

INDIAN PENAL CODE AND CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL—contd.

Mr. Deputy-Speaker: The House will now proceed with the further consideration of the following motion moved by Pandit Thakur Das Bhargava on the 30th July, 1952:

"That the Bill further to amend the Indian Penal Code (XLV of 1860), and the Code of Criminal Procedure (V of 1893), be taken into consideration."

Sardar A. S. Saigal (Bilaspur): Before taking up the Bill I wish to say that some of the hon. Members have also given notice to move private Members' Bills and I will just request you to waive the rules under rule 302 and allow us to move those Bills.

Mr. Deputy-Speaker: Which one? A Bill which has to be introduced?

Sardar A. S. Saigal: To introduce the Bill standing in my name, namely, the Indian Medical Council (Amendment) Bill.

Mr. Deputy-Speaker: The order of preference has already been arranged. The hon. Member is too well aware that preference has to be given to those Bills that have already been introduced and with respect to which notices for consideration have been sent. After all these Bills are disposed of, one after the other, the Bills to be introduced will be taken up. Even then the hon. Member's Bill comes only 24th. The order is prescribed there. I cannot go over that and disturb that order.

Sardar A. S. Saigal: My request is, you can do it under rule 302 which says:

"Any member may, with the consent of the Speaker, move that any rule may be suspended in its application to a particular motion before the House and if the motion is carried the rule in question shall be suspended for the time being."

Mr. Deputy-Speaker: Has the hon. Member made any request to me to suspend the rule? All of a sudden he starts off. How can he do so? I am not going to allow it.

-Dr. N. B. Khare (Gwalior): That is my request also. I am also in the same position.

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Mr. Deputy-Speaker: Hon. Members will realize that that kind of motion is an extraordinary motion. It is very rarely made. In cases where there are only one or two motions standing for consideration and a number of other motions for introduction are awaiting and there is not sufficient business before the House, those motions are allowed to be made lest they may have no chance. Here as many as seventeen Bills have been tabled and are in the order paper for consideration. The difficulty is that if these Bills are allowed to be introduced and the rule waived, they will also join the other number and compete with them for priority. Once they are introduced they stand on the same footing as any of the others except the one Bill which is part-heard; all the other Bills have to be thrown into the box and then the priority has to be determined. Is it the desire of the hon. Member that along with the sixteen, the others—ten or so—should also come in and compete for priority? I am not going to allow this.

Sardar A. S. Saigal: My request was only to introduce the Bill.

Mr. Deputy-Speaker: Order, order. The hon. Member has not cared to make a request in the first instance. He started off all of a sudden. And I have considered it deeply. It is not that I stand on any technicality. But it interferes seriously. It is not an exceptional case where there is little work before the House. There is enormous work before the House. This will destroy the priority and create a bad precedent.

Pandit Thakur Das Bhargava (Gurgaon): Last time on the private Members' day this Bill was taken up by this House and dealt with for a short time. Now, with your permission, Sir, I beg to give my reasons why this Bill should be taken into consideration.

This Bill has also got a chequered history as well as the subject matter of this Bill. As regards the subject matter of this Bill I would with the permission of the House take some time to explain to the House the reasons why this Bill is quite necessary.

Sir, as you are aware, so far as our notions in India are concerned, every woman should be married.....

An Hon. Member: We are not able to hear him.

Mr. Deputy-Speaker: If there is less of talk in this House, hon. Member's speech will be heard.

Pandit Thakur Das Bhargava: I was submitting that in India the notions about marriage are that we expect that every girl in India shall be married. We do not believe in the institution of old maids and spinsters. Now, prior to giving my reasons in favour of this Bill, I will only speak of the general notions prevailing in India. This is a novel thing for us which was introduced by the Britishers here that woman as such was considered master of her own person. As a matter of fact this defence of consent was in the public mind never open to any person who had illegal sexual intercourse with a woman. The public mind still thinks that the defence of consent is not good. According to Hindu and Muslim notions, according to Hindu *Shastras* and Muslim *Shariats*, the offence of rape was considered very serious. According to Hindu Law a person could be sentenced to death and according to Muslim Law he could be stoned to death and given 100 stripes. This was the original conception of the offence of rape. In 1828 a Bill was passed according to which if a person had intercourse with a girl of eight, he could be sentenced to death. In 1860, the age was raised to ten. In 1891, the age was raised to 12. There was a very great agitation in the country and the question was whether the right of the husband was absolute but then the Government of the day passed a Bill in 1891. Later on many attempts were made. After some rights of legislation were conferred on the Indians, in 1922 Bakshi Subhantl brought a Bill in this House and he wanted to change the law but he did not succeed. In 1924, Dr. Hari Singh Gour brought in a Bill in which he wanted to raise the age to 14 in respect of marital as well as extra-marital cases but there also he did not succeed though many attempts were made to raise the age to 16 in extra marital cases. The Government of the day was not anxious to pass a Bill of this nature. Now the times have changed. We have a National Government.

Babu Ramnarayan Singh (Hazari-nagh West): It is not a National Government.

Pandit Thakur Das Bhargava: I, for one, never thought that I will be disturbed on this point but we have got Babu Ramnarayan Singh in this House and he is angry at me in calling this Government National. Does he mean to say that the previous Government was National?

Babu Ramnarayan Singh: No, no.

Pandit Thakur Das Bhargava: So he will see the difference. He was a party himself in making this Constitution. He stood in the elections according to the Constitution. The Constitution envisages party Government. In all democracies there are party Governments and ours, the Congress Government, is a National Government. There can be no doubt. This would not detract me from my speech.

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I submit in those days when the British Government was in power, the Government of the day did not allow such a Bill to pass. When the House in 1925 wanted to make the age 16 in extra-marital cases the Government gave its vote against that measure and killed that Bill. In 1927 another Bill was brought before the House by Dr. Hari Singh Gour and it was in the course of that Bill that a Committee was appointed by the Government known as the Age of Consent Committee. That Committee toured the whole of India. It went to various places. It took evidence in Simla, Lahore, Peshawar, Karachi, Delhi, Ahmedabad, Bombay, Poona, Calcutta, Madras, Madura, Vizagapatam, Shillong, Calicut, Patna, Banaras, Allahabad and Nagpur. Not only did it visit the towns but it went into the villages to find out opinion. There were ten members of this Committee out of whom two were lady members and the lady members held conferences, went to the ladies to find out their opinion. This Committee consisted of Sir Moropant Vishwanath Joshi as Chairman and Rai Bahadur Pandit Kanhaiya Lal, retired High Court Judge of Allahabad, Mr. A. Ramaswami Mudaliar who was once the Leader of this House, Khan Bahadur Mahbub Mian Imam Baksh Kadri, Sessions Judge of Junagadh, Dr. Mrs. M. O'Brien Beadon, Mrs. Brij Lal Nehru, Mr. Satvendra Chandra Mitra, who was a Member of this House, myself, Maulvi Muhammad Yakub, former Deputy President, Legislative Assembly, Mian Mohammad Shah Nawaz, Bar-at-Law. These ten members toured the whole of India. About 8000 written statements were received by this Committee. About 400 witnesses were examined. All kinds of opinions, orthodox and unorthodox were considered. Religious people were consulted, ordinary people were consulted, advanced people were consulted. Every shade of opinion was consulted and this Committee spent something like Rs. 2,88,000 of Government money and after ten months touring of the whole of India, it produced this Report in the year 1929. I

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can understand that the previous Government could give a go-by to this document but I believe the present Government will certainly not be justified in ignoring this Report. The Report of this Committee which was placed before the House was unanimous. All the ten members agreed that this age, extra-marital age for rape should be 18 years but I must say with great pain that so far, the recommendations of this Committee were not implemented by the Government. I would not say any word against the old Government. They did not allow even a single comma of the Sarda Act to be tampered with in this House but so far as our Government is concerned, I had expected that they will bring in a measure themselves so far as this Bill was concerned.

In 1947, as a humble Member of this House, I brought in a Bill and that Bill had a chequered history again. I may submit for the consideration of the House that in 1927 also when Dr. Hari Singh Gour brought in a Bill, it was circulated to all the local Governments and the Local Governments submitted their views to the Central Government. In 1947, in this House, I moved a motion for the consideration of the Bill and accepted a circulation motion and on the basis of that motion, opinions were received from the whole of the country and I hold those expert opinions in my hands which I shall read to the House later on.

Then again, this Bill which was sent for public opinion was referred to a Select Committee. In the Select Committee also this point was mooted and in the report of the Select Committee I appended a minute of dissent. When the matter came up before the House, a part of the Bill which I presented to the House was passed at that time; but this particular aspect which is now the subject matter of this Bill was not discussed. Because, I submitted to the House at that time that I was not going to move the amendment, but I reserve to myself the right to bring another Bill. These are the very words which I submitted to the House:

"I reserve to myself that I would bring another Bill."

I will give the House the reasons also why I considered this course was right.

As a matter of fact, if the House goes to consider the position in 1948, the position was very grave. We had at

that time the Child Marriage Restraint Act in which the age was fixed at 14. We had this law, the Age of Consent Law in which the age consent was 13. According to the report on that Bill we wanted that the age of consent should be raised to at least 15. We also wanted that the age of marriage should be raised to 15. That was the difficulty. When I put in this Bill, I made a mistake, strategic mistake I should say. I should have confined this Bill to increasing the age of girls in intra-marital cases. That would have been much better. I am not an experienced man. I included both the age of marriage as 15 and the extra-marital age as 18. When the Bill came before the House, Sardar Patel gave his blessings to the other Bill as well as this Bill and he said that these Bills were overdue. I was very happy that with the strength of Sardar Patel behind me, I should be able to get these Bills through. When the matter came up before the Select Committee, to my great dismay, I should say to my great misfortune, a note was put up by the Department in which it was wrongly stated that opinions received were not in favour of this Bill. I am here armed with the opinions as I was then armed with them. That note went up to Sardar Patel and he got the idea that the country was not in favour of that. Sardar Patel was a great democrat. His private opinion was different, as he expressed it in the House, when he said that this Bill was overdue. But, when he received this note, he came to the conclusion that the opinions received were against this Bill. I submitted, when the Select Committee was meeting, that this was not right. But, at that time, this question was not considered. As I was very anxious to see that the age of 15 was accepted in so far as intra-marital law was concerned, I thought that the better part of discretion was to accept three-fourths of a loaf instead of getting nothing. Therefore, I accepted the situation. I thought that if Sardar Patel and the Select Committee agreed to raise the age from 13 to 15, it was a very big advance. It was a question of national solidarity. I laid store by the increase of age from 13 to 15 much more than I cared for the increase from 16 to 18. So, I thought I should accept it and I did accept it. But, I wrote even then a dissenting note and the dissenting note was published along with the report of the Select Committee. I have got that dissenting note with me. It is a short one and with the permission of the House, I

will just read it. I submitted like this:

"I regret my inability to agree that the extra-marital age of consent should not be eighteen as proposed in the Bill.

In my humble opinion, a girl of sixteen is not mentally mature to comprehend the full significance and consequences of her consent. She cannot fully realise the social degradation which may be her lot in life if she conceives and gives birth to an illegitimate child. The present day girl has much more freedom and she needs as a consequence much more protection.

The law presumes that before eighteen she is not fully mature even to dispose of her property. How can she then be regarded fully mature to dispose of her person. In regard to sections 361 of the IPC and 562 of Cr.P.C. the Committee has been pleased to accept the increase in age to eighteen. Under sections 366A, 366B, 372 and 373 IPC, the present age is eighteen years. There is no reason why the age under section 376 should not be on a parity with these sections.

The Age of Consent Committee were unanimously of the view that the extra marital age of consent should be eighteen as it is in most of the countries of the world and this age was supported by a large majority of witnesses who appeared before the Committee.

I strongly feel that the law should give full and ample protection to young girls even against themselves before they are fully developed mentally to give consent."

When the matter came before the House, we passed three Bills of a revolutionary character on 4th April 1949 in about an hour or so. At that time, nobody raised any objection. The previous Bill was the one relating to the increase of age of marriage to 14.

Mr. Deputy-Speaker: This makes the husband also punishable, between the ages 16 and 18.

Pandit Thakur Das Bhargava: No.

Mr. Deputy-Speaker: See the wording here.

Pandit Thakur Das Bhargava: No. If that were so, I would not stand before you to advocate that this Bill be accepted. It is not so. So far as intra-marital relations are concerned, the age of 15 was accepted by the previous Bill. That is exactly where you, Sir, touch a delicate point. I agreed not to press my amendment because I

was getting in a space of five minutes the entire benefit of the increase of age in intra-marital cases. Therefore, I accepted that I would not move that amendment at that stage. Sardar Patel also was very pleased when he spoke pointing out that at that stage we were not going to accept the amendment of the age from 16 to 18. We never thought that for all time, that even after three years, when the situation has changed, this matter cannot be taken up. I am here to convince the House that so far as public opinion is concerned, it is entirely in my favour. I may submit that so far as intra-marital age is concerned, this Bill has nothing to do with the rights of the husband or the rights of the wife. It is only in respect of extra-marital cases that we are considering now. I know how strongly you yourself, Sir, were pleased to advocate this case and it was because of you that we, as a matter of fact, succeeded in increasing the age in intra-marital cases. When I brought before the House the Child Marriage Restraint (Amendment) Bill and submitted that the age should be increased from 14 to 15, you yourself were pleased to point out that unless this was done, the change in the law will not be very useful. I took the cue from you as I submitted at that time in my speech and thereupon that Bill was passed. So far as extra marital age is concerned the considerations are different. Ninety-nine per cent of the population of India is in favour of this Bill. Because in India, even in regard to older ladies, more than 18 years old, so far as consent is concerned, they do not regard the consent of a woman as good in cases of rape. Social obloquy, social degradation, outcasting from caste, etc., are the weapons which public opinion uses against girls who fall from the high ideals which we have set up. As a matter of fact, as I was pointing out, this Bill only relates to extra-marital cases and only to the ages between 16 and 18. If that girl is above 18 years of age this Bill does not touch that case.

I know that Hindu and Muslim opinion in this country would regard, even now, with horror our giving sanction or acquiescence to a state of things in which a woman may have intercourse with a stranger, but at the same time, I do not go to that extent, and we cannot go to that extent. My opinion is that if we restrict the scope of this Bill to the age of 16 to 18, we will be doing the right thing. Therefore, I have submitted that this Bill in its scope is restricted to extra-marital

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cases of girls between the ages of 16 and 18; nothing more, nothing less.

I was explaining why I did not press my amendment in 1949, and I think that when the Members of this House go through the proceedings of 4th April, 1949, they will themselves realise that I did it rightly. In the course of an hour, three Bills were passed of which one increased the age of marriage of girls from 14 to 15 and another increased the age of consent in intra-marital cases from 13 to 15, and the age of consent in extra-marital cases from 14 to 16. Under those circumstances, I humbly submit for the consideration of our hon. Home Minister and the House, that they should judge my conduct rather sympathetically. And if I accepted then three-fourths of a loaf, was I not justified? In five minutes time you were agreeable and you supported me, and we passed another revolutionary measure. I call it revolutionary because in Hindu society the state of things which we contemplated in that Bill could not have been mollified and changed to the extent it was mollified and changed by the passage of the Bill. You remember, Sir, that within five minutes we passed a law whereby marriages between Hindus of all classes—Brahmins, Sudhras, Jains and Sikhs—were validated by one stroke of the pen. It is true the time was ripe, but at the same time, within the span of an hour or so, this House passed these three Bills, and I took advantage of that. I did not raise my dissenting voice then. In fact, in the Hindu Marriages validating Bill also there was another amendment which I did not move, and I did not raise this question also. But it does not preclude me from doing the same thing now, three years later.

I can understand orthodox opinion. As a member of the Age of Consent Committee, I toured the country and I had occasion to see the strength of opinion in regard to the Sarda Bill etc., but at the same time, so far as the extra-marital cases were concerned, there was very little opposition; in fact, no opposition at all. I can say. The people did not realise the full effect of it because many people did not understand what the Age of Consent Bill was. In this country age of consent is not known. It is, I should say, an idea taken from the foreigners. What is the age? There is no question of consent. Nobody wants that any woman may remain unmarried, may have any sexual connection with a stranger. That is the idea.

When I was coming back from Calcutta to Delhi, it so happened that

Vallabhbhai Patel of sacred memory was also travelling in the same train, and when I told him that I was a member of the Committee and that I was coming back from Calcutta after doing work, he said: "What a non-sensical Committee!" I said: "Perfectly true". I myself did not know, when I became a member of that Committee what that Committee intended to do. But, now times are changed. Now, on account of increase in education, on account of the freedom movement, on account of many other circumstances, a girl is exposed to many more temptations than before. It is high time that we did our duty to protect such girls.

I was submitting about public opinion in the country and the report of the Age of Consent Committee. A special chapter was devoted to considering this question. And this was one of the terms of reference. The terms of reference were:

- (1) to examine the state of the law relating to the age of consent as contained in sections 375 and 376 of the Indian Penal Code, especially with regard to its suitability to conditions in India.
- (2) to enquire into the effect of the amendments made by the Indian Penal Code (Amendment) Act, 1925, and to report whether any further amendment of the law is necessary, and if so, what changes are necessary as regards offences (a) without and (b) within the marital state."

