

[श्री गिरिराज किशोर कपूर]

जवाब देता है, "आप मेरे जैसा पुत्र लेना चाहती हैं। शादी के बाद मेरे जैसा पुत्र हो या न हो या पुत्री ही हो। मगर भारत के मनुष्य के पास आया हुआ आदमी वापस नहीं जाता। मैं तुम्हारी इच्छा को पूर्ण करूंगा। मैं ही तुम्हारा पुत्र बनता हूँ। तू मुझे पुत्र पुकार और मैं तुझे मां पुकारूँ।" यह आदर्श कहां से आया था। इसकी शिक्षा होती थी और इसके लिये गुरुकुल आश्रम हुआ करते थे और इसके लिये हमारा समाज प्रयत्न करता था। तो हमारे यहां का चरित्र जो है, वह बना रहे, मेरी मंशा बस यही थी।

हम जहां इन कानूनों को एक तरफ ला रहे हैं, समाज की हालत को देखते हुए कानूनों में संशोधन करना जरूरी है, मगर केवल कानून में संशोधन करने से समाज में पली कुरीतियां दूर नहीं हो सकतीं। उनको दूर करने के लिये हमें समाज के मानव को फिर शिक्षा देनी पड़ेगी कि इस संसार की नारी भारतवर्ष के नर के लिये मां ही हो सकती है, बहन ही हो सकती है, बेटी ही हो सकती है और इसी से समाज का उत्थान हो सकता है। जिसको हिंदू धर्म कहा जाता है वह हिन्दू धर्म नहीं है, वह मानव धर्म है, और मानवता के लिये है और उससे मानवता सुख और कल्याण से जी सके, दूसरों को ज़िन्दा रख सके, वही भारतीय संस्कृति है। एक बात आप देखते हैं कि भारतीय संस्कृति में वह लोग भी हैं जो अहिंसा परमांधर्मी कहते हैं। मच्छर को मारने में पाप समझते हैं और भारतीय संस्कृति में वह भी है जो झटका और हलाल करते हैं। हम किसी का इसमें विरोध नहीं करते मगर जिसमें समाज का चरित्र दिन पर दिन गिरता जाय उसका मेरे खयाल में सब विरोध करेंगे। मैं फिर हाउस को धन्यवाद देता हूँ जिसने मुझे इतना सुना। धन्यवाद।

THE DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

THE INDIAN PENAL CODE (AMENDMENT) BILL, 1963—continued

THE DEPUTY CHAIRMAN: Mr. Bhupesh Gupta was speaking the other day. He is not here. I call Mr. Sapru.

SHRI P. N. SAPRU (Uttar Pradesh): Madam Deputy Chairman, the question of what is obscene in literature, science or arts or any other branch of learning and what is not obscene is one of the most difficult questions that we have to consider. I think no satisfactory definition of obscenity has yet been evolved by the wit of man. Some of the finest literature in the world is obscene.

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

I am speaking with all reverence of those books, but parts of the Old Testament or parts of the Hindu Scriptures would be called obscene by those who hold very narrow views on the question of obscenity. Many parts of Shakespeare's works are obscene. If you were to have a rigid definition of obscenity, you would have to rule out many works of Emile Zola or, as my friend, Mr. Chaman Lal has said, you have to rule out a book like James Joyce's "Ulysses" or a book with such a profound psychological insight as Radclyffe Hall's "Wells of Loneliness".

You will remember, Sir, that two years back—I think it is about two years now—they had in Britain what is known as the "Lady Chatterley Lover's" case. There a Jury of 12 persons—9 were men and 3 were women—came to the conclusion that "Lady Chatterley's Lover" was not an obscene book. I confess that I am one

