यह था कि अगर इन्वेस्टिगेशन रैप केस का लेडी सुप्रिन्टिन्डेंट आफ पुलिस या डी० एस० पी० करे तो अधिक उचित होगा क्योंकि आजकल आई० ए० एस० और आई० पी० एस० में काफी महिलाएं आ रही हैं इसलिए मेरा सुझाव यह था कि अगर विवेचना मेल पुलिस आफिसर यथासंभव न ही करे तो ठीक होगा।

श्री हुकुम देव नारायण यादव : आपने कहा कि आजकल स्थिति यह है कि माँ,

बहनों के साथ सिनेमा तक नहीं जा सकते, वहाँ उनके साथ छेड़खानी की जाती है तो मैं आपसे जानना चाहता हूँ कि क्या इसमें बाहरी परिस्थितियाँ उत्तरदायी नहीं हैं जिसे कि उनको अपराध के लिये मजबूर किया जाता है जैसे देखिये सिनेमा में यह कहा जाता है कि लड़का कहे हाँ और लड़की कहे ना तो समझो प्यार होता है तो इस हिसाब से तो ना कहे तो प्यार प्रारंभ हो गया उसको क्या पता कि इसके कन्सेन्ट भी जरूरी है। यह मानस आज हमारी सिनेमाओं ने बनाया है तो जब आज बाहरी वातावरण ही ऐसा हो गया है तो क्या इस बिल में प्रावधान करने से यह समस्या सुलझ जाएगी ?

श्री जी० एस० निहालानी : यह तो आप हम सभी से संबंधित प्रश्न है मेरा कहने का मतलब यह था कि जैसे हम अपनी बीबी बच्चों के साथ सिनेमा जाते हैं तो वहाँ उनके हाँ ना का तो सवाल पैदा ही नहीं होता है। सवाल तो गुण्डागर्दी का है कोई भी शरीफ अपनी माँ बच्चों के साथ सिनेमा देखना पसंद नहीं करता है, क्योंकि वहाँ टांट कसे जाते हैं, हटिंग की जाती है, मैनजर वहाँ है, पुलिस है लेकिन वे कुछ नहीं करते इसलिए मेरा कहना है कि जहाँ खुलेआम गुण्डागर्दी है वहाँ हाँ या ना का तो प्रश्न ही उपस्थित नहीं होता, पिक्चर का अनुष्य के दिमाग पर असर होता है और यह समाप्त उसी स्थिति में हो सकता है जब समाज में इसके प्रति जागरूकता आए लेकिन सिनेमा व्यक्ति के चरित्र को इतना भी नहीं बिगाड़ता है कि शर्म ही खत्म हो जाये।

श्री हुकम देव नारायण यादव : श्री अंगर विश्वामित्र और मेनका बाला केस हो जाय कि तस्पवी तप करे और मेनका जाकर जबरदस्ती करे फिर ?

श्री जी० एस० निहालानी : यह तो हाइपोथेटिकल प्रश्न है। हमारे यहाँ ऐसे केस नहीं होते हैं और अगर होंगे भी तो लाखों में कहीं एक लेकिन हमें तो जनरल समस्याओं को देखना है। विश्वामित्र और मेनका जैसे केस तो पुलिस में जाएंगे ही नहीं।

SHRI R. K. MHALGI: You are practising lawyer in Criminal cases?

SHRI G. S. NIHALANI: Mostly on the Civil side. I am a Civil Lawyer but I do criminal cases also. I am mostly devoted to the civil cases.

SHRI R. K. MHALGI: You must have gone through the provisions of this bill, especially the provisions which are being incorporated in the Evidence Act i.e. Section 111(a)?

SHRI G. S. NIHALANI: Yes.

SHRI R. K. MHALGI: So, by that provision the presumption is contemplated if the lady says that I have not given the consent then the judge has to presume.

SHRI G. S. NIHALANI: You will find under Section 114 of the Indian Evidence Act; as also under Prevention of Corruption Act and in several other Acts, that there is a provision for presumption. In view of the circumstances of the case and the antecedents of the girls the judge may presume. In the same way the provision for presumption and discretion may be added.

MR. CHAIRMAN: The word 'shall' must be substituted by the word 'may', what is your suggestion?

SHRI G. S. NIHALANI: Yes, my suggestion is that in that case the judge may presume from the circumstances of a particular case.

SHRI R. K. MHALGI: You said something about Pakistan Law that

you read some news in 'Indian Express'. For such type of cases what punishment is given under Islamic Law, please tell us?

SHRI G. S. NIHALANI: There in Pakistan such type of accused is hanged or sentenced to life imprisonment or his hand or any other part of his body is cut. Immediate actions are taken in Pakistan against such culprits. But, I am sorry to point out that here in India we have seen in Ranga-Billa case that they were found guilty but still the case is lying pending before the President under mercy petition till the month of July. In this way such cases take long to decide and thus such accused become heroes out of the criminals. On the other hand, in Pakistan for such cases punishment is given immediately. The punishment in Pakistan is very severe but here very slight punishment is imposed.

SHRI R. S. SPARROW: I want to ask two questions. Firstly, you have mentioned that lady judges only for rape cases should be appointed?

SHRI G. S. NIHALANI: As I have said earlier, if I am correct, as far as possible in such cases preference should be given to lady judges.

SHRI R. S. SPARROW: That you have said strongly about it. Even taking that into account that if lady judges will be appointed then there would be so many implications. So once again I would request you to clarify it.

SHRI G. S. NIHALANI: Sir, my firm opinion is that if lady judges are appointed for this then the sufferer lady can give better evidence psychologically in the court.

SHRI R. S. SPARROW: The point which you made, we will consider it. Now my second question is that you have said something about caution against the judges' discretion in rape cases and you tried to carry out this

with what happens in the Islamabad Government. In this case, if you don't leave the discretion with the judges then specify the maximum punishment which can effectively be implemented or what type of judicial system you want, kindly explain this?

SHRI G. S. NIHALANI: I am of the view that when the man is found guilty then there should be no discretion left to the judges in the matter of punishment.

SHRI R. S. SPARROW: You say some one is found guilty then the minimum should be awarded.

SHRI G. S. NIHALANI: Yes.

SHRI R. S. SPARROW: If a man is pronounced guilty then the judge is bound to punish him. Not only he is bound but the other thing is entirely specific minimum or maximum punishment as prescribed, kindly clarify it?

SHRI G. S. NIHALANI: So far as minimum punishment is concerned, judge can award punishment in certain cases but he should not have discretion to the last limit.

SHRI R. S. SPARROW: You have said about the effectiveness of the Pakistan's working and appreciated the work of Islamabad Government or say of Iran. A few days ago for rape cases in Iran they hanged the accused according to the Islamabad Law and thus quick decisions are taken there in such cases. You want to say that here also such quick actions may be taken or any other action beyond that?

SHRI G. S. NIHALANI: I don't think that we should follow Pakistan as it is.

SHRI R. S. SPARROW: If you have anything specific on the copy of their law then you give us. If you don't have it now, you can send it later on. Thank you.

SHRI G. S. NIHALANI: I have already given my suggestions in writing on 14th April, 1981.

SHRI BAPUSAHEB PARULEKAR: With reference to this sentence you have suggested that minimum punishment should be prescribed and you want to stick to it, are you firm on this?

SHRI G. S. NIHALANI: Yes.

SHRI BAPUSAHEB PARULEKAR: Under Section 357 if a husband have a intercourse with his wife then for that minimum punishment is 7 years. What is your suggestion?

SHRI G. S. NIHALANI: This provision should not apply in the case of husband and wife. Even a single case has not been conducted by me in 26 years' of practice.

SHRI R. K. MHALGI: You have not seen a single case. So do you suggest that the concerned provision in the I. P. C. should be deleted?

SHRI G. S. NIHALANI: It is as good as deleted.

SHRI BAPUSAHEB PARULEKAR: Do you agree to this that there should be female presiding officer in the court and also a female police officer so that process of investigation could be improved?

SHRI G. S. NIHALANI: Yes, there should be female presiding officers. Besides this there should be lady investigator and lady prosecutor also.

SHRI BAPUSAHEB PARULEKAR: We have come to know in various States that there are no sufficient numbers of lady police officers and other lady officers. So how to tackle this problem according to you?

SHRI G. S. NIHALANI: The alternate solution can solve the problem i.e. lady should be associated with the investigation.

SHRI BAPUSAHEB PARULEKAR: You have just said that investigation is not proper. Do you mean to suggest that only if the interrogation or the investigation is entrusted to the lady officer then only the investigation will be done properly or you have to say anything else?

SHRI G. S. NIHALANI: As I have said already that lady social organisation should be associated with the investigation so that police may not manipulate and they may not manipulate at a higher level.

SHRI BAPUSAHEB PARULEKAR: By appointing lady officers the whole thing will be set right?

SHRI G. S. NIHALANI: My submission is that there should be deterrent sentence so that the accused learns a lesson for the whole life.

SHRI BAPUSAHEB PARULEKAR: What is your idea about the deterrent punishment?

SHRI G. S. NIHALANI: Consistent only with the law.

SHRI BAPUSAHEB PARULEKAR: Do you mean to say that the first and the second appeal and petition under Article 226 all should be abolished? We are living under rule of law.

SHRI G. S. NIHALANI: That should not be.

SHRI BAPUSAHEB PARULEKAR: What is your idea about the minimum implementation of the sentence?

SHRI G. S. NIHALANI: There is a mandatory provision.

SHRI B. IBRAHIM: The accused name should be disclosed for his notoriety so that it will be known to all. Besides this, the photograph should also be published in such cases.

SHRI BAPUSAHEB PARULEKAR: What you have to say about explanation no. 2 of Section 375? Do you agree with this provision?

SHRI G. S. NIHALANI: I do not agree with the whole sentence as itself. Safeguard should be there.

SHRI BAPUSAHEB PARULEKAR: Do you want that there should be a female session judge, a female public prosecutor?

SHRI G. S. NIHALANI: Yes, Public prosecutor must also be a lady and besides this the trial should also be in camera that is what I say.

MR. CHAIRMAN: Thank you.

The witness then withdrew.

II—SHRI L. S. SINHA, President Bar Association, Bhopal.

MR. CHAIRMAN: Kindly introduce yourself to the Committee.

SHRI L. S. SINHA: I am Ladli Saran Sinha, President of the Bhopal Bar Association. For the last 22 years I am in this profession. I have been practising both in civil and criminal cases. I also attend High Court.

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

SHRI L. S. SINHA: I will point out where necessary. We welcome the

Committee from our Parliament which atleast shows the keenness to legislate on such aspect which deals with the human tendencies and criminal behaviour. I will submit that there had been various schools of criminology and those schools are classical schools, graphical schools, social schools, topological schools in 20th century even in countries we don't follow the socialism and social schools have been accepted to be the best and the base of criminology or conduct of the human behaviour in the socialism is a character of a man is built by the circumstances. Similarly, this is the economic aspect, social aspect that how you behave with a particular man in your school. There are some boys who are not giving proper respect to their elders. There is very little attention to the physical exercises which make mental set up of a boy. Of course, there are barriers and these barriers stop the boy to proceed further with the study. Sir, it is a very serious matter and I pray that a superficial view will not be taken. There are some basic things which are lacking in the proposals of this Bill. A punishment of 10 years minimum has been provided. In this respect, I would refer to the comparative table of U.S.A. in 1957-58 about the rape and comparative table of the percentage under various age-group that is given at page 109 of 'Principals of Criminology' and it shows that forceable rape is committed under 18 years of age, 6.8 per cent under 21 years, 17.2 per cent under 25 years.

MR. CHAIRMAN: How this survey was conducted?

SHRI L. S. SINHA: There is a institute which has conducted.

MR. CHAIRMAN: You are referring contents from a book which is not at all concerned because that survey had been conducted long back then why are you giving evidence before a committee of the Parliament? This Com-

mittee has limited scope? Now you know that we are not here to give a social justice. We are thinking only about the legal justice in a general way whatever is intended in the provisions of the law. We simply want to know your views upon the proposed provisions of the law.

SHRI L. S. SINHA: You have proposed 10 years minimum punishment in the Bill. If a person is guilty at the age of 23 years and if you award punishment till 33 years of age, he remains in the jail. Previously it was 5 years but now you have increased the punishment by 10 years. Now, a man will remain in jail for 10 years. His children and relatives will suffer. It would not give any benefit to the society.

MR. CHAIRMAN: Should it remain as it is?

SHRI L. S. SINHA: I have come across such a case in the Sehore district court. There was an objection against one senior advocate of Sehore.

In the last I have to say that there should be no presumption.

SHRI B. IBRAHIM: I would like to know first of all regarding Section 111(A), according to your opinion should it be deleted?

SHRI L. S. SINHA: Present law is sufficient.

SHRI B. IBRAHIM: Secondly, tell about Section 228(A) what have you to say?

SHRI L. S. SINHA: It may remain. Willification is not good.

SHRI B. IBRAHIM: Regarding Section 375 is it not sufficient that if we have free consent instead of voluntary consent?

SHRI L. S. SINHA: Free consent is sufficient and voluntary should be removed.

SHRI BAPUSAHEB PARULEKAR: What is the percentage of convictions in your court?

SHRI L. S. SINHA: About 98 per cent convictions are there.

SHRI BAPUSAHEB PARULEKAR: How many acquittals in the cases of consent?

SHRI L. S. SINHA: Firstly, I am submitting that rape cases of higher strata of society hardly come before the court. It may be only one present. It is only the ladies of the lower strata.

SHRI BAPUSAHEB PARULEKAR: With reference to the consent what is the ratio?

SHRI L. S. SINHA: Nearly 50 per cent.

SHRI BAPUSAHEB PARULEKAR: Whether the deterrent punishment or the reformatory punishment should be given?

SHRI L. S. SINHA: Reformatory punishment should be given.

SHRI BAPUSAHEB PARULEKAR: Again the discretion is given to the judge. In fact, the punishment is there for 10 years. In addition to this the judge can give more punishment.

SHRI L. S. SINHA: But that is not for the judges to consider, it is for the legislators to consider.

SHRI BAPUSAHEB PARULEKAR: Present law as it stands, a judge can give a sentence of 10 years or till the rising of the court.

SHRI L. S. SINHA: For this he will have to give reasons.

SHRI BAPUSAHEB PARULEKAR: Have you to say anything about

definition as it stands today or it requires some change?

SHRI L. S. SINHA: It may remain as it is, Sir.

SHRI BAPUSAHEB PARULEKAR: So far as Section 375—explanation 2—"A woman living separately from her husband under a decree of judicial separation shall be deemed not to be his wife for the purpose of this Section. Will it not create complications? You know Personal Law?

SHRI L. S. SINHA: Yes, I know. It should remain as it is because there can be a reconciliation.

SHRI ERA SEZHIYAN: 10 years punishment and shall also be liable to fine, what is your opinion about this?

SHRI L. S. SINHA: After all what purpose this fine will serve when the punishment is already there?

MR. CHAIRMAN: About presumption perhaps I may give other information and which may lighten first. The presumption in rape case, when persons in authority involved, there the question of no consent is enough. Perhaps in authority may dominate a woman. Therefore, there should be presumptive value. What is your opinion so far as this category of persons are concerned?

SHRI L. S. SINHA: In all these cases you may retain that presumption but there should be some punishment if witnesses were found false.

MR. CHAIRMAN: I am coming to the next witnesses.

SHRI L. S. SINHA: Court may presume.

MR. CHAIRMAN: A person in authority if involved in a rape case who can dominate...

SHRI L. S. SINHA: That is one side of the picture.

SHRI R. K. MHALGI: Mr. Sinha, I think you are totally against of having a minimum punishment in rape cases?

SHRI L. S. SINHA: Minimum punishment should not be there.

The witness then withdraw.

III—Madhya Pradesh, Mahila Kalyan Samiti, Bhopal.

Spokesman

Shrimati Vimla Sharma

(The witness was called in and she took her seat)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament." Kindly introduce your self to the Committee. Have you gone through the Bill? What you have to say?

SHRIMATI VIMLA SHARMA: I am Smt. Vimla Sharma, Chairman, Mahila Kalyan Samiti, Bhopal. We got the Bill in the morning itself. First of all, I will like to say for the married women. This should be deleted. Page 3, Section 376:—

"Whoever commits rape shall be punished with imprisonment for life, or with imprisonment of either description for a term which may

extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

He should not be punished after marriage. It should be deleted.

MR. CHAIRMAN: According to matrimonial law the present age is 18 years. What do you suggest. Whether it should be 18 or 15 years of age?

SHRIMATI VIMLA SHARMA: If the husband forces on her for sexual intercourse with her consent that will not be rape. It should be deleted or if you want at all to punish then you can penalise the parents. Secondly, I would suggest that in case the rape is done under 15 years of age then there should be straightway punishment to him. Thirdly, I want to submit that when this rape is done the name of the girl should not be published in the paper. If you want to punish offender, his name should be published. Lastly, I have to say that lady judges and lady magistrates should be there so that girls may not hesitate before them because the girl is free to speak before the lady judges.

(The witness then withdrew)

IV—Inner Wheel Club, Bhopal.
Spokesman

Shrimati Saroj Lalwani:

(The witness was called in and she took her seat)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence,

the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Introduce yourself to the Committee.

SHRIMATI SAROJ LALWANI: I am Mrs. Saroj Lalwani associated with the Rotrary Club, Bhopal.

MR. CHAIRMAN: What do you want to say?

SHRIMATI SAROJ LALWANI: I feel that there should be no publicity in the newspapers of such cases but subsequently it should be printed in the law journals. Why I am telling this because the lady do not report the rape case due to shyness. For this reason, it should be limited only with the law journals.

SHRI ERA SEZHIYAN: Offenders' name should be published or not?

SHRIMATI SAROJ LALWANI: Only the name of the offender may be given but not the name of the girl or the entire case. The next point I wish to make is that if a rape case against a minor girl is committed, I think no time should be wasted in entering to record evidence and lodging the report. But once a case is lodged it should be dealt immediately by the concerning authorities. No time should be wasted. I personally feel that there should be a time limit between 3 months and 6 months. But the matter should be closed as quickly as possible. There must be special courts to deal with these matters. There should also be lady judges and lady magistrates.

SHRI BAPUSAHEB PARULEKAR: Same rule will apply also for the prosecutors and advocates?

SHRIMATI SAROJ LALWANI: Yes, public prosecutors, defence counsels, all should be female, if available, priority could be given to the matter.

SHRI BAPUSAHEB PARULEKAR: Generally, major girls are reluctant to give information and therefore delay is caused. What you have to suggest in this matter?

SHRIMATI SAROJ LALWANI: There is a reason for delay because the parents are so much concerned. There should be total secrecy and confidential treatment to the matter. It should be in camera. The matter should be dealt by the S.Ps. or Sr. Police Officers, then only the problems will be solved.

SHRI BAPUSAHEB PARULEKAR: If womens' organisation are involved then what would you suggest?

SHRIMATI SAROJ LALWANI: I agree to this but they should not be politically motivated. Secondly, I wish to make another suggestion regarding the imprisonment that there is a provision of 5 years, 2 years or may be life imprisonment at present, but I personally feel that instead of this provision if a man destroys the life of a girl and it is proved then he should be punished with life imprisonment. Because he has ruined the life of a girl so his life must also be ruined.

SHRI BAPUSAHEB PARULEKAR: We have the provision in the law that a husband commits a rape with his own wife who is below 15 years of age then what do you want to suggest?

SHRIMATI SAROJ LALWANI: I feel that provision is contradictory in this Bill because you have abolished the Child Abolition Act, Here you are permitting him. In my opinion why the man should be penalised for

his parent's mistake. This provision should be totally deleted.

MR. CHAIRMAN: According to the provision contained in the Bill and even after marriage when a wife or husband does not want to live together and a decree of judicial separation has already been granted by the judge and then what happens that there is an obligation on the part of the judge also for the reconciliation of the parties and if there a sexual intercourse takes place then will it be not offence? In such circumstances, will you not give him protection?

SHRIMATI SAROJ LALWANI: Then there will be no offence at all because the consent is there. Therefore, it should be deleted.

MR. CHAIRMAN: You have just answered that this is no offence because both are matured and the consent is there. Therefore, I am asking you that in that case the decree of judicial separation is there and they are living separately. I want to quote an example that suppose a husband has committed an excess then are you in favour to eliminate this provision?

SHRIMATI SAROJ LALWANI: It can not be generalised.

MR. CHAIRMAN: If you are agreeable that protection should be given then it is alright. But if provision of protection is not given then what should be done?

SHRIMATI SAROJ LALWANI: I agree with this. I have another point to make. In Arabian countries for barbarism Islamik Law is enforced. Under that law deterrant punishment is given. Even a personal part of the body is cut off if there has been a rape case. If some foreigner indulges in our country then he should be punished accordingly. Well, Sir, I have covered all my points.

MR. CHAIRMAN: Thank you.

Now we end here for lunch and again we will meet at 3 P.M.

(The Committee adjourned at 13.00 hours and reassembled at 15.00 hours)

V—Bhartiya Grameen Mahila Sangh,
Indore

Spokesman:

Shrimati Krishna Aggrawal:—

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Kindly introduce yourself to the Committee.

SHRIMATI KRISHNA AGRAWAL: I am Mrs. K. Aggrawal. For the last 20 years I have been working as a Chairman, Bhartiya Mahila Kalyan Sangh. I was also a Chairman of the State Rescue Home for the last 15 years. Our experience in this line is really very very alarming and I am thankful to the Committee for giving me an opportunity to express views on this important topic. The rape cases are more in the villages which are not reported. This creates a problem to the society also. But on the other hand in the city they can be reported to the police and the other authorities. The girl who suffers has got to suffer throughout the life. I think whatever provision we have put up in this Act the girls very rarely take advantages of this. This is very important factor.

I would like to draw the attention of the Committee on few points. I will not repeat suggestion already made by others before the Committee. I had been to the Western countries. I have seen there proper rehabilitation programme for unmarried girls. When the cases properly investigated and the semen is also examined and if it is found that the statement of the girl is correct then the responsibility of rehabilitating comes to the man. There should be a proper action for rehabilitation for those who suffer and that girl who suffers if it is proved then the punishment to the man is not enough but there should be some relief to the girl also. That is my suggestion. Thirdly, I want to submit as a social worker that those children who are much concerned, their protection should be taken care of otherwise children will be the burden to the society as well as to the mother who has already suffered a lot. I think, therefore, this Act should have some provision for this. Of course this is not our job, it is a job of social workers. I wish that those unmarried girls who are victims of such offences, there should be proper rehabilitation programme widely in the State. It is the duty of the social worker to go to the court for getting compensation, proper justice etc. For this, Parliament should try to make such a provision in the Act so that sufferers may get relief. Next, I will suggest that proper sex education is very very necessary in schools and colleges so that girls atleast know what is going to happen with them. Thank you.

MR. CHAIRMAN: Madam, our members would like to put some questions and some clarifications also.

SHRIMATI KRISHNA AGRAWAL: Yes, I will give answer for the questions.

SHRI DHULESHWAR MEENA: As you said that there should be sex education in schools and colleges, so I will like to know that will it not be directly or indirectly harmful to the society and to the students also?

SHRIMATI KRISHNA AGGRAWAL: I disagree with this. By giving sex education to the girls and ladies, they will be in the know of this ill and will not fall prey of this evil.

SHRI R. S. SPARROW: Just you said about the compensation, the society in which we are today living, will there not be more rape cases for getting compensation? How do feel on it?

SHRIMATI KRISHNA AGGRAWAL: That is correct. I think no lady will like to expose herself for getting only the compensation, atleast Indian ladies. They will always stand with strength and courage before the society. They will not expose themselves for a few rupees of compensation.

SHRI R. S. SPARROW: What you have to say about the punishment side?

SHRIMATI KRISHNA AGGRAWAL: You have mentioned in the law about the punishment for 5 years 10 years or whatever it may be but I do feel that this is inhuman to my mind. Those who are involved in a gang rape, should be heavily punished.

Secondly, I have to suggest that if a husband does intercourse with his own wife who is minor in age i.e. in between 12 to 15 years then in that case that should not be punished. If a husband is punished for a long time then his wife will be left unprotected in the society. So, I would suggest to reduce the sentence for those couples, parents should be punished but not the couples.

MR. CHAIRMAN: There were suggestions by some of the witnesses that even an offence against husband who does intercourse with his minor wife below the age of 15 is punishable. In such circumstances, the marriageable age i.e. 18 years should be reduced by 15, what you have to say regarding this?

SHRIMATI KRISHNA AGGRAWAL: I also agree otherwise the punishment may be of short period.

श्री बिलोकचन्द : मैं यह जानना चाहता हूँ कि जैसा कि अभी आपने कहा कि ग्रामीण क्षेत्र में जो पढ़े लिखे लोग रहते हैं उनके बच्चे अपनी रोजी रोटी कमाने के लिये घर से बाहर जाते हैं, इधर उधर जाते हैं इस कारण उनके पास रेप केसेज अधिक होते हैं। ग्राम ऐसे केसेज में अधिकतर वे रिपोर्ट भी नहीं करते हैं तो इसके निराकरण के लिये में भी क्या किया जा सकता है।

श्रीमती कुव्वात अचवाल : मेरे ब्याल में ग्रामीण क्षेत्र के लोगों को सोसायटीज के माध्यम से एजुकेट किया जाना चाहिए। ताकि वे अपना भला बुरा समझ सकें। क्योंकि जिन लड़कियों की शादी छोटी एज में कर दी जाती है अधिकतर वही लड़कियां सफर करती हैं। इस लिये ग्रामीण क्षेत्र के लोगों को एजुकेट किया जाये तो अच्छा होगा और ग्राम सभा की जो इयूटीज हैं उसमें ग्रामीण क्षेत्र के लोगों को एजुकेट करने की इयूटी भी जोड़ी जावे तो उचित होगा और ऐसे केसेज में लीगल एक्शन भी तीव्र गति से लिखा जावे इसको भी ग्राम सभा या ग्रामपंचायत की इयूटी में शामिल किया जावे। आजकल ग्रामों में बहुत सी बहनें ऐसी हैं जो बिना आश्रय के अपना जीवन गुजार रही हैं। ऐसी ही बहनें अधिकतर बलात्कार की शिकार होती हैं। क्योंकि ऐसी महिलाओं के पेरेन्टस जब रक्षा नहीं करेंगे तब ऐसी महिलाएं ही अधिकतर बलात्कार की शिकार होती हैं। इसलिये मेरी समझ में ग्रामीण क्षेत्र के लोगों को एजुकेट करने की ज़ुम्मेदारी ग्राम सभा या ग्राम पंचायत पर डाली जावे तो उचित होगा।

श्री हुसमदेव नारायण शाहव : मैं एक सवाल यह पूछना चाहता हूँ कि जैसा कि

सभी आपने कहा है कि अगर कोई पति अपनी तत्नी के साथ रेप करता है तो चूँकि वह उस स्त्री का पति है इसलिये उसको ज्यादा दिन जेल में न रखा जावे तो क्या इस कानून में जो पति को सजा का प्रावधान है उसको इस बिल से हटा दिया जावे ऐसी संशा है आपकी? क्योंकि यदि यह प्रावधान कानून के अन्दर रहता है, सजा का प्रावधान रहता है तो सभी पति अपनी पत्नियों से संपर्क करते समय ज्यादा भय डायेंगे। और जबकि पत्नी कोर्ट में जा ही रही है तो फिर उसके पति को आजीवन कारावास हो या बस साल की सजा हो फिर उसका कोई सबाल ही नहीं है कि उसको ज्यादा दिन जेल में न रखा जावे। इसलिये क्या आप चाहती हैं कि इस प्रावधान को, इस सजा के प्रावधान को निकाल दिया जावे। ऐसी संशा है क्या आपकी। ?

श्रीमती कुब्जा अग्रवाल : मैं इसमें डिफर करती हूँ। मैं ऐसा समझती हूँ कि जो पति पत्नी बनते हैं वे अपने पेरेंट्स की इच्छा से बनते हैं। मैं नहीं समझती हूँ कि पत्नी कोई इस तरह का ऐक्शन कोर्ट में लेगी। मैंने इस प्रावधान को रहना चाहिए ताकि भय बना रहे और इसके द्वारा हम चाइल्ड मैरिज ऐक्ट को भी डिस्क्रेज कर सकेंगे। मैं तो चाहती हूँ कि इस तरह की जो शादियाँ होती हैं उसमें पेरेंट्स को कुछ सजा होनी चाहिए।

श्री कुम्भदेव नारायण यादव : क्या आपकी जानकारी में कोई इस तरह की घटनायें हैं क्या कि पति और पत्नियों के जो इस तरह के सासलात होते हैं उसमें पत्नियाँ अपने पतियों के द्वारा ही सताई जाती हैं? वैसे इस तरह की पत्नियाँ कोर्ट में तो अधिकतर जाती नहीं हैं और

समाज में भी उसको कुछ नहीं मिलता है। तो ग्रामीण क्षेत्रों को ऐसी कुछ घटनायें आपकी जानकारी में आई हैं क्या ?

श्रीमती कुब्जा अग्रवाल : मेरे पास जो इस तरह की जानकारी है वह 11 से 25 वर्ष तक की महिलाओं की है और वे सब प्रशिक्षित हैं। यदि उनको सेक्स के बारे में शिक्षा दी जावे कि इसमें उनके सामने क्या-क्या तकलीफें आ सकती हैं और क्या तहीं आ सकती है तो मैं समझती हूँ कि उनका बहुत कुछ भला हो सकता है। इसलिए मैं चाहती हूँ कि ऐसी शिक्षा के लिए जो गांव की लड़कियाँ इच्छुक हों उनको सेक्स संबंधी प्रोपर एजुकेशन दिया जाना चाहिए। जिसमें शादी शुदा लड़की को पति द्वारा यातना दिये जाने के केसेज हमें मिलते हैं जिसमें कि फिजिकली उन लड़कियों को काफी तकलीफें मिलती हैं और अपनी उन तकलीफों के लिए वे गांव की लड़कियाँ किसी से कह भी नहीं सकती हैं कि उनको इस तरह की तकलीफें घर में दी जाती हैं क्योंकि हमारी भारतीय परम्परा ही ऐसी है कि लड़कियाँ सब कुछ बर्दाश्त करें। इसलिए गांव की लड़कियों को यदि सेक्स संबंधी शिक्षा दी जावे जो कि इसके लिए इच्छुक हों तो इस सेक्स संबंधी शिक्षा से उनकी हेल्पी लाईफ बनाने में काफी मदद मिलेगी।

प्रोफेसर निर्मला कुमारी शक्तावत : ग्रनमैरिड मदर बनने के केसेज ग्रामीण क्षेत्र में पहले से बड़े हैं या घटे हैं ?

श्रीमती कुब्जा अग्रवाल : मैं समझती हूँ कि ग्रनमैरिड मदर बनने की संख्या पहले से ज्यादा बढ़ी है। यह मेरा अनुभव है कि ग्रनमैरिड मदर की संख्या ग्रामीण क्षेत्रों में भी पहले से ज्यादा बढ़ी है। वैसे ग्रामीण क्षेत्रों में लड़कियाँ इसके संबंध में रिपोर्ट नहीं कर पायी हैं लेकिन केसेज बराबर हो

रहे हैं। ऐसा ही एक केस मेरे सामने भी हुआ था।

प्रोफेसर निर्मलाकुमारी शक्तावत : आपने अभी कहा है कि लड़कियों को सेक्स संबंधी यदि शिक्षा दी जावे तो उनका भला ही हो सकता है वे उससे होने वाले अच्छे बुरे परिणामों को समझेगी तो आप उन लड़कियों को सेक्स की शिक्षा किस तरह से दिलवाना चाहती हैं। क्या स्कूल और कालेज के माध्यम से। और क्या आप यह अनुभव करती हैं कि सेक्स की शिक्षा। क्या लड़कियों के लिये ही आवश्यक है और लड़कों के लिये नहीं और यदि लड़कों के लिये भी आवश्यक है तो क्या लड़की और लड़कों को दोनों को साथ साथ सेक्स की शिक्षा दी जाये, किस तरह से आप उनको सेक्स की शिक्षा दिलवाना चाहती हैं ?

श्रीमती कृष्णा अग्रवाल : आपकी यह बात ठीक है। जब हम लड़कियों के पलके सेक्स एजुकेशन आर्गनाइज करते हैं तो लड़के भी इस को छुप छुप कर सुनते थे। ऐसा हमने महसूस किया है। यदि हम सेक्स एजुकेशन की मीटिंग जो आर्गनाइज करते थे उसमें लड़कों को भी बुलायें तो उस पर लड़कियाँ एतराज करती थी। बैसे हमने यह महसूस किया है कि इस सेक्स एजुकेशन को लड़के और लड़कियाँ दोनों ही पसंद करते हैं। इसलिये यह सेक्स एजुकेशन ग्रामीण क्षेत्रों में प्राइमरी हेल्थ सेंटरों के माध्यम से या फिर सेक्स एजुकेशन सेमिनार आर्गनाइज करके दिया जाना चाहिए।

श्री राजबन्धु भारद्वाज : आपने अभी कहा था कि शारदा ऐक्ट के आफेंडर्स को इस रेपला के तहत सजा मिल जायेगी और इस से बाल विवाह नहीं होंगे।

तो क्या जिन्ने भी आफेंडर्स होते हैं सबको आप सजा इसी ऐक्ट के तहत दिलवाना चाहती हैं। मां-बाप ने लड़के की शादी 14 साल की उम्र में या 15 साल की उम्र में तो उसको आप डिटमप्रूव करना चाहती हैं शारदा ऐक्ट के तहत? क्या सुख-शांति मिलेगी क्या यह भी सोचा है आपने? जब मुकदमों का वैवहिक जीवन होगा तो फिर उस लड़की का भविष्य क्या होगा ?

SHRIMATI KRISHNA AGGRAWAL: I do not mean to say that all the couples are to be punished under this law. According to my feeling, when the couple is married if they are departed for a long time, really it happens that husband and wife will like to live together. My submission is that very rarely the cases are reported to the police for an early marriage that is why the Sharda Act is not successful. So we will have to do something in this direction. My submission is that it should not be a general law, exceptions are there. It would be better if police, instead of giving the punishment to the husband and wife, give punishment to the parents so that they will not come forward for doing marriage of their children at the minor age.

SHRI B. IBRAHIM: Can you suggest way out by employing woman police force?

SHRIMATI KRISHNA AGGRAWAL: I have got experience in this line. I myself have tried to get them escaped from the brothels, bus-stand and from the public places and handed over to the police. Instead of taking them to court or giving shelter to those girls they themselves have used. Therefore, I would like to make a suggestion that there should be lady police force so that we can give a better security and they will be able

to give their free statements and commitments to the court without fear. Before ending, I would like to submit a book that how we are working in the villages.

VI.—*Bal Niketan Sangh, Indore*

Spokesman:

Shrinati Shalini Moghe

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

श्रीमती शालिनी मोघे : मैं इंदौर से आई हूँ। मैं करीब 20 वर्षों से बाल कल्याण और महिला कल्याण के क्षेत्र में कार्य कर रही हूँ और स्टेट सोसियल वेलफेयर बोर्ड की मँबर रह चुकी हूँ तथा किशोर न्यायालय की आन्तरी मजिस्ट्रेट हूँ। महिलाओं की शिक्षा के लिये भी मैंने काम किया है। ग्रामीण क्षेत्र में काम कर रही हूँ। अग्रबन एरिया और स्वन एरिया में भी काम कर रही हूँ। किशोर न्यायालय और महिला कल्याण के क्षेत्र में काम करते हुए जो अनुभव मिला है उसमें एक बात ध्यान में आई और उस पर मैं ज्यादा जोर देते हुए यह कहती हूँ कि महिला न्यायाधीश हों तो ज्यादा अच्छा होगा।

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महिला न्यायाधीश के सामने महिला जिसके साथ बलात्कार किया गया है सारी बात बताने में सुविधा महसूस करती हैं। दूसरी बात में यह कहना चाहती हूँ कि इस प्रकार के केसेज में समय बहुत अधिक लगता है। पहले मैडिकल जांच करवाओ उसमें बहुत दिन लगते हैं और बार बार दवाखाने में जाना पड़ता है और इस तरह से काफी समय निकल जाता है और इस बीच में मुल्जिम काफी तैयारी अपने पक्ष में कर लेता है। इस संबंध में मेरा यह कहना है कि ज्यादा से ज्यादा 6 माह में इस तरह के केसेज में निर्णय दी जानी चाहिए। एक बात और मैं कहना चाहती हूँ कि इस प्रकार के मुल्जिमों का फोटो इत्यादि भी समाचार पत्रों में दिया जाना चाहिए उसकी पब्लिसिटी की जानी चाहिए ताकि दूसरे लोगों के मन में दहशत बैठे और वे इस प्रकार का घृणित कार्य करने में हतोत्साहित हों। मेरा ऐसा खयाल है कि यदि इसकी पब्लिसिटी की जायेगी तो दूसरे लोग इस प्रकार का काम करने के लिये तैयार नहीं होंगे। दूसरे देशों में जैसे पाकिस्तान, ईरान आदि देशों में इस प्रकार के जुर्म के लिये कड़ा एक्शन लिया जाता है। इस तरह से 2-3 महत्त्व की बातें हैं। उसके अलावा कानून में लिखा है कि बंद कमरे में सुनवाई होगी तो इसके लिये मैं आपको बधाई देती हूँ यह होना चाहिये सब लोगों के सामने लेडीज कहने के लिये तैयार नहीं होती हैं। एक और बात जो महिलाओं से पूछी जाती है कि आप प्रूफ कीजिये कि आपके ऊपर बलात्कार हुआ या नहीं इसके बजाय मुल्जिम को प्रूफ करने के लिये कहा जाना चाहिए। यह प्रूफ करे कि महिला की स्वीकृति थी या नहीं। सारे प्रश्न महिला से ही पूछे जाते हैं ये आफन्डर से ही पूछे जाने चाहिए। दूसरी बात यह है कि 16 वर्ष से कम उम्र की पत्नी के साथ मैथुन करने

पर पति को कम सजा दी जानी चाहिए। यदि वह 6 साल के लिये जेल चला जाता है तो इस बीच में महिला दूसरे धंधे शुरू कर देती है और उसकी लाफड बिगड जाती है। इस में उनके मां-बाप को सजा दी जानी चाहिए क्योंकि बाल विवाह उन्होंने किया है। धन्यवाद।

प्रो० निर्मला कुमारी शक्तावत : जैसा कि अभी आपने बताया कि मैडिकल में टाइम ज्यादा लग जाता है। मैं पूछना चाहती हूँ कि क्या मैडिकल 24 घंटे के बाद करने पर सही आयेगा? 24 घंटे के अन्दर रिपोर्ट देनी होती है उसी से प्रूफ होता है कि किसी लडकी के साथ बलात्कार हुआ है या नहीं। इसके साथ ही आपका जो प्रश्न था कि समय बहुत लग जाता है मैं आपसे यह प्रश्न करना चाहती हूँ कि कई बार पुरुषों को ब्लैकमेल करने के लिये भी कई ऐसी लडकियाँ और औरतें होती हैं जिनको विशेष प्रकार का प्रलोभन देकर फंसाने के लिये लगा दिया जाता है और ऐसी स्थिति में निरपराध व्यक्तियों को फंसाया जा सकता है। जैसा कि अभी आपने कहा कि पब्लिसिटी अधिक होना चाहिए। मैं एक प्रश्न आपसे पूछना चाहती हूँ कि पब्लिसिटी में पुरुष के फोटो के साथ लडकी का फोटो भी दिया जायेगा तो क्या उससे लडकी की बदनामी नहीं होगी? और आगे आने वाले समय में क्या उसका विवाह करना आसान होगा? इन सारी बातों को ध्यान में रखते हुए पब्लिसिटी के बारे में आपके विचार स्पष्ट रूप से जानना चाहती हूँ।

श्रीमती शालिनी मोघे : मैं चाहती हूँ कि अपराधी का फोटो दिया जाये महिला का फोटो नहीं दिया जाना चाहिए। दूसरी बात जो आपने कही कि मैडिकल जांच में समय लगता है मैं आपसे कहना चाहूँगी कि किशोर न्यायालय में मैंने देखा है कि तीन महीने में 6 सास की लडकी

का मैडिकल एक्जामिनेशन नहीं हुआ। सुनवाई के समय आते रहे हमसे पूछा जाता मैडिकल रिपोर्ट कहाँ हैं तो उसका पित कहता कि अभी तक अस्पताल सेंशन दी गई है। ये मेरे अनुभव में है...

प्रो० निर्मला कुमारी शक्तावत : क्या 24 घंटे के बाद मैडिकल वैलिड होगा?

श्रीमती शालिनी मोघे : वैलिड नहीं होगा इसलिये मैं चाहती हूँ कि नियम में ऐसा किया जाना चाहिए कि 24 घंटे के अन्दर मैडिकल जांच की जाये।

प्रो० निर्मला कुमारी शक्तावत : आफेंडर के बारे में था। कभी ये भी होता है कि किसी पुरुष की समाज में छबि बिगाडने के लिये या उसे ब्लैकमेल करने के लिये कई स्त्रियाँ व्यापक तौर पर कुछ एक्टिविटीज करती हैं किसी लालच के कारण तो क्या ऐसी स्थिति में आप यह चाहेंगी कि किसी प्रकार के प्रश्न उनसे न किये जायें?

श्रीमती शालिनी मोघे : इस प्रकार की महिला होती है तो कोर्ट के सामने पता चल जाता है कि महिला किस प्रकार की है। उससे प्रश्न पूछे जाने चाहिए। मेरा आशय यह नहीं है कि इस प्रकार की महिला से प्रश्न नहीं पूछे जाने चाहिए लेकिन यदि महिला मजिस्ट्रेट के सामने ये प्रश्न पूछे जायें तो अच्छा है।

प्रो० निर्मला कुमारी शक्तावत : मैं मध्य प्रदेश और राजस्थान के बारे में कहना चाहूँगी। आप मध्य प्रदेश की हैं, यहाँ पर 60 से 70 प्रतिशत शादियाँ शारदा एक्ट का उलंघन करके होती हैं तो क्या ऐसी स्थिति में सारे समाज को सजा इसी कानून के तहत दी जाये?

श्रीमती शालिनी मोघे : मध्य प्रदेश में बाल विवाह प्रथा अभी तक प्रचलित है। ग्रामीण क्षेत्रों में बाल विवाह होते हैं।

प्रो० निर्मला कुमारी शक्तावत : यदि प्रति हो तो कितनी सजा मिलनी चाहिए ?

श्रीमती शालिनी जोषे : यदि उसका पति नहीं रहता है तो और वह जेल में है तो उस समय वह दूसरे लालच में पड़ जाती है। ऐसे केसों भी हमारे सामने आये हैं। एक औरत का पति जेल में 12-13 साल तक था। उसकी पत्नी ट्रेनिंग के लिये आई थी। उसका मन नहीं लगता था वह यही सोचती रहती थी कि वह किसी के साथ भाग जाये। बाद में जब उसका पति छूट कर आ गया और वह संतुष्ट हो गयी। अतः पति जब जेल में रहता है तो लड़की भटक जाती है।

प्रो० निर्मला कुमारी शक्तावत : जैसाकि अभी आपने कहा कि शारदा एक्ट के अनुसार सजा दी जानी चाहिए। शारदा एक्ट जो बना हुआ है काफी लम्बे समय के बाद भी यह कहा जा सकता है कि समाज पर उसका कोई असर नहीं पडा है। ऐसी स्थिति में यह जो कानून है उसके तहत क्या आप यह उचित समझती हैं कि इसमें उसने पति को सजा दी जानी चाहिए।

श्रीमति शालिनी जोषे : अपराध पति का नहीं है। अपराध तो मां-बाप का है। ज्यादा सजा मां-बाप को दी जानी चाहिए।

प्रो० निर्मला कुमारी शक्तावत : 15 साल से कम यदि लड़की है तो इसके बारे में आप क्या कहना चाहेंगी ?

श्रीमती शालिनी जोषे : सजा मिलनी चाहिए, लेकिन ज्यादा लम्बे समय तक नहीं।

समापति महोदय : यदि 15 साल से कम उम्र की पत्नी के साथ उसका पति संभोग करता है और उसकी पत्नी शिकायत करती है कि उसके साथ बलात्कार

किया गया है और उसके पति को सजा हो जाती है। तब क्या जेल से लौटने के बाद वह अपनी पत्नी को स्वीकार करेगा ?

श्रीमती शालिनी जोषे : नहीं।

समापति महोदय : आपका क्या है स्माल पैनल्टी दी जानी चाहिए बड़ी ?

श्रीमती शालिनी जोषे : कम सजा दी जानी चाहिए क्योंकि यदि लम्बे समय तक यदि उसका पति जेल में रहता है तो वह लालच में आकर इधर उधर चक्करों में पड़ेगी और यदि उसका पति जल्दी छुटकर आ जाता है तो वह लालच में नहीं पड़ेगी।

श्री हुकम देव नारायण यादव : नाथ को यदि डूबना है तो नाथ चाहे तालाब में डूबे या समुद्र में उसको क्या फर्क पड़ता है।

VII—Bhartiya Vidya Pracharni Sabha Indore

(1) Spokesman:

Shrimati Nirmala Devi Poddar

(2) Gangwal Mahila Kala Niketan, Indore

Spokesman:

Shrimati Indumati Jain

(3) St. Marks School, Indore

Spokesmen:

Shrimati Florence Jacob

(4) Nari Sahakari Samiti, Gwalior

Spokesman:

Shrimati Mandakirm Wakanker

(5) Association for Social Health in India, Gwalior

Spokesman:

Shrimati Kamla Devi Jadhav

(6) M. P. Mahila Kalyan Parishad, Bhopal

Spokesman:

(1) Shrimati Pragma Mukherjee

(2) Shrimati Prakash Kumari Har-Markawat.

All India Women's Conference,
Jabalpur

Shrimati Chander Prabha Pateria

witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Please introduce yourself one by one to the Committee.

SHRIMATI NIRMALA DEVI PODDAR: I am Nirmala Devi Poddar, Advocate from Indore.

SHRIMATI INDUMATI JAIN: I am Smt. Indumati Jain, Social worker from Indore. I will speak in Hindi.

SHRIMATI FLOERANCE JACOB: I am Floerance Jacob from Indore.

SHRIMATI NIRMALA DEVI PODDAR: First of all I would like to draw your attention towards the explanation no. 2 of section 375. It reads this:—

"A woman living separately from her husband under a decree of

judicial separation shall be deemed not to be his wife for the purposes of this section."

मेरा एक सुझाव री-कन्सीलिएशन के बारे में है इस सम्बन्ध में रिलेक्सेशन दिया जाना चाहिये अन्यथा बच्चों को काफी दिक्कत होती है। मेरा कहने का तात्पर्य यह है कि अगर पति पत्नी; री-कन्सीलिएशन चाहते हैं तो उसके लिये प्रावधान रिजिड नहीं होना चाहिये और न ही लीगली कोई ग्राब्जेशन माना चाहिये।

दूसरा मेरा सुझाव यह है कि पत्नी चाहे माइनर ही क्यों न हो अगर पति उसके साथ सम्भोग करता है तो उसको पनिशमेंट नहीं मिलना चाहिये क्योंकि अगर उसके पति को पनिश किया जाएगा अर्थात् 15 साल की लड़की के पति को अगर सात साल के लिये उससे अलग किया जायेगा तो लाइफ खराब हो जाएगी और दोनों के बीच टेन्शन बढ़ेगा इसलिये मेरा यह सुझाव है कि अगर पनिशमेंट डिलीट किया जाये तो उचित होगा।

इसी तरह मेरा तीसरा सुझाव है कि केस की सुनवाई के समय अगर लेडी जज हों तो अच्छा है क्योंकि महिलाएं अपनी दुख-भरी दास्तान कहने में हिचकती हैं।

सभापति महोदय : लेडी जब उपलब्ध न हों तो ?

श्रीमती निर्मला पोद्दार : उपलब्ध न हों तो प्रश्न ही उपस्थित नहीं होता है। मेरा कहना है कि यथा संभव जहां उपलब्ध हों वहां यह ध्यान रखा जाना चाहिये। मेरा चौथा सुझाव यह है कि रेप केस का डिसेजन बहुत जल्द एक लिमिटेड टाइम के अंदर होना चाहिये अन्यथा फस्टेशन होता है।

श्री आर० के० महालगी : कितने दिन के अन्दर होना चाहिये आपके हिसाब से ?

श्रीमती निर्मला पोद्दार : अगर क्लीयर केस है तो दस दिन के अन्दर पेश होना चाहिये और ट्रायल 3 माह में पूरा होना चाहिये और 6 माह के अन्दर फाइनल हो जाना चाहिये ।

SHRI BAPUSAHEB PARULEKAR: If the presiding officer is a lady judge, but you know in the courts judge is not only a person, prosecutor is there, magistrate is there and other males are there, then how the purpose will be served by bringing a female judge? You kindly clarify it?

श्रीमती निर्मला पोद्दार : मैं निवेदन करना चाहूंगी कि जो जज कुर्सी पर बैठता है तो उसी के अनुसार कोर्ट का विवेचन भी बदलता है ।

श्रीमती इन्दुमति जैन : हमारी बहन ने अभी जैसा बतलाया है कि जब राजी खुशी से शादी हो जाती है तो उसके बाद उसके पति को रेप केस में सात साल की सजा हो जायेगी तो मैं इसके खिलाफ हूँ । वह सजा उस पति को न होकर उसके माता पिता को होनी चाहिये । यदि 12 साल की लड़की से एक लड़का शादी करता है और उसको यदि रेप केस में सात साल की सजा हो जाती है तो उस लड़की का क्या होगा । ऐसे तो उसकी जिन्दगी ही खराब हो जायेगी । इसलिये यह जो पति को सजा वाला प्रावधान है इसको निकाल दिया जावे । जहां तक लड़कियों के केस महिला मजिस्ट्रेट के द्वारा देखे जाने का सवाल आता है तो जो छोटी-छोटी लड़कियां हैं वे हमारे सामने बतलाने में ही हिचकती हैं तो फिर आदमियों के सामने तो बोलने में उन्हें बहुत ही बिककत आएगी । इसलिये यदि महिला मजिस्ट्रेट मिल जाती है तो वही इन लड़कियों के रेप केसेज को देखें तो अधिक अच्छा होगा ।

श्रीमती निर्मला पोद्दार : कोर्ट का निर्णय ला जर्नल्स में तो पब्लिश होगा ही अगर उनमें पब्लिश नहीं होगा तो समाज को मार्गदर्शन नहीं मिलेगा । लड़की का नाम भले ही आऊट न किया जाये लेकिन लड़के का नाम पब्लिश होना चाहिये । इससे समाज में डर भी पैदा होता है । लड़की का नाम देने से समाज में उसकी बदनामी होती है ।

SHRI R. K. MHALGI: I want to ask you that the provision is made under the Indian Evidence Act, in Section 111(A), what is your opinion about that?

MR. CHAIRMAN: If you have not gone through it then it is not necessary to answer. You can say it thereafter by giving a memorandum.

SHRIMATI NIRMALA RANI PODDAR: I have not gone through it because it was given very late.

SHRI BAPUSAHEB PARULEKAR: You are of the view that lesser punishment should be given or you are of the opinion that provision should completely be deleted?

SHRIMATI NIRMALA RANI PODDAR: It should completely be deleted.

श्रीमती फ्लोरेस जेकरब : मैं इंदौर से आई हूँ । प्रातःकाल ही हमको यह कागज मिला है और इसके ऊपर थोड़ा सा विचार-विमर्श किया क्योंकि बहुत कम समय मिला, लेकिन जो भी हम सामूहिक रूप से इस पर विचार कर सकें उसके अनुसार मैं कह सकती हूँ कि इसमें दो तीन बातें जो कि हमारे समक्ष अभी श्रीमती निर्मला रानी पोद्दार ने रखीं उससे संबंधित मेरे मन में दो विचार हैं जो आपके समक्ष रखती हूँ । एक बात तो जिस लड़की के पति को सजा होगी तो उस लड़की को कोई कबूल नहीं करेगा । दूसरी बात यह है कि समाज में भी उस व्यक्ति के विवे

अच्छे विचार नहीं होंगे और तीसरी बात यह होगी कि जिस महिला के साथ जो कि उसकी पत्नी है और इस प्रकार का कुछ होता है तो उसको भी फस्ट्रेन होना और अगर उसका पति बहुत दिन तक उससे अलग रहता है तो और दूसरी समस्याएं पैदा हो सकती हैं जो कि शारीरिक, मानसिक और अन्य विचार उसके मन में आयेंगे जो कि उसके पूरे व्यक्तित्व को खराब कर सकती हैं। दूसरी बात जो मैं कहना चाहती हूं वह कोर्ट के बारे में है क्योंकि एक दिन मैं भी विटनेस बाक्स में गयी थी और बहुत सी बातें जो इस टाइप की थीं भुझ से पूछी गयीं और मैं वहां जवाब नहीं दे पाई तो जो रेप केसेज होते हैं उनके बारे में मैंने नहीं सुना लेकिन अवश्य ही उनके बारे में गहराई से सवाल पूछे जाते होंगे तो मेरा यह सुझाव है कि ऐसे केसेज के लिये महिलाएं ही जज, प्रकील और अगार हो सके तो पुलिस अफसर भी महिलाएं ही हों तो बेहतर होगा क्योंकि जो बहनें पढ़ी लिखी होतीं हैं वह भी अपनी बात को पुरुषों की उपस्थिति में नहीं बतला पाती हैं। क्रास एग्जामिनेशन में तो वह बेचारी अनपढ़ आदिवासी, हरिजन बहनें नहीं बता पाती हैं। मेरा माननीय सदस्यगणों से अनुरोध है कि वे इस प्रकार के केसेज के डिस्पोजल के लिये कोई समयावधि अवश्य निर्धारित करें तो अच्छा होगा क्योंकि हमने अभी पिछले दिनों में देखा कि बिल्ला और रंगा के केस में दो साल तक कुछ नहीं हुआ जिसके कारण पूरे देश की बहनों में एक रोष का वातावरण, आतंक का वातावरण बना रहा तो यदि इसके बारे में कोई समयावधि निर्धारित कर दी जाती है तो यह एक अच्छा अमेंडमेंट होगा ऐसा मैं मानती हूं।

SHRI BAPUSAHEB PARULEKAR: Do you feel that if husband is convicted and sentenced and after coming from the jail will the husband agree to accept his wife for the future life and marriage will not break? Will you agree with me that this provision should not be there in the Bill?

SHRIMATI FLORENCE JACOB: It will be nice.

SHRI BAPUSAHEB PARULEKAR: If in the court not only the judges are there but prosecutor and defence counsels are lady members then what will be the position of the male accused. We have to take into consideration that aspect also while making this legislation?

श्री बापुसाहेब परुलेकर : जैसा कि अभी आपने बताया कि महिला पुलिस आफिसर होनी चाहिए, महिला जज होनी चाहिये, महिला एडवोकेट होनी चाहिये, महिला डिफेंस होनी चाहिये इनके सामने ही केस का निर्णय होना चाहिये। ऐसी पोजीशन में एक्यूज्ड की क्या हालत होगी? इसमें क्या किसी निर्दोष को सजा नहीं मिल जायेगी।

श्रीमती फ्लोरेंस जेकब : आपने बिल्कुल ठीक ही कहा है कि पुरुष के बारे में भी यही बात हो सकती है। साथ ही साथ एक बात बिल्कुल सच है कि महिलाओं के लिये ज्यादा विचार करना है क्योंकि वे नहीं बोल पाती हैं। आपने शायद परसेटेंज भी देखा है महिलाओं का बहुत कम होता है। अच्छा होगा कि महिलाओं को भी रखा जाये। यदि एक एडवोकेट महिला है तो पुरुष भी एक रह सकता है।

MR. CHAIRMAN: Kindly introduce yourself one by one to the members of the Committee.

(1) I am Smt. Chandra Prabha Pateria from Jabalpur.

(2) I am Kamla Devi Jadhava, Gwalior. I am President of Social Health of Community Branch, Madhya Pradesh.

(3) I am Pragya Mukherjee, President, Mahila Vikas Parishad and Ex-Secretary, Family Planning Association, Bhopal.

(4) I am Prakash Kumari Harkawat, Secretary, Mahila Vikas Parishad.

(5) I am Mandakini Wakanker.
Nari Kalyan Kendra.

MR. CHAIRMAN: Would you like to give your statement jointly or separately?

SHRIMATI MANDAKINI WAKAN-
KER: My first suggestion is that the Bail should not be made easy for the rapist. Secondly, immediate and effective disposal of the case should take place otherwise its importance, effectiveness and impact of the case is lost if the time consumption is there. Proceedings should be *in camera* and preferably lady magistrate should be appointed so that the victims will easily give statement freely otherwise all the details and facts will not come before the male magistrate.

SHRIMATI KAMLA DEVI JA-
DHAV: In Section 228(b):—

“any matter in relation to a proceeding held in a court *in camera*, is prohibited, any person who prints or publishes any such name or matter shall be punished with imprisonment...”

But when it is done in the case of High Court and Supreme Court that should not be there. If a girl is raped, her name will also come, as well as the prestige of the family. In this way complications will arise. So, in that case, I would suggest that in High Court's and Supreme Court's judgement the name of the victim should not be printed. The name may be printed in Law Journals but not in the newspapers. Next, I would like to suggest that the punishment shall not be less than 2 years. My suggestion is that for the disposal of the cases, the maximum period should be 3 months and it should be more effective and immediate. It should not be easily bailable. The next suggestion, I would like to suggest that the courts dealing with these cases should be presided by the lady judges. Another point I

would like to suggest here is that we should have special courts for these cases, because the existing courts take more period. Another thing, I would like to suggest about investigation in rape cases, it should be done by lady police officer. A cadre of lady police officer particularly we have experienced I.P.S. lady officers but we do not have in the cadre like S.O.T.I, etc. So the cadre of lady officers should be prepared for these lower cadres and then only it will be easier for a woman victim to express, in details freely. Next, my submission regarding bail is that it should be made difficult. I would like to point out regarding exception given in the Bill i.e.:—

“Sexual offence by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

In this connection, I would like to suggest that we know that child marriage under 15 years is still there, because this will spoil the family life of the girl. So, I would like to suggest this sentence ‘under 15 years’ should be removed. Whether she is under 15 even then she is wife, therefore, man should not be punished. Their parents must be punished for doing early marriages of their children.

Lastly, I would like to suggest that when the Committee is dealing with the rape case, I would like to draw the attention of the Committee that some provisions should be there about immoral traffic because I have an experience about this we have also started rescue homes for these girls who are indulged in immoral traffic. I am talking about village girls who are uneducated and from poor families, they have no sources and they become their victim and they surrender to them. In this way these girls are sold for immoral traffic. This should also be kept in mind when we are enacting a legislation. Notice should be taken of. These are the only points which I have laid before the Committee.

SHRIMATI PRAGYA MUKHERJI:
I would suggest that the 'Exception' of the Section 375 should be deleted. Supposing if a case of rape with a girl and she becomes pregnant then there should be some punishment and the abortion should be done legally by the Government. There should be a home to have some arrangement for the child. Besides this, offender should be exposed before the society by publishing his name in the newspapers. But the name of the girl and the name of the family should not be published. Lady judges should be there so that a girl can talk very freely and will be able to give details at the time of the cross examination. The punishment should be most stringent. There should be a capital punishment also.

श्रीमती प्रकाश कुमारी हरकावत :
आदरणीय सभापति महोदय, अभी हमारी बहन ने आपके सामने अपनी बातें रखी हैं तो उसमें जो दण्ड का प्रश्न आया है उसमें मेरा कहना यह है कि इसमें जो दण्ड का प्रावधान रखा गया है वह बहुत ही कम रखा गया है। मेरा कहना यह है कि यदि पुरुष कोई अपराध करता है तो उसको कड़े से कड़ा दण्ड मिलना चाहिये। यह नहीं कि उसने अपराध किया और दो वर्ष या सात वर्ष का दण्ड दे दिया। यह काफी नहीं है। जब किसी महिला के साथ कोई पुरुष रेप करता है तो वह महिला उसका आजीवन दण्ड भुगतनी है। उस महिला को समाज भी स्वीकार नहीं करता है। उसकी ठीक से शादी भी नहीं होती है। कोई अच्छा आदमी उससे शादी करने के लिए तैयार नहीं होता है। यदि शादी होती भी है तो उसको कोई लूला, लंगड़ा आदमी ही मिलता है। इस तरह वह महिला उसका आजीवन दण्ड भुगतती है। उसके मुकाबले में पुरुष को जो दण्ड रखा गया है वह कम है। ऐसे अपराध के लिए पुरुष को कड़े से कड़ा दण्ड मिलना चाहिये। यह जो

दण्ड रखा गया है इस पर मेरा विशेष आग्रह है कि यह कम है इसे और बढ़ाया जाना चाहिये। जब तक आप पुरुष को इसके लिए अधिक से अधिक दण्ड नहीं करेंगे तब तक कुछ नहीं होगा।

दूसरी बात यह है कि सभी चीजें इस बिल में आई हैं लेकिन एक बात नहीं आई है और वह यह कि जब इस तरह के रेप केसेज होते हैं और उसकी हमें जैसे ही सूचना मिलती है हम वहां भागकर जाते हैं और उन पीड़ित लड़कियों को लेकर थाने जाते हैं उस समय पुलिसका जो हमारे साथ व्यवहार होता है वह अच्छा नहीं होता है। हम उस पीड़ित बालिका का बचाव करना चाहते हैं, उसको संरक्षण दिलवाना चाहते हैं लेकिन पुलिस हमें ह्यास करती है। पुलिस ह्यासमेंट के कारण अधिकतर महिलायें इस आंदोलन में नहीं होती हैं। तो इसमें हमारे साथ पुलिस का बर्ताव अच्छा हो इसके लिए आपको कुछ करना चाहिये। ताकि भविष्य में हम पुलिस द्वारा सताये न जावें जब हम इस तरह की पीड़ित महिला को संरक्षण देते हैं तो इस विधेयक में हमारी भी सुरक्षा का प्रावधान होना चाहिये। क्योंकि जब हम ऐसी पीड़ित महिला को संरक्षण देते हैं या कि उसको थाने ले जाते हैं उसकी रिपोर्ट लिखवाते हैं तो बदमाश लोग हमारे पीछे गुण्डे लगा देते हैं। हमें कभी-कभी सुबह 9 बजे भी घर से निकलना पड़ता है। कभी-कभी रात में भी जाना पड़ता है तो हमारी सुरक्षा तो होनी ही चाहिये। इस और आपको ध्यान देना चाहिये।

तीसरी बात मैं यह निवेदन करना चाहती हूँ कि जब ऐसी पीड़ित महिला का केस हो, यदि संभव हो सके तो उस केस को महिला जज देखें और उसमें वकील भी महिला हो। यदि ऐसा होगा तो मैं समझती हूँ कि उस पीड़ित लड़की

को जवाब देना घासान हो जायेगा, नहीं तो होता क्या है कि उस महिला से ऐसे-ऐसे सवाल किये जाते हैं कि वह उसका उत्तर धर्म के कारण नहीं दे पाती है। ऐसे-ऐसे प्रश्न किये जाते हैं जिनको कि हम सुनना भी पसन्द नहीं करते हैं। तो इस केस को महिला जज देखे और वह केस जो हों वह बन्द कमरे में हों तो उचित होगा। मेरा मतलब उस महिला के बयान से है वह बन्द कमरे में होना चाहिये।

मेरा चौथा सुझाव यह है कि जब माता पिता ने अपने लड़के लड़कियों की 15 साल की एज में शादी कर दी तो फिर वे पति पत्नी के रूप में रह सकें। उनको उसके लिए रेप मानकर सजा न दी जाये और सजा देनी ही हो तो फिर उनके माता पिता को दी जाये।

श्रीमती चन्द्रप्रसा पट्टेरिया : मेरा एक सुझाव यह है कि रेप केस में जो लड़की मुक्तभोगी होती है उसकी समाज में काफी बदनामी हो जाती है और उसकी शादी के समय काफी झड़वें आती हैं, अतः इस केस को पूरी तौर से गुप्त रखा जाना चाहिये और युवाओं को ऐसी लड़कियों के साथ बिबाह हेतु प्रोत्साहित के लिये भी कुछ किया जाना चाहिये।

प्रो० निर्मला कुमारी शकशावत : आप सभी बहनों ने काफी अच्छे सुझाव दिये जिसके लिये मैं समिति के सभी सदस्यों की ओर से आप सभी को धन्यवाद देना चाहूंगी। इसी के साथ मैं आप लोगों से एक प्रश्न पूछना चाहूंगी कि न्यायिक पृथक्करण के समय पति अगर पत्नी से सम्भोग करता है तो क्या उसको आफेन्स मानकर पति को सजा दी जाना चाहिये ?

श्रीमती चन्द्रप्रसा पट्टेरिया : जी नहीं।

[The witnesses then withdrew]

VIII—Association for Social Health in India, Gwalior.

Spokesman:

Shri Ram Sanahi

[The witness was called in and he took his seat]

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witness appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

श्री राम सिनेही : मैं यह कहना चाहता हूँ कि बलात्कार होने का कारण आर्थिक पिछड़ापन है। वे धन के लालच में पड़कर भाग कर आती हैं और इसे एक प्रकार से आर्थिक साधन बनाती हैं उसे बलात्कार नहीं माना जाना चाहिये। लेकिन यदि किसी स्त्री या लड़की को कोई उसके मां बाप के घर से या पति के घर से उसे फुसलाकर उसकी मर्जी से लाया जाय और किसी दूसरे को बेच दिया जाता है तब इसे बलात्कार माना जाना चाहिये और इस प्रकार से उसके साथ जबर्न सामूहिक रूप से बलात्कार होते हैं। इस संबंध में मेरा एक सुझाव है कि यदि कोई भी व्यक्ति किसी लड़की को उसके माता पिता के यहां से या उसके पति के यहां से बगावत है तो उस लड़की

या स्त्री के दवाग की गयी रिपोर्ट के आधार पर ही इसे बलात्कार मान लिया जाना चाहिये। इससे अधिक और सबूत मांगने की आवश्यकता इसमें नहीं है। इसके साथ ही जो भी व्यक्ति इस प्रकार से लड़कियां भगाकर अड्डों में लाते हैं या सप्लाई करते हैं, उनके साथ घन के कारण बलात्कारिक अपराध होते हैं तो उतना ही सबूत पर्याप्त मान लिया जाना चाहिये और उन लोगों के विरुद्ध राष्ट्रीय सुरक्षा अधिनियम, 1980 की धारा 212 या 16 के तहत कार्यवाही की जाय तो बलात्कार की घटनाएं काफी तादाद में रकींगी।

IX—Shrimati Jayaben MLA, Madhya Pradesh.

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

श्रीमती जयाबेन : मैंने देखा है कि कई महिलाएं इसका शिकार होती हैं और फिर समाज भी उन पर अत्याचार करने में नहीं चूकता है, मैंने अनेक ऐसी लड़कियों की शादियां करवाई हैं, शारदा एक्ट में संशोधन कर इसमें कुछ कमी लाई जा सकती है। विधान सभा में भी एक दिन भी ऐसा नहीं होता जिस दिन बलात्कार का एक न एक केस न आए। कहीं-

कहीं रक्षक ही भ्रमक बन जाते हैं इस-लिये पुलिस अगर इस प्रकार का कार्य करती है तो उनके खिलाफ कड़ी से कड़ी कार्यवाही की जानी चाहिये ताकि दूसरों को सबक मिले। कानूनी दण्ड भी कड़ा से कड़ा होना चाहिये।

प्रो० निर्मला कुमारी : क्या इस हेतु मृत्यु दण्ड दिया जाना चाहिये ?

श्रीमती जयाबेन : नहीं। 6-7 साल की सजा काफी है। मेरा कहना है कि सुनवाई हेतु अगर मिल सकें तो महिला जज हों तो अधिक उचित होगा।

प्रो० निर्मला कुमारी : कड़ी से कड़ी सजा से आपका क्या तात्पर्य है, क्या आप चाहती हैं कि मुस्लिम ला के तरह से हमारे यहां भी भ्रम काट दिये जायें ?

श्रीमती जयाबेन : जी हां। अगर दो चार अपराधियों के भ्रम काट दिये जायेंगे तो इस पर काफी रोक लग जाएगी।

श्री हुकमदेव नारायण यादव : अभी आपसे पहले भी कई महिलाएं आईं। आपने भी कहा कि महिला जज होना चाहिये। सुझाव ऐसे भी आए कि महिला वकील हो, महिला पुलिस आफिसर हो, महिला जज भी हो तो इतनी सारी महिलाएं जब इक्ट्ठा हो जाएंगी तो क्या अकेला पुरुष क्रास एग्जामिनेशन के समय नर्वस नहीं हो जायेगा ?

श्रीमती जयाबेन : हो सकता है। लेकिन दुख इस बात का है कि अनेक वर्षों से इस समस्या के निदान के लिये हम प्रयास कर रहे हैं लेकिन यह समस्या सुलझ नहीं पाई है। नर्वस न करने के बजाय उसको प्रताड़ना दी जानी

चाहिये, हाथ पैर काट लेने से समाज में डर पैदा होगा और इस पर रोक लगेगी। अन्यथा रोज यह किस्से होते ही रहेंगे।

श्री हुक्मदेव नारायण यादव : आप लोगों का कहना है कि महिलाएं महिलाओं के सम्बन्ध में ज्यादा जानकारी रखती हैं और उनके प्रति ज्यादा उदार रहती हैं और मुक्त भोगी महिला महिला के सामने फ्रीली अपनी बात कह सकती है और यह भी अपने आप में एक सत्य है कि देश में कई अड्डे भी महिलाएं ही चलाती हैं। पुरुषों के द्वारा अड्डे कम चलाए जाते हैं, इन परिस्थितियों में क्या गारंटी है कि महिला पुलिस आफिसर या महिला जज महिला मुक्त-भोगी के प्रति ज्यादा उदार ही रहेंगी ?

श्रीमती जयाबेन : आपका प्रश्न सही है, लेकिन यह भी सत्य है कि ऐसे अड्डों पर पुरुष भी कई स्थानों पर होते हैं और दलाल पुरुष ही होते हैं। मेरा कहना है कि जज महिला ऐसी नहीं हो सकती।

श्री त्रिलोकचन्द्र : आप विधान सभा सदस्य हैं अतः आपको विधान सभा का

अनुभव है और संसार का भी अनुभव है आपने भी महिला जज और महिला वकील की बात कही मेरा कहना यह है कि विधान सभा और लोक सभा में बलात्कार के किस्से पुरुषों के द्वारा ही ज्यादा उठाए जाते हैं बनिस्वत महिलाओं के। इस बात को आप भी स्वीकार करेंगी। तो इसमें कौन सी ऐसी बात है जिसके कारण आप सोचती हैं कि पुलिस आफिसर या जज या वकील अगर पुरुष होता है तो वह ठीक तरह से डील नहीं करेगा ?

श्रीमती जयाबेन : ऐसी बात नहीं कि अगर हमारे क्षेत्र में ऐसी कोई वारदात होती है तो हम खुद उसको बताते हैं शासन से भी निवेदन करते हैं। सत्ता पक्ष के होते हुए भी इस सम्बन्ध में शासन से कहते हैं। अभी हाल ही में हम 19 महिला विधायकों ने मिलकर मुख्यमंत्री से एक प्रस्ताव के माध्यम से निवेदन किया है कि बलात्कार के अपराधी के खिलाफ कड़ी से कड़ी कार्यवाही की जानी चाहिये।

The Committee then adjourned.

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE OF THE CRIMINAL LAW
(AMENDMENT) BILL, 1980**

*Tuesday, the 7th July, 1981 from 10.00 to 14.00 hours and again from 15.30 to 17.30
hours, Conference Hall, Vallabh Bhavan, Bhopal*

PRESENT

Shri D. K. Naikar—Chairman

MEMBERS

Lok Sabha

2. Shri Rasa Behari Behra
3. Shri R. K. Mhalgi
4. Shri K. S. Narayana
5. Shri Ram Pyare Panika
6. Shri Bapusaheb Parulekar
7. Shri R. S. Sparrow
8. Shri Trilok Chand
9. Shri P. Venkatasubbaiah

Rajya Sabha

10. Shri Ramchandra Bharadwaj
11. Shri Amarprosad Chakraborty
12. Shri S. W. Dhabe
13. Shri B. Ibrahim
14. Shri Dhuleshwar Meena
15. Shri Hukm Deo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—Senior Legislative Committee Officer

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

Shri M. P. Khosla, Officer on Special Duty

WITNESS EXAMINED

I. Government of Madhya Pradesh, Bhopal

Spokesmen:

- (i) Shri Brahma Swarup, Additional Chief Secretary and Home Secretary.
- (ii) Shri K. K. Singh, Deputy Inspector General of Police.

- (iii) Shri J. A. Khare, Deputy Secretary Law Department
- (iv) Shri R. N. Sangani, District and Session Judge, Bhopal.
- (v) Dr. (Smt.) Gidwani, Superintendent, Sultania Hospital, Bhopal.
- (vi) Shrimati Sushma Nath, Collector, Narsimhapur.
- (vii) Shri R. S. L. Yadav, Superintendent of Police, Bhopal
- (viii) Shri R. N. Vaidya, Director of Panchayat and Social Welfare, Bhopal.
- (ix) Shri Vijaya Singh, District Magistrate, Bhopal.
- (x) Shri B. S. Acharya, Additional District Magistrate, Bhopal.
- (xi) Shri Heeresh Chandra, Director Medico Legal Institute, Bhopal.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

SHRI BRAHMA SWARUP: My name is Brahmaswaroop, Additional Chief Secretary and Home Secretary.

SHRI K. K. SINGH: My name is K. K. Singh, D.I.G. (C.I.D.) and am representing the I.G.P.

MR. CHAIRMAN: What do you want to say.

SHRI BRAHMASWARUP: Sir, I have seen the draft Bill and as the intention of the bill is to make a punishment of offence of rape cases stringent. I would like to say about Section 376(A). The proposed clause refers to sexual intercourse by a public servant in whose custody a woman is placed. Generally if consent is there, I suppose no evidence

could be forthcoming. Therefore, I do not know whether this clause will serve any particular purpose. But otherwise this clause does not have any objection so far as I conceive. This is all comments I would like to make otherwise I do not find anything wrong with the proposed law.

MR. CHAIRMAN: I could not follow that. What is your intention? Make it clear.

SHRI BRAHMASWARUP: Section 376(A) of the proposed bill refers to a sexual intercourse with her consent when she is placed in custody in question.

MR. CHAIRMAN: What is your suggestion?

SHRI BRAHMASWARUP: Even if it not there, this provision does not effect efficiency of the legislation. It does not do any harm, that is all I am trying to say.

MR. CHAIRMAN: I am telling you please say that clause 376 deals with rape cases of persons who are in authority, the punishment is also provided there. If rape is not proved but authority concerned does offence is proved that there was sexual intercourse, that is provided under Section 376 (A) in respect of persons who are in authority. I think now you have followed this. Tell me what you have to say regarding this?

SHRI BRAHMA SWARUP: Sir, I would like to say if the woman in question has given her consent would she complain, that question arises?

MR. CHAIRMAN: I will explain in this way that suppose a woman has been arrested and put into the custody of police officer, then the police officer having custody of that lady for some time and during that period with domination on her he commits the rape. There is, the presumption also by the court. Suppose at any rate if the rape is not proved by the prosecution as against the police officer the only intercourse is proved then he must be given punishment that is the idea in 376(A).

SHRI BRAHMA SWARUP: I have already said, it is quite clear what you are saying. If you are saying during the course of investigation it lies in the charge of public servant, such as police man.

MR. CHAIRMAN: Please, what you want to say, clarify.

SHRI BRAHMA SWARUP: I have only submitted is this that this clause 376(A) implies when the woman consent is clear. Now assuming it is there, complainant cannot be the woman in question. How this clause will be in operation. This was the only point.

MR. CHAIRMAN: According to you, this clause is redundant?

SHRI BRAHMA SWARUP: Yes.

MR. CHAIRMAN: Only one point?

SHRI BRAHMA SWARUP: Yes.

SHRI R. K. MHALGI: The views you have put forth before the committee are your personal views or the views of the Government of Madhya Pradesh?

SHRI BRAHMA SWARUP: All the officers who are submitting their views before this committee are their

personal views on the basis of their experience and understanding, no Government views.

SHRI R. K. MHALGI: In a conference the views laid down by Government officers were they not official views because as many as seven suggestions were given which are already here?

SHRI BRAHMA SWARUP: They were submitted in the conference. In that conference views were on the basis of proposed law, they were circulated to the various State Governments.

SHRI R. K. MHALGI: Are you not representing the Government here?

SHRI BRAHMA SWARUP: I am a representative of the State Government. I would submit before the committee that those suggestions given at that time were not the policy formation of the Government.

SHRI R. K. MHALGI: The representatives who have expressed on this provision of amendment of the Bill, they have no comments.

SHRI BRAHMA SWARUP: May I clarify again? The views expressed were not of the Government. They were on the basis of an apprehension of the association. There was no policy formation. Those views we have expressed in the official capacity also.

MR. CHAIRMAN: Mr. Additional Chief Secretary, today you are representing the Government and therefore I have no objection to it if you add something in your individual capacity. But the contentions taken by the Government, you will have to maintain it. Perhaps you must understand the position whichever you have given as an Additional Chief Secretary representing the Government.

SHRI BRAHMA SWARUP: Sir, I have already expressed it. I find this lic servant or in the custody of a lic servant, the views expressed by the individual officers may be kept in view.

SHRI P. VENKATASUBBAIAH: Mr. Additional Chief Secretary, you have made some statements before the committee. When the question has been asked by the some honourable members about the formulation of policy by the previous conference of the State Governments' nominees and you have come here as a spokesman of the Govt. You have come here as in individual capacity or the representative of the Govt.? You will have to stick on those decisions you have already taken in that conference. Government as such has not made any formulation policy on this particular Bill. In this way you have submitted before the committee two contradictory statements. In this regard, so far as Government is concerned, can you say, this provision is unexceptionable. I want to ask you now that what is the actual position?

SHRI BRAHMA SWARUP: Sir, today what I have said is on behalf of the Government, this I have said. Earlier we find the proposed law unexceptionable. Next, only the reference was made in the conference last year which was convened by the Home Ministry. At that time the matter was under examination even in the ministry. We had circulated certainly the draft of law but at that time a question of the policy formation did not arrive, because the matter was at the consideration stage. The conference considered various issues. We only expressed our views at the conference. Thirdly, I will refer to Section 376(A) and point out that in my individual opinion this Section does not make much difference. I have given the reasons. I would finally submit that there is no contradiction.

SHRI P. VENKATASUBBAIAH: Firstly, you said it was my individual views and secondly you are telling here as Govt. representative and you are not giving clear views on this particular amending Bill. Now, finally, what you have to state?

SHRI BRAHMA SWARUP: I have already summarised before the committee, this may be accepted.

SHRI S. W. DHABE: Do you feel that this clause 376(A) not necessary in your individual opinion. Have you got any departmental enquiries rules if a police officer misbehaves or does intercourse with a woman?

SHRI BRAHMA SWARUP: In regard police personnel there are no separate rules. It is covered by the general.

SHRI S. W. DHABE: Whether it is misconduct or not?

SHRI BRAHMA SWARUP: Not only it will be a misconduct, in the service rules it is also a criminal offence. This will be a grave misconduct and is liable for dismissal from the service.

SHRI S. W. DHABE: When there is consent there is no offence and so no rape also. Section 376(A) reads as thus:—

“Whoever, being a public servant, takes undue advantage of his official position and seduces any woman, who is in his custody as such public law *unexceptionable*. While forming public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.”

If this offence takes place, according to you, intercourse will be permitted?

SHRI BRAHMA SWARUP: If the consent is there then who would complain?

SHRI S. W. DHABE: I am restricting it to only police officer who will misuse their position and in such a way a large number of such cases will come up then what you have to say about this?

SHRI BRAHMA SWARUP: This should be deleted.

SHRI BAPUSAHEB PARULEKAR: With reference to Section 376(A) you have said that this is redundant of course, if it is redundant, we don't want repetition. Have you read this Section 376(A)? The section mentions:—

"If a public servant, takes undue advantage of his official position and seduces any woman."

When a public servant does intercourse with her consent still do you feel that it is redundant?

SHRI BRAHMA SWARUP: It will be very very remote case.

SHRI AMARPROSAD CHAKRABORTY: Mr. Additional Chief Secretary, have you got any statistics on the crimes of rapes?

SHRI BRAHMA SWARUP: I haven't.

SHRI AMARPROSAD CHAKRABORTY: Whether it is on increase or decrease? On the basis of report of Govt. of India in Madhya Pradesh the cases of crime in 1976 are 598 out of 3083. So at present how many cases are there?

SHRI BRAHMA SWARUP: This information is not available with me.

SHRI AMARPROSAD CHAKRABORTY: D.I.G. is sitting by you, he can help you. In Madhya Pradesh kidnapping cases are 860 rape are 698 in 1976. I am giving this figure from the 'Crime Report of the Government of India'.

SHRI BRAHMA SWARUP: We do not prepare from that point of view, we don't have that information just now.

SHRI AMARPROSAD CHAKRABORTY: By giving deterrent punishment these cases will come to decrease or not?

MR. CHAIRMAN: The answer by the witness is that he has not collected the figures.

SHRI K. K. SINGH: I agree with the provisions of this Bill.

MR. CHAIRMAN: Have you any suggestion to give?

SHRI K. K. SINGH: I have no suggestion.

SHRI BAPUSAHEB PARULEKAR: Can you give the percentage of the crime cases?

SHRI K. K. SINGH: No Sir.

SHRI AMARPROSAD CHAKRABORTY: It is a very serious matter, that the concerned Add. Chief Secretary and D.I.G. have come here as a representative of the Government and they are unable to give figures.

SHRI BAPUSAHEB PARULEKAR: When the representatives of the Government say that they entirely agree with all the provisions of the Bill then, therefore, no need to ask any question.

SHRI S. W. DHABE: I would like to know that for the last two years how many rape cases at police station done by the public servant or in the public custody in Madhya Pradesh?

SHRI K. K. SINGH: It is difficult to give now, but I think there should be 15 cases within a year, 10 cases by police man and 4 to 5 by other departments but I can not tell you more than this.

SHRI S. W. DHABE: Can you supply this information later on?

SHRI K. K. SINGH: Yes, I will send it later on.

SHRI S. W. DHABE: How many women police officers are employed in Madhya Pradesh? What is the total number of police officers and percentage of woman officers?

SHRI K. K. SINGH: We have 1 S.P. who is lady then 2 Dy. S.P. and other ranks which I do not know the number but we have some. I do not deal with the establishment matter so, I don't know. But we have a strength of 75 thousand policemen in the State.

SHRI S. W. DHABE: We have come here to know the gravity of the problem about police cases. I.G.P., is he here today?

SHRI K. K. SINGH: He has gone out.

SHRI S. W. DHABE: Are you in favour that Section 376 should be deleted?

SHRI K. K. SINGH: I have already said that I agree with all the provisions of the bill.

SHRI R. K. MHALGI: Have you got any report that the victims of the rape cases have rushed to the police station for lodging a complaint but the police have not recorded them?

SHRI K. K. SINGH: Whenever our officers come to know they get it registered and investigate the matter and try to punish the offenders.

SHRI BAPUSAHEB PARULKAR: Mr. D.I.G., do you feel that some changes should be made in the Cr. P.C.?

SHRI K. K. SINGH: This has been already incorporated in the Bill.

SHRI B. IBRAHIM: Whether it is correct to say that in Madhya Pradesh women have lost confidence in police force?

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SHRI K. K. SINGH: I think it is not correct, Sir.

श्री हुकुम देव नारायण शास्त्री : आपने अपनी कहा कि आप इस संतोषन बिल के सभी प्रावधानों का समर्थन करते हैं तो क्या मैं जान सकता हूँ कि आप यह समर्थन अपनी स्वेच्छा से दे रहे हैं या मन्डर प्रेशर दे रहे हैं ?

श्री के. के. सिंह : मैं स्वेच्छा से समर्थन कर रहा हूँ ।

I have already submitted the suggestions for changes in the Criminal law (Amendment) Bill, 1980 in writing. The draft may be changed wherever necessary.

MR. CHAIRMAN: What you have given in writing apart from this, have you to say something more?

SHRI J. A. KHARE: First of all I will like to draw the attention of the committee towards some typing mistakes in my written statement which I have given. On first page the 'New Section 288 (A)' please may be read as 'New Section 228(A)'. I will first touch upon the proposed Section 111(A) of the Indian Evidence Act. As the proposed measure ought not to be half-hearted and I am of the respectful opinion sir, that, some more offences should be included because many a time cognizance is not taken in the cases of offences against 'Ablas' who are unable to approach the police station. I invite the attention of the Chairman and learned members of this committee to pages 12 and 13 of my note. My draft is more comprehensive as I have included there in Sections 354, 363, 366, 366(A), 366(B), 367, 370, 372, 373 and 376 and the new Section 376 (A), (B) and (C) and also 509 of the Indian Penal Code. Beside, this, I have also included therein Sections 5 and 6 of Suppression of Immoral Traffic in Women & Girls Act, 1956. These sections, 5 & 6 deal with the procuring.

inducing or taking the woman or girl for the sake of prostitution, detaining a woman or girl in premises where prostitution is carried on. So I feel that these sections should be included and the extent of presumption is also indicated by me in column 4 of the table. I have indicated it distinctly.

MR. CHAIRMAN: By way of interruption I want to know that whether presumption in rape cases is provided so that the consent is concerned there should be no presumption. I want to know it is not clear in my mind.

SHRI J. A. KHARE: I beg to draw your attention towards the column 4 of my table in S. III-A so that if a woman says on oath before the court then the presumption is there.

MR. CHAIRMAN: You happened to be D.J., some cases might have come before you.

SHRI J. A. KHARE: I know one of the case of Indore in which a 9 year old Sindhi girl was taken by a man in the bush nearby the road and he tried to rape her he was not satisfied. He had carnal intercourse with her and then killed her. I have a certified copy of that case. The second suggestion is about the freedom of the press. In this connection I would like to draw the attention of the committee towards the opinion expressed by Jefferson, President of America about freedom of press (Read from the book, Vol IV page No. 359). In this regard, I have already suggested draft in my note under Section 228 (A)—Disclosure of identity of victim of certain offences, etc.

MR. CHAIRMAN: You referred the Jefferson's statement, that was statement for the American democracy that has also been defined by Abraham Linken as thus:

'The democracy is a form of a Government of the people, for the people and by the people.

But here in India the system of democracy is different, we have parliamentary system of democracy. In America the social life of the people differs from ours.

SHRI J. A. KHARE: I agree. Here in the Bill under Section 375 clause (5) it is given that:—

'With her consent, when her consent is given under a misconception of fact, when the man knows or has reason to believe that the consent was given in consequence of such misconception.'

It should be deleted because for an example if a man allures a lady by saying that he will keep her happy and will take her to the foreign cities like New York, Honolulu and all other places for enjoyment. In this way they have some nice time and afterwards he does not keep his promise. Such type of cases should not be treated within the ambit of rape. Therefore, I humbly submit it should be deleted. It is a case of cheating. One more point I have to suggest in regard to Explanation No. 2:—

"A woman living separately from her husband under a decree of judicial separation shall be deemed not to be his wife for the purposes of this section."

It is not clear whether this clause is for Hindu or Muslims because amongst Hindus there is a deep Sacramental significance for marriage, therefore, such provision will not serve any useful purpose. Therefore, this also be excluded. Sexual intercourse by man with his own wife under 15 years of age is not rape. In our state of Madhya Pradesh in Jabua the Adivasis perform child marriage. They are not governed by Hindu Law or by Muslim Law but by their own customary laws. There is no calling of 15 years. You will be surprised that in Mohammdana as per Siya Law, age of first menstruation for girls is between 8 to 13 years. Therefore, if a girl before

15 years of age, lives with her husband, and if intercourse takes place between the spouses I feel it should not be treated as rape. Then I will come to Section 376(A), (B) and (C). These provisions are good. I have made a some changes in that. Then, I submit that sub-section (2) of Section 228, according to me is unnecessary for two reasons. First because under marriage laws (Amendment) Act 1976 which has amended (i) Hindu Marriage Act 1955 and Special Marriage Act 1954 unauthorised printing or publishing. I can quote relevant sections. One is Section 22(2) of Hindu Marriage Act the other is Sec. 33(2) of the Special Marriage Act. We are trying to amend Cr. P.C. I have suggested the offences will be cognizable it may be bailable with maximum 6 months punishment with or without fine, or both. Second innocent printing or publication without providing exceptions should not be as offence.

श्री हुकम देव नारायण बाबू : मैं उप सचिव विधि से जानना चाहूंगा कि अभी कई महिलाएं आई थीं जिन्होंने यह सुझाव दिया था कि ज्यूडिशियल सेपरेशन के बाद और तलाक के पहले अगर पति पत्नि से इन्टरकोर्स करता है तो वह रेप न माना जाय लेकिन आप कहते हैं कि ज्यूडिशियल सेपरेशन और डायवोर्स के बीच में पत्नि पति की पत्नि रहती है और ऐसी स्थिति में पत्नि की इच्छा के विपरीत अगर पति संभोग करता है तो वह कोर्ट में जा सकती है।

श्री जे ए धरे : वह रेप तो होगा। यह बात प्रजग है कि वह कोर्ट में जाये कि नहीं।

SHRI BAPUSAHEB PARULEKAR:

It is already provided in the Bill that intercourse between husband and wife, wife not being under 15 is no rape but if under a decree of judicial separation it will be a rape. What you have to say.

SHRI J. A. KHARE: It will be a rape, certainly. If intercourse is against her will or without her consent.

SHRI R. K. MHALGI: Mr Khare, you have read the Bill wholly, I am just putting one question regarding Section 111(A) about presumption. You desired that the presumption should also be drawn to a limited extent.

SHRI J. A. KHARE: Yes. I have indicated every thing regarding Section 376, I.P.C. in my draft for section III—A vide pages 13 and 14 of my drafts.

SHRI R. K. MHALGI: You were District and Section Judge from April 76 up-to what-date?

SHRI J. A. KHARE: From about October, 1958 to 1968 I was Magistrate First Class. Then I was Additional Sessions Judge from 1968 to 1976.

SHRI R. K. MHALGI: Then you must have tried such cases. What is the percentage of conviction and acquittal?

SHRI J. A. KHARE: There was higher percentage of acquittals. Many alleged cases of rape come up are of Sexual intercourse with consent which are exposed.

SHRI R. K. MHALGI: As a Session Judge you must have tried some cases. I want to know the percentage of acquittal from your experience?

SHRI J. A. KHARE: Higher percentage of acquittal is there.

SHRI S. W. DHABE: I want to ask about the Section 375 clause (5) of the original Bill about age:—

“Seventhly—with or without her consent, when she is under sixteen years of age.”

Now, I will like to draw the attention to Section 361 of the Indian Penal Code. there the age has been raised. Here both the sections, are communicated to you. So, I would like to know that whether

there should be uniformity, whether it should be 16 or 18?

SHRI J. A. KHARE: It is a policy matter. I agree that there should be uniformity.

SHRI S. W. DHABE: The trial should be in camera or not looking at the freedom of press given by the Constitution?

SHRI J. A. KHARE: I feel, the trial should be in camera for sexual offences. There must be reasonable restriction on the freedom of press about rape cases.

MR. CHAIRMAN: Here, the provision prohibiting trials. It should be in camera. What is your opinion, whether discretion should be given to the court or not?

SHRI J. A. KHARE: It should be left on the discretion of the court. This is my personal view.

SHRI RASABEHARI BEHRA: After rape both are willing to marry then?

SHRI J. A. KHARE: There is no prohibition and no harm.

SHRI R. S. SPARROW: Can you recommend any reforms?

SHRI J. A. KHARE: In many cases I have seen that for chemical and serological examination 4 or 5 months are being taken. This delay should be reduced. Generally, I have seen in many cases investigation is being done by the head constables, even in the case of rape. My suggestion is that investigation should be done by responsible police officer.

MR. CHAIRMAN: I want clarification from you that you were D.J. for a long time so I want to know that have you come across such a case where wife complained of rape against her husband?

SHRI J. A. KHARE: So far I am concerned as a Sessions Judge. I have not come across such type of cases. I have not tried such a case.

MR. CHAIRMAN: Please read the Section:

"Exception—Sexual offence by a man with his own wife, the wife not being under fifteen years of age, is not rape."

SHRI J. A. KHARE: If husband, after marriage merely commits sexual intercourse with his wife who is over 15 years, does not amount a rape.

SHRI BAPUSAHEB PARULEKAR: Leave aside this. If decree of judicial separation with the wife and husband is there and if husband does forcible intercourse, will it be rape or not?

SHRI J. A. KHARE: It is so, Sir, because it is against desire.

MR. CHAIRMAN: You please refer the clause 7:

'With or without her consent when she is under sixteen years of age.'

In these circumstances, if a case of rape committed by husband with his wife under the age of sixteen with or without consent, would it not be an offence? Do you agree?

• **SHRI J. A. KHARE:** If there is no consent, then it is rape.

MR. CHAIRMAN: I will put another case before you. Suppose the wife who is 40 years of age she does not give consent and even then husband does sexual intercourse. Then intercourse is not rape. Do you agree with this proposition?

SHRI J. A. KHARE: Without consent it will be a case of rape.

श्री हुकूम देव नारायण बाबू : इस बिल के पेज 3 पर आप देखें 'अपवाद' में लिखा है कि पुरुष का अपनी पत्नी के साथ मैथुन बलात्संग नहीं है। जबकि वह पत्नी पन्द्रह वर्ष से कम आयु की नहीं है।

श्री जे. ए. खरे : केवल सम्भोग होता है और पत्नी की आयु 15 वर्ष से अधिक हो। इसमें अबरवस्ती की बात नहीं कही है।

श्री हुकूम देव नारायण बाबू : 15 साल से अधिक की आयु हो और उसकी इच्छा के विपरीत सम्भोग करता है तो ?

श्री जे. ए. खरे : तो उसको धारा 376 के अन्तर्गत बलात्कार की सजा होगी।

श्री हुकूम देव नारायण बाबू : इस हिसाब से अगर ज्यूडिसियल सेप्रेशन और डायबोर्स के बीच में अगर पत्नी की सहमति से पति द्वारा सम्भोग किया जायेगा तो वह रेप नहीं माना जायेगा ?

श्री जे. ए. खरे : इसमें ऐसा कहा नहीं गया है। वैसे यह जो प्रावधान किया गया है कि ज्यूडिसियल सेप्रेशन के बाद पत्नी को पत्नी नहीं माना जायेगा वह ठीक नहीं है, कारण कि अगर कोई और पति पत्नी के रिश्तेदार उन दोनों को रजामन्द करवाना चाहें तो उनको छूट होना चाहिये। इसलिये यह प्रावधान डिलीट कर देना चाहिये।

श्री हुकूम देव नारायण बाबू : मेरा कहना है कि अगर सहमति से कुछ नहीं हो पाता वह सहमति देती है और उसके बाद भी वह केस करती है कि उसकी सहमति से नहीं हुआ उसके साथ ज्यादाती हुई ?

श्री जे. ए. खरे : अगर वह सिद्ध करती है तो 376 में पति को सजा मिलेगी। मेरा कहना यह भी है कि यह सजा का जो प्रावधान रखा गया है वह बलात्कार के अपराध तक ही सीमित न रखा जाय बल्कि महिलाओं के साथ और भी कई तरीके के अपराध होते हैं उनके लिये भी प्रावधान कर सजा दी जाय।

श्री हुकूम देव नारायण बाबू : जो क्या हिन्दुस्तान के सभी मर्दों पर परिवर्तित किया जाय। क्या मर्द जन्म से ही रेपिस्ट होता है ?

श्री जे. ए. खरे : अंग्रेजों ने वहाँ के कानून बनाए थे और उस समय कानून बनाने वालों के मन में यह धारणा थी कि महिलायें भावतन झूठ बोलती हैं, यह कहां तक सच है। महिलाएं कोई जाना पसन्द नहीं करती।

श्री हुकूम देव नारायण बाबू : अंग्रेजों ने जो धारणा बनाई थी कि महिलायें भावतन झूठ बोलती हैं उसी तरह क्या आप यह धारणा नहीं बना रहे हैं कि मर्द स्वभाव से ही रेपिस्ट होता है ?

श्री जे. ए. खरे : आपसे लेकर महिला कहती है। प्रारम्भ से ही किसी को गलत नहीं माना जाता। मुस्लिम को भी बचाव का पूरा मौका दिया जाता है।

श्री हुकूम देव नारायण बाबू : अगर महिला किसी अन्य मर्द से इन्टरकोर्स करवाए और किसी दूसरे पर आरोप लगा दे और कोर्ट में यह प्रिस्यूम कर ले कि वह सही बोल रही है तो बुझपयोग भी हो सकता है ?

श्री जे. ए. खरे : अगर पुलिस मर्द के बीच और उसके तरीके की बात

एवं रासायनिक जांच समय पर और सही रूप से न करवाए तो उसमें महिला का क्या दोष । मर्द को अपनी सफाई का पूरा मौका दिया जाता है, अतः उसके साथ अन्याय की संभावना कम है ।

SHRI R. N. SANGANI: The draft of this sub-section (1) of Section 376:—

'... punished with imprisonment of either description for a term which shall not be ... which may be for life...'

that means the description. The life sentence should be separated. In clause (b) sub-section (2):—

'(b) being a public servant ... subordinate to him; or

It is redundant. These words should be deleted. The same clause (e), it is not necessary. Then clause (d) should also be deleted. No purpose will be served by prescribing minimum sentence.

MR. CHAIRMAN: According to you what is your next suggestion?

SHRI R. N. SANGANI: Maximum should be there. For example, a case of Bombay, 1942 is before us. The Sessions Judge awarded life imprisonment in a rape case. But when the case was sent for approval. But it reduced. Next I would like to draw the attention towards the Section 375(5):—

"With her consent....such misconception."

It has been made very wide. I think if consent is obtained by giving false promise that I will marry you and a sexual intercourse is done then it will be considered rape. It should be maintained.

SHRI BAPUSAHEB PARULEKAR: Where misconception has occurred should it be deleted?

SHRI R. N. SANGANI: Misconception is a different thing. It may be committed in addition. About this summary punishment it is not clear whether it will be additional. Under Section 350(A) summary trial of publication of names and other things would be tried by the same judge.

MR. CHAIRMAN: This is procedural.

SHRI R. N. SANGANI: While in the main section the punishment is higher. It will go to a Magistrate, so it should be clarified. Say, the police takes cognizance, makes a challan in a magistrate's court and the judge concerned also takes cognizance. I have not given deep thought on this, whether this procedure would be in addition to this. I think it should be clarified.

SHRI AMARPROSAD CHAKRAVORTY: Under Section 375(7): 'with or without her consent, when she is under sixteen years of age' do you want to raise this age by 18 years? Or as under Marriage Act should it be under the Penal Code also? Or you think it should be 16 because this is an age of sexual intercourse?

SHRI R. N. SANGANI: It should be 16. Some provision should be made about proof of age, because even doctors can not say exactly. There is always errors of two years.

SHRI AMARPROSAD CHAKRAVORTY: It varies by two years. So would it not be proper to raise 18 years?

SHRI R. N. SANGANI: For rape I will not support 18 years.

SHRI AMARPROSAD CHAKRAVORTY: If a lady is under decree of judicial separation would it be rape, if intercourse takes place?

SHRI R. N. SANGANI: It will be rape.

SHRI AMARPROSAD CHAKRA-BORTY: Regarding Section 111(A) what have you to say?

SHRI R. N. SANGANI: It should be deleted.

MR. CHAIRMAN: Please say about 111(A).

SHRI R. N. SANGANI: It is for all. It should not be for all purposes, if there is a sexual intercourse at police station it should be presumed without consent.

MR. CHAIRMAN: Please read 111(A). You referred clause (2) of 376. Now tell about only for 376(A). What are your reasons?

SHRI R. N. SANGANI: The reasons are that offences take place at police station. When woman is called at police station and if sexual intercourse takes place there, then the chances of it being voluntary absolutely unexceptionable. That is main reason and that is our experience of our life.

SHRI AMARPROSAD CHAKRA-BORTY: Chairman has also clarified that court shall presume, then why are you making it unexceptionable?

SHRI R. N. SANGANI: Because the sexual intercourse at the police station takes the chances to its being without consent are more.

SHRI R. K. MHALGI: What about jail as given in sub-section (c)? If jailor commits rape in jail, then?

SHRI R. N. SANGANI: In jail there is no police administration as such.

SHRI AMARPROSAD CHAKRA-BORTY: If it happens in jail then what have you to say?

SHRI R. N. SANGANI: Again the question of presumption is there. We have not come across in 20 years of service. We have not heard of it. I am talking only on that basis.

SHRI AMARPROSAD CHAKRA-BORTY: How many rape cases in service you have tried?

SHRI R. N. SANGANI: Large number of cases, approximately, something like 200—300 cases.

SHRI AMARPROSAD CHAKRA-BORTY: Out of these how many acquitted and conviction cases were there?

SHRI R. N. SANGANI: Hardly 34 are convictions and rest are acquittal cases. What happens is this that in most cases age is not proved.

SHRI AMARPROSAD CHAKRA-BORTY: Have you tried any cases under sub-section (a) (b) (c) (d) of Section 376?

SHRI R. N. SANGANI: I have not tried any cases and not of even public servant so far as rape is concerned, as far as I remember.

SHRI S. W. DHABE: I would like to know that you have said that the minimum punishment should not be applicable but there are legislation in our country where the minimum punishment is provided.

SHRI R. N. SANGANI: In our province between 4 or 6. There are so many mitigating circumstances.

SHRI S. W. DHABE: The discretion is then for the magistrate.

SHRI R. N. SANGANI: Special provisions would mean that law can cover many cases.

SHRI B. IBRAHIM: Regarding Section 111(A), I point out that in spite of this word 'shall' if we insert 'may' is it sufficient? Whether it will serve the purpose?

SHRI R. N. SANGANI: After all the evidence is to be weighed. I think there is no reason why the special provision should be made, because court may presume, court will always presume, if the story is natural.

SHRI B. IBRAHIM: In which Section we should include?

SHRI R. N. SANGANI: It can be added in Penal Code itself.

SHRI BAPUSAHEB PARULEKAR: Don't you think that this provision 111(A) leaving no discretion to the judge will do injustice to accused?

SHRI R. N. SANGANI: Yes, it would do injustice because to lay down in the Act itself that the statement of the girl on the basis of presumption that it was without consent.

श्री हुकम देव नारायण यादव : इसमें अभी आपने बताया है कि यदि अपने पद का दुरुपयोग करता है तो उसको हटा दिया जाये इसको जग स्पष्ट करिये ?

श्री आर० एन० संगानी : यह सफीशियेन्ट है कि वह पुलिस आफिसर हो और उसकी कस्टडी में लड़की हो ।

श्री हुकमदेव नारायण यादव : पुलिस को जो अधिकार प्राप्त है यदि इसको हटा दिया जाता है तो फिर जो इतने बड़े मोहदे पर काम करने वाले अधिकारी हैं वे किस तरह से उस औरत को प्रभावित करते हैं और फिर उस औरत के साथ यह बात आती है कि उसकी इच्छा के विरुद्ध मैथुन किया है । ऐसी स्थिति में क्या होगा ?

श्री आर० एन० संगानी : यदि वह पब्लिक आफिसर है तो वह इसमें आता है ।

श्री हुकम देव नारायण यादव : 376 के बारे में जो म सजा के लिए प्रावधान किया गया है वह साधारण नागरिकों के लिए है जोकि कानून की जानकारी नहीं रखते हैं और दूसरे वे नागरिक जिनको कि कानून की जानकारी है या कि जो कानून को अच्छी तरह से समझते हैं तो जिन लोगों के जुम्मे कानून की सुरक्षा की बुम्मेवारी है यदि वे इस तरह का जुर्म करते हैं तो क्या उनको

ज्यादा सजा नहीं मिलनी चाहिये बनिश्चत उन नगरिकों के जिन्हें कि कानून की जानकारी नहीं है ?

श्री आर० एन० संगानी : निश्चय ही उनका ज्यादा सजा मिलेगी ।

श्री हुकम देव नारायण यादव : एक जगह तो है ला दैन सेविन ईस्ट और दूसरी जगह है ला दैन 10 ईस्ट । ता यह जो साधारण लोग हैं इनके प्रलावा है ?

श्री आर० एन० संगानी : वह तो कोर्ट हो फैक्ट को देखकर सजा देती है । यह अपनी जगह ठीक है ।

श्री हुकम देव नारायण यादव : अभी यहां पर आपके यहां के विधि उप उच्चिवाये वे और उनसे भी यही प्रश्न किया था कि मान लीजिये 40 वर्ष की परती है और वह कहती है कि उसकी इच्छा के विरुद्ध संभोग किया है तो क्या वह रेप माना जायेगा ? आपका विधि उप सचिव का कहना है कि वह रेप है ।

श्री आर० एन० संगानी : बिल्कुल नहीं है ।

श्री हुकमदेव नारायण यादव : क्या आपके सामने ऐसे मामले आये हैं कि कोई नौजवान हो और देखने में सुन्दर हो और किसी महिला अधिकारी के अधीन काम करने वाला वह कर्मचारी हो, वह महिला अधिकारी उस नौजवान पर प्रेशर डालकर उससे संभोग करवाये और वह मूल कर्मचारी न्याय मांगे तो क्या वह मूल नौजवान कर्मचारी न्याय मांग सकता है ?

श्री आर० एन० संगानी : यह तो आप प्रकृति के विपरीत कह रहे हैं । ऐसा नहीं होता है ।

MR. CHAIRMAN: About presumption you have said that it should be there. I am asking you one point. If sexual intercourse has happened presumption would be that there was no consent?

SHRI R. N. SANGANI: Only at the police station.

MR. CHAIRMAN: You need not have any medical evidence that there was no penetration?

SHRI R. N. SANGANI: Strictly speaking, it is not necessary.

MR. CHAIRMAN: Strictly speaking in such cases here entire statement should be placed.

MR. R. N. SANGANI: This should be taken into consideration. If the girl is quite truthful then even if there are no marks of injury, the whole statement of the girl should be believed by the judge.

MR. CHAIRMAN: Now you have said about simple intercourse in the police station without any other proof and also about offence and punishment.

SHRI R. N. SANGANI: As I have already said to the honourable members it will be difficult to prove the consent. Virtually, it will amount whether consent or not consent that is an offence. According to law because the intercourse has taken place it is without consent.

MR. CHAIRMAN: Do you agree, you are Sessions Judge, if by providing such provision innocent persons will be harassed?

SHRI R. N. SANGANI: Whatever law provides for innocent persons are always likely to be harassed.

MR. CHAIRMAN: Thank you.

(The Committee then adjourned at 14.00 hours and reassembled at 15.30 hours).

MR. CHAIRMAN: Now Doctor, what you have to say?

DR. (SMT.) GIDWANI: My first point is this that I agree with the amendment except the fact that the age which is mentioned as 15 years for the wives and 16 years for the other women. It should be the same, 16 years for the both. Because it is very difficult to differentiate whether she is of 15 years or of 16 years. We cannot calculate the age exactly.

MR. CHAIRMAN: Therefore, your opinion is that it should be raised to 16.

DR. (SMT.) GIDWANI: Yes. Next, I would like to say about Section 376(D) that employees of the hospital commit intercourse or sexual act with the patients. They may allege the doctors or compounders. Such things usually take place in the hospital also. If it is done by force it should come under the rape.

SHRI S. W. DHABE: Under the Child Marriage Act and also in IPC, it has been raised 15 to 18. So will you like to raise from 16 to 18 in this law?

DR. (SMT.) GIDWANI: Yes Sir.

SHRI R. K. MHALGI: Medical report, in the cases of rape, is given by the Government Doctor and not by the private practitioner, what is your opinion?

DR. (SMT.) GIDWANI: I think both of them can give evidence if they are qualified.

MR. CHAIRMAN: In cases of private practitioner there may be more chances of corrupt practice. In case of Government doctors they are subject to disciplinary action. Is there a possibility of corruption by the private doctors?

DR. (SMT.) GIDWANI: That is a general point.

MR. CHAIRMAN: What is your view, woman of such type should be sent even to private practitioner for medical examination where Government doctors are not available?

DR. (SMT.) GIDWANI: In such places, where there are no Government doctors, private doctors may be allowed.

MR. CHAIRMAN: But not in all cases.

DR. (SMT.) GIDWANI: No Sir.

SHRIMATI SUSHMANATH: Generally, I agree with the amendments. So far as rape cases are concerned, generally two years' time is taken. In the mean time she may change the statement. So, there should be a period of 3 to 6 months for finalising the case.

SHRI S. W. DHABE: I will like to know from you because you are the Collector of Narsimhapur. How many Woman Police Officers in your district?

SHRIMATI SUSHMANATH: None.

SHRI S. W. DHABE: Do you think Woman Police Officer would be helpful in investigation.

SHRIMATI SUSHMANATH: Yes, they will be helpful.

SHRI S. W. DHABE: What do you think about the Woman Social Organisation, if associated with the work of investigation. Will it be helpful?

SHRIMATI SUSHMANATH: I do not know to what extent it will help but they should be tried.

SHRI S. W. DHABE: Some categories are mentioned under Section 376(A) like police officers, public servant Supdt. or Manager of the jail and the hospital. There are certain

other categories like landlords or employees in the private industry, taking advantage of their position. Will you like to include these type of persons?

SHRIMATI SUSHMANATH: I do not think so.

SHRI R. K. MHALGI: Under Section 376(1)(b) there are persons in authority namely police officer, jailor, remand home officers etc. So you feel that all these persons should be there or only the police or jail officers should be there?

SHRIMATI SUSHMANATH: All the persons mentioned in the provisions should be retained.

SHRI S. W. DHABE: Presumption should be drawn. If you will read clause (e) this is about pregnancy. Do you think it should be included in 111(A) or not?

SHRIMATI SUSHMANATH: I don't think so. It has been excluded.

MR. CHAIRMAN: Thank you.

SHRI R. S. L. YADAV: I generally agree with the provisions of the Bill. But there should be some provisions regarding concession to the victim. This should be in some proportion. Compensation should be more. Next, there is clause 376(2), it is given that 'whoever-being a police officer, being a public servant, being the superintendent or manager of the jail or being on the staff of the hospital may not like this. Actually, there was no need of long section like this. Whoever being a public servant commits rape it will cover all. If any public servant commits an offence of rape he should be punished more regorously.

MR. CHAIRMAN: You kindly refer the definition given under Section 21 of the I.P.C., the term 'public servant' has already been defined. Only few cases where women are available.

SHRI R. S. L. YADAV: Under Irrigation Department lady Rajas are employed and they are used by male rajas in Chhatisgarh but no complaint in District Bilaspur. They are not covered under this law.

MR. CHAIRMAN: Your views are noted.

SHRI R. S. L. YADAV: Next, I would like to submit that there should not be limit of seven years punishment. If judge feels necessary then the punishment of 1 year, 2 years, or 3 years is sufficient. In case of public servant, second category of the people, there should be 5 years limit but not in all the cases.

MR. CHAIRMAN: Judge can reduce.

SHRI R. S. L. YADAV: If there is minimum limit say psychologically on the judges' mind he should not award less punishment.

MR. CHAIRMAN: The common feeling is that the courts are not properly exercising the power of discretion given under I.P.C. and Cr. P.C. so why not Parliament should make some provision of deterrent punishment.

SHRI R. S. L. YADAV: In that case, there will be more acquittals. Because judges will give less punishment. Rape by husband under previous section of the I.P.C. there was some difference of quantum of punishment by rape of other people. I don't think there is any difference in this amendment. In Chhatisgarh, Sir, normally girls' age of puberty is 11 years and normally child marriage is in practice, this social custom we cannot stop it. Before the age of 15 they become the mother of two or three children. So we have to look into the social custom of the people. So, my proposal is that the age of rape against wife must be about 13 years.

SHRI HUKUMDEO NARAIN YADAV: It is too much in Bihar also.

SHRI R. S. L. YADAV: The question of presumption under Section 111(A), I will tell you three cases of my district Bilaspur. I came from Bilaspur just 15 days back only. There was a lot of hue and cry about rape by policemen in the paper. So one day on receiving message, four ladies gave it that they are raped by policeman in the night. But, Sir, this is not so. The fact of the case is this that these ladies were connected with dacoits. In search of the dacoits, policeman went there to make an enquiry. The police party searched the houses before the Sarpanch of village. It was known that Sarpanch was also involved with them and on his investigation we received the false report. Actually the ladies were not raped by the police party.

SHRI R. K. MHALGI: Here, ladies say that we have been raped in the police station.

SHRI R. S. L. YADAV: Raped by the policemen in the village but not at police station.

SHRI AMARPROSAD CHAKRABORTY: What is the percentage of such rape cases in Bilaspur district for the last three years by all including police officers?

SHRI R. S. L. YADAV: About 30 to 40 percent per year.

SHRI AMARPROSAD CHAKRABORTY: 698 cases in 1976 and rape by the police 4 cases are registered.

SHRI R. S. L. YADAV: I am S.P. since 1972, that was the first case against the police and that was too false.

MR. CHAIRMAN: Members want to know whether it was false case or not?

SHRI R. S. L. YADAV: It was a false case.

SHRI AMARPROSAD CHAKRABORTY: Regarding Section 111(A) you have not given your opinion?

SHRI R. S. L. YADAV: I am against this provision.

SHRI B. IBRAHIM: In your district how many cases of rape have been reported so far?

SHRI R. S. L. YADAV: Nil for the last 12 years.

MR. CHAIRMAN: According to you there are no cases of rape in your district?

SHRI R. S. L. YADAV: No.

SHRI BAPUSAHEB PARULEKAR: Kindly, refer to sub clause of sub-section (2) and just say whether that would suffice in the case. That would cover (a) to (d) and we are keeping (e) and (f) also so all this will be covered.

SHRI R. S. L. YADAV: Yes Sir.

SHRI BAPUSAHEB PARULEKAR: Don't you think that by retaining this provision police force would not be demoralised?

SHRI R. S. L. YADAV: It may demoralise by retaining.

SHRI BAPUSAHEB PARULEKAR: Kindly consider this also that when a police officer in his custody seduces with an intention for intercourse without consent then this seduction is made punishable. Will it be a rape?

SHRI R. S. L. YADAV: Seduction is not intercourse so it is not rape. Only intercourse is punishable.

SHRI S. W. DHABE: Have you any woman police officer.

SHRI R. S. L. YADAV: Three Head Constables out of 2200 policemen and one sub-inspector out of 150.

SHRI S. W. DHABE: By appointing more lady police officers will it not help in investigation?

SHRI R. S. L. YADAV: Yes Sir.

SHRI S. W. DHABE: You have said regarding Section 376(2) that the word 'public servant' must be used in a very wide sense. It means you are in favour of deleting sub clauses (a), (b), (c) and (d) and so on. You are in favour to cover all types of such clauses under the term 'public servant'.

SHRI R. S. L. YADAV: Yes sir.

SHRI S. W. DHABE: If there is any misconduct of the policemen, is there any procedure under the police manual for taking action against him?

SHRI R. S. L. YADAV: Yes, it is.

SHRI S. W. DHABE: Well, I would like to know if any section is created, how the police will be demoralised?

SHRI R. S. L. YADAV: Demoralisation, under Section 376(2) penal section has been construed for police officers but not for other public servant.

SHRI S. W. DHABE: Do you think that the presumption should not be there if the offence is committed in police custody under Section 111(A), will it apply for presumption or not?

SHRI R. S. L. YADAV: I am not in favour of presumption.

SHRI S. W. DHABE: About the child rape, there are many cases below the age of 13. Do you think deterrent punishment should be given?

SHRI R. S. L. YADAV: Actually this should be left on the discretion of judges in the case of child rape.

SHRI R. K. MHALGI: It appears that you are against the minimum punishment?

SHRI R. S. L. YADAV: Yes Sir.

श्री कुलदेव नारायण दावद : इस बिल में लोक सेवक को सजा को श्रेणी में एक विशिष्ट तबके को लोक सेवक को श्रेणी में रखा गया है और प्रथम उन श्रेणियों के लोगों द्वारा दुत्कार किया जाता है तो सजा का प्रावधान किया गया है तो क्या आप चाहते हैं कि इन श्रेणियों को समाप्त कर दिया जाये और सभी कर्मचारियों को लोक सेवक ही माना जाये ?

श्री आर० एस० एल० दावद : सजा देते समय दो कैटेगरी बनाना आवश्यक है। मेरा कहना यह था कि पुलिस और अन्य सेक्शन ही नहीं बल्कि सभी पब्लिक सर्वेंट्स को एक ही श्रेणी में रखा जाय और उनके लिये मिनिमम सजा फिक्स रखी जाये।

SHRI R. N. YAIDYA: Sir, first of all I will invite your attention to the object and reasons of this bill, wherein it is said,—

(4) the prosecutrix should be protected from the glare of embarrassing publicity...

Now, Sir, I will draw your attention to the Explanation of the proposed Section 229(A):

The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.

Sir, a case is tried in the court of Sessions Judge. Judgment is given. Newspaper voluntarily does not publish the judgement, then an appeal is filed in the High Court and then the publisher entirely publishes the whole text, giving name etc. Does this committee not think that the mischief has been done? Therefore, I would suggest that in place of giving complete protection to the publication of the judgement a limited clause should be

there. I would frame this clause like this "The printing or publication of the judgement of a High Court or Supreme Court in a law journal or any book used by legal profession or students of law does not amount etc.

In the Section 375, I would request that in the Exception, this limitation of the age should be removed totally. There are two reasons for removing it. Witness who gave evidence before me has pointed out that in the previous law there was some relaxation in the matter of punishment for the intercourse with a wife between the age of 12—15. Sir, I would like to draw your attention to the fact that this offence was then noncognizable but today we have made it cognizable. Therefore, under the previous law unless the wife complained the police could not interfere in the family life. but today, the offence is cognizable and therefore if a wife below the age of 15 becomes pregnant by her husband and some policewala takes its cognizance, her life is ruined. So, I would request you kindly to remove this clause under fifteen years of age.

Then, I come to section 376(2) (A):—

(a) being a police officer, commits rape in the local area to which he is appointed, or in any police station whether or not situated in such local area.

My submission is that a poor lady does not go to enquire whether the policeman is from local area or from outside. He is a policeman, not a common man. So when a policeman in uniform and not in civil dress, commits a rape, whether in local area, or outside them in both the cases he should be equally punishable.

In regard to (b) I fail to understand what is the meaning of 'in his custody' in the clause. If a public servant takes advantage of his official position and commits rape on a woman in his custody as such public

servant or in the custody of a public servant subordinate to him. I think these words in his custody should be omitted.

Then Sir, the definition of hospital has been given under Section 376 (C) but the word hospital occurs in 376(2) (d) as well. So, this definition should be given under 376 and not 376(C). This is a minor drafting mistake.

Then, Sir, I again request you kindly to consider what was the need for the Bill? The need for the Bill was because in a number of cases accused were going to be free or awarded very little punishment. There is nothing in this Bill to protect the honour of the girls from the cross examination in the court. So, Sir, I request that the committee may kindly consider these points. I am suggesting, firstly, that the statement of a ladies should be recorded by her in her own handwriting, and presented to the court. She should not be asked to state orally. If she is illiterate, the case is different. Sir, I would request that some procedures and methods should be evolved so that we may really do good to these ladies. The Bill in itself will not be good. That is all.

SHRI AMARPROSAD CHAKRA-BORTY: The only statement if she can write and if she files the statement in the court of law then how the medical examination would come up?

SHRI R. N. VAIDYA: I have not said that there should not be medical examination.

SHRI AMARPROSAD CHAKRA-BORTY: How the accused may be punished in the present system of law, because you know there are some provisions of law that how accused be punished and what procedure should be followed by the court. Do you suggest that only on an application before the court, court will presume?

SHRI R. N. VAIDYA: Let me explain again. In the case of poor women

they can easily tell in the court what happened with them. In the case of middle class ladies instead of making a statement in the court, they should be allowed to give their statement in writing.

SHRI AMARPROSAD CHAKRA-BORTY: Then, if I follow you. After taking all the legal procedures laid down by the Cr. P. C. I.P.C. then court will decide whether the accused should be punished or not. But in that case there will be no presumption?

SHRI R. N. VAIDYA: Presumption is already there.

SHRI BAPUSAHEB PARULAKAR: Coming to 228(A), I freely agree. Even accepting your suggestion, judgement of the sessions court would be published in the case of law journal as well as in the papers the name of the prosecutrix and the accused should be there or not? Or it should be published without publishing the name?

SHRI R. N. VAIDYA: Even if you publish the name of prosecutor I have no objection. But if you can publish in the news papers that a Harijan girl of village such and such is raped by a Dhobi and the name not given, the identity of the victim can be known.

SHRI BAPUSAHEB PARULAKAR: You said that this intended legislation is not sufficient and will not serve the purpose for stopping offences. You suggested some means that there should be a lady judge, a lady advocate and there should be females in the courts room so that a girl will be free to make statement. By making these suggestions do you think that the position will improve?

SHRI R. N. VAIDYA: The problem can be solved only by making the law more stringent.

SHRI S. W. DHABE: I would like to know from you about the stringent punishment for the police officer. In the same way are you of the opinion that the big land lords and their em-

ployers in the villages and industries they take advantages of their position, and they harass their woman employees whether they should also be dealt with stringent punishment?

SHRI R. N. VAIDYA: I would like that the employers should be covered, but not the land lords.

SHRI VIJYA SINGH: I read the amendments and I have nothing to add, except that other public servants, other than the police officers employees of the hospitals jail Supdt. etc. should also be covered under Section 376(2). That is all.

SHRI B. S. ACHARYA: I totally agree with the proposed Bill but I would like to request if the committee may agree with my vices that where victim women have been categorised in clause (c) of Section 376(2). In the same way if we can categorise the position of such victims those who are deaf, dumb and infirm the accused must be given deterrent punishment.

MR. CHAIRMAN: kindly introduce yourself to the committee.

PROF. HEERESH CHANDRA: I am Prof. Heeresh, I am Director of Medico-legal, Madhya Pradesh Government and Professor of Forensic Medicine. By chance, in the Home Department. I came to know of this meeting today. It was suggested that I will be helpful to give some assistance whatever you need from me. I do not know very much of law. I know very, much of what complications, the rape examination creates.

MR. CHAIRMAN: Say, what you want to say.

PROF. HEERESH CHANDRA: Definition under Section 375 defines sexual offence of rape. Not during our cross of examination all medical people will revolve around the word rape substituted as sexual assault pro-

bably will cover a bigger area. Penetration constitutes rape but the law does not define what is penetration. Sir, Hari Singh Gaur has clarified in I.P.C. What is penetration? It says that there may be an attempt to penetrate. What is penetration it is given on page 2940 of the book.

For ascertaining whether rape is committed or not, first of all clinical history is necessary. When she being given a chance to state more fact within 24 hours she should be examined. Clinical history should be recorded immediately then only the story will absolutely correct.

MR. CHAIRMAN: One interruption, when you are a Prof. of forensic Medicine you must have conducted postmortum also?

PROF. HEERESH CHANDRA: Yes.

MR. CHAIRMAN: Just you said that the clinical history is more important. If this clinical history is more important in your view, do you think the examination of the private part is not necessary?

PROF. HEERESH CHANDRA: Secondly, the examination of private parts is also necessary. If anybody tries against her will, certainly there will be some injuries on her, her bangles will go into pieces. These types of injuries are more common.

MR. CHAIRMAN: I want to know from you, when penetration is sufficient so far as rape is concerned. Does it constitute offence? To what extent penetration is sufficient, I want to know what are the marks left by simple penetration if any resistance is there?

PROF. HEERESH CHANDRA: Under the law to touch the valva is penetration.

MR. CHAIRMAN: I am asking you a simple question about penetration. What are the marks left in?

PROF. HEERESH CHANDRA: This will depend upon the condition of vagina. I feel that the law is liberal in the rape cases.

SHRI AMARPROSAD CHAKRABORTY: Penetration can amount rapture of vagina?

PROF. HEERESH CHANDRA: Not necessary.

SHRI AMARPROSAD CHAKRABORTY: As an expert opinion, the rapture of hymen will be there?

PROF. HEERESH CHANDRA No. I find that most cases are of willingness Violant opposition is there. Bengles are very important. I would like to suggest that somewhere there should be a provision that the examination of the accused should be without any delay. Formality and law should not come in between the examination of the victim and the accused. It should

be as early as possible because it is a dying evidence.

SHRI AMARPROSAD CHAKRABORTY: These rapes cases are on decreased or on increased?

PROF. HEERESH CHANDRA: I deal with only referred cases. But rapes are there. I would like to suggest that senior persons to examine a female case in the hospital should be there, and that too they must have 10 years standing because what tendency I have seen in periphery it creates problems. This point should be kept in mind while framing the legislation. There should be two doctors at a time so that there will no difference of opinion. It is a factual data and two are necessary because we have observed in burns cases. it had helped us.

MR. CHAIRMAN: Thank you for the enlightenment.

The Committee then adjourned.

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CRIMINAL LAW
(AMENDMENT) BILL, 1980

Monday, the 27th July, 1981 from 10.00 to 14.00 hours and again from 15.30 to
18.45 hours Room No. 2001, New Vidhan Bhavan, Bombay

PRESENT

Shri D. N. Naikar—Chairman

MEMBERS

Lok Sabha

2. Shrimati Vidyavati Chaturvedi
3. Shrimati Mohsina Kidwai
4. Shri R. K. Mhalgi
5. Shrimati Geeta Mukherjee
6. Shri Bapusaheb Parulekar
7. Prof. Nirmala Kumar Shaktawat
8. Shri S. Singarvadival
9. Shri R. S. Sparrow
10. Shri Trilok Chand
11. Shri V. S. Vijayaraghavan
12. Shri Qazi Saleem

Rajya Sabha

13. Shri Lal K. Advani
14. Shri Ramchandra Bharadwaj
15. Shri Amarprosad Chakraborty
16. Shri S. W. Dhabe
17. Shri B. Ibrahim
18. Shri Dhuleshwar Meena
19. Shri V. P. Munusamy
20. Shri Era Sezhiyan

SECRETARIAT

Shri Ram Kishore—Senior Legislative Committee Officer

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri M. P. Khosla, Officer on Special Duty
2. Shri S. C. Bablani—Under Secretary

WITNESS EXAMINED

I. Government of Maharashtra:

Spokesmen:

1. Shri A. D. Tated, Secretary, Law and Judiciary Department
2. Shri P. G. Salvi, Secretary, Home Department
3. Shri S. K. Chaturvedi, I.G.P., Maharashtra State

II. Shrimati Suman Athavale, Principal, Someshwarnagar, Pune

pal Mugutrao Sahebrao Kakade College, Pune

III. Lawyers Collective, Bombay:

Spokesmen:

1. Shrimati Indira Jai Sing
2. Shri Anand Grover

IV. National Federation of Indian Women, Maharashtra Branch Bombay

Spokesmen:

1. Shrimati Manju Gandhi
2. Shrimati Kusum Nadkarni

V. Uttar Vibhag Stree Sanstha Sanyukt Samiti Matunga, Bombay:

Spokesmen:

1. Shrimati Indumati M. Kulkarni
2. Shrimati Tara K. Shah
3. Shrimati Kastur Manjrekar
4. Shrimati Shalini Mantri

VI. Indira Council of Social Welfare, Bombay:

Spokesman:

Shri H. S. Ursekar, Legal Consultant and Ex-Session Judge, Bombay

VII. Congress (I) Mahila Front, Thane District:

Spokesman:

Shrimati Shakuntala Paranjpe, President and Notary Public Advocate

I. Government of Maharashtra Bombay.

Spokesmen

1. Shri A. D. Tated, Secretary, Law and Judiciary Department.
2. Shri P. G. Salve, Secretary, Home Department.
3. Shri S. K. Chaturvedi, Inspector General of Police.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:—

58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is

liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

What do you want to say on the Bill?

SHRI A. D. TATED: In section 375. Secondly, the words 'without her free and voluntary consent' have been added to qualify it. In Section 90 of the IPC it has been explained as to what is consent and what is no consent. If it is there, then this has no value. Therefore, it is unnecessary. The

The same thing applies to clause Thirdly also. If the lady is having a child and the person threatens her that he will cause injury to her child and thus her consent is obtained, in that case, the purpose of the Act will be defeated. So, I think the wording should be 'either to herself or to any person she is related.' About Fourthly, I have nothing to say. Fifthly is already there in Section 90 of the IPC. If you feel that Section 90 covers this thing, then it will be redundant. Sixthly is also redundant because of Section 90. If the Committee wants to put it then the words 'by him' should not be there because in Section 90 these words are not there.

MR. CHAIRMAN: Do you want the words 'through other person' or do you want to eliminate the words 'by him'?

SHRI A. D. TATED: 'By him' should be eliminated. Section 90 is about consent. It does not say 'whosoever may administer'.

MR. CHAIRMAN: It may be either by him or through some agent.

SHRI A. D. TATED: Yes, Sir. If the consent is given by a person who from unsoundness of mind or intoxication is unable to understand the nature and consequences of that to which he gives his consent.

MR. CHAIRMAN: Intoxication is already covered there. "Other substances" not covered under Section 90. Would you like to have it or not?

SHRI A. D. TATED: Consent always implies that man in a position to understand things. If the man is not in a position to understand, it is no consent. Consent is always free and voluntary.

MR. CHAIRMAN: One is normal condition of the state of mind and another is her mind is not working because of "some substances". Would you like to retain "some substances" or not?

SHRI A. D. TATED: "By him or any other person" should be deleted. By adding "by him" we are helping the victim.

She has taken liquor. It was not administered by the accused. It should, therefore, not be there.

Explanation 2.—

"A woman living separately from her husband under a decree of judicial separation shall be deemed not to be his wife for the purpose of this section."

Normally the idea is that in these two years there should be an opportunity for them to unite.

MR. CHAIRMAN: That is provided in the Marriage Act itself. 'Every effort should be made for reconciliation'.

SHRI A. D. TATED: If we keep these things then lives can be ruined. The husband thinks that she is his wife. He may have intercourse with her. These two years have been given for reconciliation.

MR. CHAIRMAN: She waits for these two years to get divorce. The only intention is to file an application for divorce. Can the husband try for sexual intercourse? Do you want that it should be deleted?

SHRI A. D. TATED: Yes, Sir. It should not be on par with rape. In rape the main idea is the lady who is not his wife or somebody else or a virgin, if she is ravished, her life becomes miserable. She is looked down upon by the society. After rape her prestige goes down and it becomes difficult for her to live in society. Punishment is awarded for ravishing the lady. The case of this lady is that she has been separated from her husband. If sexual intercourse is committed, she will not be subject to that ignominy. It should not be

equated with rape. If we do so, the provision of reconciliation will be retarded. It should be some other offence. He tries to have intercourse after applying force. She can always complain and that complaint will be treated as 'violence'. This provision is likely to lead to some undesirable things.

If the sexual offence is committed by a man with his own wife, the wife being under fifteen years of age..

It should be sexual offence. Formerly, there was a provision according to which for anyone committing rape on a girl who is ten years or more but below fifteen years of age, some lesser punishment was prescribed.

Here too, you may think of lesser punishment if one rapes a girl who is thirteen or fourteen years of age but she has not completed fifteen years of age. Since under the Child Marriage Restraint Act, there cannot be a valid marriage, the same punishment as is awarded to a rapist should not be given to a person who has done a sexual intercourse with a girl who has not completed fifteen years of age but who has been wedded to him.

Between the age of thirteen and fifteen years of that girl, if such a situation arises, we must reduce this punishment.

MR. CHAIRMAN: According to the customs, marriages take place even at the age of fifteen and there may also be a child to that girl. You must also understand the situation in which we are placed. Would you like to reduce the age of sixteen occurring in Section 375, seventh description in view of the rise in the marriage age to 18 years?

Even if the marriage takes place under sixteen years of age, still, there is a possibility of the girl's filing a complaint that she has not given her consent for the sexual intercourse. That is why the provision is made

that a man is said to commit 'rape' with or without her consent, when she is under sixteen years of age. Would you still like to reduce it to fourteen or thirteen years?

SHRI A. D. TATED: It may remain as such. According to me, fourteen will be better. We know that even at the age of fourteen there are cases of sexual intercourse having been done by a man.

MR. CHAIRMAN: I think you would have served as a sessions and district judge.

SHRI A. D. TATED: Yes, Sir.

MR. CHAIRMAN: Then tell us whether you have come across instances where you had a chance to try the cases of sexual offence involving husbands.

SHRI A. D. TATED: I did not come across a single case of this type.

SHRI AMARPROSAD CHAKRABORTY: In the tropical country, the puberty starts at a much earlier age.

SHRI A. D. TATED: That is so.

Now, coming to Sec. 228A(1)—a new section to IPC which is sought to be inserted by the amending Bill—it is all right. The name of the lady who has been ravished should not be published. The only objection is to the change in the burden of proof. Already provisions exist. There may be exceptions also. In case of rapes, shifting the burden of proof on the accused that the sexual act was done with her consent becomes a very difficult affair. I have tried rape cases. There were cases where young ladies were led away but they never thought of a man of the age of fifty or forty-five committing rapes on them. Such things do happen and it becomes difficult for the prosecution to prove that it was done without her consent. And so, the benefit of doubt is given to the accused. The burden of proof is not

exactly shifted. It is shifted only on a presumption. The circumstances do indicate that the same thing will happen in such cases. But, for the present, the benefit of doubt is given to the accused since the prosecution is unable to prove beyond reasonable doubt that the sexual intercourse was done without her consent. Though it would be fraught with some danger, yet, at the same time, looking to the circumstances, in many rape cases where the prosecution is unable to prove beyond reasonable doubt that the act was done with her consent, such a shifting of burden of proof may only help in bringing the offenders to book.

MR. CHAIRMAN: You are aware of Section 111A. The provision is only in respect of offences where officers have been involved, more so, the police. There are suggestions from the Police Department that the morale of the police officers will be affected. What have you to say to this? The presumption is in respect of cases where persons in authority have been involved. In such circumstances, a case has been made against the police officer to take revenge against him. Then the burden of proof is a difficult affair. Do you expect that the police officers will discharge their official duties in a proper way?

SHRI A. D. TATED: That is true. There are some advantages as well as some disadvantages. We have to balance them. While doing so, it is difficult for the prosecution to prove that sexual intercourse was done without her consent. To prove it is an uphill task. Further, if a false charge is made against the officer, the burden to prove it is on the prosecution. It can easily be rebutted. The burden of proof on the accused is never as heavy as that in the prosecution. Therefore, though the burden is cast on him, it can easily be rebutted. That is all that I have to say.

MR. CHAIRMAN: Kindly listen to the Members. They will put some questions to you seeking some clarifications.

SHRI BAPUSAHEB PARULEKAR: We have three witnesses in this session. We can go a little slow. You started by saying that under the Sharda Act, the marriageable age is eighteen years for the girls. You know that this enactment will be applicable not only to the Hindus but also to other communities. As far as Mohammedan Law is concerned, the marriageable age is the puberty period. We heard in Bhopal that the puberty age is between 12 and 13. If the marriage takes place in this period, then that marriage is completely valid. If the intercourse takes place, then the offence is cognisable. Don't you think that if the boy is punished for this offence, then the entire marriage is disturbed? The reasoning which you gave was that eighteen being the marriageable age applicable to the Hindus, don't you think that injustice will be done to the other communities where the marriage is perfectly legal when the girl is twelve years of age? Do you still believe that this should be retained exclusively for the Hindus? In that case, don't you think, you will be destroying all the marriages? When it is a cognizable offence, anybody may go and make a complaint to the police. And the police will have to take cognisance of it. So taking this fact into consideration—leave aside the marriageable age is 18 for the girls under the Hindu Marriage Act—do you still think that this should be retained?

SHRI A. D. TATED: I think the provision 'under sixteen years of age' could be changed and the age could still be reduced. If at all you want to inflict the punishment, it should be a minor punishment. Here, after all, she is a legally wedded wife.

SHRI BAPUSAHEB PARULEKAR: Do you still believe that for this offence, the husband is to be convicted?

According to you, if the age is reduced, the punishment should be very light. Is that your contention?

SHRI A. D. TATED: During my tenure of 12 years as Sessions Judge, I have not come across any case like this.

SHRI BAPUSAHEB PARULEKAR: Will you please tell us what is the percentage of acquittal as also conviction when you dealt with such cases during your tenure?

SHRI A. D. TATED: I think acquittal is more and according to me it might be about 70 per cent or even more.

SHRI BAPUSAHEB PARULEKAR: What is the reason for that?

SHRI A. D. TATED: First of all, investigation is not prompt. According to me, if we have prompt investigation, there is no necessity of changing the law. The first thing is that the victim should be immediately examined. The accused should be arrested immediately and examined. All the clothes worn by the accused should be seized and examined. What I found in many cases is that the clothes are immediately removed or washed and in such cases the courts find it very difficult to get evidence.

SHRI BAPUSAHEB PARULEKAR: Now, a case for divorce is pending in the court of law. During the pendency of decree for divorce, when there is the judicial separation, even without consent if sexual intercourse takes place, do you think that it should be treated as rape?

SHRI A. D. TATED: There is a period of two years and although the decree for separation remains no party can apply for dissolution of marriage

before two years period. As soon as the dissolution of marriage period is ended, if sexual intercourse takes place, it may be taken as rape. But during that period, even without the consent of the party if sexual intercourse takes place, it should not be treated as rape.

SHRI BAPUSAHEB PARULEKAR: According to you, without the consent of the party, if there is an intercourse during the two years' period, that should amount to rape. Would definition of consent given in section 90 would apply to such a case. I hope you know the recent Mathura case.

SHRI A. D. TATED: I am supporting that case also. It is a very unfortunate case. I do not agree with what has been stated in the Supreme Court judgement because I know how the authorities were against that lady. The evidence was taken in the High Court. The High Court directed the authorities to take evidence. The medical officers were not prepared to give evidence and even the Sessions Judge could not record the evidence.

SHRI BAPUSAHEB PARULEKAR: In the rural areas, the women submit because of economic necessity. The consent is free and there is voluntary consent because of poverty.

SHRI A. D. TATED: I am coming from a rural area. I have had occasions to move the village area. I may say that in villages, ladies value their chastity more. In the villages people do not dare touch the ladies.

SHRI BAPUSAHEB PARULEKAR: Take the case of a rural woman who is a widow with two or three kids. She has to maintain them. There is no money with her. She serves with a landlord. Taking advantage of her helplessness, the landlord commits rape and she submits willingly. Here the consent is given but it is given because of her helplessness. Do you not think that this should be covered?

SHRI A. D. TATED: It is very difficult to cover such type of cases. The cases which I have come across are laid away cases.

SHRI BAPUSAHEB PARULEKAR: About Thirdly, you said that this does not cover her kids or any of her near relations. But if you read Section 503 the words 'injury to anyone in whom the person is interested' are mentioned. And therefore it is not necessary to mention these details in this Section. Do you agree with this?

SHRI A. D. TATED: I agree.

SHRI BABUSAHEB PARULEKAR: You may be knowing cases of police atrocities in Narayanpur and gang rape in Belchi. These have come up only due to the publicity given by the press. Otherwise, these cases would not have come to the notice of the public because very high-ups were involved in them. So to that extent, some arrangement should be made and this blanket ban on the press would be safeguarding the rapists and not the victims.

SHRI A. D. TATED: Since it affects her prestige and mars her future life, blanket ban on press is necessary.

SHRI BAPUSAHEB PARULEKAR: You have instances of Ranga and Billa. When the victim dies, do you mean to say that it should still not be published?

SHRI A. D. TATED: If that lady is not there, then exception can be made.

SHRI BAPUSAHEB PARULEKAR: It is likely that sometimes false accusations are made. A man gets deterrent punishment. Do you not think that in false cases the woman should also be given severe punishment?

SHRI A. D. TATED: We should provide for severe punishment.

SHRI BAPUSAHEB PARULEKAR: Serious offences are covered under Section 376 A, B and C. But the Bill

makes a provision that the case should not be tried by a sessions judge but by a first class magistrate. What is your opinion about that?

A. D. TATED: I think it should be tried by a sessions judge.

SHRI BAPUSAHEB PARULEKAR: Do you not think that in Section 376(2) all public servants should be included and the definition of 'public servants' should be enlarged so as to include elected representatives in the term 'public servants'.

SHRI A. D. TATED: I agree.

SHRIMATI GEETA MUKHERJEE: About the question of judicial separation I do agree that at the time of judicial separation there should be a provision for reconciliation. If such a situation arises and inter-course takes place, you think that would help reconciliation. I would say the other way round. In this particular Bill care has been taken to see that either of the party should not act in a way which is prejudicial to his/her future relations. Keeping that idea in mind don't you think retention of this clause will help the lady?

SHRI A. D. TATED: If we retain this, then reconciliation becomes difficult. As soon as she says that it was without her consent, it will be a difficult proposition.

Rape is considered to be a serious offence because it involves the prestige of the lady. It creates such a bad atmosphere for her that she is unable to marry. For a married lady that ignominy will not be there.

SHRIMATI GEETA MUKHERJEE: The prestige is not the only thing.

SHRI A. D. TATED: It is also one of the things. That is why we think rape is an offence. Sexual intercourse is a biological necessity. After rape the ladies are looked down upon by the society. In order to preserve the

honour of the lady and to see that such things do not occur we are taking serious view of the matter.

SHRIMATI GEETA MUKHERJEE: Do we understand that you do not want it to be in this particular Act?

SHRI A. D. TATED: It should not amount to rape.

SHRIMATI GEETA MUKHERJEE: Do you also agree that economic necessity also makes them to submit? If we add the word 'economic inducement' after 'injury', does it cover some of the field?

SHRI A. D. TATED: I doubt.

SHRIMATI GEETA MUKHERJEE: Do you not feel that somehow or the other the Section should take care of that kind of thing?

SHRI A. D. TATED: That can be thought of.

SHRIMATI GEETA MUKHERJEE: I am glad that you agree to the retention of 111A. I think you appreciate that there may be false accusations. I am not very clear whether this false accusation will be again used as a weapon.

SHRI A. D. TATED: There could be cases of false accusation. But what I say is that such cases are unearthed by cross examination.

SHRI BAPUSAHEB PARULEKAR: She wants to convey that woman should also be told that she would also go to jail for false accusation.

SHRI A. D. TATED: You will have to prove that it was maliciously done. Damages can also be claimed. It will have to be proved that the allegation was false and malicious. Then action can be taken, otherwise not.

SHRIMATI GEETA MUKHERJEE: 222A. It will be counter productive.

Have you thought over it as to what protection can be granted? This covers not only the name of the woman but also indirect identification. The press will be liable to prosecution. Do you think that it should not be that much comprehensive? Even indirect access for the identity of the woman would be punishable. How can that be covered?

SHRI A. D. TATED: Indirect identification will be there, if the case is reported to the press. Suppose it is given in the press that Zamindar's daughter has been ravished by such and such a person... One who wants to probe or enquire into the matter will certainly do that. But, the general public will not be able to know that. There is a bar on the press to publish the rape victim's name. That is why I say, for such people, the press acts as a very good deterrent. Therefore, I say that publication should be allowed. But as far as the name of the victim is concerned, the name should be excluded. Identification will be easy for those who want to probe into the matter. But, most of them are always interested in knowing the name of the lady involved.

SHRI B. IBRAHIM: Please see page 3 of the Bill. After 376(2) (a) and (b), there are some suggestions to add a new clause to include charitable and educational institutions such as mutts, ashrams and dharmashalas and the like. What is your opinion about their inclusion?

SHRI A. D. TATED: I would say that everybody who is a dominant position to take advantage of his position should also be covered by this section. In my opinion, all those who are in a position to take advantage of their position to commit this offence of a grave nature should also be covered by this provision. Though there are mutts or other institutions, they may exercise their

economic pressure on the employees by taking advantage of their position in those institutions.

SHRI B. IBRAHIM: So, you are in favour of including them.

SHRI A. D. TATED: Yes, Sir.

SHRI B. IBRAHIM: Kindly see Clause 111A. There the wordings are—'the Court shall presume'. Some witnesses said that in place of 'shall' the word should be 'may'.

SHRI A. D. TATED: The word 'shall' sometimes in the context always means 'may' and 'may' sometimes means in the context 'shall' also. The retention of the word 'shall' here will be much better. The intention here is that the man committing that offence should not be acquitted. If the intention is that the benefit of doubt should not be given to the accused, the word 'shall' should be there. If we want that this should be left to the court to presume or not to presume, then the word should be 'may'.

SHRI B. IBRAHIM: Don't you think that under the present set-up, greater injustice is done in case of the burden of proof is shifted?

SHRI A. D. TATED: In criminal law, every accused shall be presumed to be innocent. Even if presumption remains, on the facts of the case by cross-examination, the court can reach to a conclusion, that presumption is rebutted. The burden on the accused is not so heavy. This has happened in the corruption cases where though the presumption was raised, and, ultimately, the man was acquitted.

MR. CHAIRMAN: He only wants you to tell him whether the word 'shall' or 'may' should be there.

SHRI A. D. TATED: The magistrate is bound to come to the con-

clusion by putting that word 'shall'. I think it should be 'shall'.

SHRI B. IBRAHIM: Coming to the judicial separation, there is Explanation (2) to Section 375 which says:

'A woman living separately from her husband under a decree of judicial separation shall be deemed not to be his wife for the purposes of this section.'

Will it be all right if we include 'customary divorce' instead of the words 'judicial separation'? Can we retain that provision?

SHRI A. D. TATED: Once customary divorce is given, then the lady no longer remains wife of that man. She will be like any other woman once the customary divorce is given.

SHRI B. IBRAHIM: So, you are in favour of total deletion of this Explanation.

SHRI A. D. TATED: Yes, Sir. I want for it.

SHRI R. S. SPARROW: I have merely a small question to ask. You mentioned about the rape committed in the rural areas. With your long experience as a sessions judge as also otherwise, did you get the majority of the cases from the rural areas or were they from the urban areas only?

SHRI A. D. TATED: I cannot say definitely whether they were from the rural or urban areas, but one thing is clear. In rural areas, most of the cases of rape offences are reported. In small villages where such things at once get currency and the people go to the police station and the matter is reported.

MR. CHAIRMAN: What is your experience as a sessions judge? You would have tried a large number of such cases as a sessions judge. Did you find that a majority of such offences had come from the rural

areas or were they from the urban areas?

SHRI A. D. TATED: There were cases on both sides. I cannot tell you definitely. I had come across a majority of the cases from the urban areas when I was in Nagpur. That is my experience.

SHRI R. S. SPARROW: In that context, I would further like to ask a small question. You mentioned that most of the cases are from the rural areas. According to your own assessment, may I know what is the percentage of such cases that came to your notice? In how many of these cases the accused had been acquitted. In your opinion what was the percentage of false cases that had been instituted?

SHRI A. D. TATED: According to me, the percentage of false cases was very small. They were genuine cases according to me. There are a few cases where, because of political rivalry etc., cases were launched. On the whole such were few.

SHRI R. S. SPARROW: Can you tell us whether incidence of false cases has increased as a result of this law?

SHRI A. D. TATED: It might have interested. Formerly the things were different. Now the things are different.

SHRI R. S. SPARROW: In relation to investigation and initial reporting, do you think it worthwhile to include some provision in the present Bill?

SHRI A. D. TATED: First of all, when a man comes or a lady comes to report, it should be immediately recorded in writing and action thereon taken by the Head Constable or any other subordinate official. The investigation should be done by a responsible officer. Prompt action in regard to on-the-spot inspection, arrest of the accused, medical examination should immediately be taken.

If these are promptly done, I think many cases could be successfully dealt with and the accused prosecuted.

MR. CHAIRMAN: You have said that the provision as at present stands, the complaint will have to be filed within 24 hours. What is that you do not find in regard to taking prompt action? As it is, do you think that the present law is sufficient?

SHRI A. D. TATED: According to me, when the cases are reported, they are not recorded immediately. My point is that a responsible trained officer can undertake scientific investigation.

MR. CHAIRMAN: Then in that case, don't you think that the officers of the subordinate rank would feel offended?

SHRI A. D. TATED: It is a question of experience. A trained responsible officer can examine the case more efficiently and in a scientific manner. They can certainly visualise things beforehand as to what sort of evidence is required in such cases.

MR. CHAIRMAN: In that case, do you like that such cases should be entrusted with the Police Inspector or a Circle Inspector or a D.S.P.?

SHRI A. D. TATED: These cases should be equated with murder cases. In murder cases, investigation is done under the supervision of the District Police Superintendent. In our State, there are instructions that no persons below the rank of D.S.P. should visit the spot and investigate the case. Therefore, I think that it should be done by a person above the rank of a Police Inspector. The Police Inspector is only holding the rank of a senior sub-inspector.

SHRI S. W. DHABE: I would like to know how many women judges are there in Maharashtra at the Sessions level?

SHRI A. D. TATED: At the Sessions level, only one women judge is

there. Now, she is on the industrial tribunal side.

SHRI S. W. DHABE: Will it help if women judges are there for hearing such cases?

SHRI A. D. TATED: I do not think so, because the experience is that lady Police Officers are also not so kind to the ladies.

SHRI S. W. DHABE: I do not agree with you. It may be according to you. Women Police Officers if appointed for investigation purposes would certainly help in such cases.

SHRI A. D. TATED: I would only want that the persons should be trained in this line.

SHRI S. W. DHABE: Many a time the victim is not able to explain the whole case to the Police Officer. And many a time the accused is acquitted because of not recording the statement of the victim correctly.

SHRI A. D. TATED: Recording of the statement of the victim is a very skilful task. The more skilful the officer is the better recording of the statement will be there.

SHRI S. W. DHABE: The woman officer can be trained.

SHRI A. D. TATED: If ladies can be trained and they are available for interrogation it is better because they can take the lady victim into confidence. If they are not there, there will be no damage if male officers are there.

SHRI S. W. DHABE: Should we make a provision in the law that police officers below certain ranks should not be entrusted with such cases? Secondly, should the accused be not immediately arrested and taken for medical examination?

SHRI A. D. TATED: Yes.

SHRI S. W. DHABE: Should we make a legal provision in this respect?

SHRI A. D. TATED: Yes. Sometimes the accused runs away. If it is possible, the accused should be immediately arrested. He should also be subjected to medical examination because medical examination in such cases is necessary.

SHRI S. W. DHABE: What is the position of the review petition in the Mathura case?

SHRI A. D. TATED: It has not yet been decided.

SHRI S. W. DHABE: The Home Secretary had made a statement before the Law Commission that the age of 16 should be raised to 18. In the Act it is already 18. In section 375, do you want the age to be 18?

SHRI A. D. TATED: I think 16 is all right.

SHRI S. W. DHABE: When in Section 361 and 366 of IPC it has been raised to 18, will it not be proper to raise it to 18 here also?

SHRI A. D. TATED: In this case we are more concerned with consent.

SHRI S. W. DHABE: If that is so. Section 90 mentions below 12.

SHRI A. D. TATED: Now what we are saying is that if the consent is there, that consent should be with proper understanding.

SHRI S. W. DHABE: What is the basis of raising the age in the IPC?

SHRI A. D. TATED: That I will not be able to answer immediately.

SHRI S. W. DHABE: If you keep the age as it is, will there not be contradiction?

SHRI A. D. TATED: I have not studied it.

SHRI S. W. DHABE: In villages landlords employ girls of 13 and 14 years of age. Similarly in tribal areas such things do happen. If rape is committed by the landlord or the employer, do you want that to be included in the Bill?

SHRI A. D. TATED: Those who have dominance either because of service or because of economic status and by using dominance, if advantage is taken, then they can be covered by the term 'public servants'.

SHRI S. W. DHABE: She states everything in her statement before the court. Suppose at the trial stage she is not examined first and other witnesses are given first opportunity,

will it be proper to presume anything after that?

SHRI A. D. TATED: Presumption has to be raised at the time of judgment.

SHRI S. W. DHABE: Suppose police statement is there that it was without her consent. Should presumption not start at that stage?

SHRI A. D. TATED: I do not agree. Presumption arises when the judge forms his opinion.

SHRI S. W. DHABE: In 111A, is there no need to clarify it?

SHRI A. D. TATED: It is not necessary.

SHRI S. W. DHABE: Are you in favour of minimum punishment?

SHRI A. D. TATED: They have stated that discretion is left to the court in suitable circumstances. That is necessary. That will safeguard the interests of the accused.

SHRI AMARPROSAD CHAKRABORTY: Discretion is there under 327 of the Act. Will you support it with legal compulsion?

SHRI A. D. TATED: It is left to the judge. Generally when such a request comes in rape cases from the prosecutor, the case is generally held *in camera*.

SHRI AMARPROSAD CHAKRABORTY: Is there any necessity of keeping it in 328B that it must be *in camera*.

SHRI A. D. TATED: The lady's evidence is generally taken *in camera*. The evidence of other persons should be in the open court.

SHRI AMARPROSAD CHAKRABORTY: When there is discretion vested in the court, should it be laid down that all this trial should be held *in camera*? Why should we give it a legal compulsion?

SHRI A. D. TATED: According to me discretion should suffice.

MR. CHAIRMAN: Should that provision be deleted?

SHRI A. D. TATED: Discretion is already there. Mostly it is *in camera* as soon as request is made.

MR. CHAIRMAN: The proposed provision is different.

SHRI AMARPROSAD CHAKRABORTY: Have you seen in the press that such and such a prostitute was raped by some persons at the high level? Should such type of incidents be published in the press or not?

SHRI A. D. TATED: The name of the victim should not be disclosed.

SHRI AMARPROSAD CHAKRABORTY: 2(2)(a) "...which make known the identity, of any person against whom an offence specified infound to have been committed."

The names of other persons or matter should be published. Do you agree?

SHRI A. D. TATED: It is envisaged that the name of the girl should not be published.

SHRI AMARPROSAD CHAKRABORTY: 'Name or any matter'.

MR. CHAIRMAN: 2(2)(b) says—
"any matter in relation to a proceeding held in a court *in camera*."

The entire thing should not be published.

SHRI A. D. TATED: With the permission of the Court, the proceedings can be published.

SHRI AMARPROSAD CHAKRABORTY: Only the Supreme Court's judgment can be published.

SHRI A. D. TATED: Section 228A (1) is the relevant section regarding the publication of the proceedings of the court.

SHRI AMARPROSAD CHAKRABORTY: I am only putting this question to you since that question has not been covered by my colleagues. Suppose 'A' has committed a rape on a woman. Do you think that the name of that person should be published? When the proceedings are held *in camera*, nothing can be published.

SHRI A. D. TATED: Complete ban is there.

SHRI AMARPROSAD CHAKRABORTY: Do you think that there should be some sort of discretion left

to the judge in regard to the publication of the name?

SHRI A. D. TATED: I think it should be left to the judge as to what portion of the *in camera* proceedings in a court should be allowed to be published and what should not be published.

SHRI AMARPROSAD CHAKRABORTY: Is it your opinion that no such publication should be made?

SHRI A. D. TATED: Yes, Sir. The names of the accused persons who have committed the atrocities should only be published in the papers as this acts as a deterrent. If such persons commit the offence, the press acts as a deterrent in publishing their names. We have only to see that the name of the victim should not be published so that she may not be looked down upon by the society.

SHRI AMARPROSAD CHAKRABORTY: Well, as a judge, how many cases did you try and give your judgment?

SHRI A. D. TATED: I tried many rape cases and gave judgments.

SHRI AMARPROSAD CHAKRABORTY: You know the Hindu Marriage Act has been amended. Under Sec. 14(3), there is a provision that even at the appellate stage, before the divorce is granted, the husband or the wife is given a time of six months by the court. In the meantime no co-habitation takes place. As a former presiding judge, if a sexual intercourse takes place, don't you think that this provision should remain as it is?

SHRI A. D. TATED: I have already said that this should not be there.

SHRI AMARPROSAD CHAKRABORTY: Thank you very much. In our country we have the Hindu Marriage Act and the Indian Penal Code. As the Chairman pointed out, the age limit has been raised to sixteen years. Don't you think that this age should be raised so as to make it uniform in

all laws of this country? See the provision 'Seventhly'. It says:

"With or without her consent, when she is under sixteen years of age."

Is it all right?

SHRI A. D. TATED: We are considering sixteen years of age as the age of consent. Under the Contract Act, the age of consent is eighteen years. Here we have been making a distinction between the Contract Act and other Acts.

SHRI AMARPROSAD CHAKRABORTY: In the Hindu Marriage Act, Contract Act and the I.P.C. they have raised the age to 18 years. What are the reasons in making a departure here?

SHRI A. D. TATED: According to me, in the Contract Act eighteen years of age is the age of majority. Under Sec. 8 of the Contract Act, all contracts are void if a girl is below eighteen years.

SHRI AMARPROSAD CHAKRABORTY: I want to know whether there should be uniform age in all the statutes? Or, should there be a departure by making it as an exception in this Bill?

SHRI A. D. TATED: It is not necessary that there should be uniformity. Since the beginning in the Contract Act, there is a provision that eighteen years is the age of majority. The purpose is better served even in the I.P.C. and other Acts by having that provision.

SHRI AMARPROSAD CHAKRABORTY: Tell us whether it should remain or it should not remain.

SHRI A. D. TATED: Sixteen years provision for the purpose of rape is all right.

SHRI AMARPROSAD CHAKRABORTY: Kindly see Sec. 376(2)(b). The words 'Public Servant' are men-

tioned. Under Sec. 217, L.P.C. a public servant also includes a judge.

SHRI A. D. TATED: Yes, Sir.

SHRI AMARPROSAD CHAKRABORTY: Would it not demoralise the entire administration if you make this provision in this way?

SHRI A. D. TATED: I would not be in favour of giving a licence to the judges.

SHRI AMARPROSAD CHAKRABORTY: We do not put it in that way. I say that Section 21 covers almost all the officials of the Government.

SHRI A. D. TATED: In Sec. 376(1) (b) the words 'public servant' find a place. Under the definition, the public servant means any person falling in any of the descriptions.

SHRI AMARPROSAD CHAKRABORTY: Would this not have a demoralising effect on the judges in the country?

SHRI A. D. TATED: If you include them as 'public servants' that would make the judges alert or very careful when they deal with the cases of the ladies.