It is not as if we went out of our way and enquired into these questions. These were the specific terms of reference and we were asked to find out what was the suitable age so far as extra-marital cases were concerned and all other matters connected therewith. And with respect to this, we examined 400 witnesses orally and called for a very great number of written statements. It so happened, and it is not curious, that when witnesses, who had given their written statements about increasing the extra-marital age to 16, came before the Committee and we cross-examined them as to the nature of the circumstances which justified the increase, many of them changed their opinion and said that the age should be at least 18, because, as a matter of fact, human nature is such. When I say that it should be raised from 14 to 18, people say, "you jump to 18". I could not understand what is jumping in this matter. It is quite true in this matter also.

So far as the previous Government was concerned, any person would have been very cautious in bringing a Bill of this nature. Now we have got at the helm of affairs a National Government, and our Ministers have taken a pledge to see that the objectives with which we framed our Constitution are given effect to. We want that social justice should be done, that our girls and young boys, all of them, should rise to their full stature and be able to hold their own and therefore, the considerations which actuated the previous Government are quite different from those which actuate this Government. Sardar Patel himself was in favour of this Bill, but the opinions received were reported wrongly to be against it, and so he did not agree at that time to give me in full what I wanted of this Bill. Now I appeal to the Home Minister kindly to judge the matter on merits, and nothing else, because I value his opinion very much. If he is not satisfied, I myself will think twice, but at the same time, I beg of him most humbly not to be guided by the question of what happened in 1949 and 1947. Now, it is not a foreign Government which will be rather afraid of bringing in a measure which will go against the religion of any person, though no religious question is involved here. When the previous Government was hesitating when the age was increased to 14, the next Government accepted 15 as right, and passed it into law in a few minutes. At that time, I did not think it discreet to press my amendment to raise it to 18, now I do move it and very humbly come before the House kindly to consider the question in all its aspects.

The question is, how do I justify this change. After all, it is quite true that at the age of 16, a girl, so far as the physical aspect is concerned, cannot be said to be immature for cohabitation. So far as full capacity and full maturity is concerned, the doctors are of the view that 18 is the proper age, but at the same time, at 16 also the age is not immature in the sense that we expect any specific physical injury. I would have liked, and I think every Member in this House would have liked, that if we could increase the age of marriage to 16—or, some go further—and say to 18—it would have been all right, but I know what the difficulties are, and what the difficulties were even in increasing it to 14, and I again owe it to you—I am not given to flattery—that the Child Marriage Restraint (Amendment) Act was passed in this House by increasing the age to 15. I remember that our Mr. Gadgil who

represented Government at that time, insisted on the full pound of 14; he would not budge an inch, and I went to the length of saying that I was going to withdraw the Bill and would go to the public and say that the Government of the day was not progressive enough. And another leader will kindly excuse me when I refer to him. Could I ever expect that no less a person than Dr. Deshmukh our Minister of Agriculture, could have even come forward to uphold the age of 14 and say that he was not happy with the passage of that Bill. Not that I am complaining against him. In the other measure he supported too well, but at the same time, the circumstances of the country were such that opinions were bound to differ. With this background to increasing the age from 14 to 15, when I was withdrawing the Bill, you came to my assistance and put it to Mr. Gadgil and said: "Are you agreeable to 15 at least?" So far as the age of the boy is concerned, it could not be increased from 18 to 19, 20 or 21, but so far as the age of the girl is concerned, you extorted almost this thing from Shri Gadgil and made it 15. When I was so circumstanced that even in increasing the age from 14 to 15 I was driven to the extent of withdrawing the Bill and just asking the House to drop this measure, you then came to my aid. If you will kindly go through the proceedings you will find that it was under these circumstances that the age of 15 was accepted. With this background, was I foolish enough to endanger this my second Bill by insisting on the age of 18 instead of 16? I am submitting all these for the consideration of the hon. Home Minister. Why I agreed at that time not to move any amendment was because I was so circumstanced that I could not move it. Now I am in a freer atmosphere. What I wanted as the main plank has been accepted by the House then, and the age of consent was increased. I was very happy over that, and I regard that amendment as one which I should think, is a nation-building law, that we have passed. And I am very happy that I was connected with it.

Now the problem is this. According to this report and according to what we believe, the position is this. At the age of 16, it may be said that the girl will not get physical injury in ordinary cases if the offence of rape is committed on her, but so far as the intellect is concerned, I think we are not right in concluding that the girl of 16 is fully able to comprehend the

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full consequences of that ignoble act. I say it is ignoble because as a matter of fact when the intellect is not fully developed, it is an outrage upon her. The girl may be consenting to undergo injuries, but no person can inflict any injury upon her even if she consents, except to the extent provided in section 87 of the Indian Penal Code. My submission is that it is a case of undeveloped intellect, and not one of undeveloped body. Opinions may differ. And in fact we have received opinions to the effect that 16 is the proper age of consent because at 16, the girl is fully able to comprehend the consequences of such an act. I do not quarrel with such persons, because as a matter of fact the opinions are bound to differ in a matter of this nature. But what I submit is that in the opinion of crores of my countrymen, this consent at the age of 16 is meaningless. And in the opinion of those people who gave evidence before us, the consent at the age of 16, was meaningless, because at that age, the girl is not fully competent to understand the consequences of such an act. Now in our society, if a girl has to undergo that kind of torture of being raped by any person, even if she is quite innocent and never gave her consent, the society is so unreasonable that it refuses to accept the girl. Now, what happened in 1947 at the time of partition? There were many girls who were kept in Pakistan, and on whom these offences were committed. Even then our leaders had to go to the society and tell them that these girls were innocent, and so they should be rightly treated. And I am glad that it was in Punjab that we accepted these girls who came back, and made them members of our family. But in the society at large, if a girl is raped, even for no fault of hers, the society does not accept her. Such is the state of things in the society. It may be wrong, it may be the severest form of tyranny over that girl, but still if a girl is treated in that way, she is not accepted back. Nobody is willing to marry a girl on whom this crime has been committed. The House has to consider the case of such a girl. It is all right to say that for the offence committed against any such girl who has been raped, the offender is guilty. There is no doubt about that, but at the same time, I would like to know how many persons there are in this country who will gladly accept the hand of a girl, who, it is proved, consented to sexual intercourse with a stranger. I think this is a case of social degradation that in the society she will be treated as an

outcast, she will not be married by anybody, and the little finger of every person shall be raised against her, if only it is known that she has consented to this act with a stranger. Therefore, when the society is so tyrannically disposed in the case of innocent girls, and so justly disposed in the case of consenting girls—it regards this offence as one of the highest gravity that even under section 497 of the Indian Penal Code, the girl is not punished, because the society punishes her, and the society's punishment is much more severe, much more drastic than any punishment that any court of law could give. My submission is that I claim—I may be wrong—that in my view a girl of 16 is not fully competent to comprehend fully the consequences of her consent to such an act by a stranger. If she marries the man and the man also agrees to marry her, it is all right, and I would not raise any objections. But if the marriage does not take place, then the girl loses all that is dear to a woman and all that is dear to her relatives and she will be exposed to such consequences that we can only dream of and cannot fully comprehend. This is the basis on which I have come before this House with this Bill. A girl of 16 cannot dispose of even the smallest amount of land or property, she cannot enter into any legal contract, she cannot do anything, and she is an infant in the eye of the law.

Shri S. V. Ramaswamy (Salem): Nor can a boy of the age of 16.

Pandit Thakur Das Bhargava: I have not been able to hear what the interrupter has said, I am, therefore, not in a position to reply to it.

Shri S. V. Ramaswamy: Nor can a man do so. I said that nor can a man at that age dispose of property.

Mr. Deputy-Speaker: Essentially the offence is against the woman and not against the man. Leave alone the question of disposal of property.

Pandit Thakur Das Bhargava: When did a man ever have the right to dispose of property at that age? But if he commits an offence of this nature, do you not want to give protection to the girl? I cannot understand the mentality of those who want to find some criticism and fix the blame on the girl also. I do submit that it is not possible for a man of that age also to enter into a legal contract. But the point at issue is whether she is fully competent to understand the consequences of the act. If she cannot dispose of property, what is the

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reason? She is an infant in the eye of the law and cannot understand the full consequences. May I just enquire of my hon. friend why it is that in the Civil Marriages Act, it is said that the age of a girl should be 21, if she is not to require the consent of her parents to the marriage, it is not even 18, but 21 that has been laid down. Therefore, my submission is that so far as the question of marriage is concerned, below that age, the girl, under ordinary law, in India, is given away to her husband by her parents. That is why in ordinary marriages, we find that there is the ceremony of 'giving' the girl at the time of marriage, namely *Kanyadan*. One of the reasons for that is this. At the age of 16, she is not fully mature enough to understand what the meaning of her consent would be. It is not the age at which the consequences of the act could be fully thought out and deliberated upon. At the age of 16, she is unable fully to realise what it would mean to her if an illegitimate offspring is the result of that union. What is the fate of illegitimate children born as a result of such an act? For all their lives, they are branded with a stigma and wherever they go, society calls them *Haram ka Bacha*. So the consequences are so great that a girl of 16 cannot realise them. So this is one of the reasons which I would like to submit in support of my Bill.

In 1927-29, the Age of Consent Committee Report was published. Now so many years have passed, co-education has spread in every college, you find young girls and young boys reading together; in every factory, you find many young girls working; if you go to any office, you will find a fair number of ladies working there. Now I find there is much greater freedom in the country for girls than it used to be a few years ago. It can be said that girls also, as a matter of fact, have become more competent. But how many girls are there of this description? After all, in the country at large, the freedom movement and the things that are happening in India have influenced the growth of girls simultaneously with the growth of ideas. Everybody thinks that after 18, a person becomes a major.

There is another aspect of the question and that is one of the most important aspects. The idealism of a country is its best and most valuable capital. We have inherited that idealism from Sita and Savitri. We have inherited that idealism from our culture and from the thousands of years of the nation's striving after the goal of the best principles of conduct.

In India and in this country alone, I should say, such ideals have been there as do not find favour in any other country. If my attention is called to this question, "in how many countries is this age of consent 18?", I would subsequently reply to it. But I submit, so far as the circumstances of other countries are concerned, they are entirely different from our country. In no other country is chastity put on such a high pedestal as in our country. In no other country is social degradation looked down to such an extent if a girl goes wrong—as in our country. Therefore, my humble submission is that here in this country we have been having certain high ideals. Now, if we want to have those ideals, if we want to strengthen those ideals, then we have to see that so far as a girl is concerned, before the age of 18, her person is sacred except when she is married and given over to the husband. We have to instal this idea in the public mind, that an unmarried girl of less than 18 cannot be looked upon with amorous eyes, and by providing this by law, we will be doing the right thing. A girl comes from England to India, six thousand miles away, and has got full liberty to roam about alone. But can our girls do the same thing in India? Our girls are not so brave that they will go to other countries and behave in this manner.

The Minister of Agriculture (Dr. P. S. Deshmukh): They are going now.

Pandit Thakur Das Bhargava: They are going now. I am glad my friend says they are going now. I only wish that whatever he thinks right may be increased 100 per cent. so that all girls may get that strength and that bravery so that they may be able to hold their own in this life.

Therefore, my humble submission is that so far as this psychological aspect is concerned, if we instal this in the public mind and carry out this amendment and make 18 as the age lower than which if a person wants to look upon a woman he must think that he is doing a wrong thing, then it means that every girl will get that strength to a certain extent. We cannot divorce this psychological aspect from the other aspects of this question, if we really want that we may have high ideals and high respect for our womanhood.

This is not all that I want to submit. If you kindly look at the parity of laws which deal with this aspect, you will be pleased to see that in this chapter which relates to offences against the human body we have got some sections which deal with the

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relations of man with woman. In section 361—kidnapping—previously the age was 16, but by my Bill of 1949 this age was raised to 18. Now, kindly see how this question becomes very important. When the age of a girl is, for the purposes of section 361, 18, how can it be less than 18 in extra-marital cases for the purposes of section 375? Now, section 361 runs thus:

“Whoever takes or entices any minor under sixteen years of age or under eighteen years of age, if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship”.

Then other sections proceed—362, 364 and 366—in which the age of a girl for purposes of this definition has been made 18, with the result that in cases of kidnapping, under sections 366, 366A, 372, 373 as well as under the sections 368 etc., it appears that the age is 18. Now, after all, kidnapping is perhaps not a great offence, not a greater offence than an offence under section 375. If a girl is kidnapped for an illicit purpose and that purpose is accomplished then the person who accomplishes it is not guilty if he pleads and proves consent. Otherwise, under section 361 if the girl was agreeable to elope and gave her consent, even then the offence of kidnapping is committed. My humble submission is, if you kindly see the whole scheme of the Act from section 359 onwards up to the end, it will be clear that the protection was afforded to those girls on account of their immature age. Previous to that the age was different. Now in all the other sections, the age has been changed. Even in regard to section 552 of the Criminal Procedure Code, this age has been changed. It reads thus:

“Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of eighteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female, child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary”.

So that in relation to all these matters the age is now 18, and not the previous age of 16.

I remember having read a case reported in Punjab No. 17, I think, in which a girl of 17 invited a stranger to her house. In the whole of India when a person goes to the house of a girl who invites him, then if her age is more than 16, what happens? The girl is there, the stranger comes, the guardians are helpless. If they prosecute the case, what happens? The man says: ‘I went there at the invitation of the girl and committed no offence’. They cannot sustain the case and they have to fabricate—that this man came for stealing or for some other purpose. The real thing is not disclosed because it will involve disgrace etc. In that case the man was acquitted. So far as section 448 was concerned, the offence was not committed; he had not come with the purpose of producing uneasiness in a person’s mind or disturbing his peace. In cases of such a nature, where the girls are immature, between the ages of 16 and 18—there are lakhs of widows in this country on account of the system of child marriage—if a widow below 18 were to call a person to her house and if he is found in the house, he will not be guilty. So, the position today is that if a person kidnaps a girl, takes her to his house or sells or buys a girl, then that person is guilty under sections 366, 366A, 372, 373, 361 etc., but if he just achieves the object or the purpose for which he takes away the girl—sexual intercourse with her—then he is not guilty. My own submission is that this is not the right position of law; all the sections should be brought into line. Therefore, it is absolutely necessary that we bring all these sections in parity. The original intention of the framers of the Indian Penal Code should be given effect to and we should see that all these sections are on a par and we give to all our daughters the protection the law should give them. The law should give them protection against themselves, against their immature judgment so that they may not ruin themselves.

I submitted for your consideration that so far as the question of public opinion is concerned, every Member knows—and I need not expatiate any further on this point—that in the country it is not a religious question at all and the whole country wants that all kinds of extra-marital connections may be tabooed. With your per-

mission, Sir, I will read some of the opinions and submit for your consideration that the opinions received on my Bill, so far as the extra-marital age is concerned, are certainly in favour of the Bill. I will not trouble the House reading long extracts or small extracts or even cursorily some of them. From the opinions received, I have made out a statement myself and I will read out the number of people who supported it from the different provinces.

So far as the United Provinces goes, there were 26 opinions given. Out of those opinions—I have called them—19 are in favour of my Bill, including the Government of the United Provinces, including most of the Judges of the High Court and other very influential people. With your permission, Sir, I will just read out some names. The Government is in favour; the Chief Justice, Justice R. Dayal, Justice Sapru, Justice Bind Bansi Prasad, the District Judges of Agra, Aligarh, Azamgarh, Banaras, Bareilly, Naini Tal, Meerut, Shahjahanpur, Justice Chandramoni, the District Judge of Sitapur, the District Judge of Hardoi, the Advocate-General of U.P. and the Government Advocate of the High Court of Allahabad and Oudh also, Mr. S. Prasad, Mr. Asthana, Mr. Hyder Husain, Mr. Darbari Lal and others. There were only six against and they were Mr. Hon. District Judge of Fyzabad, the District Judge of Lucknow, the Chief Court of Lucknow and the District Judge of Allahabad. So far as this aspect is concerned, if the United Provinces is regarded as an index of the opinion of the whole country, I would submit, in 1927 also the United Provinces supported the Bill of Dr. Gour.

The Minister of Home Affairs and States (Dr. Katju): Am I right in thinking that only the U.P. Government and the Judges were consulted and nobody else?

Pandit Thakur Das Bhargava: I have read out the names of the District Judges of at least ten places, members of the Bar...

Dr. Katju: You just read out the name of the Advocate-General.

Pandit Thakur Das Bhargava: I read the other names also, the names of District Judges. I have read out the names of those who are in favour and also of those who are against.

Dr. Katju: They are Judges and Advocates; they are qualified people.

Pandit Thakur Das Bhargava: If they are qualified people, then I am all the more on sure ground.

I am quoting here the opinions of Samajes, of bodies, of Prarthna Samaj, of the Arya Samaj, Vaidik Samaj and even Sanatan Dharma and I will show what the opinions received are. If the other opinions are not received, it is the hon. Home Minister that is responsible for that, for not calling and receiving them. The Bill was circulated by the Government to the various people and if they do not call for their opinions I am not responsible. I claim that so far as the majority of my countrymen are concerned, they are all in favour and that there is no religious question. They were all against the Sarda Bill, they were against the age of marriage being increased. So far as this is concerned, I do not think any enlightened person will raise any objection. Who wants that his daughter may be abducted, who wants that his homely peace may be disturbed by an outsider; whoever wants this kind of liberty for a girl of less than 18 to go about wherever she likes? Nobody wants it, up to the age of 18.

