

PARLIAMENT OF INDIA

RAJYA SABHA

THE INDIAN PENAL CODE (AMENDMENT) BILL, 1963

EVIDENCE



RAJYA SABHA SECRETARIAT
NEW DELHI
MAY, 1967

LIST OF WITNESSES WHO TENDERED EVIDENCE BEFORE THE SELECT COMMITTEE

Name of individual	Dated	Pages
(1) Shri M. C. Setalvad, M.P. and <i>former</i> Attorney-General of India.	17-10-66	1—11
(2) Dr. V. K. Narayana Menon, Director General, All India Radio.	18-10-66	11—29
(3) Shri Mohammad Fazl-ur Rahman, Pro-Vice-Chancellor, Muslim University, Aligarh.	19-10-66	30—49
(4) Shrimati Sundari K. Shridharani, Honorary General Secretary, Triveni Kala Sangam, Delhi.	-do-	49—66
(5) Shri A.S.R. Chari, Senior Advocate, Supreme Court of India.	-do-	66—83
(6) Shri Asoka Sen, Joint Secretary, Ministry of Home Affairs.	6-3-1967	83—96
(7) Shri K. N. Bamzai, Registrar of Newspapers for India.	6-3-1967	96—102
(8) Shri A. K. Jain, President, All India Newspaper Editors' Conference, New Delhi.	7-3-1967	102—113
(9) Shrimati Leela Chitnis, Film Artist.	24-4-1967	113—122
(10) Shrimati Snehprabha Pradhan Film Artist.	24-4-1967	122—134
(11) Shri B. R. Chopra, Film Producer and Director.	25-4-1967	134—146
(12) Shri Prithviraj Kapoor, Actor, Director Stage and Films.	25-4-1967	146—155
(13) Shri B. P. Bhatt, Chairman, Central Board of Films Censors, Bombay.	26-4-1967	155—168
(14) Shri B. K. Nundee, Regional Officer, Central Board of Films Censors, Bombay.	26-4-1967	155—168
(15) Prof. D. K. Be'ekar, Representative of the Maharashtra Sahitya Parishad, Poona.	26-4-1967	169—174
(16) Shri A. N. Mulla, M. P.	4-5-1967	174—190
(17) Shri G. S. Pathak, M.P.	5-5-1967	190—204

SELECT COMMITTEE ON THE INDIAN PENAL CODE (AMENDMENT)
BILL, 1963

VERBATIM REPORT OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE ON THE
INDIAN PENAL CODE (AMENDMENT) BILL, 1963

Monday, the 17th October, 1966

PRESENT

1. Shri Akbar Ali Khan—*Chairman.*

MEMBERS

- | | |
|-----------------------------|--------------------------|
| 2. Shri M. P. Bhargava | 7. Shri P. K. Kumaran |
| 3. Pandit S. S. N. Tankha | 8. Shri Jaisukhlal Hathi |
| 4. Shri Arjun Arora | 9. Shri A. D. Mani |
| 5. Shri Mulka Govinda Reddy | 10. Diwan Chaman Lall |
| 6. Shri Dahyabhai V. Patel | |

REPRESENTATIVES OF THE MINISTRIES

Ministry of Law

Shri S. K. Maitra, Additional Legislative Counsel.

Ministry of Home Affairs

Shri G. S. Kapoor, Under Secretary.

SECRETARIAT

Shri S. S. Bhalerao, Joint Secretary.

Shri S. P. Ganguly, Deputy Secretary.

Shri Amar Nandi, Under Secretary.

WITNESS

Shri M. C. Setalvad, M.P.

(Shri M. C. Setalvad was called in.)

CHAIRMAN: Let us begin now. We are here to consider the amendment proposed by Diwan Chaman Lall to the Penal Code sections 292 and 293. We are very happy that today Mr. Setalvad, who is not only an eminent lawyer but is also our esteemed colleague, is with us. Now he will give his evidence. It is confidential except for Members of Parliament—I need not point out that. In connection with the proposed amendment we have received opinions from different States and different people, which are sharply divided, and we are therefore in difficulty. In such a situation I am sure your evidence will be very valuable to us.

SHRI M. C. SETALVAD: The proposed amendment may be approached from two aspects. First, is it necessary? And, secondly, if necessary, is it an appropriate amendment? And I will deal with these two aspects in the order in which I have mentioned them.

As to the first, it appears to me that the amendment is not needed. It seems that the amendment is inspired by a recent change in the law in England regarding obscenity effected by the Obscene Publications Act, 1959, known as the Jenkins Act.

Now if one examines the provisions of that English Act, it appears to me that the law in India, as laid down recently by the Supreme Court, really has all the elements which the recent English statute provides for. The first element in this statute is: "(1) to take into consideration the dominant effect of the whole book". Now that, indeed, is what the Supreme Court has laid down in its recent judgment, and I am reading portion of the judgment.

"In judging a work, stress should not be laid upon a word here and

a word there, or a passage here and a passage there."

So it means that the effect of the whole has to be looked at.

The second part of the English statute provides this: "(ii) to find whether the publication of the matter is justified on the ground that it is in the interest of science, literature or learning and of other subjects of general concern;" Now that is laid down also in the same decision; if I may again read another portion of the judgment of the Supreme Court—

"In this connection, the interests of the contemporary society, and particularly the influence of the impugned book on it must not be overlooked. Where obscenity and art are mixed, art must so preponderate as to throw the obscenity into a shadow, or the obscenity so trivial and insignificant that it can have no effect and may be overlooked,"

so that art—and that is a broad term which includes literature and all kinds of general knowledge, is well provided for. Only the court thinks it must predominate, and that is really the effect of the second provision in the English Act. The third and final part of the English statute provides this: "(iii) to admit opinion of the experts as to the literary, scientific or other merits of the publication." Well, that is permissible in Indian law, and, indeed, in the case which came before the Supreme Court, evidence was tendered before the magistrate, I think, by Mr. Mulk Raj Anand as an expert, so that, if the desire of those promoting the amendment is to bring our law into line with what the English statute has provided, it seems, broadly speaking, that our law is more or less in conformity with what the English statute contemplates. Well, that completes the first aspect.

Taking the second aspect of the amendment, if you have to have the amendment at all, the language does

not appear to be apt, because what is provided therein is:

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

Now the words "meant for public good". That seems, if I am giving the correct meaning of the language, to take us back to the question: "What did the author mean it for? Did he mean it for the *bona fide* purposes mentioned, or some other purpose?" Now with regard to that, from the decisions in India and England it is clear that what is to be regarded is not what the author designed to do, or what he meant to do, but what the effect of it is and, therefore, the proposed amendment, even if it were to be made, really misses the fundamental point, namely, that what is to be judged is the effect of the writing on society or people in general, and that is what the courts have said. Further an amendment or a law, which may be suitable to one country, may not be suitable to another. Well, that is my comment on the language, of the proposed amendment, and that is all that I have to say.

CHAIRMAN: Now there is the Exception there provided as that, and will it not make the matter clear if in that exception this exception regarding science, art and literature is also added? If that had been in the section with the exception, then the position would have been different. But as you said, the present judgment of the Supreme Court has taken note of the Jenkins Act and so in your opinion will it help to clear the matter if this exception is also added to the exception already existing there?

SHRI SETALVAD: This is an absolute exception and gives complete immunity. What you want to propose in the amendment is not an absolute

exception. You say "provided it does not have or does not tend to affect the mind of the public and so on". So what you propose will not go with the existing exception which is an absolute exception.

SHRI JAISUKHLAL HATHI: The word "obscene" is not defined and whether a piece of publication is obscene or not has to be judged from the effect that it causes on the mind, having regard to the circumstances. In such cases we find it difficult to decide and although we feel and think that a particular article published in a newspaper is obscene, because of the law, we cannot say that it is obscene. So could you find some way of defining the word "obscene"? Now the matter has to go to the court. In the U.K. Act the word is defined as "For the purpose of this Act 'obscene' shall be deemed embodied in it". If some such things were attempted here, would it be a correct approach?

SHRI SETALVAD: The definition we find in the English Act is practically the same as what we get from the courts' decisions here. The definition does not take us any the nearer the objective. Even with the definition the court has to put itself in the same position as it does these days in considering a writing and trying to see its effect on that section of society which reads that publication. After seeing that it has to come to its conclusion. So the position will be the same whether you have the definition or not.

SHRI A. D. MANI: I would like to put to Mr. Setalvad what we have been thinking on this matter. I have been one of those who supported this Bill being referred to a Select Committee. We have been supporting it on the ground that there are a number of publications in India which are really a disgrace to Indian society since they deprave the minds of the people. I asked the Secretariat to get some copies of this publication—"The Con-

fidential Adviser". This is a publication which is causing the Home Ministry difficulty since it is not able to deal with it. This is younger brother of "The Observer". I do not want to scandalise the eyes of Mr. Setalvad, but I would like him to see this publication and tell us how we can deal with such publications. See the last page. It is awful.

"The Blitz", for example, is facing prosecution for obscenity in a court in Nagpur for publishing a pin-up photograph on its last page, of a lady almost in the nude, except for a few essential coverings. The Blitz is being prosecuted. Such publications are to be found all over the country. In England some 35,000 offensive publications are seized by Customs. That is why we are considering this matter.

I want to ask Mr. Setalvad particularly whether if we leave the words "meant for public good" and have the words "the effect on the minds of the people" or some such words—the exact words to be drafted later—it would serve the purpose. It is the effect on the mind of the public that matters and not the intention of the person who produces the book.

About the word "*bona fide*" even though the original Act contains that phrase "*bona fide*" I have come across a publication sold in Bombay "How to be happy even though married." There is no necessary contradiction between these two states and the case went up to court in Bombay when Mr. Setalvad was Advocate General, I think.

SHRI SETALVAD: I cannot recollect. Perhaps I was.

SHRI A. D. MANI: And the ruling was that as long as that book was meant for circulation among married people, the question of obscenity did not come. This publication is by Herring and Kent and is being sold in that corner in Hornby Road near Victoria Terminus and the man says

that the book will be sold only to a person who makes a solemn affirmation that he is married. We got that book sent to the Press Commission. There was a good deal of medical material available in that book. But largely its appeal is to the prurient taste. So if we drop the word "*bona fide*" it may be better. I am not happy with the word "*bona fide*" even in the original enactment.

The words occurring here are "of science, literature, art or any other branch of learning." Mr. Chaudhuri in his opinion says that these words "any other branch of learning" are redundant. Even if you stop with the words "science, literature and art" you would be giving the authorities the necessary powers to deal with such publications as The Confidential Adviser".

DIWAN CHAMAN LALL: If I may interrupt my hon. friend I would say that what Nirad Chaudhuri says is that as far as literature, science and art are concerned, they are not branches of learning.

SHRI A. D. MANI: I would suggest the dropping of "*bona fide*" from the original Act because it seems to substitute the intention. It is not the intention that really matters but the effect that the thing produces on the mind of the public. If we have this it may enable the authorities to deal with such journals.

While I am on this subject, I may say that after Mr. Setalvad has answered, may I request the Home Ministry to tell us their experience in dealing with this particular publication?

SHRI SETALVAD: May I know, Mr. Mani, what the actual question is?

SHRI A. D. MANI: Suppose I drop the words 'meant for public good' and put in an equivalent phrase 'whose effect is for public good' or any proper legal phraseology in that

place and drop the word 'bona fide' and stop with 'literature or art' would that be all right?

SHRI SETALVAD: It appears to me that you are dealing with the second aspect; that is, improving the wording of the amendment. But what about the first aspect? The first aspect was, is the amendment necessary at all?

SHRI A. D. MANI: That is covered by what I said earlier. There are publications of this kind and the Government is not able to deal with them.

SHRI SETALVAD: If I understand the idea of the proposed amendment correctly, it is meant to liberalise the provision while you seem to be wanting to move in the other direction.

SHRI A. D. MANI: That is on account of the judgment in the Bombay case. I am having that Bombay case in my mind. If a person says this is meant for the adult audience, those who are over sixty, who are not susceptible to prurient tastes, he gets some measure of protection.

SHRI SETALVAD: If you want to have that remedied, then you will have to make the law even stricter.

DIWAN CHAMAN LALL: What Mr. Mani is trying to do is to survey the entire situation regarding obscenity, not merely this particular amendment. And one aspect is, what is to be done in the circumstances that prevail in India today? What are we to do in regard to the Observer or the Confidential Adviser; not merely releasing the works of literary art, literature, art or science, from any restriction that may have been placed upon them by this particular legislation, but also to tighten up the law regarding obscenity?

SHRI A. D. MANI: That is what I would like to do because it is true that if it is for purposes of science . . .

CHAIRMAN: That does not strictly come within the consideration of this amendment. But I think we are all thinking on that line as Mr. Mani mentioned and as Diwan Chaman Lall pointed out; we want that aspect also to be considered.

SHRI SETALVAD: If the intention is to tighten the law . . .

SHRI A. D. MANI: We would like you to help us in that.

SHRI SETALVAD: . . . one might insert a definition of the word 'obscene' which will have the effect of tightening it. That will have to be drafted; it cannot be done here.

SHRI A. D. MANI: We will like your help in that matter.

SHRI SETALVAD: I can always assist and help.

SHRI A. D. MANI: I would also like to ask whether it is necessary to have this proviso which says "Provided that in the event of any dispute arising as to the nature of the publication the opinion of experts on the subject may be admitted as evidence". I am not a lawyer but I believe that the courts can always take evidence of experts whether or not it is specifically provided for in the law.

SHRI SETALVAD: There is an express provision in the Evidence Act for taking the evidence of experts, and expert evidence was taken in the case I mentioned of Mr. Mulk Raj Anand. There is no difficulty about it at all.

SHRI JAISUKHLAL HATHI: Even the words 'any dispute arising as to the . . .

SHRI SETALVAD: That is not appropriate language.

PANDIT S. S. N. TANKHA: Mr. Setalvad, proceeding on the assumption that a change has to be made in the law, may I know whether you consider that in proviso to section 293A, the proposed amendment of

Diwan Chaman Lall, the words meant for public good' would permit a large volume of literature, which is not allowed at present to creep in as permissible because of these words?

SHRI SETALVAD: I appreciate what you are putting to me. Supposing this were the law and if a prosecution is launched the court will have to ask itself the question, what is meant by the words 'meant for public good'. Is it, 'meant' by the author or is it what the court may think it is 'meant' for? It is quite conceivable that the words as they stand may be construed to mean 'meant by the writer or the author', in which case, of course, there is nothing more left except for the author to come and say on oath that it was meant by him for public good. And that would be an end to it, but I do not think that that was the intention of the draftsman or the mover of the amendment.

PANDIT S. S. N. TANKHA: The second point I have to ask is, whether in your opinion it is at all necessary to provide for the opinion of experts to be taken in under this clause here because a provision to consult experts already finds a place in section 45 of the Evidence Act.

SHRI SETALVAD: I think it is unnecessary.

PANDIT S. S. N. TANKHA: The third point is that already a proviso exists in the Penal Code under section 292. Now if a proviso of the type as that provided in section 293A is again added, do you not think that it will create some confusion in the mind of the courts that this implies something other than what is already covered under section 292?

SHRI SETALVAD: As I have already pointed out, the proposed amendment will not fit into the exception because that is an absolute exception. Take, for example, some of our temples, which have clearly obscene sculptures but they are abso-

lutely immune because they come under the exception. That is not the intention of the proposed amendment and therefore it would not fit in with that part of the exception as it stands.

PANDIT S. S. N. TANKHA: Do you think that this proviso is needed at all?

SHRI SETALVAD: I do not think so. It is already there. It need not be repeated here.

DIWAN CHAMAN LALL: You have said that this amendment is not necessary. Is it not so?

SHRI SETALVAD: Yes.

DIWAN CHAMAN LALL: And your ground is that what the Judgment of the Supreme Court in Lady Chatterley's Lover case provides for is the English law which is in the amended Act. Yet the decision in England was entirely different from the decision in India. Don't you think it would be necessary to provide for the protection of rare works of literature, art and science by an absolute exception in regard to these three just as we have an absolute exception in regard to temples? Even in temples, there is Konarak, there is Khajuraho. They are ruins, they are no longer temples. The provision is to protect existing temples but not to protect archaeological ruins as Konarak and Khajuraho. And if we are going to protect works of art, literature or science, it is very necessary that there must be an absolute proposal to this effect.

SHRI SETALVAD: If I may look for a second at the law as it stands in regard to the exception, the words in the exception are:—

"Any representation sculptured, engraved, painted or otherwise presented on or in any temple..."

Kajuraho or Konarak are they not temples?

DIWAN CHAMAN LALL: They are, no longer temples. They were once upon a time temples. They are just monuments of ancient times.

SHRI SETALVAD: No doubt at one time they were temples, although we have ceased worshipping in these temples. They will still come within the exception.

