

SHRI RAVI SHANKAR PRASAD: Sir, I move:

**That the Bill be passed.**

*The question was put and the motion was adopted.*

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): We shall now take up the Indian Evidence (Amendment) Bill, 2002.

**THE INDIAN EVIDENCE (AMENDMENT) BILL, 2002.**

कोयला और खन मंत्रालय में राज्य मंत्री तथा विधि और न्याय मंत्रालय में राज्य मंत्री ( श्री रवि शंकर प्रसाद) : महोदय, मैं प्रस्ताव करता हूँ :

कि भारतीय साक्ष्य अधिनियम, 1872 का और संशोधन करने वाले

विधेयक पर, लोक सभा द्वारा पारित रूप में, विचार किया जाए।

उपसभाध्यक्ष जी, यह जो मैं इससदन के समक्ष प्रस्तुत कर रहा हूँ, यह लोक सभा द्वारा पारित बिल है। यह बिल अपने आप में बहुत ही ऐतिहासिक बिल है, क्योंकि महिलाओं के साथ बलात्कार के मामले में जो कुछ ऐसे प्रावधान थे, जिन का बहुत दुरुप्रयोग होता था, जिसे संबंध में लॉ कमीशन की अनुशंसा भी थी और जिसके संबंध में स्वयं विमेन कमीशन की अनुशंसा भी थी, उन सारी अनुशंसाओं के आलोक में यह बिल प्रस्तुत किया गया है। आदरणीय उपसभाध्यक्ष जी, भारत का जो साक्ष्य अधिनियम है, इंडियन एविडेंस एक्ट है, उसमें धारा 155 में एक प्रावधान था। जब रेप का मामला चलता है, तो उसके अंतर्गत जो प्रावधान है उसको मैं प्रस्तुत करना चाहता हूँ :

'The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him... \* ;

इसकी एक क्लाज 4 है,, which says:

"When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character"

आदरणीय उपसभाध्यक्ष जी, ऐसे मामले जब होते थे, बलात्कार का मामला सुनवाई के लिए जब कोर्ट पहुंचता था तो जो अभियुक्त थे उनकी ओर से चरित्र के विषय में बड़े अजीब

[16 December, 2002]

RAJYA SABHA

प्रकार के प्रश्न पूछे जाते थे और सामान्यतः यह प्रयास किया जाता था कि the victim is of a loose character; she is of an immoral character. And these questions, basically, were intended to destroy her testimony and expose her to a wide range of shame, that she is full of sin and full of shame. Therefore, unfortunately, the focus on her conduct became important and the sin by which she was visited by the accused became secondary. This was noted by the Law Commission. This was noted by the National Commission for Women. It was found that this amendment was necessary. Therefore, Sir, we have taken this initiative, in the light of the Law Commission's recommendations, and also a very exhaustive study done by the National Commission for Women.

Now, we are putting a specific proviso to section 146 of the Indian Evidence Act. May I read out, for your kind consideration, what section 146 says? It says:

"When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any question, which tend to test his veracity, to discover who he is, to shake his credit..." . '

It is very natural that when a witness comes, the accused and the defence have got the right to shake his credit, to question him and to show that he or she is not trustworthy. But, while permitting that, what the proposed amendment does is that, we are putting a proviso under section 146, and the proviso is:

"Provided that in a prosecution for rape or attempt to commit rape, it shall not be permissible to put questions in the cross-examination of the prosecutrix as to her general immoral character" .

तो सर, यह पूरा प्रावधान हमने कर दिया है कि उसके चरित्र के संबंध में कोई भी प्रश्न नहीं पूछेंगे यह एक बहुत ही प्रगतिशील और महिलाओं के हितों की चिंता करने वाला विधेयक है। इसलिए मैं पूरे हाउस से इसे पास करने के लिए आग्रह करूंगा।

*The question was proposed.*

SHRI JANARDHANA POOJARY (Karnataka): Sir, in India, we believe that the place, where women are respected for their virtues, becomes an abode of God. Our epics describe how *asuras* were destroyed after they had outraged the modesty of the woman. Ravana was vanquished after he touched mother Sita. The clan of Kauravas was defeated as a result of the war that erupted after they tried to outrage the modesty of Draupadi. So, in our society, women were always respected. Indians cannot tolerate indecency and disrespect towards women. I quote here the words of Swami Vivekananda, "The first manifestation of God is the hand that rocks the cradle." Awestruck by the teachings of Swami Vivekananda, a foreign woman, by name Margaret Nobel, came to stay in India, who later came to be known as '*Bagini Nivedita*'. A woman named Mansa asked her about the difference that she might have experienced during her stay in India and her country. She replied, "The respect for women in India is unprecedented and it develops sentiments, leading to tears in eyes."

Sir, so far as rape is concerned, there are no two opinions that this offence should be dealt deterrent punishment; there should not be any mercy at all. Sir, we have got different laws to deal with rape cases. When an accused is brought before the court, there is criminal jurisprudence and also the Evidence Act. So far as section 155 of the Evidence Act is concerned, it says, "...impeaching of credit of witness." Sub-section (4) of section 155 says, "when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character." Afterwards, Sir, there have been judgments from the Supreme Court which have laid down that the uncorroborated testimony of a prosecutrix could be accepted in evidence. There need not be any corroboration at all. If the evidence is unimpeachable, it could be accepted, and conviction could be based on the uncorroborated testimony of the prosecutrix. That is the Supreme Court judgement, and it has been followed throughout the country.

Sir, so far as the unimpeachable evidence is concerned, there is no doubt that her evidence could be accepted; benefit of doubt should not be given to the accused. Then, where does the danger lie? The danger lies here. Tomorrow, some woman will come and say, and, on the basis of her statement, a Government could be dislodged; a Prime Minister could be thrown out; a Member of Parliament who is having a good character, could be thrown out; how? There are some women who could be purchased;

there are women who live in the red-light area. A woman from that area can lodge a complaint and say, "I was raped by so and so." The evidence comes afterwards. An FIR could be lodged. Then, Sir, investigation starts. After the investigation, chargesheet and other things would follow. But, before that, if a woman comes and says that she has been raped, and if the charge is against the Prime Minister, the Prime Minister has to leave his office because the FIR would have been lodged when she says so. In my opinion, building of the character is a penance. Character should be built.

What I am submitting is, Sir, decision on the unimpeachable character is for the court and not for us. We can come before the House with amendments. I was thinking of this when Mr. Nariman, the other day went inside the Chamber to discuss about the amendments, when the hon. Member called some of the hon. Members from other parties. You can say that you would bring an amendment to effect change that if the evidence is unimpeachable, the evidence of the prosecutors could be accepted. You can bring that forward. You can bring amendment to section 375, 376 and 377 also. You can say, "the penetration need not be complete." You can bring that change. There are so many sections. You can bring amendments. Sir, it can't be ruled out, the danger can't be ruled out. The Government should keep it in mind.

Tomorrow, any person can come before a police station with something. You know how our police stations are, how their character is, whether it is unimpeachable. My submission is, you create a conducive atmosphere in the police stations. I can understand if you say the law should be respected. The question before the House is about the rape victims. We have our sympathy towards rape victims. It should not happen in our society. We are for them. There are two trials they have to face, one in the police station and then in the court. Some people have even gone to the extent of saying that the judiciary has become insensitive now. They also have quoted some decision. My submission is, nobody is insensitive to this fact. Everybody is against rape. No man, whoever has sister/mother/daughter, would support rape. Sir, we should be a little careful in framing the rules. So far as their suffering in the court trial is concerned, it can be held *in camera*. I don't think there is any need for publicity. The provision is already there. I practised criminal law for 18 years in courts. I don't know about the latest position. When we were practising, we used to conduct the trials in open courts.

Now, the question is simple. Please bring in an amendment which provides for prosecutor's evidence, saying, "The prosecutor's evidence could be accepted, without any corroboration, if it is unimpeachable." Otherwise, there will be danger.

With these words, I conclude. Thank you.

**श्री संघ प्रिय गौतम (उत्तरांचल) :** उपसभाध्यक्ष जी, मैं इस विधेयक का समर्थन करता हूँ और हमारे माननीय मंत्री जी बहुत विद्वान अधिवक्ता भी रहें हैं, मैं उनसे कहना चाहता हूँ कि इस विधेयक की अंग्रेजी मेरी समझ में नहीं आ रही है और इसमें मुझे कुछ शक है, इसलिए जो अंग्रेजीदा है, वे इस पर विचार करें।

"In section 146 of the Indian Evidence Act, 1872 (hereinafter referred to as the principal Act), after clause 3, the following proviso shall be inserted, namely:-

"provided that in a prosecution for rape or attempt to commit rape, it shall not be permissible to put questions in the cross-examination of the prosecutrix as to her general immoral character."