SHRI AMARPROSAD CHAKRABORTY: In our country, even before the age of 12 puberty takes place among the girls. Here it is very serious if you suggest that it would not be treated as rape because it takes place when the victim is under 15 years.

SHRI A. D. TATED: That is why I had said that it should not be equated with other extraordinary cases. After all she is married to the accused. Deterrent punishment would mean dislocation in the happy married life. I have not come across any complaint against a husband having raped his wife.

SHRI AMARPROSAD CHAKRABORTY: In the Evidence Act, under Section 114, do you suggest that by putting the word "shall" would be more suitable?

SHRI A. D. TATED: There will be no difference in the trial. The trial will continue as it is. But the difference is that the accused will not get any benefit of doubt if the word "shall" is added in the relevant section.

MR. CHAIRMAN: Now, a complaint is filed that such and such man has committed rape. Then investigation takes place. The charge-sheet is submitted to the Court. The accused comes to the court and he is questioned etc. Then the report of the medical examination is produced. Questions will be put to the accused and the answers are recorded and after all these formalities are over, the evidence is taken into consideration. In that case quoting of all sorts of evidence i.e. first sexual intercourse and then proof, is necessary. If it is proved that sexual intercourse has taken place, then he tries to make out a case that there was a consent given by the lady and at the same time, the prosecution will also try to destroy the circumstances which may lead to proof of consent. Then there is the question of forming of presumption. But here a special presumption is provided i.e. absence of consent. Why do you want this to be here when it is already there in the Act?

SHRI A. D. TATED: By putting Section 111A we are emphasising a certain fact. In section 114 there are general provisions. Section 114 does not cover this type of cases.

SHRI LAL K. ADVANI: Do you not think that in the recent judgments given by the courts, the question of consent was very material?

SHRI A. D. TATED: Absence of consent is very difficult to prove and he gets the benefit of doubt. If such presumption is there and the burden

is shifted, then the benefit of doubt will not be there.

SHRI R. K. MHALGI: It appears that you have got lot of experience as a judge. You please refer to page 5, line 40 of the Bill. It is mentioned here that cases under Section 376 will be tried by sessions court. Though the following sections 376 A, B and C are of a graver nature they will be tried by a first-class magistrate. How will you justify it?

SHRI A. D. TATED: I have already said that they should be tried by the court of sessions.

श्री० निर्मला कुमारी शक्तावत : बहुत से लोग मुग्गी-पट्टी में रहते हैं और अधिकांश समस्याएँ मुग्गी में से उठती हैं। मैं आप से यह जानना चाहती हूँ कि एच ए जज या एच ए ला सेक्रेटरी, क्या आप ने इस समस्या का अध्ययन किया है कि ऐसी समस्याएँ मध्य परिवारों से, जो इन मुग्गी-मुग्गी में रहते हैं, उठती हैं या ग्रामीण क्षेत्रों में रहने वाले शरीब लोगों में भी इस तरह की बातें होती हैं ?

श्री ए० डी० तातेड : जैसा पहले बताया गया है कि एकोनामिक कंडिशन भी इस तरफ ले जाती हैं। पाबर्टी इन क्विटरि कंडिशन। यह भी पापों की जननी है, शरीबी भी ऐसी समस्या की जननी है। मुग्गी-मुग्गी में रहने वाले लोगों की शरीबी के कारण भी यह समस्या पैदा हो सकती है।

श्री० निर्मला कुमारी शक्तावत : मैं यह पूछना चाहती हूँ कि एच ए ला सेक्रेटरी क्या आप ने इस तरह का कोई अध्ययन किया है और क्या आप के पास कोई कैटेगोरिजेशन है, जिस के अनुसार अधिकांशतया इस तरह के अपराध कहां पर होते हैं ? क्या मुग्गी-पट्टी में इस तरह के केस ज्यादा होते हैं,

मध्य वर्गीय परिवारों में ज्यादा है या ग्रामीण क्षेत्रों में ज्यादा होते हैं।

श्री ए० डी० तातेड : इस तरह के स्टैटिस्टिक हम ने इकट्ठा नहीं किये हैं। इसलिए करेक्ट आन्सर देने में मैं असमर्थ हूँ। कहां ज्यादा है और कहां कम, मेरे लिये यह बताना कठिन है। मैंने अभी बताया था कि इन्वेस्टीगेशन अच्छी तरह से होना बहुत आवश्यक है। इन्वेस्टीगेशन अगर अच्छा नहीं होगा, तो चाहे आप जितना अच्छा कानून बना दें, कोई समस्या हल होने वाली नहीं है।

SHRIMATI MOHSINA KIDWAI: You said that the medical examination of the accused and proper investigation of the case should be there. After the amendment of the present Act, I think the same problem will be there. Are there any suggestions from you as to how we can make the law more practicable and more effective? Should there be a special police force? Should they be given special training?

SHRI A. D. TATED: There will be no solution.

The persons who are incharge should be trained. We have got some institutions wherein training in criminology is given. If such a training is imparted, it will help the people. At least one or two persons in every district should be trained so that they can impart knowledge to others. That is necessary.

SHRIMATI MOHSINA KIDWAI: The basic thing is the medical examination.

SHRI A. D. TATED: Many doctors do not know its ingredients. The case is to be decided on the medical evidence. There should be capable persons.

MR. CHAIRMAN: I.G.P. may please enlighten us in this regard.

SHRI S. K. CHATURVEDI: We have 600 police stations all over Maharashtra. The police stations are located at distant places. There is element of delay in approaching both—women and the accused. Part of delay is there in medical examination also because medical facilities are not available everywhere. Microscopic examination is necessary to establish at least that spermatozoa is in tact. Presence of semen is there. This kind of examination facility is not available everywhere. If the courts and the Parliament permit us we could train some of the Police Officers in the microscopic examination. The examination by the police officer should be regarded as evidence. That is the only practical solution which I can suggest. It will help in the prompt investigation.

MR. CHAIRMAN: According to the Law Secretary there was delay in undertaking the investigation. The accused was not arrested immediately. If an accused person is apprehended immediately there is possibility of getting the marks of evidence such as scratches, etc. Even though provisions are very clear to take action immediately, why do you not do it immediately?

SHRI S. K. CHATURVEDI: Where there is delay on the part of the Investigating Officer, the matter is looked into. The accused runs away. He is not traceable. Search is made for him.

You know even in murder case some-times the accused runs away. We do chase him. Unless it is provide that on the part of the police officers delay is deliberate to apprehend the accused we cannot take action against him.

The more important thing is that the victim should come to the police

station to report the matter. Also equally important thing is whether she has been promptly examined medically.

If there is deliberate delay on the part of the police officer we deal with it very strictly and the police officer may face suspension and even dismissal.

To deal with cases of offence sternly we are raising jail sentence. Since it is a grave crime, telegraphic report is sent to the Superintendent of Police, though such cases are dealt with by Deputy Superintendent of Police. If S. P. comes to know the time at which the complaint had been lodged with the police station, he can count when the examination could take place, when the accused could be apprehended and whether there was deliberate delay.

MR. CHAIRMAN: According to you there is no difficulty in undertaking investigation immediately after the filing of the complaint.

SHRI S. K. CHATURVEDI: The real difficulty arises because the lady does not come to the police station promptly. She goes to her guardians and friends so as to have consultation. There also there is reluctance to report the matter to the police.

After great reluctance she comes to the police station and lodges a report. Normally the delay is there and by that time everything is lost so far as medical evidence is concerned. The accused also tries to remove all evidence.

By that time she washes her body, clothes, etc. with soap. Practically everything is lost in this way.

MR. CHAIRMAN: Some of the Investigating Officers do not know what is the ingredient of rape. What have you to say about that?

SHRI S. K. CHATURVEDI: I do not subscribe to this. I think every police officer knows quite well.

What are the ingredients of rape? Without trying to import any levity into it, I would say that if a young man has studied law, he will find that there is a section there.

MR. CHAIRMAN: The Law Secretary says that a senior police officer must be entrusted with the case. Do you agree?

SHRI S. K. CHATURVEDI: No, Sir. Experience will always help. It is not that a junior officer does not know the provisions of law. Experience in investigation is quite a different matter altogether. I would say that a senior officer, if not for anything else, will surely help in expediting the matters.

MR. CHAIRMAN: In that connection you are in respectful agreement with the proposition made by the Law Secretary.

SHRI S. K. CHATURVEDI: I would say that it should be made a grave or serious crime so that if a telegraphic information is given both to the Sub-Divisional Police Officer as well as the S. P., with one or two senior officers, that is either the Superintendent of Police or Deputy Superintendent of Police or Assistant Superintendent of Police, they can look into this as they look into the murder or robbery or dacoity cases and get that investigated under the supervision of a senior police officer.

The Law Secretary has almost summed up the entire argument. There is only one thing which I would draw your attention to. I am here talking about the police officers. As you know, it is the duty of the police officer to handle the crimes and to investigate into the crime cases. That includes crime by women also. I take the opportunity of just reading out to you a report which I have received only this morning from a district in our State, namely, Sholapur. That 3027 LS—12.

incident is still fresh in our minds. I shall just read that out to you to show what the problem is.

MR. CHAIRMAN: I want to know here whether it can go on record or not.

SHRI S. K. CHATURVEDI: It can go on record. I have no objection. This is a case from Sholapur District. I quote:

"Smt. Sharada Chavan, a resident of Tarapur, Taluka Pandharpur, lodged a complaint with the District Magistrate, Sholapur on 22-7-81 stating that she had been to Mohol police station on 18-7-81 to enquire about the case against her son, who had been arrested under Sec. 122 B. P. Act on 15-7-81 and sentenced to undergo S. I for four days. According to her complaint, on the 18th instant, PSI Chalke of Mohol Police Station asked her to bring Rs. 200/- so that the case against her son would be settled. Accordingly, she visited the Police Station again on 21-7-81 in the afternoon and according to her, at that time, the PSI took her to his quarters and threatened with his revolver and raped her. Smt. Chavan was accompanied by Shri Bharati Yamaji Chavan, a leader of the Pardhis in Sholapur district.

"On receipt of this complaint, a case u/s 376 IPC was registered at Sadar Bezaar Police Station, Sholapur on the same day at 20.40 hrs. Smt. Chavan was immediately sent for medical examination and the next day P. I., Sadar Bazar Police Station went to Mohol, just 15 kms away from Sholapur, and on 23-7-82 at 08.15 hrs., formally registered an offence at Mohol Police Station. The news regarding a case of rape against the PSI on a complaint lodged by a Pardhi woman had already raised Mohol earlier and on registration of the case at Mohol Police Station, a large crowd gathered and some of the policemen reported sick *en masse*, demanding justice

and protection to the PSI. Smt. Chavan stated that she was 45 years old and according to the S. P., she appeared to be 50 years old. She has 6 children and her eldest son who is arrested by the police is 22 years old. Her medical examination revealed that there is no external injury and no sign of rape."

"Her son's wife comes from Mohol and her son had gone to Mohol to meet her on 15-7-81 and perhaps during his stay there, was picked up by the police u/s. 122 B.P. Act and was prosecuted.

"Smt. Chavan is related to another Pardhi woman by name Smt. Hira Shiva Kale of Tarapur, Tal. Pandharpur, who is reported to be indulging in the business of illicit liquor and she was found to have lodged two false cases under Sec. 354 IPC and Sec. 376 IPC in 1979 and 1980 against a private person and son of a policeman respectively. Both the cases ended in acquittal. It is believed that at the instance of this woman, Smt. Sharoda Chavan lodged a false complaint of rape against PSI Chalke. Smt. Chavan herself does not have any criminal record though it is suspected that she also indulges in the sale of liquor."

"PSI Chalke is 25 years old, is married and has 2 children and his family is living with him in the Government quarters attached to the Police Station which is situated in a busy locality in Mohol. He has been posted at Mohol Police Station as desired by Government only about 3 months before and is reported to be working very well. On 21-7-81, PSI Chalke at the relevant time was at village Karkam for a prohibition raid. Earlier also he had arrested 4 Pardhi boys and recovered stolen property from them. Villagers thought that the complainant, a Pardhi woman was

related to one of the Pardhi boys arrested by the P.S.I."

SHRI R. K. MHALGI: Taking this into consideration, do you agree with the proposal made by the Law Secretary supporting the new Section 111A?

SHRI S. K. CHATURVEDI: I was coming to that.

As far as police officers are concerned, a deterrent sentence of ten years is too long a period. I think that when you are enhancing the sentence itself, the standard of proof should be sufficiently high. Having the standard of proof low in one case and a higher standard of proof in another case will have undesirable effect making the police officers so scared of handling women as this itself is a very difficult task. It may lead to what I may think, demoralisation of police forces when dealing with women in any crime as it may become almost impossible. I would say it will be embarrassing even if they touch the women. The law makes no distinction between man and woman when it is a question of arresting. Here the police officer is very much worried. When he is handling the cases of women, sometimes, there are occasions when a police officer on getting the information may have to arrest the woman also. We know what the difficulties are. We try to make women constables present at times when there are such matters to be dealt with. However, we do not have women police here to be able to deal with those cases. I would only say that the standard of proof should be high if the sentence is to be high. I have no quarrel with the sentence that has been prescribed. It should be ten years. But the standard of proof should also be equally high. In the case of murder, for example, when death sentence is to be given, there the standard of proof is to be much higher. This is the only point that I want to make.

प्रो० निर्मला कुमारी शक्तावत : जैसा आपने बताया था कि पुलिस अफसरों को भी इस बात की ट्रेनिंग देनी चाहिए कि वे मैडिकल एग्जामिनेशन कर सकें। क्योंकि 24 घंटे के अन्दर ही मैडिकल एग्जामिनेशन हो जाना चाहिए, तो क्या आप इस बात को आवश्यक समझते हैं कि हर एक पुलिस अफसर को इस बात की ट्रेनिंग दी जाए ?

श्री एस० के० चतुर्वेदी : हर एक पुलिस अफसर को ऐसी ट्रेनिंग देने की शायद आवश्यकता नहीं है।

प्रो० निर्मला कुमारी शक्तावत : आपने बताया था कि बहुत से रूरल एरियाज हैं और वहां पर अगर इस प्रकार के केसेज होते हैं, तो वे टेलीग्राफीकली इन्फोर्म करते हैं। टेलीग्राफीकली इन्फोर्म करने के बाद पुलिस अफसर को उस जगह पहुंचने में 24 घंटे से अधिक का समय लग जाता है। ऐसी स्थिति में क्या आप यह आवश्यक समझते हैं कि जहां पर ऐसे पुलिस स्टेशन हैं, वहां पर उन लोगों को ऐसी ट्रेनिंग दी जा सके कि वे मैडिकल एग्जामिनेशन कर सकें ?

श्री एस० के० चतुर्वेदी : जी, हां।

प्रो० निर्मला कुमारी शक्तावत : क्या पुलिस अफसरों को मैडिकल ट्रेनिंग दी जाती है ?

श्री एस० के० चतुर्वेदी : थोड़ी मैडिकल ट्रेनिंग हर मैडिकल कालेज में दी जाती है।

प्रो० निर्मला कुमारी शक्तावत : कैम्पिकल एग्जामिनेशन कर सके, इसके लिए कितने दिनों की ट्रेनिंग की आवश्यकता है ?

श्री एस० के० चतुर्वेदी : मेरे क्वेश्चन से थोड़ी सी ट्रेनिंग देने के लिए 10 दिन की आवश्यकता होगी।

After 10 days of training, microscopic examination is a possibility. Spermatology is not a difficult thing.

प्रो० निर्मला कुमारी शक्तावत : आपने अभी एक केस के बारे में कहा था। हो सकता है कि इस प्रकार के केसेज और भी हों। यदि हम 111(ए) को डिलीट कर देते हैं, तो स्त्रियों को न्याय नहीं मिल सकेगा। मैंने अपनी पोलिटीकल लाइफ में कई ऐसी एग्जाम्पल देखी हैं कि रेप के केस हुए हैं और जो अपराधी था, उसका कुछ नहीं बिगड़ सका। मैं ऐसा समझती हूँ कि अगर इसको डिलीट किया जाता है, तो फिर स्त्रियों को न्याय नहीं मिल सकेगा।

श्री एस० के० चतुर्वेदी : ऐसी बात नहीं है क्योंकि एक दूसरा सेक्शन बनाया हुआ है, जिसमें अगर पुलिस अफसर रेप के अपराध में बच गया, तो सिडेक्शन में घा जाता है और उसमें उसको पांच साल की सजा हो जाएगी। पांच साल की सजा कोई कम सजा नहीं है अगर सजा मिलती है।

Having an intercourse with a woman who is in his custody, even with her consent, is an offence.

SHRI K. K. MHALGI: Now, if you refer to Section 111A, you will find that the word "Shall" is put in the last sentence. Many have contended that the word "shall" should not be there. Is it also your contention?

SHRI S. K. CHATURVEDI: No. The relevance was that the Police Officers were public servants, who were to deal with women as well as men. Under the circumstances, their association is not a very pleasant association. Normally, in dealing with the women, it will be their duty to arrest them and this being the reason, more chances of false complaints being lodged against the police men are there. And it is a fact that it had happened and it is also a fact that in some cases the Police also had to

react to such false complaints. Some time these persons went on casual leave because false cases were being lodged against them. The general public had also reacted to this. This is what has happened. I gave an example of precise case to show that this may happen in many other cases.

SHRI R. K. MHALGI: You have to see that there is no demoralisation in the Police force. If Police commit such an offence, then certain punishments are prescribed for that and Section 111A will also be invoked.

SHRI S. K. CHATURVEDI: This is what I have said. I am fully in agreement with this provision.

SHRI R. K. MHALGI: How many women Police Officers are there in Maharashtra Police force?

SHRI S. K. CHATURVEDI: I will not be able to give you the precise information offhand. Approximately, it will not be more than 25 out of a total number of officers of about 3000. The Bombay city has the largest number of officers and also the largest number of women police officers.

SHRI R. K. MHALGI: What is your experience in regard to the women Police Officers dealing with the rape cases?

SHRI S. K. CHATURVEDI: I have no experience of women police officers investigating into the rape case. They were not officers in charge of Police Stations. We have an auxiliary police force comprising women police officers who deal with cases like juvenile delinquency, abduction cases, tracing of lost women and things like that. But normally the cases dealt with the Police Stations are mostly dealt with by male officers.

SHRI AMARPROSAD CHAKRABORTY: Can you give the figures of rapes committed in Maharashtra during the last three years?

SHRI S. K. CHATURVEDI:

1978—358 cases

1979—371

1980—418

SHRI AMARPROSAD CHAKRABORTY: How many cases were ended in acquittal and how many were ended in conviction?

SHRI S. K. CHATURVEDI: Total number of cases in 1978 was 358. Convicted—86, Acquitted—163, Pending trial—146.

1979—total number of cases—371. Convicted—118; Acquitted—174; Pending trial—140

1980—total number of cases—418. Convicted—104; Acquitted—191. Pending trial—131.

SHRI LAL K. ADVANI: Out of these cases, how many were related to police officials and public servants?

SHRI S. K. CHATURVEDI: As far as police officials are concerned I do not have the figures. But this year upto last month there may be 8 or 9 cases.

SHRIMATI GEETA MUKHERJEE: Please supply the figures.

SHRI S. K. CHATURVEDI: Yes, I will.

SHRI AMARPROSAD CHAKRABORTY: It is mentioned in the Bill that the investigation should be made by a higher police officer. Section 53 lays down that police officer not below the rank of sub-inspector is permitted to make the enquiry. What do you say about this?

SHRI S. K. CHATURVEDI: In our State the Head Constables are entitled to investigate such type of cases.

SHRI AMARPROSAD CHAKRABORTY: Do you engage registered medical practitioners for conducting medical examination?

SHRI S. K. CHATURVEDI: Yes. These provisions are generally complied with.

SHRI S. W. DHABE: Have you taken any action against those police officers who were involved in Mathura case? After that case, did you give any instructions that offences of such a nature should be dealt with severely?

SHRI S. K. CHATURVEDI: I am not very conversant with this. But if you want I can certainly find out. It is a grave misconduct and the police officer who is involved in such a type of case should be dismissed straightaway.

SHRI S. W. DHABE: Recently in Nagpur a Muslim women was raped by some police officials. What action did you take against those police personnel?

SHRI S. K. CHATURVEDI: Those constables have been arrested.

SHRI S. W. DHABE: Section 111A is not only applicable to the police personnel but to the whole Section 376(2) Section 111A covers all types of cases. Is it your contention that it should be restricted to the police officers or should it apply to other categories also?

SHRI S. K. CHATURVEDI: The police officer goes to a village for investigation. He has to arrest a woman. He has to choose whether to arrest her or not. He is placed in special circumstances where he has to exercise official powers in a remote place. I would say that the work of the police is normally unpleasant. Therefore, the chances of allegation against him can always be there.

SHRI S. W. DHABE: There are cases of raping pregnant women and gang rapes.

SHRI S. K. CHATURVEDI: As Chief of the Police, I have to tell you facts.

SHRI B. IBRAHIM: In most of the cases there are acquittals, not convictions.

SHRI S. K. CHATURVEDI: In most of the cases witnesses turn hostile. The lady sometimes withdraws from the proceedings of the prosecution. Proving of offence becomes difficult in the court of law.

SHRI B. IBRAHIM: Is it correct to suggest that no proper presentation of the case like rape is given by the prosecutor? This leads to acquittal.

SHRI S. K. CHATURVEDI: I would not say so.

MR. CHAIRMAN: There is no proper standard of investigation and there is no speedy trial. That is the reason acquittals take place in rape cases. What is your view?

SHRI S. K. CHATURVEDI: Whatever be the standard of the prosecutor, it is for all the cases and not merely in rape cases.

SHRIMATI GEETA MUKHERJEE: In 1980, 480 cases were reported. In 1978, 358 cases were reported. So far only eight or nine police officers have been charge sheeted in 1981. If this is the situation how can you say that the entire police will become demoralised?

SHRI S. K. CHATURVEDI: There may be false allegations.

SHRIMATI GEETA MUKHERJEE: I know aggressive women all the time are accusing police officers. But this provision may do greater justice to women. You may please send us your suggestions which may serve the purpose and the police officers should also not feel demoralised.

SHRI BAPUSAHEB PARULEKAR: I shall touch the subject of delays. I come to the stage of investigation. Is it your experience that because we have no separate investigating agency in the police Department, the investigation is delayed to a considerable extent?

It is noticed when the reason of delay is asked it is often told that the police has been busy in bandobust. Therefore, just as you have armed constables and unarmed constables, if the investigation agency is kept separate, don't you think they can cope with investigation? Don't you also think that delays could be avoided to a considerable extent?

SHRI S. K. CHATURVEDI: Rape would not be such a regular offence as to have a special investigation department for that.

What I am saying is that the distance should be kept in view in making arrangements like this. We have police stations far apart. In one police station once in a year the rape case may come in. Now, to have a separate set of people for investigating such offences would be only a waste of man power.

SHRI BAPUSAHEB PARULEKAR: If an investigating agency is separately kept, then what is your opinion? Suppose there are 100 policemen. Each P.S. is having armed as well as unarmed constables. Why not have such police to have investigation since they are not concerned with bandobust and other special work?

SHRI S. K. CHATURVEDI: That kind of arrangement for crime detection and for law and order, we try to make. In fact it is already existing. What happens is this. When the real problem of law and order comes, not to speak of crime detection police force, even the armed police are taken for that purpose. Even so, the policemen will always be out numbered by the people.

SHRI BAPUSAHEB PARULEKAR: Tell me about the delay investigation.

SHRI S. K. CHATURVEDI: I am not saying that there is delay in investigation always. It is one of the factors. There finding a possible solution is often more difficult. One of the reasons for it is the delay caused by the prosecutrix herself.

SHRI BAPUSAHEB PARULEKAR: We are concerned with the delay after the FIR is filed.

SHRI S. K. CHATURVEDI: Secondly, the person is not sent up for medical examination in a particular case.

SHRI BAPUSAHEB PARULEKAR: If the prosecutrix comes to the police station, have you a medical officer to examine her at the taluka level?

SHRI S. K. CHATURVEDI: Now the rule is that there should be more medical officers in the taluk head quarters. The question is: whether doctors are available or not. I would agree to an extent that medical officers should be in the taluka headquarters. The most inhibiting factor here is in our not being able to get the information quickly about the accused person.

SHRI BAPUSAHEB PARULEKAR: Examination of the accused is next to impossible for the purpose of medical examination. As you said, the accused might wash his clothes. In such a case, you know, medical examination of the accused is rather difficult.

SHRI S. K. CHATURVEDI: I would not say that. It would be much less if the accused is sent for medical examination immediately. Sometimes the accused is examined immediately and in some cases, there is difficulty in getting them examined immediately.

MR. CHAIRMAN: The proper thing would be to have qualified medical officers in taluka headquarters.

SHRI S. K. CHATURVEDI: A doctor is not only having a M.B.B.S. degree but he should have undergone a course in forensic medicine, when he has to appear in the court.

SHRI BAPUSAHEB PARULEKAR: In the case of women, medical examination will have to be made only by the female doctors. The problem here

is you have no female doctors. And therefore examination is done by male doctors. Some solution has to be found out.

Now I come to a very important point about which the public is very much agitated. That is about the offence of rape committed by the police in the police station. If one comes to the police station to register a rape case against an inspector or if he comes to the D.S.P. do you think that these officers would correctly record the offence against the police officer? That is what happened in two or three cases. What is your suggestion? A prosecutrix cannot go to the D.S.P. to file an FIR. What should be done here?

SHRI S. K. CHATURVEDI: The solution to my mind is whether the public could be educated to that kind of a thing. If an allegation is made against the police officer himself, then possibly, a telegram should be sent to the Superintendent of Police of the district in time making it possible for him to send an officer from the headquarters. This would be a best solution. As I see it, you yourself are answering your question, there is a difficulty with a junior police officer in the station. He would not like to take action against a senior officer. In a case where a senior officer is involved, we know that this is covered by law. We may assure you that we will help him in order not to escape from this responsibility. When such a thing comes about, reluctance is there. But, by sending a telegram to the superior officer, this difficulty may be overcome. He will send his officer immediately. What I mean is that in case of delay, if a telegram is sent, then the responsibility is that of the S.P. He will send the person there for making an investigation into the matter.

SHRI BAPUSAHEB PARULEKAR: Why don't you record it under Sec. 154?

SHRI S. K. CHATURVEDI: The law is always two-sided. The recording of a statement under Sec. 164 also becomes difficult.

In Bombay City, you would be surprised that there is no recording of a statement under that section.

SHRI BAPUSAHEB PARULEKAR: Many of my distinguished colleagues have asked questions. They said that the investigation should be given to an officer of the rank of the DSP. Do you think that a young officer from the IPS having no experience would be in a better position to investigate?

SHRI S. K. CHATURVEDI: I do not think so. I say for that kind of investigation, the senior officer's supervision is necessary. After all investigation is done only by the sub-inspectors.

SHRI BAPUSAHEB PARULEKAR: Have you given any instruction regarding investigation? What is the effect of these instructions? You must have come across cases many times. Will it not serve the purpose if you entrust the investigation work to an officer of a particular rank? I have seen cases of investigation resulting in acquittal of the accused. That is why I say, experience is necessary.

SHRI S. K. CHATURVEDI: I agree that experience is necessary. The sub-inspector or inspector investigating the case knows where the loop-hole lies. He also verifies whether the evidence is truthfully recorded or not.

बीकानेर जिलाक सीकुरी : जैसा मानवीय सचस्य ने बतादा श्री मेरे पास भी कई ऐसी एग्जाम्पल्स हैं, जिनके अनुसार पुलिस के छोटे कर्मचारियों की तिकायत जाने पर उन को रफा-दफा कर दिया जाता है और जो कम्प्लेनेट होता है, उस को भगा दिया जाता है। क्या आप इस चीज को पसन्द करेंगे कि कोई इस तरह का एक सब

चार-पांच घादसियों का पंचायत लेवल पर हो, जो पुलिस से एकदम अलग हो और वे ऐसे केसेज की जांच करे। उसमें एक घादमी मेडिकली ट्रेन्ड हो, क्रिमिनल ला की जानकारी रखने वाला भी हो। पंचायत लेवल से ले कर डिस्ट्रिक्ट लेवल तक इस तरह का तंत्र हो और वह रेप वाले केसेज की जांच करे। क्या इस तरह का तंत्र बनाना ठीक होगा ?

श्री एस० के चतुर्वेदी : मैं तो यह कहूंगा कि अगर इस तरह की कोई चीज हो सके और सिनसियरली हो सके, तो अच्छा होगा।

As the hon. Member has pointed out, if it could be done, then there is nothing like that. But the fear is, as we call it in Marathi proverb, that it will become a Panchayat kind of thing. That is why there is a difference kept between the elected Panchayat and...

श्रीमती विद्यावती चतुर्वेदी : मैं पंचायतों के चुने हुए लोगों की बात नहीं कह रही हूँ, मैं शासकीय तंत्र की बात कह रही हूँ। सरकार इस तरह का कोई तंत्र बनाए और डिस्ट्रिक्ट लेवल पर जो इन्वेस्टीगेशन करनी है, तो रेप वाले केसेज में वह इन्वेस्टीगेशन करे क्योंकि होता क्या है कि एक बार तो पहले वह स्त्री एक जगह सताई जाती है और दूसरी बार जब वह पुलिस वालों के पास जाती है, तो वहाँ सताई जाती है। इस तरह के केसेज वह बोर्डे इन्वेस्टीगेट करे और वह बिल्कुल इन्डिपेंडेंट बोर्डे हो और ऊपर के लेवल तक इस चीज को ले जाया जा सके, तो क्या यह ठीक होगा।

श्री एस० के चतुर्वेदी : मेरा जवाब यही है कि अगर ऐसा हो सके, तो बहुत अच्छा है।

श्रीमती विद्यावती चतुर्वेदी : दूसरी बात यह है कि आप जानते हैं कि कोई मर्डर करता है, तो उस पर 302 में

मुकदमा चलाया जाता है। जो घादमी मारा गया, वह तो मर ही जाता है लेकिन रेप का जो केस होता है, उस में तो उस महिला की जिन्दा रहते हुए मौत हो जाती है और उस की जिन्दगी मौत से बदतर होती है। 302, 304 और 307 में जो मर्डर का केस चलाया जाता है, तो क्या आप यह पसन्द करेंगे कि रेप वाला जो केस होता है, उस में भी कानून को सक्त बनाया जाए, जिस से इस तरह के केसेज में कमी आए ?

श्री एस० के चतुर्वेदी : यह जो कानून बनाया जा रहा है, यह भी वैसा ही है। इस में 10 साल की सजा देने का प्रावधान है। इस में सजा और भी ज्यादा दे सकते हैं।

The only thing is that the standard of proof should also be quite high as in the case of murder case.

MR. CHAIRMAN: According to you, the standard of proof must be very high because you are imposing a heavy penalty. So, in that case, the presumption is that Section 111A would not be useful. According to you, there is no alternative for the police Officer to escape from the clutches of the law.

SHRI S. K. CHATURVEDI: Yes, Sir.

SHRI P. G. SALVI: So far as Section 228A is concerned, I think there is a little contradiction. So far as the contents of this Section are concerned, as also the proposed provisions of Section 327 (2) are concerned it has been said that the proceedings taken *in camera* will not be published without the previous permission of the Court. That means the court can give permission to publish the proceedings. So, it is possible that it may conflict with the provisions of Section 228A. Therefore, I personally feel that 327 (2) may have to be recast. So far as the definition of the word rape is concerned, Section 375 is overlapping with the Section 90. I think that to the extent of overlapping there should be some changes made in the draft.

Regarding the age of consent, here it is given as 16 years. It was earlier thought, when a meeting was called by the Home Minister, that it might be raised to 18 years, but on reconsideration I feel that this age limit may be retained as 16 years because this is in different context. Now, Explanation 2 concerns with husband living in judicial separation. I feel that the proposed Section 111A should not be made applicable here, for obvious reasons because it is possible that there could be reconciliation at any stage.

SHRI R. K. MAHALGI: So, you say that this should not be applicable.

SHRI P. G. SALVI: Yes, Sir. So far as Section 376(2) is concerned it appears that the police officer has been singled out. This is something which is concerning the police officer only. That has been emphasized by the IGP. There could be a police officer who has the entire State as his jurisdiction. It is possible that he may be involved in what could be called rape by means of attack by putting up false case. Such a situation would arise in a fairly big scale if the present clause continues like that. If the rape is committed in the police station it should be treated as a very grievous offence. But the first part of this clause says that if the rape is committed either in the police station or outside, he is liable. I would say that this might be deleted. Otherwise this would have demoralising effect on the police force in the circumstances mentioned by the IGP.

Next clause talks about public servants. I do not know why it has been mentioned taking advantage of his official position. If a public servant commits rape on a woman in his custody, it is not necessary to prove that he took advantage of his official position. The basic point is that if a woman is in the custody of a public servant whosoever he may be, he is

expected to behave with her decently. If he does not do that, then the clause of enhanced punishment should be made applicable to him. Looking at it from that point of view I do not see why the wording taking advantage of his official position is necessary in this. The same thing is applicable to Section 376A. Here it will have to be proved whether he has taken undue advantage. The same thing is applicable to Section 376B. I agree with my colleague that Sections 376 A, B and C should be triable by a sessions court.

So far as investigation is concerned, I feel that investigation should be done very promptly particularly medical examination of the accused. The accused has a tendency to run away. He is caught after a day or two. But then the evidence to a great extent, is lost. So, it is necessary that the accused should be examined as early as possible at the taluka itself. We have the necessary facilities there. The only change I am thinking is that in a Government medical institution like primary health centre or taluka dispensary we should make it possible for even a male doctor to examine victim. It should be ensured that medical examination is conducted there with immediate results because in that case it will be possible to prove the case in a court of law.

So far as the investigation part is concerned, I have always felt that it would be worthwhile to associate a woman police with the investigation. Actually the time has come when we should have woman police at the taluka level. In fact, we have a number of police woman. We should train them and involve them in the investigation of such cases. Those police woman who are in the police stations should necessarily be involved in the investigation of rape cases.

So far as the success of court cases is concerned, it has not been very commendable. Reasons for that have already been given by the IGP. The

number of cases pending in the courts is extremely large. I find that out of 350 cases registered in 1977, 94 are still pending. In 1978, 308 cases were charge-sheeted and out of them 125 are still pending. You can very well see that as the case becomes older and older it would be difficult to bring proof and ultimately get him convicted. I feel it necessary to have special courts so that trial takes place at the earliest. Actually day to-day trials should be held.

So far as our State is concerned we have taken action when rape is committed. Deputy Superintendent In-charge of the Police Station or the Superintendent of Police visits the site. He guides the investigating officer at the place of offence. It has been made binding on them to halt there and play a positive role in detection and investigation. This general direction applies in all serious types of offences.

In March, 1981 we issued a circular that reports regarding incidents of molestations, rape, kidnapping, should be reported to the Government with a copy to the Chief Minister, Minister of Social Welfare, Chief Secretary and the Home Secretary so that the matter can be pursued in the best possible manner.

We are making rape a grave offence and the punishment is going to be very stringent. Those who are giving false and malicious information should also be given stringent punishment.

MR. CHAIRMAN: Thank you very much for giving your suggestions.

SHRI S. W. DHABE: Mr. Chairman, I would like to ask a question from the hon. witness before withdraws.

As explained by you in your Memorandum on page 3 that there should be such and such an age, but now you have changed your opinion.

What is the basis of changing your opinion?

SHRI P. G. SALVI: You have to go by adulthood. 16 years should be considered.

SHRI BAPUSAHEB PARULEKAR: You have said that the words official position should be deleted.

'Public Servant' is used in this only. It is not used in any other Section.

SHRI P. G. SALVI: It is in (c) also.

SHRI BAPUSAHEB PARULEKAR: As far as the word 'public servant' is concerned, it cannot apply to Police Officer, Jail Superintendent, Doctor or Remand Home Officer. No other public servant is governed by sub-clause (2). Do you not think that the word custody should be removed?

All other public servants who are not Jail Superintendent, Police Officers have certain persons in custody. Therefore the word custody is to be removed and his official position against his subordinate should be preserved. Is it so?

SHRI P. G. SALVI: Once the custody is established, there is no need to prescribe the condition of his taking advantage or undue advantage. Once the custody of a public servant is there, the relationship is such that if he commits rape, he will come within its mischief automatically.

SHRI LAL K. ADVANI: Can you contemplate any example of a public servant who is not a Superintendent of Jail and yet has persons in his custody?

SHRI P. G. SALVI: Forest Officer who can arrest.

SHRI LAL K. ADVANI: You have pointed out that the provision is very harsh so far as police officers are concerned. I remember a police officer who pointed out that there is a loophole in

this. A police officer commits rape in his own local area. He gets involved. If he commits rape in any other area, he is not involved. That means a police officer in Fort area of Bombay is liable for crime if he commits rape in Fort Area and if he commits rape in Vorki, he is not considered to have committed the crime officially. I would say that a police officer if he commits crime, may be anywhere, is a serious thing.

I would ask the Home Secretary, Law Secretary and I.G.P. what has been response of the police personnel in general to this kind of Bill because this Bill is the outcome of the outcry of the public against incidents of this kind. The crime committed by eight or nine police officers in this State is a very serious thing.

Is it their feeling that this Bill is directed against the police itself? Or is it the feeling that it is a stigma on the police and the Committee should help them? If this community helps us in identifying such persons and punishing them, it is doing service to itself. I do not know how police officers have reacted to this Bill?

SHRI P. G. SALVI: So far, we have no idea about the reaction. I do not know whether I.G.P has any knowledge.

SHRI LAL K. ADVANI: So far as enhancement of punishment is concerned, under Sec. 111A, the standard of proof required is more. Every party can disapprove of all that is being said about the consent. The court can only presume. Take for instance railway property which is in possession of an unauthorised person. Here the presumption is whether he has stolen it. The Bill is meant to identify only such black sheep.

MR. CHAIRMAN: The Bill is not against the police as such. If the

offence is committed by a police officer the standard of proof required is much higher. This will only make them alert.

SHRI R. K. MHALGI: I want to know from the witness whether the police in Maharashtra knows that the Bill has been introduced in the Lok Sabha.

SHRI P. G. SALVI: They generally know this. The detailed provisions contained in this Bill are not known. This much I can say.

MR. CHAIRMAN: Unless this is given effect, there cannot be any reaction. What we are thinking of is about hypothetical cases. There is an apprehension of danger but no reaction.

SHRI AMARPROSAD CHAKRABORTY: He has made a suggestion that if the burden of proof is shifted, then all facilities should be given to the prosecutrix, I do not follow him. What did you say about the burden of proof?

SHRI P. G. SALVI: I do not have the papers with me. So far as the first draft was concerned, the draft has been circulated and it was also discussed at that time. There was a provision to the effect that the antecedents of the prosecutrix should not be questioned in cross-examination. For that, I said that the accused or the defence should be given the opportunity to question the antecedents.

This Bill was drafted afterwards. My observations were with reference to the first draft Bill. I have not changed my opinion. I still hold that opinion. Somehow or other, since that point has been covered by this Bill, this question of change of opinion does not arise.

MR. CHAIRMAN: Thank you very much.

(The Committee adjourned at 14.00 hours and reassembled at 15.30 hours)

II.—*Shrimati Susheela Athavale, Principal Mugutrao Saheb Kakade College Someshwarnagar, Pune.*

(The witness was called in and she took her seat)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

श्रीमती आठवले : मैं कुछ सुझाव इस समिति के सामने देना चाहती हूँ। मैं यह बतलाना चाहती हूँ कि आजकल जीवन में सुरक्षता नहीं रही है और महिलाओं पर अत्याचार बढ़ते जा रहे हैं। इस लिये महिलाओं के लिए संरक्षण की नितान आवश्यकता है। जो लोग भटका और स्मगलिंग आदि जैसे कामों में लगे हुए हैं, ऐसा लगता है कि इन लोगों के सम्बन्ध पुलिस के साथ जुड़े हुए हैं। लेने, देने, खाने और पीने के सम्बन्ध पुलिस के साथ जरूर होंगे, ऐसा हमें मालूम पड़ता है और इसी कारण से अत्याचार बढ़ता जा रहा है। इसलिए आज आवश्यकता इस बात की है कि महिलाओं को अधिक से अधिक संरक्षण मिले, उन को न्याय मिले और जो समाज में गुनाहगार लोग हैं, उनको ऐसी सजा मिले कि उनके दिल में वहलत बैठ

जाए। इस हेतु पार्लियामेंट की इस कमेटी ने जो बिल बनाया है, उसका मैं स्वागत करती हूँ और हमारे बम्बई शहर में जो यह कमेटी आई है, उसका भी मैं स्वागत करती हूँ। मैं इस बात का भी स्वागत करती हूँ कि यह कमेटी जगह जगह जा कर लोगों के विचार जान लेती है और लोकमत का भ्रंदाजा लगा रही है और उस सबको ध्यान में रख कर इस बिल को बनाने का प्रयास कर रही है। इसलिए इस कमेटी का भी मैं स्वागत करती हूँ।

मेरे मन में जो कठोर भावना है, अपराध करने वाले व्यक्तियों के प्रति जो कठोर भावना है, उस का समावेश काफी अंश तक इस बिल में हो गया है और सख्त सजाओं का प्रावधान इस बिल में किया गया है लेकिन स्त्रियों के प्रतिनिधि के रूप में मैं कुछ सुझाव देना चाहती हूँ हालांकि मैं कोई कायदे-कानून को पंडित नहीं हूँ।

पहली बात तो मैं यह कहना चाहती हूँ कि प्रायः स्त्रियां इस गुनाह के बारे में पुलिस स्टेशन पर आ कर बताना नहीं चाहती हैं और कोई औरत आ कर एक गुनाह बताती है, तो आप को यह मान लेना चाहिए कि दस गुना गुनाह नहीं बताये गये हैं क्योंकि जिन स्त्रियों के साथ यह गुनाह किया जाता है, उन के बारे में समाज में शक बना रहता है। जो अत्याचार महिलाओं पर होते हैं, उनको बताने में बे डरती रहती हैं और इस तरह से पूरी जानकारी इन गुनाहों को समाज को नहीं मिलती है। जो गुनाहगार होता है उसके तलाश करने में क्लिप्त होता है और मुकदमे दो-दो और चार-चार साल तक चलते रहते हैं। सलिए मेरा सुझाव यह है कि ऐसे मुकदमों को निपटाने में गति धानी चाहिए और जल्दी से जल्दी इन को निपटाया जाना चाहिए।

दूसरा मेरा सुझाव यह है कि मुनाह दाखिल करने के बाद स्त्री का मेडिकल एग्जामिनेशन जल्दी से जल्दी होना चाहिए। इसके अलावा मेरा सुझाव यह है कि मुनाह दाखिल होने के बाद चार्जशीट जल्दी से जल्दी तैयार होनी चाहिए और इसके लिए मेरा कहना यह है कि इस बिल में ऐसा कुछ कालम जोड़ देना चाहिए कि इतने समय में चार्जशीट दाखिल कर दी जाये यानी कोई काला-बधि चार्जशीट के लिए निश्चित कर देनी चाहिए।

इसके बाद मैं यह सुझाव देना चाहती हूँ कि रेप के जो केसेस होते हैं उनका जो इन्वेस्टिगेशन होता है, उसके लिए कोई स्पेशल ब्रांच होनी चाहिए, जो केवल इस तरह के केसेस को इन्वेस्टि-गेट करे।

अबला मेरा सुझाव यह है कि स्त्री का जो लाश्व लिया जाए, वह इन-केमरा होना चाहिए और उस का जो म्यान लिखा जाता है, वह स्त्री क्लर्क द्वारा लिखा जाना चाहिए। इसके लिए स्त्री क्लर्क होनी चाहिए। नलाशी में अधिक गति आनी चाहिए। और इसके लिए एक स्पेशल मजिस्ट्रेट होना चाहिए। अगर स्पेशल मेजिस्ट्रेट पर इस बात को जिम्मेदारी डाली जाएगी कि मेडिकल एग्जामिनेशन जल्दी हो और नलाशी जल्दी हो और एक निश्चित काला-बधि इसके लिए रखी जाए, तो मैं ऐसा सपना हूँ कि ऐसे मुकदमों को निपटाने में जति मिलेगी। इसके अलावा मैं यह सुझाव देना चाहती हूँ कि चार्जशीट दाखिल होने के बाद तुरन्त मुकदमा सेन्स कोर्ट में जाना चाहिए ताकि बीच में जो देरी होती है, वह न हो।

जिस स्त्री ने मुनाह के बारे में बो बताया है, उसकी जो जवानी होती है पंचनामा होता है और दूसरे कागज होते हैं, उन की कापी मुनाहगार को तो मिल जाती है लेकिन उस स्त्री को नहीं मिलती है। उस को भी वे मिलनी चाहिए।

ऐसे केसेस में जो प्रोसीक्यूटर होता है, वह जनिबर आवधी रहता है। मेरा कहना यह है कि इस तरह के मुकदमों में सौनियर प्रोसीक्यूटर होना चाहिए। कागज पत्रों की नकल स्त्री को जरूर मिलनी चाहिए ताकि उसको पता चल सके कि उसके मुकदमें में क्या हो रहा है और वह चाहे तो अपनी तरफ से बकीस भी कर सकती है और प्रोसीक्यूटर से कुछ डिस्कस भी कर सकती है।

इसके प्रतिरिक्त मेरा सुझाव यह है कि पूर्व चरित्र के बारे में पूछ-ताछ वहीं की जानी चाहिए, चाहे वह बेध्या ही क्यों न हो। किसी स्त्री के साथ जो घटना होती है, जो प्रजेन्ट प्रसंग है, उसके संबंध में ही जानकारी प्राप्त की जाए न कि उस के पूर्व चरित्र के बारे में और यह वहीं होना चाहिए कि पूर्व चरित्र के आधार पर ही कोई गुनहगार छूट जाए।

इस बिल में पुलिस कस्टडी में और रिमांड हाऊस आदि के अधिकारियों के बारे में कुछ प्रावधान है कि अगर उन से कुछ मुनाह हो जाए, तो उनको कुछ अधिक सजा दी जाए। इसके पीछे कुछ विचार है और विचार यह होगा कि यहाँ पर गार्डियन और वार्ड, पालक और पास्य का एक रिलेशन अलग से है। इस संबंध में मैं यह सुझाव देना चाहती हूँ कि जहाँ पर भी गार्डियन और वार्ड, पालक और पास्य का सम्बन्ध हो, उन सब के लिए अधिक सजा का प्रावधान हो और वह इस में जोड़ दिया जाना चाहिए। बहुत सी जगहों पर

टनों रहती हैं, पर्सनल सेक्टरों रहती हैं, जिला परिषदों के काम में काम करने वाली नर्स हैं, हेल्थ विजिटर्स हैं और शिक्षिकाएँ हैं, इन के उपर जो अधिकारा हैं, उन सब का रिलेशन पालक और पाल्य जैसा होता है। इसलिए इस बिल में जो इस कालम में अधिक सजा देने की व्यवस्था की है, उसमें इन सब लोगों को भी जोड़ा जाए क्योंकि वे लोग केवल यह गुनाह ही नहीं करते हैं बल्कि ब्रांच आफ ट्रस्ट भी करते हैं। इसलिए मेरा सुझाव यह है कि इन सब लोगों का इसमें समावेश होना चाहिए।

भापने कल के ही लोकसभा भवन में पढ़ा होगा, जिस में यह निकला है: "पेटचो बटणे सोडणारे गुंड-मवाली, हतबल महिला अथ निष्क्रिय पोलिस" दिन में चलती हुई गाड़ी में महिलाओं के डिब्बे में जा कर जो लोग ऐसा काम करते हैं, तो यह रेप नहीं होगा लेकिन उसके समकक्ष माना जाएगा। इस के लिए ज्यादा से ज्यादा सजा होनी चाहिए। पुलिस ऐसे लोगों को पकड़ती नहीं है क्योंकि उन के साथ हाथ से हाथ मिले रहते हैं। इसलिए मेरा कहना यह है कि ऐसे अपराधों को भी रेप के समकक्ष मानना चाहिए।

वह बिल जो भाप बनाने जा रहे हैं, उस में कोई इस तरह की बात नहीं रहनी चाहिए कि कोई वकील पिछले किस्से के आधार पर गुनाहगार को छुड़वा दे। इस तरह की बात भवन में निकली है और वह यह है :

'हंगामो मैत्रीण उपपत्ती मिन्बन देणारा "सैली करार" अस्तित्वात'। ऐसा कानून भाप बनाएं, जिस से महिलाओं को संरक्षण मिले, उन को न्याय मिले। इस के लिए मैंने कुछ सुझाव दिये हैं। कानून ऐसा बनना चाहिये, जिससे गुनाहगार पकड़ा जाए और उस को सजा सजा मिले।

इस बिल में 111 ए में जो प्रावधान किया गया है, उसके बारे में मेरे मन में शक है। इस का मतलब यह होगा कि अगर कोई स्त्री यह बताएगी कि मेरे साथ रेप हुआ है और मेरी सम्मति नहीं थी, तो उस के केवल ऐसा कह देने से ही यह मान लिया जाएगा कि रेप हुआ है, ऐसा समझ लेना मेरी राय में ठीक नहीं होगा। स्त्रियों को संरक्षण मिलना चाहिए लेकिन संरक्षण देते समय यह भी देखना होगा कि दूसरे लोगों को असुरक्षा में न डाला जाए। ऐसा करना ठीक नहीं होगा। आज राजनीति में स्पर्धा बढ़ती जा रही है और जीवन के हर क्षेत्र में राजनीति घुसी जा रही है। आज विरोध में रहने वाले व्यक्ति को उखाड़ फेंकने की लोग कोशिश करते हैं और इस में वह महिला की सहायता भी ले सकते हैं वे कहेंगे कि बहन जी, भाप यह कहिये कि फलां आदर्श ने हमारे साथ ऐसा काम किया है और इस में हमारी सम्मति नहीं थी। अब अगर उस महिला की इस बात को कोर्ट द्वारा माना जाएगा, तो उस व्यक्ति को सजा मिल जाएगी जबकि उस ने ऐसा काम नहीं किया है। इस लिए इस तरह का प्रावधान करना ठीक नहीं होगा। हमें भापे जाने वाले इस तरह के घोकेबाज लोगों से भी सावधान रहना है। इसलिए केवल महिला की बात को ही नहीं मान लेना चाहिए बल्कि परिस्थिति-जन्य पूरी एबीडेंस को देखना चाहिए। कोई स्त्री कह देगी कि मेरे साथ ऐसा काम हुआ है और उसके कहने को सत्य मान लिया जाएगा, तो वह किसी को भी पुलिस से पिटा सकती है और सजा दिलवा सकती है। ऐसा होना ठीक नहीं रहेगा। स्त्रियों की सुरक्षा के लिए जितना हो सके, वह इस बिल में रखना चाहिए और उस को न्याय मिलना चाहिए, ऐसा मेरा कहना है।

मैंने अपना भावना इस बिल के बारे में व्यक्त कर दी है और इतना कह कर मैं खतम करती हूँ।

श्रीमती विद्यावती चतुर्वेदी : आप ने बहुत सारी बातें बताई हैं और बड़े अच्छे सुझाव दिये हैं। मैं आप से यह जानना चाहती हूँ कि क्या आप यह महसूस करती हैं कि आज जिस तरीके की फिल्में आ रही हैं, वे भी बहुत कुछ इसके लिए दोषी हैं जिस तरह की उत्तेजित फिल्में दिखाई जाती हैं, उन का असर हमारे नौजवानों पर बहुत बुरा पड़ता है और वे भी इस तरह के अपराधों के लिए दोषी हैं?

श्रीमती आठवले : जी, हाँ, उनका असर जरूर उन पर पड़ता है।

श्रीमती विद्यावती चतुर्वेदी : क्या आप कोई ऐसा एमेंडमेंट चाहेंगी कि इस तरह के जो चित्र हैं या एडवर्टाइजमेंट में जो औरतों का बुरे रूप में दिखाया जाता है उन पर प्रतिबंध लगना चाहिए।

श्रीमती आठवले : जरूर लगना चाहिए फिल्मों में और एडवर्टाइजमेंट्स में स्त्रियों का जिस तरह से प्रयोग किया जाता है, कानून में अगर उस पर कोई प्रतिबंध लगाया जाए, तो बड़ा अच्छा होगा।

श्रीमती विद्यावती चतुर्वेदी : आपने स्पेशल ब्रांच के लिए कहा। पुलिस के अलावा कोई और बाड़ी हो, जिस के द्वारा सारी जांच हो, ऐसा आप चाहती हैं।

श्रीमती आठवले : वैसे तो मैं नहीं चाहती। पुलिस तो होने चाहिए लेकिन रेप की जांच के लिए अलग से एक स्पेशल ब्रांच होनी चाहिए।

श्रीमती विद्यावती चतुर्वेदी : पुलिस के अन्दर ही?

श्रीमती आठवले : जी, हाँ।

(The witnesses then withdrew)

III—Lawyers Collective, Bombay Spokesmen

1. Ms. Indira Jai Sing, Advocate.
2. Shri A. Grover.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Please indicate the portion which you do not want to be placed on record. Have you gone through the Bill?

Ms. INDRA JAI SNGH: Yes.

We have had the benefit of Law Commission's recommendations as also the Bill. Now we find that the Bill does not contain several recommendations of the Law Commission. We personally feel that the Law Commission's recommendations are very useful in preventing the incident of rape. We would like to emphasise that these recommendations of the Law Commission must be introduced as this will prevent rape rather than deal with it after it has taken place. These recommendations would have gone a long way in preventing rapes.

Many precautions have to be taken when a woman is in police station. Several safeguards have to be taken. The woman may not be called to police station. She should be kept in a separate lock up, not in the same lock up in which men are kept.

She must have a right to have with her, her relative when she is taken to

the police station. She must have a right to get a copy of the FIR which she lodges in the police station. Law Commission made all these recommendations. These will help to prevent the incidents of rape. We feel distressed to see that these provisions do not find a place in the Criminal Law Amendment Bill. We strongly urge upon you to accept the recommendations of the Law Commission and to see that they find a place in the Bill when it finally goes before the Parliament.

We do not wish to emphasise the aspect of punishment but we want to emphasise the aspect of prevention. We find that the Bill has made a recommendation for a minimum punishment of seven years. Here again we feel that the approach is wrong. Punishment should be with a view to reform a person. We do not believe that by imposing a minimum sentence of seven years the social evil of rape is going to be uprooted. Punishment part should be left to the discretion of the Judge as to how much punishment he wants to give—seven years, ten years or punishment for life. If you say that a Judge has to impose a minimum punishment of seven years, what is likely to happen is that judge will hesitate to convict him. He will feel that conviction means jail for seven years. This will help the rapist rather than bringing him to book.

MR. CHAIRMAN: Under the provisions of the Bill, there is discretion. How and why it is difficult to get conviction?

Ms. INDIRA JAI SING: I shall deal with it.

Definition of rape has got to be changed. Secondly, the difficulty is how do you prove rape. I have been facing these difficulties as a practising lawyer. The difficulty is before the stage of punishment and not after the stage of punishment. That thing

has got to be cured by changing the definition of rape. We support the introduction of the new provision.

What is the evidence necessary to prove rape or sexual intercourse without consent? The crucial question is how is the woman expected to prove in the court of law that she did not consent. In my opinion the difficulty lies here. Obviously for an offence like rape there cannot be an eye witness. It takes place in secret. It is going to be the woman's word against the man's word. Here we find a bias in the minds of people that there is a presumption that she is lying. Secondly, as she is coming to the court of law she must be a woman of loose character. We want two very very important changes which again do not find a place in the Bill.

In a trial for rape a woman's previous sexual history shall not be taken into consideration by the judge. This was the recommendation made by the Law Commission. It is very very unfortunate that this recommendation does not find a place in the Bill. I cannot understand the reason for this. This directly answers your question why it is difficult to get conviction. Every time the standard defence of the man is she is of loose character. Is it being suggested that the woman of loose character can be raped? We cannot accept this.

First of all, presumption that a lady who comes to court is a lady of loose character is wrong. We, on the contrary, feel that it is with great hesitation that a woman comes forward to enter court. She tries not to tell her neighbour, members of family and the people in the local area. She has the fear of being socially ostracised. Unfortunately, when we go to court, not only judges but lawyers appearing on behalf of the accused have an unspoken presumption that the woman who comes to court on the allegation of rape must be a woman of loose character. It is a unanimous demand of the women organisation that there should be a statutory provision in the law that woman's pre-

vious history will not not be taken into consideration by the judge deciding whether or not she has been raped. We strongly urge upon the Committee to accept that recommendation of the Law Commission and to see that it finds a place in the Bill when it finally comes to Parliament.

By way of information I would like to inform you that such a provision has been introduced in all other countries of the world. In U.K. this was introduced by Criminal Law Amendment Bill of 1976. The law specifically says that we cannot take into account the woman's previous history in deciding whether she has or has not been raped. This partly answers your question. My difficulty is this. How does the woman prove that she did not consent? It is a very difficult question. I would strongly urge upon you to give a serious thought to this. Here it also rises a very ticklish issue of the shifting of burden of proof. On that issue I can only quote the Law Commission's recommendation. Their recommendation is sought to introduce a new provision, namely, Sec. 111A. We support that provision. Unfortunately, pressure is sought to be created that this provision of law shifts the burden of proof. I may say that Sec. 111A does not alter the burden of proof. The woman making an allegation of rape on her will still have to prove beyond reasonable doubt that the man is guilty of the offence. Even though the new provision may be introduced, it will be for the judge to conclude that it is beyond reasonable doubt. On the burden of proof, you are asking the woman to prove that she did not consent. In law the negative is always more difficult to prove than the positive. So, it is much easier for a man to prove that he did not rape. It is impossible in law to prove the negative. Take the instance of theft. I cannot prove that I did not steal. I can only prove the positive. Take for instance, the case of theft. Suppose an allegation is made against me that I had committed the theft on the 27th July in Bombay. I cannot prove that I did not do it. But, I can prove

that on the 27th of July I was in Bangalore. That is proving the positive side.

MR. CHAIRMAN: The fact that you were at Bangalore on 27th itself is a negative proof.

Ms. INDIRA JAI SING: I am proving that I did not do anything except to say that I was not in Bombay on that day. I had nothing to do on that day at Bombay as I was in Bangalore on that day. I can even produce witnesses to say that I was in Bangalore. I cannot produce witnesses to say that I was not in Bombay. That is the main reason why it is so difficult to prove the rape case in a court. Once you accept the statement of a woman that she did not consent, then the onus of proof is shifted on the man. He had to say under what circumstances he had committed that act. It was open to him to say that in fact she did consent. That is why I say that the introduction of Sec. 111A does not shift the burden of proof. The burden of proof is still on the woman to prove that the sexual intercourse took place without her consent. In accordance with the law I have to produce medical evidence to show whether there is any mark or resistance on the victim. In the cross-examination in a witness box, if the woman says that she did not consent, the judge will presume that she did not consent. It is for the accused to disprove the presumption that she did not consent. If the victim says that she did not consent, the evidential burden of proof is shifted but ultimately the complainant woman will have to prove beyond reasonable doubt that the accused is guilty. In rape cases the woman is called upon to prove the negative thing. I cannot think of any other example where the person is called upon to prove a negative thing. We are not interested in window-dressing. Just by increasing the punishment how is it going to help? On the contrary, the judge will hesitate before giving the conviction order. If you introduce the change, namely, Sec. 111A then it will make it easier for a woman to come forward

and prove her case. After all, this is one of the few offences where a woman's life and character is on trial, when she comes forward. It pains me to hear this argument again and again from different sections of the society as to how we are going to deal with false cases of complaints. Every law can be misused, that is no reason not to have the law.

I know of several cases unconnected with the sexual offence, where false complaints are made. In rape cases the woman thinks hundred times before coming to the court. As a practising lawyer, everytime I came across the false complaints having been made by the parents of girls who were below sixteen years of age. Generally the cases are connected with the inter-caste marriage of a Muslim girl falling in love with a Hindu boy or a Muslim boy falling in love with a Hindu girl. The so-called false complaints arise in this way. It is generally the parents who are to blame not the girl. If the girl is below sixteen years of age, in rape cases, the question of consent does not arise. I would say it is only an inter-communal or inter-caste problem. It is not an ordinary problem where a woman wants to make an allegation of rape against a man. Suppose a Hindu girl is below sixteen years of age. She wants to marry a Muslim boy. The parents of the Hindu girl do not want her to be married to a Muslim boy. They bring forth false charges of rape against that man. Hindu-Muslim caste disputes are sought to be solved through the media of false complaints of rape on the girl who is below 16 years of age. There the question of consent does not arise. The institution of false complaints of rape is not known to a great extent. Apart from vague allegation that false complaints will be made by the girl about the rape on her, nobody has shown any statistics to say that false complaints will be made.

MR. CHAIRMAN: Now, you have already said about the rebuttal. When

the question of rebuttal comes to the court, what are the circumstances to show that there was a rebuttal and what evidence was there on record?

Ms. INDIRA JAI SING: It will be exactly the same as it is today such as that there is no sign of resistance. Eliminating the cross-examination on the basis of character, he cannot ask the victim "Madam, is it a fact that you had sexual relation with Mr. 'X' on such and such day"? Now, that is the only question that is ruled out. Even for that, he can ask her about the previous sexual history with himself. He can ask "Madam, is it true that you have been having a love affairs with me for the last five years"?

MR. CHAIRMAN: So, you agree that if there is a past relation with the accused then he can say 'Yes, she consulted'. Suppose I come to the witness box and I say that I did resist, he may ask "how did you resist"? and "when did you resist"? He may say that the medical examination is not correct. Now, with these circumstances, he can prove that he was having sexual relationship with her for a pretty long time. The only thing which he cannot ask the victim is about her relationship with other men. That is the only thing that is barred.

Ms. INDIRA JAI SING: Now, there is a point. The Bill expects that if the husband and wife are legally separated, then the husband cannot have sexual relation with his wife. The Law Commission's recommendations are if they are separated by mutual consent or by a decree of the Court, the husband cannot have sexual relation. They may have been living in two different houses although they were legally married, but not having sexual intercourse. This should be included in the Bill.

Now, there is a point for consideration in regard to raising of the statutory age of 16 to 18. The proposed amendment says that if she is below the age of 16 and if a man has sexual

intercourse with her, then the question of consent does not arise and it is considered that the man is said to have committed rape. We would like the age remaining at 16. The so-called false complaints are generally in the age of below 16. Also we feel that between the age of 16 and 18, perhaps the girl is capable of making up her mind as to what she should do. In the rural areas, girls at the age of 16 are quite matured. We would therefore like the age limit being fixed at 16. This would put an end to the so-called complaint of "false charges".

Now, the most important provisions are the provisions relating to arrest and investigation. The emphasis is on the aspect of prevention and not on the aspect of punishment. The Law Commission's report recognises the fact that a woman, when she is in Police custody, feels insecure. Certain recommendations were made in the Law Commission's report. Women organisations always complain that whenever a woman goes and makes a complaint to the Police, the Police generally do not bother to record her complaints. According to the Law Commission's recommendations, if a Police officer refuses to record a complaint, particularly of this nature, then it is treated that he is guilty of cognisable offence. Now, this recommendation does not find a place in the Bill and I strongly plead that this provision should be included in the Bill. This would act as deterrent against the Police and this would also arrest the increasing incidence of rape by the Police against women when they are in their custody.

The other provision was that the police officer should not physically touch the woman when she is arrested. I do not see any reason why this should not be accepted. In a case in which the police officers are involved, the investigation should be carried out by an independent agency.

MR. CHAIRMAN: Which agency?

Ms. INDIRA JAI SING: Similar to

Ombudsman. Let there be a statutory agency.

There is a very important provision in the Bill to which we do not agree i.e. Section 228A. We recommend complete deletion of this provision. We feel that this introduces a form of press censorship into the law. When a rape occurs in a local area we feel that it is the duty of the women organisations to mobilise public opinion against this social evil of rape. The incidence of rape is not going to disappear by law alone. It will disappear only by educating the people and building up public opinion. We must make known to the rapist that he cannot get away with rape. This provision will hamper and hinder genuine women organisations from doing their activities. If a rape is committed, we do not mention the name of the woman. We call upon all women organisations to come openly to show solidarity. If we publish such a leaflet, that will directly hit the provisions of Section 228(A). Because of that reason we are totally opposed to the introduction of this provision. If it is the desire of the Committee to protect the victim of rape from cheap publicity, then it can be said that the name of the victim should not be published. If the court comes to the conclusion that the report was published with *malafide* intentions, then the publisher should be punished. If the report is published to help the victim and to build up a movement in the local areas, then this provision should not be made applicable.

SHRI BAPUSAHEB PARULEKAR:

You said that the provision should be such that instead of punishing the person who has committed this crime he should be prevented from committing such types of crimes. That means that there should be preventive measures. What preventive measures do you want to contemplate? Secondly, Section 326 refers to the presumption. Our endeavour is also preventive. With regard to police certain suggestions have been made. What

about other offences committed by the police? Do you have any suggestion to prevent this type of rape?

Ms. INDIRA JAI SING: As far as preventive measures are concerned, my personal belief is that it can be done by building up a public opinion and by not looking at the woman as sex object. You made a reference to certain recommendations of the Law Commission which are not incorporated in this Bill. Those recommendations are with reference to the offences which may take place in the police station.

The second point to which you made a reference is with regard to the minimum punishment of seven years. In the Bill discretion has been given to the judge. You are apprehending that the judge may come to the conclusion that he has to give seven years punishment. He may use his discretion as is given in the proviso. This would act only as a deterrent. Our apprehension is that it may act as a deterrent on the judge to impose punishment. It is like a death sentence or sentence for life. For very very serious offences the judge has to impose punishment for life.

As a normal rule, he will give punishment for seven years. We feel that the law as it stands at the moment is quite adequate in so far as punishment is concerned. Even today if he feels he can impose punishment for life.

SHRI BAPUSAHEB PARULEKAR: We are more concerned with reformation. Will you let us know what could be reformative punishment in offences like rape? I read a case. In USSR there are offences on delinquent and women offences. These are referred to Special Courts. A woman committed a theft of Rs. 3,000. The Magistrate found out the reason for that. The reason found was that her husband used to steal money and she could not make a provision for

her kids. The punishment that was given was that the husband was placed in the Remand Home and free education was given to the kids.

MR. CHAIRMAN: What is your view in this regard?

Ms. INDIRA JAI SING: In my opinion you publish the name of the man who is convicted. That will act as a deterrent.

SHRI BAPUSAHEB PARULEKAR: Instead of sending him behind the bars, mere charging the man with rape, is it sufficient?

Ms. INDIRA JAI SING: No.

SHRI R. K. MHALGI: The Sessions Judge may sentence him to be behind the bars till the court rises.

SHRI ANAND GROVER: Everything has to be analysed by the psychologist. He has to know his past history. In fact he has to get a particular treatment. You have to probe into his mind. Reformation is based on person's weak psychology. That particular aspect should be emphasised so that that particular person does not commit the crime again. Giving imprisonment is not going to solve the problem.

Ms. INDIRA JAI SING: If the man is convicted, his name should be published in the newspaper. He should be socially ostracised.

SHRI BAPUSAHEB PARULEKAR: Do you feel that that will prove more deterrent?

You said that the previous character of the lady should not be questioned. I do believe that it is not the intention of law that a woman of loose character can be raped. At the time of assessment of evidence and for finding out whether she was a consenting party the character has to be seen. You referred to the Act in the United Kingdom. Are you ready for such a provision here?

Ms. INDIRA JAI SING: No. In case you are questioning her relationship with the man, then it should be permitted.

SHRI BAPUSAHEB PARULEKAR: When the fact of intercourse has been proved as is in 111A, we have to see the consent. No sooner intercourse is proved, that is sufficient.

What you say is correct. No sooner the prosecution proves the act of intercourse, the accused shall prove that it is with consent. Presumption under 111A will go a long way. In that case it will be necessary to rebut it.

Do you not think that to rebut the presumption of consent and to prove that the prosecutrix did consent her previous character is relevant and therefore recourse to provision in Section 115(4) of Evidence Act is necessary.

Ms. INDIRA JAI SING: In generalised cross-examination, on the point of consent, I disagree. I agree only to the limited point to her consent.

SHRIMATI GEETA MUKHERJEE: I shall ask a question. You referred to the recommendations of the Law Commission. Why are you particularly anxious that they may be put in the statute itself?

Ms. INDIRA JAI SING: The relevant section of Cr. P.C. says very clearly that woman should not be interrogated, except at her place of residence.

The provisions contained in the section are differently interpreted by different judges. Take for example if you ask me about my residence, I shall say that I am a resident of Bombay. There is a scope for interpretation of the provisions differently. Speaking as a lawyer drawn from my experience, I find that the law, as it stands today, is not even implemented, least of all, by the police.

You go to any police station and give the information of what is known as a cognizable offence. If they do not record, what happens? If it happens to me I know what to do. I can write a registered/A.D. letter and I can go to the High Court. I have hundred and one remedies if it happens to me. But, what happens to an illiterate person? Even if he goes to the police station, the police officer, duty bound, has to record the complaint. Our past experience shows that the police had taken advantage of the illiteracy and ignorance of the persons whether they are women or men. So, they have not implemented at all the provisions of the law. In the light of this experience that a recommendation has been made that if a woman is in a police station wanting to give information and the officer refuses to record it, he is guilty of the cognisable offence. If this is provided for in the statute itself, surely, this will act as a deterrent against the police. Surely he knows that once it is on the statute, he has to record it. Otherwise, I can go and file a suit against him if he does not do it. In almost every other country of the world, whether it be the U.S.A. or the U.K., the law relating to police is so clear that the lawyers and litigants have been filing such complaints against the police. In our country, I can cite only one example. In the Nagpur case, somebody had bothered to go to the police station to file a complaint against the police officer. These provisions are intended to check the police misconduct. There is no law as such against the police misconduct. If this is on the statute, it may act as a deterrent on them. The police officer has got much more power than is necessary. If a provision like this is on the statute book, it will act as a deterrent against them. It only affects the illiterates.

SHRIMATI GEETA MUKHERJEE: What is your suggestion with regard to simplification of the medical evidence?

Ms. INDIRA JAI SING: Medical evidence is a problem that we face. Suppose a medical report is called for. I have one suggestion to make here. This was debated among a group of members also. If a woman goes to a private medical practitioner, he cannot refuse to examine her. Today what happens is that if a woman is raped and if she goes to the doctor, he will not examine her because he is worried that he may be called in the witness box for the cross-examination. So, the doctor in 99 out of 100 cases refuses to examine the girl. If he were to examine that woman today, then, tomorrow he would be called as a witness in the witness box. Therefore he says that he cannot examine her.

In order to help women in these conditions, the law must compulsorily provide that a doctor cannot refuse to examine the woman in the case of a complaint of rape. If he refuses, it will only mean professional misconduct. It should be made a social responsibility on the part of the doctor to examine her when she comes to him with the complaint of rape. He should not say that he would not examine her on the plea that the police will catch him. This would help in preserving the evidence. Ultimately, in rape trials, a lot depends on the medical examination.

SHRIMATI GEETA MUKHERJEE: Is it not an encroachment on the fundamental rights of the doctors?

Ms. INDIRA JAI SING: Doctors are not supposed to refuse any work. It is not a professional ethic on his part not to examine the woman. It should be part of their social responsibility to work for a woman who is raped.

SHRI LAL K. ADVANI: In the course of the arguments you said that there might be a bar for publishing the name. The problem before the Committee is this. The objective of the Bill is to see that the victim of rape is not further maligned by this

kind of sensational publicity. What do you say?

Ms. INDIRA JAI SING: I have seen the recommendations of the Law Commission. What they have suggested is that the provisions of Sec. 228A should be limited to those cases where any publication is found to be with a *malafide* intention.

SHRI ERA SEZHIYAN: How to prevent this?

SHRI LAL K. ADVANI: You see the way in which the press tries to sensationalise the news. At the same time it can also claim that they are contributing towards solving social problems. You cannot call it *malafide*. It may be at the most most sensational news.

Ms. INDIRA JAI SING: It must be left to the press to exercise self-restraint. In your opening remarks you yourself said that this is a problem and the Committee desires to protect the victim. At the same time it is their desire not to impose restrictions on the press. The press has a big role to play in exposing the rapist. Only *malafide* press reports should be prohibited. It is always possible to distinguish between a *bonafide* and a *malafide* publication.

SHRI LAL K. ADVANI: Don't you think that as the provision stands today, it is clear that the rapists are not supposed to be protected. This provision is necessary because of this reason. The names of those who had committed this offence would be published. It is with a view to protecting the identity of the victim that this provision is necessary.

Ms. INDIRA JAI SING: I have you the example of Goregaon incident. You may not mention her name. But you can say that a woman working in a garment factory in Goregaon was raped.

SHRI LAL K. ADVANI: Would you suggest something to protect them with a *bonafide* approach?

Ms. INDIRA JAI SING: For example, a *bonafide* comment on a judgment is not a contempt of court but a comment which is intended to scandalise the court is a contempt.

SHRI R. S. SPARROW: What have you to say about the accused having to give evidence to prove that he has not committed crime?

Ms. INDIRA JAI SING: I would like my answer to be recorded in confidence.

SHRI ANAND GROVER: Generally speaking, the system of administration of criminal justice in this country does not bring criminals to book. Take for example smuggling offence, black-marketing offence, drug peddling etc. There is a presumption that you have smuggled a certain commodity into the country. The authority feels that it is a social offence which they have committed and to prevent such offence, they have altered rule relating to "burden of proof". In Customs Law, an amendment to this effect has been done. Any adulteration of consumer goods has been looked upon as a very serious social offence.

SHRI R. S. SPARROW: Here the accused does not have to answer any question.

SHRI ANAND GROVER: According to 111A, even if it is accepted, it only shifts the evidential Burden of proof. It does not actually create what is called 'presumptions'. The woman has to prove that the person concerned was guilty. In India, a poor person cannot afford to plead his case very vehemently but a rich smuggler can get away this kind of offence.

SHRI R. S. SPARROW: Do you have any other suggestions to make in this proposed Amendment Bill?

Ms. INDIRA JAI SING: In regard to the question of 'burden of proof', the man does not have to give any evidence. He does not have to show

that she consented. It is a very important question. In all the cases, do you shift the burden when one party is in a weak position and the other party is in a strong position? Then you talk about the shifting the onus. The law must speak in favour of the weak party and in this case in favour of women.

SHRI R. K. MHALGI: There is a demand that there should be women courts to try these rape cases. What is your opinion on this?

Ms. INDIRA JAI SING: I want more women judges in the courts. But I do not subscribe to the theory that only women judges can do justice in rape cases.

MR. CHAIRMAN: Thank you.

(The witness then withdrew)

IV—National Federation of Indian Women, Maharashtra Branch, Bombay.

Spokesmen:

1. Shrimati Manju Gandhi
2. Shrimati Kusum Nadkarni

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

MR. CHAIRMAN: What do you want to say on the Bill?

SHRIMATI KUSUM NADKARNI:
It has been suggested that in the case of custodial rape the onus of proving 'consent' will be on the accused. We propose that the concept of custodial rape should be extended to (a) landlords, (b) all employers of establishments where women are employed and the complainant is the woman employee who has been the victim of rape.

The proposed amending Bill suggests that all proceedings in rape cases will be held in camera and both the victim and the accused will enjoy protection from publicity. This in actual practice, turns out to be a protection for the criminal. In the present social media where woman has been bearing the brunt of the crime committed on her and has to suffer a social stigma, such a protection of proceedings being held in camera should be available to her. However, such a protection should not be available to the man, accused of the crime of rape, for it will take away the right of the women's organisations to build up a powerful movement which is the only guarantee of getting justice for women particularly those belonging to the poorer sections. Hence we propose that the press and the media should not be restrained from publishing the name of the accused and the crime he is being charged with. But the woman's name should not be disclosed.

The Bill contains no provision for amendments in the Criminal Procedure code except holding the proceedings in camera. Procedural reforms regarding amendments to the code of by the police while dealing with women should be made a part of the law.

We give the following suggestions regarding amendments to the Code of Criminal Procedure:

(a) Section 157 should be amended by inserting a proviso that where in-

formation is lodged of an offence of rape the case must be recorded.

The law should require that in such cases the Officers Incharge of the Police Station must proceed to investigate the offences personally and should not leave it to the subordinates.

A copy of the F. I. R. also should be furnished to the lady complainant-victim of the rape.

The magistrates on receiving the information should be empowered to issue directions regarding investigations of the case until cognisance is taken by a Magistrate who is empowered to take.

Women's organisations should have the right to lodge court proceedings against the accused in the rape cases.

Priority should be given to the conduct and finishing rape cases and hearing of every rape case should be finished within six months of the crime. Where necessary, a special court may be constituted.

SHRI S. W. DHABE: Do you think that at investigation stage social organisations of women should be associated.

SHRIMATI KUSUM NADKARNI:
Yes. Women organisations should be authorised to lodge complaint.

SHRI S. W. DHABE: You have said that publicity should be given to the name of the accused. Will it be proper to allow the press to publish the entire proceedings barring the name of the woman?

SHRIMATI KUSUM NADKARNI:
The name of the woman should not be given but the name of the accused should be given. After the trial the whole judgment and summary of the proceedings should be published.

SHRI S. W. DHABE: How many cases you have come across—rape victims—in the city of Bombay?

SHRIMATI MANJU GANDHI: We do not know.

SHRI AMARPROSAD CHAKRABORTY: 157—Do you think that some amendment is necessary in this Section?

SHRIMATI KUSUM NADKARNI: We want that this should be handled by the Police Officer Incharge.

SHRIMATI GEETA MUKHERJEE: There are Government circulars on how to deal with women cases. You said that these provisions should be amended. I would like to know your reaction with regard to the issue of Government circulars.

SHRIMATI KUSUM NADKARNI: Central Government has recently issued a circular to the State Government that woman should not be called to the police station from 8 P.M. to 6 A.M. In spite of that there are some instances where women are asked to come to the police station during odd hours. My suggestion is that woman should not be called. All those instructions given by the Centre should be incorporated in the Bill. Otherwise the instructions will not be observed. These cannot be properly implemented unless they become part of the knowledge of the general public. If these are made a part of the Bill, the officer Incharge in the police Station will be forced to act upon that.

I am sorry to point out that a nomadic tribe boy stole certain things. He was taken to the police station. At dead of night his mother was called to come to the police station. She knew about it. Fortunately, because she belonged to our organisation, she had always talked about it. I remember that it was only afterwards that the case was taken-up, may be it was taken up the next morning.

SHRI BAPUSAHEB PARULEKAR: You know that the women should not

be arrested after sun-set and taken to police station. Where should they be kept in such a situation?

SHRIMATI KUSUM NADKARNI: Instead of keeping her in police custody, she should be sent to a rescue home.

SHRIMATI MANJU GANDHI: Either she should be kept in judicial custody or she should be removed to the rescue home. The women may be sent to Jail later as undertrials.

MR. CHAIRMAN: Thank you very much.

(The witnesses then withdrew)

V—Uttar Vibhag Stree Sanstha San-yukta Samiti, Matunga, Bombay.

1. Shrimati Indumati Kulkarni.
2. Shrimati Tara K. Shah.
3. Shrimati Kastur Manjrekar.
4. Shrimati Shalini Mantri.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

All of you can speak either in English or in Marathi according to your choice. If they can express their views in a language other their own language, it

is well and good. If they can express only in Marathi language, they can do so.

श्रीमती तारा शाह : अनुभव से हम ने देखा है, कि जब जब रेप के केस होते हैं, तो एफ० आई० आर० पुलिस के सामने दाखिल करने में बहुत दिक्कत आती है। इसके लिए कोई तरीका निकालना चाहिए कि जब भी हमारी बहनें या उन के रिश्तेदार एफ० आई० आर० लिखाने जाते हैं, तो इमीजिएटली बह लिखी जानी चाहिए और डिटेल् में लिखी जानी चाहिए बरना होता क्या है कि कोर्ट के सामने जब मुकदमा जाता है, तो वह इसलिए खत्म हो जाता है कि एफ०शियेन्ट एबीडेंस नहीं है।

The accused are acquitted on the ground that the evidence is not proved and charges are not proper.

दूसरा यह है कि जो घादमी रेप करता है उस का नाम न्यूजपेपर्स में आना चाहिए :

At that time, it is enough if the news is given saying that X, Y or Z has raped the lady working under him or something like that. This much publicity should be given whether the man is sentenced or not.

इसके अलावा हमारी बहनें यह भी जानना चाहती हैं कि उस के केस के बारे में क्या हुआ। जो अपराधी था, उस को सजा मिली या नहीं, इसके बारे में उन को मालूम नहीं हो पाता है। इस लिए मेरा कहना यह है कि पब्लिसिटी ज्यादा होनी चाहिए। मैं यह भी चाहती हूँ कि जो घादमी ऐसे हीनस क्राइम करता है, उसको सख्त सजा दी जाए।

Rape is one of the most heinous crimes which ruins the life of the woman.

जिस घादमी के इस काम के कारण औरत की लाइफ रूइन हो जाती है, उस की पब्लिसिटी अखबारों में होनी चाहिए।

That man is to be known to the public that it is this man who has ruined the life of the woman/or girl and he has to be sentenced.

इस के अलावा मैं यह चाहती हूँ कि उस महिला का मेडिकल एग्जामिनेशन इमीजिएटली होना चाहिए।

श्री अमरप्रसाद चक्रवर्ती : आपने इस बिल को देखा है। उसके बारे में क्या कहना है।

श्रीमती तारा शाह : उस के बारे में लिख कर भेज दिया है।

श्री अमरप्रसाद चक्रवर्ती : आप चाहती हैं कि पब्लिसिटी ज्यादा होनी चाहिए?

श्रीमती तारा शाह : जो अपराधी है, उस की पब्लिसिटी होनी चाहिए।

I am saying this because, there was a case three years ago of a man—a trader—who had a book shop in North Bombay. He had raped a four year old girl. The people around him took him to the police station where he was beaten by the police. But, after four days, he sold away the shop and went to another part of North Bombay. Today he has got a big book shop, a big flat and everything. Still he was not at all sentenced. No prosecution was launched. This case came to our notice very late. Otherwise, our Mahila Mandal would have done something about it. The people around them know as to what has happened to this case.

A lot of publicity should be given in the press, even if there is a slight idea of what has happened. The publicity should be given in the sense that the name of the victim girl is

not to be published in the newspapers once the FIR is filed against the accused person be he an ordinary pavement dweller or a shop-keeper or whoever he may be.

श्रीमती मंजरेकर : हमारी संस्था की ओर से जवाब दे दिया गया है लेकिन मुझे यह कहना है कि ऐसे अपराधियों को ज्यादा से ज्यादा सजा दी जानी चाहिए। आपने पढ़ा होगा कि प्रखबारों में यह आया है कि एक घरब कन्टी में रेप करने वाले आदमी को फांसी की सजा दी गई और दूसरे लोगों को कोड़े लगाए गये। इस तरह की सख्त सजाएं प्रगर दी जाएं, तो लोगों को कुछ शिक्षा मिल सकती है।

इसके अलावा यह कहना है कि जो पोस्टर लगाए जाते हैं और उन में औरतों को बुरे रूप में दिखाया जाता है, उसके बारे में इस कानून में कुछ नहीं है। उस के लिए भी कुछ किया जाना चाहिए और हमारा महिला मण्डल इस ओर आप का ध्यान आकर्षित करना चाहता है।

दूसरा यह है कि रेलवे में जो महिलाओं के साथ बुरा व्यवहार किया जाता है और अर्ध-लोकसभा में उसके बारे में खबर निकली है, उसके लिए रेलवे को सतर्क किया जाना चाहिए क्योंकि पुलिस बाहर खड़ी रहती है और जो लोग ऐसा काम करते हैं, उनके खिलाफ कोई कार्यवाही नहीं की जाती है। कोई कानूनन कार्यवाही ऐसे लोगों के खिलाफ हो, इसके बारे में समिति को सोचना चाहिए।

(Smt. Shalini Mantri spoke in Marathi language)

प्रोफेसर निर्मला कुमारी शक्तावत : मराठी में जो आप ने बताया, वह तो हमारी समझ में ज्यादा नहीं आया है, लेकिन मैं यह समझती हूँ कि आप ने यह कहा है

कि पब्लिसिटी बहुत ज्यादा होनी चाहिए जिस से अपराधी बदनाम हो जाए और फिर अपराध न कर सक। मैं यह प्रश्न पूछना चाहती हूँ कि प्रगर पब्लिसिटी की जाएगी, तो क्या उस लड़की की लाइफ रूइन नहीं होगी और क्या कोई दूसरा आदमी उस के साथ शादी करना चाहेगा ?

श्रीमती तारा शाह : जो विक्रिम है उसकी पब्लिसिटी नहीं होनी चाहिए, बल्कि उसका होना चाहिए, जिसने ऐसा गुनाह किया है।

I think that the name of the person who has been raped should not be published but the accused name should be published whether he be a zamindar or a big business man or a Police Officer.

प्रोफेसर निर्मला कुमारी शक्तावत : मैं उसी को समझी थी।

श्री एन. डब्ल्यू. धाबे : प्राप ने जो मेमोरेण्डम दिया है, उस में कहा है कि सेशन्स जज द्वारा ट्रायल होना चाहिए। क्या प्राप चाहते हैं कि महिला जम होनी चाहिए ?

श्रीमती शालिनी कुलकर्णी : नहीं ऐसी बात नहीं है लेकिन प्रगर बीमेन जज होंगी तो औरतें उनके सामने प्रच्छी तरह से बतवा सकेंगी और लेडीज के सामने साहम से बात कर सकेंगी।

SHRI S. W. DHABE: Do you think that the violence in sex in the films should be stopped immediately?

SMT. TARA SHAH: We have been agitating for that for the last so many years.

(The witness, then withdrew)

VI— Indian Council of Social Welfare, Bombay

Spokesman:

Shri H. S. Ursekar, Legal Consultant and ex-Session Judge, Bombay.

(The witness was called in and he took his seat)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Please introduce yourself to the Committee.

SHRI H. S. URSEKAR: I am a retired Sessions Judge of Bombay. Now, I am practising as an Advocate in the Bombay High Court. I have written a book called "Law and Social Welfare".

MR. CHAIRMAN: What are your views on the proposed Amendment Bill?

SHRI H. S. URSEKAR: My first point is that in the proposed Draft Amendment, bearing in mind the spirit of the provisions of Section 228A with which I agree very much, there are other sections also in which the victims are involved and their reputation is at stake. For example, cases like a kidnapped girl, minor girl kidnapped for prostitution purposes, are dealt under Section 373 of the Indian Penal Code. If possible, cases of this kind may also be included in this proposed Amendment Bill and given the coverage and protection against publicity. If a journalist transgresses the law and tries to bring a woman into further disrepute, then the best punishment for him is to publish an apology. My opinion is that it will act as a more effective deterrent than giving him fine only or sending him to jail.

Under Section 228(a) we find that nobody is allowed to give publicity to the victim of the rape crime. But there may be a loophole. A clever journalist may try to re-produce a part of the judgment which may bring disrepute to the victim of the rape. My suggestion is that if he does that, he should be punished. But if he reproduces the entire judgment, then only he may not be punished.

MR. CHAIRMAN: Why should he not be punished in that case?

SHRI H. S. URSEKAR: Because the judgment is a public document and there is no ban on publishing the judgment.

In Section 375 Fifthly, the words 'under a misconception of fact' should not be there. I propose that the expression may be changed to 'mistake of fact'. The reason is that 'misconception' is a language of a layman. 'Mistake of fact' has a legal content recognised by all the courts. If we go on the basis of 'misconception of fact', it becomes personal. The mistake of fact is not personal.

In Section 375 Sixthly about administering of some drug, the present provision is that the man is punished if he personally administers some drug. It needs further clarification i.e. whether by himself or through somebody.

Again the same clause says that there should be effective resistance. Retention of the word 'effective' is dangerous because when we talk of effective resistance, it means successful resistance. So, this particular word 'effective' should be dropped. Only 'resistance' should be there.

Section 375, Explanation 2 says that if the husband and wife are staying part under a decree of judicial separation and if an intercourse takes place, it may amount to rape. I am suggesting here another category also viz, where an application for divorce by mutual consent, which is permissible

under the Hindu Marriage Act or the Special Marriage Act, is pending and during this period if the husband makes an attempt on the wife, it should be treated as rape.

SHRI AMARPROSAD CHAKRABORTY: When the relations exist, can you include this into rape?

SHRI H. S. URSEKAR: This particular judicial separation further allows the wife to claim maintenance without giving the man any service. This is a step to procure decree. If approved, where a joint petition for mutual divorce is submitted in the court and they live apart and if intercourse takes place, that should be included in this.

A girl of 13 or 14 years of age reads cinema literature or sees cinema shows. She may be tempted to have the pleasure of life. She is not in a position to give consent.

Here is a girl under ten years of age.

One who is not capable of having any experience is raped then the minimum imprisonment should be ten years. This is my personal suggestion. Protection should be given to the girls under ten so that their life should not be ruined.

In case of public servant, the word used is "undue advantage". It is on page 4. This word "undue" is capable of creating great mischief at the hands of lawyers. It should be deleted. It should be left to the wisdom of the court. It should be left to the discretion of the court.

We would like to add that in order to effectively combat and curb criminal assaults on minor girls further proviso may be added after the proviso to Section 376(3).

Provided further that if the victim is a minor girl below sixteen the punishment shall be death.

In Clause (2) Section 376 we suggest that the proviso for the minimum sentence in case of minor girl may be added as under clause (1) of the said section as proposed by us.

In Section 376 (2) (c) the word inmate of the institution is an inadequate category to prevent the mischief. Hence we say that any person who comes to see the inmate of the institution and who is subjected to revivishment within the premises of jail, etc. should also be brought under cover of this clause. Similarly, in section 376(2) (d) after the words woman who is receiving treatment, the words 'on a woman visitor to the hospital' be deemed to enlarge the scope of protection.

111A: This new presumption is not warranted under the present situation. It will lead to more harm than preventing crime. It is well known that false charges are trumpeted up by woman out of enmity or out of corrupt motives of blackmailing a person. Further we may point out that this presumption is too wide and drastic. No man would be safe and it would charge the male accused prejudicially. We are afraid this may prove a nail in the coffin of the presumption of innocence which according to Lord Sankey, is a silver lining to the criminal jurisprudence.

The provision of new Section 111A in the Act of 1872 page 6 (lines 3-9) are extremely heartening that due to the awareness created in the country today, the Government want to give the benefit of the doubt totally to the aggrieved person. Whenever and wherever the evidence proves that sexual intercourse has taken place and the question whether it was without the consent or with the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent. However, much as we wish to book the culprit yet, it is thought necessary in order to ensure that no mis-carriage of justice is done that

the court may be permitted to decide after hearing the evidence instead of presuming that all statements made by the woman are to be considered correct. Thus the following be added as amendment to the clause:—

Clause 8—at page 6 lines 3-9 words “The court shall presume that she did not consent” the words “The court shall decide the question on the basis of the evidence before the court” be substituted.

If at all it is to be laid down, the court's decision is not there.

MR. CHAIRMAN: Let me interrupt you at this stage. You have substantially advocated your point. Your counter-argument is that the burden of proof is not shifted on the accused. What is presumed is that there is absence of consent. It is not a case of everybody that the guilt should be established. May be, it could be destroyed by the accused himself unless there is a substantive evidence that there was co-habitation. If there was a sexual intercourse, there should be some symptoms of penetration and then there should be some self-supporting medical evidence in that case. And if the intercourse is proved, then the presumption would be that there is absence of consent or the woman has not given her consent. This presumption of absence of consent does not cast the burden on the accused to disprove or rebut it. This was the view expressed by others. What have you to say?

SHRI H. S. URSEKAR: May I submit that I do not accept this view. This is an Aristotle's fallacy. I have already made it clear that if you introduce the provision it will only destroy the whole structure. Some of the persons who came here made out a case that everything should be presumed. Presumption would arise at a later stage when the evidence is to be taken. The judge has to form an opinion while giving his judgment. The point here is very simple. First

of all there should be a sexual intercourse. Otherwise, rape cannot be established. It has been provided for that penetration is sufficient to constitute a sexual intercourse to the offence of rape. That part of the evidence must be there on record. The point here is whether the man has done the intercourse with or without her consent. In that stage, the presumption should be in favour of the witness. That is what I think. If presumption is accepted as part of the proof, then even the physical contact with the woman is enough. But, if it is through the pressure of somebody, in such a case, the presumption is not there.

Therefore, I am suggesting that it may be classified under a category. Sec. 114 is already there. Under that, the court may presume under certain circumstances.

MR. CHAIRMAN: According to you Sec. 114 will serve the same purpose. What is the good in making the provision of 111A?

SHRI H. S. URSEKAR: The provision as it stands contains the wordings ‘the Court shall presume’. According to my interpretation, what I am respectfully trying to point out is this. Surely in our anxiety to give protection to a woman, we may not remove the protection given to a man.

SHRI BAPUSAHEB PARULEKAR: I have two or three questions to ask. With reference to definition under 376, you said that the words ‘misconception of facts’ should be removed. You yourself said that the mistake of facts is no defence because it is an Exception. Do you think that we may include the Exception in the Penal Code Clause?

SHRI H. S. URSEKAR: That is already included. We all know how Lord Indira, the King of God played false on Ahilya under this pretext.

SHRI BAPUSAHEB PARULEKAR: The object of the Bill is to punish the guilty. We should give priority to this. Do you mean to say that the

basic fabric should not be changed even if injustice is caused to the people? Don't you think that the guilty should be punished?

SHRI H. S. URSEKAR: It is not an injustice at all. Justice is always administered according to law. I have written a book on it which is appreciated by Prof. Devki Nandan.

SHRI BAPUSAHEB PARULEKAR: Therefore, even if the law is to be changed, justice should be according to law.

SHRI H. S. URSEKAR: In your view you may be perfectly right. This is not the only way.

SHRI BAPUSAHEB PARULEKAR: As the law stands today, a woman has to prove a thing which is a negative thing, namely, that she did not consent. How can this be proved that she did not consent?

SHRI H. S. URSEKAR: The consent can be proved or expressed. If there is a consent it may be by way of a letter written; it may be an implied consent. The magistrate among other things has to collect and to act according to the circumstantial evidence. I have come across a case where the court is in possession of a letter written by the boy.

SHRI BAPUSAHEB PARULEKAR: Excuse me for my interruption. What was the rationale of your judgment that led to the conviction?

SHRI H. S. URSEKAR: I have convicted persons. And in many cases, what I did was this. As a sort of rehabilitation in the case of a boy, I have won him over.

That has been done in so many cases.

SHRI ERA SEZHIYAN: After marrying the victim girl the accused person may get clemency. But, afterwards, he may divorce her.

SHRI H. S. URSEKAR: In such cases, even if a girl is traditionally married after looking to the horoscope, he may divorce her. We cannot stop him from doing that.

SHRI S. W. DHABE: Please refer to Section 228A sub-Clause (2)(b). I will read it out. It is as follows:

"(b) any matter in relation to a proceeding held in a court in camera, is prohibited, any person who prints or publishes any such news or matter shall be punished with imprisonment for a term which shall not be less than one month but which may extend to two years and shall also be liable to fine;"

Now, I would like to know whether the publication of the news will help in solving the problem. Are you in favour giving publicity to such matters?

SHRI H. S. URSEKAR: What is required is giving protection to the victims. The girl's identity and her name should not be publicised in wider circles. It may however be published without giving her name and details of her identification.

SHRI S. W. DHABE: Are you in favour of in camera trial?

SHRI H. S. URSEKAR: Yes, Sir.

SHRI S. W. DHABE: Under Section 327 of the Cr. P.C. of 1973, discretionary powers are given to the Court. There is no compulsion.

SHRI H. S. URSEKAR: The discretionary power should be retained because the fundamental principle of judicial system is to have a fair and open trial. I would therefore like that the discretion should remain.

SHRI ERA SEZHIYAN: The witness was explaining about the Section 376A.

But I would like him to refer to Section 376B. It is stated here—

"376B. Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution or holding any other office in such institution by virtue of which he can exercise any authority or control over its inmates, takes undue advantage of his official position..."

Here the word "undue" is added. Except this, this Section is identical to the Section 376A.

SHRI H. S. URSEKAR: Here the word "undue" should be removed.

MR. CHAIRMAN: What is your view on clause 11-1A in the proposed Amendment Bill?

SHRI H. S. URSEKAR: This kind of case should not be treated as an ordinary case. You can enhance the punishment. You can tighten the proof, you can tighten the investigation. Women's organisations should be associated with the trial and investigation of these cases.

SHRI BAPUSAHEB PARULEKAR: There is Customs Act, there is Adulteration Act, there is COSEPOSA, etc. There, there is a presumption where the burden can be shifted. Now, why should this be treated on par with those Acts?

SHRI H. S. URESKAR: Those are objective things. But this is a subjective thing. It would be dangerous if you adopt those principles here.

SHRI S. W. DHABE: You have mentioned about whipping in the case of gang rape. Will you go further to the extent of suggesting death sentence to the accused in such cases?

SHRI H. S. URSEKAR: In gang rape, I would suggest whipping.

(The witness then withdrew)

VII—Indira Congress, I Mahila
Front Thane District

Spokesman:

Shrimati Shakuntala Paranjpe,
President and Notary Public Advocate.

(The witness was called in and she took her seat)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

What do you want to say on the Bill?

SHRIMATI SHAKUNTALA PARANJPE: So far as the consenting age is concerned, it should be reduced from 16 to 14 because the IPC was drafted 100 years back when the social environment was quite different from what they are today. Especially when we consider the Indian climate, girls here get sexual urge at an early age. Even at the age of 13 or 14 they pass SSC standard. My experience is that so far as the higher and middle classes are concerned, they do not come forward to lodge complaints. So most of the cases come from jhopar-patti. We very well know the environment there. Here almost all the family members go out for work. Only girls remain at home. Because of the scarcity of accommodation there is no privacy to the family life. So, because of the effect of cinema on them and the environment in which they live, they get sexual urge at an

early age. We find that because of sexual urge and out of curiosity also, they fall prey. They do it knowing fully well what they are doing. Sometimes false cases are also lodged only because the parents want to extract money from the accused. My experience is that between 60 and 75 per cent of the cases are consent cases. Therefore, if the age is reduced from 16 to 14, I think, the percentage of the cases will be reduced. Now-a-days certainly the girls get knowledge about sex at an early age because of education, environment, social conditions, effect of cinema etc. Here the girl gets menses at the age of 12. This is the time when she gets sexual urge.

About Section 376 I feel that this provision of proposed amendment is dangerous because when a discrimination is made between one man and another man, it will be unconstitutional.

MR. CHAIRMAN: Here many witnesses say that the name of victim should not be published but the name of the accused should be published.

SHRIMATI SHAKUNTALA PARANJPE: Here I feel that names of both the parties should not be published.

SHRI BAPUSAHEB PARULEKAR: Apart from the discrimination part of it, what is your view about this section?

SHRIMATI SHAKUNTALA PARANJPE: Doctors have also been included in this. In that case, you will not get good gynaecologists.

MR. CHAIRMAN: Do you like it or do you dislike it?

SHRIMATI SHAKUNTALA PARANJPE: I dislike it. Because of that presumption, automatically the burden will be shifted on to the accused. The proposed amendments taken together are very dangerous to the society. Ten years imprisonment is absolutely rigorous.

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The definition of 'public servant' will be so wide that M.Ps., M.L.As. and Ministers will also come in. We have to look at the things from social point of view. College going girls and boys are there. In such type of cases we can ask for a guarantee of good behaviour when convicted. Leniency has to be shown to him. If we make ten years punishment/imprisonment, the judge will not have any discretion which he has just now under the present Act. Young girls and boys must be given liberty.

SHRI S. W. DHABE: She had suggested whipping.

SHRIMATI SHAKUNTALA PARANJPE: We have to take it as a social offence.

SHRIMATI SHAKUNTALA PRANJPE: We have to take it as a social offence.

MR. CHAIRMAN: Have you handled any such cases?

SHRIMATI SHAKUNTALA PARANJPE: Yes so many. There were certain borderline cases of girls of the age of 15 to 17 years. In most of these cases they were sent to the Civil Hospitals. We know so much of corruption is going on. They tamper with the certificates. Therefore, there must be some panel of lady doctors in every district and this type of cases should be sent to the lady doctors.

So far as F.I.R. is concerned, it must be recorded by the Lady Police Officer. In every big city there must be one police station which should be fully organised by lady Police Officer.

SHRI AMARPROSAD CHAKRABORTY: Do you suggest lady judges?

SHRIMATI SHAKUNTALA PARANJPE: I am coming to that.

If offence is not committed in the area where the police stations suggested by me are there, the case may be registered in the area where offence has been committed but for

investigation it should be transferred to the police station which is fully organised by the lady Police Officer.

Family courts should be established. All the family cases should be decided in such courts. Cases of rape, adultery, kidnapping, etc., which are family matters and which concern the family life, these cases should be conducted in the family courts.

As far as possible there should be lady judges. There may be a panel of two judges.

So far as judiciary is concerned, they are not getting many lady judges. It is because of so many problems for the ladies. In Bombay High Court there is only one lady judge.

After sun set no lady should be arrested. That provision is already there. As far as possible the statement of the victim should be recorded by the Police Officer at the residence of the victim. After sun-set she may be put under house arrest. Her clothes should be collected. Lady Doctor should physically examine her.

MR. CHAIRMAN: You have not given concrete suggestion so far as medical evidence is concerned.

SHRIMATI SHAKUNTALA PARANJPE: Medical evidence is tempered. That is what I have said. I have not followed what the Chairman would like me to suggest.

MR. CHAIRMAN: Some lacuna is there so far as medical evidence is concerned. You talked about panel of doctors.

SHRIMATI SHAKUNTALA PARANJPE: I have suggested that there should be a panel of lady doctors for every district to whom the victim should be sent for medical examination.

So far as shifting of burden of proof on the accused is concerned, that provision should be deleted because it

may create a dangerous precedent if it is retained.

MR. CHAIRMAN: Have you finished with what you want to say?

SHRIMATI SHAKUNTALA PARANJPE: Lastly, I would submit that if at all the Explanation is to be made, always the discretion is with the court. When the case comes before the court that the father has raped his own daughter—I have come across the cases of this type also—it is definitely a heinous crime and the court should give a severe punishment to the accused.

MR. CHAIRMAN: We have provided for a ten year imprisonment in this Bill for this offence. Is it your contention that this provision should remain?

SHRIMATI SHAKUNTALA PARANJPE: Leniency may be shown in some cases. In the case of the father raping his own daughter, that is heinous in nature the leniency should not be shown to him. Sometimes a college boy falls in love with a girl. In that case the parents of both may lodge a complaint. He should not come in for a trouble. In such a case, both of them are guilty. If both of them are consenting parties, in such cases, even though it may be an offence, there should be some provision by which the benefit of doubt may be given to them. Some leniency may be shown to them.

MR. CHAIRMAN: One more question. There are cases where a consent by wife is given but no consent from husband is given. Is it your case that if the intercourse comes through, it amounts to adultery? In all other cases when there is no consent, it amounts to rape. In that case the wife should be a party to the consent and she will be a passive witness.

Don't you think so?

SHRIMATI SHAKUNTALA PARANJPE: So far as section 125 of the Cr. P. C. is concerned, I suggest that there should be some provision for interim maintenance just as there is a provision under the Hindu Marriage Act, under Sec. 224. If a case is pending for two years, the poor lady does not get any relief for two years. She simply comes to the court and goes out now and then because the husband manages to get extension of time.

SHRI AMARPROSAD CHAKRABORTY: Don't you think that the court is sympathetic in such cases?

MR. CHAIRMAN: I am sorry, the Committee has no jurisdiction over this.

SHRI BAPUSAHEB PARULEKAR: We have not discussed the social aspect of the problem. Suppose there is pregnancy out of the rape. Do you think that statutory protection should be given to the child as also the child's mother?

SHRIMATI SHAKUNTALA PARANJPE: There will be so many complications.

SHRI BAPUSAHEB PARULEKAR: How can you establish that the child is out of that rape?

SHRIMATI SHAKUNTALA PARANJPE: It will be a problem. Recently, I had an occasion to visit China on a study tour. There I came across the law. They do not differentiate as between legitimate and illegitimate children.

SHRI BAPUSAHEB PARULEKAR: They are the children of the soil.

SHRIMATI SHAKUNTALA PARANJPE: There is no private property in China. There are very few cases of inheritance.

SHRI BAPUSAHEB PARULEKAR: Who should look after such children?

SHRIMATI SHAKUNTALA PARANJPE: There must be a special law enacted for giving protection to such types of children. I should give you one story. One lady had come to me and she wanted to have a child from the person whom she liked. He came from a respectable family and he was popular in society. She never wanted to disclose the name that he was the father of the child. She was asking him what name should be given to the child if she were to send the child to the school. I said that she should put in the name of the father. She said 'No' to this because the man was from a respectable family. She did not want to damage the reputation. I told her to give her own name since she expressed a desire that the society will not accept the child if her name is put in. There should be an act, to the effect that if the lady adopts the child as her own daughter or son, for protecting such a child she be allowed to put her own as guardian in place of father.

SHRI S. W. DHABE: Do you think that such an offence should be made compoundable?

SHRIMATI SHAKUNTALA PARANJPE: It should be. Compensation should be paid to the victim. The culprit should not be left free. There must be some provision by which the person committing rape should be punished. The offence should be made compoundable. The judge should try to intervene from the social point of view and he should ask that compensation should be paid to the victim.

SHRI S. W. DHABE: Under Sec. 90 of the IPC, even today, if the child is above 12 years of age, consent may be given. Do you want that this should be changed to 14 years?

SHRIMATI SHAKUNTALA PARANJPE: It should be raised to 14.

SHRI S. W. DHABE: In the Indian Penal Code, the age of consent is given as 12.

SHRIMATI SHAKUNTALA PARANJPE: That should be enhanced to 14 for all purposes. There should not be any discrimination. Even in kidnapping cases, it should be reduced from 18 to 16.

SHRIMATI GEETA MUKHERJEE: You have tried some cases of rape and perhaps most of them turned out to be false complaints. What are the reasons for making false complaints?

SHRIMATI SHAKUNTALA PARANJPE: I do not mean to say that all the cases are false. Many a time there were false complaints made with a view to extracting money from the person concerned.

MR. CHAIRMAN: Thank you very much.

(The Committee then adjourned)

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON
THE CRIMINAL LAW (AMENDMENT) BILL, 1980**

**Tuesday, the 28th July, 1981 from 14.00 to 18.30 hours, Room No. 20001, New Vidhan
Bhavan, Bombay**

PRESENT

MEMBERS

Lok Sabha

Shri D. K. Naikar—Chairman

2. **Shrimati Vidyavati Chaturvedi**
3. **Shrimati Suseela Gopalan**
4. **Shrimati Mohsina Kidwai**
5. **Shri R. K. Mhalgi**
6. **Shrimati Geeta Mukherjee**
7. **Shri K. S. Narayana**
8. **Shri Ram Pyare Panika**
9. **Shri Bapusaheb Parulekar**
10. **Shri Qazi Saleem**
11. **Prof. Nirmala Kumari Shaktawat**
12. **Shri S. Singarvalival**
13. **Shri R. S. Sparrow**
14. **Shri Trilok Chand**
15. **Shri V. S. Vijayaraghavan**

Rajya Sabha

16. **Shri Lal K. Advani**
17. **Shri Ram Chandra Bhardwaj**
18. **Shri Amarprosad Chakraborty**
19. **Shri S. W. Dhabe**
20. **Shri B. Ibrahim**
21. **Shri Dhuleshwar Meena**
22. **Shri V. P. Munusamy**
23. **Shri Leonard Solomon Saring**
24. **Shri Era Sezhiyan**
25. **Shri Hukmdeo Narayan Yadav**

SECRETARIES

Shri Kam Kishore—Senior Legislative Committee Officer

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS

Shri M. P. Khosla—*Officer on Special Duty*

WITNESSES EXAMINED

I. Government of Gujarat, Gandhinagar:

Spokesmen:

1. Shri R. V. Chandramouli, Secretary, Home Department.
2. Shri K. M. Satwani, Secretary, Legal Department.

II. Shramik Mahila Sangh, Bombay:

Spokesmen:

1. Shrimati Ahilya Rangnekar.
2. Shrimati Tara Valamu.
3. Shrimati Subhashini Ali.

III. Lawyers for Democracy, Bombay:

Spokesmen:

1. Shri Arun Sathe.
2. Shri Haresh Jagtani
3. Shri Mahesh Jethamalani
4. Shri Raj Purohit
5. Shri M. D. Angal
6. Shri Milind Sathe
7. Shri Nitin G. Raut

IV. Dr. Roop Kulkarni, Lecturer Nagpur University, Nagpur

V. Bhartiya Janata Party (Mahila Agadi), Bombay:

Spokesmen:

1. Shrimati Jayawantiben Mehta, MLA
2. Shrimati Malti Nanawani
3. Shrimati Chandra Kanta Goyal
4. Shrimati Shalini Kulkarni
5. Shrimati Pushpa Wagle
6. Kumari Sudha Gandhi, Advocate
7. Kumari Chanushila Azgaonkar
8. Shri Ramdas Nayak, Ex-MLA.

(The witnesses were called in and they took their seats)

I.—Government of Gujarat, Gandhinagar.

Spokesmen:

1. Shri R. V. Chandramouli, Secretary Home Department.
2. Shri K. M. Satwani, Secretary Legal Department.

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

“58. Where witnesses appear before a Committee to give evidence, the Chairman, shall make it clear to the witnesses that their evidence

shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

I hope you have gone through the Bill. You kindly touch only those points on which you want to enlighten us.

SHRI K. M. SATWANI: With regard to clause 2 (proposed Section 228A, sub-section 1, line 5) it is one of the sections based on our recommendations and we welcome it. There is a small thing which we would like to point out. In line 5 the words are '...shall be punished with imprisonment...and shall also be liable to fine' I feel that after the word 'imprisonment' the words of either description should be there. In all the sections these words are there. If the draftsman has omitted it with purpose then I have nothing to say. But if it is a slip, then it should be rectified.

SHRI R. V. CHANDRAMOULI: Clause 3 relates to the definition of Section 375. Part beginning with 'Fifthly' gives an impression that it is fear of death to herself. Here the words 'anyone in whom she might be interested' should be added. In fact the Law Commission made a recommendation to that effect. Those words are there in other sections.

About the age as mentioned in 'Seventhly' of Section 375 we would like to submit that in both the cases it should be 18 years because that is the legal age of marriage. Lowering the age here gives an impression that this Section legalises this age for marriage purposes also.

With regard to the proposed amendment to the Evidence Act, the Draft

Bill has covered only one amendment i.e. Section 111A. We would like to submit that the recommendations made by the Commission with regard to other two sections of the Cr. P. C. and the Evidence Act are not covered by the present Bill. They should be included in this. In clause 8 of the draft Bill our submission is that in the third line of Section 111A the object is to shift the burden of proof. So, after the word 'intercourse', the words 'by the accused' should be added. The mere act of sexual intercourse is not enough. But sexual intercourse by the accused is necessary to be proved. Otherwise it will not be fair to the accused to shift the burden on him to prove the consent.

Section 146 of the Evidence Act and 53A as proposed by the Law Commission should also be incorporated in this Bill. The words 'in camera' are not defined in the Bill. It is for consideration whether it should be broadly defined. Otherwise we will have to leave it to the court and the judge will have his own interpretation.

It is necessary to provide the prosecutrix with some sort of legal aid. It may be a lady lawyer or somebody in whom she has confidence. I can say on the basis of my experience as a Session Judge that the prosecutrix often feels that she is being subjected to another ordeal when she is in the court room. So, we should do everything possible to see that she feels comfortable, and she does not feel nervous. She should feel that she is in safe hands in the court room.

There are instances where cross examination is such that the court should intervene. That is, of course, a matter for the court to provide somebody who can talk to the lady in confidence. What we find is that some awkward questions are put at the time of cross examination.

The offence of rape cannot be said to have been proved unless it is proved that penetration was there. These questions when put to the victim

create a scene where she feels very uncomfortable. Sometimes the judge has to whisper 'you are just like my daughter'. If there is a lady lawyer or somebody who has already talked to her, she will not feel embarrassed. Therefore, I submit that some provision of legal aid to the victim should be there.

We are really very sorry for having put you to inconvenience by coming late.

MR. CHAIRMAN: You were also a Session Judge. You have also dealt with many cases of rape. Kindly refer to the word beginning with 'thirdly'. You said 'person in whom interested' is not there. Therefore, there should be insertion of some words. You kindly refer to Section 44 of the I.P.C., wherein it has been defined.

503—Criminal intimidation has been defined. In definition of criminal intimidation 'a person in whom interested' is also covered.

SHRI K. M. SATWANI: 'Fear of death or hurt to the person concerned or someone in whom he or she is interested' is clear in Section 503.

In Thirdly, ref. to Sec. 503 is at the end. It is preceded by the words "I as defined".

The provision regarding somebody else is not there.

MR. CHAIRMAN: Entire sentence should be read. You cannot split it up.

SHRI K. M. SATWANI: In the original Law Commission's Report, probably it was there.

I personally feel it is better to add these words in the earlier part of the Section as it will avoid any scope for ambiguity.

SHRIMATI SUSHEELA GOPALAN: You have suggested legal aid for the girl.

Will you allow her to proceed against the accused simultaneously along with the State proceedings?

SHRI K. M. SATWANI: The object of legal aid is to proceed against the accused also on her own on the civil side as well as on the criminal side. In addition to that the legal aid which I contemplated is also in the trial for offence of rape—where the lady lawyer talks to her. She acts as an interpreter and remains present in the court.

SHRIMATI GEETA MUKHERJEE: 111A:

You have supported it. You also wanted some addition. You were Sessions Judge. Will it not be helpful for meeting out justice if the onus of proof is shifted? Surely, you should know all the arguments that are being put forth. There may be false complaints. Why are you supporting Section 111A particularly in view of this fact that you had the experience as the Sessions Judge?

SHRI K. M. SATWANI: Why we are supporting this is that the basic principle of criminal jurisprudence which we got from the British is still being followed by us. In a criminal case, the burden of proof is always on the prosecution to prove every ingredient of the offence. We are here making a departure from the basic principle by saying that a part of the burden should shift on the accused. This principle of shifting the onus of proof under criminal law has been accepted. There have been laws like the Prevention of Food Adulteration Act, Corruption Act etc., where in a suitable case, the burden can be shifted. If I may be permitted to say so, when we are administering justice between the two individuals or between the two classes of people, one is weak and the other is strong, there the burden should shift. I am of the view that in these cases because the woman is the victim of the offence of rape, when she says in her evidence that it is without her

consent, it is for the accused to prove that it was done with her consent. The onus will then shift to him. I think this is a welcome provision.

SHRI R. V. CHANDRAMOULI: In 95 per cent of the offences of this kind there will be no witnesses except the prosecutrix and the person concerned. Shifting the burden on the accused is a very necessary provision. Other-wise it would be difficult to say whether the consent has been given or not.

SHRI K. M. SATWANI: As I submitted earlier, firstly, the sexual intercourse by the accused person should be proved; then the absence of consent for this act will have to be proved. Then only the burden of proof will lie on the accused to prove that there was consent. The lady may say that she did not give her consent. It is only in that case that the court will presume.

SHRIMATI GEETA MUKHERJEE: In your note you suggested some of the provisions to be incorporated should be as per the Law Commission's recommendations. One was with regard to the procedure of the enquiry. That incorporated. The idea of the framers was that this may be done by the administrative orders. Your memorandum states that some of the amendments should be incorporated in the body of the law in order to make the administration more alive to the pressures. In the meantime since the Bill has not got the provisions, have you any reason to shift your ideas?

SHRI R. V. CHANDRAMOULI: We stand by what we recommended in the light of the Law Commission's recommendations. We discussed amongst ourselves the Law Commission's recommendations. This Bill is for dealing with the rape cases. Consequential provisions in the Cr. P. C. and I. P. C. find a place here. In fact we were under the impression that probably the Government of India was contemplating a separate omnibus Bill because of the recom-

mendations of the Law Commission. We thought that the incidental provisions could be covered by either administrative orders or by other legal provisions. We thought that this would be a part of the omnibus Bill involving not only investigation of each offence like outraging the modesty of women etc. but also other offences. Executive instructions already exist, that a woman should not be sent to the police station after sun set and all that. It should have statutory cover. We are under the impression that it will be covered by an omnibus Bill. We stand by this.

SHRIMATI GEETA MUKHERJEE: My last question is about the medical examination. Based upon your experience, can you suggest a way on how to make the medical examination more effective?

SHRI K. M. SATWANI: The girl should be sent for medical examination within twenty four hours. The report should be there. These things are generally done. It would be better if there is some statutory provision also to this effect.

SHRIMATI GEETA MUKHERJEE: If any police personnel refuses to record the case on time, should it be treated as a cognisable offence? Do you agree?

SHRI R. V. CHANDRAMOULI: We support this provision not only for this sort of offence but for other offences also.

SHRI B. IBRAHIM: Regarding new Clause 228A(1), if the words 'official communication' are also included after the words 'Whoever prints or publishes', do you support?

SHRI K. M. SATWANI: Firstly the official communication is not said to be a publication; secondly, under the Evidence Act, there is a provision that the official communication between two individuals or two government officers does not form part of the publication.

SHRI B. IBRAHIM: There is an opinion from some of the people, es-

sociations, that is amounts to 'press' censorship'. What do you say to this?

SHRI K. M. SATWANI: The press which normally can publish the details of the proceedings of a case will be prohibited from doing that. It will be an offence if they publish it.

So, to that extent, there is a restraint on the press.

SHRI LAL K. ADVANI: Is it not a fact that the legislation which is contemplated now is as a result of publication in the press of several cases of rape? For instance, the wife of a journalist was raped and there was an outcry of the society expressed through the press which resulted in this kind of reform. So, by bringing this provision, are we not going towards a social change?

SHRI R. V. CHANDRAMOULI: But the publication before the offence is registered will not be covered by this section.

SHRI K. M. SATWANI: We are on a limited point. The name or the identity or details of the victim should not be published. We are not objecting to the publication of the trial and the result of the trial.

MR. CHAIRMAN: You kindly refer to Section 228A (2) (b). It is clearly stated that any matter in relation to the proceedings held in camera should not be printed or published. But I may bring to your kind notice that other witnesses have said that this kind of censorship of press should not be encouraged. This Bill is the result of the outcry of the general public after seeing the publication of such matters in the press. So, publication of this matter in the press is very important for the cause of society. Therefore, I would like to know whether you approve of this principle or not.

SHRI K. M. SATWANI: As you have have rightly pointed out, it does amount to a curb on the press and to

that extent it is a restriction on the liberty under Article 19 of the Constitution. Now, Section 228A (2) (b) clearly mentions that where by any enactment for the time being in force, the printing or publication of any matter in relation to a proceeding held in a court in camera is prohibited from publication. That means it is contemplated that another enactment which should make a special provision saying that any matter in relation to the proceedings held in court in camera is prohibited. Now, parliament which has to introduce another legislation of this nature has to decide whether to completely ban any news item with regard to a proceeding held by a court in camera. Then only this provision will come into play. But this provision as it stands does not totally ban all the news items with regard to the trial.

MR. CHAIRMAN: I want to know whether reasonable restriction is to be put on the censorship.

SHRI K. M. SATWANI: We have to balance the society's rights or the citizens, rights against the rights of the difficulties of the victim of an offence and personally speaking when the honour or the life of a victim of a rape is concerned, I personally feel that publicity should be avoided even if it impinges to that extent upon the right of publicity or rights granted to the press.

SHRI LAL K. ADVANI: I am talking in terms of society's desire to curb this heinous crime. Even the publication of the identity of the victim has contributed to the society's welfare. I am not talking about the individual right of free expression. That is a different matter. This Bill has come about because the society has thought of changing the law.

SHRI R. V. CHANDRAMOULI: By suppressing the news itself from the pages of the news papers, the problems will not be forgotten.

SHRI B. IBRAHIM: With regard to the Section 111A, are you in favour of substituting the word 'shall' to the word 'may'?

SHRI K. M. SATWANI: For this purpose, we will have to turn to the Section 4 of the Evidence Act where it is stated that "shall presume" means that opportunity is given to the accused to rebut the presumption. This by virtue of the provisions of Section 4 of the Evidence Act, it becomes a rebuttable presumption. The other way of looking at it is that even when the burden shifts in a criminal trial the Supreme Court has laid down that whenever the burden is on the accused the onus is not to prove beyond reasonable doubt. In a particular case, the court can weigh of the evidence. The other alternative could be to make it very clear by saying that the court shall presume unless the contrary is proved by the accused which will only be a sort of introducing the provisions of the Evidence Act in this Amendment Bill.

MR. CHAIRMAN: Section 4 says "may be presumed" and not "shall be presumed". Here the discretion is so much. There the power is given to the judge. But when the word 'shall' is provided, he is bound to presume. This has got legal force. It is for the accused to bring on record to show that there was a consent while on the contrary the presumption is rebuttal. Therefore, many stalwarts have suggested that instead of 'shall' it should be 'may'. What is your view on this?

SHRI K. M. SATWANI: Our view is that the word 'shall' should be there.

SHRI R. S. SPARROW: What one has noticed is that because of defective or inadequate reporting and investigation, the cases go in for acquittal. Do you have any suggestion on this so that this thing can be put in order?

SHRI R. V. CHANDRAMOULI: The commission of the offence should be revealed as early as possible to the

police authorities for further investigation. But in practice, many such cases are revealed very very late. Then it gives an opportunity to the accused to bring in extraneous factors. But there is not solution unless the woman takes the first opportunity to reveal the commission of the offence to the nearest police station. Otherwise there is no remedy. How can the Government ensure that the commission of offence should be revealed as early as possible? No law can help in this matter.

SHRI R. S. SPARROW: For instance the medical check up. What can be the new process and method instituted whereby the case is dealt with on an urgent basis? After all the machinery is working under us. We want to get insight from you. What should be the reporting aspect of it so that the reporting officer should go into the root cause where the whole thing starts? If you want to deliberate over it, you can send your views in writing. There are so many things on reporting side and investigation side. These are the problems which you will have to examine in depth.

SHRI R. V. CHANDRAMOULI: We would send a note. On the spot I can give one or two suggestions. In Gujarat such offences are investigated at the Inspector's level. The other thing is to give a time limit to the medical officer to give his report. We have got mobile forensic laboratories. These are certain administrative measures which we can take up ourselves. About legal measures, we will certainly send a note.

SHRI R. S. SPARROW: At some stage the onus can be shifted on to the accused. I am not very clear on that point. If there is a little bit of change to be brought into the law regarding shifting of the onus on to the accused, then perhaps it will have a deterrent effect on the rapist. In the absence of that provision we notice that a high percentage of cases go unpunished. Let us have your views on it.

SHRI K. M. SATWANI: That question takes us to a very wide field. It is a very large issue before the country as to whether we can shift from the adversary system to the inquisitorial system.

SHRI R. S. SPARROW: On this specific case of rape, I am asking your view.

SHRI K. M. SATWANI: If the burden is reduced on the prosecution and further added on to the accused, it can lead to very bad results. A charge of rape is easy to make and difficult to disprove. If we further shift the burden on the accused, there will be scope of false charges.

SHRI S. W. DHABE: I would like to have your views about legal aid. Additional lady lawyers will have to be appointed. We may have to appoint women prosecutors.

SHRI K. M. SATWANI: That is a welcome suggestion. On behalf of the State at the time of trial of the offence of rape, it should be conducted by a lady lawyer. The prosecutor represents the State. But in addition to that what we find from our experience is that well-to-do persons when they are complainants engage their own lawyers. I have come across cases where very senior counsel have been engaged by the complainants in criminal cases on payment of heavy fees. In a rape case that will form a link between the public prosecutor and the complainant.

SHRI S. W. DHABE: What is the number of incidents of rape in Gujarat for the last two years?

SHRI R. V. CHANDRAMOULI: It is about 50 per year.

SHRI S. W. DHABE: Can you give me the figures of number of convicted cases, acquittals, rape in police custody or officials in public service?

SHRI R. V. CHANDRAMOULI: I shall collect figures and submit the same to the committee. I shall give

information in regard to 376(A), (B) & (C).

SHRI S. W. DHABE: Please see the statement of objects and Reasons and 2(2)(a).

Do you think that this will be more restriction on the press?

SHRI R. V. CHANDRAMOULI: 'Any matter' is qualified by 'which may make known the identity of the person'.

Its investigation, etc., can be publicised. They can say that a woman in 'X' village has been raped. That can be done.

SHRI S. W. DHABE: Suppose the story is not published. Even if we publish a part of it where offence has taken place, she is bound to be affected. Are you in favour of restriction or not?

SHRI R. V. CHANDRAMOULI: I am in favour of the restriction.

The previous permission of the court can be taken in respect of the publication of the proceedings.

SHRI S. W. DHABE: Only the orders of the Supreme Court and High Court can be published.

SHRI R. V. CHANDRAMOULI: Please see 4(2)—that explanation relates to the law which has been made under Cr. P.C.

SHRI S. W. DHABE: In an in camera trial, your opinion was that the name of the prosecutrix may not be published. There is no need to place a total ban against the press report as this has also an educative value for the public. Do you stand by this view which you have given?

SHRI R. V. CHANDRAMOULI: The objective is to see that the woman does not undergo any trauma. I am against the total ban on publication. Otherwise the problem will go underground.

SHRI AMARPROSAD CHAKRABORTY: Now you will kindly see Section 226A(2)(b). It says:

'any matter in relation to a proceeding held in a court *in camera*.'

But the words '*in camera*' are not defined. Be that as it may, from your experience you know that the power of the court is that it is for it to decide whether the trials should be held in *camera* or openly. In view of this, do you still feel that this amendment is necessary? This is the discretion of the court. In that discretion do you also want to put a legal compulsion?

SHRI K. M. SATWANI: From the question that is put it seems the working of the courts is very well known to the Honourable Member. Whenever a discretion is given to the court. I will not go to the length of saying that the judge behaves in a manner in which equity is said to be varying with the foot of the Chancellor. But, the extent to which the discretion is exercised could be a question mark. As you rightly pointed out, the judge himself should put his foot down to see that the trial is held *in camera*.

SHRI AMARPROSAD CHAKRABORTY: In view of the section which is still existing in the statute, do you think that this amendment is necessary in this Bill?

SHRI K. M. SATWANI: One thing is that there should be uniformity that the trial will necessarily be *in camera*. We should not leave the discretion to the judge to hold the trial *in camera*—I may be pardoned for saying this that in quite a number of cases conducted by me, in not a single case was a request made to me for this. In every case had to take the initiative by saying in an open court before commencement of the trial or even while allowing the trial to proceed unto a certain point, that when it came to the vulgar part or the delicate part it was only then that I asked the members of the public that they might please go out. The prac-

tice which I observed was that members of the bar were allowed to sit. Because there was this discretion, I am going to the extent of saying that this discretion could be exercised by me. As I submitted, neither the prosecutrix nor the public prosecutor made a request in this regard. Therefore, I feel that this should be made obligatory.

SHRI AMARPROSAD CHAKRABORTY: Section 90, sub-section (4) of the Evidence Act says that 'the court may resume or shall presume', etc., etc. In view of the existing provision on the statute book, do you still feel that Sec. 111A should be all but necessary?

SHRI K. M. SATWANI: Even after considering the provisions of Section 90 of the Evidence Act, read with Section 4, wherein the definition of 'may presume' and 'shall presume' is given, we still feel that Sec. 111A is necessary. As the law stands, the prosecution must first prove, not merely allege, that there was no consent. Then only the burden will shift on the accused. In the court even if the prosecutrix alleges that she did not give consent or denies her consent, at that point of time, the burden shifts. This is the distinction. So, the burden of shifting provision is necessary.

SHRI AMARPROSAD CHAKRABORTY: There is a procedure in the Criminal Procedure Code. The judge has got the power to restrict the person from putting a question. Under the Evidence Act, the provision is there to prove or disprove. That means you must give him the chance to prove or disprove the offence committed.

SHRI K. M. SATWANI: We are making a conscious departure from the basic principle as I submitted earlier. There are cases where that conscious departure has to be made. In this case also this departure is necessary. I may also add that the law contemplates that as the law now stands, the

standard of proof is not heavy for the accused. So, the accused can discharge his burden of proving the consent of the prosecutrix, if necessary, by stepping into the witness box and by giving testimony on oath. That is also permitted to him.

So, the spirit or the reason underlying this provision, I think, is salutary.

SHRI S. W. DHABE: Can you tell us the number of rape cases during custody in the Police Stations?

SHRI R. V. CHANDRAMOULI: The number of rape cases is very very small at the Police Inspector level. At the non-police Inspector level, it was about 12 out of more than 1500. I will send that information later on.

SHRI ERA SEZHIYAN: The complaint is that very often the cases are not recorded by the Officer in-charge of the Police Station. Why is it happening so?

SHRI R. V. CHANDRAMOULI: We have not received any complaints about the non-registration of the complaints or declining to register complaints.

SHRI ERA SEZHIYAN: I think you are supporting the view that the burden is being shifted to the accused in certain cases. The Law Commission's recommendations did not make any distinction. Now, Section 111A is only restricted to sub-clause 2. What is your view on this point?

SHRI R. V. CHANDRAMOULI: This Bill makes a distinction between custodial rape and ordinary rape. Our view is that the onus should shift to the accused concerned. In all cases of rape, the onus should shift to the accused concerned. Our view is that it should cover all rapes.

(The witnesses then withdrew)

II—*Shramik Mahila Sangh, Bombay.*

Spokesmen:

1. Shrimati Ahilya Rangnekar
2. Shrimati Tara Valemur
3. Shrimati Subhashini Ali

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:—

“58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.”

Now, there are many points which other witnesses had dealt with. On what particular points you want to emphasise?

SHRIMATI AHILYA RANGNEKAR: We think that most of the recommendations made by the Law Commission are very good. We are sorry to note that this Amendment Bill has ignored those recommendations. We therefore feel that all the recommendations of the Law Commission should be considered for inclusion in this Amendment Bill. The main point of difference is about the onus. There is an indisputable difference between a man and woman. For so many years a lot of injustice has been meted out to women. We are glad that the Government of India has now at least thought of bringing forward an amendment to this effect.

Here past history should not be taken into account. Even if she had intercourse with A, B or C, nobody has the right to rape her. In the Mathura case, she was raped in the police station. Now the judges say that she was a prostitute. So no lacuna should be left out. There may be exceptions. If she says that she has been raped, that must be taken into account.

MR. CHAIRMAN: Kindly do not defend the case of a prostitute. There the licence is given to everybody to go there. There, the only thing is money.

SHRIMATI AHILYA RANGNEKAR: Even in that case nobody has a right to rape her. In this you have included police personnel. It is good. But you have not included Ministers, MPs, etc.

MR. CHAIRMAN: They come under the term 'public servant'. It was the decision of the Bombay High Court that Ministers are public servants.

SHRIMATI AHILYA RANGNEKAR: But MPs do not come into it.

You have omitted gang rapes. In many cases, when the workers were on strike, their wives were raped. In contract work if the ladies ask for more money, they are raped. The instigator and the abettor of the gang rape should be included in that.

There is no provision in the Bill for the rehabilitation of the victim who has been rejected by the society. It is a social problem. So, rehabilitation aspect of it should also be considered by the Committee.

About other things i.e., the woman should be accompanied by representatives of women organisations, we agree with that. In one case, the victim was knowing only Tamil. She did not know on what statement her signatures were taken. But that provision has not been included in the Bill.

About publicity, I think you have been very harsh on that point. We will be arrested if we give publicity.

MR. CHAIRMAN: This Committee is not harsh but it is the outcome of the cry of the ladies.

SHRIMATI AHILYA RANGNEKAR: It should be left to the discretion of the courts. Otherwise, we will be prevented from taking our own handbills.

In a case where the police officer is the accused, the Law Commission has recommended that the case should be investigated by an officer of other district. We feel that even that is inadequate. But you have not included that in this Bill. You have seen the Mathura case. The whole evidence can be destroyed, because the State's interest are there. The onus is the main thing.

MR. CHAIRMAN: About that you have already said.

SHRIMATI SUBHASHINI ALI: Arrest of the woman after sun-set and before sun rise, you have not accepted. This is the report of the Law Commission. It has not been included in your amendment. It should be included. Many other things you have not included. Because the Law Commission had recommended we were stopping the policemen not to keep women in police station after sun-set and before the sun rise. After your amendment came, we failed to give protection to the ladies.

Insection of new section 167A in this IPC (Para 3.3)

167A: Whoever being an officer in charge of a police station and required by law to record any information relating to the commission of a cognizable offence reported to him, refuses or without reasonable cause fails to record such information shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

This is very necessary. In all cases of rape this is a complaint which people have got against the police from all classes. That should be kept in mind.

(The witnesses then withdrew)

III—Lawyers for Democracy, Bombay spokesmen

(The witnesses were called and they took their seats)

1. Shri Arun Sathe
2. Shri Hareesh Jagtani
3. Shri Mahesh Jethmalani
4. Shri Raj Prohit
5. Shri M. Angal
6. Shri Miland Sathe
7. Shri Nitin G. Raut

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:—

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence, shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

What have you to say about the proposed Bill?

SHRI ARUN SATHE: We have given our comments in the Memorandum.

SHRI M. D. ANGAL: Let me read out to you Section 228A (1) which says:—

"Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 354, section 376, section 376A, section 376B or section 376C is alleged or found to have been committed shall be punished

with imprisonment for a term which shall not be less than one month but which may extend to two years and shall also be liable to fine".

So far as the object of the proposed amendment is concerned, I certainly agree. So far as the legal connotation of the words 'whoever prints or publishes' is concerned, it may mean 'an oral communication' or 'a written communication'. If a particular raped woman's name is divulged or published, that is an offence. So far as the ingredients of this offence are concerned, they are complete and the person concerned may be hauled up. I do not think that the Legislature can have such an object as to prevent that sort of publication of the news. So, the wording should be so guarded. It will be rather impossible to guard even that particular mischief or to prevent it. Rather the object of this Bill will be defeated because so many innocent persons will be unnecessarily involved and, it will be difficult for them to say that this particular publication or printing of this news was done with any motive.

MR. CHAIRMAN: What will come out of that?

SHRI M. D. ANGAL: It could be ~~meny~~ read if this particular printing or publication of the news is done with the intention of defaming the prosecutrix—woman—against whom the offence has been committed. See definition of 'rape' Section 375. It says:—

"Fifthly—with her consent, when her consent is given under a misconception of fact, when the man knows or has reason to believe that the consent was given in consequence of such misconception".

The term misconception is much wider. Even an innocent person could be hauled up. A particular person says that he is a rich man. The woman believes in his making such a statement. She gives her consent on that statement. Under the provision of the

Bill, that person will be guilty of the offence. The misconception is such a wide term that even an innocent or innocuous person who is procuring her consent will be covered up by this provision. So, this should be deleted altogether.

MR. CHAIRMAN: What do you propose?

SHRI M. D. ANGAL: The word 'misconception' should be deleted completely. Come to 'Sixthly'. It says:—

"With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent, or is unable to offer effective resistance."

I want to make a distinction between
 ► Intoxication by the woman and the intoxication which has been forced on her either voluntarily or involuntarily. A woman herself gets intoxicated. We can come across so many instances wherein the woman, interested party gets herself intoxicated. If such a woman, in that intoxication stage, gives consent, she will be taking the benefit of her act.

MR. CHAIRMAN: Take for instance this case. She gives her consent for such a sexual intercourse.

SHRI M. D. ANGAL: She will not be in a position to give that consent.

MR. CHAIRMAN: It is only at that stage that she may not understand whether she had been given the drink only for the purpose of committing this offence.

SHRI MAHESH JETHMALANI: We are talking about self-intoxication. Don't women drink? The women should be given the benefit.

SHRI M. D. ANGAL: Coming to the amendment to the Evidence Act my

comment is that this may give a complete go-by to the established criminal jurisprudence to which we have now been accustomed that the accused shall be taken to be an innocent person. Here the presumption is that no sooner the woman says in the court that the sexual intercourse was without her consent, then it shall presume that she did not consent.

SHRI BAPUSAHEB PARULEKAR: It is only when the sexual intercourse is proved.

SHRI M. D. ANGAL: If a sexual intercourse is proved, then the question arises: whether it was done without her consent or with her consent who is alleged to have been raped. If she states, in her evidence before the Court that she did not consent, the court shall presume that she did not consent. Here I would like you to see the definition of 'rape' under Section 375:

'First.—Against her will. Secondly.—Without her free and voluntary consent'.

By virtue of this presumption, under Section, 111A of the Evidence Act, the position seems to be like this that if the woman says in the court that it was done without her free and voluntary consent, then the Court shall presume...

MR. CHAIRMAN: Even according to you, there should be penetration and there should be sexual intercourse. Then only the question of presumption would arise. Is it not?

SHRI M. D. ANGAL: Yes, Sir.

SHRI HARESH JAGTANI: It is not inconceivable. There is always this presumption in a criminal case. Every ingredient of the offence must be proved beyond reasonable doubt before the offence could be foisted upon the accused person. In this case, it is not inconceivable that the person making the complaint is a woman. In such a case her complaint is good enough to

shift the burden upon the accused person. But that would be unfair because she is clearly an interested party and so, the court cannot rely upon the interested party so it can call upon the accused to prove his innocence. You have to keep this fact that the rapist victim is always an interested party.

By preponderance of possibility, if it is done and if the consent were missing, then she may be called upon to prove it. It need not be beyond reasonable doubt. So, if she says that this particular act was without consent, the prosecutrix being an interested person, shifting the burden on the accused person is grossly unfair.

SHRI LAL K. ADVANI: After all, no one seems to defend that. Section 111A is not related to cases of rape. The Bill, as it is, confuses the issue of the consent and that too in specific cases. The accused person in relationship with the victim is not an interested party in a specific situation. In case of a police officer or in case of a public servant or the medical superintendent, this provision will apply and in all other cases, this does not apply. So, the starting point is that if the sexual intercourse takes place, it is impossible to prove.

SHRI HARESH JAGTANI: Even if you ask criminal professional lawyer, he will, as a matter of fact, say the same thing namely that it is impossible to prove the lack of consent.

SHRI LAL K. ADVANI: *Ipsa dixit* is not a proof. Already there are laws.

SHRI HARESH JAGTANI: Where a sexual intercourse is proved, then the necessary ingredient comes. The point is whether it was without the consent of the woman alleged to have been raped; if she says in her evi-

dence before the court that she did not consent, then the burden shifts upon the accused person. If she states in the court that she did not consent, that statement may be a worthless one because she is an interested party.

SHRI LAL K. ADVANI: If it is a case of a woman who has been raped inside the police station, how to prevent it or to punish the rapist?

SHRI MAHESH JETHMALANI: Is the law meant to prevent the rape or to punish the rapist?

SHRIMATI GEETA MUKHERJI: This is meant to punish the culprit.

SHRI MAHESH JETHMALANI: I say why not give an enhanced punishment in such cases rather than to make it easy for the accused to get himself acquitted.

SHRI MAHESH JETHMALANI: We have no objection to Section 376A, B and C. That is about the custodial rape. Our objection is to the blanket provision in all cases of rape.

MR. CHAIRMAN: What is your view on that point?

SHRI HARESH JAGTANI: As far as this is concerned, there should be basic circumstances to show that there was absence of consent and only then can the burden be left open because it was without consent. There must be some additional circumstances which on a preponderance of probability would perhaps show that there was no consent.

SHRI M. D. ANGAL: We should leave it to the court to decide.

SHRI NITIN G. RAUT: We want the complete deletion of the Section 111A in the proposed amendment Bill.

SHRI M. D. ANGAL: So far as the public servants and all these things are concerned, we may suggest that there should be a clear mention of

various categories of public servants including the Ministers, their sons, etc. Since an amendment is being brought forward, our suggestion is why not put those categories in clear terms.

MR. CHAIRMAN: Ministers are already included in the category of public servants.

SHRI MAHESH JETHMALANI: The Law Commission's recommendations about the custody of women before Sun-set and after Sun rise should be wholeheartedly accepted.

श्री काजी सलीम : पब्लिकेशन के बारे में मैं यह कहना चाहता हूँ कि सोशल फील्ड को भी देखा जाए। अगर पब्लिसिटी बैन कर दी जाए, तो जो लोग ऐसा जुर्म करते हैं उन के मन से पब्लिसिटी की बजह से जो डर होता है, वह दूर हो जाएगा। इसके अलावा जो सोशल मार्गनाइजेशन है, उन को भी इस तरह के केसेज का पता नहीं चलेगा और फिर वे विकटम के लिए कुछ नहीं कर सकेंगी। क्या आप यह समझते हैं कि पब्लिकेशन को बैन करने से ऐसे अपराधों को बढ़ावा मिलेगा ?

श्री अकन साठे : हमने इसको अपोज किया है।

श्री काजी सलीम : मैं एक सोशल लवर्कर हूँ और मेरी कांस्टीट्यूएन्सी में अगर कोई रेप हुआ है, तो मैं पुलिस की नोटिस में इस को ला सकता हूँ। अगर मैं पब्लिसिटी करता हूँ और हैड बिस्स के जरिये प्रचार करता हूँ, तो क्या यह इस एक्ट के खिलाफ नहीं होगा ?

श्री अकन साठे : इसीलिए तो मैं इसको अपोज कर रहा हूँ।

श्री काजी सलीम : एक चीज और जानना चाहता हूँ। बर्न साउथ मूक एक्चंड पर डालने की बात कही गई है और

जो बर्न साउथ साधेरिटी है, उन को इस एक्ट के अधीन लाने की बात कही गई है। मैं ऐसा समझता हूँ कि बर्न साउथ साधेरिटी में डाक्टर और वकील आदि लोग भी आ जाते हैं। तो जो डाक्टर और वकील का इलाज करते हैं, उन को एक तरह से रिस्क में नहीं डालते हैं। इस चीज को आप पसन्द करेंगे।

इसी तरह से जहाँ पर प्रिजम्पशन की बात कही गई है, उस में "लैक प्रिजम्प" लगाने की बात है। अगर इस में "ने प्रिजम्प" कर दिया जाए, तो जो इन्सिडर आ रहा है, वह खत्म हो जाएगा। हर केस के सरकमस्टान्सेज अलग होंगे और कोर्ट उन को ध्यान में रख कर सजा दे। छोटी सड़की के साथ रेप होता है, जब-बंस्तो और जुल्म होता है, तो उसके अनु-सार डिसाइड करे। इस में आप की क्या राय है ?

SHRI MAHESH JETHMALANI: Then we have suggested suitable amendment to the *mens rea*

SHRI M. D. ANGAL: When the woman says that it was done without consent, then the words "may presume" have a different connotation. According to us circumstantial evidence should be taken into consideration.

SHRI BAPUSAHEB PARULEKAR: You said that *mens rea* should be there. All know that *mens rea* has to be there. But we are concerned with the offence like murder, rape, etc. Kindly note that this provision is not incorporated, because it is a defamation case. Here her future life is jeopardised.

SHRI MAHESH JETHMALANI: Supposing a newspaper reporter gives a report without mentioning the name, then perhaps, the victim will not be known.

SHRI BAPUSAHEB PARULEKAR:
We have some fundamental principles of law. And the point is whether the time has come to change them because we are more concerned to bring the culprit to book. Don't you think that we should amend our Cr. PC and cross-examination of the accused should be made compulsory? If we are ready to change our concept of criminal jurisprudence, don't you think that the time has come that the notion of the criminal law should be changed if we find that the guilty are escaping. In this background, kindly consider section 111A. As we know, a positive thing can be proved but a negative thing cannot be proved. 'Consent' can be proved but 'no consent' cannot be proved. Therefore, don't you think that 'consent' has to be proved by the accused?

SHRI MAHESH JETHMALANI:
How do you establish that the woman has not consented.

SHRI BAPUSAHEB PARULEKAR:
On the basis of medical evidence relating to existence of external injury coupled with violence. In that case, if the burden is shifted, are you satisfied?

SHRI MAHESH JETHMALANI:
We agree.

SHRIMATI SUSEELA GOPALAN: The custodians of the law are taken as a special category of people. There are thousands of cases in which police personnel are involved. In your own State, Mathura case was there. She comes from a village. That girl was taken to the police station. She was made to lie between two drunkard police personnel. Lights were put off. Then in that case, what do you expect her to do? There will not be any resistance or injury mark on the body. Her whole sentiment will be out and she will be *subduing herself*.

The last thing is that in all these cases they will say that the girl was bad. That is our experience. This

will be especially when a case is proved that intercourse was there in the police station. When such things are there, why cannot we presume that she has not given her consent? What does the Supreme Court say? Hard facts are there before us. In Andhra Pradesh Rameezabi case is there. After the police personnel were acquitted, there was a demonstration. They met the Chief Minister. It was said that this cannot be relied upon. That means in a majority of cases women are not getting justice. In Mathura also such a type of case took place.

SHRI HARESH JAGTANI: Looking to these facts we do not say that the burden should be shifted.

SHRIMATI SUSEELA GOPALAN: When some domination is there, when intercourse is proved, why cannot the burden be shifted on those people who are having high position?

SHRI MAHESH JETHMALANI:
Our argument is based on experience.

MR. CHAIRMAN: Are you changing it or not?

SHRI MAHESH JETHMALANI:
No, we are not changing.

SHRIMATI GEETA MUKHERJEE:
I would like to appeal you to consider this. I do not want to add to what she has said. What is happening in the country everyday in so far as police is concerned. Is it possible for the women in police custody to prove that she did not give her consent? Women will never be able to prove that she did not give her consent. In the name of democracy, I appeal to you to separate these two categories. If you are not in a position to think over it just now, you may take time and send your views to the Committee later on.

SHRI M. D. ANGAL: It is conveyed that the woman was in the custody of the police. That is a factor which the court has to consider when

the element of consent is to be decided or determined. When the woman says that she was never a consenting party, the court should not be asked to presume that there was no consent. You should not be asked to presume that there was no consent. You leave it to the court. Let the court apply its mind or let it be left to the rules of jurisprudence. You are drawing a statutory presumption that there was no consent at all!

Let us leave it to the court. The court is bound to consider the situation. Woman was in the custody of the police. It was odd time. There was no one to look after her. This is the situation which the court is bound to consider. Coupled with this situation, the woman comes and justifies that she was never a consenting party, the court is bound to consider it. Why do you want a statutory presumption?

SHRI LAL K. ADVANI: So far as Mathura case is concerned, as far as I can recall, it was not that the Supreme Court felt that the consent has been given—the absence of consent had not been proved. There is an essential difference in this. It seems that our reaction is on the basis of the Law Commission's recommendations. Perhaps, then this kind of reaction might be somewhat justified—that in all cases of rape we want to shift the burden of proof on the accused. It would be rather harsh on the accused to show that. But so far as this Bill is concerned, it is confined to many specific cases and the case of the kind of which Supreme Court has given a verdict on the basis—absence of consent was not proved. It was a passive consent, according to the High Court which took the totality of circumstances into view. The Supreme Court said because consent was not proved, the persons are acquitted. Because of the present law in which an alleged rape has been committed inside the police station, the Supreme Court upheld the judgment of the High Court.

Law requires that every single ingredient of the offence has to be proved beyond a reasonable doubt. Even in this case it has to be proved. The very fact that presumption is there, does not make it proved. Presumption shifts the burden of rebutting.

What I am trying to point out is this. Here you have to reconcile both the things. Either you want that in such cases including the instance I gave you—railway property—or you want that for several such instances that can be pointed out and, perhaps, you may be able to cite so many instances, where the burden of rebuttal or presumption should lie on the accused. Is that not a gross violation of the fundamental jurisprudence? Mr. Parulekar was trying to suggest to you certain very radical things? At the moment, this Committee is confining itself to a case of alleged rape committed by certain categories of persons. My question to you is: if, instead of the present phraseology, namely, 'shall presume' if the words 'may presume' are put in, would it not be absolutely all right? 'May presume' would necessarily mean taking into consideration the totality of the circumstances.

SHRI MAHESH JETHMALANI: It is redundant. The discretion is always with the Court. The court may always presume ...

SHRI LAL K. ADVANI: At the moment that responsibility of proving it is on the prosecutrix. It is on that basis that Mathura case was decided.

SHRI MAHESH JETHMALANI: That is right. This legislation is dealing with cases like Mathura Case. Then why don't you deal only with those cases? After all by taking up one case, you are trying to change the fundamentals of the Criminal Law jurisprudence.

SHRI LAL K. ADVANI: This is not changing the fundamental basis of the criminal jurisprudence.

So far as the first point is concerned, you are in agreements that the name, the identify, of the person should not be disclosed. There should not be any publication which amounts to revealing the identity of the person should not be disclosed. There should not be any publication which amounts to revealing the identity of the person.

SHRI MAHESH JETHMALANI: In a matter of this kind, we can as well say that it is the revelation of the *Nagpur University. Nagpur.*

SHRI LAL K. ADVANI: Don't you think that this kind of curb would lead to the suppression of the process of social change that the press can bring about? This law would not have come into being had it not been for this fact that the press brought out the incidence of the wife of a journalist who was raped in Orissa. It is because of this publicity.

SHRI MAHESH JETHMALANI: You can also provide for under Sec. 228 that whenever somebody publishes the report of an enquiry into the rape case that might be permitted.

SHRI LAL K. ADVANI: I agree that this provision in the Bill may lead to the suppression of the press freedom.

SHRI HARESH JAGTANI: Suppose a woman is raped by two goondas at the dead of night. Why should that clause be distinguished from the clause over here? If it is done by three goondas, this provision covers gang rape as well.

MR. CHAIRMAN: They are in full agreement with your view.

SHRI R. S. SPARROW: I have to seek a clarification from you. That is about the shifting of the burden. This section has to be understood that this

pertains to this particular subject rape. You all belong to Bombay. You all agree that the majority of rape cases are from the rural areas. There are few exceptions only at the total cases where a woman may wish to pin down the accused wrongly. Taking into account the Indian culture, would it be wrong if we provide a section exclusively for rape cases?

SHRI MAHESH JETHMALANI: Why exclusively for rape cases?

SHRI R. S. SPARROW: At one time there was no value attached to woman. As the time passed, the law had to be amended suited to the Indian conditions. I shall be grateful if you will give us your cogent reasons whether you are for or against the proposed amendment.

SHRI M. D. ANGAL: Our main difficulty is with regard to the presumption clause. It is impossible for an accused to establish a positive fact that the woman was a consenting party.

SHRI ERA SEZHIYAN: Clause 111A does not cover all the cases. Under 376 certain cases are covered. Don't you think that under the circumstances if an offence is committed by a police officer, why not the burden be shifted? The Law Commission has recommended certain things. We are here dealing with specific cases involving the Jail Superintendent or Hospital Superintendent or pregnant women. There are cases where the circumstances are such that a police officer may take undue advantage of their position in committing the offence when the woman is in police custody. So, in order to prevent recurrence of such incidents that this Bill has been brought forward.

SHRI HARESH JAGTANI: We have no objection to the burden of proof being shifted in cases where the offence of rape is not established after intercourse has taken place.

SHRI S. W. DHABE: Section 228 prohibits publication of even the judgement of Sessions Court. Do you agree to this?

SHRI M. D. ANGAL: We are basically opposing Section 228 completely.

MR. CHAIRMAN: So far as presumption is concerned, I am quoting one example. It is in respect of Judge Deshpande's decision. It is in respect of Section 197 Cr. P. C. regarding a Government servant who was discharging his duties. There was a Civil Surgeon in the office who was in charge of the work. Some girl with the consent of her mother went for a surgical operation because she was advised to undergo an operation. She entered the surgical theatre. The doctor started examining her and then he penetrated his organ with full satisfaction. Then he said that the operation was cover. She reported the matter. In that particular case the external proof was not there. Now, the point is whether it is a passive submission. You can prove the positive consent but not a negative consent and that too in a case where doctor or Police Officers who are public servants and who are in authority who have got chances to do such crime, there under such circumstances may not be any external marks even if the rape takes place. Here there was an intercourse. The defence in that case may be that it was done with the consent of the lady. There was a passive submission of the lady. In the circumstances and then in the absence of all these marks and everything, if the presumption is avoided that the consent was not even given. Is it open for the accused to show that there was a rebuttal evidence to avoid this?

SHRI HARESH JAGTANI: The totality of the circumstances could clearly show that this was the case and there was no consent. It could have been given while she was led to believe that this was the only way to complete her work. But the court must be in a position to know this and rest content with the word of the

victim who says so. We are in agreement with that.

MR. CHAIRMAN: I am saying this in regard to the absence of consent. Presumption is absence of consent. The question of presumption will arise only at the time of forming opinions. This could happen in a very remote place and there you cannot have evidence. In the circumstances, the judge has to presume so. So, under the circumstances, that too in peculiar circumstances this presumption has been provided, not generally.

SHRI MAHESH JETHMALANI: We are in full agreement with that.

(The witnesses then withdrew)
IV. Dr. Pupa Kulkarni, Lecturer
Nagpur University, Nagpur ..
(The witness were called in and she took her seat)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:—

58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

What do you want to say on the Bill?

DR. ROOPA KULKARNI: After going through the Bill thoroughly I feel that it needs to be revised on some points. We are very much concerned with Section 228 (A) because our movements are based on the cooperation of the press. I think, this is a sort of censor which will harm the movement. Specially in Mathura's case we noticed that all the newspapers had projected

Mathura in different angles. But nobody did give publicity to the accused. So, we add that the offender should be given due publicity instead of the victim. There is no provision for punishment of the offender in child rape cases. In Vidharbha District there was a child rape case. The girl was not only raped but killed. In Nagpur a girl of 8 years was raped by 75 year old man. In such cases, death sentence should be introduced.

The definition of 'gang' needs to be defined. Instead of 'three or more' it should be 'more than one'.

In the case of police officers, the following words should be omitted from section 376(2)(a) 'in the local area to which he is appointed'. Mere 'police officer' is enough. Recently two Muslim ladies were raped at the Nagpur Rly. Station by the Railway Police. That place does not come under that definition. So, the wording which I have already indicated should be removed from that definition.

In Section 376(1), the following shall not be considered as special and adequate reasons for awarding sentence of imprisonment:

- (i) the fact that the accused has been convicted for the first time for an offence under this Act;
- (ii) the fact that the accused was not a principal offender;
- (iii) the age of the accused."

There is no mention of the medical examination of the victim. There should be a panel of registered lady medical doctors at district level for this purposes and for getting true medical report.

In Section 375 exception has been provided. There should not be any condition of age. Here it should be: "Sexual offence by a man with his own wife, regardless of her age, is rape."

SHRI ERA SEZHIAN: If it is accepted, then no home will be free from police interference. Without warrant they can enter into any home or bed-room.

DR. ROOPA KULKARNI: We very much welcome Section. 111A.

MR. CHAIRMAN: You will have some satisfaction in that. Division is sufficient.

DR. ROOPA KULKARNI: Yes, the scope should be widened. The Law Commission had widened the scope. It should be accepted.

There should be one paralld social organisation consisting of lady social workers and doctors. There is a great need of such an organisation parallel to this for assistance, for investigation. There should be locally formed women organisation on District level. They are poor people. The organisation should be given some power. But it should not consist of political parties.

We agree with the suggestion that the offence should be made non-bailable.

Rehabilitation of the victims.

Just now I have quoted an example of a girl of eight years. One lady professor from Vithol has adopted that girl. She will give her new life. It should be done on wider basis

This Committee should offer some new and solid suggestion. Censor Board should be there to eliminate rape scenes which are shown in the films. That should be banned.

MR. CHAIRMAN: Why do you not have a talk with the lady actresses? They should be stopped to act. They should be persuaded not to have such roles.

DR. ROOPA KULKARNI: We led a campaign in Nagpur against those obscene dramas which were shown in the local theatre in Nagpur. There is a lady actress. Her name is Ashu. She is from Maharashtra. We have pleaded with her not to accept such roles.

MR. CHAIRMAN: Why does your organisation not write a letter to such actresses who are taking such

roles? You ask all women organisations and institutions to write to them. You watch the reaction thereafter.

Indian culture and tradition must be maintained.

SHRI S. W. DHABE: Whether the law should be made applicable to the landlords? Offences are committed in the rural areas.

DR. ROOPA KULKARNI: It should be included in the Bill.

SHRIMATI SUSEELA GOPALAN: Do you think that investigation should be in camera?

DR. ROOPA KULKARNI: In this way the lady will be saved from harassment.

(The witness then withdrew)

V—*Bharatiya Janata Party; (Mahila Agadi) Bombay*

Spokesmen:

1. Kumari Chanusheela Azgaonkar
2. Shrimati Malati Narvane
3. Shrimati Jayawantiben Mehta
4. Shrimati Shalini Kulkarni
5. Kumari Sudha Gandhi
6. Shrimati Pushpa Wagle
7. Shrimati Chandra Kanta Goyal.
8. Shri Ramdas Nayak, Ex-MLA.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evi-

dence is liable to be made available to the Members of Parliament."

What do you want to say?

कुमारी चानुशीला अजगांवकर : सब से पहले मैं सोशल वर्कर्स-जोइन के प्रतिनिधि के रूप में कुछ बातें कहना चाहूंगी और उसके बाद इस एक्ट के बारे में अपनी बातें आप के सामने रखूंगी ।

सभापति महोदय : पहले आप एक्ट के बारे में बता दें ।

कुमारी चानुशीला अजगांवकर : सब से पहले तो मैं यह चाहूंगी कि जो इस बिल का संशोधन 228 ए० है, उसमें हम यह एमेंडमेंट चाहते हैं कि 'सिमिल इम्प्रिजिनमेंट' के स्थान पर 'रोयस इम्प्रिजिनमेंट' होना चाहिए । जो आदमी ऐसे अपराध करता है, उसको रोयस इम्प्रिजिनमेंट का पनिशमेंट मिलना चाहिए ।

We approve of the proposed substitution of new section 375 with the following amendments:—

"(a) In sub-clause "Thirdly", the words "or any other person" after the words "...has been obtained by putting her" may please be added because the husband and wife always go together. If the accompanying person says that if she does not comply with his request, he will commit murder on his husband. The amended sub-clause should read as follows:

"Thirdly,—With her consent, when her consent has been obtained by putting her, or any other person in fear of death or of hurt or of any injury or by criminal intimidation as defined in section 503."

