

points concern the State Government, and some concern the Central Government. In fact the Ministries write to them direct. If they do not reply they can come to me, or write to me.

MR. DEPUTY-SPEAKER : Yes, yes. You bring it to their notice.

SHRI BUTA SINGH : Kindly let me clarify my position. I am only a post-man. If he writes a letter to his beloved and if he does not get a reply, what can I do ?

श्री राम लाल राही : साथ में यह भी कह दें कि सदस्यों की इच्छा के अनुसार जवाब दें ।

SHRI BUTA SINGH : He cannot expect me to write a reply.

MR. DEPUTY-SPEAKER : Mr. Rahi, if you do not get a reply you can write to the Minister.

(x) Opening of Cooperative Sugar Mill in Machharheta (Sitapur), U.P.

श्री राम लाल राही : केन्द्र सरकार सहकारी व निजी क्षेत्रों में चीनी मिलों के निर्माण की स्वीकृति एवं सहायता की व्यवस्था करती है। उत्तर प्रदेश में जनपद सीतापुर प्रमुख गन्ना उत्पादक क्षेत्र है। तीन चीनी मिलें निजी क्षेत्र में और एक सहकारी क्षेत्र में होने के बावजूद भी पूरे उत्पादित गन्ने की पेरार्ई मिल नहीं कर पाते। हर वर्ष नवम्बर से लेकर जुलाई तक मिलों में पेरार्ई होने के बावजूद 15-20 फीसदी गन्ना खेतों में खड़ा रह जाता है। किसान की लागत व मेहनत सब बेकार जाती है। गुड़, खांडसारी व सल्फर यूनिट के मालिक भी गन्ने की खरीद मनमाने दामों पर करते हैं। 5 रुपया से लेकर 9-10 रु० क्विंटल के बीच खरीद होती है। वहां पर भी समय पर किसान को कीमत नहीं मिलती। इन यूनिटों के मालिकों से प्रदेश भर के किसानों को सरकार उचित गन्ने का दाम दिलाने में असफल रही है।

जिला प्रशासन ने जनपद सीतापुर के मछरेहता तथा लहरपुर तम्बौर के मध्य सहकारी क्षेत्र में

चीनी मिलें लगाये जाने की आवश्यकता की तरफ प्रदेश सरकार का ध्यान आकर्षित किया है। इन क्षेत्रों में चीनी मिल लगाये जाने की नितान्त आवश्यकता है। सहकारी क्षेत्र में चीनी मिलों के लगाये जाने की घोषणा पर ही हजारों की तादाद में किसान सदस्य बन, अंश पूंजी देने को तैयार हैं।

हमारी केन्द्र सरकार से मांग है कि सीतापुर के मछरेहता तथा तम्बौर लहरपुर के मध्य लालपुर बाजार के निकट सहकारी क्षेत्र में चीनी मिल बनाये जाने के लिए प्रदेश सरकार को सहायता दे। यह भी मांग है कि गुड़, सल्फर, खाण्डसारी के मालिकों को कानून बनाकर विवश करे कि वह किसानों को गन्ने का उचित व निर्धारित नकद मूल्य देने के लिए विवश हों।

CRIMINAL LAW (AMENDMENT)
BILL—Contd.

MR. DEPUTY-SPEAKER : Now we take up Bill for Consideration. Hon. Members, the time allotted to this Bill was four hours. We have already exhausted 2 hrs. and 28 minutes and we have got one hour and 32 minutes more. I think the hon. Members will cooperate and the Minister will reply at least at five o'clock and we will complete the Bill today. I want your cooperation. Thank you.

Now Shri A.T. Patil to continue his speech. He has already taken 120 seconds.

SHRI A.T. PATIL (Kulaba) : Mr. Deputy-Speaker, Sir, I was referring to the special features of this piece of legislation last time. Without going into the deeper explanations, I can straightway go to the distinguishing features of this sexual offence. Firstly, in this offence the victim is invariably a woman. There cannot be a man who can be a victim of this offence. So far as the definition of this offence is concerned, it is only the woman who is supposed to be the victim. I do not wish to enter into that sort of a situation where the man can equally be a victim of a sexual offence, if necessary, I shall refer to it during

the course of my speech. But as it stands, the victim is invariably a woman. The second distinguishing feature is that there is no scope for restitution or reparation. The social morality which is translated into words constituting a section of the law, is or has a concept of a sort of defilement of the victim—defilement of the woman in particular and not of the man. That aspect should also be taken into consideration and, therefore, so far as this concept of defilement is concerned, there cannot be any sort of restitution or reparation. In all other offences, for instance, except murder, there can be a restitution or some sort of reparation but in this type or in this kind of an offence, there cannot be any restitution or reparation. Thirdly, the offence is such that the psychological scars are never healed. That is not the case with any other offence. Fourthly, there is no scope for retribution—I mean to say retribution by the community, or retribution for the victim.

For instance, when a harm is caused to the victim, the victim cannot take a retribution against the culprit. Even if the relatives of the victim desire to cause harm by way of retribution, they cannot cause that harm which has been caused to the victim.

Further, since the Indian Penal Code came into force in 1860, till today this offence is treated as an offence against the human body. It has never been given special treatment in the west. We tolerated it, we pursued it, we considered it but we did not ever think of giving a special treatment to the offence. With due respect to the view that is put forward by the Government, as well as reported by the Joint Committee, the treatment that has been given to this offence so far has been continued. It is always treated as an offence against the human body. We have never considered the question of giving it a special status. Therefore, it needs reconsideration.

Because of the peculiar situation of this offence, it has continued to increase, or at least the publication of such offences continued to increase. They are now brought to the knowledge of the public in greater number. It is in this background that the matter was referred to the Joint Committee and the Bill that is now placed before the

House is as reported by the Joint Committee.

The various objectives that are put forward in the Bill are stringent punishment, removal of loopholes and inadequacies, minimum punishment for the offence, protection to the victim, from embarrassing publicity and onus of proof on accused. So far as these five objectives are concerned, if you refer to the first and the most important objective viz. the removal of loopholes and inadequacies, I was comparing the existing section 375, which defines the offence of rape with the provisions of reported bill and I find almost the same definition, of this offence. But we have sought to re-define the social morality, so far as this point is concerned. The question is, what is the morality that we are going to transmit into the words of the statute. Is it the same morality that is transmitted into the words, as I told you, 123 years ago, by the framer of the Code, Macaulay? This was there in the statute book for all these years. We have taken it upon ourselves to re-define it. Are we going to transmit our own social morality into the statute, or are we just trying to get here and there the so-called morality of the west which, in a way, was thrust on us, although they say that it was formulated with prior consultation with pandits, Mullas and others.

Secondly, so far as the Act is concerned, what is the social morality. We have created, the entire world has created, the institution of marriage to keep a sort of sexual relationship between man and woman.

Any sexual relationship between man and woman outside the relationship or marriage is said to be something immoral. This may be termed today as a middle-class morality. I am not concerned with the so-called high class morality or the so-called low class morality. I am not concerned if it is to be dubbed as a middle class morality. My question will be whether it is a morality—in high class, middle class or low class morality—to give a free hand to sexual acts or relations with free consent. That is the question. The question will be whether the society of high or low or middle class, permits or professes to permit a free sexual

relationship between persons who are not married, by their free consent. If that is the idea or the concept of social morality, then I will have to say little about it. But my understanding of the social morality in any class of society is that they look upon any sexual relationship between a man and a woman who are not married, as something which is immoral. If that is the concept of social morality, no question of class morality will come up. It is universal morality. And if this is so, we need not have to go into 'firstly', 'secondly', 'thirdly', 'fourthly', 'fifthly' and all that of Section 375. Section 375 as reported by the Committee says, "Firstly—Against her will. Secondly—without her free and voluntary consent," etc. etc. I need not read everything except when it says in the bill reported by Joint Committee.

"Fifthly,—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.

"Sixthly,—With or without her consent, when she is under sixteen years of age."

I need not read the Explanation. But then the question remains : What improvement have we made so far as the existing statute is concerned ? You will find that the 'firstly' is kept as it is, 'secondly' is kept as it is. But in 'Thirdly' you have added only these words : "or any person in whom she is interested". Beyond that you have done nothing so far as 'Thirdly' is concerned. So, it is there as it is. In 'Fourthly' there is no change as the existing statute stands. "Fifthly" is an addition. Therefore, I have read it fully. This is an addition that where consent is caused by intoxication or the administration of some stupefying or unwholesome substance, then she shall be deemed to have not given her consent. That is the position. So far as this aspect is concerned, I would request the Government to take into account the existing

provisions of Sections 85 and 86 of the Indian Penal Code. In this particular case—I have gone through some of the evidence and there is evidence of some people saying that this provision will open a floodgate of accusations—these are the words used in the evidence : "Floodgate of accusations"—so far as the administration of intoxicating or stupefying or unwholesome substance is concerned'.

You may please refer to Sections 85 and 86 of the Indian Penal Code. If I bring an illustration, the question which was raised by the hon. Member may get some explanation. Suppose, a man 'A' and a woman 'B' come together out of some interests totally with good intention and the woman serves him some sort of intoxicating drink or stupefying substance without any ill-will. Now, under the influence of this stupefying substance, the man supplies or makes the woman to drink or swallow something which has the effect of intoxication or administration of stupefying substance. Now, they enter into sexual relationship. What is the offence they committed ? Even under the clauses "Fifthly" by operation of sections 85 and 86 of the Indian Penal Code—the offence is nil. Therefore, this addition of "fourthly", "fifthly" or "sixthly" shall have a sound defence saying that these are the things which have happened. So, no offence has been committed even if the clause "Fifthly" is sought to be brought in.

Therefore, my simple definition of "rape" will be like this. I will not go into the words "Secondly", "Thirdly", "Fourthly" etc. I will put straightly the definition of "rape". If you do not call it a "rape", call it as "sexual offence". "Sexual offence is an offence committed by way of sexual relationship between a man and a woman who are not married." That will be my simple definition. There shall be no scope for any legal luminary to interpret the concept and to bring in various circumstances true or false in the evidence which will nullify the object and intention of this Bill. And, therefore, my simple definition of "rape" or "sexual offence" is any sexual relationship between a man and a woman who are not married.

SHRI N.K. SHEJWALKAR (Gwalior) : What is the difference between "adultery" and "rape" in that case. (*Interruptions*)

AN HON. MEMBER : You have to amend article 19 of the Constitution.

SHRI A.T. PATIL : The question of amending the Constitution or amending the law is ultimately subservient to social morality. Constitution by itself is not sacrosanct. If it does not express the social morality, the provisions of the Constitution have no meaning at all. You have to amend the Constitution or to interpret the Constitution. Don't take shelter to conceal your guilt under the provisions of the Constitution or law. If you are guilty, whether the provisions of law protect you or not, you are guilty in the sense of social morality.

(*Interruptions*)

SHRI MOOL CHAND DAGA (Pali) : Is there any difference between legal morality and social morality ?

SHRI A.T. PATIL : There is a difference between social morality and legal morality. In fact, law and morality should go hand in hand. But law always lags behind morality. That is the position.

There is another point, whether the concept of rape by husband and wife should come within the ambit of law. Today, the circumstances are changed. The age of marriage has been raised. If that is so, the sexual relationship between husband and wife should be treated as legal and should not be put in the definition or treated as an offence of rape. That should be deleted. Therefore, I would suggest that in the Explanation the words "wife not being under 15 years of age" may be deleted and, similarly, the words in Section 376 beginning with "unless the woman...and ending with fine or both" may be deleted so that the relationship between husband and wife is always treated as legal. It should not be treated as an offence under any circumstances.

Further, there will be a question of investigation and trial. So far as investigation and trial of this type of an offence are con-

cerned, we are still governed by the same provisions under which investigation and trial of other offences are governed. I would suggest that a totally separate machinery for the investigation and trial of this offence may be set up. The rigour of procedure and all other things should be removed. As far as possible, the trial should be simplified so that no questions during cross-examination or evidence are put so as to deny justice because one must remember that a question which is embarrassing is not replied to and there is a denial of real justice. Therefore, there should be simplification of investigation and trial. There should be some independent machinery for this type of offence.

Then comes the question of punishment, its nature and quantum. So far as this is concerned, the Bill for the first time seeks to set in a minimum punishment of seven years. But it is left to the discretion of the court and there is no lower limit prescribed. My submission is that, go far as the discretion of the court is concerned, there should be a lower limit prescribed. There should be a minimum limit put on the punishment, even at the discretion of the court, and I would submit that it may be put at three years. That means, when the court reduces the sentence from seven years to one below seven years, it must not go below three years.

So far as the nature of punishment is concerned, today only one type of punishment is given, that is, imprisonment. There are countries and legal systems in the world which have adopted other types of punishment also.

14.53 hrs

[SHRI R.S. SPARROW *in the Chair*]

For instance, castration through chemical or surgical means is one of the punishments adopted. If this punishment is given, there will be an effective check on sexual offences.

There are also other punishments meted out in other countries which provide for excommunication and restriction on employment etc. You can think over this whether

we can switch over from mere imprisonment to this sort of punishments.

A suggestion was made that compensation should be paid to the victim. I will not go into that. But if at all such compensation is to be given, let us fix it at the rate of half of the property to the victim. If that is done, perhaps there will be a better check.

SHRI SONTOSH MOHAN DEV : It may be an incentive also !

SHRI A.T. PATIL : The law will take care of such incentives. So far as publicity is concerned, there is a lot of criticism against publicity. Some of the Hon. Members of the Committee have spoken against this Section 228 A. They have given certain reasons. There is force in the reasons that they have given. According to them, the investigation will be barred.

But I think that there can be no bar to investigation into the offence. As I have gone through the provision, I find that the objective behind barring the publication is the protection of the interests of the victim. But, the victim has been given the right to forego that right in the sense that if it is necessary that the name should be published in the interests of better investigation then, provision has been made in the Section itself that in that case the name may be published or the details may be published. Acting in good faith, the Police Officer, for the purpose of investigation, can grant or refuse the permission. If that is our main ground of objection against the publication namely that the investigation will be barred, then it is provided in the Bill. The proviso and explanation provide that no such authorisation can be given by the next of kin. The proviso and the Explanation, to my mind, are redundant.

So far as Section 228A is concerned, there should be some minimum punishment because right of publication is likely to be misused. Therefore, in the words in Section 228A "who prints or publishes", 'or' should be substituted by 'and'.

15.00 hrs.

Then it will read, "Whoever prints and

publishes. ..." That will cover the possible mischief. Then at the end of "which may extend to two years" you can add, "but shall not be less than three months and shall also be liable to fine". That will serve the purpose or the objective.

So far as the definition of section 376 is concerned, it appears that the provisions of section 493 have not been taken into account ; that is a duplication because section 493 provides for a similar offence which has been defined in the clause 'Fourthly'.

Sections 376B, 376C and 376D are offences of seduction where consent is taken for granted in the sense that we presume that there was the consent but the consent was brought about by seduction or inducement. The point is whether you want the consent to be an important factor in regard to this offence which is an offence relating to social morality. If not, then 376B, 376C and 376D may not be necessary. If you want to remove consent altogether from consideration, whether consent or no-consent it is an offence, in that case the offences relating to seduction, under new Sections 376B, 376C and 376D, may not be necessary.

Only one point more and I shall complete, and this is regarding section 376(2)(c) and section 376C. I may invite the attention of the House to the provisions of these two. Section 376(2)(c) reads :

"being on the management or on the staff of a jail..."

Section 376C reads :

"whoever being the superintendent or manager of a jail..."

These were the original words which were there. If you want to bring in line both these sections, you use the same words at both the places. If you want to put the words "being on the management or on the staff of a jail..." in 376(2)(c), then put the same words in 376C also. That is my submission.

So far as section 354 is concerned, I invite the attention of the House to two para-

graphs or references made by the Committee to section 354. One is on page (viii) which says :

"The Committee feel that since the proposed legislation mainly deals with rape and illicit sexual intercourse, the offence under section 354 which is a minor offence and not so grave and serious as the offence of rape need not be brought within its purview."

On page (xvi), the Committee says :

"The Committee feel that outraging the modesty of a woman is the most cruel offence and needs to be dealt with severely. The Committee are of the opinion that the offence of molestation might be equated with rape and brought within the purview of section 100 of the Indian Penal Code relating to the right of private defence of the body extending to causing death."

Taking these two observations of the same Committee and without there being any note of dissent, so far as this is concerned from any Member, the question is how to reconcile these two statements. I will adopt the statement on page (xvi) and reject the statement on page (viii).

With these words, I support this Bill and I request the hon. Minister as well as the House to consider the various suggestions I have made.

SHRI N.K. SHEJWALKAR (Gwalior) : Mr. Chairman, Sir, I thank you very much for giving me this opportunity to speak. I must say at the very outset that I was a member of the Joint Committee which has submitted the report. I know the convention that I am allowed only to the extent I have given my dissent. But because some points have been raised by hon. Members in this House—fundamental points, I should say—I think, you will permit me to say a few words about them also, not anything against what has been said in the Bill.

I joined this Committee a little late, seven months before the Committee submitted its

report ; throughout the tour I was not there, while the evidence was being recorded. But in the end, in the last deliberations, I did participate and I had the chance to put my amendments also. As you know, the House with great difficulty extended the time for submission of the report of the Committee. The report was submitted on 27th October, 1982. But the Bill, in spite of the fact that submission of the report was hurried up, after a lapse of one year, is being tried to be put through now which is December, 1983.

There were other Committees also which were considering the other aspects of the laws connected with these activities. On the law regarding dowry, there was a Committee constituted which gave its recommendation, and a small Bill is tried to be put through. There was another Select Committee on a Bill regarding amendment of marriage laws concerning divorce. These are all, somehow or other, related to each other. In this report also which is being considered today there are certain other recommendations ; they are actually not part of the Bill but there are certain recommendations. I am not clear as yet why, after taking so much of time, even after one year, when they have agreed to the report and the recommendations which are there and the other things which have come up in other Committees, Government is not trying to bring a comprehensive Bill covering all the subjects. This is a question which is worrying me, particularly when they say that the law is not in conformity with what the society is thinking today ; it is lagging behind as my friend has said. Why is the Government delaying this ? This is a matter of concern to me.

Then on the fundamental point as to what is an offence and what is not, offence is a very important thing ; a line has to be drawn. It was suggested that even mental cruelty amounts to an offence. That was the suggestion given by my friend indirectly. I would say that mental reaction may vary according to the thinking of the society and it may vary from person to person. Therefore, just a sort of a mental reaction being caused to some extent, cannot be made punishable. Ultimately it is the physical

assault only which will be the governing factor to condemn a man and say that it is an offence. If we draw this line, then in that case there will be no difficulty, because the mental reaction of A may be something and that of B may be something else altogether. It can go to the extent that one might like to commit suicide and we know that in many cases of rape, sometimes the ladies commit suicide. In that case, can the person be charged with murder? That is the point. Therefore, that line has to be drawn between the two—that ultimately it can be at the most an actionable claim for mental reaction and the loss caused to her, but unless there is a factor of physical assault, it cannot be an offence. That is my thinking.

Coming to the Bill itself, I have given my suggestions in my dissenting note and I do not want to repeat that thing. But I would like to make my point clear. First I have opposed the amendment which he is going to introduce by Sec. 228A which debar publication of any sort of information regarding the incident. That is totally against the very purpose which this amendment proposes to serve. The Law Commission also has not suggested such an amendment. I do not know what are the reasons and to what extent that should be made punishable. The very purpose will not be, according to me, served. On the other hand, lot of difficulties may arise. And all these investigations will automatically die and unless and until these days there is a sort of public pressure through Press, certain actions do not go ahead or do not proceed. Actually what do we see? What is the record? When there was lot of demonstrations and other cases coming up and publicity is given of such cases and when particularly communal factor is involved as in Mathura's case, where even a police constable has done such a thing, such a wrong thing, then only people thought of all these amendments. If all these things are not there, I am afraid there may not be any pressure on the House or on the legislators to bring an amendment of the type which is being submitted.

