THE INDIAN PENAL CODE (AMENDMENT) BILL, 1963

(To amend section 292 nf Act 45 of 1860 and section 99 and Schedule II of Act 5 of 1898)—contd.

THE DEPUTY CHAIRMAN: Mr. Mani.

SHRI A. D. MANI (Madhya Pradesh): Madam, I felt that I should speak at this stage of the debate on this Bill because the previous speakers, from the speeches that they have made, appear not to have very carefully scanned the provisions of this Bill. I listened with great attention to the speech of our hon. friend, Mr. Rajnarain, and I was surprised to find that he was as much an expert in Indian literature as he is in polemical politics. I was greatly surprised also to see the depth of his erudition on Indian books of literature in his own rights. I was very pleased to hear that, but untortunately I felt that my hon. friend has not read the Bill properly, and I would like to show you how he has not read it.

श्री राजनारायण (उत्तर प्रदेश) : अगर आज्ञा दी जाय तो मैं जाऊं । जिस तरह से बन्दर की तरह अंग्रेजी में बोलते हैं तो मुझे गुस्सा आता है ।

SHRI A. D. MANI: I felt that he has not read the terms of the Bill.

SHRI AKBAR ALI KHAN (Andhra Pradesh): That expression बन्दर की तरह should not come. He is not a बन्दर ।

श्री राजनारायण : मैंने कभी "बन्दर" नहीं कहा । मैंने "बन्दर की तरह" कहा ।

THE DEPUTY CHAIRMAN: I think we should not be too sensitive.

SHRI A. D. MANI: Madam, it has been made to appear that this Bill is being put on the anvil only to penalise our literature and our ancient works of art in which there is some kind of erotic symbolism. This is not the purpose of this Bill. I may mention in this connection here that this Bill has been very carefully scanned and the Select Committee which was set up of this House examined a large number of witnesses. Perhaps this matter escaped the attention of Members of the House. Among the witnesses examined are: Mr. M. C. Setalvad; Dr. V. K. Narayana Menon, Director-General. All India Radio; Shri Mohammad Fazl-ur Rahman, Pro-Vice-Chancellor, Muslim University, Aligarh; Shrimati Sundari K. Shridharani, Honorary General Secretary, Triveni Kala Sangam; Shri A. S. R. Chari, Senior Advocate, Supreme Court of India; Shri Asoka Sen, Joint Secretary, Ministry of Home Affairs; the list is a long list. We also took the evidence of some former film stars at Bombay, and we had the benefit of the advice of Shrimati Lila Chitnis and Shrimati Snehaprabha Pradhan.

One of the reasons why the Select Committee has felt it necessary to present the Bill after suitable modifications is that there has been a rush of obscene literature in the country. I do not know whether Members have seen a journal called the "Indian Observer". Its circulation is not audited, but its circulation is supposed to run into thousands of copies. This is the first page of the "Indian Observer". The date is 23rd September, 1966. I do not want to offend your eyes, Madam, by showing this picture to you, but this is a semi-nude lady in the picture and the photograph is taken and published. In this connection, I may mention here that in 1930 or 1932 there was a picture taken in Berlin in which Miss Keslinger as she then was but Hedy Lamarr later, appeared in one of the shots stark naked running into the woods and plunging into the pond for a swim.

It was done so cleverly that very few could see that she was naked, but her back side was exposed. And on that ground, the United States Board of Censors prevented that filth from entering into the USA. Here is a magazine freely circulating in Delhi, wherein the back side of a lady is prominently exposed. And here is another—this is on the last page—showing a lady in a very suggestive posture. How do such journals help the cause of learning? Madam, I do not want to read this filth which has been circulating here. Yesterday I was trying to find out some material for being shown on the floor of this House. And one of the magazines circulating in Connaught Place valued at Rs. 10 has such a large number of suggestive nude photographs that I am ashamed to go through them. I would not like...

SHRI AKBAR ALI KHAN: How do you find out?

SHRI A. D. MANI: I am coming to that. When I go to the book-stall, they all ask me. I say to them, this Bill is coming up, I want you to give me some of the material itself. And they say, here is one of the books, Sir. you would like to purchase it. If it is Rs. 3 or 4, I will not mind spending that amount, but spending Rs. 10 on such filth I do not like. But such journals are available in Delhi. There is an article here 'Tragedy of Chastity Belt'. I do not want to read the various bed-room scenes very well described in this journal. There are also other journals published in Madras and in Bombay, and recently one journal has made its appearance in Punjab—in Punjab as it then was, whether it is published from Haryana or Punjab, I cannot say.

AN HON. MEMBER: Is it the same proprietor?

SHRI A. D. MANI: No, not the same proprietor.

The Home Ministry and the various administrations have been having serious difficulties in dealing with such publications. Prosecutions have been launched. But in many prosecutions it is difficult to get conviction for obscenity because the entire law of obscenity itself is not defined. According to section 292 of the Indian Penal Code, the word 'obscene' has not been defined in the Indian Penal Code. This is the first time that a definition of the word is being attempted in our Bill. Lord Birkett who was the Lord Chief Justice of England has observed that one of the fundamental points of criminal law is that it must be defined and clear to the lay man. He must know what an offence is and what the penalties are. Now, section 292 only mentions about obscenity but does not define obscenity at all. This was also the position in the United Kingdom, and in the United Kingdom in 1959, the Obscene Publications Act was enacted.

Now, so far as the law of obscenity is concerned, the British law has influenced the judiciary in the country. The British law has been laid down by Lord Cockburn in the famous case Regina v. Hicklin of the 60s of the last century. In that case the test which was laid down by Chief Justice Lord Cockburn was :

> "The test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and in whose hands a publication of this sort may fall."

Lord Birkett has written a very interesting essay which is published in this book 'The Pornographic matter'. There are a large number of collections here. His is the first essay, it is almost a chapter. He knows a lot about this law because he was the counsel who appeared for *Miss Radcliff Hall* in the famous Well of Loneliness case which led to lesbianism. He failed in that case. Lord Birkett has dealt with the law of obscenity in the background of that case also in that book.

Lord Birkett observed—this is what he says about the Hicklin case :

> "It had long been felt by lawyers and publishers alike that this definition..."

The Cockburn definition—

> "... was far too rigid and quite unsuited to the needs of modern society. It was plain that if the test were to be rigidly applied, it would injure literature very gravely and would deprive men and women of the freedom to write as they would wish to write in describing, for example, the spirit and temper of the age in which they happen to be living."

He said that literature must move with the times.

> "The test laid down is plainly unjust and inequitable, for a writer publishing his work which was intended only for adult readers might use words essential for his purpose.."

If the House will be pleased to see, according to Cockburn definition, it is 'in whose hands a publication of this kind may fall.' I might have published it for an adult reader. But if by mistake that publication falls into the hands of a young person, I would come into trouble. That is why he says:

> "The test laid down in plainly unjust and inequitable, for a writer publishing his work which was intended only for adult readers might use words essential for his purpose and unsuited for young persons and for whom the book was never intended."

It is for this reason that Lord Birkett suggested that the law should be amended.

[Shri A. D. Mani]

If the Members are pleased to see the clauses of the Bill as amended, they will find that under clause 2, an attempt is being made to define what obscenity is. I realise that any definition that is attempted at obscenity is bound to be not too comprehensive because it cannot be a perfect definition as many sections in the Indian Penal Code are. But obscenity, in dealing with literature, has got to be somewhat nebulous and there must be some kind of vagueness about it in order that literature may move with the spirit of the times.

Clause 2 says:

"(1) For the purposes of sub-section (2), a book, a pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, ..." etc. That is to say, not only the items but the whole must be considered.

Now, this definition which we attempted is more or less based on the Canadian Law and the United Kingdom law; it is also based on the Obscene Publications Act. There was also an international conference on obscenity. But I do not have the documentation with me. We have gone through all this matter at the Select Committee. And according to the documentation, words something on these lines were also suggested at the international convention. This Bill makes a very far-reaching change in the Indian Penal Code because after Macaulay and his associates drafted the Indian Penal Code, for the first time section 292 is being amended.

Members may ask why there is need for the amendment of this section at the present time. Madam, I do not want to refer to cases which are *sub judice*. But it is permissible for a Member of this House to narrate briefly the facts of a judicial decision. Mr. R. K. Karanjia, the editor of the 'Blitz,' has been sentenced to one month's imprisonment for the publication of a nude photograph or semi-nude photograph on the last page with a caption. That photograph had been published in many well-known magazines abroad, including the 'Time' and the 'Life' magazines. The 'Blitz' put that caption like this. Her name was Mrs. Puffin. He said, "Why can't make a tiffin of her?" That was published. The magistrate held that both the picture and the caption were obscene and sentenced him to one month's imprisonment. The case is now before the District Court. I am just mentioning this because, since there is no definition of obscenity, magistrates themselves do not know where they stand. Now, the only authoritative pronouncement on the question of obscenity is the judgment of the Supreme Court in Ranjit D. Udehsi *v.* State of Maharashtra, in which the Happy Bookstall was involved, as a result of selling *Lady Chatterley's Lover.*

The hon'ble Mr. Justice Hidayatullah, who was the Chief Justice of the old Madhya Pradesh and who wrote the judgment for his colleagues said that the Hicklin's best cannot be discarded, while Mr. Lord Birkett says that the Hicklin's test is unfair and unjust and does not move with the times.

There are one or two observations. I do not want to quote much from this because any quotation is very tiresome when it is read out. The Supreme Court says:

"In this connection the interests of our contemporary society and particularly the influence of the book etc. on it must not be overlooked. A number of considerations may here enter which it is not necessary to enumerate, but we must draw attention to one fact. Today our national and regional languages are strengthening themselves by new literary standards after a deadening period under the impact of English. Emulation by our writers of an obscene book under the ageis of this Court's determination is likely to pervert our entire literature because obscenity pays and true art finds little popular support."

Now in order to test the test laid down in the famous case of Hicklin, this Bill lays down on page 2 in sub-clause (ii) :—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or of other objects of general concern, ..."

Now, in Well of Loneliness case which was argued before the court of the King's Bench and in which Lord Birkett appeared for Miss Radcliff Hall evidence was also taken. After the passing of the Obscene Publications Act, 1959, it is open to a person who has been charged with obscenity to lead expert evidence to show what he has published or what he has created is not obscene. This Bill, therefore, provides, in one of the exceptions, that works of art can be saved from the rigidity of the Hicklin's test. This is an advance on the law as it stands.

I would like to assure my hon. friends who may speak after me that this Bill is not seeking to penalise literature at all. Any work of art, whether it is a genuine work of art is going to be judged by a court. According to the Hicklin's test it is for the court to decide whether a work of art is obscene, or whether a thing which has been created is obscene or not.