Now, with your permission, Sir, I will also submit the position in regard to the other provinces. I will not like to read out many names. It is enough for my purpose that the majority of the people are with me. In Coorg, the Government favour me; that is the only opinion received. In the Central Provinces, five opinions were received, three were in favour, one is of no use and one is against. In Andamans, only one was received and it is against. In Ajmer-Merwara, five are in favour, and nobody against. In West Bengal seven were in favour and two were against; in Delhi five were in favour and two were against; in East Bengal, eight were in favour and four against, in Bihar two were against and none in favour. In Assam, two opinions were in favour and none against; in Bombay, fourteen opinions were in my favour and two were against and one was neutral. About the United Provinces, I have already submitted. So, it appears that out of the opinions received, about 80 were in favour, 29 were against and 9 were neutral. That is the sum total of the opinions received in regard to this Bill. But, if you kindly go through the opinions received, one will be struck by the reasoning and the unanimous feeling of many respectable men in this country who look at this question from a different angle from those who look at this question in a rather narrow way.

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I do not claim that this Bill is liked by all people. There are some people who do not like this Bill and I divide them into three categories. First, who by their experience in life have got the view that 16 is the proper age at which the girl can fully comprehend the consequences of her act. So far as these are concerned, I have nothing to say. It is a matter of opinion and I do not claim that I am better able to give an opinion as compared to them. This is not my claim. They are entitled to their opinions and so far as they are concerned, their position means something to me also. I cannot brush them aside as some of those opinions are of people whom I respect. Others who are against it are not against it because of this. They have got two kinds of opinions. Some people think that the prostitute class will be affected by this Bill; *Devadasis* and prostitutes may be affected by this Bill, in their living. This aspect was also considered by the Age of Consent Committee. They devoted some paras to it. I do not want to take up the time of the House in going into chimeras but, at the same time, I would submit that in our country when a girl is driven to that profession on account of circumstances over which she has no control, we are not doing the right thing in not helping her to earn an honest living. If the age is raised to 18, there will be many rebellious girls who would not like this profession. They will never go to this profession if this age is increased. Then it will be to their benefit and it is not wrong to say that these immoral practices are encouraged in this country by keeping the age at 16. This age of sixteen is entirely wrong. I remember what Mahatmaji said when he started his campaign. He said, that so far as the fallen sisters are concerned, we owe a great duty to them and now if we can by legislation of this kind give them an opportunity, give them protection, I would submit we will be doing the right thing.

There is a third class also. In this third class there are some people whom I call *Ashiq mizaj*. These people consider that so far as girls between 16 and 18 are concerned, no sort of obstacle should be put on their liberty. Their conception of girlhood is quite different from the conception which we have in the country.

So, so far as the first class is concerned, I have just read out its opposition so far as this Bill is concerned and so far as its position before

our Committee is concerned also, I have read out to you. I have placed before you all the grounds on which this measure is being opposed. Now this House has to consider whether the reasons advanced by these three classes are good ones and whether in the interests of the majority of the people we should ignore their opinions. I claim that so far as the very big majority of the people is concerned, they only think that the interests of the girl should be looked after and nothing else. Now, as I submitted, what is happening in this country? If you are going to allow this co-education and everything else, are we not drifting towards what was happening in Russia a few years ago? One of the witnesses that appeared before the Committee gave the evidence that in Russia, students—male and female—were allotted a single room where they were living in colleges. (*Shri Nambiar*: Question.) It may be wrong. I wish it was wrong. But I was very sorry when this evidence was given before us. I am very glad that my hon. friend who knows Russia better has contradicted me. But assuming for the sake of argument that this was the condition, I want to ask you: do you want that our country should go down to that state? (*Babu Ramnarayan Singh*: No, no.) My humble opinion is that if we want our girls to rise to their full stature, if we want that our girls must be robust, must be strong, must be able to produce good children and lead happy married lives, then it is absolutely necessary that we should place before our eyes this psychological aspect that their body should be held sacred and sacrosanct until they attain a particular age.

This Bill is not only intended to deal out punishment to offenders, because I know that in these cases it is very difficult to bring home the charge to the offenders. Do I not know the figures of rape cases in the whole country? In this Age of Consent Committee Report the figures up to 1927 were reviewed. Yesterday, I made an attempt to find out from our Library whether I could get good figures in regard to the matters which are covered by this Bill, but unfortunately I could not get those figures. But so far as Punjab is concerned, I know that during the last year the rape cases were 191 out of which 120 were brought to book. My humble submission is—and I say it with very great pain and very great shame—that in our country during recent years, and especially after this partition, all

those relations which we hold sacred have become rather loose. When I went to Bengal, I saw scores of homes for girls. Owing to the partition, all those girls had lost the protection of their elders and they had to be kept in these homes. Similarly, due to the exodus from West Pakistan, we find that in Delhi and other places there is a kind of moral degradation which we have never seen before. I am very much ashamed of it and I want that just as we have a Five Year Plan for our economic advancement, similarly we should have another Plan in which provision will be made for us to revert back to our old ideas of chastity, to our ideas of domestic felicity, marriage and fidelity. We should evolve such a character in our young men and women as to make India a pattern for all the countries of the world as it used to be. I want that pattern to be restored, and it is with a view to achieving that ideal that I am submitting this Bill for the consideration of the House.

1 P.M.

It is now one o'clock, Sir, and if you will permit me I shall continue after lunch.

Mr. Deputy-Speaker: Will he take very long?

Pandit Thakur Das Bhargava: No, Sir. Only a very short time.

Shri Nambiar (Mayuram): May I get a clarification from the hon. Member? By the old idea of chastity, does he mean that women should not be allowed to divorce? Does he mean that or something else?

Pandit Thakur Das Bhargava: Certainly not.

Mr. Deputy-Speaker: Divorce is irrelevant.

Pandit Thakur Das Bhargava: If the hon. Member had followed what my position was with regard to the Hindu Code Bill, he would have seen that I am in favour of divorce.

Mr. Deputy-Speaker: As often as he wants.

The House then adjourned for Lunch till Half Past Two of the Clock.

The House re-assembled after Lunch at Half Past Two of the Clock.

[MR. DEPUTY-SPEAKER in the Chair]

Shri S. V. Ramaswamy: Sir, there are a number of Bills waiting to be introduced. I suggest that all the Bills

be introduced and then they be taken one after another.

Mr. Deputy-Speaker: That matter was brought to my notice in the morning—it is no new suggestion.

Shri S. V. Ramaswamy: I am sorry I was not here.

Mr. Deputy-Speaker: I said that it is contrary to the rules and a suggestion was made that I should suspend the rules. That is done in extraordinary cases. First of all if that rule is to be waived, so as not to stand in the way of the other motions which are already on the Order Paper, the consent of every one of them has to be taken in writing. The reason is this. Now if the other Bills are also introduced the priority of Bills which had already been introduced and brought up for consideration will be disturbed. So, without the consent of the Members affected, the rule can never be waived.

Further, if the business before the House consists only of one or two motions for consideration, and a number of other Bills are pending, then leave may be granted for their introduction, because there is a chance of the other business collapsing. There are already sixteen motions for consideration on the Order Paper. What is the good of adding to that number?

For these reasons, I do not propose to apply my extraordinary discretion of waiving the rule and allowing these motions to be made at this stage. Let us consider it next time.

Pandit Thakur Das Bhargava: I have dealt with one aspect of my Bill, that is the clause which seeks to substitute the figure 18 for the figure 16. There is another clause where the punishment is provided and an amendment of the Criminal Procedure Code is sought. In regard to this I know that this question must be exercising the minds of many hon. Members and this is an aspect which we cannot ignore, so far as this Bill is concerned. It was advanced as an argument before the Age of Consent Committee that if such a provision is passed into law, there will be some difficulties experienced in regard to some youngmen who may be entrapped by young ladies. As I submitted before in the case of prostitutes also there will be some difficulty. I do not want to go into this difficulty. I would only just read out some lines from the report of the Age of Consent Committee where this point has been discussed. I would also like to give the background why in clause 4 I have made the offence compoundable.

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At paragraph 405—page 188—of the Report, the Committee observe:

"It has been brought to our notice that, in communities where courtship before marriage is permitted, it may cause hardship if the age is fixed so high as 18. In particular in the Assam valley, there is evidence of a practice of young Assamese living for a few days in the jungles as husband and wife and on their return to their villages getting married with the approval of their parents. It is not our intention, however, that these cases should be dealt with under the proposed law."

Now, it is well known that among Anglo-Indians and some Assamese people there are such practices—after courtship the couple come and want to get married. Nobody wants that any obstacles should be placed in their way, provided they do not contravene the provisions of the Child Marriage Restraint Act. With a view to provide for that, I thought it would be better if the remedy were placed in the hands of those who have broken the law to come and compound the case, if a case of that nature was brought.

In regard to cases where the objection is that the young man may be entrapped, the Age of Consent Committee observed—page 190, para. 408:

"A more serious objection has been advanced that boys of tender age, i.e., below 18 years are not protected against the blandishments of girls over 16 and that such boys, while at the mercy of designing girls, will be penalised for what they are not wholly or even largely responsible. In considering this objection, we may ignore the girls who are unchaste and who belong to the professional class of prostitutes, as their case will be considered separately. Among the ordinary classes who lead a normally chaste life, it is, we feel, an exaggeration to suggest that girls will often be tempters of young boys of immature age. Such a hypothesis is wholly against experience and the danger, if it exists, must be held to be of such a small degree that it cannot prevail in the consideration of the question. Moreover, we have sufficient faith in the discretion of the trying judge and are confident that in such cases the boy would not be given a disproportionate punishment."

So, this point has been sufficiently answered by the extract I have read out. I can very well understand the anxiety of people to save youngmen from the clutches of law. But I have yet to come across a criminal law which is absolutely flawless, in which hundred per cent. success can be expected. What about the Penal Code of this country? Is it not a fact that in hundreds of cases the law does not succeed and it is evaded? That does not mean that we should not have such law. It may be that the law may not work wholly satisfactorily, but what we have to see is whether it will protect young girls in a majority of cases, in large numbers.

I think these few lines from the Age of Consent Committee—paragraph 412—will bear repetition from me:

"We do not ignore the fact that the law may not work satisfactorily, particularly at the initial stages, with reference to prostitutes. There will be many cases of violation of the law which will not come to light. There may be a few cases where harassing prosecutions may be instituted. But even so, the salutary effects of the law are bound to be great and decisive. The distinction of chaste and unchaste girls has been made in some western countries, a lower age being fixed for the latter. It is a distinction, however, which we do not feel called upon to recommend in the circumstances of this country."

My humble submission is that we have to consider this law from the broad standpoints and not from rare cases which may create hardship. In clause 2 of this Bill I have tried to add the following to the section:

"Or unless the woman is between sixteen and eighteen years of age and is a consenting party to the sexual intercourse in which case he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both".

I have seen many sections in the Indian Penal Code in which the maximum punishment is provided as well as mere fine or warning is provided. We must have faith in our judges and they will look to the circumstances of the case and apportion punishment according to the gravity of the offence. I remember that while we were in the Age of Consent Committee and a pro-

posal like this was made, namely that the husband may be imprisoned, my sister Shrimati Rameshwari Nehru put in a note and she thought that it was atrocious and very drastic to provide such imprisonment to a husband. I know the women have got very lenient hearts and I know that some of the lady Members in this House also will not like the provision that a person should be sentenced for two years if he behaves in this manner. May I humbly submit that it is not necessary that in every case there should be a two years' imprisonment? On the contrary it depends upon the circumstances of the case. In some cases fine or warning or imprisonment for a day would be enough. It depends on the circumstances. But at the same time I would like to know of a penal provision in which no punishment is provided. How can we make a penal law in which there is no provision of punishment? After all the range of discretion is large and two years' imprisonment will not be awarded in all cases. Therefore, this punishment is not very great.

On the contrary I must submit that I do not visualize that very many cases will come before the court. As a matter of fact, from the nature of the case, the offence will be committed in secret and there will be nobody to bring the offenders to court. The girl, if she has given her consent, will not bring it; the offender will not bring it. The greater usefulness of this Act will consist in giving us an ideal and at the same time putting fear in the minds of those who want to behave in this ignoble way. What happened with the Sarda Act? We know that many cases were not brought before the courts. And in fact even now marriages are being celebrated in violation of the Act. But at the same time who can deny that it has had very good influence on the people and that the rise in the marriageable age is a measure due, among other causes, to the existence of the Sarda Act?

Similarly, it is not the business of this law to go after every infraction in every case. It is not possible in the very nature of things. I do not think there will be many hard cases in which persons will be sent to two years' imprisonment. I do not think so. This is the maximum provided. It is not in every case that this punishment is given. We have not to look only at the severe consequences provided in the Act; we have to look at the whole thing in a broad way.

I know that there are some people who are against this law. But I have also not known of any penal law of a social nature on which every person is agreed. There are some who think that the consequences in some cases may be hard. I am not here to say that there will be no case in which there may be no hardship to anybody. But in all things it is so. When we were going to enact the Sarda Act I remember people were ruthlessly against it and they just conjured to themselves a state of things in which the heavens were going to fall if the Act was passed. I remember those days also. I remember in respect of myself that certain orthodox people took my *arhi* out in a town in Bhiwani because I was in favour of the Sarda Act. This sort of thing is bound to be there. On that account we cannot be chicken-hearted and refrain from effecting these reforms, even if there are some people who are opposed to them.

Considering the entire circumstances in the country, considering the trend of the present civilisation, and considering the moral degradation that is coming upon us almost in so hasty and shocking a fashion, I think every possible effort should be made to see that our morals do not deteriorate.

Some persons are of opinion that education will correct it. But when I look at educated people I think the less educated the ladies and girls are perhaps the better they behave in this respect. Others say: you give lessons in morality. I do not know how far we shall succeed.

Shri Sinhasan Singh (Gorakhpur Dist.—South): Does the hon. Member think that his case is so weak that he should take such a long time to strengthen it by such big arguments?

Mr. Deputy-Speaker: Length of argument does not necessarily mean weakness of the case.

Pandit Thakur Das Bhargava: Some of my hon. friends are evidently anxious to speak. I understand. It is a way of putting things. But I understand the interrupter is very anxious to speak. And I do not want to stand between him and the House. I am very glad he is anxious to speak. I wish all of my friends will speak on this point. But I would request them in a most humble way kindly to read the Age of Consent Committee Report, chapter X, on this aspect of the case and go through the opinions we have received. As my friend thinks I have taken too much time on a matter like

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this—I do not think I have taken too much time; if I have, I beg the pardon of the House—I shall conclude soon.

Shri Gadgil (Poona Central): That is not without our consent!

Shri Bansal (Jhajjar-Rewari): But he is going to oppose it.

Shri Sinhasan Singh: I said why take so long.

Pandit Thakur Das Bhargava: Since my friend wants me to finish, I have no hesitation to conclude my speech. It is not my case that this Bill will bring a millennium. I do not think every case will come to court, and I do not want...

Shri D. D. Pant (Almora Distt.—North-East): You want to stop trial marriages!

An Hon. Member: No. Married trial.

Shri Gadgil: You stand for it now.

Pandit Thakur Das Bhargava: It is very difficult for me to go into the depths of my friend Shri Pant's mind. I have never been able to understand him. But I submit that in the efforts which this country and the people of this country can make in having our standard of chastity and morality restored and raised, this is one of the methods by which we can certainly instal and restore chastity to its ancient standard. From the psychological point of view we may understand that by enacting this measure we will be helping the cause of morality and chastity.

I still beg the pardon of those friends who think I have taken too long a time. But I respectfully beg of them—perhaps this may not be passed today, but when it comes before them in the next session I would respectfully beg of them—kindly to read these opinions and at the same time come to their own conclusions. In matters where social legislation is enacted in the House, it has been the practice in past that every person has been allowed freedom of voting. And I think now also our Leaders and the Leaders of other parties will allow that freedom of vote. It depends upon us whether we are going to take advantage of the Swaraj and liberty we have got or not.

Mr. Deputy-Speaker: Motion moved:

“That the Bill further to amend the Indian Penal Code (XLV of 1860) and the Code of Criminal

Procedure (V of 1898), be taken into consideration.”

I have received notice of certain amendments. Is Shri Nageshwar Prasad Sinha going to move his amendment?

Shri N. P. Sinha (Hazaribagh East): Yes, Sir.

Mr. Deputy-Speaker: Has not this Bill been already circulated?

Pandit Thakur Das Bhargava: Many a time. The Age of Consent Committee was a circulating Committee. In 1927 opinions were invited on Dr. Gaur's Bill and my Bill was circulated. The provisions in the present Bill were a part of my previous Bill. I hold in my hand the opinions received on that Bill.

Mr. Deputy-Speaker: I only wanted to know that information for this purpose. This motion will not be in order if it has already been circulated.

Pandit Thakur Das Bhargava: No, Sir. This Bill as such has not been circulated.

Mr. Deputy-Speaker: Very well.

Shri N. P. Sinha: I beg to move:

“That the Bill be circulated for the purpose of eliciting opinion thereon by the end of March, 1953.”

I do not like to make a long speech at the present moment when so many of my hon. friends are anxious to speak, but the points, which have initiated me to move this amendment, are mainly two. The first is that this amendment affects one of the common laws of the land and these sections of the Indian Penal Code which are at play almost everywhere, everyday, in hundreds of cases throughout the country. So, it would be better if we get an opinion from all sections of the public, the lawyers, the Judges and from those who are concerned with it, right up from the police investigating officers up to those of the Supreme Court. When we are taking up an important question like this on which opinions may vary, I find it difficult to accept this motion in such a haste today.