Then, Sir, I can understand. To have the proceedings *in camera* is a different thing

because proceedings are held *in camera* with particular objectives. Then it is a different thing. Otherwise, they have given two reasons—one that it gives publicity and then secondly, it may affect the investigation. I have given my reasoning regarding that. So far as publicity is concerned, how is it going to effect? The lady or the woman or the girl who is raped—naturally, at least the people of her family or the people of the village or the people of the city to which she belongs come to know it. If the society is not ready to accept the girl honourably, then in that case, it is not the publicity but it is the feeling of the society which is nearby. Otherwise, it will be a greater horror if this matter is kept hidden and the girl is married to another family and that family and the husband come to know that she has been raped and unless the husband is a broad-minded person, the marriage will be shattered altogether. So unless and until we make a change in our social thinking and the society takes a sympathetic view of such incidents—because she is not at fault—and unless this mentality is developed in the society, I am afraid that mere publicity or rather not giving publicity is not going to help in the matter in any way.

Secondly, regarding investigations also, I have said and I agree with my friend, Mr. Patil when he says that marital relation should be presumed with consent. We adopt the idea that any sexual contact or any sexual intercourse should not be without consent. Then irrespective of age it will become an offence. Consent is a very important factor. Without consent even a married person has intercourse. Then why should we differentiate between a girl who is more than 16 years and a girl who is less than 16 years? It does not make any difference.

In a case of husband and wife I am saying that once they are married, they do not get a licence to force sex upon the wife. If we are going to that extent, I can understand. But, it cannot be bothways that after 16 years, irrespective of consent you can have intercourse with your wife and, if she is below 16, it should not be done. I am not able to follow this. In India, particularly, in spite of the Sarda Act we have, 90% of the child marriage takes place in the villages.

And if we introduce this provision, it can be exploited by some and this might cause trouble to so many. I am not for that.

Furthermore, is it not a fact that these days, with the sex education, the girls and boys know the sex? It is not like America where 30% of the girls of the age of 14 have sex and it is more than 70% in the case of those who are between 15 and 16 years of age. It is much more when they are 16 years of age. If a boy of 17 years of age and a girl of 15 years have sex, in that case, if somebody comes to know of this, the girl may say that it was with consent, it would be deemed to be with consent. Should this be considered an offence if sexual relationship is with consent? This is a matter which should be properly examined. And I think it will be very risky to say just because the girl is 16 years of age, it should be presumed that the girl is not able to understand the consequences of what she is doing. I have quoted many of the girls from the American Magazine who are pastmasters at the age of 16. They have a lot of experience of sex. This factor should be carefully taken into account. In any case it becomes an offence. Whether it was actually done with or without consent without properly understanding the consequences or not should be left to the court and the age of a girl should not be the determining factor. I can understand for instance if the girl is below 12, when the sexual intercourse can be considered an offence. If it is beyond 12, it should not be. It should not be like this. This is also one of my submissions which I have made in the dissenting note. Then again, to-day, the difficulty arises regarding investigation. There is a possibility of investigation in many cases—not in all cases—and medical examination is one of the important factors. The Law Commission has given importance to this also. Colour photography and examination of the accused as well as the victim are the methods by which the evidence can be well procured. Naturally, I think, it will be clinching the evidence that at least the intercourse is there. Whether it is forcibly done or whether it is done by consent, that will be determined later on. In the courts, the prosecution has to prove that the accused did have the intercourse and, actually, he has the same person who

contacted the lady. On examination if the semen is there and the other medical examination is done, then, in that case, much of the proof will be automatically covered. So, I do not know why I was not able to satisfy the Committee to bring these things into the amending Bill. Probably, they thought that they were kind enough to put these in the recommendations. I do not know why Government is not kind enough to bring those recommendations by incorporating them as a sort of provision in the law itself. If they feel that they are convinced of the report of the Committee, why they are not able to include all these in the amending Bill. There should be a provision made in the Criminal Procedure Code. Similarly, there is a very interesting thing. The trouble is with regard to the Law for self-defence or private defence. This is rather a vague law. The law says that you must exercise force only where it is required for your self-defence and not beyond that.

So far as the Explanation is concerned, they said that if somebody was going to commit a sexual intercourse, to defend herself, the lady could murder somebody else. In that case, that will be considered as self-defence. Should she wait to that extent? I have suggested that if any molestation is being tried, then everything is of course, going to happen. The moment the rape is going to be committed, the question is whether that right should be exercised at that point or it should be exercised even earlier, perhaps, I think, an amendment to Section 100 of the IPC that even a molestation should be enough and that should be a ground for self-defence. In that case, if she shoots a person by her firearms when he tries to molest her, that should be a ground for self-defence. I have also suggested a few amendments.

Again I submit and request the hon. Minister to consider the points suggested in my report and, if possible, bring some comprehensive law on all the three subjects.

More particularly the law which is before us, the recommendations made should be incorporated by way of amendment.

SHRI BRAJAMOHAN MOHANTY
(Puri): Mr. Chairman, Sir, really with

anguish at my heart I am participating in this debate. This is a crisis all over the world which mankind is facing. It is not only limited to India but in advanced countries also now the debate is going on whether they have to legalise the homosexuality on the basis of consent or not. A few months back here in India the Chief Justice of the Supreme Court had to throw out a lady clerk because she had worn the Jean Pant. I gave this illustration just to show how the society is restless and how day by day the women are more and more humiliated on account of male chauvinism.

Sir, when you open the newspaper every morning you will find that somewhere a beauty show in some five star hotel is being organised or somewhere cabarets are going on. So, all around every day you find that the sanctity of womanhood is being injured. It is being denigrated.

What is the problem before us ? In this country we have committed ourselves that men and women have equal opportunity, equal right and equal dignity. I congratulate the Home Minister for bringing forward this Bill. Although it is not fully adequate yet it is a humble step towards that direction, namely, in establishing a society in which dignity of the women will be equal to that of the men.

Sir, the Law Commission recommended that the scope of 'consent' should be enlarged as the original provision in the IPC is considered to be inadequate. My submission is that the definition of 'consent' is also not adequate. I would invite the attention of the hon. Minister to the fact whether in a case of fraud, in a case of undue influence or in a case of coercion the 'consent' is obtained. If the consent is obtained then the question is whether the amended Section will take care of it. Will it be 'consent' or 'no consent' ? The definition does not cover that. Although I have not given a separate amendment yet I would suggest for an addition to be made in the Explanation to Section 375. Let me explain first. Supposing the Principal of a School who is a male member takes liberty with a lady teacher. Will the Section take care of it ?

Should it be considered 'consent' or not

because the person in authority takes advantage of the situation ? Take the case of a priest of a temple or bishop of a church. If they do some mischief then my submission is that they should come not only within the purview of rape but also deterrent punishment should be given to them. So, a comprehensive definition must be provided and, as such, I would invite the attention of the hon. Minister to the need to incorporate the amendment. In place of this Explanation under Section 375 we can have another. This can be replaced by 'Consent obtained by undue influence, fraud or coercion'. Suppose one girl is staying with her sister who is married and if the brother-in-law takes some liberty and takes some advantage of the situation, this law and this definition, does not help in that sort of a situation. In many cases, in educational institutions etc. we don't take note of this kind of a situation. There are company offices and others ; there are men in public offices ; or anybody who is in authoritative position in any establishment or in any institution. If such a person takes this liberty and does some mischief these Amendments do not answer that situation. This is my point. Such a thing will not constitute an offence. He will go away. The man will be released ; he will be acquitted.

There is a consent. The question is whether consent is obtained by fraud or undue influence in connection with his official position. That is why my submission is that this definition of 'Consent' must be widened so that all possible contingencies can be covered fully.

Now, with regard to Section 376 I wish to point out one thing. In Section 376 punishment is there. Deterrent punishment is provided. But it is only in the case of some hospitals, jails and this and that. My submission is that this also should be made comprehensive. When the person in an authoritative position (in any establishment or in any institution) does some mischief, deterrent punishment must be provided. Persons using 'undue influence' to obtain consent and doing some mischief, should also be brought under this category and deterrent punishment must be provided against them also.

Then my third submission would be that under Clause 376 a new clause may be added as follows :

- (g) being in fiducial relationship or in authoritative position in an establishment or institution where woman is employed.

In that case also, deterrent punishment must be provided.

The next thing which I would like to submit is with regard to Explanation (1) under Clause 376. Here it is put as '3 or more persons'. Why not two? The normal unlawful assembly is constituted by five persons. We have deliberately stated here, '3 or more persons'. My submission is this. It should be 'more than one'. If one is committing the offence and others are there who are his accomplices, who are abettors, who help him in that crime, then, all of them should be equally punished. So there is absolutely no logic in having three. It should be 'more than one'.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. VENKATASUBBAIAH) : Which explanation are you referring to ?

SHRI BRAJAMOHAN MOHANTY : I am reading this where it says 'where woman is raped by 3 or more persons'...

SHRI P. VENKATASUBBAIAH : 'By one or more in a group of persons'...

SHRI BRAJAMOHAN MOHANTY : The explanation here says 'raped by 3 or more persons'.

SHRI P. VENKATASUBBAIAH : It is not lik that. I am reading this as reported by the Joint Committee. It says :

Where a woman is raped by one or more in a group of persons'.

SHRI BRAJAMOHAN MOHANTY : If that is so, it is all right. My copy states like this. However I need not dwell on this point. But my submission would be that the ultimate approach of this House should be not

simply legislating on Criminal Law or Evidence Act.

It is not only in the case of rape but there are also cases like homosexual, illicit connection, adultery etc. They should also be dealt with. But my submission is that the cases concerning the atrocities against women should be treated separately. I would therefore like to submit to this august House that the legislation is not 100% answer. A hundred per cent answer can be assured if we give women economic freedom, if we assure a healthy and considered ethos in the country, in the society and then only we can meet the challenge of the situation. We have inherited a cultural heritage where men and women were treated with equal dignity, with equal rights and opportunity. I recall those days when Gargi was measuring wisdom during Upanishad period with Yagyavalkya the greatest philosopher during those days. Our ancestors have treated sex as divine, sex as promoter of civilisation, sex as creator and sex as beautiful. We have never treated sex as equal. But we consider women subordinate to men. It has never been a question of consent. A number of episodes will show in our cultural history that a consent was the most important aspect of the sexual relationship. When there was no consent absolutely for sexual relationship, the society has never endorsed it. That is the cultural heritage that we have in our society. But the things of feudal norms had changed the situation. Women were debarred to read Vedas. Even the Muslim ladies are not allowed to go to mosque. Nobody can imagine a lady becoming a 'Pope and never in the history a woman had been a Pope. We can see the history of the last 200 years when you will find that not a lady was the President of the United States of America. It is not happening in urban society alone. All over the world, we find that male chauvanism is very much predominant. Even in the United Kingdom, the lady Prime Minister had to amend the Constitution of Tory Party where-in it was provided that the leader elected by the majority will be the leader of the Party. Earlier, by convention, the Queen's consent was necessary. She pursued for the amendment of the Constitution. Perhaps she was not sure that the Queen would give the con-

sent for a lady to be the Prime Minister in the United Kingdom. Therefore, my submission is that it is very unequal at present. Never we have treated them with dignity. That is the latest adaptation of our culture and civilisation. We have a different culture altogether of different origin.

Sir, my submission is that we should build up a new cultural ethos in our country which will create a psychosis wherein men and women are equal, treated with dignity, having equal rights and equal opportunity. My submission is that this legislation or any further amendments will not answer the problem.

Another aspect of the problem is the economic problem, economic emancipation of women. Too much of dependence on men had degenerated them. Moreover, women are weak, they have to bear children, nourish them and bring them up, whereas the advantage is taken by men because of these inherent qualities of women. There is more responsibility on women. This is the present state of affairs. Therefore, my submission would be that to solve the economic problem of women, there should be enough employment opportunities for women and equal wages for them. There should be some sort of reservation in the services for women. If we give them these facilities in a big way, then only we will be able to achieve our objective.

In the USSR, they have developed a new concept that since men and women are equally treated there, even if a woman divorces her husband, she has to pay alimony or compensation to the man. In the Supreme Court of India, sometime back Section 488 of IPC was discussed as to whether women had to pay alimony for ill-treatment of men. The Supreme Court did not accept that. So, my submission is that there should be equal treatment with dignity of women and equal opportunity should be given to them and the cultural degeneration must stop. Now, the new wave of culture is crippling our social law. You will find that women are being degenerated and the entire structure of the new culture is degenerating the values of women. Therefore, I would suggest to the House and the hon. Minister that let the

various sections of the Bill be more comprehensive and in order to make it more foolproof, deterrent punishment must be provided to the offenders and those who have obtained their consent by undue influence or coercion or by other means. I would suggest that the Government should come forward in a big way for economic emancipation of women and it should be considered as a national issue. It should not be politicalised. The entire nation should move in one direction and that direction is to evolve a better society, a healthy society, an equality of women in the society. With these words, I thank you very much for the opportunity given to me.

श्री रामलाल राही (मिसरिख) : सभापति जी, दण्ड विधि संशोधन विधेयक जो इस सदन में प्रवर समिति के प्रतिवेदन के साथ प्रस्तुत किया गया है, इसको मैंने देखा है और मैं ऐसा मानकर चलता हूँ कि जो प्रतिवेदन संयुक्त समिति का प्रस्तुत किया गया है और उसके आधार पर जो नया बिल बनाया गया है वह भी ऐसा बिल नहीं है कि दण्ड-विधि संशोधन विधेयक की भावना के अनुरूप प्रभावी हो सके तथा महिलाओं की रक्षा, संरक्षा और सुरक्षा करने में समर्थ हो सके।

पहली बात तो मैं यह निवेदन करना चाहता हूँ—आप चाहे इसके जिस चैप्टर्स को देखें, जो प्रावधान किए गए हैं, उसके अन्तिम चैप्टर में बिमत-टिप्पणियां को देखें तो कोई न कोई टिप्पणी ऐसी जरूर है जो इस बिल के प्रावधानों अथवा खण्डों से मेल नहीं खाती। उनको देखने से ऐसा लगता है कि यह बिल निरर्थक है और प्रभावी नहीं हो पाएगा।

इस बिल में अनेकों कठिनाइयां हैं। 12 अगस्त, 1980 को यह बिल पेश हुआ था और उसके बाद यह प्रवर समिति को गया और सलेक्ट कमेटी ने बड़ी मेहनत की। लगभग 44 बैठकें कीं, और कोई भी संस्था ऐसी संयुक्त समिति ने नहीं छोड़ी, जोकि सामाजिक क्षेत्र में कार्य करने वाली हो चाहे वह महिलाओं से संबंधित हो और चाहे वह किसी अन्य कार्य से संबंधित हो और चाहे वह लीगल एडवाइजरों की वार एसोसिएशन हो या

कोई और अंग हो, जिसको उसने एप्रोच न किया हो, पकड़ा न हो और लिखा न हो तथा उनसे इस बिल के बारे में सलाह-मशिवरा करने की कोशिश न की हो। फिर भी इस बिल को आप देखिये तो ऐसा लगता है कि भगवान जाने कैसे यह कारगर सिद्ध होगा। मैं तो निश्चित रूप से इस धारणा का बन गया हूँ कि यह जो बिल पेश किया गया है, वह प्रभावी नहीं होगा। मैं कागजों का थोड़ा सहारा लूंगा क्योंकि मैंने इसको देखा है। वैसे मैं कभी कागजों का सहारा नहीं लेता हूँ और कागजों में से पढ़ता नहीं हूँ लेकिन आज मुझे आप इसके लिए माफ करोगे क्योंकि यह एक महत्वपूर्ण विषय है और इसके लिए मुझे कागजों का सहारा लेना पड़ रहा है।

सदन की सहमति से इस कार्य को एक संयुक्त समिति को सौंपा गया। इस पर विचार करने के लिए ऐसे सभी लोगों से जो इसमें दिलचस्पी रखते हों और महिलाओं के साथ आज के युग में होने वाले अपराधों पर रोक लगाने के लिए अपनी राय दे सकें, उसने सम्पर्क किया और उन सबकी राय जानी गई।

प्रसन्नता है कि समिति ने इस संबंध में दिलचस्पी से काम किया और कुल 44 बार इस समिति की बैठकें हुईं। विभिन्न क्षेत्रों में विभिन्न स्वायत्तशासी संगठनों से, महिला संगठनों से, बार एसोसियेशन से और प्रेस संगठन आदि-आदि से उसने सम्पर्क किया और यह एक सराहनीय कार्य इस समिति का रहा है परन्तु रिपोर्ट को देखकर निराशा हो रही है। इतना सब कुछ होने के बाद भी विमत टिप्पणियाँ इतनी इस रिपोर्ट में दी गई है जिन्हें पढ़कर मैं तो इस निष्कर्ष पर पहुंचा हूँ कि इस बिल को पुनः रिटायर्ड सुप्रीम कोर्ट के जजों तथा रिटायर्ड सीनियर सरकारी तथा गैर सरकारी वकीलों को सुपुर्द किया जाना चाहिए। यह सदन तय करे अथवा मंत्री जी तय करें कि समिति के सदस्यों की संख्या क्या हो, कितनी हो और उनके पास इस बिल को भेजने के बाद और उनकी राय जानने के बाद ही इस सदन में फिर इस बिल को पेश करना चाहिए ताकि कोई ऐसा निष्कर्ष निकल

सके, जिससे प्रभावी ढंग से आपका यह बिल काम कर सके और स्त्रियों के साथ बलात्कार रोकने में और उनके साथ जो अन्य प्रकार के अन्याय और अत्याचार होते हैं, उनको रोकने में यह सहायक हो सके।

इस सम्बन्ध में मैं दो बातें और आपसे कहना चाहता हूँ। पहली तो यह है कि 35 सालों का जो दूषित समाज है वह दोषी है, सरकार दोषी है जो बलात्कार और अन्याय तथा अत्याचार महिलाओं पर हो रहे हैं, उनके सम्बन्ध में मैं कुछ कहना चाहता हूँ। पहली बात तो यह है कि हमारी सामाजिक और आर्थिक व्यवस्था इस प्रकार की दूषित रही है कि 35 सालों में हमने इसपर ध्यान ही नहीं दिया है। 35 साल गुजर गए हैं और उस वक्त जो बच्चा पैदा हुआ था, वह आज तीन बच्चों का बाप बन गया होगा लेकिन हमने इस बीच में इस समस्या का समाधान करने की कोशिश नहीं की कि नारी जिसे अर्द्धांगिनी कहते हैं, उसकी सुरक्षा, संरक्षा कैसे की जाए और उसे समान अधिकार कैसे दिलायें। इस व्यवस्था में मेरी अपनी राय यह है कि सामंती और पूंजीवादी ताकतें बराबर इस प्रकार का प्रयास करती रही हैं और ये ताकतें अपनी गोली और अपनी लाठी के बल पर गरीब महिलाओं की इज्जत खुले-आम, सरेआम लूटती रही हैं। इस तरह की घटनायें अनेक अखबारों में भी आई हैं और इस सदन में भी समय-समय पर उठती रही हैं। उनका मैं बखान करके सदन का समय नहीं लेना चाहता। घर तो क्या गांव तक जलाए गए हैं। मेरे पास इतना समय नहीं है कि मैं एक-एक गांव का, एक-एक घटना का जिक्र कर सकूँ कि किस प्रकार गांव जलाने की और अमानुषिक बलात्कार की घटनायें हुई हैं। ये घटनायें देश की जनता और सरकार की निगाहों में हैं और सरकार इन घटनाओं पर समय-समय पर पर्दा डालती रही है।

जब बलात्कार या अत्याचार की घटनायें पूंजीपतियों, सामंतशाहों की नारियों के साथ होती हैं तो उनको न्याय दिलाने के लिए सरकार और उसका प्रशासनतंत्र जिस प्रकार की कोशिश

करता है अगर उसी प्रकार की कोशिश वह आम आदमी के लिए भी करने लगे तो निश्चित रूप से यहां के लोगों की भावनाओं में कुछ परिवर्तन आए और लोग यह महसूस कर सकें कि इस देश में आजादी के बाद सभी के साथ समान व्यवहार किया जाता है, इस देश में मनुष्य-मनुष्य के बीच न्याय देने के लिए दो मानदंड नहीं बनाए गए हैं। परन्तु आज जो स्थिति है उससे यहां के आम आदमी में यह भावना उत्पन्न होती है कि यहां न्याय के दो मापदंड हैं। आपकी कार्यपालिका, न्यायपालिका और आपकी लोक सभा, विधान सभा, जिला परिषद, गांव सभा आदि जितनी भी विधायिकाएं हैं इनके कार्यों को अगर देखें तो उनसे अपने आप यह स्पष्ट हो जाता है कि 35 साल की आजादी के बाद भी आज यह स्थिति है।

15.45 hrs.