DIWAN CHAMAN LALL: Would they come within the exception? I do not know. But why are you against this particular effort on our part to try and make it impossible for any magistrate, for instance, or any judge to ban a work of art? Such work of art has been banned here, although it is considered as a work of art in Great Britain. It is no longer considered in India as a work of art.

SHRI SETALVAD: The difficulty which I feel is this. Suppose you want to make an absolute exception or exemption in favour of works of art. You will have to define what works of art and works of literature are, which will again bring you back to the present definition. It is easier in a temple, where you have got a physical object. You have got it engraved or sculptured, but when you come to the other part of it, works of art or literature, you are not dealing with a physical object. Who is to determine and on what standards whether it is a work of art or work of literature, which is entitled to an absolute immunity? Again, somebody will have to do it with reference to some yardstick.

DIWAN CHAMAN LALL: But we may do it by legislation.

SHRI SETALVAD: May I know what is in your mind? You can make it absolute only by saying that a work of art will be this, that or the other. Your work of art will be a work which does this or that. That means you will have to give a definition. Merely saying that it is a work of art will not help. What is a work of

art as distinguished from an obscene writing?

DIWAN CHAMAN LALL: Let us take the case of Rousseau's Confessions. I do not know if you have read it.

SHRI SETALVAD: I read that long ago.

DIWAN CHAMAN LALL: Now, I remember in 1924 when this matter came up, I referred to Rousseau's Confessions and Mr. Mohammed Ali Jinnah, in the Central Legislature objected to my saying: "Why should a third class magistrate be permitted to ban a work of literature like Rousseau's Confessions? He said he did not think that there was any person in the world, such as I contemplated, who would ban a work of art, a work of literature, like Rousseau's Confessions. That was his opinion in those days. If Lady Chatterley's Lover could be banned right up to the Supreme Court obviously Rousseau's Confessions could be banned. The Tropic of Capricorn and the Tropic of Cancer could be banned and a hundred and one other works of art by Oscar Wilde, Dorian Gray and others could be banned. Certainly these are all works of literature. The difficulty that we are faced with at the present moment is that these works of art and literature, which are sanctioned, which are considered to be not obscene in other countries like Great Britain and the United States of America, are nevertheless considered to be obscene here in India. What are we to do to get over this particular difficulty?

SHRI SETALVAD: I think even under the law as it stands at present, some of these, which you have mentioned, would not be regarded as obscene. It all depends on a particular book, its context, etc. Dorian Gray is being sold in India so far as I know and nobody has banned it so far.

DIWAN CHAMAN LALL: Even Lady Chatterley's Lover. I remember

in 1930 I brought a copy form Great Britain. It was taken hold of by Mr. Gauba, who immediately published an Indian version.

CHAIRMAN: I would like to point out that during this week I could not get a copy of it.

DIWAN CHAMAN LALL: I do not suppose that the library has got it.

SHRI SETALVAD: The remedy is to leave it to the court, either if you like under the present law, to determine it in each case and the court has said in its judgement that an opinion will have to be formed in regard to each case and each book. Or, if you would want to go further, make a definition of art or literature. But personally I think it would be very difficult really to work out a definition and you will be much in the same position as you are now.

SHRI P. K. KUMARAN: I would like to know whether Mr. Setalved has thought of any definition for obscenity. Now, when Mr. Mani produced a weekly and sent it to him, he saw the picture and said that it was really obscene. On the walls of the sun temple at Konarak there are carvings, which are very similar to this. All the postures described in *Kokkogam Alankar* are carved on the temple walls. So also at Khajuraho. These two centres are an attraction for tourists from all over the world. Now, I would like to know where you would like to draw the line between obscenity and art. If this is obscenity, what about the carvings on the walls of temples? Not only these two. There are other temples also where you find innumerable carvings like these. Then, it is no more a temple. There are temples where the gods are very much alive, where people go and pray everyday. There also we have got such carvings, especially in the foldings of the minarets and all that. These carvings speak very eloquently. People go and see them in the temples. Would you stop them? Are we going to ban

it or demolish all these carvings, which are considered to be a heritage of art?

CHAIRMAN: That is protected under the present law and, therefore, your question does not arise.

SHRI P. K. KUMARAN: They are all temples. If you see it on a certain wall of a temple, it is all right, but if you see it in a magazine it is obscene. How do you draw the distinction?

SHRI SETALVAD: As I understand it—I may not be right—the idea is this. These sculptures and paintings, in the temples, subsist in a particular context. They are in a place where groups of religious people come for religious worship. Therefore, obscenity would be entirely in the background or as has been said by the Supreme Court there art and religious feeling predominate and obscenity is in the shadow.

SHRI P. K. KUMARAN: If that is your view, then the judgment of the British Court regarding *Lady Chatterley's Lover* is correct.

SHRI SETALVAD: It depends. I am sure you are aware that matters affect different minds in a different way. Perhaps in the Supreme Court itself if the Bench had been differently constituted, a different conclusion might have been arrived at. These things lie on the borderline. What one has produced is on this side of the line or that will be a matter of human judgement. Thus in practice there can be no fixed line.

DIWAN CHAMAN LALL: Can anything be done to help us? The Supreme Court declares "*Lady Chatterley's Lover*" obscene, whereas in the English Courts they declare that it is not obscene. Can anything be done to help us in regard to this matter?

SHRI SETALVAD: In this connection I may draw your attention to one circumstance which generally speaking is correct. It may well be that what may be obscene here will not be obscene there and *vice versa*.

It all depends on the state of the society, the people, the way things are looked at, and so forth. Because in England a book has been pronounced not to be obscene one must not necessarily conclude that it must be so pronounced upon here.

DIWAN CHAMAN LALL: In Great Britain they are bound by original sin. Right through their history the original sin has operated in order to limit their vision. In India in temples, in our culture, we have been much more liberal in this respect. Some of these books here would be banned ordinarily in Great Britain. They are not published in an expensive manner. But here they are part and parcel of our life and we are much more tolerant from that point of view than they are in Great Britain. Nevertheless the compulsions of English law take us into an intolerant attitude. That is what has got to be objected. That is what is very objectionable as far as I am concerned.

SHRI SETALVAD: All that I can suggest is an attempt at a definition of what is obscene in literature or art which may liberalise the law. Such a definition could be framed.

SHRI ARJUN ARORA: The problem is not merely what Diwan Chaman Lall is faced with. Diwan Chaman Lall wants liberalisation of the law to protect works of art and literature from the mischief of the Indian Penal Code. That is only one aspect of the problem. The other aspect of the problem as raised by Mr. Mani is also a real thing because the present law is such that it gives Diwan Chaman Lall and us a reasonable fear that works of art and literature may not be exempted from the mischief of sections 292 and 293, whereas sections 292 and 293 are such that they give a licence to the publishers of literature mentioned by Mr. Mani and the Home Ministry headed by Mr. Hathi is helpless because the arms of the law are not long enough to catch the mischief-makers pointed out by Mr. Mani. So

the present amendment as envisaged in the Bill does not really cope up with the whole problem. We expect your guidance, your advice and your opinion in this matter as to how to cope up with both the fears of Diwan Chaman Lall and Mr. Mani.

SHRI A. D. MANI: May I say something in support of what he says? Since this Bill is before us, the section is open for discussion. It is open to the Select Committee to reject the amendment—this is my reading of this—or introduce matter not contemplated by the Mover. When some of us spoke on this Bill we had referred to these offensive publications which are appearing all over the country. In regard to the definition we have before us some material supplied by the Secretariat on the revised Statutes of Canada which say “any photograph, model, picture, tending to corrupt morals”. The definition is more or less attempted here. In the United States Code the words “leud, lascivious or filthy” which are not legal terms have been used. I would like to give both these things to Mr. Setalvad and ask him to see whether the time has not come for us to have a definition at an appropriate place. I would like to suggest that besides ascertaining Mr. Setalvad's views today we might give him time to consider the question of definition and meet again to consider the definition because the members of this Committee would be fully justified in giving a definition of obscenity which would help the Government as well as the public to deal with such publications. I would argue this from another angle.

CHAIRMAN: He has already said that.

SHRI A. D. MANI: I am suggesting now today and this has the approval of the Committee and I would ask him to think over the matter and the Secretariat would assist him with all material to work out a definition which can be inserted at some place, which

will tend to make the law a little more stiff than it is. It will not meet Diwan Chaman Lall's purpose but will meet my purpose.

DIWAN CHAMAN LALL: You want in addition to do something, namely, to make the law so stiff that these people who are capable of being sentenced to three months are at least sentenced to two years' imprisonment as the law provides in other countries like Canada and the U.S.A.

CHAIRMAN: We are all contemplating that not only we try to have the idea of giving a little more elasticity so far as art, literature and other things are concerned, we are also thinking, as you suggested and our friend suggested, to make the present law more strict.

SHRI JAISUKHLAL HATHI: We can introduce a definition of the word "obscene". My first question was to clearly define the word "obscene" so that we may be able to bring to book these people. I read also the definition which you just now read.

SHRI A. D. MANI: We would like to examine it again on the question of definition.

SHRI DAHYABHAI V. PATEL: Excuse me for my being late. The plane was late. Two aspects of the matter which may not be strictly within the framework of the Bill strike me today. There is no doubt that a certain amount of action would be justified. Writings of this type, scurrilous, leud, dirty are something we would not like to read in front of our families. When my sister is there, when my wife is there, certainly I would not like to read them. There is a certain difference between our society and the American society. Yet if American or Canadian law has put a restriction on this, is it not time for us to put it?

The other aspect is, what is happening to the student world today? There is great indiscipline there. With great respect and restraint, I would

like to submit my experience when we tour about. Unfortunately the fact is this—in large meetings in the North, I have seen young men trying to push away ladies, push their hands and pinch them. This does not happen, let me tell you, in Gujarat or in Maharashtra. There, if anyone does that, the students of colleges would have fallen upon them and pushed them away. But, unfortunately, in Uttar Pradesh and Delhi we hear of these things and the other students look on with fashion and enjoy. This is what hurts me. This may not be strictly within the purview of this Bill. But does it not have something to do with this? And what we need is to do something to prevent this.

These are the few thoughts that I would like to put before you.

SHRI SETALVAD: If I may so state, the Mover of this amendment may also think of moving some other amendment to some other provisions of the Penal Code to meet the situation.

CHAIRMAN: Mr. Mulka Govinda Reddy, would you like to say something?

SHRI MULKA GOVINDA REDDY: No, I came just now. I would like to watch for some time.

PANDIT S. S. N. TANKHA: While answering one of the members on this side, you wanted to know whether his intention was to tighten the present law on this subject. Suppose we wish to tighten it; because in spite of the present provisions in our law certain publications, newspapers and other things which have so much objectionable matter in them cannot be touched and the Home Ministry finds itself unable to prosecute them with success. In these circumstances suppose it is necessary to tighten the law what suggestions would you give for doing so?

SHRI SETALVAD: What has been put to me is really covered by what

has been said. We can put in some definition for the effective tightening of the law as well as getting in genuine works of art and literature . . .

PANDIT S. S. N. TANKHA: You think that merely defining the word 'obscene' would suffice for the purpose?

SHRI SETALVAD: By merely defining 'obscene'? You are talking of the liberalising of the law. A further exception dealing with works of art may be framed in proper language so as to ensure community to true works of art and literature. As to making the law stricter, perhaps to the word 'obscene' may be added some other following words. This is merely a suggestion.

SHRI ARJUN ARORA: I agree with Mr. Mani that we should some time later have the considered opinion of Mr. Setalvad on the twin aspects of definition.

CHAIRMAN: I would suggest to the Law Ministry to draft an amendment on the lines that we have been discussing and place it before Mr. Setalvad so that he may also apply his mind and either tomorrow or at a later stage . . .

SHRI A. D. MANI: Since Mr. Setalvad is one of us—he is a Member of Parliament—we suggest that the Law Ministry gets in touch with Mr. Setalvad instead of their preparing a draft and taking his opinion later on. We want to cut down the time. They will put material at his disposal to help him draft a suitable amendment which will be placed before us by Mr. Setalvad. We shall consider it and it is open to us at that stage to take the Law Ministry's view.

SHRI SETALVAD: I would do it but I do want to be assisted by some others as I would be assisted by some juniors in the courts.

CHAIRMAN: Let there be a draft.

SHRI S. S. BHALERAO: The moment the Law Ministry gives the draft,

we will circulate it to the Members. Members may then make their suggestions on that draft and give them to us and the whole thing will be sent to Shri Setalvad that will still cut down the time.

SHRI SETALVAD: They will have to collect the material, the Canadian Statute, etc.

SHRI A. D. MANI: I would suggest that we may give to Mr. Setalvad the material that we have already because a good deal of documented material is here. On the basis of the draft which the Law Ministry submits and the opinions received from those Members who may choose to submit opinions, Mr. Setalvad will consider the matter fully and then give us a draft on that.

SHRI SETALVAD: We will have all that material. But I should like to have the matter pinpointed in the two directions discussed here.

SHRI S. S. BHALERAO: Members may give their ideas pinpointing . . .

CHAIRMAN: I am sure the Law Ministry will take note of the discussions which we have had this afternoon.

SHRI A. D. MANI: Instead of our pinpointing the Joint Secretary knows what points have been made. He can circulate them saying that these are the points made by the Members.

DIWAN CHAMAN LALL: That is exactly what should be done.

CHAIRMAN: I would suggest that the things that have been given to the Members may be sent to Mr. Setalvad.

SHRI A. D. MANI: If I may make a request to you, in order to enable Mr. Setalvad and the Law Ministry to have the background of this matter in its entirety, I would like Mr. Hathi to tell us what his difficulty experienced in dealing with obscene publications

in Delhi has been, since we are not examining him.

SHRI JAISUKHLAL HATHI: When the Law Ministry assists Mr. Setalvad, it will be able to tell about their difficulties because we are guided by their advice.

CHAIRMAN: Now, the Law Ministry will say something.

SHRI S. K. MAITRA: The other witnesses are coming. So, it would be better if we hear all the witnesses and get their ideas.

SHRI A. D. MANI: It is a very good idea.

SHRI SETALVAD: That would be better undoubtedly because we can have some other opinions also.

CHAIRMAN: Anything else?

We are very grateful to you, Mr. Setalvad, for your very valuable advice and suggestions and we hope to have your further advice and help in this difficult task.

SHRI SETALVAD: Thank you.

(The witness then withdrew)

Tuesday, the 18th October 1966.

PRESENT

1. Shri Akbar Ali Khan—*Chairman.*

MEMBERS

- | | |
|-----------------------------|--------------------------|
| 2. Shri M. P. Bhargava | 7. Shri P. K. Kumaran |
| 3. Pandit S. S. N. Tankha | 8. Shri Jaisukhlal Hathi |
| 4. Shri Mulka Govinda Reddy | 9. Shri A. D. Mani |
| 5. Shri Dahyabhai V. Patel | 10. Diwan Chaman Lall. |
| 6. Shri K. K. Shah | |

REPRESENTATIVES OF THE MINISTRIES

Ministry of Law

Shri S. K. Maitra, Additional Legislative Counsel.

Ministry of Home Affairs

Shri G. S. Kapoor, Under Secretary.

SECRETARIAT

Shri S. S. Bhalerao, Joint Secretary.

Shri S. P. Ganguly, Deputy Secretary.

Shri Amar Nandi, Under Secretary.

WITNESS

Dr. V. K. Narayana Menon, Director General, All India Radio.

(Dr. V. K. Narayana Menon was called in)

CHAIRMAN: Mr. Menon, you know it is a Select Committee on the Indian Penal Code on which there are Members of Parliament, and we want the help of experienced people like you so that on this rather delicate question we may be able to form a balanced view. We will be glad to have your views on this matter. Now we begin the evidence.

You must have seen the amendment as well as the original sections relating to obscenity. We would like to have your opinion on these. Will you please tell us if the amendment is necessary and, if so, what are your views?

SHRI K. K. SHAH: And if the amendment is necessary whether the wording should be the same?

CHAIRMAN: I will come to the wording next. First, we would like to know whether the amendment is necessary. If it is so, for what reasons, if not, for what reasons?

DR. V. K. NARAYANA MENON: I certainly feel that the amendment would protect works of art which are likely to be banned because of the Act as it stands today. But I also feel that the definition of the word "obscenity", and even the application of the amendment may not be a very simple matter. But there is a clause in the amendment that in difficult cases this could again be referred to experts.

SHRI A. D. MANI: Mr. Menon, will you come closer to the mike? You are not audible.