What does it mean? It means that we have taken it for granted that rape victim is of general immoral character, यह हम मानकर चल रहे हैं, तो इममोरल शब्द गायब होना चाहिए यहां से। यह होना चाहिए कि जनरल करेक्टर तो है। इसलिए इसकी अंग्रेजी मुझे समझ में नहीं आई। मैं तो यह समझ रहा हूँ कि हम इस विधेयक को इसलिए लाए हैं ताकि बलात्कार कम हो, बलात्कारी को सजा मिले, बलात्कार की शिकार महिला का और ज्यादा उत्पीड़न न हो, वह शर्म और लिहाज की ज्यादा शिकार न बने और उससे उसके चरित्र के बारे में सवाल न पूछे जाएं कि उसका चरित्र गंदा है, लेकिन यहां हम यह मानकर चल रहे हैं general immoral character as to her general immoral character, क्या मतलब है इसका? इसलिए मेरा कहना है कि या तो रवि शंकर प्रसाद जी इसे समझा दें वरना इममोरल शब्द को निकालें। बस इतना ही मुझे कहना है। धन्यवाद।

**SHRI R.K. ANAND (Jharkhand):** Mr. Vice-chairman, Sir, I will add to what Shri Poojary has said. The objects which are sought to be achieved by the proposed amendment are laudable-and unquestionable. It is not only in India, but also practically in all part of the world, that amendments are being proposed keeping this object in view. But we cannot forget that an accused has got a right for a free and fair trial. Introduction of this section 146, proviso (3) creates some doubts in my mind and I would like to have clarification from the hon. Minister about the right of an accused for a free and fair trial. My friend when he introduced this

amendment, he did make a reference to the Law Commission Reports. One of them was made in 1980 and the other one was made in 1999. Between 1999 and 2002, a lot of things have happened, a lot of amendments have been made in other parts of the world. I feel they have not been taken note of. During the course of reference, it was contended by my friend that a lot of questions are being asked in the court about the general reputation of a woman when she comes before the court in a rape case. My friend has got the Evidence Act with him. May I request him to read three or four sections only which should make my point clear. If the lawyers do not do their work, if the judges do not do their work, it does not mean that we need amendment. Now kindly have section 146 which my first read. Section 146 deals with the questions, which are lawful in cross-examination. "When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked by any questions which tend-(3) shake his credit..."

Now, he read only these three lines. He did not read the further lines, 'which tend to (3) shake his credit by injuring his character, although the answers to such questions might tend directly or indirectly to criminate him or might expose to tend directly or indirectly to expose him to a penalty or forfeiture.' After this we have section 147, which says that if any question relates to a matter relevant to the proceedings, the proviso of section 132 shall apply. Section 132 provides that you can ask a question from any individual to criminate him. Now, section 148 is the answer to the point which has been referred to by the hon. Minister.

Now, Section 148 says, "The court is to decide when question shall be asked and when a witness can be compelled to answer. If any such question relates to a matter not relevant to a suit or a proceeding except in so far as it affects...." -- kindly mark the word -- "...the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and, may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the court shall have regard to the following considerations..." The point I am trying to make out is, when a question is put before the court, it is for the court to decide whether a particular question should be asked. Now, kindly read Section 149. It is very important. It says, "No such question as is referred to in Section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-

founded." So, a lawyer asking question in the court of law should have a reasonable basis with him to ask a question. Unless he has a reasonable basis, he cannot ask any question and the court cannot allow such question. Now, if, without any foundation, a question is asked by a lawyer to a woman, in the court of law, what happens in such cases? The reply is given in Section 150. It says, "if the court is of the opinion that any such question was asked without any reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is the subject in the exercise of his profession." The meaning thereby is, if a lawyer asked any question in the court of law, without any foundation, he is liable to be punished by the Bar Council --that is the body which can take away his license. So, the arguments made by the hon. Minister that a lot of questions are being put to women that they should come before the court and there are no guidelines and there is no check on them is unfounded. There are enabling provisions in Sections 147 to 150 which makes it very clear that you cannot ask any question to a witness, unless you have a reasonable basis and foundation for the same.

Sir, now, I come to Section 146, Mr. Minister, kindly read this with me. It says, "When a witness is cross-examined, he may, in addition to the questions herein before referred to be asked any question which tend to shake his credit, by injuring his character." Now, in an ordinary case/in a criminal trial, the credibility of the witness is a very, very important question. As Shri Janardhana Poojary said, on an uncorroborated statement of a prosecutrix, a man can be convicted. And, if you do not allow, his credit is impeached or his credibility is shaken. We are entering into a very dangerous zone. What is the meaning of cross-examination? Kindly see what the Supreme Court has observed in one of the cases. It says, "Weapon of cross-examination is a powerful weapon by which the defence can separate truth from falsehood, piercing through the evidence given by the witness who has been examined in the examination-in-chief. By the process of cross-examination, the defence can test the evidence of a witness on the anvil of truth." Now, thereafter, I have read the Statement of Objects and Reasons which I will read for my friend. I am reading the fourth line. It says, "The said Commission also observed that no one can have a claim to force sexual intercourse with a women even if she is generally of an immoral character. The National Commission for Women in its study has also observed that the defence counsels usually refer to prior

sexual conduct of the complainant in their pleadings for demolishing here testimony that she did not consent, thus tarnishing the complainant's reputation and her chances of marriage." I will stop here. Here, we are looking only from the angle of a woman. Now, think of a case where a man is prosecuted on a false complaint. We have an example before us. Two months ago, two people belonging to the BJP were prosecuted on a false complaint. A person belonging to the ABVP was prosecuted and he was sent behind the bars on a false complaint. It is in that context that I am making a reference to you that you can't forget that a person, who is being prosecuted before the court of law, has also got daughters, has got sisters, has got a family. If you talk of the marriage of that girl, you must also talk about the marriage of the daughter of the accused, sister of the accused. We can't have only one object in view and defeat the other object. When the reports of the First and the Second Law Commissions were being discussed, a lot of changes were being made in the other parts of the world. I must emphasise that in the report of the First Law Commission which was made in the year 1999, a reference was made to certain enactments made in the South Wales. But I must point out that in England, in the year 1978, they made a specific provision, which is known as Sexual Offences (Amendment) Act of 1976. It had a particular provision, which has built-in safeguards. It had section 2, which says, "Where any person, charged with rape, pleads not guilty, then, except with the leave of the judge no evidence and no question to examine shall be adduced or asked at the trial by or on behalf of any defendant about any sexual experience of the complainant with a person other than the defendant." This amendment was moved in the year 1976. But from 1976 to 1999, the ladies were still being humiliated in the court of law. The questions were being asked. Then, an amendment came in the year 1999, which is very, very vital. The amendment, which came in 1999, is with regard to Youth Justice and Criminal Evidence Act 1999. It is about section 41. It being a comprehensive amendment, I would request my friend to take it into consideration. Kindly see section 41, which had been made in the year 1999, and which had been tested by the House of Lords in the year 2001. I would like to read the observation made by five judges of the House of Lords in the year 2001. In section 41, they say, "If at a trial, a person is charged with sexual offence then except with the leave of the court no evidence may be adduced, no question may be asked into examination by or on behalf of the accused at the trial about any sexual behaviour of the complainant." They leave it to the court. There is no complete bar as you



are putting here. What you are doing here is, you are putting a complete bar to any question by putting in, section 146, a proviso. Here, in section 41, which has been put in that part of the world, they leave it to the court. In our Evidence Act, there is a provision that you can put a question about the character of a woman, but with the leave of the court. There should be a reasonable basis. And, if there is no foundation, you cannot put a question. And, if you put a question without any foundation, you are liable to be penalised by the Bar Council. So, there is an in-built provision in our Act. Here, when we read section 41, sub-section 2, it says, "The court may give leave in relation to any evidence or question only on an application made by or on behalf of the accused, and may not give such leave unless it is satisfied." So, they have laid down certain guidelines, under what circumstances you can put certain questions to a woman in a case of sexual offence. Now, this particular provision was challenged in the court of law when an offence of rape was committed, and the accused were brought before the court. He put questions about the sexual experience of the woman, not only about other people, but about him also. The questions were disallowed. The matter went to the House of Lords. Now, I would like to read an observation which was made by the House of Lords. This is reported in All England Reports, 2001. May I draw the attention of the hon. Minister? This is reported in All England Reports, 2001. All the judges of the House of Lords did observe, "In recent years it has become plain that women who allege that they have been raped should not in court be harassed unfairly by questions about their previous sex experiences. To allow such harassment is very unjust to the woman; it is also bad for the society in that women will be afraid to complain and, as a result, men ought to be prosecuted will escape. That such questioning about sex with another or other men than the accused should be disallowed without the leave of the court is well established. Section 2 of the Act provided that, "...without the leave of the judge there should be no evidence or cross-examination by or on behalf of the defendant of a complainant's sexual experience with a person other than the accused. Leave was only to be given by the judge if and only if he is satisfied that it would be unfair to that defendant to refuse to allow the evidence to be adduced or the question to be asked." Now, when this question went before the court, kindly see what were the observations made. One of the judges observed in the judgement, "It is plain that a balance must be struck between the right of the defendant to a fair trial and the right of the complainant not to be subjected to unnecessary humiliation and distress when giving evidence. The