[SHRI F.H. MOHSIN in the Chair]

श्रीमन् मैं यह सोचने पर विवश हूं, मैं ही नहीं, देश की जनता भी यह सोचने पर विवश है कि सभी को नागरिकता के समान अधिकार संविधान में दिए गए हैं, इस देश के प्रत्येक नारी और पुरुष के लिए एक समान अधिकार दिए गए हैं। परन्तु क्या उन अधिकारों के अनुरूप समान व्यवहार किया जाता है? मैं ऐसा मानकर चलता हूं कि नहीं। अगर समान व्यवहार किया जाता तो ऐसी घटनाएं जिनका इस समय मैं नाम नहीं लेना चाहूंगा, नहीं घटतीं। किसी बड़े आदमी के साथ कोई घटना घटी तो पूरी छानबीन हुई, लोग पकड़े गए, पता नहीं कहां से अपराधी पकड़े गए, उनपर मुकद्दमा चला और जेल भेज दिए गए। लेकिन भूखी, नंगी, गरीब औरतों के साथ और न जाने कितनी ही महिलाओं के साथ इस प्रकार की घटनाएं घटती हैं तो उन्हें उदासीनता की दृष्टि से देखा जाता है। इसलिए मेरी राय साफ बनती है कि इस देश में 35 साल की आजादी के बाद भी हम अब तक न्यायिक मूल्यों पर आधारित कोई व्यवस्था नहीं बना सके हैं।

मैं एक दूसरी बात आपसे निवेदन करना

चाहूंगा। अब तक नारी को मात्र ऐश की वस्तु माना जाता रहा है। मैं किसी विशेष युग का नाम नहीं लेना चाहता। चाहे आप आर्य युग की बात करें, चाहे वैदिक युग की बात करें, चाहे मुस्लिम युग की बात करें या अंग्रेजों के जमाने की बात करें या आज से जमाने की बात करें, किसी भी युग में आप देख लीजिए कि नारी को केवल भोग-विलास की वस्तु बनाए रखा गया। चन्द घरानों को छोड़ दीजिए जिनके परिवारों में लोग शिक्षित हो गए हैं। इसके अलावा हमने इसको भोग विलास की वस्तु बना रखा है। हमको इन विचारों में परिवर्तन लाने की आवश्यकता है। इसके लिए सरकार को पहल करनी होगी; हमको नहीं। सरकार में शक्ति है, क्षमता है, सरकार की तरफ बैठने वालों में क्षमता है। अगर ये अगुवाई करें तो कोई बजह नहीं कि इस तरफ बैठने वाले लोग उनके साथ कंधे से कंधा मिलाकर इस सामाजिक काम को करने में इनका साथ न दें। मेरा ऐसा विचार है।

सभापति महोदय, वेश्यावृत्ति आज भी हो रही है। इसको रोकने के बारे में इस सदन में अनेकों सदस्यों ने कई बार सवाल उठाया और कहा कि इस पर सरकार विचार करे। इस बिल में संशोधन किया जा रहा है, बलात्कारों पर प्रतिबन्ध लगाने और बलात्कारी को किस प्रकार से दंडित किया जाए, कैसे इसको नियंत्रित किया जाए, आदि व्यवस्था इसमें की गई है। लेकिन सभापति महोदय मैं आपसे निवेदन करूंगा यह वेश्यावृत्ति जब तक बनी रहेगी तब तक यह कानून प्रभावी नहीं होगा। वेश्यावृत्ति कौन कराता है। आज हिन्दुस्तान की कोई भी महिला इस कुकर्म को करके जीवनयापन करने के लिए कतई तैयार नहीं है। कोई भी महिला पाउडर लगाकर सड़क पर मटकना नहीं चाहेगी। यह इस व्यवस्था का दोष है। इस व्यवस्था में आर्थिक और सामाजिक विषमता बढ़ी है। इसलिए सरकार वेश्यावृत्ति रोकने में असफल रही है। मैं तो निवेदन करना चाहूंगा कि राज्य मंत्री महोदय अगर सारे काम छोड़कर एक ही काम कर लें तो देवी की तरह उनकी पूजा हो सकती है। इसके अभाव में आपका

यह कानून कतई प्रभावी नहीं हो सकता। जब तक वेश्यावृत्ति नहीं रुकती तब तक हम बलात्कारों को रोकने में सफल नहीं हो सकते। इसलिए इसको रोका जाना आवश्यक है। यह पुराने समय से चली आ रही है और आज भी विद्यमान है। आप यहां दिल्ली के किसी भी मोहल्ले में चले जाएं, सैकड़ों की तादाद में मजबूर महिलाएं इस पेशे में लगी हुई हैं। पिछड़े क्षेत्रों की महिलाएं, पहाड़ी क्षेत्रों की महिलाएं, जहां लोग एक-एक दाने के लिए मोहताज हैं, लोग विवश हो जाते हैं, और विवश होकर अपनी बहू-बेटियों को छोड़ देते हैं कि जाओ हम तुमको नहीं पाल सकते। हम इस राज में तुमको खाने के लिए दाना नहीं दे सकते। तुम जैसे चाहो रोटी प्राप्त करके अपना पेट पालो। सभापति महोदय यह व्यवस्था कब तक आप बनाए रखेंगे। कब तक आर्थिक विषमता बनी रहेगी। आर्थिक विषमता बनी रहेगी तो सामाजिक विषमता भी बनी रहेगी। इसलिए मेरा मंत्री जी से अनुरोध है कि वेश्यावृत्ति को समाप्त करने के बारे में विचार करें। इसको अगर समाप्त नहीं करेंगे तो इनको सफलता नहीं मिल सकेगी।

तीसरी बात मैं आपसे निवेदन करना चाहूंगा, कि इसमें प्रावधान है, कौन बलात्कार करेगा, कैसे रिपोर्ट लिखी जाएगी, कौन से थाने में रिपोर्ट लिखी जाएगी और स्त्री अथवा पुरुष अगर पकड़ में आ जाता है तो उसकी कैसे डॉक्टरों होगी? कैसे क्या होगा और कैसे क्या नहीं होगा? एक बात मैं जानना चाहता हूँ कि क्या डॉक्टरों की इसमें राय ली गई थी? क्या राय लेना जरूरी था या नहीं? इसलिए मैं पूछना चाहता हूँ कि अगर संभोग की स्थिति आती है... (व्यवधान)

SHRI RAM PYARE PANIKA (Roberts-ganj) : Sir I was one of the Members of the Joint Select Committee. We had gone everywhere, in every State and had met even the Medical Practitioners. I was present there. So, he cannot say that we have not consulted the doctors.

श्री रामलाल राही : मेरी बात अधूरी रह गई

थी इसलिए पूरी करना चाहता हूँ। डॉक्टरों की राय ली गई या नहीं? अगर नहीं ली गई तो क्यों नहीं ली गई? मैं यह बात इसलिए कहना चाहता हूँ कि स्त्री हो या पुरुष, अगर बलात्कार होता है तो दोनों के सीमेन या कोई भी रसायन हों, उनकी जांच होती है। अगर पाया जाता है कि ऐसा हो गया तो दोनों दोषी पाए जाएंगे। क्या इस देश में खून नहीं मिलता है। क्या एक इन्सान का दूसरे इन्सान से खून नहीं मिलता है? क्या किसी पुरुष या महिला का वीर्य दूसरे पुरुष या महिला के वीर्य से मेल नहीं खाएगा, निश्चित रूप से ऐसा होना स्वाभाविक है। उस स्थिति में आप क्या करेंगे? कानून में इसके लिए क्या व्यवस्था है? कैसे आप उसको सजा दिला पायेंगे? आपने बता दिया कि उसका वीर्य अमुक प्रकार का निकला है और अपराधी ने सबूत में कहा कि हमारे ही प्रकार का अमुक लोगों का है वह अपराधी थे तो उस स्थिति में अदालत क्या कर पाएगी? इसलिए, डॉक्टरों की राय इस बिल में लेनी चाहिए थी। उनसे इस मुद्दे पर बहस करनी चाहिए थी। अगर, यह स्थिति उत्पन्न होगी और आप परीक्षण करेंगे तो हम अपराधी को अपराधी के कठघरे में कैसे खड़ा कर पायेंगे। यह बात इसमें नहीं है। इसलिए, मैं कहना चाहता हूँ कि इस बिल को आप पास न करें। गृह मंत्री महोदय, इसको सीनियर रिटायर्ड सुप्रीम कोर्ट के जज, सीनियर रिटायर्ड सुप्रीम कोर्ट के एडवोकेट, सीनियर रिटायर्ड प्राइवेट प्रैक्टिस करने वाले वकील के बीच में भेजें। वे लोग इस पर विचार करें। समय, तीन या छह महीने का भी जो उचित हो दे सकते हैं। जहां, 1980 से 1983 में आप इस बिल को पास कर रहे हैं। वहां आप तीन महीने या छह महीने बढ़ा दें और डॉक्टरों की राय भी इसमें ले लें तो मेरी अपनी राय में यह बिल संसद की जिस भावना के अनुकूल लाने का प्रयास किया गया था उसमें सफलता मिलेगी और बिल कामयाब होगा।

महिलाओं पर जो जबरिया बलात्कार पैसे के कारण होते हैं उन पर रोक लगाने में हम सक्षम होंगे। पैसे के लालच में ही सबसे ज्यादा बलात्कार महिलाओं के साथ होते हैं।

किसी कल-कारखाने में या बाग-बगीचे में काम करने वाली मजदूर महिलाओं को अपने पेट की मजबूरी व बच्चों की जिंदगी के लिए तन बेचने पर विवश है और बगीचा चाहे किसी बड़े सेठ का हो और चाहे हजार दो हजार एकड़ का फार्म किसी कुलक किसान का हो चाहे कोई को-आपरेटिव फार्म हो, चाहे फैंक्ट्री हो जिसमें महिलाएं काम करती हैं वे मजबूर और विवश हो जाती हैं।

16.00 hrs.

उनको नौकरी के लालच में विवश किया जाता है कि वे यह काम करें। कैसे हम ऐसे अपराधियों को पकड़ पाएंगे। यह बिल भी ऐसे लोगों को पकड़ने में सक्षम नहीं हो सकता है। किसी महिला को फैंक्ट्री में जो काम करती है उसको अगर कष्टा जाएगा कि यह करो तो नौकरी पर रखा जाएगा तो वह क्या करे? आप रोटी उसको दे नहीं सकते हैं तो वह बेचारी क्या करे। अगर रोटी की व्यवस्था आप कर दें तो वह कतई फैंक्ट्री या कारखाने में या कहीं और ऐसे व्यक्ति का मुंह भी नहीं देखना चाहेगी और उसके मुंह में आग लगा देगी जो इस तरह की बात करेगा या इस तरह का कुकर्म करने के लिए उसको मजबूर करता है।

यह बिल अपने में अपूर्ण है। संयुक्त समिति की रिपोर्ट में विमति की टिप्पणियां यह बताती हैं कि यह अपने में अपूर्ण है। बिल अपने आप में सक्षम नहीं है।

मैं एक बात जानना चाहता हूँ। आपका कानून यह कहता है कि बारह साल की उम्र से कम बच्चों से काम लेना वर्जित है। कितनों को हमने, अपने या दूसरे लोगों ने अपने घरों में रख छोड़ा है, यह सर्वविदित है। क्या कोई बाप नहीं चाहेगा कि उसका लड़का स्कूल में जाए और पढ़-लिखकर बड़ा आदमी बने। लेकिन आप उसकी आर्थिक स्थिति को पैंतीस साल में सुधार नहीं पाए हैं। वह बिगड़ी ही है। विवश होकर उसको अपने बच्चे को नौकरी पर लगाना पड़ता है। वह काम नहीं करेगा तो खाएगा क्या? कौन मां अपने बच्चे को स्तन से दूध पिलाना नहीं चाहेगी? लेकिन वह

पिला नहीं पाती क्योंकि उसे रोटी नहीं मिलेगी तो दूध कहां से मिलेगा।

एक और बात की तरफ ध्यान दें। गृह मंत्री जी ने 16 तारीख को तिहाड़ जेल के बारे में एक उत्तर दिया। वह बहुत साफ नहीं था। मैं पिछले साल इस जेल में रहा हूँ। मेरे रहने के दूसरे दिन छोटे-छोटे बच्चे जो उसमें बन्द थे डकैती या चोरी या अन्य आरोपों में। वे दीवार फांदकर मेरे पास आकर रोने लगे—किसी तरह उनको पता चल गया होगा कि मैं यहां हूँ—और बताने लगे कि हमारे साथ यह कुकर्म होता है, हमें अमुक-अमुक कैदियों के साथ जो पांच-पांच और दस-दस साल से वहां रह रहे हैं, उनके साथ सोने के लिए भेजा जाता है, कहा जाता है उनके साथ जाकर लेटो, उनके साथ जाकर रहो और तुमको यह बुरा काम कराना पड़ेगा। वे रो रहे थे, चिल्ला रहे थे, आंसू बहा रहे थे। वे बच्चे किसी के भी हो सकते हैं। हमारा या आपका या कोई भी लड़का अगर चोरी डकैती आदि के आरोप में जेल जाता है तो जो सजा आप उसको देना चाहते थे, लेकिन कानूनन दें। अगर इस तरह की सजा उनको दी जाती है और इस तरह के कुकर्म उनको करवाए जाने के लिए विवश किया जाता है तो क्या यह चुल्लू भर पानी में आपके और हमारे लिए और सारे समाज के लिए डूब मरने वाली बात नहीं है। जिस समाज की इस कद्र व्यवस्था बिगाड़ रखी हो, उस समाज को डूब मरना चाहिए। आप कहते हैं कि हम पैसे वाले हैं, हम हवाई जहाज वाले हैं, हम महलों वाले हैं, हम ऐश व आराम वाले हैं। ऐसों को चुल्लू भर पानी में डूब मरना चाहिए क्योंकि उनके अन्दर इंसानियत नाम की चीज नहीं रह गई है। व्यवस्था बदलनी है जब यह भ्रष्ट व्यवस्था बदलेगी कानून का राज्य होगा तभी ये दुराचार कम हो सकेंगे।

SHRI NURUL ISLAM (Dhubri) :
Mr. Chairman, in supporting the Bill, at the first instance I extend my heartiest congratulations to the Government for bringing this Bill, though it is fraught with many shortfalls and legal defects. This is the proper time when the Government has come

up with the amendment of the IPC, the Cr. P.C. and the Evidence Act, because of the alarming way, the offences on women are increasing gradually. So, at this time, at this juncture, Government have correctly come up with this amendment. The amendment was expected to be comprehensive and exhaustive. But, to our utter surprise, we have seen that it is neither comprehensive nor exhaustive, because it does not cover all aspects of sexual offences. It should have covered them all.

Then, Sir, considering the dimension of the offences, in my humble opinion I feel the Government should declare these type of offences as national crimes and capital punishment should have been provided for it because ours is a country of Sita and Savithri and traditionally we regard our women as such, and to our women chastity is everything ; if it is lost, everything is lost—not only lost, socially she becomes dead. So there is no harm in treating it as a national crime and there is no harm to provide capital punishment for it.

In our country whenever a lady is raped, not only, she is not acceptable by the society, but also she is not acceptable by the parents. But this welfare State or this Government should have made provisions for such fallen ladies. Once a lady is raped, not only she is not acceptable by the society, but also she is not acceptable by the parents, and instead of helping the lady everybody wants to take undue advantage of the situation for which she is not liable or she is not to be blamed and ultimately she had to live a life of a Prostitute.

Sir, regarding this offence of rape enough has been said. I do not like to take much of the time of this august House in dealing with the subject. But my submission is that mere legal aid is not enough to help the women. For that purpose, we must give proper education to our ladies and as one of my hon. Members, Mr. Mohanty said, there should be equal economic opportunities or there should be equal economic independence. In our country what we see is that 50 per cent of our population constitutes the ladies but, if we look at the employment figures, only 20.85 per cent

constitutes the ladies out of the total work force of the country. So, my submission is that after 31 years of planning the Government included a Chapter in the Sixth Plan on Women and I believe the Government will leave no stone unturned to implement the propositions in letter and spirit and provide the ladies with equal economic opportunities.

In enacting these amendments many things have been omitted. Perhaps the experts, those who have brought these amendments, knew that there are certain provisions in the Evidence Act. Suppose in case the victim becomes an adult, there is a provision of extracting certain implied consent. That is very dangerous because the village women-folk does not understand the implied question from which there is the implication that she is a consenting party. So, from the Evidence Act that part should be omitted and that implied consent should not be taken from the victims.

The second point is that at the same time this Act should have provided certain precautions, that there may not be any possibility of blackmailing. In the case of refusing any employment or any donation or any such services, there may be a possibility of such blackmailing of the male-folk as our hon. Supreme Court has adjudicated that no corroboration is necessary, the solitary statement of the lady will do. So, certain precautions should have been taken that there may not be blackmailing taking undue advantage of these liberal amendments.

There are other important aspects too where the Government should have concentrated its attention.

Since independence we have seen that in our country misappropriation of government funds, fraud, forgery, false personifications, cheating, bank robbery, dacoity etc., are increasing at an alarming rate. For that, the Government should have come with certain comprehensive amendments to make them all national crimes and providing capital punishment for all those offences. If the Government do not come forward with amendments providing capital punishment for all these offences, I am afraid,

there will be no end to these type of offences.

Now, again, you look at the adulteration and you look at the peculiar law. We are following the law enacted by the Britishers. You know that under the provisions of prevalent laws, if a man kills a man, he gets capital punishment. But if a person or a group of persons have been voluntarily and deliberately killing the nation or the future generation by adulterating the food or medicine, do you know what is the punishment given to them? It is only three months. Is it adequate? So my humble submission is that if the adulteration is to be stopped in this country and if the killing of the nation is to be stopped, there should be capital punishment for this type of offences and such offences should be declared as national crimes,

Now, Sir, you look at the other offences like smuggling, corruption, hoarding, profiteering etc. These should also be declared as national crimes and there should be capital punishment for that as they are not only retarding the national growth but also demolishing the national economy. You will be interested to know that in Soviet Russia, one gentleman sold mineral water in lieu of soda water. He faced the punishment of death and that too by bullets. Until and unless we are so strict in formulating the criminal laws, we cannot stop such crimes in our country. Not only this. Corruption in all forms is eating away the economic growth of our country. If we want to stop corruption in this country, we must declare this as a national offence and provide capital punishment for such offences. Then again, you look at the subversive activities in the country and the terrorist activities in the country which not only threaten the stability of the national government but also threaten the very national integrity and solidarity. For that, we should come up with certain amendments or comprehensive and exhaustive legislation. I appeal to our Government that for such activities also, the Government should come up with comprehensive and exhaustive amendments to the criminal laws providing capital punishment. These are the vital crimes and this secessionist movement and terrorist movement threaten the very

existence of the national government and integrity and solidarity of the nation. They should be declared as national crimes and the capital punishment should be provided. I appeal to the Government that they should come up with comprehensive and exhaustive amendments to the criminal laws including the IPC, Cr. P.C. and the Evidence Act.

Mere provision in the law would not be enough. There is another defect in the investigation system. Some of our friends have already mentioned it. Our police generally remain awefully busy in law and order situation and they do not have enough time to deal with the investigation and this type of crime which requires certain special type of training. My submission would be that there should be separate crime detection squad with full training and equipments and there should be separate investigation cell in the police department for detection and investigation of crimes.

I believe that if the Government takes all these steps there will be a reduction of this type of crimes in the country. Lastly, I would like to submit that it is too high-time for the Government to institute a national commission to go into the details of this type of crimes and the crimes on the women and submit an exhaustive report about the type of legislation the Government should have in our country.

