

MR. CHAIRMAN: The question is:

"That leave be granted to withdraw the Bill further to amend the Constitution of India."

The Motion was adopted

THE G. M. BANATWALLA: Sir, I withdraw the Bill.

15.30 hrs.

RIGHT TO PRIVACY BILL

MR. CHAIRMAN: Now, we take up the next Bill i.e. Right to Privacy Bill.

SHRI V. N. GADGIL (Pune): I beg to move:

"That the Bill to provide for right to privacy to every citizen of India be taken into consideration."

It may appear an unusual Bill because the concept of privacy itself is not very deep-rooted in this country. I believe, in a democracy, every citizen should have the right to privacy. Indeed, one may go to the extent of saying that the right to privacy is the source of all democratic rights.

In recent years, with the fantastic development of technology, there has been a tremendous invasion on privacy in western countries. It almost appears as if the nightmarish world of George Orwell of 1984 is about to become a reality.

The three forces which are invading this privacy are the Government, the big corporations and the big media. As one English writer said that three dangers are the over-eager constable, the over-zealous investigator and the over-nosy journalist. These are causing considerable invasion on privacy in western countries. In a sense, this Bill is an anticipatory Bill, because in ten years time, we may have similar problem in that acute form in this country.

My Bill seeks to provide four things. I will not read the Bill. In the first place, what the Bill proposes is to

give a legal right of privacy to every citizen. Secondly, to make it actionable in the sense, to use the technical term, like in the Law of Torts, a person will be entitled to go to the court against any person, who invades this right. In the third place, it provides a remedy in two ways. First, the court can grant injunction prohibiting a person or an institution from invading the privacy and the second alternative remedy is, if invasion is proved, the citizen will get damages. In the last, I have provided for certain defences. If in public interest, there is invasion for a justifiable cause, then there will be no right to privacy. These are broadly the four concepts.

Before I deal with the concept of privacy in the technical, practical and theoretical sense, I would like to make a submission regarding certain misconceptions.

In the first place, I would like to state the origin of this Bill. There is a weekly of a particular political persuasion, which is very imaginative, Mr. Vajpayee. When this Bill was introduced, it wrote that Mr. Gadgil has brought this Bill at the instance of Government. There is some diabolical plan behind all this and, therefore, at the instance of Mr. Sathe, I was asked to bring this Bill and I brought this Bill. This is not only unfair to me but poor Sathe did not know about this Bill at all. After it was introduced, when I met him in the lobby, he said: "What have you done? What Bill have you introduced?" I have received a query about it. I said, "This is the Bill." So, this is for the first time he learnt that such a Bill is introduced.

SHRI ATAL BIHARI VAJPAYEE: (New Delhi): You did not keep him informed?

SHRI V. N. GADGIL: The second misconception is that it is some kind of a western fashion, a new fangled idea like pollution or as some people said ecology is not a problem of India, it is some borrowed concept. Similarly it is not that privacy is something that I have borrowed in an imitative way or fashion; that is not so.

And the third thing I would like to refer to is that in December 1980 I happened to go to the British Council Library in Bombay. There I came across a book called, *The Right to know*, written by Francis Williams, who is a distinguished journalist and the Press Secretary of Prime Minister Atlee. When I started reading that book, I got fascinated with the subject and I collected a lot of literature and I thought that since the Bill has been introduced in England and other countries, why not we start in this country also? This is the origin of the Bill.

What is the concept of privacy? In the classical sense, in the old liberal classical sense, the best I would do is to quote from Mill's *Liberty*. This is what he said in the famous *Essay on Liberty*:

"The sole end for which mankind are warranted individually or collectively in interfering with the liberty of action of any of their number is self-protection."

"... over himself, over his own body and mind, the individual is sovereign."

This, I believe, is the basic concept of privacy in the classical liberal sense. In modern times it has been analysed, it has been elaborated in various ways and with your permission I would like to open his collar and give vent to his I am now referring to a book called *Assault of Privacy* by Prof. Arthur R. Miller, and he has quoted one definition or one concept. His analysis of the concept is like this:

"Privacy is a special kind of independence which can be understood as an attempt to secure autonomy in a few personal and spiritual concerns, if necessary, in defiance of all the pressures of modern society. Man is a private man, the man who still keeps some of his thoughts and judgements entirely to himself, who feels no overriding compulsion to share everything of value with others, not even those he loves and trusts."

This may be an extreme case, but this is one way of looking at it.

Then again, another way to look at it is that of Justice Brandeis. I may state at the outset that the whole movement for privacy started in the United States as far back as in 1890. From the famous *Harvard Law Review*, Prof. Brandeis subsequently became the famous Supreme Court Judge, Justice Brandeis. He wrote an article which has now become a classic and every author on privacy refers to that article. Subsequently, in a judgement also this is what he said:

"The makers of our Constitution conferred as against the Government the right to be let alone—the most comprehensive of the rights and the right most valued by civilized men. To protect that right every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth amendment."

This is how it was beautifully interpreted.

Then again, Sir, the National Council for Civil Liberties, which is a famous institution in England.....

PROF. MADHU DANDAVATE: Prof. Ranga, you don't want privacy?

SHRI ATAL BIHARI VAJPAYEE: He does not want privacy. Therefore, he is leaving.

SHRI V. N. GADGIL: That institution has attempted a definition. It is like this:

"The right to privacy is the right of the individual to decide for himself how much he will share with others his thoughts, his feelings and the facts of his personal life."

Then again yet another way of looking at it would be as propounded in a very colloquial language by one particular author Cahn. He says:

"Many are the occasions on which a man needs a place where he can open his collar and give vent to his

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particular day dreams, his mutterings and snatches of crazy song, his burst of obscenity, and absurdness of glory. Man likes himself to be all alone and enjoy."

This is another way of looking at it.

Then again the International Commission of Jurists, its British Branch have a famous Institution called "Justice". They have prepared a report on the concept of privacy. According to their report: privacy means:

"To preserve his sense of identity and integrity of his personality, to work out his personal relationships and find his way to own salvation, each human being needs to be able to limit his area of intercourse with others."

"There are times when we need solitude and/other, when we need comfort of our friends there are times when we need the intimacy of communication with one or more people who are close to us, and others when we need to maintain our reserve. Above all we need to be able to keep to ourselves, if we want to, those thoughts and feelings, beliefs, and doubts, hopes, plans, fears and fantasies which we call "private" precisely because we wish to be able to choose freely with whom, and to what extent, we are willing to share them."

Then again from the legal point of view this is how it has been analysed by Dean Prosser in the American Law. He says, it has four aspects:

1. Intrusion upon the plaintiff's seclusion or solitude, or into his private affairs;

2. public disclosure of embarrassing private facts about the plaintiff;

3. publicity which places the plaintiff in a false light in the public eye;

4. appropriation, for the defendant's advantage, of the plaintiff's name or likeness.

To put it in a different way Professor Westin summarised in four words:

1. Solitude.
2. Intimacy.
3. Anonymity, and
4. Reserve.

This is again another way of looking at it..

Justice Douglas, who had incidentally come to India and gave lectures, had put it in one line:

"The right to be let alone is indeed the beginning of all freedom."

This is how he deals with privacy.

Then again Lord Kardiner, a lawyer and a judge said:

"...it is one in which I have for long been interested: the extent to which a man or woman not in private life is entitled to say, "This is my private life which is of no legitimate concern to the general public, the extent to which there should be protection for business organisations against industrial espionage; the extent to which there should be protection against the invasion of our homes by the telescopic lens, or the bug under the bed, or the private detective, or even the too pressing methods of the doorstep salesman..."

"My hon. friend the Home Secretary and I fully recognise the importance of these issues and are very conscious of the widespread feeling about activities of this kind and the growing desire to find means of protecting the citizens."

Lastly, as far as the concept is concerned, the last aspect I would to point out—classic Article written by Justice Brandeis in 1890 on the Harvard Law. To me it appears to be the best statement made on this concept.

"Recent inventions and business methods call attention to the next step which must be taken for the protection of the person and for securing to the individual what judge Cooley calls the right "to be let alone"

Instantaneous photographs and newspapers enterprises have invaded what the Judge Cooley calls the right to private and domestic life; and numerous mechanical devices threatened to make good the prediction that, "What is whispered in the closet shall be proclaimed from the house-tops". For years, there has been a feeling that the law must afford some remedy for the unauthorised circulation of portraits of private persons, and the evil of the invasion of privacy by the newspapers, long keenly felt, has been but recently discussed by an able writer.