Another point is the length of the speech of the hon. Member itself. The hon. Member has made such a lengthy speech that it clearly shows the inherent weaknesses of the Bill itself. My first objection to it is, that we are not in a position to pass this very hastily because we do not know what are the view-points of those people

who are directly concerned with it in the lower rungs of the society. I know, this is a very important social measure. In one way it is going to give a very long rope to the youngsters in a fashion, which we may have sometimes afterwards to decry fully and cry a halt. The first part of the Bill is going to tighten up the period of nonage so far as the girls are concerned. But, so far as the males are concerned, the hon. Member is going to give a long rope. After all this appears to be discriminatory, this appears to be somewhat contradictory in principles, as some of his arguments indicated. Although his arguments were meant in favour of this Bill, they were contradictory in this way, when he said that it was not wise always to bring to courts of law such persons who by mistake commit some wrong nor desirable to try to expose them. But if you want to punish the offenders, you must punish them properly. There should be no leniency. If you want to put the age for the consent of girls as 18, I have no objection, but before doing that, you must also see that if offences are committed within this range, if offences are committed even by erring persons, they should be given a deterrent punishment, otherwise some people would usually think that it is only a question of two years' imprisonment which even the courts do not usually give. Of course, I feel that you are giving a long rope to such persons who are generally the active agents in these cases.

In this connection I would like to quote the views of some of the Judges of the High Courts:

"Crimes of violence upon women who are not in a position to defend themselves must be put down with a strong hand and it would be a very sad state of affairs, if criminals were to carry an impression that to criminally assault a woman or to rape her was not a very serious matter, and that they could always satisfy their unholy passion if only they were prepared to undergo a comparatively short term of imprisonment."

That is a remark made by one of the learned Judges of a High Court. Another remark of a High Court Judge is:

"When a person is convicted of rape, his punishment will be proportioned to the greater or less atrocity of the crime, his conduct and the defenceless as also the

unprotected state of the injured female—whether she is a low native or a high European. The condonation of the offence, on being paid a sum of money by the family should not be taken into consideration in determining the punishment to be inflicted."

This is an extract from the remarks of an hon. Judge of the Nagpur High Court.

The ways of these erring youngsters are always inscrutable. If there has been a consent, leave the parties alone and try to see that a sort of marital relationship is developed between them and, if no objection, marriages should be performed. I know, whenever there is an offence under this Section 99 per cent. of the cases generally end in acquittal on account of the technical defects of law or, on account of certain other things which lawyers know very well, but for that reason, we should not make the law itself so lenient as to encourage crimes.

If you are going to tighten up the previous aspect of the Bill by increasing the period of nonage, my submission will be, that you have also to tighten up the other aspect of it and make the sentence as severe as possible. It is not the law by itself that is responsible. It is the fear of the consequences of committing an offence that counts much. I submit that opinions may vary on this point and I am strongly of opinion that there should be nothing in this Bill which may give any encouragement to any section of the people for doing an act of violence or doing an act of criminal assault on unprotected human beings.

I, therefore, submit that the Bill be circulated for the purpose of eliciting public opinion.

Mr. Deputy-Speaker: Motion moved:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the end of March, 1953."

श्री नन्द लाल शर्मा (सीकर):
नमोस्तु रामाय सलक्ष्मणाय देव्ये च तस्यै
जनकात्मजायै नमोस्तु रुद्रेन्द्र यमामिलेभ्यो
नमोस्तु चन्द्रार्क महदगजेभ्यः ।

कुछ मानवीच सबस्य : इसके मतलब
तो बतला दीजिये ।

श्री नन्द लाल शर्मा : मानवीच
उपाध्यक्ष महोदय, मैं श्रीमान ठाकुर दास जी

[श्री मन्मथ लाल वर्मा]

कार्य द्वारा उपस्थित किये गये भारतीय बंड विधान संशोधन पर बोल रहा हूँ। मेरे बंधुओं को यदि इस का मतलब समझना होया तो उन को बाहर बतला सकता हूँ।

श्री बंसल : हाउस में सब को एक साथ ही बता दीजिये।

श्री मन्मथ लाल वर्मा : मुझे माननीय कार्य महोदय के इस संशोधन की भावना से सर्वथा सहानुभूति है। मुझे यह विश्वास है कि उन्होंने भारतीय समाज के सदाचार को ऊंचा उठाने के लिये ही और इसी भावना से इस संशोधन को रक्खा है। किन्तु इस संशोधन के क्लॉज ३ में, जो आप ने यहां दिया है, उस को प्रसंग के साथ मिलाने पर वहां पहले यह था कि "Unless the woman raped is his own wife and is not under 12 years of age" वहां पर उन्होंने अब एक और अल्टरनेटिव (alternative) जोड़ दिया है कि "Or unless the woman is between sixteen and eighteen years of age and so on" इस से बेरा विश्वास है कि कानून में भ्रांति अधिक बढ़ेगी। ग्रान्ति इस रूप से बढ़ेगी कि इस में पहले रूप में जहां बॉमन (woman) अपनी स्त्री होगी, वहां दूसरे रूप में ऐसा नहीं है। प्रारम्भिक कानून जो इंडियन पिनल कोड के अनुसार बंधुओं ने बना या था वह तो भारतीय समाज और भारतीय चरित्र शास्त्र को देख कर के बनाया था कि अपनी स्त्री के अतिरिक्त यदि किसी दूसरी स्त्री के प्रति दुर्भावना रखने वाला हो और उस के साथ किसी प्रकार का संबंध रखेगा तो उसे दण्ड्य बतलाया गया

3 P.M.

है। वस्तुतः इस क्लॉज के द्वारा परस्त्री के साथ संगम किसी प्रकार से निषिद्ध नहीं माना जायगा और साथ पर कम्पाउंडेबल (compoundable) भी हो सकेगा जैसा कि आगे आ चुका है। इसलिये मेरा यह विश्वास है कि इस से भारतीय चरित्र शास्त्र को और साधारण जनता को विशेष धक्का पहुंचेगा, इस से किसी प्रकार का लाभ नहीं होगा। यह कहना कि छोटी अवस्था में अर्थात् १६ या १८ वर्ष की अवस्था में उस को काफ़ी ज्ञान नहीं होता है एतावता अवस्था आगे बढ़ा देने से हम उस का ज्ञान बढ़ा देंगे, कम से कम काम शास्त्र के अनुसार तो यह ठीक नहीं है। इन्द्रियों का अवस्था से कोई सम्बन्ध नहीं है। श्री मद्भगवद्गीता में यह स्पष्ट कहा है : इन्द्रियाणि प्रमाथीनि हरन्ति प्रसभं मनः कि इन्द्रियां हुतनी बलवती होती हैं कि वह मन को जबरदस्ती खींचकर ले जाती हैं। और इसी प्रकार मनु ने भी कहा है :

मात्रास्वस्त्रादुहित्र वा नाविविक्तासनोभवेत्

बलवानिन्द्रियं माविद्वातमपि कर्षति "।

विद्वान को भी इन्द्रियां खींच कर ले जाती हैं। इसलिये १६ या १८ वर्ष की कंसेंट (consent) का प्रश्न किसी प्रकार भी उपस्थित नहीं होता। जहां तक मैं प्रारम्भिक प्रसंग (original context) को देखता हूँ उस के अनुसार किसी भी परस्त्री के साथ सम्भोग दण्ड्य माना गया है। "Unless she is his own wife and not under 12 years of age" यह जो कहा गया है इस के अनुसार अपनी स्त्री के अतिरिक्त किसी स्त्री के साथ जो सम्भोग होता है वह कुरा माना गया है। हमारे भारतीय साहब ने सीता और सावित्री की

क्या तो सुनाई, परन्तु आज उन के आदस के विपरीत लड़कियां कालिज और स्कूलों में जाती हैं और वह १८, २० वर्ष की हो जाती हैं पर उन को पति प्राप्त नहीं होता। ऐसी अवस्था में यह हो सकता है कि वह किसी लड़के को अपने बगल में फंसा लें और उस के साथ प्रसंग कर लें और फिर उसे कहें कि

"Now you must either compound the offence or you must suffer the consequences of law."

इस परिस्थिति में या तो तुम इस के परिणाम को भोगो या मेरे साथ विवाह कर लो, मुझे पति नहीं मिलता था इसलिये मैंने ऐसा किया। अथवा स्त्री उसी परिस्थिति में विवाह कर ले और फिर डाइवोर्स (Divorce) कर दे जिस के लिये आज हमारे चरित्र शास्त्र को उन्नत बनाने वाले महात्मा बार बार इस हाउस में आ कर कहते हैं। आप देख सकते हैं कि शारदा ऐक्ट पास कर के क्या कर लिया। मैं कहता हूँ कि आज भी शारदा ऐक्ट के विरुद्ध विवाह होते हैं। और वह एक डैड लैटर (dead letter) बना हुआ है। श्री भार्गव साहब ने भी यह स्वीकार किया है कि उस ऐक्ट के विरुद्ध विवाह होते हैं। इसी तरह इस कानून का भी विरोध होता रहेगा। मैं निवेदन करता हूँ कि इस हाउस के मान को बढ़ाने के लिये आप उस कानून को पास न करें जिस को जनता दुढ़ता से तोड़ना चाहती है। कानून वही बनना चाहिये जो कि जनता की भावना के अनुरूप हो। जनता ने मारल पाइंट ऑफ़ व्यू (Moral point of view) से इस चीज की माग नहीं की है। इस परिस्थिति से कि अगर परस्त्री १६ या १८ वर्ष की होने पर कंसेंट दे दे तो ऑफ़ेंस (offence) कम्पाउंडेबिल हो जायगा इस से भारतवर्ष में बहुत अनर्थ मच जायेगा। इस के स्टेटमेंट ऑफ़ आबजेक्ट्स एंड रीजन्स

में लिखा है कि, "not to treat the offender very harshly" यह शब्दमन्वार्त् उसकोसीबियर पनिशमेंट (severe punishment) न दी जाय लिये हैं। मैं तो यह कहता हूँ कि यदि यह सिद्ध हो जाये कि ऐसे अनुचित प्रसंग के लिये कन्या ने भी कंसेंट दे दी है तो कन्या को भी कानून के द्वारा दण्ड होना चाहिये। यदि आप ऐसा कानून बनावेंगे और सीता सावित्री का नाम लेते रहेंगे तो आप का चित्र आगे बढ़ेगा नहीं। इसलिये मैं यह निवेदन करता हूँ। अंग्रेजों में परस्त्री और अपनी स्त्री का कोई प्रसन्न उपस्थित नहीं होता।

कुछ माननीय सदस्य : होता है।

श्री नन्ध लाल शर्मा : ला में चाहे कुछ हो परन्तु वहां कोई भी किसी भी स्त्री के साथ गलबांही ढाल कर नाच सकता है और इस को बुरा नहीं समझा जाता है। परन्तु उन अंग्रेजों ने भी जोकानून बनाया उस में आप की सोसाइटी के मारल्स का ध्यान रखा। लेकिन आज स्वराज्य के नाम से हमारे ही देश के रत्न खड़े हो कर यह कहते हैं कि हम यहां अपनी प्राचीन परम्परा को तोड़ने के लिये आये हैं। मेरे पूर्व वक्ता ने जनमत ग्रहण करने के लिये समय मांगा है। परन्तु मैं तो कहता हूँ कि जनमत की आवश्यकता ही नहीं है। मैं श्री भार्गव से निवेदन करूंगा कि इस को वह स्वयं ही लौटा लें और यदि वह स्वयं न लौटायें तो यह संसद इस पर विचार करे और परस्त्री संसर्ग जो कि हमारे यहां सर्वथा कलंक माना गया है उस को आगे बढ़ाने का प्रयत्न न होने दे। मैं आप को बन्धवाद देता हूँ।

पंडित ठाकुर दास भार्गव : क्या मैं एक सवाल पूछ सकता हूँ। अगर इस में से कंसेंट वाला और कम्पाउंड

[पंडित ठाकुर दास भार्गव]

करले बाला हिस्सा निकाल दिया थाय तो क्या आप उस को मान लेने ? क्या आप की राय के मुताबिक अगर अनमैरिड गर्ल (Unmarried girl) कन्सेंट दे दे तो क्या वह आक्रैस नहीं होगा ?

श्री नन्द लाल शर्मा : दोनों को दण्ड होना चाहिये ।

Shri D. D. Pant: I am surprised that a man of the intelligence and experience of my hon. friend Pandit Thakur Das Bhargava should have moved this sort of a Bill. I should have thought that only a man suffering from moral constipation would think of interfering in any way with our natural and rational urges. It is a most unscientific way of thinking that he has given expression to in this Bill. In an age in which the knowledge of biology and sexual psychology and all these things has so much advanced, when people have written volumes and volumes on it—men like Havelock Ellis and Freud—and the subject is under discussion by the great intellectuals of the world, to think that we who could be called laymen so far as sexual science is concerned should try to interfere with the natural instincts of men and women in this world, is surprising in an age when girls are taking freedom all over the world, even to assert their right to trial marriages. A girl must examine quite a number of young men before she marries. That she goes wrong in certain cases does not mean anything. Ultimately the girl's moral personality will emerge out of the struggle. You cannot force a moral personality on anybody. Even a very purist thinker like Mahatma Gandhi, the Father of the Nation, used to say that swaraj is our birthright to err and correct ourselves. But, you do not want to give this freedom to people to err. It is a different thing to protect a child from the onslaught of animals or somebody else. But to think of interfering with the natural and primal instincts of men and women is not proper. I do not think that it would be wisdom on the part of this House to take this Bill so lightly and pass it in a mood of perverted moral enthusiasm. I respectfully urge that it is this sort of a provision which is responsible for many crimes in this world.

An Hon. Member: Do you want promiscuity?

Shri D. D. Pant: You will just now hear me. Have patience. Do not lose your patience; you will lose your case also.

It is said by one of the best writers that poor Adam would never have tasted the forbidden fruit had it not been said that it was forbidden. It will create a sort of rebellion in our youths if we try to interfere in these things. A youth is ordinarily sensible if you leave him to freedom. It is only when you try to interfere with his freedom that he behaves in a manner which you do not think to be correct. So, my submission is that we should not in this way try to interfere with everything without having expert opinion. Even experts would fear to give any opinion on this ordinarily.

An Hon. Member: Are you an expert?

Shri D. D. Pant: Yes, I am an expert. For you I am a super-expert.

Take the question of control of population. At one time it was said that those who were not fit for producing children and those who could not produce proper and good children should be sterilised. The discussion has been going on for the last 30 years, and scientists and intelligent people have not yet been able to come to a conclusion. A. C. Pigou in his *Economics of Social Welfare*, when he discusses the subject of sterilisation of the unfit at length, says that the scientific knowledge at our disposal is not enough to come to a conclusion. Without any knowledge of psychology, and the minds of the present youth, we should not come forward with a Bill to interfere with the tradition that has been going on for the last so many years. Nobody can say today that because of the existence of this age of consent, more rapes are being committed or more immorality is taking place. If there is any fear in the mind of Pandit Bhargava that our children are getting immoral, that the youth of this time is getting immoral, and that is why this Bill is being brought, then, their activity will only go underground. That will be the only result, and you will see that nobody has got the power to interfere with the freedom of the youth.

Dr. N. B. Khare: The type of offence contemplated can only be committed underground.

Shri Kazmi (Sultanpur Distt.—North cum Faizabad Distt.—South-West): Both of you agree.

Shri D. D. Pant: I have no objection if for himself he wants it to be underground because he believes too much in Hinduism.

Mr. Deputy-Speaker: May I intervene? The point in this Bill seems to be simple. Below the age of 15, the consent is not material. Even if the consent is given, it is useless. It is an offence.

Several Hon. Members: Sixteen.

Mr. Deputy-Speaker: Below 16, except in the case of the husband, where the age is limited to 15. Now, this does not deal with the case of the husband. The only question is whether the age of 16 ought to be raised to 18. What is the use of going back? Does the hon. Member Mr. Pant, who is arguing, want that even the age of 16 should be scrapped, and natural forces should be allowed to work for themselves? Therefore, the simple point is this. At one time it was thought that below 12 was improper. Then it was raised to 16, because even at 16 children are not sufficiently able to take care of themselves. Therefore, their consent is useless. Now, it is said that it is full of bad and serious consequences, and therefore it must be increased from 16 to 18. This is the short point. Therefore, hon. Members will address themselves to that matter. There is no good going back as if the whole principle of fixing a particular age is bad.

Shri Gadgil: May I respectfully submit that questions of eugenics, sociology and other social consequences are the necessary background for this question. All these principles or angles of view which were relevant when the limit was fixed at 16 are equally relevant today. I would, therefore, very respectfully urge on you to allow young men a little more liberal margin on the subject.

Mr. Deputy-Speaker: I can understand young men indulging in such speeches. All right.

Shri D. D. Pant: In respect of the points I have made so far, I wanted, in fact, to shorten my speech, because on this flimsy thing I did not want to waste public money; but, all the subjects to which I have referred and all the points referred to up till now are quite relevant to the point.

Shri Kazmi: They have accepted.

Shri D. D. Pant: You said, Sir, just now that the age was raised from 12 to 16 or from 14 to 16. Have we got any data in our possession to prove that we have done a wise thing. I would say that we should not talk of these things so lightly in this manner. Tomorrow we can say, it should be raised to 20. Why, our experience up till now has been that on the whole in the country, human morality and the morality of the youth, has, instead of going down, been going up. The greater the freedom we give to youth, the greater will be the morality. It cannot be secured by taking away the freedom of the youth in this manner. As far as the age of consent in this sexual matter is concerned, I say that so far as nature is concerned, we have got several instances wherein girls have been conceiving at the age of 14, and producing quite healthy children. You cannot so lightly interfere in these things. Therefore, my submission is that the motion for circulation should be supported and we must get public opinion and enlightened opinion and not deal with the case so lightly.