Madam, one of the advantages of this very flexible definition is at page 1 under clause 2(a)(1) which says :—

> "..... shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect or (where it comprises two or more distinct items), such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances..."

I would like to point out the importance of the word "relevant circumstances". We went into the matter in great detail in the evidence which was led before the Committee. The point of view was put forward to the witnesses and they agreed that obscenity can be judged only on the basis of a territory. For example, in Nagaland a lady going naked, with her upper portion exposed may not be considered obscene. But if a person does it in South India where the traditions are very conservative, that would be considered as obscene.

SHRIMATI SHAKUNTALA PARANJPYE (Nominated): Not in Kerala.

SHRI A. D. MANI: Kerala is all right. But in Maharashtra if they do it, the people may regard it as obscene.

Defection is a natural process. A person has to defecate because human anatomy is constituted that way. But it has been held that if in a film a man is shown defecating, it will be considered obscene. It has nothing to do with sex. This is a natural, elementary function. But if it is filmed and put on the screen, it would be regarded as obscene.

Madam, in some of the South Pacific islands even eating in public is regarded as obscene. And according to Christian scientists, the word "death" itself is obscene. So obscenity varies from territory to territory, from region to region and from culture to culture. It is for that reason that this phrase has been put in—"having regard to all relevant circumstances".

Madam, the point that I would like to urge is that there is so much advance going on in all fields of literature, art and fashion that what is considered fashionable in the United States may not be considered the same way in our country. For example, this was a question which we had put to many of our witnesses, particularly to the two film-stars who appeared before us, why kissing scenes were not allowed in our films. If anybody tries to exhibit a film in which an Indian star kisses an Indian, there will be a riot, protests and demonstrations, I have no doubt whatsoever, because in Indore it has happened. There were demonstrations against suggestive, amorous posters that were put up, asking the cinema houses to take away those posters. We generally feel, therefore, that kissing is something which is foreign to our traditions.

In the other House about thirty years ago a very interesting Bill came up, the Cinematograph Bill. I hope the Members of the House would have some time to look into the debate on that Bill. One of the persons who spoke on that Bill was our old friend, Mr. Sri Prakash. He was just making his mark in the debates. He astonished the House—my hon. friend, Diwan Chaman Lall might remember it—by saying that Indian husbands do not kiss their wives. And really, all the European officials who were sitting there were asking their Indian colleagues, "Is this true?" The poor chaps could not answer that because that was mentioned as a part of obscenity in regard to the discussion of the Cinematograph Bill in 1930 or 1931—I do not remember the date but I remember to have read an extract of the speech at that time. Bearing all this in mind we have decided to incorporate "having regard to all relevant circumstances' here.

[Shri A. D. Mani]

I would like to ask my hon. friend Shrimati Paranjpye: What is wrong in what has been stated in section 2 which comprises two or more different items?

SHRIMATI SHAKUNTALA PARANJPYE : will tell you.

SHRI A. D. MANI: Taken as a whole, "having regard to all relevant circumstances" have been put in. Now, Madam, all works of art are going to be protected under this Bill under clause 2(ii), sections (a), (b) and (c).

There is one other point that I would like to mention here. In regard to the punishment that has been prescribed in the Bill a suggestion has been made that the punishment suggested is very severe. Madam, any conviction for obscenity is a gold-edged gift. The man who is sentenced to one month's imprisonment or an imprisonment till the rising of the court or 15 days, gets lot of money from the royalties on his books.

3 P. M.

If a man publishes something and you prosecute him for obscenity, immediately the sale of his book goes up and he benefits as a result of his conviction. There are journals, which have been published, that disgrace Indian literature and Indian society. Now we must have some kind of a control over that literature. Unfortunately our fundamental law, as it stands, will not permit any restriction to be placed on the freedom of expression excepting under the well-known law of obscenity. Article 19(2) mentions about obscenity" . . . any matter which offends against decency or morality and so on." Under that clause, we can impose restrictions on the freedom of expression.

Now we felt that for repeated offences, the punishment should be enhanced. That is why on the schedule on page 3, we have suggested "on first conviction, imprisonment of either description for a term which may extend to two years . . ." and "in the event of second or subsequent conviction, with imprisonment of either description for a term which may extend to five years..." We have prescribed a scale of punishment for offences under this. The question may be asked finally: Why is it necessary for us to undertake a legislation of this character to penalise obscenity? What harm is being done to our generation? Studies have been done on this subject also and one of the conclusions of these studies is that a man who reads obscene literature is either physically or physiologically inadequate or psychologically frustrated. There are two categories of people who read this, people who have serious mental frustration and people who are physically inadequate and who want to have achievements in literature which achievements have been denied to them in their life. These are the classes of people who read obscene literature. There may not be a Hippie generation now in India, but a Hippie generation is coming up in our country also. If you go round Connaught Place, you will see all these long-haired gentlemen with drain-pipes and all that and with beards. We also know that we have got a frustrated generation coming up. With so much of unemployment in our country, with rising prices, people are bound to resort to all forms of stimulation and excitement and obscene literature is one such form. There are obscene journals published in the United States, but they are at least decently printed. The *'Indian Observer'* is not printed, it is mimeographed. Nobody benefits by reading this literature.

Therefore, Madam, I feel that this Bill should be given a trial. As I said, we have tried to amend the law of obscenity after 100 years and have taken into consideration in such amendments the experience of the United Kingdom, the experience of Canada and the experience of the United States. We want to broaden the frontiers of our literature. We do not want to restrict them. But we do not want Indian culture to be debased by such journals and the fundamental law will protect them as long as the law of obscenity is not amended. We have tried something very difficult, namely, to define "obscenity." It is for the first time that a definition has been attempted and I hope that this Bill, on which months of labour has been spent by Members of this Committee, will receive the full consideration of this House and that it would be sent to the other House, too, for its opinion. I do not expect that this Bill would be adopted *in toto* by them. But this is a problem on which we want to focus the attention of the Members of the other House as well as Members of this House. This is a very serious problem affecting public decency. The minds of the younger people are eroded by such obscene publications. My hon. friend, Mr. Shukla, when he speaks will be able to tell you that Government have failed to get convictions to the accused in a

large number of cases. We do not want such a situation to continue to exist in our country.

One final word The 'Indian Observer', about which I have spoken, was also banned from the Railway book-stalls But the man went to the Supreme Court and the Supreme Court gave the ruling in his favour, that this journal should be sold in Railway book-stalls. I have made enquiries in Connaught Place and I found that a large number of news-paper stalls are unwilling to take this paper. I am mentioning only the 'Indian Observer' because it is published in the Capital There are many others So I hope, Madam, that Members would not imagine that we are seeking to put restrictions on literature We are only trying to widen the field that is permissible to artistic and literary writers We have to be decent in what we write. The printed word has got enormous influence over the minds of people, particularly in a country where a large number of people are illiterate Madam, on this and other grounds, I commend the Bill for the consideration of the House.

श्री श्रीकृष्ण दत्त पालीवाल (उत्तर प्रदेश): उपसभापति महोदया, मेरे तीस वर्ष पुराने असेम्बली के जमाने के साथी दिवान चमन लाल ने जो विधेयक पेश किया है उस पर मेरे पत्रकार जगत के साथी श्री ए० डी० मणि साहब ने अभी लम्बे भाषण मे एक पडित की हैसियत से, नीति-शास्त्र के पडित और विषय के पडित की हैसियत से, बहुत विस्तार से अपने विचार प्रकट किये है लेकिन मै तो केवल जन-साधारण के दृष्टिकोण से और एक साहित्यकार के दृष्टिकोण से इसकी कुछ बातो पर विचार करुगा क्योकि मेरे लिये समय शायद दस मिनट ही दिया गया है ।

उपसभापति : ज्यादा ले सकते है, एक घटा तक चाहे तो ले सकते है ।

श्री श्रीकृष्ण दत्त पालीवाल : मुझसे दिवान चमन लाल जी ने 10 मिनट ही कहा है इसलिये ज्यादा नही लूगा ।

THE DEPUTY CHAIRMAN: The mover of the motion has given you that time.

श्री श्रीकृष्ण दत्त पालीवाल : मै यह कहना चाह रहा था कि इस विधेयक के दो उद्देश्य है और दोनो ही उद्देश्य परम प्रशसनीय है सर्वथा स्तुत्य है, एक का मतलब तो यह है कि अश्लीलता के नाम पर साहित्य की, कला की, विज्ञान की और चिकित्सा की अच्छी से अच्छी चीजो को जो अश्लील करार दे कर के बैन कर दिया जाता हे वह बन्द हो, साहित्यकारो और कलाकारो के ऊपर अश्लीलता के कानून की यह लटकती हुई तलवार उनकी गर्दन पर न रहे और दूसरे का मतलब यह है कि साहित्य के नाम पर जो बहुत से लोग ऐसे पत्र निकालते है, ऐसी पुस्तके निकालते है, ऐसा साहित्य प्रकाशित कराते है जिनका उद्देश्य केवल लोगो की काम वासना को उभार कर, उसका दोहन कर के, कामोत्तेजक साहित्य प्रकाशित कर के, रुपया बटोरना होता है उसको बन्द किया जाय और सख्ती से बन्द किया जाय । ये दोनो ही बाते अपनी अपनी जगह बहुत अच्छी है लेकिन कठिनाई आ कर यहा पडती है कि आज तक ससार मे अश्लीलता की कोई भी सुनिश्चित, स्पष्ट और सर्वमान्य परिभाषा नही हुई है, ससार भर मे कही भी नही हुई है । इस समय विधेयक मे भी जो परिभाषा दी गई है वह पहले की परिभाषा मे तो थोड़ा सा सुधार है, मुझे यह कहने मे तनिक भी सदेह नही है कि वह परिभाषा अब तक की परिभाषाओ मे सर्वश्रेष्ठ है, लेकिन इस परिभाषा से भी बिल का जो उद्देश्य है वह पूरा हो सकेगा यह नही कहा जा सकता क्योकि यह बात कि कौन सी चीज अश्लील है कौन सी श्लील हे यह लोगो के मन और भावनाओ पर निर्भर करता हे और भावनाए अलग-अलग होती है । मुझे अपने विद्यार्थी जीवन-काल का यह अनुभव है कि जब कालिदास की शकुतला को पढ़ता था तो उसके लिये मुझसे कहा जाता था कि यह अश्लील किताब है इसको मत पढो । इसी तरह से "कुमारसम्भव" और इसी तरह से कालिदास के "रघुवश" सब

[श्री श्रीकृष्ण दत्त पालीवाल]

को अश्लील माना जा सकता है और कुछ विचारकों की दृष्टि में तो गोस्वामी तुलसीदास जैसे भगत की कुछ रचनायें भी अश्लील मालूम पड़ती है ।