of those who read that book about the time it was published, I think in 1930, and I am a great admirer of D. H. Lawrence. Parts of that book "Lady Chatterley's Lover" might seem vulgar to us but they are really beautiful, and they give us an insight into human character and into the working conditions of industrial Britain such as few other books do or few other novels do. When the trial was going on, experts came into the witness box. Bishops came and they said that the book was of profound moral significance; they said that the book was a highly ethical book. Men of letters, men of stature, professors of literature in British universities, all came forward and they deposed to the high quality of "Lady Chatterley's Lover". In the Charge to the Jury, the Judge who was rather conservative by nature was inclined to the view that perhaps the book was obscene, but the Jury came unanimously to the conclusion that the book was not obscene, and "Lady Chatterley's Lover" is allowed in Britain. I used to possess a copy of it in the old days, I do not know whether I have the copy with me, I think I have lost it, but I personally think that the opinion which was expressed by the Judges of the Supreme Court the other day—I have very great respect for the Judges of the Supreme Court, I have very great respect for their knowledge of law, for their profound wisdom in the ways of the law—the opinion expressed by the Judges of the Supreme Court that the book is obscene is, in my opinion, erroneous. I think that, had they brought to bear upon the book a more modern outlook, they might have found that there was something profound about it.

Well, what I was going to say is that the frontier between what is obscene and what is not obscene is hard to define. In Britain at all events they had the advantage of leaving their decision to the voice of the 12 Jurymen who assisted the Court of Assizes. Here what do we

find? We find that the person who is charged with the responsibility of deciding whether a book is obscene or is not obscene is a Customs official who probably is good in his own way, is good in his own line, but who does not know what literature is, or a Magistrate who deals with kidnapping and abduction cases but who has no acquaintance with recent advances in psychological sciences or literatures of the world, and then ultimately the cases go to the High Court or the Supreme Court. That I think is a very very wrong way of going about in this business. What Diwan Chaman Lall wants to do is not to do away with the ban on obscenity. He does not want to encourage obscenity. What he wants is that it should be permissible for the publisher of a book or for the editor of a paper or for anyone who is charged with producing obscene publications to bring experts to support his case that the work is not obscene. But if they say that the book is obscene, then the book will be obscene. It will be in those circumstances for the Judge to decide whether the book is obscene or is not obscene. This is not a revolutionary change, this is a change which has been effected in Britain years ago and this is a change which should surely be effected in India considering that India claims to be more radical in her thinking than Britain, that India claims to be more socialist in her thinking than Britain.

I was rather amazed by the speech of my friend, Mr. Bhupesh Gupta, who is not here today. Mr. Bhupesh Gupta seemed to be siding with the conservatives. He was trying to suggest that books like 'Lady Chatterley's Lover' were not good books in a society such as ours. He was also inclined to doubt whether Freud had made any contribution to human knowledge, and I wondered why he was talking in that way. And then it struck me that he was propounding the Marxist-Leninist theory. Our literary critics think that literature interprets life; artists see life as it is and interpret it in their own way.

[Shri P. N. Saprú.]

But a Marxist-Leninist theorist would say that life must be interpreted according to a certain scheme of social good which has been enunciated for eternity by Marx and Lenin in their great works. They do not believe in art for art's sake; they do not believe in literature for literature's sake or they do not believe in science even for science's sake. Literature or art or science must have some social objective and that social objective must be the objective enunciated for all time by the founders of the Communist doctrine. And when Mr. Bhupesh Gupta spoke, I could see the Communist mind working and I realised then that though we often find ourselves in the same lobby, the outlook is different because here I feel devoted to freedom of thought and to freedom of expression which I hold very dear; I think they are valued possessions of mankind and I would put up with what is called obscenity in order to find out what is best in literature and science. The point which I am driving at is that the viewpoint of a person who does not believe in the Marxist-Leninist doctrine is bound to be different in regard to what is obscene and what is not obscene, what is vulgar and what is not vulgar, from those who believe in the Marxist-Leninist doctrine. I think in our country it has been a tradition to take a liberal view in matters of expression of things connected with art, literature and science. We have some beautiful paintings, we have some beautiful sculptures in the Ajanta Caves and other places. We have some literature which some people might call obscene but which are of great value from the scientific point of view. In the *Koka Shastra* and the *Kama Sutra* and other books of a similar character, we have a liberal outlook and I do not see why we should approach this question from a very narrow angle from which our friends seem to be approaching. One would have thought that after the trial of the publishers of "Lady Chatterley's Lover" in Britain, steps would be