श्रीवती उमा नैहरू (जिला सीतापुर व जिला खेरी पश्चिम) : जब से यह बिल इस हाउस के सामने आया है, मैं बराबर इस पर विचार कर रही हूँ, और अभी जो हमारे आनरेबिल मेम्बर ठाकुर दास भागव ने उस पर ब्याख्या दी है, उस पर भी मैंने बहुत विचार किया है। लेकिन लाइफ (Life) की देजिडी जो मुझे दिखाई देती है और बदकिस्मती जिन्दगी की यह है कि आज इस जमाने में मैं सावित्री और सत्यवान की चर्चा तो सुनती हूँ, लेकिन आजकल की सावित्री जो हैं, जो भी हों, उन को अधिकार नहीं है कि वह अपने सत्यवान के गले में जयमाल भी डाल सकें, आज हमारी यह स्थिति है। आज मैं यह भी दखती हूँ हमारी मोरैली (Morality) की बैकग्राउन्ड (Background) जो है वह सावित्री और सत्यवान की चर्चा कर के बनाई तो गई है, लेकिन उस के साथ साथ हमारी हालत आज यह हो गई है कि इस बिल के यहां आने की जरूरत हो गई। १८ वर्ष की उम्र जो बढ़ाई

[श्रीमती उमा नेहरू]

चाई, उस में तो मुझे कोई एतराज नहीं है, क्योंकि जाहिर है कि मैं तो वही जमाना पसन्द करती हूँ कि जब मैं सावित्री को सत्यवान के गले में जयमाल डालते देख, खासी बड़ी हो और योग्य स्त्री हो जो सावित्री स्वयं अपने सत्यवान के गले में जयमाला डाले और उस को बरे लेकिन इस के साथ ही साथ मैं देखती हूँ कि दो साल के बास्ते लड़कों का सजा मिले, उस की बाबत मैं यह कहना चाहती हूँ और एक माता की हैसियत से कहती हूँ, क्योंकि मैं समझती हूँ कि लड़का और लड़की दोनों एक माता के पुत्र और पुत्री होते हैं और मैं नहीं समझती कि इस कानून से आप ऐसी चीजें ला सकते हैं जो आप लाना चाहते हैं। अगर आप को समाज को दुस्त करना है और अपने आनरेबल भाई को भी मैं यह बताती हूँ कि अगर आप समाज की शुद्धी करना चाहते हैं तो आप को समाज के मारेन्स को बदलना है, आप को उसके लिये मारेन्स को फ़िजा बनाना चाहिये, आप समझते हैं कि आप यह कानून ला कर इन चीजों को बदल सकते हैं, लेकिन मैं समझती हूँ कि आप कभी भी इस तरह इन चीजों को नहीं बदल सकते, लेकिन आप तो अपनी ही करेंगे और यह कानून पास करके आप और भाइयों से बच्चों से चोरों करवायेंगे मैं आप से यह भी कहूँ कि मैं बराबर इस पर सोच रही हूँ कि अगर ऐसी चीजें कहीं होती भी हैं स्कूल अथवा कालेज में, तो कौन से भाई आप ऐसे होंगे कि अगर उन को यह चीज मालूम भी हो जायेगी, तो भी वह उस पर परदा नहीं डालेंगे, क्योंकि अगर लड़की के भाई आप ऐसे लड़के को दो वर्ष के लिये जेल खाने भिजवा भी देते हैं, तो पहले तो वह अपनी लड़की का इन्तेहार करते हैं, उस चीज

का डिगोरा पीटते हैं और फिर उस हालत में कौन ऐसा आदमी होगा जो उस कम्बड से विवाह करने को राजी होगा, वह तो बेचारे उस पर ही परदा डालेंगे। हमारे समाज की हालत तो आज यह है और आप ऐसी चीजें उस के सामने रख रहे हैं जो असम्भव और नामुमकिन चीजें हैं।

इसलिय मैं तो अपने आनरेबल भाई से कहूँगी कि मैं तो इस सजा के बहुत ही विरुद्ध हूँ। मैं तो यह कहूँगी कि अगर समाज में परिवर्तन करना है तो आप मारेन्स को पहले ठीक करना है। जब तक आप समाज के मारेन्स को ठीक नहीं करेंगे तब तक परिवर्तन नहीं हो सकता।

फिर इसके साथ साथ मुझे इन बात का भी विचार आ रहा है कि हम से कहा जाता है कि हम गृहलक्ष्मी हैं, हम माताये हैं। लेकिन आज जिस वक्त मैं इस बिल को पढ़ रही थी तो मैं सोच रही थी कि गृहलक्ष्मी कहां और यह बिल कहां। भारत की सभ्यता में गृहलक्ष्मी और देवी कहते हैं और पूजनीय कहते हैं। आज उस पूजनीय स्त्री को हालत यह है कि उस के लिये यह कानून आ रहा है। उस की इज्जत खो गई है। यह कहा गया कि कनसेंट और नोन कनसेंट (consent or non-consent)। अगर कनसेंट है तब भी वह गुनहगार नहीं है, गुनहगार लड़का ही है। लड़का गुनहगार नहीं है। उस को आज यह हालत है। इस के लिये तो यह तरीका है कि अगर आप ठीक तरह से शिक्षा दें, केवल कालेज और यूनिवर्सिटी की ही नहीं, केवल किताबों ही नहीं, बल्कि मारेन्स की, चरित्र की शिक्षा दी जाय, तो नामुमकिन है कि ऐसे कसेब कसे सामन आवे। आज समाज की यह हालत होते हुए सावित्री और सत्यवान

और सीता का स्वप्न देखना कितनी मूल है। क्योंकि आप वह जमाना ला नहीं सकते। वह चीजें आप ला नहीं सकते। आप को सबसे पहले यह देखना है कि इस जमान में आप को क्या करना है। सीता और सावित्री की चर्चा आप करते हैं, तो यहां आप ही नहीं, जहां कहीं भी मैं सुनती हूँ तो मैं चारों तरफ देखती हूँ, लेकिन मुझे राम दिखाई नहीं देते। राम की जगह मुझे रावण दिखाई देता है। तो जहां रावण हों, राक्षस हों, वहां सीता और सावित्री की चर्चा करना कहां तक ठीक है।

अब दूसरी बात मेरे भाई ने कन्यादान की कही थी, कि हम कन्य दान करते हैं। तो कन्यदान की भी एक अजीब हालत है। आप तो १६, १८ वर्ष की चर्चा करते हैं और कन्यादान का चर्चा करते हैं। कन्यादान को कोरी लकीर आप आज पी टटें। लेकिन कन्यादान के जो माने थे वह आप नहीं जानते हैं। आप कन्यादान कह कर सिर्फ लकीर पीट रहे हैं। मुझे कन्यादान की तो चिन्ता नहीं है, असल में वह कन्यादान नहीं है एक रस्म अदा करनी है।

इस के साथ आप ने तीसरी बात पंजाब के पार्टीशन की कही थी - आप ने कहा कि हम देखते हैं कि लड़कियां बड़ी बही फिर रही हैं। मैं खुद रिफ्रूजीव में काम करती हूँ। मैं ने भी लड़कियों को देखा है और उन को देख कर मुझे दुःख होता है। लेकिन मैं यह भी जानती हूँ कि जिस वक्त कोई मुल्क, कोई देश उजड़ जाता है तो उस को मौरिल्टी भी उस के संग उजड़ जाती है। तो आज हम उस स्थिति में हैं। लेकिन मैं समझती हूँ कि हलके हलके, आहिस्ता आहिस्ता सब बातें ठीक हो जायगी। लेकिन पंजाब की लड़कियों को बगैर घर के बहते हुए देखने से हम को

इस स्थाल में नहीं आना चाहिये कि लड़कियों के मार्ल्स ठीक नहीं हैं और वे बिगड़ गयी हैं। मुझे आप से यह भी कहना है कि जब आप का मुल्क ही अपरूट (uproot) हो गया है तो न इस वजह से मार्ल्स भी अपरूट हो गये हैं।

कुछ मनवीय सबस्य : मलत है ।

श्रीमती उमा नेहरू : नहीं नहीं, मार्ल्स जो अपरूट होने के लिये कहा गया है तो उस में "कोई नहीं" और "हां" कहने की जरूरत नहीं है, क्योंकि मैं तो उन के संग ही काम करती हूँ। मुझे मालूम है। भाई ठाकुरदास को स्वीच में एक चीज मुझे बड़ी तकलीफ देह मालूम दो। मैं ने आज सुना कि यहां इस तरह के लोग हैं जिन को बताया गया कि आशिक मिजाज हैं। यह कहा गया और बताया गया कि आशिक मिजाज कौन लोग हैं। यह बात सुन कर मुझे सलत तकलीफ हुई और मैं समझती हूँ कि यह हैंगलपज नहीं है। वह कोई सभ्यता का लफज भी नहीं था जो कि आज मैं ने सुना आशिक मिजाज का। मैं आप से यह कहूँ कि यह चीजें जो लोग इस्तेमाल करते हैं वह बिल्कुल ही इस को समझते नहीं हैं। यह सेक्स क्वेश्चन (sex question) जो है इस को वह कतई भी नहीं जानते, जो आशिक मिजाज की चर्चा करते हैं। असल बात यह है कि मेरी तो आज से नहीं बहुत दिनों से यह राय है कि यह जो सेक्स क्वेश्चन हमारा है जिस को लोग इतना हंस हंस कर सुनते हैं और जिस पर हंस्ते हैं, यह हंसने की चीज नहीं है। हय इस मामले में इतने बैकवर्ड हैं, मैं तो समझती हूँ कि यदि हम जानते तो हमारे मार्ल्स भी ठीक होते। हमें इस को समझना चाहिये और बच्चों को शिक्षा

[श्रीमती उमा नेहरू]

इसी बाह्य, ताकि उन के मारैल्स भी ठीक हों। मैं यह भी आप को बता दूँ कि जो इस को समझते हैं, जो पढ़े हैं, जो इस को जानते हैं, उन आदमियों के मारैल्स और उम्र की मारैफ्टी उन लोगों से ज्यादा अच्छी है जो कि इस की समझते नहीं हैं। मैं अपने भाई को यकीन दिलाती हूँ कि जहाँ तक हो सकेगा हम तो कोशिश करेंगी अपने लड़कों के बास्ते और लड़कियों के बास्ते भी कि वे आशिक मिजाज न हों। लेकिन हमारी कोशिश होगी उन को अक्ल के मदरसे में शिक्षा देने की, आशिक मिजाजी की नहीं, बल्कि अक्ल के मदरसे में लाना है।

अब इस बिल पर मैं बहुत नहीं कहना चाहती। मैं तो इतना ही कहना चाहती हूँ कि मैं ने इस बिल को बार बार देखा और देखने के बाद मैं फिर अपने आमरेबिल भाई से कहूंगी कि इस का पहला हिस्सा तो बहुत ठीक है। आप उम्र बढ़ा दीजिये, कोई डर की बात नहीं है। लेकिन दूसरे हिस्से में जहाँ आप ने यह कहा है कि दो वर्ष तक सजा होगी यह तो किसी तरह से भी भेरे गले से उतरता नहीं, क्योंकि इस से तो मैं खुद अपनी लड़की का एक तरह से डिबोरा पीटती हूँ, अगर मैं अपने लड़के को सजा दिलवाती हूँ। तो यह सब देख कर मैं आप से यह कहूंगी कि मैं आप के बिल को अपोज तो करती नहीं हूँ। आप ने बहुत महनत की है। लेकिन यह जो पहलू आप ने दो वर्ष की सजा का रखा है यह किसी तरह से, मैं ने दोपहर भर इस को सोचा, भेरे गले से नहीं उतरता जब तक लड़कों के और लड़कियों के मारैल्स एक तरह के नहीं होंगे तब तक मैं समझती हूँ कि समाज में उन्नति नहीं हो सकती।

Shri Kanavade Patil (Ahmednagar North): This is my first attempt to speak in Parliament, and I request the hon. Members to excuse me if I commit any blunders because this is my first effort to speak.

I submit that my hon. friend Pandit Thakur Das Bhargava has made enormous efforts with the best of motives to introduce this Bill in this House for consideration. He thinks that if this Bill is passed, the virtues of females in this country will be protected. In my humble opinion, I submit, this is not a proper method to protect the virtues of females.

Mr. Deputy-Speaker: Not in general, but of a particular age only.

Shri Kanavade Patil: Of course, I am speaking in general.

Mr. Deputy-Speaker: There is no aspersion cast against all people in general. There is an impressionable age, and that is sought to be safeguarded. So, the hon. Member need not expand the scope of the inquiry.

Shri Kanavade Patil: I am unable to appreciate the views that he has expressed.

Dr. N. B. Khare: It is his maiden speech, so encourage him.

Shri Kanavade Patil: Looking into the provisions of the Indian Penal Code, we find that the age of consent has been increased to 16 by means of the amendment that was passed in the year 1949, to Section 375 in the clause dealing with the age of consent. Even then it was thought by so many persons in the country, including experts and Judges that that age was not a proper one, because it was believed that in a country like India where generally a female attains puberty at the age of 15 years and even at the age of 14, she is perfectly capable of understanding sexual life. So, to think that a female is not capable of understanding her own interests till the age of 18 is certainly doing her injustice, according to my humble opinion. I have known of cases, and I have been practising and I would very humbly like to submit before this House.....

Mr. Deputy-Speaker: Practising law.

(Amendment) Bill

Shri Kanavade Patil: I have been practising law for 19 years at the Sessions Court in Bombay State, and I have known of a number of cases where the girls who expressed consent or were consenting parties, were of the age of 14, and even 13½, and where it was proved that they were consenting parties even then under Section 376 the offences were held to have been committed. If that has been the case, it is really surprising for me to find that the hon. Mover of this Bill wants to raise the age of consent to 18 in this Bill.

Taking all the authorities of medical jurisprudence into account, I have to submit that a girl is perfectly of the age of discretion at 15—so far her capacity to understand a sexual offence is concerned. Therefore, I submit that this Bill is introduced in this House on the assumption that the female is the weaker of the two sexes, that she is less intelligent to appreciate her own difficulties and, therefore, according to this gentleman who has introduced this Bill, she wants more protection under law. According to our own experience, a girl is quite in the prime of her youth after 16, and at the age of 18 she is at the top of her youth. And to think that at this age she should not think in terms of finding a bridegroom—for her is indeed a very queer thing and a harsh thing, so far as the female is concerned. I humbly submit that when girls and boys go to the colleges and schools and have co-education, they move about the society together; sometimes girls go about even without the permission of their guardians or parents; they go to cinema shows; they travel together for picnic purposes, it is quite natural that sometimes the young people may have overtures towards each other. Under the present amending Bill even such overtures may be looked down upon by certain people in the society who really want to protect the women, that those overtures may amount to be an attempt to commit rape—under section 376. If overtures....

Shri M. S. Gurupadaswamy (Mysore): Overtures or 'vultures'?

Shri Kanavade Patil: If overtures between the parties are not allowed under this section, then I am afraid, the girls who will be going in the society for want of a bridegroom will be at a loss. In my humble opinion, the best marriageable age is 15. After 15, a girl cannot live a happy life unless she gets a suitable partner or husband. So, in these days, to think that the age

of the girl should be raised to 18 under section 376 is not proper.

In my humble opinion, therefore, this Bill should not be allowed to be passed.

Shri Tek Chand (Ambala-Simla): Social legislation is usually a dangerous experiment. It always is a delicate experiment. The subject matter of this Bill should be examined neither from the point of view of prudishness, nor from levity. This is a very serious matter and there are many side issues which have to be scrutinised with care before it is adopted hastily or rejected hastily.

With the principle underlying the Bill, most of us have no dispute. That girls between the ages of 16 and 18 deserve protection, should admit of no doubt. That they are mentally immature seems to be fairly obvious. That they can fall victims to allurements, that at times they can be swept off their feet with the first flush of adolescent urge, is in accord with the law of nature. But the means whereby these girls can be protected are a matter which would admit of controversy—so far as the remedial side is concerned.

The hon. the Mover of this Bill suggests that anybody who violates the chastity of a girl between the ages of 16 and 18 with or without her consent falls within the mischief of the criminal law which he now wants to be the law of this land. There are one or two matters which should be carefully examined. What is the age of the violator of the girl? If there are immature girls, there are also immature boys. I can understand a man of 30 years or above taking liberties with a girl of an impressionable age and violating her with her consent. By all means give him a certain dose of punishment. By all means say: "You have taken improper advantage of the impressionable nature of the young girl between 16 and 18 and, therefore, you deserve punishment. You ought to have known better". But what about the case of a young man who equally falls a victim to the first flush of youth. In his case are you going to visit him with the same punishment and are you going to stigmatise him for the rest of his days as an immoral person? Are you going to brand him for the rest of his days as a convict, make him absolutely unfit to move in respectable society or blast his future career for a fault for which not his 'wicked' mind was to blame but because of his failure to control certain impulses and urges which can be very strong at an impressionable age? Therefore, to tar every violator of a

[Shri Tek Chand]

"Young girl who might herself have offered the temptation, who might herself have tried to ensnare the young man, to say to the girl 'You are innocent' but to tell the young man who might have fallen a prey to her blandishments 'You are guilty and, therefore, deserve to be incarcerated'—I feel that such a law will be draconic in its severity. It will be a monstrous proposition to lay down that, when a girl of 18 years less two months, has been violated by a boy of 17 in the circumstances that the boy is a willing party, and the girl is a willing party—the girl is absolutely innocent, but the boy of 17 must go to a borstal institution or to jail. But, on the other hand, I am at one with the learned Mover when it comes to an accused aged 30 or more. He is expected to know better. So long as such a legislation does not make a distinction between the respective ages of the male offenders it will have certain imperfections and, in certain cases, it may perpetrate horrible injustices. Therefore, it is this aspect of the Bill that, to my mind, is unpalatable and distasteful, though I am absolutely at one with the principle underlying it.