right of the defendant to a fair trial has now been reinforced by the incorporation into our law of article 6 of the European Convention for the Protection of Human Rights." We have got the Right of Free Trial under article 19 of the Constitution. It further says, "The guiding principle as to the extent of that right is that *prima facie* all evidence which is relevant to the question whether the defendant is guilty or innocent is admissible." He further said, "But the extent to which a defendant may go in the exercise of his right to be given that opportunity is a matter to which the common law has failed to provide a satisfactory answer. The problem is at its most acute in cases where the parties to the alleged rape are known to each other and have had some kind of a relationship in the past." I will mention one more point and I will conclude. One of the judges had mentioned about the law, which was made in Canada, "The Canadian experience shows how important it is to secure a proper balance between the necessity to provide sufficient protection for the victim of a sexual offence at the trial of the person accused of the offence and the corresponding necessity to secure that the accused has the opportunity to present any relevant defence..." He further said, "The question whether a complainant has consented to intercourse with the defendant is often a critical issue in a trial for rape. So the question what evidence is or is not relevant to the matter of the giving or withholding of consent becomes of particular importance. From at least the nineteenth century the belief seems to have been held that if the complainant had had sexual intercourse with some other man or men than the defendant she would be more likely to have consented to intercourse with the defendant. It seems also to have been believed that such a complainant would be less worthy of belief than a woman of unblemished chastity." (*Time-bell*) Sir, I will just take two more minutes. I will quote one more sentence, "The only matters to which evidence or questioning may be permitted are specific instances of alleged sexual behaviour." Now, kindly see the proviso which you have put it here in section 146. It says, "provided that in a prosecution for rape or an attempt to commit rape, it shall not be permissible to put questions in cross-examination of the prosecutrix as to her general immoral character." When you have got a specific instance, like when you have got the photographs of the woman not only with the person concerned, but with other people also. Does it mean that this 'general' would not mean to be 'specific'? I would like to have this clarification from you. I feel this needs a proper amendment. It should be brought before the court for interpreting only after a clarification.

5.00 p.m.

SHRIMATI VANGA GEETHA (Andhra Pradesh): Mr. Vice - Chairman, Sir, thank you for giving me this opportunity. I rise to support the Indian Evidence (Amendment) Bill, 2002. Sir, it is very important at this juncture. Clause 4 of section 155 has been deleted from the Indian Evidence Act, 1872. Sir, section 155 of the Act provides that in prosecution for rape, or, attempt to rape, it shall not be permissible to put questions in cross examination of the prosecutrix as to her general immoral character. I welcome this, Sir. Because when we pick up our morning newspapers, we find more news about the crime against women than anything else. It is, indeed, a matter of shame that women, in our country, are harassed, exploited, discriminated and killed by men. incidents of rape are increasing day by day. The rape victims undergoes two travails, one is rape and the other is trial, which is usually a bad experience for her. The most heart-burning aspect is that the moral character of the woman, who has been subjected to such a heinous crime, is questioned, and in the absence of sufficient evidence, the case is, generally, dismissed.

Sometimes, we are shocked to hear that even small girls are not spared. By and large, media is responsible for this. In most of the films and serials, no punishment is given to the rapists. They go scot-free. The Government should not telecast films depicting vulgarity and obscene scenes. Innocent girls are lured by criminals and, in the guise of helping them, they are raped. Therefore, I feel, that sex education, right from the 10<sup>th</sup> standard should be imparted to the students. Awareness about these things should be created among the girls. The accused should have no right to question the moral character of the raped woman. In fact, the law should be amended in such a way that the responsibility to prove lies on the accused.

Mr. Vice-Chairman, Sir, at this juncture, I wish to point out that rape victims are neglected by the families, insulted by the society and ignored by the Government. Therefore, some rehabilitation measures are required to be taken by the Government to help the rape victims. Now, rape cases are increasing day by day. It brings shame to our country. There is a need for seriously looking into this problem. I would request the hon. Minister to make a suitable amendment to this law. Conducive atmosphere should be created at the police stations itself. Not only should the defendants be barred from putting questions to the victims, but at the police

station itself, the police officials should not interrogate about her sexual experience, etc.

Lastly, I would like to suggest two or three points. Firstly, rape cases should be dealt with by designated courts. The officials who do not register FIRs, or, who ask for medical examination of the victim should be penalized heavily. Rape cases should be heard only by women judges, and handled by women police officials. Trial of rape cases should be held *in camera*, and the proceedings should be heard on day-to-day basis. Training in self-defence should, necessarily, be imparted to girls in schools and colleges. With these words, I support this Bill. Thank you.

**श्रीमती चन्द्रकला पांडे (पश्चिमी बंगाल)** :माननीय उपसभाध्यक्ष महोदय, मुझ से पहले मेरे तीन संसद मित्रों ने इस विधेयक पर अपनी बात रखी है। भले ही भारतीय साहित्य, सभ्यता, संस्कृति धर्म ग्रन्थों में स्त्री की महिमा का वर्णन किया गया हो और उसके देवोपम रूप का आख्यान किया गया हो, लेकिन दिन ब-दिन हम उस पर जो बलात्कार की घटनाओं के बारे में पढ़ रहे हैं, और उस पर बढ़ते हुए अत्याचारों की जो श्रृंखला मारे सामने आ रही है, उससे बहुत जरूरी हो जाता है कि इस पर एक सम्पूर्ण विधेयक लाया जाए। यह एक छोटा सा संशोधन विधेयक है, मैं इसका समर्थन करती हूँ। गत 12 नवम्बर को केन्द्रीय मंत्रिमंडल के एक फैसले के अनुसार बलात्कार के मुकदमों में महिलाओं के चरित्र हनन को रोकने के लिए भारतीय साक्ष्य अधिनियम 1872 की धारा 155 की उपधारा 4 को हटाने के लिए कानून में संशोधन की बात सोची गई और यह विधेयक लाया गया। लोक सभा में यह पास हो चुका है। आज राज्य सभा में भी यह आम सहमति से पास हो जाएगा, इस उम्मीद के साथ मैं इस विधेयक का पुनःसमर्थन करती हूँ। यह एक छोटा सा संशोधन है, महिलाओं की गरिमा और प्रतिष्ठा को पूरी तरह बचाने के लिए एक व्यापक विधेयक लाने की जरूरत है, इस देश के महिला संगठनों ने, बलात्कार की जो पूर्व परिभाषा है उससे और भी व्यापकता लाने की जो बात कही है, मैं अपील करूंगी कि उसे भी मान लिया जाए। सच कहें तो यौन हिंसा की शिकार महिलाओं के साथ कानून और न्याय भी ऐसा खेल खेलते रहे हैं जिसमें चारों ओर पुरुष के बचाव में खड़े सुरक्षा प्रहरी कभी [सहमति से सैक्स] पर बहस करने लगते हैं तो कभी स्त्री के चरित्र, शील, यौन पवित्रता और नैतिकता शुचिता पर जोर देते हुए वितंडा खड़ा कर देते हैं। अंततः न्यायिक विवेक कहता है जहां बलात्कृता पहले से बुरे चरित्र वाली है या चरित्र देह नहीं है, वहां सात साल कठोर कारावास की सजा बहुत सख्त सजा है।

भारतीय साक्ष्य अधिनियम की धारा 155 (4) में प्रावधान किया गया है कि गवाह की विश्वसनीयता खंडित करने के लिए अगर किसी पुरुष पर बलात्कार का आरोप हो तो उसे यह सिद्ध करना चाहिए कि पीड़ित आमतौर से अनैतिक चरित्र की महिला है। अर्थात् जिस पर बलात्कार किया गया है उसे अनैतिक चरित्र की महिला,वेश्या, कालगर्ल, रखैल, देहसुख की आदी, दुश्चरित्र, एकाधिक पुरुषों से संपर्क रखने वाली, मुहल्ले में बदनाम प्रमाणित कर दिया

जाए और बाइज्जत रिहा हो जाया जाए। क्या बुरे चरित्र की महिलाओं से जब चाहो बलात्कार किया जा सकता है और बलात्कार के बाद पीड़ित महिला को अनैतिक चरित्र की महिला, नीच व्याभिचारिणी प्रमाणित करके उंके की चोट पर पाक साफ बचकर न्यायमंदिरों से बाहर निकला जा सकता है ? सरकारी आंकड़ों में, राज्य सभा में एक उत्तर के अनुसार देश में लगभग 30 लाख महिलाएं वैश्यावृत्ति के लिए विवश हैं। इनमें पंद्रह प्रतिशत पंद्रह वर्ष से भी कम हैं। अर्थात् पांच लाख नाबालिग बालिकाओं पर रोज बलात्कार हो रहा है। तर्क है कि उन्होंने ग्राहक से पैसे लिए, उपभोक्ता की तुष्टि उनका कर्तव्य है। पर इस संशोधन के बाद किसी वेश्या, जिसे हमने स्वस्थ जीविका का साधन तो पचपन वर्ष बाद भी नहीं दिया पर एक स्वस्थ नाम जरूर दे दिया “सेक्स वर्कर”। उसकी मर्यादा को भी समान का उतना ही अधिकार है जितना किसी अन्य महिला को। इस संदर्भ में मैं कौटिल्य के अर्थशास्त्र का जिक्र करना चाहूंगी जहां रूपा जीवाओं को यह सुविधा थी कि वे जिससे अर्थ लेती हैं उसके साथ चाहे तो देह संपर्क रख सकती हैं अन्यथा नहीं। अगर बरबस कुछ किया गया है तो उसे बलात्कार ही माना जाएगा।