In sub-clause "Fourthly" the word "another" in the words, "that he is another man to whom" should be

substituted by the word 'the'. The word 'another' does not carry expected meaning of the clause. The amended sub-clause should read as follows:—

"Fourthly—With her consent which the man knows that he is not her husband, and that her consent is given because she believes that he is the man to whom she is or believes herself to be lawfully married."

The scope and application of Explanation—2 should be widened inasmuch as a woman who has filed a suit for divorce or judicial separation should be brought under it.

The amended Explanation should read:

"Explanation 2—A woman living separately from her husband under a decree of judicial separation or a woman who has filed a suit for divorce or for judicial separation on any ground mentioned for such relief in the relevant Matrimonial Law should be deemed not to be his wife for the purposes of this section."

Their relation is not like husband and wife when there is a decree for judicial separation or a suit filed for divorce. When the act is against the consent or against the wish, then also it amounts to rape. But if that is the desire of both the persons and if it is with the consent, then, it does not amount to a rape. When the divorce petition is pending, their relation is not that of a husband and a wife.

MR. CHAIRMAN: Divorce suit can be filed on other grounds also.

KUMARI CHANUSHILA AZGAONKAR: There also it should be there. On anyone of the grounds she can file a suit for a judicial separation or divorce. The grounds may be different. We do not speak about the

grounds. The age of "fifteen" years as mentioned in the Exception should be raised to "sixteen" so as to bring it on par with "Sevently" of section 375.

MR. CHAIRMAN: There the husband and wife relationship is there. So, that concession is given. Actually it is a concession. What do you lose it by raising the age to 16?

KUMARI CHANUSHILA AZGAONKAR: We do not dispute about the age. There is no special ground for keeping it at 'fifteen'.

As regards punishment, we strongly recommend that the minimum should be ten years and the maximum should be life imprisonment for rape cases. We strongly recommend the insertion of—a sub-section after section 376(1). We feel that a more severe punishment should be meted out to offenders found guilty of multiple offences of rape. Such persons are a menace to the society and hence should be dealt with a heavy hand. We propose the following insertion:—

"(a) Any person, undergoing imprisonment for committing rape, commits rape or who is found guilty of more than one incident of rape shall be punished with emasculation and imprisonment of either description for a term not less than seven years and shall also be liable to fine."

SHRI ERA SEZHIYAN: Now you have reduced it to seven years instead of ten years.

KUMARI CHANUSHILA AZGAONKAR: It is a typing mistake. It should be ten years.

MR. CHAIRMAN: Suppose a person who has wife comes under the charge of 'rape'. Do you mean to say that such a punishment should be imposed on him?

KUMARI CHANUSHILA AZGAONKAR: When he has got wife, why should he commit rape?

MR. CHAIRMAN: What about the married woman if emasculation takes place? You would like that lady to suffer?

KUMARI CHANUSHILA AZGA-ONKAR: I do not like that sort of married relationship with one who has committed several rapes. So, from the ladies point of view, we further add that just as death sentence is to be confirmed by the High Court, this sentence for emasculation given by the trial court should also be confirmed by the High Court. I think the punishment should be more than ten years. Regarding the disposal of the case, our suggestion is that such should immediately be filed and trial should be conducted at a very short time. As far as possible, these cases should be heard by the lady judges. It will be more helpful if a lady Inspector, not a Police Constable, is put in charge of the investigation of such cases.

जीवन्ती जयवंती बेन नेहता : शासन की तरफ से जो यह बिल लाया गया है, उसमें अपराधी को सजा देने वाली बात कही है। मैं तो यह समझती हूँ कि सजा चाहे 7 साल, 10 साल या 15 साल हो या जीवन के अंत तक रहे, हम यह देखते हैं कि जिस स्त्री के साथ बलात्कार होता है, उसको समाज में बूढ़ा की दृष्टि से देखा जाता है और समाज में उसका बह स्थान नहीं रहता है, जोकि उसे पहले प्राप्त था।

पहली बात तो मैं यह कहना चाहती हूँ कि जिस धारणी ने औरत के साथ बलात्कार किया है, उसका नाम व फोटो अखबार में छाना चाहिए। गुनाहगार को समाज के सामने लाया जाए और यह बताया जाए कि उसने इस प्रकार का गुनाह किया है ताकि समाज में उसको फिर से सम्मान और प्रतिष्ठा प्राप्त न हो। जिस व्यक्ति ने ऐसा गुनाह किया है, समाज में उसके प्रति ऐसी बूढ़ा का निर्माण हो कि वह किसी को मुँह दिखाने लायक न रहे और ऐसी सजा उसको मिलनी चाहिए कि फिर वह ऐसा गन्दा काम न करे।

दूसरी बात मैं यह कहना चाहती हूँ कि जिस महिला के साथ ऐसा किस्सा होता है, उसको कोर्ट में जाने-जाने का खर्च मिलना चाहिए और उसके घर के नजदीक की कोर्ट में उसका मुकदमा चलना चाहिए। गवर्नमेंट की तरफ से उस के लिए अच्छे से अच्छे प्लेडर की व्यवस्था होनी चाहिए। खर्च की व्यवस्था शासन की तरफ से होनी चाहिए।

समाजिक कर्मीन्द्र : उसको लीगल ऐड दनी चाहिए।

जीवन्ती जयवंती बेन नेहता : अच्छे से प्रवक्ता एडवोकेट उसको मिलना चाहिए। उसके जाने-जाने और रहने का प्रबंध होना चाहिए और शासन को उतका खर्च देना चाहिए।

श्रीमती जाल्ती नरवणे : मेरा एक सुझाव यह है कि मोबाइल कोर्ट्स होनी चाहिए क्योंकि लेडी मैजिस्ट्रेट बहुत कम हैं। ये गावों में जा कर और छोटे छोटे शहरों में जा कर अपना काम करें। जिसके साथ गुनाह हुआ है, बहुत दूर तक उस को न जाना पड़े, ऐसी व्यवस्था होनी चाहिए।

इसके अलावा मैं यह कहना चाहती हूँ कि आज कल लोग टी० वी० बहुत देखते हैं, इसलिए जो गुनाहगार है, जिस ने गुनाह किया है, उस का फोटो उस में आना चाहिए और जो अखबार हैं, उन में एक्ज्यूज्ड का नाम आना चाहिए और उस को बदनाम किया जाना चाहिए ताकि आयन्दा वह ऐसा गुनाह न करे।

अगर रेसिसटेंस नहीं है, तो इस का मतलब कन्सेंट होता है, इस तरह की बात इस बिल में नहीं रहनी चाहिए। कुछ मानसिक ट्रबल हो जाती है, इसलिए महिला ऐसे मौके पर रेसिसटेंस नहीं करती है। इसलिए मेरा कहना यह है कि अगर रेसिसटेंस नहीं है, तो कन्सेंट मान लेना चाहिए, इस बात को नहीं मानना चाहिये।

श्रीमती जयवंतीबेन मेहता : जब किसी महिला के साथ ऐसी बात हो जाती है, तो समाज उस को ऐसी दृष्टि से देखता है मानो उस ने कोई गुनाह किया हो। समाज में उसके प्रति हीन भावना होती है जबकि वह बेचारी खुद सताई हुई होती है। इसलिए मैं यह कहना चाहती हूँ कि उस को स्वावसंधी बनाने के लिए सरकार को कुछ

करना चाहिए और इस के लिए मेरा सुझाव यह है कि कोई बोकेशनल ट्रेनिंग उस को दी जाए ताकि वह समाज में अपने पांवों पर खड़ी हो सके और अपना जीवन व्यतीत कर सके।

श्रीमती चन्द्रकान्ता गोधल : मेरा कहना यह है कि जब ऐसे केसेज होते हैं और उन में जो ईशवायरी होती है, तो रात के समय ऐसी महिलाओं को नहीं ले जाना चाहिए बल्कि दिन के समय उन को ले जाना चाहिए और अकेले उन को नहीं जाना चाहिए। उन के साथ कोई न कोई रहना चाहिए।

SHRI ERA SEZHIYAN: They say that the accused should be given deterrent punishment. But I want to know from the witnesses whether it is going to have any effect. In this connection, I would like to quote the Judge Upendra Buxi's view. He says:

"However we do not favour the minimum sentence of 7 years now envisaged by the Bill in Section 376(i) for non-aggravated form of rape. If a penal provision is felt to be unreasonably harsh, it in effect is counter-productive. Rather than strictly implementing what is perceived, as a harsh regime of law, the entire system of administration of Criminal justice often tries to save the accused as much as possible from the unreasonably harsh punishment. In this process, the real culprit is likely to be discharged or even acquitted. Further, it should be noted that in situation of unreasonably lenient or low punishment for rape, the existing law provides for enhancement of sentence."

According to the new provision made in Section 73, the public prosecutor can in such cases go in for appeal to High Court. Therefore, putting such law in the Statute Book would mean very unreasonably harsh one. What is your view on this?

KUMARI CHANUSHILA AZGAON-KAR: If a man commits this offence, he goes to jail. After that sentence is over, he is free. What about ladies who are victims of such offences. Where should they go? For them there is no place in our society at all. They are condemned everywhere. For such type of offences we should give rigorous imprisonment to the accused.

श्रीमती विशावती चतुर्वेदी : आप ने देखा होगा कि क्रिमिनल ला में या दूसरे कानूनों में जो व्यक्ति गुनाह करता है, कोई कत्ल करता है, चोरी करता है या स्मगलिंग करता है, तो अपने को निर्दोष साबित करने के लिए उस को खुद सफाई देनी होती है जबकि रेप वाले केसज में अप्रमत्त औरतों को यह साबित करना पड़ता है कि घादमी ने ज्यादती की है, तो क्या यह सही बात है ? ऐसी महिलायें, जो आम तौर पर कमजोर वर्गों की होती हैं, के साथ जो ऐसे केसज होते हैं, उन में कानून के अनुसार उन को यह साबित करना होता है कि उन के साथ ज्यादती हुई है वजाय इसके कि गुनाहगार को यह साबित करना चाहिए कि वह निर्दोष है, इस में कुछ तब्दीली आनी चाहिए या नहीं ?

श्री काजी सलीम : कानून में ऐसा नहीं है जैसा आप ने कहा है । प्रोसीक्यूशन को साबित करना पड़ता है ।

SHRI R. K. MHALGI: What do you say about the last clause?

KUMARI CHANUSHILA AZGAON-KAR: The accused has to prove that the consent was given by the victim.

SHRI S. W. DHABE: Should social organisations be associated with the investigation of the case?

KUMARI CHANUSHILA AZGAON-KAR: We suggest that lady police officers should be appointed. If they are not there, then the assistance of social workers should be taken.

श्रीमती शास्त्री नरबने : एक बेरा कहना यह है कि ऐसी जो लेडीज हैं, उन के रिहैबिलिटेशन के लिए भी कुछ किया जाना चाहिए और उस के लिए बेरा सुझाव यह है कि उन को कोई होकेशनल ट्रेनिंग देनी चाहिए ।

श्री० निर्मला कुमारी शक्तावल : चाइल्ड मैरिज एक्ट के अनुसार जो लड़की 15 साल से कम की है, उस के साथ अंगर इन्टरकोर्स किया जाता है, तो वह रेप माना जाता है । आप ने इस उम्र को बढ़ा कर 16 साल कर दिया है । मैं यह कहना चाहती हूँ कि यह जो कानून बनेगा, यह केवल बम्बई सिटी के लिए नहीं होगा बल्कि सम्पूर्ण देश के लिए होगा और देश के विभिन्न भागों में अलग-अलग रिवाज हैं । गांवों में बहुत सी जगहों पर चाइल्ड मैरिज हो जाती है हालांकि शारदा एक्ट बना हुआ है । अभी मैरिज की रेंज को रिवाइज किया गया है लेकिन फिर भी हम देखते हैं कि बहुत सी जगहों पर सात-सात, आठ-आठ और दस-दस साल की उम्र की लड़कियों की शादियां हो जाती हैं । राजस्थान में खास तौर से, जहां से मैं आती हूँ, जो बेरा कार्य-क्षेत्र है । वहां पर इस प्रकार की 70, 75 पर सेन्ट मैरिज होती है । उस की तुलना अंगर आप बम्बई से करें, तो सही नहीं होगा । कानून में जो आप इस उम्र को बढ़ाना चाहती हैं, उस का कोई अंतर प्रामाण

समाज या आदिवासी समाज पर होगा या नहीं ?

श्रीमती जयवंती बेन मेहता : भारतवर्ष की बढ़ती हुई आबादी को देखते हुए हमारे शासन की यह नीति रही है कि विवाह-धाम को बढ़ाया जाए और इसी दृष्टि से सरकार ने विवाह की आयु को बढ़ाया है। अब अगर किसी राज्य में और किसी जगह पर इस को नहीं माना जाता है, तो जो कानून बनाया गया है, उस को क्षति पहुंचती है। 16 वर्ष जो हम ने कहा है कि वह निश्चित रूप से सारे भारतवर्ष को ध्यान में रख कर कहा है। ऐसा समझा गया है कि 16 साल की उम्र में मेचुरिटी आती है और बढ़ती हुई पापुलेशन को अगर ध्यान में रखा जाए, तो 15 वर्ष की जगह पर 16 वर्ष किया जाना सही रहेगा।

श्री. निर्मला कुमारी शक्तावर : कानून तो शारदा एक्ट का भी बना हुआ है लेकिन वह लागू नहीं हो पाया। यह एक स्टेट की बात नहीं है, सब स्टेट्स में रूल एरियाज होते हैं और महाराष्ट्र में भी होंगे। ऐसी स्थिति में क्या आप उन सब को कोर्ट में ला कर खड़ा करना चाहेंगी।

KUMARI CHANUSHILA AZGAON-KAR: That is why we have not disputed this point much.

श्रीमती जयवंती बेन मेहता : ऐसी भावना नहीं है। हम जो कानून बनाते हैं, तो निश्चित रूप से उन का प्रमल प्रोपर और ठीक तरह से होना चाहिए। यह देखने का काम कि कानून पर प्रमल होता है या नहीं प्रशासन का तो है ही लेकिन हम जो सामाजिक कार्यकर्ता हैं, उन का भी है। हम पहले सामाजिक कार्यकर्ता हैं और फिर राजनीतिक

कार्यकर्ता। और हम को समाज में जायती का काम करना चाहिए। कानूनों में कानून बने पड़े रहें और उन पर प्रमल न हो, यह ठीक नहीं है। कानूनों का पालन पूरे तौर पर होना चाहिए और सब लोगों का सहयोग इस में मिलना चाहिए ताकि इतनी बड़ी समस्याएं जो हमारे सामने आती हैं, उन पर काबू पाया जा सके।

श्री हुकमदेव नारायण थापड़ : मेरा एक सवाल है और वह यह है कि आप लोगों ने यह कहा कि महिला जांचकर्ता हो और महिला न्यायाधीश हो तो क्या आप यह समझती हैं कि मुकदमे की बहस करने वाली भी महिला हो ?

श्रीमती जयवंती बेन मेहता : नहीं, ऐसी बात नहीं है।

श्री हुकमदेव नारायण थापड़ : उन सब महिलाओं के बीच अगर उस पुरुष को खड़ा कर दिया गया, तो क्या वह पुरुष महिलाओं के बीच नरबस नहीं हो जाएगा ?

श्रीमती आस्ती नरबने : बर्षों से महिलाएं नरबस होती रही हैं, इस बार देखें कि पुरुष कैसे नरबस होता है।

श्री हुकमदेव नारायण थापड़ : प्रतिकार न करने पर भी अगर औरत की इच्छा के बिपरीत मर्द ने संभोग किया है, तो बलात्कार माना जाए, आप जो यह पक्ष प्रस्तुत कर रही हैं, तो क्या इस से आप औरतों के पक्ष को कमजोर नहीं कर रही हैं। अगर कोई औरत सम्पूर्ण इच्छा से तैयार हो कि मेरे साथ रेप न हो, तो रेप कभी संभव नहीं हो सकता है। अगर कानून में आप औरतों को यह अधिकार दे देंगी कि प्रतिकार

बाली बात न हो, तो इस से क्या घोरतों के पक्ष को कमजोर करना नहीं है। घोरतों को इसके लिए आप को तैयार करना चाहिए कि चाहे जान भी बली जाए, तो भी वे मद को रेप नहीं करने देंगी।

श्रीमती मास्ती नरबन्धे : जान तो महिलाएं देती आई हैं लेकिन प्रतिकार की जो बात आप ने कही है, कई बार ऐसे मानसिक दबाव महिला पर पड़ते हैं कि प्रतिकार भी नहीं कर सकती। जो लोग ऐसा काम करते हैं वे कहते हैं कि अगर तुम राजी नहीं हुई, तो हम तुम्हारे बच्चे को मार देंगे, तुम्हारे पति को मार देंगे। ऐसी स्थिति में अगर वह महिला कन्सेंट दे भी देती है, तो उस को नहीं माना जाना चाहिए।

श्री हुकमदेव नारायण यादव : कानून में ऐसा है कि अगर अपराधी यह सिद्ध कर देता है कि उस को इन्स्टीगेट किया गया है और इन्स्टीगेट होने पर अगर वह कोई अपराध करता है, तो कानून की निगाह में वह पूरा अपराधी नहीं माना जाता है और उस को कानून में कम सजा दी जाती है। आज बम्बई के जरिये सम्पूर्ण देश में एक नई संस्कृति फैलाई जा रही है, तरह-तरह के फैशन किये जाते हैं। क्या इन फैशनों के जरिये पुरुषों को इन्स्टीगेट नहीं किया जा रहा है। और उस इन्स्टीगेशन में आकर, मनोवैज्ञानिक प्रकरण में आकर पुरुष कुछ कर बैठता है। इस चीज को रोकने के लिये आपकी तरफ से कुछ किया जा रहा है ?

श्रीमती मास्ती नरबन्धे : आपने बम्बई को बात कही। मैं आपको बताती हूँ कि सबसे कम केसिस रेप के बम्बई में होते हैं। यहां पर टैक्स्टाइल मिलों में महिलायें पुरुषों के साथ काम करती हैं, साथ में जाती हैं, लेकिन फिर भी यहां पर सबसे कम रेप के केस होते हैं। देहातों में अगर महिला अकेली मिल जाती है तो उसके साथ रेप किया जाता है। इसलिये आपने जो इन्स्टीगेशन की बात कही है, महिलाएं ऐसा कभी नहीं करती हैं।

SHRI BAPUSAHEB PARULEKAR: All Mahila organisations maintain that the name of the victim should not be published. Please consider a case where Police does not take cognisance of such offences. Women are required to agitate. The name of the victim is required to be published in order to take a decision. Do you want that it should be retained?

KUMARI CHANUSHILA AZGAONKAR: We demand rigorous punishment.

SHRI BAPUSAHEB PARULEKAR: Please think over it and give your considered opinion in this regard.

The second point is with reference to the pleadings by the lady advocates. You said that women are more free to express before the lady judges. We agree that the prosecutor and the judge should be women. Do you subscribe to the view that even the advocates should also be female.

KUMARI CHANUSHILA AZGAONKAR: Not always.

SHRI BAPUSAHEB PARULEKAR: If your view is to be accepted then

the judge, the clerk, the prosecutor, etc. all should be female.

'Anybody in fear' is already covered by Section 305 I.P.C.

Marriageable age is not there. 'When the girl attains puberty' she can marry. If this age is fixed the conviction should be there of cognisable offence. Kindly give thought to it also.

KUMARI CHANUSHILA AZGAONKAR: The main question is with regard to judicial separation.

SHRI BAPUSAHEB PARULEKAR: We are more interested about husband and wife. Once there is a marriage as per personal law, we must see that the marriage is not broken. Please give thought to it.

श्री काजी सलीम : महिलाओं की जो पिछली हिस्ट्री होती है, क्रोम एग्जामिनेशन में उसके पूछने का अधिकार होना चाहिए या नहीं? महिला का जो पिछला करेक्टर होता है या उसकी जो लास्ट हिस्ट्री होती है, उसके बारे

में अगर सवाल पूछे जायें, तो वे एडमिसेबल होने चाहिए या नहीं ?

श्रीमति जयवन्ती बेन मेहता : केस की जांच और सही जानकारी प्राप्त करने के लिये अगर यह आवश्यक है, तो सवाल पूछने में कोई ऐतराज नहीं होना चाहिये लेकिन जानबूझ कर केस को दूसरी तरफ ले जाने के लिये और गुमराह करने के लिये अगर ऐसा किया जाये, तो इसकी अनुमति नहीं देनी चाहिये ।

सभापति महोदय : थैंक यू ।

श्रीमति जयवन्ती बेन मेहता : हम आपके अभारी हैं कि आपने हमें इस बिल पर अपने विचार व्यक्त करने के लिए मौका दिया ।

MR. CHAIRMAN: I thank you all on behalf of the Committee for having come and given your valuable evidence.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE OF THE CRIMINAL LAW
(AMENDMENT) BILL, 1980

Wednesday, the 29th July, 1981 from 15.30 to 17.40 hours in Old Committee Hall,
Andhra Pradesh Government Secretariat, Hyderabad

PRESENT

Shri D. K. Naikar—*Chairman*

MEMBERS

Lok Sabha

2. Shrimati Vidyavati Chaturvedi
3. Shrimati Suseela Gopalan
4. Shrimati Mohsina Kidwai
5. Shrimati Geeta Mukherjee
6. Shri K. S. Narayana
7. Shri Bapusaheb Parulekar
8. Shri Qazi Saleem
9. Prof. Nirmala Kumari Shaktawat
10. Shri S. Singarvalival
11. Shri R. S. Sparrow
12. Shri Trilok Chand
13. Shri V. S. Vijayaraghavan
14. Shri P. Venkatasubbaiah.

Rajya Sabha

15. Shri Lal K. Advani
16. Shri Ramchandra Bhardwaj
17. Shri Amarprosad Chakraborty
18. Shri S. W. Dhabe
19. Shri B. Ibrahim
20. Shri Dhuleshwar Meena
21. Shri V. P. Munusamy
22. Shri Leonard Soloman Saring
23. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—*Senior Legislative Committee Officer*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri M. P. Khosla *Officer on Special Duty*
2. Shri S. C. Bablani, *Under Secretary*

WITNESSES EXAMINED

I. National Federation of Indian Women, Hyderabad

Spokesman:

Shrimati Rita Seth, President

II. Hyderabad Women's Democratic Association, Hyderabad

Spokesman:

Shrimati Fatima Alam Ali

III. Bhartiya Grameen Mahila Sangh, Hyderabad

Spokesman:

Shrimati A. Wahabuddin

IV. Indian Council of Social Welfare, Hyderabad

Spokesmen:

1. Shrimati Prema Malhotra
2. Shrimati Ayesha Rishad
3. Shri B. V. Jagdish

V. A. P. Mahila Samakhya, Hyderabad

Spokesmen:

1. Shrimati Sarla Devi
2. Shrimati Brij Rani Goud
3. Shrimati C. Rajkumari

All Indian Women's Conference, Hyderabad

Spokesman:

Shrimati Daya Devi

I—National Federation of Indian,
Women, Hyderabad.

Spokesman:

SHRIMATI Rita Seth, President.

(The witness was called in and she took her seat).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman, shall make it clear to the witnesses that their

evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Have you gone through this Bill? On what points would you like to enlighten us?

SHRIMATI RITA SETH: I have a few points to emphasise. Firstly, the onus should be on the accused to disapprove and secondly, the case of rape trial should be conducted in a regular manner; only the name of the woman should not be divulged.

MR. CHAIRMAN: When you said that onus should be placed on the accused, on what basis did you say this?

SHRIMATI RITA SETH: In our society, first of all, it is very difficult for the women's organisation to persuade the girls to come forward for every reported case of rape. They have a feeling that these laws are for the protection of men and they are biased towards women. In a prosecution, the character of a woman is involved. That is one thing which puts the woman into a very great difficulty. One girl told us that she was asked in a prosecution whether she knew so and so—the young man—and whether she was going with him or not. This does not mean that it amounts to a consent. We do not want the trials to be held in camera as such. We want a regular trial case. Only the name of the rape victim should be withheld. That is because of this reason namely, in our society, there is a stigma attached to the woman and so we think there should be no publicity. You would have heard about this case of Rameezabi. We have our own experience about this case.

MR. CHAIRMAN: Our Members desire to know as to what has happened in the Rameezbai case. You are aware of the full facts: Kindly enlighten us on this.

SHRIMATI RITA SETH: In the Rameezabi case, Mukhtiar Commission was appointed by the Government and their report is now available with all M.Ps. and other people. That Commission has clearly brought out the case of rape committed on her under illegal con-

finement or detention or whatever you may call it. They found the policemen guilty of rape. When the Government filed a case against the policemen, they wanted the case to be transferred outside Andhra Pradesh. But, surprisingly the Judge had to let them off.

MR. CHAIRMAN: What was the ground on which the prayer was made for the transfer of the case?

SHRIMATI RITA SETH: The policemen were supposed to have said that since the public were very much agitated, they would not get a fair trial. For that reason, they asked for the transfer of the case. They went in appeal to the Supreme Court. I do know the details of that. Now, all the women's organisations, all over India, after the submission of the Mukhtiar Commission Report, were saying that the punishment was not given to the policemen. The Women's organisation agitated, we went and saw the Chief Minister. We wanted that the State must appeal in the case of Rameezabi. I can say that in this case the State was clearly dragging its feet. It was only when the Women's organisation threatened and went on dharna and a number of protests were received from all over India that they have decided to go in appeal in Rameezabi's case. On this one point we are submitting a memorandum. The other point is about the intimidation and harassment caused to the women. We were getting information in a case of a woman who was raped and who became pregnant. We gave her a little bit of protection. But she was very much afraid. When we went to meet her, she refused to meet any of us. Why? Because she was intimidated by the accused. Now her evidence is very weak. She recognised all the accused persons. The medical report is there. Now the same lady says that if we go on appeal, what will happen to her? We

feel that rape victim must be protected from harassment and intimidation during the trial period.

MR. CHAIRMAN: You want that the trial should not be in camera.

SHRIMATI RITA SETH: Yes.

MR. CHAIRMAN: Can you tell us any reason in favour of this?

SHRIMATI RITA SETH: This will give protection to the accused because under the provisions of the law the name or anything of the case will not be allowed to be published. In many cases, policemen are the accused.

MR. CHAIRMAN: Kindly do not generalise it. You are expressing your view that there should not be any in camera trial.

SHRIMATI RITA SETH: If it is desired by the party concerned, then I have no objection. We want to expose the guilty person. Even now the Magistrate has the power to conduct a part of the proceedings in camera.

We would like that the women organisations may be allowed to go in appeal in rape cases and participate in them. If the victim is not willing to file a case against the accused, the women organisation should be allowed to do so.

MR. CHAIRMAN: How can women organisations come in? Right to appeal is a personal right given to an individual. Therefore, it is up to him/her to prefer an appeal or not. How can you overcome the opinion of the individual concerned?

SHRIMATI RITA SETH: In such cases, we should be allowed. In this particular case, we tried to persuade her to go in for appeal. But she could not understand anything. I think we should also have the right to go in for appeal.

When the State appoints an inquiry commission into a rape case, the report of the commission should be taken note of by the court. We would like that the laws regarding perjury must be made more stringent. We want that the family courts should be established to try these cases. Every police station must have one woman police officer. We are losing all these cases because of lack of medical examination facilities. The medical examination is not conducted immediately. That is also due to the fact that most of our women are not aware of this. We would like that the rape victim should be taken first to a magistrate. A senior police officer should do the investigation. In cases where police personnel are involved, the investigation in those cases should be conducted by the CBI. Some help should be given by the Government in the form of helping the women organisations so that they can do proper work for enlightening women and educating them about the laws relating to rape. For this we would like that persons should be educated by special programmes on T.V. and radio. Ladies do not know that they would be harming their interest if they report late. It is because of ignorance they report the matter after two or three days. By that time they take bath also. We lose the case.

In rape cases, medical evidence is most important. She should be examined not by one doctor but by two doctors. If she has a family doctor, that doctor should also be allowed to examine her.

I am submitting the Memorandum giving all these points.

SHRI BAPUSAHEB PARULEKAR: What do you mean by family courts?

SHRIMATI RITA SETH: It should consist of half the number of lady

magistrates and these courts should deal with rape cases and there should be time limit for the disposal of the cases. This court can be for all the cases relating to family life.

SHRI BAPUSAHEB PARULEKAR: You said that the trial need not be in camera. In that case the identity of the victim will be known.

SHRIMATI RITA SETH: I do not think that general public has so much time to go to attend courts for the purpose.

SHRI BAPUSAHEB PARULEKAR: You just now said that in most of the cases the policemen are involved. In your own State have the women lost faith in police force?

SHRIMATI RITA SETH: Certainly.

SHRI AMARPROSAD CHAKRABORTY: Have you gone through the definition of rape? Please see 875. You please come to the bottom of that page.

Please see Explanation 2 on page 2—

"A woman, living separately from her husband under a decree of judicial separation shall be deemed not to be his wife for the purpose of this section".

What is your opinion?

SHRIMATI RITA SETH: I agree with it.

SHRI AMARPROSAD CHAKRABORTY: Do you want that during the pendency of the judicial separation lady should not be treated as wife and in that case husband should be guilty of rape?

SHRIMATI RITA SETH: If the consent is not there, it should be considered as rape.

SHRI G. W. DHABE: In the murder case bail is very exceptionally granted. In case of rape, will it be pro-

per to recommend that bail should not be granted?

SHRIMATI RITA SETH: That would be very good. Generally the influential family applies its influence and gets bail.

We have also asked for in our Memorandum compensation to the rape victim. She must be rehabilitated. We have suggested that daily allowance should be given to her and her attendant who comes to give evidence. Now-a-days D.A. is Rs. 1.50. You can well imagine, could Rameezabi bring an attendant with such a meagre amount of allowance?

Cinema posters play a very bad part. Cinema is not as bad as cinema posters are. Women go round removing these pictures.

SHRI AMARPROSAD CHAKRABORTY: Have you made an attempt to protest against such cinema posters?

SHRIMATI RITA SETH: Yes.

SHRIMATI GEETA MUKHERJEE: If there is no ban on publicity do you agree to hold the trial in camera? Your main objection is that the trial should not be held so that the crime of the accused can be published. Your point is that the Bill is drafted in a way that the publicity part protect the accused also. But woman can be given protection especially when the trial is held in camera. If the publicity about the accused and protection of the victim could be combined together have you any objection?

SHRIMATI RITA SETH: If this is done, we have no objection.

MR. CHAIRMAN: Thank you, very much.

The witness then withdrew.

II. Hyderabad Women's Democratic Association

Spokesman:

SHRIMATI FATIMA ALAM ALI:
President.

(The witness was called and she took her seat)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament"

I believe you have gone through this Bill. You know the provision contained therein.

श्रीमती फातिमा आलम अली : यह जो बिल आप लोगों ने बनाया है, यह बहुत अच्छा है।

सभापति महोदय : उस में आप को क्या कहना है ?

श्रीमती फातिमा आलम अली : एक बात तो मुझे यह कहनी है कि जहाँ इस बिल में यह कहा गया है कि शौरत की मर्जी से यह चीज की गई है, तो उस में मदद से कहा जाए कि वह प्रूव करे कि शौरत अपनी खुशी से राजी हुई थी।

दूसरी बात मुझे यह कहनी है कि रेप के बाद मेडिकल एग्जामिनेशन फौरन होना चाहिए, जल्दी से जल्दी होना चाहिए।

क्योंकि देर हो जाने से पूरे मुकदमे पर असर पड़ सकता है।

तीसरी बात यह कहनी है कि बीमेन आर्गेनाइजेशन को भी हक मिलना चाहिए कि वे अपील कर सकें।

सभापति महोदय : अगर वह शौरत अपील न कर सके, तो आप को अपील करने का हक मिलना चाहिए।

श्रीमती फातिमा आलम अली : जी हाँ।

श्रीमती गीता मुखर्जी : अगर बीमेन आर्गेनाइजेशन के पास इतना पैसा न हो तो कैसे वह अपील कर सकेंगी।

श्रीमती फातिमा आलम अली : हम चाहते हैं कि गवर्नमेंट इस मामले में हमारी मदद करे।

श्रीमती गीता मुखर्जी : अपील का राइट दिया जाए, तो गवर्नमेंट से मदद मिलनी चाहिए, ऐसा आप चाहती हैं।

श्रीमती फातिमा आलम अली : जी, हाँ।

सभापति महोदय : थैंक यू।

(The witness then withdrew)

III. Bharatiya Grameena Mahila Sangh, Hyderabad

Spokesman:

1 Shrimati A. Wahabuddin

(The witness was called in and she took her seat)

MR. CHAIRMAN: Before we proceed may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential, It shall however, be explained to

the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Have you also submitted a memorandum to the Committee?

SHRIMATI WAHABUDDIN AHMED: I am afraid. I was not here. I was on tour.

MR. CHAIRMAN: You can give your memorandum now on the Bill, what points are you emphasising?

SHRIMATI WAHABUDDIN AHMAD: On page 5 of the Bill it has been mentioned that in a rape case, the punishment is imprisonment for life. If a public servant commits the offence, after his conviction by the court, he should be removed from service. I feel that it is important that a lot of publicity should be given through the radio, T.V. and through other media that these are the people about whom the mothers have to take care of the future generation.

I say that some officials take the law in their own hands when the women are in their custody. It is not fair. I say that women should not be kept in the jail. You may ask the voluntary women's organisations to take care of the women who are victims of rape. If you want, I will be in a position to send a detailed memorandum in about two to three weeks' time.

MR. CHAIRMAN: As a representative of an institution, you must have come across a number of cases where rapes had been committed.

What do you propose to do? Would you like to give relief to the victims?

SHRIMATI A. WAHABUDDIN: For your information, I have been associated with a social organisation for many years. I was concerned with the Hyderabad Mahila Samiti. I was also a member of the State Board. We were able to ask the

rescue homes to take care of these women. We are trying to help these women in this way. We have asked more and more voluntary organisations and Government officials to play their role well. We cannot draw a line between worker and worker. However, if any injustice has been done to a woman, it is not only the responsibility of the organisation but also other voluntary organisations to take up this programme in a big way. Women had no status at all. But, during Emergency, the women had status. What I feel is that we have to have experienced workers to assist us in the programme. It should not only be at the national level but it should also go to the State and from there to the districts. After all, these incidents take place even in the hospitals. As a President of the Mahila Organisation, I used to go to the prostitutes houses to find out the position. Once a prostitute was threatened and I had gone there to give some relief. I have taken care of hundreds of women like that and we have relieved them from disease. They are the mothers of hundreds and hundreds of children. It is important that we must be given a little more time to think about it. Unfortunately, I was away and I only received this letter day before yesterday. If you like, I may send you a memorandum.

MR. CHAIRMAN: That is all right. We want your suggestions. What measures should be adopted by the Central Government in imposing restrictions by way of provisions in the bill in cases where rapes had been committed. There cannot be any chance to prove whether it was done with her consent or without her consent. What is the deterrence that should be adopted to see that the guilty persons do not go unpunished.

SHRIMATI A. WAHABUDDIN AHMAD: It all depends on each and every case.

MR. CHAIRMAN: Tell us what provisions should be made in the Bill.

SHRIMATI A. WAHABUDDIN: In that case I suggest we have a Committee of women here. There is a possibility as to what they can do. They can go to the help of women. It would be indeed very nice if more and more organisations help these women.

SHRI BAPUSAHEB PARULEKAR: You know, the police and other government officials are having illicit relations with the women and they commit offences against them. This should be checked. What do you want us to do to punish the guilty and they do not go unpunished? As a representative of women's organisation, have you any suggestions to give?

SHRIMATI A. WAHABUDDIN: The position is like this. It has become a sort of cancer. This destroys everything. We will have to think about it how best we can do away with this evil.

The police are the custodians of law and order. How is it that they commit such offences against women? It is not enough to remove them from service. Something more has to be done to change them.

SHRIMATI GEETA MUKHERJEE: What are difficulties that you face in handling these cases?

SHRIMATI A. WAHABUDDIN: I shall tell you. I was in Bombay. My husband was posted there. When I was there, there was a girl who was taken from here to Bombay and sold to a brothel house. On one night I got a telephone. I was out. I was a President of an Association at that time. We had a vigilant department which was working very closely. I had one inspector with me. The next day I asked him to go there and to find out the facts. I also requested the Chief Minister to do something in the matter. He came and asked me to come with him to identify the girl. Since my driver knows her, I asked him to take him with him. He

went there. Since she was a Hyderabad girl, she was in Hyderabad dress. She dressed herself in such a manner that he could not even identify her. He said that she was not that person. Then after two days, again, I got a telephone from that girl saying that she had been threatened with shooting and that they had shifted her from there. I said, what a nonsense it was. I went to Char Minar Police Station. I saw there hundreds of people gathering together and I was perturbed.

I said that I wanted the girl back within a week and if I did not get her within that period, I would report the matter to the Government. You will be surprised to know that she was released within that period. But she was full of disease. We got her treated. But about this question, I think I will write to you.

MR. CHAIRMAN: Thank you.

(The witness then withdrew)

IV—*Indian Council of Social Welfare, Hyderabad.*

Spokesmen:

1. Shrimati Prema Malhotra
2. Shrimati Ayesha Rishad.
3. Shri B. V. Jagdish.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they

might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

On what point would you like to enlighten the Committee.

SHRIMATI PREMA MALHOTRA: When the complaint is made to the officer on duty, he should immediately report it to his supervisor, who is not below the rank of DSP. No woman should be asked to come to the police station for investigation. A relative or a friend or a representative of the victim should be allowed to be present at the time of investigation, where police officers are involved in rape cases, those cases should be investigated not by the same department but by the Magistrate.

MR. CHAIRMAN: Which Department do you suggest?

SHRIMATI PREMA MALHOTRA: Magistrate.

MR. CHAIRMAN: One person should not have both the functions of investigation as well as trial.

SHRIMATI PREMA MALHOTRA: I want that it should be a different agency.

At the trial stage if a woman says that she has been raped it should not be taken as presumed. We suggest that the sentence should be decided on the basis of the evidence. Whosoever commits rape on the woman who is below 18 he should be given death sentence. There should be some provision for the rehabilitation of the victim. Women should be given education regarding her rights and laws.

SHRIMATI AYESHA RISHAD: When the investigation is on, the woman is harassed a lot. That should be avoided.

MR. CHAIRMAN: Should that be eliminated? What is your suggestion?

SHRIMATI PREMA MALHOTRA: She should not be taken to the police station. Her representative should be there at the time of enquiry.

SHRI BAPUSAHEB PARULEKAR: What do you mean by harassment?

श्रीमती प्रेमा मल्होत्रा : जेन्ट्स की तरफ से ऐसे सवाल होते हैं कि औरत बोल नहीं सकती। क्लिप्रिट तो आदमी रहता है लेकिन फिर भी औरत से तरह-तरह के सवाल पूछे जाते हैं।

SHRI BAPUSAHEB PARULEKAR: Should investigation be made by a female staff?

SHRIMATI PREMA MALHOTRA: Yes.

If the rape is committed by more than one man, it should be treated as a gang rape.

SHRI BAPUSAHEB PARULEKAR: The Bill makes a provision for 'presumption'. Presumption is that if the intercourse is proved and if the woman in witness-box says that she did not consent, the court shall presume that she did not consent and it shall be for the accused to prove consent. You have suggested that the court should decide it on merit. Why should this presumption not be there?

SHRIMATI PREMA MALHOTRA: Man may not have raped. He may not be unnecessarily punished. First is human right. Second is that the woman may have consented and later due to someone's pressure might have said that she was actually raped. Actually, it may not be a rape.

We want to do justice to both. It should be on the basis of evidence.

SHRIMATI GEETA MUKHERJEE: You rightly said that at the investigation stage the woman must be free from pressure. If the accused is a man of authority, there is likelihood of pressure being exerted on her. Evidence in any case will be there. I understand, as the law stands, the

woman has to prove that she did not consent. The man need not prove it. There is inequality already existing. Person in authority can possibly bring pressure. It is very difficult to prove that I did not give consent than to prove that I gave consent. Would you think once again the position of a woman where the accused is the person in authority?

SHRI BAPUSAHEB PARULEKAR:
In the case of gang rape, the presumption is to be drawn or not? Kindly consider this incident.

At dead of night she is called to the police station. Incident takes place. She says she did not consent. It has to be proved. What have you to say in this regard?

SHRIMATI PREMA MALHOTRA:
I have no objection to say that she did not consent. Benefit of doubt will go to her.

MR. CHAIRMAN: In a gang rape, the question of consent does not arise. She cannot give consent to more than two.

Consent comes in respect of person who is in authority and does this act without consent. He has got dominance over the lady. Therefore, in that case there may not be any evidence. Is it safe to keep a provision that the presumption should be in favour of the woman?

I am making a distinction between the two. In a rape case where more than two are involved, no consent can come. In a case where only a single man does it and the man is in authority and has the custody of the lady, then the question comes of consent. In these circumstances if he claims that it was with her consent, it is for him to prove that it was done with her consent.

श्री हुकम देव नारायण यादव : मैं यह निवेदन करना चाहूंगा कि विधि महा-विद्यालय के जो ये प्राचार्य हैं, इन को सरकार ने अपना प्रतिनिधि बना कर भेजा है। इस लिए बिल का समर्थन करते हुए अगर ये कोई सुझाव देना चाहें कि इस बिल को किस तरह से इफेक्टिवली इम्प्लीमेंट किया जा सकता है, तो वह सरकार के स्टैंड के समर्थन में हो होगा।

श्री बिलोक चन्द : जो लामेंबर गवर्न-मेंट के बिहाफ पर बाल रहे हैं और इस बिल को सपोर्ट कर रहे हैं पहले उनसे सवाल पूछ लें और उस के बाद वे अपना पर्सनल व्यू दे दें।

SHRIMATI SUSHEELA GOPALAN:
You may perhaps be aware of Mathura case. The rape was committed in Police custody. The Supreme Court had said that there was passive submission on her part because there were no marks or injury on her body to prove that she was raped without consent. In that case, if presumption is there that she did not consent, then the onus of the proof is on the other side. He has to prove that there was consent. Don't you think that it is necessary for the accused to prove?

SHRIMATI PREMA MALHOTRA:
What I am trying to say is that she could have appealed to some Women's Welfare Organisation who ought have fought her case. Otherwise the girl will not be able to fight her case alone.

SHRI S. W. DHABE: In regard to rape cases, there is no woman lawyer to plead their case. Would you subscribe to the view that only Women lawyers should deal with the rape cases? Most of the time the women become the victims. Don't you think that they should be rehabilitated by way of payment of compensation during the trial and after the case is over?

SHRIMATI AYESHA RISHAD: It is a good idea. We do not object to this. Compensation for rehabilitation after the case is over is necessary.
(The witnesses then withdrew)

V—A. P. Mahila Samakhya, Hyderabad.

Spokesmen:

1. Smt. Sarla Devi.
2. Smt. Brij Rani Goud.
3. Smt. C. Raj Kumari.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

I think you have gone through the important provisions of this Amendment Bill. What are your suggestions on this Bill?

SHRIMATI BRIJ RANI GOUD: The trial must be held in camera and all matters relating to these cases must be published and brought to the notice of the public except the name and the address of the victim.

MR. CHAIRMAN: So, you do not object to the publication of such cases. Now, can you give us the reason why it should be done so?

श्रीमती सरला देवी : हमारा प्वाइन्ट यह है कि क्या क्या हो रहा है, यह जनता को मालूम होना चाहिए और इसके लिए पब्लिसिटी बहुत जरूरी है। पब्लिसिटी न होने से जनता को मालूम नहीं होता है

कि क्या-क्या चीजें हो रही हैं लेकिन मैं यह जरूर कहना चाहूंगी कि औरत का नाम और एंज्रेस पब्लिश न किया जाए। इस के अलावा मैं यह कहना चाहती हूँ कि ट्रायल इन केमरा होना चाहिए।

MR. CHAIRMAN: What is your next point?

SHRIMATI BRIJ RANI GOUD: When the States appoint an Enquiry Commission to go into rape cases, the report of the Commission should be taken note of by the Trial Court. Only the family special courts must conduct the trial courts. The magistrates of the family courts should be women. There should be speedy trials in the rape cases. In every Police Station at least one lady Police Officer must be appointed. When information of such a crime is given to the Magistrate, it should be seen that the case is entered in the Register and the case should be handed over either to the S.P. or D.S.P. who shall investigate the case himself or by some senior Police Officer. If the accused happens to be a police personnel, then the case should be investigated by the C.B.I. On receipt of such information, the magistrates shall immediately refer victims of rape for medical examination by 2 or more doctors preferably lady doctors or by the family doctors of the victim if any.

Another point is that the Women's Organisation should be given grants by the Government to publish booklets, posters and conduct propaganda about the rape laws and specially emphasise the necessity to go in for immediate medical examination by the victims of rape.

MR. CHAIRMAN: Do you prefer that lady judges should hear such cases?

SHRIMATI BRIJ RANI GOUD: We prefer half of them being ladies:

SHRIMATI SUSEELA GOPALAN: You want that the Women's Organisation should come into the picture at the appeal stage.

SHRIMATI SARLA DEVI: Yes, only for appeal.

MR. CHAIRMAN: You mean to say that in many cases they are unable to file appeal because of monetary difficulties. Therefore, these organisations should come forward to help them and on behalf of them file an appeal and fight their case.

SHRIMATI SUSEELA GOPALAN: Why cannot it be started from the lower courts?

श्रीमती सरला देवी : एक बात में यह कहना चाहूंगी कि अभी तक विक्टम इतना एजूकेटेड नहीं है और न ही इतनी फैसेलिटीज उसके पास होती हैं कि वह अपील कर सके। इसलिए जरूरत इस बात की है कि जो वालेंटरी ऑर्गेनाइजेशन हैं, उनको भी अपील करने का अधिकार दिया जाए। इसका प्रावधान इस बिल में होना चाहिए।

सभापति महोदय : इंस्टीट्यूशन पैसा कहां से लाएंगी।

श्रीमती सरला देवी : चन्दा इकट्ठा करेंगी और आप जैसे प्रोपेसिज लोगों से चन्दा मिल जाएगा।

श्री त्रिलोक चन्द : फैमिली कौंट्स का क्या मतलब है ?

श्रीमती सरला देवी : ऐसी स्पेशल कौंट्स हों, जो घरेलू केसेज को करें जैसे डाइवोर्स केसेज हैं।

श्री त्रिलोक चन्द : जज आदमी हो या औरत ?

श्रीमती सरला देवी : जज कोई भी हो लेकिन यह अच्छा होगा अगर लेडी जज हों।

श्रीमती विद्यावती चतुर्वेदी : आपने कहा कि वीमेन्स ऑर्गेनाइजेशन को अपील करने का अधिकार दिया जाए। आप यह जानती हैं कि वीमेन्स ऑर्गेनाइजेशन बहुत सी हैं और एक कहेगी कि हम अपील करेंगे दूसरी कहेगी कि हम करेंगे। ऐसी हालत में कौन सी ऑर्गेनाइजेशन को अधिकार दिया जाएगा ? क्या इससे काम्प्लीकेशन खड़ी नहीं होंगी ?

श्रीमती सरला देवी : इस तरह के केसेज बहुत कम होंगे। अगर बहुत सारी ऑर्गेनाइजेशन अपील करना चाहती हैं, तो उनमें से कोई भी अपील कर सकती है या फिर सब मिल कर अपील कर सकती हैं।

श्रीमती विद्यावती चतुर्वेदी : कोई दस-पांच लोगों ने मिल कर एक एसोसियेशन बना तो ताकि उन को अपील करने का अधिकार मिल जाए। वे चन्दा इकट्ठा करने के लिए भी ऐसा कर सकती हैं और अगर सरकार सहायता देती है, तो फिर वे यह कहने लगेगी कि हमको सरकारी सहायता मिलनी चाहिए। क्या इससे कन्फ्यूजन क्रियेट नहीं होगा ?

श्रीमती सरला देवी : हमारा खयाल है कि कन्फ्यूजन नहीं होगा। लॉअर कोर्ट्स में एबीडेंस देने के लिए वालंट्री ऑर्गेनाइजेशन को मदद लेनी चाहिए। जब विक्टम अपील नहीं कर सकता, तो ऐसे मौके पर वालंट्री ऑर्गेनाइजेशन को अपील करने का अधिकार देना चाहिए।

श्री अमर प्रसाद चक्रवर्ती : फैमिली कोर्ट का क्या मतलब है ?

श्रीमती सरला देवी : डाउरी, रेप, औरतों के तलाक आदि के जो केस होते

हैं, उनके लिए अलग से कौट्स हों। इन को स्पेशल कोर्ट वाह सकते हैं। कुछ लोग इनको फैमिली कोर्ट कहते हैं।

श्री अमर प्रसाद चक्रवर्ती : कानून में ऐसा कोई टर्म नहीं है ?

श्रीमती सरला देवी : कानून में ऐसा एमेंडमेंट होना चाहिए।

श्री अमर प्रसाद चक्रवर्ती : अपील करने के लिए गवर्नमेंट समूची मदद दे या मार्गनाइजेशन अपनी सोर्स से इस काम को करेगी।

श्रीमती सरला देवी : मार्गनाइजेशन को कानून में अपील करने का मौका मिलना चाहिए।

श्री अमर प्रसाद चक्रवर्ती : अपील करना आपका राइट है ?

श्रीमती सरला देवी : नहीं है।

प्रो० निर्मला कुमारी शक्तावत : आप ने बताया कि अगर किसी महिला के साथ ऐसी घटना हो जाती है, तो उसका मेडिकल एग्जामिनेशन फैमिली डॉक्टर से कराया जाना चाहिए। मैं एक स्पष्टीकरण चाहती हूँ। कुछ ऐसी महिलायें भी हो सकती हैं जो किसी को बचनाम करने के लिये झूठे-मूठे आडंबर कर सकती हैं। ऐसी स्थिति में क्या फैमिली डॉक्टर वायल्व नहीं होगा।

श्रीमती सरला देवी : इस में फैमिली डॉक्टर भी रहना चाहिए क्योंकि कभी कभी दूसरे डॉक्टरों द्वारा गलत स्टेटमेंट दे दिया जाता है।

SHRIMATI GEETA MUKHERJEE:
What was the trouble that the women organisations faced in the Ramizabi's case? What did you want from the State Government and what was given to you?

श्रीमती सरला देवी : मैं एक दो प्वाइंट्स और कहना चाहती हूँ और वे रमीजीबी के केस के बारे में हैं। पहला तो यह है कि स्टेट एसेम्बली के कहने पर मुख्तियार कमीशन एपाइन्ट किया गया और उसने अपनी रिपोर्ट दी लेकिन ट्रायल कोर्ट में मुख्तियार कमीशन की रिपोर्ट का नाम तक नहीं लिया गया। दूसरा प्वाइन्ट यह है कि मुकदमा पुलिस के कहने पर दूसरी जगह शिफ्ट कर दिया गया। यह भी रमीजीबी के केस में एक गलत काम हुआ और तीसरा प्वाइन्ट यह है कि शुरू से ही बहुत बड़े पैमाने पर रमीजीबी को अखबारों में प्रोस्टीट्यूट बताया गया और यह न्यूज चारों तरफ फैला दी गई। यह जो तरीका था यह गलत था और इन कारणों से रमीजीबी केस हार गई। इसके अलावा धालन्ट्री मार्गनाइजेशनन्स को अपील करने का कोई मौका नहीं दिया गया और रमीजीबी में खुद अपील करने की शक्ति नहीं है।

श्री हुकम देव नारायण यादव : आपने यह बताया कि बलात्कार की जांच करने के लिये परिवार के डॉक्टर को भी रखा जाये और इसके बारे में उधर से बहाना भी सवाल किया। मैं यह जानना चाहता हूँ कि क्या आप यह महसूस करती हैं कि ऐसा मुमकिन है क्योंकि हिन्दुस्तान में जितने केस हुए हैं, बलात्कार के केस हुए हैं, उनमें लगभग 100 परसेंट लड़कियाँ ऐसे परिवारों की हैं, जिनका अपना कोई फैमिली डॉक्टर नहीं होता। वे तो ऐसे परिवारों में हैं जोकि बीमार होने पर भी अपना इलाज नहीं करा पाते हैं। दूसरी बात यह है कि गवर्नमेंट डॉक्टर कहेगा कि मेडिकल रिपोर्ट यह कहती है और

प्राइवेट डाक्टर कहें कि ऐसी बात नहीं है। इस तरह से एक कन्ट्रोवर्सी खड़ी हो जायेगी, जिससे निर्दोष लोगों को भी विपत्त होगी।

श्रीमती सरला देवी : इसका जवाब पहले दे दिया है। बहुत सारी फैमिलीज के पास प्राइवेट डाक्टर नहीं रहता है, यह सच्ची बात है मगर जिनके पास है, उनको मौका देना चाहिए। जब फैमिली डाक्टर साथ में होगा, तो गवर्नमेंट डाक्टर को गलत रिपोर्ट देने का मौका नहीं मिलेगा।

श्री धरम प्रसाद चक्रवर्ती : अगर फैमिली डाक्टर नहीं है, तो जिस डाक्टर पर उसको फेस हो, उसको मौका दिया जाये।

श्रीमती सरला देवी : जी, हाँ।

श्री बिलोक चन्द : प्राप का यह बोर्ड रजिस्टर्ड है ?

श्रीमती सरला देवी : जी, हाँ।

सभापति महोदय : थैंक यू।

(The witnesses then withdrew)

VI—All India Women's Conference, Hyderabad.

Spokesman:

Shrimati Daya Devi.

(The witness was called in and she took her seat).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any

part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable—to be made available to the Members of Parliament."

What do you want to say on the Bill?

SHRIMATI DAYA DEVI: In Section 228A punishment in the form of one month's imprisonment has been provided. It should be enhanced to six months. There should be a provision of fine also.

In Section 376(2)(b) I want that after the words 'in his custody' the words 'working as his subordinate' should be added. 'Working as his subordinate'. He is in public service. She is working under him. He lures her for promotion.

MR. CHAIRMAN: You have referred to custody.

SHRIMATI DAYA DEVI: I wanted that 'after custody' it may be added 'or working as his subordinate'.

In cases of committing gang rape the punishment should not be less than ten years and also the accused should be liable to fine.

Magistrate should not be given discretionary powers. He will exercise it with leniency.

MR. CHAIRMAN: For how many years have you served as a Judge?

SHRIMATI DAYA DEVI: Judicial Officer for 35 years and Sessions Judge for three years.

MR. CHAIRMAN: Discretion is not a rampant discretion. But it will be where he has reason to believe or reason to be assigned. Can you find distinction?

SHRIMATI DAYA DEVI: Let it go as it is.

Section 376A:

Government servants involved in such offence should be immediately suspended and the offence, if it is proved, they should be dismissed.

MR. CHAIRMAN: Government servants Conduct Rules are there. They are governed by disciplinary rules. There should not be any substantive law.

श्रीमती दया देवी: मेरा कहना यह है कि जो मुल्जिम है, उस की पब्लिसिटी होनी चाहिए और विक्टिम को कोई स्टिग्मा न लगे, इस लिये सारी कार्यवाही इन कैमरा होनी चाहिए। मुल्जिम की पब्लिसिटी जरूर होनी चाहिए ताकि सब को मालम हो जाये कि यही वह आदमी है, जिस ने ऐसा जुमं किया है। जो विक्टिम है, उस की पब्लिसिटी नहीं होनी चाहिए।

MR. CHAIRMAN: Enquiry has to be held *in camera*. Do you agree or not?

SHRIMATI DAYA DEVI: I agree. It should be held *in camera*. We do not want any stigma to be attached to the victim. We should protect her as it will reflect on her entire future and mar her future.

MR. CHAIRMAN: What have you say about 111A?

SHRIMATI DAYA DEVI: I agree that there should be such a provision.

MR. CHAIRMAN: What are your substantive grounds?

SHRIMATI DAYA DEVI: It is difficult for the victim to prove that she is innocent. If she denies, her word should be accepted.

MR. CHAIRMAN: Your ground is simple. Because it cannot be proved by the lady 'that she had not given her consent', therefore it should be

there. But other surrounding circumstances are there to substantiate.

SHRIMATI DAYA DEVI: This will give her an upper hand to fight out the case. Women are weaker section.

SHRIMATI GEETA MUKHERJEE: From your experience, can you tell us that in the absence of this presumption how do you feel that justice was not done?

SHRIMATI DAYA DEVI: Because she does not get any opportunity to express her feelings. Nobody comes forward to help her. It is very difficult to prove that she was innocent.

SHRIMATI GEETA MUKHERJEE: It is for her to prove that this nasty thing has been done without her consent. Are there any compelling circumstances to put the onus on the accused?

SHRIMATI DAYA DEVI: There are compelling circumstances. The man being strong will always use force on the weaker section of the community. Daily we are hearing so many cases of rape.

MR. CHAIRMAN: Biologically they are the weaker section of the society. Now, there is a case where a lady was taken inside the room and the accused had tied her legs and hands with rope before committing rape. Is there any woman who would allow her hands and legs being tied before committing rape by the accused?

SHRIMATI DAYA DEVI: It happens. She becomes helpless.

MR. CHAIRMAN: What is your suggestion about educating the women in regard to this kind of crime?

SHRIMATI DAYA DEVI: Immediate medical examination is necessary. Mass education should be given through the media of cinema, TV and other publicity.

SHRI BAPUSAHEB PARULEKAR:
As a retired Sessions Judge you must have come across many cases of this type. Can you tell us how many of them had ended in conviction? Do you have some statistics on this?

SHRIMATI DAYA DEVI: We must have given benefit of doubt in so many cases.

SHRI BAPUSAHEB PARULEKAR:
Even in regard to presumption, the principle of benefit of doubt will continue and there are many acquittals. What was the reason for that? Is there any defect in the law or defect in the procedure or defect in the principle?

श्रीमती दया देवी : पुलिस cases के Register करने में और investigation का हमेशा केसेज में डिले करती है। हम लोगों का और आप भी यह एक्सपीरियंस होगा कि जब मैडिकल रिपोर्ट देर से आती है; तो देरी होने के कारण केस को भूख करना बड़ा मुश्किल हो जाता है। इस लिये मेरा सुझाव यह है कि

Magistrate of the local jurisdiction should be empowered to register the case and not to act till the Police reports, and refer the matter for medical opinion immediately.

SHRI BAPUSAHEB PARULEKAR:
According to you, the law is not effective.

SHRIMATI DAYA DEVI: The law need this amendment. The investigation is very poor. The onus of proof should be shifted to the accused and not be on victim as it now is.

MR. CHAIRMAN: Parliament is competent to enact any law which is consistent with the Constitution.

SHRIMATI DAYA DEVI: But who will try the case?

MR. CHAIRMAN: What is your opinion about publishing these matters in the newspapers?

श्रीमती दया देवी : अखबारों में ऐसे केसेज की पब्लिसिटी होनी चाहिए लेकिन जो विक्टिम है, उस का नाम अखबारों में नहीं आना चाहिए।

सभापति महोदय : क्या उसको कोई केस लड़ने के लिये सहायता मिलनी चाहिए ?

श्रीमती दया देवी : उसको लीगल aid मिलनी चाहिए ताकि वह अपना केस कर सके। और प्रीपर defence advance कर सके। आपने "इन्साफ का तराजू" देखा है ?

सभापति महोदय : वह तो पब्लिक कन्जम्शन के लिये है।

श्रीमती दया देवी : शहादत रिकॉर्ड करते वक्त हमारी आँखें नीचे होती हैं जबकि वकील तरह तरह के सवाल महिला से पूछते हैं जैसे आपको गोद में बैठ गया या यह किया और वह किया।

श्री बिलोक चन्द : आप का जूडिशियरी और मैजिस्ट्रेटों का लम्बा तजुर्बा है। इसलिये हम चाहते हैं कि आप इस बिल के बारे में सुझाव दें कि इसमें क्या तरकीब करनी चाहिए, जिस से महिलाओं पर जो रेप जैसे जुल्म होते हैं, वे न हों।

श्रीमती दया देवी : रेप न हो, इस के लिये एजुकेशन बहुत जरूरी है। टी० बी० सिनेमा अगर पब्लिसिटी के दूसरे मेडिये हैं, उन के जरिये इस बात की शिक्षा दी जाये।

श्री बिलोक चन्द : यह तो एज ए सोशल वर्कर आप ने बात की ही। आप मौजूदा कानून में क्या तरकीब चाहती हैं।

श्रीमती क्या देवी : कानून से इसको रोका नहीं जा सकता क्योंकि जुर्म करने के बाद ही कानून का धापेजान शुरू होता है ।

श्री त्रिलोक चन्द्र : हमने यह देखा है कि ऐसे केसेज में एक्यूज्ड धाम तीर पर छूट जाता है और उस को कोई सजा नहीं मिल पाती । इस के पीछे कौन से कारण हैं ?

श्रीमती क्या देवी : ऐसे केसेज में कंविक्शन बहुत मुश्किल होता है और बैनिफिट आफ डाउट एक्यूज्ड को मिल जाता है । यूजेभलो ऐसा हाता है कि जो एविडेंस होता है, वह बहुत बिक होता है ऐसे मामले को इन्फारमेशन बहुत देर से दो जाता है ।

श्री हुकम देव नारायण बाबु : कानून की मंशा एक तरफ यह है कि निर्दोष को बचाने के लिये अगर 10 दोषों भी छूट जाये, तो छूट जाये लेकिन निर्दोष को सजा नहीं मिलनी चाहिए । इस बिल में 'प्रीजम्पशन' के रहते हुए क्या यह संभव हो सकता है । ऐसा भी हो सकता है कि एक औरत जो पुलिस द्वारा गिरफ्तार की जाती है, उतने किसी दूसरे के साथ पहले से सेक्सुअल इन्टरकोर्स किया हो और जब वह पुलिस कस्टेडो में आती है तो वहाँ आने के बाद पुलिस वालों पर यह धाराप लगाया जा सकता है कि पुलिस वालों ने उसके साथ रेप किया है । अब क्योंकि इसमें 'जैल प्रिज्यूम' दिया गया है तो कोर्ट पुलिस वालों को दोषी ठहरायेगी और उस औरत के साथ सेक्सुअल इन्टरकोर्स हुआ है, यह तो प्रूव हो ही जायेगा । इस लिये मैं यह आनना चाहता हूँ कि ऐसे निर्दोष व्यक्ति को बचाने के लिये धाप कानून में क्या उपाय करना चाहते हैं ?

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श्रीमती क्या देवी : जब सेक्सुअल इन्टरकोर्स किया है, तो फिर निर्दोष कैसे ?

श्री हुकम देव नारायण बाबु : धाप मेरी बात समझ नहीं पाई है । मैं स्पष्ट करना चाहता हूँ । एक औरत को पुलिस गिरफ्तार करती है, किसी दूसरे धराराध में और उस ने पहले किसी दूसरे धराराध के साथ सेक्सुअल इन्टरकोर्स किया होता है । जब पुलिस कस्टेडो में वह औरत होती है, तो पुलिस पर यह धाराप लगाया जाता है कि पुलिस वालों ने उस के साथ रेप किया है । उ।सा मैडिकल प्रैकिस होता है और उतमें वह निकल आयेगा कि वाकई में सेक्सुअल इन्टरकोर्स किया गया है और वहाँ पर यह प्रिज्यूम कर भी लिया जायेगा और इससे निरपराधों कस्टेडियन सजा पायेगा या नहीं ?

श्रीमती क्या देवी : ऐसे तो बहुत कम बासेस होंगे । मेरा कहना यह है कि अगर वह निरपराधी है तो उसके पास दूसरी एविडेंस होगी कि वह वहाँ नहीं था और उतने ऐसा नहीं किया उसके ध्यान से ही यह प्रिज्यूम नहीं कर लिया जायेगा और उसका कंविक्शन नहीं होगा ।

SHRI AMARPROSAD CHAKRABORTY: Perhaps you are aware of the objects under Section 4 and Section 114 of the Evidence Act. Now, can you justify that the change in law would help the victims?

SHRIMATI DAYA DEVI: Since custodial rape is very difficult to prove, I think presumption should be there in cases where the victim says that she did not give her consent.

SHRI S. W. DHABE: Do you think that the First Class Magistrate can handle these cases?

SHRIMATI DAYA DEVI: I think we may give powers to the Sessions Judge. First Class Magistrates are not that mature and experienced.

SHRI S. W. DHABE: In Section 376(2), three categories are mentioned. They are police officer, superintendent or manager of a jail and the staff of a hospital. Do you recommend that death sentence should be provided to the persons belonging to these categories for committing this crime?

SHRIMATI DAYA DEVI: I think that capital punishment is too severe.

SHRI LAL K. ADVANI: This Bill has come into being because of the publicity being given in regard to the Mathura case and also the incident in Orissa where a journalist's wife was raped. If there is a complete curb on the identity of the victim, perhaps all these incidents would not have come to light because the newspaper cannot publish it.

SHRIMATI DAYA DEVI: That is one view.

SHRI LAL K. ADVANI: We are concerned with the victim that she should not be stigmatised. On the other hand we are concerned with educating the society for mobilising opinion against this kind of crime. If you make a law of this kind, there may

be a feeling that it may curb this kind of activity.

SHRIMATI DAYA DEVI: Only the victim's name should not be disclosed. The identity of the victim should not be disclosed.

SHRI LAL K. ADVANI: In all the above cases, if the name of the victim is not mentioned and the circumstances of the cases are mentioned, the identity would have come to be known.

SHRIMATI DAYA DEVI: Now, in all cases of juvenile offenders, we hold *in camera* trial.

MR. CHAIRMAN: Similarly for young girls, trial should be held *in camera*.

SHRI LAL K. ADVANI: It does not give particulars about the victim. This has become conventional.

SHRIMATI DAYA DEVI: You have given answer to the question put to me.

MR. CHAIRMAN: Thank you.

(The Committee then adjourned.)

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON
THE CRIMINAL LAW (AMENDMENT) BILL, 1980**

Thursday, the 30th July, 1981 from 10.00 to 13.10 hours and again from 15.00 to 16.00 hours in Old Committee Hall, Andhra Pradesh Government Secretariat, Hyderabad.

PRESENT

Shri D. K. Naikar—Chairman

MEMBERS

Lok Sabha

2. Shrimati Vidyavati Chaturvedi
3. Shrimati Suseela Gopalan
4. Shrimati Mohsina Kidwai
5. Shrimati Geeta Mukherjee
6. Shri K. S. Narayana
7. Shri Ram Pyare Panika
8. Shri Bapusaheb Parulekar
9. Shri Qazi Saleem
10. Shri S. Singarvadival
11. Shri R. S. Sparrow
12. Shri Trilok Chand
13. Prof. Nirmala Kumari Shaktawat
14. Shri V. S. Vijayaraghavan
15. Shri P. Venkatasubbiah

Rajya Sabha

16. Shri Ramchandra Bharadwaj
17. Shri Amarprosad Chakraborty
18. Shri S. W. Dhabe
19. Shri B. Ibrahim
20. Shri Dhuleshwar Meena
21. Shri V. P. Munusamy
22. Shri Leonard Soloman Saring
23. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—Senior Legislative Committee Officer

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS

1. **Shri M. P. Khosla, Officer on Special Duty**
2. **Shri S. C. Bablani, Under Secretary**

WITNESSES EXAMINED**I. Government of Andhra Pradesh, Hyderabad****Spokesmen:**

1. **Shri E. Ayyapu Reddy, Law Minister.**
2. **Shri Jayakar Johnson, Secretary, Home.**
3. **Shri M. N. Rao, Secretary, Law**
4. **Shri T. Ponnaiya, Additional Inspector General of Police (Crimes)**

II. Dilsukh Mahila Mandal, Hyderabad**Spokesmen:**

1. **Shrimati Yamani Choudhari**
2. **Shrimati Jamulu Nisha Begaum**
3. **Shrimati Gayatri Devi**

III. Association of Democratic Lawyers**Spokesmen:**

Shri Manohar Lal Saxena.

I—Government of Andhra Pradesh, Hyderabad.**Spokesmen:**

1. **Shri E. Ayyapu Reddy, Law Minister.**
2. **Shri Jayakar Johnson, Secretary, Home.**
3. **Shri M. N. Rao, Secretary, Law.**
4. **Shri T. Ponnaiya, Additional Inspector General of Police (Crime).**

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

“58. Where witnesses appear before a Committee to give evidence, the Chairman, shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.”

SHRI E. AYYAPU REDDY: So far as my evidence is concerned, it may be taken as public.

MR. CHAIRMAN: We have supplied copies of the Draft Bill. What have you to say? Please enlighten us on the subject.

SHRI E. AYYAPU REDDY: 228A:

Suppose rape has been committed. Somebody has to go and give it in writing to the Police. That is called the First Information Report. This First Information Report is a Public document. Copy of it is available to every person who wants it on application. After it is registered it is sent to the magistrate 'forthwith'. That is the wording give in the Cr.P.C. This should be published; this is my suggestion.

The explanation must cover the First Information Report also.

MR. CHAIRMAN: If that document is made known to the public, there will be some prejudice in investigation. That is the reason why anything done during the course of investigation is not publicised, not even allowed to be discussed on the floor of the House.

SHRI E. AYYAPU REDDY: So far as F.I.R. is concerned, a copy of it is sent to the Magistrate. Any person is entitled to take a copy of it. That we cannot prevent. Person against whom an offence is alleged, he must also be in a position to know to defend himself. The principle of every accused being entitled to defend himself right from the very beginning must be there. For example 'A' says, he has been accused of raping or assaulting a woman. 'A' was not there but was somewhere else. As soon as the First Information Report is registered and he comes to

know, he can come forward with his defence of alibi at the earliest opportunity and defend himself from the very beginning. That is why the First Information Report has always been considered as a public document. Copy of it can be had by every citizen.

MR. CHAIRMAN: So far as the Accused Defence is concerned, I agree. Whatever has been omitted in the complaint will have to be patched up by the prosecutor at the time of trial. After everything is known it will be difficult to explain what is lacking in the complaint. There is a handicap on the part of the prosecution to explain that difficulty.

SHRI E. AYYAPU REDDY: Fairness in the criminal trial must always be maintained. We need not necessarily be in favour of the prosecution or accused. Therefore, it is open to the prosecution to verify and to investigate. It does not prevent prosecution from coming forward and filing a charge sheet. Prosecution has got certain powers under Cr.P.C. We are not trying to deprive him of any powers. But the accused cannot be taken by surprise because essentially we have been trying to say that fairness of the trial has to be maintained. We cannot say that the accused will not be entitled to get a copy of the FIR. We cannot say that when FIR reaches the Magistrate he will not be entitled to get a copy. On the other hand, the importance of the FIR in a criminal trial is known to everybody. So, some balance has to be maintained with regard to the FIR, Panchanama etc. And all these are public documents; they are signed and attested by two other people and the person is entitled to take a copy of these documents. That is the position. This may be kept in mind. To me it appears that they may not be secret. On the other hand, they will be very much public documents and known to every person. If there is

correct publication of the documents, they will put an end to the unnecessary scarce and rumour. Suppose we suppress the F.I.R. or we prevent it from being made public. Then, there is a possibility of scarce being created or unnecessary rumours being built up. I agree, at the same time, that secrecy has its own place. At the same time also, some of the fundamentals which have been incorporated into the Criminal Procedure Code and which have been observed in a criminal trial from the very inception must not be hampered.

MR. CHAIRMAN: Do you think that there should be an amendment to the Explanation?

SHRI E. AYYAPU REDDY: The Explanation may include the F.I.R. also.

Now, I come to Clause 375-Sixthly. It says:

'With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him of any stupefying or unwholesome substances, she is unable to understand the nature and consequences of that to which she gives consent, or is unable to offer effective resistance.'

Here the words 'administration by him' mean by the 'accused'. That must be there.

MR. CHAIRMAN: That term always indicates the accused.

SHRI E. AYYAPU REDDY: Intoxication need not necessarily be by the accused. As the clause now stands, if a victim herself has taken the liquor even without any reference to the accused, then, in that case also, the accused becomes liable.

MR. CHAIRMAN: It covers both voluntary as well as by the accused. Administration of stupefying substance may be made by him or through his agent.

SHRI E. AYYAPU REDDY: So far as intoxication is concerned, even in all criminal trials, many a time, the accused puts forth the plea that he is speaking in an intoxicated condition. It is an act done. In the criminal jurisprudence, intoxication is taken as an extenuating circumstance. Intoxication may be without her consent. But, if intoxication is taken without her consent, that means she was made intoxicant. If the girl takes drinks voluntarily and then goes about misbehaving, if somebody takes advantage of this then, she is to blame herself. Intoxication may be by some other person—it need not necessarily be by the accused person. Mostly, consumption of liquor is taken as a matter of course. That must not be a ground for saying that there was no consent on her part. Even if there were consent before intoxication or if there was an understanding before intoxication and subsequently intoxication follows, then, what is the position?

MR. CHAIRMAN: There are some arguments advanced by several experts that intoxication in the very beginning should be voluntary and after taking liquor, she must be under control and she must know what the consequence is. Then, it should be taken as consent. This was argued by some others.

SHRI E. AYYAPU REDDY: In this respect, let me quote the Law in England as quoted by Taylor. I am quoting from Taylor's Medical Jurisprudence, page 54.

MR. CHAIRMAN: The hon. Minister must know that there is distinction between Taylor and Glister.

SHRI E. AYYAPU REDDY: Taylor is always a recognised authority so far as English Law is concerned. If a woman alleges that prior to the rape she was overcome by a drink or that a drug was administered, oral examination is important to ascertain

whether there are any signs. Now, I quote:

"If a woman alleges that prior to the rape, she was overcome by a drink, or that a drug was administered in a drink, oral examination is important to ascertain whether there are any signs in accordance with the ingestion of either alcohol or of a specific narcotic such as barbiturates or chloral, etc. Careful enquiry should be made into the circumstances in which the drink or drug was taken; whether it was taken freely or forced upon a woman; the quantity taken, the timing, the nature and degree of affection and, particularly, of course, how much of the control is there. If it were proved that a known drug had been used with such an intent, there would be little doubt about conviction. But, if no specific means had been used, there is a probability, that the consent had been given, however, much it may have been regarded afterwards."

That is, if there were a prior consent and subsequent intoxication, that must not be taken as a consent or absence of consent. That is my comment so far as that section is concerned.

Then, I come to page 3 of the Bill. See Clause 376(a) namely,

"being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him;..."

SHRI E. AYYAPU REDDY: Section 376(2) (b) requires a slight adjustment of the wordings. Now, under the same Section, Explanation 1 reads like this.

"Explanation 1—Where a woman is raped by three or more persons acting in furtherance of their common intention....."

Here it is stated "where a woman is raped by three or more persons". Even though rape is committed by one person but if several persons had acted in furtherance of their intention, it is a gang rape. The rape need not be committed by all, but the intention is there.

MR. CHAIRMAN: According to you, even if more than "one" is put, do you mean to say that Section 149 should be applicable here?

SHRI E. AYYAPU REDDY: The wording is quite clear, that is, "in furtherance of their common intention". That is, common intention of 4 persons or 2 or 3 persons is to commit rape and it must be considered to be a rape of a gang of persons. Actual physical intercourse may be done by one or more persons. But if 3 or 4 persons had a common intention, then it should be considered as gang rape.

MR. CHAIRMAN: That is why I brought it to your notice. But to what extent you want to have a common intention and to what extent you want to have a common object? Kindly make a distinction between the two.

SHRI E. AYYAPU REDDY: So far as unlawful assembly is concerned, the common object or the common intention, is to commit crime. If they are actuated by a common object or a common intention, it means that there is a prior concern and agreement and consensus by all persons who are participating in it. Therefore, it is considered to be more in pursuance of the common object. A person may exceed his object. Here we are concerned with common intention. It means that there is a prior agreement reached between two or more persons to commit a particular offence. Here rape is the common intention. Usually rape is an individual action. So long as there is even agreement to do such offence, it must be considered as gang rape.

MR. CHAIRMAN: Suppose 'X' and 'Y' went with a common intention to have a sexual intercourse with a woman. Then 'Z' join in the middle. Then in that case what have you to say in regard to the third person?

SHRI E. AYYAPU REDDY: Third person also shares the common intention. He becomes a party to it.

MR. CHAIRMAN: But according to you, there should be prior consent. There is no common intention.

SHRI E. AYYAPU REDDY: Similar intention is different from the common intention. For that, the judge decides whether they had a common intention or not. Common intention should be proved and circumstantial evidence should be proved whether there was a prior agreement or not. Therefore, "Z" was having a common intention but was not having similar intention. He will not come under this definition of gang rape.

MR. CHAIRMAN: Suppose three or four persons together had a conspiracy to commit a crime earlier they went together. They had sexual intercourse one after another. If all of them had sexual intercourse one by one, then it is called gang rape. But what have you to say in the case of one person having sexual intercourse and others might not have taken part in the crime?

SHRI E. AYYAPU REDDY: Suppose 'X', 'Y' and 'Z' are charged of having had a common intention to commit rape on a woman and if in pursuance of that common intention 'X' commits rape and 'Y' and 'Z' have not committed rape. While 'X' committed rape, 'Y' and 'Z' held the woman tightly and helped 'X'. Some individuals come there and 'X' runs away. But all the three are equally liable for deterrant punishment because they wanted to make a combined effort. We must call it a gang rape. 'Y' and 'Z' might not have had

an opportunity to commit rape. Nonetheless they are part and parcel of the criminal act.

MR. CHAIRMAN: Because of same intention, these three were not able to complete their intention whereas in other case there was a chance to have a sexual intercourse. But here they have themselves left voluntarily. They have not participated in the criminal activities. I want your comment in such cases.

SHRI E. AYYAPU REDDY: 'X', 'Y' and 'Z' commit rape on a woman and go away and some other person comes and commits rape and he goes away. In this case, because he has not acted with a common interest, the woman is also punishable for having abetted. A person who is running a prostitution is a woman who is incapable of committing rape on another woman but she has actively participated in furthering a common object of committing rape by 'X', 'Y' and 'Z'. She must also be equally guilty.

What I suggest is that in furtherance of a common intention where a woman is raped by one or more persons, it must be considered as gang rape. The woman who has aided and abetted, must also be punishable under gang rape.

In Sections 376A and B I want that after the words 'public servant' the words 'abuses his official position' should be added.

In Section 111A after the words 'sexual intercourse' the words 'by the accused' should be added. Suppose, in a police station a rape is committed by the Head Constable, the lady should not implicate the DSP. So far as the rules of evidence are concerned, certain fundamental principles have been laid down in the Evidence Act and statutory presumptions are made only in a few cases. There the statutory presumptions are drawn only to guide the judgment and discretion of the presiding officer who

conducts the trial. Here we are statutorily asking the judge to conclude that the consent has not been given. The burden of discharging of onus on an accused even under Section 105 has not been as heavy as it is now in this Bill. If the accused is able to substantiate on the basis of preponderance of probability, then generally he is given the benefit of doubt. Here also a proviso may be added giving discretion to the judge where considering preponderance of probability he is able to come to the conclusion that there was consent. There must be no statutory power conferred on him to come to such a conclusion. Absence of consent is a negative thing to prove. There must be direct evidence. Where there is a preponderance of probability in his favour, this statutory presumption should not come in the favour of the judge to come to the judgment.

MR. CHAIRMAN: The Indian Penal Code was drafted 100 years back. Many amendments have been made in the Code according to the need of the society. But the main Code has not been changed. You are well aware that a number of decided cases are also reported by High Courts and Supreme Court where presumption is not there. In certain cases corroboration was sought even when there was no chance of oral evidence.

SHRI E. AYYAPU REDDY: The Supreme Court has made it quite clear in a given case that the judge can act on an uncorroborated statement of the prosecutrix also.

MR. CHAIRMAN: Here at least by way of rule of prudence at the time of forming their opinion they must satisfy their conscience. To that extent they require corroboration. But you know that the Supreme Court has said in that case that without corroboration they may also convict the person. Here presumption is not drawn in all cases. It is drawn only where the persons in authority are involved. The lady may not have any external injury. In the absence

of attending circumstances, it may perhaps be difficult for the lady to prove that she has not given consent. That is a negative position.

SHRI E. AYYAPU REDDY: Where the prosecutor is able to prove that the person in authority had a sexual intercourse with the person who was in his hands, then the burden must be shifted on to the accused to prove that it was with her consent.

MR. CHAIRMAN: Only proving of consent and not the guilt!

SHRI E. AYYAPU REDDY: If the burden shifts on to him—with her pre-consent sexual intercourse could take place....

MR. CHAIRMAN: You agree that this presumption should be there.

SHRI E. AYYAPU REDDY: I have added "intercourse by the accused".

"May presume" shall serve the purpose instead of "will presume".

"Intercourse by the accused if proved" and "May presume".

I just want to draw the attention of the Members to a case quoted by Taylor. It is at page 57 of Edition XII.

"A girl falsely came up with a charge of rape. She finally admitted that her story was fabricated in order to convince her boy friend that she was an object of desire to them.

This is the other side of the picture also.

MR. CHAIRMAN: Here a person in authority is involved in such a criminal case. The punishment is very heavy. Therefore, the officers concerned expect the best possible proof i.e. the highest standard of proof should be there. Unless there is highest standard of proof, you cannot hang the cat.

SHRI E. AYYAPU REDDY: The heinous offence, the greater punishment, the stricter the proof.

MR. CHAIRMAN: §76A, B, C: There also if sexual intercourse is proved then they cannot escape the punishment. If that is so, why do you want to have 'Presumption' which demoralises the officers for such a charge. They urge upon us to delete 'presumption'.

SHRI E. AYYAPU REDDY: The principle is merely put in black and white. It is already there. The principle which has already been enunciated by 111A is already there in practice. But, where the prosecution is able to prove that an intercourse by the accused in his custody takes place and she says 'no', it is without her consent, then the proof shifts. If we substitute the word 'shall' by 'may', it will be perfectly all right. It is not in any way going to discriminate between these people. It cannot be struck down on the basis of Article 14.

MR. CHAIRMAN: But, some of the Women's Associations were very much afraid of deletion of the word 'shall' because the trend, according to them has been developing among the trial judges,—for 'may' and not 'shall'.

SHRI E. AYYAPU REDDY: My experience at the bar was for thirty years. The judge is always favourable to the victim unless the accused proves his innocence in rape cases. That has been practically my experience. The judge has got a lot of sympathy for the victim.

MR. CHAIRMAN: The statistics collected from each state show that chances of acquittal are more than the convictions. They attribute that this as the main cause for the acquittal. What have you got to say to this?

The magistrates or judges have developed certain notions. While appreciating the evidence, they form

their own opinion and they give the benefit of doubt to the accused even in such heinous cases of rape. There are more cases of acquittal than the convictions. Therefore, there should not be any distinction. The magistrate in such cases expressly indicates where a woman is a victim, that some conviction must be there. The present Bill before us is the outcome of the atrocities committed on the women.

SHRI E. AYYAPU REDDY: The object is laudable. At the same time, we cannot disturb the fairness of a criminal trial. It is essential that the persons involved in criminal cases must have a reasonable opportunity of proving his innocence. That has been the accepted principle. Of course, we have been trying to get over this principle. As a matter of fact, very recently, we conducted an all-India Bar Council's seminar here on Criminal Trial cases. I gave the Inaugural Address and there too I said that the principle of giving the benefit of doubt to the accused required to be re-examined. So, a new thinking is going on in that. At the same time, we must not, in our anxiety, to put certain clauses, unnecessarily curtail the discretion of the judge. After all, it varies from judge to judge. Under Sec. 105 of the Evidence Act, there is presumption. In spite of that, some of the judges are freely making use of provision of giving the benefit of doubt to the accused. There are judges who are balanced and there are judges who are unduly harsh. These two types of judges have been there from the beginning.

MR. CHAIRMAN: I fully agree with you on that.

SHRI E. AYYAPU REDDY: What I think is that the ends of justice will be well served if we substitute the word 'may' in place of the word 'shall'.

MR. CHAIRMAN: We have followed the legacy of British. Now we are in a new era. Our Indian culture and tradition will have to be maintained

by imposing severe penalties. In that context, what have you got to say? Should we retain the word 'shall'?

SHRI E. AYYAPU REDDY: If there is the word 'shall', the judge will say that he is not prepared to accept. Nonetheless, there are circumstances in which the accused may disprove it in rebuttal stage.

MR. CHAIRMAN: You have no objection; if we make a change to the provision, namely from the word 'shall' to 'may', there is no possibility of conviction. The accused will go scot-free in that case. That is what the people apprehend. What is your reply to this?

SHRI E. AYYAPU REDDY: I think there are apprehensions. Why not we delete this?

SHRI AMARPROSAD CHAKRABORTY: I think you have gone deep into the matter. You are a valuable instrument to us and you are a material witness to us. You said that the FIR comes under the category of public documents. Is it really coming under Sec. 74? The same discretion is given to a public document and it is given to the accused and not to any other outsider. On the question of publication of news, I have a question to ask. Take the case of Chaubi Rani of Orissa. If there had been no publication at all, we would not have taken cognisance of it. Let me put my question in this way.

If the publication is allowed to be made with the prior permission of the court, what is your opinion? The only thing here is that the ban is only to the publication of the name of the victim. There is no total ban as such on the publication. What do you say to this?

SHRI E. AYYAPU REDDY: Actually, as it is, the first information report with reference to a cognisable offence is a public document having regard to other provisions of the Criminal

Procedure Code. Unless the name of the accused is published, how can you arrest him? Is it the intention that only the Investigation Officers must have the right to know the name of the accused and no other person. Unless the first information report is a public document, the society as well as the citizens would not know who is innocent and who is accused. There is nothing wrong in the First Information Report being published by the press. It is a public document.

SHRI AMARPROSAD CHAKRABORTY: The women organisations have suggested suppose the name of a girl who is raped at the tender age is published, then her whole career is at stake.

SHRI E. AYYAPU REDDY: Suppose an offence has been committed in my presence, it is my duty to go and report the matter to the police. In cases of rape we shall say that no citizen shall go and report the matter to the police. Therefore, it is essential that any citizen must go and inform the police that such and such person has committed the crime and such and such person has committed rape. So, there is no reason why we should maintain secrecy in this case.

MR. CHAIRMAN: Now, in regard to the publication of this matter in the press, do you have any objection?

SHRI E. AYYAPU REDDY: If it is not published, every citizen will not know what has happened. Generally the press report giving that such and such offence is alleged to have been committed and so and so person is alleged to have committed the crime according to the information given in the police station. Nothing is going to affect the part concerned. My submission is that in this Explanation, in the exemption clause, we should include the First Information Reports and other Panchnamas which are registered in the police station and all the documents in the Court. Publication of all other documents must not be allowed.

SHRI AMARPROSAD CHAKRA-BORTY: One opinion has been expressed by some women's organisation that the name of the victim should not be published.

SHRI E. AYYAPU REDDY: They probably do not know that it is not to their advantage.

SHRI AMARPROSAD CHAKRA-BORTY: Under 327, there is a provision regarding the discretion of the court. We want to give the legal compulsion over the discretion of the court. What is your opinion?

SHRI E. AYYAPU REDDY: It is better we leave it to the discretion of the court because in camera trial always attracts sensationalism and more bad and incorrect news are published.

SHRI AMARPROSAD CHAKRA-BORTY: In Section 376A you have suggested change of language only. If after the words 'whoever being a public servant takes advantage of his official position and' I make emphasis on the words 'induces any woman' instead of 'seduces any woman' are put, what do you say then particularly in the presence of Section 366 of the Statute? Do you think that this comes under the definition of rape?

SHRI E. AYYAPU REDDY: That is the object of kidnapping. The present wording is enough.

SHRI AMARPROSAD CHAKRA-BORTY: About Section 111A in the memorandum submitted by the Government on the Law Commission report there seems to be difference of opinion on this section. Generally in these cases, judges are also sympathetic to the victim. There are two provisions—statutory presumption and Section 105. Still then do you suggest any amendment?

SHRI E. AYYAPU REDDY: There is on the one hand women organisations and on the other police organisations. In between I have suggested

that 'may' may be introduced to hold fair balance between the two. If 'may' is substituted, it will serve the purpose.

SHRI B. IBRAHIM: Regarding Section 376(2) (a) there is an opinion expressed that after the words 'Whoever being a police officer, commits rape' the words 'while in uniform at any place whether or not situated' should be added. What have you got to say about this?

SHRI E. AYYAPU REDDY: He will be punished under the ordinary law of the land if he takes the girl outside the local area and commits rape. Therefore, as it is, it is all right.

SHRI B. IBRAHIM: If a police man who is appointed at Pune goes to a woman in Bombay and tells her that she is required in the Police station. Believing him, she accompanies him. The police man takes the woman to a lonely spot and commits rape on her.

SHRI E. AYYAPU REDDY: Here the intention is if the offence is committed within the local jurisdiction it is quite likely that he will misuse his position and there is no protection for the woman to go and report the matter. That is why this deterrent punishment is there. If the offence is committed outside the local area, the other police has got the jurisdiction over there. They will very well arrest him whether he is in uniform or not.

MR. CHAIRMAN: He has no comments on that.

SHRI R. S. SPARROW: First question is with reference to 111A. The statistics show that in this type of cases the accused go unpunished in the majority of cases all over India. In that context we have to frame our views and then implement.

Our jurisprudence and our Act in this case is based on British system. Now we have to fit ourselves into the

situation as it obtains all round. As I said earlier, majority goes unpunished. So, we have to put ourselves to think how to bring about deterrent measures.

Talking about the British, what they may be doing in the way of implementing law, it is not easy for them also to punish. As opposed to that France had a different approach. The case of rape are not that much as in Britain.

SHRI E. AYYAPU REDDY: If at all there is an apprehension that accused in rape cases are being treated differently than the other cases, I would say it is not correct. The percentage of conviction in rape cases is greater than in other criminal cases.

SHRI R. S. SPARROW: With the new type of life and things that happen all round us, which make inroads to destabilise the Indian movement as we possess, for instance to cinema songs, sexy songs, sexy shows, it is difficult to check these things. They do come in. But we have to make an effort that whenever we can plug, that must be done. Kindly tell us how to save majority of womanhood. We have to keep our eye on the rural areas where there is inadequacy of education.

SHRI E. AYYAPU REDDY: In regard to womanhood, throughout the world a number of changes have taken place. We are far better than what is taking place in the Western side of the globe. We are far better in regard to the sexual relation as compared to other Western countries. Even to serve our womanhood does not mean that these cases have to be taken unduly in their favour. It may not help us. A balanced view will always be better than having a harsh view.

With regard to changes in criminal law and criminal jurisprudence, I certainly agree that we have to bring about a change and we have to give up some of these ancient principles

of jurisprudence of benefit of reasonable doubt.

SHRI R. S. SPARROW: Can we start with rape?

SHRI E. AYYAPU REDDY: The present section is clear about it. 'Shall Presume' or if charge is made then the accused must be immediately sent to prison. Judge has no discretion. Magistrate has no discretion. Charge is there. Where is the discretion for the judge? Woman comes and says such and such a person has raped. Intercourse is proved. Magistrate says—all right, go in prison for ten years. We are handling over the operation to the hands of unscrupulous women. In between, we must have some balance.

MR. CHAIRMAN: What he says is that there is no chance left for the discretion by the judge.

SHRI E. AYYAPU REDDY: Practically there is no other way except to accept the statement and send the accused to the jail.

SHRI R. S. SPARROW: My question is this. This is a very important question. It has been touched by our Chairman only slightly. First comes the F.I.R., then comes the investigation. So, the total case is built up right at the higher level. There are certain difficulties with regard to medical examination. In that context, with your vast experience, would you want us to speed up this?

SHRI E. AYYAPU REDDY: Medical examination in rape cases must be instantaneous. It should be done as expeditiously as possible. In criminal jurisprudence, while dealing with the case of rape, the medical examination of the victim as well as the culprit must be done as immediately as possible.

MR. CHAIRMAN: Have you any suggestion to make? Do you think that the present provisions are sufficient?

SHRI E. AYYAPU REDDY: It all depends upon the investigating officers in expediting the cases.

MR. CHAIRMAN: That is your view because there are delays. Have you any proposal to make at the stage of investigation?

SHRI E. AYYAPU REDDY: There is no proposal. All good proposals have already been incorporated. If you take our police Manual, it contains all these things like what a police officer has to do immediately in such cases.

SHRI R. S. SPARROW: You yourself said that this should be done immediately. You must have heard about the girl's modesty being outraged in rural areas. There is no immediate medical check up done in those cases. I am asking you—are you satisfied with the present arrangements?

SHRI E. AYYAPU REDDY: Let me tell you whether there is any lacuna in the present law with regard to immediate and expeditious investigation. As regards investigation, there is no lacuna. But, in the implementation of the law, there is delay. The Police Manual is explicitly clear and precise. There is no difficulty in implementation. I can only say that the State can have some special squads of investigating officers to deal with those cases.

MR. CHAIRMAN: What he wants to know from you is whether the investigation in such cases should be entrusted with the senior officers who are well versed with this or the present arrangements will suffice.

SHRI E. AYYAPU REDDY: So far as investigation is concerned, it is always done by a senior officer. He is made responsible. In practice it is the S.I. and head constables who make the investigation. Of course, there is nothing which prevents us from compelling our senior officers to go to the court and give evidence.

MR. CHAIRMAN: Do you want statutory provisions under the act itself?

SHRI E. AYYAPU REDDY: Not necessary.

SHRI BAPUSAHEB PARULEKAR: We are thankful to you for having given us your valuable suggestions after having given a deep thought to this. As regards 111A—let me restrict myself to the points so far not touched by my colleagues—there is a controversial proviso. The words there are 'the court shall presume'. The problem was posed by the social workers and representatives of various bodies. You will agree with me that on the question of consent, in rape cases, it is within the special knowledge of the accused. If that be so, then 111A is not necessary. There is a provision in law which makes it incumbent on the accused to prove that particular fact. It is not discretionary. The illustration given in the Evidence Act is about a person charged with the travelling in trains without a ticket. Therefore, it is not for the prosecution to prove this. Read Sec. 106 of the Indian Evidence Act. It is very clear. This is within the knowledge of the accused person and so the burden of proof of that fact is on him. As you rightly said, if the consent in a rape case is a fact, it is within the knowledge of the accused. So, it is for the accused to prove that it is not so. Where is the question of shifting of burden. This controversy can be solved by adding one more explanation to 375, that is, Explanation 3. The consent under Sec. 375 can be treated to be a fact under 106 of the Evidence Act. If 111A is deleted, the accused will have to prove the burden mandatorily. Kindly give us your opinion on this point.

SHRI E. AYYAPU REDDY: I have already expressed my view. If you substitute the word 'may', the present section will clarify it.

SHRI BAPUSAHEB PARULEKAR: My submission is this. You say that

Sec. 111A should be deleted straightway. Instead, the provisions of Sec. 106 should be there in order to see that there is no ambiguity.

SHRI E. AYYAPU REDDY: Whether the consent has been given or not, it is within the special knowledge of the victim. It is her mental condition but it is not the mental condition of the accused.

SHRI BAPUSAHEB PARULEKAR: Kindly consider the words in 106. They do not mention that it is within the knowledge of the accused only. The consent in my view will be known to the prosecutrix as also to the accused.

SHRI E. AYYAPU REDDY: In this case, the consent or absence of consent is within the knowledge of the prosecutrix as also the accused.

SHRI BAPUSAHEB PARULEKAR: So, 106 does not apply to this, according to you.

SHRI E. AYYAPU REDDY: Section 106 applies because on account of the peculiarity of this case. It is within the knowledge of two persons, not one person. Therefore, it is considered that she has given her consent.

SHRI BAPUSAHEB PARULEKAR: So, 106 refers to the proving of positive act, not negative act. Don't you think that 106 covers this and would you suggest a provision to be included in this Bill?

SHRI E. AYYAPU REDDY: I think that in spite of 106, we may have 111A. 106 by itself will not serve the purpose.

SHRI BAPUSAHEB PARULEKAR: My specific question is this. If we add Explanation 3 to Section 375 saying that the question of consent shall be treated to be an act within Section 106 of the Evidence Act. So, the controversy will go and the burden will be on the accused and it is for the accused to prove that the consent was given. The provisions under

Section 106 of the existing Evidence Act are all right. But by legislating 111A, should we say that in cases of offence of this type provisions of the Section 106 of the Evidence Act would be applicable?

SHRI E. AYYAPU REDDY: I do not think that the women's organisation will agree with our interpretation of 106.

SHRI BAPUSAHEB PARULEKAR: In your evidence you referred to Section 105 that is, about the burden and you said that the provision under Section 105 is sufficient. Now, we are making provisions to the Evidence Act.

SHRI E. AYYAPU REDDY: I did not say that Section 105 will be applied. I quoted the similarity.

SHRI BAPUSAHEB PARULEKAR: So, according to you, it is not acceptable to you. Then coming to the Section 111A, I think it applies to certain categories. That does not include the offence of rape of a pregnant woman. Don't you think that it should be made applicable to such women. In the case of a pregnant woman, there are chances of abortion. So, it is a serious offence. Therefore, in view of this, don't you think that this also should be included in the presumption of rape?

SHRI E. AYYAPU REDDY: According to me it may not be included.

SHRI BAPUSAHEB PARULEKAR: In Section 375(2) you wanted that the wordings should be maintained. Don't you think that the public servants are not made punishable with reference to offences of this type in so far as their subordinates are concerned? Sometimes the victims are kept in the custody of the subordinate officer. In this case, he takes undue advantage and rapes her. Therefore, don't you think that here 'subordinate to him' should also be included? Why should it be only in

the 'custody'? Don't you think that the word 'custody' should be removed?

SHRI E. AYYAPU REDDY: Men and Women are working hand in hand in many places.

MR. CHAIRMAN: Here 376(2)(b) refers to women in custody. Public servants refer to Section 21 of the definition of the Indian Penal Code. All people will not come in custody. There are so many categories upto 21st and 22nd definitions. Custody comes only on two occasions. After arrest, there is the question of custody. But in minor cases, there will be a custodian and it comes under custody. And in other case the question of custody comes. With regard to the Section 21, we would like to have a public servant instead of others. It must be restricted. The man takes additional burden on him and he is a trustee. So, custody has a special trusteeship special confidence, special duty and responsibility.

There are many categories of people. For them there may not be any custody. There may be some possibility of interpretation of the legislation.

SHRI E. AYYAPU REDDY: It comes under the section of ordinary law. It will not be consent.

SHRI BAPUSAHEB PARULEKAR: About printing and publication etc. assuming for a moment that a journalist takes a copy of the FIR, do you mean to say that he should be given the right and liberty to print and publish the entire FIR including the name of the victim?

SHRI E. AYYAPU REDDY: Yes

SHRI BAPUSAHEB PARULEKAR: Do you consider it necessary that the name of the victim should be published?

SHRI E. AYYAPU REDDY: Now you want to make it much more worse.

SHRI BAPUSAHEB PARULEKAR: Will it not affect the victim?

SHRI E. AYYAPU REDDY: If her name is published, then there will not be any suspicion on other ladies. It will help the public at large.

SHRI BAPUSAHEB PARULEKAR: About Section 228A, suppose a women organisation gets an information about rape and they lodge an FIR, lodging of the complaint would attract this section. That would make the problem more difficult.

SHRI E. AYYAPU REDDY: Yes. Something will have to be thought about it.

SHRIMATI SUSEELA GOPALAN: Many murder cases go in acquittal. So also only a few rape cases go in for conviction. But there is a difference between the two. In a murder case you are killing a person. But here the whole life of the victim is ruined. Nowadays, the number of rape cases are increasing. Suppose, the judges are given the option of 'may', what will happen then?

SHRI E. AYYAPU REDDY: Not only that, the entire criminal law requires a review. That is educating the mind of eminent jurists.

Very recently, we had workshop on Criminal Law.

I quote from Krishna Iyer—

"The situation is grave because of the alarming escalation of young crime, white collar crime and drug crime, big money crime, political crime and quasi crime, shakes man's faith in the rule of law. The jurisprudential dogmas of the quiet past are no longer adequate to the crime explosion of the stormy past. Criminologists, penologists, psychiatrists and jurists and politicians have to

discover the new frontiers of the law and law enforcement, forsaking the cherished notions that served well in simpler times."

There is re-thinking with regard to the entire criminal jurisprudence. Those principles of benefit of doubt, etc. Justice Iyer has said "They are the sacred cows".

"May" itself can be construed as "Shall". The difficulty is, even if you put "Shall" or "May", it all depends upon the judge.

I submit my views on Criminal Law Amendment Bill to the hon. Committee in writing.

SHRIMATI SUSEELA GOPALAN: If the name of the girl is revealed, her future is doomed. Sometimes, it is the other way round. I will give an instance. In my own town, there is a College for Women. An unfortunate girl was raped. Every girl in that college became a suspect. Every girl was saying that she was not the person concerned. Secrecy instead of helping the victim may damage others.

SHRI S. W. DHABE: What is the incident of rape for the last two years? How many cases of rape have been committed by the Police Officers.

SHRI E. AYYAPU REDDY: We do not have statistics.

MR. CHAIRMAN: Please call I.G.P., if he is available.

SHRI S. W. DHABE: Enquiry Commission was appointed in Ameerzabi case by the Andhra Pradesh Government.

MR. CHAIRMAN: Copies of the Report have already been submitted by them.

SHRI S. W. DHABE: Section 228A—It is a negation and makes a sort of restriction on the press. Should it be done away with?

307LS—18.

SHRI E. AYYAPU REDDY: I agree with you. On the same principle, we have to prohibit the exhibition of rape scene in cinemas.

SHRI S. W. DHABE: Under 377, punishment is provided for gang rape. Would you like the death sentence to be imposed on any of the offences enumerated under 377?

SHRI E. AYYAPU REDDY: The judges have differed on the death sentence. It is not necessary to provide death sentence in the Bill.

SHRI S. W. DHABE: I would like to know if there is any provision for rehabilitation of rape victims or if there is any legal aid programme for the help of the prosecutrix in the criminal trial in Andhra Pradesh.

SHRI E. AYYAPU REDDY: Some years ago what we used to do, was that whenever there was a rape on a girl or a woman belonging to the scheduled caste community, we gave compensation to the tune of Rs. 1,000 immediately. We found that this was being misused. It is all right if you provide for the rehabilitation assistance in deserving cases statutorily.

MR. CHAIRMAN: The question is: whether legal aid provision should be made in this Bill?

SHRI S. W. DHABE: Legal aid to the victims.

SHRI E. AYYAPU REDDY: It is not necessary.

SHRI S. W. DHABE: The word 'shall' may mean 'may' and the word 'may' mean 'shall'. Is there any harm in keeping the word 'shall'?

SHRI E. AYYAPU REDDY: It all depends upon the trial judge.

SHRIMATI GEETA MUKHERJEE: I was very carefully listening to the Law Minister's arguments. Clause 111A has become very controversial. What we have seen is that many advocates are particularly unnappy

over Sec. 111A and it has become very controversial. Of course some are in favour of it. There is a difference among the Home Secretaries of different States and Law Secretaries of different States. What I am trying to say is that a set pattern is not being followed. I do not have the records. I am quoting from memory. When you were confronted with the arguments, you said that this would lead to injustice to the accused.

Then came another set of arguments; when confronted with the other idea that unless the presumption is not there, unless the word 'shall' is not there it would lead to injustice to the victim. If I am not correct, you may correct me.

The onus of responsibility to prove consent is open to various interpretations. I am not a lawyer, I am only a layman. I am more and more convinced of this. Don't you think that the word 'shall' should be put in so as to put an end to the various interpretations, particularly, when there is a possibility of controverting that in the court?

SHRI E. AYYAPU REDDY: Let me clarify this. The principle of burden of proof is a subtle subject in criminal jurisprudence. It is like a Tennis Ball which will never remain in one court. If I throw it to your court, you may send it back to my court. If it is a case of shifting. It is for the prosecutrix to prove and for the accused to disprove it. This will go on shifting. The man who sits above is the umpire, the judge, has to decide it. If it is put in statutorily, then you have to accept this willy-nilly. What I am trying to say is that you do not unnecessarily curtail the discretion, the wisdom of the trial judge. After all the people have confidence in him. The judge can do whatever he thinks to be the best. If a judge has got sympathy and if he thinks that it is not a case where he can give him ten years' imprisonment, he can find some excuse to go against such a provision. I say that

this enactment has not served the purpose because, in some cases, the judge will try to do justice according to his own conscience. So, I say from my experience that the judge must have the discretion in these cases to see whether the accused has discharged his duty or not or whether the prosecution has discharged his duty or not. That is why I say that if you put in the word 'may', his discretion is not curtailed while, on the other hand, the intention of law may also be made quite clear.

MR. CHAIRMAN: Thank you, Mr. Minister.

(The Minister then withdrew)

SHRI M. N. RAO: Mr. Chairman, Sir, hon. Members, our hon. Law Minister has fairly covered all the points.

So far as Section 375 is concerned, I want to make a suggestion under the sixth description. It reads like this:

"Sixthly—With her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him of any stupefying or unwholesome substance...."

Here after the words 'unwholesome substance', would it not be proper to insert the words 'disease or infirmity'.

MR. CHAIRMAN: Unless there is a mental derailment, every woman is presumed to be conscious of her act.

SHRI M. N. RAO: After words 'unwholesome substance', I would like to suggest that the words "or due to any disease or infirmity" may be added. Further it reads like this, "she is unable to understand the nature and consequence of that to which she gives consent, or is unable to offer effective resistance". I would suggest deletion of the words "effective resistance". My submission is that effective is one step higher than the

ordinary resistance. A man can fight effectively. Effective fight means one puts forth every inch of his strength. Effective resistance might be interpreted in a different way.

MR. CHAIRMAN: You mean 'resistance' should be sufficient.

SHRI M. N. RAO: Yes, Sir. Then Section 376C reads as follows:

"376C. Whoever, being concerned with the management of a hospital....."

Here after the word 'hospital', you may consider inclusion of words "as an in-patient or out-patient or any other woman or accompanying such a patient".

On the question of awarding sentence, that is, regarding 376A, 376B and 376C, my submission is that so far as the punishment is concerned, it is better to have minimum punishment instead of providing maximum punishment. I do not know whether it would not be more effective if we incorporate minimum sentence.

MR. CHAIRMAN: What do you want to suggest here?

SHRI M. N. RAO: In the last line of Section 376A, in place of "which may extend to five years" you may consider the term "shall not be less than three years".

Now, so far as the plea of the accused is concerned, it is really an intricate aspect. It was problem which was faced by the British Government in 1935. Then the House of Lords said "if the accused pleads that he believed that the lady had given consent and if the belief is based on mistaken belief which has been entertained by the accused based on reasonable grounds that the victim has given a consent, would that be a valid plea for acquittal?" So, my own fear is that in the context of the policy of the Government, if you make this a very deterrent one, then the same thing might follow.

MR. CHAIRMAN: When the Central Government is thinking of shifting the burden of proof, then where is the question of *bonafide* consent?

SHRI M. N. RAO: It requires greater examination.

SHRI JAYAKAR JOHNSON: With regard to strengthening of the measures about medical examination of the victim, in our State there are a large number of primary health centres in rural areas. There the doctors are not allowed to take up legal cases.

MR. CHAIRMAN: Will it be feasible if a family doctor accompanies the victim?

SHRI JAYAKAR JOHNSON: We have to examine it and then necessary instructions will be given.

MR. CHAIRMAN: What are your difficulties about investigation?

SHRI T. PONNAIYA: The general experience that we have is that there is considerable delay in reporting the offence. First there is quite a delay in the family of the victim itself. As per old practice, they sit together in panchayat and try to decide it. This type of delay destroys the medical evidence. Then a lot of pressure is put on the victim and on the police. Secondly, it is quite possible that the SHO of the rank of SI is not always available. Now in our State all rape cases are considered as grave crimes where gazetted officers have to go and investigate. This has been there for the last 4 or 5 years.

MR. CHAIRMAN: In how many cases was there conviction and in how many cases was there acquittal even though effective steps had been taken by the Police Department?

SHRI T. PANNAIYA: In 1960, 186 rape cases were registered. 100 cases have been charge-sheeted in the court of law. 15 cases ended in conviction, 53 ended in acquittal and 80 are pending trial.

MR. CHAIRMAN: How many of them are against Police personnel?

SHRI T. PONNAIYA: Two or three. I want to report a particular case. A woman was raped by the village elder. She came to the police station for lodging a complaint. It was alleged that the SI also raped her. This case got a lot of publicity. The Committee of Mahila Mandli came and met me. I got that officer suspended. Then the village elder managed things with the victim and he got himself acquitted. But we dismissed the SI for not registering the case. We are examining as to what more we can do against him.

When a rape is committed on SC and ST woman, even the SP and the Collector go and verify the investigation done.

MR. CHAIRMAN: Who will do the investigation?

SHRI T. PONNAIYA: SI.

MR. CHAIRMAN: Verification is different from actual investigation.

SHRI T. PONNAIYA: The Gazetted Officer who has got three or four circles to manage need not be called to the court. We can get Confidential Grave Crime Report.

For any comment made in the court, we punish our subordinates.

MR. CHAIRMAN: Are you agreeing with 111A?

SHRI T. PONNAIYA: We had a combined discussion. Suggestions were also mine as have been given by Shri Rao.

MR. CHAIRMAN: This 'presumption' will arise only where Police Officers are involved.

SHRI T. PONNAIYA: I had suggested "shall" be amended to "may".

SHRIMATI GEETA MUKHERJEE: In the case referred to by the Women Organisation with representation to a

village pradhan, how long did you take to suspend this Officer?

SHRI T. PONNAIYA: I suspended him the next morning.

SHRIMATI GEETA MUKHERJEE: How much time did it take to register the case?

SHRI T. PONNAIYA: We thought if we are going to waste time on the rape charge, the fellow will escape. Because the case was not registered, we suspended him. We also took further action.

SHRI S. W. DHABE: What further action did you take?

SHRI T. PONNAIYA: Medical examination.

SHRI S. W. DHABE: Have you got women Police Officers?

SHRI T. PONNAIYA: We have sub-inspectors in the city. Posts have been created in large towns. We have, not yet recruited them.

SHRI BAPUSAHEB PARULEKAR: Law Secretary said if an accused reasonably believes that the consent was given by the prosecutrix he should be acquitted.

SHRI M. N. RAO: Mistaken belief based on reasonable grounds could be a valid ground for acquittal.

Two cases were decided in England. The first case was—the husband of the prosecutrix took with him three persons to his house for raping her. They could have sexual intercourse with his wife. Believing his version—he also told them that she might pretend that she was resisting. But it was only pretence. Therefore, they could have her. These three persons went to her, woke her up and in spite of resistance, all the three people had sexual intercourse.

The question that came up for consideration was if mistaken belief was entertained as was given by the

accused, based on reasonable ground that the victim had given her consent, could that be a valid plea for acquittal?

Following this, the court on appeal acquitted one accused.

For this also the facts are like this—Husband took one of his friends to his house that he could have sexual intercourse with his wife. The same thing he said—even if she resists you do not believe that it was resistance. It could be pleaded that she was not resisting. The husband was convicted but this man was acquitted.

SHRI B. IBRAHIM: 375: It is regarding 'misconception'. Will it be more appropriate if we use "mistake of fact"?

SHRI M. N. RAO: Off hand I cannot say. I have not examined it.

श्री जिलीक चन्द : मैं यह जानना चाहता हूँ कि गांवों के लैंड लॉर्ड्स, सरपंच, प्रजान या जो दूसरे बड़े लोग हैं और जो गैड्यूल्ड कास्ट या दूसरी ऐसी जातियों की औरतों के साथ, अनैतिक व्यवहार करते हैं, उन को 376 में जोड़ा जाए या नहीं ?

SHRI M. N. RAO: I think the word 'public servant' by itself today connotes something which is wide enough—it not only includes government servant but also some more people.

MR. CHAIRMAN: My hon. friend's question was whether landlords and the employers could also be included under the term 'public servant'.

SHRI M. N. RAO: That would certainly be good.

श्री राम चन्द्र भारद्वाज : सिर्फ लैंड लॉर्ड्स को ही इस में जोड़ा जाए या जो बड़े बड़े इन्डस्ट्रियलिस्ट्स हैं या धर्मन

एरियाज में दूसरे एम्प्लॉयर्स हैं, जिन के यहां महिलाएं एम्प्लॉयड हैं, उन को भी इस संवधान में जोड़ा जाए या नहीं इस के बारे में आप की क्या राय है ?

SHRI M. N. RAO: I personally feel that whoever is under duress and, under whatever circumstances he may be or whoever may be his relation, that should also be included here. Under 376A, B and C somebody is coming to you for a remedy. You are further hurting them by adding police officer/or hospital superintendent or principal or superintendent in the Jail. These three sections seem to cover this aspect also. If somebody, already hurt, is coming to you for a remedy, why are you further inflicting a sort of atrocity on him? If the Committee feel that this should include such relations also, then, I am one for it.

श्री हुसैनबेग नारायण यादव . मैं विधि सचिव से एक सवाल पूछना चाहता हूँ और वह यह है कि भारत का संविधान यह कहता है कि जो कानून बनाया उस में निग भेद नहीं वर्ता जाएगा और देश भर में सब को समान न्याय मिलेगा लेकिन यहां पर जो 'प्रिजमपेशन' का सवाल है, उस में कानून ऐसा बनाया जा रहा है कि आदमी अपराधी होगा ही क्योंकि "गल प्रिज्यूम" लिखा गया है।

SHRI M. N. RAO: Whether the discrimination on the ground of sex is constitutional or not, my submission is that under the provision of Art. 15(4), there is a special provision. In the interests of women, that special provision could be made. On that ground, certainly, we can uphold the validity of the law. We should put an end to this kind of social evils.

श्री हुक्मदेव नारायण यादव : मैं एक सवाल एडीशनल आई. जी. पी. साहब से करना चाहता हूँ जोकि पुलिस के बारे में है। 376 में जो पब्लिक सर्वेंट्स हैं, उन का नाम लिया गया है और उस में पुलिस वाले भी हैं। मैं उन से यह जानना चाहता हूँ कि क्या उन के सामने ऐस एगजांपल्स आए हैं कि जो शहरों में महिलाओं का व्यापार करने वाले हैं, ऐस लोगों को जब पुलिस पकड़ने के लिए जाती है, तो बेलाग पुलिस को डीमोरेलाइज करते हैं और महिलाओं का इस्तेमाल कर के पुलिस को ऐस लोगों को पकड़ने में परेशान करते हैं और उन के सामने बाधा पैदा करते हैं।

SHRI T. PONNAIYA: I have not understood this.

श्री हुक्म देव नारायण यादव : मेरा सवाल यह कि कुछ, ऐस लोग है जो बड़े बड़े शहरों के अन्दर लड़कियों को रख कर अर्बेज रोजगार करते हैं। उन को काल गर्ल कहा जाता है और उन से ऐसा धंधा कराया जाता है। जब पुलिस ऐस लोगों को पकड़ने के लिए जाती है, तो इस में जो एक धारा भी हुई है उस का प्रयोग कर के पुलिस के खिलाफ एक वातावरण बनाया जाएगा कि पुलिस रेपिस्ट है और उस के कारण पुलिस के अन्दर एक डीमोरेलाइजेशन आएगा और वह ऐसे लोगों को पकड़ने में हिचकिचाएगी। घाप क्या यह समझते हैं कि इस तरह को धारा इस बिल में रहनी चाहिए ?

SHRI T. PONNAIYA: I think, the question, as I understand it, is like this. There is a provision of Sec. 376A. His question is—would it effect the effective performance of the police when the police officers themselves are committing similar crimes. That is the question I believe.

MR. CHAIRMAN: No, no. What he wants to say is that some of the people who are dealing with women have a sexual intercourse with a prostitute. They do that in collusion with the police according to him. In that case, whether such police officers are also covered under this provision or not. That is his question.

SHRI T. PONNAIYA: The people allege that the police officer in charge of an area where the prostitute lives or where brothel is kept is himself hand in glove with them. They collect more money from them and so they are not taking action against them. They may use the women who are brought for the purpose of prostitution. This particular Sec. 376 is all right. This cannot cover the cases where the woman is not actually in the hands of the police officer. During investigation or otherwise. I do not think this would cover that also.

MR. CHAIRMAN: What is your suggestion?

SHRI T. PONNAIYA: If a sub-inspector of police is going to have an intercourse with a prostitute taking advantage of his position, then, he would be covered under this section. It is a question of fact in each case. We have to see whether we are able to establish this fact, if he does it within his jurisdiction. This section is all right if the act is done within his jurisdiction. This cannot be made use of if the act is done outside the jurisdiction.

SHRI JAYAKAR JOHNSON: Well, I think, it is slightly hypothetic because we have not yet put this in practice. But I think it may have an effect. At the same time, the effect will be reduced in one sense that when a S.I. conducts a raid on a brothel house, it is not an ordinary S.I. but he is a gazetted officer. Therefore he goes along with the respectful witness. So, it is not quite easy for somebody to make allegation. The

chances of allegation will be less. Then the question is perhaps that we have to choose between the lesser of the two evils.

SHRIMATI GEETA MUKHERJEE: You have suggested inclusion of certain categories in the Explanation, in the case of persons raped under medical custody. Of late a number of rape cases are occurring among the nurses. In the case of nurses, though they are not coming under this Section, they are very much subordinate to the doctors. Do you think that they should also be included in this Section?

SHRI M. N. RAO: It is a policy matter.

MR. CHAIRMAN: Do you want to include any other relations under this Section?

SHRI JAYAKAR JHONSON: I think I have already stated that I would like no such relation to be included.

MR. CHAIRMAN: I want to know from you whether you have come across any such instance in Andhra Pradesh.

SHRI JAYAKAR JOHNSON: No. But I am in favour of inclusion.

MR. CHAIRMAN: Thank you very much.

(The Committee then adjourned at 13.10 hours and reassembled at 15.00 hours).

II—*Dilsukh Mahila Mandal, Hyderabad.*

Spokesmen:

1. Shrimati Yamini Chowdary.
2. Shrimati Jamalunnisha Begum.
3. Shrimati Gayatri Devi.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

what do you want to say about the Bill?

श्रीमती जमालुन्निशा बेगम : सब से पहली बात तो मैं यह कहना चाहती हूँ कि ऐसे मामलों में जो ट्रायल हो, वह इन केमरा होना चाहिए। जिस औरत के साथ रेप किया गया है, उसका नाम न छपाया जाए बल्कि जिसने यह जर्म किया है, उस के नाम की पब्लिसिटी होनी चाहिए। इस के अलावा उस को हर तरह की प्रोटेक्शन दी जाए क्योंकि उस को डराया जाता है, धमकाया जाता है। जो बयान वह पहले दे चुकी है, उस को बदलने के लिए उस को डराया जाता है, धमकाया जाता है और कई जगहों पर रिश्बत भी दी जाती है। ऐसा कोई रास्ता निकाला जाए, जिस से ऐसी चीजें न हों और वह अपने बयान पर कायम रहे।

दूसरी बात मैं यह कहना चाहती हूँ कि अगर उस को कोई इजरी पहुंचती है, तो गवर्नमेंट उस का मदद करे।

तीसरी बात यह कहना चाहती हूँ कि हमारे यहां रबीजाबी का केंद्र हुआ था और उस के लिए स्टेट गवर्नमेंट ने एक कमिशन बैठाया था लेकिन उस का

जब केस चला तो वह वहां न चल कर मिश्र में हुआ। इसलिए मेरा कहना यह है कि जहां पर केस होता है, वहीं की अदालत में मुकदमा चलना चाहिए। जो कमीशन बीठा था और उस ने जो रिपोर्ट दी थी, उस में जो सारी चीजें आई थीं, उन पर कोई गौर नहीं किया गया। लड़की को बाद में बहुत धमकाया गया और उसने अपना बयान बदल दिया। इसलिए मेरा कहना यह है कि केस को ज्यादा लम्बा न खींचा जाए और जल्दी से जल्दी केस को निपटाया जाए। इस के अलावा एक्ज्यूटिव पर यह भार डाला जाए कि वह यह प्रबुध करे कि उसने यह जुर्म नहीं किया है। जिस पर जुल्म किया गया है, उस पर वह साबित करने का भार नहीं डालना चाहिए कि उस के साथ ऐसा बुरा काम किया गया है।

मैं यह भी चाहती हूँ कि अगर किसी महिला को कोई इजरी पहुंचती है, तो सरकार उस की पूरी तरह से हैल्प करे।

समापति महोदय : आप का मतलब है कि उस को कम्पेनसेशन मिलना चाहिए?

श्रीमती जमालुन्निसा : जी, हां।

तफसील से इस टाइप किये हुए नोट में लिखा है कि क्या क्या कानून में तब्दीलियां होनी चाहिए। मैं इस बात पर जोर देना चाहती हूँ कि कई कई वर्षों तक जो केस चलते रहते हैं, उन के कारण मुजरिम की हिम्मत बढ़ जाती है। पहले तो हम लोगों में पर्दा बहुत होता था और उस से हमारी नज़रियों को काफी हिफाजत मिल जाती थी लेकिन अब पर्दा उठता जा रहा है और प्रोटेक्शन भी कम होती जा रही है। इसलिए यह जो कानून बनाया जा

रहा है, यह सख्त होना चाहिए। इस तरह के जो केसज बढ़ते जा रहे हैं, उन से हमारी सोसाइटी बदनाम हो रही है। रोजाना कोई न कोई खबर अखबार में इस बारे में आ जाती है। इसलिए इन चीजों को रोकने की बहुत जरूरत है।

आखीर में मैं यह कहना चाहती हूँ कि यह जो कानून बनाया जा रहा है यह ठीक है और जो तरमीम इस में की जा रही हैं, उन को मैं मानती हूँ उनको माना जाए।

श्रीमती गायत्री देवी : यह जो कानून बनाया जा रहा है, यह बहुत अच्छा है और मैं चाहती हूँ कि ऐसा कानून बने। इस के साथ ही साथ मेरा कहना यह है कि पुलिस कस्टडी में जो रेप होते हैं, उन मामलों में बर्डन आफ प्रूफ आफिशियल्स पर डालना चाहिए कि रेप नहीं किया गया है न कि औरत पर, जैसा कि इस समय है।

दूसरा मेरा सुझाव यह है कि रेप होने के बाद जब केस रोजस्टर्ड होता है, तो गवर्नमेंट की तरफ से उस को फाइल किया जाए।

तीसरा मेरा सुझाव यह है कि लेडी पुलिस हर पुलिस स्टेशन पर होनी चाहिए ताकि औरतों की प्रोटेक्शन हो सके। हर रेप के केस में विक्टिम को कम्पेनसेशन मिलना चाहिए और औरत का जो हैरिसेमेंट होता है, उस को रोकना चाहिए।

समापति महोदय : कम्पेनसेशन गवर्नमेंट दे ?

श्रीमती गायत्री देवी : गवर्नमेंट को देना चाहिए।

श्रीमती जयालक्ष्मिणा बेगम : मेरा ध्यान यह है कि उस घोरत को कम्पेन्सेशन जरूर मिलना चाहिए लेकिन बेहतर यह होगा कि जिस ने ऐसी हरकत की है उस से वह कम्पेन्सेशन दिलाया जाए न कि गवर्नमेंट उस को दे ।

श्रीमती गायत्री बेबी : जिस के साथ रेप किया गया है, उस के नाम को सीक्रेट रखा जाए लेकिन जिसने रेप किया है, उस के नाम को पब्लिसिटी जरूर होनी चाहिए । उस को ऐसा बदनाम किया जाना चाहिए कि आइन्दा यह रेप करने की हिम्मत न करे ।

श्रीमती दाहिनी चौधरी : मैं जो कहना चाहती थी, वे सब प्वाइन्ट्स आ चुके हैं । मैं इतना कहना चाहती हूँ कि रेप के केस में जो मेडिकल चैक-अप होता है, उस में जो देर होती है, उस को कम किया जाए और 24 घंटे के अन्दर मेडिकल चैक-अप हो जाना चाहिए और केस जो चलता है, उसको जल्दी से जल्दी निपटारा जाना चाहिए । इस के लिए स्पेशल कोर्ट्स की व्यवस्था होनी चाहिए । पब्लिक कोर्ट में आ कर घोरत अपनी इज्जत के बारे में बयान नहीं दे सकती । इसलिए ऐसे केस की कार्यवाही इन केमरा होनी चाहिए । जो साधारण कोर्ट होती है, उस में एक-दो केस लिये जाते हैं और उन में टाइम बहुत लगता है । अगर स्पेशल कोर्ट ऐसे मामलों के लिए होंगी तो दो-तीन महीनों में केस खत्म हो जाएगा । इसलिए अगर स्पेशल कोर्ट होंगी, तो इतने महिलाओं को संरक्षण मिलेगा ।

इसके अलावा मैं यह कहना चाहती हूँ कि चैक करने के लिए जब पुलिस घर पर जाती है, तो ऐसे मामलों में लैडी पुलिस बरों पर जानी चाहिए और

पुलिस स्टेशनों पर लेडी पुलिस होनी चाहिए । इस सम्बन्ध में मैं यह भी कहना चाहती हूँ कि पुलिस स्टेशन में अगर रेप किया जाता है, तो ऐसे मामलों की चैकिंग के लिए सेंट्रल गवर्नमेंट को एक टीम होनी चाहिए । वह वहाँ जा कर सारे मामलों की छानबीन करे । इतने महिलाओं को संरक्षण मिलेगा ।

जब स्पेशल कोर्ट्स की हम मांग कर रहे हैं, तो इस के लिए यह जरूरी है कि उस में लेडीज अजेज हों, तो ज्यादा अच्छा रहेगा । जब मेडिकल चैक-अप होता है, तो उस के लिए लेडी डाक्टर हों तो अच्छा रहेगा । वे ऐसे मामलों में प्रोपर रिपोर्ट दे सकती हैं । इस के अलावा मैं यह सुझाव देना चाहती हूँ कि हमारी जो महिला संस्थाएँ हैं, उन को भी प्रोबल करने का अधिकार मिलना चाहिए ।

अगर घोरत फीमिली डाक्टर को दिमान्ड मेडिकल चैक-अप से धका करे, तो उस को फीमिली डाक्टर एलाऊ करना चाहिए । अभी उस को अच्छी तरह से न्याय मिल सकेगा । हमारी यह ग्य है कि फीमिली डाक्टर साथ में होने से गड़बड़ होने के खान्दज नहीं रहेंगे ।

श्रीमती जिजावती चतुर्वेदी : प्रायः ने कुछ देर पहले बताया था कि महिला का नाम पब्लिश नहीं किया जाना चाहिये । अभी अभी हमारे सामने ला रेफ्रेटरी प्राए वे और उन्होंने एक केस इस तरह का बताया — किसी होस्टल में किसी लड़की के साथ रेप होने के बाद अगर उस के नाम को छिपाया गया, तो उस से तो सारा काकेज ही बदनाम हो जाएगा और जिसकी भी लड़कियाँ वहाँ पढ़ती हैं, उन सब को तक की निगाहों से देखा जाएगा । अगर

उस एक लड़की का नाम छपता है, तो केवल यह बदनाम होती है लेकिन अगर नाम नहीं छपता है, तो उस का परिणाम यह होगा कि सब लड़कियां बदनाम होती हैं ।

श्रीमती जमालुन्निसा बेगम : हमने जो मतालबा किया है वह यह है कि जब कोर्ट में केस जाता है, तो लोगों को मालूम ही हो जाता है कि कौन विक्टिम है और कौन अपराधी लेकिन कोर्ट में जाने के बाद कोर्ट की तरफ से आम तौर पर लड़की का नाम पब्लिश न किया जाए । जिसने क्राइम किया है, उस का नाम जरूर पब्लिश होना चाहिए । ऐसा होता है कि कोर्ट में मामला जाने से पहले ही अखबारों में खबर आ जाती है ।

श्रीमती बिद्यावती चतुर्वेदी : प्राप ने कहा कि पुलिस स्टेशनों पर लेडी पुलिस रखी जाए । मेरे प्रॉक्स की एक घटना है, जिस में लेडी पुलिस ने खुद औरत को बड़े अपराधों के सुपुर्द कर दिया । तो यह क्या गारन्टी है कि अगर लेडी पुलिस रखी जाएगी तो हमारी बहनों की सुरक्षा ज्यादा होगी ?

श्रीमती जमालुन्निसा बेगम : अच्छे-बुरे सब जगहों पर होते हैं लेकिन हमारा कहना यह है कि कम से कम एक औरत पुलिस स्टेशन पर जरूर रहे । हमारी बहन ने जो यह कहा था कि हमारी जो रजिस्टर्ड सोसाइटीज है, उन को भी अपील करने की इजाजत मिलनी चाहिए, मैं भी ऐसी राय रखती हूँ । अगर कोई औरत अपील नहीं कर सकती क्योंकि उस डराया जाता है, धमकाया जाता है, तो हमारी जो रजिस्टर्ड सोसाइटीज हैं, उन को अपील करने की इजाजत मिलनी चाहिए ।

श्रीमती बिद्यावती चतुर्वेदी : मान लीजिए, मेरे साथ, कोई घटना घटी है और मैं केस दाखर नहीं करना चाहती, तो सोसाइटी कैसे उस केस में कामयाब हो सकती है । जब तक मैं यह साबित नहीं करूंगी कि मेरे साथ इस तरह का जुल्म हुआ है और मैं ऐसा बयान नहीं दूंगी, तो सोसाइटी कैसे ऐसे मामले में कामयाब हो सकती है ?

श्रीमती जमालुन्निसा बेगम : हमारे यहां एक केस हुआ है, जिस में सरकार ने कमीशन बैठाया और कमेटी में भी वह केस गया । दफत गुजर जाने के बाद उस औरत को डराया, धमकाया था और अब वह अपील नहीं करना चाहती है । ऐसे केस में जहां डर की वजह से कोई महिला अपील नहीं करना चाहती, अगर रजिस्टर्ड सोसाइटी को अपील करने की इजाजत मिल जाती है, तो वह अपील कर सकती है और जिस ने जुर्म किया है, उस को सजा हो सकती है ।

श्रीमती बिद्यावती चतुर्वेदी : इस में एक बात और है । मान लीजिए किसी औरत के साथ कोई घटना हो जाती है । वह गरीब है और उस के मां-बाप नहीं हैं । एक संस्था वाले उस के पास जाते हैं और कहते हैं कि हम तुम्हारा मुकदमा लड़ेंगे और उस के लिए लोगों से पैसा इकट्ठा करते हैं । बाद में दूसरी पार्टी से मिल कर थोड़ा सा बारगेनिंग कर के लोगों की सहानुभूति प्राप्त कर के केस को दबा दिया जाता है । क्या गारन्टी है कि इस तरह की बारगेनिंग कर के इस अपील के अधिकार का मित्रयुज नहीं किया जाएगा ?

श्रीमती जमालुन्निसा बेगम : चाहे जितना अच्छा कानून बना लें, इस तरह की गारन्टी नहीं दी जा सकती ।

श्री० निर्मला कुमारी शक्तावत : मैडिकल चैरुमन के समय फेमिली डाक्टर की बात कही गई है। आप जानती हैं कि हिन्दुस्तान बहुत बड़ा देश है और यहाँ पर 80 प्रतिशत आबादी गाँवों में रहती है और यहीं पर मुख्य रूप से ऐसी घटनाएँ होती हैं। क्या आप यह महसूस करती हैं कि हर गाँव में महिलाओं को फेमिली डाक्टर एवेलएबिल होगी ?

श्रीमती गायत्री देवी : जहाँ पर ऐसी फैसेलिटीज हैं, वहाँ पर जरूर इन को एवेल करना चाहिए।

श्री० निर्मला कुमारी शक्तावत : जूडीशियल सेपरेशन के समय यदि पुरुष अपनी पत्नी के साथ ऐसा सम्बन्ध रखता है, तो क्या उस को सजा होनी चाहिए।

श्रीमती यामिनी चौधरी : डाइवोर्स होने के बाद वह उस के पास नहीं जा सकता।

श्रीमती गीता मुखर्जी : जो रेप का विक्टिम है, उस को सहायता देने के लिए आप ने प्वाइन्ट उठाया है। क्या आप यह समझती हैं कि ऐसे रेप विक्टिम को गवर्नमेंट को मेन्टेन करने के लिए कुछ सहायता देनी चाहिए।

श्रीमती गायत्री देवी : उस का प्राटेक्शन होना चाहिए और उस को कुछ मेन्टीनेन्स एलाऊन्स मिलना चाहिए।

श्री० निर्मला कुमारी शक्तावत : जिस ने अपराध किया है, उस से सहायता नहीं दिलाई जा सकती ?

श्रीमती गायत्री देवी : अगर उस से सहायता दिलाई जाए, तो ज्यादा बेहतर होमा वनिस्वत गवर्नमेंट के।

श्री काजी सलीम : इन्कवेस्ट कर के अगर बड़े लोगों को फंसाया जाता है, तो क्या इन लोगों को कोई संरक्षण मिलना चाहिए।

श्रीमती यामिनी चौधरी : जहाँ पर ऐसे केस हों, तो उन लोगों को संरक्षण देना चाहिए।

सक्षयति महोदय : बैंक यू।

(The witness then withdrew)

III.—Association of Democratic Lawyers Spokesman.

Shri Manohar Lal Saxena

(The witness was called in and he took his seat).

MR. CHAIRMAN: Before we proceed may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

I think you have gone through the Bill. On what points do you want to emphasise?

SHRI MANOHAR LAL SAXENA: My suggestion is that there should be a separate codification for the sexual offence like those for juvenile offenders, suppression of immoral traffic in women and girls, etc. because this requires a separate procedure for investigation, form of trial, and also reforms. There should be a kind of reform for this. Otherwise this will not serve the purpose. It should not only be for giving protection from the criminals but there should also be a

kind of reforms for this. This Bill does not say anything except changing the syllabus or adding certain sections and one section which has been added is the Section 111A of the Evidence Act. When the question of investigation comes, you have to say what type of officers should investigate the offence.

MR. CHAIRMAN: According to you, there should be a separate enactment with regard to sexual offences.

SHRI MANOHAR LAL SAXENA: The investigation stage is very important. The question is how to deal with the persons and how we must see that in the society such things are not repeated. There must be a separate codification in so far as sexual offences are concerned. We have got separate codification suppression of immoral traffic in women. Why not bring forward a comprehensive Bill for crime against women in one codification? Section 111A of the Evidence Act is concerned, I think that is a very alarming situation. That will create a very alarming situation. Here we say about the consent. Merely on the statement of the woman that she has not given her consent, the accused must be held guilty. That type of presumption is not permitted under law. That will unnecessarily involve or blackmail the innocent persons on account of animosity or some family feuds or some difference. The question of consent or non-consent is a question of fact which is to be proved.

MR. CHAIRMAN: You mentioned 'not permitted by law'. What do you mean by that? Does it mean that it is unconstitutional or that the Parliament is incompetent to pass such laws?

SHRI MANOHAR LAL SAXENA: I did not say that Parliament is not empowered with the powers to do so. But I would say that this would give a handle of involving innocent persons. But the question of consent depends on facts and therefore that is to be proved.

MR. CHAIRMAN: What kind of danger you apprehend in this connection?

SHRI MANOHAR LAL SAXENA: As per the proposed amendment Bill, the statement of the lady is sufficient. If she says 'yes, I have not given my consent', this would give room for blackmailing the innocent persons.

MR. CHAIRMAN: Even supposing at present without having such a provision in the Bill, do you not expect that such cases are not arising out of political vendetta or even revengeful?

SHRI MANOHAR LAL SAXENA: With due respect I would say that you legislate laws and interpret the same thing in the court. But one thing I can say that presumption should not be given as a wholesale right by a mere statement. Criminal Procedure Code is based on saying that the case should not be deemed to be so till it is proved.

MR. CHAIRMAN: Otherwise circumstances are brought that there is a sexual intercourse and medical evidence and everything is there. If the victim says that she has not given the consent, then in that case there is absence of consent. But the presumption is that the accused has to disprove it. But that is not the case. He is not expected to disprove it. The question is only rebuttal in respect of consent. Under this you can prove the positive consent, but not negative one.

SHRI MANOHAR LAL SAXENA: Under the present state of circumstances, you know this presumption is taken only in respect of persons and not otherwise. Only in peculiar cases, this presumption is provided, but not generally. This presumption is only made applicable in respect of cases where persons in authority have been involved, not otherwise. Take the case of a Police Sub-Inspector. He, under the pretention of arresting a lady would put her behind the bars. In that case during the course of

interrogation or custody, he has so many roles to play. He is in a dominant authority and during his custody he has control on her. Then under such circumstances there is every possibility of submitting obviously to the enjoyment of the Police Officer.

MR. CHAIRMAN: In that case no external violence or resistance would be apparent. Under such circumstances if a police officer is involved in a rape case, he can easily say that it was done with the consent of that lady. What are your comments on this?

SHRI MANOHAR LAL SAXENA: The Bill contains specific provisions about sexual offences. It all depends on the basis of consent. Supposing a police officer is involved. Here he is also an accused. It will be mockery of a fair trial if the judgment is based on the presumption itself. Then where is the need for proceeding further in the case by the prosecutrix?

MR. CHAIRMAN: Prosecutrix has to prove after medical examination and after being examined on oath before the court, how that offence has been committed and how she was forcibly victimised in that case. To that extent, she is expected to prove that there was sexual intercourse without her consent. At the time of appreciation by a judge, when she says that it was done by the accused without her consent, the presumption would arise. Then he must presume that it was done without her consent.

SHRI MANOHAR LAL SAXENA: In this there is a great anomaly. First the lady will be examined. She will have to say that it was done without her consent. After cross-examination, if in the very statement in between the line her consent is visible, again in the witness box she will say that she had not given her consent. Then the whole case of the defence will be demolished.

MR. CHAIRMAN: This presumption is rebuttal in the circumstances brought by way of cross examination. There the skill of the advocate is involved.

SHRI MANOHAR LAL SAXENA: When all these things depend on the evidence and proof, why again this presumption then?

MR. CHAIRMAN: When this presumption is known to you, with this idea in mind you will go on cross-examining the witness to rebutt the presumption. Otherwise your haphazard cross examination will not help the accused.

SHRI MANOHAR LAL SAXENA: Making law stringent and then giving this kind of presumption is itself in negation.

MR. CHAIRMAN: How do you say that there will not be any fair trial?

SHRI MANOHAR LAL SAXENA: Every woman* involved in this case will come and say that she has not given her consent.

SHRI BAPUSAHEB PARULEKAR: You said that by the provision of Section 111A this presumption is to be drawn. I invite your attention to the presumption which is drawn under the Corruption Act. If money is proved to have been given to a public servant it shall be presumed that it was given and accepted as a bribe unless contrary is proved. That presumption and this presumption practically stand on the same footing. So the judge will draw the presumption at the time of writing the judgment.

SHRI MANOHAR LAL SAXENA: There is a very marginal distinction between the two.

SHRI BAPUSAHEB PARULEKAR: Here when the intercourse is proved and there when it is proved that the money is given to a public officer, the presumption is drawn.

SHRI MANOHAR LAL SAXENA:
After proving sexual intercourse, why this presumption then?

Section 375A: The word, 'rape' should be removed and 'sexual offence' should be substituted.

Word 'rape' should be retained in the two sections in which definition of rape has been given. In the remaining sections the word should be 'sexual offence'.

Section 228:

228A deals with false evidence in I.P.C.

Publication of something about the victim should not come under that heading. It should be put after 375A, B, C, D. It should be in another Section and not in 228A.

SHRI BAPUSAHEB PARULEKAR:
Do you agree to the principle?

SHRI MANOHAR LAL SAXENA:
Yes.

MR. CHAIRMAN: Do you want this in another Chapter?

SHRI MANOHAR LAL SAXENA:
There should be separate codification. In our Constitution it has been laid down that there will not be any discrimination. But, I think, we are not observing that.

MR. CHAIRMAN: What did you find?

SHRI MANOHAR LAL SAXENA:
Hon. Members know that in every State so far we had not given proper representation and proper position to our sisters, mothers, etc. Most probably they should be enlightened about their own rights. We are still treating women as house wives.

MR. CHAIRMAN: Women institutions and Social Workers should take up this task.

SHRI MANOHAR LAL SAXENA:
I am a Legal Adviser to the Indian Council of Social Welfare whose members came here yesterday. I have nothing more to add.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE OF THE CRIMINAL LAW
(AMENDMENT) BILL, 1980

Friday, the 31st July, 1981 from 10.00 to 13.30 hours and again from 15.00 to 17.00
hours in Committee Room No. 313, Vidhan Soudha, Bangalore

PRESENT

Shri D. K. Naikar—*Chairman* ..

MEMBERS

Lok Sabha

2. Shrimati Vidyavati Chaturvedi
3. Shrimati Suseela Gopalan
4. Shrimati Mohsina Kidwai
5. Shri Geeta Mukherjee
6. Shri K. S. Narayana
7. Shri Ram Pyare Panika
8. Shri Bapusaheb Parulekar
9. Shri Qazi Saleem
10. Prof. Nirmala Kumari Shaktawat
11. Shri S. Singarvadival
12. Shri R. S. Sparrow
13. Shri Trilok Chand
14. Shri V. S. Vijayaraghavan
15. Shri P. Venkatasubbaiah

Rajya Sabha

16. Shri Ram Chandra Bhardwaj
17. Shri Amarprosad Chakraborty
18. Shri S. W. Dhabe
19. Shri B. Ibrahim
20. Shri Dhuleshwar Meena
21. Shri V. P. Munusamy
22. Shri Leonard Soloman Saring
23. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—*Senior Legislative Committee Officer*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

Shri M. P. Khosla—*Officer on Special Duty*
Shri S. C. Bablani, *Under Secretary*

WITNESSES EXAMINED

I. Government of Karnataka, Bangalore

Spokesmen:

1. Shri P. Shankara Reddy, Director of Prosecution
2. Shri B. N. Garudachar, Additional Inspector General of Police
3. Shri A. Venkat Rao, Secretary, Law Department

II. Government of Kerala, Trivandrum*Spokesmen:*

1. Shri C. Subramaniam, Deputy Inspector General of Police
2. Shri G. Sreedharan Nair, Additional Law Secretary

III. Union Territory Administration of Goa, Daman and Diu, Panaji*Spokesmen:*

1. Shri U. D. Sharma, Secretary, Law
2. Prof. S. D. Sharma, Director Incharge, Psychiatry and Human Behaviour
3. Dr. J. M. Sharma, Prof. Forensic Medicines-cum-Police Surgeon

IV. Young Women's Christian Association, Bangalore*Spokesman:*

Shrimati E. V. Mathew

V. Shri C. Iyengar, Bangalore**I. Government of Karnataka, Bangalore***Spokesmen:*

1. Shri Shankara Reddy, Director of Prosecution
 2. Shri B. N. Gurudachar, Additional Inspector General of Police
 3. Shri A. Venkat Rao, Secretary, Law Department
- (The witnesses were called on and they took their seats).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Have you gone through the Bill?

SHRI B. N. GARUDACHAR: Yes.

MR. CHAIRMAN: You make a special reference to the loopholes if any.

SHRI B. N. GARUDACHAR: There are no loopholes.

MR. CHAIRMAN: There are many people who say that there are delays in investigation and perfunctory investigations. People who are handling it are not well versed in laws. There are motives for acquittals. The position of the law either in Cr.P.C. or manual for Police Act requires review. Do you want to have any amendment to the Cr.P.C. in that connection?

SHRI B. N. GARUDACHAR: Existing law is enough provided it is implemented properly. In our State Circle Inspector who is a Gazetted Officer handles these cases. He has sufficient experience. Sometimes difficulties are experienced in the course of medical examination. If medical facilities are not available then problems come. You have to take the victim to the hospital located at a

distant place. There may be some delay. Otherwise, there is no difficulty in so far as investigations are concerned.

MR. CHAIRMAN: During the last three years how many rape cases were there? How many of them have been tried and how many have been convicted?

SHRI B. N. GARUDACHAR: I have no idea. I have not brought figures with me.

MR. CHAIRMAN: Are there any rape cases in which police officers are involved?

SHRI B. N. GARUDACHAR: I have a vague idea that there was a case four years back. He was a Constable. He was punished for that.

The Government of Karnataka fully support all the amendments proposed in the Criminal Law (Amendment) Bill, 1980 to the I.P.C. and the Cr. P.C. The insertion of a new Section 228A in the I.P.C. and amendment of Section 327 of the Cr.P.C. and insertion of a new Section 350A. They are designed to give protection to the victim during the investigation as well as trial stages. The cover she gets with regard to her identity, apart from being in her own interest, will be of immense help to the police and the Courts as they will be in a position to get full facts and details of the offence from her. Besides, they will help to put down the mischievous exploitation of the incidents by the yellow journalists which sometimes come in the way of proper investigation and prosecution. The other amendments to the I.P.C. will plug almost all the loopholes in the existing law relating to rape and meet out deterrent punishment to the offenders, who hitherto either used to escape because of the loopholes or were awarded with insufficient punishment.

However, with regard to the amendment proposed in the said Bill to

Section 111A of the Indian Evidence Act, 1872 the State Government is of the opinion that this amendment is not really necessary and that if retained will jeopardise the considerations of fair trial.

MR. CHAIRMAN: Your statement is in respect of 228A.

As per your view there should not be such a provision in the draft Bill. It should be omitted.

SHRI B. N. GARUDACHAR: We want that.

MR. CHAIRMAN: Are you aware that this presumption is not in respect of all cases? Offences under Sections 376(2), A, B, C, D, E, F; are covered. Have you got the draft Bill?

Now, what I am telling you is this. These are criminal cases where persons in authority will be involved. The intention behind this Bill is that there is a dominance over the girl. There may be a possibility of having a passive submission of the lady to an intercourse. There, if the sexual intercourse is done by a man in authority, the man is charge-sheeted and the case is sent to the court for a trial. There the question comes for the prosecutrix to prove that she did not give her consent for this act. This is not the positive aspect. The negative aspect cannot be proved. In such circumstances, especially in cases where persons in authority are involved, there, the presumption will arise. How do you say that there will not be any injustice done to the accused person? On what ground can you say that?

SHRI B. N. GARUDACHAR: If we believe in the principle that not even in a single case an innocent should be punished, then, if the person is involved unnecessarily simply because she says that the official

under whom she was working had done this act, how are we to control this?

MR. CHAIRMAN: I will put it in another way. A police officer of the rank of S.I. apprehends a lady for a certain offence committed by her. He takes her to a police station where he forcibly makes her to have an sexual intercourse with him. In that case, after that act is over, the lady may file a case against the police officer alleging that there was a rape committed on her when she was arrested by him. Under the law, the court shall presume that she did not give her consent. In that case, how do you expect her to prove that she did not give her consent?

SHRI B. N. GARUDACHAR: It is true. A case like this can happen or might have happened also. After all, in a police station, there will not be a single constable but there will be many constables and head constables. Will they not start thinking that they are their sisters and mothers?

MR. CHAIRMAN: If you feel that injustice is caused to a victim, in conducting a fair trial of the accused, why not presume that it should also be in the interest of the protection of ladies too?

SHRI B. N. GARUDACHAR: The only thing is that in spite of this caution, we will let the innocent man to be punished. That is our view.

MR. CHAIRMAN: I do not follow this. Take the case of police officer. The officer concerned may not be an innocent man. He may be a man in authority who may misuse his position by virtue of the custodial control of the lady. In such a case only

this presumption will arise. Mr. Garudachar is an expert man; you were Commissioner formerly of our State. Therefore, I am asking your opinion.

SHRI B. N. GARUDACHAR: First of all, the intercourse has to be proved. Otherwise, this case does not arise at all. In the city of this magnitude what happens today is this. We have a lot of women of questionable character also.

MR. CHAIRMAN: There too whether you can rely upon her or not, there will be a cross-examination by the defence lawyer when a certain material will be obtained to rebut this presumption also. When you do not have any such case in your State, why are you afraid of this provision?

SHRI B. N. GARUDACHAR: I am not afraid of this. My only submission is that we do not have such cases. A few cases of this type may crop up. It may only demoralise the very structure of the police. That is what we are submitting before the hon. Committee.

MR. CHAIRMAN: All right. We have heard you sufficiently. What is your next point?

SHRI B. N. GARUDACHAR: I have no other point to submit.

SHRI SHANKARA REDDY: A number of points have already been covered by my friend with most of whom I concur. I want to add one or two points which he did not touch. So far as Sec. 354 and 354-A are concerned, *in camera* trial was mentioned. This comes under the allied offences. In my experience I say that in many such cases, Sec. 354 is added even where regular fight takes place not with the intention of outraging

the modesty of women. Whenever a man touches a woman even though it may not be with the intention of outraging the modesty of women, this will be taken to be an offence under Sec. 354 of the I.P.C. In many cases, charge sheets are filed under that section. After the evidence is recorded and when the evidence is being adduced under Sec. 354 or 326 IPC, the court is a little inconvenienced. Whenever the case under 354 is filed, the people will be asked to go out of the chamber for conducting the trial *in camera*. My submission is whether at all this could be avoided or not.

MR. CHAIRMAN: You just now referred to the cases of the trial of women. What would be the reaction of a woman if the trial is held either in public or otherwise? All these things are exposed before the court. Sometimes, a lady having her own moral courage, due to the fear of earning a bad reputation thereafter, may not be coming openly to expose in an open court. In peculiar circumstances, to give a full facility to a woman,—the trials take place *in camera* in the court. You think of such a case and tell me whether in that case there will be a fair trial or unfair trial. Don't think about the inconvenience of the Judge. A Judge has to do justice only.

SHRI SHANKARA REDDY: It will be only a little waste of time because immediately the judge will have to ask everybody to go out of the chamber.

MR. CHAIRMAN: As it is, under the present provisions, if an application is made, the judge has to pass an order to hold the trial *in camera*. He can exercise that power in such cases asking the people to go out of the court hall.

SHRI SHANKARA REDDY: That can be done.

MR. CHAIRMAN: If he wants such a power, he can exercise not only at present but in future also he can exercise this power.

SHRI SHANKARA REDDY: A large number of cases are there under 354. For example, if a group fight takes place where a woman is involved, then Sec. 354 of the IPC is also added. That is the tendency now-a-days with the police.

MR. CHAIRMAN: How many cases are there in your State in so far as Section 354 is concerned?

SHRI SHANKARA REDDY: I have no statistics available with me at the moment. I was dealing with such cases when I was a judge. My experience is that in many cases Section 354 was not proved.

In so far as Section 111A is concerned, I also support the view of my friend.

MR. CHAIRMAN: He said that there would be demoralisation in the Police.

SHRI SHANKARA REDDY: It would be absolutely impossible for the accused to prove that she did give her consent because here is a case in which the victim would not have resisted and she did not struggle and that there would be no injury. There may not be anything to show that she gave her consent. So, it is a very difficult matter wherein we have to draw a line whether it was under compulsion she gave her consent. It is very difficult to prove. What we are stating is that a fair trial should be held. If some lady of disrepute first gives consent and then says that she did not give consent, what will he do in that case?

MR. CHAIRMAN: Take a case where a prostitute filed a case to

malign the character of person. It was proved by a certificate of a doctor as well as by circumstantial evidence. Then there is a presumption that there was no consent. In that case the counsel by cross-examination brings out certain material to prove that there was a relationship between the two. So, here you are not expected to prove that the consent was given but you are expected to rebut it.

SHRI SHANKARA REDDY: In the case of prostitute, it is rather difficult to prove except making suggestion to the prosecutrix. There is no other way of proving it.

MR. CHAIRMAN: Under Section 45 and Section 46 of the Evidence Act, don't you think that sufficient chance is given to the accused? Then what is the apprehension in your mind in so far as unfair trial is concerned?

SHRI SHANKARA REDDY: In so far as cases of this type are concerned, there are very very less number of cases. Genuinely she might have consented, but later on she might say that she did not consent.

Another point I wanted to add is that in so far as Explanation to Section 375 is concerned, after the judicial separation this arrangement is to be there, that is, for at least two years according to the Hindu Marriages Act so that he or she may file an application for divorce. During this period there may be chances of these two coming together and reconcile themselves. For this purpose two-year period is given.

MR. CHAIRMAN: If there is a chance of re-conciliation, then there will not be any question of filing the complaint by the lady.

SHRI SHANKARA REDDY: But for that it is all right.

On other provisions we agree that they should be there.

SHRI B. IBRAHIM: If Section 228A is left as it is, will it not amount to press censorship?

SHRI B. N. GARUDACHAR: It would not because after all it is preserving the dignity of the lady.

SHRI B. IBRAHIM: In your State how many woman police officers are there?

SHRI B. N. GARUDACHAR: One IPS Officer, about 8 sub-inspectors and about 300 constables.

SHRI B. IBRAHIM: There is a suggestion by some lady organisations that there should be a special cadre in the police force to inquire into the cases of rape, etc., What have you got to say about this?

SHRI B. N. GARUDACHAR: It is better if we have a specialised agency to handle these cases.

SHRI B. IBRAHIM: What is your suggestion about special courts?

SHRI B. N. GARUDACHAR: That would be an ideal thing.

SHRI B. IBRAHIM: Are you in favour of removing Section 111A?

SHRI B. N. GARUDACHAR: Yes.

SHRI B. IBRAHIM: Is it your view or the view of the Government?

SHRI B. N. GARUDACHAR: It is the view of the Government.

SHRI B. IBRAHIM: Regarding Section 376 Explanation I—gang rape—do you want to change it?

SHRI B. N. GARUDACHAR: It should not be amended.

SHRI B. IBRAHIM: If we include 'more than one' would it not be more appropriate?

SHRI B. N. GARUDACHAR: It is better if a gang is defined as three or more.

SHR B. IBRAHIM: What are the reasons for acquittal of rape cases?

SHRI SHANKARA REDDY: It is because of want of proof. The evidence of other witnesses is not in support of the prosecuting witness.

SHRI B. IBRAHIM: Is it correct to suggest that because of improper presentation of the case by the prosecutors the case end in acquittal?

SHRI SHANKARA REDDY: It is not correct.

श्री हुकम देव नारायण यादव : आपने इस कानून की सभी धाराओं से अपनी सम्मति प्रकट की है। मैं यह पूछना चाहता हूँ कि पुरुष यदि अपनी पत्नी से, जो 15 वर्ष से कम उम्र की है, उसकी इच्छा के विपरीत मैथुन करता है, तो वह रेप माना जाएगा लेकिन अगर उसकी उम्र 15 वर्ष से ज्यादा है और उसकी इच्छा के विपरीत मैथुन करता है, तो वह रेप नहीं माना जाएगा, तो 15 वर्ष की जो यह रेखा है, यह कहां तक न्यायोचित है।

श्री बी० एन० गवड़ाचार : इसमें भेदा कहना यह है कि मान लीजिए एक पुरुष की पत्नी की आयु 15 वर्ष से कम है और शादी होने पर भी अगर वह ऐसी क्रिया करता है, तो बाल विवाह का जो मुद्दा है, वह खरम हो जाता है। इसलिए मैं ऐसा समझता हूँ कि कन्या की उम्र 15 वर्ष से ज्यादा होनी चाहिए और 15 वर्ष से ज्यादा की उम्र में ही ऐसी क्रिया होनी चाहिए।

श्री हुकम देव नारायण यादव : कानून एक तरह का हो होना चाहिए। एक तरफ सरकार द्वारा पारित विधेयक कहता है कि 18 साल की लड़की को शादी के योग्य माना जाएगा और यह विधेयक कहता है कि 18 साल उम्र होनी चाहिए। तो एक कानून दूसरे कानून को काट रहा है और एक दूसरे के विपरीत है। 18 साल उस कानून में है और 15 साल इस कानून में है। इसके अलावा मैं यह भी बताना चाहता हूँ कि बहुत सी लड़कियों की शादी 15 साल की उम्र में हो जाती है और आपके कर्नाटक में भी ऐसी जातियाँ होंगी, जिनमें 15 साल से कम उम्र की लड़कियों की शादी कर दी जाती है और उनके बच्चे भी हो जाते हैं। बिहार में भी करीब 40-45 प्रतिशत ऐसी लड़कियाँ हैं, जिनकी शादी 15 साल से कम उम्र में हो जाती है और उनके बच्चे भी हो जाते हैं। तो मैं यह पूछना चाहता हूँ कि एक कानून में जब 18 वर्ष की आयु शादी के लिए तय की है और दूसरे कानून में 15 वर्ष की बात है, तो क्या यह विरोधाभास नहीं है?

श्री बी० एन० गवड़ाचार : मैं वह कहना चाहता हूँ कि इसको विरोधाभास नहीं समझना चाहिए। 15 साल की उम्र में, फर्ज कीजिए, दो बार केसेज में लड़की के बच्चे भी हो जाते हैं, तो इस चीज को एक जनरल चीज नहीं मानना चाहिए।

श्री हुकम देव नारायण यादव : आप पुलिस अफसर हैं। मैं आपसे यह जानना चाहूँगा कि कानून में जो सेक्सुअल आफेंस की कैटेगिरीज बनाई गई हैं, उनसे आप सहमत हैं। अगर औरत इन्टोक्सीकेटेड है और उस समय सेक्सुअल इन्टरकोर्स किया जाता है, तो वह सेक्सुअल आफेंस माना जाएगा। समाज में आप देखते होंगे कि औरतें और मर्द नमा करते हैं और औरत मर्द

के साथ नशा करने जाती है। ऐसी स्थिति में घोरत को यह मालूम होता है कि मर्द नशा कराने के लिए ले जा रहा है और इस में इन्टेंशन कुछ भी हो सकता है। अगर नशा करने के बाद मर्द घोरत के साथ सेक्सुअल इन्टरकोर्स करता है, तो अगर मर्द को अपराधी माना जाएगा, तो यह उसके साथ ज्यादाती होगी क्योंकि घोरत को पहले से ही मालूम था कि नशा कराने में मर्द को इन्टेंशन कुछ भी हो सकती है ?

श्री श्री. एन. गवड़ाचार : जब घोरत मर्द के साथ किसी महफिल में जाती है, तो यह जरूरी नहीं कि वहां नशाबन्दी में उसकी कन्सेंट हो। आजकल तो पानो में ऐसी दवा मिला दी जाती है कि नशा हो जाता है और ऐसी सूरत में अगर वह कन्सेंट देती है, तो उसको कन्सेंट नहीं मानना चाहिए। अगर घोरत के बारे में यह सोच कर चलेंगे कि उसकी कन्सेंट थी, तो यह एक खतरनाक चीज होगी।

SHRI S. W. DHABE: I would like to know from the Director (Prosecution) his experience of the rape cases.