With these few words, I would like to close my speech. Before doing that, I extend my heartiest thanks to you for extending me this opportunity for participating in this debate.

SHRI A.K. ROY (Dhanbad): Mr. Chairman, Sir, I do not know how you are feeling, but my first feeling is that, whatever may be the outcome of the Bill, its appearance is scaring. Many of the speeches are positively terrifying. I would very humbly like to submit before this august House that we males are not that bad as has been supposed. What I feel is, all males are fools and the Members of Parliament are only honourable fools. We will be in a fools' paradise if we think that by a legis-

lation or a law we can contain or control rape.

MR. CHAIRMAN : That does not exclude Members of Parliament.

SHRI A.K. ROY : The legal experts have debated on the pros and cons of the Bill. Whether the amendment of Section 228 of the I.P.C. can be annulled by an unamended Section 354 of the Cr. P.C. or whether amending the Evidence Act will enable any victim to record the evidence at the police station, etc. are the things which have been discussed and we will discuss them when clause-by-clause consideration of the Bill is taken up.

What I want to emphasize is that Parliament is not a law court. This Bill is not just a compilation of some confusing Sections of I.P.C. and the Cr. P.C. This Bill deals with the conscience of the nation and the status of women. This Bill points out certain deep-rooted malady which has compelled us to come with this Bill. This Bill has come as a product of the movement. After 123 years, the law makers are being forced to have a second look on the question of rape.

It started with the Mathura case when four professors of law addressed an open letter to the Supreme Court in September, 1979. In August, 1980, the Bill was introduced ; in December, 1980, the Bill was sent to the Joint Committee ; in October, 1982, the Joint Committee sent back the Bill and, in December, 1983, we are discussing the Bill ; and that too with seven dissenting notes and 44 sittings of the Joint Committee, today, the Bill has come still with more than a hundred Amendments. This shows the dimension of the problem and the complexities of the issue. All those things would be dealt with by the legal luminaries and other experts.

I would like to ask the hon. Minister and this august House whether we are aware of a disturbing trend in the offence of rape, whether we are aware that this heinous crime has become a part of our developing economy, that is, wherever there is development, there is the development of rape. What is the reason for that ?

Many Hon. Members have quoted the statement of the Chief Minister of Madhya Pradesh which is the biggest den of rape, that one woman was raped every eight hours and that one woman committed suicide every 12 hours and that one woman was murdered every third day in 1981.

This is known to you all. But I would like to tell you and even the Ministers certain more details which would perhaps perplex the House.

I quote from "The Hindustan Times" dt. 3rd April, 1981 :—

*"Harijans being raped and burnt
No rape in dacoit infested area"*

This is most important.

"114 Harijans and 99 tribals were among the 454 women raped in Madhya Pradesh in the first 200 days of the Arjun Singh Ministry."

Writes "Hindustan Times"

"The largest number of rape cases were registered in Hosangabad district"

This is an urban, developed and enlightened district.

"followed by Jabbalpur 26,"

This is another enlightened district.

"and Indore and Sagar 23. The dacoit infested Morena district recorded only one rape as also in the diamond-producing Panna district. Only two rape cases were registered in Bhind and Datia, other dacoit infested districts."

This is a big challenge to us. There is no rape in the area ruled by dacoits. There are rape cases in the area ruled by Police! Where there is administration, there is crime just as just behind the light, there is darkness.

Not only the rape cases are there in the

areas where administration is there but they are increasing.

Year	No. of rape cases in the country
1978	4,424
1979	4,167
1981	4,780

The rape cases are increasing and, that too, in the more developed areas. The rape cases in the nine Union Territories total 139. In Delhi alone, 86 rape cases were there. More rape cases are taking place in Delhi than in all the Union Territories put together. These cases relate to the year 1980.

Nearest to the church, but farthest from God! Nearest to the Ministry of Home Affairs, these crimes are taking place. This is the worst position that is existing. Not only that. I would like to draw the attention of the Hon. Minister to even bigger issues. I do not subscribe to the view that things could be side-tracked by saying that it is a global phenomenon!

I would like to emphasise that rape is an offence that is converting the status of woman into a commodity. It has got something to do with the character of the Society and the value of woman.

I was just looking at what happened in Western countries. In Western countries also, the quantum of punishment is increased. I find that generally there will be two aspects to rape cases. One is the percentage of cases that are reported to the police. The other is the percentage of cases in which the offenders have been convicted in the court. These are the two aspects.

By amending section 228, you are trying to see that more cases are reported to the police because there will not be publicity, protection will be there, trial will be in camera and, therefore, the victims will be encouraged more to report to the police. By amending the Evidence Act, you are

trying to see that more conviction is there. In that way you have thought of two positive steps which, you think, would help. But I tell you, the experience in the Western countries has proved that it has failed. Rape is something different; rape is not like theft, it is not like robbery, it is not like dacoity, it is concerned with certain values of the society. We are developing into a capitalist system and the capitalist way of development is bound to increase rapes...

SHRI XAVIER ARAKAL (Ernakulam): In China it has gone up.

SHRI A.K. ROY: Mr. Arakal, you talk like 'Orachi'. You go to that place and see; it is much less there. In the Soviet Union it is much less. (*Interruptions*) The World Bank's report has come. Nowadays there are more Americans than Chinese moving in Chinese towns. It has been proved it is much less in China. Today in India we are having something like 4,600 or near about 5,000 cases of rape in a year, in a country with 680 million people. In the United States of America, a country with 20 crores of people, one-third of our population, in 1980 the number of rape cases as reported by the Federal Bureau of Investigation is 82,000; this is the position in America, your goal, your aim, whom you are aping for long by giving incentives to capitalists, by giving all sorts of concessions in income-tax. If you take to the capitalist way of development, you will have more rapes because the capitalist system values everything in terms of money. All the world is a 'shop' and men and women are mere 'buyers'. This is the great philosophy of the capitalist system whom both the Janata and the Congress, united together, are farthering in this country. In England what happened? In 1979 there were 1200 cases of rape and there also, only 300 could be convicted; that created a furore in England, how it could take place, but there was no answer. In France in 1979 there were 1700 rape cases, three times more than the rate in India population-wise; and only 435 cases could be convicted. That is because the system gives protection to such offenders. So, you cannot stop that. By making an amendment, you can increase the punishment. In America th

punishment is as high as 25 years. The Home Minister can take pride in the fact that he has increased it from seven years to ten years. In America they have increased it to 25 years. But there were less convictions. Suspended sentences are being pronounced there. Rape is increasing. That is why I want to say this. The main point is the status of women. I would like to draw your attention to another aspect of it. I was just looking into the map of India. I want that the Home Minister should paste on the wall the map of India with different intensities of rape cases in different areas. You will find that in the areas where women are free, the social status of women has been higher, where matriarchal societies or their traditions were there, rape is less. In the entire South rape is a rare event. In the Nair Society of Kerala it is a matriarchal society. They have got a tradition. In Tamilnadu it is less and in the North-east Frontier, among those Mizos, Nagas, Khasis, you cannot dream of it. You read newspapers. Can you remember a single case that a tribal has raped a tribal? Tribals were raped by non-tribals but there will be no single case where tribal has raped a non-tribal or a tribal. Harijans were raped. But do you remember any incident where a Harijan is raping another Harijan girl or of a Harijan raping a non-Harijan Brahmin? No. They have got their natural ethics, their natural ethos and natural ideals. So, can we not imitate this? Instead of imitating America and England, let us imitate our tribal society, our own traditions, our own heritage where these is no rape. You can send your daughter to our areas in Chotanagpur, the central tribal belt, into the jungles and the hills. Freely they can go and no harm will come to her. You cannot think of it. But you cannot send your daughter into the town. You are always apprehensive that somebody should be there with her. Why is it so? What is the direction of our policy which is morally debasing us? This is something you must think of. Our entire line of development, our entire direction of development is morally degrading or debasing. You are coming with one amendment or the other. Can a law stop this national degeneration? Entire national degeneration could not be stopped by bringing only one legislation.

It is something that our values are getting deteriorated.

Another point I would like to say. I have personally observed it, went to these societies living there. I say what is the basis? There the tribal women or Harijan women or Backward societies women live and they talk. In the so-called advanced societies the ladies do not talk and they feel something else but the tribal women talk without any feeling of being demoralised. That is one thing which as my esteemed friend has said is because of their economic independence. That is a very fundamental thing. The tribal man and woman—they are economically equal. They go together for work. Whatever they get they bring together and they divide. In Harijans also when they go to the field, under the landlords they work and whatever they get, they divide. I have stayed in the Chotanagpur mining belt. I have seen. But what you are doing and what your Home Ministry is doing? In the name of mechanisation you are eliminating the womenfolk. You are snatching whatever economic independence still existing. In the textiles the percentage of female workers has come down from 25 to 5 per cent. In the coal industry it has come down from 30 to 12%. Nowadays in agriculture the percentage of women workers is 47%.

I was just looking into the census. With the coming of the machines, there too, their number is fast decreasing. You are bringing in a bill providing for punishment and on the otherhand you are creating an objective situation which will make a woman vulnerable to the man's lust. You are the biggest agent I say, in the development of a capitalist society with sex exploitation. You are thereby creating a situation by which you make the women in losing their economic independence and you will make the women more and more vulnerable to the lust of men.

I shall tell you one thing. You need not go to America, England, France or to the West. We must resolve that in India we should also look to our society; you can send your experts from the Home Ministry and they should study the equality of women in the tribal society which is connected with the

emancipation of womanhood. I shall conclude by quoting a few lines from Fredrik Engels what he wrote in the 'Origin of the Family in the Human Society'. This is what he says :

"We can already see from this that for emancipate woman and make her equal of the man is an impossibility so long as the woman in shut out from social productive labour and restricted to private domestic labour".

This is what you are doing. That is the reason why the crime against the women is increasing more and more.

श्री गिरधारीलाल व्यास (भीलवाड़ा) : सभापति महोदय, सबसे पहले मैं इस क्रिमिनल ला (अमेंडमेंट) बिल 1980 का जो, कि सरकुलेट किया गया, समर्थन करता हूँ।

दूसरी बात मैं यह निवेदन करना चाहता हूँ कि जिस तरीके का यह बिल होना चाहिए था, और इसमें रेप को समाप्त करने के सम्बन्ध में जो पूरे प्रोविजंस होने चाहिए थे उनमें बहुत खामियां हैं। इसलिए मेरा निवेदन है कि इसको एक कम्प्रीहेंसिव बिल बनाया जाए और उसमें उन सभी प्रावधानों की व्यवस्था होनी चाहिए जिनसे कि वे उद्देश्य पूरे हो सकें जिन पर कि हम विश्वास करते हैं। हिन्दुस्तान में नारी की पूजा होती है। जहां नारी की पूजा होती है, वहां देवता रहते हैं, हम इसमें विश्वास करते हैं। अभी राय साहव ने केपलिस्ट कंट्रीज की नारी का जिक्र किया। हमारे देश में केपलिस्ट व्यवस्था है। हमारे देश में तो सदा से नारी की पूजा होती आई है, सदा से उनका सम्मान होता आया है। आज भी उनके प्रति सम्मान रखने के फलस्वरूप ही इस बिल को लाने की कोशिश की गई है।

इस बिल में जिस प्रकार की व्यवस्थाएँ की गई हैं उनसे मुझे ऐसा लगता है कि हाफ हार्टेडली इस बिल को लाया गया है। उसमें जिन उद्देश्यों को हम पूरा करना चाहते हैं उनको पूरा करने के लिए पूरी व्यवस्था नहीं की गई है। आपने पीनल कोड

में एक नई धारा 228 ए जोड़ने की बात इस बिल में कही है। आपने इसमें यह व्यवस्था की है कि आप खुली कोर्ट में प्रोसीक्यूटिंग न चलाकर केमरा में प्रोसीक्यूटिंग चलायेंगे जिससे कि प्रोसीक्यूटोन्क की बदनामी न हो। प्रोसीक्यूटोन्क को बदनामी से बचाने के लिए आपने यह प्रावधान किया है। फिर आपने इसमें जो सजा मुकरर की है वह दो साल तक की है। मगर इसके बाद आपने एक प्रोविजो इस क्लॉज के साथ और लगा दिया है। आपके प्रोविजो में यह दिया गया है—

Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is done by such authorisation.

ऐसी हालत में छूट दी है मगर उसके बाद फिर मजिस्ट्रेट को अधिकार दे दिया है कि वह दो साल से कम सजा दे सकता है। इस प्रकार के प्रावधान की कोई आवश्यकता नहीं है। इससे करप्शन बढ़ेगा। इस तरह की कमियां इसमें नजर आ रही हैं। इससे आपकी मंशा पूरा होने वाली नहीं है। आपकी जो मंशा है कि रेफ करने वाले को सजा मिलनी चाहिए वह पूरी नहीं होगी।

376(1) के अंदर आपने पनिशमेंट फार रेप के लिए व्यवस्था की है—

Whoever, except in the cases provided for by subsection (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 also be liable to fine.

इसके बाद एक प्रावजो और दे दिया—

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.

एक तरफ तो आप सारी जिवनी सजा देने की बात करते हैं और दूसरी तरफ सात से 10 साल तक सजा देने की बात करते हैं। एक प्रोविजो और

रख दिया कि मजिस्ट्रेट, जज अगर ठीक समझे तो इस सजा को और कम कर सकता है। इस तरह के प्रावधानों को देखकर निश्चित तरीके से आपकी मंशा में फर्क मालूम पड़ता है। जिस आदमी ने इस प्रकार का अन्याय किया है उसको पूरी सजा मिलनी चाहिए। आपने जज को डिस्क्रिप्शन दे दिया कि वह चाहे तो 7 साल से कम सजा दे सकता है, एक दिन की सजा दे सकता है, कोर्ट उठने तक की सजा दे सकता है, जुमानि से छोड़ सकता है। इस तरह का प्रावधान रखने से वह कानून प्रभावी नहीं हो सकेगा। इसको हटाया जाना चाहिए।

दूसरा 376 के सब क्लॉज (2) में लिखा है—

(2) Whoever,—

(a) being police officer commits rape—

- (i) within the limits of the police station to which he is appointed ; or
- (ii) in the premises of any station house whether or not situated in the police station to which he is appointed ; or
- (iii) on a woman in his custody or in the custody of a police officer subordinate to him.

पुलिस के तत्वाधान में रेप किया जाएगा तो इन्वेस्टीगेशन कौन करेगा ? आज का इतिहास बताता है कि पुलिस कस्टडी में जितने रेप केसेज हुए हैं। ऐसे लोगों को सजा नहीं मिली है। उनके खिलाफ पूरी कार्यवाही नहीं हुई है। क्योंकि पुलिस अधिकारी दूसरे पुलिस अधिकारी के खिलाफ कार्यवाही नहीं करता। उसमें इस प्रकार के लूप-होल्स रख देता है जिससे कोई कार्यवाही नहीं होती। पुलिस कस्टडी में हुए रेप की जांच किसी और के द्वारा की जानी चाहिए। इसका प्रावधान इसमें नहीं किया गया है। केस रजिस्ट्रेशन के बारे

में भी कोई विशेष व्यवस्था होनी चाहिए। क्योंकि जब आम केसेज में ही पुलिस केस रजिस्टर्ड नहीं करती है तो पुलिस के द्वारा किए गए रेप का केस कैसे रजिस्टर्ड होगा। इसलिए विशेष व्यवस्था होनी चाहिए। इस प्रकार का प्रावधान भी निश्चित तरीके से इस बिल के अन्दर होना चाहिए, जिसका कि नितान्त अभाव है। जब तक यह प्रावधान इसमें नहीं होगा तब तक पुलिस के अधिकारियों के खिलाफ जिन्होंने अपनी कस्टडी में जिस महिला के साथ रेप किया है, कभी भी कार्यवाही नहीं हो पाएगी। इसलिए इस प्रकार की व्यवस्था का होना नितान्त आवश्यक है। आपने, 376 में ए, बी, सी, डी और ई बाद में बढ़ाए हैं जिसमें बताया है कि जिनकी कस्टडी में चाहे जेलर की हो, हास्पिटल के अन्दर स्टाफ के द्वारा किया गया हो, कल कारखानों में या अन्य अधिकृत लोगों के द्वारा जिन महिलाओं के साथ रेप किया जाता है, उनको आपने केवल पांच साल तक की सजा का प्रावधान किया है और उसमें भी आपने कई जगह प्रोविजो की व्यवस्था की है कि पांच साल से कम सजा दी जा सकती है। एक तरफ तो आप कहते हैं कि ऐसे लोग अपनी अथारिटी का दुरुपयोग करके अत्याचार करते हैं, उनको सजा दिलाई जाए और दूसरी तरफ जज को डिस्क्रिप्शनरी पावर दे देते हैं कि वह चाहे तो पांच साल से भी कम सजा दे सकता है। इस तरह से दो तरह की बातें उचित नहीं बैठतीं। इसमें जैसा कि बहुत से माननीय सदस्यों ने कहा और मैं भी यही कहना चाहता हूँ कि जिस बड़े अधिकारी द्वारा किसी गरीब महिला के साथ अत्याचार किया गया और वह साबित होता है तो निश्चित रूप से उसकी प्रापर्टी में से हिस्सा दिलाने की बात करनी चाहिए। जब किसी महिला के साथ अत्याचार होता है तो न परिवार के लोग स्वीकार करते हैं और न समाज के, वह सब तरफ से लोगों की निगाहों में गिर जाती है। ऐसी हालत में उसके वर्चस्व को कायम रखने के लिए इस प्रकार का प्रावधान होना चाहिए। अगर, प्रापर्टी में से पचास परसेंट हिस्सा दिलाया जाए तब जाकर वह समाज में टिक पाएगी और अपनी व्यवस्थाओं को चला पाएगी।

पैसे के बलबूते पर जैसा आज तक कचहरियों में होता आया है जो भी कार्यवाही की जाती है उससे बड़े लोग बच जाते हैं। इसलिए, इस कानून को और ज्यादा सख्त और मजबूत बनाने के लिए आप ऐसी व्यवस्था नहीं करेंगे तब तक उन महिलाओं के साथ न्याय नहीं हो पाएगा। इस प्रकार के केसेज कल-कारखाने में हों, दफ्तर में हों, हास्पिटल में हों जहां लोग महिलाओं को बहकाने का काम करते हैं। ऐसे लोगों को सजा दिलाने के लिए आपने कोई व्यवस्था नहीं की। इसके संबंध में भी कुछ करना चाहिए। अबर्टस को भी सजा मिलनी चाहिए तब जाकर के इस प्रकार के गलत कदम उठाने में जो तत्पर रहते हैं, उनको रोका जा सकता है। एक बात मैं और कहना चाहूंगा, आपने 376-बी, सी, डी को कागनीजेबल बना दिया है। और आपने यह कह दिया है कि बिना वारन्ट के या मैजिस्ट्रेट के आर्डर के कोई एरेस्ट नहीं होगा। कागनीजेबल आफेंस तो आपने बनाया है लेकिन यह जो शर्त रखी है यह गलत है, कानून की मंशा के विपरीत है। इसका मतलब हुआ प्रार्थनापत्र देकर वारन्ट प्राप्त किया जाएगा और तब लोगों को गिरफ्तार किया जा सकेगा। इससे यह साबित होता है कि जो बड़े लोग हैं, जो इस प्रकार के काम करते हैं, उनको बचाने के लिए इस प्रावधान को सम्मिलित किया गया है। यह कहा जा सकता है कि लोगों को अनावश्यक हैरासमेंट से जो पुलिस द्वारा कभी-कभी किया जाता है, बचाने के लिए यह प्रावधान किया गया है। लेकिन इसमें कोई तथ्य नहीं है। पैसे वाले लोग तो पुलिस को अपनी जेब में रखते हैं। उनको कभी पुलिस सता नहीं सकती है। इसका साफ मतलब यह होता है कि 376 बी, सी और डी के केसिज में बड़े-बड़े अधिकारी लोगों को जिनके खिलाफ इस प्रकार के केसिस रात दिन देखने में आते हैं, बचाने के लिए यह प्रावधान किया गया है। यह बिल्कुल रिडंडेंट है, गलत है। यह व्यवस्था नहीं होनी चाहिए।

