

*The Bill was, by leave, withdrawn.*

MR. DEPUTY CHAIRMAN: We shall take up the next Bill moved by Shrimati Sasikala Pushpa. She is not present. The next one is by Dr. Subramanian Swamy.

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**THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES  
(AMENDMENT) BILL, 2016**

DR. SUBRAMANIAN SWAMY (Nominated): Sir, I move:—

That the Bill further to amend the Protection of Children from Sexual Offences Act, 2012, be taken into consideration.

Mr. Deputy Chairman, Sir, I thank you for the opportunity. This is a matter of law arising out of the passage of the Protection of Children from Sexual Offences Act, 2012. The Act had been widely welcomed but the drafting in some Sections has been so poor that many people in the Judiciary, particularly, have spoken to me about it and pointed out the harassment they themselves are being subjected to by the application of this Act. So, I begin that my Amendment Bill essentially aims at Section 19 and is seeking deletion of the entire Section. So, let me begin by saying what the Section says.

SHRI JAIRAM RAMESH (Karnataka): Is he trying to force us to bring a Bill?  
...(Interruptions)...

MR. DEPUTY CHAIRMAN: No, no. He is moving his Bill. ...(Interruptions)...

अल्पसंख्यक कार्य मंत्रालय के राज्य मंत्री; तथा संसदीय कार्य मंत्रालय में राज्य मंत्री  
(श्री मुख्तार अब्बास नकवी): रमेश जी, आप चिन्ता मत कीजिए। ...(व्यवधान)...

DR. SUBRAMANIAN SWAMY: Section 19 of this Act says, ‘Reporting of offences: (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any person..’ I underline the word ‘any person’ ‘..including the child who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information – (a) the Special Juvenile Police Unit; or (b) local police.’ Then it goes on for other sections. Some of them are just routine and I don’t need to read all of them except that Sub-Section (5) which says, “Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter or to the nearest hospital within twenty four hours of the report,

as may be prescribed.” Now, on the face of it, you may not see any misuse of the law. But why the judiciary has been complaining this to me is that when it says that ‘any person who has the knowledge that such an offence has been committed shall provide the information to the police.’ Now, there are not one or two, there are, at least, 27 listed cases in different parts of the country at different levels particularly at the High Court level where a Judge is hearing a divorce case. In the divorce case, the estranged wife, she says, “I want divorce because my husband has molested my daughter.” Now, the Judge hears this. It is not that the Judge is at fault or it is not that the Judge is an eyewitness. The Judge has been assigned this brief by the Chief Justice of the High Court, for example, to hear this matter. Now, what happens is that if the Judge does not now go and file a report with the police, very often the husband or the wife, as the case may be, makes a complaint that the Judge having heard this should have gone and reported it to the police, therefore, Section 21, which takes it is a cognizable offence, an FIR is registered against the Judge. The Government should call for this report from the judiciary, often the State Government, and find out how many such things have been misused. This is the way of terrorizing the Judge by one of the clients, either the plaintiff or the respondent. Therefore, what happens is that the Judges are now increasingly refusing to take divorce cases and this has caused a big backlog of divorce cases because most of the Judges are afraid that this would happen. So, I would begin by saying this, and that is why I have said in my Statement of Objects and Reasons the following:— “Section 19 of the Protection of Children from Sexual Offences Act, 2012 compels even the Court Judges...” – It says any person – “hearing a divorce case or any marriage discord case to provide information to the police authorities or otherwise face penal punishment under Section 21 of this Act.” This places an unacceptable onus on the public and public Judicial persons in their mere apprehension of a possible offence being committed. This Section should have had an exception. The exception should have said, ‘all those who conduct judicial proceedings or adjudication proceedings shall be exempt from this section.’ So, there is a big flaw in the drafting. Consequently, therefore, the whole section has to be struck down and a new amendment, maybe, brought by the Government. Now, I say this because having such a vague presentation leads to misuse; this badly drafted is capable of being misused. I don’t know how it escaped, whether it went to the Joint Select Committee, I have not been able to find out from the Parliamentary Library any evidence of that. This ought to have been important. I think because of Nirbhaya matter or something they rushed through this and brought it in, but now we must understand in our country that 0-18 years which is considered as juvenile constitute 35 per cent of the population and cases can easily be instituted because supposing the children are working in restaurants, that is, child labour is taking place, then

[Dr. Subramanian Swamy]

you have situations where these hotels and these establishments can be implicated. Then there are issues of paedophile and so many other things are there and these matters have to be gone through with great care. Therefore, I am saying... I am running out of time and you are...

MR. DEPUTY CHAIRMAN: No problem.

DR. SUBRAMANIAN SWAMY: I can't move beyond 5 o'clock.

MR. DEPUTY CHAIRMAN: I will tell you. If within 5 o'clock you do not conclude, you can continue on the next day when the Private Members' Bill is taken up.

DR. SUBRAMANIAN SWAMY: So, therefore, I am asking today, where there is a question of where an authority has to report something, this causes a great deal of a problem. What happens in a road side restaurant? The children are working as child labour. Anyone who wants the restaurant owner into trouble because of personal animosity, he can go and say that I have witnessed this happen that the boy who was serving was given a tight slap and kicked and brutalized. So, where are the safeguards? This question of safeguards is where I am focussing my attention on. Now, I am asking you, Mr. Deputy Chairman, Sir, please read Section 6, "The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where there is no Special Court, it has been designated to the Court of Session, including need of the care and protection of the child and steps taken in this regard." Here again, supposing there is a custody matter, because of Section 5 and Section 6, the child whose custody is, say with the mother, the husband can ensure through this Section that that child is sent to a special home and therefore, taken out of the custody of the mother.

MR. DEPUTY CHAIRMAN: Okay, you can continue your speech on the next day when the Private Member's Bill is taken up. Your speech is not concluded.

Now, I have some Special Mentions. I will read out the names. Shri Tiruchi Siva. Not present. Shri Oscar Fernandes. Not present. Shri T. Rathinavel. Not present.

The House stands adjourned till 11.00 a. m. on Monday, the 27th March, 2017.

*The House then adjourned at five of  
the clock till eleven of the clock on  
Monday, the 27th March, 2017.*