अत्यंत खेद का विषय है कि जहां इस संशोधन को समाज के विभिन्न तबकों से व्यापक समर्थन मिला है, वहीं राजधानी के वकील संगठनों के कुछ लोगों ने विरोध में अपनी-अपनी आपत्ति दर्ज कराई हैं। मैंने अखबारों में पढ़ा है कि बुरे चरित्र की कई महिलाएं इस तरह के कानूनों का सहारा लेकर पैसा बनाने में .लग जाएंगी और इससे महिलाओं को कोई राहत नहीं मिलने वाली है। बलात्कारियों के पक्ष में कुतकों का कोई अन्त नहीं है। इस बीच बड़े ही आवेश में हमारे उप प्रधानमंत्री, श्री लालकृष्ण आडवाणी ने बयान दिया कि अगर आम सहमति हो तो बलात्कारी को फांसी दी जाए। मैं कहना चाहती हूं कि इससे महिलाओं के दर्द की दास्तां और बोझिल हो जाएगी। तब न रहे बांस, न बजे बांसुरी वाला खेल शुरू हो जाएगा और बलात्कार के बाद महिला की हत्या कर केस को रफा—दफा कर देने का चलन चल निकलेगा। आज तो स्थिति यह है कि अखबार के पन्नों पर हर रोज बलात्कार की घटनाएं पढ़ी जा सकती हैं। दो साल की मासूम बच्ची हो या साठ वर्ष की उम्र दराज स्त्री, बलात्कार और यौन हिंसा की शिकार बनती हैं। घरेलू हिंसा से सामाजिक हिंसा तक कहीं अपराधी पिता, भाई अथवा कोई नजदीकी रिश्तेदार कहीं लुंपेन, गुंडे, कहीं रक्षक से भक्षक बनी पुलिस, कहीं नौकर, कहीं ड्राइवर, कहीं नौकरी का झांसा देकर देह व्यापार में झोंक देने वाला माफिया व्यापारी लिप्त है। अपराधी फरार, कानून और न्याय व्यवस्था लाचार, पुलिस बेकार और बलात्कार का ग्राफ तेजी से ऊपर जा रहा है। पुलिस के बड़े अधिकारी और समाज के ठेकेदार सवालिया नजरों से बलात्कृता पर एक और बलात्कार करते हैं। उसी के साथ ऐसा क्यों घटा? वह बाहर क्यों निकली? वेशभूषा जरूर उत्तेजक रही होगी आदि-आदि। लड़की बाहर निकले कैसे? घूंघट निकाल कर नकाब पहनकर या बुर्का ओढ़कर। मथुरा से भंवरी तक के बलात्कारों में बीच में और न जाने कितनी मथुराओं और भंवरियों की व्यथा कथा आती है। कहां किसको क्या न्याय मिला, मुझे उसे विस्तारपूर्वक सुनाने और गिनाने का समय नहीं दिया जा रहा है। समाज सिनेमा, साहित्य, टी.वी. सीरियल्स मिल—जुलकर आग में घी झोंकते हैं। खुलकर बलात्कार दिखाए जाते हैं। बलात्कृता या तो आत्महत्या कर लेती है या कम से कम कोशिश तो करती दिखाई ही जाती है। नायक बचाने आता है। खलनायक चोर दरवाजे से भाग जाता है। असामाजिक तत्वों का मनोबल बढ़ता है।

असली सवाल स्त्री की अस्मिता का नहीं अस्मिता का है। पीड़िता के तन-मन पर बलात्कारी आघात करता ही है अदालती प्रक्रिया के दौरान वकील भी उसे जलील करने से नहीं चूकते। बेचारी महिला अपने चरित्रवान होने का प्रमाण किससे ले ? घर से, परिवार से, समाज से या न्याय प्रक्रिया से? उसे हर तरफ कुंआ और खाई ही नजर आती है। अपराधी बाइज्जत बरी हो जाता है अथवा सन्देह का लाभ पाकर मुक्त हो जाता है। ऐसे खतरनाक समय और समाज में जो चुप हैं वे सबसे बड़े अपराधी हैं। जो तटस्थ हैं उनका भी इतिहास समय लिखेगा। हम सबको मिलकर ... ( समय की घंटी ) ...

इसका हम समर्थन करते हैं तथा एक और कंप्रीहेंसिव बिल लाने का अनुरोध है।

श्रीमती सरोज दुबे ( बिहार ) : माननीय उपसभाध्यक्ष महोदय, भारतीय साक्ष्य कानून 1872 की धारा 155 में जो धारा 4 को हटाने का प्रावधान किया गया है, विधि आयोग और महिला आयोग की रिपोर्ट पर आधारित यह संशोधन बहुत ही महत्वपूर्ण है और एक स्वागत योग्य विधेयक है।

बलात्कार की अदालती कार्यवाही के समय अधिवक्ताओं द्वारा महिलाओं के चरित्र हनन को रोकने के लिए अश्लील प्रश्नों की बौछार और मिथ्या आरोप के भीषण प्रहार कर महिला को बदचलन साबित कर बलात्कार जैसे धिनौने जघन्य अपराध की गंभीरता को कम करने के प्रयासों में यह एक सराहनीय योगदान होगा। हमेशा यह होता आया है कि अदालती कार्यवाही के समय महिला को बदचलन साबित करने के लिए वकील ऐसे-ऐसे शर्मनाक सवाल पूछते हैं कि पीड़ित महिला को लगता है कि यह एक बार फिर से बलात्कार के चंगुल में फंस गयी है। मानसिक संताप में त्रस्त अपमान की ज्वाला में तिल-तिल कर जलती हुई पीड़ित महिला के साथ बलात्कार के उस दृश्य का वकील अपने प्रश्नों के माध्यम से अदालत में फिर से उसका सजीव चित्रण जो करता है तो पीड़ित महिला तिल तिल कर मरती है ओर तिल तिल करके जीती है। पीड़ित महिला हर सवाल पर मर—मर कर जीती है और सोचती है कि इससे अच्छा तो मैं बलात्कार को खामोशी से सह जाती है और अदालती कार्यवाही के भयावह चित्रण से बच जाती।

महोदय, पहले तो महिला जब थाने पर एफ.आई.आर. कराने जाती है तो पुलिस के अश्लील और व्यंग्य भरे उनके प्रश्नों की बौछार झेलनी पड़ती है। उसकी आधी हिम्मत तो वहीं टूट जाती है। उसके बाद अगर वह नये साहस और संकल्प के साथ कोर्ट और अदालत में जाती है तो वहां पर वकील उसको अपने पैने बाणों से, अश्लील बाणों से बदचलन साबित करने के लिए छेद देता है। तो महिला इतनी हिम्मत नहीं जुटा पाती कि वह अदालतों में जाए या थाने में एफ.आई.आर. लिखाने जाए।

हर 54 मिनट में एक बलात्कार होता है। यह तो वह है जिसकी रिपोर्ट लिखायी गयी और अलिखित कितनी घटनाएं गरीब, हरिजन, आदिवासी महिलाओं के साथ रोज खेत-खलिहानों में होती हैं। अपने ही घरों में, अपने ही नजदीकी रिश्तेदार का शिकार हुई महिलाएं जो दंश झेल रही हैं वे केवल इसलिए रिपोर्ट नहीं लिखा सकती थीं क्योंकि वे जानती हैं कि पहले पुलिस का अत्याचार और उसके बाद वकीलों के प्रश्नों की बौछार झेल सकना उनके बस की बात नहीं है।

जिस अपराध में उनका कोई हाथ नहीं है उसके लिए उनको तमाम व्यंग्य बाण झेलने पड़ेंगे और अपमानित होना पड़ेगा। इसलिए वे उसको बर्दाश्त करती रह जाती हैं। 80 प्रतिशत महिलाएं उस अपराध की सजा और संताप झेल रही हैं जो उन्होंने नहीं किया। वे भयभीत हैं और खामोश हैं क्योंकि उनके अंदर वह साहस और संकल्प नहीं आ रहा है जो समाज की घुरती आंखों को सह सके।