जब कि सीता जी को देखने के लिये भगवान रामचन्द्र वाटिका में गये थे राजा जनक की, तो उन्होने लक्ष्मण जी से कहा था:

"कंकण किंकिण नुपुर धुन सुन कहत लखन सम राम हृदय गुन ।
मानहु मदन दुंदुभि दीनी, मनसा विश्व विजय कर लीनी ।।"

बहुत से लोगों ने मुझसे कहा है कि यह अश्लील है । तो जैसा मैंने आपसे कहा, अश्लीलता के नाम पर बहुत कुछ हानि की जा सकती है । जहां तक हिन्दी साहित्य से संबध है, हिन्दी साहित्य में, सब लोग जानते कि नख-शिख वर्णन खास तौर पर किया जाता है । नख-शिख वर्णन के मानी यह है कि नारी सौदर्य का पैर के नाखून से लेकर ऊपर की चोटी तक हर एक अग प्रत्यंग का वर्णन काव्य में किया जाता है । तो अश्लीलता की कसौटी पर नापा जाय तो समस्त साहित्य अश्लील करार दे दिया जायेगा और उसमें से कुछ भी नहीं पढ़ाया जा सकेगा, साहित्य नष्ट हो जायेगा । और हिन्दी नायक-नायिका भेद भी है, सस्कृत में भी नायक-नायिका भेद है संखिनी, हस्तिनी, पद्मिनी इसी तरह के चार भेद नायकों के है, चौरासी आसन है वात्स्यायन के कामसूत्र में इन सब बातों को अगर हम किसी तरह अश्लीलता की परिधी में ले आयेगे तो अच्छे साहित्य का सर्वथा लोप हो जायेगा । इसलिये हमें इसको साफ ही कर देना चाहिये । कोई साहित्य की, कला की, विज्ञान की, चिकित्सा की, जितनी भी चीजे है, इनको अश्लीलता से हमें मुक्त कर देना चाहिये । यही उद्देश्य पूरा करने के लिये इस बिल में पहली बात यह कही गई है कि उदारता से काम किया जाय, यद्यपि यह सब होने के बाद भी उदारता हो सकेगी इसमें मुझे भी संदेह है क्योंकि जैसा कि मैंने आपसे कहा जो कोई भी अदालत उसको तय करेगा, न्यायालय का जज होगा, या सुप्रीम कोर्ट का जज हो या कही का हो, उसका अपना जो सब्जेक्टिव्ह माइन्ड होगा, वह जिस समाज में रहता होगा उस समाज की अश्लीलता के संबंध में जो धारणा होगी उससे प्रभावित होकर, अपनी धारणा से प्रभावित होकर निर्णय देगा । यह सही है कि जो न्यायाधीश होते हैं उनको एक विशेष प्रकार की ट्रेनिग मिलती है, जुडीशल ट्रेनिग मिलती है जुडीशल माइन्ड उनका होता है, यह सब होते हुए भी वह हैं तो मनुष्य ही और मनुष्य के मनोविकार और दुर्बलताओं से सर्वथा मुक्त नही होते है । पचासों उदाहरण उसके मौजूद है कि उनसे भी ग़लती हो सकती है । 'लेडी चैटरलेज लवर' में भी इंग्लंड मे एक बार बैन हुआ । उसके बाद बैन उठा लिया गया । हमारे यहा उस पर बैन कर दिया गया है । जब कि हमारे यहां वात्स्यायन का कामसूत्र विज्ञान का बड़ा अच्छा ग्रथ माना जाता है लेकिन इंग्लैंड में वह बैन है, निषिद्ध है, अश्लील माना जाता है । तो जजेज़ की राय भी होती है और जनता का अश्लीलता का स्टैन्डर्ड दिन प्रति दिन बदलता रहता है । अब तो बहुत तेजी से बदल रहा है । हमें मालूम है कि यूरोपियन सोसायटी में इंग्लैंड में, खास तौर पर विक्टोरियन एज में, अगर किसी स्त्री का टखना भी दिखाई देता था तो इस बात को परम अश्लील समझ कर वह बेहोश हो जाती थी, और आज वहां की स्त्रियां "मिनी स्कर्ट" पहनती है; ऐसे वस्त्र पहनती है जिसमें एड़ी से ऊपर घुटने और जांघे सब दीखते हैं । तो इसको कैसा माना जायेगा ? हमारे समाज मे एक समय यह भी माना जाता था कि जहां किसी स्त्री ने घूंघट खोला नही कि उनका धर्म और सतीत्व नष्ट हुआ, अश्लीलता हो गई । परदे के मामले में भी, घूंघट के मामले में भी शीलता नष्ट होना माना जाता था । राजस्थान की महिलाएं घूघट बहुत लम्बा काढ़ती थीं लेकिन पेट दिखायी देता

था, कुछ थोड़ा सा वक्षस्थल दिखाई देता था। तो कौन तय करेगा क्या अश्लीलता है कहा अश्लीलता है; अश्लीलता का कौन मानदड समाज में रखा है; वह सब फैसला करना बहुत मुशकिल हो जायेगा। तो साहित्य को हमें इसमे छेडना नही चाहिये, उसको सर्वथा मुक्त करना चाहिये। ये अखबार जो निकाल जाते हैं जिनकी कटिंग पढकर अभी ए० डी० मणि साहब ने सुनाया था, उसका काफी जो प्रचार है उसका कारण एक तो अश्लील साहित्य है और दूसरे बनैर मेल करने के लिये तरह तरह की कहानियाँ अखबार में निकालते है, यहां भी और दूसरो जगहों मे भी, उनके लिये बडी कठिनाई जरूर पड़ रही है कि, उनके बारे में क्या किया जाय। साहित्य के नाम का सहारा लेने से उनको सजा नही मिलती, या सजा मिलती है तो नाम भर की सजा मिलती है। अभी जैसा "ब्लिट्ज" का केस सुनाया कि महीने भर की सजा हुई।

कमेटी के सामने गवाही देने वालो में देश के बड़े बड़े प्रसिद्ध पुरुष थे, ज्यूरिस्ट थे, हमारे ऐटारनी जनरल थे, हमारे ला मिनिस्टर भी थे, हमारे सुप्रीम कोर्ट के बड़े बडे एडवोकेट भी थे, जजेज भी थे, लेकिन सब की राय अलग-अलग थी, भिन्न-भिन्न थी। बहुतों ने तो यह कहा कि कानून को अमेन्ड करने से कोई ज्यादा फायदा नहीं होने वाला है, वह तो जजेज के ऊपर ही छोड़ना चाहिये। मुझे अच्छी तरह से याद है, दिवान चमन लाल को भी यह बात मालूम होगी कि हाइकोर्ट के एक रिटायर्ड जज मुल्ला साहब जो इस वक्त लोक सभा के माननीय सदस्य भी हैं उन्होंने यह कहा था कि फैसला तो जज के ऊपर निर्भर करता है कि जज चाहे तो सजा दे सकते है, नही चाहे तो न दे, जजके "डिस्क्रीशन" के ऊपर है कम्प्लीटली; अगर मेरे सामने यह बातें आतीं तो मैं लम्बी सजा दे देता। उन्होने गवर्नमेंट को भी इस बात के लिये टोका कि अगर नीचे की अदालत ने उनको सजा नही दी या कम सजा दी तो गवर्नमेंट ने अपील नही की, मुमकिन है अपील में हायकोर्ट में सजा बढ सकती थी। बात यह सच है। मेरा कहना है कि जब जजेज़ की राय भिन्न भिन्न है तब साधारण मनुष्यों का तो कहना ही क्या है। इसलिये मैं इस बिल के दोनों उद्देश्यों को ध्यान में रखते हुए इस बात पर जोर दूगा कि इस परिभाषा को इस वक्त तो मान लिया जाय लेकिन इस बात की तलाश मे हमको हमेशा रहना होगा कि ज्यों ज्यो स्टैन्डर्ड बदलते जायं, जैसी जैसी जरूरत होती जाय वैसे वैसे इसमें सशोधन भी होता रहे। कानूनों के बारे में हमेशा यह होता आया है कि कानून का इन्टरप्रिटेशन जज करते है, वकील करते है लोग भी अपने मानी लगाते हैं और जितने ही कानून बनते जाते है उतने ही लोग ज्यादा चतुर हो जाते है कानून की काट करने पर। पचासों कानूनों के बारे मे हमें समाज में रात दिन दिखायी दे रहा है कि ऐसा होता है और कानून का सशोधन भी इसलिए बार बार होता है। इसलिए मेरा विचार है कि अश्लीलता की कोई स्पष्ट, सर्वमान्य परिभाषा ऐसी निकल सके जिससे इस बिल का उद्देश्य पूरा हो सके।

SHRIMATI SHAKUNTALA PARANJPYE: Madam, I fail to understand why Diwan Chaman Lall and now my friend, Mr. Mani, also is so obsessed with obscenity. Diwan Chaman Lall's mind seems to have been exercised by this subject since 1924, more than 40 years ago, Madam. All this commotion over obscenity seems unnecessary to me and people haunted by this concept leave me cold. This Bill has been before the House several times and I have paid no attention to it and today even I would not have stood on my legs but for the sinister intention of this motion to enhance the punishment for offences which I regard as no offences at all, only bad taste. I shall come back to this punishment business a little later.

Madam, I have seen the amended Bill and most of the evidence, The mover is anxious to protect works of art and science from the shackles of the Penal Code. Prompted by such noble motives had he come forward with a Bill saying that obscenity should not be

[Shrimati Shakuntala Paranjpye]

considered a penal offence at all and that it should be removed bag and baggage from the Penal Code, I would certainly have congratulated him with all my heart. But he has not done so. In fact to my mind the mover and many Members of the Select Committee like my friend, Mr. Mani, also seem to have set out to save 'Lady Chatterley's Lover' and chastise the 'Observer'.

In the whole of my life, Madam, I have never been able to understand why people are more concerned with other people's morals and behaviour than their own. All these taboos, controls, only incite people to delve deeper into the forbidden sphere. How often, Madam—you must be knowing—do publishers and cinema distributors bank on this human failing? A book or a picture advertised as not for children or for adults swells the clientele. It is again the temptation of the forbidden fruit all over again. I can tell you a little story of a friend of mine, who had been studying in the United Kingdom for three years. He was—and is—a very sober lad and never touched a drop of alcohol. But when he came back to India, the Bombay State—it was Bombay then and not Maharashtra as now—went in for prohibition. This went against his grain, and that very day he said, "I am going to break this stupid law" and he took alcohol for the first time. He did not continue it, but he did taste it for the first and last time. And this happens when you pass these legislations prohibiting this, that and the other. We know what happened with prohibition ourselves.