DR. MENON: Without going into details of the actual wording in principle I think the amendment would be a step in the right direction to prevent works of art being condemned or banned be-

cause of the Act as it stands at the moment. But the question is: what should be the definition of the word "obscenity" and how much the "artistic" part of a work can be separated from "obscenity". Now it is difficult to state whether the artistic value predominates over other elements. In order to approach the subject, we may have to go into the intention of the creative artist. The creation of art implies various factors and the so-called "obscenity" may be incidental in the creative process; whereas in the really "pornographic" work, the intention is obscenity, to create something for a specific obscene purpose. There is also the question of whether the "sexual" feeling aroused in a reader is legitimate or not. Take, for instance, the last pages of *Ulysses* which I can say is one of the greatest works in fiction. The purpose of the work is not to arouse sexual feelings in the reader, though incidentally it may do that. "*Madam Bovary*" is another instance of a great work where the intention is not merely to arouse sexual feelings. I suppose the same kind of thing is true of works of art in other fields. A nude photograph, the type of photographs which are sold, let us say, in Port Said, is specifically meant to serve a kind of cheap, lewd purpose—which is very different from a nude by one of the Dutch masters where the nudity of the figure does not even occur to the viewer. One does not feel embarrassed by such a picture in one's drawing room or anywhere. This is the same in regard to sculpture. Even the extreme examples of erotic sculpture in Konarak and Khajuraho are not as embarrassing as the picture postcards available in Port Said because the intention of the latter is different, and the sum total of its image on the human mind happens to be different. But, of course, there is the problem of their impact on a comparatively unsophisticated mind who may see even in these works of art only certain aspects of nudity or obscenity. Now this is a problem.

As against this, there is also this aspect of the changing ways of our living and thinking. One's attitude to sex as a whole has changed in recent years.

The younger generation to-day perhaps has not the same inhibitions as we had, and sex is discussed and spoken of with much more objectivity as a result of an understanding of some of the basic motivating factors behind sex, particularly after Freud. However there will always be problems in regard to works like "Lady Chatterley's Lover" which was banned in England and which is not banned now, and which is banned in certain progressive countries like Japan and which is not banned in other places. There will always be certain controversies even among thinking people and people of liberal ideas and flexible minds. There will be differences of opinion, but on the whole, the amendment would help in not smothering some major works of art from being banned as merely obscene or lewd. If you look at the thing historically, whether it is incest with one's mother as in Oedipus Rex or with one's daughter as in Shelley's "Cenci" or passages from Chaucer's works or passages from Shakespeare—these do not strike us as obscene. It is when we are concerned with non-established names and reputations that we begin to feel shaky and one is not sure about the artist's intention and his ability to deal with certain specific problems in certain specific ways. So generally the Amendment should help major works of art by established masters. This is a vague statement because I am not a legal authority nor a specialist.

CHAIRMAN: Your suggestions have been helpful. I assume you mean that we should see the preponderance, whether it is on the side of art or on the side of obscenity. If the preponderance is on the side of art, then, a little obscenity should not be minded. If the preponderance

is on the other way, it should be banned. Am I right?

DR. MENON: Yes, but my point is about the "intention" of the creative art.

CHAIRMAN: How to find it?

DR. MENON: If a work of art has artistic integrity, then the other element ceases to be "obscene". The element that can be described as "lewdness" or "filth" or something bad, ceases to be "obscenity" if the artistic integrity is there. So it is difficult to say it is 25 per cent obscenity and 75 per cent art. If you take a magnificent piece of sculpture of Konarak it is a great work of art and because of its greatness as work of art, because of its integrity as a work of art, I do not see the 20th century "obscenity" there, and the feeling of obscenity disappears.

CHAIRMAN: You go by the intention.

DR. MENON: Intention of the artist. The integrity of the artist is of very great importance. It is the people who want to make capital out of something which might have a vogue, to exploit sex or the lewd aspect of it, who have to be banned.

DIWAN CHAMAN LALL: I am grateful to Mr. Menon indeed for a very clear exposition of the situation as we find it today. Would I be right in considering that Chaucer's Canterbury Tales and a great portion of the obscenity that one finds in Shakespeare would ordinarily be banned under the law as it exists?

DR. MENON: It could be.

DIWAN CHAMAN LALL: In regard to Ulysses, I entirely agree with you, the last portion of it where Mrs. Bloom sits on the chamber-pot and cogitates—that, taken by itself, would certainly come under the law and be banned. I entirely agree that

would happen but you have to look, as you say rightly, at the intention of the writer. After all James Joyce was one of the greatest novelists of his days and one of the greatest writers in the English language. One cannot possibly divorce the intention of the writer from the actual writing itself. It is not possible for us and I am grateful to you for having pointed out this aspect. As far as India is concerned we are more liberal people than, let us say, Christendom, where this problem arose and the law that we have unfortunately is the same as the Christian law. It is practically word for word the same law which was enacted in Great Britain until 1959. What I am trying to do by this amendment is to make even that Christian law applicable under the changed circumstances; as you said quite rightly, what was true yesterday is not true any longer and therefore we must take note of the changed circumstances. How are we going to do that? A double aspect appears to us. One is how to protect the works of art and literature and science which obviously would be banned under the law as it exists. How are you going to do that? Secondly how are we going to tighten the law against people of the nature that you exemplified by referring to nude photographs purveyed in the streets of Port Said or on the docks...

SHRI A. D. MANI: In Bombay too.

DIWAN CHAMAN LALL: I did not know that. There is no doubt about that. How are we going to tighten the law as far as people who are wanting to take advantage peculiarly, of a situation like this where they can be free to purvey, as Mr. Mani said even in Bombay those nude photographs? I remember one friend was going with me in Port Said and he was pressed and a pack of cards was forced into his hands.

He wanted to get rid of this insidious individual who was trying to sell him some photographs having shown him some photographs. He wanted to get rid of the man, but he discovered that it was a pack of cards. I am not so sure whether in Bombay the same sort of thing happens—I hope it does. The point I am driving at is this. Yesterday we had Mr. Setalvad, the former Attorney-General, here, and we requested him to look into this particular matter, the dual aspect of this problem, to save, by any means that we can, works of art, literature and science, which really are great works of art, literature or science, like *Lady Chatterley's Lover* for instance, from the clutches of the law as it stands today, and, secondly, how to tighten up the obscenity portion of the law, so that people do not indulge in what Mr. Mani knows and referred to yesterday—he referred to people who were taking a paper called the *Observer*, and a paper called the *Confidential Adviser*. Now these are the dual aspects. We want you, Mr. Menon, to be kind enough to throw some light on this dual aspect, on how we can, first of all, protect real works of art, literature and science and, on the other hand, how we can tighten up the law in regard to pure pornography or obscenity as such.

DR. MENON: The second aspect of how to tighten up the law seems a little difficult for me to answer, but I would like to say that in actual practice, it is in areas where the law is not very restrictive in the working of censorship, that obscenity in matters of sex has been less harmful. Maybe I am generalising, but in France, for instance, where censorship is not rigid, it is not uncommon for a family, husband, wife, and sometimes children, to go to a show where there may be semi or more than semi nude dancing. It is when the law bans a thing like that that the secret desire seems to mount up. The moment a book is banned, the desire among the public to possess it goes

up and up; and people will be proud that they have been able to see or read a banned book, and the very label of a banned book becomes an incentive to want to read it.

DIWAN CHAMAN LALL: We could not get a copy of Lady Chatterley's Lover.

DR. MENON: So it becomes desirable.

SHRI K. K. SHAH: I can give him a copy of Lady Chatterley's Daughter; another book bearing that name has come. It is a very good book and I think nobody can say that Lady Chatterley's Daughter is not a work of art.

SHRI A. D. MANI: The daughter has set up a much better standard than the mother.

DIWAN CHAMAN LALL: The same thing can be applied to Lady Chatterley's Lover.

DR. MENON: A more liberal attitude to censorship is often a better social corrective rather than a more severe approach to it. There are of course things which are on the border-line like this new American book called "Human Sexual Behaviour". It is supposed to be a scientific study of how human beings respond to or behave during the sex act. I have not seen the book; I have seen only the reviews. It is not banned. It is a best seller and has been among the best sellers in the United States for the last several weeks. It describes in great detail the responses of human beings, of the male and the female, to the sex act, in different circumstances, and so on, measured accurately and scientifically by two doctors. But whether the best selling factor is because of the scientific value of the book, or because of the curiosity...

SHRI K. K. SHAH: Curiosity.

DR. MENON: This is what I meant by a border-line case in which the intentions cannot be measured. Quite obviously, a book cannot go on selling in tens of thousands week after week out of scientific curiosity. It has been the first, second or third among the best selling works of non-fiction in the United States for the last two or three months, that means, a fantastic sale. It will be difficult to maintain that it is the scientific worth of the book or the scientific curiosity of the reader that makes him buy this book. So there is that danger. How to circumvent that, is something on which I may not be able to suggest anything in concrete terms.

PANDIT S. S. N. TANKHA: I do not know if I have understood you properly but I think you said that the application of the amendment may not be helpful and at the same time, I think, you said that it would be a step in the right direction so far as works of art are concerned.

DR. MENON: I think the amendment would be helpful; that is what I said.

PANDIT S. S. N. TANKHA: I agree with you where you have said that obscenity will depend upon the attitude and intentions of the mind of the author; you are quite right in saying that, but the question is, if we leave it at that, how are we to be sure that the courts will consider particular cases from a right point of view because it is human nature that while one mind thinks one way, the other may think in another way? It is possible that one court may hold that this is obscene, while another court may say, "No, this is a piece of art." In such a case how could this difference be reconciled and what in your opinion is the best method we can adopt?

CHAIRMAN: What is the criterion?

DR. MENON: I did say in the beginning that this is a difficult pro-

blem and that very highly intelligent and sophisticated minds have differed on one and the same work of art, whether it should be held obscene or not, and different countries, equally sophisticated, equally developed, have differed on such matters. That is why one part of the amendment offers a solution, where it says that in certain cases you may have to go to a court of arbitration to really decide whether a particular work in a particular context in a particular area should be banned or not; that is to say, what may have been considered obscene in, let us say, the Victorian times, may not be so considered so today, may be more acceptable today; or what might be considered obscene in certain parts of the world where Puritanism prevails, may not be considered so in other more advanced and liberal parts of the world. The customs of different parts of the world differ, and they may also determine this question of obscenity. I do not think there can be a simple rule of law which can clearly and categorically state the case. That is why I have felt that the amendment will be a step in the right direction in preventing works of art often being smothered or banned. It will help these works of art to come out into the open, and then, where there is difference of opinion, these can be arbitrated upon—the particular works in particular circumstances—and decisions taken.

PANDIT S. S. N. TANKHA: Do you think that, under the present law, there have been cases where particular works of art have been held as obscene and thrown out, which should not have been so held?

DR. MENON: Yes, for instance, Lady Chatterley's Lover, which is still banned in certain parts of the world, and which is not banned in certain other parts of the world, which has been banned in England during one particular period, and which has not been banned after a particular period, or, "Ulysses",

which was banned in practically the whole of the United States and in Britain. It was banned like that once, but now I am not sure whether the official ban has been lifted; it is now available in the shops in England and America and probably even here. But for a long period it was very strictly banned; copies of "Ulysses" were, in fact, burnt at the port of entry in some countries.

PANDIT S. S. N. TANKHA: Cases which are on the borderline, I believe, do not arise often. It is only in borderline cases, as in the case of Lady Chatterley's Lover, it is possible that Britain took one view, being advanced socially, while India did not tolerate it.

CHAIRMAN: India is not alone in this respect. In other countries also the book has been banned.

PANDIT S. S. N. TANKHA: Sculpture, I think, is on an entirely different footing from books on literature, because the intention of the sculptor can never be to deprave the mind of the youth.

DIWAN CHAMAN LALL: "Kok Sastra" itself is based on scientific development as far as sex is concerned, the base on which Havelock Ellis and Freud built.

CHAIRMAN: For instance medical knowledge is developed on that basis.

SHRI M. P. BHARGAVA: Mr. Menon, have you in your office any guiding principles for the Film Censor Board?

DR. MENON: Well, I do not deal with the Film Censor Board as such, because that is another wing of our Ministry. I only deal with broadcasting and for that we have a small Board which listens to film songs before we accept a whole lot of them for broadcasting purposes. It is not a very strict censorship, because after all the film itself is usually passed by the censor before we lis-

ten to it. So, there is not really very much more for us to screen, but we keep an eye on the kind of songs which go on the air.

SHRI M. P. BHARGAVA: Mr. Menon don't you feel that the law of obscenity as it exists today is not adequate to prevent all the trash which is being published and the authorities find themselves in a very peculiar position in dealing with this matter? Would you not like a tightening of the law, rather than have the present amendment which will protect only a small portion of art or science and the like and for which there are adequate precautions already in law?

DR. MENON: Well, there is a great deal of trash in existence, but great works of art are very few in number.

SHRI M. P. BHARGAVA: Art has to be preserved—that is all right. But how shall we deal with trash, which is being published? There is more trash in the country than real art.

DR. MENON: Even in the amending law there is provision for that. The amendment only suggests a different kind of approach to the protection of major works of art. It does not, therefore, necessarily mean laxity in dealing with trash, as you have said.

CHAIRMAN: What Mr. Bhargava wants to know is this. There should be relaxation so far as works of art, science and literature are concerned. In addition, we are also thinking that we should have some amendment so that the other part of it which is prudish and not very healthy for the growth of our society, is not allowed to be sold. How are we to tighten up that part of it?

DR. MENON: The Act as it stands provides for that.

CHAIRMAN: In the Act obscenity is not defined and there are some difficulties. As far as I know, we

could not proceed against some of the papers that have been referred to, such as the "Confidential Adviser" and the like, because there is a lacuna in the law and we are not sure that they would come under the grip of the law. So, that also is something which we are thinking of. On the one hand we want to widen the scope of the Act and on the other hand we want to tighten up the Act so that such things, which are really injurious to the healthy growth of our society, are checked.

DR. MENON: I agree, but I could not say how effectively it could be done, what should be the *modus operandi* for meeting it.

SHRI M. P. BHARGAVA: I think you are connected with the Natya Kala Academy.

DR. MENON: The Sangeet Natak Academi.

SHRI M. P. BHARGAVA: Have you got any code to guide you in deciding what is obscenity and what is not obscenity in the institution?

DR. MENON: There is no specific code for this particular purpose, except the usual commonsense approach to the thing. But there are interesting aspects, for instance, of music and dancing, which come in, from time to time, for serious discussion, particularly, the art of "Thumri" singing and the art of the professional singer, the courtesan type. It is a very delicate, subtle and highly developed art, but which is primarily created to please, as it were, which has got, shall I say, an erotic element in it, but again, with the development of the art itself, the musical quality of it, the musical aspect has become more important than the earlier basic intention which was definitely to please the patron, as it were. There have been some moves in the last fifteen or sixteen years, when suggestions have been made that this type of professional singers should not be used for broadcasting

and all that. But all that has changed now. The art of the Devadasi or the "bai" the art of the professional singer and dancer is no longer a kind of debased art. There have been some discussions on this, but there is no clear cut code, as it were.

SHRI M. P. BHARGAVA: Mr. Menon, if I understand you aright, the present difficulty has arisen because there is no definition anywhere of what is obscene or what is obscenity. What would be your reaction and would you like an attempt to be made to define obscenity?

DR. MENON: It would be difficult.

SHRI M. P. BHARGAVA: The attempt would be difficult or to define obscenity would be difficult?

CHAIRMAN: He means that it would be difficult to define obscenity.

DIWAN CHAMAN LALL: With regard to this particular matter there are criteria available today under the law with reference to obscenity, as to what is and what is not obscenity. For instance, it has been said in decided cases that it is the effect on the immature mind that is one criterion. The effect on the immature mind is a criterion. While that might have been true some 20 years ago, it may not be true today. And then it has been held in England that a negative of an obscene photograph cannot be seized because it is not for sale. But there are these things that are for sale and that is why they have amended the law now. However, there are many aspects of obscenity which have been laid down under the law. So it is not correct to say that obscenity has not been defined. Attempts have been made to define it in the law. But whether they are adequate or not I do not know. That is what Mr. Bhargava is driving at. They are not

adequate as they are today. Therefore, can you help us to devise some means by which we would be able to collar people who write what is called—what was that—Confidential Adviser or the Observer?

DR. MENON: Perhaps it might not be a complete definition, but one of the attributes could be that it appeals to the baser instincts. But then one is immediately faced with the problem whether sex in itself is base. It may not be.

CHAIRMAN: If it is under control.

DR. MENON: The other aspect of the matter is that the obscenity is actually in the mind of the reader rather than in the subject, in the piece of literature or art, because it is a projection of the reader or the viewer into the material which makes it obscene. For instance, there is the worship of the Shiva Linga. I do not think that obscenity comes into it at all, although it is the worship of the phallus. It is the symbol of the phallus put in front of men, women and children that is actually worshipped. But I do not think it appeals to any of the baser instincts in our minds. I don't think it is a debasing thing at all, although it is clearly and specifically understood that it is a symbol of creativity. So it is the suggestion that is there in the mind that matters. Here I am reminded of a story which may be relevant, which shows how suggestiveness is more in the mind than in the object itself. Two American boys, obsessed with the female form, particularly the upper part of the female body, saw a girl with a very good figure having her bath in the nude. One of the boys exclaimed: "Can you imagine her in a tight sweater?" This is an interesting phenomenon. An oblique suggestion about the sex act may be obscene but the picture of the phallus itself becomes an object of worship and does not seem to be obscene.