महोदय, होता यह है कि बलात्कारी अपने को निष्कलंक साबित करने के लिए महिलाओं को दुश्चरित्र साबित करता है और दुश्चरित्र साबित करने के संबंध में जो कुछ होता है उसमें महिला के हाथ में कुछ नहीं लगता है और बलात्कारी अपनी मूंछों पर ताव देते हुए साफ सफेद अपने कालर को ऊंचा करता हुआ निकल जाता है और महिला वहां से मानसिक यंत्रणा झेलती हुई तथा साथ में बदचलनी का सर्टिफिकेट लेती हुई निकलती है। इसलिए विधि आयोग ने इस पर अपनी सिफारिश देते हुए कहा था कि बलात्कार और महिला के चालचलन के बीच में किसी भी प्रकार का सामंजस्य नहीं होना चाहिए। वर्तमान संशोधन इसीलिए स्वागत योग्य है .... (समय की घंटी) अभी तो मैंने शुरू किया है।

**उपसभाध्यक्ष (श्री सुरेश पचौरी):** आपका टाइम चार मिनट है।

**श्रीमती सरोज दुबे:** मैं बहुत जल्दी खत्म कर रही हूं।

वर्तमान संशोधन इसीलिए स्वागत योग्य है कि अदालती कार्यवाही के समय उसके चरित्र की बखिया नहीं उधेड़ी जाएगी, केवल बलात्कार पर बहस होगी। एआईआर 1962, मद्रास अदालत, ने कहा है कि किसी वेश्या की मर्यादा को भी समान सुरक्षा का उतना ही अधिकार है जितना किसी अन्य महिला को है। बलात्कार के ऐसे संशोधनों का वकीलों ने विरोध किया है। कहा है कि बुरे चरित्र की कई महिलाएं इसका सहारा लेकर पैसे बनाने लग जाएंगी। मैं वकील समुदाय, जिन्होंने विरोध किया उनसे पूछना चाहती हूं कि क्या उन्होंने कभी बलात्कारी के पिछले चरित्र के बारे में भी कोई प्रश्न पूछा है? अगर उस बलात्कारी का पिछला चरित्र खराब है तो क्या उसको फांसी की सजा दी जाएगी, क्या उसको कोड़े लगाए जायेंगे ताकि वह आगे चल कर किसी अबोध बालिका को पहले की तरह अपनी हवस का शिकार न बना सके? इस मामले में वकील चुप हैं और बलात्कारी चूंकि पुरुष है इसलिए पुरुष के खिलाफ कुछ सुनने का उनके अंदर धैर्य नहीं है। कहते हैं कि औरते पैसा बनाती है, लेकिन पुरुष अगर बदचलन हो तो कोई बात नहीं। महिला अगर किसी से हंस कर बात कर ले तो वह बदचलन हो गई। महोदय, हमारा समाज इतने संकीर्ण विचारों का है कि अगर कोई महिला किसी से हंस कर बात कर ले तो वह बदचलन है, कोई किसी का सहारा लेकर अगर चल दे तो वह बदचलन है। महिला को बदचलन साबित करने में कितनी देर लगती है। इस तरह से तो हर बलात्कारी छूट जाएगा और हर महिला बदचलन साबित हो कर रह जाएगी और बदचलनी का कलंक माथे पर लगा कर जीवन भर उस संताप को झेलती रहेगी। इसलिए मैं इस संशोधन विधेयक का बहुत-बहुत स्वागत करती हूं।

महोदय, महिलाओं के लिए काल गर्ल, वेश्या, जैसा कि बहन चन्द्रकला पांडे जी ने कहा, ऐसे न जाने कितने भदे-भदे नाम उसके लिए हैं और पुरुष के लिए कुछ भी नहीं। पुरुष

की दुष्चरित्रता की कोई व्याख्या नहीं। पुरुष और महिला में यह जो भेदभाव है और यह जो अन्याय है अगर यह दूर नहीं होगा तो महिलाएं इसी तरह से बलात्कार का शिकार होती रहेंगी और पुरुष छूट-छूट कर बाहर जाता रहेगा तथा एक के बाद एक महिला को अपनी हवस का शिकार बनाता रहेगा। आखिर औरत ही बदचलन क्यों? हमेशा यही होता रहता है कि औरत को बदचलन साबित कर दिया जाता है।

इस संबंध में मैं माननीय मंत्री जी से एक और अनुरोध करना चाहूंगी कि बलात्कारी की परिभाषा को व्यापक बनाया जाए। बलात्कार की परिभाषा मानवीय परिधि में नहीं आंकी जा सकती। इसके अंतर्गत अमानुषिक, वहशियाना, घृणित, अप्राकृतिक व्यवहारों को भी शामिल किया जाना चाहिए। बलात्कारी सामान्य व्यक्ति नहीं होता है। वह विक्षुप्त होता है और किसी भी तरह का व्यवहार महिला के साथ करता है। इसलिए बलात्कार की परिभाषा बहुत सीमित नहीं होनी चाहिए। इसको व्यापक कर देना चाहिए। तभी ये लोग, जो समाज में आतंक फैला रहे हैं, वे इस परिधि में आयेंगे और सजा के हकदार होंगे। महिलाएं अपने ही घर में पति के बलात्कार का शिकार होती हैं, उन वहशी राक्षसी प्रवृत्तियों का शिकार होती हैं, इसको भी इसी परिधि में लाया जाना चाहिए। इनसे अगर महिलाओं को बचाना है तो आपको इसकी परिधि को बढ़ाना पड़ेगा। इसके अलावा मैं यह भी कहना चाहूंगी कि जल्दी से जल्दी जांच हो, 6 माह के अंदर जांच हो ताकि साक्ष्य नष्ट न होने पाए, क्योंकि शादी के बाद लड़कियां फिर कहीं चली जाती हैं। इससे जांच पूरी नहीं हो पाती है और बलात्कारी छूट जाता है। जांच भी आधुनिक तरीके से होनी चाहिए। इसके अलावा नॉन बेलबल ऑफिस हो क्योंकि बलात्कारी बाहर आ जाता है और तमाम साक्ष्यों को नष्ट कर देता है, उस महिला को भी धमकाता है और उससे छूटने का पूरा अपना इंतजाम कर लेता है।

महोदय, मैं एक बात और कहना चाहूंगी कि बच्चों के साथ रेप करने वाले लोगों को सार्वजनिक स्थल पर, बिजली के खंभे से बांध कर कोड़ों से मारा जाना चाहिए, जो 6 साल के या दुधमुंहे बच्चों के साथ रेप करते हैं। इनके लिए आपको बहुत कड़ा कानून बनाना पड़ेगा। रोज आप देखिए कभी दो साल की बच्ची के साथ, कभी पिता के साथ पुत्री का संबंध दिखाते हैं, यह जो एक वातावरण हो रहा है, इसके खिलाफ आपको अगर कुछ करना है तो आपको बहुत कड़े कदम उठाने पड़ेंगे तभी समाज में महिलाएं सुरक्षित हो पायेंगी। मौलाना आजाद मेडिकल कालेज की जो छात्रा, नाबलिंग लड़का निकल गया जिसने उसके साथ बलात्कार किया, आप उस छात्रा के बारे में सोचिए जो पढ़ी-लिखी, एक संस्कार वाली लड़की है, वह यह सोच कर जीवन भर जलेगी कि एक नाबलिंग झुग्गी-झोपड़ी में रहने वाला बिना पढ़ा-लिखा लड़का उसके शरीर को छेड़ कर चला गया, उसके शरीर को रौंद कर चला गया और इसके लिए फांसी की सजा न हो। इनको तो कोड़े मारने की सजा होनी चाहिए जो तरह का अपराध करते हैं। मैं आपसे यह भी कहना चाहूंगी कि जो हमारे यहां देह का व्यापार करती हैं, महिला भी अपनी देह की स्वामिनी है, जब तक उसकी सहमति नहीं हो, चाहे वह देह व्यापार करने वाली हो, चाहे वह हाउसवाइफ हो, दोनों को ही उसकी बिना सहमति के अगर कोई हाथ लगता है तो उसको बलात्कार की श्रेणी में लाया जाना चाहिए और उसको भी कड़ी से कड़ी सजा दी जानी चाहिए। यह आप यहां पर बेठी हुई हैं अगर आपका कागज कोई छीने तो आप नाराज होंगे, गाली देंगे, अगर आपका हाथ कोई पकड़े तो आप झटक देंगे और अगर आपके और आगे बढ़े तो आप