Then, another feature is clause 4 of the Bill, reamendment of Schedule II of Act V of 1898. If there could be anything sinister about this Bill, if there could be anything which I may liken to a trap, it is clause 4. You say, the offence is compoundable. It is the most mischievous provision of criminal law that an offence is compoundable, when you tell the accused, 'You are not at the mercy of the court, but you are at the mercy of your complainant. Please him, placate him, pacify him and if you succeed in doing so, I will let you off'. That is, in common man's language, the meaning of compound-ing an offence. What happens? A girl has lured a boy, more or less of the same age, the boy is in the teens and the girl is in the teens; and he is told, 'Be willing to get a stigma, be ready to be branded, be ready to go to jail, and if you happen to have a rich father, we propose to blackmail you, because of some adolescent folly you have committed', to which the girl was equally a party, or even if she had actually played the principal part. At pistol point the boy is to be told, 'We propose to blackmail you, out with a couple of thousands or we will prosecute you'. Therefore, to make such an offence compoundable is to make virtue of a sin. That is to say, the guilty girl will be allowed to say, when this Bill becomes part of the law of the land, 'Yes, I was guilty, yes, I lured

the boy, yes, I was the consenting party, yes, I am senior in age by a few months, yes, I encouraged him and now that he has fallen a prey to my blandishments, not only I propose to tell him that I will send him to jail, but I will either force him to marry me or may be that I will compel his father or rich uncle to part with a good bit of money'. That, I submit, is the most dangerous aspect of this measure. It is not difficult, in this country, to conceive of unfortunate parents, unfortunate distant relations who have on their hands a young girl for whom they may not be able to find a suitable husband. The barriers of high morals may not be there, and they might encourage the girl to ensnare the boy. Once the boy is caught in the web, either he parts with money or certainly he parts with reputation or may be he is tied down to that girl for the rest of his days in forced wedlock, or he goes to prison. To my mind, there can be nothing more unjust and more unfair and, if I may take the liberty of using that word, more immoral than this clause 4 of the Bill.

Therefore, I submit that this is a measure which has to be examined with a certain amount of thoroughness. The pulse of the people has to be known; we have got to find out, how people react. Some measure is overdue where-by girls between the ages of 16 and 18 should be protected, but, at the same time, all girls who are between the ages of 16 and 18 are not necessarily innocent. They might be the guilty parties and, therefore, I would suggest that this is a measure which has to be examined from all aspects and then and then alone can it form part of the Penal Code.

Shri S. V. L. Narasimham (Guntur): I rise to support this Bill, for the simple reason that this measure satisfies the demands of time and is in accord with the march of time also. Criticism has been levelled against this Bill on the question that the age of consent, as it exists now, being 16, is sought to be raised to 18. There has been absolutely no attempt on the part of any Member of this House to reduce the age of consent from 16 to a lower age. Under these circumstances, I for one, am unable to comprehend as to what is being found by these critics in the matter of raising this age of consent from 16 to 18. The facts as they exist are clearly mentioned in the Statement of Objects and Reasons of this Bill and have been expounded at length by the hon. Mover of this Bill.

After all, criticism has been levelled against this Bill by my hon. predecessor that this provision of making this offence compoundable is a highly mischievous provision. After all, if we see to examine the criticisms that are levelled by hon. Members against this Bill, then I wonder as to how it can be said that this provision of making the offence compoundable is a mischievous provision. It is only for the purpose of seeing to those persons who could not have been brought within the ambit of criminal law previously that this Bill is being brought. It seeks to bring them also into the ambit of law. It is only to protect those people so that the rigours of law may not be felt that this provision has been made compoundable. So, I would respectfully submit to this House that this provision will, while it accords with the demand of time, practically take away the rigours of law and impose a very reasonable condition, namely, by making it compoundable.

I quite agree with the criticism that this Bill will not lead to the complete achievement of the spirit of the Bill, for the simple reason that we do not know what happens in factories and other places. Having regard to the economic conditions of these women and others—it is quite possible for temptations of money to be there—this Bill will not solve the question of morality or protection of morality. Therefore, the simple reason that this will not achieve the purpose fully cannot be an argument against this Bill. On the other hand, we must accord our full support to this Bill and take the initiative to bring in measures of legislation to improve the economic condition of the women also. I am happy to state on the floor of this House that myself and friends of the Communist Party are in full accord with the principles of the Bill and I would commend the acceptance of this Bill by the House in all its entirety.

[SHRIMATI RENU CHAKRAVARTY
in the Chair]

पंडित मुनीश्वर दत्त उपाध्याय (जिला प्रतापगढ़—पूर्व) : यह विधेयक जो हमारे सामने उपस्थित है इस के सम्बन्ध में, जैसा कि हमारे और माननीय मित्रों ने निवेदन किया, तरह तरह के मत हो सकते हैं क्योंकि इस का समाज से घनिष्ठ सम्बन्ध है। और जब किसी विषय का समाज से घनिष्ठ सम्बन्ध होता है तो समाज के जितने अंग हैं सभी को उस में दिलचस्पी होती है और उस

पर उन की एक दिशा धारा होती है। उस के अनुसार इस पर कई मत हो सकते हैं। अभी जैसा माननीय सदस्यों ने निवेदन किया, जहां तक इस के पहले अंग का सम्बन्ध है कि अवस्था १६ से १८ वर्ष कर दी जाय इस के किये जाने में किसी को कोई आपत्ति नहीं होनी चाहिये। मेरा ऐसा विश्वास है। किन्तु चाहे वह १६ वर्ष रहे और चाहे वह १८ वर्ष रहे इस से कोई बहुत भेद नहीं होता। यह कहा गया कि १६ वर्ष की अवस्था की जो लड़कियां हैं उन में इतनी योग्यता नहीं होती है कि वे अपने भविष्य को समझ सकें, जो कुछ वे करती हैं उस का जो कुछ असर होता है, उस का जो कुछ उन के ऊपर प्रभाव होगा, उस को वे समझ नहीं सकती। १६ वर्ष की अवस्था में उन के लिये यह सम्भव नहीं है। इस विषय में मैं नहीं समझता कि १६ वर्ष और १८ वर्ष की अवस्था में कोई बहुत भेद हो सकता है, इस में बहुत फर्क नहीं पड़ सकता। अगर हम उस पहलू से देखें जैसा कि अभी श्रीमती उमा नेहरू ने निवेदन किया कि महज कानून बना देने से हम अगर ऐसा सुधार करना चाहें तो वह सुधार हो नहीं सकते, उन से कोई प्रभावशाली सुधार नहीं हो सकता, क्योंकि ऐसे कानून बहुत से बने और उन कानूनों का कोई बहुत असर समाज पर नहीं हुआ। समाज ने जैसा चाहा किया और वही बात चल गई जैसा कि हमारे भार्यव जी ने भी अभी अपने व्याख्यान में कहा था। तो श्रीमती उमा नेहरू ने एक तो रास्ता यह बताया कि हमारे समाज का सुधार सोचना चाहिये, हम को अपने चरित्र को ऊंचा करने की बात सोचनी चाहिये। इस में कोई सन्देह नहीं है कि अगर हम यह कर सकें, तब फिर इन ऐसे नियमों की, इन कानूनों की कोई आवश्यकता नहीं रह जाती। किन्तु कठिनता तो वही है कि हम ऐसे सुधार स्वयं नहीं कर पाते।

[पंडित मुनीश्वर दत्त उपाध्याय]

ऐसे सामाजिक सुधार करने में अगर हम स्वच्छन्द रहें तो कामयाब नहीं हो पाते। इस वास्ते इस बात की जरूरत होती है कि ऐसे नियम बनाये जायें, और इन नियमों को बना कर कभी कभी अगर हम बहुत कुछ नहीं कर सकते, बहुत आगे नहीं जा सकते तो थोड़ा बहुत सुधार तो कर ही लेते हैं। कम से कम कानून को भंग करने वाले या अप्रतिबन्धित करने वाले जो कि डर के मारे रोके जा सकते हैं, कम से कम वे तो रुक ही जाते हैं। और फिर भय एक ऐसी चीज जिस का असर एक साधारण असर होने सम्मता है। तो मैं समझता हूँ कि केवल यह सोच कर रह जाना कि हम को सामाजिक सुधार करना आवश्यक है, चरित्र को ठीक करने की बात करनी है, यह सब तो हमें करना ही है, लेकिन यह सब करते हुए जो चीज हम बिना कानून बनाये हुए नहीं रोक सकते हैं, किना कोई नियम बनाये हुए नहीं रोक सकते हैं, वैसे नियम हम को बनाने आवश्यक हैं।

उस के पश्चात् हम लोगों ने देखा कि एक दूसरे हमारे मित्र और बोले, पन्तजी बोले। उन्होंने कुछ नैचुरल अरजेज (Natural urges) की बात भी की। इस में कोई सन्देह नहीं है कि जो इस सायन्स को जानने वाले हैं वह इस का भी अध्ययन कर रहे हैं और बड़ा गहरा अध्ययन जैसा उन्होंने बताया इस विषय का हुआ है और हो रहा है। लेकिन इस सब अध्ययन के करते हुए भी कोई रास्ता जो हमारे पास है जिस से कि हम कुछ सुधार ला सकें, कुछ भी सुधार कर सकें, तो एक ही रास्ता है, यानी इस की रूकावट कानून के जरिये से, नियम के जरिये से, जो कुछ भी कर सकें, करें। इस बात को ध्यान में रखते हुए मैं समझता हूँ कि विधेयक जो भार्गवजी ने

उपस्थित किया है, वह एक आवश्यक विधेयक है।

मैं देखता हूँ कि भार्गव जी ने इस के पहले अंग में जो बात कही उस का असर उस के दूसरे अंग में जो बात कही उस से हटा दिया। मैं नहीं समझता कि यह पहला अंग और दूसरा अंग एक साथ कैसे बैठ सकते हैं। आप कहते हैं कि स्वीकृति की जो अवस्था है वह १६ वर्ष से १८ वर्ष तक बढ़ा दी जाय, १६ वर्ष के बजाये १८ वर्ष कर दी जाय। इस का अर्थ यह हुआ कि अभी तक तो अगर कोई शस्त्र कोई जुर्म करता था, किसी लड़की के साथ जो कि १६ वर्ष की हो और १६ वर्ष से ऊपर की हो तो अगर उस की रजामन्दी हो, अगर उस लड़की की स्वीकृति हो, तो कोई जुर्म नहीं होता था। अब भार्गवजी चाहते हैं कि वह अवस्था १८ वर्ष कर दी जाये। १८ वर्ष के नीचे जब तक लड़की हो तब तक वह जुर्म माना जाय, और अगर उस की रजामन्दी हो, उस की स्वीकृति हो तब भी उस स्वीकृति की वजह से वह जुर्म हटे नहीं। यहाँ तो आप ने यह फ़रमाया। फिर नीचे आकर दूसरे अंग में आप कहते हैं कि १६ और १८ वर्ष के बीच में ऐसी बातें अगर कोई हों, ऐसा कोई जुर्म हो, तो उस जुर्म में सुलह करने का भी हक रहे। उस जुर्म में यह अधिकार रहे कि दोनों लड़की और लड़की, भर्ष और औरत अगर चाहें तो आपस में सुलह कर सकें। एक माननीय सदस्य ने इस पर बहुत बड़ी आपत्ति की। उन्होंने कहा कि सुलह का इस तरह कानून बनाना तो नैतिकता से बहुत गिरा हुआ है। मैं उन से सहमत नहीं हूँ। सुलह का कानून जहाँ कहीं, किसी भी ऐक्ट में लाया जा सके, कभी नैतिकता से हमेशा गिरा हुआ नहीं हो सकता। उन्होंने एक दो मिसालें

दीं। वे मिसालें हो सकती हैं। हर कानून के खिलाफ बहुत सी ऐसी मिसालें हो सकती हैं। वह तो व्यक्तिगत मामले हैं। लेकिन सुलह का इस में जो जिक्र किया गया है, में समझता हूँ कि वह नैतिकता से गिरी हुई बात नहीं है। लेकिन जहाँ तक विधेयक का पहला अंग है, उस के असर को मिटाने वाला यह जरूर है। इस से भागव जो यह चाहते हैं कि अगर किसी वजह से ऐसे ताल्लुकात हो जायें, ऐसे सम्बन्ध हो जायें, तो उन हालत में दोनों अगर चाहें तो आपस में सुलह कर सकते हैं।

पंडित ठाकुर दास भागव : शादी कर लें।

पंडित मुनीश्वर दत्त उपाध्याय : हाँ, सुलह कर लें, शादी कर लें। सुलह में जो शर्तें हों, वे सब कर लें। पता नहीं, जैसा कि एक माननीय सदस्य ने बताया कि हजारों लाखों रुपये लेने की बात कर लें। भागवजी सिर हिला रहे हैं। उन का मतलब है कि वे रुपये लेने की चीज नहीं चाहते। लेकिन वे चाहें या नहीं चाहें, जो शब्दावली है, इस विधेयक के अनुसार, वह बात जो कि हमारे एक माननीय मित्र ने बताई वह भी हो सकती है कि हजारों रुपये देने पड़ें और तब कोई बात तय हो। यह भी हो सकता है। यह असम्भव नहीं है। लेकिन मैं निवेदन करूंगा कि जहाँ वह चाहते हैं कि १६ और १८ वर्ष के बीच का जो समय है इस समय में क्रिम लइकियों को सुरक्षित रखें, ऐसे हमलों से जो कि उन पर हो सकते हैं, जो समाज में कभी कभी सुनाई पड़ते हैं, तो मैं समझता हूँ कि उस के साथ ही इस सुलह वाली धारा को ला कर के उन्होंने उस के असर को बहुत कम कर दिया है। मैं नहीं जानता कि यह दोनों बातें वह कैसे मिलाते हैं। लेकिन

मैं यह समझता हूँ कि जहाँ तक अवस्था के बढ़ाने वाली बात है उस में कोई अधिक आपत्ति नहीं हो सकती। लेकिन जहाँ तक सुलह वाली बात है, इस सुलह के अन्दर बहुत झमेला बाद को पैदा हो सकता है, बड़ा दिक्कतें पड़ सकती हैं। इस से जो कानून पास करने का असर है, वह असर भी जाता रहता है। इस वास्ते मेरी समझ में यह जो सुझाव तरह तरह के आये, सामाजिक सुधार के और चरित्र ऊंचा करने के, इन सब को मानते हुए भी और इन पर पूरे तौर पर अमल करते हुए भी यह आवश्यक है कि हम इस तरह का नियम जरूर बनावें। लेकिन उस को बनाने के साथ ही एक दूसरा जो उस का अंग है वह अंग बिल्कुल बेकार है और वह अंग पहले अंग के असर को मिटाने वाला है। तो मैं निवेदन करूंगा कि वह पहला अंग ही हम लोगों को स्वीकार होना चाहिये।

4 P.M.

Pandit Thakur Das Bhargava: Suggest some remedy out of it. The fine can be given, the warning can be given, section 562 is there. I am not saying that the boys must be sent to jail. If you can suggest a way in which it can be compounded in respect of persons who are willing to marry I am agreeable to make it non-compoundable.

पंडित मुनीश्वर दत्त उपाध्याय : मैं निवेदन करूंगा कि जितने कानून बने ह, यह जरूरी नहीं है कि किसी में हार्ड केसज (hard cases) न हों, ऐसे केसेज को रहने देना चाहिये, पहला विभाग जो है, वही स्वीकार करना चाहिये और दूसरा अंग जो है, उस को बिल्कुल छोड़ देना चाहिये।

Dr. N. B. Khare: The offence contemplated in this Bill must necessarily be bilateral—it cannot be committed by one party alone. Active or passive, co-operation of both the parties is essential for the performance of the offence.

[Dr. N. B. Khare]

Few days ago we passed a Bill about bribery and in that Bill we had made it penal for both the giver of the bribe and the taker of the bribe. Similarly, in this matter of sex commerce there cannot be one-sided punishment.

This is not an age of chivalry. It is an age of equality of sexes. When women demand it peremptorily, they must have it. We do not know, or it is very difficult to distinguish, in this matter who is the tempter and who is the tempted. When an act is performed both should be held guilty. After all according to the science of erotics there is a saying in Sanskrit:

प्राप्ते तु षोडशे वर्षे गर्दभ्यप्सरा भवेत् ।

When a woman reaches the age of 16, even if she is an ass she looks beautiful as an apsara. That is not a man's fault. The science of erotics cannot be helped. And, nowadays, I must say that our girls are becoming aggressively attractive—with the modern cosmetics they are using they are getting aggressively attractive. So it is not the fault of poor men if they are victimised. They should not be, but it is not their fault. Therefore, according to me, if such things happen both should be punished.