So a great deal depends on two factors. One factor is the appeal to some part of the consciousness of the person. The other is what the person himself sees in the object that is viewed or the passage that is read, because he projects himself into the situation. That is where the baser instinct comes into play or into operation.

DIWAN CHAMAN LALL: I am very glad, Dr. Menon, that you mentioned the case of the Shiva Linga worship, because that also shows that Indian society is entirely different from Christendom as such. As I said yesterday there the society started with the basic guilt symbol of Adam and Eve. It is entirely different from ours. Therefore, we are a little more liberal and we have to be a little more liberal though we just followed in the footsteps of the British until 1959.

SHRI M. P. BHARGAVA: Dr. Menon, you just said that obscenity depends upon the person who is viewing the object. If that is so, then it is not necessary to have any law at all about obscenity. So why not let things take their own course? Let any person view the thing in whatever way or manner he likes. We need not attempt to make any law.

CHAIRMAN: I do not think he meant that.

DR. MENON: I don't think I meant that.

SHRI MULKA GOVINDA REDDY: Dr. Menon, you said that the intention of the author is very important. But at the same time it would be difficult to judge what is the intention of the author. So the effect of the work of art that is produced on the mind of the reader or the seer is more important. So would you advise that the opinion or advice of an expert is necessary to say that the intention of the author was so and so and so it is a work of art. Or should we just leave it to the judgment of the common

reader? Can we leave it to the common reader's judgement to say that the intention of the author is like this and therefore it is a great work of art? What is your advice in this respect?

DR. MENON: What I meant to say is this. The creation of a work of literature or the creation of a work of art implies many things. It may imply also many intentions. Literature, for instance, deals a great deal with human relationships, with human behaviour, the resolution of human problems, the integration of human relationships, morals and other things. In fact, it is a compound of a large number of significant factors. And it may often happen that the element of love or even sometimes the delineation of the sex act may come in as a perfectly legitimate factor, among many other factors, in the creation of that work of art. That is why I said that the intention of the person is important. As against that you have the intention of the person who sells picture postcards or writes lewd verses merely to appeal to the baser instincts of people to make capital or to make profit out of it. There is the example of James Joyce who in actual life was a moralist, almost a puritan, I mean the sort of person who was incapable of uttering one obscene word. He was that kind of a person, a moralist among moralists. That is the kind of man that he was. But in writing "Ulysses" and in depicting the thoughts of Molly Blom he has revealed a complete lack of inhibition because he was dealing with basic truths. That is artistically vital. That is why one does not criticise him for trying to cash in on sex or appealing to the baser instincts. That is why I said, the intention is very important. This is the case with Sophocles, or Shelley or Chaucer or Shakespeare, even James Joyce or D. H. Lawrence. But when confronted with an unknown author or figure, it does become difficult. Then you have to study the work yourself and then come to a conclusion.

SHRI MULKA GOVINDA REDDY: It may be difficult to define the word "obscene" or "obscenity". But with the assistance of legal pandits and others it may be possible to define the word "obscenity" and enlarge the meaning of that word. But even then some works of art or great books might be banned. At that time, is it necessary to call in the advice of experts?

DR. MENON: I think it would be, especially where there is difference of opinion in individual cases, because what we may consider obscene today, we may not consider to be obscene some ten years later. What may be considered obscene in some part of the country may not be considered to be obscene in some other part. So the particular place, the people and the time all become important.

DIWAN CHAMAN LALL: Have you read 'The Canticles of Solomon' in the Bible? It is one of the most obscene things that I have come across in my experience. But it is part and parcel of the Bible.

SHRI MULKA GOVINDA REDDY: The meaning of 'expert' is defined in the Evidence Act but it does not cover the expert that we have in view in this particular context. So is it necessary to define who is an expert?

CHAIRMAN: I do not think so.

DR. MENON: That depends on the type of work of art—whether it is sculpture, painting or a book.

SHRI K. K. SHAH: Dr. Menon, I am trying to combine in me both a lawyer and the man who understands something about this. There are two types of approaches which are advocated. One is, examine whether the matter is obscene, then examine whether it contains any element of art. The other method is, examine whether it is some sort of art and don't bother at all whether it is obscene or not. If the answer is that it is a piece of art or literature, permit it. In the

first method you examine whether it is obscene and if it is so then examine whether an exception can be made in the sense whether it is a piece of art or literature and the compromise is, if it is a piece of art or literature, though obscene, if the preponderating influence is art or literature, permit it but if the preponderating influence is obscenity, prohibit it. If there is a balance between the two permit it. Now if we have to select between these two approaches which is the better approach? I hope I have made myself clear, abundantly clear.

DR. MENON: Yes; you have made it clear.

SHRI K. K. SHAH: If you can indicate which approach is better then our task becomes much easier. I hope I have put it in a nutshell.

DR. MENON: My suggestion would be that the first consideration should be its validity as a work of art and if it passes that test it becomes a major contribution to human consciousness or welfare and then the so-called obscenity part of it ceases to have the sting of obscenity.

SHRI K. K. SHAH: Therefore let us now go step by step. Would you allow a piece of art to cover ludicrous obscenity, to cover even the worst type of obscenity? My difficulty is this. I understand that you say, examine whether it is a piece of art or literature and if you come to the conclusion that it is a piece of art or literature, don't bother whether it is obscene or not but to what extent? For example, now you referred to Lady Chatterley's Lover. And the next book is Lady Chatterley's Daughter. But there is a vast difference. Of course I propose to come to the question of intention later. Now to what extent can this be described as a discussion of the question whether the lover's incapacity on the one hand and the demands of physical life of the other cannot be balanced. Now it is a very great question of much

higher importance. From that point of view it is a piece of art or literature, that a permanently crippled man permits his wife to have the physical aspect looked into. But it is in the presence of her husband and that too in a way which is not permitted. It is not physical aspect alone; it is something more. I want to understand therefore to what extent it is a piece of art or literature or to what extent and what type of obscenity it is. Therefore I want your opinion because that is a very difficult question to decide. I have been struggling after my friend Diwan Chaman Lall's proposal that while discharging our duties we may not do something which may not meet with the intentions of my friend Diwan Chaman Lall or the object with which he has brought this.

DR. MENON: Perhaps I said this once before; my own feeling is that once the validity of the work of art is established, then the sting of obscenity ceases

SHRI K. K. SHAH: To what extent?

DR. MENON: in the sense that it is valid and necessary component of the work of art and therefore it becomes even difficult to label that part of it as obscene.

SHRI K. K. SHAH: Supposing there is an evident attempt?

DR. MENON: That is different; that is why I said intention is important. As far as anything is introduced into a work of art which is integral to it and essential for its existence as a work of art, that component I do not consider obscene.

SHRI K. K. SHAH: That means, may I say that if there is anything which enhances or enables to interpret any piece of art or literature, however obscene it may be, it may be permitted but anything that degrades or reduces the value of the piece of art or literature should not be permitted? Do you agree with me?

DR. MENON: Roughly, yes.

SHRI K. K. SHAH: The second point is about intention. You know intention is always judged from effect.

SHRI A. D. MANI: That is lawyer's point of view.

CHAIRMAN: That is the practical point of view.

SHRI K. K. SHAH: There is no other way of judging the intention. You cannot delve into the recesses of the human mind except to the extent that it is exposed either in the writing or in the art. That is the only way. If the intention is to be compromised with the effect, to what extent should it be done? That is a very good example, the example of Lady Chatterley's Lover. There the man has given his intention. In the beginning the book says, there is a man crippled for all his life. To what extent his wife's demands for sexual cohabitation with others should be permitted. The man has given his complete intention. You have not to go in search of the intentions. Not having to go in search of intentions in this case, the question is to what extent does that intention go in effect. If I put it this way perhaps it will be easier for you. If the effect is within judicious bounds . . .

SHRI A. D. MANI: Would you explain that?

SHRI K. K. SHAH: I will explain that, since my friend wants to understand that. I am very happy that he is going deep into that. Judicious bounds will be what a decent man or a decent woman would physically expect to satisfy her physical requirements. That will be within judicious bounds; not what a depraved woman would demand for satisfying her physical demands.

DR. MENON: I was thinking more in terms of the creative artist himself treating a particular problem, whether he is a sculptor or painter or writer or novelist, and there I would like to

use the word integrity instead of intention. If the artist's integrity, if the artistic integrity of the person is beyond doubt . . .

SHRI K. K. SHAH: Author's integrity as revealed in the work of art.

DR. MENON: Yes. If that is established, then . . .

SHRI K. K. SHAH: In other words you would modify intention by saying that if the artistic integrity is maintained by the author in the piece of art or literature under review, it should be permitted.

DR. MENON: Yes. Ultimately it means the integrity of the author.

SHRI K. K. SHAH: I will come to the next difficulty. It is not necessary to elaborate, you know it much more. Cinemas in the modern world are quite different from the world where pieces of art and literature flourished. But there is a massive way of either creating standards or demoralising standards by cinemas and cinema slides. Do you not think that this creates a necessity for a special consideration?

DR. MENON: Yes.

SHRI K. K. SHAH: The first thing is the top priority. I will not say that somehow you must wriggle out of that position, but this massive media of mass education should not be allowed to be so utilised as to lower standards, and if the first demand can be brought in tune without reducing the importance of the first, it can be also met, do you not agree? For example, personally I have been examining this question, the student unrest. To what extent it should be attributed to certain types of films is a question still to be answered.

CHAIRMAN: It has its own contribution.

SHRI K. K. SHAH: It has.

DR. MENON: But the problem there is for instance, there is a great deal

more of strictness in censorship in Indian films. For instance kissing.

SHRI A. D. MANI: Which is a very healthy demonstration.

DR. MENON: But the Indian film is so suggestive. And the degree of vulgarity that can be achieved in spite of these restrictions becomes fantastic. If you take the films of Bergmann, the Swedish film-maker, there have been films in which you see nude figures and so on, but Bergmann's films are not vulgar or debasing. In fact they could almost be described as very moral films; but while we eliminate even such an act as kissing from the screen, we manage to achieve a tremendous amount of vulgarity and even obscenity. Whether the law itself can protect this state of affairs and give it a moral tone is the problem.

SHRI K. K. SHAH: I will not go to that extent as a man who lives in the 20th century. If you cannot preach morals through the mass media, even that I do not care. If you permit the circumstances to settle down in their natural way, even that is enough. But if it has the effect of not permitting them to settle down, then it does trouble us. For example, there is just now a film "Moment to moment" which is being shown. A first class scientist, an educated wife; the scientist busy with his conferences; one son ten years old; wife struggling at home trying to get the company of her husband; sometimes when she is not able to control herself, she telephones her husband and demands his company for a day or two; husband not realising this is unable to come across to her. The struggle is worth seeing, how she is struggling. When she is struggling against temptation, she telephones her husband again, so that even that momentary help she is not receiving and falls a prey to it. It is a struggle of mind. But supposing that struggle of mind were to create complications in life without being a real struggle of mind? I do not know if you have seen the film. "A man who allows himself to be compromised is a fool."

SHRI A. D. MANI: What is the question?

SHRI K. K. SHAH: My question is this. When there is a mass medium which is likely to affect the day-to-day standards of hundreds of thousands of people to what extent the demand of art should be allowed to degenerate into sexy film episodes? That is the point.

DR. MENON: When you said "degenerate" into sexy films . . .

SHRI K. K. SHAH: I said sexy episodes. Misadventures of a carnal type.

DR. MENON: The word you used "degenerate" is the answer.

CHAIRMAN: The general and the more pronounced effect is on the side of sex rather than on the more constructive and better aspects. That is in a way telling upon the mind of our young people.

DR. MENON: There is no doubt that both the cinema as well as television in other parts of the world have massive, enormous audiences. One has to pay due regard to standards.

SHRI K. K. SHAH: I hope you will give thought to it later.

SHRI P. K. KUMARAN: In your introductory remarks I think you have given a very good idea about obscenity and art. That is my impression. That is the way how an intellectual looks at it, but in the law I think we are concerned with the impact of these things on the lay mind. I agree, when a lay man looks at a work of art, at a figure of Venus or some such thing, the impression that he gets is different. And if the pictures that are available at Port Said are quite different, I can understand . . .

SHRI A. D. MANI: They are available in Delhi also.

SHRI P. K. KUMARAN: I do not get them.

CHAIRMAN: Good offices of Mr. Mani will help you.

SHRI P. K. KUMARAN: I will take a concrete example. In the north-west corner of the Konarak temple there is the figure of a *rishi* with his—I do not know whether the word is parliamentary or not—it is in an upright position and he is about to embrace a woman. I saw it only last year or so; that is why I remember it. There were a large number of people who saw it. I do not think that many people who saw it will take it as a work of art. I had been watching the impact of the figure on the people, it was quite different, not as it would be when they view a work of art in the temple, etc. How are you to distinguish that when something is reproduced in this thing, in Mr. Mani's magazine?

SHRI A. D. MANI: Do not say "Mani's magazine".

SHRI P. K. KUMARAN: It is obscene. But where do you draw the line? How to define the impact, the effect on the layman? It is an elusive thing. So also is 'intention'. In the court of law if the editor of this magazine comes and says, "My intention is honourable; it is only to disclose or expose the bad things that are there in the society and that is my intention", then we should exonerate him. I do not know how he will plead otherwise. So, where will you draw the line. That is why I come back to the question whether you can in a large way define obscenity in the Indian context because yesterday from the notes I found that while *Lady Chatterley's Lover* was considered not as an obscene literature in England, the Indian Supreme Court has decided that it is obscene. In the Indian context how will we be able to define obscenity largely? This effect, intention and integrity, they are also elusive. The integrity of an author who died long ago is a matter of discussion now.

DR. MENON: I find it difficult to answer the question regarding the figure at Konarak. Even there, I would say that you have to see the Konarak temple as a whole, let us say, not view it separately just as one can take out passage from Lady Chatterley's Lover or take out some passages from Ulysses out of context, which can appear obscene. But in the major frame-work of the whole work lies its own purpose and therefore the sense of obscenity goes. If you look at Konarak and Khajuraho as sculptures showing the juxtaposition of human figures as symbols of creativity and vitality, if you take the picture as a whole, as links in the continuing acts of living and procreation, they are not obscene. But if you separate one or two or three pieces out of their context, they may look and suggest different things. This is the only interpretation that I can give of this particular figure at Konarak. But it is also an example of a case where it is difficult to draw the line as to where art begins and obscenity ends.

CHAIRMAN: What he says is, let us take it as a whole piece of art, not piecemeal.

SHRI P. K. KUMARAN: The effect is different on different minds.

DR. MENON: I said earlier, it is in your own mind.

SHRI P. K. KUMARAN: It is with that aspect that we are more concerned.

CHAIRMAN: I do not think that the standard of the society that we live in can change at present; it may be that after 10 years we may also change. In the present circumstances, what would you suggest?

DR. MENON: We cannot ban Khajuraho or Konarak now. They have been there far too long.

SHRI A. D. MANI: Mr. Menon, would you broadly accept this proposition that obscenity is not capable, or

works of art are not capable, of any rigid test and that obscenity depends on the circumstances and the mind of the community into which an obscene matter is put. I will explain the thing I have in mind. Can I have that journal which Diwan Chaman Lal is reading with so much of interest? I would like Dr. Menon who has seen the painting of Van Gogh and other famous painters to see the painting on this page. It might pass for a juvenile examination. It is still a work of art but because it is published in the Indian Observer, it becomes obscene.

CHAIRMAN: There also the standard differs.

SHRI A. D. MANI: The second illustration that I would like to put before you is, Venus de Milan's statue in Paris is a work of great beauty. I have seen it. But whenever this statue has been exhibited in Indian homes, the suggestion has been made by women, "Why not tie a saree round this statue?" I mean, it depends on the circumstances. The point that I want to put is, would you accept the proposition that obscenity and works of art are not capable of a definite, rigid test and that a third party has to judge the circumstances in which a work of art or a work of obscenity is offered for exhibition?

DR. MENON: I said that obscenity lies, to some extent, in the mind of the person who views a particular object.

SHRI A. D. MANI: You have not answered my question. My question is about the mind of the community. This has arisen from the Supreme Court judgment in Lady Chatterley's case. I mean the mind of the community and the circumstances in which a work of art is offered for exhibition. I will give an illustration. For example, reference to the human anatomy concerning procreation may be quite in order in a discussion in a medical association, it will be quite in order in a discussion on a Contra-

ceptive Bill, but it will not be in order, it will become obscene, if those expressions are used in connection with the Bonus Bill. The circumstances of each case will have to be taken into account. Would you accept that proposition?

DR. MENON: Yes.