As far back as 1890, he had predicted what technological development will lead to. What it led to, I shall presently show: Sir, there have been now computers, concealed cameras, electronic devices for bugging, for snooping, for eaves dropping visual and listening devices and all kinds of things are operating in the world. I shall presently refer to some of these: This is what has happened in America. This is an evidence given by Senator Goldwater before a Senate Committee:

"Computer storage devices now exist which make it entirely practicable to record thousands of millions of characters of information, and to have the whole of this always available for instant retrieval. Distance is no obstacle. Communications circuits, telephone lines, radio waves, even laser beams can be used to carry information in bulk at speeds which can match the computer's own. Time-sharing is normal. We are now hearing of a system whereby it is feasible for there can be several thousands of simultaneous users or terminals. Details of our health, our education, our employment, our taxes, our telephone calls, our insurance, our banking and our financial transactions, pension contributions, our books borrowed, our airline and hotel reservations, our professional societies, our family relations, and all are being handled by computers right now. Unless these computers both governmental and private are specifically progra-

mmed to erase unwanted history, these details from our past can at any time be reassembled to confront us. We must programme the programmers while there is still some personal liberty left."

Then, Sir, there is a book by another Senator Edward V. Long. The book is called *Intruder*. It gives photographs of various devices which are used and fantastic devices which are used for intruding upon one's privacy. You are unaware of the fact that you are being followed, that you are being watched and that you are being over-heard, you are being pursued. All these are done by electronic devices. Various photographs have been given which have been used not only by government but also by private agencies, big corporations and even newspapers.

To what extent it has gone? I am referring to a report by the national committee for civil liberties. Their evidence it this. This is an article by Bradt who is the most controversial and vocal Labour Party leader, at present. He says:

"In the last 25 years, there had been three great scientific developments. One was the nuclear energy which at Hiroshima and Nagasaki shocked the world. The second was the discovery of man's capacity to travel in space which thrilled the world. The third was the discovery and invention of the computer which went more or less unnoticed and which was the most important of the three."

And what has it done?

"The spectre that haunts us is that every child at birth will be traced and tapped by government and business, recorded and analysed, categorised and supervised throughout his life and that every fact known about him will be available to any one; facts about his family, his income, his habits, his health, his qualifications, his convictions both moral and penal. This is the tyranny which we would be subjected to."

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Then, there is another aspect to this technological development. It has been well formulated by Senator Edward V. Long in his book on "Invasion on Privacy". He calls it record prison. These technological inventions have created record prison in which an individual is now subjected and it is almost like an imprisonment with a kind of information gathering that they have.

Again, another instance is given by Arthur R. Miller. This is what he says in his book on "Assault on Privacy":

"Perhaps, the most significant threats to personal freedom are presented by the inevitable linking of computers to existing surveillance devices for monitoring people and their communications. One of the simplest contemporary snooping devices is the pen register, which, when attached to a telephone line, records a series of dashes representing the numbers dialled from a particular telephone. This snooping capability could be magnified if the information drawn in by the pen register were automatically fed into a central computer for analysis. Widespread use of this technique would quickly reveal patterns of acquaintances and dealings among a substantial group of people. As a practical matter, however, telephone monitoring will be possible without pen registers in a few years."

And that has happened now. What has happened is, instead of privacy, you have what Prof. Arthur calls "de-privacy". This is the effect of modern technology.

What is the effect? He has put it on a poetic form:

"Although we feel unknown, ignored

As unrecorded blanks,

Take heart! Our vital selves are stored

In giant data banks,

"Our childhoods and maturities, Effi-

Our stocks and insecurities
All permanently filed.

Our tastes and our proclivities,
In gross and in particular,

Our incomes, our activities
Both extra-and curricular,

And such will be our happy state
Until the day we die

When we'll be snatched up by the
great Computer in the sky."

This is the latest effect of the modern technology.

There was a Conference on Civil Liberties and they have given instances of how harmful it is. This can happen in India without any remedy. For example, "You and your co-director are in your office discussing your company's future marketing strategy. The window is open from the premises across the street. Your trade rival, without the permission of the occupier, records your conversation with a microphone." Now, the common law provides no remedy. You cannot proceed against him in a court of law. You have just to suffer.

Here is another instance. You are a respected member of your local community, but not in any sense a public figure. I am not making a case for politicians or public figures. Now, one day, your local newspaper publishes an article in which they allude to some facts about you, that 25 years ago you were convicted of stealing and that your mother died in the lunatic asylum. Both the statements are true. But you can do nothing about it. You cannot proceed to the court saying, "My right to: privacy is encroached." There is no public interest involved; this is not the right to know; this is only the right to curiosity which is to be satisfied.

Now, suppose your only child is killed in a car crash, the reporters telephone you night and day and your house is besieged by photographers from the press and the television who take photographs of you and your wife when you show yourself at the door. These photographs are published in the press and shown on the television news-bulletin. You have n

remedy. You have to suffer. You cannot do anything about it. That is the common law and also the Indian law.

I can go on multiplying instances as to where the right to privacy is invaded by Government, by newspapers, by television, by various other agencies and all that. You cannot do anything about it. You have just to suffer.

Then again, what has happened? The danger is that this power is being used by the Government, private companies and the media. Prior to talking about India, let me talk about the mother birth of democracy, the United Kingdom. This is what has happened.

"On June, 7, 1957, Mr. R. A. Butler admitted in the House of Commons that tapping of telephone by Government takes place."

A committee was appointed, called the Privy Council Burket Committee and what was the report of that Committee in a country which is supposed to be the champion of liberty? The Committee was appointed to enquire into interception of telephone calls as I and its report said that that practice was inherently objectionable, but necessary.

In November, 1966—Mr. Vajpayee is interested—Mr. Harold Wilson revealed that he placed a ban on tapping of M.Ps' telephones as soon as he took office. But long after he had given an assurance after at least a dozen M.Ps from both sides of the House were protesting that their telephones were being tapped, Sir Tuffon Beenish, one M.P. claimed that no fewer than 15 Labour M.Ps had been shadowed by the Police and the telephone was tapped, at the request of their own party. At the request of their own party, their telephones were tapped!

Mr. Anthony Barber told the House of Common that every year 3 lakhs of letters were opened by Postal authorities. This is in the land of liberty! This is the kind of invasion by Government!

PROF. MADHU DANDAVATE (Rajapur): The advantage of tapping of the telephone is that they remain in order!

SHRI V. N. GADGIL: You should have told it to Mr. Stephen! One astounding thing I came across, and it is this. I thought it applied to M.Ps. But from this book, I find a very astounding statement.

"Our country,"

that is America,

"has no monopoly of evesdropping at the highest level. It was revealed that the telephone in a home where Queen Elizabeth of England and the Queen Mother had been guests, were monitored."

Even their telephones were tapped!

Then, another instance of invasion of privacy. This is also in England. In England, there is a group, as you know, which is against South Africa and anti-apartheid. And what happens to them?

"When the Spring Book was read out to her during 1969-70, several anti-apartheid demonstrators complained that they had been photographed by the Police in the course of a match."

Because they were demonstrators! One demonstrator wrote to the Home Secretary complaining, and she has complained:

"I am now in the invidious position of remaining in police photograph files indefinitely although I have been charged with no offence and, therefore, I have no chance to defend myself."

Greater things are done in America! More advanced country, therefore, greater things!

There what happens? We have heard of purity of legal process. Prof. Arthur Miller states:

"It is a well-known that whoever investigates potential jurors, in many cases in which the United States is a litigant, is the Government a party to litigation and jury trial whoever investigates the jury."

Then more surprising!

SHRI K. MAYATHEVAR (Dindigul): You have the monopoly of the House!

SHRI V. N. GADGIL: I am going to ke lot of time.

"Perhaps the greatest threat in record prison is that it endangers our basic individual freedoms. A striking example is the revelation early in 1970 that the United States army has been systematically keeping watch over the lawful political activity of a number of groups and is preparing "incident" reports and dossiers on individuals engaged in a wide range of legal protests."

6.00 hrs.

Christopher H. Pyle, a former Army intelligence officer has revealed:

"The Army maintains files on the membership, ideology, program, and practices of virtually every activist political group in the country. These include not only such violence-prone organizations as the Minutemen and the Revolutionary Action Movement (RAM), but such non-violent groups as the Southern Christian Leadership Conference, Clergy and Laymen United Against the War in Vietnam, the American Civil Liberties Union, Women Strike for peace, and the National Association for the Advancement of Colored People."

Even University professors are not free in this land of freedom. The same author says:

"In this atmosphere, we can expect the universities to be subjected to increased demands for information from the outside. Investigative efforts certainly would be expedited if data collected by the FBI, the Justice Department, local law-enforcement agencies, and the academic institutions could be coordinated. If any one thinks that this notion is farfetched, let him consider the implications of President Nixon's request of September 22, 1970, for funding and increased statutory authority to use one thousand new FBI agents on university campuses."

So, even the universities are not free. Are the Senators free? This is what Senator Wayne Morse, a famous Senator, described to the Senate:

"Last year a secret service agent conveyed to me his belief that a microphone was hidden in my office. . . or my home. . . .The agent was able to repeat conversations which took place across my desk in the Senate building and at home."

This was what had happened to a Senator.

Then another interesting thing given in the same book. *The Intruders*, is this:

"In the mid-1930's, the New York City police found them selves tapped into a telephone line that was assigned to the wife of President Roosevelt. . . ."

Then the intelligence officer adds:

".....told an even more startling story on an NBC television program in October, 1965. . . ."