Even in the Penal Code, which the Bill seeks to amend—and the Government, unfortunately, has lent its support to this move—temples and old religious books are exempted from the purview of the offence. Is one to infer thereby that the law concedes that some of the paintaings and sculptures in temples, and many of the tales in the *Puranas* are downright obscene because, if and when any reproductions of these are made, the law goes against them, as it did with Mulkraj Anand as it came in the evidence? Does the law book upon the concept of *Shiv Linga* and *Pindi* as obscene? Are the antiques of Krishna and the Gopis really obscene but pardoned because of the halo that Krishna wears round his head?

The amending Bill, Madam, seeks to define obscenity, and some of the distinguished witnesses, as the hon. Member who preceded me, thought that it was unnecessary. The world pandits, who had assembled in Geneva some years back, had come to the agreement that obscenity was a concept which could not be defined. And yet, Madam, people have been fined for an offence which so far no one had been able to define. Now our Select Committee has tried to fill in this lacuna and has come out with a definition which, I am afraid, Madam, is not very different from the definition of Justice Cockburn, and obscenity can be construed differently by different Judges and different experts. So the same thing will go on. The same injustice will be done to people.

To my mind, obscenity is very much a subjective matter. People who revel in it can imagine a whole lot of obscene and indecent acts from simple words like marriage, mother, father, child, anything which is even remotely related to sex or the sex act. Madam, even wedding invitations will be forbidden, because what are they? They only amount to public proclamations of sex intimacy. Where are we to stop?

If one has healthy ideas about sex, all this fuss about obscenity is absolutely redundant. Animals are not obscene.

SHRI LOKANATH MISRA (Orissa): Advertisement of loops must be prohibited then, according to them.

SHRIMATI SHAKUNTALA PARANJPYE: Yes. As I said, animals are not obscene. They go about naked and even perform the sex act in public, and no one thinks anything about it. They are not held up in court for being obscene.

PANDIT S. S. N. TANKHA (Uttar Pradesh): But can you control it?

SHRIMATI SHAKUNTALA PARANJPYE : But why should you want to control it?

PANDIT S. S. N. TANKHA: You are a human being, not an animal.

SHRIMATI SHAKUNTALA PARANJPYE: I think we are worse; if we were like animals even in this, we would be far better.

(Interruptions)

Obscenity is not an attribute of a picture or painting or publication, but it is wholly an attribute of the onlooker

or the reader. My friend goes to these shops and finds these books. I have lived more than three years in Delhi and I have never cared to find them or...

SHRI A. D. MANI: Because I was dealing with this Bill so, naturally, I was trying to get at what obscenity was.

SHRIMATI SHAKUNTALA PARANJPYE: I am coming to you, quite heavily, in a minute. Those who have been brought up with a lot of complexes and inhibitions will see obscenity in everything, and even a thousand amendments to the Penal Code will not save such people. Here I would like to point out in passing—listen to me—that most of the offenders against the law of obscenity belong to the male sex.

SHRI A. D. MANI: Yes, yes, it is true; males are the offenders.

SHRI LOKANATH MISRA: He is an offender even at the age of sixty.

SHRIMATI SHAKUNTALA PARANJPYE : Women do not seem to offend the law very much.

SHRI A. D. MANI: They don't.

SHRIMATI SHAKUNTALA PARANJPYE: Maybe, that was why not a single woman was taken on this Select Committee, Madam. I said it when the Select Committee was chosen, and I did not shout loudly because I did not want to be associated with the job myself.

SHRI AKBAR ALI KHAN: But there were lady witnesses.

SHRIMATI SHAKUNTALA PARANJPYE: I think they wanted to have the monopoly of reading all obscene literature among themselves. That is why perhaps this Committee was appointed. That is what I can see from all the evidence, from what you call the documentation that has been presented.

Madam, I have had a look at 'Lady Chatterley's Lover'. I could not finish it to the end. And same is the case with 'Ulysses'. These books bored me stiff. So did the 'Observer'.

THE DEPUTY CHAIRMAN: You did not pass it on to Mr. Mani.

SHRIMATI SHAKUNTALA PARANJPYE : No, somebody took it away from my house. So I lost the money. Also I did not know Mr. Mani so well then. As I said, so did the 'Observer'.

SHRI A. D. MANI: There are three experts. Mr. K. K. Shah is also an expert.

SHRIMATI SHAKUNTALA PARANJPYE: I have to keep a vigil on them now. There is a law of defamation, and if papers like the 'Observer' indulge in blackmail or slander, they can be brought to book under that law.

SHRI A. D. MANI: No.

SHRIMATI SHAKUNTALA PARANJPYE: It is not necessary to take cover under the law of obscenity.

SHRI A. D. MANI: It is very difficult to prove a charge of blackmail, because you have got to have a good deal of primary evidence, namely, you have got to say that this was said in the presence of A or B or C. My friend, Mr. Mookerjee, will bear out as a Judge that blackmail cannot be proved by mere circumstantial evidence; it has got to be supported by primary evidence, but blackmailing of the public and corrupting of the morals of the public, this is a very important matter also with which this Bill deals.

SHRIMATI SHAKUNTALA PARANJPYE: You are very much worried about the public morals, I think. Leave the public morals alone; they will look after themselves.

Several speakers have pointed out that the concept of obscenity varies from country to country; everybody has, in fact, admitted it, that it varies from century to century, from person to person, and even with the same person from age to age. What I thought was obscene at the age of twenty, I may not think obscene now, or *vice versa*. This obscenity again, leads to what? A picure is obscene in one country and not in another. Again, a book was obscene twenty years ago and it is not so today. What kind of concept is the mover trying to define? It is an ever changing idea. Why not leave it alone? Such laws only enhance the curiosity which kills the cat.

I strongly oppose the motion and particularly the provisions to enhance the punishment, to which I am coming in a minute.

[THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) in the Chair]

SHRI A. D. MANI: You can move an amendment.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): You need not move it at this stage, but you can speak on it.

SHRIMATI SHAKUNTALA PARANJPYE: Yes, I shall move it when the time comes. I do not want the punishment to be enhanced. In fact I do not want any punishment at all. I want the Bill to be thrown out because I am not clear where obscenity begins and where it ends.

DIWAN CHAMAN LALL (Punjab): But you have got a law of obscenity now. What are you going to do about it?

SHRIMATI SHAKUNTALA PARANJPYE: It will remain, that is all right. But later on we might agitate to bring in a Bill to delete that.

SHRI LOKANATH MISRA : You might bring in a Bill to repeal it later on but let it be as it is now.

SHRIMATI SHAKUNTALA PARANJPYE: Yes, let us not disturb it at the moment. Now, this terrible provision for enhancing punishment brings back to my mind my great guru, the late Mr. R. D. Karve, the pioneer of birth control in India. He was a confirmed rationalist and he held very progressive views on subjects like religion, God, eugenics, sex, prevention of venereal diseases, moral and social customs etc. As no journal unfortunately in English or Marathi had the courage to publish his articles, this courageous person single-handed conducted a monthly journal in Marathi called the *"Samaj Swasthya"*. Till the day of his death, he conducted it, that is, for twentyfive years altogether. This journal was run at a tremendous loss; although I may tell you there were pictures in it which Mr. Mani would not have liked, even then he made no profit. Though he was incurring a tremendous loss, he never gave up till the very end. In fact, after his death we published the last number of the journal to say that the journal will not come out any more as the editor and publisher was no more. He was an M.A. of the Bombay University. He was the son of the Bharat Ratna, Maharishi Karve. He was a Professor of Mathematics and in his spare time he worked for the propagation of his progressive ideas. The authorities of the college where he worked could not tolerate this type of social work of his and asked him to give it up. Sir, Karve gave up his job instead saying that Professors of Mathematics could be had by the dozen but there was none to espouse the causes like birth control, eugenics, superstition, sex, customs, etc. This periodical of his written in the most chaste—note my word chaste—beautiful and simple language brought the wrath of the law three times upon him and he was hauled up in court. He was always strong in his criticism of religion, superstition, morality, etc. and was an anathema, as can be imagined, to the orthodox who prodded the Government to sue him.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): That was according to the existing law.

SHRIMATI SHAKUNTALA PARANJPYE: I do not think there is going to be any great change with this Bill.

First time in 1931 he was fined Rs. 100 for an article on adultery which he had written himself. Second time in 1933 he was fined double that amount for some letters published in the Gujrati edition and the Judge—and here I would like to point out what the Judges are like—was so mean as to refuse to raise the fine by one rupee so that Karve could file an appeal in the High Court. These are the sort of Judges we are going to depend upon.

SHRI A. D. MANI: You cannot attack the judiciary like that.

SHRIMATI SHAKUNTALA PARANJPYE: I am sorry; you can haul me up for contempt of court.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): In the House there is no contempt.

SHRIMATI SHAKUNTALA PARANJPYE: No less a person than Dr. Ambedkar fought Karve's case and his defence is worth reading. The third time in 1940, Karve was sued for publishing a three line advertisement of a book called 'Kama Kala' and this time Karve won his case. So this sinister attempt to enhance the punishment cannot but alarm me with the thought that others like Karve will run a greater risk for propagation of their views if this awful Bill with its evil clause for enhancing the punishment becomes law. But I suppose, Sir, they will be in good company. Voltaire, Rousseau, Annie Beasant and Bertrand Russel came under the cudgels of the same senseless law of

obscenity. It is always the honest; sincere and the scrupulous people who suffer punishment while the dishonest, insincere and the unscrupulous people like probably those who bring out 'Observer' find ways and means to escape it. If this House ever passes this Bill in its present form, the martyrdom of several future pioneers will be upon its head.

Let us therefore throw this Bill entirely out and particularly this clause to enhance the punishment.

Thank you.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Now, I will call Mr. Justice Mookerjee to speak.

SHRI DEBABRATA MOOKERJEE (West Bengal): Not now. I once was.

SHRI A. D. MANI: Ex-Justice.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI VIDYA CHARAN SHUKLA): They always carry the title with them like the Generals.

SHRI DEBABRATA MOOKERJEE: I find myself in agreement with what the previous speaker, Shrimati Paranjpye, has said but the reasons she gave do not commend to me at all. Her conclusion appears to me to be all right, at least that part of her conclusion of leaving the law where it is, but surely I am not prepared to go with her to that farthest limit of suggesting that some day soon enough there should be a Bill brought before this House to do away with the law of obscenity altogether. The remedy she suggests would be worse than the disease. To my mind, Sir, the approach to this difficult question has not been correct. I say so with the utmost respect for the Members of the Select Committee. The question that arises foremost in one's mind is: Is there any occasion just now for amending the law as it stands? As far as I can see there is no necessity at all. I find from the Report which the Select Committee has made to this House that the idea was to liberalise the law in the country in regard to publications and objects of the kind referred to in the Bill. In the second place, the object was to tighten up the law relating to the publication of obscene matters or objects by providing deterrent punishments. To my mind both the objects are laudable on their face value but neither seems necessary at the moment. I will just ask: Who complains of the engravings of Konarak or Khajuraho and says that they are obscene? Who complains of the smile of Mona Lisa and says that the smile of that buxom matron produces a polluting effect on the mind of the observer? That smile has puzzled the world but no one complains about it and says that it is obscene.