Prosecutrix is harassed at the time of cross examination. The burden of proof is negatived—that she did not give consent. These two facts are mainly responsible for the acquittal and not the medical evidence. Are Women Lawyers appointed in rape cases as Special Prosecutors? Have you women prosecutors in the State?

SHRI SHANKARA REDDY: One lady Senior Assistant Prosecutor is there. Two lady Assistant Public Prosecutors are there. Total Assistant Prosecutors are about 135 as on date. Out of them two are ladies. We have total 46 Senior Assistant Prosecutors. One of them is a lady. Public Prosecutors are male, there is no lady.

SHRI S. W. DHABE: If prosecutrix is assisted by women lawyer, will it help fair trial?

SHRI SHANKARA REDDY: I do not think it very necessary.

SHRI S. W. DHABE: Is it necessary to get her medically examined immediately as also the accused?

SHRI SHANKARA REDDY: It is better to get both of them examined.

SHRI S. W. DHABE: I want to know whether under Sec. 376(1)(a), the police officer is liable to be punished or not if he commits rape with or without consent that is, if the sexual intercourse takes place in custody. He cannot escape punishment, according to me, once the intercourse is proved. But, Sec. 111-A gives him the onus of shifting the burden. Besides, evidence must be given by the police officer. You cannot prevent him from giving evidence on whether the offence was committed by him with or without consent. In the new set of circumstances, don't you think that this provision is necessary?

SHRI B. N. GARUDACHAR: There we are apprehensive of the misuse of the provision.

SHRI S. W. DHABE: You know even now the law is being misused by the smugglers now-a-days. They are set free also. In my State, in Nagpur, rape on a Bangladesh woman took place. The crime was committed by the Railway police there. In order to prevent this, don't you think that a change in this law is necessary in the changed circumstances? It is in order to prevent such a mischief that this provision has been brought forward.

SHRI B. N. GARUDACHAR: We want that innocent should not be unnecessarily punished.

SHRI S. W. DHABE: My last question is this. Sec. 228A completely prohibits the publication of any news right from the investigation stage. It may be a news regarding the identify

of the person against whom the rape charge has been made in the court. Do you think that a blanket ban on publication of the news in the press or the circulation of such a news that will help the prevention of the offence? Will it not be a proper thing in the circumstances that this news should be published in the papers?

SHRI B. N. GARUDACHAR: It should be retained. Moreover, it will help the accused person also if he proves his innocence.

SHRI S. W. DHABE: Don't you think that the freedom of the press is involved if there is complete ban on publication of the news? Only the name of the woman or the accused's name should not be published. But the other facts may be published.

SHRI B. N. GARUDACHAR: After the judgment of the High Court is delivered, it becomes a public document.

SHRI R. S. SPARROW: I have one simple question to ask. Give me roughly as to what is the percentage of rape cases from the rural areas in your State? What is the percentage of the same from the urban areas?

SHRI B. N. GARUDACHAR: I would not be able to say that.

MR. CHAIRMAN: He wants to know whether, in so far as rape cases are concerned, a majority of them are from rural areas or from the urban areas. If you have got information you can give.

SHRI SHANKARA REDDY: There is no such case from the rural areas.

SHRI R. S. SPARROW: My other question is: what was the percentage of false cases that were instituted?

SHRI B. N. GARUDACHAR: It is a very negligible number.

SHRI BAPUSAHEB PARULEKAR: You spoke about Sec. 111A. I see

from the papers that on 15th July, 1981 when the representatives of all States met, your representatives also met us. At that time you said that these provisions should not be deleted. As far as Evidence Act is concerned, the Government of Karnataka feels that since the trial is in camera, for the onus of proof, the discretion should be left to the court. It was also said that in place of the expression 'shall presume', the expression should be 'may presume'. I would, therefore, like you to tell us as to the circumstances that led you to change your opinion.

SHRI SHANKARA REDDY: I am not aware of this fact.

SHRI BAPUSAHEB PARULEKAR: So, you have no idea of this kind of recommendation in the Act. Shall we take it that way?

MR. CHAIRMAN: For this, the Home Secretary will be able to answer.

SHRI BAPUSAHEB PARULEKAR: You have rightly admitted that the fact of consent in a rape case is within the special knowledge of the accused. Don't you think that even in the present law that provision is there? Why do you say that Section 111A would cause hardship to the accused?

SHRI SHANKARA REDDY: I do not think that both the Sections are similar.

SHRI BAPUSAHEB PARULEKAR: Now, we have a provision that the Superintendent of a Medical Hospital includes a Superintendent in lunatic asylum where there are female lunatics also. There the question of consent does not arise. If the Superintendent of a Lunatic Asylum has an intercourse with a female lunatic. Do you mean to say that they should go scot free? There will be no evidence. On that account all Superintendents or doctors of lunatic asylum will be acquitted. What suggestion would you like to make?

SHRI SHANKARA REDDY: Other evidence can be adduced.

SHRI BAPUSAHEB PARULEKAR: Rape is committed in secrecy.

SHRI SHANKARA REDDY: There will be struggle.

SHRI BAPUSAHEB PARULEKAR: There will not be any struggle. What do you say about that? How best can we protect our sisters and mothers who are suffering from mental disease and who are in the mental asylum?

SHRI SHANKARA REDDY: In such cases Section 111A will be necessary.

SHRI BAPUSAHEB PARULEKAR: In this case if the provision is to be retained and it is not made applicable on a civil surgeon, will it not amount to discrimination?

SHRI SHANKARA REDDY: It will not. The victims are different.

SHRI BAPUSAHEB PARULEKAR: How can that ingredient be there when she comes in the witness box and says that she did not give consent. Here proof of intercourse by the doctor with a lunatic is sufficient to constitute an offence of rape. Here consideration of consent does not arise. That should be the law. Therefore, should we not go to this extent that some notions of criminal jurisprudence require change?

SHRI SHANKARA REDDY: It will be slightly misused.

SHRI AMARPROSAD CHAKRABORTY: In Section 376A, B and C you want deterrent punishment. But here in the evidence you say that there should be lesser punishment. What is the reason for change of opinion? In para 7 of your memorandum you said that the punishment should be deterrent and it should be 10 years.

SHRI B. N. GARUDACHAR: We agree with that.

SHRI AMARPROSAD CHAKRABORTY: Its implementation is delayed. What do you feel—should the assistance of women organisation be taken so that investigation is not delayed?

SHRI B. N. GARUDACHAR: If assistance is coming, it should be taken.

SHRIMATI GEETA MUKHERJEE: The points made by the witnesses are that 111A may impede fair trial. In the absence of fair trial, the police officers who may be accused, may become demoralised.

Senior officers are accused of rape and the act of intercourse inside the police station has been proved. How will an ordinary person look at it? It will be a common practice to choose the police stations as a theatre of intercourse.

The very fact that it has been proved that an intercourse has taken place inside the police station. This is a very derogatory thing. What is your idea?

SHRI B. N. GARUDACHAR: If such a thing is proved, then there is no doubt that such presumption against the Police Officer must be drawn. It is covered under 376A.

SHRIMATI GEETA MUKHERJEE: I am sorry to say every-body has pointed out that the question of presumption enters at a point when the act of intercourse has already been proved. Fair trial should not only be of the accused but fairness should also be towards the victim particularly when offence like rape is proved. For woman it is a question of life and death. Fairness should be for both. They stand on the same ground. Act of intercourse has already been proved. Here is a woman who has been raped inside the police station. That part is clear. How fair it will be for

the women victim to prove that they did not give their consent. It will be very difficult to prove. In my opinion and in the opinion of the framers of law, in fairness, this presumption is necessary.

SHRI B. N. GARUDACHAR: If it is proved that intercourse has taken place, this presumption should be taken. It is shameful, disgraceful and should be taken as a rape.

SHRIMATI GEETA MUKHERJEE: Karnataka Government representatives have said that courts are being made cautious. Cautious of what? Cautious as to prevent the accused of being denied justice.

SHRI P. VENKATASUBBAIAH:
No, no, that is not the case.

SHRIMATI GEETA MUKHERJEE:
I would rather say that they should think over it again and agree with 111A.

MR. CHAIRMAN: He has come out with hard facts.

SHRIMATI SUSEELA GOPALAN: 111A is applicable to those persons only who are occupying responsible position in society. They are not ordinary persons. They have special responsibility towards society. Purity in administration is desired. In such cases why cannot the provision be made? I want to know whether the person, occupying such a position and, by virtue of that position, has committed a rape on the woman, should be given the burden of proving himself that she did consent? Why should it not be like this? Because he is occupying a particular position in society, he has a moral duty towards that society? What have you to say to this?

SHRI B. N. GARUDACHAR:
Madam, when wild allegations are made against the officer, how can he defend himself?

SHRIMATI SUSEELA GOPALAN:
This is not against the innocent person but this is against the officer in high position who has a sexual intercourse with a woman by virtue of that position. Don't you think that such a provision should be made here?

SHRI B. N. GARUDACHAR: Such a person can be dealt with under the Government Servant's Conduct Rules.

MR. CHAIRMAN: What the hon'ble Member wanted to know was this. When a police officer is committing rape in office, it is very difficult to establish a case against him that it was after getting the consent of the lady. Under the circumstances, to protect the interests of women, is it not safe to have such a provision?

SHRIMATI SUSEELA GOPALAN:
This provision is meant to deal with the persons occupying high position. That is what is included in the Bill.

MR. CHAIRMAN: Do you think that such people should be dealt with seriously under the disciplinary proceedings?

SHRI B. N. GARUDACHAR: If the officer had committed such a crime in a police station, definitely, that should be dealt with as a rape only under Sec. 376A of IPC.

SHRI P. VENKATASUBBAIAH:
On a previous occasion, in Hyderabad, we have also heard enough of opinion or evidence on Sec. 111A. Our hon. Members are putting the question because there has been a variation in the recommendations or in your comments on the Law Commission recommendations firstly and secondly in your second report on the draft Bill. Therefore, we want your considered view now. It is good that you have come before the Committee to give evidence. The Law Secretary is also here. You study the problem as also the points made out by the hon. Members. You can communicate your considered opinion later on.

I am commanded by the Chairman now to put a question. It may be outside the purview of the Bill. As a Home Minister, I would like to put one question. The society has become complicated and the cases have also become a little bit complicated with the result that even the innocent persons are punished in rape offences. Still the offenders go unpunished.

Have you any complaint or not to reorganise your Police Administration in Karnataka to deal with the cases in such a situation? As regards recruitment of police officers you have said enough. Are you going to recruit more constables? Would you like to have a separate Directorate to deal with the situation so that you keep a sort of a liaison with the prosecution as well as with the courts? You can send a report or your considered view later on.

SHRI A. VENKAT RAO: I shall submit a report later.

SHRI S. W. DHABE: He said lastly that if the intercourse takes place in a police station, that should be considered as rape. We would like to have your opinion on this also.

MR. CHAIRMAN: They will give their considered opinion later on. Mr. Law Secretary, kindly listen. You are requested to give answers on one or two points. The Government of Karnataka submitted two memoranda. In the first one, mention was made about retention of the provision of 111A. The expression 'shall' should be substituted by the expression 'may'. That is one opinion. Your subsequent memorandum from Government contains a recommendation that the entire provision should be deleted. What made you to come to the second opinion? That was the question posed by the hon. Members.

Kindly enlighten us on this.

SHRI A. VENKAT RAO: At the outset, I would like to tell the hon. Members that I took over as Law Secretary only in November and this

meeting had taken place even before I took over. So, I do not know what exactly transpired. There was the Advocate General also. All of them had taken part at that meeting. They know about this much more.

MR. CHAIRMAN: All right. You do one thing. You know what has been discussed here. You can send a complete/comprehensive memorandum to us. You may send that to the Lok Sabha Secretariat. We will circulate a copy of the report to all the Members. Immediately you must do this. Don't delay it. You give your own reasons also for this change. You have a discussion with your Advocate General. All of you must have a discussion and then you must prepare a note and send that on to us.

SHRI BAPUSAHEB PARULEKAR: Kindly consider this whether you can give your considered opinion for having a special directorate for investigation.

MR. CHAIRMAN: I am giving that position. When I was in charge of the Law Ministry, I made some reforms in this. There was no Directorate of Prosecution in the early stage. There were only police prosecutors recruited for the purpose of handling the cases before the Magistrates.

Whichever power has been vested in the magistrate, he was using that power in trying the cases. In sessions cases, the public prosecutor were allowed to conduct the cases. They were appointed on the basis of the recommendation made by the Dy. Commissioner. This was the position. Under the Cr.P.C., the Chief Judicial Magistrates were also provided with the powers to conduct the trial cases. If I am correct, the Directorate of Prosecution is to deal with all matters which come within the purview of the Chief Judicial Magistrates and the senior-most advocates are recommended as public prosecutors. They were appointed by the State Government to handle the sessions cases. There are several cases of acquittal as well as conviction. They will go

to the Director of Prosecution for his opinion. He is the man who can check up and file an appeal and can make recommendations to the Government to file appeals in cases of acquittal subsequently.

SHRI BAPUSAHEB PARULEKAR: Before the case is filed, he investigates into the rape case. If a VIP comes the police is sent for bondobust and the investigation is affected. You have unarmed and armed police. I want to know whether investigation people should have a separate cell and they should only look after the rape cases.

MR. CHAIRMAN: If a man is in charge of investigation of serious crimes, he will not attend to the Ministers. Otherwise, there will be some other people who can attend to them. They can go into this aspect of the matter.

(The witnesses then withdrew)

II—Government of Kerala, Trivandrum.

Spokesmen:

1. Shri G. Sreedharan Nair.
2. Shri C. Subramaniam.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence

is liable to be made available to the Members of Parliament."

I think you would have gone through the Bill. Kindly enlighten us on what point you want to emphasise and what are your suggestions in regard to the various Sections of the Draft Bill.

SHRI G. SREEDHARAN NAIR: Excepting Section 111A, we are in complete agreement with other Sections. Regarding Section 111A, as far as presumption is concerned, it is likely to be misused since there is scope for the misuse of presumption. I think that such a presumption may not be drawn. Now, another provision in the Bill is that "court shall presume". In the case of "shall presume" the court is precluded for calling for evidence. The position would be different if it is phrased "the court may presume". This means that the court may draw the presumption or may call for proof. But the position will be different if it is "shall presume".

MR. CHAIRMAN: There are instances given in regard to "may" and "shall". In a case where it is an obligation of a magistrate to discharge his function even if there is the word "may" and it should be construed as "shall". So, the duty is cast on a magistrate or the judge to presume the circumstances of consent or no consent. Then in discharging the obligatory duty under this clause he is bound to presume. I have brought it to your notice.

SHRI G. SREEDHARAN NAIR: In that sense there will not be any distinction.

SHRI C. SUBRAMANIAM: My view is that Section 111A is not necessary. This may lead to a certain amount of blackmail of the accused.

MR. CHAIRMAN: It is not applicable in all cases. It is applicable in cases where persons in authority are involved.

SHRI C. SUBRAMANIAM: We have already submitted a memorandum on this.

MR. CHAIRMAN: Why do you want to delete that?

SHRI C. SUBRAMANIAM: It is likely to be misused against the accused.

SHRI B. IBRAHIM: Regarding gang rape I would like to know about one case specifically which had happened in Pallitura near Trivandrum. In that case the policemen had committed rape on a fisher-woman. What action has the State Government taken in this case?

SHRI C. SUBRAMANIAM: Unfortunately I am not dealing with that case. I do not have the details of that case.

SHRI B. IBRAHIM: Is any police officer involved in that?

SHRI C. SUBRAMANIAM: I cannot pass any comments. I have not investigated that case.

SHRI V. S. VIJAYARAGHAVAN: In how many cases rapes were committed in police station in the last three years?

SHRI C. SUBRAMANIAM: I do not have the statistics with me. To my knowledge there has been no case of rape inside the police station.

SHRI V. S. VIJAYARAGHAVAN: An MLA made a charge in the Assembly that some police officers had committed rape in Coyalmanam Police Station. Do you know about that?

SHRI C. SUBRAMANIAM: I do not know about that.

MR. CHAIRMAN: How many cases of rape have occurred in your State during the last two or three years? Out of those cases, in how many cases police personnel were involved?

SHRI C. SUBRAMANIAM: I do not know.

MR. CHAIRMAN: You have come to represent the State Government of Kerala. You should not take the Committee lightly. If there is something and you deny it, it will reflect on you. Mind you, you are making the statement in the presence of the Home Minister.

SHRI C. SUBRAMANIAM: I can collect the statistics and submit to the Committee. To my knowledge it may be very very exceptional.

SHRI B. IBRAHIM: Regarding Pallitura case there has been an agitation going on. There is a demand from the public that the Home Minister should resign. And here the DIG says that he does not know at all about that case.

SHRI P. VENKATASUBBAIAH: This is a very serious matter. That is why, Parliament constituted this Joint Committee. We have been taking evidence from all State Governments. You are representing the Government of Kerala. You should have presumed that all these matters would come up in the meeting. If you are not prepared to say anything, then you can send the information in writing. But you should be specific on this point. Perhaps, of that, you are not aware of. If you want to take some time to think over it, you take it.

SHRI C. SUBRAMANIAM: I want to take time.

SHRIMATI SUSEELA GOPALAN: Please send information regarding the number of cases which have taken place. How many policemen were involved in that and how many have been convicted.

SHRI P. VENKATASUBBAIAH: Let us not politicalise this issue. We are concerned with national malady—whether it is in Maharashtra, Karnataka or elsewhere. Let us not argue

or project our Bill on political angles. We want statistics.

SHRI C. SUBRAMANIAM: I shall collect it and give it. As far as Pallitura is concerned, there is a Commission of Enquiry. The Commission has been appointed by the Government. The matter is being looked into by the Commission.

SHRI P. VENKATASUBBAIAH: You could have told that earlier and you should not take the Committee casually. The Member has asked persistently about Pallitura and you said that you were not aware of that. When the hon. Member said that it has come in the press, you repeated the same answer. You should have consulted the Law Secretary at that time. You should be very careful. Do not be in a hurry to make statements before this august body.

MR. CHAIRMAN: Please give detailed report and the statistics—how many police officers and others are involved.

Mr. Law Secretary, you prepare a report for the last three years—the number of cases reported, convictions, acquittals and pending cases and the number of cases in which police officers are involved. What is the number of their convictions and acquittals after they have been tried.

SHRI BAPUSAHEB PARULEKAR: They said earlier that 111A should be made applicable in the case of custodial rapes. How they hold a different view. They can explain that.

MR. CHAIRMAN: Law Secretary, you have submitted two Memoranda. In one you have maintained one thing and in the second you have changed it. What made you to change that? That should be clarified.

SHRI G. SHREEDHARAN NAIR: So far as Kerala Government is concerned they have casually accepted all the Sections of our Draft. They have accepted 228 also.

SHRI P. VENKATASUBBALAH: When they send comments, naturally they will give the reasons.

MR. CHAIRMAN: Detailed report should be submitted at the earliest. About 111A hon. Member wants to ask the questions.

श्री हुस्न बेग नारायण यादव : मैं हिन्दी में प्रश्न करूंगा। लगता है कि बिधि सचिव इस को समझ नहीं पाएंगे। मेरा प्रश्न यह है कि 111ए में जो 'प्रिज्यूम' शब्द है, उस के रहते अपराधी को सही और साफ न्याय नहीं मिल सकेगा, ऐसा आप का कहना है। मैं आप से यह जानना चाहता हूँ कि क्या आपके केरल में ऐसी घटना बढी है, जिस के कारण आप की सरकार को यह सोचने के लिए बाध्य होना पड़ा कि इस प्रिजम्पशन के चलते, जो पुलिस अफसर काम करने वाले हैं, उन को किसी गलत मुकदमे में फंसाया गया और तबाह किया गया। ऐसे दो-चार कसेज, जिन में पुलिसमैनो को हरेस किया गया हो, अगर हों, तो उन को जानकारी आप अपनी रिपोर्ट में दे दे।

SHRI G. SHREEDHARAN NAIR: Hitherto no such presumption was drawn. No such instance has come.

SHRI S. W. DHABE: On 15-7-1960 Conference was held by the Home Minister. Kerala Government stated that onus should be placed on the accused except in the case of custodial rape. Now you are changing as previously different opinion was given.

In 376 'sexual intercourse' has been made punishable. The question of consent does not arise in this case. In view of this 111A is not necessary. What is your view? In Mathura case intercourse was proved but consent

was not proved. He has been acquitted. Now, the law provides for Sec. 376A. Hence I want to know whether 111A has become redundant or not.

MR. CHAIRMAN: The Committee will consider whether it is redundant or not.

SHRI P. VENKATASUBBALAH: May I tell you that when you say that 111A need not be there, it may lead to harassment? In view of this, 376-A has now been inserted. In your earlier deposition you said that provision of 111A may lead to demoralisation of the officers. We are concerned with that only.

In view of this, Clause 376A and 376B have been inserted.

In that event, he wants to know whether you feel that 111A is redundant or not.

SHRI G. SHREEDHARAN NAIR: It cannot be said that in view of the existence of 376A, 111A has become redundant.

MR. CHAIRMAN: Thank you very much. You will kindly send your report immediately.

(The witnesses then withdrew)

III—Union Territory Administration of Goa, Daman and Diu, Panaji. Spokesmen:

1. Dr. U. D. Sharma, Secretary Law and Judiciary Department,
2. Dr. S. D. Sharma, Director, Institute of Psychiatry and Human Behaviour.
3. Dr. J. M. Sharma, Professor of Forensic Medicine and Police Surgeon.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence should be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

I believe you have gone through this Bill. Have you any suggestions to make?

DR. U. D. SHARMA: Let me first thank you all. (It is a coincidence that all of us are Sharmas and all represent Goa. We all come from Rajasthan). In the Explanation to the proposed Section 228A, reference is to the High Court. Goa has no High Court. We have Judicial Commissioners' Court. There is a Bill in Parliament for constituting the Bench of the Bombay High Court in Goa.

SHRI AMARPROSAD CHAKRABORTY: I think Rajya Sabha has already passed this Bill.

DR. U. D. SHARMA: No, Sir. It is pending before Rajya Sabha.

SHRI S. W. DHABE: That Bill has not yet been passed.

DR. U. D. SHARMA: This may please be kept in view by the Committee. Till the Bill is passed, we will have only Judicial Commissioner's Court. My another submission is this. The heading 'of rape' has been changed to "sexual offences" before Sec. 375 is given. My small submission is that

there is Sec. 354 which relates to outraging the modesty of women. This is also a sexual offence. This may also be made a part of that Chapter. Then, there is an Explanation to Sec. 375. There it is said that 'penetration' is sufficient to constitute the sexual intercourse. My submission is that stress should not be given to 'penetration'. Sometimes the intention may be to commit rape but the person might have been prevented from committing rape. So many obnoxious questions are asked in the court regarding 'penetration'. A very embarrassing situation for the victim arises.

MR. CHAIRMAN: Dr. Sharma will enlighten us on this.

DR. U. D. SHARMA: If the intention is to commit rape, even the physical contact is sufficient for rape.

MR. CHAIRMAN: Already in the I.P.C. provision like 'attempt to commit rape' etc. is there.

DR. U. D. SHARMA: My suggestion is only to make this provision a little more stringent. Since the intention to commit rape was there, the stage of attempt had been crossed. The new Section 376, regarding punishment for rape reads like this:

"376 (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall be liable to fine;

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years."

Here the term imprisonment is not clear. It is not clear whether it is simple imprisonment or rigorous imprisonment.

MR. CHAIRMAN: It is not rigorous imprisonment. It should be presumed as simple imprisonment.

DR. U. D. SHARMA: My humble submission is that for rape cases, it should be rigorous imprisonment.

Then it says that the term may be less than seven years. My suggestion is that it should be added here as "not less than five years".

Further, under the same Section sub-section (2), it is stated as follows:

"(2) Whoever,—

(a) being a police officer, commits rape in the local area to which he is appointed....."

Here the words "local area" should be omitted. Wherever the Police Officer commits rape, he should be punished. When a police officer is in uniform, an illiterate person or a person belonging to weaker section is not in a position to know whether the police officer is acting in his local area. A police officer can exert his influence anywhere. Again under sub-section (2)(b) of the same Section, it is stated as follows:

"(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or"

Here the words "such public servant" should be deleted because public servants should not take any advantage at all.

Recently, a few cases have been reported where a father has committed rape on his daughter, a relative has committed rape on some relations under his protection. Such cases should also be included in this Section, so that they get severe punishment.

Suppose a widow is living under the protection of some person and she is in his protective custody and if that person takes advantage of his position and commits rape, then a provision like severe punishment should be included here.

Section 376(2) (f) reads as follows:

“(f) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine;

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.”

Now, when the discretion is given to the court to award punishment “less than ten years”, then there should be a provision that “it shall however be not less than seven years in any case”.

Under Explanation 1, it is stated as follows:

“Explanation 1—Where a woman is raped by three or more persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.”

Sometimes, there is an assembly of more than 5 or 6 persons but the rape was committed by 3 or 4 persons. The victim identifies only a few of the persons. In that case, all persons should be deemed to have committed rape as there was a common intention to commit rape.

Explanation 2 says like this:

“Explanation 2—“Superintendent” in relation to a jail, remand home or other place of custody or a

women's or children's institution includes a person holding any other office in such institution by virtue of which he can exercise any authority or control over its inmates.”

Sometimes the authority may not be a direct authority. He may be doing it through a manager. He may not be having any direct control over the management. But he can exert indirect authority. So, in this case when the control is indirect, even then it should be brought here in clear terms.

Now, Sections 376A, B, C, actually suggest less punishment to those persons, when the intercourse is by consent. My submission is that these persons have no legal or moral right to have intercourse even with permission. This permission should be deemed to have been taken under pressure. They are not supposed to have intercourse even with consent. A Superintendent is not supposed to take consent and then commit rape. So, even if he has taken the consent for such an act, it should be considered as rape. If the Committee wants to retain these provisions then there is an explanation below Section 376C which defines the ‘hospital’. This should be brought earlier.

Regarding Section 228A the word ‘person’ has been used. This word ‘person’ is nowhere found in other sections.

MR. CHAIRMAN: That is the definition in the Indian Penal Code.

DR. J. M. SHARMA: In the first place, Section 228A may be changed as below to make it more elaborate:

“Whosoever by words either spoken or intended to be read or by signs or by visible representation or publishes the name or any matter which may make known the identity of any persons...”

I have taken these words from Section 499 of IPC.

In Section 375 'Thirdly' after the words 'section 503' the word 'IPC' should also be added to make it more clear.

In clause 6 I object the inclusion of the word 'by him'. My submission is that suppose she herself has consumed some intoxication, has anybody got any right to sexually assault her? There is an important case in Scotland. There a person violated a woman who was under intoxication. The counsel of the accused maintained that the indictment was irrelevant because it did not disclose the crime of rape according to the law. The presiding judge sustained the objection and the case was withdrawn.

Regarding clause 7, 16 years of age is a controversial age. We can say that the lady is sexually matured enough to have sexual intercourse at 16. But the point is whether she is mentally matured enough to look to the consequences of that. In our country where illiteracy is more, I think many girls do not become mentally matured to know the consequence of it. The age of maturity is taken at 18. So 16 years is much less. It should be raised to 18.

In other countries three words—force, fear and fraud—are there in their Code. But here in this clause the element of fraud has been ignored. In order to have sexual intercourse a man may play upon the gullibility of the victim. I give some examples. By going through a hoax marriage ceremony, the accused makes the victim to believe that they are husband and wife and leads her to bed. A doting woman in the early hours of morning, believing her husband has slipped into the bed to enjoy coition is started awake when she realises that her partner's voice is not that of her husband. A singing master intercourses with his pupil

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pretending that it will help develop her voice. A doctor has connection with a girl under the pretence that he was performing an operation. This is a matter of fraud. So, one more clause should be added that if by fraud somebody commits sexual intercourse it should amount to rape.

A Police Officer goes to a house with a valid warrant of arrest of a man. There he meets his wife. The Police Officer promises her that he will not arrest her husband if she submits herself to him for sexual intercourse. She agrees. It is a sort of contract entered into by both the parties for some consideration. In England such cases had happened. They say that it is a contract between two parties. After all, she has gained by that contract. There the court had held that the accused could not be punished. This aspect should also be considered. If some immoral thing on ground of a contract has been entered into, that should be treated as null and void.

MR. CHAIRMAN: I am quoting an Indian case. In one concrete case, a police officer armed with a warrant of arrest of 'X' entered the house of 'Y' where he was not authorised to enter. That man protested against his entry. That Police Officer who was armed with a warrant of arrest, took him to his custody. He was taken to the police station. There he was canded and belaboured like anything. A complaint was lodged that the Police Officer had committed a number of offences. During the trial the contention taken by the Police Officer was that his action was protected by 197 Cr.P.C. This protection was accepted by the Supreme Court. In these circumstances what have you to say? Kindly enlighten us.

DR. J. M. SHARMA: This clause should be added. That is what I want.

In Explanation No. 1 'penetration' should be qualified. If it is not qualified, then it will be presumed that there must have been full penetration. If there is partial penetration, it may not be penetration at all.

In the previous explanation it has been given—'partial penetration will amount of act of sexual intercourse'. Not only penetration but also partial penetration will amount to sexual intercourse.

Penetration in vagina will be taken as sexual intercourse—even partial penetration.

MR. CHAIRMAN: Can you quote any Article where it has been held as a rape?

DR. J. M. SHARMA: There are many cases. I cannot quote. Decided cases and published cases are there. I know that there had been an attempt on the part of the person but there was a great disparity between the female organ and male organ. It did injure the outer part.

MR. CHAIRMAN: There must have been rupture. I want to know from medical point of view. Here we have given explanation—Penetration is sufficient to constitute a rape. Without penetration there cannot be rape at all. Either it should be an attempt to commit rape or abetment to rape. In Mathura's case the other constable under the influence of alcohol could not push in his organ. Glyster has given certain illustrations. Because you are an expert on this side, I want to know how do you detect—there was penetration and if incomplete penetration was there a semen, is detected how can you certify that? In partial and semi-partial penetration what are the marks? Even the

trial judge will have to place his belief on the certificate issued by the Doctor or testimony given by the doctor. Doctor is an authority on whom reliance is placed and the accused can be sent to gallows. What are the marks left there on penetration and what kind of impression should be there?

DR. J. M. SHARMA: We have to divide it into two parts.

Victim of rape: He has sexual intercourse with a virgin. In the case of virgin there are marks.

In the second category if she has not given consent there will be struggle throughout.

MR. CHAIRMAN: I differ here. Supreme Court has said 'passive submission'. There may not be resistance also.

DR. J. M. SHARMA: Those who had resisted and who had not resisted.

In the cases where there had been resistance, the person will find it difficult to separate the things and lower part. To make an attempt to separate thighs hands will have to be used. There will be marks of hands. Scratches may be there.

Where one has submitted, in that case, we will not get anything unless and until there has been full sexual intercourse and discharge of the semen. This is a dilemma for me. Practically I cannot give an opinion till I find human semen present.

MR. CHAIRMAN: Take the present modern methods of contraceptives. In that case you cannot find semen also. In that case what is your opinion?

DR. J.M. SHARMA: There should be a directive to the court under this Act that a negative report as regards sexual intercourse by a Medical Officer should not be taken as a green signal that sexual intercourse has not taken place.

MR. CHAIRMAN: You may kindly come at 3 o'clock. We may adjourn for lunch at this stage.

(The Committee then adjourned at 13.30 hours and reassembled at 15.00 hours).

MR. CHAIRMAN: I was asking last time about two types of medical opinion. In respect of virgin lady nobody bothers about it because there are marks and other visible things. Suppose if it is not a complete penetration but a semi-penetration, how would you detect it?

DR. J. M. SHARMA: My answer is that in the circumstances unless and until we get a positive proof, we are not going to give a positive opinion. Marks or men's semen are there. But we cannot give a positive opinion about the sexual intercourse.

MR. CHAIRMAN: In a particular case, a lady says that there was penetration but because of the lack of medical evidence, the accused could say that there was no penetration. In that case, the accused may come in different category, that is, there was an intention to commit rape, etc. But there is every likelihood of escaping from the clutches of law.

DR. J. M. SHARMA: In this respect this is the dilemma which I have been facing for the last so many years. If a woman has been raped in the absence of any of these signs, I am unable to give a positive opinion. In this connection, a directive may be given to the Presiding Officer that in the absence of negative medical opinion, sexual intercourse should not be taken as a proof negating the act of sexual intercourse. They should also take cognisance of the

circumstantial evidence. It is positive but the medical opinion is negative and therefore medical evidence should be ignored.

MR. CHAIRMAN: That is called history of the case and unfortunately it was not admitted. Now, to overcome that difficulty, have you got any suggestion to make?

DR. J.M. SHARMA: As regards my suggestion that the medical examination of a victim of rape like any other medical examination by a doctor, it is like a case of typhoid or pneumonia and no other examination would help. Here history will play its part. But whether the history given by the girl is corroborated by some positive evidence or not, the doctor must consider other facts also. Suppose, she says that the person closed her mouth in order to stop her from crying, then the proof could be found by examining her mouth. But in a medical examination, there is some history which may not be correct. So, history must be taken by a doctor. Doctor is an independent witness and his evidence is independent.

MR. CHAIRMAN: You said about the corroboration. Perhaps the present draft Bill propose presumption under 111A. The law as it stands has no such presumption in favour of prosecutrix. She has to prove everything including consent not being given. In that case, as a matter of prudence, the trial judge will have to seek some sort of evidence of corroboration. No oral evidence will be available. Only circumstantial evidence will be there. To satisfy the conscience of the trial judge, this corroboration is necessary. But here is a case where presumption is given, then the question of corroboration does not arise and the testimony of the victim will have to be accepted. In respect of sexual intercourse proof is concerned, that is to be proved but in the case of consent or no consent what have you got to say?

DR. J. M. SHARMA: As regards presumption of 'consent' or no consent as suggested under Section 111A, there are a few authoritative positions like the jailor, the Superintendent of the hostel, etc. Their position is such an authoritative position that there is always a tinge of potential nuisance. If the inmate of the jail does not submit to the jailor, she will be given a severe punishment. In such cases, if the matter of sexual intercourse is proved, the presumption should automatically be drawn though she was a consenting party. She consented because of force of circumstances. Here I want to say that if a lady has reported that the jailor has asked her to submit herself before him for sexual intercourse and she was ravished by him, the presumption need not be called in the court. The presumption should be drawn that she was a non-consenting party.

MR. CHAIRMAN: In such circumstances will people not say that there will not be a fair trial?

DR. J. M. SHARMA: In this case, the presence of the human spermatozoa is the most important factor and the person will not leave the task undone. If the doctor gives a positive report, it will be a corroborative statement which will be supporting the complainant's view. Here he can only say that she has consented. But that consent should be taken as consent under duress.

MR. CHAIRMAN: In another case where a lady is put under constant fear either of death or of injury or attack on her reputation, there is a possibility of submitting herself as a passive person. In that case, there will not be any abrasions or external violence. There this presumption would not help because it is altogether a different category of case. What is your medical evidence to prove that there was no consent given by the lady under such circumstances?

DR. J. M. SHARMA: Medical evidence is a part of the whole chain. It is not a whole proof. In case there has been a sexual intercourse, the person's spermatozoa will be there. It is for the prosecution to prove that this act has been done by the accused by threatening the victim.

MR. CHAIRMAN: What is the proof as medical evidence?

DR. J. M. SHARMA: I will only say that sexual intercourse has been accomplished. I will not say that the force has been used. It is for the prosecution to prove that.

In Section 376 sub-clauses A to E have been kept where the word 'rape' has been used. If any sexual act by these persons whether it was done with or without consent, is to be treated as without consent, then this Section becomes useless. If it is accepted, then the word 'rape' should be removed. The word should be only 'sexual intercourse'. This has to be taken as rape. These persons have been given only five years imprisonment whereas the ordinary persons have been given seven years imprisonment. These persons should be given at least 10 years imprisonment. If the word 'rape' is removed and it is substituted by the word 'sexual intercourse', then automatically these persons will get severe punishment.

PROF. S. D. SHARMA: There is some truth in the theory that rape is a natural product of social systems rather than a manifestation of individual pathology. In support of this, I will give examples of some countries where punishment for rape is very severe but even then the incidence of rape is very high in those countries. For example in U.S.A. the punishment for rape is severer than in U.K. Even then the total rape cases in England are less than the rape cases in the city of Detroit. In that city every year rapes committed are made

that the rapes reported from the whole of England.

The second point is that quite a good number of cases are not reported. Victims may feel compromised or embarrassed, dis-inclined to become involved in investigatory proceedings or reluctant to appear in court and face the prospect of hostile cross-examination. It is estimated that—out of 20 rapes only one case is reported. 19 cases are not reported. Among those which are reported, there are various factors. Circumstances were such that the man was caught in the wrong circumstances or the woman was in a different mood. All those things are to be considered.

From one view point the man charged with rape seems little different from the average man, save that, in efforts to satisfy the desires and fantasies shared by many males, he has acted impulsively or over enthusiastically and had the bad luck to encounter a woman who decided to report him. The late Dr. Kinsey is said to have commented that the difference between a good time and a rape often largely depends upon whether the girl's parents happened to be awake when she returned home. Rapes are often ambiguous affairs.

The theory is true that rape is natural product of social systems rather than a manifestation of individual pathology. It appears that a substantial proportion of rapes occur in the context of ordinary relationship between normal man and woman. The offenders are mostly young and working class and their victims are likely to be the same, coming from the same neighbourhood and ethnic group.

The group rapes, perpetrated as masculinity proving rituals, by some young gangs or occasionally in more respectable settings, demonstrate the

relative ease with which, under appropriate circumstances, even in civilian life, young males can be led to participate in sexual assaults. Usually group rapes are deliberate and pre-meditated.

Broadly there are three types of sexual aggressors:

(a) The first consisted of Statistically normal individuals who simply misjudged the situation.

(b) The second is the socio-pathic or criminal group. These are criminally inclined men who take what they want, whether money, material or women and their sex offences are by-products of their general criminality.

(c) The third group includes persons—rapists in conflict because they fail to come up to their own image of masculinity and whose crimes result from an irrational effort to deny the existence of homo-sexual urges or from deep seated hatred focussed particularly on women. They are true misogynists who expressed their hostility to women by overpowering, devaluing and dirtying their victims.

There was a question how to prove criteria of rape? Suppose man is alcoholic and he does something under that influence, we may not be able to collect blood samples at that time. I may tell this from the history of the accused. We can know this from some objective tests to prove a person alcoholic. There are other methods which scientists have developed, to prove a person alcoholic and also to detect the presence of semen etc. may not be semen, etc.

MR. CHAIRMAN: 99 per cent of alcohol is absorbed in the body and 10 per cent passed out.

In some cases, small quantity of alcohol is consumed. They have no control on them. But they behave in

such a way as if they have control. What have you to say so far as psychology is concerned?

PROF. S. D. SHARMA: It is true, that two persons may behave differently after taking alcohol though the quantity and quality of alcohol may be the same. Some become vocal. Some become inactive. One man may behave in one way and another in a different way. It depends upon the interaction of alcohol and his personality.

I would like to add a point about consent. I feel it should be replaced by the words "informed consent" which is more than consent. In informed consent only consequences are explained to her. For example in the area of Medical Practice it is for the doctor to prove who gave drugs that those drugs will have such consequences.

MR. CHAIRMAN: Even silent consent is also there.

PROF. S. D. SHARMA: That is not informed consent. It should be no consent. It should not be taken into consideration.

SHRI P. VENKATASUBBAIAH: It is a half consent. There was a point that a girl of 16 years of age cannot give consent. And hence, the rape may be classified into two categories.

MR. CHAIRMAN: The consent comes only after sixteen years of age.

PROF. S. D. SHARMA: We can classify this offence in two categories—statutory and non-statutory. The rape committed on a girl who is below sixteen years of age should come under statutory category. If some sort of classification is made, we would be able to solve this problem.

MR. CHAIRMAN: That has been explained already.

PROF. S. D. SHARMA: There should be some provision in the proposed legislation by which no one should ask about one's past sexual experience. The objection should be to prove whether this particular crime was committed on a woman or not even by the investigated people. There may be some external marks.

SHRI P. VENKATASUBBAIAH: There may be exceptions also.

MR. CHAIRMAN: What is your suggestion?

PROF. S. D. SHARMA: When we are making a special provision, I am wondering whether it is possible for us to make some suggestions regarding the criminal procedure and time factor. The more the delay the more is going to be the agony the mental torture, to the person who is a victim. All these cases should be expedited and somehow or other they should not prolong. That aspect of time factor should be taken into consideration.

There are some objective criteria regarding the credibility of the victim whether the act committed by him is right or wrong. That should also be taken into consideration. Some sort of provision should be there.

SHRI P. VENKATASUBBAIAH: Even if the girl is below sixteen years of age, the judge is bound to test the veracity of her statement to see whether she understands this act as good or bad.

PROF. S. D. SHARMA: What we attempt to do is not done here.

MR. CHAIRMAN: Exercising of the power is altogether quite a different thing. There is an existing legal provision.

SHRIMATI GEETA MUKHERJEE: We have come across cases of rape,

Due to one reason or the other, the medical evidence was not taken on time. This poses a big problem. He was giving his opinion as a Principal and not as a witness I believed. Only circumstantial evidence should be taken into consideration in such cases. I want to know whether a directive could be given to the presiding officer if there could be any codification on this.

DR. J. M. SHARMA: According to me, it should be incorporated in the Presumption Clause.

SHRI QAZI SALEEM: Uptil now we had been discussing only the legal aspect of it. If you can understand Hindustani, I can speak in Hindi.

अभी तक जो विटनेस हमारे सामने आए हैं, उन्होंने लोगल एस्पेक्ट हमारे सामने रखी है। पहली दफा एक एक्सपर्ट आए हैं, जो ह्यूमन बिहेवियर के बारे में बता सकते हैं। इन्होंने बताया है कि रेप को कैटेगिरीज कितनी है और तीन-चार कैटेगिरीज इन्होंने बताई हैं। मैं उस में एक-दो कैटेगिरीज और जोड़ना चाहता हूँ। एक एन्टो-सोशल आदमी या बेगाबॉड रेप कर सकता है। दूसरे बे सोग है, जो पर्वन इन आथेरीटी है और रेप कर सकते हैं और सेक्शन III ए में जिन लोगों का नाम दिया गया है जैसे हास्पिटल के डॉक्टर हैं या पुलिस कस्टडी में जब औरत होता है तो बहुत से लोग वहाँ पर रेप कर सकते हैं, जिस को गैंग रेप कहते हैं। इस तरह से एक कन्सोरेसी कर के रेप करते हैं। इस के अलावा कुछ ऐसे लोग हैं, जो बहुत करीफ आदमी हैं जैसे डॉक्टर हैं या वकील हैं, जो रेप नहीं करना चाहते लेकिन कुछ परिस्थिति ऐसी हो जाती है कि वे भी रेप करते हैं। जब औरत डांस करती है या अपने आप को एक्सपोज करती है और वे आदमी यह सोचते हैं कि साइकोलाजीकली वह सेक्सुअल इन्टरकोर्स करना चाहती है।

कुछ लोग इस कैटेगिरी में आ जाते हैं। इस के अलावा जब कम्युनल रायड्स होते हैं, तो एक किस्म का हेडिड पैदा हो जाता है और उस में औरतों को रेप किया जाता है। इस के अलावा कुछ जगहों पर एम्बलायस नर्कियों को एम्पलाय करते हैं।

Suddenly, in her weak and psychological moment, she might have agreed for a sexual intercourse.

आपने जा कैटेगिरीज बनाई है और मैंने जो कैटेगिरीज बताई हैं, वे सात-आठ कैटेगिरीज हो जाती हैं। मैं यह जानना चाहता हूँ कि क्या आप सब को एक ही सजा देना चाहते हैं, सब का एक ही लाठी से हांकना चाहते हैं या अलग-अलग कैटेगिरीज के हिसाब से सजा देना चाहते हैं।

I shall narrate one incidence. A boy was studying in some college. He had got some urge. He used to meet a girl and kiss her. Suddenly, he had the sexual urge which involved him in the sexual intercourse with that girl.

हम हायस्ट सजा मुकर्रर कर दें और बाकी जज के डिस्क्रेशन पर छोड़ दें। अगर मिनीमम सजा हम तयबीज करते हैं, तो जज के डिस्क्रेशन को हम के रहे हैं। हर केस के सरकमटांसेज अलग होंगे और ऐसे सरकमटांसेज पैदा हो सकते हैं जिनमें यह जर्म किया जा सकता है। क्या सजा दे कर आप बलात्कार को रोकना चाहते हैं? हम ने देखा है कि अमेरिका में लन्दन के मुकाबले में ये अपराध ज्यादा हैं हालांकि वहाँ पर सजा सक्त है। येरा सवाल यह है कि अलग-अलग कैटेगिरी के हिसाब से अपराधी को सजा दो जाए या सब के लिए एक ही सजा हो?

PROF. S. D. SHARMA: Sir, the main objective of classifying the same is that the punishment depends upon the personality of the person and the nature of the crime and the aim should be to correct them. In our old

approach, we did not know about the human aspect of the problem. Now, we are aware of this.

For example, to say that every institution has a bad man is not true because if there are bad persons who are holding the position in such institutions, they should be treated more severely. The persons occupying high position who are responsible commit this kind of crime, misusing their authority, they should be punished and dealt with more severely. If we take this point in view we can solve this problem.

SHRI AMARPROSAD CHAKRABORTY: Is it proper to alter the whole conception of our jurisprudence and change the rule and say that every man is innocent unless he is proved otherwise in so far as this crime is concerned?

PROF. S. D. SHARMA: The crimes are increasing. There is enough evidence in support of this. One of the important reasons is that there is industrialisation in many parts of the country. Persons go from rural area to urban area. A person comes from a village to a metropolitan city like Bombay, Calcutta, Delhi, Madras etc. thinks that nobody knows him if he commits a crime. If a man is living in area 'A' and he goes to area 'B' and commits crime because he has got some status in his own native place and he is afraid of committing crime in his own place. Take for example, Mafia gang. In the place where they live, that is, their residential area, they have a status but outside that area he is a bad man. The crimes are increasing because of the rapid disintegration of the family and rapid industrialisation and urbanisation.

MR. CHAIRMAN: Will it not help if more publicity is given for this kind of crime?

PROF. S. D. SHARMA: It will not help. Publicity acts as a kind of suggestion and many persons may take clues from such publicity.

श्री बिलोक चन्दा : मैं शर्मा जी से एक सवाल पूछना चाहता हूँ कि क्या आप ने इस बात का अध्ययन किया है कि क्राइम कहां होते हैं और शहरों और गांवों में जो इस तरह के क्राइम होते हैं उन कारेशों क्या है ?

PROF. S. D. SHARMA: It is more in the urban areas than in the rural areas. I can say authoritatively that as far as Goa is concerned, we have done a detailed survey.

SHRI AMARPROSAD CHAKRABORTY: It is found that there are some cases of this kind and because of the agitation of the woman organisations and also the press, the crime has come down. Do you recommend the publication of such crime or not?

PROF. S. D. SHARMA: There should be discretion in the matter of publication of such cases. One should not make a man hero from such publicity.

SHRI BAPUSAHEB PARULEKAR: You said that the evidence has to be taken into consideration and it is not necessary that there should be any positive medical evidence. Then you said that a statutory provision should be made to enable the presiding judge to give a positive decision in spite of the negative opinion given by the doctor.

DR. J. M. SHARMA: I said that the absence of a positive opinion of the medical evidence should not be taken for granted.

SHRI BAPUSAHEB PARULEKAR: Kindly take into consideration the evidence given by your brother ex-

pert. He says that even the previous character of the victim is not relevant. And you went to this extent that if the lady makes a statement before the court, that should be accepted.

DR. J. M. SHARMA: If the Jailor has done that act, then the police should find out some other circumstantial evidence.

SHRI BAPUSAHEB PARULEKAR: Is it a fact that after the age of 60 even if there is no sexual intercourse, because of certain mental disability the woman comes to the conclusion that she has been raped.

DR. J. M. SHARMA: It is called delusion. She says that she has seen her husband's impression, which is absolutely false. But that is not the single proof. She has to prove other evidence also.

प्रो० निर्मला कुमारी कक्तावत : मनोवैज्ञानिक तथ्यों के आधार पर आप ने यह बताया कि कई प्रकार के व्यक्ति ऐसे होते हैं जो कि एबनार्मल एक्टिविटीज करते हैं और अमेरिका जैसे देश में आडोपस काम्प्लेक्स वाली सोसाइटी में लोग इस प्रकार की एक्टिविटीज करते हैं। मैं आप से यह जानना चाहती हूँ कि वर्तमान समय में क्या इस प्रकार की एक्टिविटीज बढ़ रही हैं या घट रही हैं ?

आप ने बहुत सारी एग्जाम्पल्स अमेरिकन और ब्रिटिश सोसाइटी की दी हैं। भारत में जो अर्बन सोसाइटी, ट्राइबल सोसाइटी और इस के साथ साथ कूरल सोसाइटी है, उन सब का अध्ययन इस चीज को सामने रख कर किया है ?

PROF. S. D. SHARMA: Sometimes in the family oedipus complex is developed and if it is not resolved, it can lead to sexual abrasions. These cases are not very common but they do occur. Even though they are not

committing the crime, yet at the subconscious level, they feel guilty. Such cases are quite high but because of social customs and other inhibitions they do not give expression to such things.

I do not have much experience with the tribal population. But there the sexual promiscuity is large and the society is not willing to accept that. In some tribal areas, to have sexual relationship before marriage is quite common, but after marriage it is not permitted. These things are very much prevalent in the Indian situation also.

प्रो० निर्मला कुमारी कक्तावत : मेरे कहने का मतलब यह है कि आप ने जो यह कहा कि आडोपस सोसाइटी अमेरिका जैसे देश में ही है, हमारी इंडियन सोसाइटी में भी ये होती हैं और प्रोफेसर श्रीनिवासन ने संस्कृटाइजेशन आफ कल्चरल एक्टिविटीज जिसे कहा है, तो मनोवैज्ञानिक तथ्यों के आधार पर क्या आप ने ऐसी सोसाइटीज का अध्ययन किया है ?

PROF. S. D. SHARMA: Culture plays a very important role in guiding our behaviour. I would give a very simple example of a spider who is not in the cobweb. Cobweb is like culture. Culture or cobweb reduces our mobility. When he personally comes out of the cobweb or culture, he is exposed to more dangers. He would in these circumstances commit those things which he would not commit in his own culture. This part is very much true. One goes in one direction and the other goes in a different direction.

SHRI S. W. DHABE: If physically handicapped say blind women are raped, what should be the punishment in that case?

DR. U. D. SHARMA: If offence is committed against such helpless persons, punishment should be deterrent.

SHRI S. W. DHABE: Gang rape are pre-meditated. Can they be put

in different category and should they be given harsher punishment?

DR. U. D. SHARMA: I leave it to the wisdom of Parliament to see that the punishment could be for life.

SHRI S. W. DHABE: Please see page 3—top. "Wife not being 15 years of age".

DR. J. M. SHARMA: If that is raised to 18, it will have to come like that.

SHRI S. W. DHABE: You have suggested many things about the prevention of crime. But what about rehabilitation of the victim?

PROF. S. D. SHARMA: It all depends upon the acceptance of the society.

श्री हुकम देव नारायण यादव : समिति के सामने पहलो बार मानव स्वभाव से सम्बन्धित विशेषज्ञ साक्ष्य देने के लिए आए हैं और इन्होंने हमें कई बातें मानव विज्ञान के बारे में बताई हैं। मैं यह कहना चाहता हूँ कि एक तरफ महिला में पुरुष के मुकाबले में शारीरिक कमजोरी है लेकिन दूसरी तरफ यौन के मामले में महिला के मुकाबले में पुरुष में कमजोरी है। इन दोनों को सामने रखते हुए ही हम कानून बनाने के बारे में सोचेंगे। इस चोज को ध्यान में रखते हुए मैं आप से एक प्रश्न पूछना चाहता हूँ कि अगर कहीं पर महिला द्वारा इन्स्टोगेट किया जाता है और उस इन्स्टोगेशन से पुरुष उस महिला के साथ इन्टरकोर्स करता है, उस के बाद अगर यह शिकायत होती है कि महिला के साथ रेप किया गया है, तो ऐसे मामले में क्या पुरुष अपराधी माना जाएगा। यह तो मेडिकली प्रूब हो जाएगा कि औरत के साथ सेक्सुअल इन्टरकोर्स किया गया है और यौन के अपराध रोकने के लिए जितने प्रतिबंध आप पुरुषों पर लगाना चाहते हैं, तो मैं यह जानना चाहता हूँ कि जहाँ पर इस तरह से महिलाओं की धोर से इन्स्टोगेशन

किया जाता है, उन पर भी क्या आप कोई प्रतिबंध लगाने की बात सोचते हैं। उन पर प्रतिबंध होना चाहिए या नहीं ?

PROF. S. D. SHARMA: He has raised a very fundamental question which has not been raised by anybody. To say that they cannot take initiative is not true. Some studies on the psychology of women revealed that they may take as much initiative as man. They are part and parcel of the whole system. They may be as active as a man and in those cases we may have to protect man.

श्रीमती विद्यावती चतुर्वेदी : मैं केवल एक बात जानना चाहती हूँ। हिन्दी का जो यह बिल है, उस में 375(6) में 'प्रभावी प्रतिरोध' की बात कही गई है। इस में पहली, दूसरी, तीसरी और चौथी आदि सारी चीजों को मिला कर देखा जाए, तो क्या यह समझते हैं कि इफेक्टिव रेसिस्टेंस शब्द रखने जरूरी हैं। 'इफेक्टिव' शब्द का कोई मतलब नहीं निकलता है क्योंकि अगर यह रखा गया तो कोर्ट में जा कर इस के तरह तरह के इन्टरप्रिटेशन होंगे और वकीलों को अच्छा मौका ऐसे मामलों में मिल जाएगा।

DR. U. D. SHARMA: आप का जो यह सजेशन है यह बड़ा अच्छा है और यह शब्द नहीं रहना चाहिए।

I think counsels of both the parties will apply their mind and they will quote so many rulings.

श्रीमती विद्यावती चतुर्वेदी : मैं आप से यह जानना चाहती हूँ कि क्या आप ने इस तरह का प्रयत्न किया है कि जहाँ गरीबी है, जहाँ बेकारी है और लोगों के पास कोई काम नहीं है, वहाँ इस तरह की सेक्स की घटनाएं ज्यादा होती हैं ? इसके अलावा देहाती क्षेत्रों में जहाँ जमींदारों, नैब्लोर्ड और मजदूरों का सवाल आता है, वहाँ पर

पूरी बटनाएं ज्यादा होती हैं या ऐसी जगहों पर ज्यादा होती हैं जहाँ पर रिच लोग हैं और उन के पास सारी फैसेलिटीज हैं और जो प्रारामतलबों का जीवन बिता रहे हैं ?

PROF. S. D. SHARMA: From the study made about the criminal behaviour, it is not true to say that only the poor commit the crimes. I can say that among the poor persons below fourteen years of age, the crime rate was very less.

SHRI P. VENKATASUBBALAM: She is not wanting to know about the crime rate. What the Hon. Member wants to know is this. Is it due to the helplessness because of poverty of women, the crime rate is more?

PROF. S. D. SHARMA: I can only say that the crime rate is more among the middle-class.

MR. CHAIRMAN: The question is very simple. Some ladies are working under landlords or zamindars. They have dominance over them. Because of poverty, there is a likelihood of the landlords, the rich people, taking advantage of their poverty. In such cases, there may be a chance for committing rape on the ladies by them. What is your experience here? Are such cases more or less? If it is more, can you suggest any measures to avoid this?

PROF. S. D. SHARMA: Among those who are in that situation, the crime rate is very high. To be precise, in Goa, there is a system of adoption of the illegitimate children in some communities. When the girls grow old or when they mature in age, the sexual enjoyment is so high that it is more a rule than an exception.

श्रीमती विद्यावती कडुबंदी : देहातों में इस तरह के केसेज ज्यादा होते हैं और वहाँ

पर दो-दो और तीन-तीन दिनों तक डाक्टर एबैलएबिल नहीं होते हैं। इसलिए डाक्टरों का जो रिजल्ट होता, वह स्त्रियों के मामले में कमबोर होता है। मैं यह जानना चाहती हूँ कि मेडिकल साइंस ने ऐसी कोई खोज निकाली है, जिस से कुछ सरकमस्टेंसेस को बेसिस पर यह सिद्ध किया जा सके कि उस महिला के साथ ज्यादा हुई है, उसके साथ रेप हुआ है? क्या कोई खोज ऐसी सामने आई है? इस मामले में दोनों तरफ देखा चाहिए कि कोई औरत किसी मर्द पर झूठा इल्जाम न लगा सके और वास्तव में अगर औरत पर जुल्म हुआ है, तो अपराधी को सजा मिले। मध्य प्रदेश में जो हमारा बस्तर का इलाका है, वहाँ पर सौ, डेढ़ सौ और दो सौ मील तक न बँलगाड़ी है और न दूसरे घाने-जाने के साधन हैं। लोगों को पैदल घाना-जाना पड़ता है और इतने में एविडेंस खत्म हो जाती है। ऐसी स्थिति में साइंस में ऐसी कौन सी चीज है, जिस से यह साबित हो सके कि वाकई में महिला पर ज्यादा हुई है।

DR. J. M. SHARMA: My submission here is that the medical examination, in rape case where the piece of evidence is likely to be destroyed with the passage of time, should be done at the district headquarters level. Again I want to say this. I have already brought this out in writing. I could not be ready earlier. These examinations should not be made by anybody and everybody. That should be done by a trained medical officer who has been trained in forensic medicine and who has got the experience and who has been given training in dealing with such cases. Once there is a delay of one or two days, it may be harmful to the accused.

I may say here that spermatozoa and semen can be seen alive in the vagina for four or five days. If an injury is there, it will not be healed. So, in these four or five days, nothing

much is going to be lost. If a trained medical officer examines the person concerned that will be better.

MR. CHAIRMAN: In case they disappear, what concrete suggestions you have to say that the sexual intercourse has been done? This is what the madam wants to know from you.

DR. J. M. SHARMA: You may say that the evidence will be lost but I say it will not be lost.

MR. CHAIRMAN: Now, the Minister will put his question.

SHRI P. VENKATASUBBAIAH: Again I will have to obey the order of the Chairman. I am only putting my question to Dr. Sharma. Dr. Sharma, you started by saying that we will have to presume that even when rape takes place, the medical examination of victim is not forthcoming. You also said that there would be hundred and one circumstantial evidences which can be taken care of. But the character of the victim need not be taken into account.

When the medical finding comes, then the statement made by the victim must be given due weight. This is what you were trying to tell us; if I am wrong, please correct me.

DR. J. M. SHARMA: What I said was that if the victim comes for medical examination, her history is compared and if the history is confirmed by the circumstantial evidence, even when the medical opinion is negative and, the circumstantial evidence is positive, the medical opinion should be taken.

SHRI P. VENKATASUBBAIAH: We take into account the presumption and are not going to take into account the past history.

DR. J. M. SHARMA: If the medical opinion is not able to support us positively, then, their 'no' may be 'yes'. This is what I say.

Let me clarify it again. If the medical opinion is 'no' but if the circumstantial evidence says 'yes', then my 'no' should be ignored.

SHRI P. VENKATASUBBAIAH: What should I conclude by this?

DR. J. M. SHARMA: Many a time, a leading witness can tell that the circumstantial evidence is so strong that they never tell a lie. Hence the judge has to take it.

SHRI P. VENKATASUBBAIAH: What you say is quite contradictory.

DR. J. M. SHARMA: If the medical opinion says 'no' but, if the circumstantial evidence is strong and says 'yes', then the medical opinion could be ignored. That is what I say.

SHRI P. VENKATASUBBAIAH: About the human behaviour you have made a study. You know our judicial system is mainly based on British jurisprudence and every act is according to the jurisprudence of the Indian Criminal Code and everything. The society is fast developing. In the Indian society there are several exposures and Western influence and all that. Have you made any study based on the changing circumstances? I want to know whether you feel that a time has come that the jurisprudence now prevalent in this country should require a thorough change or not. What is your opinion?

PROF. S. D. SHARMA: Then the question is so far as the judicial system is concerned is: should we frame law under the presumption that everybody is honest or everybody is dishonest? In any Government there are some old laws which were based on the system that everybody was telling the truth till it was proved otherwise. If you take the French Police System, you will find it is different from the British Police System. It is not consistent.

MR. CHAIRMAN: Thank you very much.

(The witnesses then withdrew)

IV. *Young Women's Christian Association, Bangalore*

Spokesman:

Shrimati E. V. Mathew

[*The witness was called in and she took her seat.*]

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

You may now tell us the important points which you may like to add in regard to the draft Bill.

SHRIMATI E. V. MATHEW: Generally speaking, from the women's point of view I feel that some of the provisions given in this Amendment Bill protect the interests of women. But there are certain amendments which will definitely, in my opinion, go against the interests of women.

There is a provision that women shall not be arrested after Sun set and before Sun rise. We would like to add here that the arrested women should be interrogated only at her residence and she should not be taken to the Police Station for interrogation. Cases relating to rape and sexual offences should be dealt with only in camera. Moreover, if the accused in a powerful position, belongs to the higher section of the society, he can definitely wield authority and influence. In that case, the interests of the victims would not be safeguarded.

Unless it is expressly requested by the victim, the proceeding should be held in camera, otherwise not. The present provision should be deleted, according to me.

Then during the interrogation by the Police she should be allowed to have a male relative or a friend or a representative of a Women's Social Organisation. Once a woman is arrested, she should not be detained in a Police Station, but she should be kept in a women's detention centre or Women's Home. Moreover, if the Police refuse to record a complaint made by a woman of a rape victim, it should be considered as a cognisable offence. Many cases which have been reported to the Police go unrecorded by the Police.

In a case of rape, when the victim is required to be examined by a medical practitioner, she should be allowed to have a doctor of her own choice for conducting medical examination on her. The medical report should be submitted without any delay to the concerned authority.

The onus of providing proof must be on the accused. But this should be extended to more cases, for example in the case of land disputes. The onus of proof should be on the part of the accused that the offence has not been committed. It should not only be in the case of custodial rape, but it should be extended to other cases like land disputes, employer-employee disputes, etc.

SHRIMATI E. V. MATHEW: Regarding rape cases not allowing to be published and also not to reveal the identity of the accused, I am definitely against this provision. We feel that this will be misused in the interest of the accused. It will also curb the right of the press and the women organisations. The press and social organisations should be permitted to publish such cases.

MR. CHAIRMAN: Thank you.

(*The witness then withdrew*)

V—Sri C. Ayyangar, Bangalore.

[The witness was called and he took his seat.]

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witness that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

What do you want to say on this Bill?

SRI C. AYYANGAR: I thank the Chairman of this hon. Committee for having extended to me the opportunity of appearing before this august Committee. The object of this Bill is limited to sex offences only. I feel the following points should be taken into consideration.

The rehabilitation of the victims to their full mental, physical and moral composure should be there.

The penalty of this issue rests not only on the culprits and abettors but also on society and Government.

There should be effective measures to check recurrence of such crimes.

Considering the seriousness of the subject on hand which covers the whole humanity and its existence, it should be viewed in all its aspects even if it involves delving into the Directive Principles of the Constitution and further re-modelling the Constitution itself.

I am submitting a general statement in connection with the Bill as one of the worst victims of this offence in its conspired form and has endured the after-effects for 35 years. That speaks for itself.

I have made an exhaustive study of the world psychology also and have a good knowledge of the present development of science and its limitations.

On this Bill I have already submitted a memorandum.

MR. CHAIRMAN: Thank you.

(The witness then withdrew)

The Committee then adjourned.

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CRIMINAL LAW
(AMENDMENT) BILL, 1980

Saturday, the 1st August, 1981 from 10.00 to 13.40 hours and again from 15.00
to 16.00 hours Committee Room No. 313, Vidhan Soudha, Bangalore.

PRESENT

Shri D. K. Naiker—*Chairman*

MEMBERS

Lok Sabha

2. Shrimati Vidyavati Chaturvedi
3. Shrimati Suseela Gopalan
4. Shri R. K. Mhalgi
5. Shrimati Geet Mukherjee
6. Shri K. S. Narayana
7. Shri Ram Pyare Panika
8. Shri Qazi Saleem
9. Prof. Nirmala Kumari Shaktawat
10. Shri S. Singarvadival
11. Shri R. S. Sparrow.
12. Shri Trilok Chand
13. Shri V. S. Vijayraghavan
14. Shri P. Venkatasubbaiah

Rajya Sabha

15. Shri Kamchandra Bharadwaj
16. Shri Amarprosad Chakraborty
17. Shri S. W. Dhabe
18. Shri B. Ibrahim
19. Shri Dhuleshwar Meena
20. Shri Leonard Soloman Saring
21. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—*Senior Legislative Committee Officer*

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS

Shri S. C. Bablani, *Under Secretary.*

WITNESSES EXAMINED

I. Government of Tamil Nadu

Spokesmen:

1. Shri Herbet Chelliah, Deputy Secretary, Law Department
2. Shri A. John Joseph, Deputy Secretary, Home Department

II. Union Territory Administration of Pondicherry*Spokesmen:*

1. Shri A. John Amproise, Chief Judicial Magistrate, Pondicherry.
2. Shri S. G. Bhatt, Principal, Government Law College, Pondicherry

III. Shanthi Seva Samaj, Bangalore*Spokesman:*

Shrimati Indu Krishnappa

IV. Baze Niswan, Bangalore*Spokesmen:*

1. Shrimati Sharkat Qureshi
2. Shrimati Saadthuissa Begum

V. Dakshina Bharathia Mahila Sangham, Bangalore*Spokesmen:*

1. Shrimati Padma Srinivasan
2. Shrimati Bhavani Sunder Raj

VI. Government of Karnataka*Spokesmen:*

1. Shri A. Venkat Rao, Law Secretary
2. Shri A. M. Moses

VII. Agnes Villa for destitutes, Bangalore*Spokesmen:*

1. Shrimati Lilian Xavier
2. Shrimati B. Vimla

VIII. Working Women's Co-ordination Committee, Karnataka, Bangalore*Spokesmen:*

1. Shrimati S. Malthi
2. Shrimati Gayatri Devi

I. Government of Tamil Nadu,
Madras.

Spokesman:

vs. spokesman:

1. Shri Herbet Chelliah.
2. Shri John Joseph, Deputy Secretary Home Department.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them shall be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

Why are your Secretaries not coming? In all the States Secretaries, like Home Secretaries, and Law Secretaries have been appearing before the Committee.

SHRI A. JOHN JOSEPH: Yes, Sir.

MR. CHAIRMAN: Have you gone through the Draft Bill? Please enlighten us with your views.

SHRI HERBET CHELLIAH: It proposes 'in camera trial' for rape cases and ban on publishing any material likely to identify the victims. It has widened the consent which was not in existence before. It has shifted the onus of proof in respect of custodial rape.

The rape proceedings should be in camera. Tamilnadu Government has
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been meaning public trial. Now this Government favours the proposal that all these proceedings should be in camera.

Another new proposal is also there i.e. publication of any material which is likely to identify the victim should be restricted. In our State, there are some Tamil dailies which make capital out of such publication. They propagate the offences committed particularly in some villages. Some cheap Tamil dailies publish the news items in Headlines that so and so of village so and so, aged so and so has been raped. It gives wide publicity throughout the State. We, therefore, welcome the introduction of this aspect in the Bill, viz., Now the publishers and printers should be punished.

We have got some instances to quote which I shall do later.

The consent is very important legal aspect of the matter. In the present law, as it stands, the onus is on the prosecutrix i.e. the victim has to prove that it was done without her consent.

Now, the Bill envisages that the burden is shifted to policemen, that is from the constables and the other police officers. It is for him to prove that the act was done with her consent. Government also welcomes the proposed amendment that the onus should shift on the policeman to prove that the sexual intercourse was done with her consent.

MR. CHAIRMAN: What is your justification to maintain that? You must say that.

SHRI HERBET CHELLIAH: Sec. 375 (2) says that "Whoever,—(a) being a police officer commits rape in the local area to which he is appointed, or in any police station whether or not situated in such local area;..." Now, with regard to the policemen, I

say that the punishment should be stringent because they are a disciplined force and they should not misbehave. Also I would lay stress not only on the police officers but also on those working in hospitals. Clause (d) says:

"being concerned with the management or being on the staff of a hospital, commits rape on a woman who is receiving treatment in that hospital; . . ."

So, I am mixing both the categories of officers, that is, medical officers as well as the policemen. In our State, we have picked out five instances of police constables committing rape and one instance of a medical officer's committing rape.

MR. CHAIRMAN: What is your inference by that? Have you any concrete proposals?

SHRI S. W. DHABE: Let us know the result of those cases.

MR. CHAIRMAN: He will tell later. Let him first say what he wants to say.

SHRI HERBET CHELLIAH: Let me explain briefly. Now, we are on the topic of consent. According to the provisions of the Bill, the onus shifts. It is for the accused, that is, for the suspect, to prove that the act was done with her consent.

MR. CHAIRMAN: You quote one instance. Take the case of the police officer only—not both. You explain that case.

SHRI HERBET CHELLIAH: Take the case of Primary Health Centre. The offence usually takes place there. There we are propagating birth control and sterilisation also takes place. There the medical officer in-charge, under the pretext of giving treatment, undresses the girl and he touches her private part. In that process she gives her consent. That is because

she is under the impression that she comes only for the particular treatment. This medical officer, taking advantage of her innocence, commits the sexual intercourse with her. One doctor has been charged—not in an open court—and he had been dealt with departmentally. He was dismissed from service.

MR. CHAIRMAN: No trial took place.

SHRI HERBET CHELLIAH: No trial took place.

MR. CHAIRMAN: Why?

SHRI HERBET CHELLIAH: Immediately there was nothing available. In a trial case, the onus shifts on the prosecution to prove the offence.

MR. CHAIRMAN: That is a different matter. Why should she not file a complaint?

SHRI HERBET CHELLIAH: This is a drawback. Particularly, in villages, they do not make a complaint.

SHRI P. VENKATASURBAIAH: I shall try to help you. Your argument in the matter is that in the Primary Health Centres, the village girls coming there for getting themselves sterilised are given this impression by the doctor that this is another method of sterilisation and, in that process, he commits that offence.

This is what you were trying to explain to the Committee.

SHRI HERBET CHELLIAH: That is right.

SHRI P. VENKATASUBBAIAH: The doctor commits the offence on the pretext of his doing the sterilisation operation. He gives the impression that this is a particular treatment. In this connection, what the Chairman would like to know from you is this. You said that departmental action had been taken against the doctor. How did it arise? Was there any complaint made subsequently by the victim or anybody from that place? How would you ever come to know that

this sort of a crime has been committed by this particular doctor? You also said that a departmental enquiry was conducted against him.

SHRI HERBET CHELLIAH: There were lots of complaints against that doctor not only by this particular victim but from some one else also.

SHRI P. VENKATASUBBAIAH: You mean to say that on a general complaint you have taken departmental action.

SHRI HERBET CHELLIAH: Only on allegation reported we have taken action against the doctor for this misconduct.

SHRI P. VENKATASUBBAIAH: You took departmental action against him. And a dismissal order was also served on him. They have made him to prepare to face an enquiry and you have given this punishment. You have not given a deterrent punishment to the officer for this offence.

SHRI HERBET CHELLIAH: No, Sir. That is because there are so many factors involved. Medical examination is necessary for imposing the deterrent punishment to the accused.

SHRI R. K. MHALGI: That means the doctor is in the habit of committing such an offence but Government did not take a complaint against him. You made a departmental enquiry into this case.

SHRI HERBET CHELLIAH: That came much later. For one year or so, there was no complaint.

MR. CHAIRMAN: What is your next point?

SHRI HERBET CHELLIAH: About constables we have some problems.

SHRI P. VENKATASUBBAIAH: You now tell how is the amendment going to help you. First tell us to

what extent this amendment will help you in all the five cases that you cited.

You take your time and tell us as to how this is going to help you to deal with such similar cases which may happen in future. There may be a complaint or may not be. In such an event how is the amendment going to help you in awarding deterrent punishment to those officers.

SHRI HERBET CHELLIAH: That is how I come before you with my suggestions.

In this case, the Government has suggested that the present Bill as such does not make any provision at the investigation stage itself. There should be some sort of a provision for this. For the crime of this nature, a committee may be formed and that committee may be constituted according to the rules. That Committee may help in getting the complaints registered with the Police and also during investigation any Member of the Committee can participate and help the Police Officer.

MR. CHAIRMAN: An injury or any act of crime is done only against the individual. Therefore those who are aggrieved can make the complaint and not otherwise. The right is given to the party who have suffered due to the act and not otherwise. Suppose some injury has been inflicted on me, I have to take action and not anybody else. Now, in regard to investigation do you feel that there is any loopholes in so far as the laws are concerned in the Criminal Procedure Code or even in your Police Act?

SHRI HERBET CHELLIAH: I feel that the investigation should be handled by top police officers not below the rank of Deputy Superintendent or Superintendent of Police in the district who should immediately take the case for investigation.

MR. CHAIRMAN: My question is very simple. Do you find any loopholes in the present laws pertaining to investigation and if so have you got any suggestions to make?

SHRI HERBET CHELLIAH: As far as investigation is concerned I have no remarks to make.

SHRI P. VENKATASUBBAIAH: The Committee has not been able to understand you. It will be better if you send a detailed note to the Committee.

SHRI HERBET CHELLIAH: Yes, Sir.

SHRI P. VENKATASUBBAIAH: What is your experience about the police officers? What were the circumstances and what action did you take against them. Are you still proceeding against them. What were the circumstances that make you believe that his man abusing his authority, had committed rape?

SHRI A. JOHN JOSEPH: There was one reported case here. A policeman had found one young girl loitering at the platform. He took her to his house. He gave her food, etc. While she was asleep he committed rape. Next morning that girl went to her sister and she complained to the police. That victim then disappeared for two or three months. The policeman was suspended. But the policeman was acquitted by the court. The Government went in for appeal but it was dismissed by the High Court.

MR. CHAIRMAN: What had happened in other cases?

SHRI HERBET CHELLIAH: In one case a policeman was charge-sheeted before the Chief Judicial Magistrate. But he was acquitted. The reason was that the main victim was absconding and so, she could not be produced before the court.

SHRI P. VENKATASUBBAIAH: What about other cases?

SHRI HERBET CHELLIAH: We took departmental action.

MR. CHAIRMAN: Why did you not proceed further against those officers?

SHRI HERBET CHELLIAH: The victim girl was not available. The complaint was registered and the investigation was undertaken. But it was stalled because there was a parallel enquiry.

MR. CHAIRMAN: Here the police officers have both the duties—investigation and submitting the chargesheet. Was there submission of chargesheet and trial also? If there was no trial, what was the report of the investigating officer? Our hon. Minister has advised you to give a detailed note. You also quote the cases and what action was taken in those cases.

SHRI HERBET CHELLIAH: Yes.

SHRI AMARPROSAD CHAKRABORTY: Section 327 is here. It gives powers to the court where an application can be given to the Magistrate to hold the proceedings in camera. Why do you want this discretion to be turned into legal compulsion?

SHRI A. JOHN JOSEPH: If it is mandatory, they will hold it in camera. Otherwise they will hold it in the open court.

SHRI AMARPROSAD CHAKRABORTY: About publication of material I wish to say that we must make the public in general conscious of the fact that here are the scoundrels. Law does not take cognisance of many cases.

SHRI S. W. DHABE: For custodial rape we have provided ten years punishment by way of imprisonment. You have suggested now death punishment. Why have you changed your opinion? You were previously of the

view that punishment should be the same as had been suggested by the Law Commission.

SHRI A. JOHN JOSEPH: We can not give the reason just now.

MR. CHAIRMAN: You take a note of it and explain in detail why you have changed the stand.

SHRI S. W. DHABE: You have suggested censorship of cinema pictures showing rape and filthy scenes. We find man posters giving obscene postures.

MR. CHAIRMAN: Let them give it also in the detailed note.

SHRI P. VENKATASUBBALAH: There are inconsistencies found in your Memorandum. Our hon. Members wanted clarifications from you. Since the Committee feels that you require further home work, you go through everything and send the clarifications, etc. to the Chairman at Delhi. We will send for the Law Secretary, Home Secretary and Chief Secretary.

SHRI HERBET CHELLIAH: I want to correct myself. I had given an example of a doctor in my observations. It was not an offence of rape. For grave criminal misconduct action was taken against him. There was no evidence of forthcoming rape.

MR. CHAIRMAN: I request you not to say anything more. You please go and send your Memorandum.

SHRI P. VENKATASUBBALAH: We do not want to embarrass you.

MR. CHAIRMAN: After the receipt of the Memorandum, we will again invite your Law Secretary, Chief Secretary and Home Secretary.

(The witnesses then withdrew)

II. Union Territory Administration of Pondicherry

Spokesmen:

1. Shri A. John Ambroise

Chief Judicial Magistrate, Pondicherry.

2. SHRI S. G. BHATT,

Principal, Government, Law College, Pondicherry.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

SHRI A. JOHN AMBROISE: Government of Pondicherry has not sent any views officially on the Criminal Law Amendment Bill, 1960.

MR. CHAIRMAN: What do you want to say on the provisions contained in the Bill?

SHRI A. JOHN AMBROISE: We have not been asked by the Government to express any specific comments. This is a welcome Bill.

MR. CHAIRMAN: The entire Bill is welcomed by you.

SHRI A. JOHN AMBROISE: Yes, Sir, No comments.

SHRI P. VENKATASUBBAIAH: What is your designation?

SHRI A. JOHN AMBROISE: I am the Chief Judicial Magistrate, Pondicherry.

SHRI P. VENKATASUBBAIAH: You have come here to give evidence before the Committee on behalf of Government.

SHRI A. JOHN AMBROISE: I was nominated by the Pondicherry Administration.

SHRI P. VENKATASUBBAIAH: You said that Government have no comments to offer.

SHRI A. JOHN AMBROISE: That is right.

SHRI P. VENKATASUBBAIAH: In that case why have you taken the trouble to come over here?

SHRI A. JOHN AMBROISE: I personally feel that this is a welcome measure.

SHRI P. VENKATASUBBAIAH: When you go back, you tell your Chief Secretary that the Committee desires that the comments of the Administration have to be sent. Here you have no comments to make. You say that the Government welcome this Bill and agree with it. You also said that you have come here on behalf of the Government and you are at liberty to give your views or comments on this Bill. You also said that these are not Government views. Are these your personal views?

SHRI A. JOHN AMBROISE: I have come here on behalf of Pondicherry Administration.

SHRI P. VENKATASUBBAIAH: Leaving aside that you have come here on behalf of Pondicherry Administration, we will take it as a memorandum whatever you want to say. Are you prepared for that?

SHRI A. JOHN AMBROISE: I shall do so.

SHRI P. VENKATASUBBAIAH: There is then no need for the Pondicherry Administration to send a memorandum. Whatever you say here can be consolidated and it may be taken as a sort of memorandum. Are you prepared to offer your comments which can be taken as the comments offered by the Pondicherry Administration?

SHRI A. JOHN AMBROISE: No, Sir.

SHRI P. VENKATASUBBAIAH: Then what is the use of your coming over here. You give the views as an individual.

SHRI A. JOHN AMBROISE: I have come here on behalf of the Administration.

SHRI P. VENKATASUBBAIAH: You say you have come on behalf of the Administration. Are you prepared to offer your comments on their behalf? This is a simple question I am putting to you.

SHRI A. JOHN AMBROISE: I do not know whether the Pondicherry Administration has submitted a written memorandum.

SHRI P. VENKATASUBBAIAH: In that case, individual opinions should not be taken.

SHRI S. W. DHABE: He is not prepared to give his individual opinions.

SHRI AMARPROSAD CHAKRABORTY: He says that he is a competent representative of the Pondicherry Administration...

SHRI P. VENKATASUBBAIAH: That is why I feel that it is better that he should not give any individual opinions as such. He is not prepared to say that whatever he says here is the opinion of the Administration.

SHRI R. K. MHALGI: On behalf of the Government, he is not entitled to give any opinion since the Government has not formulated its opinion or given its mind. He is a judicial magistrate. We may put to him some questions.

SHRI P. VENKATASUBBAIAH: I think we leave it to the Chairman.

MR. CHAIRMAN: May I request the Hon'ble Members to listen? Here he has been deputed by the Pondicherry Administration to express the views of the Government. That Administration has not submitted its memorandum even though it was called upon to do so. He does not want to take the risk to say something on behalf of the Administration. He has not come in his individual capacity. Let us not confuse. Let him go and give a report. There is another man who is an expert. He may enlighten us. He is the Principal of the Law College. He can enlighten us on criminology and all that. He is a Government employee.

SHRI A. JOHN AMBROISE: Both of us were nominated by Administration.

MR. CHAIRMAN: Let us hear the other witness.

SHRI S. G. BHATT: Sir, at the outset, I must confess that I had come to Pondicherry a few years back. I had the experience as a Member of the Bar in Karnataka State. I had been briefed by Government. Actually the Government is appreciating the measures taken by the Government of India.

As the Law Secretary said we are fully supporting this.

MR. CHAIRMAN: Kindly listen to me. You were there when there was a discussion on this Bill.

SHRI S. G. BHATT: In fact we have been nominated by them.

MR. CHAIRMAN: Tell me whether there was any discussion on the Bill and you were present at that time.

SHRI S. G. BHATT: I was called by the Law Secretary and I was there in his chamber.

MR. CHAIRMAN: Was there a thorough discussion.

SHRI S. G. BHATT: I have been nominated by Pondicherry Administration and I was also told by the Law Secretary that the Pondicherry Administration supports this measure. They have actually asked me, if the Chairman permits, to offer my suggestions as an Academician. So far as we are concerned, we are not criticising the Bill and we are fully supporting the measure taken by the Government of India.

MR. CHAIRMAN: This is the stand taken by Pondicherry Administration.

SHRI S. G. BHATT: If you permit me, as an Academician and a Government employee nominated by Pondicherry Administration, I shall express my views.

SHRI P. VENKATASUBBAIAH: You are the accredited representative.

SHRI S. G. BHATT: I do not know that.

MR. CHAIRMAN: You should be thankful to him for this compliment.

SHRI S. G. BHATT: I am not an expert; I am not a specialist and I am

not a criminal lawyer. As an Academician, as also as a citizen of the country, I would like to offer my humble views before the Committee. Sir, my submissions are of two parts—general and specific—and I shall go section by section. As an Academician, I am telling this. It should not be taken as Government's view.

MR. CHAIRMAN: What are your comments?

SHRI R. K. MHALGI: First of all, he comes here with an authority from Pondicherry Administration to give Government views. They have accepted and welcomed this Bill in toto. Let us first of all know the mind of the Administration through him and then we will ask him certain question from his own personal points of view. Otherwise there will be a mixture of two opinions.

MR. CHAIRMAN: There is no mixture. He made it very clear. I am telling you what he said just now. He said that the Pondicherry Administration welcomed the Bill.

SHRI R. K. MHALGI: On that we have something to ask.

MR. CHAIRMAN: You may ask him later on. I have no objection. The Law Secretary has also authorised him to say a few things when he appears before the Committee. So, I have permitted him. As an Academician, I am permitting him to give his evidence. He is making a statement. You will listen to him.

SHRI R. K. MHALGI: What is the opinion of the Administration and what is his own opinion. Let him say that.

MR. CHAIRMAN: He made it clear that he was authorised to say some things in his individual capacity.

SHRI S. G. BHATT: I would like to make it clear that there is nothing inconsistent with the main objective of the Bill. I welcome this Bill.

MR. CHAIRMAN: Your statement should not be inconsistent to the stand taken by the Government.

SHRI S. G. BHATT: I was trying to make out a point that the Bill as such is not providing free legal service or free legal aid to the victims of rape. As a matter of fact, we know that the State has necessarily to render legal service to the people, I feel that such measures taken up by the Government will go a long way.

MR. CHAIRMAN: What kind of legal aid should be provided to the victim according to you?

SHRI S. G. BHATT: In many cases they are hesitant to go to the Police. Hence some sort of family counselling centres and things like that should be there so that they can help the victims. For the family counselling centres and the social workers' centres, the State Government should bear the expenses. When it is already proposed that these cases should be discussed *in camera* they can very well come forward and provide assistance to the victims. Moreover, the rape cases must be disposed of as expeditiously as possible. Some time-limit should be specified for disposing of these cases. These cases should not be prolonged for a long time. If the accused is not available for 2 or 3 years, I feel personally that he should not be just let out but we should see to it that the accused is traced and trial is conducted.

Coming to the sections now proposed here, one of the hon. Members suggested whether a blanket curb on publicity is feasible. I find that there must not necessarily be any publicity because it may affect the reputation of the womenfolk in our country. If the victim is young and unmarried, it

will affect her future career. But at the same time, we may also be curbing the freedom of speech. Therefore, I do not know how the judicial interpretation could be in this regard. But I feel that the interpretation should not be in a different fashion and the purpose of the Bill should not be defeated. Some sort of measures should be thought of by the hon. Committee.

SHRI R. K. MHALGI: Have you got any suggestion?

SHRI S. G. BHATT: Blanket ban should not be imposed.

MR. CHAIRMAN: Here he has come on behalf of the Government and he has already expressed that *in toto* the Government welcomes the present draft Bill. Why the Government welcomes the Bill is being explained by him now.

SHRI AMARPROSAD CHAKRABORTY: If he says that the Government accepts this Bill *in toto*...

MR. CHAIRMAN: His apprehension is after all there is also a provision in the Constitution about the freedom of speech and it should not be violated if there is a blanket ban on publicity. But he said that it is subject to judicial review.

SHRI R. K. MHALGI: This is his personal opinion.

MR. CHAIRMAN: Has the Law Secretary authorised you to give differing opinion on this Bill?

SHRI S. G. BHATT: No. Actually I am supporting the Bill.

श्री सुब्रह्मण्यम नारायण स्वामी : मैं यह निवेदन करना चाहूँगा कि यह जो बहस चल रही है, इस में विधि महाविद्यालय के जो प्राचार्य हैं, इन को सरकार ने अपना प्रतिनिधि बना कर भेजा है और बिल का समर्थन करते हुए प्रारंभ के लोई मुताबिक देना चाहें कि किस

तरह से इस बिल का इफेक्टिव इम्प्लीमेंटेशन हो सकता है, तो दें। वह सरकार के स्टैंड के समर्थन में हो होगा।

श्री बिलोक स्वामी : जो ला मेम्बर नार्थवेस्ट के बिहाफ पर बिल का सपोर्ट कर रहे हैं, उन पर पहले उन से सवाल पूछने का इजाजत दी जाए। उसके बाद वे अपने पर्सनल व्यू दे सकते हैं।

SHRIMATI GEETA MUKHERJEE: With regard to publicity, the Pondicherry Government agrees with the Bill. At the same time you feel that there should be some judicial review and the Committee should find out as to how it can be done. Have you got any personal suggestion to make?

SHRI S. G. BHATT: I have taken permission of the Chair to submit my views. I would like to say that those are not inconsistent so far as measures taken in this regard are concerned and also in curbing the offences of rape are concerned. Government is welcoming it.

As a student and teacher of Law, I was just thinking if there is blanket ban on publicity, somebody may throw an application to the court that it infringes Article 19, the court may say that it is *ultra vires*. Perhaps, the purpose for which we make a provision may be defeated. If discretionary powers are given to the Court, just like other cases, I think the purpose will be served.

Again I may tell that this is my personal view. Government is not against it.

MR. CHAIRMAN: We have taken note of it.

Have you got any idea of Constitutional provision? In what way will the Bill be attacked?

SHRI S. G. BHATT: Even at the allegation stage, one is subject to judicial review. Later on when it is completely prohibited this may be viewed.

Apart from question of 'allegations stage', it may attract the question of allegations against V.I.Ps. It may lead to multiplicity of proceedings.

MR. CHAIRMAN: You have not understood my question. You doubt very much that such a provision will have a judicial review. On what basis have you got this apprehension? To overcome that have you any concrete suggestions to make?

SHRI S. G. BHATT: Provisions have been made to a certain extent under the Journalists Act wherein they have to see that since it is not in public interest so, such things should not be published.

MR. CHAIRMAN: Under the Fundamental Rights Chapter also reasonable restrictions in public interest can be imposed by the legislative body. Here is the Parliament which is a legislative body. It has got ample power to enact even giving effect to the Directive Principles and to implement them. Keeping in view your apprehension that certain attack will be made on certain basis, have you got any concrete suggestion to make so that we may put that in the Bill?

SHRI S. G. BHATT: Only those things which are in public interest may be put and the remaining should be deleted.

Though public interest has not been defined, we can make out what is public interest and what is not. It is a controversial subject. Reasonability and public interest can be divided. It affects human beings.

There are instances which effect community as a whole. Mas, rape of nurses—such things are in public interest.

SHRIMATI GEETA MUKHERJEE: If there is no opportunity for public organisations and the press to take up these cases openly, will this clause obstruct that opportunity?

SHRI S. G. BHATT: If we find that public morality and public interest are well taken care of, we should not have any objection.

MR. CHAIRMAN: You write down all the points on the basis of case law and send it to us.

SHRI S. G. BHATT: I shall do the needful.

SHRIMATI GEETA MUKHERJEE: Your views on blanket ban and the role of public organisations and press may be made known.

MR. CHAIRMAN: What answer have you got to give on this question?

SHRIMATI GEETA MUKHERJEE: He will consider and let us know.

SHRI R. K. MHALGI: Coming to page 6 of the Bill, Clause 111A says that 'the Court shall presume that she did not consent'. What is your opinion if the word 'shall' is substituted by the word 'may'?

MR. CHAIRMAN: What is your answer?

SHRI S. G. BHATT: The hon. Member asked whether I could give my opinion on the substitution of the word 'may' for the word 'shall'. As the matter stands, if the word 'shall' is substituted by the word 'may', we have to think about the consequences of the discretionary power that is given to the court. I find that actually in some of the earlier provisions, to some extent, the discretionary powers are partly taken away. If we are to support the mandatory provision of the Act, certainly, the word 'shall' is also supported by Government—not the word 'may'.

SHRI AMARPROSAD CHAKRABORTY: As a Member of the Bar you also know very well, that the laws are already on the Statute. You can recall your memory to the provisions concerning the 'consent' or 'presumption'. In view of these provisions

already in the Statute, do you still feel that any further amendment is required to be made regarding the consent and presumption sections?

SHRI S. G. BHATT: I find that we have now two more clauses in 375. There the 'consent' is defined as elaborately as possible.

SHRI AMARPROSAD CHAKRABORTY: If there is preponderance of probability, in some cases, in that case, if you use the word 'shall' would it not shut out the persons if they have something to say in the court? And would it not do justice to the persons?

SHRI S. G. BHATT: I say that when we are inserting new Sec. 111A specifically for this specific offence of rape, we are covering the offence of rape specifically. There are other clauses in the Evidence Act where the Court may presume a certain thing. I shall give an example of Sec. 10 of the Industrial Disputes Act under which the power is given to Government. There the word 'may' virtually becomes 'shall'.

Nonetheless, we are making specific provisions with a view to making them applicable for the specific purpose namely for the specific offence. This alone will be the law of the land and not the other laws. So, the word 'shall' alone will come into the picture.

SHRI AMARPROSAD CHAKRABORTY: Suppose the rape is committed on the innocent lady. Is it a legal consent? What is your opinion? Take an innocent woman in a hospital. She is raped by a doctor. There, if you say that the Court shall presume, then what is the necessity of having the words 'shall presume'? Don't you think that this provision is redundant?

SHRI S. G. BHATT: In such a case, whatever it is, I feel that there is no consent at all. It comes under the general law. The consent must be only voluntary and free. Here, there is no consent at all.

SHRI R. K. MHALGI: Here hospital includes a mental hospital as well.

SHRI S. G. BHATT: It may happen under a misconception of fact.

SHRI AMARPROSAD CHAKRABORTY: We are making a specific provision in the Bill itself which will take care of this contingency.

SHRI R. S. SPARROW: Practically, you seem to agree on one point. Various women's organisations and others who have come and given evidence agree that the disposal of rape cases should be speeded up within the minimum time.

In that context, with your matured experience, I want you to let us know whether any new method can be adopted to cope up with the requirements from the judicial point of view as well as from the investigation point of view. For instance, there are a number of cases where the people have recommended for the special courts to be constituted. I would like to ask you whether, by any radical method, we can dispose of those cases.

SHRI S. G. BHATT: There is a reservation. On one point Government has not specifically suggested anything in writing. Since the hon. Member has asked me the question, if the Committee will permit me, I can give my suggestion. I do not know whether the Government will agree with it or not. I can give my own view. I do not know whether it would be consistent with the Government stand.

MR. CHAIRMAN: It cannot be inconsistent with the Government stand.

SHRI S. G. BHATT: Government has not briefed me on this point.

श्री हुससेन नारसिंग दादर : मैं आप से एक विधि विशेषज्ञ होने के नाते से वह सवाल पूछ रहा हूँ कि अभी यौन सम्बन्धी अपराधों के बारे में नये सिरे से व्याख्या की जा रही है कि कितने सरकारस्टॉल में मेकअपल इन्टरकोर्स

सेक्सुअल आफेन्स माना जाएगा। हमारे इस कानून के अन्दर प्रावधान किये गये हैं क्या आप यह समझते हैं कि वे सफ़ीशियेन्ट हैं या इस के अलावा कोई ऐसी परिस्थितियाँ हैं, जो इस कानून में अिन से छूट गई हैं और जिन परिस्थितियों में सेक्सुअल इन्टरकोर्स सेक्सुअल आफेन्स माना जाएगा और उन को इस कानून के अन्दर लाना चाहिए? इस बारे में आप अपना राय दें।

SHRI S. G. BHATT: We find here one clause where it is mentioned that the rape and the allied offence of sex are taken care of. But there is nothing mentioned specifically in this regard.

SHRI S. W. DHABE: You have made a very good point about Section 228A. The judgement of the Sessions Judge cannot be published. Only the judgement of the High Court and the Supreme Court has been excluded. Under this Section there are exceptions. Fifth exceptions reads as follows.

"5th Exception—Merits of case decided in court or conduct of witness and others concerned—it is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a court of Justice or respecting the conduct of any person as a party witness or agent in any such case or respecting the character of such person as far as his character appears in that conduct and no further".

Will you also look into Article 449 where exceptions are given. Exception 3 reads as follows:

"Exception-III.—Conduct of any person touching any public question—it is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character so far as his character appears in that conduct and no further."

Now, do you think that these exceptions should also be provided under the Clause 228A in order to avoid judicial review?

SHRI S. G. BHATT: Public morality is public interest. These exceptions are provided there so that we may not have any difficulty.

MR. CHAIRMAN: Thank you very much.

(The witnesses withdrew)

III—*Shanti Seva Samaj, Bangalore*

Spokesman:

Shrimati Indu Krishnappa

(The witness was called in and she took her seat)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Now, you may throw some light on the proposed Bill.

SHRIMATI INDU KRISHNAPPA: I would like to bring to your kind notice certain anomalies in this Bill. First, please refer to Section 375, Sixth description last line, "...or is unable to offer effective resistance". Here the resistance that I can give is completely different from that of a strong lady. Therefore, I do not think that the word "effective resistance" can be

interpreted either in the court or outside in any manner.

MR. CHAIRMAN: What do you understand by "effective resistance" for which you are making your comments?

SHRIMATI INDU KRISHNAPPA: About 10 days ago there was a case in the High Court. The prosecutrix had made a complaint to the police that she was sexually assaulted by a doctor. The appeal was dismissed by the court because she could not prove that she put up resistance. There are women who are very touchy. So you should give attention to this term.

SHRI R. K. MHALGI: Are you in favour of deleting the word 'effective' or 'resistance'?

SHRIMATI INDU KRISHNAPPA: We can remove the word 'effective'.

SHRI P. VENKATASUBBAIAH: Effective resistance in some cases is simply out of question. Even resistance can be presumed if she becomes unconscious or there is a shock.

SHRIMATI INDU KRISHNAPPA: But medical attention is not immediately available. Later on medical evidence will not show that.

No minimum punishment should be there. Only 10 years should be provided.

About public officers committing crime, abetment clause should be included in it. When an offence is committed by a police constable and if his superior is sitting in his room and he does not come to the help of the lady, that shows that he is also a party to that. So the word 'abetment' should also be provided.

MR. CHAIRMAN: The main offences are defined in the IPC. Are you satisfied with that?

SHRIMATI INDU KRISHNAPPA: Yes. In the doctor's case, out patient is not included.

MR. CHAIRMAN: Does it not indicate out patient also? What is your suggestion in this regard?

SHRIMATI INDU KRISHNAPPA: That should be specifically included. We get more cases of out-patients. It is very difficult to watch such a crime when it is committed with the in-patient.

MR. CHAIRMAN: You wish that 'indoor and outdoor' both should be specifically mentioned. What about attendant?

SHRIMATI INDU KRISHNAPPA: This may also be included.

SHRIMATI SUSEELA GOPALAN: Do you want to exclude nurses?

SHRIMATI INDU KRISHNAPPA: Definitely not. We get many complaints in this regard.

Trial should be held in camera.

Usually you have to request the court that it should be held in camera. Presiding Judge will have to decide that. When these cases are there, it should be in camera. Government should think of establishing family courts. The Presiding Officer should be a lady and it should be in camera. Wide publicity should be given with regard to offender.

MR. CHAIRMAN: Will male judge not do justice?

SHRIMATI INDU KRISHNAPPA: That feeling may or may not be there. Moreover, it is just for convenience. Lady will be more useful when evidence is going on. The prosecutrix can express herself without shyness and can give details freely which she will not do before a male judge. There will be certain inhibitions. It will be helpful and convenient for the prosecutrix.

MR. CHAIRMAN: What about the lawyers?

SHRIMATI INDU KRISHNAPPA: Naturally the victim will go to the lady lawyer.

Summary Trial: Whenever rape is committed, it will be in circumstances of darkness and without light and she will be in the state of shock also. To identify the offender will be very difficult task. She is not going to watch the face of a gentleman who is trying to assault her. She is trying to escape. As investigation and trial takes time she may not be able to identify the offender. So summary trial must be there.

In the first instance witnesses agree to be present. As time passes, they feel why should they go? The whole thing becomes too cold by that time.

Sexual offences should be named against special class. They should be tried summarily as far as possible by the ladies.

SHRI R. K. MHALGI: You want that these cases should be tried 'expeditiously'.

SHRIMATI INDU KRISHNAPPA: If you put the word 'expeditiously' how will the courts follow? It may be for you but it may not be for the Registrar. It should be put that such cases should be completed within two or three months.

The burden of proof should be on the offender and not on the prosecutrix. In fact what happens now is that if there is going to be a parallel investigation done by the police, the police are always not sympathetic towards such cases.

I can cite an example. There was a case in Poona where the evidence was very clear. He was caught with a minor child. But, in the Supreme Court file they found a small mistake in the F.I.R. Can you believe this? The accused was let off. In that case Mrs. Vajpayee, President of the Association led a very big agitation. She

could not do anything in this case under the rules and regulations of the court.

MR. CHAIRMAN: You are well aware that while appreciating the evidence under Sec. 367 of the Cr. P.C. there are principles laid down by different courts on a point of law. Every detail may be mentioned in the FIR. But, afterwards, if something else is mentioned in the FIR, there is a possibility of concoction in that. It may be just to build up a story. Therefore, could you not give importance to the F.I.R. rather than to anything else?

SHRIMATI INDU KRISHNAPPA: I agree with you. Afterwards, some interested parties may try to tamper with the F.I.R.

MR. CHAIRMAN: What is your suggestion?

SHRIMATI INDU KRISHNAPPA: The offender should be made to give the evidence that he has not raped. That is the burden of proof.

MR. CHAIRMAN: That is a different section. You come to the next point. We are here to listen to you. What is your suggestion?

SHRIMATI INDU KRISHNAPPA: I have no suggestion because I have talked so much. This is all I want to say.

SHRIMATI GEETA MUKHERJEE: You have not finished with the burden of proof.

SHRIMATI INDU KRISHNAPPA: I have already finished with that.

MR. CHAIRMAN: You have forgotten that. That is important. What do you want to say?

SHRIMATI INDU KRISHNAPPA: The burden of proof should be on the offender and not on the prosecutrix because it is very difficult for a woman to gather the evidence to

show that she has been sexually assaulted. It is almost impossible to get an eye witness because this is such a crime that there is no possibility of the witness being present. The medical evidence which is available is only after eight hours or so. There is no clue to indicate any resistance when the sexual intercourse is done. There is no physical injury to the man also.

He can say that he fell down in the footpath and as a result he got scratches. How can you prove that?

MR. CHAIRMAN: I am narrating a story which is not for record. How would you know that the lady has a good character?

SHRIMATI INDU KRISHNAPPA: I am talking about the general character. It should be proved that she has been benefited monetarily or in any other manner.

SHRIMATI GEETA MUKHERJEE: Earlier she was raising a point that in the case of custodial rape where lower rank of the police officials are guilty of rape either by having an indirect consent or by any other way, there should be a specific mention in the law that they would also be a party to the offence. I would like to know that despite the fact that this provision may be got from other laws, it is very important for the higher officials to bear the responsibility for such offence. Do you want that this provision should also be specifically mentioned in the Bill?

SHRIMATI INDU KRISHNAPPA: In the case of abatement, it should be included as a special clause under the particular section.

SHRIMATI SUSEELA GOPALAN: You said that the words "effective resistance" should be deleted from

the proposed Bill. But do you mean to say that only the word "resistance" would be sufficient?

SHRIMATI INDU KRISHNAPPA: For the sake of fair trial, there should be some evidence to show that she has resisted. But "effective resistance" is something which cannot be defined. Therefore, mere word "resistance" would be sufficient.

SHRIMATI SUSEELA GOPALAN: In Mathura case, the court verdict was that there was no resistance on the part of the victim.

SHRIMATI INDU KRISHNAPPA: But they forget that there was provision that no women should be brought to the police station after the sun set.

SHRIMATI INDU KRISHNAPPA: But there is a provision that no woman should be taken to the police station at night. If her statement is to be recorded that should be done at her residence.

SHRIMATI SUSEELA GOPALAN: Don't you think that there will be a tendency on the part of the judge to set free the accused if rigorous imprisonment is put in the clause?

SHRIMATI INDU KRISHNAPPA: The law should be more deterrent in such cases.

SHRIMATI SUSEELA GOPALAN: Don't you think that it will adversely affect the very purpose of the law?

SHRIMATI INDU KRISHNAPPA: No.

SHRIMATI SUSEELA GOPALAN: You suggested in camera session. If that is allowed, will it not affect the women organisations?

SHRIMATI INDU KRISHNAPPA: They can request the prosecutrix to

allow them. I think there will not be any difficulty in that.

SHRI QAZI SALEEM: If the women organisations want to publish some handbills, etc. will it not affect them?

SHRIMATI INDU KRISHNAPPA: They can say that they are doing for the welfare of the victim.

SHRI QAZI SALEEM: Indirectly you mean to say that some exception should be there.

SHRIMATI INDU KRISHNAPPA: Yes.

श्रीमती विद्यावती चतुर्वेदी : इस में एक कालम ऐसा है कि अगर हर्बैंड अपनी पत्नी के साथ, जिस की उम्र 15 साल से कम है, संग करता है, तो वह भी जुर्म है। क्या आप यह समझती हैं कि 15 साल के ऊपर अगर 16 साल कर दिया जाए, तो यह काफी है और क्या इसे से जो कैमाला प्लानिंग का आबजेक्ट है, उस में बाधा नहीं आती है? इस उम्र को और बढ़ाना चाहिए या नहीं?

श्रीमती इन्दू कृष्णाप्पा : जरूर बढ़ाना चाहिए। मैं यह चाहती हूँ कि इस को 18 साल कर दिया जाए क्योंकि इंडियन कांटेक्ट एक्ट जो है, उस में 18 साल की उम्र दी हुई है। उस से कम उम्र का आदमी कोई कांटेक्ट नहीं कर सकता। इसलिए अगर इस उम्र को बढ़ा कर 18 साल कर दिया जाए, तो ठीक रहेगा।

श्री हुक्म देव नारायण यादव : सभी महिलाओं के प्रति सम्मान रखते हुए और यह मान कर कि हिन्दुस्तान के अन्दर सभी महिलाएं भेरो मां और बहन के समान हैं, मैं एक प्रश्न करना चाहता हूँ। यौन-संबंधी जो अपराध बढ़ रहे हैं देश के अन्दर, उन को कैसे रोका जाए, कैसे उन पर नियंत्रण पाया जाए, उस के लिए हम सब लोगों से जानकारी ले रहे हैं।

मैं एक निवेदन यह करना चाहता हूँ कि मर्द किन परिस्थितियों में किसी महिला के साथ रेप करता है, उन परिस्थितियों का विवेचन करें और उस के बाद यह तय करें कि किन परिस्थितियों में रेप माना जाएगा और किन में नहीं। इसलिए मैं यह जानना चाहता हूँ कि मर्द अगर ऐसा अपराध करता है, तो उस के लिए कानून में सबत सजा का उपबंध होना चाहिए, जिसे से समाज के अन्दर महिलाओं की इज्जत महफूज रहे, क्या आप ऐसा उपबंध इस बिल में चाहती हैं लेकिन जो विवाहिता महिला अपन पति की इच्छा के विपरीत पर-पुष्य के साथ सम्बन्ध स्थापित करती हो, तो क्या ऐसी महिलाओं के लिए भी कानून में कोई उपबंध होना चाहिए?

श्रीमती इन्दू कृष्णाप्पा : यह तो एडल्ट्री है, यह इस में नहीं आया। इसके लिए अलग से कानून बना हुआ है।

श्री हुक्म देव नारायण यादव : जो लड़की इस तरह का रोखमार करती है और समाज के कुछ लाभ उस से ऐसा रोजगार कराते हैं। ऐसी लड़कियों को पुलिस जब पकड़ने के लिए जाता है और किसी के साथ सेक्सुअल इन्टरकोर्स करने के बाद वह पकड़ी जाती है, तो जब वह लड़की पुलिस कस्टडो में होती है, तो पुलिस वालों के खिलाफ यह इल्जाम लगाया जाता है कि उन्होंने उस के साथ रेप किया है और मेडिकल चैक-अप में वह चोज आ जाती है, तो ऐसी पुलिसवालों के लिए, उन की प्रोटेक्शन के लिए कानून में कोई उपबंध होना चाहिए या नहीं क्योंकि वे अपराधी नहीं होते हैं?

समापति महोदय : आप के पास अन्दर हो, तो दोजिए, करना नहीं।

श्रीमती इन्दू कृष्णाप्पा : ये तो काल गर्ल की बात है। उस वक्त रिसर्च नहीं होता है। इस बिल में भी एफेक्टिव रिसर्च की बात है।

SHRI S. W. DHABE: The public servants are already included. We had

you like that landlords and farmers should also be included in the Bill?

SHRIMATI INDU KRISHNAPPA: General provision is there.

MR. CHAIRMAN: Public Servant has been there in so far as definition is concerned. Landlords and employers are not coming under that. Would you like to include them or not? This is a simple question.

SHRIMATI INDU KRISHNAPPA: Stiffer imprisonment has been prescribed. Rigorous punishment is there. So it will not effect.

SHRI S. W. DHABE: We are now making a departure from the provisions of the Evidence Act—Presumption under 111A. Under 313, the accused cannot be examined as a witness and cannot be administered oath. I want to know whether the accused should be administered oath and give evidence.

Under Sec. 113 of the Cr. P.C. because there is no other witness available, the accused can give evidence. What is your view on this?

SHRIMATI INDU KRISHNAPPA: If there is no other evidence available, in that case, the accused can be administered the oath. For trial, I think that should be allowed.

MR. CHAIRMAN: You have not understood the implication. Here, it is for the prosecution to establish this case. He comes as a prosecution witness and the law prohibits him to give evidence against himself. Kindly look to that.

SHRIMATI INDU KRISHNAPPA: If there was no other evidence, then?

MR. CHAIRMAN: If there was no other evidence the accused is always examined under 342 or so.

SHRI S. W. DHABE: Sec. 313 prohibits that.

MR. CHAIRMAN: Is that your case?

SHRIMATI INDU KRISHNAPPA: I am rather confused. I say I have no comments to make on this.

IV. Baze Niswan, Bangalore. Spokesmen:

1. Shrimati Sharkat Qureshi.
2. Shrimati Saadhtuissa Begum.

(The witness were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 88 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

SHRIMATI SHARKAT QURESHI: I have nothing to add. Now-a-days the marriage takes place when the girl is 27 years of age.

MR. CHAIRMAN: In rich family, they get their daughters married at the early age.

SHRIMATI SHARKAT QURESHI: That is so.

MR. CHAIRMAN: What is your view?

SHRIMATI SHARKAT QURESHI: The marriage should be at the age of eighteen.

MR. CHAIRMAN: In general should it be like that? Any other suggestion?

SHRIMATI SHARKAT QURESHI: That is right. For the rape offence the punishment should be enhanced. In that case no mercy petition to the President should be entertained. About the *in camera* trials my colleague has already spoken a lot. I have no other additional points to offer.

MR. CHAIRMAN: Thank you.

(The witnesses then withdrew)

V. Dhakshina Bharatha Mahila Sangam, Bangalore.

Spokesmen:

1. Smt. Padma Srinivasan, President.
2. Smt. Bhavani Sunder Raj.
3. Smt. Pushpadevi Krishnaiah.

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evi-

dence is liable to be made available to the Members of Parliament."

SHRIMATI PUSHPADEV, KRISHNAIAH: Since my friend Shrimati Induji has already spoken all that I wanted to say on behalf of Bangalore Rural Association, I have nothing to add.

MR. CHAIRMAN: What about you?

SHRIMATI PADMA SRINIVASAN: I have gone through the Bill. We are in agreement with the amendments proposed in the Bill.

MR. CHAIRMAN: No other comments?

SHRIMATI PADMA SRINIVASAN: I have no other comments to offer. We feel that this Bill is fully covered.

SHRIMATI BHAVANI SUNDER RAJ: We have no comments to make. We agree with the Bill.

(The witnesses then withdrew.)

VI. Government of Karnataka, Bangalore.

Spokesmen:

1. Shri A. Venkat Rao Law Secretary
2. Shri A. M. Moses.

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any

part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

SHRI A. VENKAT RAO: We do not find as such any inconsistency in so far as our statement is concerned.

MR. CHAIRMAN: Yesterday some hon'ble. Member pointed out that there had been some inconsistency in the oral reply given by you.

SHRI A. VENKAT RAO: Now I have tried to get all the files. According to our records the State Government were requested on 27-6-51 to send their comments on the various recommendations made by the Law Commission.

MR. CHAIRMAN: When you had submitted your Memorandum to the Law Commission, there your contention was that 111A should be deleted. But here when you submitted your comments on Criminal Law Amendment Bill, there was no mention about the transfer of onus.

SHRI R. K. MHALGI: The recommendations of the Law Commission regarding the transfer of onus was not supported. That is not just mentioned by you.

SHRI A. VENKAT RAO: Before our representative, attending this meeting (the proceedings were just not read out) we had a very detailed discussion. The Home Secretary had a discussion with the Law Secretary.

SHRI AMARPROSAD CHAKRABORTY: The transfer of onus was not accepted by the Karnataka Government, according to their memorandum. It was made clear there.

SHRI A. M. MOSES: We had a discussion before we sent our repre-

sentatives to the meeting, held by the Home Minister in Delhi at which this point was discussed. Before that, we had a very detailed discussion here.

As regards the proposal to introduce the section, it is felt that the presumption in regard to consent is considered too drastic and consent may often result in miscarriage of justice. Therefore, it is recommended that the proposal for the insertion of the new Section 111A might be dropped. It is categorical. Unfortunately, the Home Minister could not go there at the last moment. The Additional Home Secretary attended the meeting. What he said was his personal opinion. It was not the opinion of the State Government as such. Finally, Mr. Garudachar wrote to us—this was in the month of February—asking for a memorandum on this point which we had sent on the 27th June. When finally we were asked to give the memorandum, we gave the memorandum and that is the only view of the State Government.

MR. CHAIRMAN: You sent him as a Government representative there. It was the view of the Government which was expressed by the Joint Secretary. Here also—second time—it is the view of the Government. One view was expressed at one stage and second view was expressed at second stage. What made you to change the opinion?

SHRI A. M. MOSES: The view of the Government as recorded, has never been changed.

MR. CHAIRMAN: When the Joint Secretary was sent, did you have any such deliberations in your Secretariat?

SHRI A. VENKAT RAO: We did that and it was our view that Section 111A should be dropped.

MR. CHAIRMAN: It is on record that when you agreed to send your representative to the conference, be-

fore that you had deliberations and in those deliberations you came to a particular conclusion. And the stand taken was made known to the person whom you had deputed. He was not expected under the circumstances to go beyond what had been stated to him. In that case, whatever view had been expressed by your officer, that was taken as a Government view. Now you have given this considered view in this memorandum. So there is a conflict between the two opinions. That is why this question has arisen. What made you to have a different opinion?

SHRI A. M. MOSES: This is the final memorandum which was submitted to the Committee on 27th June. This is the only view of the Government. That has consistently been the view of the Government. If there is any abrasion on the part of the officer we will ask that officer as to how it has happened.

MR. CHAIRMAN: Are you now aware how that view was expressed?

SHRI A. M. MOSES: No.

MR. CHAIRMAN: You kindly send the statistics for the last three years.

SHRI B. N. GARUDACHAR: Yes.

MR. CHAIRMAN: Thank you.

(The Committee then adjourned at 13.40 hours and reassembled again at 15.00 hours).

VII. *Agnes Villa for destitutes, Bangalore.*

Spokesmen:

1. Shrimati Lillian Xavier.
2. Shrimati B. Vimla.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

SHRIMATI LILLIAN XAVIER: We are bringing up destitute girls, orphans, in homes. We are giving them homely atmosphere.

MR. CHAIRMAN: What is the name of the Institution?

SHRIMATI LILLIAN XAVIER: Agnes Villa. The Director of this Institute is Father Towro.

First of all I want that law should be amended. Sometimes presumptive values must be given. When the child is raped, she would not be able to give proper evidence or the evidence will not be that clear. Sometimes court rejects the evidence because she does not have that worldly knowledge which should be. We should have presumptive values—what the child is saying, it is true and we must believe that. Most of the cases are dismissed because presumptive values are not clear.

In most of the cases I have found that they do not treat the evidence of the child as a clear evidence.

The accused is released on bail. This is a threat to the other people. They should not be released on bail. Special cell must be formed for the inquiry and investigation.

MR. CHAIRMAN: There are two stages. One is investigation and the other is enquiry.

SHRIMATI LILLIAN XAVIER: By the time you take statement, enquiry goes on and then investigation takes place, everything is hushed up. Special cell should be so alert to get it done speedily. Some parents feel ashamed because of customs in India. They do not like to tell any other person. They feel if people come to know, the girl will not be able to marry. This cell should investigate and find out.

MR. CHAIRMAN: Of whom it consists of?

SHRIMATI LILLIAN XAVIER: It should consist of preferably ladies. They can understand things better. This thing should be done in the shortest time.

The accused is acquitted because of lack of proper evidence. Child's evidence is not taken into consideration. She is a small child and has no worldly knowledge.

MR. CHAIRMAN: That is not a correct proposition. Are you an advocate?

SHRIMATI LILLIAN XAVIER: No; I am not an advocate.

MR. CHAIRMAN: Sometimes child evidence is also taken seriously.

SHRIMATI LILLIAN XAVIER: Sometimes it may happen but it cannot happen very often. In such cases, the lady doctor's evidence should be taken into consideration. For the child rape, sometimes lady doctors are not available.

MR. CHAIRMAN: I see your point. According to your contention, the lady victim should be examined only by the lady doctor and not by the male doctors.

SHRIMATI LILLIAN XAVIER: The victim being a lady, she would prefer a lady doctor for the medical examination. That is my point.

MR. CHAIRMAN: Any other point?

SHRIMATI LILLIAN XAVIER: Sometimes rape cases are not proved because there is no evidence.

MR. CHAIRMAN: What is your suggestion?

SHRIMATI LILLIAN XAVIER: I told you in the beginning, if there are not evidences, it is necessary that someone should come and give the evidence. When a person is saying that, his wording should be taken into consideration.

MR. CHAIRMAN: If the lady comes and makes a statement on oath that she has been raped by a person, then, it should be believed and conviction should be given. There is a confusion. I have not properly followed you. Is it your contention that when a victim comes before the court and makes a statement on oath that she was raped by a person in a particular manner, then that statement should be believed by the judge and conviction should be given?

SHRIMATI LILLIAN XAVIER: Yes, Sir. If there is no evidence, let some one prove that there is no evidence.

In such a situation, the cases are also dismissed on this plea.

MR. CHAIRMAN: Even according to you, attendant circumstances should not be taken into account.

SHRIMATI LILLIAN XAVIER: It should be based on the statement by the victim. These are few points that I would like to make.

(The witnesses then withdrew)

VIII—Working Women's Coordination Committee, Karnataka, Bangalore.

Spokesmen:

1. Shrimati S. Malathi.
2. Shrimati Gayatri Devi.

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Have you any suggestions to make?

SHRIMATI S. MALATHI: We have already given our suggestions. In Bangalore, the representatives from all Women's Organisations joined together and discussed among ourselves the whole thing and we have given the suggestions. If permitted, I may read that out.

MR. CHAIRMAN: You need not read that. What else?

SHRIMATI S. MALATHI: No woman should be arrested after sunset. In Bangalore, in Chamrajpet, there was some rape case. She could not go to the doctor, as she was illiterate and no doctor was ready to take up the case. Women's organisation wanted to take up the case. It could not. Because they could not have the medical certificate. That may be the case with many women also. Can Government do something to the illiterate and poor women who cannot go to the doctor?

MR. CHAIRMAN: You are in the organisation serving the cause of the women. Tell me after how many days did you come to know of this case?

SHRIMATI S. MALATHI: After 15 days.

MR. CHAIRMAN: Had this been brought to your notice earlier, you could have agitated for their causes. This is what you mean. When rape takes place, immediately the victim must go to the Police Station and file a complaint. It should be further followed up that the F.I.R. is registered so that the police start investigation. Within an hour of the registration of the F.I.R. the police should take her to the doctor. It is the duty cast on the police, not on the lady or any other organisation. That is why I am telling you that legal position is already clear. If the complaint is given, then it is for them to charge-sheet the accused. The lady can only support the prosecution case and not a single pie is to be spent by the lady.

SHRIMATI S. MALATHI: In Melur, one lady named Anasuya, was raped. The doctor could not give certificate and therefore she could not go to the court. Moreover, how do you expect a lady who is raped to go and tell the police about the case. When you say that the press should not publish it, how can a lady could go and tell her own unhappy incident to the police? I would not object if the press is permitted to publicise the whole thing, the name of the victim and the name of the accused. Publicity is required even at the earlier stage with the consent of the victim of the rape.

SHRIMATI GEETA MUKHERJEE: You have said about the onus of proof. You have said that you support the provision regarding the shifting of the onus in the case of custodial rape on the accused. You have observed that other than the custodial, some other categories should

also be included. In these categories you have mentioned about the cases of land dispute and cases of employer-employee which should also be included. So your contention is that the proposed Clause 111A is all right.

SHRIMATI S. MALATHI: Yes.

SHRIMATI GAYATRI DEVI: I support all the proposed clauses in the Bill. But the important things on which I want to stress is that in regard to publicity part of this Amendment Bill, I totally oppose that. Publicity of such cases should not be given if the victim does not want any publicity of the cases. At least one member of any women's organisation must be present during the *in camera*

proceedings. Then, no woman should be arrested after the sun-set and before the sun-rise. In case a woman is to be arrested after the sun-set, permission from the superior authorities should be taken by the police. If any doctor refuses to examine the victim, then action against the doctor should be taken. In the police station, if the police inspector refuses to register a complaint of this nature, then action against the concerned police Inspector or the Incharge of the Police Station should be taken. These are all my points.

MR. CHAIRMAN: Thank you very much.

(The Committee then adjourned)

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CRIMINAL LAW
(AMENDMENT) BILL, 1960**

Wednesday, the 14th October, 1961 from 11.30 to 13.30 and again from 15.00 to 18.00 hours in Room No. 46, Assembly House, Calcutta

PRESENT

Shri D. K. Naikar—*Chairman*

MEMBERS

Lok Sabha

2. Shri Kasa Behari Behra
3. Shrimati. Vidyavati Chaturvedi
4. Shri V. Kishore Chandra S. Deo
5. Shri R. K. Mhalgi
6. Shrimati Geet Mukherjee
7. Shri K. S. Narayana
8. Shri Ram Pyare Panika
9. Shri Bapusaheb Parulekar
10. Shri Qazi Saleem
11. Prof. Nirmala Kumari Shaktawat
12. Shri R. S. Sparrow
13. Shri Trilok Chand
14. Shri V. S. Vijayaraghavan

Rajya Sabha

15. Shri Lal K. Advani
16. Shri Ramchandra Bharadwaj
17. Shri Dhuleshwar Meena
18. Shri V. P. Munusamy
19. Shri Era Sezhiyan
20. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—*Senior Legislative Committee Officer.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

Shri S. V. Sharan—*Joint Secretary.*

Shri S. C. Bablani—*Under Secretary.*

WITNESSES EXAMINED

I. National Federation of Indian Women, Calcutta

Spokesmen:

1. Shrimati Rani Das Gupta

2. Shrimati Seva Bandopadaya
3. Shrimati Mina Das Gupta

II. Paschim Banga Mahila Samity, Calcutta

Spokesmen:

1. Shrimati Bina Guha
2. Shrimati Vidya Muni

III. (a) All Bengal Women's Union, Calcutta

Spokesmen:

1. Shrimati Romala Sinha
2. Kumari Meera Datta Gupta

(b) All India Women's Conference, Calcutta Metropolitan Branch, Calcutta

Spokesmen:

1. Shrimati Sati Sinha
2. Shrimati Ashoka Gupta

(c) The Women's Coordinating Council, Calcutta

Spokesmen:

1. Shrimati Bijoli Ghose
2. Shrimati Aloka Mitra

IV. (a) The Indian Journalist's Association, Calcutta

Spokesman:

Shri Lalit Mohan Banerjee

(b) The Calcutta Press Club, Calcutta

Spokesman:

Shri Mrityunjoy Chattopadhyay

(c) Calcutta Journalist Club, Calcutta

Spokesmen:

1. Shri Niranjan Sen Gupta
2. Shri Satyen Deb Mallick

V. (a) The Bar Council of West Bengal, Calcutta

Spokesman:

Shri M. G. Mukherjee, Member and Senior Advocate

(b) Chief Metropolitan Magistrate Court, Calcutta

Spokesman:

Shri Deven Mookerjee, Advocate

(c) Shri Tarapada Lahiri, Senior Advocate, Alipur Bar Association, Alipur

I—National Federation of Indian Women, Calcutta.

Spokesmen:

1. Shrimati Rani Das Gupta.
2. Shrimati Seva Bandopadaya.
3. Shrimati Mina Das Gupta.

(The witnesses were called and they took their seats).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Let us start.

You would have gone through the Bill. Please tell the Committee what are your views and on what points you would like to enlighten the Committee.

SHRIMATI RANI DAS GUPTA: In general our organisations welcome this proposed Bill because it seeks to widen the definition of sexual

offences and also defines more extensively circumstances which vitiate consent. In particular we welcome the provision where the onus of proof is shifted to the accused and is not on the victim. We welcome insertion of Sections 375 and 376 in this Bill. We request you only to make a minor change regarding age. The age should be 18 and not 16. At the age of 16 they are just school girls. Even the passing of final school is at the age of 17. So, they are not matured. We suggest that the age should be 18.

We also welcome insertion of Section 111A of Indian Evidence Act of 1872. We want that in all cases where sexual intercourse is proved and the victim claims that she did not give her consent the courts should presume that she did not give consent.

As regards Section 228 in respect of printing and publication we oppose any blanket ban on reporting of rape cases. We totally oppose trial *in camera*. Our suggestion is that during the proceedings there should be no ban on the publication of the name of the accused and the crime committed. After the case has been decided there should be maximum publicity given to the crime, name of the accused and the punishment. Only the name of the victim should be withheld from publicity. Further, we submit for deletion of Section 358 regarding punishment about the publisher and the printer. We do not want *in camera* trial and we request the name of the accused and the

name of the case should be published.

MR. CHAIRMAN: Do you mean to say that punishment thereby should be abolished?

SHRIMATI RANI DAS GUPTA:
Yes.

MR. CHAIRMAN: You have finished your statement. Now some Members may desire to ask some questions. Please answer them.

SHRI ERA SEZHIYAN: Regarding item 6 of your memorandum, you have stated that full publicity should be given and the trial should not be *in camera*. Suppose in the end the case proves to be false and the accused is acquitted. Then, what is the remedy you suggest for the accused?

SHRIMATI RANI DAS GUPTA:
We have said that full publicity should be given.

SHRI ERA SEZHIYAN: That is all right. Suppose in the end the case proves to be a false case and the accused is acquitted. Then what happens to all the damage done to him?

SHRIMATI RANI DAS GUPTA:
In our society the accused is more powerful than the victim.

SHRI ERA SEZHIYAN: Suppose there is a plan wilfully foisted by a lady and she files a case against a Minister or somebody. But after the trial is over it is proved that it is a false case. Then what happens?

SHRIMATI RANI DAS GUPTA:
After the court decided the innocence of the accused then the case will be dismissed.

SHRI ERA SEZHIYAN: But what happens to the damage done to the accused?

SHRIMATI RANI DAS GUPTA:
When a person is accused before the decision of the court we cannot say that he is innocent.

SHRI ERA SEZHIYAN: Suppose he wins the case. What happens to the damage done to the accused?

SHRIMATI RANI DAS GUPTA:
That will depend on the decision of the court. If the decision of the court is that he is innocent, that should be published. We have requested that the decision in the case should be given more publicity.

SHRI ERA SEZHIYAN: Perhaps in this case the decision is that a false case was filed against the accused.

SHRIMATI RANI DAS GUPTA:
How can you say that the case is false until and unless the Judge decides so? So, we have to wait for the judgement.

SHRI ERA SEZHIYAN: Do you want to say that till the judgement comes, it should not be published and the trial should be held *in camera*?

SHRIMATI RANI DAS GUPTA:
The victim being a girl will be more socially persecuted.

SHRI BAPUSAHEB PERULEKAR:
Supposing after the entire evidence is heard and with all the protections afforded under the new Bill the Judge comes to the conclusion that the woman has falsely implicated an innocent person in order to malign his character. Do you think that in such a case the woman should be punished?

SHRIMATI RANI DAS GUPTA:
That is blackmailing.

SHRI BAPUSAHEB PERULEKAR:
Suppose the court has decided that with the intention to malign a public person the case was filed. Don't you think that in such cases the woman who has indulged in filing the case falsely accusing a person with a serious crime should be punished? Supposing the court ultimately comes to the conclusion that the accused has not done anything. Don't you think that the woman should be punished?

SHRIMATI RANI DAS GUPTA:
If it is decided by the court that she is a culprit, she should be punished.

SHRI BAPUSAHEB PERULEKAR:
Regarding point No. 2 in your Memorandum you have said that you are totally opposed to the trial *in camera*. And you say that if the trial is held *in camera*, more protection will be given to the accused. But if the trial is held *in camera*, the woman will be more free in giving detailed evidence because there are some delicate issues which will be discussed. Then, why do you say that this will be giving more protection to the accused?

SHRIMATI RANI DAS GUPTA:
The condition in our society is such that the accused will have all the social advantages. If the trial is not held *in camera* and if it is open, then the public may come to the protection of the woman who is the victim.

SHRI BAPUSAHEB PERULEKAR:
I am on the point of holding the trial *in camera*. If the trial is held *in camera*, the woman will be more free to give her deposition.

SHRIMATI RANI DAS GUPTA:
Then nobody will know what is happening in that case and the victim may be put under disadvantage.

SHRI BAPUSAHEB PERULEKAR:
You said that consent by inducement should be included within the definition of rape. You have stated 'sexual intercourse through consent by inducement.' What exactly do you mean by that?

SHRIMATI RANI DAS GUPTA:
We do not like to differentiate the punishment on account of this.

SHRI V. KISHORE CHANDRA S. DEO: You stated that you are opposed to holding these proceedings *in camera*. Don't you think that it would be detrimental to women if a ban is imposed on *in camera* hearings as for as rape cases are concerned?

SHRIMATI RANI DAS GUPTA:
We think that the victims will get no benefit from *in camera* hearing.

SHRI V. KISHORE CHANDRA S. DEO: Are you opposed to holding *in camera* hearing if the victim insists on such a hearing?

SHRIMATI RANI DAS GUPTA:
We are not opposed.

SHRIMATI GEETA MUKHERJEE:
As far as the trial *in camera* is concerned, probably the witnesses are apprehensive that the proceedings would not be punished. But, if the social organisations etc. are permitted to be present during the *in camera* hearing in the court, do the witnesses think that the hearing can be held *in camera*?

SHRIMATI RANI DAS GUPTA:
Yes.

MR. CHAIRMAN: Sometimes there would be a chance to accept a finding in favour of the victim instead of giving the benefit of doubt to the accused. There are possibilities. They are not ruled out. That is why, publicity has got its own advantages and disadvantages.

MR. R. K. MHALGI: Do you agree with suggestion that if the victim in a rape case requests for *in camera* proceeding, it should be allowed?

SHRIMATI RANI DAS GUPTA:
But not in all the rape proceedings.

SHRI R. K. MHALGI: If the victim requests that the proceedings should be held *in camera*, can it be held?

SHRIMATI RANI DAS GUPTA:
In that case, it can be allowed.

(The witnesses then withdrew.)

II—Paschim Banga Mahila Samity,
Calcutta.

Spokesmen:

1. Shrimati Bina Guha
2. Shrimati Vidya Munshi

(The witnesses were called and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

SHRIMATI VIDYA MUNSHI: It should be public.

MR. CHAIRMAN: You please place your views, point by point.

SHRIMATI VIDYA MUNSHI: We already submitted a written statement. I will try to mention the main points with which we are concerned

In Section 111A of the Indian Evidence Act, 1872, some changes are proposed in respect of rape. We think that these changes should apply not only in the case of custodial rape or committed by policemen others in authority, but in all cases. In every case where sexual intercourse has been proved and the woman says that she did not give her consent, it should be accepted, and the onus of proving that there was consent on her part, should shift to the accused. We know that there

are some objections to this point of view because it has been claimed that this can be used to blackmail people. But we think that as the law stands the main problem is not that of innocent people getting punished on charges of rape but that it is almost impossible to bring any guilty person to book. So, we propose that in all cases of rape, the onus to prove consent should shift to the accused.

MR. CHAIRMAN: I would like to know whether you have followed the distinction between the onus of proof and onus of presumption.

SHRIMATI VIDYA MUNSHI: I would like to feel that the burden of proof of consent should go to the accused.

As regards Section 376(2)(a), the Bill mentions Police Officer. We are not very clear whether this includes Police Constable. We want that the Bill should be specific and include not only Police Officer but policemen of all ranks because, many cases have taken place involving police constables who are not officer.

Secondly, the alleged crimes committed by a police officer in his area of jurisdiction only are covered by this Clause. We think that a rape committed by any policeman in uniform anywhere, whether in his area of jurisdiction or outside his area of jurisdiction, should be covered by this Clause because to the majority of women victims most of whom are from the under-privileged sections it is not known whether a policeman in uniform is in his area of jurisdiction or not. What she is concerned about is that a policeman in uniform is a person of authority and an object of terror. So, all policemen in uniform committing such crimes, whatever be the area, whether it is in their jurisdiction or not, should be covered by this Clause.

The Law Commission have made certain recommendations about amending the Criminal Procedure Code, 1973, to ensure that the areas of contact between women and

policemen are minimised and that whenever they occur, they are controlled. We want that, in section 46 (1) of the Cr. P. C. 1973 there should be an addition that, when a woman is arrested, either the arrest should be made by a police-woman or if there is no police woman available and if a policeman arrests a woman, then oral submission to arrest should be sufficient and the policemen carrying out the arrest should not touch the person of the woman except in very exceptional circumstances.

We also want acceptance of the Law Commission's recommendation about Section 46 to add a new sub-para under section 46 of the Cr. P. C. that no woman should be arrested ordinarily after 8.00 p.m. and before 6.00 a.m. that is during the night. If there are any exceptional circumstances necessitating such an arrest at such a time, then the officer concerned should get special permission from his superior officer or should state, after the arrest, the reason for such an exceptional step.

The interrogation of a woman put under arrest or even under inquiry should take place ordinarily at her dwelling place. The present term of 'at her place of residence' is likely to be interpreted as area of residence or town of residence or village of residence, etc. The scope for such wide interpretation should not be there. In her own home, the woman should be questioned. No woman should be required to attend the Police Station between 8.00 p.m. and 6.00 a.m.

On the same lines, as far as arrest and detention are concerned, in sections 417A and 417B of the Cr. P. C., we want certain changes to be made. Firstly, no woman should be arrested and lodged in a police lock-up at night during those hours. Secondly, if there is no suitable place of detention meant only for women in the vicinity, then she should be kept in an ap-

proved home meant for the protection or welfare of women and children in the vicinity.

It should be made an offence if any police officer refuses to record information in a cognizable offence. Such refusal should be punishable with imprisonment. Section 167A of the Cr. P. C. should be suitably amended to bring this about. Secondly, the officer in charge of the Police Station where the information is recorded should himself investigate the case and not remit it to any lower staff. In the case of a sub-divisional town, the District Superintendent of Police should himself carry out the investigation. A copy of the information lodged with the Police Station should be forwarded to the nearest Magistrate, whether or not he is empowered to take cognizance. He should issue directions regarding investigation of the case until cognizance is taken by the Magistrate who is empowered to do so.

Regarding evidence, we think that the past of the raped victim in respect of sex with any person other than the accused should be considered as irrelevant to the investigation of the case because, any woman, whatever be her past, whether she is a good or a bad woman or even a prostitute, should have the right to protection against rape.

In the Bill under the heading 'Sexual Offences', there are a number of clauses when consent will be considered as vitiated. We think that the age should be not 18 years but 16 years because that is now the minimum age for marriage, and that has also been recommended by the Law Commission. Secondly, we think that there should be an additional clause including inducement as one of the factors vitiating consent because there are many cases where persons in authority or persons holding economic power over the relatives of the woman concerned offer inducements or threats

forcing them to obtain the consent of their womenfolk for sexual exploitation by the persons who hold power.

We are for trial in camera provided representatives of women organizations and social organizations would have the right of access to such trial.

About publication of reports, we think that the provisions in the Amendment Bill are very drastic. The Bill itself would probably not have come up and many of these provisions would never have been discussed by such a wide section of public organization but for the publicity which was given by the press to the Mathura case and several other similar incidents in the recent past. We think that particularly at the allegation stage there should be no restriction on press publicity except that the name of the victim should not be published. If the caste to which the victim belongs, for example, a tribal woman or a Harijan woman, etc., is published, it helps to arouse public opinion and it helps the victim to defend herself. Otherwise, many of these incidents never see the light of the day and are even recorded in police diaries.

As far as punishment is concerned, in the case of custodial rape where sexual offence not amounting to rape is defined, the punishment prescribed is rather low and there are many loopholes. In one particular case at least, rape of or sexual assault on children, there should be a heavy punishment, because those are particularly heinous crimes and there can be no doubt about any element of provision on the part of the victim. I have finished my statement.

श्री सुकन्य देव नारायण वाच्य : मैं यह कहना चाहता हूँ कि यदि कोई महिला अदालत के सामने बयान दे दे कि उसकी सहमति के बिना उसके साथ संबंध किया गया तो उसको मौन लिया जाना चाहिए। यदि कोई ऐसी महिला है, जिसने कहीं अन्यत्र किसी के साथ

संबंध बनाए रखे हैं और उसके ऊपर कोई दूसरे मुकदमें भी चल रहे हों और उस केस में उसको पुलिस गरिफ्तार कर ले और वहाँ वह महिला फिर किसी पर यह आरोप लगा दे कि इसने मेरे साथ संबंध बनाए रखे हैं, तो उस हालत में, यदि डाक्टरों जांच के बाद सही साबित हो जाता है, उस प्रादमी को जेल जाना ही होगा, जबकि वह प्रादमी इस मामले में निरपराध है। ऐसी स्थिति में केवल कस्टोडियन में हो नहीं, कहीं पर भी महिला किसी भी पुरुष के बारे में बयान दे दे, तो उसके बयान को मान लेना चाहिए और यह भी हो सकता है कि अपने पति के साथ संबंध हो और वह किसी पुरुष पर आरोप लगा दे और केवल उसके कह देने मात्र से ही उसको सजा मिल जाए, तो इस बारे में आपकी क्या राय है ?

SHRIMATI VIDYA MUNSI: What I said was that the onus for proving consent should be on the accused. One would presume that when the case is going in the court the learned judge will take into account all the evidence and the circumstances. But as I said before the main thing to guard against is that—may be one or two such cases may take place—as far as this particular matter is concerned in our society as it is an accusation of rape itself means a big social stigma against the woman. The guilty are going scot free and there is no way of proving that she did not give her consent.

श्री सुकन्य देव नारायण वाच्य : आपने कहा कि कोई भी महिला पकड़ी जाती है, तो उसकी पूछताछ उसके निवास स्थान पर होनी चाहिए। क्या यह सभी महिलाओं के लिए नियम लागू होगा ? ऐसी बहुत सी महिलाएँ हैं जो हत्याओं के अपराध में, डकैतियों के अपराध में वा हेतुबोध का अपराध हो, कोई गुप्त समाचार दूसरे देश को बताये—ऐसी महिला के साथ पुलिस पूछताछ उसके निवास स्थान पर नहीं

कर सकता है। ऐसी स्थिति में असलियत का पता पुलिस नहीं लगा सकेगी। क्या वह सभी महिलाओं के लिए हो या इनमें आप कोई सीमा-रेखा रखना चाहती हैं ?

SHRIMATI VIDYA MUNSI: If physical torture is not to be condoned there is no reason why any interrogation should not be possible to be held in the woman's own residence. If in exceptional cases a woman has to be interrogated somewhere away in that case investigation should take place in the presence of a woman social worker or a village school teacher. It should not take place entirely in the police precincts.

SHRI V. KISHORE CHANDRA S. DEO: You have said that you are in favour of holding the proceedings in camera and at the same time you want that wide publicity should be given. So, my question is how hearing in camera is relevant once publicity is to be given.

SHRIMATI VIDYA MUNSI: On the whole we are not so particular whether it is in camera or not. If it is in camera in name of the woman should be withheld. The evidence that comes out in camera would obviously not be open for press publicity but at the allegation stage there should be perfect freedom for publication.

SHRI V. KISHORE CHANDRA S. DEO: You have said that the onus of proof in respect of consent should be on the accused and you have said

that there should be wide publicity. Don't you think in this sort of thing in certain cases women may like to malign the character of a man? Don't you think that with such press publicity at the allegation stage the reputation of the accused person would be damaged? I do entirely share your views and the anxiety you have expressed, but there may be certain instances where such cases are filed against persons to malign their personality. In such cases how do you think?

SHRIMATI VIDYA MUNSI: Actually our experience is that despite a massive publicity campaign, despite all the press publicity, the accused may be acquitted. In a case like that of Rameeza Bi, even the findings of the Inquiry Commission headed by a Judge were totally reversed in the Court. So, it is mainly the less privileged, the more disadvantageously placed of the two sides, who should get greater protection of the law.

SHRI ERA SEZHIYAN: You have said that the words 'A police officer who has raped in any police station' should be substituted with a 'A policeman in uniform'. What are your arguments about this?

SHRIMATI VIDYA MUNSI: Firstly, we want that police officers as well as policemen of all ranks, I mean the police personnel, should be included in the clause as it stands. Secondly, here it is said about a police officer committing rape in the local area in which he is appointed. There is no question of uniform or out of uniform. That is all right. Then, it is said, 'in any police station

whether or not situated in such local area'. There also there is no question of uniform or no uniform. But outside these two, the policemen in uniform in any other area or outside the jurisdiction may also commit rape and in such cases the victim would have no way of knowing whether he is the officer in that area or he is in charge of that area. In such circumstances the question of uniform becomes important, not otherwise.

SHRI ERA SEZHIYAN: You see, in respect of other classes of employees the uniform and other things do not occur. Only here the concept of uniform occurs. Why?

SHRIMATI VIDYA MUNSI: If it says 'policeman committing rape in any area' then it is all right.

SHRI V. S. VIJAYARAGHAVAN: You referred to sexual assault and said that more deterrent punishment should be given. We have already provided the punishment of imprisonment for that offence. What more deterrent punishment do you want as far as sexual assaults are concerned? Do you want that the accused should be punished with death?

SHRIMATI VIDYA MUNSI: No. But the minimum punishment should be more than 5 years' imprisonment and not less than 7 years' imprisonment in any case.

MR. CHAIRMAN: I want to know this from you. Just as the offence is committed, till the complaint is filed before the police officer, the press is at liberty under the fundamental rights to publish about the offence. As soon as the case comes to the Court, the trial will be *in camera*. Of course publicity can be given after the judgment is delivered by the court. What is provided here is publication at a particular stage. At which stage would you like to have publication? Or, do you want that the entire publication should be after that?

SHRIMATI VIDYA MUNSHI: We want that publication should be unrestricted at the allegation stage. When the court hears *in camera* that cannot be published. But at the allegation stage everything except the name of the victim should be publishable by the press and after the judgment, of course.

MR. CHAIRMAN: You said about the enhancement of the age from 16 to 18. The Act about the maturity of children provides 16 years. The understanding is that after 16, a girl will have good understanding. After 16 the question of consent would arise. That means, after that age comes, consent is given. But there is a danger that between 16 and 18 years of age there may be a consent and there may be some cohabitation. Suppose, in that case the parties are willing to marry. Even then, if you put the age as 18, you will not have this consideration. Conception would be there after the age of 16. Then the question of marriage would arise.

SHRIMATI VIDYA MUNSI: That may be true as far as the question of marriage is concerned.

MR. CHAIRMAN: I am only explaining the difficulties arising out of these offences.

SHRIMATI VIDYA MUNSI: That way if the minimum age of marriage should be fixed as 18. There may be social difficulties in enforcing it.

MR. CHAIRMAN: Kindly do not mix it up with marriage. But where the custody of the grown-up girl is up to the age of 18, only for the purpose of marriage consent is there. But here is a case where consent is very material for the purpose of conviction of the accused. These are two things.

SHRIMATI VIDYA MUNSI: I do not see why there should be any difficulty in the age being eighteen in both the cases.

MR. CHAIRMAN: Of course, it is more of an advantage to a woman. On that you give your view.

SHRIMATI VIDYA MUNSI: I do not know why it should be disadvantageous to the accused also.

MR. CHAIRMAN: I have made that very clear. Advantage is with the consent. Without the consent is not advantageous to the accused.

SHRIMATI VIDYA MUNSHI: Yes, but if the age is 18, then below that age consent would be vitiated.

MR. CHAIRMAN: I think I am not able to convince you. I have given a concrete example where consent is material for the purpose of marriage or for the purpose of conviction of an accused. I told you that maturity of understanding comes at the age of 16. Even medical experts are very vehement in saying that. They said that maturity comes at the age of 16. So many scientific reasons have been given while coming to this conclusion. It is not guess or an imaginary thing.

SHRIMATI VIDYA MUNSI: Anyway, we have stated the opinion of our organisation. I think that the Law Commission also is of the opinion that it should be 18 and not 16.

(The witnesses then withdrew)

III—(a) All Bengal Women's Union Calcutta.

Spokesmen:

1. Shrimati Romola Sinha
2. Kumari Meera Dutta Gupta

(b) All India Womens Conference Calcutta.

Spokesmen:

1. Shrimati Sati Sinha
2. Shrimati Ashoka Gupta

(c) The Womens Co-ording Council Calcutta.

Spokesman:

1. Shrimati Bijoli Ghosh
2. Shrimati Aloka Mitra

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:—

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

I would like to know whether one of you would make the statement on behalf of all.

SHRIMATI ASHOKA GUPTA:

We have discussed the matter and we are of the same opinion and if you put any particular question for individual opinion, we can give clarifications individually.

MR. CHAIRMAN: On what points are you going to give evidence?

SHRIMATI ROMOLA SINHA: On page 3 of the draft Bill, line 2 under 'Exception', we want that the age should be put at 16 in place of 15.

On page 2 of the draft Bill, line 41, we want to put the age at 18 years in place of 16 years.

On page 3 of the draft Bill, line 38 "Explanation 1,—Where a woman is raped by three or more persons". The words "three or more persons" should be replaced by two or more persons.

Then there are Sections about Public Servants and Jail Superintendents who have women under their custody. In their case, the accused should not be let off if the intercourse takes place even with the consent of woman. The women under their custody are helpless. They may give their consent which may not be real. It may be a forced consent.

SHRIMATI ASHOK MITRA: As regards publicity, the name of the accused should be published only after conviction. If exemplary punishment is given, it should be published with the name of the accused. There should be some provision made in the Bill to give publicity to the fact whether the victim comes from tribal family or from a low income group or Islam. This matter may be given consideration. The crimes committed should be given publicity. Otherwise, the whole case can be hushed up and generally there will not be any effect on the public and also on the morale of the victim.

SHRIMATI BIJOLI GHOSE: I want to suggest that, on page 3, in sub-clause 2(a) (b) and (c), the words 'takes advantage of his position' be deleted. Also in 376A and 376B, the words "takes undue advantage of his official position" may be deleted; also 'police officer and' may be added before 'public servant'. On page 4 lines 52 and 53, the words "previous permission of the Court" may be deleted. On page 5, line 10 may read as "to imprisonment of not less than six months and also to fine". On page 5, in 376A, 376B and 376C, it should be treated as rape and the same punishment should be given as in 376.

SHRIMATI ASEOKA GUPTA: I would like to add that, when interrogation of the victim takes place, the interrogation should be in the presence of a woman social worker or a woman lawyer and also a male or female relative of the victim and in her own home.

SHRIMATI ALOKA MITRA: There are a few points that I would like to add. On page 1, line 14, "a fine of not less than Rs. 5,000" may be added. On page 2, line 41, "18 years" be inserted in place of "16 years". All cases under this legislation should be held in camera. We strongly recommend that separate courts on the lines of family courts be set up for better understanding and handling of such cases, and particularly for speedy disposal of cases. Provision should be made for free legal aid for victims of rape on zonal basis in cities and Sub-Divisional basis in the districts. Voluntary organizations and social workers should be authorised to lodge complaints on behalf of victims and to render assistance during the trial. Refusal by the police station to take F.I.R. from the victim, her relatives or voluntary organizations should be a punishable offence. The rape victims should be interrogated by the police officer at their residence or dwelling place only in the presence of a male or female relative or friend and a woman social worker or a lawyer. The investigating officer should not be below the rank of the officer incharge. The medical examination of the victim and the accused should be done by two doctors of which one should be a lady doctor representing the victim, and a copy of such examination report should be given to the victim and the Magistrate without any delay. The accused must be arrested and detained until the investigation is complete. In cases of custodial rape, the victim should be immediately removed to a reputable home for women. Police protection must be given to the victim if asked for. If there is any complaint of

of intimidation lodged by the victim or her relatives or any social worker working into the case, the intimidator or intimidators should be arrested immediately and detained till the investigation is complete. Proceedings against him/them should be started immediately and the person should be liable to a jail sentence of not less than six months. In all cases of unlawful intercourse under this Act, the onus of proof of consent should be on the accused and not on the victim. The morality and past sexual history of the victim should not be a matter for investigation and record during the proceedings; the relevant issue should be the relationship of the victim with the accused in order to establish consent or otherwise. Regarding the role of the press, no publicity should be given during the trial of rape cases. After the verdict has been given, the case should be reported in general terms highlighting punishment imposed without disclosing the names of the victim as well as the accused as this may facilitate identification of the victim.

SHRIMATI ASHOKA GUPTA: The All India Women's Conference feel that the name of the accused, if he is punished and the crime is proved, should be given wide publicity after the case is over.

SHRIMATI ROMOLA SINHA: It does not necessarily mean that the name of the victim will be disclosed. The press should be urged never to mention the name of the victim. If the name of the victim is mentioned, that should be punished.

SHRI LAL K. ADVANI: If this provision had been there in the law, two years ago, this Bill may not have been born. This Bill is the result of an outcry in the press that such incidents are taking place and nothing is done about them. As a result of this outcry in the press and by the vision had been there, then the Mathura case would not have come to light. I am merely pointing out the other side of it. Here most of the

women's organizations have pleaded for publicity and they have opposed any ban on publicity as is proposed here.

SHRIMATI ROMALA SINHA: In our country, if the name of the victim is made known, you know what the result is.

SHRI LAL K. ADVANI: I am aware of it. I am merely pointing out the other side.

SHRIMATI ASHOKA GUPTA: We appreciate what you say. As soon as the case is complete then give wide publicity but don't mention the name of the victim.

SHRI LAL K. ADVANI: This Bill prohibits publication even before the trial. Trial, of course, should be in camera. That cannot be published even subsequently. There is embargo on the judgements being published as it is.

SHRIMATI ALOKA MITRA: That should be relaxed.

श्री सुकम देव नारस्यण यादव : मैं हिन्दी में सवाल करूंगा। मैं आप से यह जानना चाहता हूँ कि पत्नियों के मामले में उम्र 15 साल रखी गई है और अगर कोई पत्नी पति के ऊपर अदालत में मुकदमा कर देती है, रेप के बारे में, तो फिर क्या वह पति और पत्नी का रिश्ता बरकरार रह जायगा और क्या उस लड़की के साथ कोई दूसरा लड़का शादी करने को तैयार होगा ?

दूसरे, हमारे देश के जो आदिवासी क्षेत्र हैं, जो गरीब तबके के लोग हैं, जिस कम्युनिटी के अन्दर मैं हूँ, उस कम्युनिटी के अन्दर भी, 12-13-14 साल की उम्र में लड़की की शादी हो जाती है और 14-15-16 साल की उम्र में उनके बच्चे भी हो जाते हैं। लेकिन इस केस को इस बिल में कॉमिन्जैबल बनाया गया है। क्या इस मामले में आपने कभी सोचा है, या नहीं ?

जीवन्ती अशोका गुप्ता : गर्भों में तो ७-८ मास तक की उम्र में ही लड़कियों की शादी हो जाती है। हमारी महिला संस्थान की यह राय है कि लड़की की शादी 18 साल से पहले न करें। मैं यह कहना चाहती हूँ कि 18 साल से नीचे बच्ची की शादी कर दें और फिर उसको प्रोटेशन न दें और 13-14 साल में उस के बच्चे होते रहें तो यह उचित नहीं है। इस लिए, जैसा कि आप ने कहा, शादी की उम्र को बढ़ायें तो एज प्राफ कन्सेंट को भी बढ़ायें। यही हम लोगों की राय है।

SHRI LAL K. ADVANI: Child marriage is a social problem. It has to be dealt with in its own way. I can understand somebody suggesting that that should be made more stringent but so far as this is concerned under the age of 18 it is a rape. So, instead of reforming we will be giving strength to the administration to use it in any manner.

जीवन्ती अशोका गुप्ता : माना कि चाइल्ड मैरिज सोलिवल एक्ट है। एज प्राफ कन्सेंट को भी बढ़ाया है, लेकिन आप दोनों को आपस में न मिलायें।

SHRI LAL K. ADVANI: At the moment we are considering the issue of rape and not dealing with the issue of child marriage.

जीवन्ती अशोका गुप्ता : यह सवाल महिलाओं की इच्छा से संबंधित है। हम लोगों के जमाने में भी, माँ के जमाने में शादी होती थी। आठ-दस साल की लड़की कभी भी पति के घर नहीं जाती है। इस लिए महिला संस्थान की राय है कि 16 साल से पहले लड़की पति के घर न जाए और चाइल्ड हुड के समय में शादी न करें—आप ऐसा कुछ कीजिए।

SHRI V. KISHORE CHANDRA S. DEO: We appreciate what you have said but this comes in a different Act and linking it will be giving more powers to the police and magistrates.

SHRIMATI ROMOLA SINHA: That is all we feel.

SHRI V. KISHORE CHANDRA S. DEO: You have said that no publicity should be given as far as the victim is concerned. By 'victim' what exactly do you mean? Do you mean to say that a person becomes a victim only after the court judgment is delivered?

SHRIMATI ALOKA MITRA: Of course, it is not true.

SHRI LAL K. ADVANI: After the judgment of acquittal is delivered, will he be the victim against whom the accusation is made?

SHRIMATI ALOKA MITRA: Yes.

SHRI V. KISHORE CHANDRA S. DEO: Has the victim been the man who was falsely implicated?

SHRIMATI ALOKA MITRA: That is, after the case is over, publicity can be given.

SHRI V. KISHORE CHANDRA S. DEO: Do you name the persons as victim after that person is acquitted by the court judgment?

SHRIMATI ASHOKA GUPTA: The person who is alleged to have been raped is not necessarily a victim. After the judgment is given, the victim may be the accused who is acquitted by the court of law. That is why we are asking that no publicity should be given before the court judgment is delivered.

SHRI V. KISHORE CHANDRA S. DEO: In such cases also should the publicity be withheld?

SHRIMATI ASHOKA GUPTA: Of course, the name should be withheld.

SHRI V. KISHORE CHANDRA S. DEO: What is your opinion about Section 376 on page 3 of the Bill?

SHRIMATI ROMOLA SINHA: This gives rise to the loophole in the proceedings. There should not be any doubt, giving room for taking advantage of the position.

SHRI V. KISHORE CHANDRA S. DEO: That would be proved in a court of law. There are certain cases where by virtue of that power they take advantage.

SHRIMATI ASHOKA GUPTA: We feel that there should not be that much stress laid in trying to prove whether he has taken unnecessary advantage of his position or not. The very fact that he is in a position of authority is quite enough. This is our feeling.

SHRI QAZI SALEEM: About the age of 16 to 18, our Chairman has already explained. Apart from that I am concerned about the social aspect of this Section. In this Bill we are treating the husband just as a vagabond who is in the habit of raping girls. I want to know whether you are suggesting that both should be treated equally. Sometimes it happens that a separation case is filed on behalf of the girl by the parents. But even if they are not allowing them to go with each other, there is likelihood of their coming to a compromise once they meet each other. In our social life marriage is a sacred institution and under this institution you are encouraging them to separate each other. I want your advice as an experienced social worker.

SHRIMATI ROMOLA SINHA: It is only on year's difference. You are saying 15 and we are saying 16. It is what the Marriage Act says. The Child Marriage Act says that nobody can marry at the age of below 16. So we feel that 16 years is the right age for a girl to know her husband.

SHRI QAZI SALEEM: How do you intend improving social conditions? There is very possibility of social changes.

श्रीमती अशोका गुप्ता : जहां तक सोशियल कन्डिशनस का संबंध है, उस में हमें बेजोब लानी होगी। पहले जमाने में तो बहुत छोटी उम्र में ही शादी हो जाती थी। लेकिन हम समझते हैं कि यदि लड़की की शादी हो तो 18 साल से पहले न हो।

I am mother of children. I know what a girl of 18 years is and what is her maturity. It is not right for a girl to go into this process of marriage before 16. That is what I know as a social worker.

SHRI QAZI SALEEM: Would you prefer to give some lesser punishment to the husband?

SHRIMATI ROMOLA SINHA: May be we should consider that.

श्रीमती अशोका गुप्ता : उस जमाने में तो माता पिता लड़कों को पढ़ने के लिए भेज देते थे। पति पत्नी को संभोग करने का मौका नहीं देते थे। इस लिए हमें भी कुछ, ऐसा ही करना पड़ेगा।

SHRI BAPUSAHEB PARULEKAR: The first point is with reference to sexual relations. It seems that you intend to raise this age from 15 to 16 because of the restrictions placed by Sarda Act. But you may kindly note that Sarda Act is applicable only to Hindus. We have different communities and different religions and there are different age limits in respect of marriages in their communities. If you take into consideration the Muslim personal law, it is difficult to change the age of marriage which is 12 to 17. This legislation which we are passing will be applicable to Muslims as well. If you say

that the Muslim personal law allows marriage of a man with a girl who has attained the age of puberty and who is below the age prescribed in this Bill and he has sexual relations with his lawfully wedded wife, he should be sent to jail for 7 years. Don't you think that this would be against the interests of the Muslim Personal Law or against the interests of that society?

SHRIMATI ROMOLA SINHA: You are quoting the Muslim Law for allowing relationship between husband and wife at the age of 12. But you yourself mention the age in the Bill as 15 and not below 15. So, anything below 15 years is not good.

SHRI BAPUSAHEB PARULEKAR: This is a suggestion. This is not final. There were some witnesses at some other places who have explained this issue. Therefore, considering this aspect I would like to know whether you would like to change your opinion. Probably you are all referring to Sarda Act. Therefore, I have brought this to your notice. If you can give a valid opinion it will be better.

SHRIMATI ROMOLA SINHA: The Sarda Act should not apply to this as far as marriage is concerned. The age of 12 should not be allowed, but we have to give special exemptions in those cases.

SHRI BAPUSAHEB PARULEKAR: The second point is with reference to publication. You have said that no report is to be published during trial or investigation of the case and before the judgment the name of the victim should not be published. Kindly consider a case where a person has filed a case and the police are not taking cognizance of the offence. It is absolutely necessary for the press and the women's organisation to exert pressure on the Police. That can be done only by holding demonstrations and by writing articles in the press. In that case

we have taken into consideration your view that the real culprit from the elite society would go unpunished because of the influence he holds on the Police. Suppose a rape has taken place in Calcutta. But the culprit is not being brought to book. How can you assist the poor victim unless you know his name? It is absolutely necessary that it should be published so that the police can take cognizance.

SHRIMATI ALOKA MITRA: We have discussed this point. We think that the Press can give only so much publicity that the offence took place in Islam or in other community or perhaps in a tribal area or in a backward area but if we disclose the name of the woman or the child, whoever the victim of this rape, then, probably the rehabilitation of that particular woman or child will become difficult.