The intelligence team "...had wired almost every hotel in Chicago. The most prominent victim of its eavesdropping activities, he said, was Mrs. Franklin D. Roosevelt when she visited that area."

Even the top people in the Government are shadowed; telephones are tapped. To that extent there is intrusion into privacy in Western countries.

This is another book by Vance Packard entitled *'The Naked Society'*. It has been mentioned on page 11 of this book:

"The former district attorney of Philadelphia.told a Senate Committee:

"In cities where wiretapping was known to exist, there was generally a sense of insecurity among professional people and people engaged in political life. Prominent persons were constantly afraid to use their telephones despite the fact that they were not engaged in any wrong doing. It was clear that freedom of communication and the atmosphere of living in a free society without fear were handicapped by the presence of spying ears."

This is again from the same book, page 103.

"....more than 5,000 gadgets to permit telephone eavesdropping still are attached to Government telephones in the Washington area alone—from report by House Committee on Government Operations, 1962."

How does the Pentagon, the centre of armed forces in the United States, work? This is also from the same book, page 110:

"Writer Ben H. Bagdikian, after talking with a good many people who work in, or deal with, the Pentagon, reported that 'A surprising number of Pentagon officials take for granted that their offices are 'bugged'—monitored by hidden microphones. Almost every defence correspondent I talked to assumed his telephones, office and home, are tapped by some government agency'."

If this is the correct picture, is this any different from what George Orwell wrote in that famous 1984 novel?

Lastly, I want to make a reference to a book called 'History of the Legislation of right to privacy.' The effect of all this is:

"Americans today are scrutinised, measured, watched, counted, and interrogated by more governmental agencies, law enforcement officials, social scientists and poll takers than at any other time in our history. Probably in no Nation on earth is as much individualized information collected, recorded and disseminated as in the United States.

The information gathering and surveillance activities of the Federal Government have expanded to such an extent that they are becoming a threat to several of every American's basic rights, the rights of privacy, speech, assembly, association, and petition of the Government."

I think if one reads Orwell and Huxley carefully, one realises that '1984' is a state of mind. In the past, dictatorships always have come with hobnailed boots and tanks and machineguns, but a dictatorship of dossiers, a dictatorship of data banks can be just as re-

pressive, just as chilling and just as debilitating on our constitutional protections. I think it is this fear that presents the greatest challenge to Congress right now."

This is the picture of Government using the modern technological devices for invasion of the individual's right to privacy. There is a book called 'Big Brother in Britain' by Anthony Thompson which also gives similar instances. But I do not want to multiply them.

I come to the invasion of privacy by big corporations. Here what happens—I will give one or two instances only. "The Retail Credit Company offers a continent-spanning intelligent services with 6000 full-time salaried inspectors who constantly operate and has 1500 offices and in Ohio province alone it has 64 offices and has representatives in Mexico and Europe. The company's investigators conduct about 90,000 investigations every day, reporting mostly on individuals."

Another company which is a private investigative company has files on more than 2.20 crores individuals. On so many individuals files are kept. The most astounding information furnished by this book is that the Associated Credit Bureau of America maintains files on approximately one out of every two Americans. Half the population is covered by investigating and by keeping record by this private company.

What about telephones? You know in America telephones are not owned by Government but by private companies. In one year, the Pacific Telephone and Telegraph Company monitored 27 million private telephone calls in California alone! Another agency—I will not again go to that Atlanta-based credit company, but I will refer to another instance—the Hooper-Holmes Bureau—what does it specialise in? Because in America everything is specialisation. This low-visibility organisation is said to specialise in derogatory information and reportedly has files on nine or ten million people." So if you want some derogatory information, you approach this company and they will provide you with that kind of information. Then, again, Sir, another private company. "The Pri-

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vate Agencies set up by the Federal Housing Administration report on such things on martial situation to the applicants. It is easy to imagine how much of such an assessment is made up of rumour and gossip.' But, all this is solemnly selected, recorded and filed.

The result is that there is already an association formed and the name of the Association is very interesting. The invasion is so much and the people are worried so much that already the International Society for the Abolition of the Data Processing Machine has been formed with a membership of 5,000 people. It is typically an American.

The head of that institution is Mr. Harvey Matusow. He says:

"... People were being conditioned to their use. They were being hypnotized by innovation, bedazzled by gadgets and bamboozed by what Orwell called 'newspeak' and 'double-think'. Rights' were being claimed to justify 'wrongs'.

Now I come to the Press invasion on the Right of Privacy. This is a third category. I will start again from 1890. The famous article by Justice Brandel, about 100 years back, said about the press as follows:

'Of the desirability—indeed of the necessity—of some such protection, there can, it is believed, be no doubt. The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread/broadcast in the columns of daily papers. To occupy the indolent, columns upon columns is filled with idle gossip, which can only be procured by intrusion upon the domestic circle. The intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual;

but modern enterprises and inventions have, through invasions upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury. Nor is the harm wrought by such invasions confined to the suffering of those who may be made the subjects of journalistic or their enterprise. In this, as in other branches of commerce, the supply creates the demand. Each crop of unseemly gossip, thus harvested, becomes the seed of more, and, in direct proportion to its circulation, results in a lowering of social standards and of morality. Even gossip apparently harmless, when widely and persistently circulated, is its potent evil. It both belittles and perverts. It belittles by inverting the relative importance of things, thus dwarfing the thoughts and aspirations of a people. When personal gossip attains the dignity of print, and crowds the space available for matters of real interest to the community, what wonder that the ignorant and thoughtless mistake its relative importance. Easy of comprehension, appealing to that weak side of human nature which is never wholly cast down by the misfortunes and frailties of our neighbours, no one can be surprised that it usurps the place of interest in brains capable of other things. Triviality and delicacy of feeling. No enthusiasm can flourish, no generous impulse can survive under its blighting influence."

These are the words of Justice Brandel—not a politician active in public life. And then, the Chief Justice of America said this:

"Newspapers have become big business and there are far fewer of them to serve a large literate population. Chains of newspapers, national newspapers, national wire and news services and one newspaper town are the dominant features of a Press that had become non-competitive and enormously powerful and influential in its capacity to manipulate popular opinion and change the course of events. The result of these vast changes has been to place in a few hands the power to in-

form the American people and shape public opinion. The abuses of bias and manipulative reportage are, likewise, said to be the result of the vast accumulations of unreviewable power in the modern media empires, the same economic factors which have caused the disappearance of vast numbers of metropolitan newspapers have made entry into the market place of ideas served by the print media almost impossible. The First Amendment interest of the public in being informed is said to be in peril because the 'market place of ideas' is today a monopoly controlled by the owners of the market."

This is what has been said by the Chief Justice of America.

SHRI MOOL CHAND DAGA (Pali): Will you kindly explain what is the matter of privacy?

SHRI V. N. GADGIL: I explained it at length. You were absent when I spoke about it.

SHRI RAM JETHMALANI: You can quote Soviet and Arab sources!

SHRI V. N. GADGIL: On that I leave it to him!

Then, Lord Lloyd made effectively the point in his reviews of the Porter and Shawcross Reports in the United Kingdom and his conclusion was as follows:—

"Such committees seem to have been over-ready to listen to the voice of the press as the voice of freedom incarnate. It has been put, in an American context, that constitutional law of the United States has been singularly indifferent to the reality and implications of non-governmental obstruction..."

MR. CHAIRMAN: You have already taken to 45 minutes by now.

SHRI V. N. GADGIL: Sir, I will need 5 or 10 minutes more.

PROF. MADHU DANDAVATE: It is a Private Member's Bill; the subject is also on Right of Privacy'.

SHRI V. N. GADGIL: ..'non-Governmental obstruction to the spread of political truth, and this indifference becomes critical when a comparatively few private interests are in a position to determine

not only the control of information but its very availability."

Then I would quote what Chief Justice Burger has said. This is what he says:—

"The case against razing state libel laws is compelling when considered in the light of the increasingly prominent role.

of mass media in our society and the awesome power it has placed in the hands of a select few."

There are number of other people like Lord Goodman and Justice Cowen, who had come to India to give Tagore Law lectures. A number of them have warned about this danger.

And now I want to come to a very interesting aspect of the Press. Sir, there is a Committee appointed on 'The right of Privacy in England' called the Kenneth Younger Committee and the Kenneth Younger Committee has found that there has been considerable invasion of privacy by the newspapers. This was a committee appointed to consider the right of privacy. It consisted of 20 distinguished lawyers and social scientists—no politicians. I will hurriedly mention some of the points. They said:

"We received more complaints about the activities of the Press than on any other aspect of the subject."

This too, not from politicians, but from ordinary people. They have instances where an accident takes place and how the Reporters harass the bereaved family because they think that news is more important than the private feelings of individuals. Prof. Madhu Dandvate may be interested to know what was told to this Kenneth Younger Committee.

"Some organisations in the teaching profession for instance objected to the Press intrusion into school affairs and demanded greater care by reporters in this matter."

Then about medical profession:

"A similar view for a different reason is advanced by some of the organisations in the professions, who criticised the press's disregard at times for the well-being of the patients in hospitals in their

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desire to get news-worthy stories of pictures."