आपने एवीडेंस एक्ट में तरमीम करने की बात भी कही है। कोई भी महिला यह कह दे कि मेरे साथ रेप किया गया है, उसके बाद प्रूब करने

का दायित्व मुलजिम पर आ जाएगा। आपने इस बात का खयाल नहीं किया कि ऐसे भी केसिस हो सकते हैं जिनमें गलत आरोप लगाए जा सकते हैं किसी भले आदमी को फंसाने के लिए। इसके वास्ते आपने कोई सेफगार्ड नहीं रखे हैं, कोई प्रावधान नहीं किया है। सही आदमी के खिलाफ इस प्रकार के आरोप न लें, किसी आदमी को गलत न फंसाया जा सके, इसके सम्बन्ध में भी कोई न कोई व्यवस्था होनी चाहिए। सभी महिलायें इस तरह के गलत काम नहीं करती हैं। लेकिन कुछ परसेंटेज ऐसा भी हो सकता है जो इस प्रकार के भले आदमियों के खिलाफ इस प्रकार के आरोप लगाकर उनको फंसाने की कोशिश करें और उसके बाद वह बेचारा आदमी परेशान होता फिरेगा। इसके बारे में भी आपको सोचना चाहिए। एक तरफ आपने कह दिया है कि बिना वारन्ट या मैजिस्ट्रेट की आज्ञा के किसी को गिरफ्तार नहीं किया जा सकेगा लेकिन ऐसे केसों में जहां गलत आरोप लगा दिए गए होंगे वहां पर उसको आप गिरफ्तार कर लेंगे, उसके खिलाफ कार्रवाई करते रहेंगे और साबित भी उसी को करना पड़ेगा कि उसने रेप नहीं किया। ये कुछ खामियां हैं जिनकी तरफ आपका ध्यान जाना चाहिए।

कैपिटल पनिशमेंट की बात भी सोची जानी चाहिए। राय साहब ने कह दिया कि कैपिटलिस्ट कंट्री में इस तरह के क्राइम ज्यादा होते हैं। लेकिन अरब देश जो कैपिटलिस्ट देश हैं वहां कैपिटल पनिशमेंट है इस वजह से मैं समझता हूँ कि बहुत कम रेप के केसिस होते हैं। किस प्रकार का वातावरण आप बनाना चाहते हैं, किस प्रकार से न्याय देना चाहते हैं, उस पर यह सब निर्भर करता है। आपने सारे अधिकार पुलिस को दे दिए हैं। पुलिस जैसी है हम जानते हैं। मैं अपने क्षेत्र में दौरा करने गया था। कुछ लोगों ने हमला किया और मेरी गाड़ी को तोड़ दिया। मैंने पुलिस को इत्तिला दी। पुलिस ने आज तक कोई कार्यवाही नहीं की। इस प्रकार की हालत हम जो चुने हुए प्रतिनिधि हैं, पार्लियामेंट के मंम्बर हैं उनकी होती है। साधारण आदमी जो है, जो पीड़ित है, शोषित है, उसके खिलाफ पुलिस किस प्रकार की

कार्रवाई करती है, इसको भी हम जानते हैं। मंत्री महोदय कह सकते हैं कि पुलिस के खिलाफ ज्यादा कुछ करेंगे तो वह डीमारेलाइज होगी। मैं चाहता हूँ कि पुलिस की व्यवस्था आप ऐसी करें ताकि लोगों को न्याय मिले, इन्साफ मिले और जो गलत काम करते हैं उनको सख्त सजा मिले। यह नितान्त आवश्यक है। श्री इसलाम साहब ने ठीक कहा है कि स्मर्गलिंग के केसिज, मिलावट के केसिज, रेप के केसिज में जब तक कैपिटल पनिशमेंट नहीं होगी, तब तक देश का बातावरण ठीक नहीं बन पाएगा। इसलिए कैपिटल पनिशमेंट नितान्त आवश्यक है और ऐसे केसेज में ऐसी सजा मिलनी चाहिए जिससे दूसरे लोग इवरत लें ताकि दुबारा ऐसे केसेज सामने न आयें।

इस बिल का तो मैं समर्थन करता हूँ मगर मंत्री जी से कहूँगा कि इसको और एलोबरेट करें और एक काम्प्रीहेन्सिव बिल लायें जिसमें सारी व्यवस्था ठीक प्रकार से कर सकें। ऐसी व्यवस्था करना नितान्त आवश्यक है।

इन शब्दों के साथ मैं इस बिल का समर्थन करता हूँ।

SHRI RAM JETHMALANI (Bombay North West) : Sir, I am very grateful to you for having given me an opportunity to express my thoughts on this somewhat serious problem.

First I wish to take the opportunity of congratulating the various women's organisations in the country which have undoubtedly created a consciousness of this somewhat serious problem and which ultimately with their efforts has brought about an awareness in the Government and in this House; and it is the result of their efforts that this Bill is before the House.

I must also congratulate the Joint Committee of Parliament which has deliberated on this problem. Great care and great effort has been put into it. I particularly congratulate the lady Members of that Committee as I know personally, when I gave evidence

before them, the kind of interest which they had taken in regard to this.

But, Sir, there are one or two things which still require to be said. We are a society governed by a rule of law and the women's movement today is beginning to manifest itself in some forms which with all respect to the intelligent females in this country, I wish to say—are not consistent with the rule of law. Only the other day the High Court of Delhi allowed an appeal. The Judges honestly did their duty. They thought on evidence the man was not guilty, his co-accused was not guilty and they passed a judgment of acquittal. And Sir, there were demonstrations outside the High Court and all kinds of ugly scenes had been witnessed. Sir, these are somewhat unproductive and I think these ought to be avoided. While it is true that rape is a very serious problem, which has to be dealt with, while it is true that the innocent women of this country, particularly those living in the inner and distant areas, away from the city and urban centres require to be very seriously protected, there is also no doubt, and it should not be forgotten by the ladies in this country, that through the course of history there have been at least occasional false accusations of rape and people have been wrongly convicted.

Sir, every practitioner at the Criminal Bar knows of the famous case of Adolph Beck, which happened once in England in which there were half a dozen women who came into the court and swore in the witness box that the accused in the dock was the person. It was not a case of rape. It was a case of a man who first struck friendship with those women, then lured them into bed and after this he deprived them of their ornaments, jewellery and cash and decamped. Six women said he was the man who had come to us, made love to us and deprived us of the ornaments. The man was sentenced and he went to jail. After he was lodged in jail, the only person who believed his innocence was the Solicitor. He carried on the campaign for his innocence. And fortunately for the innocent accused, while he was in jail, similar offences started being committed in some other localities in England. Ultimately the man was caught who not only confessed the fresh crimes, but said that he had com-

mitted all those crimes which Adolph Beck had been convicted of and for which he was languishing in jail. Therefore, Sir, if you can commit mistakes of identity in a case in which a man has met a woman and six of them over a period of time.

17.00 hrs

[MR. DEPUTY-SPEAKER *in the Chair*]

You can at least have wrong convictions as a result of wrong identification of persons who, in the darkness of night, in conditions in which identification is not possible, might be accused of rape. Therefore, this kind of agitations directed against judicial pronouncements are something which, I think, do not do credit to our system of rule of law, and which ought to be avoided.

But, once again, this is not to detract from the seriousness of the offence, nor from the seriousness of the problem; nor does it detract from my great appreciation of the work of these admirable ladies who have brought about this Bill ultimately before this House.

I welcome this Bill; I substantially welcome all its provisions. But, once again, on the merits of the Bill itself, the contents of the Bill, I have 2 or 3 comments to make which I hope the Minister-in-charge will heed to, and consider.

First of all, this Section 228A is a very absurd Section. It is counter-productive. It prohibits the disclosure of any information which might lead to the discovery of the identity of the victim suppose a serious crime is committed against a known lady and nothing is being done to investigate that crime. And an intrepid journalist published it in the newspaper saying that a rape has taken place, and the police is not investigating; and he gives some clue that a rape has taken place against a respectable advocate, a respectable doctor, it has taken place in such-and-such a locality—this is an information which gives some clue about the identity of the person who is a victim of rape; and the furnishing of this kind of information is made an offence. Section 228 must be very seriously considered by the

Minister. There must be some very drastic changes made in this Section, because it does not serve the purposes for which this Statute is brought. On the contrary, it produces very absurd results.

A father who complains: "The Police is corrupt. My daughter has been raped," also gives information which leads to the identity of the victim of the rape; and the father is liable to be punished, because he makes a complaint that his daughter has been raped, in this case. I do not know how this provision has come in, and who suggested this provision, but this is a provision which ought not to be there in the statute book. (*Interruptions*)

If the ladies want this, they are welcome to it. But I would suggest that it is not in the interests of the ladies themselves, and I feel it is terribly counter-productive.

Then there is the fifth clause in the definition of rape. To my mind, it is a very absurd provision. It says:

"*Fifthly*.—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another, of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent."

First of all, I think simple fairness requires that before you punish the accused, these conditions of the woman must be known to the accused. The accused must know that she is of unsound mind; because after all, unsoundness of mind is not always manifest in every case. There are cases of unsoundness in which you require long association to discover that the person is of an unsound mind. Suppose two persons meet together. The lady is normal for all intents and purposes; but there is some kind of an insanity concealed somewhere, which is not too obvious; and there is, under those conditions, a sexual union. To punish that man because the lady does not understand the nature and consequences of that to which she consents, I think, to my mind is absurd from any point of view.

Secondly, about intoxication. Intoxication must be put on the same footing as the 'administration by him personally or through another of some stupefying or unwholesome substances'. If, there you make the stupid condition of the woman a ground of liability, you have taken care to say that the stupidity is induced by the man, i.e. by the accused. But what about intoxication? If the woman had intoxicated herself fully—after all, we are not dealing all the time with virtuous women. We may also deal with some women who, unfortunately, do not conform to the normal standards of womanhood. A woman may be there who has first taken a lot of drinks herself voluntarily, and intoxicates herself and then complains against the man and says: 'Look! I never appreciated the nature and consequences of the act.' So, intoxication and administration of the stupefying substance must be put on the same footing. Intoxication must be induced by the accused with the intention that she should not understand the nature and consequences of that to which she is consenting.

With respect, I really do not understand the nature and consequences of that which she consents. Surely, the nature of the sexual act, she does not understand, the consequences of it, she does not understand. There are two things. The consequences may be that a woman might say, "when I consent to sexual intercourse, I understand that a pregnancy would result." Now this man is guilty of rape. She may say, "I did not understand that I will meet so much of opposition in society once the fact of sexual intercourse becomes known. I did not realise that this man is going to desert me after six days or one week or one month and I would not have consented if I had known the consequences and what was going to happen. Now, I am left high and dry." This section is absurd and I think it will produce a plethora of frivolous and vexatious prosecutions and will affect the whole administration of justice. In any event, I submit that it requires a very serious amendment.

What happens to a case where a man and a woman start their evening with mutual drinking, each administers drinks to the other in the real *Omar Khayyam* style, both are intoxicated and get mutually intoxicated.

MR. DEPUTY-SPEAKER : Mr. Jethmalani, does an intoxicated woman, does she not know who raped her? Does she not know the concerned person at least?

SHRI RAM JETHMALANI : She may not.

MR. DEPUTY-SPEAKER : She may not?

SHRI RAM JETHMALANI : She may not know, or she might accuse somebody else.

SHRI SATISH AGARWAL (Jaipur) : These are legal arguments, not experienced arguments.

SHRI RAM JETHMALANI : These are things to be explained; the person who does the drafting may know it.

Now, there is one thing. The provision, seventhly :

"With or without her consent, when she is under sixteen years of age."

My submission is that intercourse between man and woman should be outside the rape provision altogether. No. You must completely eliminate from the provision any situation in which a man can be held guilty of rape against his own wife. The proper solution to this problem is that you must prevent marriages taking place at an early age. You are not able to interfere with personal laws of some people.

SHRI P. VENKATASUBBAIAH : This is about rape. It is about sexual offence here.

SHRI RAM JETHMALANI : You see the exception after explanation 2, which reads :

'Sexual offence by man with his own wife, the wife not being under fifteen years of age, is not rape.'

This you must remove. Because, if a marriage takes place and you recognise that

marriage as valid, you must invalidate that marriage so that nobody should be able to say 'I am having sexual intercourse with my own wife'. That you are not prepared to do. Marriage is permitted ; marriage is good, even if it takes place when it is an early marriage, you recognise it as valid, and this provision prevents the man from becoming a hermit in the sense that you keep your wife in a cupboard and do not have sexual intercourse with her and she should have no sexual intercourse with you. This is absurd. It is a surrender to a spirit which is not really secular, because you are not prepared to take some secular decisions and execute some secular policies, and interference with some personal law you will not do. But by these indirect and dubious methods you are creating a situation which will be totally intolerable and which you cannot possibly control.

One more thing. Take Clause 376 (d) :

'(d) 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 ;'

and in (c) it is said :

"...takes advantage of his official position and commits rape on any inmate of the institution ; or"

Now, 'has intercourse with any woman in that hospital..'

When you say, with any woman in a hospital does it mean a woman connected with that hospital or hospital is the place of sexual intercourse ? What have you in mind ? I can understand the case of a doctor who takes advantage of the nurse, or of a doctor who takes advantage of a patient in the hospital. How can you say, 'intercourse with any woman in that hospital' ?

Supposing his girl friend visits the hospital but he has no place to go, he utilises the quarter in that hospital for the purpose of sexual intercourse, does it constitute an offence ? Therefore, ultimately you must confine yourself to those situations in which

a woman is connected in such a manner with the hospital that the person in charge of the management of the hospital is in a position to exercise some control over her and secure her. Obviously the reference here is either to nurses or patients. There cannot be a third class of persons covered. You are not talking of other kinds of employees in the hospital because then the hospital question is totally irrelevant. On the other hand, it is well known in this country that there have been hundreds of love affairs between doctors who are so lovingly taking care of their patients and at the last stage of the cure some kind of a lapse takes place. To punish that offence under Section 376, I think, is a little too harsh.

My last point is about the minimum sentence for the first offence. I am not talking of gang rape, I am not talking of those special kinds of rapes which you have now created under special conditions. There your punishments are justified but minimum sentence of seven years for the first offence—ordinary offence of rape, not the extraordinary offence of rape which you have now described—to my mind is inhuman and unscientific. I have three circumstances to mention which the Minister should consider. First of all, in such cases the major punishment should go to society. As Mr. Sezhiyan in his concurrent note on page XXXV of the Report has said :

"Rape is not merely a criminal assault, it is an assault on her life, on her soul, on her social respectability. For no fault of hers, a woman is suddenly deprived of her inherent right to lead a normal and happy life ; she is doomed to suffer in silence and only death can free her from the stigma and the agony."

This is the attitude of a very ignorant, uneducated society to a woman who becomes the unfortunate victim of a rape. Why don't you improve the society, why don't you educate the people that a woman who has gone through this traumatic experience, is not to be shunned, she is to be worshipped, she is to be protected ? But society will not improve its attitude, society will still insist upon that virginity in a woman. Once a

woman has lost her virginity, thereafter she is entirely useless to people. This kind of irrational attitude must go. The punishment is being caused by society much more than the original offender and, therefore, a severe punishment must not be inflicted upon the rapist, society must suffer that punishment and since you are not punishing the society it is no reason why... (*Interruptions*).

MR. DEPUTY-SPEAKER : Now, please conclude.

SHRI RAM JETHMALANI : Only one minute more. Secondly, crimes flourish not because of deficiency of punishment but because of laxity of enforcement. After all, murders are punishable with death, have been punishable with death for centuries and yet the crime of murder has taken place. So, please do not remain under the illusion which you seem to have that increased punishment means lesser crimes. If that was so, every offence should be punishable with that and you will have no offences left. Therefore, it is a false juristic theory, it is a false penalogical theory and merely increasing punishment is just becoming counter-productive again.

Lastly, with respect, the Parliamentary Committee has not applied its mind at all to the scientific aspects of the problem and has not applied its mind to the real causes of crime. Why is rape committed? Why there are rapists present in our society? To say the least, modern psycho-analysis and psychological analysis reveal that there are at least six or seven causes which may turn people into rapist's sexual deviation, particularly in the form of a rape. There are causes which are neuro-physiological for which the man is not responsible. There are genetic causes also. Family histories have been gone into, histories of twins have been gone into and it has been discovered that there is something in the gene for which a man is not responsible, perhaps his ancestors are. Thirdly, there are hormonal disturbances and things like that. Then, there are endocrine causes, environmental imprinting, intrapsychic causes and societal causes and all these the Joint Parliamentary Committee has failed to take into account

and, therefore, in the net result, has produced some recommendations which are totally unscientific. I just want to repeat a few sentences and I will stop.

"Deviational rape is a form of sadism in which the man achieves excitement only in the awareness that he is harming the woman, as evidenced by her struggles or anguish; behind this awareness lies a fantasy of revenge or a feeling that women are inferior and not worthy of decent treatment. Such attitudes often derive from childhood experiences in which the boy was rejected or humiliated by women and subjected to physical punishment excessive for the boy's misbehaviour. Rapists usually come from families in which violence is frequent between parents or between parents and children. In psycholoanalytic theory involving the Oedipal complex, deviational rape represents a misplaced attempt to force a rejecting mother into sexual relations."

Consider, this rapist is also a patient. He is also to be treated like any other patient. Perhaps, a major part of his time should be spent in a medical institution, where he should receive proper treatment for his hormonal disturbance, psychological disturbances, rather than confined to jail for a long time. This is irrational, this is unscientific and it is not worthy of this great House.