SHRIMATI SHAKUNTALA PARANJPYE: Then, why protect it?

SHRI DEBABRATA MOOKERJEE: Who complains of the undraped angel figures of Raphael or of Michelangelo? Who complains of the figure of Antiope by Corregio which gives you the feel of the flesh and displays the curves of the female body? Who says that it is obscene? Who complains of "Ariadni in Sleep"? No one complains. Here art rises far above muck and dirt. Therefore, that being the position I hesitate to say that there is any occasion, whatever, at the moment to change the law either by way of liberalising it or by way of tightening it. You will remember that this matter came up before an International Convention at Geneva in 1923. A resolution was passed for the supersession of obscene publications. It was in pursuance of that resolution that the law in this country was amended, but be pleased to remember that they did not adopt a definition of obscenity. They did not try the impossible. I do not like that the Bill should contain any definition at all. People, by and large, know what is obscene and they do not require the assistance of a set definition or a formula for the purpose of being told emphatically that this is obscene, bad and that is not obscene, good.

Turning to the suggested definition of obscenity in the Bill for one moment, we find that sub-clause (1) of clause 2 says :

> "(1) For the purposes of sub-section (2), a book, a pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it."

[Shri Debabrata Mookerjee]

I want to underline the word "hear". I fear due attention was not paid to the corresponding English Act. It is taken from the Obscene Publications Act, 1959 (7 and 8 Eliz 2, Chapter 66). There the definition is different. It is said; "For the purposes of the Act, an article shall be deemed to be obscene if its effect is such as to tend to deprave and corrupt persons." I am leaving out the unimportant parts. I am not reading the rest of it.

Coming to the next sub-section of the English Act, 'article' is defined as:

> "Any description of an article containing or embodying matter to be read or looked at or both, any sound record and any film or other record and picture or pictures."

The definition in the Bill which I have read, has been taken from the English Act, but it has been taken in a truncated form and the result is disastrous. Please turn to the last line of that paragraph. There is the word "hear". To what substantive do you connect it? Do you hear a pamphlet? Do you hear a picture?

DIWAN CHAMAN LALL: You hear a record. Do you not?

SHRI DEBABRATA MOOKERJEE: You hear a record, but 'record' is not included or defined. It is not even stated here. That is my complaint. If you take the English law, take it as it is. Do not truncate it and try to improve upon it. If you do it, you do it with disaster. You do not hear a picture. You do not hear a writing. You do not hear a figure. You hear a record.

DIWAN CHAMAN LALL: Of course, you can hear a book.

SHRI DEBABRATA MOOKERJEE: That is not the way in which a book is ordinarily dealt with. If you wish to take it, take the whole of it or leave it. Change it if you like. Please get the word 'record' here included in the definition. I do not know whether it pleases the Members of the Committee, for whom I have very great respect, to listen to this criticism, but the word 'hear' has no corresponding substantive and it is in a deplorable condition because the definition in the English Act has been truncated.

Now, I will come to the middle of the suggested definition. It says:—

> "...shall be deemed to be obscene if it is lascivious or appeals to the prurient interest..."

I submit these words are utterly useless. They do not advance the meaning at all. The words "lascivious or appeals to the prurient interest" are not to be found in the English Act. Now, what does the word 'lascivious' mean? The ordinary dictionary meaning is: "lustful, wanton, inciting to lust." What do the words "prurient interest" mean? They would mean morbidly lewd, lascivious, indecent, lustful, etc. Why have these words again? How can these two expressions, having more or less the same connotation, be used in the body of the definition? You are dealing with law and you must be precise as far as possible. It is anything but precise here. In my submission these words "lascivious or appeals to the prurient interest" mean nothing and they should not be there in the definition.

I may tell you that the latter part of this clause is the most important part. They have been taken from the famous Hicklin's case and adopted also in the English definition. Lord Justice Goddard had occasion to comment upon it and he said that the definition suggested in Hicklin's case is a classic definition. The words used by Justice Cockburn in that case were that a matter charged with obscenity must have a tendency to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of the sort is likely to fall.

Therefore, if you wish to have a definition, by all means retain the last part and my submission is you omit the earlier part which really means nothing. But I would suggest, do not have a definition at all. We have done without a definition all these years and let us do without it for the rest of the time. As a matter of fact, the Supreme Court had recently occasion to discuss this question in Ranjit Udeshi's case and there it was observed by the Learned Judge that obscenity is not defined in the Code and it is more or less a question of fact to be decided upon the matter which is put before the Court for its decision. You can never say except by indicating in a most general way what should constitute obscenity. The Indian Courts have, as far as I know, dealt with this question

quite properly. They have never allowed their judgment to be swayed by extraneous considerations. Where the total effect of a writing or brochure is found to be not obscene, no person has ever been convicted under section 292 or 293. I should be very chary in making a statement of a definitive kind but it is within my experience, if I may say so, that there has hardly been a failure of justice and no man has been improperly convicted of obscenity where the matter charged is not really obscene. Slender indeed is the necessity for a definition. Once you adopt a definition, you put yourself in a strait-jacket that would imply certain restrictions and constrictions. Leave it to the decision of the Courts in the country, and they will decide having regard to the contemporary standards of the community prevailing what is good for the society and what is bad for it. It would be all right if the word was capable of a precise definition. That might have given the Courts the advantage of falling back upon it for the purpose of deciding in a particular case whether the matter charged is really obscene or not. But you can never, Sir, encompass or exhaust the whole universe of thought and discourse. Men's relations are so infinite and so complex and admit of such divergent, differing shades that it must be left eventually to the decision of the deciding authority as to whether a matter charged can really be said to be obscene and therefore deleterious to the morals of the country.

Sir, the Court presided over by a human being, may be a distinguished human being, cannot shut its eyes to facts. You must remember that these are days of mini-skirts, of mini-sarees, of mini-cholies, days of twist and frug. It will have to decide upon the prevailing standard which it should apply to the facts of a particular case. If you have a set definition for the purpose, you put a limit to the Court's discretion, and unless you are very sure that your definition is a foolproof one, I am afraid you will be doing injustice to yourself and to persons that may be charged in the future with having committed the offences contemplated in section 292 or 293 of the Penal Code. Would you be surprised to hear that the International Commission at Geneva declined to define the word 'obscene'? Would you be surprised to be reminded that in the Press (Objectionable Matters) Act of 1951, Parliament did not deliberately define the word 'obscene'? If you turn to section 3 of this Act, you will find that it says that matters which are grossly indecent or scurrilous or obscene or are intended for blackmail may be dealt with under the provisions of that Act. You have to give, Sir, some credit to the wisdom of your forbears. They had before them this identical question. Why hurry and come up with a set definition so as to make it difficult for the Courts to take an unfettered view of the entire situation, and make it extremely delicate for the Court to apply its own independent judgment to the matter charged as obscene before it and to see that complete justice is done between the State and the persons accused of having committed an offence either under section 292 or 293? If there was evidence available to show that the Courts in the country have been putting their foot down on publications which should not be banned and frowned upon but still they are doing so, there might be some justification for a definition. I do not find any justification whatever for defining 'obscenity' at this time of the day simply because some attempt has been made in England recently to define it. You will please remember that the English Act does not say all that we wish to say. It merely gives statutory form to that classic dictum in Hicklin's case that a matter charged with having a tendency to deprave and corrupt those into whose hands it is likely to fall, is obscene. They are really enshrining in an Act cockburn's dictum approved of by Chief Justice Goddard. They felt proud of it. I say, Sir, that dictum has been acted upon in this country from the lowest Court to the highest. No one has departed from it. The absence of a strict definition has the undoubted merit that it will not restrict the Court's discretion. It enables the Court to take a conspectus of things happening round about and come to a decision whether the matter charged is all muck and dirt or it is good and healthy for society.

4 P.M.

Now turn, Sir, to another part of the proposed Bill, that is sub-clause (ii)—it comes under the Exception; I am referring to sub-clause (ii) (a) (i)—it says:

> "the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or of other objects of general concern,"

[Shri Debabrata Mookerjee]

Now, this is in effect a proviso put in as a part of the Exception. Well, Sir, this is a risky thing, in my judgment, that has been sought to be done. What is the effect of a proviso by way of an exception which is embodied in the main part of the section? I am afraid, my esteemed friends on the Select Committee have not paid due attention to this aspect of the matter. They may have but I do not find any evidence of that. You know, Sir, that when a proviso is in the nature of an exception, it becomes necessary for the prosecution also to prove that the person charged, cannot successfully plead what is stated in the proviso. Ordinarily, it is not necessary for the prosecution to negative a proviso. But it does become necessary, if it is in the nature of an exception, and the enacting clause cannot be read without it. It becomes, as drafted, a part of the enacting clause; you cannot read it without referring to the parent clause. And what is the legal effect of that? The effect is that the prosecution will be obliged to prove that the defence of the person charged is not available to him. So, this additional burden is cast upon the prosecution of proving that. Why do you wish that it should so happen? The law of the land is that a prosecution must prove its case beyond all reasonable doubt. The prosecution is not obliged to prove that the defence or possible defence of the person charged is false. The effect of putting the proviso by way of exception in the main body of the clause is that the prosecution will be obliged to prove not only the elements necessary to prove the offence charged, but also to prove that this defence is not available to the person accused. I dare say, Sir, this was not the intention of the hon. Members sitting on the Committee. But then that is the result.

The matter will not rest there. In every case, a person aggrieved will come before the court and put forward the plea that the prosecution merely alleged certain facts and produced evidence in support of them, but did not negative his defence. I am sure my esteemed friends never contemplated that result.

Now, turn to the English Act, it is interesting, how, that Act has been truncated to our damnation.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Do you approve of the English amendment?

SHRI DEBABRATA MOOKERJEE: I do not. I say, I do not approve of the Bill in its entirety. But I am trying to say...

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I say, the amendment in the British law.

SHRI DEBABRATA MOOKERJEE: That is all right; it will survive legal surgery. But my humble opinion is that this Bill will not survive a lay man's scrutiny. Section 4 of the English Act says—that is an independent section, it is not part of an exception or a proviso—

> "A person shall not be convicted of an offence against section 2 of the Act and an order of forfeiture shall not be made if it is proved that publication of the article in question is justifiable or being for the public good on the ground that it is in the interest of science, literature, art, learning or other objects of general concern."