So, complaint is not only of politicians.

Now, the most clinching observation is this and this is from the Royal Commission on the Press.

"Another major criticism of the newspapers, primarily directed against a section of the national press, is that they make a habit of invading the privacy of ordinary people and of public figures to obtain stories...."

"Here we record our opinion that the way in which a few national newspapers treat some private lives is one of the worst aspects of the performance of the press. We have no wish to trespass on the jurisdiction of the Press Council or to re-open any of its cases. Like the Press Council itself, we are inhibited from commenting on some of the worst cases because we believe that to do so would only cause further distress to the victims."

Now, what is the argument of the newspapers? That is dealt with here.

"Newspaper which invade the privacy of individuals generally justify their actions by saying that the people in question are "public figures" who have forfeited their right to privacy by entering public life'. The words "public interest" are often used in such cases.

"Citizens attach great importance to their privacy. Journalists are no exception. When we commissioned Social and Community Planning Research to carry out of survey of editors and Journalists using a written questionnaire and giving participants a most explicit guarantee that no individual respondent would be identifiable; the response rate from the sample of journalists was too low...."

Why?

"it stemmed also from a feeling by some journalists that it was wrong for them to be questioned. The trade paper for journalists, the UK Press Gazette, which normally champions the public's right to know, ran a campaign against

the survey. We found it ironical that some editors should have complained directly to the Commission about the impropriety of questions which invade their privacy by asking about earnings or voting habits even when their anonymity was guaranteed."

Then, it means that the journalists have the right of privacy but politicians have no right of privacy!

PROF. MADHU DANDAVATE: Because politicians are nationalised.

SHRI V. N. GADGIL: Lastly, we are told by the Press, that we have two remedies. One is to go the Press Council. I will not refer to the experience of the Indian Press Council. The experience of the British Press Council is that the journalists do not care for the Press Council. The owner of the News of the world, the largest circulating newspapers, refused to appear before the Press Council. When one reader complained to John Gorden, Editor of Express, he said "you want to complain to the Press Council...? Why not complain to the United Nations? I don't care for you." So, this is the experience of the UK Press Council. The other is to file suit for defamation.

Then, you know what happens when a person filed a suit against the Press Council. Sir, in Maharashtra, one Minister filed a case of defamation against an editor. He was convicted and his appeal was dismissed by High Court and he went to jail. After he was discharged, when he came out of jail, what happened? The journalists felicitated him as a brave editor. Therefore politicians must accept the verdict of the court but the journalists need not! Is that the way to look at things? Therefore, I think that the right of privacy must be available against the Government, against the big corporations and also against the media.

I would like to conclude by saying that some beginning has been made in India which is welcomed although the right is not recognised in India, although there is a universal declaration signed by us. There is one case in the Supreme Court of India. It is a case of Govind *versus* Madhya Pra-

desh which hesitatingly has sought to recognise this as part of the Fundamental Rights. An Article was written by Mr. Nariman about it.

This is *Govind vs. the State of Madhya Pradesh*. It was decided on 18th March 1975 and reported in 1977(3) through the Supreme Court Reports 946, Shri Nariman in the Indian Advocate writes:

"With dexterous judicial steering and mild under-statement, the Supreme Court has given to the right of privacy, a foothold in the Fundamental Rights Chapter."

I am not claiming that my Bill is perfect. I am not claiming that this is the whole remedy, my whole objective is to invite the attention to the problem which will aggravate in future. Therefore, I conclude by saying that this right must be protected and I commend the Bill to the House.

श्री मूल चन्द डांग्रा (पाली) : सभापति जी, जिन्दगी में तीन पहली बार इस प्रकार का गंभीर भाषण सुना है। लेकिन जैन जीने देखा, जब कोई महान् व्यक्ति कायज या नितान्त निचाल कर अध्वन करने लग जाता है, उसमें कुछ समझ लगाना है, तो उसके लिये मैं गाड़िल माह्व का बड़ा आभार मानता हूँ। वे बहुत सुंदर बातें कहते हैं। मैं यह समझता हूँ कि जीवन एक खोज है और मृत्यु भी एक खोज है, यह सब जानते हैं। खोज ही जीवन है। आप भी खोज के आधार पर एक बड़े वैज्ञानिक बन रहे हैं क्योंकि आप निरन्तर खोज ही करना चाहते हैं। क्योंकि हर एक को खोज करने का अधिकार है। मैं यह भी समझता हूँ कि जब आदमी इस संसार में खो जाता है तो वह अपने से अलग हो जाता है। ज्यों ही कोई मनुष्य

इस संसार में खोया, वह अपने से अलग हो जाता है। अब आप चाहते हैं कि प्राइवेट लाइफ हो, लेकिन आत्मा की दिव्यता के क्षण कौमै आयें। क्योंकि आदमी तो एक पक्षी की तरह है, जो पिंजड़े में पड़ा हुआ है और उड़ नहीं सकता। उसी प्रकार व्यक्ति जब वासनाओं से, प्रणसा की इच्छा से, धन और लालच के लोभ से घिर जाता है तो किमी का कैदी बन जाता है। जिस तरह एक पक्षी पिंजड़े में कैद रहता है। अब मेरी प्राइवेट लाइफ में मुझे अधिकार हैं लेकिन मुझे पता नहीं कि कौन मेरी प्राइवेट लाइफ पर हमला करे या न करे।

जब मैं इस बिल को पढ़ता हूँ तो मानता हूँ कि संसार में सब कुछ चाहते हैं ऋषि और मुनी भी चाहते हैं वे भी दार्शनिक भाषा में कहते हैं कि जीवन क्षण भंगुर है, नश्वर है। लेकिन हिन्दुस्तान में जिस तरह का शासन है, वह स्वतंत्र प्रभुत्व नभयन्त लोकतन्त्रात्मक गणराज्य है। हम यह भी मानते हैं और कहते हैं कि दसर्ध्व कुटुम्बवम। अर्थात् सारा संसार एक कुटुम्ब है और हम भी उसी कुटुम्ब के संस्वर हैं। अब आप कहना चाहते हैं कि—

What is private life? The right to privacy means the right of any person is to preserve himself, his family or his property from any other person.

तब तो मेरा खयाल है कि इस परिभाषा को लेकर हमें संविधान में परिवर्तन करना पड़ेगा। मैं जानता हूँ कि मेरी स्वतंत्रता है और मुझे आजादी मिलनी चाहिए, बोलने की और विचार प्रकट करने को

[श्री मूल चन्द्र डाला]

दोनों आजादी मिलनी चाहिए। जो कुछ मैं सोचता हूँ, मुझे उसको कहने की आजादी होनी चाहिए। लेकिन मुझे यह अधिकार नहीं कि मैं अपनी आजादी का इस प्रकार उपयोग करूँ जिससे उसके कारण समाज में किसी प्रकार का विध्वन पैदा हो जाए। जिस समाज में मैं रहता हूँ। उदाहरण के लिए कोई कहता है कि प्राइवटी रखा मेरा अधिकार है। हम समझते हैं कि यह अधिकार खत्म कर देना चाहिए। जो चीज किसी ने पैदा नहीं की, लेकिन किसी तरीके से उसको मिल गई, तो उस पर अधिकार जनाने की बात समझ में नहीं आती।

इस बिल के उद्देश्यों और कारणों के कथन में माननीय सदस्य ने कहा है:

“प्रत्येक नागरिक को ऐसा जीवन व्यतीत करने का अधिकार है, जिसमें सरकार या गैर-सरकारी अभिकरणों का किसी प्रकार का कोई हस्तक्षेप न हो”।

प्रश्न यह है कि अगर मनुष्य के जीवन में किसी का हस्तक्षेप न हो, तो क्या जिन्दगी आगे बढ़ती है। मैं समझता हूँ कि सभी मनुष्य अन्वोन्याश्रित हैं। व्यक्ति समाज का एक अंग है, समाज मनुष्यों में बनता है और समाज में देश बनता है।

आज भी हमारे यहां दिगम्बरी माधु हैं मैंने मुंबई कोर्ट का एक जजमेंट पढ़ा है, जिसमें एक महिला माधु में कहा गया है कि उसे कोर्ट में कपड़े पहन कर आना होगा। उस माधु ने कहा था कि मैं अभी वस्त्र धारण नहीं करती हूँ, वस्त्र धारण न करने की मुझे आजादी है।

माननीय सदस्य ने कहा है कि मैं उनके भाषण के समय उपस्थित

नहीं था। मैं बराबर उपस्थित रहा, क्योंकि मैं उनकी बातों को गौर से सुनना चाहता था। हमारी जो फिजासफी है, दर्शन है, उसके अनुसार अगर कोई आदमी भगवान से माक्षाकार कर ले, तो उसमें किसी का हस्तक्षेप नहीं हो सकता। इसी-लिए धर्म-निरपेक्ष की बात कही जाती है जो मेरे मन में आता है, वह मैं करता हूँ।

श्री चन्दूलाल चन्दाकर (दुर्ग) : आज तो पति का जीवन भी प्राइवेट नहीं रहा है।

श्री मूलचन्द्र डाला : जीवन की प्राइवेटेमी के अधिकार की बात कही जाती है। किमका जीवन ? एक आदमी बाजार में निकलता है और जो मन चाहे वह गीत गाता है। वह गा सकता है। लेकिन उसके गाने से पड़ोस के लोगों की प्राइवेट लाइफ पर असर पड़ता है। चांदनी रात है, मैं छत पर घूम रहा हूँ और एक बड़ा सुन्दर गीत गा रहा हूँ।

एक माननीय सदस्य : प्रकने ?