श्री कैयूर भूषण (रायपुर) : उपाध्यक्ष महोदय, आपने मुझे जो थोड़ा समय दिया, उसके लिए मैं आपका आभारी हूँ। साथ ही साथ इस समय जो चर्चा हो रही है उसे भी ध्यान से सुनने और समझने का मौका मुझे मिला। इस संशोधन को यहाँ पर लाने में हमारी बहनों का जो हाथ रहा है, इसके लिए वे बधाई की पात्र हैं। मैं अपनी समझ में इन बहनों को युगप्रवर्तक मानता हूँ—क्यों? इसलिए कि आज जो चर्चा यहाँ पर हुई है या इस विषय पर हम जिस ढंग से चर्चा कर रहे हैं इसमें हमारे वर्षों से जो दासता के विचार हैं वे भी परिलक्षित होते हैं। हमने नारी को देवी के रूप में माना या पूज्य माना या रक्षित माना। जब वह

छोटी थी तब यह माना गया कि उसके मां-बाप उसकी रक्षा करेंगे, अब वह अपनी उम्र में आई तो यह माना गया कि उसका पति उसका रक्षक होगा और जब सयानी हो गई तो पुत्र उसका रक्षक हो गया। आज भी वक्तों के भाषण में मैं जब यह सुनता हूँ कि नारी की रक्षा होनी चाहिए तो मुझे दर्द होता है। हमने हजारों सालों से केवल उनकी रक्षा की, उनके अधिकारों को दबाया। यह पहली बार है जब बहनें स्वयं अपने अधिकारों के लिए सोच रही हैं। यह ठीक है कि सोचने का ढंग जैसा होना चाहिए वैसा नहीं हो पाया है। मैं उस ओर ध्यान दिलाना चाहता हूँ—भारत में बहनें पूज्य रही हैं—कब? जब वे स्वयं रक्षित हुईं, अपनी रक्षा स्वयं की—दुर्गा के रूप में, भैरवी के रूप में या सरस्वती के रूप में। जब राक्षसों का वध देवता न कर सके तब दुर्गा का अवतार हुआ राक्षसों का वध करने के लिए। वह स्थिति आज उनको स्वयं स्वीकार करनी होगी। वे अपने को रक्षित न मानें, दूसरों पर निर्भर न करें। आज जितनी बातें या उदाहरण यहां पर दिए गए या जितने अत्याचारों का वर्णन किया गया उनमें ऐसी किसी बात का उल्लेख नहीं किया गया कि अत्याचारी का मुकाबला करते हुए किसी बहन ने अपनी आत्मरक्षा के लिए प्रहार किया हो। जब तक ऐसी स्थिति पैदा नहीं होगी तब तक इस दिशा में कोई सामाजिक परिवर्तन पैदा नहीं हो सकेगा।

साथ ही साथ मैं यह भी कहना चाहता हूँ— इस समस्या के आर्थिक और सामाजिक दोनों कारण हैं। यदि आर्थिक दृष्टि से हम छोटे वर्ग की बहनों को देखें, उनका तुलनात्मक अध्ययन करें तो हम देखेंगे कि वे ज्यादा स्वावलम्बी हैं, ज्यादा रक्षित रहती हैं। जो मजदूर वर्ग की बहनें हैं वे स्वयं मजदूरी करके अपने पैरों पर खड़ी होती हैं। वे छोटे से छोटा काम क्यों न करती हों और चाहे सिर पर मेला क्यों न उठाती हों, वे उससे आगे उठ रही हैं उन दूसरी बहनों की तुलना में जो स्वावलम्बी नहीं हैं। जो बहनें स्वावलम्बी हैं, वे नैतिक दृष्टि से ऊंची हैं। इसी तरह से अगर आप सम्पन्न घरों की बहनों को देखेंगे तो यह पायेंगे कि वे अपनी आत्मरक्षा के लिए बहुत कमजोर हैं क्योंकि

वे अपने पैरों पर खड़ी हुई नहीं हैं। उनका पति अगर उन्हें घर से निकाल देता है तो वह एक करोड़-पति की पत्नी ही क्यों न हो और चाहे वह एक सम्पन्न राजनेता की पत्नी क्यों न हो और चाहे वह एक बड़े अफसर की पत्नी ही क्यों न हो, वह अपने पांवों पर खड़ी हुई नहीं है और उसका दर्जा वही है जोकि एक सड़क पर चलने वाली गरीब औरत का है। इसलिए उन्हें स्वयं को बदलना होगा। अगर वे स्वयं नहीं बदलेंगी तो समाज उन्हें भुलावा देता रहेगा। हमने आदर्श के रूप में अपने पूर्वजों को भी देखा है। मैं पुरानी कथाओं का सहारा लेना चाहूंगा और इसके लिए थोड़ा आपका समय लूंगा। उन कथाओं का हमारे मानस पर बहुत असर पड़ा है और धर्म के नाम पर हमारी बहनों का बहुत जबर्दस्त शोषण हुआ है चाहे वह कोई भी धर्म हो। चाहे आप हिन्दू धर्म को लें, चाहे इस्लाम धर्म को लें और चाहे बौद्ध और जैन धर्म को लें, आज जो स्थिति है, उसको पूर्णरूप से आप देखें, तो वहां पर आपको अन्तर मालूम पड़ेगा। जब किसी राक्षस का पुराने जमाने में वध नहीं हो पाया और किसी की सती पत्नी के साथ दुराचार किया गया, तो उसको महान् और पूज्य समझा गया और जिसने दुराचार किया, वह भी महान् समझा गया। हमने राम और सीता को समान रूप में देखा। एक के साथ दूसरे का भी जप और पूजा करते हैं। अगर दोनों के जीवन को देखें, तो सीता का सारा जीवन आंसुओं की कहानी है। क्या हम उसी आधार पर आज भी अपनी बहनों को रखना चाहते हैं, क्या उसी तरह से पूज्य रखना चाहते हैं। क्या इस स्थिति को हमको बदलना होगा और इसके साथ-साथ सामाजिक स्थिति को भी बदलना होगा। आज की सामाजिक स्थिति बदल रही है। आज की बहनें स्वयं राम की स्थिति पर आ रही हैं, आज की बहनें स्वयं शंकराचार्य की तरह वेदान्त तैयार करने की स्थिति में आ रही हैं। हम थोड़े ही दिनों का इतिहास देखें। नारी का उद्धार करने के लिए राजाराम मोहन राय से लेकर संत विनोबा तक की गिनती हम करते हैं, जिन्होंने नारी शक्ति को जागृत किया पर अब इसको बदलना होगा। आज नारी शक्ति को स्वयं नारी को जागृत करना होगा। तभी जाकर समाज में

जागृति आएगी और हमें इसका उदाहरण भी मिल रहा है।

विनोबाजी ने अश्लील पोस्टर हटाने के लिए, अश्लील पोस्टर जो सिनेमा में दिखाए जा रहे हैं या जो अश्लील किताबें बेची जा रही हैं, उनके बारे में कहा था कि ये बन्द होनी चाहियें। उस समय उनकी आवाज जन-जन तक नहीं पहुँच पाई थी पर अब बहनों ने इस चीज को स्वयं प्रारंभ किया है और इसमें उन्हें सफलता मिलेगी और हम उनके साथ रहेंगे।

मेरा आपसे एक निवेदन है कि इस आन्दोलन में, जिसको बहनों ने सामने रखा है और मानस बदलने का प्रयत्न किया जा रहा है और आर्थिक स्वावलम्बन की बात की जा रही है, आप इस कानून के साथ ही साथ उस आधार को भी रखें। मानसिक दास्ता को भी बदलें और उन्हें अधिकार भी दें। आज ग्रामीण बहनों में कई जगहों पर ऐसी स्थिति है कि पति और पत्नी के सम्बन्ध शादी के आधार पर ही कायम रहें, यह आवश्यक नहीं है। अगर सम्बन्ध विच्छेद होते हैं, आपस में उनके सम्बन्ध टूटते हैं, तो उनके टूटने का अधिकार भी आप उन्हें दें और ऐसा न हो कि केवल शादी के आधार पर वे अपना सारा जीवन सारी उन्नत व्यभिचार में बितायें। ऐसा नहीं होना चाहिए। उन्हें पूरा अधिकार रहना चाहिए। जिस दिन उनका स्वयं विचार बदलता है, तो उसको तोड़ने का अधिकार उनको रहे। यह कहा गया कि पति और पत्नी के बीच में कैसे व्यभिचार होगा। मैं ऐसे बहुत सारे उदाहरण दे सकता हूँ जिनमें उन्हें सारा जीवन व्यभिचार में जीना पड़ रहा है। ऐसे अनेक उदाहरण हैं। इसलिए उन्हें सम्बन्ध विच्छेद का अधिकार दीजिए। अगर ऐसा इसमें किया जाता है, तो वह एक बहुत अच्छी बात होगी।

यहां पर बहुत से माननीय सदस्यों ने कानूनी पहलुओं से बलात्कार की परिभाषा रखी है लेकिन मेरे क्वाल से बलात्कार की परिभाषा यह होनी चाहिए कि केवल अगर अनिच्छा है, चाहे वह शादी-शुदा हो या गैर-शादी-शुदा हो, उसकी

इच्छा के विपरीत अगर कार्य किया जाता है, तो वह व्यभिचार माना जाना चाहिए। कानूनी भेद-भाव चाहे वह सरकारी अफसर के द्वारा हो, चाहे कानून की परिधि के बाहर हो, इस बिल में सभी को समान दण्ड की व्यवस्था का प्रावधान होना चाहिए।

मैं विशेष कुछ नहीं कहना चाहता क्योंकि बाकी अन्य लोगों ने अपने विचार आपके सामने रखे हैं। इस पर परिभाषा के रूप में, एक वैज्ञानिक पहलू को सामने रखकर काफी अच्छे ढंग से अभी सदन के सामने विचार रखे गए हैं। मैं केवल यही बात सदन के सामने कहना चाहता हूँ कि जितने भी व्यभिचार नारियों के प्रति होते हैं उन सबके अगर आप आंकड़े देखें तो अधिकतर मुफ्तखोर ही व्यभिचार या बलात्कार करने वाले होते हैं। चाहे गुंडे हों या कोई बड़ा आदमी भी हो, सभी मुफ्तखोर मिलेंगे, मेहनत करके रोटी कमाने वाले लोग आपको नहीं मिलेंगे। जिन पर बलात्कार होता है वे भी गरीबी और भूख की शिकार बहनें होती हैं। अगर इस देश में से भूख और गरीबी मिटती है तो इस बलात्कार का अधिकांश हिस्सा समाप्त हो जाता है।

हमें बहनों की इस दासता को मिटाना होगा। बहनों के प्रति समाज में फैली हुई भावना को बदलना होगा। हमारी जो दुराचार और व्यभिचार की मान्यता है उसको भी बदलना होगा। अगर किसी अविवाहित बहिन के साथ कोई व्यभिचार होता है तो वह बहिन उतनी ही सती मानी जानी चाहिए जितनी कि विवाहित बहिन। हमें सतीत्व के मानदंड में परिवर्तन लाना होगा। अगर एक साधारण बहिन के ऊपर समाज में कोई बलात्कार होता है तो उसको बलात्कार नहीं माना जाना चाहिए।

मुझे याद आता है कि गांधी जी के युग में किसी एक अविवाहित बहिन पर गुंडों द्वारा बलात्कार हुआ। उस समय गांधीजी ने कहा था कि यह दुराचार इस बहिन के साथ जोरजबर्दस्ती से हुआ है, इसलिए इसे दुराचार नहीं माना जाना

चाहिए। यह भी उतनी ही सती है जितनी कि कोई विवाहित बहिन। इसका उस समय के नौ-जवानों पर बहुत असर हुआ। इसलिए मेरा निवेदन है कि जहाँ हम कानून में परिवर्तन करें वहाँ हम समाज में नारी के प्रति अपनी विचारधारा को भी बदलें और नई विचारधारा के साथ हम सोचें, यही मेरा निवेदन है।

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. VENKATASUBBAIAH) : Mr. Deputy-Speaker, Sir, I thank all the hon. Members who have participated in this debate. Many legal luminaries like my friend Shri Ram Jethmalani have thrown some light on the socio-economic conditions of the society and some of the hon. Members like our friends Shri Ram Lal Rahi and Shri Keyur Bhusan have also spoken at length though not particularly relevant to the Bill that is under discussion.

Sir, all these things have to be taken in one's own stride and Government will certainly give its due consideration on all the recommendations that have been made. Hon. Members who have participated in the debate have said that the Government has taken undue time in bringing forward this piece of legislation in this House. So, Sir, I may submit to the House with all the humility at my command that there has been no avoidable delay so far as Government's action in bringing forward this piece of legislation in this House is concerned. If the hon. Deputy-Speaker permits me, I can chronologically enumerate the dates on which this has been done and how Government has been eager enough from time to time to bring this piece of legislation in the Lok Sabha. So, I just leave it at that.

First, I will deal with the general recommendations which have been made by the Joint Committee. For the benefit of the House, I will state the Government's action or attitude towards these general recommendations.

Amendment of Section 100 of IPC (Right of private defence to a woman on molestation). It is considered that the description "thirdly" should be amended so

as to bring in, the concept "reasonably cause the apprehension" contained in description "secondly" to give greater protection to woman. The Amendment has to be examined in consultation with the Ministry of Law.

Amendment of proposed Section 376(2) : (Defining aggravated forms of rape). It is considered that such a provision need not be incorporated in the law, particularly when the difference in punishment is only with regard to the minimum punishment—7 years imprisonment in rape cases in general and 10 years in cases in aggravated circumstances. Moreover, it is also very difficult to define the concept of economic dominance. Making rape on physically and mentally disabled women or women under economic dominance as one of the aggravated forms of rape would also shift the onus on the accused. This might not be desirable as it might lead to misuse.

Amendment of Section 46 (Women not to be arrested after sun-set and before sun-rise. Instructions already exist to the effect that no woman should be arrested between sun-set and sun-rise, except in unavoidable circumstances and that if one has to be arrested at night, the police officer must obtain prior permission of his next superior officer and furnish written reasons therefor. It is considered that the amendment on the lines recommended by the Joint Committee should be made subject to the deletion of reference about making a written report for obtaining prior permission of his immediate superior before arrest and providing that the officer making the arrest should forthwith report the matter in writing to the Superintendent of Police.

Amendment of New Section 53 (Medical Examination of the person accused of rape). It is considered that a general provision stressing the need for prompt medical examination of the accused should be made. As regards the question of specifying the details, which such medical examination report should contain, it was considered that the matter be examined in consultation with the Department of Legal Affairs, since any of the omissions in the report by the Medical Practitioner, might be taken advantage of by the accused.

Insertion of new Section 164A (Medical Examination of a rape victim). It is proposed to insert a new Section 164A in the Code on the lines of the recommendation made by the Law Commission along with proposals which are under consideration for the amendment of the Code of Criminal Procedure, 1973.

Insertion of new Section 173A (Association of Social Welfare Officer in the investigation of offences against women and children). It is considered that it would not be desirable to associate Social Welfare Organisations with the investigation of rape cases as well as recording of statements of the victim. It is considered that if the victim making the statement desired the presence of a relation or friend while making the statement, this should be allowed. This purpose can be achieved by the issue of instructions instead of amending the Cr. P.C.

Amendment of Section 357 (Compensation to a rape victim). A specific provision is proposed to be inserted in the I.P.C. to provide for payment of compensation to the victims of certain types of crime. The compensation would be payable in cases of offences under Chapters XVI, XVII and XXI of the I.P.C. The recommendation made by the Joint Committee seeks compensation for rehabilitation of the victim. Since rape case will be triable by the court of Session, who can impose any amount of fine, it is possible to provide suitable compensation for the rehabilitation of the victim. The amendment being considered for insertion in the I.P.C. is considered sufficient in this regard.

Lastly, insertion of new Section 417A.

"custody and detention of woman on arrest: It is not considered necessary to incorporate such an amendment in the Indian Penal Code. Executive instructions already exist in this case and we are taking up with the State Governments also on this matter."

I may be pardoned if I make the comment that the presumption of many Hon. Members expressed in their speeches that every Police

Officer is bad and is sadist in his attitude, is not correct. The Hon. Members should not be carried away by such inhibitions while making their speeches.

The scope of the Bill is very limited. It is only because of a Memorandum that was presented to the Prime Minister and to the Government on this subject and also because of the efforts of Hon. Members Shrimati Geeta Mukherjee and Shrimati Pramila Dandavate to put up the cases of the unfortunate victims in the House in a very forceful manner, that this Bill has come up in this House and the Government has come forward with this amendment.

श्री राम लाल राही (मिसरिख) : मंत्री जी ने कह दिया कि यह विधेयक बहुत सीमित है। क्या आज से ही उनका यह विचार बन गया है कि कोई विस्तृत विधेयक लाने वाले हैं। उन्होंने स्वयं कहा है, इसलिए मैं जानना चाहता हूँ।

SHRI P. VENKATASUBBAIAH : First let us do this and then we will take up the suggestions of the Hon. Member.

Another suggestion also has been made.

MR. DEPUTY-SPEAKER : The whole difficulty is that you have mentioned the names of only Shrimati Geeta Mukherjee and Shrimati Pramila Dandavate. Mr. A.K. Roy has also been in that movement. You mention his name also.

(Interruptions)

श्री राम लाल राही : मैंने यह कहा था कि यह विधेयक अपूर्ण है। इसलिए, सुप्रीम कोर्ट के रिटायर्ड जजों और एडवोकेट्स के सुपुर्द किया जाना चाहिए। तीन महीने का टाइम उनको दिया जाए ताकि व्यापक रूप से इस विधेयक का अध्ययन करें और उसके बाद बहस हो। मैं यह कहना चाहता हूँ कि मेरे सजेशन को स्वीकार करने में क्या कठिनाई है ?

SHRI P. VENKATASUBBAIAH : Another point is made about non-registration

of cases. Section 154(3) of the Cr. P.C. takes care of that.

"If the Officer in charge of Police Station refuses to register the case, the person concerned can send the substance of the information to the Superintendent of Police who will act."

This relevant provision is also there. Hon. Members who are well-versed in law may go into the matter.

There is also a penal provision for the police officer. Besides, the police officer is liable to disciplinary action. Therefore, there is ample provision in the old I.P.C. also in this case.

So far as unhealthy exhibition of women's body, etc., in the media is concerned, I do share the anxiety of the hon. Members in this regard. I shall draw the attention of my hon. colleague in the I and B Ministry... to this aspect.

PROF. N.G. RANGA (Guntur) : It is getting worse.

SHRI P. VENKATASUBBAIAH : Shrimati Pramila Dandavate has made a suggestion...

SHRI SATISH AGARWAL : Have you not heard Prof. Ranga's comment? He says that things are going from bad to worse. This is Prof. Ranga's comment.

SHRI P. VENKATASUBBAIAH : I have said that I will convey the feelings of the House.

Shrimati Pramila Dandavate has made a suggestion that Thanas should have a Vigilance Committee and that the women members in the Committee should be in the majority. I shall commend this to the State Governments.

Mr. Kashyap has made a suggestion that there should be summary trial in rape cases. This will not be fair. The summary procedure is meant for petty offences; the maximum punishment that can be given is three

months' imprisonment and the case is triable by a Magistrate. In a serious offence like rape where the minimum punishment will now be seven years, summary trial will not be appropriate.

I will come to 228A; it is a very important matter...

SHRI SATISH AGARWAL : Not on the basis of officials' notes. What do you feel about it?

SHRI P. VENKATASUBBAIAH : What I feel, I will say here.

SHRI SATISH AGARWAL : You are speaking on the basis of the officials' notes. What is your reaction?

MR. DEPUTY-SPEAKER : He has prepared it himself; I saw him preparing it.

SHRI RAM JETHMALANI : 228A is indefensible.

SHRI P. VENKATASUBBAIAH : I will come to 228A. There appears to be a slight misunderstanding about the correct position in regard to publicity. First, there is no blanket ban; I must make that very clear. But at the same time care has been taken that the victim is not subjected to undue publicity. Newspapers are free to publicise everything; there is no ban on that; the prohibition is only with regard to the publication of the name or any matter that discloses the identity of the victim. That is only limited in scope. Any other matter could be published, and the press has not been restricted to do that.

SHRI RAM JETHMALANI : Suppose in a building rape has taken place. When you are giving information, it might lead to the discovery of the identity.

SHRI P. VENKATASUBBAIAH : It will not. It is mainly intended to safeguard the victim so that she may not be subjected to a sort of social boycott... (Interruptions) There is also another provision... (Interruptions)

MR. DEPUTY-SPEAKER : Let him complete his sentence.

SHRI P. VENKATASUBBAIAH : Why don't you have the patience to hear me ?

MR. DEPUTY-SPEAKER : Let him complete his reply.

SHRIMATI PRAMILA DANDAVATE (Bombay North-Central) : We have given notice of amendments. He should react to those.

SHRI P. VENKATASUBBAIAH : Amendments will come later on. In the First Reading I am making general observations.

MR. DEPUTY-SPEAKER : When amendments come, he will reply to the amendments.

SHRI P. VENKATASUBBAIAH : So far as name and other things are concerned which may disclose the identity of the victim, even there if the victim consents their publications, they could be published ; if the victim wants it to be published, there is no bar on that ; even her name could be published. So, how is it going to put a blanket ban at all, I do not understand. Now the suggestion is that the name could be published even without her consent. I think, it is going rather too far.

It is she who knows what publicity means. So far as social stigma is concerned, If the victim consents we will not come in the way at all with the publication. . . .

SHRI SATISH AGARWAL : Who would like her name to be published and give consent for that ?

SHRI P. VENKATASUBBAIAH : If she gives there is no bar. If the victim gives her consent for publication of her name and address, there is no bar at all.

PROF. N.G. RANGA : In England they make money.

MR. DEPUTY-SPEAKER : How are we concerned about the name ?

SHRI P. VENKATASUBBAIAH : It is only to safeguard against adverse publicity by some unscrupulous newspapers—I

am not accusing all the newspapers.—they may indulge in tactics of blackmail. In order to protect the victim this provision has been made. Even the Police Officer who investigates, can publicise the name and other material provided it helps him in investigation. That is also in good faith. We have qualified it that way so that the Police Officer should not harass the victim or exploit her position. But if he, on his own and without good faith, indulges in publishing it, then he is also punishable. So we have qualified it in all these matters.