SHRI BAPUSAHEB PARULEKAR: Do you think that it is because persons with influence go to Government and pressurise that the Police are not taking any action and publicity is not given?

SHRIMATI ALOKA MITRA: The Press only cannot help in taking up the case. There are many types of pressure to hush up a case. Social workers should take these questions up and should try to go to Government and force the Police to take action.

SHRI LAL K. ADVANI: This particular provision does not relate only to publication. This relates to printing and publication. This point was brought out by women's organisations in Bombay. They pointed out that rape took place in a factory. In that factory those who committed rape were very powerful people. It was the women's organisation there which took up the cause and gave a memorandum and staged a demonstration. Everything of it was published. Publicity covers everything, even putting up a poster that the women's organi-

sation has come to know of a particular rape in this particular factory and that the executive heads are responsible, even though the name of the victim is not published.

SHRI BAPUSAHEB PARULEKAR: Supposing the court ultimately comes to the conclusion that a case is false and the judge holds that in order to malign a particular individual the particular complaint was lodged, don't you think that this is a very serious case and it should be made penal and punished? If the court holds that this woman has purposely in order to malign has falsely implicated the accused, should she go out of court without any punishment? In such cases, don't you think that the person or the woman who has filed the false case should be punished? Should there not be protection to the man also?

SHRIMATI ALOKA MITRA: We suggest a provision could be made in this Bill to that effect. There should be something like that included in the Bill.

SHRI BAPUSAHEB PARULEKAR: Many times it so happens that after the case of rape has been filed in the court, the boy and girl who are very young decide to marry with the consent of the parents. But, unfortunately as the law does not allow, we cannot compromise this offence once the case is filed. At present, I am handling such a case. Even if there is marriage, the judge will sentence him for seven years. Do you think that if they agree and the parents agree and the marriage takes place during the pendency of the case, the boy should be sentenced? Or do you think that a compromise can be allowed?

SHRIMATI ALOKA MITRA: It depends on the judgment and seven years is the maximum.

SHRI BAPUSAHEB PARULEKAR: If he should not be punished, then

there will be no stigma that he is a rapist. It is not a question of sentence.

SHRIMATI ALOKA MITRA: We have come across such cases several times. We have known boys who were committed to imprisonment for seven or 14 years at a tender age. They had no hope in their life because they committed such an offence. A boy and girl commit such offences and afterwards there may be a compromise on both sides. But that happens very seldom. The life of a girl will be ruined if she becomes a victim of such a case. That is why we feel that this crime between a boy and girl should not be taken lightly in law. Such cases rarely happen. The court at that stage may decide that this is a case which has to be dealt with in a humane fashion. That is why we are saying that there should be family courts, and that there should not be publicity.

SHRIMATI GEETA MUKHERJEE: Do you have any objection if the victim's name is not published but the name of the accused is published?

SHRIMATI ALOKA MITRA: We have no objection.

SHRIMATI GEETA MUKHERJEE: Do you have any objection if at the stage of allegation woman's name is not published but the name of the accused and the news of what is happening is published? My question is whether in the allegation stage it could be mentioned without the name of the victim.

SHRIMATI ROMOLA SINHA: It will have to be mentioned as allegation at that stage.

MR. CHAIRMAN: In your opinion, the age should be enhanced. What is the total number of cases filed by married women against their own husband so far as West Bengal is concerned?

SHRIMATI ALOKA MITRA: We do not know.

SHRIMATI ROMOLA SINHA: I think, there are no cases.

MR. CHAIRMAN: The provision is there in the Indian Penal Code that, if a marriage takes place within the age of 15 years and if the husband has access to the woman, then that should be considered as rape if a complaint is filed. In spite of this provision in the Indian Penal Code, no cases have been filed, no woman has gone to court and there has been no conviction. The Indian Penal Code was drafted in 1836 by a British man. He never had any idea of the Indian culture and tradition. What is the advantage that you are going to gain in enhancing the age of married woman here?

SHRIMATI ROMOLA SINHA: Normally if the families agree to a girl of 15 living with her husband, nobody has any objection, nobody calls it rape. It is only in rare cases that this problem comes up where the girls do not wish, for some reason, to consider themselves mature or the relations do not consider the girls mature.

SHRIMATI ASHOKA GUPTA: We could have easily suggested 18: that would have been legal and logical, but we have suggested 16 considering the question of our social conditions and also the early maturity of our girls in this warm climate. In any case, whatever we may say, whether it is 16 or 18, there may be an anomaly. When the discussion takes place in Parliament, it may be considered whether all these laws should be reviewed together, so that there may be some sort of uniform application everywhere.

MR. CHAIRMAN: That is all. Thank you.

SHRIMATI ROMOLA SINHA: Since we are all together represent-

ing different organizations, we will put together our opinion and send it to you.

MR. CHAIRMAN: Yes.

(The witnesses then withdrew).

MR. CHAIRMAN: Hon. Members, there are some more witnesses waiting to give evidence. Let us now adjourn for lunch and meet again in the afternoon at 3 p.m.

(The Committee then adjourned at 13.30 hours and reassembled again at 15.00 hours).

IV (a) *The Indian Journalists Association, Calcutta*

Spokesman:

Shri Lalit Mahan Banerjee

(b) *The Calcutta Press Club, Calcutta*

Shri Mrityunjay Chattopadhyay.

(c) *Calcutta Journalist Club, Calcutta*

1. Shri Niranjan Sen Gupta

2. Shri Satyan Deb Mallick

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

You have been supplied with the copy of the Draft Bill. Please give your comments.

SHRI NIRANJAN SEN GUPTA: We shall restrict ourselves to the provisions in this Bill which pertain to press coverage. In Clause 2 there is a provision which puts the restriction on the press about publishing the names and identity of the victims of rape cases. This to our opinion is not a reasonable restriction in the sense which is covered by the grounds stated in Article 19 (2) of the Constitution. Our opinion is that none of these grounds covers the stated objectives for which this restriction is sought to be put on the Press. In our opinion this is not a reasonable restriction.

Secondly, this prevents the Press from mentioning even in a particular case the socio-economic class of the victim which it may be necessary to publish in matters of public interest. Even disclosing this identity is sought to be banned by this provision which we think is not correct.

Thirdly, there is another provision in the same. Clause which indicates that there may be other Acts which may in future ban similar publicity in Press in the case of some other offences. This Clause about future banning of similar publicity is too drastic. Regarding banning of publicity of the proceedings held in a court in camera we have no objection. It has been specifically said that rape cases will be tried in camera so the details of the trials will not be published in the Press except with the permission of the court. That is understandable. That is a reasonable restriction because that comes under the provision which prevents publicity of any matter which is a contempt of court.

There is Explanation to this Clause which says that the printing and publication of judgement of any High Court or Supreme Court does not amount to offence within the mean-

ing of this Section. As far as I understand, this means that when a judgement or a rape case is delivered by High Court or Supreme Court the Press can publish this judgement as it feels it to be necessary but here it does not make sense to me that only High Court and Supreme Court judgements could be published and not of the lower courts.

I have already covered rape cases being tried in camera. That is a reasonable thing and the press should have no objection. When we put these objectives as provisions of the Bill we do not forget that these restrictions have been put with an admirable objective as stated in the Statement of Objects and Reasons, namely, that if the name of the victim in a rape case is identified, there is a social stigma attached to her by this publicity even when the case is proved in her favour. We are not unaware of this fact of life. But we do not think that this evil should be or could be overcome by putting the press under penal law. We think that the purpose could be better served by bringing this matter within the purview of voluntary restraint of the press under the supervision of the Press Council of India. That is the submission I have to make.

MR. CHAIRMAN: There is one point on which I want a clarification. Do you mean to say that there is violation of fundamental rights of the press?

SHRI NIRANJAN SEN GUPTA: Yes.

MR. CHAIRMAN: Have you got any idea of what is a reasonable restriction and what is not a reasonable restriction, apart from what is stated in clauses (2), (3) and (4) of Article 99 of the Constitution? This is a matter where social environment is taken into consideration because some protection is to be extended to a woman and you are aware that the

law should be framed according to the social needs of the society. In that connection if, with a view to provide protection to a weaker section, such restrictions are imposed, what is your view?

SHRI NIRANJAN SEN GUPTA: When I say that it is not a reasonable restriction, I speak in the legal sense, in the sense, that my feeling is that if the Bill is passed in his form, it may be invalidated on the ground that it is a matter not within the jurisdiction.

MR. CHAIRMAN: But while providing the law I want to know whether Parliament is empowered to have such a legislation on the understanding that these are the restrictions reasonable in the interest of public order and morality.

SHRI NIRANJAN SEN GUPTA: I do not think that the Constitution as it stands now gives Parliament that authority. But so far as social conditions are concerned I said that we fully agree with the objective of protecting women in certain cases from publicity. I agree on that. But what I say here is that this restraint should be placed not by penal law, but by a code of voluntary restraints which may be supervised by the Press Council of India which has the authority to do so.

SHRI MRITYUNJAY CHATTO-PADHYAY: Just to supplement my colleague's point of view I would say that the First Press Commission has given a clear guideline in this respect. On page 451 of their Report they have stated while discussing the matter on scurrility etc. as follows:

"Scurrility in particular cannot be dealt with by any amount of legislation. Where it is dealt with, there can never be a firm assurance that the Press Commission is on a non-partisan and non-political basis. It can be dealt with adequately by an organisation like the Press Coun-

cil and by measures of self-regulation by the press."

My second submission is that in case the lower court's verdict is that it should not be allowed to be published there will be credibility gap so far as scores of journals published from the rural areas is concerned. From that point of view also the Bill should be liberal enough to allow them to publish, at the same time considering the need for protecting the victims in such cases from unnecessary stigma. The final verdict should lie with the Press Council.

MR. CHAIRMAN: I do not know whether you have understood the spirit of my question. The point is that there are many cases where in every walk of life you are reading the publication of all sorts of rapes and by this publication itself many ladies are not able to get married. I am not coming in the way of freedom of the press. The society has now reached a stage where it feels that protection should be given to victims. Undue publicity should not be given so as to mar their future career. In many cases the women who have become victims of rape have continued their life as if they are dead women. This is the situation prevalent in Indian society. So, in order to give protection to them, comparing the hardships posed by the press if the protection to be given to the women is outweighs the protection given to the press, then why this protection should not be withdrawn in respect of the press? It is not merely safeguarding the interests of the press, but you must also safeguard the interests of women.

SHRI MRITYUNJAY CHATTO-PADHYAY: I would say that generally the Indian press has behaved responsibly in this matter. For ourselves we can say that we generally strike out the names of victims in such cases. But as I said, in some cases it may be necessary in public interest to mention at the allegation

stage, at least, that this thing has happened. We may say that this thing has happened in a certain bustee to a certain tribal girl. At the allegation stage something like this can be published. I would add that this Bill would not have been possible but for the campaign launched by the press about certain cases like the Mathura case. This Bill would not have come at all but for the publicity and exposure made in the press. So, I would say that the press has generally behaved responsibly in this matter. But I fully agree with you that there is need in Indian social conditions to protect women from undesirable and harmful glare of publicity in these cases and I would humbly suggest that the purpose would be better served by leaving the matter to the Press Council and asking the Press Council to devise a suitable code in this matter and to enforce it, if necessary, under the penal provisions, but not under the Panel Code. This is in conjunction with the other blanket enabling clause which foresees another series of legislations which will similarly shut out the press from publishing these similar offences.

SHRI BAPUSAHEB PARULEKAR: If you refer to Clause 2 of the Bill, there is no blanket ban on publishing the incident of rape without disclosing the identity of the victim. Your purpose will then be served. But you say that the Mathura and other cases came up because of the press. That is true and correct. But what is prohibited is the publication or printing of the name of the victim. Without that, you can publish all the issues. It can be like "Rape on a young girl. Police not taking cognisance", like that. That way you can print. I would like to know what is your objection for this limited purpose which is mentioned in this particular Bill. It is no use publishing the incident of rape either at the investigation stage or at the allegation stage or even afterwards. Only limited matters are prohibited to be published by the press.

SHRI NIRANJAN SEN GUPTA: I do not say that it is not possible to publish the story without giving the name of the victim. It is quite possible. It has been done quite often.

SHRI BAPUSAHEB PARULEKAR: I think that you have no objection to the provision of the Act.

SHRI NIRANJAN SEN GUPTA: It should be left to the good sense of the press.

SHRI BAPUSAHEB PARULEKAR: What is your objection to have this legal provision?

SHRI NIRANJAN SEN GUPTA: This legal provision debar the press from mentioning anything which indicates the identity. For instance, a girl has been raped in police custody. That may be necessary to be published in public interest.

SHRI BAPUSAHEB PARULEKAR: If it is published "A tribal girl in police custody raped by Inspector of Police." Your purpose is served.

SHRI NIRANJAN SEN GUPTA: But I do not think that I can do this under this Clause.

SHRI BAPUSAHEB PARULEKAR: The words have been very carefully used "the identity of any person" X, Y or Z who is raped, identity cannot be disclosed.

SHRI NIRANJAN SEN GUPTA: My main objection is that it is too wide and is restrictive even mentioning the identity of the victim.

SHRI BAPUSAHEB PARULEKAR: Only the judgements of the High Courts and of the Supreme Court are to be published but not of the Sessions Courts. Do you not think that publication of judgements of Session also should be allowed.

SHRI NIRANJAN SEN GUPTA: But we also publish the District Court judgements in some cases.

SHRI BAPUBHAI PARULKAR:
There is no finality to it.

SHRI ERA SHEKHAN: You asked why should we not allow the legal profession itself to evolve a code of conduct. May I take it that you accept the desirability of giving protection to women? Your only apprehension is that it may violate the law. Suppose there is a lady who has been raped and she goes before court. It gets publicity which mars her future. To that extent, we are worried. But, we can accept a form in which it can be published. We can appreciate the signal services rendered by the press. Let us evolve a form. We want to put it on a legal basis. Have you any idea as to how to codify it in legal phraseology?

SHRI NIRANJAN SEN GUPTA:
By a piece of legislation, you can leave this to the Press Council and the views of the Press Council can be examined by legislators. I do not have any knowledge on that.

SHRI LAL K. ADVANI: You referred to the possibility of a series of laws emerging.

SHRI NIRANJAN SEN GUPTA:
This is my understanding of it. We refer to Section 288A(2) (a) on page 1 of the Bill.

SHRI LAL K. ADVANI: This does not empower or lead to a series of laws. This is a specific provision.

SHRI NIRANJAN SEN GUPTA:
This foresees certain laws to be made which will mention specific offences.

SHRI LAL K. ADVANI: The Sections that are there, are already there. These deal with crimes against women and the Legislature seeks to protect the identity of the woman. Those laws have been mentioned here. There is no proposal or there is no implied proposal for framing new laws. All these Sections pertain to laws for the protection of women.

SHRI NIRANJAN SEN GUPTA:
Then I stand corrected.

SHRI LAL K. ADVANI: If morally and constitutionally, this is all right, we have no objection. But according to your reading of Article 19, this is an unreasonable restriction.

SHRI NIRANJAN SEN GUPTA:
Any restraint on the press is not desirable, even if it is legal.

SHRI LAL K. ADVANI: I wish to point out that there are people who have advocated that a restraint of this kind is not necessary for the sake of social justice; it would be a social injustice to certain under-privileged sections if this restraint is there, whether by the Press Council or by law; either way, it would mean injustice to them and evils like rape will go on and there will be no remedy.

SHRI NIRANJAN SEN GUPTA:
We do not see this from that point of view.

SHRI LAL K. ADVANI: Because it is suggested that it should be an embargo restricted to the name of the victim and not to anything that may reveal the identity of the person.

SHRI NIRANJAN SEN GUPTA:
In certain cases it may be desirable in public interest to indicate the socio-economic class or certain other aspects of the case which may lead to the identity of the victim.

SHRI V. KISHORE CHANDRA S. DEO: You have opposed this Clause and one of the reasons which you have mentioned is that this is ultra vires the Constitution. You presume that it may be struck down by a court of law. How will allocating this job to the Press Council help? If the enactment of Parliament is going to be struck down by the court as ultra vires the Constitution that would apply to the Press Council

also. What is your objection in Parliament regulating this so far as press is concerned? We could specifically mention that the identity of the person need not be mentioned by the press, whereas a reference to the other aspects of the case could be made. Would you be satisfied by that?

SHRI NIRANJAN SEN GUPTA: I would repeat that any position which puts the possibility of penal action on the press by law for any publication in this category is not desirable. Regarding the other point about court striking down even the Press Council's authority on this, I do not know really, but I do not think that will happen. It is a question of self-regulation. It will not attract the attention of the court.

SHRI V. KISHORE CHANDRA S. DEO: That is not my idea. Suppose the Press Council is given this task and a journalist or some press, without listening to the directions of the Press Council, indulges in this kind of publicity. The Press Council does not have penal powers...

SHRI NIRANJAN SEN GUPTA: It has certain penal powers.

SHRI V. KISHORE CHANDRA S. DEO: Then why are you objecting to the penal powers being incorporated in this Bill?

SHRI NIRANJAN SEN GUPTA: Because the Press Council is composed mainly of professional people and people who are interested in press.

SHRI V. KISHORE CHANDRA S. DEO: Would you not by that, make it biased towards the press since it is a body consisting of its own class?

SHRI NIRANJAN SEN GUPTA: There are others also and not only the journalists. Mr. Advani knows about it.

SHRI R. K. MHALGI: Assuming that Clause 2 is retained and section 228A is added to the Indian Penal Code, what have you to say about the provision relating to quantum of punishment in respect of this offence?

SHRI NIRANJAN SEN GUPTA: I have no opinion on this. If it is retained, Members of Parliament, in their wisdom, are doing it; I do not have anything to say on this. Of course, the minimum prescribed is one month, I think.

SHRI R. K. MHALGI: There is a proviso; it could be even less than one month.

SHRIMATI GEETA MUKHERJEE: You want deletion of section 228A because you feel that, if in one law this kind of curb is introduced, that may be followed up in others also. As I understand, this is your main concern and your opinion is that it should be brought under voluntary restriction by the Press Council. Now, as far as this Clause is concerned, in case Parliament do not agree to totally taking out the Clause, do you think that deleting the following words, namely, "or any matter which may make known the identity of any person against whom..." etc., etc., would be all right? Then only the name part will remain and the justification for this would be protecting the victim. Under those circumstances, this may be the necessary evil. Is it not so?

SHRI NIRANJAN SEN GUPTA: Yes. That will be an improvement over what it is now.

SHRIMATI GEETA MUKHERJEE: As far as the other thing is concerned about taking the whole thing out and putting it under the Press Commission, what is your experience of that?

SHRI LALIT MOHAN BANERJEE: Recently the Press council had its

sitting in Bhubaneswar and there were some writings published in Indian Express and Hindustan Times and the Press Council objected to that and those newspapers published contradiction as well as apology. In that case, I think, without curbing the freedom of the Press by any penal clause it is desirable that it is left to the good sense of the Press which can behave responsibly in national interest and there is at the same time Press Council which composes of Press, Parliamentarians and legal luminaries. I think no newspaper howsoever big will be able to oppose the Press Council.

I have another suggestion. I have read the extracts. There are seven circumstances under which the offence will be taken as committing sexual offences. I suggest that there should be one more, namely, eighth—'with or without consent taking advantage of the economic situation'. This is the main crux of the problem in our country.

SHRI QAZI SALEEM: Although the number of rape cases have not increased considering the increase in population, yet the Press is exhibiting more prominently and giving details. May I know whether in your opinion this will not ruin our younger generation.

SHRI NIRANJAN SEN GUPTA: I think in general this had the effect of highlighting the cases of offence committed against women in custody by people in authority and that is the business of the Press to do. I think this job has been done admirably by the Press.

MR. CHAIRMAN: Have you any idea about the code of conduct imposed by the Press Commission on Reporters?

SHRI LALIT MOHAN BANERJEE: The first Press Commission prescribed some code of conduct and we are

still bound by that because the second Press Commission has not still put forward the suggestions. The journalists' associations generally ask our Members to observe these restrictions. By this I do not mean that all follow it in letter and spirit. On the other hand, every newspaper has its own policies and according to those policies the reporters are directed on what to do and what not to do. Over and above that there are others who are there to see whether any particular item should go or should not go on the newspaper in accordance with the policy of the newspaper and at the same time in the interest of the nation.

MR. CHAIRMAN: You are referring to the directions issued on and off to the reporters but I am not referring to those directions. I am referring to directions issued by way of code of conduct. Have you got any code of conduct adopted and imposed on the reporters? I do not think you have.

SHRI MRITYUNJAY CHATTO-PADHYAY: As my colleague and friend suggested, we generally follow the code of conduct as laid down by the First Press Commission.

MR. CHAIRMAN: Have you got directions from time to time?

SHRI MRITYUNJAY CHATTO-PADHYAY: That is the general guideline for us.

SHRI R. S. SPARROW: When we discuss such cases as the one we are discussing today we are generally silent in relation to the educational status of our people, and a majority of rape cases as one notices all round the country are from the poor classes the backward classes. In general terms, the press cannot counter the allegation that they may sometimes play a wrong role from the press side. Therefore taking that ana-

logy into consideration we together have to take that angle into account also. After all, you will agree with me that the public are interested in the story, and in view of the frequency of such types of occurrences from law point of view is to see that the investigation and all allied things connected with the law are effectively being handled. That is what the public wants to know and when you throw up the information through the media if the names are not mentioned—and the mention of names incidentally affect the majority of the poorer classes and they became a sort of a little taste for others to enjoy—it will be all right. We have to build up a certain standard in the society in this country and we have to cut off that type of idea. In that context I would like your opinion as the press heads.

SHRI NIRANJAN SEN GUPTA: I would say that is a very good argument, but I would repeat that the press should be left and encouraged to use their own good sense in these matters rather than putting them under legal curbs. When the press has done a good job of exposing this kind of offence, as you say, against women of lower economic and educational status, they have indeed done a good job is but then it should be left to the better sense of the press to behave themselves in this matter by not exposing them.

SHRI R. S. SPARROW: That poorer strata of society are the ones who suffer incidentally. Stories go round in their names and they are those girls who have suffered mostly in not getting married or by getting a bad name. So, taking that thing into consideration, please proceed.

SHRI NIRANJAN SEN GUPTA: Regarding that I would say, it is not only the press reports which help publicity in this matter. In such cases particularly when a victimised girl has the courage to take it to the police or to the court, then it is

more or less known in the locality. It is not the press publicity only which brings it to light. There are other circumstances also. Even if there was no publicity, people in the neighbourhood would have know, in our social conditions, particularly about that girl who has the courage to go to the police station or to the court to file a case. It would have been known in any case whatever social disadvantage she would have by publicity would be there on a lesser scale of course, but within her locality the people who know her the people who have the greater opportunity to put her in embarrassment will subject her to this, sort of publicity.

SHRI MRITYUNJAY CHATTO-PADHYAY: Just to reinforce the contention of my colleagues, I would say that we have volunteered to give a small suggestion for inclusion of the under-privileged classes that should be covered in one of the Sections, that is, under Section 375. That is to protect all the weaker sections of people who might be victims of such circumstances.

One more submission is that our views should be taken as one consensus. Although we would be quarreling elsewhere we came here as one voice.

MR. CHAIRMAN: Thank you.
(The witnesses then withdrew).

V. (1) *The Bar Council of West Bengal Calcutta.*

Spokesmen:

Shri M. G. Mukherjee, Member and Senior Advocate.

(2) Chief Metropolitan Magistrate Court, Calcutta.

Spokesmen:

Shri Devan Mookerjee, Advocate.

(3) Shri Tarapada Lahiri, Senior Advocate,

(The witness were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential. Such evidence is liable to be made available to the Members of Parliament."

SHRI M. G. MUKHERJEE: We three, of course are lawyers representing different institutions.

MR. CHAIRMAN: You introduce yourself on your own behalf.

SHRI M. G. MUKHERJEE: I represent the State Bar Council of West Bengal. It is the representative body of lawyers of West Bengal. It is a statutory body. I am a Member.

First and foremost, as regards the Criminal Law Amendment Bill of 1980, Section 228A mostly concerns the Press. We find that in so far as the punishment prescribed for disclosure of identity of the victims is concerned, it is rather rigorous in the sense that after all the press man is committed to certain codes of behaviour. The punishment is two years and fine. Of course, for adequate and special reasons the court has been vested with powers to impose a lesser sentence but that again is not less than one month.

HON. MEMBERS: No.

SHRI M. G. MUKHERJEE: I am sorry.

That apart, we find that in so far as this Section is concerned, it has been made non-bailable. We find in paragraph 7 in the I Schedule of the Cr. P.C. where it is sought to be amended, it is two years and fine; but in Column 3 we find "imprisonment for two years or fine or both."

MR. CHAIRMAN: Non-bailable.

SHRI M. G. MUKHERJEE: In Column 5, you will find that it is non-bailable. We as lawyers feel that such offences should be made bailable. These are not such heinous which should be classified as non-bailable offences.

On the second part also, we hold the same view.

As regards the Explanation to Section 228A(2) on page 2 of the Bill, this has been perhaps provided so that the legal journals can publish the High Court or Supreme Court judgments which should be taken as legal precedents. We think so far as the publication of the judgment of the trial court is concerned, the judgment itself may also be excluded from the purview. The trial court judgment can also be published because, if a bad sentence is imposed and the culprit has been brought to book, that aspect at least can be highlighted. Some of us, of course, may hold different views.

With regard to Section 375 on page 2 of the Bill "First—Against her will" "Secondly—Without her free and voluntary consent". That is fairly clear enough.

"Thirdly—With her consent, when her consent has been obtained by putting her in fear of death or of hurt or of any injury or by criminal intimidation as defined in Section 503". This seems to be somewhat superfluous. "Intimidation is wide enough and covers all types of cases including reputation and physical injury also. We think that it is, of course, too wide.

As regards "Fifthly—with her consent, when her consent is given under a misconception of fact, when the man knows or has reason to believe that the consent was given in consequence of such misconception in so far as this concept of misconception is concerned, we think that it would include within its ambit such cases where false promises are held out and then the victim is subjected to the ravages of the offender. But really speaking, so far as the other offences are concerned, sometimes the lady is made to believe that it is a lawful marriage, despite the fact that the previous marriage is subsisting. Let us take the case of Herbans Kaul. In the High Court of Allahabad, there was an acquittal. She took the matter to the Supreme Court. Supreme Court said "Nothing doing". That was a long-drawn procedure. Such offences as promises held out for giving employment etc. need to be definitely probed in. The offences should be classified under different Heads. Personally speaking, I have been practising for the last 23 years and I have seen at least 50 cases which are absolutely fake ones. It is not that I am a specialist on this particular subject, but I can tell you from my own experience that such cases are not rare.

The sixth is all right.

So far as the seventh is concerned, I would say this. In the case of kidnapping, the age is 18. But in the case of rape, the age is put as 16. My suggestion is that it should be made uniform as 18. If you think that a girl of less than 18 years cannot choose her own lot, the same thing holds good here also. In the case of rape also, it should be made 18 because girls below that age may seldom have the discretion to choose what is good for them and what is not.

Explanation 1 is acceptable to the whole civilized world.

Explanation 2 reads:

"A woman living separately from her husband under a decree of judicial separation shall be deemed not to be his wife for the purposes of this section."

We find that provisions of divorce are made more lenient by this. After all, it is a judicial separation; there are chances of reconciliation also. For that reason alone, we should not be stringent. One of my own aunts who was judicially separated from her husband for 15 years, when the question of giving her daughter in marriage came, went back to her husband, even though her parents, brothers and sisters resented it very much, she voluntarily went back to her husband. Then I come to Section 376 which seeks to prescribe punishment for rape. Here I may be permitted a little digression. I am associated with a society called the Indian Society of Criminology which has its headquarters in the Department of Psychology in the University of Madras. It is a Society where persons of various disciplines have come together like doctors, lawyers, psychologists, social workers, jail reformers, and so on. We are thinking that, so far as the offence of rape is concerned, it may be divided into various categories. The first is where there is romance or love affairs followed by sexual intercourse where the girl is a consenting party. Ultimately they have the idea of uniting together, but the sexual relationship is a prelude to the ultimate goal. We have seen cases where unmarried girls are taking pills and contraceptives. We are very lenient there. That should be viewed differently. Then we find from a survey that many of the prostitutes in the Berhampur jail, for example, were initiated into that profession by some of their own elderly family friends. Those elderly people should be dealt with severely.

So far as gang rape is concerned, in the Bill it is said, "Where a woman is raped by three or more persons...". Recently we had come across a case of a Muslim girl being raped by two Muslim boys near the Dum Dum Airport. Naturally the girl could offer no resistance because it was a case of two persons doing the atrocity jointly. So, there is little difference between two persons and three persons. So far as one person is concerned, that could be a different proposition because we can always find signs of resistance.

So far as police officer committing rape in the local area is concerned, we have seen many politically motivated cases recently in West Bengal where ultimately the cases ended in acquittal. We do not know what was the exact situation, but we find that many police officers had to face such trials. It was ultimately found that many of the girls were associated with different political groups or parties. We had a case where certain college boys were involved. The girl concerned was picked up from the street by one of the police officers on duty and taken to the police station. The boys phoned to a local MLA and got initiated a case of rape against the police officer. Ultimately it was proved that in the police station the offence could not have been perpetrated. Such cases of blackmail where the motive is different are also very much there. But we respect the sentiment in the sense that in the case of custodial abuse, the thing should be viewed differently. Here I come to Section 111A which reads:

"in a prosecution for rape under clause (a) or clause (b)...where sexual intercourse is proved.."

etc., etc. Here the court must come to the conclusion not only on the basis of the uncorroborated testimony of the girl concerned, it should be on medical examination also. I think,

there should be a rider to this as follows:

"...where sexual intercourse is proved on medical evidence..."

Then only the question of presumption comes. Though we as lawyers would advocate that, we should not go by any presumption on this score. Recently as members of the Bar Council we had to go to a particular hospital where there was an accusation by a lawyer's wife against a doctor that there was an attempt of rape. We found that it was a false case and the lady was not in a fit mind. If we are to presume certain things then we may substitute the word 'may presume' and not 'shall presume'.

So far as Section 376 A, B and C are concerned these are all cases where the offences do not amount to rape. Our view is that Section 376 A, B and C should not be retained as separate offences because the offences will be unscientific. These are not cases of rape. That is all what I wanted to submit.

SHRI DEVEN MUKHERJEE: The concept behind the proposed amendment contemplates deterrent punishment in regard to sexual offences and it is obviously to mitigate the offences. If it is so I am inclined to bring to your kind notice that we have seen Prevention of Corruption Act and anti-Profiteering Act. If you take the statistics prior to the passing of these Acts you will be alarmed to see after passing these enactments the corruption has increased. Time has come when the legislature should consider to mitigate the problems. In that context of the view, I think, it is not necessary to agitate our minds to think in terms of enhancement of deterrent punishment on the offender because law has already proved that these stringent measures against the offenders do not yield any effect on the offenders. Secondly, our judicial system is based on the British system.

The onus of proof is on the person who brings the allegation whereas Section 111A puts the onus of proof on the accused. Rape is not expected to take place in the public place. Supposing a person gives Rs. 500 to a woman and asks her to start a case of rape against a particular person then it will be difficult for the concerned person to prove that he did not commit rape. That apart as you know, there is some anomaly in regard to the formulation of sections, as for example, if you see Section 228, you will find that whoever prints or publishes the court proceedings will be hauled up under this Act because the wording is 'Whoever'. As soon as the evidence is taken of the prosecutrix, naturally the accused would like to have a certified copy of the documents and he gets it. Then will he be hauled up?

Secondly, this Section 228 is in conflict with clause 4(b) (2) which is as follows:

"Where any proceedings are held *in camera*, it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except with the previous permission of the court."

So, Section 228 will become irrelevant and a nullity. There is no harmony in between Section 228A and this particular 'permission'.

Thirdly, I would like to stress one aspect, that is, the schedule of offences. As you all know, the offences punishable with imprisonment for less than three years are bailable under the Code of Criminal Procedure. If it is so, the punishment under Section 228A cannot be non-bailable because it is the statutory provision of the law and so the contemplated offence Section 228A cannot be non-bailable. It must be bailable.

That apart, in our country women have outnumbered the men-folk. The

sexual desire cannot be unilateral, it can be bilateral. Assuming that there are sexual relations between man and man if the girl was voluntarily part of this act, but by the persecution of the parents and others if she goes to the court and gives evidence saying 'No, I was not a party to it', will you agree to that? In this particular case it is natural desire. If you want to attract this Section for that, it will be naturally injustice.

SHRI TARAPADA LAHIRI: Respected Mr. Chairman and Members of the Committee, on a perusal of the Bill about which we have been asked to say something. I would first say that the law enacted in the manner in which it is framed in this Bill would not serve to decrease the number of sexual offences. I for myself cannot be induced to believe that simply by making a law more stringent and enhancing punishment or imposing some disabilities on the accused, we can decrease the number of crimes. You cannot do that. The capital punishment, that is, death for a man is there not only during these times, but even in the original Manu Code. But have we been able to decrease the offences of criminal men? No. So, the stringent measures which are a departure from the usual process of law through which other offences are governed and tried must have many cogent reasons at the back, but we should not be guided by emotions.

As to the special measures my friends have already dealt with them. I will start with the last measure first, that is, clause 8 of the Bill which seeks to introduce a new Section in the Indian Evidence Act, Section 111A. To my mind, up to this time, there is no illustration in the history of laws of contemplating to commit an atrocity. It is an atrocity on the law of evidence, it is an atrocity on the principles of administration of justice because by introducing this Section 111A, only telling the court to give more weight to the testimony of a

person simply on consideration of her sex is not proper. It cannot be said that in society only the men are not pure and all women are pure.

MR. CHAIRMAN: May I interrupt you? As you are making a statement in respect of Section 111A of Evidence Act, I want to say that this 'presumption' is not provided in respect of all persons in rape cases. It is only in respect of particular persons in a particular society who have a chance of exercising power over women, here, the person who is in authority has the opportunity of having a custody of women. There is an offence of violence, either external or internal, in this case. There it is difficult to establish the crime of the accused. In that case, to establish the guilt this protection has been given by providing for 'presumption'. It is not an onus of proof. There is a distinction between onus of proof and presumption. Here the presumption is absence of consent. It is for the accused to prove whether circumstances show a rebuttal of the presumption. It is a general provision. You kindly don't quote those authorities now. Decisions were given on that because these were offences provided under this Act. No exercise has been done on that part. It is only in the present case where we have got new offences enumerated under Section 76. In those cases where a trial takes place, the Presiding Officer will have a chance to prove it. Now, you advance your arguments.

SHRI M. G. MUKHERJEE: I quite agree. But the question is that we have to see both sides. What disability it causes to others is also to be considered. A particular class of persons will get a weapon in their hands for blackmailing innocent persons. We should remember that there are professional concubines also. I find that a large proportion of the female offenders are offenders under the Suppression of Immoral Traffic of Women. So, we cannot say that in society all women are good. It will

be dangerous to give a weapon in the hands of that particular section because they will blackmail others. We must be very careful about it. If it comes to the Statute Book, I am bold enough to say that it will be dangerous for many persons to engage maid-servants in their houses. That is my opinion. I am strongly of opinion that so far as Section 111A is concerned, it should not come to the statute book.

I would support by learned friend's suggestion that the age of consent in the case of bride should be raised by two years. Instead of 16, it should be made 18.

As regards in camera trial, if the parties do not want in camera trial, then, what is the necessity of involving the court in in camera trial? The second point is that the word 'in camera trial' have not been defined in the Cr. P.C. It should be defined properly.

With regard to the journalistic offence, in my view, if the publication violates a law, that should be treated as a lesser offence and in no case any punishment exceeding six months imprisonment should be prescribed for such an offence. Rather, if you want to penalise, you penalise the paper itself by imposing financial penalty on that newspaper.

As regards the judgments of the trial court, the exemption should extend not only to judgments of Supreme Court and of High Courts but to judgments of the trial courts as well.

MR. CHAIRMAN: You are aware that the law decided by the Supreme Court and by the High Courts is treated as the law of the country and everybody is required to know what is the judgment of the Supreme Court whereas the decisions of the subordinate courts are subject to further scrutiny at the highest judiciary. But you say that even subordinate courts

decisions should be given the same status of a judgment of the Supreme Court.

SHRI TARAPADA LAHIRI: In the scheme with regard to judicial separation, the law contemplates possibilities of reconciliation. In such matters, 'Explanation-2' will stand as a bar, not only that, it may also become a handy weapon in the hands of the separated wife for exacting more and more money from her husband. So, this should not be deemed to be a case of rape at all, it is a cohabitation between husband and wife even though during judicial separation. If, however, it is decided to be made an offence, then that should be made a lesser offence because that does not stand on the same footing as a case of rape.

In the 'Exception' under section 375, on page 3 of the Bill, there is an inadvertent use of an inappropriate word. It reads: "Sexual offence by a man with his own wife...." Here the word 'offence' is inapplicable or inappropriate.

About fixing the minimum punishment of seven years, I have already said that, by these stringent measures, the number of sexual offences will not decrease. Therefore, this unusually stringent measure should not be there. It should be left to the consideration of the court.

MR. CHAIRMAN: What is your proposal there?

SHRI TARAPADA LAHIRI: My opinion is that it should be dropped. It should be left to the courts.

In sub-section 2(a) of the proposed new section 376, my opinion is, the portion "in the local area to which he is appointed" should be omitted; no jurisdiction should be there.

Sub-section 2(b) reads: "being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such

public servant or in the custody of a public servant subordinate to him". I quite agree with the principle that there should be enhanced punishment in cases of those who commit sexual offence against women in their custody as such public servants. Here the draft, as it is worded now, will not be of help. There may be cases in which a public servant takes advantage of his position as such and commits rape on a woman not in his custody. 'In his custody' means a particular specific thing. The woman may not be in his custody but still under his influence. I refer to a case, without disclosing the name, which was published recently in the newspaper where a very high dignitary of the Government, it was alleged, induced a girl to live in a particular bungalow along with him and committed rape on her. Here it cannot be said that the girl at that time was in his custody. So, the term "in his custody" must be followed by the words "or under his influence".

Sub-clause 2(a) of the proposed new section 228A reads:

"the name, or any matter which may make known the identity, of any person against whom an offence specified in such enactment is alleged or found to have been committed".

It presupposes addition of some more offences to this bar on publication which may not be sexual offences at all. So, consistent with the Objects and Reasons of this Bill, this sub-clause (2) (a) must be omitted.

That is all.

SHRIMATI GEMTA MUKHERJEE: I will concentrate on one point which is the common point of all and that is, opposition to Section 111A. In opposing that, various arguments have been given, and most of those arguments are to prevent the accused from being blackmailed by women in rape cases. While I fully admit that

there may be blackmailers in all communities and there may be some among women as well, I would like to ask as to what is your experience, how many cases of custodial rape have been tried in which you have taken part as lawyers and how many cases of custodial rape are there in which you may not have taken part but have heard of them as experienced lawyers and out of these, in how many cases the accused have been convicted, and whether that is the bigger part or individual case like some doctor somewhere being blackmailed. What is your experience even in West Bengal? Which is the bigger reality? How many custodial rapes are being proved?

SHRI M. G. MUKHERJEE: The cases of custodial rape are very few. The difficulty arises in such cases where the girl herself is found generally of a bad character. Real difficulty for the courts arises when because of Section 151 (IV) a girl's testimony can be impeached by the defence lawyer if it is proved that she is generally of a bad character. There of course the courts are reluctant to believe on her uncorroborated testimony apart from other corroborative evidence. Really speaking there will be some danger if there is false accusation but the hon. Member is definitely correct in her stand that such custodial cases are very few. The only trouble is when the girl is proved to be of a particular sexual behaviour.

MR. CHAIRMAN: In view of the circumstances prevalent in the custodial cases where the victim has much difficulty in establishing that she has not given the consent, it is not at the beginning point that the presumption is there but while framing the mind the Presiding Officer will presume that she has not given her consent. We have not curtailed cross-examination. How many cases have been filed for maligning? There is provision for filing a complaint. Here what has happened is that in

many cases of atrocities on women, the woman is not protected in cases where she had to submit to an authority when she was alone and that too under the custody of some person. So the possibility is there that she may submit herself without creating hue and cry. In that case, if the lady comes to the court and says that she has not given consent, why the presumption should not be given consideration?

SHRI M. G. MUKHERJEE: At least the court needs to presume. In such cases the rebuttal evidence would be very difficult. Take, for example, that a girl was a victim of a case of kidnapping, the honourable court directed that instead of sending her to a rescue home, she should be kept in a sub-divisional jail. The warden allowed others to visit this girl when she was in jail and consequently she became the victim. This is a case which I have myself handled. The matter is pending investigation. Of course, we are not taking away the law as regards the benefit of doubt. Take, for example, the onus of proving the offence. The question here is, at least the court 'shall' presume. That is the difficulty.

MR. CHAIRMAN: Yes, definitely it shall presume. There is no doubt about it. You are aware as a lawyer that in many cases there are decisions given by the highest authority. Therefore, the consideration or interpretation of law would be left to the court. In some cases they have given some view, but in some other cases they have given a different view. Ultimately we accept the decision given by the Supreme Court.

SHRI M. G. MUKHERJEE: The difficulty lies in this that the court may not begin from the presumption itself. The court has to come to a conclusion from other evidence. The question is, immediately after the incident what was the lady's behaviour? What was the complaint that

she lodged and what was the authority she approached?

MR. CHAIRMAN: We must also know your mind. There also the presumption would not be correct unless sexual intercourse is established. Penetration is sufficient to constitute an offence. Without penetration you cannot have a presumption there. If there is no medical proof is there any chance of protecting that woman without the presumption?

SHRI M. G. MUKHERJEE: The question is this. If the court shall presume, certain things, of course on proof of act of sexual intercourse, the question is that if the court is satisfied on medical evidence about the act of sexual intercourse, it is a different proposition.

MR. CHAIRMAN: You referred to corroboration. I very well understood your problem there also. Even in the present set of laws the corroboration in respect of a victim is that the victim was alone.

SHRI M. G. MUKHERJEE: If you bring in 'shall presume', then the court has believed it to be proved unless it is disproved. There lies the difficulty. The court may presume a fact. It may regard a fact as proved unless and until it is disproved. There is still some change for the accused to disprove it. But in this case, of course it is not possible.

SHRI BAPUSAHEB PARULEKAR: About the provision of Section 111A you have said that this amendment is an atrocity on the Law of Evidence. I would like to ask you two or three questions. Supposing an incident of inter-course has taken place in the open place, a police station. Will you presume that it is with consent and then if it is not with consent, why should the parties select this police station? Therefore, kindly consider the restrictive aspect of Section 111A. For example, a rape committed on a nurse. There, if both the parties

agree, why should that act be done in the hospital or at the police station? It is in this background I would request you to consider the provision of Section 111A.

One more thing is that the consent is a fact, which is—specially within the knowledge of accused and prosecutrix. Section 146 of the Evidence Act lays down that the burden of proving a fact within the special knowledge of the accused is on accused. The illustration to that section is very clear. So, how do you say that provision of Section 111A an atrocity on the Indian Evidence Act? Don't you think that we are just reproducing here provisions of Section 106 of the Evidence Act? Section 106 says:

"When any fact is specially within the knowledge of any person, the burden of proving it is on that person."

SHRI M. G. MUKHERJEE: There is a particular pronouncement of the Supreme Court on this. There was a case of a telegraph Headclerk in the former State of Ajmer. He was entitled to draw T.A. at the rate of second class fare. On a particular day it was proved that the railway did not issue any ticket at all for Second Class. He drew TA of II Class train fare and he was convicted under the Prevention of Corruption Act. The matter ultimately went to the Supreme Court where Justice Bose gave a famous judgment under Section 106 that it is not the duty cast upon the accused to prove how he travelled on that day. The general law is that the onus of proof is always on the prosecution to prove the guilt beyond a reasonable doubt.

SHRI BAPUSAHEB PARULEKAR: That judgment refers to ticketless travel. The spirit of Section 111A is not something absolutely new. Please take a case where the offence is committed at a police station by a police officer. These would be covered by Clause 2(a) of Section 376 (on page

3 of the Bill) of Penal Code. You agree that at least the presumption under Section 111A should be there in such cases?

SHRI M. G. MUKHERJEE: Where the sexual intercourse is proved by medical evidence.

SHRI BAPUSAHEB PARULEKAR: What happens if it is with consent?

SHRI M. G. MUKHERJEE: What is the yardstick of proof for the Court?

SHRI BAPUSAHEB PARULEKAR: Where sexual intercourse is proved by other yardsticks, the court may consider why accused or prosecutrix were not medically examined. By medical examination, the external marks would be available. In a case of consent, such external marks would not be visible. And therefore a provision is being introduced that only act of intercourse should be proved and in such case the presumption should be there. Do you agree?

SHRI M. G. MUKHERJEE: The conditions in the Police Stations and in hospitals and jails are different. Suppose a woman has sexual intercourse with a warden.

SHRI BAPUSAHEB PARULEKAR: That will be a question of fact. We are only concerned with the principles. The principle is whether we should incorporate this kind of a presumption in the Statute. We are concerned with the results. What will be the result?

SHRI M. G. MUKHERJEE: That is going too far.

SHRI BAPUSAHEB PARULEKAR: We want to plug in legal lacuna in the interest of society.

Then let us take up Explanation 2 of Section 375 of the Penal Code at page 2 of the Bill, which deals with judicial separation. Now even if there is no divorce, if the husband has intercourse without her consent, that also should be dealt with according to law.

SHRI M. G. MUKHERJEE: On this point my contention is that it is also a weapon to the lady when there is bitterness between husband and wife and there is separation. That may aggravate matters and the wife knows that the law has created a weapon which she can very well use nicely for her own benefit. Then if the husband has money, that particular weapon can be used for extracting money from the husband. My opinion is against creating weapons which may be used for unlawful purpose by unscrupulous persons.

SHRI BAPUSAHEB PARULEKAR: You say that even if it is without consent, that should not be included as an offence.

SHRI M. G. MUKHERJEE: She will definitely say that it is without consent.

SHRI BAPUSAHEB PARULEKAR: It has to be proved.

SHRI M. G. MUKHERJEE: According to Section 106 of the Cr. P.C. the accused has got no onus to prove his innocence.

SHRI BAPUSAHEB PARULEKAR: The last question is about age. The Supreme Court has ruled that if a girl is educated and she understands things, even if she is 16 or 17 years of age, that should not be taken into consideration and consent should be presumed. In view of this Supreme Court judgment, 16 or 15 makes little difference.

SHRI M. G. MUKHERJEE: Even last month I raised the matter in the High Court. I cited that particular decision. We discussed it in the State Bar Council, but not very much in detail because we were closing for the vacation, we closed on the 26th

of last month, many of our lawyers are out of town because of vacation.

MR. CHAIRMAN: That is all. Thank you very much.

MR. CHAIRMAN: We adjourn now and meet tomorrow at 10.00 hours.

(The Committee then adjourned).

RECORD OF EVIDENCE TENDERS BEFORE THE JOINT COMMITTEE ON THE CRIMINAL LAW
(AMENDMENT) BILL, 1980

Thursday, the 15th October, 1981 from 10.00 to 12.30 hours in Room No. 46,
Assembly House, Calcutta.

PRESENT

Shri D. K. Naikar—*Chairman*

MEMBERS

Lok Sabha

2. Shri Rasa Behari Behra
3. Shrimati Vidyavati Chaturvedi
4. Shri V. Kishore Chandra S. Deo
5. Shri R. K. Mhalgi
6. Shrimati Geeta Mukherjee
7. Shri K. S. Narayana
8. Shri Ram Pyare Pandka
9. Shri Bapusaheb Parulekar
10. Shri Qazi Saleem
11. Prof. Nirmala Kumari Shaktawat
12. Shri R. S. Sparrow
13. Shri Trilok Chand
14. Shri V. S. Vijayaraghavan
15. Shri P. Venkatasubbaiah

Rajya Sabha

16. Shri Lal K. Advani
17. Shri Ramchandra Bharadwaj
18. Shri Amarprosad Chakraborty
19. Shri B. Ibrahim
20. Shri Dhuleshwar Meena
21. Shri V. P. Munusamy
22. Shri Leonard Solomon Saring
23. Shri Era Sezhtyan
24. Shri Hukmdeo Narayan Yadav

SECRETARIES

Shri Ram Kishore—*Senior Legislative Committee Officer*

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS

Shri S. V. Sharan—*Joint Secretary* •Shri S. C. Bablani—*Under Secretary*

WITNESSES EXAMINED

I. Government of Manipur, Imphal

Spokesmen:

1. Shri I. Bijoy Singh, Law Secretary
2. Shri A. Sukumar Singh, Under Secretary (Law)

II. Government of Tripura, Agartala

Spokesman:

Shri H. Das, Secretary (Law)

III. Government of Assam, Dispur

Spokesmen

1. Shri C. D. Tripathi, Commissioner-cum-Secretary
2. Shri D. C. Sharma, Secretary, Judicial Department

IV. Government of West Bengal.

Spokesmen:

1. Shri Raghavendra Banerjee, Judicial Secretary
2. Shri A. K. Banerjee, Special Secretary, Home Department
3. Shri A. C. Sengupta, Joint Secretary (Judicial)

I—State Government of Manipur, Imphal.

Spokesmen:

1. Shri I. Bijoy Singh—Law Secretary.
2. Shri A. Sukumar Singh, Under Secretary, (Law).

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they

specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

SHRI I. BIJOY SINGH: As public evidence.

MR. CHAIRMAN: Have you gone through the draft Bill which has been supplied to you?

SHRI I. BIJOY SINGH: Yes Sir.

MR. CHAIRMAN: What are the points on which you are going to enlighten us?

SHRI I. BIJOY SINGH: I have come prepared only with factual circumstances based on the local customs to justify the Amendment. I have not come prepared with legal issues. If you permit me, I will submit this note to you. I do not have sufficient copies.

MR. CHAIRMAN: You read out.

SHRI I. BIJOY SINGH: Manipur is populated by the Meitei Hindus in the valley and tribals in the hills. The tribal population can broadly be divided into two groups, viz. Naga and Kuki. Of these two tribes, about 80 per cent of the population had been converted into Christianity. In spite of the conversion, they will retain their original habits, customs and social prejudices. The taboos which they professed before their conversion to Christianity are still taboos.

The Meiteis and the tribals may have been originated from the Tibbeto-Burman Stock. The physical features in all its aspects are similar except that the Nagas are more high-boned and fair in complexion than the Kukis. The Meiteis in the valley can be a mixture of both. However, their social habits, culture and prejudices are so different from one another that it will be hard to identify them to the same origin.

The Meiteis in the valley who profess the Hindu religion are more sophisticated and their original habits and social prejudices have had the influence of the Hindu culture or the Aryan culture so that they can hardly find justification for their social prejudices and habits. The Aryan culture or the Hindu culture have influenced the habits and social prejudices of the Meitei population so much that they have already forfeited or are believed to have forfeited the cult and belief of their forefathers. Accordingly, there is a movement of revivalism in the valley.

It may be that the social taboo, which the Hindu Meiteis are now professing may not have its root in the original Meitei culture. Maybe that it is an imported culture because of the adoption of the Hindu religion in the valley. Like the Hindus in other parts of India, the children, both boys and girls, in a family are brought up without being taught the facts of life. It is strictly prohibited or it is very much shunned speaking about sex or even to relate an incident connected with sex habits within the hearing of the parents and parents within the hearing of their children and amongst children also within the hearing of brothers or sisters. But the intimate life and habits are more freely talked between sisters than between brothers....

MR. CHAIRMAN: You must give us your comments on the provisions contained in the Bill. What you are reading is a sort of history of Manipur.

SHRI I. BIJOY SINGH: These are the social prejudices which justify the Amendment.

MR. CHAIRMAN: You happen to be the Law Secretary. You have worked as Sessions Judge also. What is your experience so far as Manipur is concerned about rape and allied offences?

SHRI I. BIJOY SINGH: I have not worked as Sessions Judge. I was in the Bar and I was recruited as Law Secretary.

SHRI LAL K. ADVANI: As Law Secretary, have you had occasion to discuss with your police officials?

SHRI I. BIJOY SINGH: Yes, sir.

SHRI V. KISHORE CHANDRA S. DEO: During the course of your discussion with various officials, were objections raised to this Bill?

SHRI I. BIJOY SINGH: No, Sir.

SHRI ERA SEZHIYAN: What is the incidence of rape in Manipur?

SHRI I. BIJOY SINGH: In Manipur 99 per cent of the incidents are not reported. Only one per cent is reported.

SHRI ERA SEZHIYAN: How many cases were reported?

SHRI I. BIJOY SINGH: In Manipur there are about 20 cases pending in the criminal courts about rape.

SHRI ERA SEZHIYAN: How many cases were reported?

SHRI I. BIJOY SINGH: Normally about 10 cases are reported in a year.

MR. CHAIRMAN: You read out the rest of your note also.

SHRI I. BIJOY SINGH: Because of the said social taboos, we cannot freely converse or freely talk about the facts of life. If a girl in a family has been molested or has been subjected to some kind of outrage of her modesty, she has none to confide her woes to. It is only when there is a persuasive or suspicious mother that a girl is compelled to disclose her humiliation.

The social taboo or prejudice is of such magnitude that by so much as holding the wrist of a girl by a male person makes her a woman. There shall be no eligible bridegroom to woo for her hand. If anybody dares to go beyond this taboo, he is bound to be socially and physically ostracised. In the face of such prejudices, customs and habits, we can hardly find a girl who had been molested and is voluntarily prepared to disclose her humiliation.

Of the foregoing reasons, 99 per cent of the rape, molestation and outrage of modesty are not reported and if somehow the incident becomes known in the locality everybody concerned tries to suppress and conceal the fact. Similarly, in such cases witnesses are also rare and nobody would willingly volunteer to stand as witness unless compelled by circumstances.

It is fortunate for the tribal population that they are more free from social inhibitions from the Meitei population. They freely talk or relate about incidents connected with sex between brothers and sisters, between parents and children and openly in the family hearth. If a tribal girl had been molested in the absence of her family members she would, without reservation, relate the facts to her near and dear ones. If her family takes it that the disclosure of her humiliation would expose themselves to more physical harassment they shall refrain from reporting the fact and once they are free from such fear, they would always report the fact to the authority. The tribal populations, therefore, have an advantage over the Meitei population in the valley.

As I have already submitted, the social taboo in the Meitei population is of such magnitude that I would even go to the length of suggesting examination of prosecutrix by interrogatories or by use of a one-way screen where the prosecutrix can see the interrogator while the interrogator cannot see the face of the prosecutrix subject, however, to the scrutiny of the Presiding Officer, so that he may be able to record the demeanour or the misdemeanour of the witness and while at the same time save the prosecutrix from embarrassment of answering intimate questions in the course of her cross-examination.

SHRI R. S. SPARROW: On all accounts it seems to be the case that in your area the judicial system in so far as rape cases are concerned for various reasons is not well-sifted and brought to book. On the social side of it your village councils or other types of elders get together to deal with this particular type of crime.

SHRI I. BIJOY SINGH: Yes, Sir. Some sort of village council tries to deal with it and puts fines on the culprits. There are certain customs,

SHR R. S. SPARROW: Is there any move to improve the social structure by certain bodies on what is happening today?

SHRI I. BIJOY SINGH: Parliamentary Committee is the first thing I am facing.

SHRI QAZI SALEEM: I am told in your tribe rape is not prohibited custom-wise?

SHRI I. BIJOY SINGH: It is prohibited but they freely talk about it.

SHRI P. VENKATASUBBAIAH: Have you gone through the Bill? There is one important provision in this Bill about placing burden of proof on the accused. What is your opinion on this matter? Do you agree with this?

SHRI I. BIJOY SINGH: Yes, Sir.

SHRI P. VENKATASUBBAIAH: Secondly, the proceedings are to be held in camera. What is your opinion?

SHRI I. BIJOY SINGH: I entirely agree with the recommendation. Advocates are very aggressive and embarrassing questions are asked and our women-folk are very shy. If she can escape this, it will be much better.

SHRI P. VENKATASUBBAIAH: What is your experience as an advocate? Did you conduct any of these cases?

SHRI I. BIJOY SINGH: I defended two accused in my life and in these cases fortunately the girls were both married and they freely talked about their intimate relationship. They had no difficulty in telling about their intimacy.

SHRI B. IBRAHIM: What happened to the cases you have defended?

SHRI I. BIJOY SINGH: They were not convicted.

SHRI P. VENKATASUBBAIAH: What are the loopholes you find to see that people are acquitted or convicted?

SHRI I. BIJOY SINGH: In case this proposed shifting of onus was there, my clients would have been convicted and according to criminal law, conclusive proof is necessary for convicting them. But they could not offer a conclusive proof and my clients had to be given the benefit of doubt.

SHRI P. VENKATASUBBAIAH: They are acquitted by giving the benefit of doubt?

SHRI I. BIJOY SINGH: Yes.

SHRI P. VENKATASUBBAIAH: What is your experience as Sessions Judge? In how many cases you have convicted?

SHRI I. BIJOY SINGH: Only two.

SHRI P. VENKATASUBBAIAH: As an advocate also only two?

SHRI I. BIJOY SINGH: Yes.

SHRI P. VENKATASUBBAIAH: Did these two cases end in acquittal?

SHRI I. BIJOY SINGH: Yes, on benefit of doubt.

SHRI V. KISHORE CHANDRA S. DEO: In your statement you have suggested by and large that especially among the tribals and other sections of our society sex is a sort of accepted way of life. What I would like to know from you is this. Under these circumstances, to what extent is this Bill relevant specially among the tribals?

SHRI I. BIJOY SINGH: It is very much relevant in the context of our society. As I have already submitted,

our society is very much steeped in this type of crime and narrating the incident by a girl freely unthinkable is very much prohibited, and among the tribals it is more free.

SHRI BAPUSAHEB PARULEKAR: Have you gone through the Memorandum given by your Advocate-General and have you got a chance to discuss it?

SHRI I. BIJOY SINGH: I have not seen it. Sorry, he has not given it to me.

MR. CHAIRMAN: Thank you very much.

(The witnesses then withdrew)

II. —State Government of Tripura, Agartala

Spokesman:

Shri H. Das, Secretary, Law.

(The witness was called in and he took his seat).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Have you submitted your Memorandum to this Committee earlier?

SHRI H. DAS: No. But I was present in a meeting on the last occasion

when our Home Minister called for the meeting in New Delhi and I have had the opportunity of making my submissions regarding some of the provisions of the proposed Bill.

MR. CHAIRMAN: Have you gone through the provisions of this Bill?

SHRI H. DAS: Yes, of course.

MR. CHAIRMAN: On what point do you want to comment here? Please start with only those points.

SHRI H. DAS: Have I to comment only on the points on which I have some reservations or have I to comment generally?

SHRI P. VENKATASUBBAIAH: You comment on the points on which you have got some reservations.

SHRI H. DAS: In Section 376C there is an Explanation which is added regarding hospital. Is it not necessary that such an explanation should be below sub-section (2) of Section 376? And then under Section 376C in the Explanation the word 'Hospital' shall have the same meaning as has been assigned to it in the Explanation under Section 376(2).

In Section 376C we have got certain reservation about sexual intercourse by a person taking advantage of the authority and also seduction in 376A. It is not clear why an offence should be committed inside the hospital precincts. This Section does not clearly say so because, as has been drafted, it seems to indicate that if a doctor commits an offence outside the hospital, it may not amount to rape. Therefore, I propose for consideration of the Committee that the words "undue exercise of authority" may also be added in Section 376C of the Penal Code (Page 4 of the draft Bill), so as to safeguard such possibilities.

I have no reservations regarding other Sections. Rigorous punishment should be there in order to stop the alarming increase in the number of offences against the fair sex by persons in authority.

We also agree with the proposition that some cases of offences should be tried in camera. This is very necessary to avoid embarrassment to the prosecutrix and for safety.

I have reservations as regards Section 111A.

I agree with the other provisions.

As regards Section 375 "Sixthly.— With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him....", "by him" is redundant. That should be omitted. Whoever has intoxicated, that does not matter.

As regards Section 111A ".....the court shall presume...." this 'shall' may be substituted by the word 'may'. By substituting by 'may', we are giving statutory reason to the presumption that the court may presume absence of consent having regard to evidence. The discretion is left to the wisdom of the court. And that is a moderate view that safeguards the interests of the accused who may be falsely implicated and that also safeguards the interests of the prosecutrix. That also brings a proper procedure for punishment of the real offender.

Section 111A may be made Section 114.

These are my reservations.

SHRI ERA SEZHIYAN: You said 'other circumstances' and the 'past history of the prosecutrix'. What are the 'other circumstances'?

SHRI H. DAS: Section 4 of the Evidence Act define the distinction between 'may presume' and 'shall

presume'. In 'may presume', the Court has a discretion.

SHRI ERA SEZHIYAN: What are the 'other circumstances' that you have contemplated?

SHRI H. DAS: Supposing a false allegation of rape is made against a person that he has committed rape. The lady says that she has been raped. In the course of prosecution, it is disclosed that the woman is a woman of no character and it is based on past history. The circumstances may be such that the offence is stated to have been committed under circumstances which render impossible for the person to commit the offence against her will. These circumstances the court cannot take into consideration in deciding whether the act is proved or not in view of the words 'shall presume' in Section 111A.

SHRI ERA SEZHIYAN: That is exactly the point I would like to know. Even if she is a prostitute, a rape is a rape.

SHRI H. DAS: I will not say that a prostitute cannot be raped. I say that even when a prostitute is raped, the offence is committed. The offender is to be punished. I only submit that the scope is less than before to decide whether the circumstances indicate that there was absence of force or not.

SHRI V. KISHORE CHANDRA S. DEO: The discretion of the court is not taken away by this Bill. Once you change the word 'shall' to 'may', the onus of proof also partially lies on the accused. For example, when a woman is in police custody, she has no direct evidence. There have also been instances when police personnel and medical doctors have been collusion. It is to protect women against such cases that this is included in the Bill. What is your reaction to this victed?

SHRI H. DAS: In the case of trial of rape cases, we generally proceed in this way: we take evidence of the

prosecution; the prosecution says that she had not given the consent, she was forced; we see the place where the alleged offence was committed, we consider the time when the complaint was lodged, we take all these circumstances into consideration. Suppose we find that such offence was committed in a police lock-up; then, there can be no question of asking for further proof. In the wisdom of the court, the court very often presumes that what the lady says is true unless the accused gives evidence to the contrary to show that it is false. That is the usual practice. The presumption was there before also. You are only giving statutory recognition to this presumption made by the court by incorporating it in the Statute Book. Here the court may presume absence of consent. If you say 'shall', the court must presume ignoring the other circumstances also.

SHRI V. KISHORE CHANDRA S. DEO: By convention and practice, in rape and other such offences, the court does presume. It already exists. So far as the custodial rape is concerned, it is normally the accused who is in a stronger position and he is more equipped to defend himself in a court of law because there are many handicaps for the victim. Very often the accused have been acquitted. Therefore, is it not proper to have this included in the Statute Book since it already exists by convention?

SHRI H. DAS: I am only submitting that, in the Statute Book, we may incorporate the term 'may'. The court 'may presume'. That gives statutory recognition to the practice that is already being followed and it has some force. By using such moderate language, you safeguard the interests of everybody; you do not render the accused defenceless. If you say 'shall', it may do injustice to the innocents who may be punished on the basis of false allegations.

SHRIMATI GEETA MUKHERJEE: Are you aware of the fact that, in a very large number of cases of custodial rape which have come to courts, the accused have been acquitted; only in very few cases there have been convictions? The purpose of the law is to prevent such things as well as to punish the accused. In custodial position, they are very much more powerful than the victim. Given all this and given the general attitude of our society towards women—that very many things are said about the past of the women—, do you think that the word 'may' will be enough? In your eagerness to protect the accused, maybe the victim will be victimised in most of the cases.

SHRI H. DAS: The proposed Bill has provided for *in camera* trial. It has restricted publicity. To that extent, embarrassment to the prosecutrix will not be there. You say that, in many cases, there have been acquittals. It is unfortunate that in many cases there have been acquittals. But at the same time we cannot forget that there are false allegations also.

SHRIMATI GEETA MUKHERJEE: Which are more?

SHRI H. DAS: Even assuming that false allegations are less and correct allegations are more, will it justify ignoring cases which are fewer in number? I do not think we should do that.

MR. CHAIRMAN: That is all. Thank you very much.

(The witness then withdrew.)

III—State Government of Assam,
Dispur.

Spokesmen:

1. Shri C. D. Tripathy, Commissioner-cum-Secretary.
2. Shri D. C. Sharma, Secretary, Judicial Department.

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

I hope you have gone through the Draft Bill. Please let the Committee know what are your suggestions.

SHRI D. C. SHARMA: Government of Assam generally approves of the Bill. Our first point is regarding definition in Section 376A, B and C. While Section 376 A, B and C speak of the *mens rea* which is part of seduction it appears to us in Section 376 C the word 'seduction' is not there. It would appear that a mere act of having sexual intercourse with a woman by doctor or any other staff in the hospital even with consent will make it an offence. Therefore, I would submit that similar provision as has been incorporated in Section 376 A and B by use of the word 'seduction' should also be there in Section 376 (C). If it is the intention of the legislature to make any such relationship with the doctor and patient to be an offence perhaps it should not be confined to the staff of the hospital but it can be extended to relationship of a doctor and a woman privately in his chamber. That should also be made offence.

SHRI P. VENKATASUBBAIAH: There is Explanation. Do you think it is not sufficient?

SHRI D. C. SHARMA: The Explanation only says about the institutions. The point is whether the relationship of a doctor and a patient privately would be regarded as an institution.

MR. CHAIRMAN: Now, you are attracting the provision under the purview of the profession. Now, lawyers are also professional. They will have their own chambers and clients will come to them. Do you mean to say the attraction of provision should be there to lawyers and all professions.

SHRI D. C. SHARMA: Yes, Sir, if the element of seduction is there. The emphasis should be on the relationship and the amount of control over the victim.

MR. CHAIRMAN: What next?

SHRI D. C. SHARMA: In regard to Presumption our view is that even without this Presumption the guilty person can be punished on the statement of the victim. Naturally when an allegation is made that she has been raped a further statement 'that she did not consent or without her consent' is redundant. Therefore, I would humbly point that this provision is redundant.

SHRI BAPUSAHEB PARULEKAR: You mean, the entire provision?

SHRI D. C. SHARMA: Yes, the entire provision regarding Section 111A is redundant and if at all it is to be retained, I would humbly suggest that it should find its place under Section 114 and not under Section 111. Section 111 of the Evidence Act is something different. Presumption also is something different which comes under Section 114. No doubt it is a question of drafting. But perhaps it should find place under Section 114 and not under Section 111.

In Explanation 2 under Section 375, the word used is 'offence'. It is stated that "sexual offence by a man with his own wife, the wife not being under 15 years of age is not rape". If it is not rape or any other offence, the words, 'sexual offence' should be substituted by the words 'sexual intercourse'. 'Offence' always implies something else. Now, the idea perhaps is sexual intercourse of a man with his own wife. This is what I have to say.

श्री हुकम देव नारायण यादव : मैं हिन्दी में सवाल करूंगा। धारा 376 में प्रावधान किया गया है कि कोई भ्राम्यो किसी संस्था के प्रधान की हसियत से, अपने मातहत औरतों के साथ, अगर कोई सैक्सुअल इन्टरकोर्स करता है, तो उसकी कैटेगरी बना दी गई है। मैं आपसे यह जानना चाहता हूँ कि उसमें जितने लोगों के बारे में बताया गया है, उसके अलावा जो भी इन्स्टीच्यूट्स हैं, गवर्नमेंट सेक्रेटेरिएट, मिनिस्टर्स के यहां जो काम करने वाले स्टनोग्राफर होते हैं, इन सभी जगहों पर इस चीज के दुषपयोग होने की संभावना रहेगी जहां औरत और मर्द दोनों के रिश्ते नीचे और ऊंचे अधिकारियों की हसियत से रहेंगे, उन सभी संस्थानों को इसमें शामिल किया जाना चाहिए या नहीं है जिनको इस में छोड़ दिया गया है, उनको जोड़ा जाना चाहिए या नहीं—आपकी इस बारे में क्या राय है?

SHRI D. C. SHARMA: Sir, it is, for that matter, entirely for the Parliament to decide the policy and what types of offences should be made to come within the criminal law. As an individual and as a responsible citizen I can only submit before this august body that this is necessary if really the women's honour should be preserved from unscrupulous persons. In that case there should be the provision where it should be definitely

laid down that the offence of any person in authority seducing a woman for sexual intercourse should be made punishable. It is entirely for the hon. Members to decide. But the whole idea is to safeguard not only the patient but every innocent or helpless woman from the clutches of such unscrupulous persons. Naturally persons holding these institutions should also be included. If I may say so, as a judicial officer I have come across cases where there are instances of teachers seducing the pupils. Therefore, by suitably amending the provision, any person having authority over any female of this age or that age having sexual intercourse with her or seduces her for that act should be liable to be punished under this Act.

श्री हुकम देव नारायण यादव : पति और पत्नी के संबंध के बारे में कहा गया है। आपने कहा कि सैक्सुअल प्रोफेस के स्थान पर सैक्सुअल एक्ट होना चाहिए। इसमें 15 साल से कम उम्र की अपनी पत्नी और 15 साल से ज्यादा उम्र की पत्नी में फर्क कर दिया गया है। 15 साल से कम उम्र की पत्नी के साथ यदि संबंध करता है, तो रेप मान लिया जाएगा, लेकिन 15 साल से ज्यादा उम्र की पत्नी के साथ, मार-पीट करके, पति यदि संबंध करता है, तो रेप नहीं माना जाएगा। मुझे तो इस प्रकार दोनों में विरोध लग रहा है। इसके साथ देश में ऐसी बहुतांसी जातियां हैं, जहां पर 15 साल से कम उम्र में ही लड़कियों की शादी हो जाती है और 13 साल की उम्र में ही बच्चे भी हो जाते हैं। इस बिल में इस चीज को कागि-जबल आफेंस बनाया गया है और पुलिस यह अधिकार होगा कि 15 साल से कम उम्र की कोई लड़की गर्भवती हो और वह बच्चा दे, तो पुलिस उसको गिरफ्तार कर सकती है, क्योंकि वह कानून के मुताबिक रेप माना जाएगा। क्या आपने इस बारे में भी कभी सोचा है?

SHRI D. C. SHARMA: Again in Assam, if I may say so, we do not come across cases of real gang rape. But there are cases registered every year specially amongst the tea garden labourers. They are normally uneducated and illiterate and their practice is that soon after the girl attains puberty she not only marries, but goes with her lover before the marriage and the girl's father lodges a complaint in the court or the police station and the case is registered as rape. Technically it is so. But in experience I have myself found that by the time the case comes up for trial either the girl becomes a major or the girl and the boy are happily married and the girl comes to the court with her baby in her arms and she says, उसके साथ शादी हो गयी, अब

उसको जेल भेजने से क्या फायदा होगा ”

Where we found some loopholes we acquitted or discharged the accused as the case may be. Therefore, the question of age is a very vital factor in this matter whether it should be lowered or should be raised to the level of 18 years and I would leave it to the hon. Members to decide.

SHRI QAZI SALEEM: You are in favour of widening this limitation of Section 111A in order to broaden the scope of this Act. I have got certain conclusions. We are saying that we are putting some limitations by this Bill. The Judges are given the power to presume or not to presume. Can you differentiate between these two words they are using? One is rape committed by an authority or custodian. In my opinion there is a vast difference between them. Custodian's rape is all right. Will it not be a harmful attitude towards the society because 99 per cent of our population are men of authority? The lawyers, teachers and doctors and many others are men of authority. How can you differentiate between men of authority and others?

SHRI D. C. SHARMA: The whole intention of the Bill is to safeguard innocent victims or helpless women in whatever form or authority their weakness is taken advantage of by the alleged culprit and he should be made punishable. Therefore, in view of this, the lawyers or teachers or hospital superintendents should not be left out of purview. They have more control on their clients than other people have over women. Therefore, minimum punishment has been prescribed for them. I will only distinguish regarding the sentence but not regarding the conviction itself.

SHRI QAZI SALEEM: Is there no possibility of mala fide prosecutions? Some lady can file false case. How can you check it?

SHRI D. C. SHARMA: That is entirely an individual act and that depends on the outlook of the woman or on the society itself. But, I would not go to that extent. But, if I may be permitted to say so, such allegations are not rare and they are there. I have myself come across such cases. The intention of having this legislation is to safeguard women. Therefore, I suggest that every person having control over somebody should be made liable or punished under the law. There should be no discrimination between one authority and the other.

SHRI R. K. MHALGI: Government of Assam have offered certain suggestions on the 84th report of the Law Commission. It welcomed some of those recommendations. But those recommendations which were welcomed, do not find a place in the Bill. Is that correct? If so, how do you appreciate the present Bill?

SHRI D. C. SHARMA: We have mentioned about the Law Commission's Amendment of Section 375 in our Memorandum.

Regarding Sections 111 and 114, it is always desirable that as far as practicable, all facts and issues

should be proved. There should not be any presumption, surmises, probabilities etc. We disagree with the insertion of the word 'presumption'.

SHRI R. K. MHALGI: At the investigation stage you have suggested in your comments to the 84th report that in the absence of a woman police officer, the statement should be recorded by a male police officer in the presence of a female doctor who might have examined her medically, soon after the offence was committed. I think that this particular suggestion of yours does not find a place in the Bill. What have you to say?

SHRI D. C. SHARMA: This was our only suggestion regarding the Law Commission's recommendation and it is for the legislators to think about. We have only suggested for acceptance by the Government.

SHRI V. KISHORE CHANDRA S. DEO: We do feel it desirable that it should be included. With reference to Section 376C, you first stated that the words "seduction and attraction" should also be included. While referring to second part of Section 376C, you mentioned that the "private leanings of doctors etc." should also be included in the Bill. The Chairman had also mentioned this. You are aware of the fact that in this Bill we have made a categorical difference between custodial rape and rape in general. These particular Sections 376A, B and C pertain only to custodial rape and you will also appreciate that in case of private doctors or the students who go to professors and similar other cases strictly will not fall under the definition of "custodial rape" because when a patient goes to the doctor, it is also partial. They go on their own accord and, later on, without consent a sexual offence takes place. They are not in actual control and authority of the accused. But, when the victim happens to be in a police station and overseen, she has no other alternative. While suggesting that these words should also

be included within the meaning and scope of Section 376, is it your contention that rape and custodial rape will also be dealt with alike in the same manner or that there should be difference. You think that custodial rape should be treated with special reasons. What are your arguments as far as that is concerned?

SHRI D. C. SHARMA: As the language of the Section shows, it would appear that whoever is concerned with the management of the hospital or is on the staff of the hospital and has sexual intercourse with a woman who is receiving treatment in the hospital, it is a clear case of custodial rape. Therefore, I think that it should be made clear in the Section itself. I think that there should be some distinction between rape and custodial rape. But in that case, I think, more explicit terms should be used in this particular clause.

SHRI BAPUSAHEB PARULEKAR: I would like to ask only one question and that is, with reference to the provision of presumption in Section 111A. You have said in your evidence that this provision is redundant for the reasons which you gave and, therefore, this should be deleted. You very well know that this provision of Section 111A is made applicable only with reference to custodial rapes and not to other rapes. If this section is not incorporated, then we have to fall back on the present legal position which means that the prosecution has to prove that the intercourse was without consent. In this background, in a case where at mid-night in a police station a woman is raped, how can the prosecution prove absence of consent? We may say that, if it was with consent, then the police officer and the woman could go anywhere else. So, what I mean is that to prove a negative thing, no-consent, in such circumstances would amount to an impossible thing.

SHRI D. C. SHARMA: As the hon. Members are aware, in all these cases.

the initial burden is on the prosecution to make out the salient points. The moment a police officer is charged under Section 376, the ingredients of the offence itself will show that it was without consent. The moment the lady comes to the dock and says that, under these circumstances, the man had sexual intercourse, the prosecution's burden is discharged, no further evidence is necessary if the court believes that particular victim. It is only the rule of jurisprudence which requires that there should be some corroboration. Otherwise, there is a possibility of false allegations being made by a woman. Therefore, some amount of corroboration through medical evidence or through physical injury or reporting to her near relatives is necessary. If that particular lady comes to the court and shows from circumstances that she was taken possession of by this particular person without her consent or free will, the initial burden of the prosecution will be discharged. It is for the accused to show that the lady had consented and for that, he is free to cross-examine the witness.

SHRI BAPUSAHEB PARULEKAR: Kindly consider one thing. In the case of consent which is obtained not freely but under certain circumstances, the external marks are not available. That important circumstance with reference to medical evidence is not available. If she has to submit to the wishes of the police officer for certain reasons, then the only evidence is the act of intercourse. Section 111A mentions that the question of consent arises after the intercourse is proved. In such a case when the circumstantial evidence from the doctor is not available and the incident has taken place in a police station at mid-night like the Mathura case, how can the prosecution further prove that it was a case of no-consent?

SHRI D. C. SHARMA: These facts must be brought in evidence that she was in the police station, that it was

mid-night, that there was no other person available, that she was forced to remain there, all these circumstances will be there and together with these, her oral statement that, thereafter, the accused misbehaved with her or committed rape or sexual intercourse against her will.

SHRI BAPUSAHEB PARULEKAR: We will be leaving the circumstances to the court to draw the inference.

SHRI D. C. SHARMA: These circumstances must be proved.

SHRI BAPUSAHEB PARULEKAR: Even if the circumstances are proved, still, unless this provision of presumption is there, the judge cannot draw any inference. This is only with reference to custodial rape, if the incident has taken place in a police station. There is no medical evidence available. Suppose the incident has taken place in a police station, you cannot expect a constable to come and give evidence against the police officer. That is very difficult. You also know that the evidence of the prosecutrix has to be corroborated. No judge will go only on the sole testimony of the prosecutrix. Taking into account all these, the presumption would be necessary. Instead of totally removing that, the word 'shall' may be substituted by the word 'may'. Do you agree?

SHRI D. C. SHARMA: Yes.

SHRI LAL K. ADVANI: In the Mathura case, the judgment is based on the fact that the prosecutrix could not prove that she had not consented. It is out of that all this has arisen. The Supreme Court has laid down the law that she was unable to prove an important ingredient of rape, namely, that she did not consent. Proving a negative thing is obviously difficult, particularly in those circumstances like custodial rape. It is from that the whole thing has emerged.

SHRI BAPUSAHEB PARULEKAR: Will it be possible to give us the number of cases tried in the last three years in your State, how many were acquitted and how many were convicted?

SHRI C. D. TRIPATHI: That break-up is not available. I have got only the number of cases registered: 1978-79 208; 1979-80 220; 1980-81 230; from April to July in the current year 103.

SHRI BAPUSAHEB PARULEKAR: Any case of custodial rapes?

SHRI C. D. TRIPATHI: No, Sir. The number of cases where police personnel were involved, not in the custody but otherwise, is only 3 in 1978-79, 2 in 1978-80, 2 in 1980-81 and 2 in the current year, from April to July.

SHRI BAPUSAHEB PARULEKAR: Are they high officials?

SHRI C. D. TRIPATHI: No.

MR. CHAIRMAN: You have suggested expansion of provisions for certain categories of people. Tell us what do you mean by custodial offence and 'persons in authority'.

SHRI D. C. SHARMA: Custody means physical custody, legal custody or social custody. Here custody is tried to be incorporated as physical custody over the victim.

MR. CHAIRMAN: What about persons in authority.

SHRI D. C. SHARMA: Any person having control over the victim.

MR. CHAIRMAN: Where do you find social custody?

SHRI D. C. SHARMA: Sometimes it may happen about a parentless girl. Out of compassion I take her and bring to my home.

MR. CHAIRMAN: How many cases of this type have you come across?

SHRI D. C. SHARMA: None.

SHRI C. D. TRIPATHI: An element of guardianship should be there in this custodial thing.

MR. CHAIRMAN: If no cases are arising out of this then what made you propose expansion of this provision about doctors and lawyers?

SHRI D. C. SHARMA: It is entirely for the Committee to decide but as it appears custodial rape at the police station or jail those things are not explicit. Going through the Section it appears to me that it may not even cover the female patient when the doctor does not have physical control, so I suggested that other professions should be included.

SHRIMATI GEETA MUKHERJEE: Due to the preponderant position of the authorities custodial cases are hardly reported. Do you agree?

SHRI D. C. SHARMA: Yes.

SHRIMATI GEETA MUKHERJEE: In those very few cases which are reported we find this attitude of the judiciary where there is seldom conviction. Then how can you say that even 'presumption' is in favour of the victim. The only protection in this case may be if the judge presumes and other things will come for rebuttal. You did not think it necessary but after questioning you are feeling this way.

SHRI D. C. SHARMA: Evidence being as it is and depending upon the approach of the judge in particular appreciation of the fact I would say in spite of 'presumption' if a little doubt is thrown then definitely the accused will be entitled to the benefit of doubt and will be acquitted. When the statement is made by the victim that under these circumstances she had sexual intercourse and there is

no other evidence and that statement could not be shaken that would be enough for prosecution.

SHRIMATI GEETA MUKHERJEE: But the fact remains that they are not being convicted generally. So, there must be something in it.

SHRI D. C. SHARMA: I would not be able to answer.

SHRIMATI GEETA MUKHERJEE: Please think it over.

SHRI BAPUSAHEB PARULEKAR: You must have conducted many cases of this type. How many?

SHRI D. C. SHARMA: If I may say so, as a Sessions Judge I was mostly confined to murder cases only because a murder case is the only crime dealt with by Sessions Judges.

SHRIMATI GEETA MUKHERJEE: In view of the present examination of this Bill, do you think that you can revise your general attitude expressed earlier about this Section 111A? Do we take it that you have no objection to this?

SHRI D. C. SHARMA: I have no objection.

SHRIMATI GEETA MUKHERJEE: It should be like that.

MR. CHAIRMAN: Generally in cases where punishment is enhanced and heavy punishment is imposed for such offences, do you expect that the highest standard of proof is required?

SHRI D. C. SHARMA: Some standard of proof is necessary. The only thing is that the intention is that the person has some control over the woman for which she has to submit. Naturally a higher punishment is called for in such cases.

MR. CHAIRMAN: Then, in cases where presumption is provided, do we expect the same standard of proof?

SHRI D. C. SHARMA: In respect of the provision for presumption, the standard of proof will remain the same in all the criminal cases. So long as the broad principle stands that the accused is entitled to the benefit of doubt, the moment a doubt is created in the mind of the Judge, he will acquit him.

MR. CHAIRMAN: Here when the court is entitled to presume certain facts, in the case of a victim's statement where she says on oath that she has not given consent, the court is bound to presume the absence of consent and after that when presumption is there as an authority given to the presiding Judges, then necessarily there may not be so much proof required to establish the guilt as in other cases where presumption is not there. What is your view?

SHRI D. C. SHARMA: I agree with you that because of the presumption the amount of evidence which is otherwise required till today will not be necessary. But what I am saying is that in the case of the accused, assuming that he is innocent again and he is only a victim of circumstances, if he can throw a doubt on cross-examination that there was an element of consent, in that case presumption will lose its meaning. Even in this case the same standard of proof is necessary.

MR. CHAIRMAN: The same standard of proof is not expected here because more value is attached to presumption.

SHRI D. C. SHARMA: It is for him to show. It is true that because of the presumption now he has to give proof. If the prosecution fails, the accused need not prove anything, but because of this presumption, of course it will be taken that apart from other things the prosecution is strengthened. Therefore, in all such

cases the accused will have to come out with some statement or material to show that there is a case for acquittal.

MR. CHAIRMAN: Thank you very much.

(The witnesses then withdrew)

IV—Government of West Bengal, Calcutta.

Spokesmen:

1. Shri Raghendra Banerjee, Judicial Secretary, Government of West Bengal.
2. Shri A. K. Banerjee, Special Secretary, Home Department, Government of West Bengal.
3. Shri A. C. Sen Gupta, Joint Secretary (Judicial), Government of West Bengal.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Kindly introduce yourselves to the Committee one by one.

SHRI RAGHABENDRA BANERJEE: I am very recently assigned to be the Judicial Secretary to the Government of West Bengal.

MR. CHAIRMAN: Then, I hope you have gone through the Bill and I think there is sufficient exercise on that by your Government. Have you discussed in your Secretariat about this Bill?

SHRI RAGHABENDRA BANERJEE: Yes.

MR. CHAIRMAN: Then what is the outcome of it? Kindly tell us point by point.

SHRI RAGHABENDRA BANERJEE: We have several points to which we want to draw the attention of the Committee and on which we think that some amendments would be necessary. For instance, first of all description 6 of Section 375 reads as follows:

"Sixthly.—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent, or is unable to offer effective resistance."

In this clause what we have said first is that if the words 'by him' have to be retained, then three more words should be added thereafter, namely, 'or any one'. That means, not only by him or by any one. Or the better course would be that the words "by him" be omitted altogether. That will make it easier. The administration may be by anyone, by herself, by some agent or by the rapists or by anyone. We have lots of such cases where such stupefying substances have been administered by servants or even by doctors. If it is to be retained, we have to add three more words "by every one". It is better to drop those words. "Administration of any stupefying substance" would be enough.

MR. CHAIRMAN: In Criminal law, "administration of stupefying substance by him" is an indication of the intention of the man who commit an offence. Here administration of stupefying substance by someone or by his agent is another thing. Even there will be administration by self, being not in a position to understand the consequences. That condition itself will be exploited by another person taking advantage of her condition. Not being in a position to understand things is one aspect and doing a criminal act is another.

SHRI A. C. SEN GUPTA: In the case of rape, the *mensria* consists of the intention to violate the girl. That is the probable *mensria* and this may be an ancillary *mensria* but not the probable *mensria* by him or by anyone. Please look at the earlier two Clauses which will explain the position namely intoxication by man which is not induced by anyone. Intoxication may be by her or someone or by friends or others with which the girl has nothing to do. So, this is not *mensria*. This may be an ancillary *mensria*, in addition to the intention of violence on the girl. That is the point and in case of rape, the *mensria* is intention to violate the girl and not the intention to intoxicate her. That is another matter. That is ancillary, to prepare the girl for receiving him or something like that, if I may put it that way.

"By him" is unnecessary.

"anyone" is all right.

As regards intoxication and administration, even we may go to that extent as to say that the word "administration" may not be necessary even. If you look at Section 90 of the Criminal Code, there the analogous provision is given about consent and there we find that this clause about administration is not there, if I am not mistaken. However, it has been introduced here. Let it be introduced here. But it is not necessary that it

should be administered by him for showing *mensria* for committing rape. For committing rape it is not the essential *mensria*. Essential *mensria* would be intention to commit that violation.

As regards Section 375 of the Penal Code (page 2 of the draft Bill) "Seventhly.—With or without her consent, when she is under sixteen years of age", it should be 18 years of age.

MR. CHAIRMAN: What are your reasons for raising the age?

SHRI A. C. SEN GUPTA: This is for protection of female children from premature cohabitation. There are cases like Harish Mohan when husband raped his child wife who was below 12 years and she died. If the wife is healthy or mature enough or developed enough, then the progeny would be healthy. Otherwise, there will be an appalling infant mortality. Nevertheless, these are the grounds. A recent ground that I can add is this. One of the grounds for raising the minimum age of marriage is to restrict the population growth. It is said that population explosion is taking place and for restricting that, the age of marriage is raised to 18. If that is so, then it applies to this also. Why should a husband be allowed to have sexual intercourse with a girl of lesser age and produce a larger family? It does not stand to reason to my mind. These are the four reasons—three older reasons and one newer reason connected with family planning.

MR. CHAIRMAN: What you have said is with reference to curtailing population growth. In a case of criminal law, consent is a vital part and in the Indian society, girls, either in the urban areas or in the rural areas, can have the maturity of understanding at the age of 16.

SHRI RAGHABENDRA BANERJEE: Quite right. But, by this, are

you going to adopt a policy which would encourage illegal violation of enacted laws? The Sharda Act as it is, we know very well, is not respected, even very well known persons are marrying away their daughters in violation of this law. To keep a lower age would give a premium to such people, would give encouragement for more and more violations. In order to curb that, it will be necessary and proper to standardise it at 18 even in the case of rape. It should be in consonance with our policy, not that you marry away your daughter at the age of 12 and allow the husband to have sexual intercourse when she is 15...

SHRI BAPUSAHEB PARULEKAR: Do you say this in relation to 'Exception' or in respect of Section 375?

SHRI RAGHABENDRA BANERJEE: It applies to both. We are of the view that, both in Section 375 and in the 'Exception' thereunder, the age should be raised to 18.

Coming to 'Exception' under Section 375, we think that instead of the term 'sexual offence' it should be 'sexual intercourse' because in the parent Act as it stands it is 'intercourse'. Let that remain. Why should it be changed into 'sexual offence'? I have already said that the age here should be raised to 18.

MR. CHAIRMAN: According to you, even in cases of marriage where the wife is below the age of 18, the husband should be restrained from having sexual intercourse?

SHRI RAGHABENDRA BANERJEE: Yes. We know that, in a large part of India, particularly northern India, where child marriages are prevalent, they have to go through a second ceremony when the child-wife comes of age. Sexual intercourse should not be allowed before 18. That will be violation of the Child Mar-

riage Act. Even if the marriage remains, to allow this relaxation of a lesser age, to allow the husband to have sexual intercourse with his wife because she has attained the age of 15 would be giving them encouragement to carry on with marriages in violation of the Sharda Act. It cannot be, according to our thinking, the policy of the State to frame laws and at the same time provide encouragement for violation. We think that it should be 18 all round.

MR. CHAIRMAN: Are you under the impression that if the age of marriage in the Child Marriage Act is violated, the marriage itself is void?

SHRI RAGHABENDRA BANERJEE: The marriage itself is not void as long as it is not declared void. It has to be declared void. First of all, it has to be challenged in a court of law and then it can be declared void or whatever the court may declare.

MR. CHAIRMAN: By violation of the age of marriage, do you mean to say that the marriage itself is void?

SHRI RAGHABENDRA BANERJEE: It is not void. According to personal laws, they are treated as valid marriages. Under the Hindu law, even marriages which are morally prohibited are accepted legally as valid. Then we have to come to Section 376 sub-section 2 and to that there are three Explanations which have been added but we feel there should be a fourth Explanation. It should be nothing other than the Explanation which has been erroneously added at the end of Section 376C. That Explanation should be added as Explanation 4 to Section 376(2). Instead of the Explanation that has been appended to Section 376C in the Bill the Explanation should be added that the expression 'hospital' shall have the same meaning as in Explanation 4 Section 376B.

Regarding 'seduction' we feel it should be added to Section 376C. I

think it is better to be introduced there because in the earlier portion there is no question of 'seduction' but here where the offence does not amount to rape with a lesser punishment here I think element of 'seduction' should be introduced in Section 376C.

As far as Cr. P.C. is concerned we have got no comments to make but I personally feel...

MR. CHAIRMAN: You kindly see sub-clause 2 of Section 228—line 30.

SHRI RAGHABENDRA BANERJEE: Making it non-bailable will not matter because courts will give bail. It is all the same whether it is bailable or non-bailable. Murder is non-bailable but bail is granted in most of the cases.

Sir, I was seeking permission to make my submissions about two other matters. My impression is that Section 167A, as was proposed has been left out, but it should not have been left out. There was a proposal in the Law Commission's Report about that.

SHRI AMARPROSAD CHAKRABORTY: That is the Law Commission's Report.

SHRI RAGHABENDRA BANERJEE: I have to say something on Section 111A. The first thing is that it should not be numbered as 111A and should not follow 111 because it will not be in the proper context of the Evidence Act. It should be 114A, but it should not be 111A.

SHRI AMARPROSAD CHAKRABORTY: It is a question of presumption. So, should it come under Section 114?

SHRI RAGHABENDRA BANERJEE: Yes. And there has been some sort of slight difference of opinion amongst ourselves as to whether there should be 'shall presume' or 'may presume', and we have not been able

to make up our minds as to what should be the proper thing to do. The one view is that even if we say, 'shall presume', then the accused will be at the mercy of unscrupulous women. That is one view and there is much to be said in favour of that also. We cannot ignore that. There are good women and bad women, scrupulous women and unscrupulous women just as there are good men and bad men, and scrupulous men and unscrupulous men.

SHRI AMARPROSAD CHAKRABORTY: But law is not framed on the basis of good or bad women.

SHRI RAGHABENDRA BANERJEE: But this question of presumption will have to be considered keeping in mind that the accused may have been falsely implicated and all that. The majority view is that it should remain as it is—'shall presume'—because conditions are such that so many things are involved including the Judges' emoluments these days and the integrity, honesty and the efficiency of the judiciary in these days and in the near future. We would have liked to keep 'may presume' by depending on the honesty, integrity and efficiency of the Judges leaving it at that. But if these things are involved, then I do not know what the majority view is. So it should be 'shall presume' and not 'may presume'. If we put it as 'may presume', in certain cases a Judge may presume and in certain other cases he may not presume. If there is 'shall', then it will be rebuttable by the accused to prove that the presumption is not correct.

MR. CHAIRMAN: You are explaining both aspects. But what is your view?

SHRI RAGHABENDRA BANERJEE: We were having a hot debate with our counterparts from other States since yesterday as to whether it should be 'shall presume' or 'may

presume'. After that we have concluded that let it be 'shall presume'.

SHRI B. IBRAHIM: You can give a personal opinion also.

SHRIMATI GEETA MUKHERJEE: It is on record that the West Bengal Government's opinion is that it should be 'shall'.

SHRI AMARPROSAD CHAKRABORTY: The West Bengal Government sent their opinion previously. They say they are on the debate, they have not concluded.

MR. CHAIRMAN: You are correct that there is a deliberation on this point with all the intellectuals. But what is the outcome of the debate?

SHRI RAGHABENDRA BANERJEE: I can only give a majority view. The majority view is that the wording should be 'shall presume'.

SHRI P. VENKATASUBBAIAH: You are representing the Government. You are the spokesman of the Government of West Bengal. What is the opinion of your Government?

SHRI RAGHABENDRA BANERJEE: 'shall presume'.

SHRI P. VENKATASUBBAIAH: Then why should you bring all the extraneous things that you are on debate etc.?

SHRI RAGHABENDRA BANERJEE: I agree, I should not have brought them.

SHRI P. VENKATASUBBAIAH: You have brought some extraneous reasons in support of your argument for wording it as 'shall presume'. You introduced certain points like emoluments of Judges, mental make-up of the Judges and all that. Do you think that these are sufficient reasons for you to come to the conclusion that the word 'shall' should be there? Then, indirectly you are dividing the Judges and you are indirectly trying

to give to the Committee an inference that a Judge will not be impartial under certain circumstances. Do you agree?

SHRI RAGHABENDRA BANERJEE: I have no intention of conveying like that.

SHRI P. VENKATASUBBAIAH: Then what do you say?

SHRI RAGHABENDRA BANERJEE: I have given the Government's view that the expression should be 'shall presume'.

SHRI P. VENKATASUBBAIAH: You have made this statement before the Committee. Do you want that the Committee has to take cognizance of what you have expressed before the Committee by way of what influenced you to come to a decision of having 'shall'?

SHRI RAGHABENDRA BANERJEE: It is not necessary for the Committee to take into consideration all these things. The judge may presume or shall presume. It depends on the discretion of the judge. In certain cases, he may presume and in certain cases he may not presume.

SHRI P. VENKATASUBBAIAH: Whatever I have stated shall go on record. You have expressed two opinions.

SHRI RAGHABENDRA BANERJEE: The opinion I have expressed are confined to our discussions amongst ourselves.

I would like to add two more points. Of course, they are actually not Government's views. I cannot say that they are Government's views because while reading the Law Commission's report, I was of the opinion that these two points should have been there.

One is Section 167A which was proposed by Law Commission but has been left out of the Bill should be

incorporated because it is connected with such offences.

The other is addition of Clause 'C' to Section 294 relating to misuse of telephone in eve-teasing. This is a common experience of all women who have the advantage of telephone at their residences to receive ghost calls, making nasty utterances, signing and reciting obscene songs and all that over the phone. It is difficult to catch the culprit, no doubt. But it should be there in the law so that if there are cases and there may be cases where the culprits can be caught and in that case, they should be punished.

Section 167A relates to the police officer's failure in recording reports of sex offences like all other offences. It is our experience as judges in courts. I can tell from my personal experience. I was a judge in Calcutta court till 25th September. In so many cases, I have heard the witnesses coming out with the statement that they wanted to make the report, be it a dacoity or assault or rape, but the officer in charge declined to take any record. There are so many reasons. There may be powerful people behind. The officer may be corrupt. Important bits of evidence in rape cases, particularly where evidence for medical examination is essential within the first few hours will be lost if the case is delayed. Within the first few hours, medical examination must take place. Otherwise, the most important bits of evidence are gone for ever. They are irretrievably lost. So, it is essential that the officers in-charge of police stations should record cases immediately on getting such reports. If they fail to do it, then it should not be left to the other clauses like Clause 3 in Section 154C namely "if he does not record, then the complainant may send a written report to the S.P.". Look at it. What will remain of the rape case? What evidence will remain? Unless the officer records the statement immediately and takes action, all the pro-

visions will be meaningless. No case of rape will be proved. His Lordship will go on thinking and you will not be called unless he is sufficiently paid. It may be that someone powerful is behind, moneyed people or politically powerful people. Therefore, the case should be reported in the Thana immediately.

SHRI P. VENKATASUBBIAH: What is the remedy? Suppose the officer says that the gentleman has not come to me. The evidence is lost. Then what is the remedy?

SHRI RAGHABENDRA BANERJEE: One remedy that occurs to me is that Section may be amended to the effect that the report may be made to the S.P. at once.

SHRI P. VENKATASUBBIAH: Through telegram or through post?

SHRI RAGHABENDRA BANERJEE: Just go to the Thana, go to the S.P.

SHRI P. VENKATASUBBIAH: Will there be S.P. in every Head-quarter?

SHRI RAGHABENDRA BANERJEE: There will not be. They have to go even to Thanas for miles at times.

So the remedy that is suggested by the Law Commission is that the punishment for not recording should be there.

SHRI R. S. SPARROW: You have to keep in consideration the man in the street. Lots of these cases occur in the case of backward, poor type of girls. What remedy have you suggested in those cases? Let us come down to medical grounds.

SHRI RAGHABENDRA BANERJEE: A suggestion in this regard was given by the Law Commission. Section 167A was suggested by the Law Commission, but the Low Com-

mission's suggestion has not been incorporated.

These are my views.

MR. CHAIRMAN: Now, the Members will ask questions. Kindly be brief in your reply.

श्री हुकम देव नारायण यादव : मैं आप से केवल दो ही सवाल पूछूंगा आपने मुझसे दिया है कि जहां 16 साल की अवस्था किखी गई है, उस के स्थान पर 18 साल किया जाये। मैं आप से यह जानना चाहता हूँ कि जब यह कानून पास हो जाएगा और पास होने के बाद लागू हो जाएगा और उस कानून के लागू होते ही यदि 18 साल की कम उम्र की किसी लड़की के साथ उसके कन्सेंट से कोई लड़का सम्भ्रम इंटरकोर्स करता है और उस लड़की के माता पिता कोर्ट में केश करते हैं और वह लड़की कहती है कि उस लड़के ने सम्भ्रम इंटरकोर्स मेरी कन्सेंट से किया है, तो उस हालत में दोनों को कानूनी अपराधी माना जाएगा या अपेक्षा ही लड़का ही अपराधी माना जाएगा ?

श्री रागबिन्दा बनर्जी : जहां तक मैं समझ पाया हूँ, इस केस में लड़की को खुद की कम्प्लेंट करनी चाहिए, तभी कम्प्लेंट काग्निजेबल होगी, अन्यथा नहीं होगी।

श्री हुकम देव नारायण यादव : दूसरा यह कि अंग्रेजी के दो शब्द "शैल" और "मे" पर डिस्कशन किया गया है। मैं आपको एक छोटा सा उदाहरण दूँ। आपके इस कलकत्ता में कोई ऐसा औरत हो जो कई पुरुषों से सम्भ्रम इंटरकोर्स करती है और दूसरे मुकदमों में भी वह अपराधी है। पुलिस उसको गिरफ्तार करती है और वह पुलिस के खिलाफ मुकदमा करती है कि पुलिस ने कस्टोडी में मेरे साथ रेप किया, तो उस की जांच होगी, चाहे दूसरे पुरुष के साथ उसका सम्भ्रम इंटरकोर्स हुआ

हो, मेडिकल प्रूफ होगा और कानून के मुताबिक जज को मान लेना होगा; "शैल प्रिज्युम" मानना ही होगा। उसमें उसको विवेक इस्तेमाल नहीं करना है। ऐसी स्थिति में उनके अन्दर डिमोरेलाइजेशन आएगा कि ऐसी औरतों के साथ भी वे डील नहीं कर सकते हैं। आप यह महसूस करते हैं या नहीं ?

श्री रागबिन्दा बनर्जी : "शैल प्रिज्युम" का मतलब यह नहीं है कि उसके रैप्टेशन में कोई जबाब नहीं दिया जा सकता है। प्रीनस आफ प्रूफ एक्ज्यूज्ड के ऊपर शिफ्ट हो गया है। इक्विटी का सब्जेक्ट पीछे आयेगा, कोर्ट में आफेंस की बात है। आफेंस ट्रायल के सब्जेक्ट में ये शैल प्रिज्युम पहले प्रिज्युम करेगा।

SHRI R. S. SPARROW: All the witnesses from the side of women-folk who have given evidence before this Committee seemed to agree on one point, namely, that the onus of proof should rest on the accused. Now, looking at it from the overall cultural sanctity of the womenfolk that we have in India, it seems to me to be a question which needs to be understood in depth. Correlating this question with the type of culture that we have in India, would you wish to make some kind of a departure in this particular case, in the case of rape? It is not a question of changing the whole judicial system.

SHRI RAGHABENDRA BANERJEE: In the amendments that are being proposed now, there have been deviations from the general principle, the onus of proof having been shifted on to the defence in some cases. But those deviations relate to only very limited cases. For instance, Section 111A relate only to clauses (a) to (d) and (f) of sub-section (2) of Section 376. These are the special cases of rape presumed on the other side. Therefore, it is not

against the general principle of onus of proof being always on the prosecution. Only in very limited cases onus of proof has been shifted.

SHRI R. K. MHALGI: You have been a Sessions Judge. During that period approximately how many cases of rape did you try and what was the percentage of acquittal and conviction?

SHRI RAGHABENDRA BANERJEE: In my judicial career I have had to hear three to four cases. These offences are usually tried by Assistant Sessions Judge. Most of the cases I tried resulted in acquittal because of faulty investigation, delay in making medical examination, etc.

SHRI R. K. MHALGI: Do you think recommendations suggested by Law Commission about investigation and trial should be incorporated in the Bill.

SHRI RAGHABENDRA BANERJEE: Some of the recommendations have been incorporated in the Bill.

SHRI V. KISHORE CHANDRA S. DEO: You have made a forceful argument for increasing the age from 16 to 18 because you said it will be in conformity with the Marriage Act and it will help in checking population. Marriage Act is governed by a different law and marriage does not lead automatically to off-spring. In regard to maturity no research has been made and it is a debatable issue. Have you any other argument?

SHRI RAGHABENDRA BANERJEE: I have already said what I wanted to say.

SHRI BAPUSAHEB PARULEKAR: As law stands today do you think it is adequate to meet these culprits?

SHRI RAGHABENDRA BANERJEE: It is not because otherwise this new Bill will not come up.

SHRI BAPUSAHEB PARULEKAR: Why do you insist that it should be 'shall presume'. What deficiency will be there if it is 'may presume'?

SHRI RAGHABENDRA BANERJEE: The principal difficulty is that the onus of proof would be thrown on the victim.

SHRI BAPUSAHEB PARULEKAR: In both cases the burden is on the accused to dis-prove. The only difference is in one case the judge may call for proof and in other case the judge may not call for proof. That is the only distinction.

SHRI RAGHABENDRA BANERJEE: Yes, that is the only distinction.

SHRI AMARPROSAD CHAKRABORTY: Mr. Banerjee, will you kindly see that it is now an admitted fact that in the law as it stands there is no lacuna? Only at the investigation stage, for want of medical proof in some cases there are acquittals. Is it what you want to state? If that is so, would you suggest why this discrimination should be made in respect of only one class of people? Why this discriminatory procedure should be followed? Do you not suggest that the law should be amended for all and not for a particular class of officers?

SHRI RAGHABENDRA BANERJEE: This is because of the basic fact to which I have to draw your attention that they are in position of authority and as such they are in an advantageous situation, they are in a position to influence and seduce and commit the offence.

SHRI AMARPROSAD CHAKRABORTY: So, your main contention is that there is likelihood of influence and also persuading the persons who are in their custody. So, the law should be made different for that class. May I to understand like this?

SHRI RAGHABENDRA BANERJEE: Naturally.

SHRI AMARPROSAD CHAKRABORTY: Kindly see page 113 of the Memorandum of the West Bengal Government. Why a particular police officer has been excluded and why others are not excluded?

SHRI RAGHABENDRA BANERJEE: If the reason has not been given....

MR. CHAIRMAN: Mr. Chakraborty, even if Mr. Banerjee was present at the time of deliberations when that conclusion has been arrived at, he is not barred to make a statement here. You may change his opinion. This is not a criminal court where you are confronted with a criminal.

SHRI AMARPROSAD CHAKRABORTY: I am only saying how the opinion has been varied.

MR. CHAIRMAN: That is what has been already said. Mr. Banerjee said that he joined as Judicial Secretary only recently.

SHRI RAGHABENDRA BANERJEE: May I answer the question? It would have struck at that time. That is all that I can imagine. I cannot say anything more without discussing with my Government. Our Special Secretary may be permitted to say something in this connection.

SHRI A. K. BANERJEE: Originally our State Government does not seem to have opposed the idea that a police officer should be treated like any other people. They also wanted that a police officer having custody of a girl should be treated like any other person in authority. Only in this law I find that only a difference is made that in respect of a police station, 'an area within his jurisdiction' should be omitted. That is the only distinction made.

SHRI AMARPROSAD CHAKRABORTY: The fact is that a distinction is made. But why are you making a different law for one class of officers only and why not the law for all?

SHRI A. K. BANERJEE: According to our understanding, these gentlemen are holding a kind of trust. So, this is a kind of breach of trust not in respect of any property, but in respect of human beings. This appears to be on the footing of a breach of trust. So, coupled with the offence of rape, this is also a kind of breach of trust. So, the added punishment is recommended.

SHRI B. IBRAHIM: What is the total number of rape cases in your State?

SHRI RAGHABENDRA BANERJEE: We have not got the figures.

SHRI A. K. BANERJEE: I may help the Committee by giving some figures of last year, that is, 1980. In 1980 in answer to a Parliament Question we have given that in West Bengal from January 1980 to October 1980 there were 400 rape cases.

MR. CHAIRMAN: Are these the cases which are reported?

SHRI A. K. BANERJEE: Yes. We submitted this reply to a Parliament Question in respect of rape cases reported for the period from January to October, 1980.

MR. CHAIRMAN: Thank you very much.

SHRI RAGHABENDRA BANERJEE: We have to express our grateful thanks to the Committee and we seek your permission to leave.

(The witnesses withdrew)

(The Committee then adjourned).

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE OF THE CRIMINAL LAW
(AMENDMENT) BILL, 1980

Saturday, the 17th October, 1981 from 10.00 to 13.30 hours at Mahila Inlaid
Bhavan, Itanagar. . .

PRESENT

Shri D. K. Naikar—*Chairman*

MEMBERS

Lok Sabha

2. Shri Rag Behari Behra
3. Smt. Vidyavati Chaturvedi
4. Shri V. Kishore Chandra S. Deo
5. Shri R. K. Mhalgi
6. Smt Gesta Mukherjee
7. Shri K. S. Narayana
8. Shri Bapusaheb Parulekar
9. Shri Qazi Saleem
10. Prof. Nirmala Kumari Shaktawat
11. Shri R. S. Sparrow
12. Shri Trilok Chand
13. Shri V. S. Vijayaraghavan

Rajya Sabha

14. Shri Ramchandra Bharadwaj
15. Shri Amarprosod Chakraborty
16. Shri B. Ibrahim
17. Shri Dhuleshwar Meena
18. Shri V. P. Munusamy
19. Shri Leonard Solomon Saring
20. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—*Senior Legislative Committee Officer*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS..

Shri S. V. Sharan—*Joint Secretary*
Shri S. C. Bablani, *Under Secretary*

WITNESSES EXAMINED

I. Social Welfare Board, Itanagar

Spokesmen:

1. Shrimati Omen Deori, Chair-man
2. Shrimati Yari Dolom, Social Worker

II. Shri J. K. Panggeng, Advocate

III. (a) Shri J. K. Khargoria, Representative of UNI

(b) Shri R. B. Roy, Representative of Hindustan Samachar

(Leader of Opposition, Arunachal Assembly)

(Leader of Opposition, Arunachal Assembly)

V. Government of Arunachal Pradesh, Itanagar

Spokesmen:

1. Shri R. K. Patir, Chief Secretary
2. Shri J. M. Shivastava, Secretary (Law)
3. Shri C.K. Raina, Extra Assistant, Commissioner (Along)
4. Shri M. K. Mathur, Secretary, (Arunachal Pradesh Legislative Assembly)

I. Social Welfare Board, Itanagar
Spokesmen:

1. Shrimati Omen Deori.
Chairman.
2. Shrimati Yari Dulom
Social Workers.

The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be

treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

Please introduce yourselves to the Committee.

SHRIMATI OMEN DEORI: I am Mrs. Omen Deori, Chairman of the Women's Social Welfare Board, Arunachal Pradesh. She is my friend Mrs. Dulom, Chairman of the Project Implementation Committee.

MR. CHAIRMAN: You have been supplied with a copy of the draft Bill. Have you gone through it?

SHRIMATI OMEN DEORI: Yes.

MR. CHAIRMAN: Then you enlighten us with your points, one by one.

SHRIMATI OMEN DEORI: I have gone through this copy. But, I have to be very frank. Actually, we do not know the Indian Penal Code. From our side, we do not have any objection to the Bill and we also support this Bill.

MR. CHAIRMAN: Have you got any elaborate ideas to give on each point? You are representing some institution of women. Some provisions are provided in the draft Bill. Do you suggest anything in addition to what is contained therein?

SHRIMATI OMEN DEORI: I have gone through the Bill. From our side, we do not think any other provision is necessary.

SHRIMATI GEETA MUKHERJEE: Will you please tell us what is the situation prevailing in your State with regard to this problem? Do your women face this problem or not? What is your experience about it?

SHRIMATI OMEN DEORI: I am very proud to announce that till now we do not have this kind of problem in Arunachal Pradesh. We have only one or two such cases. Our customary laws are very strict. If somebody commits the criminal offence of rape, then he will be punished and heavily fined. That is why, there are very few cases and there is no necessity for Government to take action in this regard and we want to keep up this customary law.

SHRIMATI GEETA MUKHERJEE: Please tell us if you have any example in your mind, how your local Council deals with it, what punishment was given, what is the quantum of punishment.

SHRIMATI OMEN DEORI: I have not come across such cases. Supposing, some girl is raped. Then, she goes and tells her parents. Then village panchayats sit together and they punish that man and also heavily fine him and he

would be warned that if he commits that crime again in future, he would be heavily punished and fined. Punishment will be heavy. The maximum is that he will be brought to the notice of the Government and he will be put into jail and fined in terms of cash or animals. That is our existing customary law.

SHRIMATI GEETA MUKHERJEE: What about the girl who happens to be the victim of rape? What is the compensation or relief that would be given to her?

SHRIMATI OMEN DEORI: The girl will be paid some amount of money. There is no difficulty for her getting married. She will be adjusted in society. Anybody who is willing to marry her, will marry her.

MR. CHAIRMAN: Are there many people who are coming to marry such girls also?

SHRIMATI OMEN DEORI: There are no such cases now. If at all, they are very rare. Only one single case took place till now.

MR. CHAIRMAN: What is the system of marriage here?

SHRIMATI OMEN DEORI: We have different customs in Arunachal Pradesh. We have now five districts and each district has different dialects, customs etc. I come from Adit tribe. Parents select bride or bridegroom of the same dialect. Then there will be exchange of animals. The boy's parents will pay something and give some animals to the girl's family and after one year, the girl goes to the in-laws house. But, there is no dowry system.

MR. CHAIRMAN: How is customary law enforced?

SHRIMATI OMEN DEORI: That is done by Panchayat. The village head and all the elderly people gather and they take certain decisions.

MR. CHAIRMAN: Suppose that decision is flouted.

SHRIMATI OMEN DEORI: Then it will come to the Government.

MR. CHAIRMAN: What is the marriageable age in your society?

SHRIMATI OMEN DEORI: At the time of my generation, girls used to get married at the age of 15, 16 or 17. At present, girls are going to the school and after finishing their studies, they marry at the age of 19 or 20. But the girls in the villages get married at the age of 16. In certain areas, child marriages take place. They go to their in-laws house, when they grow up. But normal marriage age is 16 or 17 years. Sometimes, the would-be born children's marriages are settled by parents. Marriage takes place after they grow up. We discourage this system now. Suppose the man is of fifty years age and girl is of sixteen years. It is impossible to get married. We are fighting for that.

MR. CHAIRMAN: Is monogamy in force or polygamy?

SHRIMATI OMEN DEORI: Our man marries more than one. There is polygamy.

MR. CHAIRMAN: What is the law of inheritance?

SHRIMATI OMEN DEORI: Property is inherited by the sons. If the parents want to give anything to the girl they can give but the right is that of the son.

SHRI QAZI SALEEM: You are supporting the whole Bill but don't you think your present customs are more safeguarding your girls.

SHRIMATI OMEN DEORI: That is correct but we cannot shut our eyes to the future. I am supporting the Bill in general as a woman.

श्री हुकूम देव नारायण बाबू : बिल में प्रस्ताव है कि यदि 15 साल से कम

उम्र की पत्नी के साथ घर पर पुरुष संसु-भ्रम इंटरकोर्स करता है तो वह अपराध माना जाएगा। इस बारे में आप का क्या कहना है ?

श्रीमती ओमन देवरी : यदि यह एकट कि 15 साल से कम उम्र की पत्नी के साथ यदि कोई पुरुष संसुभ्रम इंटरकोर्स करता है तो बड़ी मुश्किल हो जाएगी, क्योंकि हमारे यहां पर तो पन्द्रह साल में ही शादी हो जाती है।

श्री घरन प्रसाद बाबू : आपकी यह राय है कि 16 साल में यदि पति पत्नी से इंटरकोर्स करता है, तो वह रेप नहीं होगा ?

श्रीमती ओमन देवरी : बिल्कुल ठीक है।

श्रीमती विद्यावती जतुबंदी : सभी कल परसों कलकता में एक केस आया था कि पति ने अपनी पत्नी, जिसकी कि उम्र 13-14 साल की थी, संभोग किया जिस से उसकी मृत्यु हो गयी। इस तरह से यदि कम उम्र में संभोग करने से इन्जरी हो सकती है, तो क्या आप इस को पसन्द करेंगी कि कम उम्र में, चाहे पत्नी ही क्यों न हो, उसके साथ कोई नुकसान नहीं होना चाहिए और ज्यादाती नहीं होनी चाहिए ?

श्रीमती ओमन देवरी : यह तो मैं पसन्द नहीं करूंगी, चाहे पत्नी हो या कोई लड़की उसके साथ इस प्रकार ज्यादाती की जाए।

श्रीमती विवेका कुमारी साकताका : मैं आपसे यह जानना चाहती हूँ कि आपकी सेन्साइटी में वाइबोर्स केबल कोर्ट के माध्यम से होता है या कस्टमरी लॉ के माध्यम से होता है ?

श्रीमती श्रीमन बेबरी : कस्टमरी लॉ के माध्यम से होता है ?

श्रीमती निर्मला कुमारी शक्तावत : उस में कितना टाइम लगता है ?

श्रीमती श्रीमन बेबरी : ज्यादा टाइम नहीं लगता है। पंचायत डिस्टाब्ल करती है।

श्रीमती निर्मला कुमारी शक्तावत : डाइवोर्स होने के बाद उसकी क्या री-मैरिज हो सकती है ?

श्रीमती श्रीमन बेबरी : जी, हो सकती है।

श्रीमती निर्मला कुमारी शक्तावत : इस बिल में प्रावधान किया गया है कि यदि जुडिशियल सैपरेसन के बाद, डाइवोर्स होने के बाद यदि पत्नी पुनः उसके साथ रहती है और उसके साथ सैक्सुअल इन्टरकोर्स हो जाता है, तो उसको भी रेप माना गया है। इसके बारे में आपकी क्या राय है ?

श्रीमती श्रीमन बेबरी : अभी तक हमने ऐसा केस नहीं देखा है। यह जो कानून बनने जा रहा है, वह केवल प्ररुणा-चल प्रदेश के लिए ही नहीं, बल्कि सारे देश के लिए बनने जा रहा है।

श्रीमती निर्मला कुमारी शक्तावत : विधायनी जी ने आपसे एक प्रश्न पूछा था कि 16 साल की लड़की के साथ यदि पति रहता है, तो उसको आप रेप की श्रेणी में नहीं मानती हैं और वह रेप भी नहीं है। परन्तु इसके साथ ही इस कानून में यह प्रावधान है कि यह रेप है। इस बारे में आप क्या कहना चाहेंगी ?

श्रीमती बोई० इयूलोव : लड़की यदि मना करती है सैक्सुअल इन्टरकोर्स करने के लिए, लेकिन उसके साथ जबरदस्ती

सैक्सुअल इन्टरकोर्स किया जाता है, तो वह रेप हो जाएगा।

श्रीमती निर्मला कुमारी शक्तावत : अगर रेप हो गया और पुलिस ने चलाव किया तथा कोर्ट में केस चला। इस प्रकार क्या वे पति पत्नी आपस में मिल सकेंगे ?

श्रीमती बोई० इयूलोव : यदि वह नहीं जाएगा, तो उसको जबरदस्ती के जाता है ट्राइबल सोसाइटी में मां-बाप रहता है, तो उसको जाना पड़ेगा, लेकिन इस तरह से उनकी चिन्वगी को खुशी नहीं मिल सकती है।

श्रीमती निर्मला कुमारी शक्तावत : ट्राइबल सोसाइटी में मैरिज-बाई-कैपचर भी है, क्या इस प्रकार की शादी लीगल मानी जाएगी ? किसी मेले में या दूसरी जगहों पर लड़की को कोई उठा ले जाता है, तो उसको क्या मैरिज मान लिया जाता है—आप की सोसाइटी में क्या ऐसा भी है ?

श्रीमती बोई० इयूलोव : यदि लड़का लड़की की पसन्द है, तो भलग बात है लेकिन ऐसी स्थिति में उसको मां-बाप मैगनीकट कर देता है, क्योंकि लड़का अपने मां-बाप का कहना नहीं माना और अपनी खुशी से लड़की के साथ भाग गया और वे लड़की की खुशी पर उसको छोड़ देते हैं।

श्रीमती निर्मला कुमारी शक्तावत : ऐसी स्थिति में क्या डाइव-प्राइस ली जाती है ?

श्रीमती बोई० इयूलोव : जी, नहीं ली जाती है।

मैं आप से यह भी कहना चाहता हूँ कि आप रेप के बारे में स्टेटमेंट न दें हैं। यदि कोई लड़की पब्लिश कर डाक्टरी करती है, सबिच करती है और

उसको यहाँ पर पैदल चलना पड़ना है। आप क्या उन लड़कियों के लिए कुछ कर रहे हैं ?

श्री बिलोक चन्ध : उसी के लिए तो कानून बनने जा रहा है। वही तो हम आप से पूछ रहे हैं कि कानून को किस तरह से सक्त बनाएं ताकि आगे लोग लौट कर भी इस तरह का गलत काम न करें।

श्रीमती बाई० ड्यूलोम : कानून बन जाता है, लेकिन लड़की के साथ रास्ते में कोई घटना हो गयी, तो क्या होगा ?

श्रीमती विद्यावती चतुर्वेदी : हम आप से इसी पर बातचीत करने के लिए आए हैं। इस कानून के अलावा और भी प्रावधान लड़की की प्रोटेक्शन के लिए क्या लाया जाए, इस बारे में आप बताइए।

श्रीमती बाई० ड्यूलोम : पता नहीं हुनिया में अकेली लड़की के जाने से इतनी नजर क्यों पड़ती है ?

SHRIMATI GEETA MUKHERJEE: Maybe you can take up this problem of security of women with the State Government, and give your suggestions to them.

SHRIMATI OMEN DEORI: We are women. We are all supporting this Bill strongly. But I want a clarification. Suppose a girl is raped by a man with her consent, but when she comes to the court the girl says that it has not been done by her willingness. Suppose the woman tells lies like this and the man is punished. What is your remedy?

SHRI AMARPROSAD CHAKRABORTY: It is for you to suggest.

SHRIMATI OMEN DEORI: Suppose she tells lies in the court and an innocent man is punished. What happens then?

SHRI AMARPROSAD CHAKRABORTY: What is your view?

श्रीमती ओमन देवरी : मैं यह कहना चाहती हूँ कि प्रूफ कहां होगा, कि जबरबस्ती किया था।

श्री बिलोक चन्ध : तो क्या इस को हटा दिया जाए ?

श्रीमती ओमन देवरी : आप इसको थोड़ा देखिये।

MR. CHAIRMAN: What is your suggestion if a false case is lodged against a man?

SHRIMATI OMEN DEORI: The girl should be punished. That is my personal opinion. Both the boy and the girl also should be punished for such things.

इसमें थोड़ा डेंजर भी है। यदि सब बोल गया तो ठीक है, लेकिन झूठ बोल गया तो मालूम नहीं क्या होगा।

श्रीमती बाई० ड्यूलोम : मैं कहना चाहती हूँ कि गलत बोलने से कोई हमारा फायदा नहीं है। यह बात सही है कि हम गलत भी बोल सकते हैं। लेकिन यदि हमारे हजबन्ध को अरेस्ट किया गया है और हम थाने में रिपोर्ट लिखाने जाते हैं और थाने में यदि रेप हो गया तो हम क्या करेंगे ?

श्रीमती विद्यावती चतुर्वेदी : यदि थाने में वा हास्पिटल में रेप हो गया तो गवाह की जरूरत नहीं है। वह जो ब्याग देगी, वही ठीक है।

श्रीमती ओमन देवरी : इस बिल को हम स्ट्रॉन्गली सपोर्ट करते हैं। आप को ब्यवस्था देते हैं कि आपने इसे बोलने के लिए मौका दिया।

(The witnesses then withdrew)

II—Shri J. K. Panggeng, Advocate

(The witness was called in and he took his seat)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Please introduce yourself to the Committee.

SHRI J.K. PANGGENG: I am Panggeng from Pasighat, Arunachal Pradesh. I am an Advocate.

MR. CHAIRMAN: You might have gone through the draft Bill.

SHRI J.K. PANGGENG: Yes, I studied it in depth.

MR. CHAIRMAN: What are your suggestions so far as this draft Bill is concerned?

SHRI J.K. PANGGENG: I have a simple suggestion to make. First of all, I would like to say a few words about

Arunachal. In Arunachal, we have no such rape cases as such and here we have a free society. People freely mix with one another. So, this sort of sexual offences are very rare. We have a traditional method by which we decide these cases. The victim is given some compensation.

SHRIMATI GEETA MUKHERJEE: Are there no cases at all or cases are there but they are not reported? What is your view?

SHRI J. K. PANGGENG: There may be some cases which are not reported. People being ignorant and illiterate, they may not have access to the officials. They do not know the language. They come from villages. There may be some cases, but they are not reported.

MR. CHAIRMAN: From how many years are you practising?

SHRI J. K. PANGGENG: I am quite new. I joined the profession in February, 1979.

SHRI V. KISHORE CHANDRA S. DEO: Is it your argument that cases are not reported because people are not aware of the various legal aspects involved or is it because of their concept of custom?

SHRI J. K. PANGGENG: It is both ways. First of all, people do not realise the legal implications. After all, the society is guided by certain norms, some customs, traditions and after all, a lady, whether she is from tribal or non-tribal family, has some chastity. It is probable that there may be some cases filed.

(The witness then withdrew.)

III—(1) Shri J. K. Khargoria, Representative United News of India.

(2) Shri R. B. Roy, Representative Hindustan Samachar.

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence should be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witness that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

श्री धार. बी. राय : मैं क्रिमिनल ला प्रमेडमेंट के बारे में कुछ कहने से पहले यह कहना चाहूंगा कि रेप यानी बलात्कार एक सामाजिक बुराई है, जिसे केवल कानून बना देने से रोक नहीं जा सकता है, परन्तु कानून से थोड़ा उस पर प्रकुश लगाया जा सकता है। मैं कहना चाहता हूँ कि जो सामाजिक बुराइयाँ हैं, उनसे रेप को बड़ावा मिलता है और रेप मैन्टेलिटी को बड़ावा मिलता है। उदाहरण के तौर पर मैं आपको बताना चाहूंगा जहाँ हम हैं यानि अरुणाचल प्रदेश, वहाँ रेप नाम की कोई चीज नहीं है और न आपको सुनने को मिलेगी, लेकिन यदा-कदा वहाँ भी रेप की घटनायें होती हैं, लेकिन उसके पीछे क्या है? यहाँ कोई लड़का लखीमपुर में सिनेमा देखता है और सिनेमा के पर्दे पर रेप की खुली घटनायें देखते हैं, तो उसकी एक काली छाया उनके विभाग पर पड़ती है और उस काली छाया का प्रतिबिम्ब उनके आचरण पर धीरे-धीरे उतरता है। यह लोग चूँकि कई बार इन घटनाओं को देखते हैं, तो रेप करते हैं।

इसलिए मैं आपको सुझाव देना चाहता हूँ कि इस संशोधन विधेयक में कहीं-कहीं इस बात की व्यवस्था की जानी चाहिये कि सिनेमाओं के विज्ञापन

जो कि अश्लीलता को बढ़ावा देते हैं, उस पर रोक लगाई जानी चाहिए। तमाम पत्र-पत्रिकाओं, व्यावसायिक या साहित्यिक के विज्ञापन नंगी लड़कियों की तस्वीरों से भरे रहते हैं। क्या भारत सरकार इस बात पर विचार करेगी कि उन नंगे विज्ञापनों पर रोक लगे।

मैं माननीय सदस्या, श्रीमती विद्यावती चतुर्वेदी जिनके प्रति मेरे मन में बड़ा आदर है, दृग्ब्याप्त करना चाहूंगा कि जहाँ एक तरफ लोक सभा या राज्य सभा में रेप की घटनाओं पर बड़े जोरदार शब्दों में भाषण करती हैं, वहाँ एक तरफ यह भी व्यवस्था की जानी चाहिये कि सारे हिन्दुस्तान में उन नंगे विज्ञापनों पर, जो कि नारी के नंगेपन को प्रदर्शित करते हैं, रोक लगाई जानी चाहिये। मैं बहुत जोरदार शब्दों में इस बात को कहना चाहता हूँ।

श्रीमती विद्यावती चतुर्वेदी :. आप इस कानून में उचित सुझाव दीजिये।

श्री धार. बी. राय : मैं सुझाव यह देना चाहता हूँ कि इस कानून में भी ऐसी व्यवस्था की जानी चाहिए कि सिनेमा और साहित्य, पत्र-पत्रिकाओं में जो नंगे विज्ञापन दिये जाते हैं, अश्लीलता के विज्ञापन दिए जाते हैं, उन पर रोक लगाई जानी चाहिये।

दूसरा मेरा सुझाव यह है कि तमाम तरह के अश्लील साहित्य कि किस तरह से आप बलात्कार करें और इन्टरकोर्स करें, इसकी जानकारी पुलिस को भी होगी, जोकि खुले आम विकते हैं, उन पर रोक लगायी चाहिये।

यह तो मैंने आपको पृष्ठ-भूमि बताई है, अब मैं जो प्रस्तावित कानून है या विधेयक है, उसके सम्बन्ध में कुछ सुझाव देना चाहूंगा। आई०पी०सी० के सैक्शन 228 (ए) में आप कहते हैं कि जो आवधी बलात्कार करता है, उसका नाम अखबारों में नहीं छापना चाहिये, मैं इस बात से सहमत हूँ, एक तरफ आप दंड देने की बात करते हैं तो इस कानून का उद्देश्य यह है कि व्यक्ति बलात्कार करने से डरे। वह दो तरीके से डर सकता है। एक तो सामाजिक अप्रतिष्ठा से, जिसमें कि इस बात की गुंजाइश होगी कि उसके इस काले कारनामे का प्रचार होगा, तो वह डरेगा, लेकिन आप उसकी बेइज्जती होने से पहले ही रोक दे रहे हैं यानी इस कानून के माध्यम से आप उसका जो रूप काला होने जा रहा है, उस पर आप पाबन्दी लगा रहे हैं। मैं आपसे कहना चाहता हूँ कि इस प्रावधान को इस कानून में से निकाल देना चाहिए। इसकी जगह यह होना चाहिये कि जिस ने रेप किया है, तो अखबारों को, प्रेस को, इस बात की छूट होनी चाहिये कि वे उस बात को खुले आम प्रकाशित करें।

सैक्शन 376 के सम्बन्ध में मैं कहना चाहता हूँ कि, जहाँ तक मैं पढ़ पाया हूँ दस बरस की सजा की व्यवस्था है। मुझे ऐसा लगता है कि इसके अतिरिक्त यानी दस बरस से अधिक सजा की व्यवस्था की जानी चाहिये। मैं समझता हूँ कि यदि कानून बनाकर जोड़ा जाता है, तो बेहतर होगा। जैसे आपने दो बरस की सजा दे दी या दस बरस की सजा दे दी, इतना पर्याप्त नहीं है। आपने बलात्कारी के सात कारण बताए हैं, लेकिन मैं कहना चाहता हूँ कि जो व्यक्ति जोड़ा कर्म अपराधी है, साबित होता है, तो

क्या यह उसके लिए उचित नहीं होगा कि उसे सड़क पर काला-मूंह करके घुमाया जाये। उसी तरह से अपाधीन कारावास की दृश्य संशोधन में व्यवस्था है, उसके साथ-साथ मैं यह कहना चाहूंगा कि उसके सामाजिक अपमान की व्यवस्था होनी चाहिये, जेल सामाजिक अपमान नहीं है। सामाजिक अपमान से मेरा मतलब यह है कि जिस समाज में, जिस समुदाय में, वह बलात्कारी रहता है, वहाँ उसकी बेइज्जती होनी चाहिए। जिसका कि मनोवैज्ञानिक असर उन तमाम लोगों पर पड़ेगा जोकि कई बार बलात्कार करते हैं, लेकिन सामाजिक प्रतिष्ठा पा जाते हैं। सामाजिक प्रतिष्ठा पाकर भी बलात्कार करते हैं, इनमें सभी पुलिस के अफसर के लोग और तमाम लोग हैं। इसलिए मैं पुनः इस बात को कहना चाहता हूँ कि सामाजिक अपमान की व्यवस्था कानून में होनी चाहिए, जो कि प्रस्तावित कानून में नहीं है।

पेज-7 के सम्बन्ध में मैं यह कहना चाहता हूँ कि इसमें संशोधन की जरूरत है, अन्यथा भाड़े की लड़कियों का इस्तेमाल करके एक दूसरे की इज्जत पर कुठाराघात कर सकते हैं। इस कानून की यह धारा बहुत ही खतरनाक है और इस नाते में मैं आपको सुझा देना चाहता हूँ कि जहाँ एक तरफ बलात्कार साबित हो जाता है, तो यह भी साबित किया जाना चाहिये कि इसी आवधी ने बलात्कार किया है, अन्यथा इसका दुरुपयोग किया जा सकता है।

अब मैं अपनी बात समाप्त करता हूँ, यदि कोई माननीय सबस्य कुछ पूछना चाहते हैं, तो मैं आपका स्वागत करता हूँ।

जीवन्ती निर्मला कुमार जी सहायक :
मैं आपसे यह पूछना चाहती कि, जैसे

कि आपने कहा है, इस कानून से बुराई को दूर नहीं किया जा सकता है, क्या सती प्रथा को कानून से दूर नहीं किया गया। आप के प्रवर्णन प्रवेश और नागान्द में नरबली की प्रथा भी, क्या उस को कानून से दूर नहीं किया गया, तो क्या इसको इस कानून से दूर नहीं किया जा सकता है ?

दूसरी बात आपने पब्लिकेशन के बारे में कही कि पब्लिकेशन होना चाहिए। य कानून सारे देश के लिये है। कई ऐसे नाजुक मामले होते हैं, यदि वह लड़की जिसके साथ रेप हुआ है और उसका बहुत ज्यादा पब्लिकेशन होता है, तो उसका भविष्य बहुत डार्क हो जाता है—क्या इस बारे में आपने कभी सोचा है ? इसका मतलब यह कि आप यह सुझाव देना चाहते हैं, कि लड़की के नाम का भी प्रचार किया जाय और चारों तरफ उस की इमेज को खराब किया जाये।

श्री आर० बी० राय : मैं दूसरे प्रश्न को पहले लेता हूँ। मेरा सुझाव बलात्कार के प्रचार के बारे में है, न कि जिसके साथ बलात्कार हुआ है। मैं अपनी बात फिर दोहराता हूँ, वह लड़की जिसके साथ बलात्कार किया गया, उसके नाम की तो चर्चा हम नहीं करना चाहेंगे यानी उसका नाम न छपे, यही मेरा मतलब है। लेकिन जो बलात्कार करता है, उसके नाम को तो जरूर छापना चाहिये।

पहले सवाल के सम्बन्ध में मैं यह कहना चाहता हूँ कि बलात्कार एक सामाजिक बुराई है, जिसको केवल कानून से नहीं रोका जा सकता है। जहाँ तक सती प्रथा की बात है, मैं समझता हूँ

कि आपको भी इसकी जानकारी होगी कि सैकड़ों स्त्रियाँ सती हो गयी हैं। उत्तर प्रदेश के बांदा जिले और दिल्ली में भी आप देख सकते हैं। वहाँ पर, अभी तीन महीने पहले सती प्रथा के लिए तमाम राजनीतिक दलों ने एक लड़की को सती होने की इजाजत दिये जाने की बकासत की है। इसलिए मैं कहना चाहता हूँ कि केवल कानून से इसको नहीं रोका जा सकता है।

MR. CHAIRMAN: I request the witness to be brief and not to be emotional. You are before the Committee and you are expected to be brief. I hope you have followed the spirit of what I say.

SHRI V. KISHORE CHANDRA S. DEO: Mr. Roy, you are journalist and from whatever you have said regarding this Bill I can appreciate that you stressed the social consciousness. We agree that social consciousness has to increase to control not only rape but all types of crime in the society. This is the general problem. At the same time we must also place certain things on the Statute Book. Therefore, the necessity to control crimes arises. That is why we have a government and we have Bills that have been passed to govern certain acts in society and later on it is up to the public to develop that consciousness. In the beginning I was surprised when you referred to nudity in pictures or in the films. You will appreciate that in many tribal areas in Orissa, in Andhra and Madhya Pradesh tribals still do not wear clothes, they cohabit in nude only. But there are other crimes which they commit. In western countries nudity is not a taboo. It all depends upon how vulgarity is taken. What I am trying to say is, whether it is in urban areas or in Arunachal Pradesh or in any other place, this is a suggestion you have made. As far as this publicity business is concerned, that is governed,

by a different Act and it concerns the Information and Broadcasting Ministry and they also have certain rules to prevent obscenity etc. That does not come within the scope of this Bill.

The next part of the question is regarding publication of the name. The Bill says that only the name of the victim should not be published because of certain taboos in our society. What are your suggestions with respect to this Bill to improve upon controlling this particular crime? Do you recommend any amendments or give suggestions to any of these clauses which are there in this Bill?

श्री आर. बी. राव : मैं पहले ही कह चुका हूँ कि सैक्शन 228(ए) में जिस लड़की के साथ बलात्कार हुआ है, उसका नाम नहीं छापना चाहिए, बल्कि जो रेप करता है, उसका नाम तो जरूर छापना चाहिए। यही मेरा सुझाव है।

MR. CHAIRMAN: Apart from that, have you any concrete suggestions?

श्री आर. बी. राव : मैंने जो कहा है, उसके प्रतिरक्त मैं कुछ नहीं कहना चाहता हूँ।

श्रीमती विद्यावती चतुर्वेदी : आपने बहुत अच्छे सुझाव दिये। यह बात नहीं है कि यह एक सोशियल काज है और हमें समाज को जागृत करना पड़ेगा इसके साथ साथ आपने यह भी कहा कि कुछ लोग भाड़े की लड़कियों को लाकर के किसी को फंशने के लिए या कुछ उनके साथ गलत काम करने के लिए उनका इस्तेमाल कर सकते हैं। मैं आपसे यह जानना चाहती हूँ कि क्या यह नहीं हो सकता कि कुछ लोग

इस तरह से किसी भी अश्लील चीज को लाकर उसका फायदा उठाकर उस केस को कमजोर कर सकेंगे—क्या आप इस बात को महसूस करते हैं ?

श्री आर. बी. राव : मेरा सुझाव केवल यह था कि केवल लड़की के कह देने मात्र से ही न मान लिया जाये, कि बल्कि उसको भी साबित करना पड़ेगा कि हाँ, वह वही व्यक्ति है। इससे कानून मजबूत होता है, डीला नहीं होता है।

श्रीमती विद्यावती चतुर्वेदी : आपने एक बात यह भी कही कि समाज में बलात्कार करने वाले व्यक्ति को अपमानित किया जाये। रेप करने वाले व्यक्ति को समाज में डंडे से मारा जाये या उसका काला मुँह करके गधे पर बँटा कर चुमाया जाये। क्या इस तरह की चीज कानून में लाई जा सकती है या लानी चाहिये ?

श्री आर. बी. राव : जब प्राइमी इस दुर्गाई पर उतर आया है, तो इस का मतलब यह है कि वह अपनी प्राइमरीयल खो रहा है और उसकी सजा उसी लेवल पर होनी चाहिये। इसलिये मैं ऐसा सुझाव दे रहा हूँ।

श्रीमती विद्यावती चतुर्वेदी : मैं आपसे यह पूछना चाहती हूँ जैसा कि इस प्रस्तावित कानून में लिखा है कि 16 साल से कम उम्र की पत्नी के साथ यदि पति सम्भोग करता है, तो उसको रेप मानना चाहिये, क्या आप इस बात को उचित समझते हैं ?

श्री आर. बी. राव : यह तो इन्होंने मानित नहीं किया जाना चाहिए।

श्रीमती विद्यावती चतुर्वेदी : अभी आपसे पहले जो बिलनेस प्राये थे, उन्होंने बताया कि यदि कोई नाबालिग शादी करते हैं तो हूबहू उसको पाल-पोस कर बड़ा करता है और अपनी पत्नी बनाता है। कलकत्ता में एक केस आया था कि पत्नी, जिसकी कि उम्र 12-13-14 साल की है, ने अपने पति के साथ सम्भोग किया, तो उसकी मृत्यु हो गई। मानवता के खिलाफ इस चीज को नहीं समझना, प्रामाणिक व्यवहार करना, नाबालिग पत्नी के साथ पति भी अपना अधिकार समझे—क्या यह उचित है ?

श्री आर० बी० राय : मैं इस सम्बन्ध में यह कहना चाहता हूँ कि हम लोगों के यहां प्रथा है कि ग्यारह बरस से पहले लड़की का कन्यादान कर दिया जाता है। अभी भी हमारे यहां यह प्रथा चलती है। ग्यारह बरस की उम्र किशोरावस्था की है और उसके बाद रजस्वला शुरू होता है। मैं बहुत इसके बारे में नहीं जानता हूँ, जब लड़की की रजस्वला अवस्था शुरू होता है, तो उसके साथ सम्भोग किया जा सकता है। पहले जो 18-19 साल की उम्र थी, वह घट कर नीचे चली आई है, जैसा कि गावों में दिखाई दे रहा है, इसलिए यह उचित नहीं है, इस को इसमें शामिल किया जाय।

श्री सिलोक चन्द्र : राय साहब, सैक्सन 111(ए) के तहत आप का ऐसा ब्याल है कि लोग भाड़े की लड़कियों को ला कर गलत काम करेंगे। मैं आप से यह पूछना चाहता हूँ कि 111(ए) के रहते हुए, जैसा कि सैक्सन 378 में कुछ लोगों, जैसे पुलिस के प्राफिसर, अस्पताल में काम करने वाले कर्मचारों डाक्टर आदि, के लिए लिखा

गया है। लड़की भंगरे कोर्ट में एडिजेंस देती है कि इस आदमी ने मेरे साथ बलात्कार किया, तो उस लड़की की बात को मान लिया जायगा, जबकि यह प्रमाणित हो जाए कि इन्टरकोर्स हुआ है। क्या इस बात को इस क्लास में इस संदर्भ में रखा जाए ?

श्री आर० बी० राय : यह केवल एक ब्लास किस्म के लोगों के लिए है। पुलिस आफिसर या डाक्टर है, तो उन को रखा जाए। यदि यह आम लोगों के लिए है, तो मैं उससे असहमत हूँ।

श्री रामचन्द्र भारद्वाज : आप का भाषण बड़े ध्यान से सुनने के बाद, अब मुझे अवसर मिला है, कि मैं आपसे चन्द सवाल पूछ सकूँ। क्योंकि आप पत्रकार हैं, इस लिए आप का भाषण ठीक ही था। आपको यहां पर इस लिए बुलाया गया है कि आप इस बिल के संबंध में अपने विचार कमेटी के समक्ष प्रस्तुत करें। जो बलात्कारी की प्रथा है, उस प्रथा के संबंध में आपके क्या विचार हैं ? आपके भाषण से लाभान्वित हुए, लेकिन कुछ बातें जो आपने गर्मी में कहीं, वे स्पष्ट नहीं हो सकीं। आपने दस बरस की चर्चा करते हुए कहा कि बलात्कार के प्रकार होने चाहिए। मैं आप से पूछना चाहता हूँ कि बलात्कार के प्रकार से आप क्या मतलब है ?

श्री आर० बी० राय : मैं अपनी बात स्पष्ट करना चाहता हूँ। मेरा मतलब यह है कि कई बार बलात्कार को कोशिश होता है, लेकिन बलात्कार होता नहीं है या लड़की के अपमान को कोशिश होती है, उस वक़्त वह पकड़ लिया जाता है। इसको कुछ कर्टेगरीज बन सकती है। मान लीजिए, कि कोशिश हो रही है, लड़की को बदनाम करने को, अपमानित करने की तो वहीं भी सजा मिलनी चाहिए, लेकिन

उसकी सजा थोड़ी कम होगी, उस ब्राह्मणी से जिसने रेप किया है—यही मेरा सुझाव है।

श्री रामचन्द्र पारुलकर : आपने बलात्कार के प्रकार की बात कही, मैं आपसे पूछना चाहता हूँ कि बलात्कार के कितने प्रकार आप मानते हैं ?

श्री आर० बी० राय : मैं आपको उदाहरण देता हूँ, जिससे आप को बेरो बात स्पष्ट हो जाएगी। उत्तर प्रदेश के एक मंत्री हैं, जिनका लड़का अपने गाँव की दो लड़कियों को उठा कर ले जाता है और गाँव के लोग इकट्ठे हो जाते हैं। यह बलात्कार करने की काजिमा हुई।

श्री रामचन्द्र पारुलकर : मैं आपसे बलात्कार के प्रकार की बात पूछ रहा था। आपने इस बिल में सामाजिक अपमान के प्रावधान करने की बात कही। क्या कानून में कोई सामाजिक अपमान का प्रावधान हो सकता है ?

श्री आर० बी० राय : जो, हो सकता है।

SHRI BAPUSAHEB PARULEKAR: You have said that there should be public censure of the person who indulges in such an activity. I would like to know whether you would agree with me that a person who is convicted of rape, in order to have public censure, should be disfranchised for the rest of his life?

श्री आर० बी० राय : सामाजिक अपमान का भी एक तरीका हो सकता है। मैं आप से सहमत हूँ।

श्री हुसैन शेख नारामण भाख्य : आपने एक बहुत ही अच्छे विषय को उठा दिया है कि इस बिल के माध्यम से बलात्कारी की प्रतिष्ठा को समाज में बिरा दिया जाय। क्या इसमें आप यह भी जोड़ना चाहते

हैं, जैसा कि पारुलकर जी ने भी कहा, बल्कि उतना ही नहीं, वह किसी भी सामाजिक संस्थान का प्रतिनिधि नहीं बन सके, जिन संस्थाओं से उस व्यक्ति का संबंध है और जिस ब्राह्मणी को एक बार बलात्कार के अपराध में अपराधी घोषित कर दिया जाए, उसका मतदान का अधिकार भी समाप्त कर दिया जाए और इसके साथ-साथ उस व्यक्ति को जिन संस्थाओं या बैंक से लोन मिलता है, वे सारे सुविधायें जो ग्राम नागरिक को मिलती हैं उन गरीब सुविधाओं के उस व्यक्ति को वंचित कर दिया जाए—क्या यह भी आपकी वंशा है ?

श्री आर० बी० राय : आपके सुझावों में एक बात जोड़ना चाहता हूँ कि जो लोग बलात्कारी को संरक्षण देने की कोशिश करते हैं, वही वे संसद सदस्य हों या किसी राजनीतिक दल के नेता हों या किसी राज्य सरकार के मंत्री हों या किसी सामाजिक संस्थाओं के पदाधिकारी हों—इन सारे लोगों का भी इस कानून के तहत लाया जाना चाहिए।

SHRI B. IBRAHIM: You have said movies are responsible for increase of this kind of offence in the country. In this connection would you like to suggest censorship should be made more strict than at present.

श्री आर० बी० राय : मैं आप से सहमत हूँ।

MR. CHAIRMAN: Thank you very much.

SHRI KHARGORIA: I agree in general with the views of Mr. Roy but I do not agree with him on the point of life imprisonment.

श्री आर० बी० राय : मैं आपको अन्यायवाद देता हूँ कि आपने हमें कुछ इस बारे में कहने के लिए भीका दिया।

(The witnesses then withdrew)

IV—Shri Tomo Riba, MLA
Leader of opposition Arunachal
Assembly.

(The witness was called in and he took his seat)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

I hope you have gone through the Draft Bill. What are your suggestions?

SHRI TOMO RIBA: I wanted to give my evidence after going through this Draft Bill which is going to be amended.

Actually we have certain problems in Arunachal Pradesh in implementing this law. In Arunachal Pradesh the provisions of Cr. P.C. and I.P.C. are only on paper. But we do not really follow. So, under such circumstances, what is going to happen in Arunachal Pradesh? I am posing this question before the hon. Members of the Committee.

MR. CHAIRMAN: You are very much requested to do so.

SHRI TOMO RIBA: We are not following I.P.C. or Cr. P.C. All the cases including rape or even heinous offences are decided by a Kejang, that is, a local body, the jury or whoever decides the cases in that area. It is not a one-man body like a mag-

istrate or anybody. It is a combination of a few people. So under such circumstances, even if this law is amended, what will happen to Arunachal Pradesh? I wanted to know this from you because Arunachal Pradesh is part and parcel of Indian Union. Therefore, while amending or introducing such a Bill, will any care be taken to decide whether to codify tribal laws which are existing in this society since time immemorial and according to which all the cases are settled? As I have already told you, because we cannot put into practice the Cr. P.C. and I.P.C., there must be some provision to codify the customary laws prevailing here and our customary law is not a written one. It is only oral. The new-comers here do not know this law. An I.A.S. officer who joins service and who is posted in Arunachal Pradesh today may not know the customary law. But since he is posted to Arunachal Pradesh he has to do something. Therefore, I would like to know whether the Committee would kindly take into consideration side by side the question that the tribal laws should be codified so that all the offences including rape can be settled, as we have been settling them by oral decision. That is what I wanted to raise before this Committee.

MR. CHAIRMAN: From what you have said one thing is very clear. The provisions of Cr. P.C. and I.P.C. are practically not applied in your society. The law is there, but you have not applied it and you have not derived any benefit out of it. Now also, for the benefit of human beings we are enlarging the scope of this Act. It is for you to derive the benefit. If you do not want to derive, we are not compelling you. When you feel that your people who are following your customary law are not able to solve the problem, this law will be in force. This is what I am going to say to you. But what do you want to say about this before the Committee? What are the suggestions you are going to give to this Committee?

SHRI TOMORIBA: I have already posed my problems. You are examining as to how to amend the law regarding rape cases. My point is that we are not going to practise this even if it is amended, since in Arunachal Pradesh we are settling the cases under the customary law. This law is all right, but since we are safeguarded by the 1945 Regulation Act, which says that all the cases including those of rape should be settled not by the panchayat but by Kebang system.

SHRI V. KISHORE CHANDRA S. DEO: As you have said, this law is meant for the entire country as a whole. You have said that you have the Kebang system to settle all crimes, that is, according to your customary laws. So, do you think that it will be better for Arunachal Pradesh if measures are taken to implement these laws also or how do you think if certain exemptions are given in this respect for Arunachal Pradesh where you are solving these crimes in your own customary way?

SHRI TOMORIBA: We have got the child marriage system and all such things. Even today sometimes the girls are married by force also. In some cases in Arunachal Pradesh by timing they are having intercourse.

SHRI V. KISHORE CHANDRA S. DEO: Do you think that the customary laws that are existing in Arunachal Pradesh are enough to control crimes?

SHRI TOMORIBA: It is enough to control these crimes. But they are not written. For the new-comer it is difficult to follow them. Therefore, will the Committee consider that since the existing customary laws are not written there should be some arrangements to put them in writing?

MR. CHAIRMAN: You refer to a Regulation which you are following. Which is that Regulation?

SHRI TOMORIBA: The 1945 Regulation.

MR. CHAIRMAN: Do you have a copy of it?

SHRI TOMORIBA: No.

SHRI AMARPROSAD CHAKRABORTY: What is the gist of it?

SHRI TOMORIBA: Empowering the village authority to settle disputes and cases including those of rape.

SHRI R. S. SPARROW: You have said about tribal customs prevalent in this area. Incidentally, you will agree with me that in Arunachal Pradesh there are so many tribes and I presume that customs also vary from tribe to tribe. In that context, therefore as the Chairman has pointed out, they are in force as they stand to their benefit. But when it comes to law, the time may come when you may have to fall back on that. In that context this Bill is being revised and considered. Am I correct in understanding that there are different customs among various tribes?

SHRI TOMORIBA: Yes, you are very correct.

SHRI R. S. SPARROW: Therefore, if at all any provision is brought before you, then it will have to be applied differently from tribe to tribe. That is the point to be considered. I want a clarification on this.

SHRI TOMORIBA: We do have customs. They differ from area to area. But by and large in every tribe we have got some sort of customs and they are akin to each other. So far as rape is concerned, it is almost dealt with the same way. So, what I mean to say is that even if we introduce this Bill in the present context in Arunachal Pradesh it may not be advisable to directly put it into practice in Arunachal Pradesh. Therefore, I would like to know whether

the Committee would kindly consider that considering the special circumstances and the situation, there should be some provision which would be adjusting to the local customs, as I have said, by codifying the local law through which we can settle all the cases.

MR. CHAIRMAN: The sum and substance of your statement is that you are requesting this Committee to give exemption for Arunachal Pradesh from the provisions of this Bill.

SHRI TOMORIBA: Yes.. At this stage, it may not be possible for the people to practise it.

MR. CHAIRMAN: What is your concrete suggestion?

SHRI V. KISHORE CHANDRA S. DEO: There are several tribes in various States. It is not practicable to codify the customs and conventions that we have in various parts of the country. Customs are customs. But they are bound by convention and practice, not because they have been codified by law. What is your reaction to my suggestion that tribal customs in various States pertaining to various tribes should be exempted from the purview of this Bill?

SHRI TOMORIBA: If it cannot be done for all States, at least for Arunachal, exemption should be given from this Bill.

MR. CHAIRMAN: In Arunachal Pradesh, I am told that there are nine districts. Each district has got its own customary law which they are following independently. They vary from one district to another. So, if you say that exemption should be given to you, the other districts may say that it should be made applicable to them. That will be a problem again. Therefore, I ask you in the first instance what is your suggestion on enforcing the law effectively in this part of the country?

SHRI TOMO RIBA: I am not requesting the Committee to give concession to our State. I have gone through all these Clauses. It may not be practicable to enforce this law in Arunachal Pradesh considering the prevailing situation and customs.

MR. CHAIRMAN: You are also a Leader of the Opposition. You have a dominant place in the political field. People like you should take up the Act and propagate it to the people and make them conscious of taking the benefit of its provisions.

SHRI TOMORIBA: It will take time.

SHRI QAZI SALEEM: Certain customary laws are prevailing here which control this crime. What are they?

SHRI TOMORIBA: I have already told you that we have various customary laws drawn from 1945 Regulation Act. There are some village leaders and they settle the disputes. Even rape and murder cases are decided by them. Therefore, I say that this may not be practicable for the time being in Arunachal Pradesh.

SHRIMATI GEETA MUKHERJEE: As Leader of the Opposition, you are well aware of the provisions of 1945 Regulations and also the provisions of the Indian Penal Code and Criminal Procedure Code which are quite stringent in respect of these rape crimes.

SHRI TOMORIBA: I am not saying anything on Cr.P.C. or I.P.C. or about Regulation Act. I am not disputing such laws as such. I have to say that under 1945 Regulation Act, the tribal authorities are empowered to settle their disputes and we are doing it. They settle their disputes.

SHRIMATI GEETA MUKHERJEE: Government of India wants to give protection to women. For that purpose, it has introduced this particular piece of legislation in Parliament. We want to make it more effective. That

is why I am putting it to you whether the provisions of 1945 Regulations are better or the provisions in the Cr.P.C. the I.P.C. and in this particular Bill, are more effective.

SHRI TOMORIBA: Cr P. C. and I.P.C. are more effective. But for Arunachal Pradesh, the Government should also consider the local situation. We have been giving some safeguard.

SHRI BAPUSAHEB PARULEKAR: Arunachal Pradesh is part and parcel of the country. The laws are equally applicable to this part of the country. I believe that it is not your contention that the offences relating to counter-feiting of coins and murder are tried and decided by your community. I think that the community decides the offences relating to marriage. That is the custom. But you do not decide the murder case. That is decided by the courts. According to legal experts, heinous offences should be decided by the court. Then, is it your contention that you want a blanket exemption just as it is given to Jammu & Kashmir? Are the provisions of IPC not to be made applicable to Arunachal Pradesh? Is it your contention?

SHRI TOMORIBA: That is not my contention. The Government of India has already made legal provisions to Arunachal Pradesh under which we are practising.

SHRI BAPUSAHEB PARULEKAR: Will it do if exemption from the provisions of IPC is given relating to offences of marriage? Will that solve your purpose because in the IPC, there are different Chapters and Chapter 20 deals with offences relating to marriage.

SHRI TOMORIBA: Arunachal Pradesh is an infant and under-developed area. Keeping this in view, the Government of India has made special provisions for it and they are being followed. If the pre-

sent Bill regarding rape is imposed it may be difficult to implement it.

SHRI BAPUSAHEB PARULEKAR: Regulation 1945 does not say that the provisions of IPC shall not be applicable to Arunachal Pradesh.

SHRI TOMORIBA: Cr. P. C. and IPC provisions should be followed in spirit. IPC and Cr. P.C. are applicable to Arunachal Pradesh.

SHRI BAPUSAHEB PARULEKAR: Is it your contention that they should not be implemented because of the special circumstances? These special circumstances are relating to matrimonial offences. Therefore, will it suffice if tribal people of Arunachal Pradesh are exempted from offences relating to marriage?

SHRI TOMORIBA: Yes' Sir.

धीनकी निर्वन्ता कुमारी लक्ष्मणन :-
 अरुणाचल प्रदेश भी हिन्दुस्तान का एक पार्ट है, देश का एक हिस्सा है। देश के और भी बहुत से हिस्से हैं, जहाँ पर अपनी-अपनी अलग-अलग प्रथाएं प्रचलित हैं। आप केवल इसको अरुणाचल प्रदेश के ही बारे में क्यों देखना चाहते हैं। समय के परिवर्तन के साथ-साथ इन नियमों में भी परिवर्तन होता है जैसा कि आप ने कहा कि एडिशन में हर तरह के काइम के लिए ट्राइबल सोसाइटी में पनिशमेंट बिद्यमान है। पुराने समय में यह भी था कि किसी आदमी की हत्या करना कोई बड़ी बात नहीं थी। कहने का मतलब यह है कि उन नियमों में भी समय के साथ परिवर्तन आया, जो उसके अनुसार ही जब रेप जैसी गन्दी प्रथा है और उसके लिए कानून था रहा है, तो उसको क्यों नहीं पसन्द करते हैं? यह आपकी सोसाइटी में हस्तक्षेप नहीं है, बल्कि आपके जो प्रचलित नियम हैं, उनमें एक एडिशन है, तो क्या आप इस एडिशन को अलग रखना चाहते हैं?

श्री टोमोरिबा : मैंने यह नहीं कहा है कि अरुणाचल प्रदेश हिन्दुस्तान से अलग है। भारत सरकार ने जानबूझ कर के अरुणाचल प्रदेश को अलग-अलग कानूनों से, अलग-अलग नियमों से अलग रखा है।

श्रीमती निर्मला कुमारी शक्तावत : ट्राइबल सोसाइटी केवल अरुणाचल प्रदेश में ही नहीं है। अन्य स्थानों पर, जैसे नागालैंड और अंडमान निकोबार, भी हैं। क्या वहाँ के लोग भी अलग-अलग बात सोचें ?

श्री टोमोरिबा : मेरे कहने का मतलब यह नहीं है। मैं यह कहना चाहता हूँ अपने कानून में जो कुछ है, उसके मुताबिक सैटल करना चाहिए। हम लोग इसको कर रहे हैं। हम लोग उसको सैटल कर रहे हैं। नियम के मुताबिक कर रहे हैं।

श्रीमती निर्मला कुमारी शक्तावत : आपकी सोसाइटी में मंडर के लिए एक अलग सजा सुकरर हैं और आप उसी से उसको सैटलफाई कर लेने हैं, तो कानून बनाने से आपकी क्या नुकसान हुआ ?