taken to liberalise the law along with the lines suggested by Dewan Chaman Lall in his amending Bill. But Government seems to be unwilling to do so. So much so that the opinion of the Supreme Court was invited by the State. Foreseeing prosecution, the person concerned took the matter to the Supreme Court and the Supreme Court has taken an unfortunate view that "Lady Chatterley's Lover" is an obscene book. I think it is desirable for us, it is important for us, to have a rational view on the question of obscenity. Let me try and define what is obscene. I have no perfect definition of obscenity and I confess that the definition that I am suggesting is of a tentative character and may not be free from defects. I would say that a book is obscene if it has a tendency to deprave the people who read it; I would say that a book is obscene if it has a tendency to lower the moral-tone of the community. Now, if we apply that test, we will find that in many of these great books sex is discussed in a free manner without inhibitions. Many books do that sort of thing but they are of fundamental importance for the study of man, for the progress of knowledge, for search after truth. After all our effort should be to behave as if we are seekers after truth and in our efforts to search for truth we come to certain conclusions; as Havelock Ellis or Freud or Hall in "Wells of Loneliness" seems to suggest, we cannot condemn a person who is indulging in language which we regard as obscene, as immoral. I, therefore, think that some such thing, as suggested by Diwan Chaman Lall, is necessary because it is desirable that the publications meant for public good, or *bona fide* purpose or for science and literature and any branch of learning should not be declared as obscene literature under Sections 292 and 293 of the Indian Penal Code.

Sir, the word *bona fide* is important. Diwan Chaman Lall is not suggesting that free licence should be

given for the publication of obscene matter in our country. That does not mean that he does not like restrictions to be placed on obscenity or on the publication of obscene matter, but he would like those restrictions to be of a reasonable character, of a *bona fide* character and he would like to make it possible for the opinion of experts to be invited on the book under consideration.

Now, Mr. Vice-Chairman, I would like to invite your attention to the specific proposal that Diwan Chaman Lall has made in clause 2 of his Bill:—

“293A. Nothing contained in section 292 or section 293 shall apply to any book, pamphlet, writing, drawing, painting, representation or figure meant for public good or for *bona fide* purposes of science, literature, art or any other branch of learning:

Provided that in the event of any dispute arising as to the nature of the publication, the opinion of experts on the subject may be admitted as evidence.”

So you will see that sections 292 and 293 will remain much as they are in their present form in the Indian Penal Code but a rider will be added which would make it possible for courts to understand the viewpoint from which this Legislature had approached this question of obscenity.

The question at the trial of an obscene literature would be this, namely whether this is a book of a *bona fide* character. We have to consider the question from the point of view of society, whether it will promote science, literature or any other branch of learning. If the court comes to the conclusion that it will have the tendency to promote such knowledge, it will not prohibit the book from being imported into India and from being published in India. This, I think, is the meaning of what Diwan Chaman Lall suggests, and if

this amendment is effected in our Penal Code, it will make it possible for us, or it will make it possible for intelligent readers of current literature to read many current books or many books in the modern world in European and other countries.

Sir, today Indian young men and Indian young women are deprived of the opportunity of reading great works of art, science and literature because of a narrow interpretation put upon the word “obscenity” by courts of law who may not be conversant with the tendencies in current literature. Therefore, what he is doing is to provide a criterion for judging whether the book is or is not of an obscene character for our courts of law and he is providing them further with the opportunity of hearing the case for the publication of the book as understood by experts on the subject in dispute.