शायद गोली मार दें, और महिला ही इतनी फालतू चीज है कि जो जब चाहे उसको पकड़ ले और उसको रौंद कर चला जाए और आप उसके खिलाफ कड़ी कार्यवाही न कर सकें। इतने दिनों बाद यह कानून आया है कि अब तक महिलाओं ने इस अपराध को झेल लिया। न जाने कितनी महिलाएं बलात्कार का शिकार बनी समाज के व्यंग्य बाणों को झेल रही हैं, समाज की तीखी निगाहों को झेल रही हैं। महोदय, केवल वे ही नहीं, उन के मां-बाप, उन के खानदान के लोग इसे झेल रहे हैं। लोग कहते हैं कि इन की लड़की के साथ बलात्कार हो गया था। इसलिए मैं माननीय मंत्री जी से कहना चाहूंगी कि आप के इस बिल का स्वागत है, लेकिन आप एक बड़ा व्यापक बिल लाइए। महोदय, आज समाज जैसे-जैसे प्रगति की ओर बढ़ रहा है, मीडिया के माध्यम से ऐसे अश्लील चित्र दिखाए जाते हैं, इंटरनेट के माध्यम से लगतार जो कुछ लोग देख रहे हैं, उस से लोगों की भावनाओं को भड़काया जाता है और फिर उन से उम्मीद की जाती है कि वह अपना व्यवहार ठीक रखें। इसलिए मैं आप से कहूंगी कि इस तरह की बातों को प्रेरणा बनाने वाले वातावरण पर रोक लगानी पड़ेगी तभी यह समाज स्वच्छ होगा और तभी यह समाज बचेगा। आप इस बात को याद रखिए कि जब तक इस के लिए सजा का कठिन प्रावधान नहीं होगा तब तक ऐसे लोग सुधरने वाले नहीं हैं। हमारी एक बहन ने कहा कि फांसी की सजा देने से यह समाज बोझिल होगा। मैं तो कहती हूँ कि अगर फांसी का डर इन लोगों के मन में होगा तो दोबारा साहस नहीं करेंगे। आखिर ये कितने लोगों को मारेंगे? उपसभाध्यक्ष जी, फांसी का डर बहुत बड़ा डर होता है। कहते हैं कि 302 की दफा को अगर हरे पेड़ पर लटका दिया जाए तो वह पेड़ सूख जाता है। फिर अगर फांसी की सजा हो तो ठीक है अन्यथा सार्वजनिक स्थल पर ऐसे लोगों को कोड़े मारने की सजा होनी चाहिए। महोदय, एक महिला चौराहे पर, खूनी दरवाजे पर भीड़ में बेइज्जत हो जाए और किसी का खून न खौले। उस के बाद पुरुष के लिए वकील भी वकालत करने आ जाते हैं। इसलिए मैं मंत्री जी से अनुरोध करूंगी कि व्यापक बिल लाएं, बहुत विचार-विमर्श कर के उसे कुछ ऐसा बना दें ताकि व्यक्ति किसी महिला को अपनी हवस का शिकार बनाने का दुस्साहस न कर सके और अगर वह ऐसा दुस्साहस करता है तो उसे कड़ी-से-कड़ी सजा देकर इतनी प्रताड़ना दी जाए कि उस से दूसरे लोग सबक लें और भयभीत होकर कहें —

॥या देवी सर्वभूतेषु, शाक्तिरूपेण संस्थिता, नमस्तस्यै, नमस्तस्यै, नमस्तस्यै नमो नमः॥।

SHRI R. SHUNMUGASUNDARAM (Tamil Nadu): Mr. Vice-Chairman, Sir, thank you very much for the opportunity. This is a very welcome Bill. The spirit behind this Bill is to curtail the cross examination, which is used as a weapon of humiliation or harassment of a victim of rape, because, a victim of rape is already in a trauma, and there should not be any further humiliation. That is the purpose behind bringing in this Bill. The hon. Member, Shri R.K. Anand, had elaborately dealt with certain provisions of the Evidence Act. But, he has left out two sections, that is, section 151 and 152 of the Evidence Act, which say that no questions insulting or annoying a witness should be put, and the court is always there to prohibit or forbid any such cross examination. The Evidence Act itself has been given by the

[16 December,  
2002]

RAJYA SABHA

Britishers out of their own experience of 500 years, and this is a very, very comprehensive legislation, which is being followed and which has been working on for the last over a century. It has given the definition of what is relevant in a case, and what is a fact in issue in a case, and the Judiciary, the judicial officer, a trial judge is given freedom to decide, and he has been given certain guidelines under which he can exercise his jurisdiction to decide on the relevancy of any fact or the fact in issue. Therefore, these sections are available there, and the provision, which is now being added, is only an appendage, and I want the Minister to clarify whether this appendage, at this stage, is necessary at all. Though the object is welcome, the spirit is most welcome, when the court is prohibited under sections 5

and 136 not to allow anything which is not relevant to the fact in issues it necessary at all? In the case of *The State of Punjab vs. Gurmeet Singh*, in the year 1996, the Supreme Court ruled that a trial Judge should not be a silent spectator. He has to participate in the trial and he should cut down the cross-examinations, which are intended to annoy a witness. When these provisions are available, I want the hon. Minister to explain this and clarify. Further, I would suggest, instead of this proviso, the proviso sought to be introduced to 146, can be added to Section 151 with the additional words that "provided that in a prosecution for rape or an attempt to commit rape, it shall not be permissible to put questions in cross-examination of the prosecutrix as to her general immoral character, unless those questions are shown to be absolutely necessary for the defence of the accused." With such additions, this can be replaced under 155, and dropping of 154, sub-clause (4) need not be there. With these suggestions, Sir, I welcome the Bill.

**श्री भारतेन्दु प्रकाश सिंहल ( उत्तर प्रदेश ) :** उपसभाध्यक्ष जी, पहले तो मैं सरोज जी को बता दूँ, जो वह फांसी की सजा मांगने की बात कर रही थी, कि प्रत्येक महिला को जो भी रेप करने की इच्छा रखता है और बढ़ता है उस व्यक्ति की हत्या करने का कानूनी अधिकार है। उसका प्रयोग होना चाहिए। हमारे सिनेमा कभी-कभी दिखाते हैं कि ऐसा प्रयोग करने पर वह महिला अपने को हत्यारा मानकर के भागती फिर रही है। इतनी गलतफहमी तैयार करते हैं यह सिनेमा कभी कभी, जिसकी कोई इन्तिहा नहीं। इसलिए मैं इस बात को साफ करना चाहता हूँ कि उनके पास यह अधिकार है। सिनेमा में तो डकैतों को घोड़ों पर चलते हुए दिखाते हैं। 35 साल हो गए मुझे, मैंने एक भी डकैत को घोड़े पर चलते हुए नहीं देखा, लेकिन सिनेमा में बगैर घोड़े के डकैत होते। ... (व्यवधान)...

**प्र० रामगोपाल यादव ( उत्तर प्रदेश ) :** शत्रुघ्न सिन्हा साहब यहीं बैठे हैं।

**श्री भारतेन्दु प्रकाश सिंहल** : सिन्हा जी, आपकी बात कर रहे हैं। ... (व्यवधान)...

Sir, the ethos of this country is such that the chastity of women is considered extremely precious. It was, therefore, that only in India, the judges made this law exclusively for India that the single statement of the prosecutrix is sufficient to shift the burden of proof to the accused. Otherwise, in English laws it is not so, in other laws it is not so. But it is made so in India because in India, the ethos and chastity of women are so well preserved by every woman that if she has the compulsion of going to the police and reporting the rape against her, she must be speaking the truth, it's like a bank declaration. I agree with Smt. Saroj Dubey that rape is not only a physical assault, the physical crushing of a woman while the act is being done, but it is also an emotional crushing, an emotional rape when it comes to the court. I support this view, but I am not happy with the Bill. It is not very comprehensive. A comprehensive Bill must be brought forward. Sir, I had suggested a long time back - I think I had written two letters, one about two years back and the other about six months back - that the incidence of rape is increasing because the victims are reluctant to come forward, both for their own ignominy as well as because of the emotional rape that they are made to face in the courts. So, I had suggested that every rape victim should be permitted, with the consent of the court, to adopt a pseudonym. All the trials, all the investigations should be done by women. We have plenty of women officers in the police, in the courts as well as in the prosecution. The inquiry can be conducted by women police, women judges, and women prosecutors. Now, if that is done, the need for this kind of a thing will not arise. Besides, as Shri R. K. Anand put it so beautifully, there are sufficient safeguards; the trouble is that the Judges have not been doing their duties in preventing the advocates from putting vicious questions, without any grounds. If they had taken action against those advocates, for putting questions without any grounds, perhaps, advocates would not dare to raise a question against the character of the woman, the prosecutrix. Now, the question is this. If an FIR is registered, investigation will take place. Suppose the girl was a prostitute. The evidence will come about that in the investigation, her address will come in the investigation, her profession will come in the investigation. What will happen in that case? Investigation is not prohibiting all this. Investigating agencies may collect all the evidence that is available about the lady, whoever that may be. But if there was an unhappy past, the evidence will come about that. How should that evidence be put up in the court? What

will happen to that evidence? Will it not be subjected to cross-examination? These are all my questions. We have not taken care of that aspect.