SHRI A. D. MANI: If you accept that proposition, we cannot have the opinion of experts taken as being the final word on the subject. It is the third party who has got to decide this matter; it is not only the expert but a third party who looks at it not from an artist's point of view but who takes the totality of the circumstances and the community in which a person lives has also to be taken into account. Would you accept that proposition too?

DR. MENON: Yes.

SHRI A. D. MANI: Will you accept that? That means the opinion of experts is only a guide line for the third party to decide but the opinion of the experts is not final.

DR. MENON: The question is whether the opinion of an expert or the validity of a work of art is an absolute thing or not.

SHRI A. D. MANI: The question is this. I put the case of the study of Venus de Milan. It is a work of great beauty. You have seen it in Paris and hon'ble Members here have seen it too. But if you exhibit it in an Indian home it does not fit into the milieu.

Then again it depends on the circumstances . . . (*Interruption by Diwan Chzman Lall.*) I want the witness to answer, Diwan Chaman Lall—I do not want interruption—because he is a person who, I know, has seen a large number of paintings abroad. I have gone round with him and seen Vincent Van Gogh's paintings. He knows a lot on this subject. Would you say that it depends on the

circumstances and not the intention of the person? The intention of the person is not of very great importance or relevance as the effect a work of art or work of obscenity produces on the mind of the people.

DR. MENON: In judging the achievement of the artist, his intention and integrity are very vital factors but what others might read into his work is a different factor. But in certain cases and in certain circumstances one may have to bear both in mind. But the fact that some people are able to see obscenity in Venus de Milan's work does not take away from its integrity as a work of art.

SHRI A. D. MANI: Dr. Menon, I want to pursue this line again. Speaking about the work of art, there are a large number of people all over the world who regard kissing as a normal, healthy biological demonstration. But you know well that the very kissing, if permitted in Indian films, provokes demonstrations against what is considered as very normal and healthy demonstration.

DR. MENON: I do not know whether it would provoke demonstrations.

SHRI A. D. MANI: There are people who hate seeing kissing in public.

DR. MENON: It is true that in certain areas of the world public kissing is not uncommon.

SHRI A. D. MANI: I am only pointing out to the difficulties of the problem.

I may go on to another point, and that is that some people in the country feel that the law of obscenity as it stands today, has many loopholes, that the law should be made a little rigid so that offenders like the Indian Observer may be properly and suitably punished. It is difficult for you or for me or for any Member to offer a rigid definition now. That matter has got to be seen by lawyers and by

the people concerned with the drafting of the Bill. Now I would like to ask you whether you would agree with this definition. It is not my definition. It has occurred to me in the course of the discussion this morning as going some way to meet the needs of the situation and in making the law on obscenity rigid. Section 292 of the Indian Penal Code reads as follows:

“Whoever—

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, . . .

It has not been defined.

“ . . . pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, . . . ”

This is the relevant section concerning the contents and offence of obscenity. Suppose I suggest that a suitable definition on the pattern of the U.S. Code is admitted. As I said, it is not final:

“ . . . lewd, filthy pamphlet, drawing, painting, representation or figure which tends to corrupt the morals or deprave the tastes of the community.”

Do you think this definition would serve the purpose that all of us have in view, namely, in the name of work of art filthy material should not be allowed to circulate in this country. I want you to think over the wordings which I have suggested. It is not a final word but something which occurred to me during the course of the discussion.

CHAIRMAN: That is a suggestion given in the Supreme Court judgment itself.

DIWAN CHAMAN LALL: Mr. Mani mentioned women objecting to the sculpture of Venus de Milan on the ground that it is obscene and, therefore, it must have a saritied round it. What about the lingam-worship? Do they have a *langoti tied* round it? It is really an absurd way of looking at it.

SHRI A. D. MANI: With great respect to Diwan Chaman Lall, *lingam* is worshipped in temples or wherever *lingam* is placed it is a place of worship. But suppose it is placed in the midst of a political meeting organised by one of the political parties against the Congress, it would become obscene. As I said, it depends on the circumstances of the case.

DIWAN CHAMAN LALL: My mother used to worship the lingam in her room.

SHRI A. D. MANI: With due respect I am trying to go a long way with the mover of the Bill. But I would like the witness to answer the question that I have put to him. Does he consider what I have just said now as a basis of a workable definition? It is a lewd or filthy object which is not a work of art at all “which tends to corrupt morals or deprave the tastes of the community”. The word “community” is taken from the Supreme Court judgement. Do you think that it is a workable basis or definition?

DR. MENON: As you earlier said, I agree that under the cloak of “art” you must not let any one get away with a filthy and lewd work.

CHAIRMAN: That is as a whole.

DR. MENON: Yes, as a whole.

SHRI A. D. MANI: One more point. You are agreed on the point that lewd and filthy objects should not be allowed to pass as work of art.

CHAIRMAN: He is conditioning it ‘under the cloak’.

SHRI A. D. MANI: You will have to put it in a proper phraseology.

DR. MENON: If it is a work of art, then those elements do not come into it.

SHRI A. D. MANI: That has been the whole idea. There is no rigid standard test for art.

SHRI K. K. SHAH: Dr. Menon says that a real work of art cannot be of that type.

SHRI A. D. MANI: Now I go on to the clause in the Bill. The clause says, "meant for public good". We have had an expert opinion of a great lawyer in our country. He said that the intention of a person was of no material consequence in prosecution for obscenity. The intention may be good but the effect may be bad. The Chirman as a great lawyer himself would agree with what the law courts have said. Supposing the words "meant for public good" is dropped altogether, it would be in conformity with the law as it stands now because the intention is not of material consequence as the effect that it produces. Would you agree with the legal opinion that this phrase "meant for public good" be dropped?

DR. MENON: I would like to be guided by legal opinion. "Intention" is an extremely important factor in human life and human behaviour.

SHRI A. D. MANI: Unfortunately the law which is blind does not take into account the intention, but the effect of it. The lawyers who are present here and the Minister of State for Home Affairs also knows that the intention perhaps plays a part in reducing the severity of the sentence but not the offence.

DR. MENON: I know nothing about law but I have a'ways fe't that if a man did not intend to kill a person, but killed him

SHRI A. D. MANI: He goes in for culpable homicide.

SHRI K. K. SHAH: There is the extreme case of a mother suffering from an incurable disease for more than 12 months and the son being unable to bear it shoots her. It is argued that it may be that he is tired of serving his mother and therefore he shoots her. The effect is that the mother is shot. His intention may be to save the mother from agony.

DR. MENON: Suppose the intention is to protect one-self, then isn't the intention relevant?

SHRI K. K. SHAH: There are cases where the intention can be dangerous.

SHRI A. D. MANI: In clause 2 it is said: "For *Bona fide* purposes of science, literature." The word occurs in regard to painting and so on. The word '*bona fide*' has occurred in regard to matters which are now of archaeological and historical interest. We need not go into why that word is put in at all in 1925. There is just a possibility that the word '*bona fide*' may be used by those prosecuted for obscenity for defending themselves in a prosecution by saying: 'I did it for a good public purpose'. In fact the 'Indian Observer' always says that it stands for morals of the community, that it is publishing all the materials in order to expose the vices of the so-called higher brackets of the society in order that the country may become worth of Rama and Sita. If the legal interpretation is that the intention is not of material consequence would you mind the word '*bona fide*' being dropped altogether and the clause reading 'for purposes of science, literature, art or any other branch of learning'? Why should you put in '*bona fide*'? It may be *mala fide* but if it served art, it should stand. Would you mind that being dropped?

SHRI K. K. SHAH: He said: 'It cannot pass under the cloak of art' and so the word *bona fide* becomes lately of no great importance.

CHAIRMAN: That is one of the evidence—*bona fide*—as suggested by the witness.

SHRI JAISUKHLAL HATHI: I understand that you have read a number of books. Can you cite from your experience any instance where books which you consider pieces of art have been banned in India as being obscene? Have you come across any book publication, piece of art or photograph or painting which you consider or others consider as pieces of art that have been banned in India as obscene?

DR. MENON: Yes "Lady Chatterley's Lover" I consider that a great novel.

SHRI HATHI: Therefore you think some protection should be granted to pieces of art.

DR. MENON: Yes.

SHRI HATHI: Have you come across publications which you consider as obscene that have not been declared obscene or banned?

DR. MENON: I have found some at various levels but I cannot give particulars. But there are such publications.

SHRI HATHI: So while it is necessary to relax the law but it is also necessary to tighten the law about obscene literature?

DR. MENON: Yes.

SHRI HATHI: Have you read any books or magazines which you consider as pieces of art but which you would hesitate to put in the hands of children? It may be a piece of art to a mature mind but you would not like it put in the hands of young children.

DR. MENON: Yes.

SHRI HATHI: Would you like "Lady Chatterley's Lover" to be placed in the hands of young children?

DR. MENON: Young children, perhaps not.

SHRI HATHI: Why not?

DR. MENON: Because they may not see the greatness or the validity of it as a novel but will only pick out little odds and ends of it out of context.

SHRI HATHI: Therefore you contribute to the idea that what may not be obscene to a particular individual under particular circumstances may be obscene to others?

DR. MENON: Yes.

DIWAN CHAMAN LALL: You know during the evidence that was given in the Lady Chatterley's Lover case, this specific question which Mr. Hathi has put to you was put to experts and to clergymen and their reply was that they would not mind their children reading it and then discussing it with their parents.

DR. MENON: I said 'little children'. I will not mind my 18 year old daughter reading it, but a little child who may not be able to understand what love or sex is, will only find ugly passages in it.

PANDIT S. S. N. TANKHA: The Film Censor Board often rejects certain portions of films and they are made to be deleted. Is there any set formula for such rejections and what is the guideline for it?

DR. MENON: I have very little to do with the Film Censor Board but they have certain formulae which they do follow but there are probably even more ways of getting round the restrictions. This is the difficult thing about Film Censoring.

PANDIT TANKHA: Is there no guideline that certain portions to which exception is taken is so done on the ground that they consider it would be against the public morals to exhibit that portion?

DR. MENON: If you mean by morals things primarily associated with sex, yes; but the worst immorality in the films that we often see is a degradation of taste and the inculcation of attitudes which are low and vulgar. So it is a wider problem than narrow "obsce- nity".

PANDIT S. S. N. TANKHA: Will you not agree that such considerations which compel the Board of Censors to delete certain portions should also be taken into account when judging whether a particular book should or should not be prescribed or whether, or not it should be considered obscene?

DR. MENON: Yes, but my point is that the application of these principles is only valid to a work of art, where the intention of the person, or what is at the back of the mind of the author, is very important. But, unfortunately, the film is rarely a work of art; films which are works of art are few and far between—that is the trouble; It is mostly a commercial venture and a long time may have to pass before it is highly developed and before we may be able to judge which films are works, of art, and which not. So the application of certain principles relevant to works of art may not apply to commercial ventures.

DIWAN CHAMAN LALL: May I continue asking a few more questions, one or two questions? Now, Mr. Menon, please tell us if you have read La Garsonne either in English or in French.

DR. MENON: I have not.

DIWAN CHAMAN LALL: Have you read the Tropic of Capricorn and the Tropic of Cancer?

DR. MENON: Yes.

DIWAN CHAMAN LALL: Now would you consider those two works, Tropic of Capricorn, and Tropic

of Cancer—would they be liable, under the present law as it exists, liable to confiscation as Lady Chatterley's Lover has been?

DR. MENON: Yes, as the law exists here, it would be.

DIWAN CHAMAN LALL: Have you read Peyton Place?

DR. MENON: I have heard about it but I have not read it.

DIWAN CHAMAN LALL: This is also a book which ordinarily, if the Government so decided, or the executive authorities so decided, could be made liable under the law as it exists today. Now I mentioned Chaucer; I mentioned Shakespeare. There are portions of Chaucer, and portions of Shakespeare, which ordinarily would come under the ban if the law is not changed.

DR. MENON: That is correct.

CHAIRMAN: Do you want to put any question, Mr. Dahyabhai Patel?

SHRI DAHYABHAI V. PATEL: No, Sir.

CHAIRMAN: We are very thankful to you, Dr. Menon, for telling us your experience and your knowledge in this matter. Your evidence has been very helpful to us, and I thank you on behalf of the Committee and myself.

DR. MENON: Thank you for the compliment. I thank you, Sir.

(The witness then withdrew.)

Wednesday, the 19th October, 1966.

PRESENT

1. Shri Akbar Ali Khan—*Chairman*.

MEMBERS

- | | |
|-----------------------------|--------------------------|
| 2. Shri M. P. Bhargava | 7. Shri K. K. Shah |
| 3. Pandit S. S. N. Tankha | 8. Shri Jaisukhlal Hathi |
| 4. Shri Bhupesh Gupta | 9. Shri A. D. Mani |
| 5. Shri Mulka Govinda Reddy | 10. Diwan Chaman Lall. |
| 6. Shri Dahyabhai V. Patel | |

REPRESENTATIVES OF THE MINISTRIES

Ministry of Law

Shri S. K. Maitra, Additional Legislative Counsel.

Ministry of Home Affairs

Shri G. S. Kapoor, Under Secretary.

SECRETARIAT

Shri S. S. Bhalerao, Joint Secretary.
 Shri S. P. Ganguly, Deputy Secretary.
 Shri Amar Nandi, Under Secretary.

WITNESSES

1. Shri Mohammad Fazl-ur Rahman, Pro-Vice-Chancellor, Muslim University, Aligarh.
2. Shrimati Sundari K. Shridharani, Honorary General Secretary, Triveni Kala Sangam, New Delhi.
3. Shri A. S. R. Chari, Senior Advocate, Supreme Court of India.

(*Shri Mohammad Fazl-ur Rahman was called in.*)

CHAIRMAN: I think we may begin now since we are all here.

May I introduce the witness to you all. Mr. Rahman has been the Director of the Radio as well as Director of Public Instruction in Hyderabad. He is a writer of repute in Urdu. He is at present Pro-Vice-Chancellor in the Muslim University, Aligarh. Though Mr. Rahman has been in the

official line he has always been very helpful on all national issues even though he was in Government service.

We are very glad to have you here. Mr. Rahman and I welcome you.

SHRI MOHAMMAD FAZL-UR-RAHMAN: Thank you, very much.

CHAIRMAN: I hope your experience will help us in the delicate matter that is for consideration before us now.

Mr. Rahman, this is all confidential, I mean what is said here and it cannot be published, though it will be open to Members of Parliament. If you want any further steps to be taken, that is to say, if you want anything to be kept in still greater confidence, you may suggest it.

SHRI RAHMAN: I have none.

CHAIRMAN: You must have seen the amendment that has been moved by our esteemed colleague Diwan Chaman Lall and also the history of this subject, as also the recent decisions on the book *Lady Chatterley's Lover* and the previous decisions. These

SHRI RAHMAN: I have suggested some of us to think in the Kalidas in considering whether the present law which exists is adequate or whether it needs modification, I mean modification on both sides.

SHRI A. D. MANI: Sir, you were good enough to say that the evidence tendered here will be confidential. We are under the obligation to place the text of the evidence before Members of Parliament. The evidence given before a Select Committee is always published. It is confidential only to this extent that what is said here should not be published in the newspapers. But all the evidence will be placed before Members of Parliament.

CHAIRMAN: Yes, the evidence will be open to Members of Parliament. It will be placed before the House.

SHRI A. D. MANI: Before both Houses of Parliament.

CHAIRMAN: Yes, both Houses of Parliament.

SHRI BHALERAU: May I clarify the position? The position is like this. The evidence tendered by the witness is confidential in the sense that the witness cannot say to the Press what has been stated before the Committee. It cannot be given to the Press before it is laid on the Table of the House.

But when it is laid on the Table of the House then it is a public document and anybody can make use of it.

Another point is this. If the witness has to say something which he considers to be very confidential he can point it out to us and of course, it will rest on the Committee to treat it as confidential or not. It will be within the discretion of the Committee to decide the matter.

CHAIRMAN: Now we would like to have your views on the subject, whether the law as it stands should be modified or not.

SHRI RAHMAN: Personally I think as has been referred to in the proceedings also, the need for an amendment was felt on account of the controversy that raged on the book *Lady Chatterley's Lover*. That book was proscribed for a long time in England and about 4 years back the ban was lifted. Then the publishers here tried to put it into the market and then the court cases went on against them and then it resulted in the Supreme Court decision upholding the lower court's decision. I think this is the only important case of a recognised book of high literary merit which had been banned in one country while the ban was withdrawn in another country, namely, the country of its origin. This has led to a feeling, I think, that there is something wrong with the present section of the law dealing with obscene matter in literature. Otherwise, as a problem it has not been felt that there is any such urgent need that the present law is not in a position to deal with obvious cases of obscenity either in print, in printed word or in pictures or in other forms of art. In India from what I know of the present day literature which is being imported from America and England as well as which is being produced in different Indian languages here certainly the climate of opinion in this country has changed and there is a lot more freedom of expression with regard to sex and other matters than there was for instance 30

or 40 years ago and yet at least I have not heard of many cases brought against these publications or these journals or the printer or publisher or the importers of these books which deal with sex matters so frankly that perhaps some thirty or forty years ago there might have been a hue and cry in India if anything like that had appeared in print. That is one thing.