And there is one more thing: now I come to the pure physical act, as a medical man. The law provides that between 16 and 18 years if a woman seeks sexual act with her husband it is all right; but with a stranger it becomes an offence. I fail to understand how the consequences of the sexual act performed by the husband, physically I mean, and by a stranger, are different. Therefore, although I agree entirely with my hon. friend the Mover of the Bill in all the fine sentiments about morality and culture expressed by him, I do not agree with him in all the provisions of his Bill, because we have to take into consideration the other surrounding factors. Therefore, my submission is that both should be made punishable. The physical act cannot be bifurcated or differentiated as between one performed by the husband and the other performed by a stranger. The consequences are the same. Therefore, I am not in favour of this Bill.

Pandit Thakur Das Bhargava: The distinction is quite clear—in one case the off spring is legitimate, in the other it is illegitimate.

Shri S. V. Ramaswamy: I yield to none in my loyalty and admiration for

the historic and cultural heritage of our country. If Hindu society held together in spite of the innumerable invading hordes we have seen through the history of five thousand years and more, it is not merely due to the bravery of our men, but it is also due to the chastity of our women and their loyalty to the great ideal set by Sita, Savitri and others.

But it does not mean that I am supporting this Bill, because I find it rather difficult to persuade myself to support it. There seems to be some confusion of ideas in the mind of the hon. Mover of this Bill. It is one thing to raise the age of consent of marriage, I am one with him when my hon. friend wants to raise it from 16 to 18. In this matter, however, I am opposing it not because the position is inconsistent or incongruous, but for reasons which I shall presently submit.

The point is this. We have been dealing only with the word 16 and 18 without looking to the fact how these would affect the section. With your kind permission I will read the wording of section 375:

"A man is said to commit 'rape' who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under 14 years of age."

The last clause was subsequently amended to 16 and now by this measure it is sought to be raised to 18.

In the original section, that is in the Penal Code of 1860, the age was fixed at ten. By the Act X of 1891 it was amended and the age was raised to 12. The Statement of Objects and Reasons for raising it from ten to 12 stated thus:

"The limit at which the age of consent is now fixed, that is ten

years, favours the premature consummation by adult husbands of marriages with children who have not reached the age of puberty and that is, in the unanimous opinion of medical authorities productive of grievous suffering, and permanent injury to child wives and of physical deterioration in the community to which they belong."

It was on that ground that it was raised from ten to twelve. Subsequently the age was again raised from 12 to 14 by Act XXIV of 1925. There the Statement of Objects and Reasons ran as follows:

"Books on medical jurisprudence establish the fact that the age of puberty in India is attained by a girl about her reaching the age of 14. Even though puberty may be reached, it is obvious that girls are unfit for sexual intercourse till they are older and more developed in physique and strength. The appalling infant mortality in the country is partially ascribed to early marriages and the consummation which follows with immature girls. It is, therefore, not only for the protection of minor girls but also of their progeny that the age of consent should be raised to at least 14 years."

Subsequently by the Act of 1949, the age of 14 was again raised to 16. I am sorry I have not got the Statement of Object and Reasons, but it was passed in 1949, as you will remember, when there were so many inhuman acts following in the wake of partition. The Act which raised the age from 14 to 16 must be read in the background of those circumstances. Now, when everything is settled, the hon. Member Pandit Bhargava wants to base his Bill upon the report of 1929 and in paragraph two of the Statement of Objects and Reasons the House will see it stated why this Bill is being brought.

"Now under the present stress of civilisation when better and more extensive opportunities exist for college and other kinds of education and employment in factories and offices, a young girl is more exposed than before and requires more protection."

I find the language is almost the same as is found in chapter X of the Report of the Age of Consent Committee.

"The age of a girl between 16 and 18, when she has no experi-

ence of the world, is the age when the law should cast its protecting wings around her. Her immature judgment and inexperience of worldly affairs entitles her to be treated as not fully grown up and nobody should be allowed to take advantage of her undeveloped intellect. In the eye of the law a girl of 18 is an infant, not capable of disposing of her properties. Obviously, therefore, the age of consent at the extra-marital cases should not be less than 18."

My humble submission is that the reasoning based in this paragraph seems to be fallacious. I shall presently submit how it is. I find from the Age of Consent Committee Report that some of the reasons which have been advanced there are contained in this paragraph. The first point that they urge is this:

"The reasons for an advance are fairly clear and have been put forward with great vigour by those who have advocated an advance in the age. Physically and physiologically a girl at 14 is not fit for the sexual act, and still less for the possible consequences of such an act. All the reasons that have been advanced with reference to marital cases from a medical point of view, apply with equal if not greater force in this case."

It is a bit difficult to follow this line of argument, because if the person is physically and psychologically fit, and biologically too, to bear children, I do not see how it becomes necessary, for the purpose of section 375 of the Indian Penal Code alone, to raise the age. It is considered by medical books and authorities—if you turn any book on medical jurisprudence, for instance, *Modi's Medical Jurisprudence*—you will find it authoritatively stated that in a good percentage the age of puberty is somewhere about twelve. And I find, going through other statistics also that there has been a physical degeneration in our women. You will find that the age of puberty which was formerly 14 or 15, or which in the early nineties was somewhere about 18 in the villages, there has been a gradual fall and the average now is somewhere between 12 and 13. It may be a case of physical degeneration. Nevertheless, for the purposes of this Bill it would show that physiologically and physically nature has made them fit. And to enforce them to keep idle or to make punishable any deviation from a moral rectitude of persons up to eighteen, would be imposing a great difficulty.

[Shri S. V. Ramaswamy]

The second argument they have advanced is that the consenting mind is absent. I do not find it easy to agree to this because modern girls get education. I find they are more and more self-reliant, self-assertive, courageous, bold. And I believe they can take care of themselves. To contend that even though they are physiologically fit at fourteen, they are not mentally so, is not paying tribute to the intellectual and moral attainments of our young girls.

The third line of argument that was taken up was that the social changes need greater protection. It has been argued that because girls have got to go to schools and colleges, and girls have to go to offices, companies, departments of Government, it is necessary to protect them because they have got to go for their living, and while in pursuit of their living they might be exposed to certain dangers. I find it difficult to follow this line of argument as well. I find it is an argument for not raising the age at all. It is the other way. It is all right for those people who are well off, who can go and take to married life, settle down and run a family. But what about those poor women who are placed in such economic circumstances—and men too? I belong to a very puritan family. I am a puritan too. I will not allow any deviation from a moral rectitude. Nevertheless the approach to this problem must be realistic. It must have some relation to the economic background and the social conditions that are prevailing. There are men and women who, because they are not socially well placed—and economically too—cannot marry and settle down in life. They may be working in the same factory. They may be working in the same office. There may be intimate relationship between them. But that does not mean that it is bad. Because, the storm and stress of economic forces is so great, and the need to maintain a standard of living and to give an equal standard of living to the progeny is so urgent, that they cannot immediately marry and settle down. Even though there have been lapses from a puritanical view of moral rectitude, oftentimes this break-away from it leads to and ends in happy marriages. Take for instance a man and woman working in an office. The girl is 18, the man is, say, 20. Should there be any lapse—I use the word carefully—should there be any lapse on the part of the woman to make this a punishable offence? or the man, is the hon. Member going The consequences are punishment.

Social and economic conditions prevent them from marrying like others and settling down in life. But until they are able to earn their living and marry and settle down in married life, is it the contention of the Mover of this Bill that that man and woman should not have any relationship? It is ideal, I agree. But is it practical? Has it got any bearing to life as we see. To make that an offence, I submit, is too much.

Therefore, what I submit is this. I do not say we must encourage these lapses. That is not my object. But the facts of life are there. All that you can do is, give the men and women a proper education, particularly the women. Give them not merely book knowledge, but physical training, moral training to stand on their own legs to defend themselves, to be self-reliant, self-assertive and not merely depend upon this law which, as has been adumbrated in the Statement of Objects and Reasons, is going to protect them.

Other arguments also have been advanced against the raising of this age. Well, I do not find myself in agreement with some arguments advanced here but this point is worthy of note: whether it will not give a handle to prostitutes or people of that category to blackmail young men. It would be open to women of questionable character to bring forth false cases against young men and implicate them also in cases of rape and I believe raising this age up to the higher limit will give them a greater handle to blackmail. I do not find myself in agreement with the arguments advanced that the living of prostitutes are going to be affected. I, for one, am not in favour of the existence of prostitution. It ought to go. It is a social evil. It is true that it cannot be done away with all of a sudden but we are not going to give statutory encouragement to such a state of affairs. Nevertheless the danger to young men from the existence of prostitution is there. The added difficulty is there if we allow the age to be raised.

I do not know why my friend wants to raise this age when in England, for instance, they are reducing the age, I believe, to 15. I speak subject to correction. Sixteen, in my humble opinion, will be all right. If the Bill raising the age to 16 was passed in 1949, it was because of the peculiar circumstances under which that Bill was brought into existence. The learned Mover of this Bill said that

he was hoping to protect the chastity and virginity of our young girls. I quite agree it is a laudable object but viewing the trends not merely in other countries but in our country also, it would be difficult to check the social trends by merely raising the age from 16 to 18. I do not wish to deal with what is taking place in other countries but the other day I came across an interesting book—*The sex Habits of American Women*. It is a very serious book.

Dr. Katju: Why bring all this?

Shri S. V. Ramaswamy: I take your advice. I will not read it. Such of those hon. Members who want to go through it can read pages 47 to 51 and it will give an insight into the amount of virginity which still exists in other countries.

An Hon. Member: Will you please read it?

Shri S. V. Ramaswamy: Let us maintain a certain amount of decorum. It is a serious matter.

I would like to submit two other points. I do not know how the proposed amendment fits in with section 376. Now section 376 runs as follows:

"Whoever commits rape shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

This amendment seeks to impose a lesser punishment on offences committed by persons between the ages of 16 and 18. Between that section and the amending clause I find there is a gap between the ages of 12 and 16. How this amendment will fill up that gap I fail to see.

Lastly, clause 4 seeks to amend Schedule II of the Code of Criminal Procedure. There again I find the difficulty as to how it fits in with the clause. I shall read Schedule II with reference to section 376:

"Sexual intercourse by a man on his own wife under the age of 12 years" that is the first clause.

The second clause is:

"If the sexual intercourse was by a man on his own wife under 12 years of age"

then last clause is "in any other case". In between the second and the last clause, the learned Mover would have the following clause:

"Sexual intercourse with a woman between 16 and 18 years of age when the girl is a consenting party."

The learned Mover would have it an offence and then impose imprisonment of either description for two years or fine or both. If this is the case, why thrust in a third clause, I still fail to see. What would happen if the offence relates to persons between the ages of 12 and 16. We will find therefore that on all these points the proposed amendments do not cover the gaps and I submit there is a serious flaw and therefore not merely on grounds of policy but on grounds of defective framing itself, I submit that this House do reject the Bill.

I, once again, submit that the way to protect our girls is not by merely raising the age from 16 to 18 and depending only on the law but upon their own inherent strength, physical and moral, not merely intellectual. There is an inherent self-reliance and capacity to protect themselves. We must work towards that end and that is the aim that we must work for and whatever will tend towards achieving that object will have my full support as well as of the House.

**श्री पी० एन० राजभोज (शोलापुर—
रक्षित-अनुसूचित जातियाँ) :** मुझे इस बिल के बारे में बहुत कुछ कहना नहीं है। जो कुछ कहना है वह यह है कि मेरा ख्याल है कि हमारे लोगों की जो आर्थिक परिस्थिति है। वह अच्छी नहीं है जब तक वह ठीक नहीं होती है तब तक इस बिल के लाने से हमारे समाज या सोसायटी का बहुत फायदा होगा यह मेरी समझ में नहीं आता है।

दूसरी बात में यह कहना चाहता हूँ कि जो हमारे लोग हैं वह बैकवर्ड (backward) हैं। वहाँ पंचायत पद्धति है और शेड्यूलड कास्ट (Scheduled Caste) में तो सारा ही काम पंचायतों के द्वारा होता है। अगर कहीं कोई गड़बड़ी का काम हो जाये तो वह पंचायत के पास आता है और हम लोग आपस में ही मिल कर उस को ठप कर देते

[श्री पी० एन० राजभोज]

हैं और झगड़ा मिट जाता है। जो कानून हम बनाते हैं, जैसे शारदा एक्ट बना, तो देहातों में जो शादियां होती हैं और पुलिसवाले जा कर पूछते हैं कि तुम्हारी उम्र क्या है, तो उम्र तो ठीक रहती है लेकिन चूंकि लोग पढ़े लिखे ज्यादा नहीं हैं, इसलिये वह ठीक ठीक उम्र तक नहीं बतला पाते हैं। और ठीक ठीक उम्र न बताने से उन के ऊपर कोर्ट में, कानून के खिलाफ काम करने के लिये कार्रवाई होती है। तो हम लोगों की उन्नति होनी चाहिये, हमें बड़ादुर होना चाहिये, हम लोगों को जागृत होना चाहिये, हमारी नैतिकता अच्छी होनी चाहिये, मैं इस के खिलाफ नहीं हूँ। लेकिन जो लोग बूढ़े हो कर भी शादी करते हैं तो उन के खिलाफ भी कानून होना चाहिये। यह नहीं होना चाहिये कि जो नौजवान लड़की लड़के हों उन्हीं के लिये कानून बनाया जाय। यह जो कानून लाया गया है वह ठीक है लेकिन उस को अमल में लाने में हमारी गवर्नमेंट को कितनी तकलीफ होगी। मामला पुलिस के पास जाता है, पुलिस पूछती है कि तुम्हारी उम्र क्या है। वह कहते हैं कि हमारी उम्र १७ वर्ष की है। पुलिस इस में क्या कर सकती है, उन के पास पूरा सर्टिफिकेट नहीं है, न कोर्ट का सर्टिफिकेट है, क्योंकि उन के लिये कम्पल्सरी एजुकेशन (compulsory education) नहीं है।

हम ऐजुकेशन में कितने बैंकवर्ड हैं और जब तक हमारा देश ऐजुकेशनली फ़ारवर्ड नहीं होगा, यह कानून काफ़ी नहीं होगा और मेरे ख्याल से आज ऐसा नहीं है। यह जो कानून है यह मिडिल क्लास (middle class) के लोगों के लिये है, मिडिल क्लास के लोगों में थोड़ी खराबी है, क्योंकि मिडिल क्लास में ऐजुकेशन ज्यादा है और उन में कारकिंग स्टूडेंट्स ज्यादा हैं

और यही बात में समझता हूँ कि इस बिल के लाने वाले पंडित जी के दिमाग में भी थी जिस के कारण वह ऐसा बिल यहां लाये। मेरी राय में अगर कम्पल्सरी ऐजुकेशन के लिये अगर कोई बिल लाया जाय या हमारी जो हालत खराब हो गई है, उस को सुधारने के लिये कोई बिल लावे तो ज्यादा अच्छा होगा। पंडित जी की हमारे ऊपर बड़ी कृपा रहती है और कभी कभी वह हमारे लोगों के उत्थान के लिये बोलते हैं, लेकिन इस बिल के बारे में मुझे यह कहना है कि वह कम से कम इस के बारे में पहले यह जानने की कोशिश करें कि पब्लिक ओपीनियन (public opinion) क्या है और इस वास्ते इस को सलैक्ट कमेटी में भेजें और मालूम करें कि इस बिल के बारे में लोगों की क्या राय है। मेरा कहना यह है कि हमारी हालत को देखते हुए और बैंकवर्डनेस को देखते हुए मेरी दृष्टि में यह बिल बैंकवर्ड क्लासेज के लिये अच्छा नहीं है और जैसा हमारी बहिन श्रीमती उमा नेहरू ने बताया कि उस के लिये दोनों की पुरुष और स्त्री की गलती है, पुरुष का भी कैरक्टर (character) होना चाहिये और महिला का भी कैरक्टर होना चाहिये। आज सीता और सावित्री की यहां पर चर्चा की जाती है, लेकिन दुनिया में आज कहां सीता और सावित्री दिखाई देती हैं। लोग कहते हैं कि भाई पुरुष भी अच्छे होते हैं, तो वह तो हम सब पार्लियामेंट जो बैठे हुए हैं वह इस को जानते हैं कि पुरुष कितने अच्छे हैं। यहां पार्लियामेंट में मैं ऐसी कोई बात नहीं निकालना चाहता जो यहां पर मुनासिब न जंचे, लेकिन मेरी राय यह है कि यह बिल अभी लाना नहीं चाहिये या और अगर अभी ले जाये हैं तो कम से कम उस बिल के बारे में पब्लिक ओपीनियन क्या है, लोगों की राय क्या है, उस को जान लेना चाहिये और ऐसा बं

(Amendment) Bill

परिगणित जाति के दृष्टिकोण को ध्यान में रखते हुए कहता हूँ, क्योंकि मैं देखता हूँ कि शारदा ऐक्ट बन तो गया लेकिन अमल में नहीं आ रहा है और वह खाली शो (show) है और मुझे डर है कि कहीं यह बिल भी एक शो मात्र ही न रह जाय। मेरा इस कारण इस बिल के बारे में विरोध है और कम अज कम हाउस जब तक पब्लिक ओरीनियन इस के बारे में क्या है, उसे प्राप्त नहीं कर लेता, तब तक उस के ऊपर यहां चर्चा करना ठीक नहीं है। इस वास्ते मेरा अनुरोध है कि यह बिल सेलेक्ट कमेटी को भेजा जाय और उस में जो कुछ अमेंडमेंट्स ला सकते हों, वह लाये जायें। इतना बोल कर मैं अपनी बात खत्म करता हूँ।

Shri N. Somana (Coorg): I am in full support and sympathy with this Bill. I look at it merely from one point of view, and that is, that this Bill has been aimed at raising the age of consent. The most important point to be considered by the House is, what should be the age of consent. If we see this chapter which deals with infants, that is sections 359 to 376, we see that so far as offences affecting minors are concerned, every section lays down the age as 18. That is the purpose. Under law, a person under the age of 18 is supposed to be an infant and either he or she, she in this case, is not competent to give any consent for a valid contract. So, when it is a question of giving consent, there cannot be any valid consent unless that is given by a major. I am really surprised why this section has not been amended so far, when it is a question of consent so far as this particular sub-clause is concerned.