Sir, in the case of the book, “Lady Chatterley’s Lover”, I followed the entire day-to-day proceedings of the case. Many witnesses of eminence in the world of religion came forward and testified to the healthy influence that that book was likely to exert upon its readers. One of them described it as a highly ethical book. That may or may not be exaggerated praise. Opinions may differ as to whether it is a highly ethical book, but it is certainly not a book which will make any person less ethical than what he was before reading the book. The author had described sexual love and has done it exceedingly well. So is the case with other writers. If we were to apply this test rigidly, we should have to ban many works. I think, therefore, that the Indian Government, which is a radical Government, which has a great radical tradition left to it by the founder of the nation, should take a large view on this question and make it possible for all that is best in literature, art or science to be published even if it be obscene for

[Shri P. N. Saprú.]

purposes of the development of the human mind.

I think stress has to be laid about this aspect of what is good and what is not good in literature, in judging whether a book is obscene or is not obscene. I think we have to emphasise that in order to decide what is proper or what is not proper we must be guided by competent expert opinion and this is the change that Diwan Chaman Lall would bring about by amending Sections 292 and 293 of the I.P.C. It is to remove this lacuna that he wants this Bill to be passed and the justification for the clause, as he has put it, is that this is the law in other countries, in other modern countries. This is the law in England. This change was effected in England in 1922 if I am not wrong and I believe that in U.S. the law is even more liberal in this respect than the British law. What we want really to do by this section—by supplementing it these provisos—is to make the law conform to the law in modern countries in regard to obscenity in literature, art and science.

It is very necessary that in science there must be no inhibitions. Probably Mr. Bhupesh Gupta would agree that in science there should be no inhibitions but then he would add a rider that they must conform to the Marxist-Leninist theory of life. For example after a great deal of struggle among the scientists, they had come to accept Darwin's "Origin of the Species" as a profound book which explains the phenomenon of the evolution of life on this earth but the Russian scientists have discovered that Darwin was on the wrong track and they repudiate Huxley and Darwin and they have substituted in their praise Lyshinsky. That of course is not an objective way of looking at questions. The objective way is to search after truth. I think it was Lessing who said; "If we have to choose between truth and the search for truth, he would choose the

latter." What I believe distinguishes the intellectual men from the conventional persons is the approach to questions or such matters as life, death, the origin of life and survival of men and questions of that type. These are the matters on which people should be allowed to express themselves freely and it may be that in writing even a book on political theory or in writing a book on religion you may have to draw attention to certain aspects of life which are called pornographic. They are not pornographic if you view them in their proper perspective.

I am not able to understand how Mr. Gupta came to describe Freud as a person of no significance. The three or four persons who have changed the modern outlook on life are, I should say, Charles Darwin, Karl Marx, Sigmund Freud, Albert Einstein and Mahatma Gandhi. I will also include Lenin. They represent a class by themselves. They have changed the outlook on things of life on this planet of ours. Therefore I would say it would not have been possible for a genius like Freud or Einstein to flourish in the cramped atmosphere of a Communist shell. That is what makes Communist theory unacceptable to many who do not believe in the acquisitive instinct in life. Personally I do not believe in the profit-motive in life. I think man does his work best when he is thinking of the community and not of himself. I do not believe in individual salvation and my feeling is that he who seeks individual salvation shall be denied it. Therefore I am not bothered as to what will happen to me after I am dead and gone. I find myself in a society of human beings and I have to adjust myself in that society. I am not a Robinson Crusoe on a Desert Island and my morals are determined by my relationship to my social organism of which I am a part and from which I cannot be separated without grave injury to my inner being. There are books or novels which have this as their central theme

and they discuss sex in a free manner, in a manner which would seem to some old persons with a very very conservative mind living in the cloistered monasteries of the 14th or 15th century, as indecent and I think our criterion should not be the effect that they produce upon the minds of men of this type. What we want is to substitute for their judgment a better judgment and that is the judgment of experts who can speak with authority on the modern aspect that these obscene books present.

Now, Mr. Vice-Chairman, I have taken perhaps deliberately a little more time, than I should have, of this House, and I would like with these words to support very strongly this amendment. As a matter of fact, when Diwan Chaman Lall had the idea of sponsoring this amendment to the Indian Penal Code, he and I had a talk and both of us did decide on a common amended Bill. Then I dropped out but Diwan Chaman Lall remained persistent in his advocacy of the removal of this ban, and I hope, Sir, that the House will give to this question of obscenity the serious consideration that it deserves.