श्री टोमोरिबा : मैं यह कहना चाहता हूँ कि ट्राइबल के कानून से जस्टिस मिलता है, लेकिन कभी-कभी कांर्ट में उसको ऐसा जस्टिस नहीं मिलता है।

श्रीमती निर्मला कुमारी शक्तावत : कानून बनाने में कोई नुकसान नहीं है, उसका मूज करना चाहें तो कर सकते हैं।

श्री टोमोरिबा : मैंने यह नहीं कहा है कि कानून नहीं बनना चाहिए। सारा देश एक है, सारे देश के लोगों के लिए कानून बनना चाहिए।

SHRI AMARPROSAD CHAKRABORTY: You are Leader of the Opposition and you have gone through the provisions of the Bill. We appreciate your intention but the constitutional point has to be decided separately. Please tell the Committee

what are provisions of the Bill which are contradictory to the provisions of the Regulation which is said to be in force according to you.

SHRI TOMORIBA: I have not said that it is contradicting the Regulation. Rape case is not defined but we know how to deal with it and how much fine one has to pay.

MR. CHAIRMAN: He is not opposing the provisions of this Amendment Bill.

SHRI AMAR PROSAD CHAKRABORTY: Probably I did not make myself clear to him.

MR. CHAIRMAN: He is not aware of these regulations which are contained in the book.

SHRI TOMORIBA: I say, it should be qualified. The authorities are empowered to settle. It is up to them to settle according to those provisions.

श्री हुकम देव नारायण धारव : मैं आपसे एक छोटा प्रश्न पूछना चाहता हूँ। मुझे ऐसा लगा कि आपकी चिन्ता इस बात से है कि वर्तमान कानून में जो प्रावधान किए जा रहे हैं और यहां जो रीति-रिवाज प्रचलित हैं, जिनके अनुसार आप काम चलाते हैं, तो उन रीति-रिवाजों के ऊपर अगर कोई इन कानून के जरिये आघात पहुंचे तो उससे यहां पर बसने वालों को तकलीफ हो सकती है कि हमारे ऊपर, हमारे रीति-रिवाजों के ऊपर एक बंधन लागू किया जा रहा है—क्या आपकी चिन्ता इस बात से है ?

श्री टोमोरिबा : मेरे कहने का मतलब यह है, मैं पहले भी कह चुका हूँ, कि यह जो कानून बनाये जा रहे हैं, यह खराब नहीं है, बल्कि सारे देश के लिए अच्छा है। अरुणाचल प्रदेश में एक नियम है, एक प्रचलित कानून है, यदि उस नियम के ऊपर यह कानून लागू किया जाएगा तो तकलीफ मिल सकती है।

श्रीमती विद्यावती चतुर्वेदी : आपने कहा कि कानून अच्छा नहीं होगा तो बुरा भी नहीं होगा। आपके यहां कुछ ट्रेडिशनस हैं, कुछ नियम हैं, जिनको हम महसूस करते हैं। मैं आपसे यह पूछना चाहती हूँ कि क्या आपको कोई भी ऐसी चीज इस कानून में नज़र नहीं आई, जिसको आप अच्छा कह सकें ?

श्री टोमोरिबा : यह मैं पहले ही कह चुका हूँ कि जो कानून बनने जा रहा है वह बहुत अच्छा है, देश के लिए अच्छा है। मेरी यह रिक्वेस्ट है कि जो कानून बनने जा रहा है यदि उसमें प्रवेश प्रदेश के कानून का रिफ़रेंस दिया जाए तो अच्छा होगा। इस बारे में कमेटी विचार कर सकती है।

श्री बिलोक चन्द : मैं आप से एक क्लैरिफिकेशन चाहता हूँ। आपने कहा कि कस्टमरी लॉ से आदमी सैटिसफाई हो जाता है, लेकिन अगर कोई व्यक्ति उससे सैटिसफाई नहीं होता है और वह कोर्ट में जाए, तो क्या आपको कोई ऐतराज है ?

श्री टोमोरिबा : कोई ऐतराज नहीं है।

SHRIMATI GEETA MUKHERJEE: Please tell us whether in your experience there are some cases of custodial rape in the recent past. Have there been any case of custodial rape?

SHRI TOMO RIBA: We have no such cases.

SHRI V. KISHORE CHANDRA S. DEO: You said, you have your own way of settling the disputes under the customary laws. My point is, these laws are made to guide the society on various aspects when society cannot control the crimes. We highly appreciate your view that in Arunachal Pradesh you have your own way of dealing with crimes. Only those cases which are reported

or which are filed in the court will be dealt with according to the law. I think you should not have any objection to this Bill at all. It is only where your customary laws will not be able to solve the problems, this Act can come into force. This does not come in the way of dealing with the cases according to customary laws.

SHRI TOMO RIBA: I have no objection if this does not come in the way of customary laws.

SHRI V. KISHORE CHANDRA S. DEO: Should this Bill not in any way curtail the customary ways of dealing with those problems?

SHRI TOMO RIBA: No, it should not.

SHRI R. K. MHALGI: We were told that in the last one year there was one case of rape in Arunachal Pradesh and this was dealt with customary law. What was the punishment given?

SHRI TOMO RIBA: I am not able to say anything about this. We have got child marriage. Sometimes a girl is married even when she has not attained puberty.

SHRI R. K. MHALGI: My point is that a particular case of rape was decided with by customary law. What was the punishment given in that case.

SHRI TOMO RIBA: I do not know about that particular case.

MR. CHAIRMAN: Thank you very much.

(The witness then withdrew)

V. Government of Arunachal Pradesh, Itanagar.

Spokesman:

1. Shri M. K. Mathur, Secretary, Arunachal Assembly.
2. Shri R. K. Patir, Chief Secretary.
3. SHRI J. M. Srivastav, Law Secretary.

4. Shri C. K. Raina, Extra Assistant Commissioner.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Direction by the Speaker which reads, as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

You kindly introduce yourselves to the Committee.

Is the Chief Secretary deposing on behalf of the Government?

SHRI R. K. PATIR: Yes, Sir.

MR. CHAIRMAN: Who is the spokesman on behalf of the Government?

SHRI R. K. PATIR: Everybody has something to say.

MR. CHAIRMAN: You give your views one by one.

SHRI R. K. PATIR: I fully agree with the contents of the Bill.

MR. CHAIRMAN: If your Government has sent its opinion through a Memorandum previously, you will please bear in mind the stand taken by your Government.

SHRI R. K. PATIR: I have only to mention that where the customary law is prevalent, it should continue. This point has been discussed a little while ago when a non-official individual came and gave his evidence. There he mentioned it. I too would like to mention here that the customary laws will continue to prevail in the areas particularly in the villages where village councils administer justice. It is at present in practice. I think that it is generally applicable also in other parts of the country in rural areas. Similarly, in this part of the country also, the system of administering justice at the village level by the village councils prevails and that may continue. But wherever report of rape is received from any area in a police station, such cases will be naturally considered and tried or investigated according to the Act which is proposed to be enacted.

SHRI J. M. SRIVASTAV: I substantially agree with the proposals of the Bill. I have a few suggestions for your kind consideration. One relates to Explanation 2 to Section 375. (Page 2 of the draft Bill). The IPC which is proposed to be amended has been in force in this territory since 1916. Since the law is in force here and it is proposed to be amended, it is suggested for kind consideration that this Explanation may also take into cognisance the relationship under customary laws among the tribal population of this territory.

MR. CHAIRMAN: Kindly enlighten what is the difference between the two sets of laws.

SHRI J. M. SRIVASTAV: There is no decree as such. When we say decree or judicial separation, we have in our mind some formal order of a

court. Normally, we will understand it that way. Under tribal customary laws, we would not come across any formal declaration like decree of court.

MR. CHAIRMAN: Do you want that there should be something in writing?

SHRI J. M. SRIVASTAVA: Yes. The Bill should also cover the relationship in customary laws.

MR. CHAIRMAN: According to you, what is the relationship after divorce as per the customary laws?

SHRI J. M. SRIVASTAVA: In a separation, marriage is not dissolved. In some tribes, there is a practice whereby after some relationship between husband and wife, which is not exactly dissolution of marriage, still subsists.

MR. CHAIRMAN: How long?

SHRI J. M. SRIVASTAVA: That depends on the orders passed as per customary law.

MR. CHAIRMAN: On getting a decree of judicial separation, marriage is dissolved according to existing law. But, according to customary law, is there objection or not, to have sexual intercourse after divorce?

SHRI J. M. SRIVASTAVA: I am just saying that that covers only a case where there is a decree of judicial separation. But there are people who are not governed by marriage laws in which there is a decree of judicial separation. But there may be a state of relationship under their customary laws which are to be taken into consideration.

SHRI R. K. MHALGI: What is the customary law?

SHRI J. M. SRIVASTAVA: According to customary law, even if a husband and wife live separately, still there will be some relationship bet-

ween them and that should be included in the Bill. I will give the exact words to be included in the Bill later.

MR. CHAIRMAN: The customary laws of separation should be taken into account.

SHRI J. M. SRIVASTAVA: That is my submission.

SHRI V. KISHORE CHANDRA S. DEO: You said that tribals get separation under customs. We want to know whether under such circumstances, under their customary law whether sexual intercourse is prohibited or not.

SHRI J. M. SRIVASTAVA: Of course. My second point is that in Clause A Sub-section 2 of proposed Section 376 there is provision:

"(2) whoever,—

(a) being a police officer, commits rape in the local area to which he is appointed...."

My submission here is why confine the scope only to the local area. There should be enlargement of the scope. Supposing he does it in an adjacent area then he will escape. You kindly take into consideration that aspect also.

Thirdly, in Clause (c) of Sub-Section 2 of the same Section it has been provided:

"Whoever, being the superintendent or manager of a jail....takes undue advantage of his official position and seduces any female inmate of such jail, remand home, place or institution".

We provide only for commission of an actual offence of a rape by manager. There are cases reported where such persons in authority in charge of such institutions have utilised helpless inmates of such institutions by making them available to others for such an offence. That should also be included. Supposing he assists or encourages somebody then why should he be not liable for that also.

MR. CHAIRMAN: In IPC there is provision for abetment.

SHRI J. M. SRIVASTAVA: He should not only be called an abettor but it is more than that because he has misused his authority.

Now in Section 376A you have provided for inter-course by public servant with woman in his custody. What about many public servants abusing their authority? They commit similar acts which are not rape on women who are not in their custody but who are working under them. Why should we exclude it?

Further, we all talk of imposition of fine but why should we not make a specific provision that there will be imposition of substantial fine and a stipulation that that amount should be paid to the victim. It should be provided that fine shall be imposed and a substantial part of the fine shall be paid to the lady.

Sir, prior to our evidence there was a submission and I want to clarify that. The 1945 law is only a law of procedure and it provides that principles of Cr. PC and Civil Procedure Code shall be utilised while administering justice in these areas. Another clarification I would like to make is that Arunachal Pradesh today has not only an indigenous population but a large number of people from outside. They also commit these offences. They should also be taken care of.

SHRI M. K. MATHUR: Hon'ble Chairman and Members of the Committee while I was going through the Clauses of the Bill I just got stuck up on Clause 3 (Page 2) wherein it is proposed to include a new Section, viz., Section 375. I would like to draw your attention to part 4 of this Clause. It reads:

"With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another

man to whom she is or believes herself to be lawfully married."

The word 'another man' pre-supposes that the woman here referred to has more than one husband. I do not know whether under the law a woman can have more than one husband. In some parts of the country polyandry may be in practice, but lawfully the girl will not be the wife of several husbands. But here the words used are that 'he is another man to whom she believes herself to be married'. It pre-supposes that she is having more than one husband. In the whole of the Bill there is no provision which relates to a woman having only one husband. So in order to make this clause applicable to a woman having one husband or more than one husband, I think the words 'another man' may be substituted by the words 'the man', which will cover both the cases. This is my only suggestion.

SHRI C. K. RAINA: Section 228A(2) says:—

"Where, by any enactment for the time being in force, the printing or publication of—

(a) the name, or any matter which may make known the identity, of any person against whom an offence specified in such enactment is alleged or found to have been committed."

On the one hand they are putting a check on the press by saying that they will not be allowed to publish the proceedings of the trial or the inquiry which is being done, and on the other hand the Explanation on page 2 says:—

"The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section."

So we have a little feeling that what is being given with one hand is being taken away by another hand because the judgment, from the High Courts or the Supreme Court will be

published and so the purpose of the Bill is sadly defeated. That is my submission.

SHRI R. K. PATIL: Perhaps it will be enough if we do not mention the name of the victim.

MR. CHAIRMAN: I am asking Mr. Raina: Should this Explanation be deleted according to you?

SHRI C. K. RAINA: It may be suitably amended. That is my submission.

MR. CHAIRMAN: Even in the case of a court judgment?

SHRI C. K. RAINA: Even thereafter.

There is one more thing on which I would like to say something. Of course, enough has been said about it. Rape as such, which the Committee is considering here, is almost non-existent in Arunachal Pradesh and particularly in the tribal society I am referring to. There have been instances where force has been used over the girl, but that is only in the process of marriage and nothing beyond that. The way we use the word 'rape' in the Bill is absolutely unknown here, the society is absolutely free and it is mostly on mutual consent and they certainly have a good time if both are willing.

श्री हुकूम देव नारायण बाबू : जैसा कि बिल में प्रावधान है, आपने भी देखा होगा कि 16 साल से कम अवस्था की अपनी पत्नी के साथ संभोग करना भी रेप माना गया है। कहीं-कहीं पर 18 साल का भी सुझाव दिया गया है। मैं आप से एक स्पष्ट बात जानना चाहता हूँ कि 16 साल से कम उम्र की लड़की कंसेंट देती है, और कंसेंट से संसुभल इंटरकोर्स होता है और उसके बाद कोई तीसरा आदमी पुलिस में खबर देता है कि यह काम हुआ है और पुलिस को पता है कि जिसमें कॉन्सिजेंट ले ले। मामला अदालत में आए और जाने के बाद पुलिस कहती है

कि कॉन्सिजेंटल आफेंस है। लड़की कहती है कि हमने कंसेंट दिया है, कानून कहा है कि "विद और विदाउट कंसेंट"। कानून की नजर में अपराध माना जाएगा। तो इस मामले में कानून क्या करेगा, क्या इस मामले में कानून की नजर में दोनों अपराधी हैं या एक ही अपराधी माना जाएगा ?

SHRI J. M. SRIVASTAVA: I did not make any submission in this regard. But since the hon. Member has raised this question, I would merely submit that the law provides that if a girl is below the age of 16, whether or not she gives her consent for sexual intercourse, it would be a rape. It has been decided that a girl below the age of 16 is not competent to give consent for a sexual intercourse. Then, I think there should not be any objection to the conclusion that the man who has such sexual intercourse, whether it is with consent or without consent, commits the offence of rape.

SHRI B. IBRAHIM: (Kindly refer to Section 375, Clauses 3, 5 and 6 (Thirdly, Fifthly and Sixthly) Page 2 of the draft Bill. Is it not redundant in view of Section 90 of the IPC?

SHRI J. M. SRIVASTAVA: It is not redundant. Under Section 375, substantive provisions are made for the offence. Unless the offences are mentioned in detail and provisions made, mere explanation would not help.

SHRI B. IBRAHIM: Regarding Section 376, you said that it is better to include educational institutions also. Will it not be proper to include religious and charitable institutions, such as Mutts, in Ashrams and Dharmashalas also in this Bill?

SHRI J. M. SRIVASTAVA: I have absolutely no objection if you propose to include these Mutts or any other institutions where the helplessness of women inmates is exploited.

SHRI B. IBRAHIM: Do you support Section 111A?

SHRI J. M. SRIVASTAVA: Yes.

SHRI AMARPROSAD CHAKRABORTY: Is there any customary law in vogue in Arunachal which is in contradiction to Explanation 2 of Section 375 Page 2 of the draft Bill and to Exception (on page 3 of the draft Bill) to Section 375?

SHRI J. M. SRIVASTAVA: I do not think that there is anything contrary to the customary laws in the Bill.

SHRI AMARPROSAD CHAKRABORTY: Do you suggest raising the age of marriage? Now it is 15 years. If there is cohabitation with a girl of less than 15 years of age, do you consider that it is an offence? Is it an offence if she is cohabited by her husband without her consent?

SHRI J. M. SRIVASTAVA: Personally I think that husband has hardly any right as such. It is a matter of mutual appreciation, love and affection. This is my personal opinion, that husband has no right even on a wife above that age.

श्रीमती निर्मला कुमारी मल्लाखत :
मैं आप से यह जानना चाहती हूँ कि क्या अरुणाचल प्रदेश में पॉलीएन्ड्री सिस्टम विद्यमान है ?

SHRI J. M. SRIVASTAVA: I do not think that the system of Polyandry exist here. There is some custom in a particular tribe or may be more than one tribe. Polygamy is, of course, in practice. Polyandry system as such does not exist but we understand that a custom used to prevail and that is also substantially on the wane where in the absence of the elder brother for a long time who is the husband, his younger brothers had access to his wife. It is not a matter of right as in Polyandry. There used to be in vogue

in the society some kind of relationship which I think was not a very unhealthy system.

श्रीमती विद्यावती चतुर्वेदी : आपने सुझाव बहुत अच्छे दिये हैं। इसके साथ-साथ आपने बताया कि शैक्षणिक संस्थाओं पर भी प्रतिबन्ध लगाना चाहिये। मुझे उम्मीद है आप इस बात को परन्व करेगे न केवल एजुकेशनल इन्स्टीचूशन्स, बल्कि जितने भी सरकारी या गैर-सरकारी इन्स्टीचूशन्स हैं और जिन कार्यालयों में लड़कियां काम कर रही हैं, वहां उनके पास उनसे कई बार मिस-बिहेव करते हैं, तो क्या इन संस्थाओं को छोड़ दिया जाए तो कानून ज्यादा इफेक्टिव होगा और अच्छा होगा ?

दूसरे मैं आपसे जानकारी चाहती हूँ कि सैक्शन 375 (6) के प्राविक में लिखा है—“इफैक्टिव रजिस्ट्रेस—इफैक्टिव” रजिस्ट्रेस इफैक्टिव होने से जो हमारा परपज है और जिसकी वजह से हम कानून बना रहे हैं, वह कमजोर नहीं हो जाता है और या यह इफैक्टिव शब्द इसमें रहना चाहिए या इसको निकाल देना चाहिए ?

SHRI J. M. SRIVASTAVA: So far as the first suggestion is concerned. I submit, again it is my personal opinion—that I wholly agree with it. Our society is changing fast. Women are getting employment in various institutions and at remote places. I submit that they are all entitled to all protection which the law can give them and if any such mis-conduct is committed towards them it should be severely dealt with. So far as the second aspect is concerned I wish I had more time to consider your question but I do agree with you that this Clause about ‘offer effective resistance’ is likely to be so interpreted in course of time that it may perhaps tend to defeat the purpose of this provision.

SHRIMATI GEETA MUKHERJEE: In connection with Section 376 A, B & C you have mentioned a very important point that not only these categories but also other people who are in authority should be brought under the purview of these Sections. In connection with another Clause earlier you said if you had time at your disposal you could give the actual formulation. I would like to know how these persons in authority should be formulated in the law. What will be your draft or what is your immediate reaction? If your immediate reaction is not enough you give the formulation.

Secondly, you said that you don't mind if this kind of offenders are brought under Section 376 Sub-section 2. That means quantum of punishment being raised as well as that they will be covered under Section 111 A subsequently. In view of this I would like to know how would you like to formulate under this Section those persons in authority whom you would have liked to bring under this Section.

SHRI J. M. SRIVASTAVA: Regarding your first question about Section 376 A I had suggested for consideration that we may not confine the scope of this provision only to women in custody. I had suggested that either in this provision itself or in a separate provision altogether you may provide for commission of such acts which do not amount to rape by persons in authority who have some kind of control or who have been entrusted with the care etc.

SHRIMATI GEETA MUKHERJEE: Then, you would like to have a separate Section. According to you, there should be a separate section?

MR. CHAIRMAN: He has only suggested that some provision should be made to cover those cases also.

SHRIMATI GEETA MUKHERJEE: I have understood that. But I would like to know how he would have codified it here. In case he cannot say im-

mediately, then later on he may submit his suggestions about codification.

SHRI J. M. SRIVASTAVA: I would submit now itself that it would be better to have a separate provision because this covers the cases of custody.

SHRIMATI GEETA MUKHERJEE: And in that you would like to say "persons in authority". Do you think that "persons in authority" could be a legally comprehensive enough term?

SHRI J. M. SRIVASTAVA: No. That would require to be precisely worded. You can say, 'a public servant', there is no problem. But there are many private institutions like Chairman of some educational institution or manager of some educational institution or Chairman or Manager of some hospital etc. We should see that all those persons are also covered by this.

SHRIMATI GEETA MUKHERJEE: In view of your opinion I would like to know if you think the scope of Section 111A could be extended under the circumstances which you explained.

SHRI J. M. SRIVASTAVA: Madam, the basis for this proposed Section 111A is that there has been some abuse of trust or authority. Consequently the onus to prove that there was consent should shift or should lie with the person who asserts that it was with consent. In my opinion there should be no in extending the provisions of proposed Section 111A to these cases also.

SHRI R. S. SPARROW: The States all over India seem to indicate that a vast majority of rape cases, after due deliberations and of course the judiciary and we here to do something about it so that the law becomes more prompt and effective. This is a small question concerning the off-shoot of Section 111A and it is two-phased. One is that it is suggested in certain quarters that onus of proof should rest with the accused in whatever form we may have to work it out. In fact,

many of the lady witnesses seem to be feeling very strongly on that and there is good reason for that and the second phase of the point is, if there is a case of blackmailing and cheating and the case is not proved against the accused, do you have the idea of punishing the alleged victim? So, these are the two sides of the question, I would like to get your views on that. How do you want to proceed about this?

SHRI J. M. SRIVASTAVA: It is my repeated experience that it becomes extremely difficult to prove the offence of rape or that the act was performed without her consent. That is why, particularly in those cases where such an offence is committed by persons in authority taking advantage of their position and the woman victim in custody, that the onus is being placed on the person who asserts that it is not an offence. If a rape, for example, has taken place in a police station, how do you expect it to be proved that it was without her consent? After all police stations are not meant for this purpose. If something like this happens in a police station, obviously the persons in charge of the police station or the police officers must have something to do with obtaining consent. To put it on the lady by saying that it was with her consent, is putting too much burden on her. If she wants an intercourse she can go anywhere else. Why should she go to the police station.

SHRI R. S. SPARROW: You comment also on the cases which may have occurred outside the police station.

SHRI J. M. SRIVASTAVA: A doctor, for example, rapes a girl in the hospital. How do you prove it?

MR. CHAIRMAN: There is a concrete example I am quoting here now. Here is a case where a woman had entered a police station where her son was arrested on some other crime. This woman came to get him released. The police officer there was not willing to release her son. Then the lady filed a complaint against the Sub-Inspector

alleging that he had committed a rape on her. The lady was 45 years old and the Sub-Inspector was 25 and 28 years old and that case went to the notice of the S. P. and it was registered in the Station Diary and further investigation started and during the investigation the S. P. came to know that a false case was filed by her because, as her daughter also was present at that time; who was young and beautiful, he would have committed rape on the young girl rather than on the aged woman. Therefore, he had arrived at his own conclusion and he decided that case. So, if the statement under Section 111A that there was no consent is believed, then what are you going to say as a safeguard to such cases?

SHRI J. M. SHIVASTAVA: The mere fact that we make a provision in law does not mean that there will be no scope for its misuse or abuse. But that should not prevent us from making a provision which we consider justified in the circumstances. There would always be abuse of certain provisions of law. If we are contemplating a situation in our society that there will be no misuse of laws, it is impossible. Make this provision. See how it works and if it is being abused, modify it again. What is the difficulty? After all, so long so many cases of rape have taken place. The experience in society has been that absence of such a provision has been creating a lot of problems in handling the rape cases. That is why this provision has come in. Why not give it a fair trial?

SHRI BAPUSAHEB PARULEKAR: I would like to ask three or four questions with reference to what you have said here in your evidence. You said that you have no objection to extend the provisions of Section 111A to offences under Section 376A and to 276C.

SHRI J. M. SRIVASTAVA: I confined it to Section 376 and I suggested that there should be another provision made.

SHRI BAPUSAHEB PARULEKAR: Section 111A speaks about the presumption as regards consent and if you see the offence under Section 376A, the element of consent does not arise because 376A, B or C deals with an offence regarding sexual intercourse not amounting to rape, that is, intercourse with consent also. I have made myself clear.

SHRI J. M. SRIVASTAV: It does not amount to rape. It is not a case of rape.

SHRI BAPUSAHEB PARULEKAR: Such intercourse not amounting to offence of rape means that if the officer in charge seduces a woman in custody and he has intercourse with the consent of the woman, still, it is made punishable. Therefore, the question of consent is not what is disputed. Therefore, the presumption under Section 111A does not arise because the presumption is only with reference to the question of consent and the question of consent or no consent is not an element which is an offence under Section 376A. I believe that the extension of provisions of Section 111A to any of these provisions including Section 376A, does not arise. I think you will agree. It would only apply when the question of consent is in dispute.

SHRI J. M. SRIVASTAV: I agree with you and I stand corrected.

SHRI BAPUSAHEB PARULEKAR: Now coming to Section 376A, you would see that only to public servants, if they indulge in these activities, the offence is made punishable. Do you wish to extend it to persons who are not public servants? For example, there are employers and employees. There are big landlords. They employ so many workers with them. But they are not public servants in law. Would you like to extend this to all under whom many women serve or only to public servants as defined under the Penal

Code? You said that school headmasters will be included in public servants. But there are certain authorities who are not public servants under the law. That definition does not include these authorities, with whom there are so many women who are employed and working but who are not public servants in law. Don't you think that this should be extended to those also apart from the fact whether women are under their custody or not?

SHRI J. M. SRIVASTAV: I suggest that a provision should be made. You make a provision. You take into consideration this aspect. Women serve in institutions or under persons who are not public servants. To them also it is likely to apply. You may make a provision to that effect.

MR. CHAIRMAN: As per the definition under the Penal Code, "public servant" has been defined. Some of the concrete suggestions which you have quoted are not covered under that.

SHRI BAPUSAHEB PARULEKAR: Assuming that a person indulges in such activities, don't you think, they should also be included by separate provision? Do you agree with this or this should be restricted to only public servants and not to those who employ many women but who are not public servants?

SHRI J. M. SRIVASTAV: My submission is that in providing for such cases of sexual intercourse with women working under people who have some authority or some control over them, there should be no question of their coming under the definition of public servants. Public servants are defined for certain reasons, for certain considerations. It is not necessary at all that all those persons who have control over women or who employ women or, are their custodians need be public servants.

SHRI BAPUSAHEB PARULEKAR: You started with Explanation 2 of Section 375 and you said that there

are cases in Arunachal Pradesh where according to the provisions of custom, the husband and wife before divorce live separately though not under decree of judicial separation. Kindly consider whether your purpose will be served if after the words "a decree of judicial separation", we add "or according to customary law if any." Explanation 2 reads as under with the addition made:—

"Explanation 2.—A woman living separately from her husband under a decree of judicial separation or according to customary law, if any, shall be deemed not to be his wife for the purposes of this section".

SHRI J. M. SRIVASTAVA: I gave thought to this suggestion. But there are people in our country and there are societies in our country which are governed by certain customs or customary laws in regard to marriage. Once you just leave it like that or under customary law and do not further confine its scope to these to whom marriage laws do not apply, then, it will create complications.

SHRI BAPUSAHEB PURULIEKAR: If we include "customary laws of the community to which marriage law is not applicable", with that qualification, will your purpose be served?

SHRI J. M. SRIVASTAVA: "Customary laws" will be sufficient.

SHRI BAPUSAHEB PARULEKAR: You referred to Section 376 (2) and said that it should not be restricted to the activity of the police officer in the local area. What do you exactly mean by not restricted to the local area?

SHRI J. M. SRIVASTAVA: I suggested widening the scope of the Section to include not only the area to which he is appointed but in adjacent area/adjoining area to his place of appointment.

SHRI BAPUSAHEB PARULEKAR: Don't you think a police officer who is a responsible man should not indulge into these activities wherever it be?

SHRI J. M. SRIVASTAVA: I agree with you in but the basis of this provision is mis-use of his authority.

MR. CHAIRMAN: Here the question is misuse of the position that he occupies. Another thing is wherever he goes in that dress and he does it.

SHRI J. M. SRIVASTAVA: I am confining it at the moment to the local area and adjacent/adjoining area.

SHRI BAPUSAHEB PARULEKAR: The penal code is applicable to Arunachal Pradesh and only petty cases could be decided by a panchayat. May I know whether the authorities in Arunachal Pradesh are or are not seriously implementing the provision of IPC? The reason is you have said there is polygamy here. Polygamy is in contradiction of the Section 494. What does the State Government intend to do in this regard?

SHRI SRIVASTAVA: I think this offence of polygamy only extends to those persons whose personal law prohibits it. The Hindu Marriage Act does not apply to tribals in Arunachal under the Hindu Marriage Act itself. Polygamy does not exist in any other community except scheduled tribes of Arunachal Pradesh.

SHRI BAPUSAHEB PARULEKAR: Mr. Raina said that they have a free society in Arunachal Pradesh. There are dormitories for boys and girls and boys and girls below the age of 15, live in dormitories. They have a free life. It is an offence. It is not a custom. What steps will Government take to prevent it?

SHRI C. K. RAINA: In the tribal society the age of a person is never recorded nor is it known to anybody.

It is only after the puberty of a girl the sexual relation take place.

SHRI BAPUSAHEB PARULEKAR:

What is the age of puberty in Arunachal Pradesh? Under sixteen years, I believe. We were told in the morning that the girls of 14 and 15 years look much older and they marry at the ages of 14, 15, 16. Therefore, this question arises.

SHRI J. M. SRIVASTAVA: There is no yardstick for calculating their age. Even their mothers and fathers would not be able to say how old their girl is. It will not be very proper I would submit, to apply our yardsticks, and our concepts to what they are doing and what they are not doing. The approach of the Government is not to interfere with their social customs and practices. We strictly stick to that approach.

SHRI V. KISHORE CHANDRA S.

DEO: Mr. Law Secretary, you have been very precise and clear in making your observations. There are only two points on which I would like to have clarifications. One is with respect to Section 376A. Regarding the police officer you said that the provision should be extended to local and adjacent areas. The spirit with which you have mentioned this is that the policemen using the authority should be prevented from committing rape even if it is not in the local area. Policeman's authority comes mainly from his uniform. So, will you not think that the policeman in uniform wherever he commits the crime should come under the purview of this Section? What is your reaction to this?

SHRI J. M. SRIVASTAVA: I would personally welcome your suggestion.

SHRI V. KISHORE CHANDRA S.

DEO: There are two things—a police officer within his jurisdiction and a police officer in uniform anywhere in the country. What I am trying to say is that policeman in a particular area, whether or not in uniform is recognised as a police officer be-

longing to that local area. Obviously, whether he is in uniform or not in that local area, he has some authority and power, because he belongs to that local area and he can always commit an offence even when he is not in uniform. But outside the local area, his power flows from his uniform. So, a police officer outside the local area in uniform should come under this provision. Do you agree to this?

SHRI J. M. SRIVASTAVA: Confining once again the scope of the Section to a police officer in uniform doing such an act in an adjacent area may not perhaps fulfil the purpose.

SHRI V. KISHORE CHANDRA

S. DEO: This is because you personally feel that the policeman in uniform in the local area has the same powers outside.

SHRI J. M. SRIVASTAVA: People do not recognise whether he is a policeman in uniform or not so long as they know him.

SHRI V. KISHORE CHANDRA

S. DEO: There is a general sort of resentment to Section 111A. Here several organisations have represented to us that in the last sentence, in respect of the words 'the court shall presume', the words 'the court may presume' should be substituted. Can I ask your personal opinion?

SHRI J. M. SRIVASTAVA: I would like to submit that in law 'shall presume' and 'may presume' have only difference of degrees. But that does not mean that where it is 'shall presume' it cannot be rebutted and disproved. So, what harm is there even if you say 'may presume'? But personally I think 'shall presume' should be there.

SHRI R. K. MHALGI: Regarding the crimes of rape which are dealt with according to the Criminal Procedure Code in Arunachal Pradesh, would you be in a position to say how

many cases have been registered and how many have been tried during the last 3-4 years, and what is the result thereof?

MR. J. M. SRIVASTAVA: I did not make the sub-mission that they are tried according to Cr.P.C. I said I.P.C. is in force, but there is customary law.

SHRI R. K. MHALGI: I want to know whether the cases are dealt with according to customary law or according to I.P.C.

SHRI J. M. SRIVASTAVA: When the incidents of rape take place and when the offender is a person not belonging to the Scheduled Tribes at all, then naturally such cases have to be handled and they are handled according to the normal laws, that is, I.P.C. there is a difficulty in appreciation of the fact that in the tribal society the concept of crime is different. It is still a concept of wrong which can be set right by paying compensation. And I personally think that this system is really a very good system. No stigma is cast on anybody, no bitterness is developed. The whole thing is settled and the victim gets married without any stigma attached to her unlike in our society. Such cases are being dealt with according to tribal customs, as per their tribal councils and if one wants to take a very legalistic view, I would still submit that this is an act which has two aspects. The civil aspect is claim for damages. There is the other aspect, the criminal aspect, which is taken care of by the society by means of punishment for an offence which has been committed against a person in society. You can very well say, that the first aspect is being dealt

with and the second aspect is not being dealt with.

SHRI R. K. MHALGI: It means you have not got any details regarding the cases tried by the court. Cases are being tried. For your kind information, I would submit that there was an officer who committed rape on two girls and he had been convicted and his appeal is pending in the High Court. There are cases which have been tried, that means of custodial rape.

MR CHAIRMAN: I have got one question. While giving an answer to the question of one Hon. Member, you said in respect of the marriage of a girl below the age of 15 years, there should be access for a husband without her consent. Why did you say so?

SHRI J. M. SRIVASTAV: I did not say so. Why should he have that right? Why should we say that he has a right? Why should it be presumed that he has a right? I would submit all these concepts of these laws have arisen because of the very very highly male dominated society where women are considered as a kind of chattel. That is why you find all these laws describing as if the wife is a property of the husband.

MR. CHAIRMAN: Somebody has defined the term marriage. He said marriage is an institution of a husband and wife where the wife is subject to the demands of the husband, to bear children and rear her children.

SHRI J. M. SRIVASTAV: This must be a statement by a person who has that kind of belief. I do not agree with that view.

The Committee then adjourned.

RECORD OF EVIDENCE PRESENTED BEFORE THE JOINT COMMITTEE ON THE CRIMINAL LAW
(AMENDMENT) BILL, 1980

Monday, the 19th October, 1981 from 15.15 to 17.45 hours in Members Reading
Room in Bihar Vidhan Sabha Secretariat, Patna.

PRESENT

Shri D. K. Naikar—Chairman

MEMBERS

Lok Sabha

2. Shri Rasa Behari Behra
3. Shrimati Vidyavati Chaturvedi
4. Shrimati Madhuri Singh
5. Shri R. K. Mhalgi
6. Shrimati Geet Mukherjee
7. Shri K. S. Narayana
8. Shri Bapusaheb Parulekar
9. Shri Qazi Saleem
10. Prof. Nirmala Kumari Shaktawat
11. Shri E. S. Sparrow
12. Shri Trilok Chand
13. Shri V. S. Vijayaraghavan

Rajya Sabha

14. Shri Ramchandra Bharadwaj
15. Shri Amarprosad Chakraborty
16. Shri B. Ibrahim
17. Shri Dhuleshwar Meena
18. Shri V. P. Munusamy
19. Shri Leonard Solomon Saring
20. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—Senior Legislative Committee Officer.

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS.

Shri S. V. Sharan—*Joint Secretary*Shri S. C. Bablani—*Under Secretary*

WITNESSES EXAMINED

I. Dr. Ram Raj Prasad Singh, MLA

II. Shrimati Sukumari Devi, MLA

III. Bihar Mahila Samaj, Patna

Spokesmen:

1. Shrimati Kanak Roy
2. Shrimati Raj Kumari Shabnam

I—Dr. Ram Raj Prasad Singh, MLA

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

You have gone through the Bill. On what points would you like to enlighten the committee.

डा० राम राज प्रसाद सिंह : मैं इन्ट्रोडक्शन के रूप में यह कहना चाहता हूँ कि मैं विधायक बहुत वर्षों से रहा हूँ लेकिन मूझे ला की ट्रेनिंग कोई नहीं है, इसलिए मैं जो कहूँगा वह जो आम जनता सोचती

है उसी के हिसाब से कहूँगा और बहुत टेक्निकल बात मैं नहीं कहूँगा।

इस क्रिमिनल ला अमेंडमेंट बिल में 7 धाराओं का अमेंडमेंट हुआ है जिनमें तीन तो धारा पी सी की हैं, दो क्रिमिनल प्रोसीजर कोड की हैं, एक कांसीक्यूशनल है और एक इंडियन एविडेंस ऐक्ट की धारा है। इस में रेप के संबंध में जो नाम बा—रेप, उस को बदला गया है, मेन प्वाइंट वही है और उस का नाम ग्रब रख दिया गया है सेक्सुअल आफेंस। शानी 375 और 376 में अमेंडमेंट किया गया है।

पहली बात तो मैं यह कहूँगा कि आई पी सी जो पुराना है उस में 375, 376 और 377 तीन सेक्शन इस तरह के हैं जिन में से 375 और 376 का तो अमेंडमेंट किया जा रहा है, मेरी राय में 377 पर भी विचार किया जाता तो अच्छा था और उस का भी अमेंडमेंट आ जाता तो बहुत अच्छा होता क्योंकि ये सेक्शन तो मुख्यतः बीसेन के सम्बन्ध में हैं, किन्तु मर्दों के संबंध में जो 377 सेक्शन है उसको छोड़ दिया गया है। दो सेक्शन में से सिर्फ एक ही के सम्बन्ध में

की गई है। दूसरा सेक्शन 377 जिस से मर्द और बच्चे लोग एफकेडे होते हैं उस के सम्बन्ध में यदि कुछ नहीं कहा जाता तो उससे मर्दों के सम्बन्ध में कुछ डिस्टिन्क्शन की बात हो गई। मैं प्राग्रह करूंगा, इस प्रमेंडमेंट बिल में तो यह नहीं है, लेकिन कमेटी सक्षम है उस को भी जोड़ने के लिए। तो यह तो मैं पहली बात कहना चाहता हूँ।

दूसरी बात यह है कि इतना ज्यादा और सिर्फ बीमेन के सम्बन्ध में रेप या सेक्सुअल आफेंस के ऊपर जोर दिया गया है वह बहुत उचित नहीं है। यह सही बात है कि घोरतों पर प्रत्याचार हुए हैं और इन प्रत्याचार को रोकना चाहिए लेकिन कई प्रमेंडमेंट्स में हम लोग देखेंगे, कांटे-डिक्शन है और उससे ऐसी फीलिच न बन जाए इन प्रमेंडमेंट्स के कारण कि इन से मर्दों को बहुत हानी उठानी पड़े जिन को यह समझा जाता है कि बराबर का आफेंसिव लेते हैं। मैं इस बात को मरु में ही रखना चाहता हूँ क्योंकि आर्टिकल 14 को भी मद्देनजर रखना चाहिए। ऐसा लगता है क्योंकि 377 में प्रमेंडमेंट नहीं लाया गया है तो प्राग्रह उस को मद्देनजर नहीं रखा गया है।

सभापति महोदय : प्राप को कहना क्या है ? उस सेक्शन में क्या है ?

डा० राज राज प्रसाद सिंह : ऐवरीवदी इज ईक्वल बिफोर दि ला। बाकी उस के लिए मैंने तैयारी नहीं की है। मैंने एक सजेसन दिया, उस पर कमेंटी गीर करे।

MR. CHAIRMAN: When you are saying about a particular Section then you must be prepared to give good suggestions in regard to that.

डा० राज राज प्रसाद सिंह : हमने उसके लिए तैयारी नहीं की है, और वह मने पहले ही कहा कि मैं ला पड़ा हुआ नहीं हूँ।

MR. CHAIRMAN: Then I request you not to speak on that Section.

डा० राज राज प्रसाद सिंह : लेकिन मैंने यह कहा कि तीन ही सेक्शन हैं सेक्सुअल आफेंस के उसमें एक को छोड़ दिया गया, उसके सम्बन्ध में भी विचार किया जाना चाहिए था।

सभापति महोदय : प्राप का प्रमेंडमेंट क्या है ?

What is your amendment?

डा० राज राज प्रसाद सिंह : इस बिल में 376 और 375 को स्ट्रिक्ट बनाया गया है तो 377 में जो सेकुना है उस को दूर किया जाना चाहिए और उस को भी स्ट्रिक्ट बनाया जाना चाहिए। क्यों उस तरह के आफेंस का केस परनों ही बिहार के प्रचाराओं में प्राया था।

SHRI R. K. MHALGI: Have you to say anything about the punishment?

डा० राज राज प्रसाद सिंह : मैंने यह प्राग्रह किया है कि वह कमेटी के परब्यू में तो नहीं हैं लेकिन उन को भी उस में नाना चाहिए। एराक्फ 2 मादन 10 में देखा जाय :

"With or without her consent when she is sixteen years of age"

उसमें यह कहा गया है कि प्रचारा में पब्लिश नहीं होगा। मैं इसका अर्थ यह समझता हूँ कि इस से एक तरह का करिक्टर एसेसिमेसन होता है इसलिए यह पब्लिश नहीं। मेरा यह प्राग्रह कि इस में 377 भी जोड़ दिया जाय क्यों कि तीन ही सेक्शन लागू होते हैं सेक्सुअल आफेंस के सम्बन्ध में, जिन में से एक को छोड़ दिया गया है। तो 377 को भी इस में जोड़ा जाय तो ज्यादा प्रचारा होगा। इसी के अर्थ में मैंने यह कहा

कि 377 पर भी विचार किया जाना चाहिए था।

दूसरी बात में यह कहूंगा कि पेज 2 पर सातवीं बात जो कही गई है :

"Child who has not attained the age of 16 years and the girl who has not attained the age of 18 years."

इस पर दो तरह का जाबजबान मूक है एक, तो यह है कि 16 साल को 18 साल कर देना चाहिए कि इसलिये किडनें ऐक्ट जो भारत सरकार का है उस में चाइल्ड की डेफिनीशन को देखें : यह 16 साल क्यों रखी गयी है मेरी समझ में नहीं आया। यदि हम भारत सरकार के चिल्ड्रन-ऐक्ट को फालो करें, तो उस में 18 साल की लड़की चाइल्ड में गिनी जाती है। इसलिए मैं आपसे प्रार्थना करता चाहता हूँ कि उमर 16 साल को बढ़ा कर 18 साल किया जाए।

पेज 3 के शुरू में लिखा है कि

"Sexual offence by a man with his own wife, the wife not being under 15 years of age is not a rape."

इस में से इन शब्दों को

"The wife not being under 15 years of age."

हटा दिया जाए, तो इस प्रकार

"Sexual offence by a man with his own wife is not a rape."

हो जाएगा। हमारी राय में यह उचित है। जब-जब इस प्रकार के अप्रैडमेंट आयेंगे 18 और 21 साल के, तब-तब हमें उसमें अप्रैडमेंट कर ना पड़ेगा।

सेक्शन 376 के दो पार्ट किए बने हैं। दूसरे पार्ट में पुलिस; पब्लिक सर्वेंट, जेल सुपरिन्टेंडेंट और हास्पिटल स्टाफ, इस प्रकार छः भाग और दिए गए हैं। 376 (ए) में पब्लिक सर्वेंट के लिए क्या सजा होगी, उसके बारे में बताया गया है और इसी प्रकार बी और सी में भी बताया गया है, लेकिन इस में पुलिस को छोड़ दिया गया है। इस लिए हमारा आपसे प्रार्थना है कि इसमें पुलिस को भी इन्कलूड करना चाहिए। पुलिस को छोड़ दिया गया है, यह ठीक बात नहीं है। पहले के दिनों में यह बहुत डिस्टर्बिंग बातें हुई हैं कि पुलिस की ब्रूटेलिटी बहुत बढ़ गई है, पूरे देश में और खासकर औरतों पर। इस ब्रूटेलिटी को कस करने के लिए मेरा आप से प्रार्थना है कि पुलिस को इन्कलूड करना चाहिए।

साथ-ही-साथ मेरा प्रार्थना है कि सेक्शन 376(2) में "हूवर" की जो क्लॉज है उसमें ग्राम लोग रेप करेंगे तो उनको रिगोरस इम्प्रोजनमेंट दिया जाएगा, लेकिन गवर्नमेंट सर्वेंट, हास्पिटल के लोग, जेल के लोग, सरकारी कर्मचारी रेप करेंगे तो सिम्पल इम्प्रोजनमेंट दिया गया है, यह व्हाइट कालर के साथ रियायत क्यों की गई है?

MR. CHAIRMAN: Can you tell us what is the reason behind?

डा० राम राव प्रसाद सिंह

श्रीमान्, व्हाइट-कालर इस देश में बहुत बढ़ रहा है जबसे हमें सजा प्राप्त हुई है व्हाइट-कालर क्रिमिनल बहुत बढ़े हैं और तरह तरह के क्राइम हो रहे हैं, उसको दबाने के लिए ही ऐक्ट बनाया जा रहा है। व्हाइट-कालर के लिए अलग से प्रोविजन दिया गया है, यदि आप सेक्शन 376(ए) को देखें...

MR. CHAIRMAN: You say in respect of doctors and others simple imprisonment should be provided whereas for police officers rigorous imprisonment

officers rigorous imprisonment should be provided. What is your ground of making discrimination between these two classes.

डा० राम राव प्रसाद सिंह :

मुझे गलत न समझा जाए। मैंने कहा है कि ग्लाट-कालर को भी रिगोरस इम्प्रिजनमेंट होना चाहिए। मुझे लगता है कि आप हमें गलत समझ गए हैं, इसके लिए मैं आपसे माफी चाहूंगा।

संख्यान 376 के एकस्प्लेनेशन (1) में कहा गया है कि

"Where woman is raped by three or more persons". What about two? It should be where a woman is raped two or more persons.

तीन को दो कर दिया जाए, क्योंकि हम लोगों के यहां हिन्दी में एकवचन और बहुवचन होता है। इसलिए दो और तीन बहुवचन होता है। इस प्रकार यदि तीन लोगों ने रेप किया है, तो दो का क्या होगा। इस लिए मेरा आप से आग्रह है कि तीन के स्थान पर दो कर दिया जाए। एक बात और मैं कहना चाहता था हास्पिटल के बारे में।

Section 376 (2) (d) says:

"being concerned with the management of being on the staff of a hospital, commits rape on a woman is receiving treatment in that hospital."

हास्पिटल में ज्यादातर पेन्सन्स के रिसेशन से ही रेप की बातें होती हैं जो अखबारों में भी पढ़ता हूँ और कल के अखबारों में इस तरह की एक म्यूज आई भी है। तो जॉर्ज पुलिस के बारे में कहा गया है कि पुलिस इन्टी पर अपने इलाके में हो या बाहर के इलाके में सब को इतने

इन्स्यूड किया गया है इसी तरह इसमें भी रखने के ऊपर विचार करना चाहिए, इसमें उसको भी इन्स्यूड करना चाहिए।

376 (ए) को देखें, इसमें सेडक्शन दिया गया है, एकस्प्लेन गन रेप नहीं है सेडक्शन के लिए क्या क्या किया जाएगा वह इस में है। मेरा यह कहना है कि 376(ए) का जो क्लॉज है उसमें भी फाईव ईवर्स से टेन ईवर्स कर देना चाहिए।

रेप के सम्बन्ध में घोरता को बचाने के लिए जितनी इस्टिम्योसी लमाई गई है, सरकारी कर्मचारियों को घोर अन्य लोगों को कभी कभी इस के कारण बहुत तंग भी होना पड़ सकता है क्योंकि कर्सेट या या नहीं था, इसको कहेंगे कि हम नहीं मानते हैं। यह जो एक्ट्रेस का पार्ट है 111 में उस में यह है। तो हमें ऐसा लगता है कि कभी कभी इसके कारण बहुत तकलीफ भी लोगों को हो सकती है और इस का नाजायज फायदा मर्दों से उठाया जा सकता है। इसलिए इसका भी बचाव होना चाहिए। ऐसा न हो कि इसके द्वारा कुछ ब्यास लोगों को ब्यास कर मर्दों को कुछ लॉग तंग करें। इस को बहुत ज्यादा पॉसिबिलिटीज हैं। हमने देखा है पोलिटिकल लाइफ में कई बार कुछ बदनाम घोरतों को ला कर पोलिटिकल लीडर्स को बदनाम किया गया है। हम ने वह तीन देखा है दिल्ली में कि बदनाम घोरतें आईं और कहा कि हमारे साथ रेप किया है। तो इस तरह के केसेज से बचने बचा जायेगा इसका भी कोई उपाय निकालना चाहिए घोरतों का प्रोटेक्शन हो, यह हम भी चाहते हैं। लेकिन मर्दों का भी प्रोटेक्शन होना चाहिए। लेकिन अभी जो किया जा रहा है उस में तो ऐसा लगता है कि मर्दों को बहुत फंसाया जाएगा। तो इस प्वाइंट को भी देखा जाए कि इससे

कुछ खास जगहों को तकलीफ न उठानी पड़े। गलत ढंग से एक्टिंग आ जाये और उनकी बातें मान ली जाये तो ऐसी कठिनाई आ सकती है। कैमरा में बातें हो जायें वह भी हम मान लेते हैं लेकिन इस क्लॉज 111 पर भी विचार करना चाहिए मैं अपना माइंड नहीं बना सका कि क्या होना चाहिए लेकिन मैं आग्रह करूंगा कि कमेटी सक्षम है, कमेटी को इस पर विचार करना चाहिए। एक को बचाने में दूसरो को तंग नहीं किया जाना चाहिए। अब आप कोई प्रश्न पूछना चाहें तो पूछें, मुझे उत्तर देने में बहुत खुशी होगी।

प्रो० निर्मला कुमारी शक्तावत : मैं दो तीन प्रश्न करना चाहूंगी। पहली बात तो आपने यह कही कि 16 वर्ष से कम उम्र बाधा प्रश्न ही हटा देना चाहिए और इसमें जो दिया है:-

"Sexual offence by a man with own wife the wife not being under 15 years of age is not rape."

इस में 15 ईयर्स को हटाने की बात आप ने कही है। इससे यह साबित होता है कि आप यह चाहते हैं कि लड़की चाहे एक साल की हो, दो साल की हो, बार्डफ हो तो उस के साथ किसी तरह का सम्बन्ध रेप नहीं माना जायगा। क्या आप यही चाहते हैं?

दूसरी बात आपने समानता की कही कि स्त्रियों और पुरुषों में समानता लाने की बात कानून में की जानी चाहिए परन्तु आपने यह नहीं देखा कि सब से अधिक अत्याचार स्त्रियों के ऊपर होते हैं और यह बात आप ने कही कि औरतों को भाड़े पर लाया जायेगा और बदनाम करने की कोशिश की जायगी। इससे

यह साबित होता है कि आप का दृष्टिकोण ऐसा है कि यह जो कानून बनाया गया है इस में बहुत ज्यादा सख्ती कि गई है औरतों को बचाने के लिए, तो क्या इस में कोई इस तरह का अमेंडमेंट नहीं किया जाना चाहिए जिस से स्त्रियों को सुरक्षा मिले ?

डा० राज राज प्रसाद सिंह : मुझे गलत न समझा जाये। मैंने बार बार कहा कि औरतों को सुरक्षा मिले लेकिन दूसरे इस में कंसाये न जाय इस के लिये मैंने यह बात कही। 16 वर्ष वाली जो बात है उसके संबंध में आप देखें हिन्दू मैरिज ऐक्ट, 1955 के सब-सेक्शन 3 में यह है:-

Section 5 (3) of the Hindu Marriage Act says:

"The bridegroom has completed the age of 18 years and the bride 15 years at the time of marriage."

इससे कम तो हो ही नहीं सकता है। लेकिन हम ने यह कहा कि फ्यूचर को देखते हुए इस को बढ़ा कर 18 कर दिया जाय। आज मांग तो 21 पर चली गई है कि 21 हो जब बीसा हो जायगा तो कांसीक्वेंशियल जेंज लाना पड़ेगा।

प्रो० निर्मला कुमारी शक्तावत : भारदा ऐक्ट को आप बहुत समय हो गया है। मैं यह जानना चाहूंगी कि क्या आप के बिहार में चाइल्ड मैरिज नहीं होती क्या वह ऐक्ट पूरी तरह प्रभाव में आ गया है?

डा० राज राज प्रसाद सिंह : उस ऐक्ट का प्रभाव है। चाइल्ड मैरिज पहले अवर 100 होती थीं तो अब पांच होती हैं। जो डेमोक्रेटिक सेंस हमारे अंदर आई है उससे चाइल्ड मैरिज बहुत कम हो गई है। लेकिन मैंने हिन्दू मैरिज ऐक्ट को देख कर ही यह कहा कि उस के

अनुसार 15 वर्ष से कम तो हो ही नहीं सकता। आगे चल कर फ्यूचर के लिए हमने वह बात कही है।

SHRIMATI GEETA MUKHERJEE: You have expressed the apprehension that Section 111A may be used for blackmail. This relates to Section 376 Clause (a), (b), (d) and (f) of Sub-Section (2), not to all cases, if the women in custody is raped and if the case is not proved, she will be disappointed. That is why, she should take the benefit of presumption by the court.

डा० राम राज प्रसाद सिंह : हमने कहा है कि वह तो कस्टोडी में रहने पर भी यह प्रश्न उठ सकता है। यदि वह सक्षम घोरत है, तो वह तो घोरों पर भी चार्ज कर सकती है। इस एक्ट में पब्लिकमेंट प्रिस्क्राइब कर दिया है, लेकिन उस घोरत घोर मद के करैक्टर को नहीं देखा गया है। उस घोरत घोर मद का करैक्टर अच्छा है या बुरा है। मैं सब घोरतों के बारे में नहीं कह रहा हूँ।

SHRIMATI GEETA MUKHERJEE: You have mentioned about delays etc. From your statement, it is obvious that there are such rape cases. Can you tell us how such offenders have been punished and how many such offenders have been really found to be guilty?

डा० राम राज प्रसाद सिंह : हमारा अपना दृष्टिकोण इस बारे में अच्छा नहीं है। क्योंकि जो आफेंडर्स होते हैं, उनको पब्लिकमेंट या तो मिलता नहीं है और मिलता भी है, तो बहुत दिनों के बाद मिलता है। मैं आपको एक उदाहरण देना चाहता हूँ दिल्ली का एक केस है—संजय भाई-बहन का—उसमें अभी तक फैसला नहीं हुआ है कि उसमें रेप हुआ या मर्डर हुआ।

पता नहीं क्या हुआ, लेकिन अभी तक सही रूप से सजा नहीं दी गई है।

श्रीमती विद्यावती चतुर्वेदी : बिल्कुल एक के मुताबिक दूसरी ऐज-लिमिट भी बढ़ा रहे हैं। 16 साल से 18 साल का संशोधन भी आया है। मैं आपसे पूछना चाहती हूँ कि कभी कभी ऐसी स्थिति भी आती है कि पत्नी पति के साथ नहीं रहना चाहती है। कायदे से, पूरी तरह से डाई-वोर्स, कानूनी तरीके से, नहीं होता है। यदि ऐसी स्थिति में बीच में किया जाती है, तो क्या वह रेप की श्रेणी में नहीं आवेगा?

डा० राम राज प्रसाद सिंह : इस बारे में इस बिल में कहीं नहीं है। इसमें जो सिक 15 बरस के बारे में कहा गया है।

श्री० निर्मला कुमारी शक्तावत : जुडिसियल संपरेसन है।

डा० राम राज प्रसाद सिंह : जुडिसियल संपरेसन है, ला के बारे में मैं ज्यादा नहीं जानता हूँ, लेकिन इतना जरूर जानता हूँ कि लीगली नहीं हुआ है, तब तक कुछ नहीं हो सकता है।

Explanation 2. of Sec. 376 page 3 of the Draft Bill:—

'A woman living separately from her husband under a decree of judicial separation shall be deemed not to be his wife for the purposes of this Section.'

इसमें यह तो क्लीयर है।

श्रीमती विद्यावती चतुर्वेदी : मैं यह जानना चाहती हूँ कि आपने पुलिस और हास्पिटल और दूसरी तरह के लोग तथा ज्वाइंट कालर की बात कही, तो क्या इससे मैं समझूँ कि जो भी आफेंडर्स हैं, चाहे पुलिस के हों, जनरल आफेंडर्स हों, प्राइवेट आफेंडर्स हों या कहीं भी जहाँ महिलायें काम करती हैं, उन सभी इन्स्टीयूशन को इसमें शामिल किया जाना चाहिए?

डा० राम राज प्रसाद सिंह : ला के बारे में मैं क्यावा नहीं जानता हूँ। आफिस, ग्राहट कालर बड़े-साहब, छोटे साहब, उनके लिए कोई दूसरा पनिशमेंट हो, इसको मैं उचित नहीं समझता हूँ।

श्री बिल्लोक चन्ध : मैं आप से यह जानना चाहता हूँ कि पुलिस सुप्रिन्टेंडेंट, गवर्नमेंट सर्वेंट आदि लोगों को शामिल करने की बात कही, तो क्या यह संभव नहीं हो सकता है कि इसमें मिनिस्टर्स एम०एज०एज०, एजुकेशनल इन्स्टीट्यूशन्स, बड़े लैड-लार्ड्स जहाँ पर कि धोरत काम करती हैं, जिनको छोड़ दिया गया है, इनको भी जोड़ना संभव हो सकेगा ?

डा० राम राज प्रसाद सिंह : जिस बात को मैं कहना नहीं चाह रहा था, वही बात आपने कह दी। यद्यपि, ये बातें मैं लिख कर लाया था। इसमें स्कूल टीचर्स को भी शामिल किया जाना चाहिए।

श्री बिल्लोक चन्ध : आपने कहा कि 111(ए) इंडियन एवीयेंस एक्ट है। यह गवर्नमेंट सर्वेंट, जेल सुप्रिन्टेंडेंट या पुलिस के अधिकारी हैं, उनके लिए यह ला है। इसके मताधिक यदि कोई खराब धोरत है, तो उसकी बात को भी मान लिया जायेगा, यदि यह प्रूब हो जाए कि इन्टरकोर्स किया गया है। यदि इसमें लीडर, फेक्टरी मालिक, टीचर बगैरह को भी शामिल कर दिया गया तो यह सभी लोगों के लिए हो जाएगा—क्या आप की राय यह है कि इसको खत्म कर देना चाहिए ?

डा० राम राज प्रसाद सिंह : इसको खत्म करने की बात मैंने कही नहीं है। मैंने यह कहा है कि इसका इस्तेमाल ठीक तरीके से होना चाहिए। कई केसेज में ऐसा भी होता है कि धोरत नहीं कहती हैं, जो घाबरी घूट जाता है। इसके साथ-साथ

मैं यह भी कहना चाहता हूँ कि इसमें कहीं ऐसा न हो जाए कि जो रेप नहीं करता है, वह भी फंस जाए और बदनाम हो जाए।

श्री बिल्लोक चन्ध : सेशन 111 के रहते हुए, सब को जोड़ने के बाद लोग फंसेंगे, बचेंगे नहीं। यदि इन सब को जोड़ दिया जाए, तो इस बारे में आपकी क्या राय है ?

डा० रामराज प्रसाद सिंह : मैंने यह भी कहा कि इस पूरे ऐक्ट में 375 और 376 में यह नहीं प्रिञ्जुम किया जा रहा है कि करेक्टर किसका कैसा है ? जिस को रेप किया गया है उस के करेक्टर के बारे में कहीं बात नहीं की गई है। वह खराब करेक्टर की है या नहीं इसका भी लेखा जोखा होना चाहिए और इस पर भी डायरेक्शन दी जानी चाहिए जैसे इस बिल में जजेज को डायरेक्शन दी गई है। यदि खराब चरित्र की धोरत हो तो उस के बारे में डायरेक्शन देनी चाहिए कि उसकी फर्दर एन्वयारी की जाय।

श्री बिल्लोक चन्ध : कोई धोरत खराब करेक्टर की होगी तो वह केस करने जायगी ?

डा० राम राज प्रसाद सिंह : यह मटर बहुत डिबेटेबल है।

श्री रामचन्द्र भारद्वाज : आप ने 376 के बारे में कहा है कि पेनल्टी के रिलेशंस को भी उस में इन्क्लूड कर देना चाहिए, तो सिर्फ रिलेशंस या प्रॉटेक्ट्स को भी उस में शामिल किया जाये ?

डा० राम राज प्रसाद सिंह : प्रॉटेक्ट को भी रखा जाये।

श्री काजी सलीम : आप की बातें मैं ने सुनी तो मुझे ऐसा लगा कि उस में थोड़ा कांटेडिक्शन है। एक तरफ तो 111 के सम्बन्ध में आप ने प्रिजम्पशन को रिटैने करने की बात कही और दूसरी तरफ आप यह कहते हैं कि 376 को इतना वास्ट कर दिया जाय कि हर एक व्यक्ति जिस के पास एपारिटी है वह उसमें इन्क्लूडेड हो जाय। आप देखिए, आप के घर में एक नौकरानी रहती है, आप भी उस के मालिक हैं, आप की खेती में काम करने वाले हैं, उनके भी आप मालिक हो जाते हैं। मेरा यह कहना है कि या तो आप यह कहिए कि इस में ऐसा कोई प्रोविजन रखा जाय जिससे बेगुनाह लोग बच सकें क्योंकि इस तरह की हमारी स्पिरिट है कि एक बेगुनाह को सजा नहीं होनी चाहिए चाहे सौ गुनाहमार छूट जाय, तो उस स्पिरिट के खिलाफ क्या यह बात नहीं जा रही है? अगर आप समझते हैं कि उस के खिलाफ बात जा रही है तो उस के लिए इसमें क्या कोई प्रोविजन रखा जाय और रखा जाय तो किस तरह का प्रोविजन वह हो?

दूसरी बात यह है कि घोरतों को बचाने की बात इस इन्तहा तक की जाय कि वह जिस जगह भी हों, जो शक्स जरा भी उस पर कंट्रोल रखता हो उन के लिए अदालत ऐसा व्यू ले कि उस के ऊपर उसको डिस्ट्रूब करने का सारा बर्धन पड़े, क्या यह मुनासिब है?

अब जहां तक कंसेंट का सवाल है कंसेंट तो एक ह्यूमन ऐक्शन है। एक साइकोलाजिकल ऐक्शन कहें या एक फिजिकल ऐक्शन भी कह सकते हैं, मेन्टल ऐक्शन भी कह सकते हैं। मेरा जो ऐक्शन या रिऐक्शन है वह मैं ही

जान सकता हूं कोई दूसरा या बर्धन परसन तो जान ही नहीं सकता। ऐसी हालत में उस का बर्धन उस व्यक्ति पर डालना और उस की रेस्पॉसिबिलिटी उस पर क्षिप्ट करना, क्या इस में मदों के साथ ज्यादाती नहीं हो जाती? आप की इस के बारे में क्या राय है?

डा० राम राज प्रसाद सिंह : मैं ने यह कहा कि इस में कोई प्राविजन होना चाहिए कि निर्दोष व्यक्तियों को बचाया जा सके। अभी पांच सात रोज पहले एक घटना बिहार में हुई है पुन पुन एरिया में जिस में एक बूढ़े आदमी को एक घोरत ने एलेज किया कि इस ने मुझे रेप कर दिया। उस आदमी की उम्र 65-70 के करीब है। जो साइंस आफ लेक्स है उसके अनुसार यह असंभव बात है। लेकिन बुकि वह घोरत उसके घर में गई और एवान कर दिया कि इस ने मुझे रेप किया है इसलिए एक चीड़ पांच हजार आदमियों की इकट्ठी हो गई। पुलिस उसको छुड़ाने के लिए गई तो वह लोग उस आदमी को छीन कर ले गए और मार भी दिया। यह घटना अभी पांच सात दिन पहले बिहार के पुन पुन एरिया में हुई है। तो इस तरह का ऐलेजिय हो हम इसको अच्छा नहीं समझते। कोई भी घोरत किसी के ऊपर इन तरह का इन्जाम लना दे कि इस ने मेरे साथ दुर्व्यवहार किया है, इस से बचाव के लिए हम में कोई प्राविजन होना चाहिए।

श्री काजी सलीम : कोई कांफीट प्रोपोजल आप का है?

डा० राम राज प्रसाद सिंह : मैंने सामने कोई कांफीट प्रोपोजल नहीं है। मैंने पहले ही कहा कि मैं ना पढ़ा हुआ नहीं हूँ।

मुझे आपने जो मौका दिया उस के लिए मैं आप को धन्यवाद देता हूँ ।

SHRI BAPUSAHEB PARULEKAR: In order to give protection to males to see that no false cases are filed against males by females, don't you think that a provision should be made to the effect that if the accusation is proved to be false, the woman who makes that false accusation should also be punished? If that provision is made, then there would be a check on filing false cases and making false accusations.

Your suggestion is that there should be some provision in the Bill in order to have a check on false cases of rape. I ask you whether your purpose would be served if a provision is made that if a woman makes a false accusation of rape against a man and if it is proved in a court of law that it is false, she should be punished.

डा० राम राज प्रसाद सिंह : मैंने कहा है कि यह पूरा अमेन्डमेंट एक्ट बहुत सोच समझकर बनाया गया है । औरतों पर बहुत भ्रष्टाचार हो रहा है और भ्रष्टाचार करने वाले मर्द हैं । इसी लाइट में मैंने इस बात को कहा है कि अभी तक भ्रष्टाचार मर्दों ने भ्रष्टाचार किया है और अब उन पर भ्रष्टाचार किया जाए ।

SHRI BAPUSAHEB PARULEKAR: You referred to Section 375 Seventh Clause Page 2 of the Bill, and stated that the age should be increased from 16 to 18 in view of the provision in Childrens Act. You also stated that as far as Hindu Marriage Act is concerned, the marriageable age for girls is 15. But the Childrens Act is not concerned with marriage. It is concerned with the imprisonment of children. They should not be sent to regular jail but to remand home. Don't you think that the marriageable age of 15 years for the purpose of

sexual act should be mentioned in Seventh Clause because that is the age which is recognised by law for the purpose of sexual act.

डा० राम राज प्रसाद सिंह : हम तो ऐसा समझते हैं कि यदि कोई झूठा मुकदमा दायर किया जाता है तो उसको इन्वेस्टीगेशन पीरियड में ही खत्म कर देना चाहिए । एक्ट में जब को ऐसा न बांध दिया जाए कि वह कुछ कर ही न सके ।

श्री काजी सलीम : क्या बिल में इस तरह का प्रोवीजन रखा जाए कि अगर कोई खराब औरत है और उसने किसी अच्छे आदमी पर इल्जाम लगाया है और वह साबित हो जाए, तो उसको भी सजा दी जाए ?

डा० राम राज प्रसाद सिंह : मलत इल्जाम लगाने वाले के लिए यदि पनिशमेंट का क्लॉज रखा जाए तो बहुत अच्छा है ।

SHRI BAPUSAHEB PARULEKAR: As regards Section 377, you stated that because these offences against young people are committed in jails, they are to be protected. You also said that is should be made mandatory. But from the point of view of sentence, that cannot be mandatory because as per the existing provisions, the punishment is imprisonment for life. Do you mean to say that in order to make Superintendent of Jails and other persons in authority no to commit sexual offences against young boys, the presumption under Sec. 111A should be "in custodial homosexual offences" so that the provisions should be made stringent?

डा० राम राज प्रसाद सिंह : मैं आपसे यह कहना चाहता हूँ कि जब लड़के की उम्र को 21 साल किया गया है तो लड़की की उम्र को 15 से 18

साल किया जाए, इस पर विचार कीजिए।

बिबेक पर निर्भर करेगा, चाहे वो वह सजा दे या बरी कर दे।

श्री काजी सलीम : बिल्डिंग एक्ट है इसलिए बनाया गया है कि उनको सजा देकर हम मुजरिम नहीं बनाना चाहते हैं। इसलिये मैरिज एक्ट में 18 साल की उम्र रखी गई है कि बच्चे खराब न हों, सुधरने की स्थिति में रहें। दोनों का अलग-अलग मतलब है।

डा० रामराज प्रसाद सिंह : मेरे कहने का मतलब यह है कि जज जो बैठते हैं, उनको मालूम हो जाता है, लेकिन कभी-कभी एक्ट धीरे-रूत से बन्द जाते हैं। जज का बिबेक जरूरी नहीं है कि अच्छा होगा। ज्यादातर जज बहुत अच्छे होते हैं, लेकिन कुछ के बारे में कहा जा सकता है कि ठीक नहीं है।

डा० राम राज प्रसाद सिंह : उनको बच्चा भी कहा जाए, बच्ची भी कहा जाए और सैक्स के लिए उनको भेज दिया जाए। इसलिए श्रीमन् हमारा जो सोलियन कन्वेंशन है, यह उसके खिलाफ है।

श्री हुसमदेव नारायण बाबब : आपने लड़की की उम्र 18 साल बढ़ाने के बारे में कहा। लेकिन जबी भी हमारे प्रदेश के अन्दर लड़की की मायी 12-13-14 और 15 साल में हो जाती है और 16-17-18 साल में उनके बच्चे भी हो जाते हैं। 18 साल से कम उम्र पर आप प्रतिबन्ध लगा रहे हैं बायी 18 साल से कम उम्र में यदि यौन संबंध स्थापित होता है, तो आप रेप मानेंगे। यदि कोई 18 साल में नीचे की लड़की बच्चे को जन्म देती है, तो पुलिस को यह अधिकार है कि वह उसको पकड़ ले, इन बारे में कानून में कोई संशोधन होना चाहिए—क्या आप ऐसा महसूस करते हैं?

SHRI BAPUSAHEB PARULEKAR:
What punishments should be given to breach of trust?

डा० राम राज प्रसाद सिंह : हमारे हिसाब से ब्रिच-आफ-ट्रस्ट हर हालत में हुआ। बाजबब ने लिखा है कि जो आफसर ट्रस्ट को ब्रीच करता है, उसको हाइवेस्ट पनिशमेंट मिलना चाहिए। ब्रीच आफ ट्रस्ट सबसे बड़ा दोष है। उसको रिगोरस इम्प्रीजन्मेंट मिलना चाहिए। स्कूल और टीचर्स को इस बिल में जोड़ा जाना चाहिए। जो संबन्धन करता है, उसको वीक्सिमम पनिशमेंट मिलना चाहिए।

डा० राम राज प्रसाद सिंह : मैंने जो कहा कि 18 साल कर देना चाहिए उस से पापुलेसन कंट्रोल भी होगा और समाज में सुधार भी आएगा। मैं पापुलेसन कंट्रोल का हिमायती हूँ। 15 साल जो मैरिजेशन एज है उस के लिए ऐसा कानून बना दें कि उसे 18 कर दें तो उस से बहुत बड़ी राहत देग का होगी। इसी सन्दर्भ में मैंने इस को भी 18 वर्ष करने को कहा। इसमें कई फायदे होंगे।

श्री हुसमदेव नारायण बाबब : 111 के बारे में आपने कहा है। जैसा कि उसमें लिखा कि "गैल-प्रिज्यूम"—इससे क्या आपकी मंजा यह है कि इसको इस तरह से बनाया जाए कि जज के ऊपर किसी तरह का बन्धन न करें। क्या इस बिल में "गैल" की जगह पर "मि" रखा जाए! जज के

SHRI B. IBRAHIM: You have referred to the previous character of the prosecutrix. In that connection I would like to know whether in the cross-examination the previous conduct of the prosecutrix is allowed to be asked or not.

डा० राम राम प्रसाद सिंह : मैंने कहा कि महिलाओं के पूर्व चरित्र के बारे में जानना बहुत आवश्यक है मैंने एक बात और कही कि बार बार जो रेप करते हैं उनकी पनिशमेंट डबल होनी चाहिए ।

MR. CHAIRMAN: Thank you very much.

(The witness then withdrew)

II—Shrimati Sukumari Devi MLA.

(The witness was called and she took her seat.)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follow:

“58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.”

You have gone through the Draft Bill. Please tell us what have you to say in this respect.

श्रीमती राम सुकुमारी देवी : यह जो अमेंडमेंट बिल है, इसे हम ने पढ़ा । यह बहुत ही हितकर है । जो बलात्कार

बाध कल हो रहे हैं उसको रोकने में यह बहुत ही कारगर सिद्ध होगा ।

एक बात मुझे यह कहनी है कि सेक्शन 376 का जो अमेंडमेंट है उस में पब्लिक सर्वेंट बंद जो है, उसमें इतना और होना चाहिए कि पब्लिक सर्वेंट कुछ कनोट पोलिटिकल परसन्स इन आफिस । मिनिस्टर हों, एम० एल० ए० हों, एम० पी० हो, किसी अडवोकेटिंग के बेदरमैन हों, उन को सब को इस के अन्तर्गत कर देना चाहिए । एक यह मेरा सुझाव है ।

MR. CHAIRMAN: Are you a practising advocate?

SHRIMATI RAM SUKUMARI DEVI: Yes, I am practising before District courts.

MR. CHAIRMAN: Bombay High Court has held that a Minister comes under the category of a public servant.

श्रीमती राम सुकुमारी देवी : मैं इस चीज को जानती हूँ लेकिन इस के बावजूद भी यह इस में क्लियर हो जाना चाहिए । क्योंकि राजनीति की जो बिगड़ती हुई स्थिति है उस को देखते हुए साफ सन्दर्भों में मैं चाहती हूँ कि इस के अन्तर्गत यह कर दिया जावे ।

MR. CHAIRMAN: According to you, even M.L.As., M.L.Cs. and M.Ps. should be included in that?

SHRIMATI RAM SUKUMARI DEVI: Political persons in office.

MR. CHAIRMAN: What do you mean by 'in office'?

SHRIMATI RAM SUKUMARI DEVI: M.L.As., M.L.Cs., M.Ps., Zila Parishad Chairman, Sarpanch, Mukhiya of the Gram Panchayat in office.

दूसरे में अपने अनुभव के आधार पर कहना चाहती हूँ कि मिनिमम बेज एकट में जो बीकर सेक्सुअल के लोग हैं, यदि उन लोगों का किसी दूसरे से झगडा हो तो, वे किसी व्यक्ति को पैसा देकर कोर्ट में केस करने के लिये भेज देते हैं। इस तरह से एक्सप्लाइड होकर इस मिनिमम बेज एकट से बहुत सारे लोग परेशान होते रहे हैं। यह जो प्रेसेंटमेंट है, इस में यह भी देखना होगा कि एक दूसरे से झगडा होने के कारण, जैसे मान लीजिये पोलिटिकल झगडा हो प्रबवा पर की सम्पत्ति को लेकर झगडा हो, तो ऐसी स्थिति में मरीज पर की लडकी को एक्सप्लाइड किया जाता है। इस चीज से बचने के लिये भी कानून में व्यवस्था होनी चाहिए। इस संबंध में हरीद्वी कन्स्यूजन्स नहीं होना चाहिए कि केस-आफ-रेप है। इस को ठीक से देखकर अपना बिबेक लगाकर ही जज को निर्णय देना चाहिए। हाल की जो परम्परा है उसको देखते हुए, व्यक्ति समाज में अपनी इज्जत को देखते हुए सोसायटी में नहीं जा सकता है। इस चीज से बचने के लिये भी कानून में व्यवस्था होनी चाहिए।

श्रीमती बिबावती कतुबेबी : किस तरह की सजा होनी चाहिए ?

श्रीमती राज सुकुमारी देवी : सरकार-स्टन्डिन्ग एबोडेंस को भी कन्सीडर करना चाहिए। इस को देखकर ही निर्णय निकालना चाहिए।

श्री० निर्मला कुमारी शक्तावत : मैं आपसे एक प्रश्न पूछना चाहती हूँ। जैसा कि आपने कहा कि इन्फोर्सेट प्राइमी गलत तरीके से नहीं फंसा दिया जाये। इस के लिये इस बिज में प्रोबोजब होना चाहिए। रेप हुआ है या नहीं, इसके लिये मैडिकल टैस्ट होना और जब उसकी

रिपोर्ट आयेगी, तभी कुछ हो सकता है। इस लिये वह प्रश्न नहीं उठता कि कोई गलत प्राइमी हो सकता है ?

श्रीमती राज सुकुमारी देवी : निषय 376 को देखा जाये। उसमें बहुत सारी बातें बताई गई हैं। जब प्रूफ होना, तभी यह कहा जा सकता है कि रेप हुआ है। मैडिकल टैस्ट तो है ही, लेकिन साथ ही साथ सरकारस्टन्डिन्ग एबोडेंस को भी कन्सीडर करना चाहिए।

SHRIMATI GEETA MUKHER-JEE: You being a woman as well as an advocate, you desire that persons indulging in rape should be punished. This is evident from your evidence. You know that in rape cases, the court may presume but not take for granted. In view of this, don't you think that all the circumstantial evidence can be brought and there is nothing here which will prevent bringing that circumstantial evidence?

Secondly, this is only applicable to custodial rape. Is it not a fact that when a custodial rape is committed, the custodians call for all kinds of bogus evidences as to the sexual past of the offender? That being the predominant situation, this presumption which is not proved, by itself would really bring a new element to bring those guilty to book. But this will not by itself at all prevent circumstantial evidence.

श्रीमती राज सुकुमारी देवी : इस में आपने जैसा कहा वह बिलकुल सही है। यही चर्चा रहा है कि जो प्रभावकारी है, जो कर्टांरिडियन है, वह इस तरह से ऐसा मंजूर करता है कि जिस के कारण वह बरी हो जाता है। यह सही है और यही प्रेसेंटमेंट है। बहुत तरह से प्रेजेराइज होते हैं। कोर्टस भी प्रेजेराइज होते हैं केवल न्याय ही नहीं होते हैं और कोर्टस,

के इस तरह से प्रेक्षारण होने के बाद कस्टोडियन्स बरी होते हैं तो इसको रोकने की बात किस तरह से की जाये उस के संबंध में मैं कहना चाहती हूँ कि इस बात का पता चल जाता है जब गवाह बताते हैं और वह स्टोरियों टाइप एविडेंस देना शुरू कर देते हैं और एक लाइन पकड़ कर उसी लाइन पर बोलते चले जाते हैं। उन को उसी तरह पढा कर भेजा जाता है। तो कोर्टस उस से कनक्लूजन पर आ सकते हैं कि इस गवाह को इस तरह से सिखाया गया है। गवाह की टेस्टिमनी कि वह जो बोलता है वह कहां तक सही है, इस का पता इस से चल सकता है। तो इस के लिये कोर्टस ही सफिसेंट है। उन को पता चल जायेगा जब सेरिज आफ विट्रिभ आयेंगे और वह एक ही तरह की बात कहते चले जायेंगे। यह कोर्ट की कम्पोसेंट पर निर्भर करता है कि वह किस तरह से इस की सत्यता पर पहुंचे।

श्रीमती विद्यावती चतुर्वेदी : 375 का छटा आप ने देखा कि जित में लिखा है कि प्रभावी प्रतिरोध करने में असमर्थ है, इसमें प्रभावी शब्द जो है इस को रहना चाहिए ? क्योंकि प्रभावी शब्द रहने से कोई भी कह देगा कि इस औरत ने कोई जोरदार विरोध नहीं किया, ऐसे ही जोडा सा हां, हूं, कर दिया। ऐसी हालत में इस जगह प्रभावी रखना जरूरी है या नहीं ?

श्रीमती राम लक्ष्मणारी देवी : प्रभावी रखना बिलकुल जरूरी नहीं है।

श्रीमती विद्यावती चतुर्वेदी : इतना पर्याप्त है कि विरोध किया ?

श्रीमती राम लक्ष्मणारी देवी : जी हां। स को तो डिलिट कर ही देना चाहिए।

श्रीमती विद्यावती चतुर्वेदी : इस में जो यह लिखा है कि 15 वर्ष तक की यदि पत्नी भी हो उस के साथ पति संग करता है तो वह भी इस अपराध में प्राता है, इस के संबंध में कई तरह के एवाडेंस आयें हैं। अभी कलकत्ता में एक घटना हुई है जिस में पति की उम्र ज्यादा थी और पत्नी की कम थी 12-13 साल की पत्नी थी, उस के साथ संभोग करने से उस की मृत हो गई। तो क्या यह बात आप पसंद करेंगी कि यह उम्र पन्द्रह साल से ऊपर 18 साल कर देना चाहिए या 15 से कम करनी चाहिए ?

श्रीमती राम लक्ष्मणारी देवी : ऐज का तो पहले 15 वर्ष का प्रश्न ही नहीं उठता है। मैरिज एक्ट के अन्तर्गत यह निश्चित कर दिया गया है कि लड़के की इतनी आयु होनी चाहिए और लड़की की इतनी आयु होनी चाहिए। तो उस के रहते हुए यह तो अप्रासंगिक हो जाता है ?

श्रीमती विद्यावती चतुर्वेदी : प्रैक्टिकल में तो अभी तक बाल विवाह है। आप के बिहार में भी ऐसे केसेज हैं। करीब करीब सभी जगह अभी तक बाल विवाह हो रहे हैं।

श्रीमती राम लक्ष्मणारी देवी : तो बाल-विवाह को रोकने के लिये कार्यवाही होनी चाहिए। लेकिन यह जो पन्द्रह वर्ष का पति पत्नी वाला सबाल है यह जो प्रश्न ही नहीं खड़ा जाता है।

श्रीमती विद्यावती चतुर्वेदी : कोर्टस के अन्तर जो एविडेंस हो वह युक्त हो, उस का बाहर प्रचार न हो तो क्या आप यह पसंद करेंगी कि जो मुनाहवार है उसे लोगों के सामने न लाया जाये ? उस के बारे में लोगों को यह पता न चले कि यह मुनाहवार है, गलत आदमी है,

असामयिक तत्व है यह क्या आप पसन्द करेंगे? आपकी क्या राय है कि इस बात का बाहर प्रचार होना चाहिए या नहीं होना चाहिए या गुनाहगार का तो प्रचार होना चाहिए लेकिन लडकी के नाम का प्रचार नहीं होना चाहिए क्योंकि समाज में उसकी स्थिति खराब हो सकती है? इसके बारे में आपकी क्या राय है?

श्रीमती राम सुकुमारी देवी: लडकी के संबंध में शो गुप्त रखना ज्यादा अच्छा है क्योंकि बाबू का उसका जीवन नरककुंड न बन जाय, इसलिये इसको गुप्त रखना ज्यादा हितकर होगा। लेकिन जो उस तरह के असामयिक तत्व हैं उनकी भर्त्सना तो समाज के हर वर्ग से होनी चाहिए और इसलिये उसका नाम गुप्त नहीं रखना चाहिए। इसके सब-साब ट्रायल भी अगर गुप्त ढंग से होता है और उसका नाम भी बाहर नहीं आता है तो उस से फायदा क्या होगा? क्यों कि अगर वह प्रभावशाली व्यक्ति हैं, सामंजस्यवान हैं। इस तरह के राजकल के जो बहुत सारे नौजवान हैं तो बहुत सारा पैसा हाईवे राबरी से या औरतों का सामान चोरना गिनकर इकट्ठे करते हैं और उस से उन में जो हुनूष आ जाते हैं जिस के कारण वे ऐसा करते हैं और इस तरह की घटनाओं देव बर्गहरा की बढ़ती हैं तो ऐसे लोगों को तो एक्सपोज होना ही चाहिए, उनकी भर्त्सना तो जरूर करनी चाहिए। वह तो कोशिश करेंगे कि दूसरे लोगों तक जानकारी न पहुंचे और बाहर वे अच्छे बने रहेंगे।

श्रीमती विद्यावती चतुर्वेदी: वह मैं समझ गई कि जो गुनाहगार हैं उसका जो प्रचार होना चाहिए लेकिन लडकी का बर्त्सना चाहिए।

दूसरी बात मैं जानना चाहती थी कि 376 का (क) (ख) (ग) आपने देखा होगा। उसमें पुलिस, अस्पताल या जेल आदि के बारे में विद्या हुआ है लेकिन उस के अलावा और बहुत से इस्टीम्यूमेंस होते हैं, जैसे नारी निकेतन या और बहुत से प्राइवेट इस्टीम्यूमेंस हैं, प्राइवेट सरकारी और प्राइवेट पब्लिक के इस्टीम्यूमेंस हैं, स्कूल हैं कॉलेज हैं उनमें भी लडकियां काम करती हैं और उनके भी दास होते हैं तो क्या उनको भी इसमें जोड़ा जाना चाहिए या नहीं?

श्रीमती राम सुकुमारी देवी: उसमें संशयों भी जोड़ दी जायें। इसके साथ मैं यह भी चाहती हूँ कि हाट, बाजार जैसे आदि या जहाँ पर भी हिन्दुओं के पबं होते हैं जैसे अभी कर्तिक का मेला है, उस में हज़ारों की भीड़ होती है। तो इस तरह के जो स्थान हैं हाट बाजार मेले या तीर्थस्थान आदि उन में जो इस तरह की घटनाएँ होती हैं उनको भी इस के अन्तर्ग ले जाना चाहिए।

SHRI AMARPROSAD CHAKRA-BORTY: You are appearing before this Committee in two capacities. You are an Advocate and also a Member of the Assembly. Have you gone through all the Sections of the Bill and all the Clauses? What do you say regarding publication of cases of rape in newspapers? Have you given your thought to this problem? Please see Section 228A. Do you think that publication is necessary or whoever publishes such cases should be punished?

SHRIMATI RAM SUKUMARI DEVI: If in Law Journal it is published and besides that it is published in some provincial newspapers.

SHRI AMARPROSAD CHAKRA-BORTY: Suppose in your locality rape is committed by a very influential political person or a Minister or an MP do you feel it should be published in the newspapers or it should not be published?

SHRIMATI RAM SUKUMARI DEVI: Definitely it should be published.

SHRI AMARPROSAD CHAKRABORTY: Have you given thought to the point whether the name of the girl or person should be published or not?

SHRIMATI RAM SUKUMARI DEVI: Name of the person should be published and not that of the girl.

SHRI AMARPROSAD CHAKRABORTY: Then the present amendment in the Bill according to you should be re-amended. Is that your submission?

SHRIMATI RAM SUKUMARI DEVI: If he publishes the judgement then he should not be punished.

SHRI AMARPROSAD CHAKRABORTY: Have you gone through Section 21 of the IPC? Do you suggest any inclusion or amendment along with this Bill?

SHRIMATI RAM SUKUMARI DEVI: Public servant should also come along with political persons in authority.

SHRI AMARPROSAD CHAKRABORTY: You have suggested that there is possibility of blackmailing. Do you actually have in mind the point about 'presumption'?

SHRI AMARPROSAD CHAKRABORTY: Will you give some clarification as to what you intend to say on 'presumption'?

MR. CHAIRMAN: I have understood her. Her statement is like this. She said that protection should be given to ladies, but at the same time precaution should be taken to make some provision in order not to give scope for misuse of it.

SHRI AMARPROSAD CHAKRABORTY: If you say, 'yes', do you suggest any amendment to save the man from false prosecution by any girl?

SHRIMATI RAM SUKUMARI DEVI: What sort of protection should be given to the male member?

SHRI AMARPROSAD CHAKRABORTY: Suppose there is some false prosecution. Do you suggest that some provision should be made in the Act so as to save the people from false prosecution? Do you suggest any amendment for protecting the people who are falsely prosecuted?

MR. CHAIRMAN: The chances of filing a false complaint or false prosecution are there. So for the false complaint and false prosecution, Section 250 of the Cr. P. C. is there

SHRI AMARPROSAD CHAKRABORTY: I want to know whether she will suggest any safety provision. I want to know whether she wants any clause to be added in respect of cases of false prosecution.

I will again put the question. You have already suggested that there is likelihood of some false complaint or false prosecution. For that there is a law. But do you suggest that another amendment of the Section is required to save the person under the law?

श्रीमती राम सुकुमारी देवी : इस में मैंने यह बताया है कि एक सप्लायमेंटेशन के चांसोज हैं जिसके कारण इन्फॉर्मेट परसन भी उस में घा सकते हैं। तो उस कलिये तो मैंने बताया है कि सर्कमस्टेंशियल एविडेंस को भी देखा जाय और जो इन्क्वायरी आफिसर है वह अपने विवेक से काम ले।

SHRI R. K. MHALGI: Madam, you desire to enlarge the scope of the definition of 'public servant' so that the politicians in office will also be included. I do not want any names. But have you got any concrete examples or instances in your mind to support this particular amendment which you propose?

श्रीमती राज सुकुमारी देवी : मैं कांक्रेट तो नहीं बना सकता हूँ लेकिन पहले ऐसी घटनायें हुई हैं और प्रचाराओं में वह निकली हैं। मैंने यह इस लिये कहा कि राजनीति की जो विवशता हुई अवस्था है उसको देखते हुए मुखिया, सरपंच, प्रमुख, जिला परिषद् के अध्यक्ष इन सारे लोगों को इस में इन्वोल्व कर दिया जाय ताकि सबके ऊपर एक कानून का प्रभुत्व रहे और सभी उसके अंदर आये।

SHRI R. S. SPARROW: You have very aptly said the whole thing in general terms. And taking the whole question in its correct perspective, I would like to ask your view on one thing. This question of rape is very important. You also know in which section of the society majority of rape cases are occurring. You might have by now formed the opinion as to how to handle such cases. Could you tell me one or two measures on which you would lay emphasis to make this particular Bill a success? You are a lawyer and you have got a background of it and you have talked in general terms also, and there is a fresh approach to that problem. So, could you kindly tell us one or two measures which you emphasise to pursue and if possible, to include in this?

श्रीमती राज सुकुमारी देवी : कमजोर वर्ग या हरिजन लोग हैं इन लोगों में इस तरह की घटनायें ज्यादा घटती हैं। इस संबंध में मैं चाहूंगी न्याय मिले, इस के लिये यह आवश्यक है कि जो पूषरर सेक्सुअल के लोग इस तरह से विक्टिम बनते हैं उन को लीगल एड जरूर मिलनी चाहिये जिससे कि वह अपनी सारी बातें बतला सकें और उनके जो लीगल एडवाइजर या एडवोकेट हों उन से उनको मदद मिले। ऐसा नहीं हो कि उस के अभाव में वह और किसी तरह से प्रेस-इन्वोल्व होने के कारण वे अपनी बात सामने न ला सकें।

वे कमजोर वर्ग से आते हैं, हरिजन हैं या बँकबर्त हैं और उनके ऊपर प्रेसर पड़ सकता है। तो कानूनी मदद के अभाव में ऐसा न हो कि कोई दूसरे तरीके से उनसे गलतबयानी कर दें या तपया पंसा देकर बिन घोवर करा लें। इसको बचाने के लिये सरकार को चाहिए कि लीगल एड इस तरह के रैप केसेज में विक्टिम को दिलावाये।

इस के अलावा इसमें यह जो है कि जो आर मोर दैन जो परसन्स इसको मोर एन बन परसन करना चाहिए।

श्री काशी लालीम : इसको प्रोव्हीडिंग को गुप्त रखना तो केवल बड़े शहरों में पोसिबल है। बम्बई, दिल्ली और कलकत्ता में ऐसा हो सकता है, लेकिन छोटे-छोटे शहरों में जहाँ हम रहते हैं, आपकी म लूम है वहाँ किसनी क्पूरोसिटी होती है। यदि वहाँ पर किसी लडकी के साथ रेप हुआ और बात फील गई तो उनका घर जलाना शुरू कर दें और लगडे होते हैं—इस बारे में कभी आपने सोचा है ?

श्रीमती राज सुकुमारी देवी : जहाँ तक समाज के ड्राये का संबंध है कि तनावपूर्ण हो जायेगा, यदि इस चीज को गुप्त रखा जायेगा। तनाव को कम करने के लिये ही इसको गुप्त रखना चाहिए, महा तो तनाव बढ जायेगा।

SHRI BAPUSAHEB PARULEKAR: I would like to ask two questions. One is regarding your evidence for enlarging the scope of the definition of the words "public servant" which occur in Section 376(2) (b) Page 3 of the Bill and Sec. 376A page 4 of the Bill. At both these places, the words "public servant" and "commits rape on a woman" vis-a-vis the words "in his custody" are used. You would like

to enlarge the definition so as to include all representatives of people from Gram Panchayat to Members of Parliament. Kindly tell me the words you would like to use in order to enlarge the scope of this definition. Otherwise, that will be redundant. If you include all people, ultimately it becomes a general thing with nothing in particular. Therefore, the enlargement of the scope of the provision would become redundant which would be a dangerous proposition.

SHRIMATI RAM SUKUMARI DEVI: "Who ever being a public servant takes under advantage of the official position and seduces a woman who is in custody or contact". These words would do.

श्रीमती राम सुकुमारी देवी : पब्लिक कास्टैबल में जो है। वह है वह ग्राम पंचायत हो, जिला परिषद् हो, प्रमुख हो और कोई भी हो

SHRI BAPUSAHEB PARULEKAR: An esteemed colleague of mine has mentioned that special efforts should be made so that the spirit of the Act should be implemented. You suggested that free legal aid should be given to the victim. As an advocate you know that at present from the time of filing a complaint up to the Supreme Court, the victim has not to pay anything. That provision is there. In addition to this, what legal aid you want to be given?

श्री श्रीमती राम सुकुमारी देवी : लीगल एड का मतलब में है लेकिन ऐडवुकेटली लीगल एड मिल नहीं पाती है।

SHRI BAPUSAHEB PARULEKAR: What do you mean there cannot be any legal aid? That means the present machinery provided is inadequate.

श्रीमती राम सुकुमारी देवी : हां, वह इन्फ्रीकीट है।

यह लीगल एड की बात बालनर इसलिए बोलने लगी है कि अगर वहां पर लाइवर एड-

बोकेट होगा तो वह विक्टिम की तरफ से काम करेगा और उस को वह सारी बातें बताएगा जिस में उस की मदद हो सके।

MR. CHAIRMAN: At what stage the Government is giving assistance. Now, the assistance of the public prosecutor will arise during the trial stage. Do you mean to say that the legal aid should be given from the initial stage of filing the chargesheet?

SHRIMATI RAM SUKUMARI DEVI: From the very beginning.

MR. CHAIRMAN: Thank you very much.

(The witness then withdrew)

III.—Bihar Mahila Samaj Patna.
Spokesman:

1. Shrimati Kanak Roy
2. Shrimati Raj Kumari Shabnam.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we proceed, may, I draw your attention to Direction 58 of the Directions by the Speaker which reads as follow:—

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

I hope you have gone through the Draft Bill. Please give four suggestions point by point in brief.

SHRIMATI KANAK ROY: I have gone through the Bill. I suggest the following amendments in the existing law. There should be family courts for trying cases of rape and molestation. There should be speedy trial in rape cases. Investigation should be completed within fifteen days and final judgement in two months. Special courts should be there for trial of rape cases. Punishment for rape should be seven to ten years only. It should not be liable to fine. Instead of fine some other severe punishment may be introduced such as flogging. In rape cases evidence of the victim should be considered conclusive for awarding punishment. Case should be decided on primary evidence. Only woman police should deal with the woman and victim should not be taken to lock-up but sent direct to the jail and interrogation held there.

श्रीमती राजकुमारी सक्सेना : जो यह बोल चुकी है उस को मैं सपोर्ट करती हूँ। इस के अलावा मैं यह कहना चाहती हूँ कि इस में जो एविडेंस है उस में डाक्टरी एविडेंस को छोड़ कर बाकी जो बिक्टिम है उस के मोरल एविडेंस को प्रथम माना जाना चाहिए। उस के ऊपर जल्दी से जल्दी उस की इन्वेस्टिगेशन होनी चाहिए बिदिन 15 डेज और उस के बाद ट्रयाल भी बिदिन दू मन्थ हो जानी चाहिए। मोरल एविडेंस जो बिक्टिम गर्ल या बूमन देगी उसी को फस्ट प्रीफरेंस देना चाहिए लेकिन उस हालत में जब कि बिक्टिम बूमन या गर्ल स्वयं उपस्थित हो कर ऐसा एविडेंस दे तभी उस को फस्ट प्रीफरेंस देना चाहिए। उसकी तरफ से उस के परेन्ट्स या उसके गार्जियन्स के एविडेंस को फस्ट प्रीफरेंस नहीं दिया जाना चाहिए। जो पर्सनलमेंट गवर्नमेंट सर्वेट के लिए है, पुलिस बार्सों के लिए है, वही सक्षी के लिए होता चाहिए व हेव्ह गवर्नमेंट सर्वेट होना नहीं हो।

SHRI AMARPROSAD CHAKRABORTY: Madam, you have said that in preference to medical evidence oral evidence should be given importance. What do you actually mean by it? You have seen the Act. Unless the intercourse is proved, the question of with or without consent does not arise. Suppose you file a complaint and suppose there is medical evidence. Still if the girl says orally that she is raped, the man will be punished. In that case can her oral statement be given preference?

MR. CHAIRMAN: You said in your statement that the girl's statement should be taken as primary evidence in performance to medical evidence.

SHRI AMARPROSAD CHAKRABORTY: The question is even if the doctor does not support the case of a rape, whether her uncorroborative oral evidence can be taken as an authentic statement for presumption.

श्रीमती राजकुमारी सक्सेना : होता यह है कि बिक्टिम रिपोर्ट हासिल करने में प्रथम हो जाते हैं। अक्सर मैंने देखा है कि रेप गरीब सबके और लोअर कास्ट के लोगों के साथ होता है। इसीलिए रेप करने वाले डाक्टरी रिपोर्ट अपने फेबर में हासिल कर लेते हैं। ऐसी हालत में केस को केवल डाक्टरी रिपोर्ट के आधार पर फैल कर दिया जाता है। मैं कहना चाहती हूँ कि लड़की कहती है कि मेरे साथ रेप हुआ है, लेकिन उस का स्टेटमेंट वैडिकल रिपोर्ट के अभाव में गलत हो जाता है। नायब ही कोई लड़की ऐसी होगी जो अपने ही बारे में गलत स्टेटमेंट दे। इसलिए मैंने अपना सुझाव दिया है।

SHRI R. K. MHALGI: Madam, you said something about family court. What is your concept of 'family court'?

श्रीमती राजकुमारी सक्सेना : फीमिली कोर्ट से केस टात्सर्ब यह है कि स्पेशल ट्राइल की कोर्ट हों, जहाँ पर ऐसे केसेज को उपस्थित हो। ऐसी घटनायें जो कि समाज से बायकाट

होती है, उनको सुलझाने के लिए इस तरह के कोर्ट की जरूरत है और ऐसे केसेज उसमें ही सुलझाए जाने चाहिए।

SHRI BAPUSAHEB PARULEKAR:
You said that in these days reliance cannot be placed on the medical report of the doctor and therefore, the oral evidence of the girl should be accepted. Suppose the medical examination is made by a female doctor. Do you think that even in that case the medical report should not be accepted? Do you think that even female doctors will give a false medical report?

My next question is this. According to you, in our society there are such kind of ladies who are of easy virtue and such ladies can file a false case against men. In such a case, do you think that protection for man is necessary?

MR. CHAIRMAN: I will clarify this. You said that a medical report can be given under influence, even if the doctors happen to be ladies. Then when the victim comes to the court, she will openly say that she has been raped. Therefore, that evidence should be accepted, according to you. The point he has made is that women are also subject to influence and sometimes false cases are filed at the instance of ladies. Then is it safe to try the man and convict him on the basis of the oral evidence of a woman?

श्री जिलोक शम्भू: आप ने जैसी शंका व्यक्त की है कि डाक्टरी रिपोर्ट ठीक नहीं आती है तो अगर महिला डाक्टर हो तो क्या रिपोर्ट सही आएगी ?

श्रीमती राजकुमारी शबनम : डाक्टर मीम्स डाक्टर, वह महिला हो या पुरुष उस से कोई फर्क नहीं पड़ता है। गरीबी की वजह से और ब्यवस्था की वजह से हर कोई इन्फ्लुएंस हो सकता है।

श्री हुकूम हेब नारायण घाटव : आपने सही कहा कि महिलाओं के लिए सब से प्रमुख वस्तु उनका सतीत्व है। लेकिन आप भी यह महसूस करती होंगी कि ऐसी महिलाएँ जो अपवाद स्वरूप हों जिन के लिए दुनियाँ समाज या सतीत्व कोई चीज नहीं है ऐसी अपवाद स्वरूप महिला समाज के अन्दर हो और वह किसी अपादमी के ऊपर आरोप लगा दे कि इस ने हमारे साथ सेक्सुअल इंटरकोस किया है और किसी दूसरे मर्द के साथ उसका सेक्सुअल इंटरकोस हो भी गया हो वैसी हालत में जो आप कहती हैं कि डाक्टरी सर्टिफिकेट का कोई महत्व न हो और उस की बात को मान लिया जाय तो ऐसी महिला के कथन को मान लेने पर तो किसी भी सीधे सादे अपादमी को सजा हो जायेगी। तो डाक्टरी सर्टिफिकेट को बिलकुल इनकार कैसे कर सकते हैं ?

श्रीमती राजकुमारी शबनम : ऐसे रेप केसेज आएंगे। ऐसा आम तौर से होता नहीं है। लेकिन यह आम देखा जाता है कि डाक्टरी रिपोर्ट लोग अपने फेवर में आबंटन कर लेते हैं। जो आप ने कहा है वैसा भी हो सकता है लेकिन रयली ऐसा होता है। मगर यह आप देखें कोई भी औरत अपने ही बारे में ऐसा नहीं कहेगी कि मेरे साथ ऐसा किया गया।

SHRI B. IBRAHIM: You have stated that the women-folk have lost confidence in Police force in some States. Does it apply to this particular State?

श्री रास बिहारी जेहरा : बिहार स्टेट की पुलिस के ऊपर तो आप का भरोसा है या नहीं ?

श्रीमती राजकुमारी शबनम : पुलिस के ऊपर भरोसा है लेकिन यह बात है कि

यदि कोई केस पुलिस के अहाँ कराने जाते हैं और पुलिस केस खराब कर देती है तो हम प्रोटेस्ट देकर उस की कम्प्लेंट कर देते हैं लेकिन डाक्टर के केस में हम कुछ नहीं कर सकते हैं।

प्रो० निर्मला कुमारी शर्मा : बिहार के बारे में आप ने बहुत अच्छा अध्ययन किया होगा। बिहार को तीन भागों में बांटा जा सकता है। एक तो यह क्षेत्र है संभल परगना बंगरुह का, दूसरा ग्रामीण क्षेत्र है और तीसरा यह है जो कि पटना या अन्य नगरों का नगरीय क्षेत्र है। तो क्या यह आप ने पाया कि जो संभल परगना का क्षेत्र है वहाँ पर क्या इस प्रकार के केसेज अधिक होते हैं या नगरों में अधिक होते हैं ?

दूसरा प्रश्न होगा यह है कि मुझे ऐसी जानकारी मिली है कि बिहार में एक क्षेत्रिय ब्राह्मण नाम का बर्ग है जिस में एक व्यक्ति बहुत सारे विवाह करता है। उस के विवाह का एक रजिस्टर मन्टेन होता है और उसके अनुसार पीरि-आडिकली उस के पास स्थिरा जाती रहती है। इस प्रकार के केसेज में रेप के केसेज अधिक होते हैं। क्या यह स्थिति वहाँ है ?

तीसरा प्रश्न यह है कि कुछ जगहों से हमें यह जानकारी मिली कि जो खराब ऐक्ट है उस का प्रभाव बिहार में

बहुत अधिक हुआ है। तो क्या ऐक्यु-पली जैसे बाइबलमेंजेड दूसरे प्रश्नों में होती है, आप के अहाँ रिजिस्ट्रेशन से उस के ऊपर रोक लग गई है ?

श्रीमती कमल राय : आप का पहला प्रश्न है संभल परगना के बारे में वहाँ हमारी आदिवासी संभल महिलाएं रहती हैं, वहाँ रेप के कांड होते हैं मानहीं, इसकी जानकारी आप चाहती हैं। इन केसेज के सम्बन्ध में हमारा बिहार महिला समाज कुछ प्रत्यक्षदणियों को अहाँ भेषता है। उनकी रिपोर्ट के आधार पर मैं यह कह सकती हूँ कि खासकर आदिवासियों में इस तरह की घटनाएं घ-एचिन हुआ करती हैं। इसे आप समाज का जो कमजोर वर्ग है उस पर उच्च बर्ग भा सचनों का एक हथका ही समझिए। आप यह कहेंगी कि क्या यह बड़िया है तो बड़ा तो बकर है लेकिन अभी जो कमजोर वर्ग के लोग हैं यह कामज हो गए हैं। इस सम्बन्ध में राइटिंग में हम कुछ ने धाई है अगर आप चाहें तो मैं पढ़ सकती हूँ। एक केस है मयाथा का जहाँ पर रात को पुलिस के कास्टेबलों में जा कर मास रेप किया था। वहाँ बहुत हल्का भी हुआ महिला समिति के प्रति-निधि भी वहाँ गए। इन के बाद यह लोग पकड़े गए। लेकिन कोई खास सीबियर पब्लिशमेंट तो हुआ नहीं। कुछ घर पकड़े हुंती हैं लेकिन केस का इतना सम्बा-बौड़ा प्रोसीजर है कि उस से उस का सारा एफेक्ट गइबड़ा जाता है, केस हलंभप हो जाता है। आखिर कमजोर लोगों के पीछे कौन लोग हैं ? आप ने रिजि-संभल परगना की बात कही है, मैं कहना चाहती हूँ कि बकसरपुर, छबिभावपुर का जो इलाका है वहाँ बंग मसल पतल और तकड़ी का काम करती है घाए दिन वहाँ

पर ऐसी घटनाएं घटती हैं। एक बार वो बहनों को होल नाइट उन्होंने रेप किया गैंग रेप हुआ। उस के पीछे हमारे प्रावमी पड़े। पुलिस कम्प्लेंट हुई, लेकिन अभी तक उस केस में कोई डेसी-शन नहीं हुआ। आप के भी कुछ लोग होंगे उसकी जांचपड़ताल के लिए गए होंगे। एक और स्थान में भी इस तरह की घटना हुई थी। तो इस तरह की घटनाएं बर्दास्त नहीं करती हैं।

प्रो० निर्मला कुमारी शक्ताबत : इस के लिए क्या सजेरिजन देना चाहती हैं ?

श्रीमती कनक राय : इस के लिए हमने जो सुझाव दिया है अगर उसको सख्ती से प्रमल में लाया जाए और सीवियर लाये उस के लिए हो, कड़ी सजा लोगों को मिले, ला केवल इन राइटिंग में न हो बल्कि एक दो को कड़ी सजा हो जाय तो यह चीज बहुत हद तक रोकी जा सकती है। मैं एक बात यह कहती हूँ कि इन स्टैड आफ फाइन फ्लोर्गिंग होना चाहिए। कानून आप जो भी बनाएं जब तक उसका इम्प्लोमेंटेशन नहीं होगा तब तक कुछ नहीं हो सकता है।

प्रो० निर्मला कुमारी शक्ताबत : क्या आपको दूसरे क्षेत्रिय ब्राह्मण समाज के बारे में कोई जानकारी है ?

श्रीमती कनकराय : मैं बहुत डिटेल् में नहीं बता सकती हूँ। मैं यह कह सकती हूँ कि बहु-विवाह करते हैं इस तरह की बातें हमने सुनी हैं।

प्रो० निर्मला कुमारी शक्ताबत : जब शादरा एक्ट बना था तो उसका विहार में बहुत प्रभाव पड़ा था। आप की इस बारे में क्या राय है ?

श्रीमती कनकराय : इस का असर अपर कास्ट पर पड़ा है लेकिन लोअर

कास्ट पर कोई असर नहीं पड़ा है लेकिन खास तौर से जो दबे हुए हैं। लोग हरिजन हैं, इन जातियों में अभी भी घाठ-नी बरस में शादी होती है। जैसे गौरीदा जाति में घाठ-नी बरस में शादी हो जाती है। लेकिन इस संघ में मुझे खास जानकारी नहीं है।

SHRIMATI GEETA MUKHERJEE:

The witness has raised the point of medical evidence. The mind of the witness is very much agitated on the question of medical evidence which often makes the case ineffective. So, I would like to know since most of these doctors who examine the victims are Government doctors and consequently in cases of custodial rape there may be much pressure brought on them now in this connection Law Commission has suggested that let the victim be examined by two doctors and not one and moreover this question of a doctor to the liking of the girl herself. If there is provision for specific legal aid to the victim would it solve the problem to some extent ?

SHRIMATI KANAK ROY: Yes.

MR. CHAIRMAN : Has the other witness to say something apart from what Shrimati Kanak Roy has said?

SHRIMATI RAJ KUMARI SHABNAM : I only want to make one suggestion that under Section 354 the offence should be non-bailable and not bailable.

MR. CHAIRMAN : Thank you very much.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CRIMINAL LAW
(AMENDMENT) 1980.

Tuesday, the 20th October, 1981 from 09.10 to 12.25 hours and again from 14.45 to 15.45 hours in Members Reading Room in Bihar Vidhan Sabha Secretariat, Patna.

PRESENT

- Shri D. K. Naikar—*Chairman*
2. Shri Rasa Behari Behra
 3. Shrimati Madhuri Singh
 4. Shri R. K. Mhalgi
 5. Shri Bapusaheb Parulekar
 6. Shri Qazi Saleem
 7. Shri R. S. Sparrow
 8. Shri Trilok Chand
 9. Shri V. S. Vijayaraghavan

Rajya Sabha

10. Shri Ramchandra Bhardwaj
11. Shri Amarprosad Chakraborty
12. Shri B. Ibrahim
13. Shri Dhuleshwar Meena
14. Shri V. P. Munusamy
15. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—*Senior Legislative Committee Officer.*

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS

Shri S. V. Sharan—*Joint Secretary.*

I. Government of Bihar, Patna**Spokesmen:**

1. Shri P. P. Nayar, Chief Secretary.
2. Shri R. N. Dash, Home Secretary.
3. Shri A.P. Sinha, Law Secretary.
4. Shri Fazal Ahmed, I.G. Police.
5. Shri Kailashpati, Additional I.G. (CID).

II. Patna Women's College, Patna University, Patna**Spokesmen:**

1. Shrimati Sumita Chowdhry
2. Shrimati Nidhi Sinha

III. Shrimati Ramanika Gupta, MLA.**IV. Social Welfare Advisory Board, Patna****Spokesmen:**

1. Shrimati Anusuya Jayaswal, Chairman.
2. Shrimati Mukul Jha, Vice-Chairman.

V. All India Women's Conference, Patna**Spokesman:**

Dr. (Mrs) Uma Sinha, President.

VI. (1) Syed Shamseer Rahman, Public Prosecutor, Patna.

(2) Shri Siddheswari Prasad Singh, Advocate, Patna.

VII. (1) Shri U. N. Sinha, IAS (Retd.).

(2) Shrimati Radhika Devi, Ex-MLA.

I—State Government of Bihar, Patna

Spokesmen :

1. Shri P.P. Nagar, Chief Secretary
2. Shri R. N. Dash, Home Secretary
3. Shri A. P. Sinha, Law Secretary
4. Shri Fazal Ahmed, I. G. Police
5. Shri Kailashpati, Additional I.G. (C.I.D.)

(The witnesses were called in and they took their seats).

MR. CHAIRMAN : Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows :

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

I think your Government has not sent any specific memorandum so far as our draft Bill is concerned. Only comments are understood to have been given on the basis of the draft Bill. What are your comments on each point.

SHRI R. K. MHALGI : Before starting the evidence, may we know whether the State Government was requested to send their memorandum in response to the various provisions of the Bill and if so, why the memorandum was not sent by the Government.

SHRI P. P. NAYAR : To our knowledge no request was received.

MR. CHAIRMAN : They will not send their comments if they accept the draft Bill in toto.

SHRI BAPUSAHEB PARULEKAR : Should we take it for granted that they agree to this Bill in toto if they do not send any comments ?

MR. CHAIRMAN : If they have not sent any memorandum we can presume that they have supported the Bill in toto. But even then since they have come here, they will give their oral comments.

SHRI FAZAL AHMED : In this direction we have prepared a short note for our own consumption. I will just refer to it and then come to the various amendments suggested. I will just read it out as follows, as it will be easier.

There have been pressing demands inside and outside Parliament for the amendment of the law relating to rape so that it becomes more difficult for the offender to escape conviction and severe penalties are imposed on those convicted.

The Criminal Law (Amendment) Bill makes punishment for offences more deterrent, but the reason for a large number of acquittals will remain even after these amendments are adopted by Parliament. The delays in trials of such cases have to be avoided. Government may be recommended to press the Parliamentary Committee to keep this factor in view.

Secondly, even if we make these amendments, unfortunately in many of the States, the delays start from the root and the whole process will become infructuous. The Parliamentary Committee may consider to have some course or give the directives stating that these cases should be taken up expeditiously and on priority.

The Government prosecutors before the Sessions Court these days are not of sufficiently good standard. Parliament may authorise appointment of Additional P. Ps. and P. Ps. and District Magistrates. So far as the different amendments are concerned, the special prosecutors for trial of these cases should be there. They should not take it as a routine matter.

Then, our comments on the various amendments suggested are :—

Under Section 376(2), a police officer who commits rape in the local area to which he is appointed or in any police station whether or not situated in such area shall be punished with a rigorous imprisonment for a term and shall also be liable to fine. The police department cannot object awarding the severe punishment. But our common experience these days is that some women take revenge and false cases are launched against the police officers and other public servants. Government will naturally be keen to protect its employees against these frivolous prosecution. It is, therefore, necessary and desirable that before cognizance against police officers is taken prior sanction for their prosecution should be obtained from the appointing authority just on the lines of Prevention of Corruption Act. At present with a litigant mind all undesirable persons will feed fat grudge by bringing false cases of rape/molestation etc. by saying that in the course of house search/arrests or detention in police custody a woman was raped. Unfortunately the chances are not lacking where false allegations of rape have been brought against police officers at the instance of or through a woman of easy virtue. The Committee would like to insist that the appointing authority should satisfy himself that the police officers and other public servants are not being made a scape goat because of group rivalry/political factionalism/caste prejudices. As a matter of fact, Ministers and other public men holding high office as public servants are also being at times charged with immoral offences at the hands of dissidents and politi-

cal enemies with a view to indulge a character assassination.

Under Section 228A, printing or publication of any matter which may make known the identity of a victim of rape has been made an offence punishable with imprisonment for two years. It should be made clear that if in the course of investigation the police circulates or publishes details of the victim with a view to recover the victim or for any other legitimate object such an act shall not be covered under Section 228A. Quite often we get an unknown body of a woman who has been raped or an unknown woman who is not yet dead and we circulate her physical marks and other particulars to know her identification and this is in furtherance of the process of investigation. For knowing the identification of such a raped woman or a kidnapped woman it may be necessary to give her physical marks and her peculiarities etc. to the press or other agencies. For recovering such a woman, it may be necessary to give wide publicity through wireless, publication in Police Gazette or through broadcast. That is why this exception must be made against the investigative agencies for the purpose of furtherance of the investigation.

It is not clear to me whether Superintendents of Girls Hostels and Nurses quarters etc. are included under the amendments because it has been heard time and again that girl inmates of such institutions are supplied to outsiders for satisfying their carnal desires. Such an act should be made an offence and included in this Section. This is not expressed in that.

Section 376A makes punishable the act of a public servant who takes undue advantage of his position with a woman in his custody and has sexual intercourse with her. In this Section also, prosecution should be launched only after obtaining prior sanction of the appointing authority because persons with criminal mind who are dissatisfied with Police action may bring false accusation of rape against police officers without sanctioning prosecution. These are the few points that I

would like to submit on behalf of the Police.

SHRI P. P. NAYAR: I may be permitted to add two points. The proposed Sections 376, 376A and 376B mention the liability of the Superintendent or the Manager of the institution who keeps custody of women and girls. But they do not mention the liability of others. It may be seen that Section 376C rightly mentions the liability of the other staff. It may happen that in some institution, the Superintendent or the Manager may not be involved. He is not required to be present 24 hours and other staff might be doing these acts. So these three draft Sections 376, 376A and 376B should be so amended that other staff in addition to the Superintendent or the Manager should also be made criminally liable in case the offence of rape is committed.

I would like to add one more point in continuation of the submissions of the Inspector General of Police. He has rightly observed that we must be careful against the increasing tendency of false allegations, specially against people who are reputed in society. If there is an allegation of rape, draft Section 228A takes care of the reputation and prestige. The name of A would not be published in case he happens to be a reputed person of the society. There is also a tendency of the press and also public to exaggerate it and print the name of A and thus cause incalculable harm to the reputation of the person. They should be protected in the light of this tendency of false accusations.

MR. CHAIRMAN: What do you say about Section 111 of the Evidence Act?

SHRI P. P. NAYAR: Our Legal Adviser will answer this question.

We would suggest that the term "shall presume" may be converted as "may presume" so that the accused would have a chance to present his case before the Court from which the Court can infer whatever they deem proper. If there is "shall presume", the court would not have any option.

SHRI A. P. SINHA: As regards Section 111A of the proposed amendment, it should have been 114A.

MR. CHAIRMAN: What are your reasons?

SHRI A. P. SINHA: Section 111A has been published because it happens to be of Evidence Act.

MR. CHAIRMAN: You say that Section 114 is there. Therefore, it should be near about that.

SHRI A. P. SINHA: It is a question of presumption. The language is not that. The burden of proof shall be on the accused.

As regards "shall" or "may", I do not find much force because presumption is also rebuttable.

MR. CHAIRMAN: Don't you feel any distinction between "shall" and "may"?

SHRI A. P. SINHA: In view of the special nature of the amendment, the purpose will be more served, if the words "shall presume" are there.

MR. CHAIRMAN: What about other provisions?

SHRI A. P. SINHA: I support all the other provisions.

SHRI P. P. NAYAR: I would like to mention that the present day society is faced with two-fold problems, increasing attack on women and molestation. Women are nowadays coming into the open. They are no longer drudges in the kitchen. But, in this process, we have to protect the women from molestation, rape etc. On the other hand, however, it seems to me that in this modern society the functionaries who have to function under difficult circumstances should also require protection against malicious prosecution. We had an example here about a couple of years ago where a woman of easy virtue was instigated by some people to file a case against the Chief Judicial Magistrate and it became very

difficult for such a person to defend himself because defending or not defending the general newspapers did untold damage. I am sure this hon'ble Committee is interested in striking a balance to see that this law while being strengthened to protect the women does not become an instrument of blackmailing. That balance has to be struck.

Firstly, certain amendments have been proposed in the definition of rape. First part is the same as it was previously. In second part earlier it was the word 'without her consent'. Now the words 'free and voluntary' have been added to read "without her free and voluntary consent". In the absence of notes on clauses circulated to us I am unable to appreciate the reasons for adding these two words 'free and voluntary' because throughout the judicial pronouncements to date as far as I understand consent means free and voluntary consent and not otherwise. This aspect I would like the Committee to deliberate upon because my feeling is these words which are being added are redundant. It would create complications in hundreds of other laws where simply word consent has been used.

As regards parts third and fourth there is not any change. It is the fifth part of the definition which is worrying me and I would like to be enlightened as to what is the kind of misconception. What is the misconception part or mis-conception of facts which is contemplated to be covered by this fifth part.

MR. CHAIRMAN: You please refer to Section 90 of the IPC.

SHRI P. P. NAYAR: Yes, Sir, I have gone through it. It is very correct. What I am trying to say here is that it is in relation to consent that certain misconception of fact can occur. For example, you want my consent to sell my property. I have no idea that this is my property at all but somebody tells me: No, No. This is your property and thus I signed a document giving consent thinking it to be mine

which consent I have given under a misconception. That is the idea which is covered in Section 90. What I am trying to cover here is this definition with reference to vague. Consent given under misconception of facts will still be vague read even with Section 90. So, I am not able to understand what is the intended objective to be covered. What are the areas which are left out in the other definition which are sought to be covered here? I may change my view if I am told what exactly is sought to be covered. Let me once again say that I am only trying to say mis-conception of facts with regard to consent is one thing...

SHRI P. P. NAYAR: If misconception of fact qualifies consent here which, to my understanding it does not, then this is a redundant clause because this is covered under Section 19.

The sixth sub-clause which has been introduced seems to be perfectly all right and there is no comment. Then there is the seventh sub-clause, 'with or without consent when she is under 16 years of age'. This seems to be all right. This was in existence before.

MR. CHAIRMAN: Here, as far as the age is concerned, there are others who want to raise it from 16 to 18 on the same lines as the Marriage Act provides. What is your view on that? Would you like to retain the age as 16 or raise it to 18?

SHRI P. P. NAYAR: Law is one thing. Human physiology is another thing. At that age young people want to experiment out of curiosity. It is better to retain the age as 16 rather than increasing it to 18 which will create more problems of law and order at this stage because if in the process of this Act they are discovered by parents or somebody, they always throw the blame on them saying that the consent was not there. So, in this area we should retain the age at 16 and not create problems of law and order.

MR. CHAIRMAN: What are the problems that are created if age is raised to 18.

SHRI R. K. MHALGI: Specially with reference to law and order.

SHRI P. P. NAYAR: What I am saying is, this is about the age where young people move about. If any of them are caught in blatant violation by parents or any one, many times it is said that the girl is forced. This will bring more and more cases of accusations to the courts, and it should be avoided. This is a delicate subject. I do not want to be very very specific. But this is a very delicate area. That is why the age of 16 is rightly covered.

The point I was coming to was about 15 years of age for the wife. I have not been able to understand the logic. Of course, I am told that possibly under the Hindu Marriage Act, 15 years was mentioned, but under the Child Marriage Act you have already provided the age of 18 years. So, the earlier intention was slightly different. I would say that in regard to this we should not fix any age or if we have to have an age it should not be less than. Otherwise the legislature itself is legitimising an illegal marriage.

SHRI AMARPROSAD CHAKRABORTY: You have not completed the sentence after 'not less than'.

SHRI P. P. NAYAR: Not less than 18 years. Because by putting it as 15 years you are legitimising an illegal marriage under the Child Marriage Act. So, either you don't put the age or fix the age as 18. I can understand the difficulties in this area, but you have to fix an age. But don't legitimise what has been made illegal under the Child Marriage Act. These two contradictions in my view should not go in.

MR. CHAIRMAN: In this connection customary laws are prevalent in some parts of the country so far as marriages are concerned. Even marriages of girls below 15 do take place and those marriages are performed according to customary laws and they are

not declared void. In that case when you say that the provision will legitimise the illegal marriage under the Child Marriages Act your argument will not sustain. In our society many marriages in early ages do take place and before 15, even children are born to a girl and they never called illegitimate.

Then what is the harm in retaining the age of 15 years? Because in our society there may not be many cases filed against a husband and if such cases are filed, there may not be any chance of reconciliation thereafter. In your experience, have you got any cases of this type in your State?

SHRI P. P. NAYAR: I would like to put it this way. There would be hardly any cases of this nature unless the parties to the dispute quarrel.

MR. CHAIRMAN: No cases or some cases?

SHRI P. P. NAYAR: I have not frankly gone into this question of how many cases are there.

SHRI FAZAL AHMED: No such cases have come up in my experience of 22 years in the Police.

SHRI P. P. NAYAR: You have mentioned the marriage under customary law. As far as I understand, even in regard to the customary marriage systems of various societies etc. the Child Marriages Restraint Act applies. It does not exclude them. Everywhere across the board that applies without any distinction of religion, race, caste or community. The point you have mentioned is about children. Here the question is relationship between husband and wife if the marriage takes place and husband and wife live together. In this country puberty is very early, say at the age of 12. And if a marriage is taking place early, do you expect that the sexual intercourse will not take place before that age, whether you put it as 15, or 16 or 17 or 18?

MR. CHAIRMAN: That is why I ask you as to what is your experience, whether there are any such marriages like this in Bihar.

SHRI P. P. NAYAR: There are marriages because this is a social phenomenon. If you put the age subsequently, and you are making it cognizable offence and all that, every family will have trouble and the policemen will have to come into the picture. If the policemen will have to enter into that, you are opening the flood gates of prosecution. That is why, I personally urge you to remove age. But, if you have to keep it, put it at 18 years, illegitimate or legitimate.

In case you insist on a keeping the age, the prosecution or initiation of action must be safe-guarded. It should not be left to the lowest Thana Officer or some functionary. At the puberty age of 12, 15 or 18, it does not matter. If sexual intercourse takes place at this age, it does not matter. But the Thana Officer files cases. So, all these chaps will be hauled up in court which, I am sure, is not the intention of any law-making body. But it is coming out like this and I am a little apprehensive that this should not be the attitude. My suggestion is to remove the age and keep this offence out of rape.

MR. CHAIRMAN: Are you in favour of deletion or modification?

SHRI P. P. NAYAR: My first suggestion is that you may delete the words "under fifteen years of age". But if you are under compulsion that there must be age, then I am only urging that you must be consistent. But my strong suggestion would be not to make this an offence and make inroads on every Police Officer.

As regards Sections 376 (1) and 376 (2), I would only like to mention that while introducing the minimum punishment and the maximum punishment, you have also added a proviso for the court having an opportunity to reduce the punishment. But I would appeal that some thought should be given to

juvenile delinquency. If we are to keep them seven years in jail, probably at the end of seven years, they would come out as confirmed criminals. Of course, each case will be judged according to circumstances but, some thought should be given to the utilisation of the Provincial Services also. This is the aspect which has to be built into this proviso. If you do not incorporate in it certain provisions relating to juvenile delinquency, it will amount to making them confirmed criminals.

MR. CHAIRMAN: As regards the punishment under the Children's Act, there is a provision to bring them to court in case accused is below 16 years of age.

SHRI P. P. NAYAR: That applies where the punishment for the offence is neither life imprisonment nor death sentence. Here you are providing life imprisonment.

MR. CHAIRMAN: In that case, that age protection is there. After 16 years of age, he is not a child. There is an apprehension in a section of the society that the offences are being tried by Magistrates also but, in many cases, acquittals are given and in some cases, punishment is not given. Therefore, there is no stringent action taken so far as the courts are concerned. Therefore, why should not this offence be made very stringent and heavy punishment imposed in order to create in the minds of accused an apprehension of severe punishment?

SHRI P. P. NAYAR: It is not the quantum of punishment which is a deterrent. What is a deterrent is the certainty of punishment and in our judicial system today, in our criminal judicial administration, we lack the certainty of expedition. There should be certainty of punishment. You may enhance it to death sentence but if there is no certainty of trial for seven years or ten years and by that time, most of the witnesses are dead, no amount of punishment is going to achieve anything.

MR. CHAIRMAN: In that case how do you assume certainty of punishment? What are your concrete proposals?

SHRI P. P. NAYAR: Certainty of punishment can be assured by expeditious investigation and more than that promptness of courts. Formerly every Sessions' case was to be finished in three months whereas today a Sessions case does not get completed before five years in Bihar and so, I think, will be the case in other States. Earlier there used to be camp courts in villages whereas today no judicial officer wants to stir out of his room.

MR. CHAIRMAN: We have received complaints that the investigation is also of not good quality.

SHRI P. P. NAYAR: Investigation of police is to be judged by the percentage of convictions. Even in Britain the percentage of conviction is fairly low but what deters crime there is the quickness with which the decision takes place.

SHRI R. K. MHALGI: In Maharashtra the Sessions cases regarding murder and dacoity are pending for not more than two years maximum.

SHRI P. P. NAYAR: So, it is a question of degree. I said the case when committed before the Sessions court should be completed in three months.

Then what is worrying me is separating the authorities, whether jail or hospital authorities, and identifying them for special treatment in the matter of punishment. I have a feeling that the drafting needs a little care. Firstly, far too many classifications have been made but how do you distinguish. I give you an example. Cases have been known where step-father has raped his step-daughter. You have made distinction for the simple reasons that these women are under their protective custody or protection. How is it different from the case of the type I am quoting. Why are you leaving those cases from severe treatment and

only dealing with public servant. I do agree that public servants—which-ever category—must be above board and must have highest integrity but if you are categorising then you must categorise the totality of those who have protective custody of women and if they are involved in such rape cases and not make a situation where it is only certain people are included and others are left out. Constitutionally I do not know how it will stand. That would be, of course, seen if a challenge is made in the court. But the rationale which you take must be consistent. I am not sure whether the rationale itself is very constitutional and my colleagues have expressed their apprehension and I think there is a lot to be said. Today, with the separation of judiciary, there have been instances, where even a District Magistrate has arrested a person to enforce law and order. A complaint can be filed straightaway in court that a watch has been stolen or some money has been stolen. The courts have taken the view that no sanction of Government is required under Section 197 because taking away a watch or money is no discharge of duty! All that I have to do is to put three witnesses who will say "before my eyes, the money or the watch was taken away". So, *Prima facie* immediately a case is made out. The complaint is complete.

Cognizance is taken. Now you stand the trial. I hope that here in such cases, you would like to provide a Section. Cases are not unknown. Cases are also not unknown of people, who have in high authority, misused their position and their influence. I would urge upon you to give a balance both ways. If you want a separate treatment for this category, then, you must provide an inbuilt measure, a similar provision as in the Prevention of Corruption Act, for prior approval. But I can quite see the difficulty in this case when rape allegations have been made. You are only distinguishing for the purpose of punishment, to enhance punishment, and not otherwise. But the very fact of enhanced punishment will create some problems.

Then after this you have got the cases of seductions. Firstly, seduction has not been defined anywhere in legal terminology. Probably you are going to bank upon the ordinary dictionary meaning which leads to a jungle of interpretations of the word. I would urge that the word "seduction" must be clearly defined in legal terminology and these provisos of A, B and C etc. of Section 376 must also come within the purview of the same treatment of prior sanction when such a case is being dealt with. My colleagues have mentioned certain omissions about staff etc. I do not like to deal with them.

I refer lastly to "presumption". I would suggest that "shall" should be removed and converted into "may" for the simple reason that the Evidence Act Section 4 defines the words "may presume" and "shall presume". There is a discretion to the court. I think that we must retain the word "may".

SHRI R. K. MHALGI: Has the Law Secretary given his opinion in his own personal capacity or is it the opinion of the Government?

SHRI FAZAL AHMED: It is his personal opinion.

MR. CHAIRMAN: It can be taken as his personal opinion.

SHRI A. P. SINHA: As regard giving publicity while the women is protected, people in positions also would require protection against disrepute, etc. Therefore, whether publicity in both cases should be prohibited or not, it is up to you to see. But this is something which our newspapers have been flashing all over the country.

SHRI R. S. SPARROW: I am going through the newspapers very carefully and I find publicity is being given to such cases.

SHRI A. P. SINHA: You are prohibiting publication of the names of the victims. But innocent accused also could be there, particularly those in position, who are being harassed.

They get the glare of publicity and newspaper headlines. So, they should be also given protection. It is for you to decide. But in this matter, if it is stated in the Act that a person in authority or in custody of a woman commits rape, higher punishment would be given that one Clause would be more than enough than the series of Clauses that you are making.

MR. CHAIRMAN: According to my understanding, there is a variation in degree so far as these issues are concerned. For persons in authority, we have made statutory provision and some persons have a natural right of protection and custody, there the degree is less. But the provisions are misused.

SHRI P. P. NAYAR: You are trying to make a distinction between a group which is statutorily put under custody and another which is naturally put under custody. There is very correctly made, but why I am saying so is that by making a distinction so specific in nature in which you have made that distinction there would be a larger attraction of maliciously bringing cases against this. But if you want to put your definition in the form in which I am, it would have a telling effect because the moment the words 'Superintendent of Jail' or 'a public servant' are used in the form in which it is mentioned supposing some women want an interview with me and suppose I refuse to do whatever she wants me to do, she can pick up a row and say that she has been molested and I will immediately come under some of these clauses. And this would make the position of public servants rather difficult and the fact that this is being made a sort of political victimisation is also not unknown. So, I would like to urge a little caution on this. It is a very difficult subject.

SHRI R. K. MHALGI: Not difficult, but complex.

SHRI P. P. NAYAR: Yes, it is as complex as human relations.

MR. CHAIRMAN: Can you supply the figures about the total number of rape cases that have been reported and out of which how many cases have been tried and out of them how many of the cases are there where persons in authority are involved?

SHRI FAZAL AHMED: It may take some time to give the details so far as persons in authority are concerned.

SHRI P. P. NAYAR: We will send you the figures within a week.

SHRI AMARPROSAD CHAKRABORTY: The I.G. has stated that the number of cases are delayed in trial and the procedure under the Criminal Procedure Code is such that cases are delayed. Unless we can have an idea as to how many cases have been pending for the last three years or five years and in how many cases there is delay because of procedural reasons, we cannot proceed further.

SHRI FAZAL AHMED: We will give you those figures, but as you see, cases of three years old are still under trial.

SHRI AMARPROSAD CHAKRABORTY: You have mentioned about 'sanction'. Will you kindly look at Section 197 of the Cr. P.C.?

SHRI FAZAL AHMED: As Mr. Nayar has stated, suppose he is setting out for discharge of duties to a village. He goes for some official work to that village and suppose he does not perform that work. Of course the act of rape or no rape is not in discharge of his duties. But this will be connected with the discharge of his duties. He goes there not as an ordinary individual but as Chief Secretary of the Government of Bihar. Of course, if a police officer commits rape it is not in discharge of his duties. But probably such com-

plaints have become more frequent and they are false complaints. So, what I have submitted is that we want a little safeguard for those who do not commit this offence. I do concede that some of us unfortunately may have been responsible for such offences, but most of them will suffer as we do not have the sanction.

SHRI AMARPROSAD CHAKRABORTY: If you say that it is in discharge of public duty...

MR. CHAIRMAN: What he means is that there should be some distinction between their duty and their act.

SHRI P. P. NAYAR: The point is that it is not what we wish it to be. In fact, Section 197 has always been there in the past, but the court interpretations have come to such a level that I give you the example of a District Magistrate or S.P. having been proceeded against by the court saying that in the manner in which he proceeded it is not a part of his duty. And this is what I quoted as an actual case, not something as an illustration.

SHRI AMARPROSAD CHAKRABORTY: Regarding publication, do you think that there should not be any publication as given under Section 228A?

SHRI FAZAL AHMED: Regarding this amendment that was suggested I am definitely in favour of some safeguard to protect the honour of the lady and there should be protection of the people in position also. What I have said is that quite often for purposes of investigations, for furtherance of investigation where identity is not established, we will need the publication for information about the whereabouts of the lady. For example, we have recovered a woman in precarious condition and she gives details about her name and home and then she dies. We have to publish

these details and it will involve the name of the family and name of the girl.

SHRI AMARPROSAD CHAKRABORTY: May I take it that if you want publication—there must be some safeguard—so that anybody might not be falsely implicated?

SHRI FAZAL AHMED: Yes, Sir, when it is in the interest of furtherance of investigation.

SHRI AMARPROSAD CHAKRABORTY: You have made comments on Section 375 Explanation 2 which says:

“A woman living separately from her husband under a decree of judicial separation shall be deemed not to be his wife for the purposes of this Section.”

We know judicial separation is not the end of the matter because after two years she has to bring a case for divorce. In the circumstances you see that it comes under the mischief of rape.

SHRI P. P. NAYAR: I accept this Clause as rightly included the reason being that if the husband and wife living in judicial separation cohabit without consent, it should come within this, but if they cohabit with consent then no clause will apply consenting persons can cohabit and it is not considered to be rape. Even that is not rape. And it says that for the purpose she will not be considered as wife. If she is not a wife, you can have a sexual intercourse with a girl even now. All that I am saying is that a woman is at par with reference to her separated husband in the matter of sexual intercourse. If they make up among themselves and start living together, it is not rape and even if they are not living together, but have had sexual intercourse that is not also rape. It is not illegal.

SHRI AMARPROSAD CHAKRABORTY: I am talking about the legality of the act.

SHRI P. P. NAYAR: It is not illegal.

SHRI AMARPROSAD CHAKRABORTY: Article 14 is based on equality of all under the law. Then, if in this Bill we have made one category of custodians as special and another category as general, do you think or do you not think that by creating a separate class, the real purpose of the Bill will be defeated?

SHRI P. P. NAYAR: I would say that presumption should apply in every case.

SHRI AMARPROSAD CHAKRABORTY: I am not entering into that. My point is whether it will be dealt with by classification or it will be dealt with by article 14.

SHRI P. P. NAYAR: Custodial classification can be justified under the Constitution. For example, what happens to a customs officer or income-tax officer when he goes and makes a search? If he commits rape or molestation, he may not be punished. So, regarding this classification as it stands at present I have my doubts as to whether it will stand the test of the scrutiny and that is where I have said that it would be better to consider a custodial classification. You can make out as to who is in custodial charge.

SHRI AMARPROSAD CHAKRABORTY: After all we are human beings. The entire inquiry and investigation will be in favour of officers. By this classification, will we not get the general tendency of the officials concerned to get the case in their favour?

MR. CHAIRMAN: Whatever you want to say should stand the judicial test.

SHRI P. P. NAYAR: You have the idea that because police officers have been made a special class here, they will be dealt with properly. In the entire I.P.C. public servants are a class by themselves. Where a police officer commits a murder, the same police investigates that crime, the same police, as in the past, charge-sheet him. This is the only instrument at present under the law which is charged with the responsibility of investigation. If the District Police fails, we have the CID and if it fails we have the CBI to investigate. In a general way to say that we have to suspect that they will act like this or not act like this is not correct.

SHRI AMARPROSAD CHAKRABORTY: I mean the normal human conduct.

SHRI P. P. NAYAR: The normal human conduct depends upon an individual also and not the entire class by itself. Even among the police force you would find officers who are absolutely above board.

SHRI FAZAL AHMAD: It will be unsafe to generalise this for all policemen. My point is, whether you want to change the law for one class in one way and for another class in another way.

SHRI AMARPROSAD CHAKRABORTY: The last thing is that it is said, "Seventhly—with or without her consent, when she is under sixteen years of age." You have given a hint that it will not be 18 years. But the Chairman put the question whether it can be put as 18 years. On experience you know that the age varies. What is your objection in raising the age to 18 instead of 15 to 16?

SHRI P. P. NAYAR: If you go into the history of this clause, earlier it was co-related to the age of puberty. Later it has been raised and raised to conform to the Child Marriages Act and if the same logic has to be

followed, I have no objection in raising the age to 18, but these are clauses regarding which I have a feeling that it should have been better left at 'the age of puberty' rather than putting any other age.

SHRI AMARPROSAD CHAKRABORTY: My last point is, that you have hinted that there will be blackmailing and some false accusations. So, under the Act there should be a provision for punishment for false accusations. My point is: Do you feel that some proviso should be made under Section 111A if there is any false allegation made?

SHRI P. P. NAYAR: That would not be necessary and even the experience of Section 182 and Section 211 has shown us that it is very very rare that the courts are not inclined to pursue this matter. Apart from prosecution, courts are very chary of pursuing under Section 182 and 211 for various historical reasons. Therefore, Sections 182 and 211 are no protection against a damage done.

SHRI AMARPROSAD CHAKRABORTY: Do you feel that any provision should be made here?

SHRI P. P. NAYAR: I have suggested that there is a separate classification for this, on the same lines of Prevention of Corruption Act, the case should not be allowed to proceed without sanction.

SHRI R. K. MHALGI: You said about the delays in court trials. To what extent is it true?

SHRI FAZAL AHAMAD: I am speaking primarily about my State.

SHRI R. K. MHALGI: Delays are also due to the attitude of Police in court.

SHRI FAZAL AHAMAD: I entirely agree with you. I agree with all aspects of Police delays.

SHRI R. K. MHALGI: Would you enlighten the Committee how many under-trials in the case of rape are there in the State of Bihar today?

SHRI FAZAL AHAMAD: I will collect and send the information to you.

SHRI R. K. MHALGI: Do you suggest any improvement in the Bill?

SHRI FAZAL AHMAD: That is a general question which is being examined at the Government of India level and at the other States level also for the amendment in the Cr. P.C. The amendment that came into force from 1-4-78 in the Cr. P.C. has created many difficulties for the establishment of law and order and for the prosecution so much so that one of the Supreme Court Judges, in one of his judgements, has said that the new Cr. P.C. is a paradise for criminals. When you create a paradise for criminals, it will naturally affect the good people of this country. It has been very much liberalised, the bail and other provisions and separation of executive and judiciary. And we are not yet mature as a people. It has become a rule, not an exception, and the tendency has developed towards dacoity and murder. Almost 60 to 70 per cent of these cases were still to put on test. Then, there is the proviso of the anticipatory bail. Even hardened, criminals, on whom we have submitted charge-sheet in murder and dacoity cases, are released. A particular man who committed 24 murder and dacoity cases, never remained in jail for one day till we arrested him under Crime Control and the National Security Act. Bail is a matter of right!

SHRI R. K. MHALGI: To have lady Police Officers in the court helps in effective implementation of the Act especially with reference to the rape cases.

SHRI FAZAL AHMAD: We are having.

SHRI R. K. MHALGI: What is the number of women police officers and

the women police constables in the State?

SHRI FAZAL AHAMAD: We have created a women's cell which is in-charge of a lady SP for offences against women, dowry offences and others.

SHRI P. P. NAYAR: Only now, ladies are coming into the open. There is reservation of posts for women in our services.

SHRI R. K. MHALGI: What is the number of women police officers?

SHRI FAZAL AHAMAD: There is one Superintendent of Police, I.P.S. one Inspector in CID Wing and then there are lady constables. One lady constable is about to join. She is under training.

SHRI R. K. MHALGI: You said that there is increasing tendency of allegations, political victimisation etc. I do not want any names of the personalities of the incidents but while making such an observation, you must have got certain instances in your mind.

SHRI P. P. NAYAR: I certainly have certain specific instances in mind. Apart from that, I gave you one instance in a general way without mentioning the identity. Besides this, there are parliamentary debates in the last few Sessions in which some instances can be found. I do not know whether the whole issue has not been politicalised and I believe in Delhi also there are call girl rackets which are sometimes very dangerous. I have a specific instance there also. Long back it came to our notice where almost a similar blackmailing was done. But this officers, I must say, is very courageous. Some woman wanted him to give a lift in his car. He agreed and dropped her at the destination. She accused him of committing rape and threatened to prosecute him. But he said that he would take her to the Police Station. Thereupon, she ran away.

SHRI R. K. MHALGI: So, do you suggest enlarging the scope of the definition of "public servant"?

SHRI P. P. NAYAR: It is at present wide enough. From Minister down to MLAs, MPs and last chowkidars in the village, all are included.

SHRI R. K. MHALGI: Is it that the correct definition?

SHRI P. P. NAYAR: Ministers are definitely public servants.

SHRI R. K. MHALGI: You want to keep 111A as it is with 'shall'. Supposing it is retained, do you suggest any punishment for such a lady in case of black-mailing?

SHRI A. P. SINHA: Prior sanction is at the time of start of trial. It does not prevent you from starting the investigation.

SHRI R. S. SPARROW: You have said about the delay in finalisation of rape cases and involvement of difficulties. Where during the pendency of the case in the court, the witnesses die. There is delay in the investigation of the case. So, we have to consider and put our heads together to come to certain sound conclusions. You have already promised a note on this point.

Then you said about specific magistrate as opposed to the routine magistrates. How exactly can we bring about speed because these cases occur in respect of poor and illiterate persons living in villages where all types of facilities are not available. What do we do about it. Would you like to have some lady organisers so that in each bloc or ward some are nominated to immediately coverage on the scene so that there is no influence. Would you like that the case should be directly reported to the S. P. or some other senior officer nominated by the S. P. so that there is no delay and nanky-panky at the lower level.

Would you wish to recommend that there should be certain special courts and at what level they should handle and further some kind of stipulated time within six months or one year they should finalise. Would you suggest as in Army where courts do not get up until the cases are decided. Your intention is to cut this evil and to cut this evil is essential for India in particular because we are very keen to keep our civilisation and culture going and we do not have any kind of marring effect on that.

SHRI FAZAL AHMAD: Of course, we will be submitting the note about the delayed investigation and delayed trial. As a few suggestions I want to say that in North India this is being examined by Government to separate law and order police from investigation police. For the information of this august body I want to say that as an experimental basis we are starting the same thing in four towns of our State and later on we will cover ten towns. Today what happens is that greater part of the time of the officers is wasted in the so-called law and order problem to the detriment of thorough investigation. And somehow or the other a tendency has also grown to lay greater stress on these law and order problems. So we intend to separate the law and order police and the investigation police. Secondly, as you very correctly indicated earlier when the Cr. P.C. was not amended, as in the army trial the court has to sit and finish the case. But under the new Cr. P.C. which is intended to expedite matters of trial, unfortunately there has to be three or four adjournments which have to be given during the Sessions trial and it very much delays now-a-days as compared to earlier Sessions trial. Thirdly, though it may be difficult everywhere to have special courts, yet for purposes of these cases the executive or judicial order of the High Court can be issued stating that these rape cases should be taken up on a priority basis. In this respect we also had a discussion with the High Court. According to the

experience in our State even when we submit charge-sheets, the cases are lying and we have allowed them to die. But we have decided that priority should be indicated by the Superintendent of Police in the Monthly Monitoring Cell Committee meeting which we hold with the District Judges. So, I would suggest that in respect of rape cases, in view of the intention illustrated in the amendment, we may not term it as special court, but an executive directive from the High Court that these should be taken up expeditiously. Obviously more courts and more judicial magistrates are necessary. Recently at one place we had the hearing of the entire group of Bihar officers and during that hearing, the one request that was made was: "Before you give us one policemen, I would request you to give us more Judges and more Magistrates so that all the 26,000 Sessions trials and about 6 lakhs lower court trials and about 16,000 criminal cases which are pending are disposed of. Otherwise the police cannot manage." I would submit a note on that.

SHRI P. P. NAYAR: Since this larger question of disposal of cases by the courts was not a subject matter of the Committee, I do not want to elaborate on it because we are concerned with a limited item. But there are complex things in the matter of criminal justice administration system which need to be looked into. It is not merely the number of Judges which is going to help you because you have been appointing Judges every year in the High Court, but it will not solve the problem. I may say that the disposal in the northern courts per court is very poor compared to the courts in the South. This is the situation. So intrinsically this is a larger question which has to be gone into and I would not like to burden the Committee with the various issues which in the Chief Secretaries' Conference we have brought to the notice of the Central Government and we are expecting that some sort of Committee would be set up to go into various questions. As we

are constituted today I do not expect much improvement by just adding the bodies.

SHRI R. S. SPARROW: Whatever you have given will be helpful to the Committee. My point is somewhat general. I would draw your attention to the 'presumption' in Section 111A. As has been brought out practically by all the women witnesses whom we met all round the country, every one of them seems to think that the onus of proof should be put on the head of the accused and as it is, very difficult to change the course of law. But as an exception, at least it could be considered as to what limit can be put. There is one facet of the question—onus of proof to be on the accused. I do not want you to worry about what is happening in France etc. The other facet is, as has been already brought out, sometimes the accused is acquitted and the case is proved to be a false case. What would you do about the falsity of the case? At least some action could be taken against the so-called victim. On these points could you give us your view?

SHRI P. P. NAYAR: I quite see that 'presumption' must be taken and while introducing 'may' instead of 'shall' I had only one thing in mind and that is to avoid a separation where a woman of easy virtue is set to blackmail a person. If the reputation of a woman is already on record, then it would be suicidal to shift the burden. I am also aware that in many rape cases the victim's is the only oral evidence and the rest, whether consent was or was not there, is basically derived from the circumstantial evidence and that is why the famous Supreme Court case brought about so much of controversy. I am not going into that question as to whether that judgment was right or wrong, but courts have always been trying to look to the circumstantial evidence as corroboration of the oral evidence and that is why marks of resistance on the body etc. become relevant facts. Now we have, as I said, accepted this position that it is very

difficult, it could at best be an oath against oath. Whether it is may' or 'shall' the circumstantial evidence will still remain relevant for the determination of with or without consent. You have not yet made that change in this law and I do not find any change on account of that having been made whatever has been the drafting and this would be very difficult. It amounts to crossing the fences whether you burden this side or that side.

The other point I would like to mention is about reputation. I had made my submissions earlier. I do not think at this stage it is necessary to elaborate because what is necessary is that with society becoming increasingly promiscuous, we will have to be a little cautious in making the laws stringent, which are not in true with the society.

श्री रामचन्द्र भारद्वाज : आपन क्वान्टम आफ पनिशमेंट के बारे में कहा मैं आपसे यह जानना चाहता हूँ कि क्या इसको व्यवहार में लाने के लिए आंकड़े पास कोई सुभाव हैं ?

SHRI P. P. NAYAR: That is a broader question of quick trial, trial procedures and Cr.P.C. I would recommend a broader Committee to be set up to go into this question of changing the procedures. We functioned as Magistrates at a time when the judiciary was not separate. Separation can go up to a point. If you separate things to such an extent, you will not achieve results. Even in the most advanced countries, such cases are more or less tried by the executive and finished. It is the accumulation of this type of cases in courts which has hampered the progress of more important cases. This is a broader question which has to be attended very urgently. It is crime investigation. If we separate investigation, that will not help at all, till we are willing to review. In summary trial, we are not even required to record the evidence. Just a summary of the evidence is taken and the whole case

is finished. Today it is the plea which is taken and that creates problems. No summary trial can be held. We have to have all these things if we really want to do something to improve the judicial system.

श्री रामचन्द्र भारद्वाज : मैं कहना चाहता हूँ कि जुडिशियल संपरेशन हुआ और उसके बाद बेल मिलने पर छूट जाते हैं, तो इस प्रकार स्टैट्टी पनिशमेंट खत्म हो गया।

श्री पी० पी० नायर : मैं आपको 17 साल तक सजिन जज रहने का उदाहरण देता हूँ।

By that time, even the report which I had submitted at that time, had vanished. So, I was asked to prove a report of which there was a purported copy. I told the Public Prosecutor that after 17 years, I will not say that this is the report which I gave. I will only say that I submitted a report. I cannot swear that this, is my report in the absence of the original document.

श्री रामचन्द्र भारद्वाज : आपने अपने वक्तव्य में कहा है कि इस विधेयक में कोई ऐसा प्रावधान होना चाहिए जिससे बरिद्व हूनन के लिये इसका दुरुपयोग न किया जाये। मैं आपसे पूछना चाहता हूँ कि क्या कोई ऐसा कानून बन सकता है, किसी समय में, कि उसका प्रागे बलकर दुरुपयोग नहीं होगा और उसका इस बिल में प्रावधान हो ?

श्री कजल महेश्वर : आपने सही फरमाया कि उसका गलत इस्तेमाल हो सकता है। उसी गलत इस्तेमाल की हिकायत के लिये मैंने कहा था कि एन्वाइस्टिगेशन प्रोसेच्यूटि से सेंशन ले ली जाये, वरना आप बहुत से कानून बनायें, अगर उसको लागू करने वाले अच्छे नहीं होंगे, तो इम्प्लीमेंटेशन नहीं हो सकता है।

श्री राम चन्द्र भारद्वाज : गुरु में आपने कहा है कि इसका इस्तेमाल खरिज हनन के लिये नहीं सके, क्या इसका इसमें गुःजाइश है ?

श्री फजल अहमद : यह हम तजुबों के बिना पर कह रहे थे । ऐसे बहुत सारे केसेज हुए हैं जिसमें सिर्फ गलत करेक्टर के मुकदमें किये गये और चूँकि इस में हम ज़रूरी सजा मुकर्रर कर रहे हैं, इस लिये मेरी गुःजरिश थी कि गवर्नमेंट सर्वेन्ट के लिये कुछ थोड़ा लेफ-गार्ड्स होनी चाहिए ।

श्री राम चन्द्र भारद्वाज : क्या आप सिर्फ गवर्नमेंट सर्वेन्ट के लिये कन्फाइन्ड कर रहे हैं ?

श्री फजल अहमद : पब्लिक सर्वेन्ट के लिये भी है ।

श्री राम चन्द्र भारद्वाज : आपने कहा है व इडर पब्लिसिटी हो, लेकिन जहाँ यह बिचार हो रहा है कि प्रखबारों में इस खबर को न दिया जाये ।

श्री फजल अहमद : हम लोगों ने यह नहीं कहा है कि व इडर पब्लिसिटी हो । फरदर इम्बेस्टीगेशन यदि करना हो तो प्रोहिबिशन ला हम को रोके नहीं ।

श्री राम चन्द्र भारद्वाज : फार फर्देस प्राक इम्बेस्टीगेशन जो आप ने कहा है उसका क्या अर्थ है ?

श्री फजल अहमद : जैसे एक शकस ने खबर दी कि मेरी बेटों को उठा ले गये और संभावना है कि उसे मार दिया गया या कहीं छिपा दिया गया है तो उस में तो पब्लिसिटी करनी होगी ।

श्री राम चन्द्र भारद्वाज : बैसे केलेज में अगर आप पब्लिसिटी करेंगे प्रखबार में

तो अपराधी को सजा तो बाद में होगी लेकिन विक्टिम को तो सजा पहले ही हो जाती है ।

श्री फजल अहमद : नहीं तो हम लोग उसका पता कैसे चलायेंगे कि वह लड़की कहाँ है ?

SHRI QAZI SALEEM: You did not describe any provision how to protect the innocent persons who may be trapped by bad women. Secondly, in the proposed Bill the name of the victim is not to be given publicity but we do not prevent publishing the name of the accused. Suppose after the trial there is acquittal, the damage has been done. Is it not advisable that before the final decision no name of the accused is published? My third question is about the married couple. Instead of giving specific age if we can give the age of puberty will it be not enough?

SHRI P. P. NAYAR: I will take the last question first. If you recall I preferred omitting the age there for obvious reasons because due to the constitution age of puberty also changes. That is one factor. The second factor is that I would not like where marriage has taken place the police to enter. That is one reason why I have preferred that the age clause be completely deleted.

As regards your other question I would rather not comment because I had suggested in my earlier submissions that you can cover the safeguard of non-publication of the name of the accused also but it is a very very ticklish question because if an accused has done it in the area of the community it will be known while in the broader press publicity it may not be known. So far as the damage to the person is concerned it has already been done but I would leave it to the Committee to suggest how to safeguard this situation and whether we can provide some sort of safeguard

but that should be separate because you cannot prosecute the accused and the victim in the same trial.

SHRI BAPUSAHEB PARULEKAR: What is the usual time that is taken for investigation of rape cases since giving the FIR to the final chargesheet?

SHRI FAZAL AHMED: Real investigation should not take more than 15 days for submission of chargesheet if the victim is easily available and we do not have to establish the identity. In other cases where chemical examination is required then it will take six months. There what happens if they do it according to the date of receipt.

SHRI BAPUSAHEB PARULEKAR: According to you large delays are due to defective laws or because of inadequacy of courts.

SHRI FAZAL AHMED: I do not complain about any defect in law in this respect but our courts are inadequate. Further during the festivals when law and order problem magnifies, the law and order, police and investigation police not being separate the investigation of cases is given low priority as compared to dealing with other cases.

SHRI BAPUSAHEB PARULEKAR: Even during the pendency of cases before courts when police are busy with festivals or looking after law and order problems, I am told that hearing is fixed. But because of this, the cases are delayed.

SHRI P. P. NAYAR: During festival time, Sessions courts are also closed.

SHRI FAZAL AHMED: Except perhaps during the election, we were busy. Otherwise we have not made any such excuse. But during communal riots etc, the Sessions courts should not hold trials.

SHRI P. P. NAYAR: May I react and say that the quantum of courts' work is a question of judgment? If you take the All-India average of disposal of cases as the yardstick, the existing strength will be able to dispose of all the cases pending within two years.

SHRI BAPUSAHEB PARULEKAR: In Bihar there is no quota fixed as in Maharashtra for disposal of cases.

SHRI P. P. NAYAR: It is prescribed.

SHRI BAPUSAHEB PARULEKAR: You said that in order to have adequate protection from false accusations a provision should be made in this particular Bill. May I know whether the sanction asked for of the investigating agency is refused by the Government?

SHRI FAZAL AHMED: We have refused. But the percentage of refusal, of course, is very low.

SHRI BAPUSAHEB PARULEKAR: Don't you think that if the investigating agency itself finds that there is no case against an officer who is accused of an offence they may not forward it at all? So, the question of sanction does not arise.

SHRI P. P. NAYAR: The court can still take cognizance.

SHRI BAPUSAHEB PARULEKAR: The Prevention of Corruption Act says that no cognizance will be taken unless sanction is granted on the report by the investigating agency. When the power lies with the investigating agency, how will the purpose be served?

SHRI P. P. NAYAR: It ultimately lies with the court.

SHRI BAPUSAHEB PARULEKAR: Under the Prevention of Corruption Act the court will not take cognizance of an offence unless it is sanctioned by the investigating agency.

SHRI P. P. NAYAR: Then what do you do with the complaint case?

SHRI BAPUSAHEB PARULEKAR: The court does not take cognizance of the complaint. I am dealing with the question of going to the Sessions Court. Under Section 202 the Courts can ask the police to investigate. You say that if the safeguard provision is included in this Bill about the sanction, it would be better. Now the question of sanction arises only when the investigating agency *prima facie* comes to the conclusion and reports for sanction. If we provide for the sanction, it means that we do not trust the investigating agency because in false accusations also they ask for sanction.

SHRI P. P. NAYAR: Under the Prevention of Corruption Act, we can say that we do not trust the investigation and still we give sanction.

SHRI BAPUSAHEB PARULEKAR: I want to know whether it will be possible for you to tell us in how many cases the sanction was refused.

SHRI P. P. NAYAR: The point is, why this sanction provision is kept in certain cases. As a public policy it is to safeguard and to have a double check. When the police had investigated and gone into it very carefully and if the administrative implications are looked into, then the sanction is given. That is one thing. A double scrutiny takes place before going in for prosecution. It is a part of the public policy.

SHRI FAZAL AHMED: It is a further caution. We also know our fault that for other extraneous considerations, and political interference, quite often or sometimes in some cases charge-sheet has been submitted unjustifiably. There may be that possibility in such cases. So sanction is a further and second safeguard against charge-sheet.

SHRI BAPUSAHEB PARULEKAR: Do you think that some amendment should be made in the Cr. P. C. so that the main charge-sheet should be submitted to the Sessions Court?