Practically *verbatim* this has been taken from the English Act and put into the Exception. The place has been changed and I do not think, very wisely. I say so with the utmost respect, it is put in the exception in a slightly changed form. That change of context makes all the difference in the world. Therefore, I say that the way in which the Bill is being sought to be passed into law will, if passed, lead to difficulties.

Now, in my humble submission, nobody in this country ever said that any work of art, properly so-called, should, be put down. There was no occasion for this. This is all gratuitous legislative activity for which there is no warrant. Who has said that a medical treatise where you get many intimate pictures of the female form or the male form is a book which ought to be put down and proscribed and a person possessing or selling it ought to be punished under section 292 or section 293 of the Indian Penal Code? Who has ever heard that any book containing photogravure of famous paintings the world over was...

DIWAN CHAMAN LALL: I am sorry to interrupt my hon. friend. But has he seen Dr. Mulk Raj Anand's book of reproduction of Khajuraho and Konarak which has been banned in India?

SHRI DEBABRATA MOOKERJEE: I am not sure of that particular book. But I have seen a hundred others. I do

not know how far, to what extent, that particular book which my hon. friend has referred to, has gone. It may be that there is something in what he says. I am not dogmatic. But all that I wish to say is that there are hundreds and thousands of books in the country which are put out on the open shelves in shops for sale, to which a puritan can turn his upturned nose or a woman who may be said to believe in grundyism might legitimately take exception. Has any action been taken against them? Why is it necessary to rush today to imitate what the Britishers have done? After the great hullabaloo for prosecution over 'Lady Chatterley's Lover' they had the Act. Leave them alone. Try to turn to the state of your own country and see whether things are in a bad way or in such a mess as to require legislative intervention.

SHRI P. N. SAPRU (Uttar Pradesh): 'Lady Chatterley's Lover' is banned in this country.

SHRI DEBABRATA MOOKERJEE: I have another aspect of the matter to which I think I should call attention and that is about the sentences proposed. You know, Sir—I say again with respect—that there has been considerable tight-rope walking. On the one hand, an attempt has been made to liberalise the law and on the other hand to tighten the law relating to publications of obscene literature.

My objections remain; it is not right to have a definition at all, and if you insist upon having it, have a proper definition. Cut out the words that are wholly unnecessary, the words which I have already pointed out earlier, and do not by any means have in the Exception portion the subject-matter of an independent section relating to books, literature, pamphlet, writings, and so on which are proved to have been written for the purpose of advancing the cause of science, literature and art generally.

Lastly, Sir, I would say that the sentences that have been provided appear to me to be not only harsh but almost brutal. Who has ever heard of a man being sentenced to imprisonment for five years for having published obscene literature? In England they have three years, if I remember aright. A man has to be sent to jail under section 292 for two years, and for subsequent conviction for an enhanced period of five years. It may be either under section 292 or longer still under 293. These imprisonment sentences would appear ridiculous in the eyes of the world. If you think what I have said about the main provisions of the Bill is not right, by all means have them. But have them please in a decent way and provide for a sentence which may not be regarded as savage. A man who kills another under somewhat dubious circumstances may be found guilty under section 302 (II) of the Indian Penal Code and given four years or five years. A dacoit might be sent to jail for five years. But a person who possesses or sells an obscene book is sent to jail for five years. Are we advancing or are we marking our steps in the opposite direction? Which way are we going? I submit, Sir, this Bill represents two contrary views pulling in two directions. Some of my esteemed friends were trying to liberalise the law. Others were trying, if I may say so with respect, to strike a bargain and say, "Well, where obscenity is established, send the man to jail either for three years or for five years". I think this is not the right attitude to take.

श्री निरंजन वर्मा (मध्य प्रदेश) : उपसभाध्यक्ष महोदय, हमारे मित्र श्री दिवान चमन लाल जी ने एक बिल प्रस्तुत किया था और फिर यह बिल सिलेक्ट कमेटी में गया और वहां इसमें गवाहियां ली गई। हमें इस बात से बड़ा आश्चर्य है कि इस युग में, जिस युग में कोई धर्म-कर्म शेष नहीं रह गया है और एक ऐसे युग में जिस में बहुत से लोग किशोरावस्था में स्त्री-पुरुष कामान्ध की तरह घूमते हैं उस युग में यह बिल लाया गया है और इस आड़ में लाया गया है कि हमारा उद्देश्य यह है कि देश में बहुत सी कविताएं, बहुत से ग्रन्थ, बहुत से चित्र और बहुत से भीति-अंकन इस प्रकार हैं कि उनको बचाया जा सके। इस आड़ में यह बिल लाया गया है और मैं प्रारम्भ में ही इस बिल के प्रस्तुत करते समय निवेदन कर चुका हूं कि किसी उद्देश्य के पीछे एक भावना होती है। एक पुरुष चाहे वह किशोरावस्था की स्थिति में क्यों न हो जब वह एक माता के सामने जायेगा तो उस समय उसकी भावना अलग होगी, जब वह बहिन के सामने

[श्री निरंजन वर्मा]

जायेगा तो उसकी भावना अलग होगी और जब वह पत्नी के सामने जायेगा तो उसकी भावना अलग होगी । अभी यहां मोनालिसा के चित्र का वर्णन किया गया है जिसमें उसकी मुस्कान बतलाई गई है । वह साहित्य की एक निधि है परंतु यह तो बहुत ही साधारण चित्र है क्योंकि हमारे यहां इससे भी अधिक सौंदर्य उत्तेजक चित्र मिलते है और ऐसे चित्र सर्वत्र ही भारतवर्ष में पाये जाते हैं। कन्याकुमारी अन्तरीप से लेकर मीनाक्षी के मंदिरों, खजुराहो और उसके साथ ही सांची के मंदिरों में जो आर्ट बतलाया गया है, उस आर्ट में किसी प्रकार की गन्ध नहीं है, गन्दगी नहीं है । इसी प्रकार कवियों की वाणी में, अगर कवियों ने किसी नखशिख का वर्णन किया है और उसमें कोई ऐसी श्रृंगार प्रधान बात आ गई है, तो उससे यह मतलब नहीं निकाला जाना चाहिये कि वह इस प्रकार का ग्रन्थ है जैसा कि मुल्कराज आनन्द ने लिखा है । "मेघदूत" के वर्णन में यक्ष ने अपनी प्रेयसी को संदेश भेजा था और उसमें जो कुछ भी वर्णन है, उसको साहित्यकारों ने पढ़ा होगा । इसी प्रकार "रघुवंशम्" और कालिदास के दूसरे ग्रन्थों में जो श्रृंगार-प्रधान वर्णन आता है, वह कामोत्तेजक नहीं है; भावोत्तेजक हो सकता है, लेकिन कामोत्तेजन करने वाला नहीं है ।

श्री प्रकाश नारायन सप्रू : मैंने मुल्क राज आनन्द की किताब नहीं पढ़ी मगर मैं यह जानना चाहता हूं कि उसमें क्या बात है ?

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Dr. Sapru, you are speaking. So you need not interrupt. Let Mr. Varma go on.

श्री निरंजन वर्मा : मैंने पुस्तक पढ़ी है और उसके बारे में जो टिप्पणी समाचारपत्रों में प्रकाशित हुई, वह भी पढ़ी है । श्रीमन्, हमारे कहने का उद्देश्य यह है कि अलग-अलग भावना हर एक बात के पीछे होती है । संस्कृत साहित्य में एक ग्रन्थ है, जिसे बंगाली लोग बहुत पढ़ते है, हम लोग भी पढ़ते है और वह "गीत गोविन्द" है । इस "गीत गोविन्द" को पढ़ने के पश्चात् जिसमें राधिका कृष्ण का वर्णन है, यदि आजकल की स्थिति में उसको पढ़ें तो भी इसी प्रकार की टिप्पणी कर सकते हैं कि इसमें कामोत्तेजना है । परंतु अपने यहां भारतवर्ष में एक युग ऐसा आया जिसे रीति काल कहते हैं और वह 15, 16 और 17 वीं शताब्दी में रहा । रीति काल में अच्छे-अच्छे कोटि के विद्वानों ने कविताएं और ग्रन्थ लिखे हैं और उसमें नख-शिख का श्रृंगार रस पूर्ण वर्णन किया है । उसके बारे में कोई यह नहीं कह सकता है कि उनमें किसी प्रकार की वासना की गन्ध आती है । हमारे यहां बहुत से कामसूत्र लिखे गये हैं और हमें इस बात का गर्व है कि संसार भर में इस विषय में सबसे पहले हाथ हमने ही उठाया था कि स्त्री कितनी प्रकार की होती है । संसार में जब लोग नंगे फिरते थे, जब उनको ज्ञान नहीं था, तब हमने लिखा और बतलाया कि चार प्रकार की स्त्रियां होती हैं । उनके बारे में बड़ा अध्ययन करके लिखा गया । वात्सायन का जो "कामसूत्र" है उसमें ये बातें बहुत अच्छी तरह से लिखी गई और इस तरह की बातें पहले संसार में किसी ने नहीं लिखीं । सबसे पहले 'कामसूत्र' में ही इस तरह के वर्णन लिखे गये और तब संसार के सामने इस प्रकार का ज्ञान आया । तो उस समय जितने भी ग्रन्थ लिखे गये, जितनी भी कविताएं लिखी गईं, जितने भी चित्र अंकन किये गये थे, उनमें अलग-अलग भावना थी । वे कामोत्तेजक नहीं थे ।

इस कमेटी ने कुछ गवाहियां लीं । इस कमेटी ने कुछ विद्वान गवाहियों के साथ फिल्म ऐक्टरेसों को भी बुलाया और उनकी भी गवाहियां ली गईं । लेकिन हमें आश्चर्य है कि इस पूरी कमेटी में एक भी व्यक्ति ऐसा नहीं था जिस ने इस बिल को सपोर्ट किया हो । किसी ने भी इस बिल को सपोर्ट नहीं किया; मैं सबसे पहले यह निवेदन करना चाहता हूं कि श्री सीतलवाड जी ने इसके संबंध में क्या राय दी है । श्री सीतलवाड

जी की बात बडे मार्के की है । उनको इस बात पर आश्चर्य है कि इस अमेन्डमेंट को लाने की आवश्यकता क्या है । अगर आप अमेन्डमेन्ट लाये है तो आप इस बात को कैसे साबित करेगे कि कौन चीज खराब है । इसलिए मै कहना चाहता हू कि इस अमेन्डमेंट को लाने की कोई आवश्यकता नही है । जब आप इस तरह का अमेन्डमेन्ट लाये ही है तो इस कानून की व्याख्या अलग-अलग तरीके से की जायेगी । अगर कोई गलत काम करेगा या इस कानून के अन्तर्गत फंस जायेगा तो उसको 6 महीने की सजा नही मिलेगी बल्कि उसे तीन वर्ष या 5 वर्ष तक की सजा दे देगे ।

हमारा यह निवेदन है कि हम सब ऐडवोकेट्स जानते है कि आप इसमे किसी को सजा दिला ही नही सकते । प्राज़िक्युशन कितना ही ताकत के साथ बन कर के आये और अपने केस को जब वह पूरी तौर से अदालत के सामने रखेगा तो हमें आश्चर्य है कि उसमे इतने लूपहोल्स होगे कि कोई भी आदमी इसमें से जल्दी से जल्दी छूट कर के भाग जायेगा और किसी को सजा होने की नौबत नही आयेगी ।

आबसीन के बारे में कि किस अंश में कामाधता है, गन्दगी है, इसके बारे मे यह कमेटी, हमें ऐसा मालूम पड़ता है कि काफी देखने के पश्चात् और कानूनों का अध्ययन करने के पश्चात उसकी कोई डेफिनीशन कर नही सकी । आबसीन के बारे में सिर्फ यही लिख दिया कि ये ये चीजें भी आबसीन मे सम्मिलित होंगी जैसे :

"For the purposes of sub-section (2), a book, a pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest....." etc., etc.