THE VICE-CHAIRMAN (SHRI ARBAR ALI KHAN): You have given full support to Diwan Chaman Lall.

पंडित भवानी प्रसाद तिवारी (मध्य प्रदेश) : उपसभाध्यक्ष महोदय, जो दीवान चमन लाल जी ने संशोधन प्रस्तावित किया है उसे अभी माननीय सदस्य सप्रू जी ने कानूनी नजरिए से देखा है और दिखाया है और मैं चूंकि इस संशोधन में साहित्य की, ज्ञान की, अथवा कला और विज्ञान की चर्चा है इसलिए उसे उस नजरिए से पेश करता हूं।

असल में कला और विज्ञान ये जोवन को अग्रसर करने वाले दो तत्व हैं और इस संशोधन के द्वारा यह स्पष्ट कर दिया गया है—जिसका कि मैं समर्थन करने खड़ा हुआ हूँ—कि इन दो तत्वों की परख वे लोग करें जो कि उसके अधिकारी हैं और दूसरे, वे लोग न करें जो कि इसके

अधिकारी नहीं हैं। स्पष्ट रूप से जहां कला का क्षेत्र है वहां वह अश्लील है या नहीं है, अच्छा है या बुरा है, उस के गुणदोष का निर्णय न्याय पर क्यों छोड़ा जाता है। मुझे ऐसा लगता है कि कला का और न्याय का कोई सम्बन्ध नहीं आता। कला की परख कलाकार ही कर सकता है। और तभी तो यह बात सामने आई कि दो देशों के ऊंचाई पर स्थित दो न्याय-पदों ने एक पुस्तक के गुण-दोष के सम्बन्ध में मतभेद रखा। असल में न्याय का सम्बन्ध विवेक से है क्या सही और क्या गलत है इसका निर्णय करने से है, कानून की नजर में क्या अपराध है क्या निरपराध है इसका निर्णय करने से है और साहित्य और कला बिल्कुल ही दूसरी चीज है जिसका उद्देश्य सौंदर्य के आकलन से और उसकी अभिव्यक्ति से है, जहां एक ओर भावनाहीन बुद्धि के चमत्कार की आवश्यकता पड़ती है वहां दूसरी ओर भावना और अनुमति की आवश्यकता पड़ती है और इसलिए हम किसी भी कलात्मक कृति के बारे में, किसी भी सौंदर्य की वस्तु के बारे में, अलग अलग नजरिया साफ देखते हैं। एक गुलाब का फूल है उसे जो वैज्ञानिक है या आयुर्वेदिक शास्त्र का ज्ञाता है वह इस नजरिए से देखेगा कि इसकी क्या औषधि बनाई जा सकती है और जो एक सौंदर्य-पारखी है वह उसकी सुंदरता, कोमलता और भोलेपन पर नजर डालेगा और जो इन दोनों तत्वों से सम्बन्ध नहीं रखता जो बुभुक्षित है वह जब चरने जायेगा तो उसे खा जायेगा, उसे किसी प्रकार का ज्ञान नहीं है। तो ये नजरिए सामने आते हैं और इस लिए कला की परख करने में यदि ठीक कलाकार न हो तो गलती होती है।

एक पुरानी कहानी मुझे याद आती है। जब यहां पर स्वतंत्रता-संग्राम चल रहा था तब अंग्रेजों को यह आवश्यकता हुई कि वह अपने देश से दमनकारी अफसर यहां भेजें और उन्होंने एक अफसर भेजा और वह अफसर मैजिस्ट्रेट भी था। जैसा कि अभी भी कई स्थानों पर है कि

[पं० भवानि प्रसाद तिवारी]