SHRI P. P. NAYAR: We have no objection.

SHRI FAZAL AHMED: I am not in favour of committing straightaway to the Sessions Court.

SHRI BAPUSAHEB PARULEKAR: Mr. Chief Secretary, you referred to Section 375 and you said that you could not appreciate why this clause has been brought in about misconception of fact. Kindly consider a case which ultimately ended in acquittal. There is a case of a teacher who was teaching vocal music and one young girl used to attend his class, but her voice was not good. The teacher told the girl that if she wanted to improve her voice a particular operation was to be performed and this is the operation of intercourse which he performed and it was a free and voluntary consent. This case went to the court and the court came to the conclusion that the consent is voluntary. There is no objection in treating the consent free and voluntary under the conception that her voice would be improved. The Session Judge after hearing all the argument came to the conclusion that since that Section of the Cr. P. C. defines 'consent' clearly the case will be covered under that.

SHRI P. P. NAYAR: I would only humbly submit that it is a bad judgment.

SHRI BAPUSAHEB PARULEKAR: Free and voluntary are redundant?

SHRI P. P. NAYAR: Yes. Consent, by itself is sufficient read with Section 90. What you are creating is that this clause has some—what different meaning from the word 'consent' read with Section 90 and this misconception of fact will be read as something contemplated outside the scope of Section 90, and I am not able to give any concrete example on anything outside that Section 90.

SHRI BAPUSAHEB PARULEKAR: There is a good deal of discussion about this presumption under Section 111A. Some people said that 'it

should be extended to offence under Section 375. You will agree that the question of consent is a fact within the special knowledge of the accused. And if that be the position, don't you think the law has already made a provision in the Evidence Act?

SHRI BAPUSAHEB PARULEKAR: I am trying to persuade you that this inclusion is not necessary. The relevant Section in the Evidence Act reads that "consent with the special knowledge of the accused". If the question is "consent with the special knowledge of the accused", don't you think that there is a provision in law that we shall prove that and they have given the illustrations also?

SHRI P. P. NAYAR: Section 106 will not serve the purpose because you have to read that with the principle, that

"No person can be compelled to be a witness against himself".

SHRI BAPUSAHEB PARULEKAR: Section 106 has been held to be *intra vires* but not with reference to the accused. Therefore, you can just consider.

SHRI P. P. NAYAR: But even in a case of ticketless travel, you need the evidence that I was travelling without a ticket. No conviction will take place. This Evidence Act is pre-1950. Somebody would go and challenge it. Because you cannot compel me to be a witness against myself.

SHRI BAPUSAHEB PARULEKAR: Inspector General has said that if it is necessary in the interest of investigation, publication should be allowed. I would like to know even before investigation commences, if the person against whom the allegation is made is a person of repute or a person in office, sometimes the police are not willing to take cognizance of the offence. Agitations follow and the reports appear in the Press. Do you

think that in such cases also publication should not be prohibited?

SHRI P. P. NAYAR: I would say "No" for the simple reason that this will create some difficulty to bring out cases which are not being handled by the Police or Magistrates. After all, greater public interest would be served in exposing such cases where the law and order authority is not adequate.

SHRI B. IBRAHIM: You have gone through the draft Bill. Minimum punishments are provided in that. What have you got to say in this regard?

SHRI P. P. NAYAR: I have already said that these minimum punishments are all right but take care of that only element, juvenile delinquency where human physiology is more powerful.

SHRI B. IBRAHIM: We collected some opinions from Associations as well as legal experts also and they said that it is better not to allow any questions regarding the past conduct of the prosecutrix in cross-examining. What have you got to say?

SHRI P. P. NAYAR: I do not agree with that suggestion because that is very relevant in cases of false and malicious type of cases.

SHRI B. IBRAHIM: You referred to special courts. I would like to know what sort of special courts you like to have.

SHRI FAZAL AHAMAD: My point was that sometimes it becomes difficult to sanction special court. The main purpose would be served if these cases are taken up for trial on a priority basis.

SHRI B. IBRAHIM: But not separate courts.

SHRI FAZAL AHAMAD: No. These cases are taken up on priority basis

on a directive from the Sessions Judge or the Chief Justice. Then society will not be exposed.

SHRI P. P. NAYAR: As regards travelling without ticket, now the new Railway Act says that even if you are travelling without ticket, unless it is proved that it is made with an intent to defraud, you cannot be convicted.

SHRI B. IBRAHIM: There was also a proposal to have a special cadre in police force consisting of women police. Have you got such a cadre?

SHRI FAZAL AHAMAD: We do not have a cadre as such but we are establishing a cell for such offences primarily in the CID under women police officers and constables.

SHRI B. IBRAHIM: Regarding result of rape cases, what is the percentage of acquittals and convictions?

SHRI FAZAL AHAMAD: It would be 50:50.

SHRI B. IBRAHIM: What are the reasons for it?

SHRI P. P. NAYAR: 50 per cent are convicted. Percentage is not more than this. It is even less.

SHRI FAZAL AHAMAD: The prosecutrix is also gained over by the accused persons for the sake of her prestige, in the case of unmarried women for the sake of their future marriage and many other social factors come in the way of conviction.

SHRI B. IBRAHIM: Is it also correct to say that non-presentation of the case properly by the prosecutrix is also one of the reasons?

SHRI FAZAL AHAMAD: It is correct.

SHRI B. IBRAHIM: Please refer to Section 376(2)(a) Page 3 of the draft Bill, "(2) Whoever—(a) being a police officer, commits rape in the

local areas....." Is it necessary to elaborate the words "local area"?

SHRI FAZAL AHAMAD: I am in charge of the Sub-Inspectors of Police. The jurisdiction of the Police Station is adjoining the area of other officers. My jurisdiction is throughout the State. That is why I have to look after whatever is done by the Sub-Inspectors. I can also be hauled up because the offences are committed in my jurisdiction.

SHRI P. P. NAYAR: As I have suggested earlier, it is better to put a different clause for custodial rape. Then all these problems can be taken care of. Supposing a police officer is after a woman, we can transfer him to another Thana or to a sub-divisional Headquarter which is outside the jurisdiction. Reference of areas is meaningless. Custodial aspect should be the basis of enhanced punishment. There should be only one custodial clause rather than five or six clauses.

SHRI RASA BEHARI BEHRA: Please refer to Explanation 1 of Section 376 Page 3 of the draft Bill. "Explanation 1.—Where a woman is raped by three or more persons....." Can it be changed to more than one or two men?

SHRI P. P. NAYAR: If you consider three is a gang and two is not a gang then I have no comments but I will prefer more than one.

MR. CHAIRMAN: Thank you very much for having given very useful suggestions.

(The witnesses then withdrew)

II—Patna Women's College, Patna University, Patna.

Spokesmen:

1. Shrimati Nidhi Sinha
2. Shrimati Sumita Chowdhary

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence,

the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

MR. CHAIRMAN: I hope you have received the Bill and gone through the same. Please offer your comments.

SHRIMATI NIDHI SINHA: First I would like to suggest that definitely it is essential that the law should prescribe an effective punishment for a person who commits rape but the amendment that is proposed gives certain arbitrariness to the Magistrate where it is mentioned in certain special circumstances the Magistrate can reduce the punishment. If discretion is given to the Magistrate then definitely it will not be effective and it will be a loophole in the law that has been prescribed. So, Sections 376(1) and 376 (2) should be deleted.

Secondly, in the proposed amendment the age of consent in Section 375 (7) has been mentioned as 16 years but I would suggest it should be raised to 18 years because at the age of 16 years a girl is considered to be a minor. Then there is exception in Section 376 where it is said:

"Sexual offence by a man with his own wife, the wife not being under fifteen years of age, is not rape."

I would like that this age-limit should be raised to 18 years.

Thirdly, definitely severe punishment is required for rape but at the same time nothing should be enacted which will jeopardise considerations of fair trial. In the amendment that is

proposed it has been mentioned that if a woman accepts in the court that it was against her consent then the court would presume that it has been against her consent without taking further evidence. Section IIIA has been added to the Evidence Act, I would beg to differ because here the chances of fair trial would be minimum because in certain cases we find that the lady has given her consent but with the fear of publicity or bad name in the court she disagrees and says that she has not given consent. So, the court should better investigate the matter and then give the judgement. Without verifying the fact that she has stated before the court that she has not given the consent, the court presumes. So, I would beg to differ here. I would not like to agree with the amendment.

The next point is that in Section 375, Description 2, the words 'free and voluntary' should be defined more precisely. What the law means by free and voluntary consent is not very clear. So, I would like that there should be a clear definition of these words 'free and voluntary'.

Another point is that here the amendment that has been proposed mentions that the trial should be *in camera* and nothing should be published. If the press publishes, there would be a summary trial and the pressman would be punished. That will depend upon the court whether to punish him for one month or even two years' imprisonment. But at the same time it means that with the permission of the court it can publish. The trial *in camera* has been inserted so that the girl who has been victimised can freely express her opinion without the danger of her name being publicised. To me it appears to be rather contradictory because the trial *in camera* has been conducted and the court gives the permission to the press to publish it.

Besides this, the judgements of the Supreme Court and of High Courts can be published. So it is not in proper

link. This should be made clear. Otherwise the pressmen would be unnecessarily harassed. Thank you.

SHRIMATI SUMITA CHOWDHARY: As far as the amendments that we have gone through and the papers that we read are concerned, my first objection is to the Explanation appended to the proposed Section 228A where it says that that printing or publication of the judgement of any High Court or Supreme Court will not amount to an offence within the meaning of this Section. This may cause inhibition to many victims of sexual offences to go to the court and get the offenders punished because of the fear of being scandalised widely. The victims, girls or women, whose names are mostly likely to be referred to in Judgements whether of High Courts or Supreme Court, may subsequently find difficulty in getting rehabilitated or in getting married. Our society is not so enlightened as not to look down upon such girls or woman. So, if the names of the victims are publicised, then it will create some problem of scandal or ill-reputation. So, I would suggest that while permitting the printing and publication of the judgements exception should be made to withhold the printing and publication of the names and other identities of the victims of sexual offences. It should apply to all the judgements starting from the lower courts to the higher courts.

My second objection is with respect to the third clause regarding definition of rape in Section 375 I.P.C. which mentions consent obtained from the victim by putting her in fear of death or of hurt or of any injury or by criminal intimidation. It does not mention of consent obtained by practising deception or fraud. So many times it happens that the girl has been cheated, she was given the allurements and the accused person is actually acquitted because consent though obtained by fraud, allurements or deception was held to be consent nonetheless as the consent was obtained not by putting the victim in fear of hurt, death, injury or criminal intimidation. I would

like to submit a case reported in AIR 1955, Nagpur page 121, where the accused was acquitted of the charge of rape simply because the consent of the victim was obtained by fraud by putting the victim in fear of immediate arrest. It was held that where the fear to which the woman was subjected was neither the fear of death nor of hurt nor of physical injury, consent obtained through such fraud was nonetheless consent to have sexual intercourse. So the words "fraud and deception" should also be included.

My third objection is to the use of words 'by him' in description of Section 375 I.P.C. which relates to intoxication. If the girl was given intoxication or if the girl had been administered intoxicating drugs by the person, he will attract this Section. But it may so happen that somebody may administer intoxicating drugs and some other person may commit rape. In such circumstances the accused will be acquitted because he did not administer the intoxicating drugs, but took advantage of the woman's condition created by another. So, the words 'by him' should be deleted. Suppose there are two persons A and B. As has committed the crime of intoxicating and B has committed rape. So, I do not think it will serve the purpose. It will create confusion.

My fourth objection is to the use of the words 'in the local area to which he has been appointed' with reference to the police officer in Section 376(2) (a). A person does not always know where a police officer is posted or the area to which he is appointed, which officer is in Kotwali and which officer is in another police station. We always recognise police officers by their dress. A woman may fall an easy prey to even the lowest of the police officers little knowing that he is not appointed in the local area where the offence is being committed. So that provision 'in the local area to which he is appointed' should be deleted.

MR. CHAIRMAN: What is your suggestion as to whether he should be in uniform whenever he commits the rape?

SHRIMATI SUMITA CHOWDHRY: Yes, the police officer in any area is enough. He may be posted anywhere, but if he has committed that offence he should not be exempted on the ground that he is not posted in that area.

MR. CHAIRMAN: Is it within or outside his jurisdiction without uniform? What is your view?

SHRIMATI SUMITA CHOWDHRY: Definitely he should be punished. The uniform is just for identification. Even if he commits rape without uniform he must be given rigorous imprisonment. Nobody can be a *rakshak* of law if he commits offences against law.

Concerning Section 376C, this Section prescribes punishment to a person who is either concerned with the management of a hospital or is on the staff of a hospital and who commits rape on a woman who is receiving treatment in the hospital. So many times it happens that the woman is receiving the treatment and her relations who are visitors and who are attending on her are raped or the woman raped herself is not admitted but attending her relation who is admitted. So, a provision should be made to include woman relations or attendants who are attending the sick persons.

As regards Criminal Procedure Code in Section 327(2) of the Cr. P.C. it is made permissible to print and publish any matter of any proceeding *in camera* with the permission of the court. In the proceedings generally the reference of the victim woman comes, who may not like to be identified for fear of being looked down upon in the society or for fear of her rehabilitation or impediment in getting married. So, there should be a proviso that any matter regarding identification of the victim woman shall not be printed or

published even with the permission of the court. That is my suggestion before the Committee.

Finally, I would like to say that personally I believe that description 7 of Section 375 excludes sexual intercourse from the category of offences when it is done with the consent of the woman who is above 16 years of age.

It excludes sexual intercourse from the category of offences when it is done with the consent of a woman who is above 16 years of age. You may raise it to 18. But this, besides encouraging corruption, will also create problems like medical termination of pregnancy or rehabilitation of women in our society in the present set up of today. Sexual intercourse should not be allowed even with the consent of women of any age group.

(The witnesses then withdrew)

III Shrimati Ramanika Gupta M.L.A.
(The witness was called in and she took her seat)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a committee to give evidence Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be liable to be made available to the treated as confidential such evidence Members of Parliament."

Shrimati Ramanika Gupta: Kindly See Seventh Clause of Section 375 on Page 2 of the draft Bill.

"Seventhly—with or without her consent when she is under sixteen years of age."

श्रीमती राखिका गुप्ता: पेज-2 पर संकशन 375 में आपने लिखा है कि 16 year, may be made 18 years.

एक तरह से आप शर्तों की उम्र 18 साल घोषित मानते हैं और इस बिल में सैक्रिडल ऑफेंस के अन्तर्गत 16 साल दे रहे हैं। मेरा आप से आग्रह है कि इस को 18 साल कर दिया जाये।

पेज-3 पर आपने लिखा है, एक्सेप्शन में,

Kindly see Exception to Section 375 of Panel Code Page 2 of the draft Bill. The age may be 18 years.

इसकी भी 18 साल कर देना चाहिए।

Kindly see Proviso to Section 376 of the Penal Code.

(Page 3 of the draft Bill) "Provided that the Court may for adequate and special reasons to be mentioned in the judgement, impose a sentence.."

प्रमाणित होने पर उसको दस साल की सजा है, मेरा आग्रह है कि मिनिमम सजा डिमोट लोजिये।

MR. CHAIRMAN: You want the maximum of ten years and a minimum of five or three years.

SHRIMATI RAMANIKA GUPTA: Maximum is ten years Minimum five years. It should not be less than five years. The discretion should not be a blank cheque.

Kindly see Provison to Section 376 Page 3 of the Draft Bill.

इसमें आपने पुलिस अफिसर को लिखा है, पब्लिक सर्वेंट्स को ले लिया और

सभी को आपने ले लिया लेकिन पब्लिक रिप्रजेंटेटिव्स का क्या होगा ?

MR. CHAIRMAN: What is your proposal?

SHRIMATI RAMANIKA GUPTA: Public representatives may also commit such offences. They should be included in this Clause.

चूहे एम० पी० हो, चूहे एम० एल० ए० हो, चाहे मुखिया हो, चाहे संपर्क हो, सभी को शामिल किया जाना चाहिए।

पेज-4 पर क्रिमिनल प्रासीजर कोड के संकशन 327(2) में आपने लिखा है कि

"Where any proceedings are held in camera, it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except with the previous permission of the court."

मैं यह चाहती हूँ कि "प्रोवीबिस परमिशन आफ दि कोर्ट" केवल इस को हटा दिया जाये, ताकि लड़की अपना बयान ज्यादासे ज्यादा हिम्मत कर के दे सके। नहीं तो वह बयान नह देगी, क्योंकि उसको पता है कि जज साहब इसको पब्लिश करने की इजाजत दे सकते हैं और हमारी कहानी प्रखबारों में छः सकता है। वह लड़की इस लिये हिम्मत नहीं करेगी सच्चा बयान देने के लिये

बाकी सब इस बिल में ठीक है। संकशन-111 को मैं सिफारिश करती हूँ।

मैं आपको धन्यवाद देती हूँ कि आपने मुझे इस कमेटी के सम्मुख कुछ आपने विचार प्रकट करने के लिये मौका दिया।

(The witness then withdrew)

IV—Social Welfare Advisory Board
Patna.

Spokesmen:

1. Shrimati Ansuya Jayaswal
2. Shrimati Mukul Jha

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

MR. CHAIRMAN: You would have gone through the Bill. What concrete suggestions would you like to make before the Committee?

SHRIMATI ANSUYA JAYASWAL: With regard to Section 5, I would like to say that you have mentioned in this Bill ten years' penalty and liable to fine. I want that amount of the fine should be indicated and that amount should be given to the victim with which she can maintain herself.

MR. CHAIRMAN: How much fine should be imposed?

SHRIMATI ANSUYA JAYASWAL: It should be minimum ten thousand and maximum twenty-five thousand. In respect of gang rape there should be rigorous imprisonment and a minimum fine of Rs. 25,000 and maximum of Rs. 50,000. Further, I find that some partiality has been done to the public servant. A public servant who is required to be more responsible should be given greater punish-

ment. For him the maximum imprisonment should be ten years and minimum fine of Rs. 25,000. You have provided less in the present Bill.

MR. CHAIRMAN: What is your proposal for the second offence?

SHRIMATI ANSUYA JAYASWAL: Once he is proved to be an accused then he should be no more a public servant. Then he should be treated as part of the public and given the treatment given to an ordinary man.

Further the period of the Sessions trial should be fixed and it should not be lengthy period with the result that the victim may leave the case and the accused gets acquitted.

MR. CHAIRMAN: What is your limitation?

SHRIMATI ANSUYA JAYASWAL: It should be finalised within six months. There should be provision for Special Courts. In a general way the judge cannot expedite these things so speedily. That is why I feel for the special court where these cases are being tried expeditiously. And within six months the cases should be tried. That is my proposal.

One thing more and that is, in the case of such victims as ladies or girls—it is out of the purview of this Bill, but my suggestion is that the Government should consider their cases in a special way and they should provide some work for them. This is my suggestion though it is out of the way.

MR. CHAIRMAN: Do you mean it is for victims?

SHRIMATI ANSUYA JAYASWAL: Yes, girls and ladies, because in our culture we people do not allow them to live with their families or maintain their day-to-day livelihood. Hence my proposal.

MR. CHAIRMAN: Do you agree with other provisions contained in the draft Bill?

SHRIMATI ANSUYA JAYASWAL: Yes.

SHRIMATI MUKUL JHA: My suggestions are that when the girl is put on trial she should not be embarrassed with delicate questions and it should not be publicised through papers etc. What happens is that many girls do not come out with the reality of what suffering they are putting up with.

MR. CHAIRMAN: What do you propose?

SHRIMATI MUKUL JHA: I propose that these things should be done in a more secretive way rather than publicly.

MR. CHAIRMAN: So will you agree to the provision for the trial in camera?

SHRI MUKUL JHA: Yes, I agree.

MR. CHAIRMAN: Do you want to add anything more?

SHRIMATI ANSUYA JAYASWAL: Every case depends on evidence and in such cases whether male members will come out with truth or not is doubtful because the victim's father will not like that she should be exposed before other people. That is why such evidences will not be able to produce by her. In such cases I suggest that the main evidence that should be banked upon is the doctor's evidence. No other person should come and give evidence in her favour or her father will not like to call any other person as she may be exposed before so many persons and it will affect her future life.

SHRIMATI MUKUL JHA: There should be more security for the girls, particularly in Bihar. In such cases, as she mentioned some livelihood should be provided to such girls because nobody would be willing to

accept such girls. So, there should be more avenues for the employment of such girls for their livelihood etc.

MR. CHAIRMAN: Do you mean to say that some compensation should be awarded or they must be given some Government jobs?

SHRIMATI MUKUL JHA: Yes, they should get jobs.

MR. CHAIRMAN: Then, in that case the general rules of recruitment will apply. Some of the girls who are victims may not be qualified.

SHRIMATI MUKUL JHA: They are not being accepted in the family. So, for such girls there is no alternative but to run away and take shelter of a broker or to commit suicide. So there should be some provision for their rehabilitation. We have tried our best but we have not yet succeeded in getting their proper rehabilitation. Unless some quota or something like that is fixed for them for a particular jobs or work they cannot save themselves.

MR. CHAIRMAN: What kind of livelihood do you propose?

SHRIMATI MUKUL JHA: Like nursing, teaching or anything according to the qualifications.

MR. CHAIRMAN: There are some ladies who are without qualifications.

SHRIMATI MUKUL JHA: They can work in some orphanage or schools or do jobs like ayahs. If they are illiterate, they cannot except to get anything better, but that will be something better than committing suicide.

MR. CHAIRMAN: But in some cases it may so happen that in respect of age of ladies, though they are qualified to secure their jobs, yet they are disqualified on the ground of age limit. What are you going to propose for such people?

SHRIMATI ANSUYA JAYASWAL: Their cases should be treated as Harijans and Adivasis and relaxation of age should be given.

श्री बिलोक चन्द : अभी आपने एक बात कही कि स्पेशल कोर्ट होनी चाहिये, लेकिन आपने यह नहीं बताया कि किस तरह की स्पेशल कोर्ट होनी चाहिये ? क्या उसमें लेडीज जज हों या कोई दूसरी तरह की कोर्ट हों—इस बारे में आप अपने विचार जरा बोल कर व्यक्त करें ?

श्रीमती अनुसुय्या जयसवाल : आपका कहना सही है कि कोई महिला जज हो, तो ज्यादा सुविधा होगी। हमारे बिहार में एक भी महिला जज नहीं है। इसलिये उनको प्रिफरेंस तो जरूर देना चाहिये, लेकिन यह संभव नहीं है, तो जो भी जज संभव हो, केस का जल्दी से जल्दी निपटारा हो सके, इसके लिये स्पेशल कोर्ट की व्यवस्था होनी चाहिये।

MR. CHAIRMAN: Thank you.

(The witness then withdrew)

V.—All India Women's Conference Patna.

Spokesman:

SHRIMATI UMA SINHA:

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:—

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be

treated as confidential such evidence is liable to be made available to the Members of Parliament." Now you can give your views to enlighten the Committee.

श्रीमती उमा सिन्हा : मैं प्रबल भारतीय महिला परिषद् की अध्यक्ष के रूप में कार्यरत हूँ। मैं वकील नहीं हूँ। इसलिये ला की इतनी जानकारी मुझे नहीं है जितनी कि अपेक्षित है। मुझे दो तीन बातें एक समाज सेवी होने के नाते अपने अनुभव के आधार पर आप लोगों के समक्ष रखनी हैं।

जितने संशोधन प्रस्तावित हैं वह बहुत ही अच्छे हैं और लोगों को भी लगता है कि इस से कानून अधिक कारगर और चुस्त हो सकेगा। जिस क्राइम को हम रोकने की चेष्टा कर रहे हैं उस को रोकने में इस से मदद मिलेगी। मगर इसमें हमने देखा कि इस का कोई भी प्रावधान नहीं है कि किसी प्रकार भी रेप के मामलों को सप्रेस न किया जाये। हम लोगों ने देखा है कि इस क्राइम के बोधी जहाँ पर बहुत प्रभावशाली व्यक्ति होते हैं वहाँ यह चेष्टा होती है कि हर स्तर पर इसे दबा दिया जाये, छिपा दिया जाये और इस पर कोई कार्यवाही न हो। अक्सर गाँवों के मामलों में भी हम ने देखा है कि जब पुलिस के पास एक घाई घार लाज कराने के लिये लोग जाते हैं तो यदि बोधी व्यक्ति प्रभावशाली है तो वह किसी तरह भी एक घाई घार लेने के लिये तैयार नहीं होते और यदि बते भी है और मामला कोर्ट में जाता भी है तो बहुत ज्यादा बिलम्ब से उस पर कार्यवाही होती है। नतीजा यह होता है कि लड़की को बहुत हैरसमेंट होता है। दूसरे, बोधी चाहे जो भी हो, ऐसे मामलों

हमारा समाज ऐसा है कि कलंक स्त्री के माथे पर ही लगता है। तो वह स्त्री या लड़की कलंकित अवस्था में बहुत दिनों तक पड़ी रहती है जिस से कि उस पर बहुत बुरा मनोवैज्ञानिक प्रसर पड़ता है और साथ-साथ वह यदि पढ़ने लिखने वाली लड़की है तो वह शिक्षा संस्थाओं में भी नहीं जा सकती क्योंकि दूसरी लड़कियाँ उसको फिर दूसरी नजर से देखने लगती हैं। उसका शादी-ब्याह भी नहीं ही सकता। अगर शादी मुदा है तो उसके समाज की औरतें उसे और नजरों से देखती हैं। बहुत सी ऐसी बातें उसके बारे में कही जाती हैं जिससे उस पर बहुत बुरा प्रभाव पड़ता है और बाध्य होकर वह आत्महत्या कर लेती है इसलिये यह देखा गया है कि रेप के बहुत से केसेज में मृत होता है लड़की के आत्महत्या के रूप में। तो कानून में ऐसा प्रावधान किया जाना चाहिये कि किसी हालत में भी इस प्रकार के केसेज को सप्रेस न किया जाये और दूसरे, इस मामले का निपटारा टाइम बाउन्ड प्रोग्राम के अन्दर एक सीमित समय में कर दिया जाना चाहिये जिससे कि लड़की को उस कलंकित अवस्था में अधिक दिनों तक न रहना पड़े। कितने समय में मामला खत्म किया जा सकता है यह मैं नहीं बता सकती हूँ। वही लोग बता सकते हैं जिनके ऊपर इसकी जिम्मेदारी है। लेकिन इतना ही कहना चाहूँगे कि जितना कम समय लग सके उतना ही हम इस क्राइम को रोकने में सफल होंगे, नहीं तो लड़की के मां-बाप तक सोचते हैं कि चुपचाप रह जाओ, इसी में कल्याण है, इतना बिलम्ब होता है कि मुकदमा न करना ही वह अच्छा समझते हैं।

दूसरी बात अमेडमेंट में सीक्रेसी की बात कही गई है। वह बहुत ही सुन्दर

है। इस मामले को इन कैमरा में निपटार्य जाना चाहिये जिससे कि इस संबंध की सारी बातें सीक्रेट रहें। लड़की का नाम किसी तरह भी बाहर नहीं जाने देना चाहिये क्योंकि जब लोग नाम जान जाते हैं तो उसमें लड़की की बहुत बदनामी होती है। इसके लिये केस होते ही एक कोड नम्बर दे दिया जाये और सारी कार्यवाही कोड नम्बर से ही हो। जब मुकदमे का फैसला छपता है तो वह बिलकुल पब्लिक डाय्यूमेंट हो जाता है। उसमें भी अगर लड़की का नाम किसी तरह हुआ और लड़की निर्दोष भी साबित हो गई फिर भी उसको उससे नुकसान उठाना पड़ जायेगा। तो मुकदमे की कार्यवाही में शुरू से ही इससे काम लिया जाये और जजमेंट में तो किसी तरह भी लड़की का नाम न हों, उसको कोई नम्बर से ही प्रकाशित किया जाये क्योंकि वह जजमेंट पब्लिक डाय्यूमेंट होता है।

तीसरी बात—जो अमेडमेंट में प्रावधान किया गया है कि यदि पब्लिक सर्वेंट कन्विकट हो जाता है तो उसको दस साल की सजा दी जाये, उसके साथ-साथ मेरा यह कहना है कि उसका आटोमेटिक डिस्मिसल भी हो जाना चाहिए। यदि वह किसी पद पर है तो आटोमेटिक डिस्मिसल कन्विकशन के साथ ही हो जाने से मामला जल्दी निपटने की संभावना होगी।

चौथी बात—अमेडमेंट आफ दिस क्राइम वाइ परसन्स इन पोजीशन इसको भी इसमें शामिल किया जाय। ऐसा होता है कि वह प्रक्सर खुद तो क्राइम कमिट नहीं करते हैं। अगर वह खुद करेंगे तो बाकी ला उन पर लागू हो जायेगा। लेकिन बहुधा ऐसा देखा जाता है कि वह कनाइव कर जाते हैं और दूसरे से यह क्राइम करा देते हैं। तो अमेडमेंट आफ दिस क्राइम वाई अदर परसन्स, चाहे वह पुलिस

मैन हो या जेल का सुपरिन्टेन्डेंट हो, कोई भी हो, उस पदाधिकारी को, यह समझा जाये कि उसने कनाइव किया है और उसको भी इसकी सजा मिलनी चाहिए। इसलिए 376 के (2) (ए) और (बी) में जो प्रावधान किए गए हैं उसमें इस एंबेडमेंट वर्ड को भी डाल दें। इससे यह काफी प्रभावशाली हो सकता है। ये तो लीगल बातें हुईं।

बाकी और दूसरी सामाजिक बातें हैं, पता नहीं वह आपकी सीमा में हैं या नहीं, जैसे प्रत्येक लड़की को अपनी सुरक्षा की ट्रेनिंग बचपन से ही मिलनी चाहिए जिससे वह अपने को बचा सके। ये बड़ी सी बात मैन आपके सामने रखी है, इनको मैं लिख कर भी लायी हूँ।

MR. CHAIRMAN: Thank you very much.

(The witness then withdrew)

VI. (1) Syed Shamseer Rahman
Public Prosecutor,

(2) Shri Siddeshwari Prasad
Singh, Advocate.

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

You have gone through the Bill. What have you to say?

SHRI SIDDESHWARI PRASAD SINGH: In respect of 375 A—fifthly in my opinion so far as the word 'misconception' is concerned it is vague and sometimes it may prove to be dangerous. Misconception is a very vague word. Even without this addition of clause fifth we can do it as has been done earlier. It is redundant and it should be deleted.

Secondly after Section 376 (2) (D) in my opinion two clauses may be added. One is teacher and the other MPs, MLAs and MLCs.

Then at page 4, I think, the intention is not even the judgement of the original court. I hope it means that. It should be clarified. The judgement of the trial court should not be published. Judgements of the High Court and Supreme Court may be published.

Then Section 111A is a misprint for Section 114. The relevant Section is 114 of the Evidence Act.

Then I come to the last sentence. In my opinion 'presumption' should not be there. Rather the court that should give due weight to the statement. Unscrupulous ladies can involve many innocent persons. It may be added that while deciding the cases past antecedents of the women may be taken into consideration.

Further, I would like to suggest in the definition of women anywhere in Section 354 IPC—after the word 'woman' the words 'or female child' should be added.

SHRI SYED SHAMSEER RAHMAN: Sir, I endorse the views expressed by Shri Siddheshwari Prasad Singh.

SHRI AMARPROSAD CHAKRABORTY: As a Government pleader, in how many rape cases you have appeared so far?

SHRI SIDDESHWARI PRASAD SINGH: I was Assistant Public Pro-

sicutor during my early days and during those days when I was conducting criminal cases I had the opportunity either to appear for or against in half-a-dozen rape cases.

SHRI AMARPROSAD CHAKRABORTY: Out of those cases, in how many cases acquittals are there?

SHRI SIDDHESHWARI PRASAD SINGH: Not more than 20 per cent.

SHRI AMARPROSAD CHAKRABORTY: In your experience what is the lacuna in the present Act so that acquittals are ordered?

SHRI SIDDHESHWARI PRASAD SINGH: So far as the production of evidence is concerned, the accused are often acquitted because...

MR. CHAIRMAN: The point is, in your experience whether you have noticed any lacuna in the existing laws. Did you find any loopholes during your practice?

SHRI AMARPROSAD CHAKRABORTY: After the Mathura case decided by the Supreme Court and also in different cases in the Harijan or Adivasi areas there is a strong public opinion that the present law is not adequate. So what is your experience? In the cases in which you have appeared does this amendment justify by filling up this lacuna?

SHRI SIDDHESHWARI PRASAD SINGH: I have no difficulty about this. And there is no lacuna and because of no lacuna there was no difficulty in the cases conducted by me. But in the last several years certain developments have taken place and therefore, these two amendments appear to be justified.

SHRI AMARPROSAD CHAKRABORTY: In respect of law, before this proposed amendment, did you not find any difficulty in the trial of rape cases?

SHRI SIDDHESHWARI PRASAD SINGH: No difficulty.

SHRI AMARPROSAD CHAKRABORTY: Still, the Government feels that for safeguarding the ladies law should be made more stringent. Now the Home Ministry has thought it fit to replace law by substituting certain clauses. Out of these clauses you are raising objection regarding the fifth clause. In place of 'misconception' do you suggest any word?

SHRI SIDDHESHWARI PRASAD SINGH: It is to be deleted.

SHRI AMARPROSAD CHAKRABORTY: You see, here it is written, "Seventhly—With or without her consent when she is under sixteen years of age". Have you given thought to this matter that it should be raised to 18 years?

SHRI SIDDHESHWARI PRASAD SINGH: It should be 16 years. I can give reasons for it also, but you have not so much time. So in my opinion it should be 16 years.

SHRI AMARPROSAD CHAKRABORTY: There are some serious allegations against public prosecutors. People are very much dissatisfied with the office of the Government prosecutor. Will you kindly throw some light on this? They say that unnecessary delays should be avoided and the cases should be decided quickly. What are the reasons for the delays?

SYED SHAMSEER RAHMAN: First of all, so far as the investigation is concerned, that should be expedited. That is very important. Secondly, the other point which I shall raise is this. So far as the witnesses are concerned, they are available, but they do not want to depose before the court because in my experience I find that there is likelihood of tampering of evidence in such cases. So, the delay is automatically caused. Sometimes we do not get the medical evidence also so quickly. All these things are responsible for the delay.

BORTY: But there is evidence before
BORTY: But there is evidence before

us and it is suggested that these rape cases should be disposed of within six months. But unfortunately it takes more than 3 or 4 years' time. What are the reasons? Do you think that any of the Sections of the Criminal Procedure Code should be amended?

SYED SHAMSEER RAHMAN: So far as expediting the case is concerned, our Government has already amended the Code. In spite of that we are facing great difficulty because sometimes the doctors are not available for evidence. They are not available for 6 to 7 months. There are a large number of cases like that. Some doctors are outside the country some are here or there. Summons go and come back undelivered and the trial is withheld. Also, the police officers are responsible for the delay because they are not easily available to see that the trial is concluded.

SHRI AMARPROSAD CHAKRABORTY: So, according to you there is defect in the law?

SYED SHAMSEER RAHMAN: No. But the delay is there.

SHRI AMARPROSAD CHAKRABORTY: But what is the explanation?

MR. CHAIRMAN: He has given it in his statement.

SHRI R. K. MHALGI: You said that Section 111A should be renumbered as 114A. At the same time, you have stated that the words "shall presume", should be substituted by the words "evidence before the Court". What are your reasons for making this suggestion?

SHRI SIDDHESHWARI PRASAD SINGH: So far as presumption is concerned, the moment it is presumed, then if there is no evidence, the conviction will be based on the solitary evidence of the lady concerned.

SHRI R. K. MHALGI: Please read Section 111A of the Indian Evidence Act, Page 6 of the Draft Bill. It is a

presumption regarding consent, not of the proof.

SHRI SIDDHESHWARI PRASAD SINGH: If the sexual intercourse is proved, even then, there will be problem. I am giving an instance. If there is a divorced wife and she comes out with a story against her divorced husband that he committed sexual intercourse with her. Medical evidence will prove that there was sexual intercourse an hour before, but not with whom. She will say that my divorced husband has committed this offence and then he will be convicted. Therefore, I am saying that there is danger if undue weight is given to her evidence.

SHRI R. K. MHALGI: We were told that in Bihar there are 50 per cent acquittals in rape cases. So, Public Prosecutors also play a very important role in conviction or acquittal. Is there any machinery to assess the role of a public prosecutor in a case of acquittal in rape case?

SHRI SIDDHESHWARI PRASAD SINGH: There is no particular or definite machinery but if the Police is alert, if they can attend to the case day to day, then, they can make a report to the Government that the case is not being properly conducted by the PP or APP or SP or the ASP. If the Government is alert, certainly there is remedy. Such matters may be brought to the notice of the Government. Rape by women against men are also committed. That you may kindly consider. There have been cases not only in France but in Patna also. In Patna High Court, there was such a case. Two or three girls took away a boy and did all those things with him and he was found in an awkward position.

The witnesses then withdrew.

VII—(1) *Shri U. N. Sinha, IAS (Retired)*

(2) *Shrimati Radhika Devi Ex-MLA.*

(*The witnesses were called in and they took their seats.*)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

SHRI U. N. SINHA: I am U. N. Sinha. I am retired Government servant. I retired as Secretary, Department of Education, in the year 1977. I have the experience of being Sub-Divisional Official. At present I am the Secretary of Lok Dal, Bihar. Rape may take place in a hotel, rest house in the fields, in the vehicles, police custody, jail, with the subordinate staff, girl students, women who are helpless and weaker sections, and scheduled castes and scheduled tribes women. So we have to distinguish between all these types of rape. Then there is rape by a married person, rape by a person above the age of 15, by a person who is just a student, by a politician, businessman. You have to distinguish. Then there is rape on widows. Regarding the punishment to be given, it has to vary according to the crime. Helpless girls are picked up in a vehi-

cle, and rape is committed. It may be only penetration. When she is raped in the vehicle, you have to be a little lenient. If the girl is of 12 years of age, if she is raped in a vehicle, then she will definitely tell you the truth. But there are certain girls, young girls. The danger is there. Certain loose character girls, induced by politicians or by group rivalry, they will tell lies. I have seen in the Bill that when a girl says in a court that she is raped, rape is proved. The girl says that she has been raped and it is taken as evidence and the court will presume that she is correct and that she is raped. That is a danger signal in the present set up of Bihar, at least. Here there is political rivalry. Somebody will entangle a candidate, if he is a formidable candidate, by going to the court and filing a case that the girl has said that rape is committed by that formidable candidate and then a *prima facie* case will be established. These things will be coming up. Suppose a politician put a question about somebody the other person will induce a girl. So, that portion where the girl is raped and "and should be taken that she has been raped" should be omitted. Further, if the rape is on weaker sections it should carry much more punishment than the rape on affluent sections. If a rape is committed in a hotel or a vehicle the proprietors should also be punished.

Sir, there is little difference between outraging modesty and rape. I feel the punishment for outraging modesty should also be increased.

श्रीमती राधिका देवी: मेरा यह कहना है कि इसमें यह जो स्पष्टीकरण है—
"किसी उच्च न्यायालय या उच्चतम न्यायालय के निर्णय का मुद्दा या प्रकाशन इस धारा के अर्थ में कोई अपराध नहीं है,"

इसमें कमसे कम पांच साल तो लगा हो देना चाहिये क्योंकि बिना कुछ पनिशमेंट रखे हुये काम नहीं चलेगा ।

दूसरी बात यह है कि यौन अपराध का जो स्पष्टीकरण है उसमें अगर 18

वर्ष के कम उम्र की किसी महिला पर किसी तरह का अपत्याचार पुरुष द्वारा होता है तो उसे बलात्संग मानना चाहिये । उसमें 15 वर्ष के स्थान पर 18 वर्ष कर देना चाहिये ।

(समिति की बैठक स्थगित हो गई ।)

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE OF THE CRIMINAL LAW
(AMENDMENT) BILL, 1980.**

*Thursday, the 22nd October, 1981 from 10.00 to 12.25 hours at Conference Hall,
Orissa Secretariat, Bhubaneswar*

PRESENT

Shri D. K. Naikar—*Chairman*

MEMBERS

Lok Sabha

2. Shri Rasa Behari Behra
8. Smt. Vidyavati Chaturvedi
3. Shrimati Geeta Mukherjee
5. Shri K. S. Narayana
6. Shri Trilok Chand
7. Shri V. S. Vijayaraghavan
8. Shri P. Venkatasubbaiah

Rajya Sabha

9. Shri Ramchandra Bharadwaj
10. Shri Amarprosad Chakraborty
11. Shri B. Ibrahim
12. Shri Dhuleshwar Meena
13. Shri V. P. Munusamy
14. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—*Senior Legislative Committee Officer*

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS

Shri S. C. Bablani, *Under Secretary*

WITNESSES EXAMINED

I. Congress (I), Ganesh Ghat, Cuttack

Spokesmen:

1. Shrimati Indira Mitra
2. Shri Basant K. Beura, Advocate

3. Shrimati Mamata Das, Advocate
4. Shri J. K. Patnaik, Chartered Accountant.

II. State Social Welfare Advisory Board, Bhubaneswar

Spokesman:

1. Dr. (Mrs.) Belarani Dutta, Chairman
2. Shrimati Apala Mitra, Social Worker, Bhubaneswar

III. Utkal Mahila Samiti, Cuttack

Spokesmen:

1. Dr. Nirupama Rath
2. Shrimati Nabanita Roy
3. Shrimati Neeroda Prabha Patnaik
4. Shrimati Shantilata Bhuyan
5. Shrimati Chandraprabha Patnaik

IV. Orissa Nari Seva Sangha, Cuttack

Spokesmen:

1. Dr. Jyotsna Dei
2. Shrimati Padmalaya Das

V. Prajatantra, Cuttack

Spokesmen:

1. Shri Chandrasekhar Mohapatra, Editor
2. Shri Saroj Ranjan Mohanty

VI. Utkal Journalist Association, Bhubaneswar

Spokesman:

Shri N. K. Swami—President

I—Congress(i) Ganesh Ghat, cuttack Spokesmen:

- | | |
|--------------------------|---|
| 1. Shrimati Indira Mitra | 3. Shrimati Mamta Das Advocate |
| 2. Shri B. K. Beura | 4. Shri J. K. Patnaik, Chartered Accountant |

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence,

the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the

witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Kindly introduce yourselves to the Committee.

SHRI B. K. BEURA: Yes.

MR. CHAIRMAN: Have you gone through the Draft Bill?

SHRI B. K. BEURA: Yes.

MR. CHAIRMAN: What are the suggestions you are going to give on this Bill clause by clause? Your statement should be very brief.

SHRI B. K. BEURA: Honourable Members, we have gone through the proposed amendment Bill and so as to facilitate the discussion we have brought our evidence recorded in writing. I will read it out to you.

MR. CHAIRMAN: The Committee want to know what are your views in respect of the proposed amendment, whether you agree with it and if not, do you suggest any amendment? As a practising lawyer you are expected to give your opinion about the amendment.

SHRI B. K. BEURA: We welcome all the proposed amendments and request your good selves to kindly add two more amendments in connection with Sections 375 and 376, I.P.C.

MR. CHAIRMAN: What is to be added and where it should be added and in what manner?

SHRI B. K. BEURA: I may be permitted to read out the portion.

So far as Section 375 is concerned, what we propose is to bring out a new addition as the eighth circumstance. So, in line 19 on page 2, the word 'Seven' may be substituted by the

word 'eight'. After that, after line 41 on page 2, the following may be added:

"Eighly,—Without the free consent of the wife when she expresses genuine reasons for not giving consent to intercourse by the husband."

Besides the seven circumstances given under Section 375 I.P.C. of the proposed Bill, there may be another circumstance, which is more often found in the everyday life in our society. Many times husbands returning home in drunken state late night torture their wives and demand intercourse and other unusual sex acts to which normally any normal wife declines and as a result falls victim to the high-handed, brutal acts of her husband. Other common instances are like demands of husbands to commit intercourse in spite of objectionable state of health of either spouse viz. while suffering from the infectious and communicable diseases or during pregnancy of the wife etc. In such circumstances, no wife gives her consent to the sex-thirsty husband for the sole mutual benefit, but the husbands in their beastly passion satisfy their hunger through criminal force and pressure against the free will of the wives. Such a circumstance be added as the eighth circumstance under the Section so as to save the innocent housewives from the high-handed oppression of the inhuman husbands.

MR. CHAIRMAN: This is a broad statement. What is to be inserted is not legally drafted.

SHRI B. K. BEURA: I have proposed at the end,

MR. CHAIRMAN: There are several sections regarding committing an offence against woman. There if anything is proposed, you should add it. There are so many provisions. But under which provision do you want to add?

SHRI B. K. BEURA: I want the changes to be made like this:

On page 2, in line 19, the word 'seven' may be substituted by the word 'eight'.

Again, after line 41 on page 2, the following may be added :—

"Eighthly—Without the free consent of the wife when she expresses genuine reasons for not so giving consent to intercourse by the husband."

This is the eighth circumstance.

MR. CHAIRMAN: What are the reasons which compelled you to add this so that the Members will be able to understand the real position of law?

SHRI B. K. BEURA: You will agree with me that most of the husbands return home after drinking and spending their time in the night clubs and demand intercourse with their wives. When the wife is not in good health and in good mind, she requests husband not to indulge in intercourse. But the husband uses criminal force on the woman. The woman becomes pitifully helpless. This circumstance also may be brought under rape.

MR. CHAIRMAN: I may tell you what happens in case of certain marriages. If the husband and wife have incompatible temperaments, there may not be any cohabitation. There may be divorce. After divorce, the decree of judicial separation, there should not be any relationship between the husband and wife. How this question would arise?

SHRI B. K. BEURA: I am saying that when the husband and wife live together and when the wife is not in normal mind and normal health. There are other instances when viz. the wife is pregnant, the husband makes demand for intercourse. Some-

times, the husband may be suffering from some contagious disease and demands intercourse and the wife refuses. In such cases, if the husband uses force, then let it be rape.

MR. CHAIRMAN: In such circumstances, human psychology is such that the husband will not use force. He will not do injustice. I am sure perhaps you are also a married man. How many cases of this type have you come across?

SHRI B. K. BEURA: There are many cases. These incidents are very common. There are abnormal cases. Normally these cases do not occur. But in abnormal cases, when the wife is not in a position to submit to intercourse, the husband uses force on the pregnant wife. The wife will not be in a state of health to submit to the demands of the husband. The child in the womb will be destroyed. Instances are there.

MR. CHAIRMAN: That is only an imprudent husband. He is not a civilised man. It does not apply to every individual citizen of this country. There may be exceptions. We are not making any provisions for exceptions.

SHRI B. K. BEURA: I think that we must frame laws against such inhuman criminals also. I propose amendment to provide for atrocities committed on ladies by men, which are not common.

Next I propose amendment of Section 376 (Page 3 of the Draft Bill). Under the relevant Section 376(2) (a), (b), (c) and (d) some classes of officers have been enlisted. In addition to those officers, such as Police Officers in Section 376(2) (a) and "being concerned with the management or being on the staff of hospital" occurring in Clause 2(d), another class of officers may be included. That may be added as sub-para "whoever being concerned with the management or on the staff at a public place". By

"public place" I mean religious, social and cultural institutions. Licensed premises may also be included in it just like licensed hotels, lodging houses, clubs, cultural centres, cinema houses and other commercial establishments. Visitors here are mostly subjected to these offences. I find that these offences are very rampant in the lodging houses of Orissa. This may be added as an addition as sub-paragraph (e) and the existing sub-paragraph (e) may be accordingly renumbered.

Another Explanation for "public place" as including religious, social and cultural institutions and licensed premises like hotels, drinking places, manufactories and commercial establishments may be added.

MR. CHAIRMAN: You may even suggest places where such offences take place should be prohibited.

SHRI B. K. BEURA: This may be brought under Section 376 as an additional sub-paragraph in addition to the proposed one.

MR. CHAIRMAN: Here is a provision for the persons in authority mis-using their positions and you are telling me the instances of other categories of persons.

SHRI B. K. BEURA: As I said, the authorities of these public places and licensed premises should also be included. During 1980, more than three instances have taken place in the lodging houses. Authorities were involved in the offences, for taking in the woman visitor and using their power and influence. Because they are in management, they committed the offence. The provision, if made, will definitely correct those offences.

MR. CHAIRMAN: You mean to say that this provision should be extended to them also.

SHRI B. K. BEURA: Yes.

These are the additions we suggest for inclusion in the Bill and with regard to the rest of the provisions, we have no comments.

MR. CHAIRMAN: Do you agree with other provisions?

SHRI B. K. BEURA: Yes.

श्री हुकमचंद नारायण यादव : आपने संकशन 375 में एक और धारा जोड़ने के लिए सुझाव दिया है कि जो पति किसी संक्रामक रोग से पीड़ित हो और वह अपनी पत्नी के साथ मंथन करना चाहे और पत्नी इन्कार कर दे, तो उसको भी रेप मानना चाहिए। यदि पति संक्रामक रोग से पीड़ित हो और वे दोनों कोर्ट द्वारा सौंपेशन कर लें और एक जगह रहें और पति-पत्नी के रिश्ते भी न रहें—ये दोनों चीजें विरोधाभास हैं।

दूसरे, यह कि जो क्लब जाने वाले पति हैं, शराब पीने वाले नशाबाज हैं, जिनकी यह पक्की आदत सी बन गई है, उनका जीवन पत्नी के साथ किसी भी तरह से प्रेमपूर्ण परिवार में नहीं रह सकता है। तो फिर दोनों जुडिशियल सौंपेशन करके, डाइवोर्स करके अलग हो जाना क्यों नहीं उचित समझेगा, क्योंकि एक दूसरे के रहते हुये और संभोग के काम से दोनों बंचित भी रहे और रेप का कारण होकर अदालत में जायें—यह कैसे संभव होगा ?

SHRI B. K. BEURA: Because we are going in for an Amendment, in order to provide for enlargement, for more specific cases under this Clause, I wanted inclusion of these.

SHRI AMARPROSAD CHAKRABORTY: Have you gone through the Objects and Reasons of this Bill, particularly point (5)? If persons who are in custodial control of the woman or girl commit rape on the woman or

girl, they will be punished. Do you think that the persons who are managing or working in hotels, lodging houses, temples, etc., will be treated as being in custodial control of the visitors there?

SHRI B. K. BEURA: They are licensed premises, and there are instances of rapes committed inside the temple or hotel or lodging houses, by those who are lawfully attached to such places. They may not be construed as being in the custody of management or staff working at such places.

SHRI AMARPROSAD CHAKRABORTY: 'Custodial control' and 'employment' are different. These people whom you have suggested are in the employ or management at such places. Do you like to include even those persons who are not in custodial charge but who are in employment at such places?

SHRI B. K. BEURA: Yes; that is my suggestion; I have suggested inclusion of the persons concerned with the management or staff of public places, like religious, social and cultural institutions and licensed premises which women often visit for their respective beliefs and faiths.

SHRI AMARPROSAD CHAKRABORTY: You have said regarding all other provisions that you support them. Do you support non-publication of reports on rape?

SHRI B. K. BEURA: Yes; I do.

SHRI AMARPROSAD CHAKRABORTY: In Orissa, as you know, there was the case of Chhabi Rani. The police did not take cognizance of this in the first instance. Then after it was published by the press. Then it was taken note of. Therefore, unless these things are published in a limited way, without exposing the name of the victim, the police may not proceed in the matter. Do you not feel that real justice will not be done to the victim if it is not published?

SHRI B. K. BEURA: As I understand from the proposed amendment, any publication intending to further defame the victim so as to bring for a bad name in the society is sought to be banned.

SHRI AMARPROSAD CHAKRABORTY: You want to extend the scope of definition by bringing in cases where wife refuses to have intercourse with the husband. Under the Hindu Marriage Act and the law of divorce, action can be taken against the husband by the wife who can proceed with the matter in a court of law. When there is already a provision for this, why do you suggest inclusion of such cases also under rape?

SHRI B. K. BEURA: In spite of the provisions in the Marriage Act there are provisions under the Cr. PC even with regard to maintenance, that is, to give more scope to the common man. These provisions are provided in the laws and this more elucidation is the intent of the proposed amendment. My suggestion is to make the law more commonly available to the common man.

SHRIMATI GEETA MUKHERJEE: I quite appreciate your concern with regard to the cases which are included in section 376 and you have suggested inclusion of religious, social and cultural institutions. But about commercial establishments there are two circumstances. One, the owner or the manager himself goes in for such an offence. Likelihood is that he may not go but under his protection other criminals may indulge in this offence. In that case whether you consider these circumstances of aiding and abetting the criminals to do such things in the custody of particular persons that may not be under his direct control but is very much actually part of the custodial case. In your suggestion do you want to add if that owner or manager himself is the accused then they may come or you want also to include in

the role of an aider and abettor of such acts.

SHRI B. K. BEURA: It is a question of custody and custody comes into play in case of a hotel management when the inmate is registered. Then she is under the legal custody of the management. This offence you are pointing out may be from the side of the management and in addition to that it may also be committed by anybody else other than this management or staff but in any case since they are the persons expected to provide sufficient arrangement to see that such instances do not occur they should be treated on par. For other inmates there is provision in the law elsewhere but these persons concerned with management or staff are not excluded.

SHRIMATI GEETA MUKHERJEE: You have suggested certain circumstances which should be considered as a rape but our society as it is male-dominant this will vitiate the marriage relationship and bring in hundred and one complications. What are your comments?

SHRI B. K. BEURA: In this regard my suggestion is if such offences are codified in the law the criminals will be cautioned and discouraged to go ahead with them.

SHRI P. VENKATASUBBAIAH: I would like to draw your attention to Para 2 (5) of the statement of objects and Reasons. It reads:

"(5) in the case of rape by a police officer or by a group of persons or by a person having a custodial control by virtue of his special position over the victim, once it is proved that sexual intercourse has taken place, the onus should be on the accused to prove that the sexual intercourse was with the consent of the woman."

Here you wanted to add another sub-clause incorporating certain other places viz. lodging houses, religious places, cultural centres and even cinema houses. These are the items which you thought may not be covered by this word 'custodial authority'.

SHRI B. K. BEURA: So far as the word 'custody' is concerned to my opinion it is all right and sufficient. But so far as the classification of persons viz. public officers, police officers or hospital authorities in seclusion of all others which are not covered in this amendment I want to bring them under this.

SHRI P. VENKATASUBBAIAH: Do you feel that by not bringing such categories under this provision there is merely a chance of a loophole being found by eminent advocates to see that the culprits are acquitted?

SHRI B. K. BEURA: Yes, A considerable number of instances are there like that.

SHRI P. VENKATASUBBAIAH: So, this is a sort of omnibus clause I would like to know whether it would be all right if the rules made under this Act are explicitly mentioned.

SHRI B. K. BEURA: Under an independent Section?

SHRI P. VENKATASUBBAIAH: I mean, the rules made under this Act, because there is already a clause specifying the objective. If you want that to be included in the Act, do you feel that justice will be done as more specific instances will be there? What I am suggesting is that this being a sort of a word that has been used which may cover all these categories whether it will not be redundant if what you suggested is added in the Act.

SHRI B. K. BEURA: Yes, by this inclusion we will be covering quite a

number of clauses. Law will be very much stretched and it may stand the test of time.

SHRI B. IBRAHIM: In Section 375, 'Fifthly...' is added. In view of Section 90 of the Indian Penal Code, will this be redundant?

SHRI B. K. BEURA: I do not think so.

SHRI B. IBRAHIM: I mean, Section 90 of the Indian Penal Code.

MR. CHAIRMAN: In Section 375 certain elaborate descriptions are inserted. So far as consent is concerned, Section 90 of the Indian Penal Code defines it very clearly. Therefore, the question is, whether in view of the elaborate descriptions contained in Section 375, do you feel that Section 90 has become redundant?

SHRI B. K. BEURA: To me it appears that the word 'misconception' should be substituted by 'mistake of facts'.

SHRI B. IBRAHIM: Have you conducted any rape cases?

SHRI B. K. BEURA: I have not conducted any.

SHRI B. IBRAHIM: Have you got any idea as to in how many cases acquittals are given?

SHRI B. K. BEURA: So far as my knowledge goes, for lack of sufficient evidence or for lack of sufficient enactments the real culprits, the criminals, are not sufficiently punished. I still feel that the law can be made a little more stringent to put the criminals in bar.

SHRI B. IBRAHIM: Kindly enlighten the Committee regarding the fact whether the rape cases ended mostly in acquittals or in convictions.

SHRI B. K. BEURA: They ended more in acquittals than in convictions.

SHRI B. IBRAHIM: Regarding this new Section 111A, do you agree in toto?

SHRI B. K. BEURA: There is one fear only that if this right is extended to the alleged victim, the woman can take advantage of it. It is because of the attitude of some women. There may be instances when the alleged victims may take ill advantage of the amendment.

SHRI B. IBRAHIM: What is the remedy for that?

SHRI B. K. BEURA: What I would submit is that instead of making it specific it should be depending upon the circumstances. According to the circumstances of the case it would be more proper to do so.

SHRI B. IBRAHIM: It is said the court 'shall presume'. That means it is a mandatory one. Do you agree with that or do you suggest any change in this?

SHRI B. K. BEURA: This appears to be a little arbitrary. My apprehension to this is that this presumption will be arbitrary.

There are instances where such victims were influenced.

SHRI B. IBRAHIM: My simple question is this: Whether you are agreeable for his clause or you suggest any other word instead of "shall".

MR. CHAIRMAN: He said that he agrees with the other provisions of the Bill.

SHRI B. IBRAHIM: Now he is not agreeable. I have drawn his attention particularly to this Clause. He says otherwise. That was the over-all opinion he gave. I would like to know his specific opinion regarding this.

SHRI B. K. BEURA: I am not agreeable to this proposed amendment. It is arbitrary. That is my opinion.

SHRI RASA BEHARI BEHRA: Supposing a lady files a wrong allegation against a man, whether that lady should be punished or not.

SHRI B. K. BEURA: If she is guilty of the offence, naturally she should be punished.

SHRI RASA BEHARI BEHRA: Do you agree that during trial stage, the name of the victim should not be published?

SHRI B. K. BEURA: I agree.

SHRI AMARPROSAD CHAKRABORTY: Suppose the victim is dead. After the rape is committed, she dies. How can it be published?

SHRI B. K. BEURA: Then what?

SHRI RASA BEHARI BEHRA : Please see 376(2) (a) Page 3 of the draft Bill. "(2) (a) being a police officer....."

If these words are replaced by police uniform, do you agree?

SHRI B. K. BEURA: Anybody in police uniform having the status of police officer.

SHRIMATI GEETA MUKHERJEE: You think that Section 111A is arbitrary. This Section actually gives necessary support to the unfortunate and defenceless victims. It may be practically impossible for her in some situations to prove that she did not give her consent. That being the situation and in the prevailing circumstances, the victim has the advantage of the court being under the presumption that she did not consent and this enables her to bring the necessary evidence before the court to prove the case. This provision is actually for protecting the victim who is a victim of other than custodial rape. Considering that and considering the present circumstances of society, do you think that there is nothing arbitrary in the words "shall presume"?

SHRI B. K. BEURA: There may be instances which you just elucidated. This Section may be subject to the circumstances or dependent on the circumstances. But we may provide another proviso under this Clause that will meet with our said apprehension.

SHRIMATI GEETA MUKHERJEE: You think that a new provision should be made.

SHRI B. K. BEURA: Yes.

MR. CHAIRMAN: In such cases, what happens naturally is when a victim comes to the court, a defence lawyer like you will try to make that an offence. Then it may be very difficult for the lady to prove by negative aspect. Therefore, in view of the difficulty arising out of the trial whether it is safe to provide such a provision in order to protect the interests of the lady and even in safeguarding the interests of the accused also. Do you think that presumption should be there?

SHRI B. K. BEURA: Drawing a presumption is also risky.

श्रीमती विद्यावती चतुर्वेदी : आपने कहा कि यदि पति को संक्रामक रोग हो तो बैसे पति के लिए अगर स्त्री पति से भी संभोग करने से इन्कार कर दे, तो पति को संभोग नहीं करना चाहिये। जादो होने के बाद भी यदि पति को कोई संक्रामक रोग हो जाये, जो कि लगने वाला हो, हमारी भारतीय नारी कभी भी पति को तलाक नहीं देना चाहती है, बल्कि उसकी सेवा करना चाहती है, इसलिए वह जानती है कि यदि संभोग होगा तो वह बुढ़ के लिए भी हानिकारक होगा—क्या यह क्लज आप इसलिए तो नहीं जोड़ना चाहते हैं ?

SHRI B. K. BEURA: The instances which I cited are not permanent incurable diseases. In case of incurable diseases, there should be judicial separation. But I am speaking of temporary diseases which are curable.

SHRI K. S. NARAYANA: You have said that there are many cases. Many husbands come home in a drunken state of mind and insist on their wives for cohabitation and if wife refused to give consent it should also come under rape. I think you are aware that, in our society, among the poorer classes, many instances occur like this. Suppose the wife goes to a police station and makes a complaint; her husband may be sent to the jail; when he comes back from the jail after some time, will that family live happily thereafter? If your argument is to be accepted, then the very fabric of social life will get disturbed.

SHRI B. K. BEURA: My suggestion was with reference to abnormal circumstances. In the normal circumstances, a wife is not expected to go to the police station to complain against her husband.

MR. CHAIRMAN: That is all. Thank you very much.

(The witness then withdrew)

II—State Social Welfare Advisory Board, Bhubaneswar.

SPOKESMEN:

1. Dr. (Mrs.) Belarani Dutta Chairman.

2. Shrimati Apala Mitra, Social Worker.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to

Direction 58 of the Directions by the Speaker which reads as follows:—

“58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.”

You must have gone through the Draft Bill. What are the comments that you want to offer on the Bill before the Committee?

DR. (MRS.) BELARANI DUTTA: The following are our suggestions:—

Legal provision should be made to investigate the rape case by a lady police officer and examination of the victim at the investigation stage and trial stage should be by a Commissioner who must be a lady because the victim will hesitate to disclose the entire facts to any male member.

A Committee in each district should be made, like the Harijan Atrocity Committee, etc., with mostly lady members who will visit the place, meet the victim and assist the district authorities in all respects in punishing the actual culprit.

A list of rapists in each police station should be mentioned and circulated like other B.Cs. They should be socially boycotted.

In a rape case, the S.P. should submit the chargesheet and the D.I.G. and Collector should supervise the case.

The court, instead of giving weight to oral evidence, should give more

importance to documentary evidence and Commission/Committee reports. Appearance of the victim in court should be avoided as far as possible.

Social security, financial help and other assistance, etc., should be legally provided to deserving victims when the case is proved in the court.

SHRIMATI APALA MITRA: I am not a lawyer. Therefore, I may not be able to tender hair-splitting arguments before the hon. Committee. My views will be based on common sense.

So far as the Clauses are concerned, Clause 2 which seeks to insert a new section 228A (1) provides for punishment which may extend to two years and fine for publication of any name or any matter which may make known the identity of the person against whom an offence under section such and such is alleged to have been committed. Here I would submit that, under all these sections, an F.I.R. has to be lodged with the police. The F.I.R. is a public document and when the court takes cognizance, the proceedings are also public. I feel that it would be restricting the freedom of press to prohibit publication of such news which is already available to the public. On the other hand, suppression of such news might lead to distortion and exaggeration.

As regards Clause 3 which will be inserted as section 375, I support it. The next section 376(1) provides for sentences for different terms extending from seven to ten years. I would beg to submit here that, while agreeing with the other provisions, I would like sub-clause (f) to be made more stringent. In the case of an ordinary rape, it may or may not be a calculated move, but in the case of a gang rape, it is calculated, intentional and pre-planned. That is why I am suggesting for a more stringent provision here.

Section 376A provides for punishment to a public servant taking undue advantage of his official position and seducing any woman who is in his custody. I would suggest that it should be specifically mentioned in the Bill that the punishment under this section shall be in addition to the punishment which is given to any other non-official person committing the crime of rape. So is the case with regard to 376B and 376C.

In regard to the new section 111A, my submission is that it might lead to blackmail. We are following in India the British judicial procedure where by a person cannot be held guilty unless it is so proved against him. But the proposed amendment could make him guilty from the date of prosecution till he can absolve himself from such charges. I think this will give a handle to the call-girls who try to earn money in the easiest way possible. A woman coming for an interview might lodge a complaint against the interviewer and use it as a lever to get the appointment. Therefore, I would suggest that this provision should be modified.

The Bill provides for life-term for the offender on the evidence of the woman supposed to have been raped. I would like to express my fear before this hon. body that this might lead the offender to liquidate the victim so that there would be no chance for her to lodge a complaint. If it would have been for the prosecution to prove the charge before he could be convicted he would not have perhaps thought of summary liquidation of the victim but since on her complaint and complaint alone he would get a life-term, he might desperately try to wipe out all possible sources of evidence after rape is committed.

MR. CHAIRMAN: Thank You.

(The witness then withdrew)

Utkal Mahila Samiti, Cuttack.

Spokesmen:

1. Dr. Nirupama Rath:
2. Shrimati Nabanita Roy:
3. Shrimati Neeroda Prabha Patnaik:
4. Shrimati Chandra Prabha Patnaik:
5. Shrimati Shantilata Bhuyan:

(The witnesses were called in and they took their Seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

You would have gone through the proposed amending Bill. What are your comments clause-by-clause?

DR. (MRS.) NIRUPAMA RATH: In clause No. 226-A Utkal Mahila Samiti deems it is correct not to publish the name of the victim in rape cases but, anything which leads to the disclosure of the identity of the victim this kind of sweeping restriction should be withdrawn. So, we propose to add to this Clause to the first line after the words—any matter 'except by way of lodging information with the police, or Magistrate or Complaining to the authorities in accordance with the procedure proscribed by law'.

In clause No. 375 A at page No. 2 under the heading 'sexual offences' the 6th para is vague and does not convey the meaning properly and so should be made specific. We think it is little vague.

So, in Section 376(2) on page 3 in line 21 after the words 'remand home', the following words may be added:—

"or any head of religious institutions like Monastery, temple etc. or Minister, M.P., M.L.A. or political leader".

This should be added after "remand home" in line 21 on page 3. It is because political people are also committing such crimes. So, this should be added.

In Section 376 on page 3, regarding the term of punishment the third line speaks that the punishment in gang rape should not be less than seven years and the eighth line speaks that it may be less than seven years, which is contradictory. So, we propose to keep that the punishment should not be less than 10 years, maybe also for life. But we suggest that the punishment should be for life. So, the proviso in Section 376 should be deleted.

MR. CHAIRMAN: You want that discretionary power should not be given for the time being?

DR. (MRS.) NIRUPAMA RATH: It should not be less than 10 years. So, I say that the proviso above line 35 should be deleted and it should be made for life.

Last but not the least I have got to say about Section 111A on page 6. It is stated "... the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent the court shall presume that she did not consent." This fixes the onus of proving the consent of woman in certain cases (cases of custodial rape) on the accused. The Utkal Mahila Samiti is in favour of this clause and further wants this to be extended in all cases.

SHRIMATI NABANITA ROY: I believe this is more a social problem

than purely, a legal problem. This has to be tackled both socially and legally. The enactments must be more meaningful. And to be meaningful they, must have a social aspect. These legislations will be ineffective unless the social structure is made to change. The permissiveness that has eroded our social structure will have to be viewed with seriousness. The effect of the media and the laxity in censorship in films, magazines and other media are responsible for this. The integrity and the moral standard of the people is sacrificed for the economic expansion. The result is a start from the back. Crimes are on the increase and the rigging out from the legal consequences of these crimes is becoming more and more common. Enactments should be made escape-proof.

It is an undisputed and a recognised fact that the police system has further degenerated as the custodians of law and security. There is corruption from top to bottom and political influence is one of the reasons for this.

Less of political interference in the police organisation may give better results. This has been discussed in the Utkal Mahila Samiti. Neither do the police command the fear for the criminals, nor the succour for the victims as they used to be before. So, through overhauling of the police system and organisation is one of the major factors. Social security and police protection are mere mockeries.

MR. CHAIRMAN: So far as this Committee is concerned, it has not followed "political influence".

SHRIMATI NABANITA ROY: You must see the social aspect of it. The issue is how this organisation can help this Committee.

As far as the penal clauses in general are concerned I may make a difference between the police custodial rape and non-police custodial rape because the police are responsible for custodial rape. For this custodial

rape by the police, punishment should be stringent. We go even to the extent of suggesting capital punishment. So, it should be a deterrent punishment. The police themselves do commit such crimes. We should differentiate between police and non-police custodians and award punishments accordingly. Even for gang rape, extreme punishment should be given. So, extreme punishment must be given for these two types of crimes—police custodial rape and gang rape. This will act as a deterrent.

One thing more and that is my suggestion about investigation. During the investigation stage my suggestion would be that as soon as a case of rape is registered, investigation work should be given not to the police officer, but to a judicial officer and it should be investigated by an officer of not less than the rank of D.S.P. who will not be amenable to any sort of influence.

The next point is that trial should be conducted by a Session Court and not by any lower court. Once a charge is framed, the bail should be refused and the accused should be put under judicial custody.

SHRIMATI NEERODA PRABHA PATNAIK: I am Secretary of the Mahila Samiti and we have legal aid committee and we were getting a number of letters regarding these rape cases and legal cases and one or two instances, I can give you that Police are not dealing with these cases properly and they are also harassing the victims. In one case in Ganjam district in Orissa, two sisters had gone to the forest to pick up some wood. One was ten years of age and the other was 12 years of age. At that time, a person came in a car and he stopped the car in the jungle and raped one of the girls. The other girl went to the village and informed. The whole story is reported to the Panchayat Officer and

to the Police Officer and everybody. What happened is that the girl was kept for 24 hours in police Thana but no action was taken. What the public will do when the Police is not taking any action after it is reported to them. What right do they have to keep the girl for 24 hours in the police station? We request the Committee that these Police Officers should be given rigorous punishment. If you permit me, I can give more examples.

SHRIMATI CHANDRAPRABHA PATNAIK: I am General Secretary of the Utkal Mahila Samithi Committee. Please refer to Section 228A(1) of the draft Bill. Publicity is insisted. But identity of the victim should not be published because the woman suffers in the society. The husband may divorce his wife. So, the name should not be disclosed when the complaint is lodged to the authorities.

श्री हुषम बेंबे नारायण यादव : आपने सेक्शन 111(ए) में सुझाव दिया कि "मन प्रियुम" सभी केसेज के लिए लागू होना चाहिये। मैं आपसे यह जानना चाहता हूँ कि समाज में जो अपवाद स्वरूप ही, अपवाद स्वरूप ऐसे केसेज भी हो सकते हैं, जिसमें किसी महिला का दुर्व्ययोग किया जा सकता है, सामाजिक, राजनीतिक या किसी तरह से किन्हीं लोगों को बदनाम करने के लिए और अगर उस केस में भी अगर यह जैल प्रियुम वाली बात होगी तो भी वह मान लिया जाएगा। मैं आपको एक उदाहरण देता हूँ। किसी महिला का सेक्सुअल इन्टरकोर्स किसी पुरुष के साथ हुआ और वह जाकर पुलिस में किसी दूसरे पुरुष को बदनाम करने के लिए केस कर देती है कि उसने मेरे साथ रेप किया तो मेडिकल जांच होगी और अगर यह जैल प्रियुम सिद्धा रहेगा तो वही पुरुष को, जिसको सामाजिक, राजनीतिक दृष्टि से बदनाम करने के लिए यह काम किया

गया है, सजा मिलेगी मैं समझता हूँ कि आपने इस पहलू पर भा ज़रूर सोचा होगा ?

DR. (MRS.) NIRUPAMA RATH: There are some exceptions, no doubt. There are some blacksheep also among women. That also we admit. But the number of such women is very small. Such women must be found out and punished.

श्री हुषम बेंबे नारायण यादव : इस बिल में एक जगह लिखा हुआ है 16 साल से कम उम्र की लड़की के साथ अगर कोई सेक्सुअल इन्टरकोर्स करता है—विद और विदाउट हर कन्सेन्ट—तो कानून का पहलू इसमें क्या होगा कि अगर किसी कारणवश 16 साल से कम उम्र की लड़की फीसल जाती है और किसी लड़के के साथ सेक्सुअल इन्टरकोर्स हो जाता है, यह कानूनीजेल केस है। पुलिस को पता चल जाता है, तो वह लड़का और लड़की दोनों को गिरफ्तार कर लेती है। मामला अदालत में चला जाता है। कोर्ट में लड़की कहती है हमने कन्सेन्ट दिया और लड़का कहता है कि विद-हर-कन्सेन्ट हमने सेक्सुअल इन्टरकोर्स किया और कानून कहता है कि 16 साल से कम उम्र का कोई मतलब नहीं है, यह कानून जोर्म है। वह लड़की जान-बूझकर भी कन्सेन्ट दे रहा है और कानून को तोड़ रही है, तो मैं आपसे पूछना चाहता हूँ कि ऐसे केस में क्या लड़का को सजा मिलनी चाहिये या नहीं ?

SHRIMATI NABANITA ROY: Ignorance of law is no defence at all.

श्री हुषम बेंबे नारायण यादव : इसका मतलब यह हुआ कि दोनों, लड़का और लड़की, के मामले में इग्नोरेंस प्राक ना इव नाट ए डिफेंस होना चाहिये।

SHRIMATI NABANITA ROY: You have to follow certain norms in deciding a case. You cannot have a general law. The law is not one for a girl and other for a boy. The same law holds good for both.

SHRI AMARPROSAD CHAKRA-BORTY: Kindly see Exception to Section 375 of Penal Code 3 of the Bill. "Exception.—Sexual offence by a man with his own wife, the wife not being under fifteen years of age...." some women have recently suggested that the age may be 18 years. What is your opinion?

SHRIMATI NABANITA ROY: The existing provision will do.

SHRI AMARPROSAD CHAKRA-BORTY: Kindly see in Section 375 "Seventhly.— With or without her consent, when she is under sixteen years of age." Do you want that the age should be raised to eighteen years?

SHRIMATI NABANITA ROY: 16 years of age should be alright.

SHRI AMARPROSAD CHAKRA-BORTY: Do you suggest that some Mahila Association's help should be taken at the time of investigation?

SHRIMATI NABANITA ROY: Yes. Not only that, but more women police should be appointed. The victims will feel more free to talk to women police officers than to talk to male police officers.

SHRI AMARPROSAD CHAKRA-BORTY: Some suggestion has been made that, because the doctor's probe after the rape is a valuable evidence in a rape case, there should be some special procedure when the examination is made. Have you anything to suggest how this investigation should be made and by whom?

DR. (MRS.) NIRUPAMA RATH: The examination should be made by two lady doctors. They must examine

the woman not only visually but also through laboratory examination for sperm-detection. Laboratory facilities for chemical examination should be available. All hospitals and doctors are not equipped with these facilities; only a few specialised institutions have these. So, the doctors, in such cases, should be provided with these facilities.

SHRIMATI GEETA MUKHERJEE: In the course of your evidence you have said that your Association is receiving many complaints. Have you received any complaints of custodial rape, that is in a police station etc.

SHRIMATI NEERODA PRABHA PATNAIK: Yes, complaints about rape in police station also. But they are suppressing the cases. The victims are writing letters. But no action has been taken till now.

SHRI B. IBRAHIM: Have you brought it to the notice of the Government?

SHRIMATI NEERODA PRABHA PATNAIK: We have received complaints. There is a Legal Aid Committee in the State, but that is still not functioning. We have submitted all the letters to the Legal Aid Committee of the State.

SHRI AMARPROSAD CHAKRA-BORTY: In those cases publicity is necessary.

SHRIMATI NEERODA PRABHA PATNAIK: These cases have been published in the press also. Recently in the daily paper *Samaj* they have published. They have also mentioned that Government is not taking action.

SHRI RASA BEHARI BEHRA: Just now you mentioned that there should not be any publicity.

SHRIMATI NEERODA PRABHA PATNAIK: We want publicity but without mentioning the name of the victim.

DR. (MRS.) NIRUPAMA RATH: Normally publicity to the name of the victim should not be given; the victim should not be identified. But when the necessity comes, the victim has also to be identified. We should not have a blanket ban over that. When there is a dire necessity, the name may be published. For example, in the case of Chhabi Rani, we knew about it only after it was published. Only in cases of dire necessity the name should be published. Otherwise, the attempt should be not to publish the name.

SHRI B. IBRAHIM: Regarding police you have said that the present police system should be changed..

SHRIMATI NABANITA ROY: We must be able to re-instill in the public a sense of security and trust in the police system which is fast deteriorating. Government must take steps to see that the police officers do not fall a victim to vices.

MR. CHAIRMAN: What is the concrete suggestion that you would like to make?

SHRIMATI NABANITA ROY: As in IAS there should be inter-change between different States in the police cadre so that they may not wield influence in the locality. There should be more recruitment of the lady police and the cases of rape should be entrusted to the lady police.

SHRI P. VENKATASUBBAIAH: I draw your attention to the suggestion that you have made in regard to the transfer of the police so as to create confidence in the police so that they discharge their duty in the manner that real culprits are brought to book. As in the case of IAS so in respect of IPS we allot officers to the States

SHRIMATI NABANITA ROY: There should be more diffusion than as it is today.

SHRI P. VENKATASUBBAIAH: What about Inspectors and Sub-Inspectors of Police? Do you think it is practicable to bring them from outside the State?

SHRIMATI NABANITA ROY: I think a certain portion should be brought from outside.

SHRI P. VENKATASUBBAIAH: You said that there should be separate cell consisting of lady police officers to deal exclusively with rape and such other cases.

SHRIMATI NABANITA ROY: That is our suggestion.

MR. CHAIRMAN: Madam you said that investigation should not be entrusted to a police officer but it should be entrusted to the magistrate. Do you want judicial magistrate?

SHRIMATI NABANITA ROY: Yes.

MR. CHAIRMAN: But you know investigating officer cannot be a presiding officer.

SHRIMATI NABANITA ROY: Presiding officer and investigating officer can be two different magistrates.

MR. CHAIRMAN: You want lady police officers to be entrusted this work because you have lost confidence in the male police officers.

SHRIMATI NABANITA ROY: I made that suggestion because women will be frank to talk to the women police officers.

MR. CHAIRMAN: You said that the proposed amendment does not guarantee heavy punishment and it should be enhanced in case of persons in authority.

SHRIMATI NABANITA ROY: I made the comment in respect of custodial cases and police officers under

whom they are in custody. So, if the police officers are found to be guilty then they should be provided with deterrent punishment and I say that even capital punishment should be provided.

MR. CHAIRMAN: Then about 'presumption' I would like to know whether you feel there would be harassment on the part of the accused that he will not be getting sufficient opportunity and there is possibility of blackmail.

SHRIMATI NABANITA ROY: The amending provision is all right. The onus of proof should be shifted to the accused.

MR. CHAIRMAN: This presumption under Section 111A will defeat the main purpose of the Criminal Procedure Code. Here the presumption would be that he is guilty unless it is proved.

SHRIMATI NABANITA ROY: It is a one-sided approach. The victim who is raped has to be examined in the sense that when a man commits rape, it is for her to prove that he has committed rape on her. There will be many loopholes. It is very difficult to prove that there has been no consent and unless there is such an amendment, it would not be possible for these cases to come to light and there is every chance of the offender wriggling out of it unless it turns the other way round.

MR. CHAIRMAN: Is it your case that there should be a special case other than the general law?

SHRIMATI NABANITA ROY: It should be a special case other than the general law.

SHRI AMARPROSAD CHAKRABORTY: Mrs. Roy, though the Parliament has brought this amendment to

give special treatment to women, yet in making this amendment you might have observed that they have framed a particular clause, that is, in the case of custodial rape presumption should be taken. So, we have framed a clause in regard to the rape in custody in respect of those who are in custody. In that case presumption shall be made. In view of this, do you feel that by framing this clause, even appointing a woman police officer will be of any use? And do you think that a common law should be made for all, for those in custody and also in a general way?

SHRIMATI NABANITA ROY: I think it should be in regard to custody only.

SHRI AMARPROSAD CHAKRABORTY: Custodians are public servants in authority. Then there is likelihood of their thinking 'Oh', we have been singled out, others would commit rape and they will be left 'scot free.' So, there will be a psychology of change in their attitude so that they will group together and see that there is more rape by them. In view of this, is there any likelihood of creating such a feeling in the minds of those people so that the entire purpose of this amendment will be defeated?

SHRIMATI NABANITA ROY: The custodians are armed with certain powers which make them liable to commit more crimes. That is why they have been singled out and the laws have become more stringent. Because they are armed with power and while having custody they are likely to misuse their power, so I think this Section is all right.

MR. CHAIRMAN: Thank you.

(The witness, then withdraw.)

IV. Orissa Nari Seva Sangha, Cuttack.

Spokesmen:

1. Dr. (Mrs.) Jyotsna Dei, President.

2. Shrimati Padmalaya Das.

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

MR. CHAIRMAN: Please introduce yourself one by one.

SHRIMATI PADMALAYA DAS:
Yes.

MR. CHAIRMAN: Then, what are your comments on this Bill?

DR. (MRS.) JYOTSNA DEI: I agree with all the clauses in the Bill. I would just add only one thing.

Heads of religious institutions have not been included in the category of offenders. They should also be included.

SHRIMATI PADMALAYA DAS: Regarding FIR, it is only the initial stage.

It should not be published in the newspapers.

DR. (MRS.) JYOTSNA DEI: If somebody commit adultery with the wife of a man, the offender can be punished. If the husband complains against the woman, can the offender be punished?

MR. CHAIRMAN: The point is very simple. In case of ladies after marriage, if rape is committed without consent, the lady has a right to file a complaint. If the consent was given by the lady after marriage and the husband has not connived or not given consent, then it is an offence and the husband can file a complaint.

DR. (MRS.) JYOTSNA DEI: Can the wife complain against the husband for same reason?

MR. CHAIRMAN: Married wife can complain if she is above 15 years of age.

SHRIMATI PADMALAYA DAS: When you say age of 15, as far as we know, there is a law prohibiting marriage below 18 years.

MR. CHAIRMAN: Yes. Marriage is, at a limited age because it was thought that the lady can give her consent and late marriages are also good for population control. There is a severe limitation placed on age. Even that restriction is there. But our customary law allows marriages even at early age and those marriages take place under customary law and declared legal.

SHRIMATI PADMALAYA DAS: Early marriages have taken place in Orissa, and also in Rajasthan.

MR. CHAIRMAN: Some scope is given for custom, usages, and tradition because those customs are followed from time immemorial. Those rights are reserved under law.

SHRIMATI PADMALAYA DAS: Does it include bigamy also? Yesterday I was reading "The Hindu" wherein it is reported that a man with two wives had 15 children. Is it legal or not?

MR. CHAIRMAN: Is it your view that the age should be raised to 18 years?

SHRIMATI PADMALAYA DAS should be.

MR. CHAIRMAN: We have no objection. We want to know from you.

DR. (MRS.) JYOTSNA DEI: It is already raised. Why this topic should be raised again? This creates an anomalous situation.

MR. CHAIRMAN: Law-makers are conscious of the limitations.

The witnesses then withdrew.

V. Prajatantra, Cuttack.—

Spokesmen:

1. Shri Chandrasekhar Mohapatra,
Editor.

2. Shri Saroj Ranjan Mohanty.

(The witnesses were called and they took their seats.)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Both of you are Press representatives.

SHRI CHANDRA SEKHAR MOHAPATRA: Yes, Sir.

MR. CHAIRMAN: What are your comments so far as this Draft Bill is concerned?

SHRI CHANDRA SEKHAR MOHAPATRA: We unequivocally support the Bill except on one or two points.

Kindly see Section 111A of the Indian Evidence Act, 1872, Page 6 of the draft bill. The question is if the woman alleged to have been raped states in

her evidence before the Court that she did not consent, the court shall presume that she did not consent. This we have to submit is devoid of the fundamental principles of jurisprudence which presumes the accused to be innocent until the contrary is proved. There are several instances. Recently the Cuttack S. P. wrote an article in which he has cited some instances to show that it is the woman who is on the offensive and not the man. There is an instance of the presence of mind of a lawyer. When a lawyer was going in a First Class coupe, a lady said that unless he paid Rs. 1,000 she would report to the police that he wanted to rape her. He pretended to be deaf and asked the lady to explain in writing which she did. Then he reported the matter to the police and she was prosecuted. There are so many instances like this. There is the racket of women regularly visiting hotels seeking men; about payment, if there is some dispute, the women start threatening that they would report to police. For these reasons, I think that this portion of the Bill needs some change; some amendment should be there to protect the male persons. There is no protection for men even when they are not on the offensive; it is the women who are always on the offensive.

MR. CHAIRMAN: What is your concrete suggestion there?

SHRI CHANDRASEKHAR MOHAPATRA: It should not be presumed that whatever the woman says is correct and true.

MR. CHAIRMAN: Do you want this provision to be deleted?

SHRI CHANDRASEKHAR MOHAPATRA: Yes; it should be deleted. I have already said that, if nothing is proved to the contrary, then only it should be presumed. If other evidences are there, it should not be presumed to be true.

MR. CHAIRMAN: That does not arise if the provision itself is to be deleted.

SHRI CHANDRASEKHAR MOHAPATRA: Section 228A says that the identity of the victim should not be published. Before the matter goes to the court, if somebody is caught in the hotel, then it is published; by that time, it is not a part of court proceedings. But this Bill will deprive them of this right. It should be allowed to be there. Today the courts can hold any part of their trial *in camera*. When they have the right to hold trial *in camera*, this provision about publication I do not think, is necessary; there is no need for this. These are the points I wanted to cover.

SHRI SAROJ RANJAN MOHANTY: The proposed insertion in the Indian Evidence Act, namely, section 111A, reads:

"In a prosecution for rape under clause (a) or clause (b).....of the Indian Penal Code, where sexual intercourse is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent."

Here I would like to submit that the following words, namely, "and nothing is proved contrary to that" be added after the words "...that she did not consent....". Then only the Court shall presume that she did not give the consent.

MR. CHAIRMAN: Your friend has already suggested that. What more do you want to add?

SHRI SAROJ RANJAN MOHANTY: The proposed section 376A reads:

"Whoever, being a public servant, takes undue advantage of his official position and seduces any woman who is in his custody as such

public servant or in the custody of a public servant subordinate to him....."

Here, my submission is, it should be like this:

".....or in the custody of a public servant either subordinate or superior to him...."

As regards the provision for punishment for disclosure of the identity of victim I would like to submit that the punishment is very stringent. It should be confined only to fine. That is all I wanted to submit.

MR. CHAIRMAN: Thank you.

(The witnesses then withdrew.)

VI—Utkal Journalist Association, Bhubaneswar.

Spokesman:

Shri N. K. Swamy, President.

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

I hope you have gone through the amending Bill. What have you to say in this respect?

SHRI N.K. SWAMY: Recently the Press Council was here and the Chairman of the Press Council said that they have made a proposal to the Government to amend the statute to

give it power to impose fine or imprisonment to journalists who have violated public taste or code of conduct. Our federation also proposed that the code of conduct should be statutorily made to be administered by the professional body. If that is done then there is no need for the penal clauses in this Bill in so far as journalists are concerned.

Secondly, when there is an occurrence of an incident of this nature, all the local people come to know and no purpose is served by not giving the name of the victim and the accused. So, we also suggest that provision regarding 'in camera proceedings' should be deleted.

As regards public servant, the definition of the public servant does not include clearly the Ministers. We feel there have been instances of the misuse of his position. So, the Ministers should be included specifically in the category of public servant.

With regard to discrimination about the accused, I would like to submit that there have been instances where the woman also seduce for ulterior motives. A woman of loose character might pretend that she had been asked to submit. Now, that kind of thing is there. It should apply in equal measure to woman if the woman is also a culprit and the onus of proving should also lie with her.

MR. CHAIRMAN: What is your opinion about presumption? Should it be there or not?

SHRI N. K. SWAMY: The presumption as it is today will be against men. But there have been, of late, some cases where blackmailing by woman

is there. Prostitution has been abolished, but those who practise it would find that under this provision the scope for blackmailing is more.

MR. CHAIRMAN: How many cases regarding maligning the character of gentleman have come to your knowledge?

SHRI N. K. SWAMY: There is a social stigma. Even when the woman has been molested or violated, she does not go to the court.

MR. CHAIRMAN: That is not my point. We are making out a case that presumption will be harassment for some gentlemen. There may be some prostitutes blackmailing gentlemen. Therefore, I want to know how many cases of this type have come to your knowledge. I am asking you because you are a press reporter and some cases would have come to your knowledge for publishing.

SHRI N.K SWAMY: You are quite right in saying that I should have covered such instances. In my private conversations I have come to know of some, though I have not published them. For instance in Bhubaneswar some young girls go to the houses when ladies are not generally at home. If the man opens the door and there is nobody in the house, they blackmail.

MR. CHAIRMAN: Such cases might be very rare. Anything more you want to say?

SHRI N. K. SWAMY: No.

MR. CHAIRMAN: Thank you very much.

(The committee then adjourned).

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CRIMINAL LAW
(AMENDMENT) BILL, 1980.

Friday, the 23rd October, 1981 from 09.00 to 11.45 hours in Conference Hall,
Orissa Secretariat, Bhubaneswar.

PRESENT

Shri D. K. Naikar—*Chairman*

MEMBERS

Lok Sabha

2. Shri Rasa Behari Behra
3. Shrimati Vidyavati Chaturvedi
4. Shrimati Suseela Gopalan
5. Shrimati Geeta Mukherjee
6. Shri K. S. Narayana
7. Shri Bapusaheb Parulekar
8. Prof. Nirmala Kumari Shaktawat
9. Shri Trilok Chand
10. Shri P. Venkatasubbaiah

Rajya Sabha

11. Shri Ramchandra Bharadwaj
12. Shri Amarprosad Chakraborty
13. Shri B. Ibrahim
14. Shri Dhuleshwar Meena
15. Shri V. P. Munusamy
16. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—*Senior Legislative Committee Officer*

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS

Shri S. C. Bablani—*Under Secretary*

WITNESSES EXAMINED

I. Government of Orissa, Bhubaneswar

Spokesmen:

1. Shri Gobinda Das, Advocate General
2. Shri Krishna Prasad Mohapatra, Law Secretary
3. Shri Narasinha Swain, IPS
4. Shri Sudhansu Mohan Patnaik, IAS, Additional Secretary, Home Department

II. Shrimati Jayanti Patnaik, M.P.

I—State Government of Orissa,
Bhubaneswar.

1. Shri Gobinda Das, Advocate General.
2. Shri Krishna Prasad Mohapatra, Secretary (Law)

Spokesmen

3. Shri Narasinha Swain, IPS, Inspector General of Police.
4. Shri Sudhansu Mohan Patnaik, IAS, Secretary, Home Dept.

The witnesses were called in and they took their seats.

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence should be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be

treated as confidential such evidence is liable to be made available to the Members of Parliament."

Have you submitted your Memorandum containing some of your comments?

SHRI GOBINDA DAS: We have prepared some statement.

MR. CHAIRMAN: You tell us on what points you are going to enlighten us, one by one.

SHRI GOBINDA DAS: Kindly refer to Section 228A and its Explanation (Pp.2 and 3 of the draft Bill) of the Indian Penal Code. The purpose and object is to protect the prosecutrix. Therefore, the addition of the words "provided the name of the victim is not disclosed" may be made. Then the purpose of giving protection will really be served. Or the Explanation may be deleted altogether because Section 228A(1) takes care of it. It has been stated therein that "is alleged or found to have been committed shall be punished with imprisonment for a term which shall not be less than one month but which may extend to two years and shall also be liable to fine." So, either of the two modifications will solve the problem and achieve the objective.

As regards Section 375 Clause 6 (Page 2 of the draft Bill), the words "or is unable to offer effective resistance" should be substituted by the words "or is rendered incapable of protecting herself or securing protection." These will cover both her physical and mental inabilities.

Kindly See Explanation 2 of Section 375 of the Penal Code page 2 of the draft Bill. We think that this should not be there. In a judicial separation, the marriage subsists till such time that the divorce is granted. Law does not rule out re-conciliation of the parties in a judicial separation even when they are living separately and even when the decree of judicial separation is still in force. The existence of Explanation-2 will render reconciliation between the estranged couple difficult. On the other hand, if Explanation-2 is deleted and for different reasons, the estranged couple come together and cohabit, there is a fair chance of reconciliation. Cohabitation during the period when decree of judicial separation is still in force should not carry with it a risk of prosecution for rape later as reconciliation may thereby become almost impossible.

In section 375, in 'Exception', it has been mentioned in the Bill that "sexual offence by a man with his own wife, the wife not being under fifteen years of age, is not rape". Here the expression should not be 'sexual offence'; it should be 'sexual intercourse'.

Coming to 376(2), here we are suggesting some major recasting. It is neither necessary nor advisable to spell out the categories of public servants who would be liable for enhanced punishment for offences defined in Clauses (a), (b), (c) and (d) of sub section (2). The following sub-clauses may be substituted in place of the existing sub-clauses (a), (b) (c) and (d):

(a) being a public servant, takes advantage of his official position and commits rape on a woman in his custody or care as such public servant or in the custody or care of a public servant subordinate to him or,

(b) not being a public servant but being concerned with the management or being on the staff of an institution, takes advantage of his position in such institution and commits rape on a woman who is an inmate of such institution or is under the care or custody of such person or in the care or custody of a person subordinate to him.

With regard to (e), we suggest that it should include also a girl of 12 years or below. A girl of immature and tender age suffers a traumatic experience which might haunt her throughout her life after a rape. It is necessary that a serious view should be taken of rape of an immature girl of tender age. It is suggested that Clause (e) of sub-section (2) may be substituted by the following :—

(e) Commits rape on a girl of 12 years or below or on a woman knowing her to be pregnant.

So far as gang rape is concerned, we have, instead of three, suggested two. The expression 'gang rape' has been defined in Explanation-1 to mean rape by three or more persons acting in furtherance of their common intention. It is suggested that gang rape should include every case where a woman is raped by two or more persons acting in furtherance of their common intention. Explanation-1 may be amended accordingly.

In view of suggestions given with regard to Clauses (a), (b), (c) and (d) sub-section (2), Explanation (2) and (3) of the draft need to be substituted by the following :—

"Institution" shall include (i) a women's or children's institution, whether called an orphanage or a

home for neglected women or children or a widower's home or by any other name, which is established and maintained for the reception and care of women and children; (ii) hospitals, dispensaries and any institution for the reception and treatment of persons suffering from illness or suspected to be suffering from illness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation; (iii) any institution which provides boarding and lodging facilities for women, whether on payment or otherwise. It may also be considered whether a provision may not be made for payment of some compensation. Whether such compensation cannot be paid out of the fine, the State might provide funds for payment of compensation.

So far as 376A, 376B and 376C are concerned, on the analogy of suggestions made with regard to offences under clauses (a), (b), (c) and (d) of sub-section (2) of section 376, it is suggested that sections 376A, 376B and 376C may be substituted by the following:—

In the same manner, namely,

“Whoever being a public servant, takes undue advantage of his official position and seduces any woman who is in his custody or care as such public servant or in the custody or care of a public servant subordinate to him, to have sexual intercourse with her, such sexual intercourse not amounting to the offences of rape, when committed while such women continue to be in such custody or care shall be punished with imprisonment or either description for a term which may extend to five years and shall also be liable to fine.”

Mostly the same thing has been maintained excepting public servants have been clubbed together. As regards 376B we would like it to read like this:

“Whoever, not being a public servant but being concerned with the management or being on the staff of an institution take advantage of his position or the position of any person subordinate to him, in such institution and has sexual intercourse with a woman while she is in such custody or care, such sexual intercourse not amounting to the offence of rape shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.”

The explanation below Section 376C may be substituted by the definition of 'institution' given in Section 376.

Coming to Section 377 about proceeding to be held *in camera* we have no suggestion to offer excepting that when you permit the court to grant permission you should also delete the name of the victim.

Under the proposed provisions, where any of proceeding is held *in camera* it shall not be lawful for any person to print or publish any such matter in relation to any such proceedings, except with the previous permission of the court. It should be provided in the law that in no circumstance, the court shall permit disclosure of the name and address of the victim or any other information which might lead to the identification of the victim.

Next is 350A where there is provision for summary trial. We have suggested that minimum should be increased from one month to three months. Where summary trial is resorted to, the maximum punishment for offences under Section 228A is three months and also fine. Where normal trial is held, the minimum punishment for the same offence is imprisonment for one month but if the term of imprisonment may extend to two years. The maximum punishment of three months in the case of sum-

mary trial for the same offence is too short to provide adequate deterrent. The punishment may be enhanced to six months with a minimum imprisonment of one month.

Coming to the Schedule we have suggested that so far as Section 376 is concerned the Bill postulates Court of Sessions but so far as Section 376 A, B & C are concerned you have suggested First class Magistrate. We indicate that all these offences be tried by court of sessions.

Coming to Section 111A we have suggested that 'presumption' may be maintained so far as the allegation of gang rape is concerned or rape of a girl of 12 years or below but so far as offence in general is concerned Section 111A should not be made applicable.

That is all we have say.

MR. CHAIRMAN: I would like to know from the Inspector General of Police what are your difficulties so far as investigation is concerned. Are you going to suggest any improvement in the existing law?

SHRI NARASINHA SWAIN: What we say from our experience is, even when we take extraordinary precaution in cases where policemen themselves are involved, invariably these cases end in acquittal and in analysing the reasons for acquittal we find that ultimately the prosecutrix is won over. In a majority of cases where policemen were involved they have ultimately been acquitted in the courts of law.

MR. CHAIRMAN: Have you got any idea, so far as your State is concerned, of how many cases were reported where police officers are involved and how many, of them are convicted or acquitted?

SHRI NARASINHA SWAIN: I have got the statistics from 1978 up to the end of July, 1981.

In 1978, One Assistant Sub Inspector of Police was accused of rape, but there was no evidence to send him up for trial in a court of law. So the case was not reported to the court, but at the same time he was proceeded against departmentally. There again he was acquitted because of non-availability of any reliable evidence.

In 1979 two cases of rape were registered against policemen, one against a Head constable and another against a Sub Inspector. They were sent to stand for trial in both the cases, but they were acquitted.

MR. CHAIRMAN: Who investigated in those two cases?

SHRI NARASINHA SWAIN: The police investigated. It was investigated by a Sub Inspector of Police.

Then, in 1980 five cases of rape were registered against policemen, one each in Cuttack, Rourkela, Phulbani, Mayurbhanj and Balasore. Charge-sheets were submitted in three cases. In the Cuttack case one head constable and three constables were involved, but after the trial they were acquitted.

MR. CHAIRMAN: What are the grounds for acquittal?

SHRI NARASINHA SWAIN: I do not precisely remember the grounds for acquittal. In the Rourkela case the trial is going on against a constable.

MR. CHAIRMAN: I want to know, according to your opinion whether the prosecutrix is expected to support or not to support.

SHRI NARASINHA SWAIN: She is expected to support. Normally I would expect her to support her case.

In the other two cases one was declared mistake of fact, and the other was declared false and in this false case the prosecution report was submitted.

SHRI P. VENKATASUBBAIAH: If it is a false case, that means the prosecutrix had deliberately done it or after she had made a complaint she was manoeuvred to say that she was not supporting the prosecution.

SHRI NARASINHA SWAIN: This is a clear case where deliberately a false case was lodged against the police.

Then, during the current year there is one case in the district of Balasore where two constables were arrested. The case is *sub judice*.

There is one case in Rourkela where investigation is pending and two constables were under suspension departmentally.

This is so far as involvement of policemen is concerned.

MR. CHAIRMAN: What are total number of rape cases reported in 1978, 1979 and 1980?

SHRI NARASINHA SWAIN: In 1978, 84 cases of rape were registered in police stations, of which 80 were true cases, 2 were finally reported as mistake of fact, and two cases are still pending investigation. That means, these are perhaps awaiting chemical examiner's report and so on. Out of them 71 cases went up for trial. Out of these 71 cases, 11 have ended in conviction, 16 have been acquitted and 44 are pending trial.

In 1979, 103 cases of rape were registered in the State of which 93 were true, but 82 cases were charge-sheeted, 19 have been acquitted and the remaining 54 have been pending trial.

In 1980, 120 cases of rape were registered, of which 78 have been charge-sheeted, 5 have ended in con-

viction 7 have ended in acquittal, and the remaining 66 are pending trial in the courts.

MR. CHAIRMAN: So according to you, pendency has increased.

SHRI NARASINHA SWAIN: During the last seven months of the current year, 53 cases have been registered but a big number is pending. 41 are pending investigation. These are recent cases 35 charge-sheets have been submitted. Only one case has been tried but has ended in acquittal. The remaining 34 are pending trial.

MR. CHAIRMAN: How much time it will take for investigation?

SHRI NARASINHA SWAIN: Normally, it will take 90 days.

MR. CHAIRMAN: Do you give the report to the press for the purpose of identification?

SHRI NARASINHA SWAIN: Normally we do not give to the Press unless something really transpires.

SHRI BAPUSAHEB PARULKAR: Do you take the assistance of the Press in order to find out the identification?

SHRI NARASINHA SWAIN: Not as a matter of course.

SHRI P. VENKATASUBBAIAH: According to the statistics given by you, there is an increase of crime. Are there any cases which were not reported nor taken care or attention by the Government nor by the authorities?

SHRI NARASINHA SWAIN: I think that there is growing awareness and women whether they are literate or illiterate, when they are badly violated and victimised they are coming forward to lodge complaints in the police station.

SHRI K. S. NAVAYAUR: It has been said before this Committee in the course of evidence that when such cases are being reported to the Police, they do not normally entertain the cases. After some sort of investigation, most cases end in acquittal. Would you suggest measures to reform this procedure? There should not be any loophole on the part of the Police Officer to avoid registering the case. At certain times, chemical examination takes long time. With delay in examination, the seriousness of the case is lost. Something is to be done in this regard. Would you give some comments on this?

SHRI NARASINHA SWAIN: Normally when a complaint is received the police does entertain it and register it. But, here and there, there may be some shyness on the part of some police officers to entertain complaints and straightway go ahead with registration of the case. The shyness is on account of the realisation of the fact that physical evidence has been destroyed; generally the woman is brought to the police station by some relative after some lapse of time and by that time the physical evidence has been destroyed; secondly, the police people know that, after some time, it happens that the victim is approached by the victimiser and an apology is given which is accepted because the woman does not want to go through the grueling process of court proceedings; for these reasons, sometimes the cases fall or collapse. I feel that in all these cases legal steps could be taken provided there are social workers who would bring these cases to the notice of the police and the press also acts in the way it has been doing all these years. We are concerned very much about protection of women and their liberty and freedom, but there should be social workers, particularly in tribal areas where the cases are the maximum.

SHRI K. S. NARAYANA: Would it be possible to stipulate a time limit,

say, within one month the medical examination should be over and within such and such time the investigation should be completed? Would that help?

SHRI NARASINHA SWAIN: It would help very much if it is made obligatory on the part of the medical officer to give his medical opinion within a stipulated time, namely, 48 or 72 hours. A time limit could be stipulated for investigation of the cases; 90 days could be the maximum time limit. Wherever we find that an investigating officer is deliberately neglecting submission of the charges in time, we do take some departmental action against him. But in some cases we find that the man is overworked. If it happens to be a very important and heavy police station, the staff will be inadequate and the fellow will not be able to expedite the investigation. If special emphasis is given that in cases of rape they must charge-sheet in 90 days' time, it will go a long way in expediting the process.

SHRI K. S. NARAYANA: Have you any woman police officer or constable to help in investigation?

SHRI NARASINHA SWAIN: We have some women police, but it is a small force. They are not available in all the police stations; they are available mostly at State head quarters like Bhubaneswar, Cuttack, etc. But whenever there are important cases, we draft them to the local police station to help us in examining the victim.

MR. CHAIRMAN: I want to know whether, during the course of trial, efforts are made to put some senior officer, either DSP or ASP, to sit in the court and observe the proceedings so as to know what are the loopholes, why acquittals are being given, etc.

SHRI NARASINHA SWAIN: During the trial, supervision at a senior level which used to be exercised in the past is no longer there because pro-

cution has been separated from investigation. Today the entire prosecution rests on the prosecuting agency. In other words, after investigation has been separated from prosecution, the policemen are not present during the trial. Formerly we used to have a sub-inspector or inspector who was present during the trial and who was closely associated with the process of trial, but after the separation of the prosecution, there is no police presence at all.

MR. CHAIRMAN: You have not followed my question. My question is whether you have made any efforts to put senior officers during the trial to sit and observe so as to know what are the loopholes.

SHRI NARASINHA SWAIN: We have not.

SHRIMATI SUSEELA GOPALAN: Where the police officers are involved, in most of the cases, they are acquitted...

SHRI NARASINHA SWAIN: Yes, by and large.

SHRIMATI SUSEELA GOPALAN: You have mentioned that, in most of these cases, no evidence was there. Therefore, is it not necessary to make a special provision for these cases. When women are in custody, especially in police custody, there is always the difficulty to prove that there was no consent. So, will it not be advisable to say that, in the case of custodial rape where sexual intercourse is proved, the Court shall presume that she did not consent?

SHRI NARASINHA SWAIN: After all this refers to a particular compartment of rape cases involving the woman in custody. In such a case I have no objection to the presumption part of the provision because she is in custody.

SHRI GOBINDA DAS: We have included two categories—girl under-12 and also gang cases. Here perhaps we can include custodial rape in respect of police for the purposes of presumption.

SHRIMATI SUSEELA GOPALAN: The same thing can happen in the case of men of authority.

SHRI GOBINDA DAS: It is a question of balance on both the sides. A nurse can have a grievance against a doctor. Supposing she has malice and attributes, what protection can we give to the man?

SHRIMATI SUSEELA GOPALAN: At the investigating stage do you think it is better to involve social organisation and for that any legal provision can be made?

SHRI NARASINHA SWAIN: I think it would be advisable at the level of local police station to consult or associate local women organisations but to make a legal provision would be difficult because one will have to define which social organisation will get recognition and which organisation will get recognition.

SHRIMATI SUSEELA GOPALAN: In the case of police officers involvement will it be enough to ask the SI to investigate the case because he will get influenced.

SHRI NARASINHA SWAIN: Rank does not matter. Madam, if I may say so, it is one such organisation where maximum punishment is given to such criminal officers. Even when we do not get good evidence for being sent them to trial yet we impose a strict punishment departmentally.

SHRIMATI GEETA MUKHERJEE: I want to have a clarification in respect of your alternative draft of Section 376, namely, your explanation about the institutions.

SHRI GOBINDA DAS: Broadly, speaking we have included all the institutions that have been indicated in the original Bill.

SHRIMATI GEETA MUKHERJEE: Just now while answering hon'ble Mrs. Gopalan you admitted that in your opinion the police can be made to influence if police officer is involved.

Firstly, in view of the present situation prevailing here, when you disposed earlier this fact that the police has a special position somehow or other did not strike.

SHRI GOBINDA DAS: It is because this category has been included in the public officers.

SHRIMATI GEETA MUKHERJEE: Even among the public officers there can be distinction.

SHRI GOBINDA DAS: It is not by virtue of the position of the police officer that a distinction is made. But the distinction is because in a police station there are 8 to 10 policemen and there is no opportunity of freedom of movement. Therefore, consent may be a matter of presumption.

SHRIMATI GEETA MUKHERJEE: This concerns the custodial rape. So, custody is very important. So, with regard to that you have to revise your thinking. In view of this re-thinking, the change that is suggested under Section 376 where you took two positions, one is in regard to all public servants and the other is with regard to all non-public servants, needs modification. In view of the special custodial position that the police people have, don't you now think that even among the public servants the police has a special place and therefore, that category should be separated?

My second question is this. Since you are the Advocate General, I would like to have your opinion as to who are the public servants. For example, do the Ministers come in the category of public servants? If they do not, such people also should find a special place.

About institutions, in this very clause itself you are bringing in all the institutions. Of course, according to your scheme, there may be a correlation. But according to this scheme if those institutions are brought under this Section, then in respect of those cases also Section 111A should apply. Is it not? In any case, you felt that those institutions should be included. Is it not?

SHRI GOBINDA DAS: Yes.

SHRIMATI GEETA MUKHERJEE: If Section 111A remains, do you think that they should not be brought?

SHRI GOBINDA DAS: As I understand your questions, so far as the first question is concerned, I think in this country the emphasis on the police officers' behaviour has been more because of the Mathura case. Because the police officers are the custodians; the crime of this nature is committed. But that portion of the crime is not really more than what is happening in the society in general. The police force of my mind, is responsible for protection of a particular section of society as such including protection from offences of rape. But if we exclusively stipulate this in respect of police officers only, it may demoralise the Service as such. That is my point. If we club this with other categories, it is all right. Otherwise you demigrate the police.

Secondly, why should anybody else in charge of custody of a woman be distinguished from the police officers as such, though police officers may have more authority than others? Therefore, we thought that the police officers are more responsible and their negligence should be visited by greater scrutiny. But specific mention is there.

The second part is about the inclusion of Ministers. I think it depends upon the nature of their function. Suppose a Minister is custodian of

children's home or women's home. But the Minister cannot be held responsible. But it is his relation with the victim which is more material. Therefore, to your second question the answer will be, whether it is a Minister or for that matter, all different categories of public servants mentioned in the Indian Penal Code, it will depend upon the relations with the woman who is a victim.

Regarding the third part of your question, law does not frown upon sexual intercourse as such. There is freedom of sexual relation with consent. The thing on which we want to put a stop is the absence of consent which is an insult to the individual. Therefore, you have to find out a via media between the two. Therefore, we suggest that if the presumption is permitted, then it will be a source of perpetual blackmailing. So, according to our suggestion there will be less of blackmailing.

SHRIMATI GEETA MUKHERJEE: I would like to know this. The figures of police rape are separately given by I. G. The rest of the cases are in respect of custodians. For that we do not have figures. The fact remains that all these are generally resulting in acquittal.

A very large number of rape cases end in acquittals. Section 111A alone is giving protection to a large number of cases. In view of this, do you think that there is a case for extending it to cover other custodial persons as well?

SHRI GOBINDA DAS: The cases are ending in acquittals. This is a national problem and a national phenomenon. A very large percentage of the crimes in general are going unpunished. There are various reasons. Liberalisation of the prosecutions of the trials and other legal factors as well. Therefore, your saying that

rape cases are only acquitted does not stand on a different footing as compared to other cases of crime in general. Also imagine that there may be cases where innocent persons also may be convicted. How do you differentiate? As responsible persons, we have to see both the sides.

SHRIMATI SUSEELA GOPALAN: Have you convicted any rape case?

SHRI GOBINDA DAS: We can cite the instances of custodial and general cases.

SHRIMATI GEETA MUKHERJEE: In view of the large number of rape cases, is it not essential to have some special courts?

SHRI GOVINDA DAS: We can have. But it is your responsibility.

SHRI B. IBRAHIM: I learnt that Atrocities Enquiry Committee was set up by the Orissa Government to go into cases of alleged rape. The police have not handled properly the alleged rape case of a Harijan girl in Ganjam district on May, 22. Are you aware of that case? If so, what had happened to that?

SHRI NARASINHA SWAIN: I am not aware of this case. This came up in the Assembly sometime back.

SHRI B. IBRAHIM: I can tell you the date, 30th August, 1981, "The Statesman".

SHRI NARASINHA SWAIN: I can look into this incident but I am not prepared to say anything.

MR. CHAIRMAN: Provided the press report is correct.

SHRI B. IBRAHIM: That was the Atrocities Committee set up by the Orissa Government. They have submitted the report. This is what it says. There is allegation against po-

lice that the victim has not submitted to the medical authorities. Are you not aware of that?

SHRI SUDHAUSU MOHAN PATNAIK: No.

MR. CHAIRMAN: It is a serious matter. When it is published in the Press, you are expected to know what has happened.

SHRI B. IBRAHIM: You have quoted the figures for the last three years. Pendency of cases has increased. What is the main reason for that?

SHRI NARASINHA SWAIN: It is partly due to more and more women coming forward due to increased social consciousness of the people. There was no consciousness earlier. Therefore, most cases were not reported earlier.

SHRI B. IBRAHIM: You have said that political persons in office should also be included in the definition "public servant". That includes MLAs, MPs, MLCs also. Are you aware of any cases in your State for the last three years so far as MLAs, MLCs are concerned? How many such cases have been reported?

SHRI NARASINHA SWAIN: There is no case. I do not think that these statistics that I have referred involve these people.

SHRI P. VENKATASUBBAIAH: The hon. Member has quoted from a newspaper of the standing of the Statesman. Also what has been quoted is a report of the UNI, a well-established news agency. Again he has quoted from the reported of the Atrocities Inquiry Committee set up by the Government of Orissa. These are very important material factors that should have attracted the attention of the Inspector-General of Police. Now you say before this Committee that you are not aware of this. This is a very serious matter.

Please bear this in mind that, whenever you come before the Committee on such a serious matter as this, you must be able to give the Committee the full facts.

SHRI NARASINHA SWAIN: I am sorry, somehow it has escaped my notice. But I can assure you that I will go into this and give you a report. This must be available.

MR. CHAIRMAN: Find out just now whether information has been collected by the Home Department.

SHRI NARASINHA SWAIN: Yes, Sir.

SHRI BAPUSAHEB PARULEKAR: In your evidence you have said that, by and large, the police officers who were prosecuted for the offence of rape have been acquitted. I would like to know whether the defence taken in those cases was consent or alibi.

SHRI NARASINHA SWAIN: It was not so much relating to consent as to lack of independent witnesses, corroborating evidence.

SHRI BAPUSAHEB PARULEKAR: Mr. Advocate-General, you have said that acquittal is a national phenomenon and all that. Do you not think that in such cases when the witnesses are won over and when corroborative evidence is not available, it is now time for us to amend the Cr. P. C. so as to make cross-examination of the accused compulsory? If you make it compulsory, many things can be brought out from the mouth of the accused, specially in such cases.

SHRI GOVINDA DAS: Jurisprudence is based on the principle of presumption of innocence. That will affect the very basis of jurisprudence, and there are various other factors also.

SHRI BAPUSAHEB PARULEKAR: You have said that section 111 should

be made applicable only to police officers and not to other custodial rapes. Kindly take into consideration all statutory custodies. If we make this law applicable only to police custody and not to others, will it not be a discrimination?

SHRI GOBINDA DAS: The circumstances are different. In one case there is no other alternative possible while in other cases alternatives may be possible.

SHRI BAPUSAHEB PARULEKAR: I believe you will agree with me that police stations, remand homes, etc., are not places to have sexual intercourse. Therefore, don't you think that, if a particular official, may be a police official or any other person holding office having custody, has intercourse even with consent in the office, it should be included in the definition of rape, so that the question of consent, presumption under section 111A and all those difficulties which we are facing will go? A suggestion has been made by one of the Bar Associations in our country. I will read it out:

"The insertion of the following as an additional description under section 375 will render inclusion of the proposed section 111A unnecessary:—

"With her consent when the man being a police officer or a public servant or a superintendent or a manager of a jail or remand home or other place of custody of women or children or a doctor or a legal adviser or a trustee or an agent or a director of a company or any other person who is in a position to dominate over her she being in his custody or control or under his authority, knows or has known to believe that her consent is given because of his use of that position with a view to have undue advantage of such position."

The sum and substance comes to this. Intercourse with consent committed by

a public servant and others who are mentioned here abusing the position and obtained consent due to position will amount to rape. Will that solve the problem.

SHRI GOBINDA DAS: I do not know. Supposing I am in custody of X and X for various reasons has grievance against me. Further supposing this sexual intercourse will not be possible to be proved chemically then to make her consent is irrelevant. Then I am perpetually in a position of risk. I want the Committee to look from that point of view.

SHRI BAPUSAHEB PARULEKAR: Coming to new Section 228 if provision in respect of printing and publication is made with the permission of the victim.

SHRI GOBINDA DAS: It is a salutary provision. Elimination of name and identity should be insisted but by virtue of Explanation you have put the High Court and Supreme Court judgements.

SHRI BAPUSAHEB PARULEKAR: There is a blanket ban in respect of printing and publishing the name of the victim. Supposing this printing and publication is made with the permission of the victim do you still feel that it should be an offence?

SHRI GOBINDA DAS: Yes. The bar should be absolute.

SHRI BAPUSAHEB PARULEKAR: Supposing the police do not take cognizance of the crime because the person involved is high-up in the society. Then it is necessary to pressurise the Government by some publication in the Press otherwise if it is not done we have instances where cognizance is not taken then in that case this also would be penalised. IGP, Patna told us that sometimes it becomes necessary during investiga-

tion to collect evidence to publish it. Whether such exemptions should be made.

SHRI GOBINDA DAS: (A) it applies to all the crimes where the richer elements are involved. So far as rape is concerned we have to bear in mind that there is another human being involved and that is a girl and, as such, something should be done for the protection of the girl.

SHRI BAPUSAHEB PARULEKAR: Then giving the certified copy of the deposition would also amount to publication. In that case nobody would be agreeable to give a certified copy. In these circumstances there should be some change in the Section as it stands today.

SHRI GOBINDA DAS: Yes, you can define clearly and give a broad definition of publication. A certified copy need not be included under the Press and Publication Act.

SHRI BAPUSAHEB PARULEKAR: Supposing I apply for this and I get the cyclostyled copy, but the person who prints and circulates it is left scot free.

SHRI GOBINDA DAS: Yes, under the Press and Publication Act, but not under this Section.

SHRI BAPUSAHEB PARULEKAR: Then you refer to the Explanation that the printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this Section'.

Do you think even the judgement of the trial court should be included in this?

SHRI GOBINDA DAS: Yes, if you elaborate this Explanation, then it covers the judgement of the trial court. But if you permit the High Court or

the Supreme Court judgement to be published, then the purpose of this Section is defeated.

SHRI BAPUSAHEB PARULEKAR: Do you know that the question of consent is not relevant when the woman is below 15 years?

SHRI GOBINDA DAS: That is right.

SHRI BAPUSAHEB PARULEKAR: So, that is not relevant. You said about Explanation 2 regarding the women living separately because during the period of judicial separation they may come together. But what about the case without consent? Do you mean to say that even if it is without the consent, that should be allowed?

SHRI GOBINDA DAS: I do not have any personal experience regarding this. But perhaps if a little force on one side or the other leads to reconciliation, then it is alright.

SHRI BAPUSAHEB PARULEKAR: In the case of reconciliation consent is there, but because there is no divorce pending the court decision, the man has the right to have matrimonial relations and force the sexual intercourse. Still, do you mean to say that it should not be treated as an offence of rape?

SHRI GOBINDA DAS: There is a possibility of reconciliation on this ground, because the man has resumed his habitation.

SHRI BAPUSAHEB PARULEKAR: You know, there is a provision for divorce on the ground of mutual consent and a joint petition can be filed. That takes a pretty long time. Don't you think that in such cases when both husband and wife file a joint petition there should not be any matrimonial relations and if that happens, that should be an offence of rape?

SHRI GOBINDA DAS: The court gives time for coming together by mutual consent so that divorce may not take place finally. If they resume the relationship in the meanwhile, I do not think that law should come in their way.

SHRI RASA BEHARI BEHRA: You have given a long list of the number of rape cases in our State, including custodial rape cases. How many lady officers have been so far appointed in the police force?

SHRI NARSINHA SWAIN: There is one woman Inspector of Police, some 10 to 12 Sub-Inspectors of police and a little more than that number are Assistant Sub-Inspectors and some constables and they are confined only to two or three districts, particularly the urban districts like Cuttack, Bhubaneswar, Puri and Rourkela.

SHRI RASA BEHARI BEHRA: So far, has any lady police officer investigated a rape case?

SHRI NARASINHA SWAIN: One lady police officer assisted in the investigation of a rape case.

SHRI GOBINDA DAS: May I clarify one thing? The cases against the police officers are not custodial rape. Secondly in five years there have been altogether 7 cases against the police officers as such. To my mind, it is not alarming. But there is none in respect of custodial rape. These are general cases against the police officers which are undesirable.

SHRI RASA BEHARI BEHRA: Suppose a woman has falsely implicated a man. Ultimately it transpires that the man is not guilty, and he is acquitted. So in this case I would like to know whether the woman should be punished.

SHRI GOBINDA DAS: Acquittals may be for various reasons. So, I do not think that provision should be really necessary.

SHRI AMARPROSAD CHAKRABORTY: Mr. I. G., will you kindly tell us about this? As it transpires from the press note shown by the hon. Member of the Committee, how many cases were taken up by the police after those were published in the papers, that is after printing and publication? It transpired that you are not aware of the cases that were published in the newspapers. So, from the statistics given, will you kindly throw some light on how many cases were taken up after they were published in newspapers?

SHRI NARASINHA SWAIN: I think every case of rape whether it is published in the newspaper soon after the offence or a few days after the offence, normally comes to a police station and is registered and even evidence is published in the newspaper. But if there is no formal complaint in the police station from the side of the party, the case is not registered. But when ever there is press publication, extracts are taken of such information and these extracts are brought to the notice of the concerned Superintendent of Police for enquiry and report. If the enquiry reveals that facts are true, that it is a cognisable offence, then, automatically a case will be registered in the Police Station for investigation as per law.

SHRI AMARPROSAD CHAKRABORTY: May I take it from you that printing and publication of the report helps you in taking up the case of rape?

SHRI NARASINHA SWAIN: Not in many cases.

SHRI AMARPROSAD CHAKRABORTY: I shall refer to another case of Maheswar. That case was not registered by the Police. It was not taken cognizance and after it was published, this was taken up.

SHRI NARASINHA SWAIN: I am afraid that is not exactly the case. A complaint was lodged. There was a complaint. There was initially some delay in the Police Station on the part of the local officers. They should have visited the spot that very night when the complaint was lodged. They visited the spot next morning. For this delay, the officers concerned were taken to task. Initially, the investigation was taken up by the Thana concerned but when they were not satisfied with the investigation, there was a lot of hue and cry in the press and the public that the local police are partisan and were not doing justice. I entrusted the investigation of the case to State CID under the supervision of a superintendent of Police who took pains and supervised the investigation and the result is that it has ended in conviction with a lot of compliments from the court.

SHRI AMARPROSAD CHAKRABORTY: The fact is that after publication was made or it was printed, the Department became more active in the matter in detecting the case.

SHRI NARASINHA SWAIN: I would not contribute to that. There was a public uproar about this case.

SHRI AMARPROSAD CHAKRABORTY: The simple point is that after publication and printing, there are some cases which received cognizance and they took up the matter in right earnest. This fact remains.

SHRI NARASINHA SWAIN: I would put it this way. No doubt it was not an ordinary case. The names of some of the influential persons of the locality were mentioned. Hence I thought it necessary to entrust investigation to a specialised agency which would be more competent than the local agency. I would put it that way.

SHRI AMARPROSAD CHAKRABORTY: Kindly see Section 228A of the Indian Penal Code (Page 1 of the

draft Bill). Do you think that there should be restriction on the publication of rape on girls or the publication should be banned completely?

SHRI NARASINHA SWAIN: From the various aspects of publicity or publication, I think the way it is made in a section of the press does not have a good healthy moral effect on the society. It does lead to an adverse effect on the crimeprone youth of the society. If publicity is given, from a constructive angle, by taking due care not to take the identity so as to embarrass the victim, that kind of publicity serves the purpose. I do not deny.

SHRI AMARPROSAD CHAKRABORTY: So publicity serves some purpose.

SHRI NARASINHA SWAIN: Provided it is from a constructive angle.

SHRI AMARPROSAD CHAKRABORTY: Two Members have placed before us one memo each. In both the Memos practically no suggestion were made. The Home Department Law Secretary presented a memo. That is with us. You have sent another Memo to Government. In both these Memoranda, no amendment is suggested of any Section except in some cases. You have not suggested anything in case of Evidence Act and other provisions of the IPC. May I take it that all the officers in the State have no suggestion to make?

SHRI NARASINHA SWAIN: I do not know.

SHRI AMARPROSAD CHAKRABORTY: Please see page, 41 and 42 of the Memoranda.

SHRI NARASINHA SWAIN: Is there any contradiction?

SHRI AMARPROSAD CHAKRABORTY: Yes, there is certainly contradiction. Memorandum says no change should be made in the Cr. P.C. except Section 376 (b) and (c).

SHRI GOBINDA DAS: You know that the latter is always the better.

श्री हुसमदेव नारायण यादव : आपने धारा 375 के बारे में कहा। भारत का संविधान कहता है कि कानून बनाते समय धर्म-जाति में कोई भी भेदभाव नहीं किया जाएगा। इस धारा के सातवें भाग में लिखा हुआ है कि 16 साल से कम उम्र की लड़की उसकी कंसेंट और विद्वान्मंडल कंसेंट से अगर सैक्सुअल इन्टरकोर्स होता है, वह अपराध माना जाएगा। इस प्रकार कानून के तहत 16 साल से कम उम्र की लड़की पर प्रतिबन्ध लगाया जा रहा है कि वह सैक्सुअल इन्टरकोर्स कर ही नहीं सकती है, लेकिन लड़के की एज के बारे में कुछ नहीं कहा गया है। लड़के की उम्र यदि कम हो, तो क्या लड़का अपराधी माना जाएगा या नहीं माना जाएगा कि इतनी एज तक लड़का सैक्सुअल इन्टरकोर्स नहीं कर सकता है ?

श्री गोबिन्द दास : लड़की की उम्र का जहाँ तक ताल्लुक है, यह प्रश्न तो बहुत पहले से चला आ रहा है कि 18 साल होनी चाहिए। दूसरा जो प्रतिबन्ध लगाया गया है, वह लड़की को असहाय मान कर किया गया है। लड़का जितना कम उम्र का होगा, वह उतना असहाय नहीं है, इसलिए उसकी एज लिमिट नहीं रखी गई है। तीसरी बात यह है कि इस चीज से जो क्षति होती है, वह लड़की को होती है, लड़के को नहीं होती है।

श्री हुसमदेव नारायण यादव : मैरिज एक्ट के मुताबिक लड़के की उम्र 21 साल बान्ध दी गई है। कानून यह मानकर चला है कि 21 साल तक लड़का भी यौन के मामले में कमजोर है, जिस तरह से 15 साल की लड़की यौन के मामले में

कमजोर माना गया है। क्या इस प्रकार की व्यवस्था इस बिल में भी होनी चाहिए ?

श्री गोबिन्द दास : ऐसा व्यवस्था करेंगे तो अच्छा होगा। इस पर कभी हमने ध्यान नहीं दिया है।

श्री हुसमदेव नारायण यादव : जो आदिवासी क्षेत्र हैं, शरीर क्षेत्र हैं, वहाँ लड़कियों की शादी 13-14-15 साल में हो जाती है और जल्दी ही उनके बच्चे भी हो जाते हैं, लेकिन इस बिल में 15 साल से कम उम्र की पत्नी के साथ संभोग करना भी अपराध माना गया है। कारिजबिल प्रॉपोज है। पुलिस को यह पावर है कि ऐसी व्यवस्था में उनको गिरफ्तार कर ले। मैं आपसे यह जानना चाहता हूँ कि पुलिस इस तरह से ज्यादा हस्तक्षेप करके घर को बिगाड़ने का काम कर सकती है या नहीं।

श्री गोबिन्द दास : जब शादी हो जाती है, तो रिलेशन चेंज हो जाता है। जब शादी नहीं होती है, तो प्रतिबन्ध लग सकता है। यदि कम उम्र की लड़की के साथ यह चीज होती है, तो घर की बात हो जाती है।

SHRI BAPUSAHEB PARULEKAR:
Please see page 3 of the Bill at the top.

MR. CHAIRMAN: There you have only said that it should not be 'sexual offence', it should be 'sexual intercourse'. That is all.

MR. CHAIRMAN: His question is only about the age. Would you like to raise it or it should remain as it is or it should be deleted.

SHRI GOBINDA DAS: We have thought about it. We only want to substitute 'offence' with 'intercourse'. We have no other comment to make in this regard.

MR. CHAIRMAN: Coming to your amendment to Section 376C you said 'custody' or 'care'. Now take the case of a police officer. There is clear distinction between custody and care. So far custody is concerned there is a police officer who is a person in authority and then he will have dominant control over the lady. In that case there are many chances that the lady may submit to the sexual intercourse without creating violence. On the basis of medical report you cannot approve the negative aspect of the consent. Therefore, is it not proper to give 'presumption' in such a case so that the police officer should not exploit the position or misuse the position.

SHRI GOBINDA DAS: We agree with the lady Member that 'presumption' should be given under certain circumstances.

MR. CHAIRMAN: About care also in respect of misusing the power can't you feel some difference between care and earlier submission?

SHRI GOBINDA DAS: Concept of care arises on the wording of the Bill. Bill makes distinction.

MR. CHAIRMAN: Do you agree that MLAs and MPs should be eliminated from the categories mentioned now.

SHRI GOBINDA DAS: If you adopt our drafting it will eliminate that possibility. Bill's definition is wide enough.

SHRI SUDHASU MOHAN PATNAIK: Sir, I have been able to collect some facts about the case mentioned earlier. There is a standing committee of the Harijans and Tribal Welfare which receives complaints about harassment on Harijans and makes enquiry. It is a continuing committee and not specifically appointed for this purpose. As we find from the complaint it was a complaint not of rape but of molestation.

The complaint was registered. Investigation was supervised by a gazetted officer. The committee visited the spot. Chargesheet has been filed in the court of law and as such the case is *sub-judice*. On the basis of comments made by the committee about certain short coming on the part of the investigating officer the SP has taken up the inquiry.

MR. CHAIRMAN: About printing and publishing I think in some cases police has to use it for identification of the accused. In that case that publicity given by the police officer should come under the complete ban or should it be exempted.

SHRI NARASINHA SWAIN: In some suitable cases publicity is needed by the police. I do not say that by general rule we can do that.

SHRI P. VENKATASUBBAIAH: Mr. Home Secretary has explained about this particular incident. I want care should be taken to see that a fresh investigation is made by the Government in order to report the latest position.

SHRIMATI GEETA MUKHERJEE: Suppose there are two girls. One of them was raped and the other escaped. The girl who was raped made complaint to the sarpanch, to the police officers and to the other men of that locality and the other girl who escaped was also there to corroborate what has happened. And their complaint was that the police did not take any cognizance of that charge of rape. But the police say that it is a case of molestation. But I would like to know whether this charge of rape was brought in at all or not.

SHRI P. VENKATASUBBAIAH: Apart from what the hon. Member stated, you should take care of such incidents properly.

MR. CHAIRMAN: Thank you.

(The witnesses then withdrew)

II—Mrs. Jayanti Patnaik, M.P.
(The witness was called in and she took her seat)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

You please introduce yourself to the Committee though we know you are a Member of Parliament.

SHRIMATI JAYANTI PATNAIK: I am a Member of Parliament and this is a new experience I have for the first time. I must thank the Chairman of the Committee for giving me this opportunity.

Now I have come to give my evidence from the psychological angle of a victim woman. I am not a lawyer and I cannot deal with the subject in all its intricacies of law but during the last three years shocking reports of victimisation of women by sexual violence have appeared in the newspapers.

Considering the vastness of our country, they may be considered insignificant so far as the manifestation of this kind of criminal behaviour is concerned. But this is hardly reassuring. With the present level of literacy, the inadequate coverage of newspapers and the secret nature of such offences, it is to be apprehended that only the tip of

the iceberg has attracted the public gaze.

The press reports indicate a disturbing trend of increase in the cases of violence on women. Whatever the statistics may reveal it would be safe to take note of the venomous manifestation of this malaise in the society and to adopt measures to arrest the crime. The law on the subject of violation of woman was laid down in the Indian Penal Code long back. According to the provision laid down therein, 'rape' is defined as the unlawful and carnal knowledge by a man of a woman (i) against her will (ii) without her consent (iii) with her consent when her consent has been obtained by putting her in fear of death or hurt (iv) with her consent when the man personates her husband (v) with or without her consent when she is under 'sixteen years of age'. Standards of proof required to ensure punishment to the accused on a charge of rape are such that, apart from others, the victim woman must withstand batteries of searching questions critically designed to baffle her in the open court within full view of the indulgent press. The fact that more and more shocking incidents of rape are coming to public knowledge itself suggests inadequacies of the prescriptions of law. One of the fundamental principles in criminal law is that the accused persons are to be deemed innocent till the prosecution has been able to prove the guilt of the accused beyond any reasonable doubt and the burden of proof never shifts on the accused. Evidence needed by the court from the prosecution is, in the nature of the crime in question, such that the accused often gets the benefit of doubt from the version of the victim herself. She is all the while apprehensive of the stigma attributed to her by the society for her sheer involvement in the incident even though it may be against her consent and beyond her control. The accused usually attempts to embarrass her in open court through inconvenient questions about her past

personal life and all this gets conspicuous publicity. If a practical view is taken, one would see the trial of a rape case as more or less a continuation of the very same traumatic experience for the woman victim.

There merge two aspects. Firstly, the standard of proof needed to prove a case of rape puts the woman victim at a disadvantage that she cannot be expected to withstand. In the criminal law amendment Bill, 1980, introduced in the Lok Sabha on 12-8-80, a provision has been suggested in the Indian Penal Code that after the incident is proved, and the question is whether it was with or without the consent of the woman and she states in her evidence before the Court that she did not consent, the court shall presume that she did not consent. This provision is applicable where the accused is a policeman or a person in public authority. This could be applicable to all cases. This would be much needed reform of the law on the subject.

The second aspect is one of publicity that such cases get in the press. The above amendment Bill seeks to

impose restrictions on publicity of these cases and also provision is suggested for in-camera trial. This will help to protect the prestige of the victim. So, I agree with the Amendment Bill, in this regard.

It is however for consideration if as a temporary measure for a decade or so, the law on the subject should not be made more stringent providing that when a case is made out *prima facie* against a person alleged to have violated a woman constituting the offence of rape, the burden of proof of innocence shall lie on the accused. In Japan, the burden of proof of innocence lies on the accused. The crime rate is remarkably low in that country. In what measure, other factors contribute to low crime rate is, of course, a matter for consideration. But, undoubtedly, deterrent punishment mechanism and adverse presumption against the accused are substantial factors. At least for specific crimes such as rape, we must have deterrent legislation for which we have had enough warning.

(The Committee then adjourned.)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CRIMINAL LAW
(AMENDMENT) BILL, 1980

Monday, the 2nd November, 1981 from 11.15 to 13.00 hours and again from
15.00 to 17.35 hours, Committee Room 'B' Parliament House Annexe, New Delhi.

PRESENT

Shri D. K. Naikar—*Chairman*

MEMBERS

Lok Sabha

2. Shri Rasa Behari Behra
3. Shrimati Gurbrinder Kaur Brar
4. Shrimati Vidyavati Chaturvedi
5. Shri V. Kishore Chandra S. Deo
6. Shrimati Suseela Gopalan
7. Shrimati Mohsina Kidwai
8. Shri R. K. Mhalgi
9. Shrimati Geeta Mukherjee
10. Shri K. S. Narayana
11. Shri Ram Pyare Panika
12. Shri Qazi Saleem
13. Prof. Nirmala Kumari Shaktawat
14. Shri S. Singarvalival
15. Shri Trilok Chand
16. Shri V. S. Vijayaraghavan
17. Shri P. Venkatasubbaiah

Rajya Sabha

18. Shri Lal K. Advani
19. Shri Ramchandra Bhardwaj
20. Shri S. W. Dhabe
21. Shri B. Ibrahim
22. Shri Dhuleshwar Meena
23. Shri Surendra Mohanty
24. Shri V. P. Munusamy
25. Shri Era Sezhiyan
26. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—Senior Legislative Committee Officer

LEGISLATIVE COUNSEL

Shrimati V. S. Rama Devi—Joint Secretary and Legislative Counsel

Dr. Raghbir Singh—Assistant Legislative Counsel

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS

Shri S. V. Sharan, Joint Secretary

WITNESSES EXAMINED

I. Stree Sangharsh, New Delhi

Spokesmen:

1. Ms. Radha Kumar
2. Ms. Ein Lall
3. Ms. Jessica Mahadevan

II. Karmika, New Delhi

Spokesmen:

1. Ms. Urvashi Butalia
2. Ms. Archana Sant

III. Delhi University, (Faculty of Law), Delhi

Spokesmen:

1. Prof. (Smt.) Lotika Sarkar
2. Shri Raghunath V. Kelakar
3. Dr. Upendra Baxi, Professor of Law

IV. Guild of Service Delhi Branch

Spokesmen:

1. Shrimati Sunanda Bhandare, Advocate, Supreme Court, Chairman Legal Aid Committee
2. Shrimati (Dr.) Razia Doshi, Hon. Secretary

I. Stree Sangharsh, New Delhi

Spokesmen:

1. Ms. Radha Kumar
2. Ms. Ein Lall
3. Ms. Jessica Mahadevan

(The Witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be

published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Who is the President of this Association?

Ms. RADHA KUMAR: We do not have any officials.

MR. CHAIRMAN: You must have gone through the draft Bill. What are your comments?

Ms. RADHA KUMAR: We have already presented a memorandum to the committee. Regarding section 228A, we feel that the bar on publication should be removed, because this will act as a censorship on the press and on women's organisations. Our campaign in bringing the issue of rape into public consciousness has hinged on publicity through the press. If there is bar on publication, we would not be able to check on how any case was conducted, whether any evidence was provided, whether the judgment was correct, etc. So, this clause should be scrapped entirely.

We also feel strongly about section 327 about in-camera trial. Even though on principle we think that such trials are desirable, we feel that in conjunction with the clause on bar on publication, the kind of secrecy which would be imposed on the whole thing would work against the interest of the victim. We also feel that in any trial of a rape case, the victim must be allowed to have the support of members of her family, social workers, women's organisations and the press. So, even if the members of the public would be barred, members of the victim's family,

social workers, women's organisations and the press should be allowed. If that is not legally possible, it should be open trial. We do not like in camera trial.

Regarding section 111A dealing with onus of proof, we think it is a very good precedent that is being set up, but it should be generalised to cover not merely rapes by police or officials but all categories of rape.

There is a recommendation of the Law Commission regarding past sexual history of the victim not being used as evidence except where it concerns the accused. This should be incorporated in the Bill.

MR. CHAIRMAN: What about past sexual history in relation to others?

Ms. RADHA KUMAR: In general, we feel that past sexual history concerning others should not be considered. But in the case of marital rape and prostitution, even where it concerns the accused, it should not be used.

There are some minor points about procedures regarding arrest and interrogation, medical report, penalty for police non-compliance with procedures, etc. The Law Commission has made some recommendations regarding these and we want that those recommendations should be incorporated in the Bill.

There should be penalty for police non-compliance with procedures. There should be a detailed medical report to be recorded by a registered medical practitioner. There should be stricter check on medical practitioner who are equipped to give these reports, etc. We want that all these recommendations should be incorporated in the Bill with the exception of the clause regarding whether or not the victim was used to sexual intercourse. This sentence should be deleted.

Penalty should be imposed on medical practitioners who refuse to examine a rape victim. The victim of the complainant should be given the *locus standi* to prosecute in cases of rape, if the State does not wish to pursue the case. It would also be useful if women's organisations are given the *locus standi* in such cases to prosecute in such situation.

On section 376(2) dealing with custodial rape, we have many suggestions. Sub-section (a) deal with police rape, limiting it to rape within the thana or local area to which the policeman is appointed. This ignores police rape of duty, presuming that in such cases the policeman is like any other man. However, there are incidents in which the policeman may be off duty but is yet known to be a policeman. Here the victim would be as intimidated by his authority as if were on duty. Hence we propose that an explanation be added to this sub-section saying that local area' is any area in which the accused is known to a policeman, including the area where he resides.

Sub-section (d) deals with rape by hospital staff on inmates. We propose that this sub-section should be extended to cover rape of nurses, which is a common complaint.

Sub-section (f)—Gang Rape—Explanation 1 defines gang rape as rape by 3 or more individuals. There is no provision for rape by 2 individuals. So, it should be amended to read, "two or more individuals".

We have proposed the addition of a new sub-section (g) defining mass rape. This is a common incident in rural areas and is committed by hired thugs or policemen. The wording can be like this:

"Whoever commits, or abets, in the crime rape, i.e., where two more women are raped by one or more men". Explanation: The clause 'abets in' refers to the landlord/moneylenders/factory owner, etc.

who employs the thugs or the senior police officer who is in charge of the troops but does not actually participate in the rape.

Those men should be held responsible for what the men under their direction do.

We also propose that the definition of custodial rape be extended to cover those individuals who by virtue of their economic dominance commit rape on women in their employ, like landlords, factory owners, managers, contractors, etc. Hence sub-section 8 should be amended to cover this category.

SHRIMATI GEETA MUKHERJEE: About in camera trial you have suggested that the entry of the press and women organisations should be there. If there can be some kind of a legal arrangement under which the victim can be protected, will that not be all right?

The press may be allowed to be present there but it should not be allowed to publish the name of the victim. Do you have any objection to that?

Ms. RADHA KUMAR: No.

SHRIMATI GEETA MUKHERJEE: Your suggestion is that Section 111A should be extended in all cases. And side by side you have suggested some additions to Section 376 regarding custodial rape. Both the things cannot go together. Which one are you preferring at the moment?

Ms. JESSICA MAHADEVAN: We would prefer generalisation.

SHRIMATI GEETA MUKHERJEE: About custodial rape, you have very specifically mentioned very important persons. If a girl who is working, is raped by her superior, will that not come under custodial rape?

Ms. RADHA KUMAR: Yes.

SHRIMATI SUSEELA GOPALAN: With regard to the police who are superior, the onus of proof should be

shifted to the accused. But there is an argument that there are women of easy virtue and loose character. If they complain that they are raped, then what is the remedy for the accused person?

Ms. JESSICA MAHADEVAN: Probably there are legal precedents. When money passes hands, then the burden of proof is shifted to the accused. Also in the case of smuggling, it is the smuggler who has to prove that.

MR. CHAIRMAN: Perhaps, you have not followed the spirit of the question. You maintain that there should be presumption in respect of the evidence given by the lady that consent has not been given. Then there may be case of filing a false complaint by the lady having loose character. It may not be a case filed by herself but on instigation. In that case, the presumption is against him. What is the protection given to the accused in such cases if the burden of proof is given in favour of the lady?

Ms. RADHA KUMAR: It is not very difficult for a man to rebut that kind of argument. He can cross-examine the victim, or give an alibi, or give reasons for the false complaint. Suppose the motive is revenge he can prove it. If it is money, he can surely find some evidence to show that the lady has been bribed or instigated.

MR. CHAIRMAN: There was a case where a young man was arrested. His mother and grown up sister went to the police station to get him released. The sub-inspector refused to release him. The lady immediately filed a false complaint that the sub-inspector had raped her. How do you deal with such cases?

Ms. RADHA KUMAR: How was it detected that it was a false complaint?

MR. CHAIRMAN: The investigating officer made some discreet enquiries and came to the conclusion that it was a false complaint. It was also felt that if the sub-inspector was inclined

to rape, he would have preferred the daughter and not the mother. This was the ruling given by the highest authority.

Ms. RADHA KUMAR: I think there was no case at all here.

SHRI R. K. MHALGI: In a number of rape cases there are acquittals because of defective investigation. You have referred to the recommendations of the Law Commission. In what way can the investigation be made more effective?

Ms. RADHA KUMAR: The assistance of women's organisations and social welfare organisations can be sought for making them effective.

SHRI RASABEHARI BEHERA: Do you suggest that there should be a legal provision to that effect?

Ms. RADHA KUMAR: Yes, there should be.

SHRI RASABEHARI BEHERA: During the trial stage, should there be publicity or not?

Ms. RADHA KUMAR: We want publicity. Only the name of the victim should not be revealed.

SHRI V. KISHORE CHANDRA S. DEO: In a society like ours there is a certain social stigma attached to such cases. When a woman is a victim of a rape case, she should not be made a victim a second time by giving wide publicity to the occurrence. That is why *in camera* trial has been suggested. If you remove these two sections completely, many affected people would not like to prefer cases.

Ms. RADHA KUMAR: First of all, we have not suggested that we want completely open trial. We only suggested that there should be a modification in the *in camera* trial. If that is not possible, then we want open trial. If there is total secrecy, there is absolutely no way of checking what has happened.

SHRI V. KISHORE CHANDRA S.
DEO: Do you think it is reasonable to take the consent of the victim?

Ms. RADHA KUMAR: So long as she is not being pressurised. Even in camera at least her relatives should be allowed.

SHRI V. KISHORE CHANDRA S.
DEO: You will appreciate that there is a big difference between rape in custody and rape in the normal course. When a lady is in custody, she is under the physical control of that person. So, it is very difficult for the victim to offer circumstantial proof. Therefore, if you generalise it, it will lead to false cases and deliberate attempts to malign the character of persons. Don't you agree that rape in custody should be treated as a separate category and more stringent punishment should be inflicted in such cases than in the case of general rape, more so when there are so many cases of custody rape of late?

Ms. RADHA KUMAR: It is not necessary that they should be differentiated in that precise way in this clause. It is very difficult in these two cases for the woman to prove rape. In fact there is absolutely no proof except for violence. The only proof that she can offer is a medical report. If the medical report says that there are signs of violence in the genital areas, only then it is established as rape. If a woman has two or three children, then it is virtually impossible to prove that it is violence. Under that kind of definition, only a woman who is a virgin can be raped. But there are a number of cases where non-virgin women are also raped. Given the moral pressures in society, most women are extremely reluctant to stand up and say that they have been raped.

SHRI V. KISHORE CHANDRA S.
DEO: I am on the view that custodial rape should be treated differently.

Ms. RADHA KUMAR: Certainly, one should perhaps say that in a case of custodial rape, the mere fact of intercourse should be sufficient to convict the man and you may say that in a custodial rape the man must be given more severe punishment. Afterwards he should not be allowed to be a custodial at all. One could make recommendation of that sort. Once he is convicted, he should lose his job and other things.

SHRI V. KISHORE CHANDRA S.
DEO: About Section 376(2) (a), you said that the police officer should not be confined to the local area. It is very ambiguous whether he is known in that area or not. A policeman for instance commits rape in uniform in any area wherever he is, because the power of a policeman comes from his uniform.

Ms. RADHA KUMAR: Except in the local area where he is well-known, it can be in uniform in any other area.

SHRI V. KISHORE CHANDRA S.
DEO: A policeman in uniform can go to Kerala and commit an offence. Do you think that 'including policeman in uniform' should be better?

Ms. RADHA KUMAR: It should certainly be included.

SHRI LAL K. ADVANI: I am on the same point because this is for the first time a women's organisation pleaded against in camera trial. I think there is a mix up between the first provision relating to publicity and the second provision relating to in camera trial. I can appreciate that publicity of the rape case without mentioning the name of the victim will go to build up social awareness and lead to the kind of changes that are taking place in the society today. But I do not see how dropping this provision about in camera trial is going to help the victim because you have said that you are opposed to in camera trial only because the medication you have suggested is not

legally feasible. You want not only the women's organisations, but even the press should be allowed and the moment the press is allowed, it ceases to be *in camera* trial because through the press the people come to know about it. So '*in camera*' essentially means that it should not be publicised. So, the modification that you are suggesting means total deletion of '*in camera* trial' and you further say that if this modification is not legally tenable, then you want this '*in camera*' provision to be done away with. I do not understand how this is going to help the victim.

Ms. RADHA KUMAR: The cases that have come to light have only come to light because of publicity.

SHRI LAL K. ADVANI: I would like to point out that I fully appreciate the objection taken to a blanket ban on publicity of rape cases. When a rape case, takes place, at that stage we permit publicity and there too, very many have suggested that the name of the victim should not be disclosed and the case should be publicised in order to build up necessary social awareness. But at the trial stage how is it going to help the victim?

Ms. RADHA KUMAR: If the press is not allowed during the '*in camera* trial' then how can we get publicity in that case?

SHRI LAL K. ADVANI: Publicity will help whom? Publicity at the trial stage is likely to adversely affect the victim and the victim would be exposed, which she would not like. I am not able to appreciate how this is going to help the process of social education also.

Ms. RADHA KUMAR: It will help to the extent that supposing a victim is being cross-examined in a way which is brutal, then if there is some publicity on that and some social consciousness has been aroused on that, then we can hope, at least, to change that method of interrogation.

SHRI LAL K. ADVANI: Do you not think that the temptation to get her trial into print would in fact hurt her interest?

Ms. RADHA KUMAR: I do not think so.

SHRI LAL K. ADVANI: I noticed in your Memorandum that you have objected to the provision relating to minimum punishment and you have argued that there should be no minimum punishment. But you did not mention it in the course of your observations. Could you explain it now?

Ms. RADHA KUMAR: Our major objection was really to the punishment itself. We find it was very high and that very few judges would convict people who committed rape when the minimum punishment is 5 to 10 years and in the case of officials 7 to 10 years.

SHRI LAL K. ADVANI: Have you not noticed that the court has the right to give a lesser punishment also? This Bill deals with custodial rape. So, if a man having custody of a woman commits rape, then it requires sterner punishment. That is the rationale of the Bill.

Ms. RADHA KUMAR: That is true, but the point remains that rape cases which actually come for trial are few and far between, particularly in the case of officials committing custodial rape. The punishment has never been particularly high and we think that the Judges are very unlikely to convict the people.

SHRI LAL K. ADVANI: If the law itself provides that if the situation or the circumstances are of such a nature that the court has the authority to give even lesser punishment, what is your objection? Essentially, the law provides that in this particular case when the crime is committed by a policeman or a jail warden or a medical superintendent, he merits higher punishment. But if the Judge

is convicted of the circumstances of the case, he is empowered to give a lesser punishment.

Ms. RADHA KUMAR: In that case what is its utility?

SHRI LAL K. ADVANI: Your suggestion is that it should be extended to all sorts of rapes.

You yourself said that it is on the basis of circumstances that the accused person can prove that he is not guilty. Do you not appreciate that in cases of rape, circumstances are hard or very difficult to prove. The law, therefore, seeks to confine itself to a situation where circumstances are obvious. It is only there that the law seeks to shift the burden from the victim to the accused.

Normally the law provides that the accused is not supposed to be guilty unless proved otherwise.

Do you not think that it is more equitable than wholesale application of this principle to all cases of rape?

Ms. JESSICA MAHADVAN: Brutality is obvious that we forget other things. We are forgetting the mental tension.

SHRI B. IBRAHIM: Please read 111A. "The court shall presume..." Other organisations have suggested that 'shall' should be replaced by 'may'.

Ms. RADHA KUMAR: Then it means that everything has been left to the court. 'Shall' should remain.

SHRI ERA SEZIYAN: Rape of nurses is a common complaint in the hospitals. Do you think that 'L' will apply to all cases—lady doctors, nurses and others?

Ms. RADHA KUMAR: Nurses are often raped by her colleagues and not necessarily by her custodians.

SHRI ERA SEZIYAN: Colleagues can rape 'aya'.

Sub section (g), you want to change. You are putting up new one for mass rape. Is it like gang rape or is it something different?

Ms. RADHA KUMAR: Mass rape refers to the rape of many women. Gang rape is the raping of one woman by two or more persons. Since mass rape is very common it would be useful to have this provision.

SHRI S. W. DHABE: Custodial rape does not include landlords who commit rape in villages on those who are employed in their fields and others. Employer-employee relation may be there. Would you like it to be extended to the landlords?

Ms. RADHA KUMAR: Yes.

SHRI S. W. DHABE: Should death penalty be provided or transportation of life be provided in rape cases?

Ms. RADHA KUMAR: No.

SHRI S. W. DHABE: In your Memorandum you have spoken about rehabilitation. Should there be a legal provision in this regard and also for legal aid in such cases? Will women lawyers help fair trial?

Ms. JESSICA MAHADVAN: We feel there should be legal provision for rehabilitation and legal aid.

As far as your question of lawyer is concerned, it is not necessary that woman lawyer should get the case.

MR. CHAIRMAN: I want a clarification from you. While making a statement with reference to custodial rape, you said that the provision should be extended even to the local area where the policeman resides. I want to bring to your notice that the point made out in law is that the policeman is empowered to exercise his powers under the Police Act in the discharge of his duties. If in the discharge of his duty, he commits custodial rape, it is the misuse of power. If he misuses his power, then only the custodial rape and presumption will arise. In a

case where the woman is under the custody of a police officer, where there is no chance of having marks of violence on the body of the woman or even on the body of the man, it may be very difficult for the woman to prove the guilt against him. In such circumstances, the evidence may not be available. She makes a statement in the court that she has not given her consent and it will be presumed that the consent was not given. Here, you say that a police officer being in uniform or not, even if he commits a rape in his local area, this provision should be made applicable to that case also. I do not think that merely being in uniform or not and committing a rape will come under this provision. What is your view about it?

Ms. RADHA KUMAR: We feel that a policeman even when he is not wearing a uniform does exercise the power. If he commits a rape in his area, it is misuse of the same power. That should also be covered under this provision.

MR. CHAIRMAN: About her past history, you say that the woman should not be asked about all that. The Evidence Act is very clear that the right is given to the court to cross-examine the victim. If that right is taken away, the main object of the criminal law will be defeated. An accused is presumed to be innocent unless he or she is found to be guilty.

Ms. RADHA KUMAR: We are only suggesting two particular situations in which past history should be asked for, that is, in the case of marital rape and prostitutes.

MR. CHAIRMAN: The law is passed regulating the human behaviour in general, not in a few particular cases.

Ms. RADHA KUMAR: But there are general social categories.

MR. CHAIRMAN: About the provision of "in camera" trial, it is to see that the reputation of the victim is protected and that too much publicity of the case is avoided. Sometimes, it happens that it becomes very difficult

for a young lady to get married subsequently; it becomes very difficult for her parents to get her married. So, some protection should be extended to such victims. That is the intention. You are advocating for the deletion of the provision relating to "in camera" trial. You say that without publicity, there will not be any fair trial or there will not be any chance of the accused being convicted. Do you feel whether protection is more essential than conviction?

Ms. RADHA KUMAR: We should not assume that in any case women are going to be raped and they need protection and all that. We consider that if we really get the accused convicted and there are more and more convictions in rape cases, then there will be fewer rapes in future in which case few women would need protection subsequently.

MR. CHAIRMAN: Thank you.

(The witnesses then withdrew)

II—Karmika, New Delhi

Spokesmen:

1. Ms. Urvashi Butalia.
2. Ms. Archana Sant.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

SHRIMATI URVASHI BUTALIA:
Yes.

MR. CHAIRMAN: Would you like to say anything so far as the provisions of the Bill are concerned?

Ms. URVASHI BUTALIA:
You have with you the paper that we have handed over. It gives our ideas. We do not have anything other than the ideas contained in the paper to offer, except a few.

One of them is regarding press censorship which we strongly object to.

The second point is regarding onus of proof which, I feel is a very significant addition that the Law Commission had made and we would like this to be included in the Bill not only as regards custodial rape but as regards other persons also.

MR. CHAIRMAN: What is your suggestion based on the recommendation of the Law Commission?

Ms. URVASHI BUTALIA: Our suggestion is that there should be no ban on publishing either of the proceedings or of the analysis of the rape cases or the name of the victim if she has no objection to the name being published. We say this because we have found through our work in our organisation that a lot of information is given by the Press which moulds public opinion and if this is cut off, we feel that rape cases get no support at all.

As regards *in camera* trial we are opposed to it. We have suggested in our recommendation that there should be a special kind of modified trial for rape cases. This should be treated as a special category and we will be willing to elaborate on that. However, if that is not possible we would opt for an absolutely open trial. We feel that *in camera* trial is open to misuse.

We have many other smaller points.

Victims' past sexual history should not be questioned at all.

The Bill does not speak of minors.

It does not speak of cases "within a family." We feel that it should be included in the Bill.

Any rape is said to be gang rape if it is by more than one person. But here gang rape is said to be rape by three persons. It is open to misuse. It means that if two persons rape a woman, it will not be gang rape. Therefore, we feel that it should be "by more than one person".

There should be speedy trial of rape cases.

We would like immediate registration of medical evidence which the Law Commission had recommended.

We would like women's organisations should be given a lawyer to plead their cases on behalf of the victim.

We would like the victim to be given the right to have a private lawyer.

These are the major points that we have made in our recommendations.

MR. CHAIRMAN: What are your grounds to permit the victim to have a private lawyer?

Ms. URVASHI BUTALIA: We feel that the State lawyer may be indifferent to her case. She may very well be able to put her case a little better with the private lawyer and we feel that if the rapist or the alleged rapist is allowed to engage a private lawyer, we see no reason why the victim should not.

We particularly want to talk about *in camera* trials because we feel they are open to a lot of misuse. When a woman is along in the court room with a male rapist and the male lawyer, not only can they victimise her there but also they do not allow her to get any support

from public. The proceedings of such a trial are not to be published and allowed to be made public.

MR. CHAIRMAN: The Law Commission says that *in camera* trial protects a woman's name.

Ms. URVASHI BUTALIA: We do not agree with that view. It may be true in a Western context but in the Indian context, it is not. If a village woman is raped, everybody knows the incident. It makes no difference whether you hold the trial *in camera* or an open trial. She would be ostracised and *in camera* trial is not going to save her.

Although we do not go in for open trial, we ask for a modified trial where the judge may have the discretion to allow whoever the victim wishes to have with her. It may be members of Women's Organisations or her relatives. In the same way, the rapist may be allowed to have a certain number of persons with him. General public who have absolutely no connection whatsoever with this case should not be allowed inside the court.

If this modified trial is not possible then we are for open trial because we certainly feel that it is important in the Indian context.

SHRI RASA BEHARI BEHERA: Just now you told us of "rape within a family". What do you mean by it?

Ms. URVASHI BUTALIA: "Within family", we mean that very often it does happen that an uncle might rape a niece or a cousin might rape a cousin within the family and that is so much a part of the family set up that they don't want the other to bring it to the court. If the law recognises it, the victim can bring it to the court, but the law as it stands does not recognise this kind of thing and in the Indian context, I would like to stress that this kind of a thing happens very often.

SHRI V. KISHORE CHANDRA S. DEO: You are very particular about *in camera* trial. You said that if hearing is held *in camera*, it may go against the victim.