There is another thing with regard to the pictures that we get and the pictures that are being produced. As is well known everything nowadays from literature, from art to advertisements has been tinged with sex appeal and that is becoming a problem for our younger generation. As it is I wonder with or without obscenity whether it is a healthy thing for any nation to feed its young men and young women with so much of sex as to make them feel that nothing else matters in life. That is my view in general.

Now with regard to the other question of a great work of literature or art being banned because of certain obscene passages in it if the trying magistrate or the judge is incapable of appreciating its literary value or has got a moral outlook which attaches too much importance to these free expressions which are known in certain conditions as obscene, as far as that is concerned, my own personal opinion in a general way I will give. Of course I will speak about the Lady Chatterley's Lover also which I have read—the unexpurgated material—and I will give my opinion about that also. There has been a big controversy about that book and many well known critics have ranged themselves on one side or the other and it is rather difficult for those who have not read the book to know whether actually there was any justification for banning it in India. I feel that great literature or great art, if the writer or the artist has recourse to obscenity in it, is being blemished to that extent. That the value of the literature or the art has been recognised in spite of that is a merit not of

the obscene passages in it but of the book as a whole which overshadow these small passages which are known as obscene. So the higher the piece of literature the less has been the obscene material in that. Shakespeare is often quoted. If you read a whole play of Shakespeare there might be that way half a dozen lines incidentally occurring in places which might be regarded as obscene and which many producers omit when they produce plays. Even now . . .

CHAIRMAN: You mean to say that we should take a work of art or literature and find out whether as a work it is really a work of art or obscenity preponderates right?

SHRI RAHMAN: That is only part of it. What I feel is the greater the artist, the greater the writer, the larger the chances of his avoiding obscenity because as an artist or a writer he feels that obscenity is a blemish. He might have an obsession with sex but his expression will be such that he will not give occasion to make the critics feel that he has stooped down to vulgarity. I will quote the instance of the "Lady Chatterley's Lover" which I read in the original and I felt that it was certainly a very high work of literature though not as high as it is claimed to be by some people and I felt that as those passages had not been there it would have been a greater piece of literature than it is. Those vulgarities had perhaps been indulged in deliberately to push up the sales of his book or because of his morbid . . .

SHRI K. K. SHAH: And the four-letter words.

SHRI RAHMAN: Yes, the four-letter words. And I think if an expurgated edition is published in the country it would do more credit to the author and it will give more enjoyment to the readers. That is my opinion after reading that book.

I have known of far cleverer and far greater literary men than Lawrence, immortal poets in Persian. For instance, I will quote Jamin who has described in his Yusuf Juleka such intimate scenes of sexual intercourse and yet the language is so poetic and so beautiful that there is not one vulgar word in it, not even a word. People who have read will know it abounds in love of all kinds, mystic love, romantic love, human love but all those passages are in their place and the result of reading the whole book is an ennobling feeling. That kind of high literature does not indulge in the kind of phrases I find in the book of Lawrence.

SHRI K. K. SHAH: For example, Kalidas in Meghdoot where he gives the description of the woman with a light covering on the body.

SHRI RAHMAN: Yes. Many great works that are far greater than this controversial book, *Lady Chatterley's Lover*, have described equally intimate scenes in language which does not offend sensibility. That is one thing.

Now the other thing which is before this Committee and about which you wanted my opinion is whether under the present law there is such a wide possibility of literature or art of good quality being banned by not so very artistic-minded or literary-minded judges and magistrates that unless the law is changed or amended it would cause great handicap to the writer or the artist. Personally in practice I do not think many literary works of merit or art—I do not know much of art—have been banned in this country to justify this feeling that unless the law is amended our literature and art will suffer. Secondly, as far as legitimate bounds are concerned, because of the import and influx of literature from America and England where there is legally even far more freedom on account of the recent legislation which has affected the outlook of both writers and readers, in our own country, take for instance the stories that are written nowadays. I leave out poetry

because poetry has not been affected and poetry naturally is lyrical and philosophical in our country. So it is in only the novel and the short stories and in the magazines also where short stories are given, I find a marked difference between for instance the kind of freedom which was availed of by writers some thirty years ago or forty years ago and the freedom of expression that the present-day writers in India enjoy.

SHRI K. K. SHAH: Why do you say thirty years? Why not say 15 years? Don't be modest.

CHAIRMAN: Do you think that "*Lady Chatterley's Lover*" also is a piece of art and the literary people would think that it was wrongly banned?

SHRI RAHMAN: That is a matter of opinion. Now you may say that *Kamasutra* which is banned in English is not banned here and in England they may say that *Kamasutra* is not banned in India whereas it is banned in England. I have read that book also and except that the author does not use vulgar language—there is a slight difference of emphasis in the outlook and purpose—the difference is not very great but certainly the tone—it is not merely the language in the work of Lawrence—his whole attitude towards this part of human life, his extreme cynicism that has to be noted. I do not know if people have felt how cynical he is not only to that gentility and nobility which he wanted to expose—others have exposed it in far better and far more decent manner, but also to the conventions or to the prejudices, as I would call them, in the human approaches which are valid for their own sake, because they have a place in the cultural life of a country. You cannot have an absolute prejudice for or against a certain thing. He is very cynical in that book. As I have mentioned before, those passages have marred the book. I do not take such a crude view of things that

any kind of unconventional discussion of sex life or sex passages should be regarded as indecent or as obscene. Personally, as an explanation of my own attitude, I feel that nudity in art is unavoidable because when there is portrait painting, you cannot paint a woman or a man with clothes on. You will then be painting only the clothes. You cannot have statues like that. Nudity of mind and nudity of soul is unavoidable in literature. Unless you place a naked soul before the reader, you are not a great literary man. Therefore, that kind of nudity, whether of the mind or of the body, which some people who are extremely conventional or old-fashioned might think to be obscene, I personally think, is not obscene. It is an essential part of literature and art. In spite of that with regard to these particular passages, I felt that these are not artistic. There is always difference of opinion, as I have mentioned. One book is banned in India and not banned in England. Another of the same type is banned in England and not banned in India. That kind of difference will always remain between judge and judge, between man and man, between country and country and between writer and writer.

CHAIRMAN: What is your opinion about some of the literature which is obscene, but still does not come within the grip of the law? For instance, you must have seen some magazines like the "Observer", the "Confidential Adviser" and things like that.

SHRI RAHMAN: I am afraid I have not seen them. I have only read some novels and stories and not these magazines.

SHRI A. D. MANI: Here is one copy of a magazine which I want the witness to see and which contains objectionable passages. I will give something more today. That is not art.

SHRI RAHMAN: (After seeing the magazine) Some might overdo it a little, but the whole technique of

modern advertisement is based on sex appeal, whether it is an advertisement about soap or an advertisement about some clothes or fabrics. They give the public what it wants. I do not blame the film producers. I do not blame the writers. If they do not do like that, they do not have that kind of market. Every producer knows that he has to give a very good dose of sex appeal. His heroines need not know acting, his heroines need not be beautiful, but they must have sex appeal. You ask any producer and he will tell you that because of the sex appeal they are making money. It is a very decent kind of prostitution.

CHAIRMAN: Do you not think that they are overdoing it?

SHRI RAHMAN: Naturally, because of competition. When there is competition one has to outdo the other.

CHAIRMAN: In the best interests of the society, how will you control this unhealthy competition? Now you are a Professor and a Pro-Vice-Chancellor.

SHRI RAHMAN: It is an unfortunate thing, but it is a different matter as to how to stop this practice. Now, already the Indian film industry has a grouse that there is discrimination. Under the guise that there are different social conventions between the West and the East, things are allowed in Western films which will never be allowed in Indian films. They say that it is discrimination against them. Perhaps you might also have come to know about it. The remedy for it is something far more expensive and far more drastic. The remedy for it is for the State to have a film enterprise under which high quality films would be produced. In the beginning it may not be appreciated by the public, but gradually, in the course of ten or fifteen years, they would come to like it. It needs a very big artist and a very big writer to have general and universal appeal, without using cheap methods. An ordinary writer has a temptation to have

recourse to cheap methods in order to make money. He is not a very great writer. If a mediocre tries to become a high-brow, he produces a dull picture. Not all can be Tolstoys, not all can be Goethes. Mediocres also exist and in order to make a living they resort to cheap methods. He produces cheap films.

CHAIRMAN: Now, I would request some of my colleagues to put questions to you.

DIWAN CHAMAN LALL: Mr. Pro-Vice-Chancellor, first of all, would you tell us what is the difference between a Vice-Chancellor and a Pro-Chancellor?

SHRI RAHMAN: Both are dignitaries without any executive powers. Of course, the Vice-Chancellor has got executive powers and the Pro-Vice-Chancellor acts as his deputy.

DIWAN CHAMAN LALL: Could you tell us where you were educated?

SHRI RAHMAN: I was educated in Hyderabad and in Poona.

DIWAN CHAMAN LALL: So, you have not been abroad.

SHRI RAHMAN: I have been abroad, but not in connection with my education. I was attached for some time to the BBC. I was in the staff college of the BBC.

DIWAN CHAMAN LALL: First of all, I would like to thank you for your very kind enunciation of whatever you have told us. May I take that statement of yours up and ask you whether you have read, apart from Zami, the great Persian poet, any other part of literature, modern literature, which is likely to be banned by any action that the executive might take under the present law?

SHRI RAHMAN: Now, I read and did my best to go through "Nlysses". but I must confess—there may be something wrong with my literary

aptitude—that I felt bored after going through a hundred pages. It was with great difficulty that I could go through those hundred pages, whereas I read with relish, I must say, the other book, "Lady Chatterley's Lover", in spite of those blemishes. But in this book I could not see the points. I know that it is a famous book, but I could not make head or tail of it.

DIWAN CHAMAN LALL: Have you read the last portions of "Ulysses" where Molly Bloom sits in the Chamber . . .

SHRI RAHMAN: No. I have not read it. My friends gave me the book, but I could not go through the voluminous book. Probably the younger generation can enjoy it.

DIWAN CHAMAN LALL: Tell me now, would you consider "Ulysses" to be a work of art of a work of literature?

SHRI RAHMAN: It might be literature of a kind which I cannot appreciate, because of a certain sub-conscious fact, because of the obviously disconnected and incongruous theme and technique. I do not know whether Freud and other exponents of psycho-analysis meant exactly that kind of thing. I know that that book has influenced modern literature far more than anything else. There is a kind of admiration for the author, because I have heard so much about him. But I was disappointed in this way that I could not read the book.

DIWAN CHAMAN LALL: Anyway you did not go through it.

SHRI RAHMAN: I just went through a hundred pages.

DIWAN CHAMAN LALL: Would you consider "Lady Chatterley's Lover" as work of literature?

SHRI RAHMAN: I consider it as a work of good literature.

DIWAN CHAMAN LALL: Have you read the "Tropic of Cancer, Tropic of Capricorn"?

SHRI RAHMAN: No, I have read another book "Lolita".

DIWAN CHAMAN LALL: What do you think of "Lolita"?

SHRI RAHMAN: I think there is far less kind of that stuff than there is in "Lady Chatterley's Lover"

DIWAN CHAMAN LALL: You like "Lolita"?

SHRI RAHMAN: I think "Lolita" will be less objectionable for any court of law.

DIWAN CHAMAN LALL: Now in that edition there are scenes, for instance, where the nymphet gets hold of the man where he masturbates?

SHRI RAHMAN: Not in that edition which I read. Perhaps it was an expurgated edition.

DIWAN CHAMAN LALL: Now the real proper edition of Lolita, would you consider that as a work or literature?

SHRI RAHMAN: I do not know what those expurgated passages are. In spite of those passages I would consider that a work of literature.

DIWAN CHAMAN LALL: Would you consider that under the law as it exists today that book would be banned if the executive attempted to bring a case against the author or the publisher or the bookseller?

SHRI RAHMAN: As far as that is concerned, I am afraid I must say another thing which I feel about these things. I personally feel that more than the law the individual outlook and opinion of the reader and the critic or the trying Judge would matter in cases where a decision should be taken if a particular thing should be banned or not. Under the existing criminal law or after the amendment which has been proposed this situation I feel will not change, even after the amendment. As

regards expert opinion also, whether you take it under the present civil procedure or after the amendment as proposed, it is the most indefinable and the most controversial part of the whole thing as to who is an expert and who is not, because every writer and his supporter would claim that he is an expert whereas his opponents would say that he has no place in literature. We know as a matter of fact how many well known writers are cried down and how many insignificant scribblers are raised to the high pedestal and declared as eminent.

DIWAN CHAMAN LALL: What I am driving at is this, that under the law as it stands today, it is a law that was passed in the year 1924 and I happened to be a Member of the Legislature at that time and Mr. Jinnah opposed me when I asked for this particular exemption which I am asking now in this amendment Bill. Then Mr. Jinnah opposed me on the plea that there was no third class magistrate dishonest enough or ignorant enough who would ban a real work of art. But we have seen, as you have admitted yourself, that "Lady Chatterley's Lover", is a work of literature, great art, yet it has been banned in India. Is it not so?

SHRI RAHMAN: It has been banned in India. It has been banned in the home country for many years . . .

DIWAN CHAMAN LALL: Until the amendment of the law. The law was amended in the year 1959 in Great Britain under which the matter went to a jury and there was unanimous verdict that it was not obscene. It was not covered by the obscenity section of the law. Now under the law as it stands today what we are worried about is that Lady Chatterley's Lover has actually been banned. It has been banned actually by the Supreme Court than which there is no higher authority, but because of the law existing at the present moment and since you consider Lady Chatterley's Lover to be

a great work of literature, would you believe that there should be some provision under which Lady Chatterley's Lover and novels like that or literature of that description is not banned?

SHRI RAHMAN: I do not know what this ban would imply. As I have mentioned before, I would regard an expurgated edition of Lady Chatterley's Lover as a better piece of literature than the one in its original form, because I consider those places for which it has been banned as blemishes.

DIWAN CHAMAN LALL: That is your personal opinion. I am very glad that you emphasise the fact that it is really a matter of the individual, the way he looks at the matter just as you are looking at the matter. Is that not so?

SHRI RAHMAN: Quite so.

DIWAN CHAMAN LALL: Could we devise some means by which such works of literature, whether expurgated or unexpurgated, would be exempt from the ban which has been placed by the law?

SHRI RAHMAN: Yes, perhaps we could but the danger in that case would be because works of high quality are not produced in abundance—it is only once in a generation that four or five such books are produced but trashes are produced in abundance—if in order to protect such things we try to make the law less stringent than it is, there is a possibility that the forces of law and the judiciary might find it so difficult to pass sentences in cases of obvious filth being supplied to the public by newspapers, by trash, that it will be so difficult to control them because of these handicaps under which a clearer definition of the works of literary and artistic quality is to be given. That is the danger. In order to protect one book like Chatterley's Lover we might release on the public

one thousand obscene publications, and there are thousands of starving authors here who would not at all scruple to write any pornographic, obscene thing and make some money out of it.

DIWAN CHAMAN LALL: Let us look at another aspect of the matter. We are seized of that particular matter. Now the question is very simple. Does the law as it exists today provide for the confiscation and elimination of works of literature such as "Lady Chatterley's Lover", "Ulysses", "Peyton Place" "Tropic of Capricorn, Tropic of Cancer", "Jami"—I am talking about the present law; and not only Jami but as Mr. Shah pointed out Meghdoot—perhaps you have not read that—but "Shakuntala" you have read; there are passages in "Shakuntala" which would be considered utterly obscene; not only that but the question arises whether parts of the Bible which is a religious book, of the "Old Testament", like the 'Song of Songs', like the 'Song of Solomon', the 'Canicles of Solomon', the book of Leviticus, would they be banned under the law as it exists today? They are capable of being banned under the law. Should not something be done to avoid such a contingency?

SHRI RAHMAN: I am not a lawyer myself. But I understand that there is enough of case law in the country to protect works of literature and of artistic value just as works of religion are protected from the application of those laws relating to obscene matters. I am not a lawyer and therefore I do not know. But certainly the manner in which the decision of the Supreme Court was given in this case gives a guidance to the judiciary. Naturally, the Supreme Court's decisions are always quoted. And in spite of the fact that that book was banned, there could be two opinions about banning that book in the country. In its origin it was banned for a long time. Shaw's "Mrs. Warren's Profession" was banned on the stage.

"Mona Van" was banned on the stage.

DIWAN CHAMAN LALL: "Mona Van" was banned on the stage and at the same time Mrs. Warren's "Profession" was banned; "Picture of Dorian Gray" was banned. And a lot of literatures which were produced which we, the members of this Committee consider to be literature of great value are, under the law, capable of being banned. That is the whole point. The point is: Can you suggest something whereby such literature, such works of literature, will not be banned? That is the crux of the whole matter.