Besides that, I have some great fears. The Anti-Dowry Act was made to protect the poor girls who had been burnt in the absence of dowry. That Act has, now, become a curse. At least, there were four cases, about which I myself know, where the greedy fathers had launched cases under the Anti-Dowry Act, and when they launched the cases, they had named the father, the mother, the husband, the *devar*, even the *nanad* who was married. And the whole respect that they had lost cannot be rebuilt. That Act is now becoming a curse, and I take this opportunity to suggest to the Government to come out with some amendments to prevent the misuse of that Act. I am feeling scared because this also may be used by the undesirable women to extract money or to ruin the reputation of persons who are in eminent places. I remember that in 1965, a very big agitation took place in Gorakhpur. That was, really, a very big agitation, and the police had been very strong and merciless in controlling the agitation. But when nothing happened for a month, even after all the agitations, they claimed that the policemen had raped the three women, so much so that Madam Indira Gandhi said, "I myself will go and find out the truth!" Because, both versions were coming. She came there, and from a nearby place, Patrauna, three prostitutes were brought, and they supported the case of rape, and the whole lot of policemen had to be suspended! Now, that kind of a thing can take place. Madam, I have a very serious objection to the wordings of the amendment. It says, "...in the cross-examination of the prosecutrix as to her general immoral character." How can the law presume that she has an immoral character? If it would have been so, the law has to say "her character". That is enough. Using the words "as to her general immoral character" is not proper. It presupposes that the lady has an immoral character earlier; therefore, no questions can be asked about it. Cross-examination may not be done. But what about the evidence they had used earlier? She may not be cross-examined, but this does not stop the evidence about her immoral character from being abused. What about that, Sir? My point is, the Cr.PC needs to be amended. The name of the father given in the FIR may be a pseudo name; the address may be a pseudo address. As a result of that, rape cases are reported freely. That will also encourage all the unreported cases that are coming. While supporting the Indian Evidence (Amendment) Bill, I urge upon the Government to come with a comprehensive amendment Bill to

amend not only the Indian Evidence Act but also the Cr.PC, to really take care of the problems of women who are being subjected to rape.

SHRI FALI S. NARIMAN (Nominated): Sir, the amendment is about only a very small part of a very serious problem facing women, particularly in the cities of India, and I hope the hon. Minister will come out with a legislation, based on the detailed recommendations, pertaining to the entire gamut of law on rape which, as you know, Sir, under modern jurisprudence is called "sexual assault". They do not use the word "rape" anymore. And, we hope that this will come soon. But with regard to this specific Bill, I support what Mr. Singhal has said. This is in regard to the wording or the language " - as to her general character". This was mentioned by the hon. Member here also. "General immoral character" is borrowed from 155(4) because, in 1872, when the Evidence Act was enacted, it said: The credit of a witness may be impeached in the following ways -- by the party who calls him, (4) - when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of general immoral character. That is the origin of this phrase. But, quite frankly, as was pointed out both by Gautamji as well as by Mr. Singhal, this does not fit into the proviso of 146. In 146, when a witness is cross-examined, he may be asked questions which tend to shake his credit, by injuring his character. That is all. His character. Although the answers to such questions might tend to expose him to incrimination. So, it should be provided that in a prosecution for rape or attempted to commit rape, it shall not be permissible to put questions in the cross-examination of the prosecutrix as to her character. That fits in perfectly well, both as a matter of English and as a matter of syntax. Therefore, at some stage - perhaps, not now, because the problem is that, the Bill has already been passed by the Lok Sabha - I think, these words, which are offensive, ought to be removed. They do connote as if there is a presumption that the women generally are of immoral character. Character would cover the whole thing, and these words should be deleted, at the earliest opportunity. Sir, there is another thing. Today, the evil is no longer of rape, but of gang rape. Will the hon. Minister also consider, when he brings in a detailed Bill, a mode of punishment for rape, different from that prescribed. I, for one, do not mean that there should be death penalty because that, I believe, will only lead to the murder of women who are mercilessly raped. But a greater degree of sophistication is required. In some States in the USA, the person convicted of rape is given the option -- 10 years in jail or a much lower term with submitting to surgery for

castration -- a deterrent which is far more frightening than our present penal law and more effective than suggestions for enlarging the term of imprisonment or even death penalty. So, Sir, while supporting the Bill, I hope the hon. Minister will look into the various other aspects, particularly, making the punishment fit the crime, and incorporate the detailed recommendations already made in the 172<sup>nd</sup> Report of the Law Commission and bring in a new Bill, at a very early date, preferably in the very next session.

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): Shri Swaraj Kaushal.

SHRI SWARAJ KAUSHAL (Haryana): Thank you very much, Mr. Vice-Chairman. Sir, the proviso to section 146 says "---- it shall not be permissible to put questions in cross-examination of the prosecutrix as to her general immoral character. These words, I am sorry, are very, very offending, and the earlier we correct them, the better, and I believe, the earliest opportunity is now. If we pass this legislation as it is, we will be passing a legislation where the language is offending. And, I think, we should not be a party to it. Even if the Bill has to go back to the Lok Sabha, it must go back with this amendment. It has been pointed out by lawyers and jurists cutting across party lines, I think, the Government should come forward to make this correction. Sir, this is another flaw in the Bill. Now it shall not be permissible to put questions in cross-examination of the prosecutrix in respect of rape or attempt to commit rape. My suggestion to the Government is: Why not include section 354, along with rape or attempt to commit rape. Now, what is section 354? Section 354 is, attempt to outrage the modesty of a woman. Rape is happening. It is a fact that we all know for sure. But what is happening more often in the villages? What is happening in the villages is that a woman is stripped and paraded. Which is the law that prevents it? What is the offence committed? It is not under section 376. It is not under section 376 read with section 511, that is, attempt to rape. The offence is committed under section 354. My prayer to the Government is that when you mention these offences, namely, rape or attempt to commit rape, you must also include section 354, because it is something which is happening every day. Now, what is the purpose behind the legislation that you have brought? The purpose of this legislation appears to be that no woman should face humiliation, no woman should face insult. You must limit the cross-examination to protect the honour of

women. But, what is permissible? What is prohibited for the purpose of section 376, namely, rape, or section 376 read with section 611, namely, attempt to commit rape, is permissible for the purpose of section 354. What I am urging upon the Government is that you must make it impermissible even for the purpose of section 354, which is attempt to outrage the modesty of a woman.

Now, an answer may come that an offence under section 354 is compoundable. The answer may be that an offence under section 354 is punishable with two years imprisonment or with fine or with both. Now, what is the policy of the law? The policy of the law is that when an offence is heinous, when an offence is serious, more protection to the victim is required. So, if you have to come to protect the honour of a woman, you come forward with section 354, the reason being (1) it is a milder offence; (2) it is an offence which is more frequent. It must come under section 376 also. But there is no reason to make it permissible for the purpose of section 354. I do appreciate that we have a brilliant lawyer as Minister. I have great respect for him. But he must also respect the sentiments of the House. The House objects to this language "general immoral character". We can meet at any time. We are prepared to sit beyond working hours. We should appreciate that the language "general immoral character" makes a bad reading. Permitting such questions in respect of section 354 is also as equally offending as in a case of rape or attempt to commit rape. If the Minister is prepared to accept the suggestion, I think he would be respecting the opinion of the House. Thank you.

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): Shri Harendra Singh Malik. He is absent. Mr. Minister, you can reply now.

SHRI RAVI SHANKAR PRASAD : Sir, I am extremely grateful to all the hon. Members who have participated and contributed, in a very brilliant way, to the various aspects which impinge on the present amendment itself. Shri Nariman, Shri B.P. Singhal, Shrimati Vanga Geetha, Shrimati Saroj Dubey and others have reinforced the need for a comprehensive legislation with regard to the offences related to women. The point is very well taken. I wish to inform this House that Justice Malimath Committee has already undertaken a very extensive review of the criminal justice system in the country, which includes the Cr.P.C.-, IPC, the entire gamut of evidence laws,

etc. The Government will certainly bring a comprehensive Bill pursuant to its recommendations, which will seriously focus on the need for changing the criminal law.

SHRI B.P. SINGHAL: Sir, I have a point to make. The Justice Malimath Committee will take years to give its Report. It has already taken several years. This is a case where you can bring a Special Prevention of Rape Bill. That is my request.

SHRI RAVI SHANKAR PRASAD: Sir, Shri Singhal should know that the Law Commission recommendations have also to come. Mr. Justice Malimath is going to give his report very shortly. I want to inform that to the House. The larger issue is very well taken. Even the Law Commission is having a serious analysis of the Evidence Act. Once it also gives its recommendation, the Government will bring comprehensive amendments to the Evidence Act itself.

Sir, an issue has been raised by Mr. Shunmugasundaram. You used a very interesting expression. "Why is it appended?". If I may recall correctly, this is what he said. There are two aspects. The first point is: Is the accused in a rape case on trial or the woman, who is the victim of rape, on trial? That is the first question. The first is, the accused of a rape is on a trial or the woman who is the victim is on a trial. This issue needs to be appreciated. Now, under section 54 of the Evidence Act, the character of the accused is not relevant. But under the existing IPC, all the canons can be fired upon the victim with regard to her immoral character. This *per se* appears to be a case where the victim became, say, a kind of a more sin than the actual fact there. Therefore, this has come about.. Sir, Mr. Falli S. Nariman, my esteemed friend, Mr. Swaraj Kaushal, Mr. Gautam and some other hon. Members have asked, "Why immoral character"? The first thing requires to be noted is that under existing Section 155, the immoral character word has been used. May I just read that - Perhaps, hon. Mr. Nariman was kind enough to point out even though it is of bygone era - "Where a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character". Now this is the state of law existing today. If this is to be deleted, therefore, we have said that no questions about her immoral character. Why, Sir? A character can be moral character, a character can be immoral character.