इसका तात्पर्य यह है कि आबसीन की जो परिभाषा दी गई है उसे यह कमेटी बनाने मे किसी प्रकार से सफल नही हो सकी और उसकी कोई सही परिभाषा बना नही पाई । ये ये चीजे उसमे सम्मिलित होगी, यह पूर्ण परिभाषा कानून के अनुसार नहीं हुई । आज जब कि देश मे दूसरी कुप्रवृत्ति और विचारधाराए चल रही है, हमारी नवयुवक पीढ़ी के सामने बहुत से इस प्रकार के चलचित्र आ रहे है जिन के कारण वे अच्छे रास्ते पर जाने की अपेक्षा बुरे रास्ते पर चलते है, उस समय इस अमेंडमेंट को ला कर के देश के साथ कोई भलाई का कार्य नही किया गया है । हम समझते है कि यह अमेंडमेंट अगर न आता तब भी जो बुरा काम करने वाले है, वे बच ही निकलते थे । ऐसी बात नही है, वे बच कर नही निकल सकते थे । जिन पर मुकदमा चलाया जाना चाहिये उन पर मुकदमा बराबर चलाया जा रहा था और सज़ाएं भी होती थीं । लेकिन इस अमेंडमेंट को लाने के बाद कौन से ज्यादा मुकदमे चलाये जा सकेगे, बल्कि अब इसके कारण दोषी और बच निकलेगे । सिवाय इसके कि अपनी बात को मनवाने के लिये जनता के सामने एक मृगमरीचिका खड़ी कर दी गई है, इस बिल में कोई तथ्य नही है । अगर यह अमेंडमेंट पास हो गया तो सैकडों ऐसे आदमी जो गन्दे से गन्दे चित्र बनायेगे, सैकड़ो ऐसे आदमी जो बुरी से बुरी कविताए लिखेगे, सैकड़ो ऐसे आदमी जो लड़कियों को देख कर के, उनके नख-शिख का वर्णन कर के, उनके चित्रो को बाजार मे बेंचेगे, उसके लिये जो उनके विरुद्ध कोई मामले ले जाय जायेगे तो वे साफ बच कर के निकल जायेगे इस अमेंडमेंट के द्वारा ।

पंडित श्याम सुन्दर नारायण तन्खा : कैसे, ज़रा समझा दीजिये ।

श्री निरंजन वर्मा : जी हा, अभी लीजिये ।

उपसभाध्यक्ष (श्री अकबर अली खान) : इसीलिये सजा बढाई है ।

श्री निरंजन वर्मा : सजा से कुछ नहीं होता है । आप भी वकील है, हम भी वकील है और हम जानते है कि लोग किस तरह से

[श्री निरंजन वर्मा]

बच निकलते है । ब्लैक मार्केटिग के बडे-बडे कानून बनाये गये और उसके बाद भी हम देखते है कि सही ब्लैक मार्केटिग के केस होते है, लेकिन लोग साफ बच कर के निकल जाते है और अदालत उनका कुछ नही कर पाती है ।

उपसभाध्यक्ष (श्री अकबर अली खान) : वर्मा जी, वह तो हर कानून के साथ है ।

श्री निरंजन वर्मा : तो इस कानून से कोई लाभ नही हो रहा है । इस कानून से जो बुरी प्रवृत्ति और बुरी भावनाओ के लोग है उनको आगे चल कर के और बल मिलेगा । अभी वे बच नही पा रहे थे, लेकिन आगे बच कर के निकल जायेगे ।

पंडित श्याम सुन्दर नारायण तन्खा : मेहरबानी कर के समझाइये कि इससे किस तरह से बच कर के निकल जायेगे ।

श्री निरंजन वर्मा : अभी देखिये । आप चैप्टर 2 देखिये ।

"(ii) for the Exception, the following Exception shall be substituted, namely.—

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature art or learning or of other objects of general concern .. "

मे इस "पब्लिक गुड" को न्यायसगत बता दिया और इसके द्वारा बच जायगे । हमने किसी लडकी को देख लिया, उसका चित्र बनाया और चित्र बना कर के हमने देखा कि उसका इतना नेकेड् पोज दिया है, जैसा कि करजिया साहेब दिया करते है अपने पत्र मे, फिर हम कहेगे कि यह देखिये हमने बडी बारीकी के साथ चित्र का अकन किया है और ससार मे ऐसी कला नही है, माइकेल ऐजलो, रफेल और दूसरे मोनालिसा और लियानाडा-डा विंसी साहब ऐसे चित्र बना सकते है, तो सभव है कि सौ वर्ष के बाद हमारे चित्रो की वही कीमत हो जाय और हम भी बहुत अच्छ आर्टिस्ट माने जाय । इस तरह पब्लिक गुड साबित करने मे कौन सी बडी बात है । हमार योग्य तन्खा साहब स्वय भी वकील है और वे समझते होग कि पब्लिक गुड बहुत जल्दी साबित किया जा सकता है । 25 एक्सपर्ट्स की गवाही ले आयेग और वे कह देगे कि चित्र बहुत बढिया बना हुआ है, एक-एक अग ऐसा नक्काशी के साथ खीचा हुआ है कि तबियत खुश होती है और इस लिये यह पब्लिक गुड है, इससे चित्र पर कोई बुरा प्रभाव नही पडता है । इसलिये हमे ऐसे बिल का पूरी शक्ति के साथ विरोध करना चाहिये जिस से देश का भला होने वाला नही है, जिस से सोसायटी का भला होने वाला नही है, जिस से लोगो के चरित्र पर बुरा प्रभाव पडने की आशका है, जिस से लोग उदयगिरी, सांची, खजुराहो, मीनाक्षी देवी के मदिरो की आड मे और अजता के चित्रो की आड मे और अच्छ-अच्छ कामायनी के सूत्रो की आड मे बुरे ग्रथो की रचना करेगे, बुरे चित्रो की रचना करेगे और वे साफ बच कर के निकल जायेगे ।

इस लिये मै पूरी शक्ति के साथ इस अमेडमेट का विरोध करता हू और प्रार्थना करता हू अपने मित्रो से कि ऐसे बिल को वे कभी लाने का साहस न करे ।

PANDIT S S N TANKHA: Mr Vice-Chairman, Sir, you had been the Chairman of the Select Committee which amended the Bill and brought it before the House I would like the House to know the circumstances—which of course are known to you—under which the original Bill, which was brought forward by Diwan Chaman Lall, was radically altered and has now been brought forward in its present form I would like to tell the House why this was done At the outset, Sir, I might tell you that when the Bill was brought forward ini-

tially, it was circulated for public opinion and almost all the States of the Union were asked to express their opinion on it. Most of the States were of the view that the Bill was unnecessary. The Bill as brought forward by Diwan Chaman Lall was opposed by the U.P. Government, West Bengal State and Gujarat State. The Bill was considered unnecessary by Madhya Pradesh, Maharashtra and Bihar and also Pondicherry. The Advocate-General of Mysore was also of the same view. No objection was taken to the Bill by Orissa, Nagaland, Manipur, Tripura and Rajasthan, while Laccadives and Andamans expressed no opinion. It is only the three States of Andhra Pradesh, Himachal Pradesh and Kerala which supported the Bill. Thereafter, Sir, when the Committee met for the first time or it may have been the second time, it was decided that we should call for witnesses of various categories to obtain their views on this subject. And you might remember, Sir, we decided to call witnesses of four categories. The first were the lawyers and judges or ex-judges. Among them were Mr. M. C. Setalvad, former Attorney-General, Mr. A. S. R. Chari, senior Advocate of the Supreme Court and Mr. A. N. Mulla, retired judge of the Allahabad High Court and at present a Member of Parliament; he is also a man of literature and a renowned Urdu poet.

Then, there was Mr. G. S. Pathak, ex-Law Minister and at present the Governor of Mysore. Among the literary men, apart from Mr. Mulla, we also invited Mr. Mohammad Fazl-ur-Rahman, Pro-Vice-Chancellor of the Aligarh Muslim University who is a renowned scholar and a well-known Urdu writer. Then, Sir, among artists and painters and cinema artistes, we took the evidence of Shrimati K. Shridharani, who is a painter, Shrimati Leela Chitnis and Shrimati Snehaprabha Pradhan, both film artistes, and Mr. Prithviraj Kapoor, who is also a noted film actor and Director. Then, we took the evidence of Prof D. K. Badekar, Representative of the Maharashtra Sahitya Parishad, Poona, Mr. B. R. Chopra, Films Producer and Director, Mr. B. K. Nandee, Regional Officer, Central Board of Film Censors, Bombay and Mr. B. P. Bhatt, Chairman, Central Board of Film Censors. Then we took the evidence of some of the most important newspapermen and others, among whom were Shri K. N. Bamzai, Registrar of Newspapers for India, Shri A. K. Jain, President, All India Newspaper Editors' Conference, Dr. V. K. Narayana Menon, Director-General, All India Radio, and Shri Asoka Sen, Joint Secretary, Ministry of Home Affairs. So it is wrong to say, as was mentioned by my friend, Mr. A. P. Chatterjee, that among those whom the Select Committee examined as witnesses there was not a single man of literature, a single painter, a single artist of prominence, and therefore he failed to understand how the Select Committee has come to the conclusions it has arrived at. I want to inform him—I am sorry he is not present here today—and also the House that we did our very best to take the evidence of persons of all classes and shades in order to arrive at a better understanding of the whole matter.

