

12.06 hrs.

Title: Introduction of the Indian Evidence (Amendment) Bill, 2002.

THE MINISTER OF LAW AND JUSTICE (SHRI K. JANA KRISHNAMURTHY): Sir, I beg to move for leave to introduce a Bill further to amend the Indian Evidence Act, 1872.

MR. SPEAKER: Motion moved:

"That leave be granted to introduce a Bill further to amend the Indian Evidence Act, 1872."

Shri Varkala Radhakrishnan to speak now.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, I oppose the introduction of the Bill at this stage because it is against our legislative competence. We all know that it is a fundamental right that there is equality before law. Both the accused and the defence are equal before the law. It is also a fundamental right that when a man is taken into custody, he is to be produced before a Magistrate within 24 hours and the presumption is that the accused is innocent till otherwise proved. Now, in the instant case, I have to submit that there is ample scope in the present Evidence Act that it is for the presiding judge to decide which questions are to be asked during the trial. He has ample powers to decide which questions are relevant and which questions are not relevant.

By this amendment we are putting fetters on the powers of the presiding officer. What will be the natural consequence if the amendment is accepted? There will be an inequality in the eye of law between the accused person and the prosecution. So, I would suggest that this is highly dangerous.

We are thinking of imposing death penalty in rape cases. The hon. Deputy Prime Minister has referred in the House that the Government have an idea of imposing death penalty on rapists. In that case this amendment becomes much more dangerous because the defense, who is in the box, is denied the right of

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questioning the veracity of the prosecution. The defense cannot question regarding the character of the prosecution. In a rape case the most important element is consent. Consent is the most important element in the defence of the victim of rape. So, the net result will be that this consent will be proved only through circumstantial evidence. We cannot give documentary evidence about the immoral character of a particular person. This could be inferred from the evidence that is adduced and only from the circumstantial evidence that the offence could be proved.

So, my humble submission is that we are denying the right of the accused. There is equality of law. This is the basic feature of the Constitution and we are encroaching upon the basic features of the Constitution. That is why I presume that this is beyond our legislative competence because there is equality before law – let him be the accused or let him be the prosecution. Both are equal before law. That equality is denied if this amendment is accepted.

MR. SPEAKER: Shri Radhakrishnan, you have made your point very clear. Please sit down.

SHRI VARKALA RADHAKRISHNAN : Sir, just one minute. If this amendment is accepted it is against all fundamentals of criminal jurisprudence. So far we have accepted, for centuries together and especially in the light of the statement of the hon. Deputy Prime Minister that capital punishment will be the penalty for the rape. If you do that, then the innocent persons will be killed and even the victim will be killed. The offence takes place in a particular place in a particular moment. If the person committing the offence thinks that he cannot escape afterwards from the capital punishment, the net result will be that the victim will be killed. So, in an alleged rape case, the net result will be that the survival of the witness will become remote. If capital punishment is the result, this will happen. This is my submission.

MR. SPEAKER: I think, you have made your point clear. Let the Minister reply now. Please sit down.

SHRI VARKALA RADHAKRISHNAN : So, under these circumstances, I request the hon. Minister not to encroach upon a field where they are encroaching upon the Fundamental Right of a citizen because everybody is equal in the eyes of law.

SHRI K. JANA KRISHNAMURTHY: Whatever objections the hon. Member has raised at the introduction stage can

be raised at the time when the Bill comes up for consideration. This is not the stage to raise such objections. Even in his written submission to your office, he has said.

MR. SPEAKER: Mr. Minister, he can always raise this objection, even at this stage.

SHRI K. JANA KRISHNAMURTHY: I will tell only one thing. He has questioned the legislative competence of this House. Parliament is competent to legislate under Entry 12 List III of Seventh Schedule to the Constitution. When this House is competent to legislate, all these objections can be raised at the time of consideration of the Bill.

MR. SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Indian Evidence Act, 1872."

The motion was adopted.

SHRI K. JANA KRISHNAMURTHY: Sir, I introduce the Bill.