श्री मूलचन्द्र डाला : प्रकने—अगर कोई माय हो, तो भी कोई बात नहीं है। पड़ोसी कहता है कि तुम मेरी प्राइवेटेमी में हस्तक्षेप नहीं कर सकते। कौन किमकी प्राइवेटेमी में हस्तक्षेप कर रहा है, यही बात विचारणीय है। माननीय सदस्य ने अपने बिल को रोज़रूज दिये हैं।

“It shall be a defence in any action for such infringement to show that:—
(a) the defendant did not knowingly infringe the right to privacy.”

मान लीजिये मैं चाहता हूँ कि मुझसे कोई भी बात न करे और “डोन्ट डिस्टर्ब”

की प्लेट भी लगा देता हूँ लेकिन कोई बहुत जरूरी इन्फार्मेशन देनी हो तो वह बताया जाये, क्या तब भी आप यही कहेंगे कि मेरी प्राइवैसी को डिस्टर्ब कर दिया गया ? हमारे यहां कोई भी कार्य किया जाता है तो उसके पीछे एक उद्देश्य रहता है। हमारी जो संस्कृति है वह ऐसी है। हमारे यहां जो संबंध किये जाते हैं उनके लिये भी हम सारी बातें पूछते हैं। कोई बीमार पड़ता है तो उससे भी डाक्टर पूछता है कि यह बीमारी तुम्हारे पिता को तो नहीं थी क्या इसमें भी आप कहेंगे कि वह प्राइवेट लाइफ के संबंध में क्यों जानना चाहता हूँ ? लेकिन ऐसा नहीं है। डाक्टर को तो उसका इलाज करने के लिये यह सारी जानकारी चाहिये। एक वर्ण संकर श्रीलाद जो होती है।

MR. CHAIRMAN: I think you have so much knowledge about private life.

श्री मूल चन्द्र डागल : यह सबजेक्ट ऐसा है जिस पर बहुत गौर करने की जरूरत है।

हमारे यहां जब लोग मिलते हैं तो सारी बातें जानने की उनकी इच्छा रहती है। हमारी भारतीय संस्कृति में पहले यही पूछते हैं कि आप कहाँ के रहने वाले हैं—पंजाब के हैं, उत्तर प्रदेश के हैं या गुजरात के हैं। इसी से वे जान जाते हैं कि अगर पंजाब का है तो ऐसा करैक्टर होगा, यू पी का है तो ऐसा करैक्टर होगा या गुजरात का है तो ऐसा करैक्टर होगा। इसी तरह से आप क्या काम करते हैं, कितना कमाते हैं—यह सारी बातें पूछी जाती हैं।

मैं मानता हूँ आपने प्राइवैसी का बड़ा सूक्ष्म अध्ययन किया है और इतने सारे

उद्धरण यहां पर कोट लिए हैं। लेकिन प्राइवैसी की जो परिभाषा आपने दी है, वह मेरी समझ में नहीं आई। आपने केवल इतना ही लिखा है :

“Right of any person to preserve the seclusion of himself.”

अगर कोई ऐसा काम करता है जिससे कि मुल्क और राष्ट्र को नुकसान पहुंचता हो तो आप कैसे कह सकते हैं कि यह उसकी प्राइवैसी है जिसको डिस्टर्ब नहीं करना चाहिए। समाज का भी और देश का भी कोई उद्देश्य होता है, अगर कोई आदमी कहता है कि मेरी प्राइवेट लाइफ है।

“Right to Privacy” means the right of any person to preserve the seclusion of himself, his family or his property from any other person.

यह जो आपने अभी तक कहा है, इसकी परिभाषा पर जोर देने की जरूरत है।

“3. Any person who has been subject to any serious and unreasonable infringement of his right to privacy shall have a cause of action against the offender.”

यह भी एक बड़ा सवाल है। जो आपने कहा है—रीजनेबिल और अनरीजनेबिल में किसी को रीजनेबिल समझता हूँ और किसी को अनरीजनेबिल समझता हूँ। मैं अपनी तरह से सोचता हूँ और अपनी तरह से आप सोचते हैं। मैं एक बात कहना चाहता हूँ कि जो अनुभव प्राप्त कर लिए हैं जो संस्कार छोड़ दिए गए हैं, उन संस्कारों को बुलाने की कोशिश मत करिए। यह नई फिलामोफी है। हजारों वर्षों का अनुभव, जिनके कारण संस्कार बन चुके हैं और

[श्री मूल चन्द्र डाना]

उन संस्कारों को भूल जाते हैं और फिर उनकी पुनरावृत्ति क्यों होती है? अपराध क्यों होते हैं, गुनाह क्यों होते हैं? क्योंकि उसने जो अनुभव प्राप्त किए हैं, जो संस्कार बने हैं, उन संस्कारों को भूलने जाते हैं और हिस्ट्री पुनरावृत्ति करती है। गांधी जी ने कहा था कि मृत्यु की खोज करने रहना चाहिए और मेरा जीवन एक किताब है। मेरा जीवन ही मृत्यु की खोज है। मैं खोज करने का विरोधी नहीं हूँ। एक उद्देश्य को लेकर जीवन है। जीवन किम लिए है, जीवन पर अधिकार एक का नहीं है। जिस जीवन पर अपना अधिकार है, वह जीवन आत्मसात कर लेता है, किसी आत्मा के साथ। मैं समझता हूँ कि आत्मा अपने में अनग हो जाती है, तो वह जीता नहीं है, मरे हुए के समान रहता है।

समाप्ति संकेतः अब खोज की समाप्ति होनी चाहिए।

श्री मूलचन्द्र डाना : लेकिन जब तक वह आत्मसात नहीं कर लेता है, जितने क्षण वह अपनी आत्मा के साथ रहता है, वह है जीवन और जब वह दूर रह जाता है, तो जीवन नहीं है। वह बनावटी जीवन है।

इस विषय पर आपने कहा है कि "the plaintiff, explicitly or by his conduct, had consented to the infringement;"

यह एक नई बात है। आपने कहा है कि "the plaintiff, explicitly or by his conduct had consented to the infringement."

यह बिल काफी गहराई से सोचने का है। इस बिल के द्वारा एक मिसाल सामने रख दी गई है। इस ढंग से रखी है कि

इसकी हर एक वाक्य पर सोचना चाहिए। यदि इस बिल को इसी तरह पारित कर लिया जाए तो मैं समझता हूँ कि इस बिल में इतनी लम्बी गुंजाइश रख दी गई है, हमारे गार्डगिल साहब ने, मैं खुद भी नहीं समझ पाया हूँ? मैं आपसे जानना चाहता हूँ कि इस बिल को जाने में आपका उद्देश्य क्या है। आप अपनी लाइफ में क्या चाहते हैं? विताओं के आधार पर नहीं, अपनी खुद की बुद्धि के आधार पर, जान जो आपने प्राप्त किया है, उस के आधार पर। जब आप जवाब दें, तो सोच कर बताये इस बिल के द्वारा आप क्या प्राप्त करना चाहते हैं। आप कहते हैं कि मनुष्य की प्राइवैसी पर कोई हमला नहीं होना चाहिए। वह समाज वांछनी है। तो उसको समाज के नियमों और मर्यादाओं के अनुकूल चलना पड़ेगा।

SHRI RAM JETHMALANI (Bombay North-West): Mr. Chairman, Sir, Mr. Gadgil's performance today reminds me of what happened once in the House of Lords in England. The Archbishop of Canterbury had proposed a new Private Members' Bill in the House of Lords, under which he proposed that adultery should be made a criminal offence. Lord Winterton rose to reply to the debate on behalf of the Government. He told the House: "My Lords, I believe that the hon. Private member has not carefully thought of the consequences of his Bill. If this Bill is enacted into law, a large number of Her Majesty's subjects will end up in prisons and they will include some Members of Your Lordship also".

Sir, while I agree that there are some forms of annoying and irritating behaviour, which ought to be prevented so that irritation and annoyance is not caused to private individuals, I do not think that the need of the time is that we must evolve the right to privacy; that the need of the time says that we must now evolve and strengthen the right to know.

My friend quotes the US Supreme Court at length, their jurists at length. But the jurists there have already established a much more fundamental right, viz. the right of the people to know how they are being governed. It is only after having established that right to the full, that they are now indulging in these luxuries of inventing new rights like the right to privacy. We cannot afford such a right to privacy. Our need is that the man in the street today must know what everybody else is doing, which has an impact upon his happiness, prosperity and interest.