SHRI RAHMAN: I think this fact that you have moved an amendment and the discussion has taken place will mean that this problem has been brought into the limelight and would make people think everyone of them including the Judges and the lawyers and the magistrates . . .

SHRI M. P. BHARGAVA: The purpose is served.

SHRI RAHMAN: My only point is this, with certain features like the examination of the experts, I entirely agree but the difficulty of examining the experts remains even today and will remain even after the amendment, and the question will always be challenged as to the particular person being an expert or not.

DIWAN CHAMAN LALL: Do not worry about the amendment that I have put in. What we are asking you to do is to assist us in devising some means by which works of literature would not be banned and any executive officer who takes it into his head to ban Ulysses or ban any of those books that I have named or ban Jami—can prefer a complaint straightway against the publisher and have it banned.

SHRI RAHMAN: But then there is an appeal against it and an appeal in the Supreme Court against the

High Court's decision. I personally think—I am speaking as a layman both in regard to legislature and Indian law—I am afraid, if the trying judges from top to bottom take a very narrow view of things, they can always interpret a thing, in spite of the amendment, in such a manner as to ban it.

CHAIRMAN: When there are some difficulties we amend the law and try to improve the situation. You will see that certain exceptions have been made in this particular section—for instance, exceptions in religious matters. Similarly, what Diwan Chaman Lall has been trying for the last 50 years is, could we not have another exception so far as science or general literature is concerned? That is the point. Am I right?

DIWAN CHAMAN LALL: That is quite right.

SHRI RAHMAN: I will again mention. My only fear is that in a vast country, in an illiterate and developing country as ours, we might let loose certain forces if we try to bind the judiciary still further. You may have the amendment but it may go in the opposite direction.

DIWAN CHAMAN LALL: That is the second part of it. Mr. Mani, when he comes to deal with that in regard to this matter, will bring this particular matter up. Now, in regard to that particular aspect of obscenity which is pornography—let us say it is pornography—pure and simple, it is for the love of gain or for making money out of such literature or such art or such writings as the case may be, but it may not be literature; often it is not. There is the question of the "Observer", a copy of which was handed over to you. There is the example of the "Confidential Adviser" also published by the same gentleman and as a weekly, I think . . .

SHRI A. D. MANI: Whenever he gets a printer and publisher, he does it.

DIWAN CHAMAN LALL: It is pure filth.

SHRI RAHMAN: I know.

DIWAN CHAMAN LALL: The second part is; you give us some guidance as to how we can strengthen the law regarding purveying of such articles. How can we avoid such type of filth protecting at the same time works of art, literature and science? For instance, you mentioned "Kama Sutra". You have read "Kama Sutra" which is really the basis of all scientific development that has taken place in the matter of Havelock Ellis or Freud. I remember, when I was a child of eight, I saw a manuscript copy of the "Kama Sutra" and I was not shocked. And I did ask my elders as to what it was all about. They tried to explain it to me. And "Kama Sutra" is something that is basic as far as Indian life is concerned. A witness has admitted the fact, when Mr. K. K. Shah put it to him, that here in India there is a set of people, a very large number of people, who worship the Siva Lingam and nothing is obscene as far as that is concerned. Now, we are a more liberal type of people than the Christian civilisation which owes its origin to sin where Adam was tempted by Eve and that origin, sin, has continued all through the centuries and decades. We are a much more liberal people. As for instance, witness Konarak, witness Khajuraho. They are not temples any longer but they were originally temples. And we are a people who are addicted to this particular aspect of life. We are a little more liberal than Christendom was and yet the law that we have regarding obscenity is copied word for word from the British legislation. And what we are trying to do is not to upset it but to amend the law to bring it into line with the British developments that have taken place since 1959. Have you any objection?

SHRI RAHMAN: My fear is that our social developments and our educational developments have not

been on the same lines as those of Great Britain. So, we have to consider the social conditions of our country rather than of countries which are far more advanced educationally. For instance, if the country is educationally advanced, naturally these things are taught to a man in different ways. Being an educated person, he is able to understand, he is not amenable to that kind of influence as an uneducated man is, and a nation which has got 80 or 90 per cent of illiterate people, will differ even among the educated classes.

DIWAN CHAMAN LALL: We are governed by religious customs like the worship of the Siva Lingam. Nobody in England would ever attempt to worship publicly or openly the sexual organ of the Siva. Here we do so openly and publicly. The point is here we are addicted to something else. We have some other type of civilisation. Why should there be a ban on works of art, literature and science in India?

SHRI RAHMAN: I do not think there is a ban here on books of science.

DIWAN CHAMAN LALL: Well, let that be put to you. Suppose after the Supreme Court Judgment in the 'Lady Chatterley's Lover' book, any executive officer institutes a complaint against any one of the books, even against the Bible or against Jami, the law as it stands today, the books would be banned.

SHRI RAHMAN: Another thing which I would like to mention is that in these matters it is not just the quality of the work, but far more important than the quality of the work is the intention and the purpose of the work which determines whether a thing is objectionable or not. For instance, if the object is to give medical knowledge or scientific knowledge or knowledge of psychology, that book should not be banned. For instance,

the medical book which we read in our medical colleges for fifty years gives all sorts of sex perversities and knowledge about sexual life. It gives all the intimate details about sex perversities. It was prevalent in so many places but we did not ban it because the intention was to impart knowledge. Similarly, in the case of a book written on psychology or a novel where the purpose is not obscenity because obscenity consists more in the purpose than in the actual description that is there, it should not be termed as obscene. Similarly, a dictionary, for instance, contains all possible obscene words but nobody thinks of banning it because the purpose of the dictionary is entirely different. Of course, it is an extreme example.

DIWAN CHAMAN LALL: You think under the existing law this would not happen.

SHRI RAHMAN: I do not think it will happen.

DIWAN CHAMAN LALL: Because you are not a lawyer. Therefore you do not know.

SHRI RAHMAN: My near relations are lawyers and I have some faith in their common sense.

DIWAN CHAMAN LALL: I am a lawyer and I have been a lawyer for a very long time. I would not have attempted to amend the law if it had not been necessary to do so under the existing law. Now can you give us any indication as to how you would strengthen the ordinary law against pornography and obscenity?

CHAIRMAN: Make it more stiff and more stringent.

SHRI RAHMAN: I am afraid I cannot be necessary to do so under the if it is made more stringent how many hundreds of cases would crop up which might give a handle to the police to prosecute many who have escaped prosecution. As I said, that tendency in itself is bad.

DIWAN CHAMAN LALL: Thank you very much, Mr. Pro-Vice-Chancellor.

PANDIT S. S. N. TANKHA: Mr. Rahman, from the evidence that you have just given before us I understand you are of the view that the present law as it stands is sufficient to protect works of art, literature and science and that there have hardly been any cases where real works of art, literature or science have been banned by the courts and therefore you are of the opinion that the present law is sufficient to meet the needs. Now supposing the Committee comes to the conclusion, rightly or wrongly, that it is necessary to change the present law. Mark the words of the proposed amendment circulated by Diwan Chaman Lall.

SHRI RAHMAN: Instead of thinking of an alternative between "public good" and "works of literary value" let us put them together to guarantee against any misinterpretation or misuse of that privilege. I would say "public good and for *bona fide* purposes of science, literature, art or any other branch of learning". Instead of the word "or" the word "and" should be used. It would not give the people an opportunity to explain away their works that it is for the "public good". The book will have to satisfy both these criteria, namely that it is for public good and it is a work of literature.

PANDIT S. S. N. TANKHA: That is one aspect of it. Now I would like to know whether you are of the view that the addition of the words "public good" will not create any confusion and whether because of the use of these words there is not the danger that a lot of literature which is at present banned may be let in by the authors saying that they have written it for public good.

SHRI RAHMAN: If the word "or" is not changed. It should have literary value and it should be for public good. It should be foolproof.

DIWAN CHAMAN LALL: What the hon'ble Member is asking is in regard to public good itself. Would such a

vague term not enable authors to bring in a lot of literature which ordinarily would be banned?

SHRI RAHMAN: Exactly that is what I feel. If it is only for "public good" it would let in a lot of undesirable material in the name of public good. But if you say "public good and literary value" that would meet our purpose.

Suppose you say only "public good" an author of an obscene literature can still say that it is for public good. It may not be for public good. The intention is so obvious to corrupt the morals of the public. You might say that it is written in such a beautiful style. Therefore, it should not be only works of literature or art; it should be both for public good and works of literature, art, etc. It would be protecting real works of literature. It is only pseudo-literary work which is not for public good.

PANDIT S. S. N. TANKHA: So you think that by the substitution of the word "or" by the word "and" it will improve matters and then by the use of the words "meant for public good" a book which is otherwise banned at present is not likely to come in under the heading "public good".

SHRI RAHMAN: Quite right. One might prove that the book is a piece of literary work. But it is not meant for the public good. The whole intention is to find out whether the intention is not pronographic or obscene, whether it is not written with a dirty intention. I know cases where writers with a beautiful command over the language have written books considered by them as works of literature while their own friends thought it to be obscene literature. Therefore, my suggestion would protect this situation.

PANDIT S. S. N. TANKHA: So you think changing of the word 'or' for 'and' will simplify matters?

SHRI RAHMAN: It will make a difference for the better, if it is decided to make a amendment.

PANDIT S. S. N. TANKHA: Can you suggest now we should ban literature of the type pointed out which are obscene, like 'The Observer' and how can we tighten the law by changing the present Act?

SHRI RAHMAN: I have no particular suggestion to offer as regards the amendment. I should think that more prosecution should be launched against circumventors and if these cases are advertised it will act as a deterrent.

CHAIRMAN: So you do think that we need something to control this?

SHRI RAHMAN: In Maharashtra there was a paper which was described to me by a friend who was the magistrate then and he said that the editor got a month's sentence for this kind of writing.

DIWAN CHAMAN LALL: Under the law he can be sentenced to 3 months maximum. If you increase the sentence to 2 years or more then that would act as a deterrent? Would it not?

SHRI RAHMAN: I will not suggest such extreme punishment of 2 years.

CHAIRMAN: It will be affecting the young minds.

SHRI RAHMAN: Do you think six months is not deterrent? That is a matter for those dealing with the law. Giving discretion does not mean necessarily going that far and it depends on the magistrates.

PANDIT S. S. N. TANKHA: May I ask whether you have seen journals in the book stalls with the caption 'For men only' or 'For women only' which contain nothing but trash and which can not still be banned under the present law? Unless we find some means of tightening the law it will not be possible to stop the distribution of such publications. What is your suggestion for tightening the present law?

SHRI RAHMAN: I have not seen those journals. If it is just nudity almost all magazines coming from the West are so in abundance.

CHAIRMAN: If they are so you feel that the law needs tightening?

SHRI RAHMAN: Yes. I personally think that even without this pornography or obscenity there is too much of this for commercial reasons that can be regarded as healthy. It is to the exclusion of art or literature, in movies and even in advertisements. The concentrated effect of this kind of bombarding the youth with this kind of sexy literature and advertisement is bad. Individually it is nothing. If a boy reads one novel among a dozen it does not matter but if there is nothing else, then his sense of values undergoes a radical change. To him this appears to be the only thing worth in life.

CHAIRMAN: That has to be controlled?

SHRI RAHMAN: Yes.

SHRI K. K. SHAH: First of all I must thank you. You have a clear idea and you have explained in a very clear way. I want to ask two or three questions. First is about Lady Chatterley's Lover. There are 13 instances of sexual orgy described in that book and if 12 out of them were removed there would have been no occasion for the book to be banned. Take those 12. Would you not describe them as indicating obscene?

SHRI RAHMAN: I would. As a matter of fact I first read the expurgated edition without knowing that it was expurgated. Then I told my friends: 'What is wrong with this book?' That was 25 years ago. Then I was told it was an expurgated edition. Then some years ago I read the unexpurgated edition. The expurgated edition as a literary art was superior to the unexpurgated. If that book had succeeded in spite of these blemishes it is a compliment to the writer.

SHRI K. K. SHAH: The second question is, there is an attempt, even though the intention given in the beginning is that a crippled man should accommodate his wife so far as her sexual demands are concerned, but when you read those 12 instances that intention is replaced by the fact that he wants to prove that a gamekeeper is able to provide a tremendous type of sexual variety in comparison to a man higher up in the society. This is much more objectionable.

SHRI RAHMAN: So I said the cynical attitude towards the respectable classes. There have been people who have had that kind of attitude but it is for different reasons that they have exposed them. Writers like Shaw have exposed this kind of thing but not in this manner. This is a kind of extreme low minded cynicism.

SHRI K. K. SHAH: Therefore between art and science and extreme obscenity if the balance tilts in favour of obscenity then would you agree that it should be treated as obscene rather than as a piece of art?

SHRI RAHMAN: That is an entirely different matter because I would still regard the work of art in spite of obscenity as art and simply point out that these are blemishes but for them the book would have been better but whether it is to be banned or not, depends on the conditions in the country. In India I would think that at present the risk of being as liberal as in America or England would be a little too much.

SHRI K. K. SHAH: Would you permit the so-called piece of art or literature to be a cloak for hiding extreme type of obscenity?

SHRI RAHMAN: Of course I do not remember the name. They are not famous writers but I read some novels recently imported from America. I found as compared to what was being written the amendment of the law has released various forces. They have passed beyond control. The USA

might realise after some time. After all public opinion has to take shape in the changed circumstances. I have not read much of these but in the few books that I read even by women writers, I found that there is far more use of words unconventional and intimate.

SHRI K. K. SHAH: So you are not in favour of this . . .

SHRI RAHMAN: Not in favour of that thing but, otherwise, in favour of everything that could be described and described with relish.

SHRI K. K. SHAH: I have asked this question because I want to provide a little background for the next question. The next question is this. There are two ways to examine; first, examine whether it is obscene, and then examine whether the demands of art and literature make it imperative to tolerate that obscenity, or, second, examine whether it is a piece of art or literature and forget obscenity. I hope I have made it clear. You examine whether a piece is obscene and then examine whether the demands of art and literature make it imperative to tolerate that obscenity, or examine whether it is a piece of art or literature and forget the obscenity, however vulgar it might be. Which approach would you prefer?

SHRI RAHMAN: I will have one criterion. I will see what the purpose of the book is. If the purpose of the author in writing the thing—leave alone science—in writing the literature if the purpose of the novel is to depict certain aspects of human life which, ultimately, and in the end, would enlighten the reader and also inspire him as regards certain feelings with regard to life, such as social life, and in that background these passages occur—naturally the whole book would not be full of these passages, otherwise the purpose of the author will not be served—then I would regard it as a piece of literature because, as I said, the intention of the author is not obscene, that is, the intention is not to

exhibit his lower passions in the book, or to bring it out purely for mercenary reasons to clock over these things, the intention is not to be cynical about the decencies of life, but the author has some great psychological motive behind him and as part of that he has to, he cannot do otherwise, he has to show these aspects, I mean, if we find that the purpose is different from what the passages by themselves, would lead to, we should regard it as a piece of literature, never mind what obscene passages occur.

SHRI K. K. SHAH: May I interpret or paraphrase it in this way? To the extent it is necessary to interpret art or literature, obscenity should be tolerated.

CHAIRMAN: If it is a piece of art.

SHRI RAHMAN: If the purpose of the book is . . .

SHRI K. K. SHAH: The purpose is always judged from the effect. . .

CHAIRMAN: The purpose is to be seen from the totality of it.

SHRI RAHMAN: Of the whole book.

SHRI K. K. SHAH: In the case of the "Lady Chatterley's Lover", the purpose is quite different in the beginning; the mind of the author is quite different in the beginning, but then you find that the effect is quite different. For example, I have got another book, which my friend, Diwan Chaman Lall, has taken, and it is "Lady Chatterley's Daughter."

DIWAN CHAMAN LALL: Six million copies were sold of this particular book; three millions were sold in England because of this taste which it creates . . .

SHRI RAHMAN: There is another thing; the publishers themselves sometimes encourage this thing.

SHRI K. K. SHAH: Here you will find . . . I won't say it is obscene,

but surely nobody would say that the author has gone even a step further than what is necessary to make it a piece of art or literature.

DIWAN CHAMAN LALL: May I also add to what Mr. Shah is saying that in the "Lady Chatterley's Lover," out of 100 odd pages of the book, only 30 pages of that book deal with these sexy aberrations, only 30 pages?

SHRI K. K. SHAH: But I differ from Diwan Chaman Lall so far as the Supreme Court judgment is concerned; I agree with the Supreme Court judgment.

DIWAN CHAMAN LALL: They had no choice.

SHRI K. K. SHAH: But that difference apart, the purpose of both of us in asking this question is the same, namely, to the extent it is necessary to interpret a piece of art or literature, to enhance the value of that piece of art or literature, obscenity may be tolerated, but if it detracts from the value of that piece of art or literature, obscenity should not be tolerated.

SHRI RAHMAN: I agree with you.