Shri S. V. Ramaswamy: Is it a contract?

Shri N. Somana: It is so; consent is necessary for a contract. Because, as my hon. friend, a barrister of 22 years standing knows, a contract cannot be entered into without consent.

In this particular case, the question is whether an offence can be committed without the consent of the lady, and if that is so, what should be the age. Under the law, a person is supposed to be an infant up to the age of 18 and no valid consent can be given until she attains the age of 18.

Therefore, my hon. friend Pandit Thakur Das Bhargava has brought this Bill to raise the age to 18. As I said at the beginning, looking at the structure of the whole chapter, in every case, in describing the offences, the age limit of 18 is there. It is quite in keeping with the structure of this chapter that the age of consent should be raised to 18. I think the questions of raising the standard of morality, etc., are beside the point so far as this Bill is concerned. Every one is anxious to raise the moral standards of our society; but the solution must come in other forms. This Bill relates to the validity of consent given by a lady and I think no consent can be valid under law unless the age of the person is 18 years. Even under the Guardianship Act, the age limit of 18 has been fixed for attaining majority. After 18 years of age, he or she is entitled to enter into a contract and they need no protection. In law, any person under 18 years is deemed to be an infant under the protection of some guardian, may be natural or appointed by the court or otherwise. No consent can be valid at all unless it has been given by the lady over 18 years of age, I think, it is merely for that purpose, that my learned friend Pandit Thakur Das Bhargava has brought this Bill. I do not see any reason why this House should hesitate to pass the Bill straightway.

So far as clause 3 of the Bill is concerned, my hon. friend Mr. Ramaswamy found that there was some incongruity in that clause. I do not see any incongruity at all. As stated in the Statement of Objects and Reasons, punishment as regards offences committed between the ages of 16 and 18 has been lessened for a particular reason. That is the age at which a girl grows mature in brain. There is no question of the growth of body at all; consent is concerned only with the maturity of the brain. Between the ages of 16 and 18, there is a process of growing, and that is the very reason why the punishment in the case of offences between the ages 16 and 18 has been lessened and minimised. Similar is the case in respect of a woman who is married and is above the age of 12. There is nothing incongruous about it.

Even so, I do not think there is anything which offends or which is incongruous in clause 4 of the Bill, as my hon. friend Mr. S. V. Ramaswamy put it. It certainly fits in very well with the Schedule. The only question to be considered is whether this offence should be made compoundable and that is a question on which, probably, there may be divided opinion whether

[Shri N. Somana]

such an offence should be compoundable or non-compoundable as is the case with reference to all other portions of section 376. Barring that, my humble submission is that this Bill should certainly be accepted wholesale and there is no necessity for us to dispute the advisability of raising the age.

Shri Raghavachari (Penukonda): I have been listening to the discussion on the Bill and I find that there has not been a clear understanding of the whole scheme of the Indian Penal Code. After all, argument after argument has been advanced by hon. Members and they were trying to make out some capital, out of the difference made in the Bill between a man and a woman, both of whom have to join to commit this offence.

In fact, under sections 375 and 376, the Indian Penal Code at present concerns itself only with the offence committed by the man. Therefore, the arguments that there should be no distinction between man and woman in this respect do not at all arise. They are beside the point.

Next, the question is whether the age of consent now available in the Act to take a man's offence out of the category of offence should be preserved at 16 as at present or should be raised to 18. Those who have some experience of courts know that the offences that really are brought up before courts are only cases where there has been kidnapping, violence and some heinous method of committing sexual offence. Invariably cases come before a court when, without the consent of the parents or the girl, some ruffian or rowdy or an objectionable sort of person carries away young girls, and then forces the court to take cognizance of the offence, certainly at the initiation of the persons concerned. And in all those cases, if we examine our own experience, what invariably is found is that the girl who has been carried away oftentimes is a witness to show that she has given consent, and the prosecution proves useless. In fact, this Bill is not expected to—nor do I believe it will—prevent all kinds of objectionable relations between young girls and boys of a particular age. If social standards have to be raised, surely the law must come to assist and help. If an offence of this kind cannot be contemplated with impunity, then there is some check. Surely, that, we can expect, and therefore, to my mind it looks that the age of consent which is oftentimes used now at 16 dangerously, may as well be raised to 18.

The other arguments advanced by Members of this House that it may be used as a weapon of blackmailing, as a weapon to force people into unwilling marriages etc., appear to be beside the point, for, these abuses are available even now with the age of consent at 16. I fail to see where all the strength of that argument is for persons only between 16 and 18. Therefore, the arguments are more or less simply conceived for the sake of argument; increasing the age from 16 to 18 is the only realistic way of approaching it and thus preventing, or at any rate, largely contributing to the prevention, of such violent ways of dealing with young girls.

It may be asked, what is the age of consent? That has also been raised. It was thought that 16 was sufficiently a proper age of consent, taking into account the climatic conditions in our country and probably also the experience so far. We all know that under jurisprudence, 18 years has been accepted as the legal age of consent. Therefore, apart from the age of 16 or 18 being the proper age for valid consent, the question that is really to be considered is whether, in consonance with the whole scheme of the Act and the experience of society as at present constituted, it would not be more for the benefit of raising the moral and social standards, if we raise the age from 16 to 18.

Again, some argument has been advanced that there are more opportunities now where a young girl and a boy might misbehave because of co-education, working together in factories and things like that. In fact, it might even be stated that in these days when family planning and contraceptives and things like that are everywhere to be found, the society or the law cannot be expected to completely prevent this kind of extra-marital relationship between a boy and a girl. What we are concerned with is that, as the society is constituted at present, no young man should be permitted with impunity to lay hands upon a girl whether she is on this side of 16 or on that side, when it is raised, as I have submitted, to 18.

Dr. Lanka Sundaram (Visakhapatnam): What about the other way round.

Shri Raghavachari: The arguments about the tempter and the tempted etc., are beside the point, as I have already submitted. In the scheme of the Indian Penal Code, this offence is one of rape. Therefore, the question "No distinction should be made bet-

ween a boy and a girl", does not arise to my mind.

It looks that the Mover of this Bill has also provided, because he is suddenly raising the age of consent from 16 to 18, for some kind of compounding of the offences committed in that borderland. It was said that this measure of compounding might be used as a weapon to force an unwilling marriage. When a young man and a girl have come together, it will be the happiest thing that can be desired if society should force that they should live as man and wife, and it is not a matter on which anybody must have scruples and say, "This young man is forced to live with a woman with whom he agreed to live some time".

Therefore, it would be really helpful if we should take a realistic view that this age of consent should be raised from 16 to 18. All the arguments advanced appear to be manufactured merely for the sake of argument, and really it might not affect either the liberties or the health and the safety of the society. Therefore, I am prepared to welcome this Bill and request the House to accept it.

बाबू रामनारायण सिंह : सभानेत्री महोदया, मैं आप को बहुत बहुत धन्यवाद देता हूँ कि आज जब कि सन्ध्या हो रही है और भवन का कार्य समाप्त होने में पांच सात मिनट शेष हैं, आप ने मुझे कुछ कहने का अवसर दे दिया।

इस विधेयक के प्रस्तावक श्रीयुत ठाकुर दास जी हमारे बहुत ही पुराने और बड़े मित्र हैं। जब हम लोग एक दल में थे उस वक्त हम लोगों की राय बहुत ही मिलती जुलती थी। उन्होंने समाज सुधार का बहुत कुछ काम किया है जिस के लिये वह समाज के धन्यवाद के पात्र हैं। अंग्रेजी काल में जो कंसेंट कमेटी (Consent Committee) बनी थी उस के भी यह सदस्य थे। सारे देश में भ्रमण किया। पटना भी गये थे। मैं ने भी इन के सामने गवाही दी थी। तो यह बराबर ही समाज सुधार की तरफ

झुकते रहे हैं और काम करते आये हैं। तो यह बिल उन के लिये कुछ नई बात नहीं है। इस को शुरू करते ही इन्होंने कहा था कि अंग्रेजी काल में तो जो हुआ सो हुआ लेकिन अब तो नैशनल गवर्नमेंट है यह काम हो जाना चाहिये। तो उसी पर मैं ने कहा था कि भाई नैशनल गवर्नमेंट मत बोलो। उन को यह नापसन्द हुआ। और लोग भी बोले कि नैशनल गवर्नमेंट न कहें तो क्या कहें। मैं ने कहा कि नैशनल गवर्नमेंट तो यह नहीं है। लेकिन हमारी बात को यह नहीं माने। चूँकि यह बात शुरू ही में निकल पड़ी थी इसलिये मैं इस की ओर भी व्याख्या किये देता हूँ। यह तो सभी लोग जानते हैं और जो लोग न जानते हों वह भी जान लें कि अंग्रेजी हाउस आफ पार्लियामेंट में अगर मजदूर-सरकार होती है तो वह मजदूर सरकार कहलाती है और अगर कंजरवेटिव (conservative) सरकार होती है तो कंजरवेटिव सरकार कहलाती है। लेकिन वह नैशनल गवर्नमेंट नहीं कही जाती है।

उन्होंने विधान के बारे में कहा था तो विधान भी पढ़ लीजियेगा। आप इस को भारत सरकार कहें, अपनी सरकार कहें जैसा चाहें कहें। लेकिन जब तक दलबन्दी रहेगी मैं समझता हूँ कि सरकार के विरोध में भी बहुत से लोग रहेंगे, तब तक इस को नैशनल गवर्नमेंट नहीं कह सकते। यह नानूनी बात है। सभानेत्री महोदय वास्तविक बात तो यह है कि इस को अगर कांग्रेस सरकार कहें, या एक आदमी की सरकार कहें तो इस में कोई आश्चर्य नहीं होगा। या इसको किसी क्लिक (clique) की सरकार कहें। यह बात बिल पर जो बहस हो रही थी उस के शुरू में ही आ गई थी, इसी वास्ते इस की व्याख्या कर देना ठीक है।

[बाबू रामनारायण सिंह]

अभी काटजू साहब और हम सब लोग बात कर रहे थे तो मैं ने काटजू साहब से कहा था कि देखिये, हमारे भागंब जी की इतनी बात मानलीजिये। इन्होंने बहुत अपील की है यह समझकर कि यह नेशनल सरकार है, मगर गलती से उन्होंने यह कहा है, लेकिन खैर अब देखना है कि इन की जो यह राष्ट्रीय सरकार है यह कहां तक इनकी मदद करती है।

सरदार ए० एस० सहगल : आप की सरकार नहीं है ?

बाबू रामनारायण सिंह : नहीं, हमारी सरकार नहीं, देश के कुछ लोगों की सरकार है। हमारी हालत इस विधेयक के बारे में यह है कि जैसा मैं ने कहा हमारी और इन की राय बहुत मिलती जुलती थी और आज जो बहस हुई इस समा में, उस से मुझे बहुत आनन्द आया कि आज लोग दिल खोलकर, किसी नेता या व्हिप (whip) के डर से नहीं, बल्कि लोग दिल खोल कर अपनी अपनी बातें कह रहे हैं। मुझे बड़ी खुशी हुई। मैं सब से कहता हूँ कि इसी में देश का कल्याण है कि लोग दलबन्दी से बातें न करें, अपने हृदय की बात करें, हृदय से विचार करें और निर्णय करें। उस के बाद जो निर्णय होगा वह देश के लिये कल्याणकारी होगा।

श्री श्रीरोच गांधी (जिलाप्रतापगढ़—पश्चिम व जिला रायबरेली—पूर्व) : १६ रहे या १८ रहे ?

बाबू रामनारायण सिंह : आप इतना क्यों घबराते हैं। यह विषय इतना आसान तो नहीं है कि तुरन्त ही खत्म कर दिया जाय। तो जैसा मैं कह रहा था कि हमारी उन की राय बहुत मिलती जुलती थी। तो मैं बहुत

देर तक यही सोच रहा था और क़रीब क़रीब मेरे दिल में यह बात थी कि मैं इस बिल का समर्थन करूँ। मेरे दिल में यह बात थी। लेकिन जो बातें हुई, उन सबों की राय हम ने सुनी और फिर मैं ने भी जो सोचा तो अब तो मालूम होता है कि इस विधेयक का मैं विरोध ही करूँ तब सही बात होगी। इस बिल का सरकार तो विरोध करेगी, इसलिये कि वह किसी की सरकार है ही नहीं। लेकिन हम इस वास्ते विरोध नहीं करते कि सरकार तो इस का विरोध कर ही रही है। हम लोग तो सोच विचार कर, जैसा मैं ने अभी कहा और मैं ठीक बात कहता हूँ। ग़लत बात नहीं कहता हूँ, निर्णय करते हैं। एक घंटे पहिले तक तो मेरी राय थी कि मैं इस विधेयक का समर्थन करूँ, लेकिन अब तो राय बदल गई है जैसा मैं ने कहा कि अब तो मैं इस का विरोध करता हूँ।

बात इस में यह है कि एक ओर हमें देखना चाहिये। जो कानून बनते हैं तो देश के लिये कानून बनने चाहिये, जैसा अंग्रेज़ी में लोग कहते हैं कि “ला इज नर्थिंग बट दी बिल आफ़ दी पीपुल एक्सप्रेस्ड इन टर्म्स आफ़ ला।” यही कानून की परिभाषा है कि जो जनता चाहती है उस को कानून का रूप दे देना चाहिये। लेकिन हिन्दुस्तान में वह बात नहीं है। जनता कहीं रहे यह पार्लियामेंट जो है वह भी कहीं रहे, यहां कुछ लोग जो चाहते हैं वह तो पास हो ही जाता है।

सरदार ए० एस० सहगल यह बात ग़लत है।

बाबू रामनारायण सिंह : यह बात तो ग़लत नहीं है, लेकिन आप को तो खुश करने के लिये ऐसा कहना ही होगा।

यहां एक प्रस्ताव आया कि इस का प्रचार किया जाय। देश में इस पर मत

लिया जाय। वह चाहिये ही था। लेकिन मैं कहता हूँ कि नहीं, जब बिल ही ठीक नहीं है तब उस का विरोध कर के इस को खत्म कर देना ही ठीक है, क्यों समय बरबाद किया जाय और इधर उधर भेजा जाय। सभानेत्री महोदया, इस में धोखा यह है कि जो क़ानून बनते हैं तो इसलिये कि उन से देश में जो झगड़े हों वे खत्म हों। लेकिन हमारे यहां तो ऐसे ऐसे क़ानून बन जाते हैं जिन से झगड़े और बढ़ जाते हैं। यहां यह एक धोखा है। मैं क्यों इस विधेयक के खिलाफ़ हो गया वह मैं कहता हूँ। मैं सोचता हूँ कि यह तो सही है कि १६ वर्ष से बढ़ा कर १८ कर दिया जाय। उस का अर्थ यह होगा कि कोई बालिका १८ वर्ष की जब तक है, तब तक उस ने चाहे अपनी स्वीकृति दी हो चाहे न दी हो, उस के साथ सम्भोग करने वाला जो मनुष्य होगा वह क़सूरवार होगा। तो यह तो हुआ १८ वर्ष तक। लेकिन उस के साथ साथ यह भावना तो आ सकती है कि जो क़सूर होगा वह १८ वर्ष तक ही होगा। लेकिन १८ वर्ष के बाद क्या होगा? इस बास्ते इस में झगड़ा है, क्योंकि जब कहीं पर आप सीमा निर्धारित कर देते हैं, सीमा क़बूल कर लेते हैं, कि १८ वर्ष तक क़सूर समझा जायेगा, लेकिन १८ वर्ष से एक दिन, दो दिन, एक महीना, दो महीना अधिक हो गया, तब आप उस को क़सूर कहेंगे कि नहीं?

लेकिन इस क़ानून का लोगों पर यह असर होगा कि चूंकि क़सूर १८ वर्ष तक ही माना गया है . . .

पंडित ठाकुर बास भार्गव : अभी क़ानून क्या है ?

बाबू रामनारायण सिंह : अभी तो जैसा क़ानून है वह आप जानते ही हैं।

पंडित ठाकुर बास भार्गव : अभी १६ से एक महीना ज्यादा हो तो क्या क़ानून है ? क्या आप चाहते हैं कि सारी उम्र के लिये यह कर दिया जाय, कि कोई औरत सारी उम्र रजामन्दी न दे सके। अगर आप ऐसा चाहते हैं तो हमें बिल को मानने में क्या आपत्ति है।

बाबू रामनारायण सिंह : नहीं, उस के लिये तो मैं राज़ी हो जाऊंगा, क्योंकि हमारे शास्त्र में दिया हुआ है कि :

मातृवत परदारेषु परद्रव्येषु लोष्ठवत आत्मवत सर्वभूतेषु यः पश्यति स पण्डितः

5 P.M.

Mr. Chairman: Will the hon. Member finish shortly?

बाबू रामनारायण सिंह : जी हां, कुछ समय तो और मिलना चाहिये।

Mr. Chairman: Then I think the matter may stand over till the next private Members' day of the next session.

The House then adjourned till a Quarter to Eleven of the Clock on Friday, the 12th December, 1952.