The Supreme Court in India has recently started evolving this doctrine of right to know. It has recently been evolved in a case, which has brought great comfort to my friend on the other side—in the famous judges' case. I hope, Mr. Gadgil has read that case and I thought, he should have taken a hint from there and brought a Bill on the lines of the Freedom of Opinion Act in the US from which he has profusely quoted, so that we know what our rulers are doing, how they are governing us and what ducks and drakes they are playing with the country.

I have never heard a lawyer enunciating his right in a language of this kind, as the right to privacy means a right of a person to preserve the seclusion of himself. This includes the right of a criminal to abscond. This includes the right of a wife to abscond from her husband. It includes the right of her husband to keep himself away from his wife and his father-in-law.

I do not understand why these gentlemen, who have always been beating their breast that property is a vicious evil, particularly Mr. Gadgil should have thought of protecting the right to seclude his property from anybody else. I hope, he does not have the unfortunate pavement dwellers of Bombay in mind, because they seem to be now winning the litigation. And Mr. Gadgil, true to his real philosophy of life, is now beginning to come up to seclude the property of those rich men, who are afraid that these pavement dwellers might some day for want of any other shelter, go in for their properties.

I understand what he wanted to protect. But let me only tell him that there is a

corollary of what he said. The corollary is that every individual in a society has a *sanctum sanctorum*, an inner temple, in which an individual can retire and in that temple not the whole mankind minus himself has the right to trespass. That is the language of the Fundamental Rights of Chapter 3 of our Constitution that I have a right to freely speak, I have a right to worship my God in my own way, I have a right to form my mental, intellectual and spiritual convictions. And once I have formed them, not all the people of the world, not all the legislators, not all the 545 Members of Parliament combined, can interfere with that right. That is the right to privacy, which requires to be strengthened also; the right to privacy, which is protected by the strong walls of fundamental right of liberty. But my friend will not live upto the implications of his own philosophy, which is adumbrated in this Bill. I say and I maintain that no public man in this country is exempt from scrutiny, even in the matter of his physical health, his mental health. When the great President, Eisenhower, was suffering from an ailment of paralytic stroke, he went to the hospital and every five minutes, the people of the country wanted a bulletin to be issued about his health. Nobody said that the President's private health should not be measured in length, in centimetres, of his intestines and his intestines should be cut off. Everything is a matter of detail. I have believed that every politician or at least every Minister before he embarks upon his office, must first go to a psychiatrist for an examination because his mental health must be known. We do not know how he will arrive at a decision. We do not know what he does at home or a man who does something to his wife is likely to do it to the public at large. Therefore, we want to know his private life as well. The idea today, therefore is that we must know. Mr. Sathe or the Ministers who are sitting there, are obviously going to oppose this Bill and if I wanted to create disunity in their house, I would have supported Mr. Gadgil's Bill and set them up one against the other. But those who wish to oppose this Bill—and I am sure the Ministers are not going to concede that this Bill should be passed—should sit down and

[Shri Ram Jethmalani]

seriously decide that the time has come not for your benefit or my benefit, but for the benefit of all because in the inexorable electoral process and the changes which the electoral law brings about in this country, some day you will be on this side; so you will want to know what we are doing and therefore, enact this right to know, the Freedom of Information Act, so that we know it and, Sir, this right to privacy is the right which Mr. Gadgil might keep to himself. Our right to the privacy of our property is amply safeguarded by the law of civil trespass and criminal trespass. Our right to keep our family safe is amply safeguarded by the law of kidnapping, the law of abduction and various other provisions in the Penal Code including the Law of Torts, and the right of the man to seclude himself from others subject to the fact that he may be required by the police or by the courts is always there. He has always the right to retire wherever he wants to. What he had in mind is the illustration of Jacqueline Kennedy. When she went to Greece, photographers were perched on every convenient spot on the walls, they were trying to photograph her in her naked form or in the nude. That kind of a thing might cause some irritation to a beautiful lady, but Sir, if something like that happens to me, I would probably welcome it. (*Interruptions*). What is all this protecting being fought for, I do not know, and Sir, I am one with Mr. Daga that like him I do not understand what Mr. Gadgil wishes to accomplish. Thank you.

SHRI G. NARASIMHA REDDY (Adilabad): Mr. Chairman, Sir, the hon. Member of the House has taken great pains to refer to so many books while introducing this Bill. He has definitely something in his mind which, of course, probably he has not opened up, but one thing is very clear that something is troubling him and he wants a certain law to be enacted through which privacy can be protected. Two hon. speakers have already spoken about this—the eminent lawyer from the other side and Mr. Daga ji. I only would like to bring certain points to your kind notice. He has narrated through his illustrations the advancement of technology by which science has advanced to a great extent. He himself has said that today

through computer system one can find out anything from anywhere. So, Sir, if any person wants to declare that such and such a thing is private, in his Bill he has not mentioned clearly what he means by 'privacy'. If he wants to give a definition of 'privacy', then the problem will come that if a person tries to plan robbing somebody or murdering somebody or talk on the telephone of such plans, if any other agency—Government or a big Corporation—wants to tape his phones to find out what is there and this disturbs his privacy, it means it is going to be a great problem to this country. I would like to know from the hon. Member let us be very clear about it because if even eminent lawyer from that side and very veteran Parliamentarian Shri Daga have not understood what is privacy, I am too small a person to understand it then.

I have not travelled the European countries. But those who have travelled the European countries narrate so many stories. They say it is a stage where people are trying to remove everything about privacy. They want to tell the people of this country and the world that there is nothing private. Everything has come out on the T.V., Video and in the press. If Shri Gadgil has felt something by which he can say that privacy is being eroded by advancement in technology, then it is very necessary to pinpoint 'privacy' which has to be protected. Unless you pinpoint that, then the difficulty arises to understand what does privacy mean? In the dictionary of Shri Gadgil something may be 'privacy' but in my dictionary it may not be privacy.

The hon. Member has divided his entire speech into three categories:

1. Eroding privacy by advancement in technology.
2. Government's intrusion in private society.
3. Big Corporations.

Probably he has quoted instances from the United States of America and U.K. We know that in the United States of America there is private system. Big Corporations etc., are in private sector rather than in nationalised sector. In India in our mixed economy we have so many things in private sector as also in nationalised sector. In our country big corporations mean telephone system which is owned by the Gov-

ernment of India. He has said that tele-phones of so many Members of Parliament are being tapped. I am one of those who feel that the interest of the nation, the interest of the people is going to suffer from those people who call it privacy. They want to disturb the private life of others. It is a must for the State Government as also for the Central Government to probe into because their intention are to disturb somebody else's normal life. By their planning they want to disturb the way of life; therefore it is alone for the Central and State Government to tap the telephones and find out the fact so that the people who call it privacy, by their action others need not suffer.

I would only appeal to Shri Gadgil once more, as other friends have said, "Let us be very clear what does privacy mean?" If he can pinpoint, we would be able to give our views better. With these words I thank you.

श्री विल्लेक चन्द्र (खुर्जा) : मभापति महोदय, श्री गाडगिल जो एकान्तता के अधिकार का बिल लाये हैं, यह बहुत गम्भीर विषय है। जितनी गंभीरता से उन्होंने अपना पक्ष प्रस्तुत किया है, मैं समझता हूँ कि पार्लियामेंट के लिए तो यह मौजू नहीं था, इस पर तो कहीं पूरे देश में बहस चलनी चाहिए थी। क्योंकि एकान्तता के अधिकार पर विचार करने के लिए पार्लियामेंट के पाम तो खुद ही इतना काम है कि वह निपट नहीं रहा। वह कैसे इस गम्भीर विषय पर बहस करे।

खैर, जब आपने यह ईश्यू यहां पर उठा ही दिया तो इस पर बहस होनी भी जरूरी है। लेकिन इस विषय का विस्तार इतना है कि गाडगिल साहब इस विषय को उठाकर कहां तक ले जाना चाहते हैं, उनकी मंशा क्या है, वह स्पष्ट नहीं होता। उन्होंने इतना विस्तृत इसे कर दिया है कि एक तरफ तो कहते हैं कि गवर्नमेंट टेलीफोन टेप करती है,

चिट्ठियां खोलती है और विजिलेंस के लोग हमारे पीछे लगते हैं। लेकिन यदि गवर्नमेंट ये सब काम करती है, तो वह तो गवर्नमेंट के काम हैं और उसको करने चाहिए। आप चाहते हैं कि स पर रोक लगनी चाहिए, वह ठीक बात है। लेकिन दूसरी तरफ, जहां तक आप का कहना है लाइफ में प्राइवैसी रहे, यदि घर में भी प्राइवैसी हो, पति और पत्नी के बीच प्राइवैसी रहे तो आखिर उस प्राइवैसी की सीमा आप कहां तक रखना चाहते हैं। इस बिल से वह क्लियर नहीं होता। यह सीमा इस बिल में क्लियर होनी चाहिए थी। आखिर हम किस सीमा तक जाकर प्राइवैसी चाहते हैं। कहां तक हम इस पर विचार करें कहां तक हमारी सीमा रहे। इसलिए यह तो एक आध्यात्मिक विषय हो गया कि जहां तक चाहें, इसको ले जाएं।