अफसर और न्यायाधीश का काम मिला जुला है तो एक ताजा विलायती अफसर विदेश से आया और उसने देखा कि यह जो आन्दोलन चल रहा है वह उग्रता धारण कर रहा है और किसी ने इसका आधार उसे यह बताया कि गांधी जी गीता पढ़ते हैं और उसका आधार गीता है तो उन्होंने गीता को मंगवाया और जब उसे पढ़ाया तो उन्होंने देखा कि उसमें बार बार आता था "हे अर्जुन, तुम युद्ध करो" तो उनकी समझ में आया कि यह जो विद्रोह भारतवर्ष में चल रहा है उसी की ओर इसका संकेत है। वह कोई बहुत कुछ तो जानते नहीं थे, नये नये न्यायाधीश थे, नये नये अफसर थे, तो उन्होंने हुक्म निकाला कि इस किताब को जब्त कर लो और इस गीता के लेखक कृष्ण को गिरफ्तार कर लो। बाद में उन्हें गलती मालूम हुई और उनकी हसी हुई लेकिन इस तरह की बात हुई।

तब यह है कि असल में कला एक ओर सुन्दर को सजीव बनाती है तो दूसरी ओर जो बीभत्स है, कुरूप है, भीषण है उसको निर्जीव बनाती है और जब भीषण को निर्जीव बनाने चलती है तो जो लोग कलाकृति को नहीं समझते वह इस भ्रान्ति में पड़ जाते हैं कि यह अश्लील है। वैसे बीभत्सता को उधाड़ना भी एक कला है जिससे कि वह निर्जीव बनती है और ऐसी स्थिति में ही लोग भ्रान्ति में पड़ जाते हैं। असल में कला और विज्ञान पर कोई मापदंड नहीं लगता, उपयोगितावाद का भी मापदंड लगाइये तो नहीं लगेगा, देश और काल के घेरे में घेरिए वे घिरेंगे मही। और तब यह स्थिति साफ साफ हो जाती है जो अभी माननीय पी० एन० सप्रू साहब कह रहे थे। हमारे भाई भूपेश गुप्त से यही गलती हो गई कि उनकी वक्तव्य कला खुद कला के लिए हो गई और वह स्वयं उसमें फंस गए अपनी बात के कहने में। आज वह होते तो कहने में मजा आता, वह यहाँ है नहीं तो क्या कहूँ कि उनकी क्या गलती थी। उनके दल ने

पहले कालिदास और तुलसीदास के साहित्य को सामन्तवादी साहित्य कहा और बाद में आज जब कि रूस में कालिदास को रंगमंच में दिखाया जाने लगा और तुलसीदास के साहित्य का अनुवाद किया गया तब उनके दल को यहाँ भी उसका महत्व मालूम हुआ कि सचमुच में यह जो साहित्य है वह महत्वपूर्ण है। तो किसी मार्क्सिस्ट या लेनिनिस्ट सिद्धांत या कम्युनिस्ट पार्टी के सिद्धांतों में यह कला घेरी नहीं जायेगी, वह मापदंड नहीं लगेगा और इसीलिए यह बिल आया है जैसा कि मैंने पहले कहा।

अब जैसे विज्ञान ही है, कोई मेडिकल साइंस है, कोई मनोविज्ञान है, इन चीजों में बार बार ऐसी स्थितियाँ आती हैं कि जिसको ऊपरी नज़र से देखा जाय ठीक नज़र से न देखा जाय तो अश्लीलत्व की सज़ा दी जा सकती है। इसी प्रकार जो कलात्मक वस्तुएँ हैं—जैसे खजुराहो की कला है जहाँ कि कलाकारों ने अपनी आत्मा उड़ेल कर पथरों में प्राण पैदा किया है और जिसका दर्शन करने विदेशों से लोग आते हैं . . .

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): You can continue your fine speech on art and literature next year.

PT. BHAWANIPRASAD TIWARY: Mr. Vice-Chairman, I close my speech here and now.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The House stands adjourned till 11 A.M. on Monday, the 14th December, 1964

The House then adjourned at five of the clock till eleven of the clock on Monday the 14th December, 1964.