SHRI SWARAJ KAUSHAL : Why do we say general immoral character.

**श्री संघ प्रिय गौतम:** जो आप पढ़ रहे हैं, वह दूसरे sense में है उसका अर्थ ही अलग है बिलकुल। वह दूसरे sense में है, वह इस पर लागू नहीं होता है।

**श्री रवि शंकर प्रसाद :** आदरणीय गौतम जी, इस बात पर विचार करेंगे कि अगर लॉ में इस बात का प्रावधान है कि existing immoral character तो उसे भी undo करना है और उसमें हम कोई नई शब्दावली नहीं जोड़ सकते। Therefore, we have said that you can certainly ask about the moral aspect of a character. That is welcome if you are a moral lady, a good teacher, a spiritual person. But immoral questions will not be permissible. It has a very limited objective. It should be appreciated.

SHRI SANGH PRIYA GAUTAM : We do not agree.

**श्री रवि शंकर प्रसाद :** सर, श्रद्धावान सदस्या चन्द्रकला पांडे जी ने बहुत साहित्यिक विवेचना में बड़ी सटीक व्यथा का विवरण दिया, उस व्यथा को मैं समझता हूँ। आदरणीय आर.के.आनन्द साहब ने जो बात कही, उन्होंने कौटिल्य को क्वोट किया। जो आपने कौटिल्य के संबंध में कहा, वही सुप्रीम कोर्ट ने शायद हजारों वर्षों के बाद में स्टेट ऑफ पंजाब वर्सेज गुरमीत सिंह केस में कहा and it answers many of the queries raised by hon. Shri R.K. Anand. Even, in cases, where there is some acceptable material on the record to show that the victim was habitual to sexual intercourse, such inference like the victim being a girl of loose moral character is permissible to be drawn from that. No. It can't be drawn. Even if the prosecutrix, in the given case, has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey. The Supreme Court, in 1996, has reinforced what you mentioned about Kautilya. Therefore, Sir, all these aspects have been taken into account by this.

Sir, now I must take on some of the queries raised by hon. Mr. R.K. Anand. सर, वे भी सीनियर ऐडवोकेट हैं, भारत के नामी ऐडवोकेट हैं, मैं भी एक सीनियर ऐडवोकेट हूँ लेकिन छोटा हूँ। जब वे संसद में आए थे तो एक बहुत बड़े नेता ने एक बात कही थी। एक दिन बहस चल रही थी, कई वकील बोल रहे थे, उन्होंने कहा कि रवि बाबू, यह संसद है, कचहरी नहीं है। हमारा काम कानून बनाना है, कानून को इंटरप्रेट करने का काम अदालत का है।

I hope Mr. R.K.Anand would remember that in the entire gamut of that 146 read with 151 and 152, we have got the right to frame laws and that right flows from two aspects - a) the recommendations of the Law Commission of India as also the very concerted plea of the National Commission of Women that this offensive provision which puts a victim completely in a trial, not the accused, please take care of that. And here is the Government which has taken note of that rightful plea that this offensive provision which particularly puts accused on a higher pedestal than the victim are to be taken into account. You have raised certain points. Free and fair trial is never compromised. It is for the court to decide whether that right would be taken away.

SHRI R.K.ANAND: I doubt very much whether this can be asked. Please see the Law Commission's report, they say you will not read any evidence. You better check up before you make a statement here.

SHRI RAVI SHANKAR PRASAD: Let this law come about, and let the trial take place and see what happens. Sir, what I am saying simply is that even now, you can lead defence as evidence to discredit the character of the victim. It will be independently for the court to decide as to believe the prosecutrix or the defence. But, immoral questions pertaining to her immoral character during cross-examination will not be permissible. This is the only remedial measure, which we are taking. Sir, as far as Shri Swaraj Kaushal's plea of Article 354 is concerned, I understand his plea. But, Sir, here, I would like to remind him that Section 155, existing today, only talks of rape and attempt to commit a rape. It does not talk of Article 354 *per se*. Now, if Article 354 is taken up, why should we only stop at Article 354? We have to go beyond. There is a section 509 of the IPC, which include the word 'gesture' or 'act intended to insult the modesty of a woman'. Therefore, all these matters, perhaps, requires a comprehensive review and I would request that you are a very experienced Member and equally an eminent lawyer, when we come with a comprehensive review Bill, perhaps, these questions can be addressed. Sir, with these aspects, I would commend that this Bill be passed.

SHRI R.K.ANAND: I am sorry, Sir, I have the Law Commission's report, according to which our Minister is saying something wrong. This report says that you cannot read an evidence. If he says, "I can read the report." It says that it shall not be permissible to adduce evidence. ...*(Interruptions)*...

SHRI RAVI SHANKAR PRASAD: That is the recommendation. There is no legal bar. Let us not discuss about it, as if we are in a court... (*Interruptions*)...

SHRI R.K.ANAND: The Law Commission's report says something and the Minister is saying something else here.

SHRI B.P.SINGHAL: Sir, I have one point. Hon. Minister quoted Section 55, and the words written about 'general immoral character'. Now, we are talking about the proviso to Section 146. There is no such word in Section 146. So, the compulsion of using the word 'general immoral character' may kindly be considered once again.

उपसभाध्यक्ष ( श्री सुरेश पचौरी ) : ठीक है।

श्री संघ प्रिय गौतम : और आगे हैं if she fears..(व्यवधान )... यह होना चाहिए।

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): Now the question is:

That the Bill further to amend the Indian Evidence Act, 1872 as passed by Lok Sabha, be taken into consideration.

*The motion was adopted.*

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): We shall now take up the clause-by-clause consideration of the Bill. There is an amendment by Shri Rama Shanker Kaushik in clause 2. As he is not present, there is no question of taking it up.

*Clauses 2 and 3 were added to the Bill.*

*Clause 1, the Enacting Formula and the Title were added to the Bill.*

SHRI RAVI SHANKAR PRASAD: I move:

That the Bill be passed.

*The question was put and the motion was adopted.*

[16 December, 2002]

RAJYA SABHA

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): Hon. Members, now, we have to take up two Bills to amend the Representation of the People Act. Since these Bills are not controversial, we may pass these Bills without discussion.

श्री एस.एस. अहलुवालिया ( झारखंड ) : सर, दोनों एक साथ ले लीजिए ।

SHRI PRANAB MUKHERJEE: Sir, we should take up these Bills one-by-one.

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): I am taking the sense of the House for passing these Bills without any discussion. We shall take up these Bills one-by-one only. So, Shri Ravi Shankar Prasad, please move.

SHRI P.C.ALEXANDER (Maharashtra) : Sir, I would like to say that these are very important Bills. The mere fact that we are short of time or the fact that these have already been passed by Lok Sabha should not deter us from expressing views on such important Bills, not merely important to the Members of Parliament, but to the whole nation. Therefore, I would not be a party to the decision, or, I would not be willingly a party to the decision to pass these Bills without giving me an opportunity to express my views.

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): Would you like to speak on this Bill? But, you have not given your name.

SHRI P.C.ALEXANDER: I am sorry, Sir, but I have given my name to the Secretary-General.

SHRI NILOTPAL BASU (West Bengal) : If the hon. Member wants to speak, then, he must be allowed to speak...

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): He has given his name on the Bill pertaining to the replacement of the Ordinance relating amendment of Representation of the People Act. This is a different one.'

SHRI PRANAB MUKHERJEE: This is in regard to the Council elections in Bihar; it is merely a technical one.

RAJYA SABHA [16 December,  
2002]

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): Now, we take up the Representation of the People (Third Amendment) Bill, 2002.

**THE REPRESENTATION OF THE PEOPLE (THIRD AMENDMENT)  
BILL, 2002**

THE MINISTER OF STATE IN THE MINISTRY OF COAL AND MINES AND THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI RAVI SHANKAR PRASAD): Sir, I move:

"That the Bill further to amend the Representation of the People Act, 1950, be taken into consideration."

Sir, as per article 171 of the Constitution, we fill in the post of MLCs from local bodies also. In Bihar, what has happened is that, a change has come about now in the names of the local bodies. And, these have to be reflected in the Fourth Schedule of the Representation of the People Act.

The present Bill only seeks to amend the names of the local bodies in tune with the present names of these bodies. It is a simple Bill, and I request the House to kindly pass this Bill.

*The question was proposed.*

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): The question is:

That the Bill further to amend the Representation of the People Act, 1950, be taken into consideration.

*The motion was adopted.*

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): We shall now take up clause-by-clause consideration of the Bill.

*Clause 2 was added to the*

*Bill. 316*