Now, Sir, when the Bill of Diwan Chaman Lall came to the Committee, it was clearly apparent to the Committee that his intention was to liberalise sections 292 and 293 but ultimately the Select Committee was of the view that instead of the sections being liberalised it was necessary to place greater restrictions on them. And from that point of view it decided to make the provisions more strict and capable of better enforcement in the courts of law. During our working in the Committee and even earlier we had been informed that the Home Ministry was finding it difficult to restrict circulation or ban circulation of various newspapers or other books not considered healthy for the society and as such we also thought that the Bill which should come forward before the House should be such as would be sufficiently effective to ban all such publications. My friend, Mr. Mani, has shown us various articles and pictures which have appeared in the 'Observer' and which are highly objectionable, but these pictures and these writings when they went, so far as our information goes, to various courts of law in the various States, conviction could not be obtained for the publisher or the printer of them because of the fact that the law was not considered sufficiently specific and was not found strict enough to punish such offenders. Therefore it was natural that the Committee decided that instead of liberalising the law, as public opinion stood in our country, it was necessary to limit its scope and to make the law stricter.

At the same time, there is another fact which I would like to tell you but which of course is already known to you

[Pandit S. S. N. Tankha]

and which point I had raised before the Committee itself that the view of the lawyers and judges who appeared before us was that the law as it stands in the Indian Penal Code today was sufficient in itself to punish all kinds of offenders and to ban books which should not be allowed to be circulated in the country. From that point of view, it became a matter of serious concern for me to decide whether or not I should take the view that no change should be made in the law and that the present sections 292 and 293 of the Indian Penal Code should be considered sufficient for outlawing bad literature, books or journals. Now a change was brought about in my mind. I shall come to that presently. I would, however, like the House to know how the views of the eminent gentlemen—lawyers and judges—who appeared before us gradually changed also during the sittings of the Committee. The first eminent lawyer who appeared before us was Mr. M. C. Setalvad. With your permission, I would like to quote a few words from his printed evidence before us. He states and says on page 1 of the printed evidence:

> "The proposed amendment may be approached from two aspects. First, is it necessary? And, secondly, if necessary, is it an appropriate amendment? And I will deal with these two aspects in the order in which I have mentioned them.
>
> As to the first, it appears to me that the amendment is not needed. It seems that the amendment is inspired by a recent change in the law in England regarding obscenity effected by the Obscene Publications Act, 1959, known as the Jenkins Act."

On page 2, he expresses his opinion, regarding the amendment which was proposed by Diwan Chaman Lall, in these words:

> "The proposed amendment, even if it were to be made, really misses the fundamental point, namely that what is to be judged is the effect of the writing on society or people in general, and that is what the courts have said."

Then, Sir, on page 4 he says:

> "If I understand the idea of the proposed amendment correctly, ..."

namely, the proposed amendment by Diwan Chaman Lall as it went in its original form from this House,

> "...it is meant to liberalise the provision while you seem to be wanting to move in the other direction."

Further on the same page, after Mr. Mani had intervened, he says:

> "If the intention is to tighten the law....one might insert a definition of the word 'obscenity' which will have the effect of tightening it. That will have to be drafted."

Now, it is this which made the Committee think of inserting a definition of the word 'obscene'. Before that there was no question of defining the word 'obscenity'. Now, Sir, when this suggestion was made, it was you who suggested this in the Committee. Your suggestion appears on page 10 and I quote your words:

> "I would suggest to the Law Ministry to draft an amendment on the lines that we have been discussing and place it before Mr. Setalvad so that he may also apply his mind".

Then what happened was that it was decided that the Law Ministry would prepare a draft in consultation with Mr. Setalvad and that when it was prepared it would be placed before the Committee for its consideration. We are obliged to Mr. Setalvad for having spare the time and rendered help to the Law Ministry officials who were present there, and brought out an amended version of the Bill, not on the lines desired by Diwan Chaman Lall, but more or less in the opposite direction, that is to say, to tighten the law instead of liberalising it, and these amendments, I might inform my hon. friend Mr. Mookerjee, an ex-Justice of the Calcutta High Court, that the wordings of the amendments which have been made in the draft have been taken from various rulings of the courts which the courts have given expression to in various cases from time to time, and more particularly from the judgment of the Supreme Court in the case Ranjit D. Udeshi *versus* the State of Maharashtra—A.I.R. (1965) S.C. 881. In this case the learned Judges have observed:

> "The word, as the dictionaries tell us, denotes the quality of being obscene which means offensive to modesty or decency; lewd, filthy and repulsive. It cannot be denied that it is an important interest of society to suppress obscenity."

Here I would particularly remind the hon. lady Member who spoke previously and said that there was no need for us to curb this tendency. The Judges in the Judgment have said:

> "It cannot be denied that it is an important interest of society to suppress obscenity."

They are thus very clearly of the view, namely, that the tendency of obscenity should be curbed and all obscene books and literature should be banned. Therefore I think it will be only a proper thing for this House to impose greater restrictions. Further on, the Judges proceed and say:

> "There is, of course, some difference between obscenity and pornography in that the latter denotes writings, pictures, etc. intended to arouse sexual desire while the former may include writings, etc. not intended to do so but which have that tendency. Both, of course, offend against public decency and morals but pornography is obscenity in a more aggravated form."

They have also observed, Sir, and I quote from the same judgment:

> "This consideration marches with all law and precendent on this subject and so considered, we can only say that where obscenity and art are mixed, art must be so preponderating as to throw the obscenity into a shadow, or the obscenity so trivial and insignificant that it can have no effect and may be overlooked. In other words treating with sex in a manner offensive to public decency and morality (and these are the words of our Fundamental Law), judged of by our national standards, and considered likely to pander to lascivious, prurient or sexually precocious minds, must determine the result."

These latter words in the definition we have taken from this judgment and other judgments and incorporated them in the definition of obscenity, and these we have accepted for amendment of section 292. According to Mr. Mookerjee these words did not denote anything in particular. But I think the Committee was right in including these words in the amendment since they form part of the law of the land.

It is these decisions, particularly the decision of the Supreme Court and even of other High Courts, that will determine whether a person has or has not infringed the law of the land.

While I was pointing out that Mr. Setalvad was of the view that no change was needed, he ultimately accepted to help the Committee in drafting the amendment and it was through his good offices that we have this Bill before us as it is today.

I would also like to inform the House of the views on this matter of some other lawyer witnesses also. I will now quote to you the words of Mr. A. N. Mulla, Retired Judge of the Allahabad High Court. It appears on page 176 of the printed Evidence. He has stated:

> "I find that the provisions of law as they exist today are sufficient but if you think that some added help should be given to courts in order to crystallise their minds on certain definitions, on certain aspects of the case and issue you can do so."

He has further said:

> "I think as a whole there is no reason to be dissatisfied with the interpretation given by the higher courts at least. I don't know what interpretations were made at the level of the magistrate's court."

So his view also was that no change was needed in the law as it stands today.

Then, Sir, I would quote to you the words of Mr. G. S. Pathak, our ex-Law Minister. They appear on page 191:

> "According to my thinking, the existing law is clear and comprehensive, and it is not necessary to amend it in the way in which it is being sought to be amended by my hon. friend Diwan Chaman Lall."

That was about the original Bill as it went up. Further on, he says:

> "Now my reading of the law as it exists today, and as it has been interpreted by the Supreme Court, is that considerations of public good or social purposes are relevant considerations under the existing law itself and even now it is open to the accused to set up, by way of exception, a plea that the book or the article he has produced was intended to serve public good..."

And on page 192, he says:

> Then another reason why I am inclined to oppose this Bill is that the Supreme Court's decision, which is a recent decision of 1965, in my view reflects the national standard or the community standard and when

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according to the consistent decisions it has been held that the court is the ulimate judge of whether any particular matter is obscene or not, then in cases where public opinion has changed, where views of the community on sex matters have become more liberal, if I may use that expression, then it is for the Supreme Court on the evidence before it or on the knowledge of such notorious facts as it has to take into account the change in the conditions which have come over the society... such a situation is taken care of by the fact that the ulimate judge of the question whether any particular matter is obscene or not is the highest court of the land."

He has also stated "To my thinking there is no lacuna in the law" and as such, according to him, there was no need for any change. But, as I have informed the House through you, Sir, the main consideration which led us to suggest a change in the law was that the Home Ministry told us very clearly that they were helpless in curbing the journals, or in banning the journals, which were being circulated in Delhi and elsewhere. This is the main consideration which changed my view and changed my stand from the position which I had originally thought of taking, namely, that there should be no change in the law, and it was because of this that ultimately I agreed with the Committee that the law should be amended in the manner suggested. Because of the difficulties of the Home Ministry which I have placed before the House, I would commend to it most strongly that it should also realise the difficulties of the Government and help it to amend the law in the manner we have suggested. After all, Sir, we have tried to do our best in getting the views of all types of people on this subject and have given our most careful thought to their opinions in the matter.

Now, Sir, I have given the views of the lawyers and judges. Among the artistes and painters, the views of the two ladies, Shrimati Leela Chitnis and Shrimati Snehprabha Pradhan cut each other. While Shrimati Leela Chitnis was of the view that the law should not curb the painters and artistes in giving expression to their feelings, Shrimati Snehprabha Pradhan was definitely of the view that it was a very bad sign of the times that advantage was being taken by the artistes in dissipating their energies in giving expression to unhealthy materials. And Shrimati Shridharani was of the same view as Shrimati Leela Chitnis that the artistes should not be prevented in any manner; whether it be a painter, writer or a poet, he should be given free hand to give expression to his thoughts and feelings in any manner, words or figures may like to. The Committee, however, did not agree with the view of those who were for allowing the writers and artistes to give free expression to their feelings in an unrestricted manner but at the same time we took good care to see that good literature or good paintings are not banned. We have specifically provided in the Bill that whether it is a writer whose book is under question or a painter whose painting is under question or a sculptor whose sculpture is under question, if it is considered to be for public good, it shall not be banned. Therefore it is wrong to say, as has been maintained by some of the critics of this Bill, that we are banning things unnecessarily and that we are hampering the work of the artistes, writers and others. Of course, it will be for the courts to decide which ideas given expression to serve the public good. We also said that if a dispute arises on this point, then the evidence of experts may be taken by the courts. But my friend, Mr. A. N. Mulla, was not entirely in favour of such a provision.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Mr. Tankha, you may continue on the next day.

The House stands adjourned till 11.00 A.M. on Monday.

The House then adjourned at five of the clock till eleven of the clock on Monday, the 4th December, 1967.

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