I do not want to question the integrity of the judiciary here. You said that in the context of India, this will be more suitable. I would say it would act as the other way round. As far as the Indian context is concerned, the society is so close that in a village, if a lady or woman becomes a victim of sexual offence, a social stigma is attached to her in the society. In an European Society too it may happen. The only difference is that here if it happens to an Indian lady, it is not so easy to get her married. The people in the villages are more conservative than those living in cities and towns. Normally, it would be very difficult for a rape victim to get herself married later on because a social stigma is always attached to all her life. Personally I would feel that the publishing of name of the victim alone may not help. But, in the *in camera* proceedings this might give them a sort of protection to the honour of the woman victim in the court. As far as this kind of publicity is concerned, I appreciate your view point. As far as your women's organisation is concerned, the relative of the woman victim should be allowed even the choice whether the trial should be held *in camera* or it should be completely open. You know that actually many cases are not being reported. After all, the stigma is attached to the women for fear that if their name is publicised, they may be condemned for life. In such circumstances, do you think it would be fair, as far as this law is concerned, to have a completely open trial and not to have this provision of having an *in camera* trial at all?

Don't you agree that in such circumstances, cases from middle classes living in villages may not come to

court at all because of this particular fear? What is your view?

Ms. URVASHI BUTALIA: I agree with you when you say that it would be detrimental to apply the law in all cases for an open trial. In any case I was not asking for that. We have only asked for a modified *in camera* trial.

SHRI V. KISHORE CHANDRA S. DEO: You want a modified *in camera* trial.

Ms. URVASHI BUTALIA: Yes, Sir. I also agree that the trial is *in camera* may also work against a woman for fear of her being ostracised and she may be maligned openly. In villages, if such a case occurs, the fact is that the raped woman's name is not hidden. It does not happen in secret.

SHRI V. KISHORE CHANDRA S. DEO: You are right. As far as that village is concerned, people do get to know about that. After all our people are not confined to villages. They may have got their relatives in the villages. Once the name is publicised it would be very difficult for them to have a peaceful life.

Ms. URVASHI BUTALIA: I think there is a slight confusion. We are not recommending or asking for an open trial. What we are saying is that in cases of rape victims, we may want to bring out the names or we may not want to bring out the names. The person who committed the rape on the woman may be her boss in a company or anybody else. The fact, however, is that once a woman is raped, she should have the right of choice whether she wants her case to be conducted in an open court or it should be conducted *in camera*. Anyway both types of trials are open to a lot of misuse. The name of the victim in any case is not hidden. In any case she has the fear of being ostracised. *In camera* trial does not mean protection to woman. It only

means this. You put a sort of censorship on the press by this law that they cannot publish the proceedings if the trials are held *in camera*.

SHRI V. KISHORE CHANDRA S. DEO: If you will read section 238A(1), you will find that it prohibits only publication or disclosure of the identity of the victim.

Ms. URVASHI BUTALIA: What we want is a modified *in camera* trial where the victim or the judge is given the discretion to choose whether she would like the general public to be present or not to be present and whether the police officers who have no connection with this case should be kept out so as to avoid the harassment caused to the victims of rape.

We do not want such a provision in this Bill unless the victim herself desires that. We feel that putting a ban on the press on publication of the name of the victim is one of the most formidable provisions in this Bill. It is in fact the ban on the press to publish the name of the rape victim in a trial that creates a lot of public opinion. In fact the publication of the news of rape case in the press has led to the change of law etc. So, we feel that this provision is really detrimental to the victim's case and so it should be stopped. So, the kind of trial which we are asking for neither *in camera* nor open trial but a modified trial. Under the modified provision in the Bill, the woman victim and judge have the discretion to choose as to which one of the trials they want.

SHRI V. KISHORE CHANDRA S. DEO: As far as Section 111 of the Evidence Act is concerned, you want that that should apply to the case of custodial rape.

Ms. URVASHI BUTALIA: Yes, Sir.

SHRI V. KISHORE CHANDRA S. DEO: Don't you think that there should be some difference in the case

of custodial rape where the victim would be under his physical control and he has full authority over her? Don't you think that there should be some differentiation as between these categories of rapes?

Ms. URVASHI BUTALIA: There are many cases in which the victim is under the authority of the rapist. May be, there may be other people who may be in collusion with the rapist who will not reveal the identity of that person.

SHRI V. KISHORE CHANDRA S. DEO: Don't you think that having such sweeping generalisations would lead to filing of false cases for maligning the character and personality of the person?

Ms. URVASHI BUTALIA: Definitely that danger is there. We have argued and argued among ourselves in order to find a solution. We have finally come to this conclusion. First of all, the victim has to prove that there has been an intercourse. Only then, the onus of proof will lie upon the accused person to disprove it. It all depends on the medical evidence. Medical evidence is an important part of the Law Commission's recommendations. Their recommendation is that the medical evidence should be conducted within the limited time.

SHRI V. KISHORE CHANDRA S. DEO: Don't you think that some differentiation should be made as between a woman who is raped outside the custody and inside the custody? The woman kept in custody can be confined there even beyond a particular period and so she cannot have the medical examination in so short a time. Hence don't you think that some differentiation should be made between the two? Don't you think that when a woman is raped by a specific authority under whose custody she was kept, he should be punished in a heavier manner?

Ms. URVASHI BUTALIA: There are two things involved. Firstly, the onus of proof should apply to every-

body. The discretion is left to the judge. He can use his discretion. Secondly, the punishment given is different. For example, if a rape is committed on the woman by a public servant in his custody, then the punishment may differ.

SHRI L. K. ADVANI: Obviously your comments on the embargo sought to be imposed on publication of the case and subsequent *in camera* trial are both from the point of the Press and also Women's organisation. I think the two need not be mixed up. The purpose of building up public opinion will be served if the first provision is notified, that is, if the embargo is confined to the name of the person. So far as *in camera* trial is concerned I do not know how it is going to help if press is permitted. If Press is permitted then how it is going to help the victim of the rape case? It does not help mobilise public opinion. So, Press should not be permitted in the '*in camera*' trial.

Ms. URVASHI BUTALIA: It will be a dangerous thing for various reasons. There is fundamental right of the Press to publish whatever they wish to. Secondly, when you are doing it in the interest of the victim, then it should be left to the victim to decide whether she wants her name to be published or not. As I submitted a little while ago a city girl may like her name to be published.

SHRI L. K. ADVANI: I feel the first provision need not be mixed up with the latter. The first relates to publicity in regard to the crime and there I feel some protection is necessary but the second about '*in camera*' provision I think that is necessary for fair trial and also the victim. It is not an encroachment on the freedom of the Press. My point is so far as publication is concerned, I am in favour of publicising the case itself, but what about day to day trial proceedings? How are they going to help?

Ms. URVASHI BUTALIA: The proceeding of the trial cannot be pub-

lished. They are *sub-judice*. If you put ban on publishing the proceedings of the trial you put ban on putting any analysis of the proceedings of the trial. If press is positive and our experience is that press has been positive—then this certainly is going to help the victim.

आमता विवातः चतुर्धा : मेरा कहना यह है कि जो हम कवचन करते हैं, उसका जो जबाब वह देना चाहती है, वह हमें सुनना चाहिये। हम इस बात के लिये क्यों प्रेस करते हैं कि जो हम चाहते हैं, वह कहलवायें ? प्रेस करने की जरूरत नहीं होनी चाहिये।

उर्वशी बुटालिया : अगर हम भी ठीक तरह से समझ सकते हैं तो ठीक है, हमें भी लगे कि हम अपनी बात ठीक तरह से समझा जायें। इतना विस्फोट हो रहा है तो अच्छा ही है, कोई बात नहीं है।

SHRI V. KISHORE CHANDRA S. DEO: In what way will Press publicity during cross-examination help the victim?

Ms. URVASHI BUTALIA: As you all know a rape case may take 8-9 years to actually come through. If you put a ban on the proceedings and only after the case is over can you create any public opinion. By that time it is too late.

SHRI V. KISHORE CHANDRA S. DEO: Why are you so particular about proceedings?

Ms. URVASHI BUTALIA: We are not particular about proceedings. One point is that it takes very long. Public sympathy has to be built up over a period of time. Now, let me say this—we are not particular only about the proceedings; we are particular about the role of the Press etc.

SHRI B. IBRAHIM: We have followed your evidence. What type of concrete suggestion would you like to make before the committee?

Ms. URVASHI BUTALIA: Perhaps there can be some time limit.

SHRI B. IBRAHIM: What do you suggest?

Ms. URVASHI BUTALIA: 6 months. We have said this in our recommendation.

SHRI B. IBRAHIM: You have stated that the victim should be permitted to engage a private lawyer. What is the reason for this?

Ms. URVASHI BUTALIA: The reason is this: Even provision of lawyer's assistance by the State may lead to some indifference on his part. He may have a feeling he is only getting paid by the State. Not everybody can engage a lawyer—he does not have the money etc. But all the same, he must have this option. He may have lost his case in the lower court. He may like to go on appeal. This option can be granted. There is no harm. This is a small thing.

SHRI B. IBRAHIM: It has been pointed out to us that the past conduct of the prosecuted person should not be brought in. You also support 111-A. There is the proposed amendment in the Evidence Act. 'Shall' is mandatory. What is the protection or safeguard to the accused to defend himself in this regard, if both the provisions are allowed to be continued?

Ms. URVASHI BUTALIA: It does not depend upon the fact like, whether the woman has been married, like whether she has been raped before, etc. etc. That is utterly immaterial to the facts of her trial. Ours is a semi-permissive society. The court cannot go into past history. If the court is allowed to go into past history, the lawyer for the accused may put all kinds of embarrassing questions relating to past history.

उत्तरका कोई तारलुका ही नहीं है।

I am sorry I cannot find an equivalent English word to express it.

SHRI S. W. DHABE: Under Sec. 327 there is a procedure under Cr. P.C. Power is given to the magistrate to prohibit a particular person. It says, 'public in general'. Press need not be a 'public in general'. There is Criminal trial under Section 228. What is the provision regarding the giving of name before a trial begins and also afterwards? It is said, name should not be there. Under section 327 there can be two kinds of harassment. There is harassment inside the court. 327 is there. May I know whether it contradicts with the freedom of the Press? One point is, how the press will help in getting a fair trial. The other is, harassment inside the court.

Ms. URVASHI BUTALIA: Trial should not be in camera totally. Press may be allowed to publish if they want it, if the victim wants it.

SHRI S. W. DHABE: You say women organisation should be allowed. If somebody says, male organisation should be allowed.

Ms. URVASHI BUTALIA: There is no harm; any social organisation.

SHRI S. W. DHABE: You say, Women's organisation should have the right of appeal, on behalf of the victim. This is far away from our concept of criminal jurisprudence.

SHRI LAL K. ADVANI: A person is murdered. His parents go in appeal. That is different.

Ms. URVASHI BUTALIA: We don't look at rape like murder or theft—it is a sort of inhuman practice. You, fundamental right to your body, as a person—that is affected. This is contrary to basic fundamental rights. As a body, as a person, we feel that kind of person can be prosecuted and

dealt with under the Cr. P. C. Rape is not like robbery or theft.

SHRI S. W. DHABE: You said that investigation should be conducted by voluntary social welfare women's organisations etc. Not by the Police. That is what you say, which types of social welfare organisations? What is the criteria for giving permission?

Ms. URVASHI BUTALIA: What we feel is that the victims should not be harassed. We are not going to harass them whereas the Police may do that. We think that they are not very much interested in these cases. We said that the bonafide social organisations or women's organisation should take up these cases. We do not say that any organisation can do this, Registered Organisations or social welfare organisations, can be given certain powers by the Government for doing this kind of work as it has been done in the case of Dowry Law or so. Something can be done here also.

MR. CHAIRMAN: Thank you.

Ms. URVASHI BUTALIA: We hope you would take this very seriously because we are very serious about it. Thank you.

The Committee then adjourned at 13.00 hours and reconvened again at 15.00 hours)

III—Delhi University

(Faculty of Law) Delhi

Spokesmen:

1. Shri Raghunath V. Kelakar
2. Dr. Upendra Baxi
3. Prof. (Smt.) Lotika Sarkar

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evi-

dence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

What do you want to say on the Bill?

DR. UPENDRA BAXI: We believe that the major problem concerning status, dignity, honour and even survival of Indian women is custodial violence. It is committed by agents of the Indian State as well as by the dominant and vested interests in society. Violence by dominant vested interests in society is perpetrated by threat of rape or molestation or by execution of rape as a measure of terror and intimidation making people gullible in abject submission. This may be done by landlords against women labourers or by high caste Hindus against low caste or by vested interests against SC and ST. Violence by agents of State occurs when public servants use public power and public facilities for personal and private sexual gratification. It includes police stations, hospitals, jails, lunatic asylums, remand homes for women and children, railway stations and other public platforms. And victims of rape include women taken to police stations as suspects or accused or women working in offices and jobs.

The Bill before us is altogether devoid of an adequate perspective of the conception of custodial rape. It recognises that public power can be abused through sexual molestation in Section 375 as now proposed. But it does so, only to the extent of imposing mandatory and deterrent sentences. We believe that deterrent punishment and mandatory punishment may not

be expected to curb or to bring down the dimensions of custodial rape. And the Bill regrettably ignores the suggestions made by the Law Commission, various organisations and by us in our memorandum submitted to the Committee. We believe that adequate provision should find an expression in the Bill which minimises opportunities by public servants to use public places, public facilities and public power for commission of rape and related form of sexual violence.

We appreciate the proposed provisions in Section 376 A, B, C, of the Bill before us. These provisions come under the definition of sexual offences as sort of rape committed by certain categories of public servants in abuse of their power. We have suggested several modifications of language and concept on page 21 of our memorandum. But we want to register our fundamental objection to the underlying idea of this Section 376. This section deals with the idea of sexual offences, whereas Parliament should take into account the more fundamental offence and the offence involved is uncivilised, inhuman and abuse of public power for private gratification. It is an arbitrary exercise of power by custodians of public authority that we think is the essence of the offence. That should find clear enunciation in the proposed section. Corresponding measures for additional punishment etc., should also follow. The offence should not be an abuse of excess of public power using sexual means.

Section 228—A, which deals with the very important problem of premature publicity and undue disclosure of rape victims, seeks to balance in a fair and impartial manner the administration of justice oriented to the honour of the victim of rape and the conflicting interest of freedom of speech and expression. We feel that the section over-balances what is required to be balanced. In other words, we feel that this blanket ban on publicity is a clear violation of the fundamental right of freedom of

speech and expression, which is unreasonable. But we are not placing our objection merely on the hypothetical constitutional ground. The very reason why this Committee is sitting here, the very reason why Parliament thought it fit to draft the Bill, the very reason why this matter was referred to the Law Commission and it was asked to submit its report expeditiously was that the citizens interested in the status of women created and mobilised public opinion against rape. If the section is allowed to stand as it is drafted, it will make it impossible for people to complain if a rape incident is not properly investigated and prosecuted, because it can always be said that it will lead to premature publicity of the victim. So, while we appreciate the importance of avoiding the premature publicity detrimental to the individual victim, we also feel that this provision goes too far. Accordingly, we have suggested an amendment of this provision which will prohibit only where such printing or publication is not made in good faith or in public interest. We believe that our formulation adequately serves the need felt by the legislature.

As regards custodial rape, where the rape is committed by holders of public power, using public facilities, the onus of proof that the woman consented must be on the public servant. By onus of proof we do not mean that the public servant should be held guilty, the conception which now prevails; we do not mean that. By saying that the onus of proof in the first instance should be on the public servant we only mean that the victim should not be made the accused. We have mentioned it in para 27 on page 16.

In para 25 we have made some observations on the admissibility of character evidence of the victim of rape.

These are the broad suggestions which we would highlight, although

our entire memorandum deals with the various aspects of the formulation of the Bill. My colleagues and I deeply appreciate the opportunity given to us for the presentation of our views. We will be very happy if there is time to respond to any of your specific questions.

SHRIMATI LOTIKA SARKAR:

We feel that it is necessary for the sake of women to have women defenders. We have mentioned it on page 3 of our memorandum. I do not think in many cases a woman is in a position to engage a lawyer. In fact, she does not know what her rights are? So, we have suggested that there should be competent persons, who will be known as women defenders to whom the woman can go to know what her rights are.

SHRIMATI GEETA MUKHERJEE:

In your memorandum you have referred to the custodians of the agents of State as well as agents of vested interests. You have suggested some amendment in Section 376A, and given an explanation for Section 375. As far as I can follow, they do not cover the agents of vested interests. Would you like to include vested interests, who now take advantage of the economic dependency? Is there any possibility of that aspect being covered specifically? If so, why you have not indicated and whether you would indicate. This is one question. I have several questions to ask, but I will put them one by one.

DR. UPENDRA BAXI: Mr. Chairman, this is an omission in the Memorandum as we have submitted to this august Committee. We should be happy to make available very shortly a formulation of provision both in relation to Sections 375 and 376 and others also including the definition, and modality of dealing with what we call power rape, this rape as an instrument of political power. We very much regret that this particular

statement is missing in our present memorandum. We appreciate your point and we will send a number of copies of our proposal to your Secretariat.

SHRIMATI GEETA MUKHERJEE:
I would like to know your comments on...

MR. CHAIRMAN: The witness has made a statement with reference to the Report submitted by the Law Commission. Therefore, if you want to refer some paragraphs quoted there, you can do so.

SHRIMATI GEETA MUKHERJEE:
I would like to know two or three things with regard to that. But before that I would like to know your opinion about the definition of 'public servant'. Why I am asking it is because the question which is agitating many people's mind is that people in authority, as for example, political personalities, may be Ministers, M.Ps., M.L.As, and so on and so forth, are not covered under 'public servants', nor can it be said that that is a case of strictly custodial rape. I want to know whether you think that that section of people also should be covered in one way or the other and if so, how it can be covered.

DR. UPENDRA BAXI: Mr. Chairman on this, as you yourself pointed out, there are two components. One is, political people at a certain level are not traditionally comprehended within the legal definition of 'public servant' or if they are comprehended, it remains a matter of legal controversy. The second group of people about whom we have certain confusions or doubts include members of the Central Reserve Police Force and a large number of para-military forces including the BSF, which are often used in situations of civil strife for whatever reasons that civil strike might have arisen. Very often complaints and allegations are made that the activities of these forces have

involved a reign of terror primarily through use of force against women including mass or gang rape. Whether these allegations are true or not is something which we are not always able to determine because the operations of para-military forces—I speak on my own behalf—in this country are regarded as extremely sensitive matters. But in terms of human rights attention needs to be given and in terms of this Bill, the question is whether the definition of 'public servant' comprehends para-military force and should not there be a special provision or set of provisions dealing with allegations of mass rape and others when para-military operations begin in any area, and should there not be a special chapter either in the Penal Code or in other Acts to deal with the situation. We could not reach among the three of us a precise agreement or formulation of the type of legal provisions. But my colleagues and I are very seriously aware of this problem and would like to see that something concrete is being done on this issue as well.

SHRIMATI GEETA MUKHERJEE:
With regard to the investigation stage of this offence, where in fact most of the things get so mixed up and so diluted, it becomes very difficult to convict. As the Law Commission has already recommended, there are a number of things. It is being said that those kinds of things are covered by the already existing provisions of the Criminal Procedure Code. In your opinion what are the things which are not really covered or if covered, only very generally covered, and should be very specifically mentioned? Another thing is medical report. It is one of the things on which the case is based very much. On that if you would make any concrete suggestions, you are welcome to do so.

SHRI RAGHUNATH V. KELKAR:
Mr. Chairman, with your permission I would like to respond so far as this enquiry is concerned. On page 8 of

our Memorandum we have made specific suggestions so that the situations where the women go in police custody could be avoided. We are of the view that really speaking, it is not at all necessary to allow the woman to remain in police custody. Just as in the case of children, the Children Act of 1960 applicable to Union Territories there is a blanket restriction that no child shall be kept in police custody or shall be put in jail, a similar provision is possible in the case of women. Probably there is that awareness also when the State Governments and the administrative agencies issued executive instructions to the police that after sunset and before sunrise normally a woman shall not be arrested. So, that kind of realisation is there, and it is better if we are able to minimise the situations or the opportunities where probably misuse of power is possible. So, such provisions are needed particularly in relation to our rape laws.

SHRIMATI GEETA MUKHERJEE: My specific question is that it is being said that these things are covered by the existing provisions. So, I would like to know your specific answer. In your opinion about whatever is there already, why is it said to be inadequate?

SHRI RAGHUNATH V. KELKAR: As far as I understand the provisions of Criminal Procedure Code, if the accused is arrested, whether he is a man or a woman, he or she can be arrested by the police in the case of cognizable offence. Without any warrant or order of a magistrate when he or she is taken into custody, he or she shall be produced before the magistrate within 24 hours. After that it is to be seen whether to release him or her on bail. Within these 24 hours has the women to remain in police custody or not? That provision is not there. We have made our suggestion that as far as possible the

woman should be released on bail and this provision should be liberalised.

The accused person can be interrogated anywhere, not necessarily she should be in police custody.

MR. CHAIRMAN: Do you mean to say that there should be some provision in the codified law.

SHRI RAGHUNATH V. KLEKAR: Yes, Sir.

PROF. (SMT.) LOTIKA SARKAR: About medical examination, we have suggested that for accused it should be mandatory. At the moment there is no such provision. If we make the medical examination of the victim mandatory, then this will cause further harassment to women.

Law provides that women should not be called to the police station for questioning. Assuming that she wants to go as a complainant. We have mentioned our suggestions in the Memorandum.

Women should not be left in the police station. She may be kept in the women home.

MR. CHAIRMAN: Have you got any instance where the accused person has not been medically examined in the case of rape?

SHRI RAGHUNATH V. KELKAR: In any case there is no provision under which the accused would be compulsorily examined.

MR. CHAIRMAN: As per the existing law the accused is examined by the Medical Officer. But here you propose to make certain mandatory provision. Therefore, I am asking whether you have got any instance where the accused has been left unexamined.

SHRI RAGHUNATH V. KELKAR:
Mathura case.

MR. CHAIRMAN: That is the mistake of the officer. That is a different aspect.

According to my personal experience in every case Investigating Officers are particularly sending the accused for medical examination to judge violence on the accused.

DR. UPENDRA BAXI: We are talking about the situation where the upholders of law are those among the alleged rapists. In such a situation we believe that medical examination of the accused should be made more specific and pointed.

SHRI RAGHUNATH V. KELKAR:
In the Law Commission's Report..

MR. CHAIRMAN: You leave Law Commission's report.

SHRI RAGHUNATH V. KELKAR:
I entirely endorse the recommendation of the Law Commission. In spite of the provision under Section 53 Cr. P.C. still they felt that additional provisions are absolutely necessary. More attention should be paid towards medical examination.

SHRIMATI GEETA MUKHERJEE:
If F.I.R. is not entertained by the Police then it should be made a cognisable offence. There is specific mention of this. Do you think that these things are covered? In your opinion is there a definite necessity of covering it within this law? .

SHRI RAGHUNATH V. KELKAR: If there is a refusal on the part of the Police Officer or neglect on the part of the Police Officer, there is a provision that by registered A/D the high officials of the police can be approached. Some where we have stop.

We have made a suggestion of institutionalising it. If competent women of that spirit are appointed as

public defenders, all these distortions in the working of the procedure will be taken care of.

SHRIMATI GEETA MUKHERJEE:
Apart from Public Prosecutors, do you feel specific necessity of having Public Defenders and all that? Should they find a place in the body of the law itself? If so, why?

PROF. (SMT.) LOTIKA SARKAR:
In paragraph 14, page 13, we have made this point. We must have public defenders. It is for specific cases—dowry, harassment cases and sexual offences.

SHRIMATI GEETA MUKHERJEE:
Lastly, with regard to proof and onus of responsibility, as I understand, you support the provision of Section 111A as it stands. In regard to this, it is being said that if this provision remains, then there is the possibility of its misuse by women who are either of loose character or who want to take revenge. As a counter-measure to that, some suggestions have been made that if any false allegation is made and that is proved, then that should be punishable under the law. I want to know your opinion on that.

PROF. (SMT.) LOTIKA SARKAR:
As regards 111A, firstly, it is only restricted to custodial rape. The question that there will be any type of misuse or abuse in the case of custodial rape is on the other side. As far as the victim is concerned, the question of her being able to prove that it was without her consent has been dealt with very clearly.

Talking about women of loose-character and all that, very often the judges have gone into the past history of the victim. There is another recommendation which we are supporting that under no circumstances should a woman's character or her past history be gone into. Therefore, this question that it can be misused

by a woman of loose character is something which we do not even consider at any point of time.

SHRIMATI GEETA MUKHERJEE: There may be black-mail and all that. That is the argument given by some people.

PROF. (SMT.) LOTIKA SARKAR: As far as I am concerned, I have suggested that 111A should not apply to all cases of rape, but restricted to custodial rape. I believe, it is possible for people in authority to misuse their power. I do not think that this provision will be misused by the victim.

SHRI RAGHUNATH V. KELKAR: By the very nature of the situation, there is no other evidence available. That is why her word alone will indicate that there was no consent. The law is just making a presumption, it is not the proof. So far as misuse part is concerned, any law can be misused. Even the present law can be misused. If it is proved that the woman has given false evidence, she can be prosecuted for giving false evidence. That safeguard is there. There are civil remedies also available for making this kind of an allegation. So, the present safeguards, to my mind, are adequate to take care of that situation.

MR. CHAIRMAN: When you apply presumption in the case of a victim, when she makes a statement in the trial court, the question of presumption in favour of the victim would arise. On the basis of the presumption, whatever the victim has said before the court can be taken as that there was no consent. When a conviction is made on that account, where is the question of giving a false evidence?

SHRI RAGHUNATH V. KELKAR: When it is suggested that it has been misused, it is proved that it has been misused. Otherwise, we will not know that it has been misused.

MR. CHAIRMAN: You have not followed me. You take a case where the victim makes a statement that the consent was not given. On the basis of the medical report, it is incumbent on the part of the magistrate or the judge to presume that no consent was given. If a conviction is based on that, how can you say that it was on the basis of a false evidence? My point is very simple. Giving a false evidence will arise only when the acquittal is given to the accused. In the case where there is conviction, who is there to judge that the evidence was false, that the statement of the victim was false?

SHRI RAGHUNATH V. KELKAR: My submission is, this is only a presumption. In the case of Section 114 of the Evidence Act, several illustrations have been given. One illustration is that if immediately after theft a person is found in possession of stolen property, it shall be presumed that either he is the thief or he is the receiver of stolen property. But that does not necessarily mean that the theft is proved. This law is working quite satisfactorily for a long time.

MR. CHAIRMAN: The illustration of theft and other illustrations given in respect of Section 114 of the Evidence Act are different. Here is a case where an offence has been committed only in the presence of two persons. No other evidence is available. If the court is to entirely rely upon the evidence of the victim and make a presumption in her favour, in the absence of any other evidence to rebut the presumption, what is the other alternative for the accused to safeguard his own interest? I think, you have followed the spirit of my question.

SHRI RAGHUNATH V. KELKAR: I am afraid I have not followed the spirit of your argument.

MR. CHAIRMAN: I can repeat it again because we want more information from you. You are experts. Here according to my understanding, you compared it with the presumption provided under Section 114. But the theft case and the rape case are different. In rape case, we are dealing with a heinous crime. In a theft case, if only some theft material is found in possession of the accused and if the possession is traced by the Investigating Officer, the presumption may arise against the accused person. In the theft case, there will be more chances for rebutting that presumption. In a rape case, only two persons commit an offence and that too in a separate place, not a public place. That is why, court fails to obtain circumstantial evidence to corroborate victim's evidence, at least not for the sake of rule of law but for the sake of rule of jurisprudence, to be cautious about the conviction. In that case, if a lady comes to the court and makes a statement that she has not given her consent to the intercourse, the court may presume that the consent was not given and it may be probably very difficult for the accused to bring other circumstances to rebut their presumption. In that case, conviction may be made. Once the conviction is given, no court will see if the complaint is false or the evidence is false. How do you substantiate this difference?

SHRI RAGHUNATH V. KELKAR: The section itself says that there are two conditions. First is that actually sexual intercourse should be proved.

MR. CHAIRMAN: I say it has been proved. The presumption would arise after the intercourse is proved. If the intercourse is not proved, no presumption would arise.

SHRI RAGHUNATH V. KELKAR: I am just mentioning two aspects. One is that it is in Police Custody and the second aspect is the public place. How

is it that sexual intercourse taken place in the police custody and that too with her consent?

MR. CHAIRMAN: I do not think any separate place is necessary for giving consent.

SHRI RAGHUNATH V. KELKAR: This is my understanding of the situation. No woman will be voluntarily consenting to sexual intercourse while in police custody due to the pressure that has been brought upon her while in police custody.

MR. CHAIRMAN: I can understand that Police Officer using or making use of the Police Station is a different thing. But giving consent in police station is a different proposition.

SHRI RAGHUNATH V. KELKAR: While it is found necessary to make this kind of presumption, if the Police Officer says that the woman was consenting, let him prove it that the woman was consenting. It is absolutely necessary to shift the burden on to the Police or to the accused to prove that there was consent.

SHRIMATI SUSEELA GOPALAN: You have said that the Public Prosecutrix as well as the Police are not reliable. So, some posts should be created for women defenders. Considering the increasing incidence of these cases, will it not be very difficult to find out proper personnel in all these areas? Will it be easier for the victims to find out lawyers and will it not be better for the victims if legal aid is given to them to get their cases argued?

SHRI RAGHUNATH V. KELKAR: This woman defender should be a social worker and she will see to it that all problems of women are, to a large extent, solved and that some assistance is given. Just legal assistance only will not do.

DR. UPENDRA BAXI: Certainly the institution of women defenders is a very novel idea in this country and

I believe that while we have been able to control the infant mortality rate of children, the infant mortality rate of new ideas is frighteningly high. The idea of the women defender system has arisen recently due to the instances of violence against women and is assumed to make a dent in the system of law and in the administration of justice and enforcement of law. But it is basically anti-women and inconsiderate of women. It gives a low status to Indian women in many spheres particularly in rural areas. It cannot have greater claim to give protection to women because it is the constitutional duty of every citizen to give protection to women. Those who run the State are also citizens and, therefore, they are equally duty bound under the Constitution to take measures for protection of women. There are large number of agencies for legal services. There are all kinds of possibilities of devising a rather sound administrative structure under Public Defender's system at a considerably low cost. The institution of Public Defenders is a totally new departure in the administration of law. Some existing agencies and institutions can be reoriented and assigned a specific role to act as institutions of women defenders. There are all kinds of possibilities in this area.

PROF. (SMT.) LOTIKA SARKAR: If I may add a small point to this, Madam, on pages 13 and 14 of our memorandum, we have made this point that there will be legal aid given to these women. We visualise also that once there is this post of a public defender, it will lead, to do something much bigger even in domestic situations. This public defender will be able to help the women who are badly in need of this type of help.

SHRIMATI SUSEELA GOPALAN: Investigation in this case is very important. Do you think that it is advisable to have some legal provi-

sion to connect the social and other organisations to help these women during the investigation stage?

SHRI RAGHUNATH V. KELKAR: I am afraid I will not be able to agree with this suggestion. I do not think that they will be able to make any effective use in the investigation stage of it.

SHRI RASA BEHARI BEHARA: I want to draw your attention to page 3 of the Bill. Section 376(2) says:

"Whoever,—

(a) being a police officer commits rape in the local area to which he is appointed, or in any police station whether or not situated in such local area;"

Should a police officer be in uniform? Local area may mean any area adjoining it. What is your view in this regard?

SHRI RAGHUNATH V. KELKAR: I shall tell you.

MR. CHAIRMAN: Have you any suggestions to make? If you have got any, then say so. Otherwise, you need not go into details.

DR. UPENDRA BAXI: We have commented on this in our memorandum I would like to elaborate on that. On pages 19 and 20 of our memorandum, we have given our suggestions regarding this Bill.

MR. CHAIRMAN: Please leave out the memorandum. We will supply that to our Members. You tell us what you want to say orally. If you make a reference to your memorandum, there will be confusion only. What do you want to say in support of your statement?

DR. UPENDRA BAXI: The question, as I understand it, is whether an officer being a police officer commits rape in the local area to which he is appointed, or in any police sta-

tion whether or not situated in such local area may mean anywhere else. Is that what you want?

My answer to this is: whether the police officer remains in uniform or otherwise is a police officer. Under the Police Act, a police officer is on duty for twenty four hours if I am not mistaken.

SHRI V. KISHORE CHANDRA S. DEO: While referring to the relevant section of the Bill, you rightly mentioned that the rape committed by the officer having custody should be taken into account whether he actually misused his power or authority.

That is what you also discussed with Mrs. Geeta Mukherjee. There may be misuse of political power also while committing this offence. What I would like to know from you is this. As agents of the State, even for economic offences, such a power could be misused by the authorities. There are instances where employers have perpetrated the crime on their employees. Don't you think that they should also be brought within the purview of this section?

DR. UPENDRA BAXI: We must certainly agree with you on that. That is why I say one will have to use additional phraseology amplifying the definition 'public servant' since there will be many in the employ of the public sector undertakings/companies who may also be covered by the definition of 'public servants'.

SHRI V. KISHORE CHANDRA S. DEO: Do you also feel that the landlords in some States who may have a lot of labourers in tea estates both private and public companies can also misuse their power? Hence, don't you think that they should also be brought in here?

DR. UPENDRA BAXI: There should be a specific set of provisions dealing with rape offences. These can be committed by the instrument of social, political or economic power.

MR. CHAIRMAN: You refer to the draft Bill specially the definition section. Under Section 20 of the IPC the definition does not cover all the cases which our learned brothers have quoted. Would you like to suggest that the definition should be widened or do you propose some other provision in the Bill itself?

DR. UPENDRA BAXI: We would like first of all the definition to be widened. Anyone performing his duty as a public servant is either authorised by the States or by the rules covering any public servant. If necessary, we should leave this to the court to decide as to what constitutes a public authority.

MR. CHAIRMAN: Very good.

SHRI LAL K. ADVANI: One is about the power and the other is about one's duty. This Bill confines itself to a public servant who has committed rape on a woman while exercising his power. If we try to enlarge the ambit of the Bill and bring in all concepts of power, perhaps, it will be too large and it will give scope for a debate.

DR. UPENDRA BAXI: Mr. Chairman, I submit that a day will come soon when it will not merely be a question of status of women but of the future of the human rights in India and of the future liberal democracy and it will be beneath the dignity to use physical force against women by various powerful groups. Therefore, I would submit that any controversy would be most welcome. I share the apprehensions that such a controversy may be counter-productive. Even with the limited political consensus that may emerge the present Bill with some further minor modifications might be jeopardised. That is one of the reasons which held us back to our earlier suggestions. So, the formulation of the provision that rape is committed as an instrument of political or social power, I suppose, is counterproductive. This should be avoided. All that we are

doing is to suitably enlarge the conception of public servant.

SHRI LAL K. ADVANI: The most controversial provision is 111A.

MR. CHAIRMAN: You are satisfied with enlargement of this section. I want to ask one question before you go to another point. I will quote an example. Take a case of a Minister. There it is natural that every lady can go and seek redress if there is any grievance. In that case if a Minister is also covered under this definition that you have mentioned now then don't you think there will be apprehension of danger to a Minister who will not be able to entertain ladies thereafter?

DR. UPENDRA BAXI: I can see the possibility of such mis-apprehension on the part of an extremely conscious Minister but by the same token Ministers who are prime public servants should take certain risks that are associated with norms of civilised behaviour which for the dignity of office he must choose to uphold even if there is slight risk. We have a choice to make between embarrassment of a Minister and dignity of a woman.

SHRI LAL K. ADVANI: The Law Commission has recommended 111A which covers all kinds of rapes and the proposed Bill makes a departure and confines it to custodial rape. You have favoured the present set-up of the Bill as it is whereas Mr. Kelkar has said that the words 'shall presume' may be converted to 'may presume' when the woman says that she did not consent. My question is very specific. How would you react to this suggestion that has come to us that instead of having 'shall presume' we may substitute it by 'may presume'?

DR. UPENDRA BAXI: My personal reaction would be that the courts are very often able to say that the word 'shall' consciously used in

the statute shall mean 'may' and vice versa. Whether this would be done in a penal statute would be a subject-matter of construction but we would favour the present formulation.

SHRI RAGHUNATH V. KELKAR: Even in those cases where there is provision that it shall be presumed that does not mean...

SHRI LAL K. ADVANI: That I understand but 'may presume' does not obligate the court to presume. He has to take the totality of the circumstances into account and not merely the fact that the woman says that she did not consent.

SHRI RAGHUNATH V. KELKAR: We are in favour of 'shall presume'.

MR. CHAIRMAN: Please refer to Section 4 of the Evidence Act. There is distinction made between 'shall presume' and 'may presume'. Opinion has come forward to say that there is no scope for discretion of the trial judge in case where word 'shall' appears but in case of 'may' there shall be some discretion given to the trial judge.

SHRI RAGHUNATH V. KELKAR: The difference is one of degree. What we are suggesting is that in case of 'shall presume' the court will not have option to say that you prove it but that does not mean that the options of accused are not open. If it is 'may presume' there will be wider discretion to the court.

MR. CHAIRMAN: You don't want to give wider discretion.

SHRI RAGHUNATH V. KELKAR: Not discretion of that magnitude.

SHRI LAL K. ADVANI: Regarding minimum punishment, you say in your memorandum that 376(2) is justifiable. But in your opening remark, you said it is not correct.

PROF. (SMT.) LOTIKA SARKAR: What we support is in the case of aggravated form of rape. We are totally opposed to minimum punishment. What we said was in regard to aggravated form of rape. There we agree. If I can recollect, 376(2) is aggravated form. There we have said so.

SHRI ERA SEZHIYAN: Blanket ban is there. It is proposed in Section 228(A). You want to substitute the words 'in good faith' or 'public interest'. Identification should not be there; or name of person should not be made public. To that extent you want to give protection to affected person. How does the replacement of the words 'in good faith' help the position?

DR. UPENDRA BAXI: It is a very difficult kind of balancing of conflicting social interests. One who prints or publishes will be accountable. Mass rape has occurred. No FIR is filed. A citizen or journalist takes it up, puts up a story, he demands investigation etc. Such a citizen or journalist will say, I have done it in good faith. He should not be proceeded against.

SHRI ERA SEZHIYAN: Whether you say 'in good faith' or in 'public interest' mischief is done.

DR. UPENDRA BAXI: You have deleterious publicity for pleasure or profit. It can be used as a sort of legislative formulation to make it more concrete. To think of any preventive measure would lead to some kind of precensorship, it will inhibit the articulation of grievances of public citizens in this regard.

SHRI LAL K. ADVANI: Your suggestion is understood. How will it serve the object of this memorandum? The stigma is attached to the lady, to the accused. A paper publishes a photograph. We are doing a public interest they will say.

PROF. (SMT.) LOTIKA SARKAR: The formulation, (as given in the Bill) is extremely wide. You write to the press. They say, we did not mention the name of the identifier.

SHRI LAL K. ADVANI: Many of us are inclined to agree with it.

PROF. (SMT.) LOTIKA SARKAR: If no publication is allowed, cases like Mathura would not have come to light at all. It is possible, indirectly one comes to know. If you have to demonstrate the case, what should be done?

SHRI LAL K. ADVANI: I would not mind if this provision is omitted altogether, if you can suggest some better formulation for it, which can protect the name of the person.

SHRI ERA SEZHIYAN: You can think about it and write to us.

SHRI LAL K. ADVANI: Regarding in camera trial, what have you got to say?

SHRI RAGHUNATH V. KELAKAR: In our memorandum, we have said that it should be at the discretion of the court.

SHRI LAL K. ADVANI: That is already there. You have said it.

SHRI RAGHUNATH V. KELAKAR: We are not in favour of having that mandatory provision that all trials shall be held in camera, unless it is absolutely necessary. Suppose a woman is already dead or murdered, then there is no point in having the trial in camera. Moreover, there may be joint trials also. In that case, the entire thing will be held in camera. Sometimes the guidelines are provided, sometimes the provision is there, but it is not followed by the judges. The changes in the definition of 'rape' have also become necessary, mainly because of judicial failures.

MR. CHAIRMAN: If rape is followed by murder, then the charge will

be of murder and the trial will be for murder. So, the case will be pursued for murder, not for rape.

SHRI RAGHUNATH V. KELKAR: The offender can be tried for both the offences—murder as well as rape.

SHRI RAGHUNATH V. KELAKAR: The discretion as to whether the trial should be held *in camera* or option should be given to the victim.

SHRMATI SUSHEELA GOPALAN: The direction as to whether the trial should be held *in camera* or option should be given to the victim.

SHRIMATI SUSEELA GOPALAN: The discretion as to whether the trial should be held *in camera* or option should be given to the victim.

SHRI RAGHUNATH V. KELAKAR: If the discretion is already there to have a separate trial for rape case, the court can insist that the trial should be held separately.

SHRI ERA SEZHIYAN: In some cases, probably the victim who has been affected may feel more secure if the proceedings are held *in camera*. In open, she may not be able to explain the things securely and clearly. Now, coming to the minimum punishment you are making two distinctions. One is for the aggravated form of rape and the other is for the non-aggravated form of rape. My point is that rape is a rape, whether it is committed in custody or outside. In India, the custodial rape gets publicity. In the rural areas, more number of offences are committed. Why don't you accept a minimum punishment whether it is in aggravated form or in non-aggravated form?

DR. UPENDRA BAXI: We broadly agree that the difficulty is of being applied in penological thought and practice with consistency. Rape certainly is a rape and a victim of a rape is a victim of rape and that is considered. But some say that rape on blind woman or innocent woman or disabled woman is not the same as it

is done on other types of women. The law does not make any social classification of human miseries. Whether protection is given or not, many kinds of rape situations happen and we do have more differential understanding of situations one from the other and the other from the third and that would be able to get a more balanced and effective administration of social control on the law of rape. That is our hypothesis and our understanding. We have to balance the two kinds of approaches.

SHRI ERA SEZHIYAN: Here you have suggested that the punishment should be not less than 7 years and not more than 10 years.

SHRI RAGHUNATH V. KELAKAR: For the offence of rape by a husband on the wife of below 15 years of age, we have suggested the punishment of 7 years. The real problem is in what form the direction should be given to the judges. Whether it should be according to this formulation or another formulation, we are still leaving it to the discretion of the court. So far as the ordinary form of rape is concerned, the discretion should be there and so far as more serious types of rape are concerned, they are to be specifically provided and added here.

SHRI ERA SEZHIYAN: How far is it implemented? Is it necessary that for each district one woman defender should be there to handle this kind of case? How do you visualise this?

DR. UPENDRA BAXI: We visualise an institution to be set up hopefully at the district and Sessions level again hopefully to be a kind of mobile squad or office which will reach the specific locations whenever necessary. It will be a mobile kind of office not only in the headquarters but it will be a kind of institution which would respond to a call anywhere in the district. It is like an institution of affording legal aid to the poorer people.

SHRI S. W. DHABE: Under Section 376, do you want to say that pregnant women, blind women and dumb and deaf women should be added?

SHRI RAGHUNATH V. KELKAR: Yes, we want that they should be added here.

SHRI S. W. DHABE: Don't you think that in view of the Section 376A in the Cr. P.C. Section 111A in the Draft Bill has become redundant?

SHRI RAGHUNATH V. KELKAR: Section 111A in the present Bill deals with the question of rape whereas 376A deals with a new kind of offence. Section 376A makes it absolutely clear that it does not amount to rape whereas Section 111A is dealing with rape. Under Section 376A, you don't even need to prove. There woman's consent must be there. But it is only a misuse of power and authority.

SHRI S. W. DHABE: Now, in regard to the punishment, if it is made 7 years, the matter ends. But some presumption should be there and say that presumption should not be there. But in Police custody, if the public servant commits crime, what would you suggest?

SHRI RAGHUNATH V. KELKAR: In case of rape and that too by a public servant misusing authority, the punishment is a mandatory one, that is, 7 years. While here it is just 5 years and it is a question of gradation of offence. Otherwise, the distinction between rape and non-rape will be obliterated.

SHRI S. W. DHABE: Now, would you suggest that the Women's organisation or any other Social Organisation should be allowed to have the right of appeal in case acquittal takes place in a rape case?

SHRI RAGHUNATH V. KELKAR: Yes. We would definitely like the women's organisations or any other social organisation have the right of appeal in case the accused is acquitted.

I think that anyone who is interested in such cases, should be able to appear as an organisation on behalf of the victim. That is my personal view.

MR. CHAIRMAN: Do you feel that when the punishment in such rape cases is heavy, the standard of proof should also be the highest?

DR. UPENDRA BAXI: Must certainly. If I were judging a situation like this, I would expect the highest standard of proof.

MR. CHAIRMAN: Then my second point is that in cases where officers are involved or persons in authority are involved, without giving power to the magistrate how would you substantiate or reconcile your two statements? At one stage, you say that the word "shall" should be there and at another stage you say that presumption should be provided.

DR. UPENDRA BAXI: Inconsistency is apparent. If it has been proved that a public servant has in fact used his power or the facilities afforded to him to have a sexual intercourse, then the onus of proof that the girl had consented should naturally lie on the public officials from whom we do not expect in the first place this kind of conduct. So, it is consistent with the strictest standards of proof that when the fact of sexual intercourse is proved in such circumstances the public official should account by way of initial discharge of onus of proof as to how this happened. If I were judge, in interpreting their evidence, I will draw no particular presumption that the public servant necessarily did it, because in that case I would not be qualified to be a judge.

MR. CHAIRMAN: Thank you.

DR. UPENDRA BAXI: Thank you.

(The witnesses then withdrew)

IV—Guild of Service, Delhi Branch.

Spokesmen:

1. Smt. Sunanda Bhandare, Advocate, Chairman.
2. Shrimati (Dr.) Razia Doshi, Hony. Secretary.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

MR. CHAIRMAN: You have gone through the Draft Bill. Please give your comments.

SHRIMATI SUNANDA BHANDARE: I have already given a written memorandum. Section 228A—The words "or in any other manner make known publicly" may be added. The purpose of this section is that the name of the person who is assaulted should not be publicised, because more harm is done to the victim than to the other person who committed the crime. If somebody goes and makes a public speech in a particular place and gives the names, it would do greater damage to the victim. So, these words may be added.

In Section 375 in the third description, the words, "or any of her relatives or associates in fear of death or of hurt or of any injury" should be added. It is not always that the

girl herself is threatened. Her relatives or associates are also threatened.

The seventh description in Section 375 may be amended by changing the age from 16 to 18 because the age of marriage has been increased to 18. The same thing applies to the Exception, where also it should be 18.

Section 376(2) deals with stringent punishment for those in public office. There is a feeling that even heads of religious institutions should be included in this, because very often heads of religious institutions misuse their position and assault the women.

As regards the proviso to Section 376(1) and (2), discretion has been given to the judge to award lesser punishment. We feel no discretion should be left to the judge. We find very often the culprit goes away with small punishment and is free to do the same act again. Of course, if a man is convicted and the judge finds that there was in fact some sort of consent and the girl was above 16 but below 18, then some discretion may be given to the judge, but not otherwise.

SHRIMATI (DR.) RAZIA DOSHI: If he is convicted, there should be no discretion. If the judge has some doubt, then it becomes a different issue because there is no conviction.

MR. CHAIRMAN: The question of giving discretion regarding the sentence would arise only if there is sufficient record of evidence to convict the accused. If there are extraneous circumstances where the totality of circumstances exonerate the man from heavy punishment, in that case do you mean that the magistrate should not give lesser sentence?

SHRIMATI SUNANDA BHANDARE: It has become such a big social evil that we are now thinking of deterrent punishment. So, no discretion should be given to the magis-

trate once he concludes that the particular person has committed rape.

MR. CHAIRMAN: Have you read Medical Jurisprudence by Taylor?

SHRIMATI SUNANDA BHAN-DARE: I have read Justice Krishna Ayyar's judgment in which he says that as far as rape is concerned, age is no limitation.

MR. CHAIRMAN: The Committee want to know your views.

SHRIMATI (DR.) RAZIA DOSHI: Our view is that there should not be any limit of age.

SHRIMATI SUNANDA BHAN-DARE: I suggest that Section 354 of the IPC should be amended to make the sentence for five years. This provision is not there in the proposed amendment. We find that it is very difficult to prove a rape. And we find that because the women are biologically weak, advantage is taken by men and they are assaulted in such a way that their modesty is outraged. For a rape offence it is necessary to prove that there is a sexual intercourse. But grave damage is done to her even when she is assaulted. That is why, I suggest amendment to Section 354. I feel that since there is going to be a separate chapter for sexual offences, this section should also be added under that chapter. The sentence in Section 354 is less. I suggest that the sentence should be increased to five years. Since I have suggested amendments to Sections 354 and 354(a), they should be added in the Explanation to Section 327(1) (b) of the Criminal Procedure Code. I also suggest that either the presiding officer hearing the rape trial should be a woman or there should be a jury of four persons where two or more should be women. Then it will be easy for the woman victim to give evidence.

The Law Commission has suggested that the onus should be put on the accused. But this goes against our criminal jurisprudence. We go on the

basis that before a man is convicted, he is assumed to be innocent. So I do not think the onus should be put on the accused. There is also a possibility that a woman may exploit a particular position and an innocent man may be tried. So the same jurisprudence which we have been following should be followed.

On the social aspect I need not say anything since you all know about that.

SHRIMATI GEETA MUKHERJEE: You must have defended some of the rape cases. What is your experience about them?

SHRIMATI SUNANDA BHAN-DARE: I have appeared in a few rape cases. I find that a woman finds it difficult to get legal aid because she is afraid of the social stigma and hesitates to go to a lawyer. Secondly, what happens is that somebody from the family or some associate takes the woman to the police station and a report is made. But in the report several loopholes are left out.

SHRIMATI GEETA MUKHERJEE: Do you have any experience of trial of custodial rape cases?

SHRIMATI SUNANDA BHAN-DARE: I do not have any personal experience of trial of custodial rape cases.

SHRIMATI GEETA MUKHERJEE: Don't you think that many such cases got acquitted?

SHRIMATI SUNANDA BHAN-DARE: Our experience has been, particularly now when women want to go in for jobs and positions, the bosses and higher-ups want to take advantage of their position. So the consent is given almost out of compulsion.

SHRIMATI GEETA MUKHERJEE: I understand your concern about publicity. But in many cases, even if you go to the police for registration of a case, there is possibility that the identity of the person is disclosed to some extent. Do you suggest that there should be some safeguard against this

SHRIMATI SUNANDA BHAN-DARE: It is not possible to have that kind of safeguard. The culprits have got to be caught. When a person commits that type of offence, he is also afraid of the society. He knows that if he is caught, people will talk about him and say that he is a person who has committed such an act and he will be condemned. It is not always that he is left out. The society at least the neighbours, are bound to know it, without making any speeches.

SHRIMATI GEETA MUKHERJEE: Is it not our experience that making speeches sometimes at least forces the authorities to take cognisance of it?

SHRIMATI SUNANDA BHAN-DARE: The identity of the victim should be withheld from the public. Of course, a small group is bound to know about it. The whole story could be published. Only the identity of the person (victim) should not be disclosed.

SHRIMATI SUSEELA GOPALAN: In the case of custodial rape the onus is shifted on to the accused in this Bill. You have suggested that it is not good to shift the onus of proof to the accused. When a woman is in custody it is difficult to prove whether consent has been obtained. In such cases, don't you think it is necessary to shift the onus of proof on to the accused when an intercourse is proved?

SHRIMATI SUNANDA BHAN-DARE: I agree with you that in the case of custodial rape it is difficult to prove. But the shifting of the onus of proof goes completely against our concept of criminology. Then the whole system has to be changed.

SHRIMATI SUSEELA GOPALAN: When we see that these things go against the interests of the people,

then we will have to change the jurisprudence. We have done it in the case of economic offences.

SHRIMATI SUNANDA BHAN-DARE: Would you say that offence of rape is more serious than offence of murder?

SHRIMATI SUSEELA GOPALAN: Of course. In a murder, a woman dies and in a rape, the woman lives. So, there is a vast difference between murder and rape. But I think in a rape case, it is more crucial from the social point of view because the future of a woman living after rape is spoiled. So, her whole life is spoiled. But once a murder is committed, the life is no more.

SHRIMATI (DR.) RAZIA DOSHI: In respect of custodial rape, if rape is proved, the process will be simplified. For that we will have to change the rules because it is easier for the charge to be proved. So, there is no need to presume when there is so much proof that the man is guilty.

श्री हुकमचंद नारयण यादव : श्री आपने कहा कि किसी भी तरह का कोई आदमी यदि महिला का नाम ले कर पब्लिकली लिखता है तो उसे सजा वाले दायरे में ले आना चाहिए। मेरे यहां बिहार में ऐसी घटनाएं घटी हैं कि बहुत सारी गरीब तबके की लड़कियों के साथ मजबूत तबके के आदमियों ने बलात्कार किया और उसमें पुलिस कार्यवाही नहीं कर रही है। इसमें जो सामाजिक और आर्थिक पक्ष है उसके कारण ऐसी घटनाएं होती हैं और उसमें पुलिस कुछ नहीं करती है तब फिर सामाजिक कार्यकर्ता और सामाजिक संस्थाएं आगे आकर ऐसे मामले को उठाती हैं और कहती हैं कि यह सही मामला है और उसमें पुलिस कुछ काम नहीं कर रही है। जब यह मामला सामाजिक रूप से उठाया जाएगा तो

उसमें लड़का का नाम जायेगा। अगर लड़की का नाम जायेगा तो यह नियम फिर सामाजिक कार्यकर्ताओं और सामाजिक संस्थाओं पर भी लागू हो जाएगा और उन्हें भी इस नियम के अन्तर्गत दंडित किया जाएगा।

SHRIMATI SUNANDA BHANDARE: When I say that it should not be made public, I meant only by open public speeches. This does not include giving evidence before a court.

DR. (SHRIMATI RAZIA DOSHI): It is only the name of the woman concerned that should be withheld for obvious reasons. The idea is, to protect the victim we need not give her name. By this, further exploitation will be stopped.

श्रीमती सुनन्दा बण्डारे: डा० एक्यूज्ड का नाम ले सकते हैं कि फलां घादमी को ऐसा किया है।

श्री हुक्मदेव नारायण यादव: सभी उम्र के बारे में कहा कि यह उम्र 16 साल से बढ़ा कर 18 साल कर दी जाए। एक प्रश्न पैदा होता है कि कानून में तो सब बराबर है लेकिन 18 साल की लड़की पर तो कानून लागू हो गया लेकिन अगर 17 साल की लड़की के साथ उसकी कंसेंट से कोई सेक्सुअल इन्टरकोर्स करता है और वह अदालत में जाती है तो उसके क्लेरे में क्या होगा? पुलिस को किसी तरह से पता चल जाए या कोई पुलिस में खबर करे और अदालत में जाकर लड़की बयान करे कि यह मेरी सहमति से हुआ था तो क्या उसे अपराधी नहीं माना जाना चाहिए।

SMT. SUNANDA BHANDARE: When they become major, if they are having sexual intercourse, then we give recognition to it. But I feel that till she is a major she will not be able to make up her mind.

3027 LS—36.

श्री हुक्मदेव नारायण यादव: 18 साल से कम उम्र की लड़की कोई संबंध स्थापित नहीं कर सकती, लेकिन उम्र के हिसाब से उनके लिये छूट है।

श्रीमती सुनन्दा बण्डारे: जिस तरह से 16 साल की उम्र फिक्स की गई है, उसी तरह से 18 साल की उम्र कर देने से कोई फर्क नहीं पड़ेगा। वैसे तो लड़की 13 साल की उम्र में ही इस लायक हो जाती है।

The adolescence age starts even at 13 for a girl. So, could you reduce the age to 13? In western countries girls of 13 or 14 are having sexual intercourse. But those standards cannot be applied in our country where society does not permit this sort of permissiveness.

SHRI ERA SEZHIYAN: This is a Bill to punish people committing rape, and the definition of rape is given here. Section 376 gives punishment to the party. But you have suggested certain amendments to Section 376 where you have omitted the word 'rape' and used other words like 'assaults' etc. Suppose, you want to define 'rape', it is a different thing. But you try to introduce some other concepts and give punishment.

SHRIMATI SUNANDA BHANDARE: That is why when I read out my amendments, initially I have stated that 'rape' mentioned in Section 354 is actually not a rape because it is very difficult to prove rape and if a woman is assaulted or her modesty is assaulted, I think it is also a sexual offence which should be condemned. For example, if an intercourse is not there but she has been so badly assaulted, Section 354 is already there in the Penal Code. I only want it to be included in the chapter on sexual offences.

SHRI S. W. DHABE: You said that 'in camera' proceedings should not be published. Will it include even the judgments of the courts?

SHRIMATI SUNANDA BHAN-DARE: Even the judgment should not be published without the permission of the court.

SHRI S. W. DHABE: How will it help the cause?

SHRIMATI SUNANDA BHAN-DARE: If the Judge does not mention the name, then the judgment can be published.

SHRI S. W. DHABE: It is said that the names of the victims should not be published.

SHRIMATI SUNANDA BHAN-DARE: Yes, without the name the report can be published.

SHRI B. IBRAHEM: I would like to know whether the past conduct of the prosecutrix should be allowed to be asked in the cross-examination or

not because the Law Commission has recommended that it should not be asked.

SHRIMATI SUNANDA BHAN-DARE: I think this is a very outdated question because we have reached a stage where we find that in other parts of the world also people are saying that even a wife cannot be raped by her husband, and even a prostitute cannot be raped by any one. So, her past conduct has nothing to do with the case.

SHRI B. IBRAHEM: As per the present law, it should not be allowed.

SHRIMATI SUNANDA BHAN-DARE: It should not weigh with the Judge to come to the conclusion on whether she was raped or not because as I said, sex can be only voluntary, it cannot be by compulsion.

MR. CHAIRMAN: Thank you, Madam.

(The witnesses then withdrew)

MR. CHAIRMAN: We will meet tomorrow at 11 O'clock.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE CRIMINAL LAW
(AMENDMENT) BILL, 1960

Tuesday, the 3rd November, 1961 from 11.45 to 13.45 hours and again from
15.00 to 17.45 hours in Parliament House Annex, New Delhi.

PRESENT

Shri D. K. Naikar—Chairman

MEMBERS

Lok Sabha

2. Shri Rasa Behari Behra
3. Shrimati Gurbrinder Kaur Brar
4. Shrimati Vidyavati Chaturvedi
5. Shri V. Kishore Chandra S. Deo
6. Shrimati Suseela Gopalan
7. Shrimati Madhuri Singh
8. Shrimati Geeta Mukherjee
9. Shri K. S. Narayana
10. Shri Qazi Saleem
11. Prof. Nirmala Kumari Shaktawat
12. Shri S. Singarvalival
13. Shri Trilok Chand
14. Shri V. S. Vijaraghavan
15. Shri P. Venkatasubbaiah

Rajya Sabha

16. Shri Lal K. Advani
17. Shri Ramchandra Bharadwaj
18. Shri Amarprosad Chakraborty
19. Shri S. W. Dhabe
20. Shri B. Ibrahim
21. Shri Dhuleshwar Meena
22. Shri V. P. Munusamy
23. Shri Era Sezhiyan
24. Shri Hukmdeo Narayan Yadav

SECRETARIAT

Shri Ram Kishore—Senior Legislative Committee Officer

Legislative Counsel

Shrimati V. S. Rama Devi—Joint Secretary and Legislative Counsel

Dr. Reghbir Singh—Assistant Legislative Counsel

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS

Shri S. V. Sharan—Joint Secretary

WITNESSES EXAMINED

I. Shri K. F. Rustamji, Ex-Secretary, Government of India and Member Police Commission

II. All India Co-ordination Committee of Working Women, New Delhi (Centre of Indian Trade Union)

Spokesmen:

1. Kumari R. Vaigai
2. Shrimati Kitty Menon
3. Shrimati Brinda Karat

III. National Federation of Indian Women, New Delhi

Spokesmen:

1. Shrimati Vimla Farooqi
2. Shrimati Man Mohini Sahgal
3. Shrimati Primla Loomba

IV. Shri Ram Jethmalani, M.P.

V. Shri C. R. Irani, Chairman, Press Freedom Sub-Committee, The Indian and Eastern Newspaper Society, New Delhi

VI. Shrimati Shyamala Pappu, Senior Advocate, Supreme Court of India

VII. (a) Delhi Administration, Delhi

1. Shri D. K. Das, IAS, Secretary (Home)
2. Shri Lokeshwar Prasad, Secretary (Law and Judicial)

(b) Government of Tamil Nadu, Madras

Spokesmen:

1. Thiru S. Vadivelu, Secretary to Government (Law, Department)
2. Thiru K. Chockalingam, Second Secretary-cum-Home Secretary

I—Shri K. M. Rustamji.

Ex-Secretary, Government of India and Member Police Commission

(The witness was called in and he took his seat).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

“58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence

shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.”

Please introduce yourself to this Committee.

SHRI K. F. RUSTAMJI: My name is Rustamji. I was associated with the Police Department for the last 40 years. I retired in 1976 from the Government of India. I spent two years as Secretary in the Home Ministry and, after that, I was a Member of the National Police Commission and I left the Commission just a few months ago.

I wonder whether you would like me to give my general impressions first. Then I come to the various Clauses of the Bill.

MR. CHAIRMAN: You might have gone through the draft Bill. In that case, what are your comments?

SHRI K. F. RUSTAMJI: Kindly see Section 228A. Now, in this Clause it is assumed that in all probability the victim or the complainant wants privacy. But, supposing she wants publicity, is there any Clause which permits publicity? If she goes to the Press, it cannot help because the law forbids it from publishing her name. Therefore, I would suggest that in this Clause, there must be something that would protect the interests of the woman in case she herself wants publicity.

I would say that there are certain points in the case of rape which have not received attention in this Bill. One of the most important points is the First Information Report in the Police Station. That comes at a time when the woman has gone through a very traumatic experience. She has suffered a great deal. She suffers from a sense of shame and defflement. It is a very very traumatic experience that she passes through in the first few hours after rape. It is in those hours that she is taken to the police station for giving report. At that time, she will be incoherent, weeping, terribly affected and, therefore, you cannot depend on her not to introduce those contradictions in the FIR which will damage the case

for good. What can be done to prevent this? I submit that the report of rape must be recorded in camera in police station. It should be recorded in the presence of two women witnesses and, as far as possible, every effort should be made to console and to help the girl to recover from that sickness with which she is afflicted with at that time.

Another traumatic experience for her is the medical examination. Here again, she is taken to a hospital publicly where a large number of people would be present, people assembled to put pressure on her and so once again there must be protection for the woman introduced at the medical examination stage.

This is one of the most troublesome periods for any woman that in cross-examination in court she is subjected to every possible indignity and insult. The defence lawyer tries to make out that the case is because of her immorality, that she did not struggle enough, that she did not resist enough and in the course of cross-examination, he wounds the woman and gets from her some statement which goes against the case. What is the protection that she gets in law? One thing is certain that until we give the woman the right to defend herself in some way in a court in an adequate manner against insult and injury inflicted on her by the defence lawyer, we will not be able to give her adequate protection.

Lastly, from the women's point of view, the most important point is that when she has lost her reputation or when she has been subjected to every possible indignity, the question of compensation to her does not figure in the law. I shall give you an instance. In a case that occurred recently in Bombay three rich hoodlums went to a house of a singer and raped her. They were the rich people whereas she is a poor girl. Why can-

not the rich people who have committed this insult and indignity on her compensate her for this damage that they had caused her? So, I would strongly urge that some type of modern concept of victimology must be introduced into this. Otherwise all this would remain only a piece of paper. I shall show you how it is very difficult to enforce the law. After all, the aim of the women's organisation as it is to-day is not only to raise the status of women but it has also to give her some economic independence. If that is the case then the person who is a victim of man's lust certainly deserves some type of compensation.

May I now refer to Section 375? In the second sub-clause, if the words 'without her free and voluntary consent' are added, these have a very wide definition. 'Free' when used in connection with the 'will' may be anything. For instance, if a woman remains in a hospital, she is restricted and cannot exercise her free will in someone else's place. She is under some control. This is an unconventional form. For instance, free and voluntary consent would include this also. The girl may say that she did not give free consent because she was afraid at that time. She may fight it out. Would that amount to free and voluntary consent? Would it not go against this clause? So, even a slight twist in a conversation can become actionable under the law. Secondly, the words 'voluntary acting with the willingness' in modern terminology has assumed wide connotations. It implies also some element of volunteering. For instance she might say that she was made passionate and she was raped. So, in keeping this free and voluntary consent clause or in introducing that into the Bill, we are only placing a weapon in the hands of the police which can be easily misused. If, for instance, a girl says that it was against her will and she did not give her free and voluntary consent, anyone can take it as true. But,

would it be rape? Under the definition of free and voluntary consent, it would be easy for anybody to twist the normal conversation and say that rape was committed.

I now take you to 'Thirdly'. The new words added are or of any injury or by criminal intimidation as defined in Section 503 of the I.P.C. Sir, the word 'any' has a very wide connotation. It is completely undefined. It is completely unrestricted. You have introduced this word which can be twisted and termed in whatever way you wish. Secondly, the word 'injury' as defined in the I.P.C. means 'harm caused illegally'. But, that harm could be 'hurt or damage to impair to do wrong'. And that wrong can be done to the person. Here again the word 'any' is wide enough and injury is still wider and you will not be able to say whether the offence is committed or not because of this word 'any'. It can be given a different interpretation and so it would be very easy to make out a case of rape against anybody. Take for instance this. The girl says 'let us do it'. The boy may say 'let us do it; if not, I will harm you'. It is not a consent. That amounts to rape. Because you have widened the definition so much that any ordinary conversation between a man and woman can be interpreted as 'not free and voluntary consent'. Next there is a clause. Section 503 of I.P.C. defines what is 'criminal intimidation'. This is such a dangerous section. When I was in Madhya Pradesh, I had issued an order that nobody would be prosecuted under this section without the approval of the Superintendent of Police. You can see how wide the terminology is 'whoever threatened another with any injury to his person'. 'Any injury' is a very wide term causing harm to the woman's reputation itself. It amounts to an alarm or to cause that person to do any act who is not legally bound to do or deemed to do any act which the person is legally not entitled to do. Such a

section in the Bill is so wide that even if a man appears to pull the hair of the girl, it would amount to rape. I have no comments to the 'fourthly' and 'fifthly' under Section 375. The word 'mis-conception' has been introduced. I am not sure what the legal definition of misconception would be. But, in ordinary parlance, it means a wrong conception or a wrong idea, the opposite of a right idea. It is not fit or suitable or not appropriate. Shall we say it is erroneous. If a man says that he will marry her if she agrees to have a sexual intercourse with him, then she can report the rape. The man says you will become rich and induces her to have sexual intercourse, she does not become rich, it is done under a misconception. He says, I will take you to Kashmir, he does not take her to Kashmir, it is a misconception. Mis-conception can be brought about in so many ways. I don't want to elaborate more. Ordinary conversation between man and woman can be distorted to mean rape.

MR. CHAIRMAN: 'Misconception' is defined in IPC. 'Consent' is also defined. Can you cite instances how this is interpreted?

SHRI K. F. RUSTOMJI: Take an instance: A woman consumes liquor and is also raped. It can't be said, she is raped. She is under intoxication. One can understand the type of misuse that could be indulged in by the Police. One can put in a bottle of alcohol in a hotel room, it is very difficult for the person to say it is not a rape. The way it is put, it is very wide and it will disrupt normal relationship of man and woman in society. Instead of protecting women, you will find she becomes the real victim. It should not happen.

Then, you have put the provision, 15 years of age. Now, the law relating to marriage is not enforceable in this country. In Rajasthan and other places marriage is done at 11 or 12

or 13 years of age. On one side you say, 18 is marriage age, on the other hand you say, women not being under 15 years of age.

MR. CHAIRMAN: What is your suggestion?

SHRI K. F. RUSTOMJI: If a woman is married I would be very reluctant to introduce any concept of rape in that marriage. Number one. Conditions are such that instead of protecting the women, you will expose her to the ridicule of friends and relatives. This is what happens. Regarding statistics of rape in India we have got the figures: 1977, 4005, 1978, 4558, 1979 4290, 1980, 4215.—Of course these figures alone do not give a correct picture of rape incidents in the country. Rape cases are not reported very often. In USA one out of 10 cases gets reported. In India the figure would be double or even more. It always happens. Of course, rape is not common in India as in the west, it is because of our culture, our tradition and way of life. Jack the Rippler is not something common to India. One other cause for comparable reduction of rape cases in our country compared to some of the western countries may be the overcrowding in our cities. Now, in this provision, a presumption has been made that large number of offences have been committed by police officers, by public servants (that includes Army also), by persons concerned with Jail, people concerned with the management or staff of the hospital and so on. It is true that a few months ago a certain number of cases came together of rape in police custody and, therefore, the presumption was drawn that in the army in the police and in other forces or in jails and so on rape is very common. I think we should base our conclusion on some reliable data. What is the data that has been collected to say that this is correct? I agree that this section should give the maximum possible punishment to anybody in this category who is indifferent to the

usage of a good life. There is a great possibility of this section being mis-used in insurgency area where already you find that the charge of rape is made very commonly against army, police and other personnel with the intention of impairing any action that they may want to take. A few months ago, there were mass charges in this connection in the North Eastern region. Similarly, wherever army action or police action is in force in a big way, this type of charges are there. So, if we put a section in the law which presumes that most police officers are rapists and also define the local area to which he is posted, it means that a man of the BSF who is an All India Service is liable for action under this section throughout India. Then you take a case in which a woman takes out-door treatment at a hospital and sexual relation with the doctor of that hospital. He can be prosecuted under this section. You have given wide powers under this section. It would be very difficult for the doctor to say that it was a normal thing without any notion of seduction at all in it. I venture to think that this section is based on the assumption that there is a large amount of rape committed by police officers in police stations. In most of the city police stations there is no room where a rape can be committed. In Delhi Police Stations, there is a possibility of the rape being committed but the number of such cases is rather extremely few. In the United States where the black and white question has become so complicated, it is also connected with rape. That type of proposition definitely does not exist in India. If you want to make sure that police stations are to be protected, there are many other easy methods for doing it. One of them is that no woman should be arrested at night. But normally speaking the law should be such that women should be kept in custody in very exceptional cases, and in those exceptional cases, you must have an arrangement where always two women police officers

should be present so that their protection may be ensured. Then it is necessary to define the words 'seduce' and the 'custody of public servant'. It may be that a person is released on bail and an interpretation could be made that he is in custody. Then you define authority, control and treatment in hospitals. It might be easier to use the law carefully. In large cities like Bombay or Delhi the number of rape cases is usually about 50 or 60 as against 30,000. The data on which this thinking has been based is inadequate. Let us get answers to those questions which are important, for instances, how many rapes are committed in the society. It is not registered. Is it necessary to impose conditions on reporting, registration, protection of the women in courts and so on? These are all tied up in the same question to which I give whole-hearted support, and that is the protection for the upliftment of the women.

Section 111A gives very wide powers to women of easy virtue who want to blackmail others and who are bent on undoing another political rival, defaming his son or doing damage to somebody in society because of the powers they possess. I would be extremely careful in applying a section of this type.

In camera trial is not enough unless the woman is protected in cross-examination and unless *in camera* trial is extended to police station and hospital.

In the statement of objects and reasons, it is said: "unless it is real and given out of free choice". This is a new concept that is introduced, which is not in the Bill. Consent, approval, etc. are all right. But choice makes it a different proposition as if she is choosing from three or four. This is a minor error which can be corrected.

श्रीमती विद्यावती शर्मादेवी : मैं केवल यह जानना चाहूंगी कि 375(7) में जो प्रायु दी हुई है, वह 16 साल है। क्या आप यह समझते हैं कि यह उम्र इतनी ही रखनी चाहिये या मॅरिज एक्ट और दूसरे कानूनों में जो 18 साल की उम्र दी हुई है, उतना कर दिया जाये। मेरे कहने का मतलब यह है कि 16 साल से कम को अगर कोई लड़की है, और चाहे उस की सम्मति हो या न हो, कोई उस के साथ संभोग करता है, तो वह अपराधी माना जायेगा। यह जो 16 साल से कम उम्र दी हुई है, वह इतनी ही रहनी चाहिये या इस को बढ़ा कर 18 वर्ष कर देना चाहिये ?

श्री के०एफ० रुस्तमजी : मेरी राय में 16 ही रहनी चाहिये क्योंकि प्राजकल बच्चियां जल्दी मेथ्योर हो जाती हैं।

मैं एक बात और बता दू कि आप के मध्य प्रदेश में जहाँ से आप आती हैं, सब से ज्यादा रजिस्ट्रेशन रैप केसेज का होता है। वहाँ पर जो रजिस्ट्रेशन है और वहाँ के अफिस में आप को बताऊ तो 1977 में 766 रैप केसेज का रजिस्ट्रेशन हुआ। उस के बाद के वर्षों में वह 858, 790 और 836 है।

It is not because rape is very common in Madhya Pradesh because it is free-ly registered.

SHRIMATI GEETA MUKHERJEE:
Are you aware of a circular by the I.G., Madhya Pradesh with regard to police behaviour during Assembly session?

SHRI K. F. RUSTOMJI: I am aware of it. It was a very stupid circular issued without understanding its implications. I agree it was a very wrong thing to do.

श्रीमती विद्यावती शर्मादेवी : आप मध्य प्रदेश में आई० जी० रहे हैं। मैं यह जानना चाहूंगी कि मध्य प्रदेश में जो इतने ज्यादा रैप केसेज होते हैं, उन को रोकने के लिये क्या प्रावधान कर सकते हैं ?

श्री के०एफ० रुस्तमजी : रैप के केसेज सब जगहों पर होते हैं लेकिन मैं में यह बताया था कि वहाँ पर उन केसेज का रजिस्ट्रेशन सब से ज्यादा होता है। कोई पुलिस स्टेशन पर जाने के लिये और रिपोर्ट दर्ज कराने के लिये डरता नहीं है।

श्री काजी सलीम : आप ने यह बताया था कि जिस तरह का इन इन कैंसेरा ट्रायल दिया जाता है, उस का फायदा औरतों को नहीं मिलता जब तक कि फर्स्ट इन्फर्मेशन रिपोर्ट और क्रोस एग्जामिनेशन उन के लिये फायदेमंद नहीं बनायेंगे लेकिन आप इस तरह से सोचिये कि अगर कोई औरत बीड करेक्टर की है और उस के लिये क्रोस एग्जामिनेशन पर पाबन्दी हम लगाते हैं, उस को एनएचमिसिबिल आप करना चाहते हैं, तो क्या इस से जैकमेस के चांसेज नहीं बंद आयेंगे ?

श्री के०एफ० रुस्तमजी : मेरा मतलब यह नहीं था कि क्रोस एग्जामिनेशन बिल्कुल बन्द कर दिया जाये। मेरे कहने का मतलब यह था कि जहाँ पर औरत के ऊपर नाजायज तरीके से वदाब डाला जा रहा है या डराया जा रहा है या कोई ऐसी बात कहने के लिये मजबूर किया जा रहा है जिस से वह केस उस के एग्जिस्ट चला जाये, तब कोर्ट को इन्टरवीन करना चाहिये।

श्री काजी सलीम : कोर्ट को इन्टर-वीन करने का हक तो सब जी है।

SHRI K. F. RUSTAMJI: I agree that we cannot restrict cross-examination completely. We should give maximum latitude to the court.

श्री काजी सलीम : एक और बात बताइए । मिसकन्सेप्शन का बर्ड जो इस्तेमाल किया गया है, इस से कोई कांस्प्लिकेशन हो सकता है ? अगर कोई आदमी यह कहता है कि मैं इतने पैसे दूंगा और बाद में वह मुकर जाये, तो ऐसे केसेज भी क्या रेप के केसेज में आएंगे । कोई यह कह कर कि मैं शराब पिनाऊंगा या काश्मीर ले जाऊंगा और फिर रेप करता है, तो ऐसे केसेज को भी आप रेप केसेज मानेंगे ? क्या हम यह नहीं कर सकते कि कुछ एग्जाम्पिल्स दे दे और यह कह दें कि मिसकन्सेप्शन इस तरह के केसेज में माना जायेगा ?

श्री काजी सलीम : इस तरह से जो लोग लालच देते हैं वह भी रेप में आ जायेगा तो उसके मुताबिक मैं समझता हूँ कि आपका मकसद निकल जाता है ।

श्री के० एफ० रूस्तमजी : मिसकन्सेप्शन एक ऐसा टर्म है, जिसका आप चाहे जो मतलब निकाल सकते हैं, इसलिये बेहतर यही होगा कि इस लब्ज को ही निकाल दें ।

श्री काजी सलीम : अगर कोई लड़की कम उम्र की है अर्थात् अभी जवान नहीं हुई है तो उसके साथ यदि कोई ऐसा काम करता है तो उसको किस श्रेणी में रखेंगे ?

श्री के० एफ० रूस्तमजी : वह तो नाजायज है ही ।

श्री त्रिलोक चन्द : रूस्तम जी, आपका बहुत अनुभव रहा है और आपने

जो मेमोरेण्डम दिया है वह बहुत छोटा परन्तु गंभीर है और उससे आपने यह महसूस कराया है कि अगर वह बिल पास हो गया तो ला एण्ड आर्डर की स्थिति बहुत खराब होने की आशा है । आज जो कठिनाइयाँ हैं वे और भी बढ़ जाएंगी । पावर्स का मिसयूज होगा तो आपका मतलब यह है कि पुराना जो नियम बना हुआ है वह ठीक है अगर उसका इम्प्लीमेंटेशन ठीक हो ?

श्री के० एफ० रूस्तमजी : पुराने ला में परिवर्तन की जरूरत है लेकिन मूल डेफिनेशन जो है, 375 जैसा है—

It is a time tested law. I would say that the old Section 375 was more or less adequate with very few changes required, certainly not wide changes like criminal intimidation, etc.

SHRI AMARPROSAD CHAKRABORTY: Regarding section 228A you have said that only if the girl desires, the news should be published. Otherwise you support complete ban on printing of such news by the press.

SHRI K. F. RUSTAMJI: Yes.

SHRI AMARPROSAD CHAKRABORTY: Would you not think that it would curtail the freedom of the press? Secondly, would you not think that by publishing such a news a good clue is given to the police to go into the matter? Thirdly, if the victim after rape is murdered, in that case, don't you think that the publication of the news will be very much useful to expose the accused for the benefit of the society?

SHRI K. F. RUSTAMJI: You have mentioned about murder and rape. Murder being a bigger offence, this section cannot be attracted there. So the case can be published. I feel that a restriction on the publication in the

interest of the girl is essential. But where the victim feels that the case would be suppressed or proper action would not be taken, she can appeal to the court for permission to publish the case.

SHRI AMARPROSAD CHAKRA-BORTY: No girl would like to do that. Then would it be useful to add a proviso here?

SHRI K. F. RUSTAMJI: It will apply in the case of a modern girl who is capable of thinking for herself wants to find her way as aggressively as possible and feels that the society has not treated her properly. Only a new type of woman will benefit from such a provision.

SHRI AMARPROSAD CHAKRA-BORTY: You are aware of the provisions of the Evidence Act. Section 146 gives the right of lawful cross-examination. Sections 150, 151 and 152 give the discretion to the court. If a lawyer puts any irrelevant questions the court can stop him from doing that. In view of that, don't you think that cross-examination is necessary.

SHRI K. F. RUSTAMJI: It is necessary. But thrusting views on her which are contrary to what she holds, should be barred.

SHRI AMARPROSAD CHAKRA-BORTY: In a criminal offence all the past cases are referred to prove the veracity. Section 155(4) gives the right to find out the truth. When the court has the power to stop a lawyer from putting irrelevant questions, would adding of that section be all right?

SHRI K. F. RUSTAMJI: Unfortunately, the court does not exercise that power adequately. If the girl is of 10 or 11 and to put her in such a dilemma that she cannot think as to what is the right answer to such a

question, in such a case there should be some law to protect her.

SHRI AMARPROSAD CHAKRA-BORTY: Since criminal intimidation has been defined, would you say that the other things are redundant? Would it be sufficient if we only mention Section 503?

SHRI K. F. RUSTAMJI: Even section 503 gives a wide definition, which makes any injury redundant. But we should take another look at whether we can reduce some of the implications of Section 503.

SHRI AMARPROSAD CHAKRA-BORTY: In your long experience, can you cite some cases of misconception of facts? Do you think any other term would be better?

SHRI K. F. RUSTAMJI: At the moment I have not been able to understand what type of illustration is required. If it is a question of misconception, it does not figure in the present law. One cannot say that there are any cases in which, this has occurred. If there is any other suitable word that can replace "misconception" that would be better.

SHRI AMARPROSAD CHAKRA-BORTY: Suppose we say "mistake of facts"?

SHRI K. F. RUSTAMJI: It would mean the same thing.

SHRI V. KISHORE CHANDRA S. DEO: You have stated that because of our cultural heritage, the magnitude of the number of rapes is not as great as in the western countries. You have also referred to the conflict between blacks and whites in America, which does not exist in India. But, don't you think that the caste system has something to do with this? Has not the onslaught of higher castes on the weaker sections resulted in instances of mass rapes? It should be nipped in the bud so that it may not take a greater dimension. What is your opinion?

SHRI K. F. RUSTAMJI: You are absolutely right because of the trend that is appearing. But, in many cases of caste war and caste deceptions rape has not been common. It is very uncommon. But it is something we have to guard against. As bitterness increases, there may be a tendency to hit the other caste by defiling their women. That is a possibility.

SHRI V. KISHORE CHANDRA S. DEO: Regarding publicity, I agree with you. You had objected to the use of words like "free and voluntary". Would you like these to be deleted or amended? What are your concrete proposals?

SHRI K. F. RUSTAMJI: As far as possible, we should retain the old definition of Section 375 with minor modifications that we want to make.

SHRI V. KISHORE CHANDRA S. DEO: Regarding marital rape you said that the age should be increased to 18. But the Marriage Act applies only to Hindus, and not to Muslims or Christians. We cannot make an Act which applies only to one particular community. In that case, marital rape should be completely excluded from the purview of this Bill.

SHRI K. F. RUSTAMJI: This is a very dangerous ground for any type of appeals, court trial or investigation. If it can be 15 years, it can be 18 years also.

SHRI V. KISHORE CHANDRA S. DEO: You were very particular about a change in the presumption clause in the Evidence Act. You have said that the rapes which occur in police station or police custody are not large in number. Here we are not concerned with the quantity, but the fact that the custodians of law, who are supposed to protect women, they are violating the law. So, the offence is more heinous.

SHRI K. F. RUSTAMJI: I am not sure about the provision. If it says that the court shall presume she did not consent, does it mean that the defence cannot lead evidence?

SHRI V. KISHORE CHANDRA S. DEO: It is up to the accused to disprove it. The court shall presume unless it is proved against. When a rape takes place in a police lock up, it is very difficult for the woman to provide circumstantial evidence. It is a very grave and serious offence.

SHRI K. F. RUSTAMJI: Can we restrict it to such cases? At the moment it will apply to all rape cases.

SHRI V. KISHORE CHANDRA S. DEO: It will apply only to custodial rape.

SHRI K. F. RUSTAMJI: The term "custodial rape" is so wide. So many classes of people would be concerned with it.

SHRI V. KISHORE CHANDRA S. DEO: You have suggested a change in the system of medical examination. What is your proposal?

SHRI K. F. RUSTAMJI: I have a feeling that first of all it should be done by somebody who is preferably a woman doctor. Secondly, it should be done under conditions which give the girl a feeling of secrecy and security.

SHRI V. KISHORE CHANDRA S. DEO: Do you think that the girl should be consulted as to which doctor should examine her?

SHRI K. F. RUSTAMJI: That is not possible because she will not know who is a better doctor. As far as it is possible, it should be done by a woman doctor and with secrecy.

SHRI V. KISHORE CHANDRA S. DEO: When women are kept in police stations, they can hire women as witnesses. That is a very dangerous thing.

SHRI K. F. RUSTAMJI: But they would be available for any type of examination. It will be a choice of the victim or her relations.

SHRI LAL K. ADVANI: Obviously your memorandum is based upon the assumption that the amendment proposed, i.e. Section 111A, applies to all cases of rape.

SHRI K. F. RUSTAMJI: Partly.

SHRI LAL K. ADVANI: This was the original recommendation by the Law Commission. But the Bill has applied it only to custodial rape. The criticism against the Bill is that the Law Commission's recommendation in this regard is rejected by the recommendations in the Bill. This is the main criticism of the Bill. On that particular point, I would like to emphasise that it is only with respect of consent or no consent, whether she did consent or did not consent. In these particular circumstances of custodial rape only if she says that she did not consent the court shall presume that the consent was not given.

SHRI K. F. RUSTAMJI: Consent is not the main ingredient of rape.

SHRI LAL K. ADVANI: About the custodial rape for example, in the case of hospitals amendments have been suggested that the provision should not be as it is here, but it should be indoor patient in the hospital etc. etc. I can understand the concept being made narrower. But the basic fact is that the person who is having custody of women has a great responsibility and he cannot indulge in sex even with consent.

SHRI K. F. RUSTAMJI: I will go a little further. I am saying that no woman should be kept in custody.

SHRI LAL K. ADVANI: But it is a wider treatment of law. For example an inmate of an Ashram is not a criminal. But there is a custody because of which the person who is having the custody of the girl has an

obligation to protect her.

SHRI K. F. RUSTAMJI: In my view, it may be either a police or a public servant who has kept a woman in his custody or the Superintendent of a jail. All these are of the same category and the staff of the hospital is different.

SHRI LAL K. ADVANI: It should be statutory. But do you agree with the basic concept of the law because your original memorandum is against Section 111A?

SHRI K. F. RUSTAMJI: I feel that it is very easy to misuse Section 111A not only against the police, but by the police themselves.

SHRI LAL K. ADVANI: What would you say to a proposal that has come before this Committee that in Section 111A, instead of the words 'the court shall presume', the words 'the court may presume' should be used?

SHRI K. F. RUSTAMJI: 'May' makes the whole thing meaningless. It will be reverting to the law as it stands.

SHRI LAL K. ADVANI: It is not the case because in the last Mathura case, the basis was that she has not been able to show that she did not consent. There was a failure on the part of the victim to show that she did not consent even though it was the police station where the crime was committed. But the fact is that she has not been able to prove that she did not consent.

SHRI K. F. RUSTAMJI: I would like to think over, but may be it is an improvement.

SHRI LAL K. ADVANI: In respect of Section 228A your only reservation is in the case of women who themselves want publicity. As you yourself said, this would apply only to modern women. But don't you think that even otherwise a provision of this kind would be a great hindrance or brake on the efforts being made by social organisations or the

press to build up a proper public opinion regarding this problem? For example, even if this provision which is now going to be made statutory had been a part of the original Act or it had been on the Statute Book already, this Bill would not have been brought because nothing would have come to light.

SHRI K. F. RUSTAMJI: It is possible.

SHRI LAL K. ADVANI: The moment any one goes to the press and says that this kind of crime has been committed, not the girl but if some one outside complains the press would not report under this law saying that 'we are violating the law if we do so'. Therefore, don't you think that the total embargo of this kind is not desirable?

SHRI K. F. RUSTAMJI: It is certainly desirable in a large number of cases that a woman or a girl, particularly if she is a minor, is protected from publicity.

SHRI LAL K. ADVANI: There can be a law saying that only her name cannot be disclosed. The proposal as it is says that anything which leads to her identify being revealed cannot be published. But if it is merely said that the name of the victim shall not be published, will it be all right?

SHRI K. F. RUSTAMJI: If you don't permit the name of the victim to be published but if you give other details, you would be identifying the woman.

SHRI LAL K. ADVANI: Generally speaking, I would think that the press behaves more responsibly even though there is no bar at the present moment to publish the name of the victim. I don't think that any paper publishes the name.

SHRI LAL K. ADVANI: Barring a few which may take advantage for

commercial or communal gain, generally speaking the total embargo of this kind is not desirable.

SHRI K. F. RUSTAMJI: Limited embargo and not total embargo.

SHRI LAL K. ADVANI: You cited an example—three rich persons raped an artist in Bombay. Monetary compensation—can this principle be accepted? Then why should it not be applied to murder? If this kind of principle is accepted, that will be extended to many other aspects.

SHRI K. F. RUSTAMJI: I would like to apply to it all cases. I think first of all it should be applied to rape.

SHRI LAL K. ADVANI: 'Crimes in India' has been published by the Bureau of Police Research. Does this in any way indicate the cause of custodial rapes that have taken place?

SHRI K. F. RUSTAMJI: It should.

SHRI B. IBRAHIM: I would like to know how there can be improvement in the type of investigation. No proper investigation is done.

SHRI K. F. RUSTAMJI: I am not sure whether a large number of cases are acquitted.

Out of 3300 cases investigated in 1977, 2700 were prosecuted.

SHRI B. IBRAHIM: According to you is the present law sufficient?

SHRI K. F. RUSTAMJI: I do not say that it cannot be improved. Investigation in rape cases is supervised properly and everything is collected with great care.

SHRI B. IBRAHIM: Should there not be a special cadre in police to go into such cases?

SHRI K. F. RUSTAMJI: In large cities, it should be.

SHRI S. W. DHABE: We have the problem of the slow process of trial. Will you recommend Special Courts and Jury Trial where women can be placed as jury?

SHRI K. F. RUSTAMJI: Jury trial is not so easy in the country. People cannot give up work for a long time and the compensation that they get from the court does not cover their daily wages.

SHRI S. W. DHABE: What is your reaction to the placing of women jury?

SHRI K. F. RUSTAMJI: It should be mixed one.

SHRI S. W. DHABE: Under 302, compensation can be awarded for murder. Under 357 court has the power to award compensation in certain categories. Should we categorise compensation depending on the nature of offence?

SHRI K. F. RUSTAMJI: It should be categorised.

SHRI S. W. DHABE: If the inter-course takes place in police custody not amounting to rape, under Section 376A new offence has been created. Do you agree with this principle?

SHRI K. F. RUSTAMJI: We are introducing new concept in Law of Seduction, not rape, under 376A. It would be very easy to misuse the section.

SHRI S. W. DHABE: If we delete the word seduction, is it desirable?

SHRI K. F. RUSTAMJI: If you can prove that the man committed sex with the woman in police custody, it should be punishable.

श्रीमती गुरुचिन्दर कौर चार : यह जो मैं मोरेंडम आपने दिया है, इसके पहले सैंटेंस आपने यह कह दिया है कि :—

The Bill would create serious problems for society.

श्री के० एफ० रुस्तमजी : जी हाँ ।

श्रीमती गुरुचिन्दर कौर चार : इसका मतलब यह हुआ कि यह बिल नहीं आना चाहिए। आपने प्राग् यह कहा कि इससे पुलिस को और कि मिन्लस को बेपन मिल जाता है इसको मिसयूज करने का लास्ट सैंटेंस में आप यह लिखते हैं कि हमारी कमेटी इसको इस एंगल से देखे—

This angle needs special consideration by the Joint Committee.

जो अभी-अभी आपने सज्जेशन दी है, अगर इस पर गौर कर लिया जाए तो फिर यह बिल सोसाइटी के लिए खराब नहीं होगा क्या ?

श्री के० एफ० रुस्तमजी : भेरी राय में पीरियड आफ ट्रांजीशन में और रिलेशनशिप आफ सेक्सेसुअल में बूज हो रहे हैं। इसको देखते हुए अगर नया कसेन्ट इंट्रोड्यूस करेंगे तो इससे हो सकता है कि Society will itself get unbalanced by the law that we are trying to implement. Secondly, it is quite possible also that the law will remain on the statute book. Nobody will enforce it. The things will continue as they are.

श्रीमती गुरुचिन्दर कौर चार : यह तो हमें नहीं चाहिए। हम चाहते हैं कि ला ऐसा हो जिससे सोसाइटी में से हम फर्क करना चाहते हैं, यह कर सकें। लाब्रेस होना चाहिए जिससे जिसको प्रैक्टिकली हम इम्प्लीमेंट कर सकें, जिसका मिसयूज कम से कम हो, जिसको हम कह सकते हैं कि यह बिने के इन्ट्रेस्ट में है ऐसा ला हम चाहते हैं।

श्री के० एफ० रुस्तमजी : जी हाँ।

श्रीमती गुरबिन्दर कौर द्वार : जैसा झाड़वाणी जी ने पूछा कि भ्रमीर लोगों के बच्चे या खुद वह लोग ऐसा करें तो उनसे तो कम्पन्सेशन मिल जाता है, लेकिन रेप केसज तो ऐसे होते हैं जो मेटली सिक होते हैं या रिच नहीं होते वह लोग करते हैं, उनके बारे में क्या किया जाये ?

श्री के० एफ० रुस्तमजी : उन केसेज में भी कम्पनसेशन हो सकता है, उनके लिये प्रोटेक्शन हो सकता है, 5 रुपये, 10 रुपये, 15 रुपये हो सकता है। लेकिन एक तरह का कंसेप्ट तो होना चाहिए।

श्रीमती गुरबिन्दर कौर द्वार : कई बार बहुत छोटे छोटे बच्चों के साथ अन्याय हो जाता है, यह तो गलत बात है, लेकिन प्रगर यंग गर्ल्स के साथ कुछ हो तो उनको कोई जोब बगैरह दी जाये तो कैसा होगा ?

श्री के० एफ० रुस्तमजी : जोब तो मुश्किल होगा।

श्रीमती गुरबिन्दर कौर द्वार : 10 हजार रुपये की जो बात कही गई है, तो आजकल के हालात में क्या वह ठीक रहेगा ?

श्री के० एफ० रुस्तमजी : थोड़ी-बहुत राहत तो उस से मिल सकती है।

श्रीमती गुरबिन्दर कौर द्वार : मैं भी इसी हक में हूँ कि कम्पन्सेशन मिलना चाहिए लेकिन इस तरह से उसे कम्पन्सेट किया जाये ताकि सोसाइटी की भाँखों में उसका जो नुकसान हो गया है, वह पूरा करने के लिए वह अपने पैरों पर खड़ी हो सके। यंग गर्ल्स और वीमैन के बारे में यह होना चाहिए।

SHRI K. F. RUSTAMJI: It is certainly a very brave and bold idea. The only thing that I feel is you can class them as handicapped persons and, perhaps, consider them that way for employment purpose. It could be done.

श्रीमती गुरबिन्दर कौर द्वार : ट्रायल इन कैमरे की बात हुई थी, मैं उसके हक में हूँ। लेकिन कल कुछ लेडिज आई थीं, उनसे मैंने पूछा कि आप कैमरे के प्रगेन्सट क्यों हैं ? वह कहने लगी कि हम इसलिए कैमरे के प्रगेन्सट हैं कि हो सकता है ट्रायल इन कैमरे में उनके साथ जस्टिस न हो।

श्री के० एफ० रुस्तमजी : यह हो सकता है।

श्रीमती गुरबिन्दर कौर द्वार : मैंने कहा कि कैसे, तो कहने लगी कि प्रगर किसी पुलिस कांस्टेबिल की गलती हो गयी हो तो पुलिस वाले को ही प्रोटेक्ट करना चाहते हैं, वहाँ पर इसकी गुंजाइस हो सकती है मैंने कहा कि यह तो प्रोपन ट्रायल में भी पुलिस वाले कर सकते हैं ?

श्री के० एफ० रुस्तमजी : प्रोपन ट्रायल में लडकी के ऊपर जो प्रैसर पड़ता है वह बहुत ज्यादा होता है। इसलिए उससे प्रोटेक्ट करना चाहिए।

श्रीमती गुरबिन्दर कौर द्वार : हिन्दुस्तान में जो वीमैन प्रागोनाइजेन्स हैं, उनमें से प्रगर कुछ सैल्लक्ट की जाये जो ट्रायल के समय हों तो इस तरह से कैमरे में जो ट्रायल होगा, उसमें लडकी को प्रोटेक्शन मिल सकती है ?

श्री के. ए. हस्तमजी :

A woman investigating officer or a woman judge would be better.

श्रीमती गुरबिन्दर कौर नार : केसेब बड़े लम्बे चले जाते हैं, इनमें कुछ ऐसा होना चाहिए कि टाइम बाउन्ड कुछ होना चाहिए, कम-से कम 6 महीने होना चाहिए।

श्री के. ए. हस्तमजी : रेप केसेब में डिले इतनी ज्यादा होती है कि उसका जो इफेक्ट होता है, वह निकल जाता है। सब जगह इसकी इम्प्रूवमेंट जरूरी है।

श्रीमती गुरबिन्दर कौर नार : इसके बारे में कमेटी फैसला करेगी आप अपनी राय दीजिए।

श्री के. ए. हस्तमजी : 6 महीने में हो जाय तो ठीक है। I think, it would be a good idea; it will be more effective.

MR. CHAIRMAN: You have said about the restrictions to be imposed on cross-examination and even the past history of the lady should not be allowed to be asked. You please refer to Section 146 of the Evidence Act.

SHRI K. F. RUSTAMJI: It was referred to me. I agree that there is a law on the subject. But that is not enforced.

MR. CHAIRMAN: There is also Section 132. It is a safeguard given to the accused, to cross-examine the witness and to show the veracity or otherwise of the evidence. If this restriction is imposed in not asking about the past history of the victim, don't you feel that it will be quite contrary to the spirit of the Evidence Act?

SHRI K. F. RUSTAMJI: The spirit of the new law is to give protection to women, particularly those who

have suffered humiliation and indignity of rape. If you are not willing to give protection to them, then the law will not serve its purpose.

MR. CHAIRMAN: Do you mean to say that it should be amended according to the needs of the society?

SHRI K. F. RUSTAMJI: Either the law is amended or instructions are issued by the Supreme Court or by the High Court that the protection of a woman in giving evidence must be ensured.

MR. CHAIRMAN: By any other mode also?

SHRI K. F. RUSTAMJI: Yes, Sir, if possible.

MR. CHAIRMAN: Thank you.

(The witness then withdrew)

II—All India Co-ordination Committee of working Women, New Delhi

(Centre of Indian Trade Union)

Spokesmen:

1. Shrimati R. Vaigai.
2. Shrimati Kitty Menon.
3. Shrimati Brinda Karat.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence

is liable to be made available to the Members of Parliament."

SHRIMATI BRINDA KARAT: It can be taken as public evidence.

MR. CHAIRMAN: You might have gone through the Draft Bill. You please comment on Clauses, one by one.

SHRIMATI R. VAIGAI: The proposed amendment to Cr. P.C. has been necessitated because of the recent spurt in rape cases which have been brought to light by the work done by the press and by women's organisations and by other voluntary organisations. The publicity of these cases is very important. All the aspects of the matter can be brought to light. I am speaking mainly with reference to the Mathura case. It sparked off old controversy. That case brought to light the absence of protection to women at the investigation, interrogation and at the procedural stages. Secondly, it also brought to light the absence of proper provisions in the substantive aspect of the matter in the I.P.C. that led to rape. Therefore, there was a hue and cry of the public. So several amendments were suggested. The Government has now come with this amending Bill. But, what we find here is that though the Law Commission has recommended several amendments for protection of women at the stage of interrogation and investigation, they have not been included in the Bill.

Therefore they are very very important. I may draw your attention to what the Law Commission had recommended in their Eighty-fourth Report. They had recommended amendments to Section 166A in the I.P.C., Section 167, Section 228A, Section 234 and Section 354A of the IPC. These relate to the interrogation and other things. Earlier in the Cr. P.C. there were Sections 46, 53, 160 and 164A all of which relates to the protection to be given to women. If the rape victim is to be interrogated by

the Police Officer that should be by a woman police officer wherever she is available but if the woman police officer is not available, then she can be interrogated by the male police officer in the presence of the family member of the victim. That is very important.

The other thing is that she should not be taken into custody after sun set and before sun rise. These are procedural protections which are very important. Then coming to the substantive aspect of the whole matter, it is really good that there is a separate provision dealing with rapes committed by public servants and other similar officials. These have been included. What we feel is that rape is an offence which is not committed only in the urban areas. It is committed more in the rural areas. Therefore, you should also include rapes committed by landlords and other similarly situated employers. We have actually suggested concrete amendments to the Bill. In our Memorandum we have suggested that.

MR. CHAIRMAN: It is all there. And it is with our members.

SHRIMATI R. VAIGAI: We have said that in Section 376(2) there should be addition of words 'whoever commits rape on a woman—he is actually having economic dominance either directly or indirectly—either by himself or by the people hired by him'. We have also explained that in our memorandum. Expression 'economic dominance' also means dominance by landlords, village officials, management personnel and contractors of labour. This is a very important amendment. We feel that as the law stands to-day these amendments are very important. Otherwise also these will give protection only to 10 per cent women in the country. This is a very crucial amendment. The other thing is about the association of social organisations. Please see the relevant page of our memorandum.

MR. CHAIRMAN: You have submitted the memorandum much earlier in writing. Even if you come with a new one, we shall circulate it...

SHRIMATI R. VAIGAI: The other thing is that in the matter of protection of women at all stages, we feel that social organisations should be associated, that is, at the investigation, interrogation, trial and appellate stages. If social organisations are not available, then, the women should be allowed a discretion of her own to choose whom she wants to associate. We also feel that the abettors of the crimes should also be punished severely. There is already a section in the I. P. C.—section 109—which deals with abetment. The abettors shall be given the same punishment as is given to a person who has committed the crime. We feel that should be applicable in cases of custodial rapes. We also feel that the trial should not be conducted in camera but it should be left to the discretion of the victim. It is no doubt a very correct thing to do that the identity of the victim should be kept secret as otherwise it may mar the whole future of the victim of rape. This should be left to her discretion. There is a whole lot of manipulation or mismanagement going on at the trial and at the appellate stages. We should not forget that the Bill is an outcome of the public outcry and the publicity done by the press as well as the social welfare organisations.

MR. CHAIRMAN: Therefore, don't you want to agree with the provision provided for in this Draft Bill?

SHRIMATI R. VAIGAI: Yes. In camera should not be compulsory but it should be left to the discretion. I come to a specific Sec. 228A sub-sec-

tion(2) of the I.P.C. This should be deleted. It says:—

(2) Where, by any enactment for the time being in force, the printing or publication of,—

(a) the name, or any matter which may make known the identity, of any person against whom an offence specified in such enactment is alleged or found to have been committed."

Therefore, they shall be liable to punishment. This Bill deals with rape and allied offences. We do not see any reason for making the whole thing so wide and prohibiting the whole lot of publicity of cases unconnected. Sub-section (2) does not deal with the whole lot of rape offences.

We come to rehabilitation and compensation to the victim. This is a most important thing in rape and allied offences and we feel that Government should take the responsibility of rehabilitation and giving compensation. There is already a section in the Cr. P.C. Sec. 357 I think which deals with compensation to be paid to the victim's family in case of murder. That should apply to the rape and allied offences also. Therefore they should be adequately compensated. The discretion should be left to the judge to assess the situation as the case demands.

MR. CHAIRMAN: According to you, no quantum of compensation should be fixed.

SHRIMATI R. VAIGAI: We do not want to specify any particular amount or fine because it all depends of course on a particular case. The accused may be an ordinary person or may be a very rich person in a particular case. So, we want to leave this to the discretion of the judge and the provision should be such that the compensation must be adequate to take care of her. After all she has to be totally rehabilitated in

a society. The last thing I suggest is that this amendment does not take care of other kinds of sexual harassment that the woman has to face in her day-to-day life in the matter of employment or otherwise. Therefore an amendment should also be made for that.

MR. CHAIRMAN: What is your suggestion?

SHRIMATI R. VAIGAI: As regards custodial rape, there is a provision in the IPC—Sec. 509.

MR. CHAIRMAN: What is your concrete suggestion here regarding the custodial rape?

SHRIMATI R. VAIGAI: We want an amendment to Sec. 509 similar to the one made to 367; in case of rape, the amendment to section 509 should be to include sexual harassment committed on a woman in custody of officers by misusing their position which may not amount to rape but sexual harassment. This happens day in and day out. That section should deal with any kind of unjustified gesture too.

That is all I have got to say.

SHRIMATI BRINDA KARAT: I want to add to what my colleague has said. We are in agreement with what Mrs. Vaigai said. We would like to lay stress on one or two points. First is about the investigative stage. I shall not really go into all the legal clauses because I am not conversant with them. I can tell you from our practical experience of the working of the women's organisation in the capital of this country. Recently, for instance, there was a case of rape in an area called Seemapuri in Delhi. What we find is this. She was a refugee from Bengal belonging to a minority community. She was illiterate. She was raped by some people with high connections in that area. There was a

case of a Police Officer refusing to register FIR. Coercion comes in just organisation took it up. We held 3 or 4 demonstrations. All kinds of harassment takes place at the time of investigation. It is very unfortunate that Law Commission's recommendations are not acted upon. Very strict punishment should be given for those police people who do not register FIR. Coercion comes in just at the beginning stage. We should be very strict about that.

Regarding the custodial rape we would like to have the definition amended. Women's organisation should have certain *locus standi* to get themselves involved and become part of the investigative process. There is the recommendation of the Law Commission in this respect. We find that police officers defend each other. It may be north or south or east or west of Delhi; wherever it happens the other person always defends the other police officer. It is in their professional interest to defend each other. At the beginning stage itself it is our plea that you should associate all these women's organisations.

Regarding consent and age, many women's organisations have stated that age of consent should be raised to 18. There is a rider. Cases of material rape are there. Marriageable age is rightly put at 18. What happens? In rural areas this is not followed. The age should be 18 also for marital rape. We ourselves do not have any particular amendment but we support this idea. Marriage age is 18; as far as marital rape is concerned the age is 15; consent is 18. But for marital rape it is 15.

MR. CHAIRMAN: At what age she is supposed to understand the significance of her consent?

SHRIMATI BINDRA KARAT: 18. We have stated it clearly. But we

have to take the reality of the situation into account.

MR. CHAIRMAN: Consent comes after disclosure of mind. She does not know what the consequence is.

SHRIMATI BINDRA KARAT: In general case it should be 18. As far as marital rape is concerned it should be left as it is.

MR. CHAIRMAN: You have Marriage Act specifying the age limit. But what happens?—Marriages are taking place at 13, at 14, and so on. That is not illegal or void. Don't confuse yourself with age at marriage. At what stage she should be considered fit enough to give consent?

SHRIMATI BINDRA KARAT: We feel it should not be 16, it should be 18. I have said about that. It is our experience in dealing with women and girl's issues. My colleague has stressed upon this point a little earlier. In respect of custodial rape, economic dominance is brought in. We have worked for long in the trade union movement. We know such cases. Rape is used by the employers to deal with women and to deal with legitimate demands. There is a case in Hansi in Haryana where the management employed goondas to deal with workers on strike; women were raped; it is a custodial rape. The onus of proof is on the accused. Definition should be economic dominance. We want to be specific about it. We want to say, include, landlords, village officials, management personnel, contractor of labour or others hired by him. Regarding restrictions etc. what happens is, we are liable for imprisonment and prosecution if we prepare posters and so on. This amendment cannot be accepted. 228A should not be there. The question of in-camera is to be left to the discretion of the victim. The accused should be given full protection. Regarding past history, the Law Commission has made its recommendation. Past history cannot be

brought in. I don't want to elaborate about it

SHRIMATI KITTY MENON: I have nothing to add anything further. But I would only reiterate with regard to sexual harassment against women as far as Government as well as private organisations employers are concerned. They indulge in sexual practice with the working women and they make it a condition for their continued service. This is going on. I am very sorry to say this. Therefore, the law must give protection to women who are working. This is so widespread in every single town not only in private organisations but also in Government offices. The working women cannot tolerate this kind of harassment and I hope the hon. Members of Parliament will also not tolerate this. Some amendment to this effect has to be brought in. Otherwise, I would endorse the points which have been made by my colleague.

MR. CHAIRMAN: Thank you.

(The witnesses withdrew)

Spokesmen

III—National Federation of Indian women, New Delhi.

1. Shrimati Primla Loomba
2. Shrimati Vimla Farooqui
3. Shrimati Man Mohini Sahgal.

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them it to be treated as confiden-

tial. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Kindly tell us your viewpoints with regard to the Draft Bill.

SHRIMATI VIMLA FAROOQUI: The question of rape in the recent period has been focussed by the public, by the women's organisation, by the press and other agencies also. We find that rape has become more and more common, especially on poor women and women employees at all levels. We have been fighting so many cases of rape committed among women in the poorer sections of the society. But we find that the present law is inadequate to give punishment to those who indulge in the crime of rape.

Now, the question of consent which is a very crucial point is raised. It is very easy for a man to say that he had the consent of the woman. Therefore, we suggest that in the case of custodial rape, the onus should be on the man. In our memoranda we have also suggested that this include the landlords also because in rural areas, very few people have the possibility to stand up against the landlords. It should also include those people who are officers of factories, institutions or employees of the establishments where women are employed and become the victim of rape. When the women are employed in offices and when they are raped or molested, it is impossible for them to take up this case.

Then the question of *in camera* trial is a complicated one. But our stress on this is that the women should not be harassed and her identity, if she wants to keep it secret and does not want to advertise, should be kept secret. All proceedings in the rape case will be held in

camera. But both the victim and the offender enjoy the facility. But in the present situation, the women alone should be given the protection. Our suggestion is that firstly the trial should be conducted *in camera*. If the victim is not averse to publicity, the proceedings may be published at the discretion of the victim.

Now, these cases are fought by the advocates appointed by the Government and very often the cases of poor women are not fought properly. So, we want that the representatives of Women's Organisation or some other social organisation and women journalist should be permitted to go to the courts to hear the case. Moreover, in so far as the publication of the names is concerned, the name of the victim should not be published but the name of the accused should be published.

Another thing which we feel is that this proposed Bill is very ambiguous as far as registration of such cases with the Police is concerned. As far as Criminal Procedure Code is concerned, they have not given sufficient attention in amending that clause. Section 157 should be amended in order to include a proviso that where information regarding offence of rape is received, the case must be recorded immediately by the Police. That is one of the biggest difficulties that we have been facing. For getting one case registered under F.I.R. we have to hold 5 to 6 demonstrations and protests. So, our suggestion is that this should be done compulsorily. In such cases the officer in charge of the Police Station must proceed to investigate the offence. He should not depute any subordinate officer for investigation. If a rape is committed in a Police Station, then the case should be investigated by another Police Station Officer so that justice may be given. A copy of information must be forwarded forthwith to the nearest Magistrate and such Magistrates shall be empowered to issue direction regarding investigations.

Women organisations should have the right to lodge court proceedings against the accused in the rape cases. Women organisations should be permitted to support these cases and to lodge FIR.

MR. CHAIRMAN: Was your Association given a chance to appear when another Committee was appointed on this law?

SHRIMATI MAN MOHINI SAHGAL: No.

SHRIMATI VIMLA FAROOQUI: We want that it should be made a law; it should not be a direction by the Home Ministry. Women should not be taken to lock-ups; they should be taken straight to jails. Special provisions should be made to rehabilitate these women and the men should be fined. Many of them are forced to take to wrong ways of life. The people who commit this crime should be punished.

SHRIMATI PRIMLA LOOMBA: More emphasis should be laid on the role of the women organisations and the necessity to lodge complaints. You are aware of the social pressures that work on women who are raped which compel them to remain silent. The family members refuse to give them assistance for openly lodging a complaint. Every advice is given them to keep quiet. If the *locus-standi* is not denied to women organisations, we find many other aspects of the crime which perhaps are not possible to be covered by the law will remain a kind of pressure which makes a woman to suffer continuously despite the law. This is a very important suggestion which probably all the women organisations have put forward.

MR. CHAIRMAN: Thank you very much. We now adjourn to meet in the after noon.

(The Committee then adjourned at 13.45 hours and reassembled at 15.00 hours)

IV. Shri Ram Jethmalani, M.P.

The witness was called and he took his seat.

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Please give your views on the Draft Bill.

SHRI RAM JETHMALANI: Section 228A is a new section which you seek to introduce. I concede there is some justification for stopping or reducing publicity of the names of the victims, but this section is a typical example of the thoughtless and careless drafting. I presume that what you had in mind was newspaper publicity. But the expression used is "whoever prints or publishes" without any limitation. This is likely to have, in this wide form, an effect exactly the reverse of what was contemplated. For example, if a father takes his raped daughter to the police station, he is publishing the story of the rape and the name of the girl. It leads to such absurd consequences if the section remains in this form. A lawyer files a complaint of a rape on behalf of his client in a court. It contains the name of the girl who has been raped. He publishes it. He is liable to be punished. These are the consequences. Then the expression 'information leading to identity' to my mind,

is absolutely redundant. Suppose, a girl is raped in Mehrauli area and the police have been informed. If you put this story in the newspaper without mentioning the name, this may lead to some clue to the identity of the girl. To my mind, Section 228A is a wholly redundant section. It is counter-productive. Whatever object you have in mind can be achieved by leaving it to the Press Council to enforce some kind of guidelines as they have done in the case of communal disturbances. On the other hand, sometimes it is absolutely necessary to publish names. So the purpose can be achieved by guidelines to be enforced by the Press Council.

MR. CHAIRMAN: What is your alternative suggestion?

SHRI RAM JETHMALANI: The best thing is to leave out this section.

Sub-section (2) is equally bad. Under clause (a) of sub-section (2) you refer to some laws which are not in existence. So far as (2) (b) is concerned, they can be taken care of and they are taken care of by the power of the court to punish.

So far as Section 376(2) is concerned, I wholeheartedly support it. Section 376A is unexceptionable. I support it. I also support Section 376B. The remaining provisions are good. Section 111A is good.

Coming to Section 375, about the definition of rape, first of all, I want you to apply your mind to the exception. This has existed in the Criminal Procedure Code since Macaulay drafted it. There is no system of law except one which permits a marriage where the girl is below the age of 16. If the law prohibits and, therefore, renders void a marriage where the girl is 16, this exception can never operate. Unfortunately, it operates only in the case of Muslims because the Muslim Law even today permits marriages when the girl attains the age of puberty. And in one case the

Privy Council had held that the age of puberty is 9 years. It means no offence to anybody. I suggest that the remedy lies in raising the age of marriage even amongst Muslims and bring it in harmony with the rest of the legal systems. In any event, this section is a dead letter. If you see the law reports, there has been only one case of this nature upto now. If there is a sexual intercourse with one's own wife, it is most unlikely that the District Magistrate is going to try it or try to find out the facts. I believe even Muslim women would like a provision for raising age of marriage to be incorporated in their marriage laws.

Coming to Section 375 I have a serious objection to the clause 'secondly' where to Macaulay's original words you have added the words 'free and voluntary'. Strictly speaking, to use the epithet 'free and voluntary' is by itself a repetition. It adds nothing to the concept at all. Moreover, those cases in which you think that consent is given yet it is not free, are expressly dealt with by the other clauses which follow.

About clause 'thirdly' if you have already selected cases in which consent given under coercion is not really a consent, then there is no point in putting free and voluntary. So it is redundant. Do you have in your mind any hypothetical case in which consent will not be free and yet it would not be covered by any of the clauses that you have made provision for. I have been thinking and thinking but I am unable to conceive of a single case which can be outside the specific clauses which you have put in here and yet the consent is not free and voluntary. Therefore, this creates confusion. You have put in clause 'fifthly'. The draftsman has obviously forgotten that there is in the Penal Code Section 90 which deals with this. The impression which you are creating is that if you have taken one of these sections from the Penal Code and put in here, that means the

rest of the sections will not apply here. So it will create a lot of complications. So, section 90 already takes care of it; it takes care of fear of death or of hurt or of any injury as well as misconception of fact. Therefore, everything is taken care of. There is no case whatsoever for improving upon Macaulay's English. It is good English and there is no reason at all to interfere with it.

I have got a very serious objection to the sixth clause. To my mind, it is absurd. It reads:

"With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by ~~him~~ of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent, or is unable to offer effective resistance."

This will open up the floodgate of false accusations. For instance, the administration of the stupefying substance can be either forced or by fraud. Suppose there are two adults, a man and a woman, in love with each other, and they are having sexual relations. Suppose the man offers drinks and she drinks a couple of drinks too many and after that they have sexual intercourse. It will amount to rape, though that was not the intention which you had in mind. Suppose in a party a man offers a lady a glass of beer or gin and they had sexual relations later if the lady says that the drink had lowered her resistance power, it will become a rape. This kind of thing was not contemplated even by women's organisations which suggested the tinkering of the law, in the first instance. Suppose two persons sit together and voluntarily drink by mutual consent. If the girl gets intoxicated, then it is a serious offence to have sexual inter-

course with her. In fact, some people get intoxicated so that they would be able to have sexual intercourse. To my mind, this kind of section is taking things too far.

MR. CHAIRMAN: Do you mean to say that the situation of the lady should be exploited by the person?

SHRI RAM JETHMALANI: If a man forcibly gives an intoxicating drink with this intention, he may as well use force to have sexual relations rather than resorting to a drink. Suppose a man goes to a woman's house. He is offered drink. For the sake of civility he offers her also a cup and she gets intoxicated. Here who has administered it? These are very complicated subtle questions of fact and you cannot expect the courts to resolve such problems. Therefore, it is not at all necessary to make these additions.

Then, take the term "unable to offer effective resistance". A woman can say that her resistance power has been lowered by eating a plate of chicken.

Coming to section 376, so far as subsection (2) is concerned, I have no objection. Certain kinds of rape must be punished with greater severity. My objection is to section 376(1), where you prescribe a minimum punishment of 7 years. This is atrocious and this proceeds from a false assumption, which has no basis either in psychology, criminology or in the administration of criminal justice, that merely by raising the punishment prescribed, you eliminate the offence. If that were so, all offences should be punishable with death. Further, murder is punishable with death; yet you hear of more and more murders being committed.

Then, take the provision, which says "with or without her consent.

when she is under sixteen years of age". Take the case of a young boy and a young girl who are almost engaged to be married; after two or three months they are going to get married, even though she has not reached the age of 16. In the rural areas boys and girls mature early. Suppose in an atmosphere of loneliness, where there is no other recreation, suddenly on the impulse the boy has sex with the girl, who happens to be below 16. You are prescribing a monstrous punishment of 7 years, contrary to all notions of criminal jurisprudence that I know of.

The best thing would be to combine sections 376(1) and (2) and the maximum punishment in both cases should be the imprisonment originally prescribed. So far as the minimum punishment is concerned, judiciary will take care of it.

I have already supported sub-clauses (a) and (b) of section 376(2). In these two cases what converts it into an offence is the misuse of the dominant position in which the accused is placed. So far as sub-clause (d) is concerned, there is no such dominant position.

Suppose I am connected with the management of some hospital, which probably I have never visited even once in my life and whose director always used to come to my office to transact business, still I will come under (d), which says "being concerned with the management". Suppose such a lady is a patient in such a hospital and in some other capacity I meet her and have sexual relations, it will fall under Section 376(2)(d). I would say that this is very careless drafting. If there is misuse of the position by the accused then you can punish him. Here you are making it very wide. You must confine it to in-door patients of the hospital, where there can be an element of misuse. A person accused must not

be merely concerned with the management; he must be on the medical staff dealing with the patients. Perhaps such persons have some opportunity to misuse their position. Let me tell you a fact of history and a fact of life that some of the most delicate romances and some of the most successful marriages have originated in the hospitals particularly in mental homes where a doctor has nursed back a woman to full mental vigour and health. The woman out of sheer gratitude to the doctor had married him and before she has actually married him, an act of sex would be punishable. I am talking of Section 376C. So far as Section 376B is concerned, I have supported it. Now I am referring to Section 376C. This ought to go, but if it is to be retained, then it must be severely restricted to medical staff and it must be restricted to in-door patients in the hospital and there must be misuse of the connection of the doctor with the patient and then alone it should become an offence.

These are the various suggestions I have to make and like an honest witness, I am waiting for any cross-examination.

SHRIMATI GEETA MUKHERJEE: About Section 375, you said that in your opinion it is open to very many interpretations. Then you asked: 'Can you imagine any circumstances which are there outside those listed?' I would like to know from you one thing. Though it is not within the listed one, yet if such a thing happens, I want to know whether that would be covered by this 'free and voluntary' consent.

SHRI RAM JETHMALANI: It is impossible to conceive of a hypothetical case which is outside the specific categories and yet the consent is not free and voluntary.

SHRIMATI GEETA MUKHERJEE: I am coming to that. I am asking another hypothetical question. The point I am asking about is not listed, but may be covered by free and voluntary consent. Suppose there is some superior officer in authority. There is some male subordinate and though that superior officer in authority forces this man subordinate to him to surrender his wife, that cannot be free and voluntary consent of that wife. But that case is not listed here.

SHRI RAM JETHMALANI: It is not listed because if the woman surrenders to sexual intercourse because she thinks that the boss has threatened to harm her husband, it is fear of injury within the meaning of Section 90. On the other hand, take a woman who wants to advance the prospects of her husband and goes freely for intercourse with the husband's boss. Then you don't wish to make it rape.

SHRIMATI GEETA MUKHERJEE: About this stupefying substance, in reality stupefying substance is given in order to rape a girl. It does happen, not that it does not happen. Is it not? So, in this case giving stupefying substance alone will not make the case.

SHRI RAM JETHMALANI: It is given without the woman's knowledge and consent. Then any consent to sexual intercourse is also not free consent. It is a case where the woman is deceived first.

SHRIMATI GEETA MUKHERJEE: How is it covered under 'free and voluntary'?

SHRI RAM JETHMALANI: Because sexual intercourse is without her consent. You do not have to use the words 'free and voluntary' at all. If a person administers the stupefying

drug to a woman and renders her unconscious, then he has sexual intercourse, then he causes injury. So, consent is never free under this circumstance. You do not have to have this clause. Here he has caused injury to the mind and to the body.

SHRI AMARPROSAD CHAKRABORTY: Regarding Section 111A, you have said that in one way it is good.

SHRI RAM JETHMALANI: I will tell you why I used that mild expression. I am not objecting to this provision. As you remember, the whole controversy really has arisen as a result of the acquittal of the constable in one case. Those constables were acquitted by the Supreme Court not because the law was defective, but because the Judges' understanding of the facts was defective. That unfortunate ease is not a justification for amending the law at all. The existing law is perfectly adequate to deal with that. In all those cases where a person is in a position to dominate, and particularly when a person is having the custody of a woman, unless she is extraordinary attractive or unless some unusual circumstances develop, it is a commonsense presumption under Section 114 at least that consent was obtained by some amount of fear or misuse of authority. But because that presumption under Section 114 will be a natural and violent presumption, under Section 111A you are converting it from 'may presume' to 'shall presume'. Therefore, I have no quarrel with it. But I still prefer it to be under Section 114. But I am not particular against it.

SHRI AMARPROSAD CHAKRABORTY: Section 4 of the Evidence Act gives power to judiciary in which cases they will or shall presume. After medical examination it shall be known whether there is rape or not. Shall we put 'shall' after medical examina-

tion? Court shall presume on the primary evidence.

SHRI RAM JETHMALANI: I suppose that the little fear that you have got can be sufficiently taken care of by judicial discretion and reasonableness. At what stage the burden of proof is discharged by accused person is a matter of judicial decision so as to mitigate any hardship which may come from 111A.

SHRI ERA SEZHIYAN: In a society like ours victim of rape also needs certain amount of social protection. In the Western countries pre-marital relation is not considered a deficient thing which is not the case in our country.

SHRI RAM JETHMALANI: Two things are possible. One is the change of social attitude and the other is to compensate in financial terms. The accused who has committed rape is liable to damages. Under Cr. P.C. power should be given in such cases to assess damages and decree the amount against the accused. But in many cases the accused may be indigent and award of damages may be worthless. The State may take responsibility of compensating in such cases.

SHRI ERA SEZHIYAN: Under 376 there has been objection to seven years, whereas you say ten years imprisonment in the case of custodial rape.

SHRI RAM JETHMALANI: If you analyse the attitude of courts, in the case of rape seven years is given in very very abnormal situation. Therefore, this kind of provision should be made.

To my mind, seven years is too rough a sentence.

SHRI ERA SEZHIYAN: 376C: Out patients also stay for the whole day. Why should it not be anything done in the hospital—if they are raped in the hospital?

SHRI RAM JETHMALANI: Your section is not confined to something done in the hospital. We are not dealing with rape under 376. We are dealing with new offence other than rape. For that there is no justification.

SHRI S. W. DHABE: Can the victim be given woman lawyer in this case?

SHRI RAM JETHMALANI: This will be contrary to all notions of jurisprudence. I do agree with you that some time a petty fogging lawyer causes a miscarriage of justice by obscene cross examination. This can be very easily controlled by an effective and competent judge. But sometimes our judges are unable to control lawyers.

SHRI S. W. DHABE: Section 375: I find under Section 375 all these provisions are of a clarifying nature. The word 'intoxication' or unsoundness of mind was already covered in it.

SHRI RAM JETHMALANI: I do not think it is there in the old section.

SHRI S. W. DHABE: I am referring to Section 90 of the IPC. This concept of intoxication or unsoundness of mind and about giving consent is already covered by it. So, it is not a new concept.

SHRI RAM JETHMALANI: But the clause has now been widened. My objection is to everything that is outside Section 90.

MR. CHAIRMAN: Thank you

(The witness then withdrew)

V—*Shri C. R. Irani, Chairman, Press Freedom, Sub-Committee.*

The Indian and Eastern Newspaper Society, New Delhi.

(The witness was called in and he took his seat).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

I welcome you to the Committee.

SHRI C. R. INANI: Sir, I am grateful to you for having provided this opportunity to me. I wanted to add a few observations and to stress some of the points that we have made in our memorandum because we believe that this is a matter of great importance to the press and the media in the country.

First of all, may I say that the society endorses completely the objectives that are sought to be achieved in the Bill. There is no doubt that the offences of rape and similar offences against women are causing a great deal of concern and the press shares this concern. We would be a party to supporting any effort that is made to curb this evil. The tragedy is that in our view the provisions of the Bill, as it is, would have very much the contrary effect.

In the first place, we would like to say that in our opinion most of the offences of rape against women in this country tend to be on the part of offenders who are in a socially advantageous position. What I mean to say is that the offences tend to be inter-caste offences, higher caste men ex-

plotting women of lower caste, and they also tend to be landlord-tenant offences, poor women in the tenant class being intimidated by the rich landlords. If this so, then may I say that in our view, the provisions of the Bill tend to protect the offender as well as the victim. This is going too far and it seems to be misconceived. Wherever there is a blanket ban against any reporting, it is misconceived.

In the villages, it is a fact that the law enforcement agencies, the police in particular are often guilty of the offences themselves. This is not something that I would wish to deny. This is true. If the victim or anyone on behalf of the victim goes to the police station and wants an offence to be recorded in the diary, the offender is very often in a position to refuse to register it. In other words, the accused is a judge in his own cause. In such cases, only the press is in a position to help bring the offender to book by exposure of the action of the police in refusing to register the case. The curbs sought to be placed on the press under the provisions of this Bill in a mistaken effort to protect the victim are, therefore, likely to prove counter-productive. Bringing offenders to book is vital to the strategy of discouraging offences. This applies to all offences. The IPC says that the murder must be punished, rape must be punished. And it does so for the good reason that apart from the morality of it, this discourages other offenders. The law does not say Canute-like that there shall be no murder, there shall be no rape. I make this point because the effort to suppress information of rape cases by prohibiting their publication is not going to help deter offenders; indeed quite the contrary. Therefore, there are two important things to be done.

Firstly, the offence is brought home and the offender is booked speedily and effectively and, secondly, a climate is created whereby these offences are discouraged, if anything. That

function can only be performed by an enlightened public opinion. In this respect, the newspapers in this country have played a very healthy role. I am not here to defend every newspaper on every issue. By and large, the climate of repulsion has already been created in the country against these kind of offences against women, to a large extent by exposure and then by campaign carried out by the press. If this is so, the inhibitions that are now sought to be placed upon the press by saying that the public and, therefore, the press shall be excluded, in a mistaken effort to protect the identity of the victim, will be counter-productive to the object of the Bill. In this country, justice regrettably is often delayed. I would be very loathe to support any provision under which an offender is allowed to almost get away with the offence simply because of delay. The press in this situation does perform a very useful role.

MR. CHAIRMAN: What is your view about non-disclosure of the names of the victims?

SHRI C. R. IRANI: The present position is that the court trying the offence has discretion to say that the trial will be held *in camera*. The principle of jurisprudence that we are dealing with here is that the trial must be a public trial. I am not advancing any argument to support that basic principle. I accept that as a statement of fact. But the question arises, whether that principle should be maintained on balance or whether it should be overturned. I would like to say that on balance the discretion that is given to the court now to decide in what circumstances the trial should be held *in camera* is a good and desirable discretion and it should not be overturned. My main reason for expressing this view is that the offenders very often are socially and economically in a very much stronger position than the victim. If a public trial is held, it acts as the best disincentive for such people to commit such offences.

MR. CHAIRMAN: One view taken by the ladies and by women's institutions is that even the discretion given to the court under the existing Act is not properly utilised and, therefore, protection, as intended under the present provision, has not been extended to victims. They, therefore, feel that stringent provisions will have to be made with a view to give protection to the ladies. What have you got to say?

SHRI C. R. IRANI: My submission through you to the ladies of this country is this that by turning down well-established principle, more harm will be caused than good. The protection will similarly be extended to the offender. Surely, they are not a party to that consequence. They do not want that the offender's identity and his crime to be kept secret until the judgment is given. Keeping both the names of the offender and the victim secret would not help create the climate of revulsion that is necessary if future crimes are not to take place. It would be possible to improve the Bill perhaps in this matter. At the moment, as the Bill stands, the offender as well as the victim are similarly protected. But one can, by superior draftsmanship see that the offender's name is disclosed and the victim's name is suppressed. That would be possible. But, on balance, I would say that nothing much will be achieved. I do not believe that this will in any sense wield an effective protection to women. The case is such that it is not something that you can wish away. Something terrible has happened. It is better to face it and see that future repetitions do not take place rather than be self-complacent. We have not in any sense protected the woman.

The Statement of Objects and Reasons says that it is intended to stiffen the penalties for the offences of rape. But unfortunately, the drafting of the Bill does not support this view. At the present moment, the offence is punishable by imprisonment

for life or, in the alternative, imprisonment of either description which may extend to ten years, apart from fine. The amendment seems to change the emphasis. It seems to suggest that there shall always be a sentence of seven years, but the sentence may be extended for life. I think the emphasis is wrong. If it is intended that the sentence should not be less than seven years except for reasons to be recorded in writing, then this should be made quite clear by appropriate amendment of the Indian Penal Code.

MR. CHAIRMAN: So, a clarification is to be given on that.

SHRI C. R. IRANI: Yes.

Apart from the offence of rape and offence against women, this Bill also deals with cases of espionage and trials of offences which have nothing to do with offences against women. For that also, the trial shall be *in camera*. I have very strong objection. It amounts to overturning the Evidence Act and the Cr. P.C. It is a fundamental belief of the Society that I represent and of the press in this country that it is better in cases of doubt for that offence to be pitilessly exposed rather than cover things up and put our heads in the sand like an ostrich. I am not pleading that the discretion left to the courts to decide in which cases the trial should be held *in camera* should be put an end to. In fact, I am pleading that the existing discretion for the courts to try any case *in camera* is a good and desirable one and should be retained. I see no reason at all why the existing provision should be overturned and the courts directed to try these cases *in camera*. My submission is that there is no evidence available to justify such lack of confidence in our judges.

MR. CHAIRMAN: The point is very clear. If the trial takes place *in camera*, there would be more facilities for the victim to disclose all the activities of the accused and also the

private parts of the lady. That has been felt necessary to some witnesses to make the case more effective.

SHRI C. R. IRANI: My submission is that, according to the present law, the courts have the discretion to order a trial *in camera*. Till now, there is no evidence to prove that this discretion has not been effectively used. The advantage of leaving that discretion undisturbed is to make sure that the offender is pitilessly and mercilessly exposed and a general climate of revulsion is created against that individual, by keeping him in the full glare of publicity.

Besides, I do not see any reason why espionage cases which are quite unconnected with offences against women are included in this Bill. This Clause seems to have been unnecessarily expanded slipped into an omnibus provision.

MR. CHAIRMAN: There is no question of unconnected cases to be tried *in camera*.

SHRI ERA SEZHIYAN: The intention of Section 228A of the Indian Penal Code (Page 1 of the Draft Bill) is that the identity of the name of the victim should not be disclosed. After the trial is over, everything is done. Still she has to live in society. I want to know whether it is possible to give some protection. At the same time, taking into account your viewpoint that full publicity should be made, can you suggest something by which this may be made possible?

SHRI C. R. IRANI: I deeply appreciate this. May I say with respect that I share that concern expressed by you? Talking of the limited safeguard perhaps, some procedure can be devised under which a trial judge may settle this question of disclosure of the victim's name first before settling the other questions like the preliminary hearings etc.

SHRI ERA SEZHIYAN: Why not give the option to the victim herself

as to whether her identity should or should not be disclosed? That should be accepted by the court. The discretion can be given to the victim. Do you feel that there should be some provision like that?

SHRI C. R. IRANI: I think the Member is assuming, perhaps rightly, that we are dealing with the cases of rape resulting to the conviction of the accused on establishment of the offence. It is also true that in our society, the charge of rape may be brought unfairly for extraneous reasons for blackmail, for example. It would, therefore, be difficult to decide without knowing the circumstances in all cases whether the name of the victim should be withheld. I am therefore, opposed to a blanket discretion to be forcibly exercised at the option of the alleged victim in all cases.

Therefore, my submission would be that the Member's concern should be adequately met. In my judgment, his is a legitimate concern and we all share his concern and it would be met if that the trial court on preliminary hearing can be asked to come to a finding whether in the particular case the name of the victim must be withheld.

SHRI V. KISHORE CHANDRA S. DEO: You said that the victim may use this to malign the character or personality of a person and tell the court that she would not like her name to be publicised. That person will unnecessarily become convicted. Once it is proved that a rape is committed on the lady, then that lady victim will not have the option to say that her name should not be publicised. As I understand my colleague correctly, he was referring to a victim who had been proved to be a victim of rape.

SHRI C. R. IRANI: I do not know. But, if the victim has been proved to be a victim of rape then we are as-

suming that the trial is over. But, what happens to the proceedings in the trial?

SHRI ERA SEZHIYAN: In any event, if the trial continues, the name of the victim should not be disclosed.

SHRI C. R. IRANI: It would be no safeguard at all. His point confirms that the victim's name should not be bandied about at the beginning. It is from the trial stage where the danger will come.

SHRI V. KISHORE CHANDRA S. DEO: What I want to know from you is this. You say that after the proceedings are over, the victim's name could be publicised. That cannot prevent a lady victim from filing a false case deliberately or wilfully with a view to maligning the personality of that person.

SHRI ERA SEZHIYAN: In an *in camera* trial, such a blanket ban should not be imposed on the press not to publicise the name of the victim. There is already a provision under which the discretion is left to the court to decide. Can we give such a discretion to the victim whether she wants a trial to be conducted *in camera* or not?

SHRI C. R. IRANI: I am sharing the legitimate concern of the Member. I am only suggesting some provision be inserted whereby the victim may have the right to urge upon the Trial Magistrate at the preliminary stage, to hold proceedings *in camera*. The court may order that the trial be held *in camera* and it may also be asked to pass separate orders as to whether especially if the trial is not to be *in camera*, publication of the victim's name is to be withheld.

SHRI S. W. DHABE: I find that 228A(2) has nothing to do with the offences of rape and other things. The only thing is that the power is required to be taken like this:

Where, by any enactment for the time being in force, the printing or publication of,—

(a) the name, or any matter which may make known the identity, of any person against whom an offence specified in such enactment is alleged or found to have been committed."

In fact it has nothing to do with rape or similar offences. Blanket power has been taken not to publish the name. Do you think that this prohibition clause completely deprives the freedom of the press?

In fact the new enactment can prohibit publication of the name of the victim for any offence committed. I think this 228A has a wide power.

SHRI C. R. IRANI: That is the point we have made in our memorandum. Therefore, that should not be there. May I draw your attention to Clause 4, i.e., Section 327 of the Criminal Procedure Code? I say that the other amendments to the Cr. P.C. which follow in the Bill make the mistake of assuming that all trials 'in camera' relate to rape or other sexual offences. This is not so. For example, in clause 7 one of the two new entries to be inserted is under sub-clause (a)—"printing or publication of a proceeding held in camera in contravention of any law".

That is the point you are making.

SHRI S. W. DHABE: You are in favour of deletion of 228A(2).

SHRI C. R. IRANI: I have done it in my memorandum.

SHRI AMARPROSAD CHAKRABORTY: Many suggestions have been made whether the press can be regulated by giving some guidelines to the Press whether the name of the victim of rape should be published or not. Do you think that instead of putting in the provision here which can be capable of different interpretation to obviate that you agree that

some guidelines should be given to the Press Council in this regard? FIR is made public the complaint is made public. You know this. To obviate this difficulty do you agree or not whether some guidelines may be given to the Press Council to regulate the press so that the name of the victim should not be published. You are aware of the Orissa case. You may remember that in that case the press gave a good service by publishing it in the papers which made the police at least to take cognisance of it. Afterwards many suggestions have come. There are some which do some mischief. That is why I am asking you whether the press can be regulated by giving some guidelines by the Press Council?

SHRI C. R. IRANI: I am grateful to the hon. Member's comments that the press had played their part in the Orissa case. I am one with you on that. I am a member of the Press Council. I have some direct knowledge naturally the Press Council has been very much agitated or concerned about many of the cases where the newspaper dealt with a matter in a way which is not expected of some one who claims that this doing a public service. The difficulty will be in framing any kind of guidelines. On balance I do not think that the Press Council can issue worthwhile guidelines which will be couched in such general terms. I may be excused Mr. Chairman, if I am somewhat allergic to this type of official formulations, because, in this country somehow, official formulations have had nothing but the most adverse results. All this is a continuous process and compared to the position 3 years ago nowadays the position is very much different. There is a perceptible acceptance by the Press of its duty in general. I do feel that to frame guideline would be a remedy much worse than the disease.

MR. CHAIRMAN: What about code of conduct by the Council?

SHRI C. R. IRANI: A responsible newspaper has its own standards; its own code of conduct. Press Council has issued appeals depending upon the facts and circumstances of the case. It should not glorify criminal activities. But no formal guidelines are there.

MR. CHAIRMAN: FIR does not give right to prohibit publication. It is at investigating officer's discretion. During the period of investigation I don't think that the magistrate has got a right to prohibit. What would be the reaction if publication is given? Many women's organisations desire that there should be prohibition of name of the victim. In trial the discretion of the court is there. Regarding the prohibition of disclosure of the name and the identity of the person what is your view?

SHRI C. R. IRANI: During investigation process there is no widespread disclosure of the name of the person. Offence is not established. Only the investigation is going on. Any newspaper may be hauled up for defamation by the alleged victim or the offender. So the question is only theoretical except where some rag of a newspaper with some ulterior motive chooses to publish something or the other. There was a fact-finding committee on Newspaper, Economics and when they went round they saw how several hundred such newspapers existed with no registered office anywhere, nothing on record showed that they existed. Such is the reality of the situation. The question of awarding them the penalty itself will not arise; there will be no such opportunity; it does not happen. And unless the matter comes up before the court, it is dangerous for anybody to publish any name.

MR. CHAIRMAN: You are giving protection to the Press also.

SHRI C. R. IRANI: Some of them cannot claim that they are newspapers

at all. Unfortunately some of them have had official encouragement. I am sorry to make such a statement and I say it with a full sense of responsibility.

MR. CHAIRMAN: Thank you very much.

(The witness then withdrew)

VI—Shrimati Shyamala Pappu, Senior Advocate, Supreme Court.

(The witness was called in and she took her seat).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

SHRIMATI SHYAMALA PAPPU: I know it. I signed something to that effect. I would like to submit my statement in writing.

MR. CHAIRMAN: You can pass it on to the office.

SHRIMATI SHYAMALA PAPPU: I thank the committee for this opportunity given to me to express my view. I will go clause by clause. 228A definition is very wide. Adivasis are being raped. If it is not brought to light, the whole matter will remain in dark, in secrecy. You know

about Mathura case. Women's organisations and public organisations highlight atrocities committed. This could be called into question and they can often be accused of giving out information which may make known the identity of the victim whenever it serves the purpose of those in power or in authority.

So this particular clause which states that whoever prints or publishes any matter which may make known the identity of the rape victim may not be in the interest of the victim and therefore the name may not be published. In Indian society the victim may be ostracised. Therefore, my suggestion is that in any event this particular thing may be deleted.

The Bill stipulates that all the Rape trials or trials of allied offence should be conducted in camera and if anyone publishes such proceedings held in camera he shall be liable to a minimum punishment of one month imprisonment extendable upto two years and with fine. While the object of holding in camera trial is laudable in so far as it seeks to protect the victim from having to give evidence in the presence of all sorts of anti-social elements, absolute secrecy is also undesirable as it can result in no check being maintained on the proceedings of the case by women's organisations and members of the press who should be allowed to print if a trial is not being conducted in a fair and just manner. It is thus proposed that while the trials should be held in camera, representatives of women's organisation and the press should be allowed into the court room to keep a healthy check and provide moral support to the victim.

The Bill widens the definition of rape by stipulating that if a man has intercourse with a woman without her free and voluntary consent he commits rape. As illustrated by the Mathura case, this change had become

necessary in view of the fact that in several cases of rape passive submission has been mistakenly taken to mean consent and if the woman had not actively resisted like shouting and/or screaming she was supposed to have agreed to have sexual intercourse with the man, however much a stranger he might be. So, according to the existing law, consent is also vitiated if it has been obtained by putting the victim in fear of death and hurt. Only the Bill has extended this clause to include by putting the victim in fear of any injury or by criminal intimidation as defined in Section 503 of IPC.

The Bill has also introduced an explanation to Section 375 which states that if a woman is judicially separated from her husband she shall not be considered as his wife for the purpose of the section that is, if such a man has sexual intercourse with his wife it shall be considered rape. The Law Commission had suggested that even if the couple are living separately and the man has sexual intercourse with his wife, against her will, it will not constitute rape. Some women's organisation feel that it still lacks the recognition of a fundamental right of a woman to exist as an individual, and it is necessary that amendment should be made where a wife separated or not should have the right to prosecute her husband if sexual intercourse is had by him without her consent. I personally think such an extreme step is not necessary for it may lead to the easy disruption of a home.

Now, Section 376(2) deals with rape by a policeman in any police station or in the local area to which he is appointed. It is suggested that a Policeman anywhere whether on duty or not, committing the offence should be held guilty of an aggravated form of rape by virtue of his position. Policeman is expected to be the cus-

todian of everybody's right. But if he commits rape, he should be treated severely.

MR. CHAIRMAN: Here is a case where a Police Officer is posted to a particular locality to exercise his power. If he misuses his power he is liable to be prosecuted. But some time he has a chance to go to his friend and perhaps he may not get his other dress to change the khaki dress and therefore simply he appears in that locality as policeman. Then if any lady under misconception or misunderstanding may, out of fear, submit herself to him. Is it the mistake of the Police Officer to have such submission to him? Perhaps an imprudent lady might not have understood the actual fact.

SHRIMATI SHYAMALA PAPPU: Whether it is to be treated as aggravated or not the Police Officer who is the custodian of the citizens should not commit such an offence. If he commits such an offence, it should be treated as aggravated one.

Now, Rape by a public servant, who takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him. It is suggested that if a public servant commits rape on a woman in his custody, it should naturally be presumed that the woman fell a victim to his authority. The words "takes advantage of his official position" and "as such public servant" should therefore be deleted. Rape by a manager or a superintendent of a jail, remand home or other place of custody or of a women and childrens' institution, on any inmate of the institution in this clause too the words "takes advantage of his official position" should be deleted since such an individual, when he commits rape on an inmate obviously takes advantage of his official position. Rape by the management of staff of a hospital, of a patient in the hospital—it is suggested that others e.g. nurses working in the hospital

are often sexually exploited and the clause should therefore be extended to workers in the hospital also. I do not have any suggestions regarding rape on a woman knowing her to be pregnant. Gang rape has been defined as rape by three or more persons on a woman. It is suggested that the basic requirement of three is illogical and rape by two or more men on a woman should constitute gang rape. I do not know how three men have come in. To my mind, it is illogical. To my mind, there is no rational behind it. Then the Bill while defining gang rape has omitted any reference to mass rape i.e. rape of two or more women. This class of rape should also be included. This should be treated as an aggravated form. Further, it is suggested that the Bill should include other aggravated species of rape i.e. "rape by a man" of a woman in his employment directly or indirectly, i.e. over whom he has economic or social dominance. This class of rape would include rape by landlords, village officials, management personnel and contractors of labour.

While rape is punishable with a minimum of 7 years imprisonment, in the Bill 'custodial' rape has been made punishable with a minimum of 10 years. In discussions on this clause by various women's organisation, it was felt that this clause could be counter productive as it is likely to lead to more acquittals rather than convictions to avoid harsh punishment. On the other hand it is also felt that rape was a very heinous crime. Since the Bill itself stipulates that the judge may for special reasons to be recorded reduce the sentence it would not have the above mentioned harmful effect.

The Bill makes an important amendment to Section 111 of the Evidence Act and provides that in cases of "custodial rape" as defined in the Bill one sexual intercourse is proved and the question is whether it was without the consent of the woman alleged to have been raped and she

states in her evidence that she did not consent, the court shall presume that she did not consent. This clause has been the subject of heated arguments between different women's organisations. There is one section of thought which desires that the clause should be extended to cover all rapists since it is difficult to prove the lack of consent beyond any reasonable doubt. On the other hand the other school of thought is that this clause may be misused to falsely implicate people induced by personal enmosity or political rivalry or for any other oblique reasons and one or two wrong convictions would seriously hamper the women's cause. I think no harm will be caused if the first suggestion is accepted. The onus should be the same in regard to all kinds of rapes, because the offence is the same, because it is more aggravated. I don't see that the onus should be different and without her consent, it is presumed that it should be so.

It is, however, suggested that the amendment to Section 111 of Evidence Act should be so defined as to include the categories of rape by men in political and social dominance and of mass rape. Important suggestions of the Law Commission are not included in the Bill.

No woman should be arrested before sunrise and after sunset. In the event such an arrest being necessary, reasons will have to be recorded by the officer concerned. No male police will touch a woman while arresting her except where absolutely necessary. No woman should be detained in any place, except a place of detention exclusively meant for the women and wherever this is not feasible, she should be kept in an institution meant for the protection and care and welfare of women or children.

The Law Commission was in favour of interrogation of women by women police officers wherever possible. It further suggested that no woman should be questioned anywhere but

her dwelling place and wherever her statement has to be recorded by a male police officer either as FIR or in the course of investigation into an offence she should be accompanied by a relative or friend and also a representative of an organisation interested in the welfare of women and children. It should be noted that the existence of Section 160 Cr. P.C. which stipulates that no woman shall be questioned in any place except the place of her residence has made no difference to the number of police rapes actually committed in the police station e.g. the rape of Mathura, Rameeza Bi etc. What is therefore needed is a strict enforcement of the law. In this connection the Law Commission had recommended that public servants and police officers who did not comply with the procedural requirements aforesaid, or police officers who failed to record a cognizable offence should be punished harshly. Otherwise the injustice perpetuated against women from the stage of lodging a complaint upto the trial and beyond will continue unabated.

The Law Commission had recommended that a detailed medical report of the accused by registered Medical Practitioner as well as a detailed medical report of the victim, with her consent, should be made and sent without any delay to the investigating Officer and from him to the Magistrate to avoid any tampering. The Law Commission had given guide-lines which must be noted in the report to make it comprehensive.

Past sexual history of the victim. The Law Commission had suggested important amendments in this respect by way of insertion of Section 53A and Section 146(A) in the Evidence Act.

By these clauses the accused is prohibited from questioning the general moral character or the past sexual history of the victim with anyone other than the accused. The Bill does

not incorporate these clauses. It is ironic that while the male's past sexual history or general immoral character is hardly ever questioned all the cases of rape have centered around this notion. The defence counsel invariably tries to prove that the victim is of a loose moral character and if the victim has had any relationship with any man and if she is not married it is presumed that she will consent to having intercourse with every Tom Dick and Harry.

Last the question of rehabilitation of victims of rape and allied offences is a serious one and needs to be considered. It is suggested that fine if levied should be given to the victim. It is a loss of reputation. Some sort of compensation should be thought of by this Committee which should be paid to the victim concerned.

MR. CHAIRMAN: If the accused is not able to pay for it, then what is the remedy?

SMT. SHYAMALA PAPPU: There is no point in having a paper decree. The court will have to see the financial status of the man.

MR. CHAIRMAN: If the accused is very poor where is the chance of recovering it?

SMT. SHYAMALA PAPPU: That is why an imprisonment is there.

MR. CHAIRMAN: Is there any other alternative?

SMT. SHYAMALA PAPPU: It should be the discretion of the court to see that, even today fines are being imposed along with imprisonment, the money of the fine should go to the victim instead of going it to the State. Rigorous imprisonment should be there in any case.

These are my suggestions. The victim should be given adequate legal aid both at the pre-trial and trial stages.

MR. CHAIRMAN: Thank you.

(The witness then withdrew)

VI

(a) Delhi Administration Delhi

Spokesmen:

- (1) Shri D. K. Dass, Home Secretary.
- (2) Shri Lokeswara Prasad, Law Secretary.

(b) Government of Tamil Nadu Madras.

Spokesmen:

- (1) Thiru K. Chokalingam, Home Secretary.
- (2) Thiru S. Vadivelu, Law Secretary.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we proceed, may I draw your attention to Direction 58 of the Directions by the Speaker which reads as follows:

"58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall however, explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

MR. CHAIRMAN: If you want to make any introductory remarks, you may do so.

SHRI D. K. DAS: We have conveyed in writing the views of the Delhi Administration. We have generally agreed with all the proposals in

the amending Bill, except one which relates to the discretion given to the presiding officer in the matter of awarding punishment under clause (f) of section 376(2) where the punishment is seven years. Here discretion has been given to the presiding officer to give a lesser punishment also in certain circumstances, which would amount to nullification of the provision itself. One can go to the extent of giving no punishment or very nominal punishment. So, we have suggested that even the minimum punishment should not be less than three years. We have not made any other suggestion. Though discretionary power is given to the court, this provision is imperative. They have to give a reasoned judgment, laying down their reasons why they want to give a lesser punishment.

MR. CHAIRMAN: There is judicial scrutiny by the higher court.

SHRI D. K. DAS: We will give an alternative suggestion. Why not keep this minimum punishment of three years to be awarded by the presiding officer of the first court? If this is considered a very severe one, let the accused go to the higher court and let the discretionary power be given to the higher court, in the case of appeal in the matter of question of punishment, to reduce it.

MR. CHAIRMAN: Suppose an accused, whose trial under section 372 begins, has three small dependent children. Should we not give discretion to the presiding officer so that he can take into account those circumstances also? Otherwise, there is every likelihood of those children becoming destitute.

SHRI D. K. DAS: In the given example, if I were the presiding officer, I will not be inspired by those circumstances. If this sort of consideration is given, then every accused would try to put the children before the court than any argument. You can keep the discretion with the higher court. The trial judge, while

awarding the punishment of seven years, can recommend for consideration of the higher court a lesser punishment.

MR. CHAIRMAN: Then what is the use of fixing a minimum punishment?

SHRI D. K. DAS: In this Bill we should remember that we are engaged in serving a social purpose.

MR. CHAIRMAN: According to you, the object would not be served by having this provision.

SHRI D. K. DAS: Apart from this point, we have not ourselves made any suggestion. If you ask anything else, I will give my humble view. Thank you.

SHRIMATI GEETA MUKHERJEE: Mr. Das in this punishment clause the minimum punishment suggested here is 7 years and then in your own discretionary power you have already reduced it to 3 years. Thus there is a difference of 4 years. Is it your experience that generally in these cases the possibility of higher punishment is lesser?

SHRI D. K. DAS: I won't be that pessimistic, but you know the human behaviour. Very powerful accused persons will get away with minimum punishment. That is why we provided a minimum of six months R.I. if the offence is proved. We have provided that punishment in similar other cases also. Rigorous imprisonment of a minimum duration will be a better deterrent than this blanket discretion. Fine cannot be a deterrent to many people and there have been many cases where with a lot of money they probably think that they can get away.

SHRI AMARPROSAD CHAKRABORTY: If a man is having a lot of money...

SHRI D. K. DAS: Money can play a big role even in the matter of de-

fending oneself. If I have money probably I can engage the best of the lawyers. But without money even if I am innocent I might not have a say in the matter. Money power has relevance in our society. I leave it at that.

SHRI ERA SEZHIYAN: The Courts may give lesser punishment if this discretion is given. Actually, discretion is not a blanket one. There, they have to give adequate reasons for using that discretion. And you are saying that this 7 years period should be reduced to 3 years. If you think about the other one, that is, custodial rape...

SHRI D. K. DAS: Now that you have pointed out, I personally suggest that this discretionary power should be curbed even in the other clauses.

SHRI ERA SEZHIYAN: I would like to know whether your statement is being backed by your experience. Have you got any statistics as to how many rape cases in Delhi have been filed.

SHRI D. K. DAS: I cannot correctly tell you the total number. But percentage-wise we made a review recently. It is as low as 13 per cent only in Delhi, I mean successful convictions. When I say 'successful convictions' I mean including the police in the higher courts.

SHRI ERA SEZHIYAN: If you can give the figures to the Secretariat in a note, it will be better.

SHRI D. K. DAS: I will send it.

SHRI S. W. DHABE: Can you say what is the average period of sentence given by the Magistrate?

SHRI D. K. DAS: I cannot say. But in a recent review which is made, 13 per cent was the percentage of total successful convictions. As far as the sentence is concerned, I generally

remember that in no case the sentence has been more than 7 years. The minimum sentence was about 2 years.

SHRI S. W. DHABE: Your suggestion is that discretion should not be left to the magistrate, and three years should be the minimum limit. Therefore, your suggestion is that even if the magistrate has got the powers, it should not be less than 3 years' punishment. Have you got any case to show that the minimum punishment given by the magistrate is less than three years?

SHRI D. K. DAS: In many cases we have found that it is three years or less and in a very few cases the punishment is more than 3 or 4 years.

SHRI S. W. DHABE: What is the basis for your suggestion of minimum three years punishment? I thought it is because of your experience of cases.

SHRI D. K. DAS: No basis.

MR. CHAIRMAN: In a recent review of judgments, he came to know that in many cases the sentence is two years. Therefore, he suggests that the minimum punishment should be of three years. That is the basis.

SHRI AMARPROSAD CHAKRABORTY: How many rape cases you have got?

SHRI D. K. DAS: I will submit the statistics tomorrow to your Secretariat.

MR. CHAIRMAN: Thank you very much.

SHRI K. CHOKKALINGAM: We have already submitted a representation. In addition to that, the point which I would like to emphasise is...

MR. CHAIRMAN: Your representation has been received and it was suggested in the meeting of the Committee that some memoranda should be submitted to the Secretariat.

SHRI K. CHOKKALINGAM: Yes, we will submit that.

MR. CHAIRMAN: In addition to what, if you want to give oral evidence, I have no objection, but I think it is not necessary.

SHRI K. CHOKKALINGAM: I would like to emphasise once again that the minimum punishment that is given nowadays is 2 to 3 years. I would like to reiterate what the Delhi Home Secretary has said that the punishment should be a minimum of 3 years. In a majority of cases there are a large number of acquittals. In the year 1980 only about 40 per cent of the cases ended in conviction and 60 per cent ended in acquittal. In 1979, about 27 per cent of the cases ended in conviction and in the year 1978 only 50 per cent of the cases ended in conviction. The difficulty in these cases is that the victim is won over during the trial by several means with the result that the prosecution wall let down in the middle and most of the cases failed that way. In those cases, where it is possible to convict if the conviction is severe, we can get an example.

MR. CHAIRMAN: What is the punishment given in your State?

SHRI K. CHOKKALINGAM: In 5 per cent, it is 5 years. In most of the cases it is two to three years.

MR. CHAIRMAN: If three years is already there, what is the fun in suggesting that the punishment should be for three years?

SHRI K. CHOKKALINGAM: In most of the cases it is two years.

SHRI P. VENKATASUBBAIAH: You said that in many of the cases the victims are won over and prosecutor will not be able to establish the case. Are you contemplating any administrative measures?

SHRI K. CHOKKALINGAM: The Law Commission has already recommended that Medical Certificate should be sent in time. If it is incorporated by amending the relevant provision of Cr.P.C. that would help us a lot.

SHRI P. VENKATASUBBAIAH: Have you got any specific proposals to say that the victims are not harassed and victims are not won over so that there should be fair and speedy trial. If you have got any suggestions to make, please send those to the Secretariat.

SHRI K. CHOKKALINGAM: We will do that.

SHRI ERA SEZHIYAN: You have mentioned about the involvement of women group? How can that be put in the statutory form?

SHRI K. CHOKKALINGAM: Once we file the FIR and the process is initiated, it takes some time to come up with the medical certificate. We can make it obligatory on the part of the court to remind them and watch the progress. At present they just wait. Wherever possible, at least in big cities women associations can be associated.

SHRI ERA SEZHIYAN: Women associations wanted the appointment of women defenders and they should be provided legal aid specially in these cases.

SHRI K. CHOKKALINGAM: We agree to those suggestions.

SHRIMATI GEETA MUKHERJEE: I want to draw your attention to the first five sentences of your Memorandum.

SHRI S. VADIVELU: New Section 375 clause 6(3):

The Law Commission has suggested that consumption of unwholesome

substance should also be included within the scope of this clause.

Supposing a woman consumes a stupefying or unwholesome substance and is not in a position to give her consent, that circumstance should also be taken into account.

About custodial rape—376(2) Clause A, Clause B. It refers to "being a public servant takes advantage of his official position".

376A: It relates to seduction. It refers to "being public servant takes undue advantage of his official position".

MR. CHAIRMAN: You leave all this to the committee.

SHRI S. W. DHABE: In your memorandum you have suggested to en-

sure public confidence in the police. How can it be included in the provision of the law? How can judiciary be involved?

MR. CHAIRMAN: Have you any concrete example to quote?

SHRI K. CHOKKALINGAM: We do not have.

MR. CHAIRMAN: When the investigating officer takes up the case for investigation, he is bound under the Cr.P.C. to submit a detailed diary to show the progress of the case. Otherwise, the magistrate will not grant police remand or judicial remand. Therefore, the judges are kept informed. That is already there.

Thank you.

The Committee then adjourned.