मान्यवर, जहां तक इस ईश्यू का प्रश्न है, आप एकान्तता का अधिकार चाहते तो हैं, लेकिन मैं आपसे पूछना चाहता हूँ कि दूसरी बातों को आप छोड़ भी दें क्या कि वे बड़ी टेक्नीकल चीजें हैं, यदि हम एक दूसरे की बात को ही समझ लें, क्या कि आज जिस मुल्कों में टैक्नालॉजी डेवलप्ड है, वही मुल्क दुनिया में सबसे उन्नत मुल्क गिने जाते हैं। इसीलिए जहां तक आपके एकान्तता का अधिकार का मवाल है, दुनिया में वैसा नहीं है। आज दुनिया में एक दूसरे की मीक्रेसी जानने के लिए हर कार के उपाय बरते जा रहे हैं और हर मुल्क एक दूसरे के प्रति ऐसे उपाय काम में ला रहा है।

मान्यवर, इतना ही नहीं, हमारा मुल्क तो इससे भी काफी आगे था। जहां तक टैक्नालॉजी का सम्बन्ध है, हमारे यहां

[श्री त्रिलोक चन्द्र]

कभी पहले प्राइवैसी रही ही नहीं। प्राइवैसी का अधिकार कभी यहां नहीं रहा। आज हम जितने ज्योतिषी देखते हैं, योगी देखते हैं, मुनि देखते हैं, वे सब किस लिए हैं। उनका उद्देश्य ही यह है कि वे अपने पास कुछ ऐसी शक्तियां रखते हैं कि दूसरे आदमी के बारे में जान जाते हैं कि वह क्या कर रहा है। अन्तरात्मा की बात वे जानते हैं और इसीलिए लोम दूसरों के बारे में पता लगा लेते हैं। यह बहुत ही डैवलप्ड टैकनीक रही है। आज भी हमारे मुक्त की सरकार और प्रान्तों की सरकारें ज्योतिषी और योगियों पर ही चल रही है। आप ने यह विषय उठा कर उस बात को बंद ही कर दिया। यदि एकान्तता का अधिकार कर दिया गया तो फिर किसी के बारे में कोई जान ही नहीं पायेगा, किसी को कुछ पता ही नहीं चल पायेगा इसलिए मैं चाहता हूँ कि इस बिल में एकान्तता के अधिकार की कुछ सीमा होनी चाहिए।

आप चाहते हैं कि एकान्तता का अधिकार मिलना चाहिए, ठीक है मिलना चाहिए, लेकिन वहां तक जहां तक किसी की आजादी को खतरा न हो। लेकिन डाक्टर के मामले में क्या होगा क्योंकि वह तो बारीक से बारीक बात भी पूछेगा और आपको बनानी पड़ेगी। पुलिस के सबइंसपैक्टर के पास सारी मशीनरी होती है, डंडा होता है और वह भी बारीक से बारीक बात क्राइम के बारे में मशीनों के जरिए पता लगाएगा। चाहे उसको डंडा मारना पड़े या किसी और अतिरिक्त साधनों से पता लगाये। वह तो हर तरह से क्राइम की तह में जाएगा।

इसलिए आप कैसे कहेंगे कि एकान्तता का अधिकार रहना चाहिए। यह तो बहुत भुष्कल काम है।

इसलिए इस बिल के जरिए यहां पर बहुत गम्भीर विषय उठाया गया है। मैं जामता हूँ कि गाडगिल साहब ने जितनी विद्वत्ता के साथ इस के लिए तैयारी की है, यदि इसके बदले वे कोई लेख लिख दें तो स्टूडेंट्स और दूसरे लोगों को उससे फायदा हो सकता है। जैसे कि कई लोग अध्ययन के बाद किताबें लिखते हैं। इस पर भी विस्तृत किताब लिखी जा सकती है। वे लोम उस पर विस्तृत विचार कर सकते हैं। लेकिन हमारे देश में तो इतनी नौबत ही नहीं आई है कि इतनी सीक्रेसी मेन्टेन करने की आवश्यकता पड़े और लोग उसके लिए मांग करें। लेकिन कुछ सीमाओं के साथ प्रस्ताव का विषय ठीक है। क्योंकि हमारी प्रेम कुछ ऐसी गोपनीय बातें खोज कर निकाल लेती है, जिनका निकालना बहुत जरूरी होता है। यदि प्रेम ने गोपनीयता नहीं बरती होती तो शायद अन्तुने साहब का मामला कभी जिक्र में न आता। यदि उस मामले को किसी ने खोला है तो वह प्रेम का ही काम है जिसे ने चारों तरफ से खोज-खोज कर उसको निकाला। इसलिए यदि आप इस अधिकार को कुछ सीमा तक ले जाना चाहते हैं तो हम समझते हैं कि वह अधिकार हमें मिलना चाहिए। जहां तक आजादी का प्रश्न है, आज हमारे पास सारी आजादियां हैं। प्राइवेट प्रॉपर्टी की आजादी है। आज प्रॉपर्टी का अधिकार तो किसी का अधिकार है ही नहीं। इसी भावना के कारण तो आज हमारे मुक्त की हालत चौपट हो रही है। आज हम कहते हैं कि हमारी प्राइवेट लाइफ है, प्राइवेट प्रॉपर्टी है और प्राइवेट मिलकियत है, यही चौपट होने का मूल आधार है। उसके बदले यदि हमारे अंदर एक नेशन की भावना हो कि हम एक मुक्त के रहने वाले हैं, हम नेशन के लिए हैं, यह प्रॉपर्टी

नेशन की है तब काम चलेगा। आज लोग एक तरफ से इस मुल्क को नोचने पर लगे हैं, खसोटने पर लगे हुए हैं। सब अपना काम करेंगे और सोचेंगे कि हम मुल्क के लिए पैदा हुए हैं और मुल्क के लिए काम कर रहे हैं। हमारे मुल्क में राष्ट्रीयता की भावना सब से कम है। हमें पहले से हो कौमों, जातियों और धर्मों में बंटे हुए हैं। अगर यह बिल पाम हो गया और एकांतता की भावना आ गई, तो मैं यकीन के साथ कह सकता हूँ कि फिर स्थिति और भी बिगड़ जाएगी। इससे कोई लाभ नहीं होगा। हम बंटे हुए हैं और एक दूसरे के विचार और मीत्रेसी नहीं जान पाते। एकांतता का अधिकार गोपनीयता के साथ जुड़ा हुआ है। लेकिन डेमोक्रेसी में कोई चीज गोपनीय नहीं है, उसमें हर एक बात और हर एक डिजिटल पब्लिक का है। जो हम सोचते हैं वे भी पब्लिक के हित के लिए सोचते हैं। सुरक्षा और अपने अधिकार के लिए जितनी एकांतता की आवश्यकता हो, उतनी मेनटेन करनी चाहिए, उससे ज्यादा नहीं।

श्री गाडगिल बड़े विद्वान हैं, लेकिन उन्हें ऐसा बिल लाना चाहिए था, जिस पर हम आसानी के साथ सोच-विचार कर सकें। लेकिन उन्होंने तो एक फ़िल्लासफ़िकल मसला हाउस के सामने रख दिया है। उस पर कौन बहस करेगा? संन्यासी करेंगे या खुद माननीय सदस्य करेंगे। वह पार्लियामेंट सच्यूसियों के लिए नहीं बनी है। यह तो गरीबों, कमजोरों, पिछड़ों और मजलूमों को राहत देने के लिए बनी है। इस सूक्ष्म विषय पर अटक जाने से उद्देश्य पूरा नहीं हो सकता। पुराने जमाने में यही होता था कि वेद के श्लोक में उलझे रहो और कोई काम

न करो। उसी तरह का यह बिल है— इस पर बहस होती रहे और कोई काम न हो। मैं माननीय सदस्य से निवेदन करूंगा कि वह कोई दूसरे तरीका का बिल लाएं।

SHRI A. T. PATIL (Kolaba): Mr. Chairman, Sir, I must congratulate Prof. Gadgil for his attempt to focus the attention of the House on a very important subject, a very vital issue, of both social and political importance.

In a light strain, one could just hoodwink at the ideas seriously put forth by the mover of the Bill. That can be done in the case of any Bill—Why this Bill alone? When we sit here, it is not expected that we should treat the subject before the House so lightly, as to speak about privacy, private parts and all other things.

I should thank the hon. Member who spoke before me. He posed a very nice question that, we believe in privacy, but to what extent and what are the limits of privacy to which we should go and beyond which there cannot be any right to privacy? A very nice question he has put. That is the way of approach one should have to any problem that may be placed before the House for serious consideration. Therefore, I will approach this Bill from that point of view.