So far as women organisations are concerned, they can at any time approach the victim and extend to her all the help, take her consent and can publish the name. There is no restriction on that. That is why this Sec. 228A has been inserted. . . .

PROF. N.G. RANGA : Very good.

SHRI P. VENKATASUBBAIAH : Another point Promilaji has mentioned is that Sec. 375, Explanation (2) should not have been deleted. In fact it has not been deleted at all. All that has happened is that we have shifted it from there and made it an independent section—Sec. 376A. The reason is that even if there is a judicial separation between husband and wife, they continue to be husband and wife and therefore, intercourse with wife could not be equated with rape. All that has happened is that the punishment prescribed is milder and it remains an offence. I think this will satisfy the hon. Lady Member.

Our very enthusiastic member, Shri Mool Chand Daga said that sexual intercourse by husband should not be rape in any circumstances. It is not in keeping with the changing times in our society. Our intention is that we must discourage as far as practicable child marriages and that is the reason why...

SHRI N.K. SHEJWALKAR (Gwalior) : That you are not doing. You are doing other things.

SHRI SATISH AGARWAL : There is a law regarding child marriages.

SHRI P. VENKATASUBBAIAH : The

law is there but it cannot become null and void.

SHRI RAM JETHMALANI : Dagaji is enthusiastic about what ?

SHRI P. VENKATASUBBAIAH : Another unusual suggestion has been made by Mr. Patil who said that the victim must be given half of the property. If the person who has committed a rape. A suggestion was also made in the case of gang rape that death sentence should be awarded. But what we fear is that if capital punishment is prescribed, then there is a real danger that the rapist may even kill the victim.

SHRI N.K. SHEJWALKAR : That is exactly the report earlier.

SHRI P. VENKATASUBBAIAH : Death is ultimate and if a rapist finds that he is going to the gallows, he may not spare the victim. And it is for this consideration it was felt that instead of death, life imprisonment should be provided. (*Interruptions*) I do not know how Islam could say that this was a capital punishment. Whether life imprisonment comes under the capital punishment or not I do not know because I am not a lawyer. Therefore, you must tell me. (*Interruptions*) Sir, some suggestion has been made that seven or ten years imprisonment is not enough. But, I would like to emphasise on hon. Members that the imprisonment of seven and ten years is only a minimum punishment—not the maximum punishment. The maximum punishment can go to any length.

MR. DEPUTY-SPEAKER : Shri Ram Jethmalani said that even seven years punishment is too much. His argument is also there. (*Interruptions*)

SHRI P. VENKATASUBBAIAH : Rape by economic domination, it is a very very difficult concept. What is meant by rape by economic domination I am not able to know. (*Interruptions*) Sir, we have taken certain types of rape such as custodial rape as very very heinous crime and we have prescribed ten years to be the maximum punishment for such people. Under custodial rapes, several institutions have been

brought under this description. We have clearly made a definition. Beyond that if we want to expand the scope by saying that rape by economic domination is also punishable as custodial rape, it will be counter-productive. Also there will be instances where some unscrupulous women may take advantage of it and try to blackmail or may do some character assassination of such people. So, one should be very careful in this matter. Even then, we have prescribed a minimum punishment. Under custodial rape, the minimum punishment is 10 years. It has also been suggested that the punishments for the offences under 376B, 376C etc., should be the same as for rape. Sir, this is not fair. The hon. Members will appreciate that Sections 376B, 376C and 376D are new offences to discourage the concerned authorities from sexual exploitation of women under their control. No sexual intercourse between two adults with consent, even if there be seduction or inducement, can be equated with rape and, therefore, it would not be fair to provide the same punishment for rape, and for illicit intercourse, not amounting to rape. At the same time, we want to discourage a tendency in men in authority to exploit women under them either by seduction or inducement. And that is why this provision has been made. I shall also go through some of the suggestions made by hon. Members while participating in to-day's debate. (*Interruptions*) Sir, the observations made by the hon. Members are more or less on the same lines excepting in a few cases. Our hon. friend, Shri Ram Jethmalani has also made several suggestions. And, our friend, Shri Shejwalkar, has also mentioned about several offences which are being committed on women. With regard to harassment of women because of dowry and all that, there is a separate Bill. With regard to cruelty to women in our society, there is a separate Bill. So, Sir, as I have already said, taking into consideration all these factors, since there are several Bills to deal with offences other than rape, we should wait for the provisions made in those Bills. (*Interruptions*).

श्री रामलाल राहो : वेश्यावृत्ति को रोकने के बारे में नहीं बताया ।

SHRI P. VENKATASUBBAIAH :

वेद्यवृत्ति का भी वह जिक्र किए हैं।

I prefaced my speech saying that though that may not be relevant to the subject now, yet, these are matters which would also be considered when taking the totality of the circumstances and the measures that are to be taken by the Government.

Mr. Patil said about Principal-Teacher relationship and all that. We have said here 'Custodial rape'. If people who are in authority misuse the authority and commit this crime, they are liable to punishment. And, Sir, regarding Principal and Teacher, I don't think the Principal can exercise any such authority on a teacher working in that institution. So, that need not be mentioned here.

About age, Mr. Shejwalkar made his point. It has been deliberated very exhaustively and if I remember correct, some hon. lady Members wanted that this type of an age limit should be inserted for various reasons and also the Committee, in its wisdom, has recommended this thing for such offence. I hope I have dealt with all the points raised in the discussion here to the best of my capacity and knowledge. I commend this Bill for the acceptance of the House. I request the House to pass the Bill into an Act. Thank you.

MR. DEPUTY-SPEAKER : I will put the consideration motion to the vote of the House. The question is :

"That the Bill further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872, as reported by the Joint Committee, be taken into consideration."

The motion was adopted.

SHRI SATISH AGARWAL : Your reply is not satisfactory because neither you have the capacity nor the knowledge of the subject...

MR. DEPUTY-SPEAKER : The House will now take up Clause-by-Clause consideration.

SHRI RAM JETHMALANI : You plead guilty to his charge !

MR. DEPUTY-SPEAKER : Mr. Shejwalkar, are you moving your amendment ? There is an amendment for having a New Clause 1A.

New Clause 1A

SHRI N.K. SHEJWALKAR : Yes, Sir, I beg to move :

Page 1,

after line 4, insert—

"1A. In the Indian Penal Code in section 100, in description thirdly after the words 'of committing rape' the words 'or molestation' shall be inserted." (36)

SHRI P. VENKATASUBBAIAH : Sir, I don't want to join issue with the hon. Member, Shri Satish Agarwal. I am put in charge of the Bill and I have piloted the Bill to the best of my ability.

SHRI RAM JETHMALANI : He is paying you a compliment ! He said, you don't claim the capacity of rape. Do you ?

MR. DEPUTY-SPEAKER : You don't follow what he said. He said, you have no experience of this thing.

SHRI P. VENKATASUBBAIAH : Then I am so sorry...

MR. DEPUTY-SPEAKER : That is what he said. You have misunderstood him. He paid compliment to you.

SHRI P. VENKATASUBBAIAH : I stand corrected, Sir.

MR. DEPUTY-SPEAKER : Mr. Shejwalkar, shall I put your amendment No. 36 for insertion of new clause 1A to the vote of the House ? I think you will agree, we have already had sufficient discussion and the Joint Committee has dealt with this.

SHRI N.K. SHEJWALKAR : I don't

want to take more time. Regarding medical examination and the IPC amendment, he has given an assurance. I do hope that it will be done. But, Sir, so far as two amendments are concerned regarding 228A and rape on wife, I cannot agree. What I request is, you may kindly put the amendment to vote.

MR. DEPUTY-SPEAKER : Have you got to give any reply now ?

SHRI P. VENKATASUBBAIAH : I have already replied to these points.

MR. DEPUTY-SPEAKER : I shall now put Amendment No. 36 moved by Shri N.K. Shejwalkar to the vote of the House.

Amendment No. 36 was put and negatived.

Clause 2—Insertion of new Section 228A

SHRIMATI GEETA MUKHERJEE : I beg to move :

“Page 1, lines 8 and 9,—

omit “or any matter which may make known the identity” (9)

“Page 2,—

after line 20, insert—

“Provided further that any publication made by newspapers or others with the object of bringing to light any case of rape or molestation of women, the investigation of which has been neglected or misdirected by the police or authorities and any complaint made to or any information lodged with the police and the authorities in relation to the offences under sections 354, 376, 376A, 376B and 376D shall not constitute disclosure within the meaning of this section.”(10)

SHRI N.K. SHEJWALKAR : I beg to move :

Page 1,—

for lines 13 and 14, substitute—

“fine not exceeding five rupees” (18)

Page 2, lines 24 and 25—

for “imprisonment of either description for a term which may extend to two years and shall also be liable to fine.”

substitute—

“fine not exceeding five rupees.” (19)

MR. DEPUTY-SPEAKER : It was already announced in the House in the morning that only one hour and twenty minutes were available for this Bill. Now, we have taken more than that time. We will have to complete this Bill today. Hon. Members have already spoken at length on various points concerning this Bill. After passing this Bill, it has to go to the other House. I would therefore request the hon. Members kindly to cooperate.

SHRIMATI PRAMILA DANDAVATE : Sir, I also want to move my amendments.

MR. DEPUTY-SPEAKER : Your amendments are similar to those of Amendments No. 9 and 10 moved by Shrimati Geeta Mukherjee. Therefore, you need not move your amendments. If you want you may ask for clarifications on those points. The hon. Minister will reply to them.

SHRIMATI GEETA MUKHERJEE : Sir, the hon. Minister's reply is not clear in so far as my Amendment No. 9 is concerned. In my amendment, I have sought for the deletion of any matter which may make known the identity. The name should not be made known or published. Moreover, in case of certain other matters also, in certain other circumstances also, the whole thing should not be published. The hon. Minister has replied that this blanket ban is not applicable there. We accept that. But at the same time, he has also said that with the permission of the authority everything can be published. In such a situation, generally what happens is that these are not published with regard to the average or ordinary cases. Mostly you will find that the publications of such matters related to down-trodden women. So, if

permission is given to them, so much importance is given to such news. Moreover, there is no Women's Organisation at every place so that they can take their permission before publication. Quite often it happens that the local press is able to get such information and publish them in their local papers. If there are Women's Organisations, they will go to the locality and demonstration will be done against such atrocities. There are many cases where the victims were really glad when such an organisation pleaded for them. So, though the blanket ban is not there, we want that the name should not be published. About the rest, we do not press for them as the hon. Minister has already replied to them.

SHRI RAM JETHMALANI : The ladies themselves want that. I think the hon. Minister will agree to that.

श्रीमती प्रमिला दण्डवते : अभी श्रीमती गीता मुखर्जी ने जैसे बतलाया, देश में जो रेप होते हैं खासकर ज्यादा से ज्यादा देहात की महिलाओं, गरीब महिलाओं पर होते हैं। इन महिलाओं को पता भी नहीं चलता कि वे क्या करें। जो आपने कहा है कि उसकी कन्सेन्ट हो उसका नाम शायद निकल सकता है, लेकिन उसी के भलाई के लिए तो सारी बातें हैं अखबार में आनी चाहिए। इसलिए जो संशोधन हमने दिया है उसको आप स्वीकार करें।

SHRI P. VENKATASUBBAIAH : I have already said about that.

SHRI A.K. ROY : Let all the amendments to this clause be put together and then at the end, the Minister can reply.

MR. DEPUTY-SPEAKER : They have already been moved.

SHRI A.K. ROY : No, on clause 2, I have got amendments 58 and 59.

MR. DEPUTY-SPEAKER : Your amendments are not there.

SHRI P. VENKATASUBBAIAH : They want to omit 'or any matter which may make known the identity'.

The Members want that the prohibition should extend only to the printing or publication of the name of the victim. The purpose of the prohibition contained in the new section 228A is to save the victim of rape and other offences from publicity so that she may not shy away from giving evidence in the court. The name by itself may not be there, but the publication of other material may go to show the identity of the victim.

SHRI RAM JETHMALANI : You are paraphrasing your own Section. That is not the point. The point is that the people who want to help the victim will be prevented.

SHRI P. VENKATASUBBAIAH : No, they will not be prevented. The social organisations can take the consent of the victim any time.

MR. DEPUTY-SPEAKER : Their point is, there may not be any social organisation in the village or somebody else. This lady may be influenced and her name may come out.

SHRI RAM JETHMALANI : If the rape is committed in a poor man's house in a village, that immediately you can identify. Will you punish those people ?
(Interruptions)

SHRI P. VENKATASUBBAIAH : No, they will take the consent of the victim.

SHRI RAM JETHMALANI : Before you publicise, you must first go round and find out the woman and take the written consent, but that is only for the name. I am talking of the general information which leads to the discovery.

SHRI P. VENKATASUBBAIAH : If it is a small village, where there are no social organisations, the victim is made known...
(Interruptions).

MR. DEPUTY-SPEAKER : If the lady concerned does not give her name, then it cannot be published even in the villages.

SHRIMATI GEETA MUKHERJEE : We want that the name should not be published... (Interruptions).

SHRI P. VENKATASUBBAIAH : I am not prepared to accept this amendment. That will make matters worse.....(*Interruptions*).

SHRI N.K. SHEJWALKAR : Sir, the Chairman of the Joint Committee wants to say something.

MR. DEPUTY-SPEAKER : He cannot ; now it is the property of the House ; Chairman has nothing to do with it.

I shall now put all the Amendments moved by the Hon. Members to Clause 2 to the vote of the House.

Amendments Nos. 9, 10, 18 and 19 were put and negatived.

MR. DEPUTY-SPEAKER : The question is :

"That Clause 2 stand part of the Bill."

The Motion was adopted.

Clause 2 was added to the Bill.

CLAUSE 3—*Substitution of new sections for sections 375 and 376*

SHRI P. VENKATASUBBAIAH : I beg to move

Page 3, line 41,—

for "the institution" substitute—

"such jail, remand home, place or institution" (7)

(Shri P. Venkatasubbaiah)

Page 5, line 3,—

for "institution" substitute—

"jail, remand home, place or institution" (8)

SHRIMATI GEETA MUKHERJEE : (Panskura) : I beg to move :

Page 3,—

after line 23, insert—

"(iv) in any area where he is known to be a police man ; or" (11)

Page 4,—

after line 3, insert—

"(h) commits power rape" (12)

Page 4,—

after line 23, insert—

"Explanation 4.—Where a woman is raped under economic domination or influence or control or authority which includes domination by landlords, officials, management personnel, contractors, employers and money-lenders either by himself or by persons hired by him, each of the persons shall be deemed to have committed power rape within the meaning of this subsection." (13)

SHRI N.K. SHEJWALKAR (Gwalior) : I beg to move :

Page 3, lines 12 and 13,—

omit "the wife not being under fifteen years of age," (20)

Page 3, lines 18 to 21,—

omit "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." (21)

Page 2,—

after line 40, insert—

"Fourthly—With the consent of the woman, married or unmarried when her consent has been obtained by an Officer or owner of an establishment by inducing her for providing employment, promotion or putting her in the fear of demotion or terrorising her by abuse of his authority." (37)

Page 2, line 43,—

for "another" substitute "the" (38)

Page 3, lines 4 and 5,—

omit "is unable to understand the nature and consequences of that to which she" (39)

MR. DEPUTY-SPEAKER : Who wants to speak now ?

SHRIMATI PRAMILA DANDAVATE : I.

MR. DEPUTY-SPEAKER : Your amendments are not here.

SHRIMATI PRAMILA DANDAVATE : My amendments are there, Sir.

MR. DEPUTY-SPEAKER : Where ?

SHRIMATI PRAMILA DANDAVATE : List No. 8, it is at 34 and 35.

MR. DEPUTY-SPEAKER : Government has already accepted it. 7 and 8 are Government Amendments and they have accepted it.

SHRIMATI PRAMILA DANDAVATE : In his speech he has rejected.

MR. DEPUTY-SPEAKER : Government have given two amendmends Nos. 7 and 8. Which number are you talking about ? Which clause and which number ?

SHRIMATI PRAMILA DANDAVATE : Same amendments.

MR. DEPUTY-SPEAKER : That is what I am telling. Government has moved Amendment Nos. 7 and 8. The Minister has already moved it.

SHRIMATI GEETA MUKHERJEE (Panskura) : The Amendment I am moving is that under the Section where custodial rape has been included, there, after gang rape, another concept be added, i.e. power rape. And what is power rape ? For that I have inserted an explanation.

Now, Sir, I wanted to speak on it because I felt very disappointed by our Hon. Minister, Shri Venkatasubbaiah ; straight refusal even to consider that in future. In the beginning he said those things which are placed in the general recommendations will be given particular attention. And when I was speaking on the Bill itself, then he said "how do you know general recommendations we will take up very quickly" ? Now, power rape was there in the general recommendations. He has given the Government's reaction to it that he does not accept it. The General Recommendation by the Joint Committee was that this concept of power rape be added within it. That is now being rejected by the Government categorically. What are the arguments for rejection ? And along with it, naturally the Explanation also has been rejected.

In my explanation what I said was to define power rape. The explanation is : Where a woman is raped under economic domination or influence or control or authority, which includes domination by landlords, officials, management personnel, contractors, employers and money-lenders, either by himself or by persons hired by him, each of the person shall be deemed to have committed power rape within the meaning of this Sub-section.

His explanation is that this is too wide and this may lead to the same old black-mailing. Now, Sir, I know already upto (g) under what has been included in this Section, i.e. Section of Custodial Rape, is there not a possibility of black-mailing there ? There is. If it comes to that, then that thing should not be taken at all. If it is taken, then this question of economic domination is very very important, because this is the principal form of rape by taking advantage of the position. And, Sir, this was a place where it can be taken.

On the plea that this can lead to black-mailing, I feel Government has closed its mind to the most important aspect the most numerous aspect of taking advantage of these positions. So, I do not accept his explanation at all. I think this is an amendment about which all women's organizations had been pressing Government.

MR. DEPUTY-SPEAKER : So, You are insisting on it.

SHRIMATI GEETA MUKHERJEE : We will go on pressing. I hope he will accept the recommendation at the last moment. I hope he will accept the general recommendation. If not, this Bill will be very much ineffective. What it could do within its precincts, it has refused to do.

SHRIMATI PRAMILA DANDAVATE : My amendment is there.

MR. DEPUTY-SPEAKER : There is no amendment of yours, but only of Mrs. Geeta Mukherjee.

SHRIMATI PRAMILA DANDAVATE : My amendment is about the same, viz. power rape and economic domination.

MR. DEPUTY-SPEAKER : Have you given any amendment to clause 3 ? Where is it ? There are no amendments. Now, the Minister will reply to Mrs. Geeta Mukherjee.

SHRI A.K. ROY : Give me one minute's time.

MR. DEPUTY-SPEAKER : No ; there is a procedure to do this. No ; you cannot speak now.

SHRIMATI PRAMILA DANDAVATE : I want an explanation. It is there in List No. 8, amendment No. 34. This is what we had said ; and it has been circulated.

MR. DEPUTY-SPEAKER : Under No. 34, your name is not there.

SHRIMATI PRAMILA DANDAVATE : Why is it here, and not there with you ?

MR. DEPUTY-SPEAKER : No. 34 is the same as No. 13. It stands in the name of Mr. Amal Datta, and Mrs. Suseela Gopalan. (Interruptions) Mrs Dandavate has not given any amendment. Let her read it. Let us see.

SHRI A.K. ROY : Allow my amendment also.

SHRI N.K. SHEJWALKAR : It seems

there is some mistake. Probably, she had given an amendment in the last session. She is quoting it.

MR. DEPUTY-SPEAKER : They lapsed.

SHRI P. VENKATASUBBAIAH : Before I reply to Mrs. Geeta Mukherjee, I would like to correct her. The official amendment is No. 7, to clause 3. I wanted to emphasize this. This is an official amendment which has been moved. I am not speaking about it.

MR. DEPUTY-SPEAKER : There is Government amendment to Clause 3.

SHRI P. VENKATASUBBAIAH : I have already explained the position.

MR. DEPUTY-SPEAKER : The question is :

Page 3, line 41,—

for "the institution" substitute—

"such jail, remand home, place or institution". (7)

Page 5, line 3,—

for "institution" substitute—

"jail, remand home, place or institution" (8)

The motion was adopted.