My hon. friend, Mr. Gadgil, has defined "right to privacy" in very very general terms. He speaks about the right to privacy in the sense that the right to privacy means the right of any person to preserve the seclusion. It is not merely the right to seclusion, but it is the right to preserve the seclusion of himself, not a seclusion which is not permitted by Constitution or law, because that seclusion is already taken out of consideration. Therefore, let not anybody come forward with a flimsy argument as if the idea of privacy includes also an idea of secluding an offender from the process of law. That is not so.

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That is not the idea under this definition even. True. It is very very general. Every concept will be general initially. The concept of right to privacy has not been developed in this country up to now. It will be developed in due course or it may be rejected. If the people do not accept it, it may be rejected. It is the right of the people to develop any particular concept or reject that concept altogether. But it is the right of an individual to put forth a concept for the consideration of the House, whether the society accepts it or not.

This is the right of privacy that Mr. Gadgil wants to put forth before the society for its consideration. It is not as if the Bill has been initiated in the House, and therefore, it would be accepted and everything will be turned into a law. No. Not like that. It is just for our consideration. It is giving an impetus to the thinking of the representatives of the people in this House and also that of the people outside this House as to whether this particular type of concept should be at all taken into consideration, and, if it is taken into consideration, whether it is to be accepted. If it is to be accepted, as the Hon. Member rightly said, to what extent? I really congratulate the Hon. Member. He has accepted this concept. Things are considered and thereafter accepted.

Now to understand the limits, so far as the limits are concerned, I need not read the entire Clause of this Bill regarding the definition of right to privacy. But a concept, a legal concept, is not to be understood only by the Clause which defines that concept. It is to be understood with reference to other provisions of the Bill also, specially those including the limits put upon that particular definition. Now, the limits that have been put upon this definition which appear to be in general terms are contained in Clause 4. We accept privacy. But then, the author of the Bill also says, no, not all privacy in general terms, extensive terms. No, it has limitations and the limits have been defined. Want of knowledge or ignorance. That is

the first limit. The second is fair comment. No privacy is invaded. No individual has been deprived of privacy. If it is a fair comment. If an act is done without the knowledge, if the individual has transgressed upon the right of privacy of another person out of ignorance; no that is different. Therefore, there is that limit. Thirdly, reasonable necessity. If the society demands, or political consideration demands that they must go and step forward, they are protected, they are not supposed to invade the right of privacy of the person. They are protected. That is there.

Then, consent. If there is consent, then there is no breach of right of privacy. Fourthly, the authority. This House is the Supreme and Sovereign body to create any authority under which the apparent right of privacy or the prevalent right of privacy can be transgressed without committing any breach in law of that particular right. Therefore, this concept is not as if kept in general terms unanswerable, not like that. It is left to this House to put limits. That authority is given also to this House, to put limits on that. And we are free to put the limits and, therefore, let us not treat it so lightly, as was sought to be done by some of the Hon. Members. It is really a sorry affair. But anyway, that was not to be exposed by the Members. They exposed it. That is the only thing I can say. Now, so far as this right of privacy is concerned, it is something more than the right to reputation. The right to reputation has been provided for under the Indian Penal Code and an offence has been created under the Indian Penal Code where that right to reputation is invaded. Defences have also been given under the same Code whereby, if at all there is a transgression or contravention of that right, even the person who commits that apparent contravention or encroachment

on that particular right shall be protected. So, it is not that there is no provision. That law confines itself only to 'reputation'.

The author of this Bill is a very erudite authority, I should say. He has gone through a number of books and has cited a number of authorities, the sum and substance of which may be summarised in a few words by saying that the right to privacy is the right of a person to keep or maintain his dignity as an individual. The dignity of the individual is sought to be maintained. What is the dignity of the individual? My hon. friend has said this. At times there were *yogis* who used to know about things. For example, Sanjay of the *Mahabharata* used to know what was happening on the war front. That is a mythical topic. I should not enter into it because it may be a reality or it may be just a legend. We need not go into it. After all, it is a matter of faith, not merely a matter of legend. But apart from that, the fact remains that the right of an individual to his dignity includes the right to non-intervention so far as mental and physical activities are concerned—in so far as they do not impinge upon similar activities of the other individual. I think, the definition will then be complete. The right to dignity, I shall repeat, is the right of an individual to develop his own internal, mental and physical, abilities, a freedom both mental and physical, so long as it does not conflict with similar freedom of any other individual. I think, if we accept that definition, the right to privacy as defined by my hon. friend, Mr. Gadgil, will be complete, and if it is understood in that sense, reference to property is reference in that sense. It will not be very pertinent for me to refer to the different illustrations in which property may be referred to. The hon. gentleman who spoke a little while ago was talking with an illustration on some Greek island. It is not necessary to go to Greece or to any Greek island. A five-star hotel will be sufficient for anybody. The question will then be whether the events in five-star hotels, a description of which it is not necessary for me to make, are encroachments upon the right to privacy of the artist or the audience. If at all a right of privacy is

involved in such matters, the question is whether any of the defences provided for under clause 4 of this Bill will protect the person either from the audience or the artist. That is the simple question. Similarly suppose, for instance, some words which are not very happy, although not unparliamentary, are expressed by one member against another member even in this House or in any other House of our legislatures which may be subsequently expunged, can we say that there was encroachment of the right of privacy? Again whether clause 4 defends the person who speaks is the question. First of all whether it is an infringement or invasion of the right of privacy and if so of whose privacy or of what person, whether the person who speaks or the person against whom it is spoken—all these things have to be considered. Then we go to clause 4 to see whether any of them is protected. The illustrations can be multiplied.

SHRI SATYASADHAN CHAKRABORTY: What about the privacy of 60 per cent of our population who live in the streets? Who is going to protect their privacy? Give them a house. You are talking of privacy.....

SHRI A. T. PATIL: I should thank Shri Satyasadhan Chakraborty. He has taken the subject from the plane to a discussion or economic plane. I thank the hon. Member for that. True, the hon. Member talked about persons who are living in the streets. I will pose another question. I will pose the question to him and he may pose a question to me. We can pose questions to each other. What is the position of a beggar who is unable to earn his living *vis-a-vis* the Constitution which is supposed to be made by him along with others and adopted and given by him for himself and others?

PROF. MADHU DANDAVATE: Has he got a right to vote?

SHRI A. T. PATIL: The hon. Member speaks of a higher right. I am not going to that; I am only at the beginning. Let us begin with this. Can you really claim any right, constitutional right, from a person or any discharge of constitutional duties and obligations from a person, to

[Shri A. T. Patil]

whom we are not giving the power to exercise the constitutional right which is supposed to be given to him under the Constitution? These things are there. Not that we are blind to the economic situation. We are alive to the situation. The question is: so far as this Bill is concerned we will confine ourselves to the concept that is placed before us. We may reject it. Not that we should accept it. But let us try to understand what the concept is within its scope and limit though there is a vast scope for discussion on the different aspects and different subjects. But then if we confine ourselves to this Bill, let us try to restrict ourselves.

So far as the implementation part of the right created by this Bill, is concerned, if it is to go to a court, let us try to understand what will happen? Ordinarily when a defamation case under the Indian Penal Code is filed, it takes years and years to conclude and during the trial of that particular case, the plaintiff or the complainant stands in the position of an accused. He is further defamed. His reputation is further lost. The procedures of law are such that it would be very difficult for an individual to carry on the matter to the Court to vindicate with him the right given under the law. Therefore, if the matter goes to the court, where is the privacy? Hundreds and thousands of questions will be put to the plaintiff before damages are granted. Therefore it is very difficult to assess at this stage as to whether the remedy that is provided will be a proper or adequate remedy. That is one thing.

17.25 hrs.

[MR. DEPUTY SPEAKER *in the Chair*]

The relief is that the damages are granted. The question is whether the damages granted will be real relief that we can give to the person concerned and whether there should be damages or other things, if he has a civil right or a criminal right. Many things would come

in. The question is not a so simple. Although the concept of right of privacy is a serious concept, it is also an important concept which must be taken note of to-day not only by the politicians but by every individual in the society by every citizen. When one thinks about his own rights, he should also think himself about the rights of others. I told already that when I think about my capacity, my ability and my rights, my energy, my power to express myself mentally and physically, freely, I always take into consideration the similar right conferred upon the other persons. If I do not like any interference with my rights, then I should also respect similar rights of others. So far as my actions are concerned....

MR. DEPUTY-SPEAKER: How much time do you want? I think you can conclude.

SHRI A. T. PATIL: I will need some more time.

MR. DEPUTY-SPEAKER: If you want more time, then you may continue next time. It is now 5-30 P.M. Let me call Shrimati Suseela Gopalan to introduce her Bill.

17.28 hrs.

WORKING WOMEN WELFARE BILL*

SHRIMATI SUSHEELA GOPALAN (Alleppey): I beg to move for leave to introduce a Bill to provide for the welfare of women employed in various industries and establishments.

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill to provide for the welfare of women employed in various industries and establishments."

The motion was adopted.

SHRIMATI SUSEELA GOPALAN: I introduce the Bill.

*Published in Gazette of India extraordinary part II Section 2 dated 22-10-82.