MR. DEPUTY-SPEAKER : I will now put all the amendments together.

SHRI A.K. ROY : I demand that Shrimati Geeta Mukherjee's amendments should be put separately.

MR. DEPUTY-SPEAKER : I now see that you are present in the House.

(Interruptions)

MR. DEPUTY-SPEAKER : I will now put amendments numbers 11, 12 and 13, moved by Shrimati Geeta Mukherjee to the vote of the House.

Amendments Nos. 11, 12 and 13 were put and negatived.

MR. DEPUTY-SPEAKER : I will now put amendments numbers 20, 21, 37, 38 and 39, moved by Shri N.K. Shejwalkar to the vote of the House.

Amendments Nos. 20, 21, 37, 38 and 39 were put and negatived.

MR. DEPUTY-SPEAKER : The question is :

“That Clause 3, as amended, stand part of the Bill.

The motion was adopted.

Clause 3, as amended, was added to the Bill.

MR. DEPUTY-SPEAKER : Now, amendment for insertion of a new clause.

New Clause 3A, 3B and 3C

SHRI N.K. SHEJWALKAR : I beg to move

Page 5,—

after line 16, insert—

‘3A. in the Code of Criminal Procedure, 1973, after section 53, the following section shall be inserted, namely :

‘53A. (1) When a person accused of rape or an attempt to commit rape is arrested and an examination of his person is to be made under this section, he shall be forwarded without delay to the registered medical practitioner by whom he is to be examined,

(2) The registered medical practitioner conducting such examination shall without delay examine such person and prepare a report specifically recording the result of his examination and giving the following details:

(i) the name and address of the accused and of the person by whom he was brought ;

(ii) the age of the accused ;

(iii) marks of injury, if any, on the person of the accused ; and

(iv) other material particulars in reasonable detail including chemical examination of semen or blood and/or its stains on the body or clothes of the person wherever possible.

3B. In the code of Criminal Procedure, 1973 after section 164, the following section be inserted, namely :

‘164A. (1) Where during the stage when an offence of rape or an attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner with the consent of the woman or of some person competent to give such consent on her behalf and the woman shall be referred to the registered medical practitioner without delay.

(2) The registered medical practitioner to whom such woman is referred, shall without delay examine her person and prepare a report specifically recording the result of his examination and giving the following details :

(i) the name and address of the woman and of the person by whom she was brought ;

(ii) the age of the woman ;

(iii) whether the victim was previously used to sexual intercourse ;

(iv) marks of injuries, if any, on the person of the woman ;

(v) general mental condition of the woman ; and

(vi) other material particulars, in rea-

sonable detail including chemical examination of semen of blood and/or its stains on the body or clothes of the person, wherever possible.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of some person competent to give such consent on her behalf such examination has been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the magistrate referred to in section 173 as part of the documents referred to in clause (a) of section (5) of that section.

(6) Nothing in this section shall be construed as rendering lawful any examination without the consent of the victim or of any person competent to give such consent on her behalf."

(22)

SHRIMATI PRAMILA DANDAVATE :
I beg to move :

Page 5,—

after line 16, insert—

"3A. In the Code of Criminal Procedure, 1973 after section 53, the following new sections 53A, shall be inserted, namely :

"53A(1) When a person accused of rape or an attempt to commit rape is arrested and an examination of his person is to be made under this section, he shall be forwarded without delay to the registered medical practitioner by whom he is to be examined.

(2) The registered medical practitioner conducting such examination

shall without delay examine such person and prepare a report specifically recording the result of his examination and giving the following details :

- (i) the name and address of the accused and of the person by whom he was brought ;
- (ii) the age of the accused ;
- (iii) the marks of injury, if any, on the person of the accused ; and
- (iv) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report and the registered medical practitioner shall without delay forward the report to the investigating officer, who shall forward it to the magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

3B. In the Code of Criminal Procedure, 1973, after section 173 the following new sections shall be inserted, namely :

173A. (1) In case of offences against women and children every police officer investigating the case shall associate with such investigation, a social welfare officer or any representative of a recognised social welfare organisation or a women organisation of the area and the final report to be submitted to the magistrate in pursuance of the investigation shall contain their opinion ;

(2) In all such cases the social welfare officer or the representative of a social welfare organisation or women organisation shall be given power to prosecute the case simultaneously with the State.

173B. If after the investigation, the police officer concerned, is of the opinion that no offence has been committed, the social welfare officer, or representative of the recognised social welfare organisation or women organisation feels otherwise, the magistrate concerned shall commit the accused to trial on his or her report and allow the social welfare officer or representative of the social welfare organisation or women organisation to prosecute the case in place of the police." (47)

SHRIMATI GEETA MUKHERJEE : I beg to move

Page 5,—

after line 16, insert—

"3A. In the Code of Criminal Procedure, 1973, after section 53, the following new section 53A shall be inserted, namely :

"53A. (1) When a person accused of rape or an attempt to commit rape is arrested and an examination of his person is to be made under this section, he shall be forwarded without delay to the registered medical practitioner by whom he is to be examined.

(2) The registered medical practitioner conducting each examination shall without delay examine such person and prepare a report specifically recording the result of his examination and giving the following details :

- (i) the name and address of the accused and the person by whom he was brought ;
- (ii) the age of the accused ;
- (iii) the marks of injury, if any, on the person of the accused ; and
- (iv) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report and registered medical practitioner shall without delay forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section."

3B. In the Code of Criminal Procedure, 1973, after section 164, the following new section shall be inserted, namely :

164A. (1) Where, during the stage when an offence of rape or an attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner, with the consent of the woman or of some person competent to give such consent of her behalf and the woman shall be referred to the registered medical practitioner without delay.

(2) The registered medical practitioner to whom such woman is referred, shall without delay examine her person and prepare a report specifically recording the result of his examination and giving the following details :

- (i) the name and address of the woman and of the person by whom she was brought ;
- (ii) the age of the woman ;
- (iii) whether the victim was previously used to sexual intercourse ;
- (iv) marks of injuries, if any, on the person of the woman ;

- (v) general mental condition of the woman ; and
- (vi) other material particulars, in reasonable detail.
- (3) The report shall state precisely the reasons for each conclusion arrived at.
- (4) The report shall specifically record that the consent of the woman or of some person competent to give such consent on her behalf to such examination had been obtained.
- (5) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of section (5) of that section.

Nothing in this section shall be construed as rendering lawful any examination without the consent of the victim or any person competent to give such consent on her behalf.

3C. In the Code of Criminal Procedure, 1973, after Section 173 the following new sections shall be inserted, namely :

173A. (1) In case of offences against women and children every police officer investigating the case shall associate with such investigations, a social welfare officer or any representative of a recognised social welfare organisation or a women organisation of the area and the final report to be submitted to the magistrate in pursuance of the investigation shall contain their opinion ;

(2) In all such cases the social welfare officer or the representative of a social welfare organisation or women organisation shall be given power to prosecute the case simultaneously with the State.

173B. If after the investigation the police officer concerned is of the opinion that no offence has been committed, the social welfare officer, or representative of the recognised social welfare organisation or women organisation feels otherwise, the Magistrate concerned shall commit the accused to trial on his or her report and allow the social welfare officer or representative of the social welfare organisation or women organisation to prosecute the case in place of the police."(16)

MR. DEPUTY-SPEAKER : I will now put the amendments numbers 22 and 47 for insertion of a new clause to the vote of the House.

Amendments No. 22 and 47 were put and negatived.

MR. DEPUTY-SPEAKER : I shall now put amendment No. 16 for insertion of a new clause to the vote of the House.

Amendment No. 16 was put and negatived.

MR. DEPUTY-SPEAKER : There is another by Shrimati Suseela Gopalan. She is not present.

MR. DEPUTY-SPEAKER : Clause 4.

Shri Moolchand Daga and Shri Amal Datta have tabled amendments. Are they moving their amendments ?—They are not present. I shall put clause 4 to the vote of the House. The question is :

“That Clause 4 stand part of the Bill.”

The motion was adopted.

Clause 4 was added to the Bill.

MR. DEPUTY-SPEAKER : Clause 5. Shri M. Ramanna Rai has tabled amendment. Is he moving his amendment ?—He is not present. I shall put Clause 5 to the vote of the House. The question is :

“That Clause 5 stand part of the Bill.”

The motion was adopted.

Clause 5 was added to the Bill.

Clause 6—Insertion of new section 114A in Act 1 of 1872

SHRIMATI GEETA MUKHERJEE
(Panskura) : I beg to move :

“Page 6, lines 33 to 35—

omit “clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of” (14)

“Page 6, lines 34,—

after “or clause (g)” *insert*— “or clause (h)” (15)

“for clause 6, *substitute*—

‘6. In section 114 of the Indian Evidence Act, 1872, after illustration (i), the following illustration shall be inserted, namely :

(i) That when 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.” (17)

SHRI N.K. SHEJWALKAR (Gwalior) :
I beg to move :

“Page 6,—

for lines 35 to 39, *substitute*—

(2) of section 376 of the Indian Penal Code, where the woman alleged to have been raped states clearly in her evidence before the Court that she did not consent, the Court shall have a natural presumption that the accused had committed offence of rape.” (40)

MR. DEPUTY-SPEAKER : Mrs. Geeta Mukherjee, I think you are very much tired, you will not speak on these.

SHRIMATI GEETA MUKHERJEE : Sir,

on this I want to speak however much tired I may be. This is one of the subjects which has come after the Joint Committee's deliberations. That is why I am taking it up, otherwise I am not entitled to. This is what I referred to that the biggest contribution of this Bill, in our opinion, was one of the new clauses, that is Clause 114A where the onus of proof shifted to the accused in certain cases. Since the Government at that time brought in certain causes, we had to debate on those and there we added some other causes just like economic domination, etc. which is just now disposed of. But after that the Supreme Court verdict has come out. The other day during my speech I quoted it at length, so I am not quoting it again. That court judgement has clearly stated that if the woman says—any woman, not only who is victim of custodial rape but any woman victim—that she did not give her consent, then the court should presume it. That is why we have been agitating that there is a simple solution to the entire question that only with these things the onus of proof will shift, with the other things it will not shift. Therefore, I have moved a very simple amendment in all cases that when 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. In every case of rape, the responsibility of proving should lie with the accused and not with the victim. I know what will be said against this. Again that blackmail. So, I say that there are some bad people to blackmail but overall womanhood will not generally go in for blackmail when it is a question of rape. That will be debated. That is why I think that after the Supreme Court verdict, this should be clearly accepted by the Minister. That will give you enough scope really to deal with rape victims under the circumstances of our society about which everybody spoke. Those constraints remain.

SHRI P. VENKATASUBBAIAH : Sir, the court judgement also is with us. What they said is :

“We are, therefore, of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the ‘probabilities-factor’ does not ren-

der it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification : Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation, or when the 'probabilities-factor' is found to be out of tune."

So, the judgment also does not fully endorse what the hon. Member has said. Even then, it is a direction to the court by the Supreme Court. So we do not come into the picture at all.

MR. DEPUTY-SPEAKER : I will put amendment Nos. 14, 15, 17 and 40 to the vote of the House.

Amendments No. 14, 15, 17 and 40 were put and negatived.

MR. DEPUTY-SPEAKER : The question is :

"That clause 6 stand part of the Bill"

The motion was adopted.

Clause 6 was added to the Bill.

Clause 1—Short-Title

Amendment made

"Page 1, line 4,—

for '1982' substitute '1983' (6)
(Shri P. Venkatasubbaiah)

MR. DEPUTY-SPEAKER : The question is :

"That clause 1, as amended, stand part of the Bill"

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Enacting Formula

Amendment made

"Page 1, line 1,—

for "thirty-third" substitute "Thirty-fourth"
(5)

(Shri P. Venkatasubbaiah)

MR. DEPUTY-SPEAKER : The question is :

"That the Enacting Formula, as amended, stand part of the Bill"

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The Title was added to the Bill.

SHRI P. VENKATASUBBAIAH : I beg to move :

"That the Bill, as amended, be passed"

MR. DEPUTY-SPEAKER : Motion moved :

"That the Bill, as amended, be passed"

SHRI N.K. SHEJWALKAR : I am very grateful to the hon. Minister that he has accepted the suggestion for amendment of section 100 of IPC and Cr. P.C. regarding the medical examination. But the amendment should be brought forward as early as possible. Then only the purpose of this Bill would be completed. I want an assurance from him that the Government will come forward with a Bill as early as possible. Instead of just relying on the Ministry of Law, he should get it passed as early as possible.

श्री राम विलास पासवान : मैं इस पर बोलना नहीं चाहता था। हमारे दल की श्रीमती प्रमिला दंडवते काफी बोल गई हैं। मैं केवल एक महत्वपूर्ण विषय की ओर सरकार का ध्यान दिलाना चाहता

हूँ। सरकार का उत्तर है 1983 का जिसमें बलात्कार के सम्बन्ध में आंकड़े दिए गए हैं। उनके मुताबिक 1979 में 4300 बलात्कार की घटनायें हुईं। 1980 में बढ़कर 4379 हो गईं। 1981 में इनकी संख्या 4919 हो गई। सितम्बर 1982 तक की रिपोर्ट यह है कि यह संख्या 4492 थी। मैंने इसी सदन में एस० सी० एस० टी० के सम्बन्ध में प्रश्न पूछा था 10 अगस्त 1983 को। यह अतारांकित प्रश्न संख्या 2831 है।

इसके मुताबिक आप देखेंगे कि रेप की जितनी घटनायें घटी हैं वह कमजोर वर्ग की महिलाओं के साथ ही घटी हैं जिनमें भी शेड्यूल्ड कास्ट की अधिक हैं। मध्य प्रदेश में 1981 में 277 बलात्कार की घटनायें घटीं, जो 1982 में बढ़कर 312 हो गईं। इसी तरह से और राज्यों का भी यही हाल है और इसका सम्बन्ध निश्चित रूप से कमजोर वर्ग की महिलाओं के साथ ही है।

अभी खगरिया में एक घटना घटी जिसको मैंने उठाने की कोशिश की लेकिन आपने स्टेट सबजेक्ट कहकर मुझे इजाजत नहीं दी। वह मामला सामूहिक बलात्कार का है 22 तारीख का जिसमें गोली कांड हुआ, कफ्यू लगा तीन दिन का यानी 22 से 25 तारीख तक और उस बीच पुलिस द्वारा दो दर्जन महिलाओं के साथ रेप हुआ। जितने भी जर्नेलिस्ट्स, सभी पोलिटिकल पार्टीज के लोग यहां तक कि कांग्रेस(आई)के मंत्री लोग गए। कानून के मुताबिक किसी भी पुलिस पदाधिकारी के खिलाफ कार्यवाही करने के लिए सरकार से परमीशन ली जाएगी। मैं जानना चाहता हूँ कि ऐसे केसेज में भी जहां बलात्कार किया गया हो, वहां भी विकिटस सीधे कोर्ट में नहीं जा सकता? क्या उसको सरकार से इजाजत लेनी पड़ेगी? हमने गृह मंत्री जी को भी लिखा है और खगरिया की घटना के लिए लोगों का कहना है कि इस जमाने की सबसे वीभत्स घटना है, अंग्रेजों के जमाने में भी ऐसी घटना नहीं घटी है। मैं दोनों तरफ के लोगों से प्रार्थना करूंगा कि आपको खगरिया जाकर देखना चाहिए किस तरह 3 दिन

तक कफ्यू लगाकर दो दर्जन महिलाओं के साथ पुलिस द्वारा बलात्कार किया गया। एक दसवीं क्लास में पढ़ने वाली लड़की को देखा जाय तो लगता है कि हैवानियत का बरताव उसके साथ किया गया है। ऐसे पुलिस अधिकारियों को सजा देने के लिए क्या इस बिल में कोई प्रावधान है? कैसे न्याय पा सकती है वह महिला, यह मैं मंत्री से जानना चाहूंगा?

श्रीमती प्रमिला दंडवते जी एक बात कहना चाहती थीं, मैंने भी वह मामला उठाया था, और जब मैं जेल में था वहां छोटे-छोटे बच्चों के साथ जो बलात्कार होता है उनके लिए क्या व्यवस्था आपने की है? उन बेजबान छोटे-छोटे बच्चों के लिए सरकार ने कोई व्यवस्था की है कि नहीं?

बलात्कार एक भयंकर इश्यू है, कल रात मैं टी० वी० में देख रहा था "आक्रोश" फिल्म, अन्त में जो बलात्कारी है उसको कोई सजा नहीं मिलती है, एक आदिवासी औरत के साथ बलात्कार होता है, उसमें पति को फांसी हो जाती है, लेकिन बलात्कारी निर्दोष रूप से समाज में सम्मान पाता है। इसलिए मैं सरकार से कहूंगा कि इसको गम्भीरता से आप लें और सरकार आश्वासन दे कि जेल में जो बच्चों के साथ बलात्कार होता है उसको रोका जाएगा, और हमारे गृह मंत्री जी बड़े जागरूक हैं, इसको स्टेट का मामला न कहकर खगरिया में दो दर्जन महिलाओं के साथ जो बलात्कार हुआ है, जिसके बारे में मैंने गृह मंत्री को भी लिखा है, राष्ट्रपति जी को भी लिखा है, सबको लिखा है, मंत्री जी के नोट में वह बात है कि नहीं; बतायें कि उस बारे में क्या कार्यवाही हुई है? यदि कार्यवाही नहीं की है तो सदन को आश्वासन देंगे कि उन पर वह कार्यवाही करने के लिए जा रहे हैं।

SHRI P. VENKATASUBBAIAH : Sir, I share the concern of the hon. Member and I do not want to take shelter that it is a State subject. We will do whether we can do within the provisions of the Constitution. We will certainly do it. Whatever our friends have said on the floor of the House, we will certainly bring it to the notice of the State

Governments and we will impress upon them that speedy action has to be taken. What the hon. Member has said is correct.

Another thing is about the sodomy, the unnatural offence. There is also a provision about this in the I.P.C. A provision exists in the Act and such offences must be given a deterrent punishment. I think, I am correct that the Delhi Administration also has taken certain steps in that direction.

Regarding the observations made by Shri Shejwalkarji, while I prefaced my speech, I mentioned about the general recommendations that have been made by the Joint Select Committee and the Government's action so far as these things are concerned. I have not categorically given an assurance on the floor of the House. We have referred to the various Ministries. After getting their opinion, whatever will be possible and the Government would be able to do, we will do that. But I cannot give a categorical assurance on this matter.

श्री राम विलास पासवान : मैंने पहला प्रश्न यह पूछा था कि जो सरकारी अधिकारी हैं, उनके लिए जनरल नियम है कि जब उनके बारे में कोर्ट में जायेंगे तो स्टेट गवर्नमेंट से या सेंट्रल गवर्नमेंट से परमीशन लेनी पड़ती है लेकिन मैं जानना चाहता हूँ कि क्या इस मामले में भी उनके लिए परमीशन लेनी पड़ेगी या डायरेक्ट कोर्ट में जा सकते हैं ?

दूसरे मैंने यह कहा था कि जो यह रेप खगरिया

में हुआ है, उसके सम्बन्ध में भी आपके नालेज में कोई बात आई है या नहीं और उस पर आपने क्या कोई एक्शन लिया है ? अगर नहीं लिया है तो क्या आप उस पर एक्शन लेने जा रहे हैं या नहीं ?

MR. DEPUTY-SPEAKER : Let them go to the court. As a citizen, he has got every right to go to the court.

SHRI RAM VILAS PASWAN : Let the Minister clarify. He has not got the right.

SHRI P. VENKATASUBBAIAH : Whatever the hon. Member has said has been well taken note of and I cannot off-hand give him a reply because perhaps I will have to examine what he has said.

MR. DEPUTY-SPEAKER : The question is :

"That the Bill, as amended, be passed."

The motion was adopted.

MR. DEPUTY-SPEAKER : Now, the House stands adjourned to re-assemble tomorrow at 11.00 a.m.

18.43 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Friday, December 2, 1983 | Agrahayana 11, 1905 (Saka).