SHRI K. K. SHAH: Thank you very much. One more question, and I have done, and that question is this. Will you kindly tell me who has been responsible for cultivating this taste among the present generation? Which factors have been responsible?

SHRI RAHMAN: It is a reciprocal phenomenon. There are these agencies that cater to the public taste, which say, "Give the public what it wants" and they develop that taste and also make money in the process.

SHRI K. K. SHAH: I will ask you this question also. Don't you think that the mass media has been responsible for this taste of the generation which likes sexy films, and no film will have box value unless it has sex portrayed in it?

SHRI RAHMAN: It is true.

SHRI K. K. SHAH: Thank you.

SHRI A. D. MANI: Mr. Pro-Vice-Chancellor, may I ask you whether judgment on questions of art and literature should be conditioned by the good of the community? For example. I will illustrate what I have in mind. There may be a novel or book which is of high literary value, but if it creates a communal riot and creates law and order problem, would you agree that whatever might be its literary value, some action will have to be taken?

SHRI RAHMAN: Certainly I entirely agree with you; public good is the supreme test for any kind of art, literature, politics, ethics, everything.

SHRI A. D. MANI: Now, while I do not believe in prudish literature, I have seen that the values of the younger generation are disappearing; there is widespread indiscipline. There is more sex crime in the capital, in Delhi, as Mr. Hathi will say, than there was ever in the past, during the British days. There are cases where young students catch hold of girls going on the road, put them in a taxi or scooter and take them home. While you may appreciate that the Lady Chatterley's Lover is a work of literature, would you at least envisage the possibility that, if that book falls into the hands of a man without your cultural level and background, it might be a source of mischief?

SHRI RAHMAN: Well, I have said something to that effect in different words. I have said that at the present time, when the level of development in India is still low, we have got to be very careful to guard against the spread of obscenity. Not only obscenity; I have gone one step further and I have said that, even without obscenity, this kind of concentrated sex appeal from all quarters, from all means of communication, from all media, is very harmful.

SHRI A. D. MANI: I am directing my questions to the need for stiffening up that particular section of the Penal Code. I want to lay all my cards on the table. I will come to this question. If it is manifestly and demonstrably proved to you and to other persons who are interested in literature and art that the kind of material which has come into circulation has created a serious law and order problem, would you allow the absolute test of literature to stand aside and let the needs of the community be taken into account? I have read the book *Lady Chatterley's Lover* and I did not admire it myself. I thought that the book was a little crude. But if it falls into the hands of persons who do not have the cultural background that you or myself have, then it might create a serious question or situation for the Government. Would you agree that in these matters the authorities and public opinion should have the final judgement in saying if further restrictions are called for?

SHRI RAHMAN: Certainly. Always public opinion and the authorities are the final judges.

SHRI A. D. MANI: I want you to examine this. You must have seen some of the photographs published in the journal called, "The Indian Observer."

SHRI RAHMAN: What is the name of the journal?

SHRI A. D. MANI: "The Indian Observer". This is being subscribed to by almost all the students in Delhi and it boasts of a circulation of 100,000. It has created a serious headache for the Home Ministry and that Ministry is not able to take action against the Observer. There are so many prosecutions going on.

DIWAN CHAMAN LALL: You don't say it is a piece of literature, I hope?

SHRI A. D. MANI: This is an objectionable publication which the

Government is unable to deal with. This kind of writing is becoming common all over the country and in every language. Of course, I want things of art and literature to be protected. Also I want that a note should be taken of the serious effect that such writings have on the minds of the younger people. Here are some passages. I do not want the witness to read all that is here. But I want him to see the marked portions. There is nothing written here in the marked portions which can be said as describing the sexual act. But my objection is that it is so badly written. If it had been written well, it would have passed off as literature. But because it is badly written it becomes obscene.

I will pass this on to the witness.

(The publication with marked passages is handed over to the witness who reads them to himself.)

CHAIRMAN: You are referring to the picture?

SHRI A. D. MANI: I want him to read the marked portions.

CHAIRMAN: You want to make this paper also part of the records?

SHRI A. D. MANI: You can do it. It is very important.

SHRI BHUPESH GUPTA: Anyhow, you read it.

SHRI A. D. MANI: It can be part of the records. I may read it aloud because we are considering amending the Penal Code. It is very badly written.

SHRI RAHMAN: I have read it. Some of the novels which I said I had read from American writers, and that too women writers contain passages as intimate as these and sometimes even more intimate and more outspoken.

SHRI A. D. MANI: As the Pro-Vice-Chancellor would know, there are passages in Venus and Adonis which describe the anatomical regions, but there are passages which one could quote as pieces of literature.

SHRI RAHMAN: But I do not think that that kind of a thing should be right in a newspaper.

SHRI A. D. MANI: Would you like me to read out the passages?

SHRI RAHMAN: The whole point is this. I think passages like these appear in novels today, written in the West. But in a bulky novel with all the other things described, these passages do not become so objectionable as when they are printed in newspapers. That is because in the newspaper the whole limelight is now concentrated on that passage only. There is nothing else. But in a bulky novel there is the whole panorama of life described and there are many other things also described.

SHRI A. D. MANI: It is badly written.

SHRI RAHMAN: You cannot expect from these people here that kind of English which writers in England or America have.

SHRI A. D. MANI: That is why I mention these words. Sexual abuse or abuse based on sex has become the web of our conversation. People when they talk to each other refer to one another, you know, as "brother-in-law" or "sister-in-law" and so on. That has almost become part of their conversation.

SHRI RAHMAN: With century old tradition.

SHRI A. D. MANI: With this fall in cultural level, values disappear. I am glad you agree that the good of the community is paramount. I would like you to see clause 292 of the Penal Code which says:

"Whoever allows, lends for hire... obscene object..."

Suppose we attempt a definition of what is obscenity, since the USA has defined obscenity, since the Canadian Statute has defined obscenity. If we were to say that "any object which is lewd and filthy"—neither lewdness nor filth can be literature or art—"which tends to corrupt the morals and deprave the taste of the community", do you think that can be the basis for a workable definition for dealing with the sociological problems that we are confronted with as the present time?

SHRI RAHMAN: Excuse me. Does the author there describe the husband and wife relationship?

SHRI A. D. MANI: Just now Diwan Chamn Lall is reading it.

SHRI RAHMAN: Does he do it in order to protest himself?

SHRI A. D. MANI: Always whenever a prosecution is launched against him he says he is the upholder of the morals of the community, that he is the man who protects the community against immorality and that is why he abuses immoral people, exposes such people, that it is all meant for public good. This is what he says.

SHRI RAHMAN: Others also have done it.

SHRI A. D. MANI: Because of all this, the suggestion has been made that we should for the first time define obscenity. You know Macaulay did not do it and all these 140 years the law has remained unchanged on the Statute Book. But since so many problems of public good and other things have arisen now, the point has been put forward to us that we should define obscenity. With regard to this matter I might read out the American Statute. They use the words "lewd" and "filthy". For example: "lewd, lascivious, indescant, filthy or vile article" We need not adopt all these

epithets. Lewd and filthy would denote what we have in mind. Do you agree that in the name of literature such objectionable things should not pass?

SHRI RAHMAN: I agree with that definition.

SHRI A. D. MANI: Which tends to corrupt the morals and deprave the tastes of the community. Now, this will enable the Administration to deal with such writings which are not literature. Do you agree?

SHRI RAHMAN: Yes, certainly.

SHRI A. D. MANI: You would not object to that being a workable definition. Of course, the final draft will be done by the legal draftsman.

SHRI RAHMAN: Yes. It is very very difficult to define anything, as a matter of fact.

SHRI A. D. MANI: You would say that this roughly corresponds with what you have in mind?

SHRI RAHMAN: Yes.

SHRI A. D. MANI: You also agree that that kind of writings should be discouraged by law in some form or the other?

SHRI RAHMAN: Yes.

SHRI A. D. MANI: Now I want you to please look at this clause in the Bill: "Nothing contained in section . . . meant for public good" In law it has been explained by expert legal witnesses that what is meant, or in other words, the intention does not matter, but it is the effect that certain things have on the minds of people which has valid consequence in law. If it is the presentation of a figure, its effect on the taste of the public should be good. This man says he writes everything for public good. It is not he who should sit in judgment. If we say 'for public good' instead of 'meant for public good' you would not mind the amendment?

SHRI RAHMAN: Yes; I think it is better to drop out the word 'meant' because 'meant' would again lead to loopholes.

SHRI A. D. MANI: We say, 'which is for public good'.

SHRI RAHMAN: I would prefer that.

SHRI A. D. MANI: I would like you to go on to another clause: "for bona fide purposes of science, literature, art or other branch of learning." I want to give this to you; no, I cannot make a presentation; it is somebody else's volume. This is called 'Over Sixteen'. It is a series of volumes which our generous Government allows to be imported on O. G. L. at the rate of five dollars per copy. These copies are available at the Delhi Airport, at the Santa Cruz Airport and at the bookstall's on Jan Path. It is freely imported.

DIWAN CHAMAN LALL: Not Lady Chatterley's Lover.

SHRI A. D. MANI: This is freely available in the United States also because it has not been declared obscene under the U.S. Statutes. Now we do not want our conversation to become extremely rigid and puritanical. You also agree as a student of literature that sex sometimes gives colour to conversation. Some jokes and so on on sex are necessary. My point is that wit and humour based on sex, even though they may be a little on the borderline, should not be penalised. Once you put in the definition, because of that wit and humour should not suffer. Now on page 78 here there is a small thing. A cub reporter of a newspaper wrote an item about an auto accident and in that he stated that the woman driver had her breasts lacerated. The prudish editor insisted on the deletion of the word 'breasts' because of the Obscenity Act. The reporter complied and re-wrote the sentence as follows: The woman had her . . . lacerated. This kind of thing occurs everywhere; it happens

particularly in newspapers. This is a kind of joke which one can enjoy and this sort of thing should not be penalised. Therefore, would you have any objection to the phrase 'wit and humour' being added after 'literature and art'? Suppose we say that, what is your view? We do not want our conversation to become rigid.

SHRI RAHMAN: Wit and humour is included in literature.

SHRI A. D. MANI: When you are amending the Penal Code, there should be nothing left for ambiguity before the magistrates or judges. My suggestion is that wit and humour and ordinary jokes with a little bit of sex must be there. It is there in everybody's conversation and it should not be penalised.

CHAIRMAN: That must be left to commonsense.

SHRI RAHMAN: I am afraid it might be misused. I will just give an instance. Naturally jokes about sex are very popular especially when there is a men's meeting and when there are no women present everybody indulges in, enjoys and appreciates such things. But suppose a book contains a very large number of such jokes about sex. Now that book cannot be confined to either men only or adults and this kind of thing might have exactly the kind of effect on the minds that we are trying to avoid. That might vulgarise the idea of sex in the minds of readers. They are all right as fireside jokes which men occasionally indulge in. And literature includes wit and humour, whether it has got to do with sex or with any other aspect of life. Literature includes all that. That is what I feel.

SHRI A. D. MANI: Here is another book "Playboy's Party Jokes". It is quite popular and it is there in all bookstalls. This has been brought by my friend Mr. Bhargava.

SHRI M. P. BHARGAVA: No, Mr. Shah.

SHRI A. D. MANI: I am sorry. Here is a joke. Imagine the girl's surprise when she went into the play-boy's apartment and discovered that he had no chairs, no tables, no bed, no furniture and she was floored. This is a kind of joke which is necessary for the liveliness of conversation. I do not regard this as obscene at all.

SHRI RAHMAN: Before the war when I was in the R.B.C. they used to have a variety programme. It is always meant for laughter, wit and humour. And there arose a big controversy about it on the ground that it was not merely wit and humour but that there was some amount of vulgarity and obscenity. I do not remember now all the things but one thing I remember now and I can tell you that. A Duke's sweetheart has fallen ill and he is trying to console her by using certain phrases which obviously mean that he will attend on her, look after her and nurse her but which have a double meaning. One of them was, 'I will squeeze your oranges'. For a sick patient, naturally orange juice is given. And so on, they carried on for ten minutes in that programme. There was a big hue and cry from the public that this was absolute vulgarity, that this was obscene.

SHRI A. D. MANI: If it is found in the drafting of this that literature may or may not include the lively adjuncts of conversation would you have any objection to wit and humour being separately categorised? It is a question of drafting really. Would you like this kind of wit and humour to be preserved because some basis of sex is necessary for light conversation?

CHAIRMAN: Mr. Mani, he has already said that literature includes this.

SHRI A. D. MANI: I am just putting it to him.

SHRI RAHMAN: My answer would be it is better not to emphasise this as a separate thing when it is part of it.

SHRI A. D. MANI: The other point is about *bona fide* purposes. In the amendment of 1925 to which my friend, Diwan Chaman Lall referred, there is a reference to the word *bona fide* in regard to sculpture. Now it has been held in a number of judgments that the intention of the person is not of very great validity in judging obscenity. As far as sculpture is concerned we do not want to interfere with our temples and so on; we do not want to interfere with the original enactment but if you are going to have a further enactment would you like the word *bona fide* to be dropped because you have agreed to the dropping of the word 'm'ant' and to saying 'which is for public good'? This dropping of the word *bona fide* is also on the same lines.

SHRI RAHMAN: If it is dropped I do not think it will make much difference because literature must be defined as literature. Trash will not be defined as literature.

CHAIRMAN: Mr. Pro-Vice-Chancellor, we are grateful to you for your very lucid and very clear exposition of the subject with which we are dealing. We are glad that you have found time to come here, and I have no doubt that your views on this delicate question will be of great help to us. I thank you on my own behalf and on behalf of the Committee.

SHRI RAHMAN: I thank all the Members for the patient hearing they gave to my rather long speeches.

(The witness then withdrew.)

(Shrimati Sundari K. Shridharani was then called in.)

CHAIRMAN: Now, we will begin. I am glad, Shrimati Shridharani, that you have acceded to our request to be here and your association with the Triveni Kala Sangam, I am sure, will help us in the statement that you will

give in the matter that is before us for consideration. I request you to give us your views on the amendment that is before us.

SHRIMATI SUNDARI K. SHRIDHARANI: Mr. Chairman, it is a very great honour that I have been called as a witness here to give evidence because the subject is very dear to me. I have gone through many problems in our institution where we have exhibitions, plays and other things. Recently, about two weeks ago, this question came up, because there was an exhibition by a very good artist. Some of the art works were nude studies and then I got some anonymous letters asking why we permitted such a thing in the Kala Sangam. I very strongly feel that we must somehow protect the interests of the artists. Of course literature and other things also come in the same field, but I do understand, at the same time, that there is a certain kind of art which is not really acceptable as a work of art and it can go low in our estimation. But where you draw the line is something which has to be kept in mind before taking action. We must somehow, I feel, safeguard very strongly the interests of the artists.

CHAIRMAN: I would like to know whether you think that the provisions which at present exist regarding obscenity are adequate, whether they are defective and, if they have to be modified, in what direction they should be modified.

SHRIMATI SHRIDHARANI: I am afraid I have not really understood the language as it is worded in the Act. I can only speak in very general terms. There are these posters which appear, whether for cinemas or for something else. Now, it is likely that things which are shown there can be construed as obscene. I think that we should separate it in this fashion *viz.*, those which are meant for advertisement and publicity, by which people make money, which are meant for quick money making. That should be

a separate category. You should classify it differently from those which are really high class art work and not means for business.

CHAIRMAN: So, one criterion that you suggest is that it is not commercial, just for making money. That should be one of the tests to judge whether it is really an art or whether it is something else.

SHRIMATI SHRIDHARANI: Artists also sell their paintings, but we can have definitely two categories when we are trying to judge whether a thing is obscene or not. It can be divided into two categories. One can be purely high class art, where you have exhibitions by artists in the galleries. You have also works done purely on a commercial basis for propaganda, cinema advertisements, etc.

CHAIRMAN: Apart from the commercial aspect, would you draw a line as to which is pure art and which is trash and not at all worth being considered as art? From your experience, which would be the line, which would be the test for distinguishing the one from the other?

SHRIMATI SHRIDHARANI: I do not think I can really draw the line and I do not think anyone can really draw the line, because it is very difficult. It varies from country to country. It depends on the customs which are in vogue. Now, something which will be considered as absolutely all right and highly artistic in the West may not be accepted in this country and *vice versa*. So, to draw a line definitely between what is obscene and what is art from the artistic point of view is very difficult. I think the only way is to divide it up into two categories. Then, of course, you can have an expert committee which should go into cases and give their decision.

DIWAN CHAMAN LALL: Mrs. Shridharani, you have said something about the West *versus* East, but we are concerned with India. Would you agree with me that the tradition in India is much more liberal than the tradition in the West?

SHRIMATI SHRIDHARANI: Yes.

DIWAN CHAMAN LALL: There are things that are permissible in India today, which would be looked down upon as far as the West is concerned.

SHRIMATI SHRIDHARANI: Yes. For instance, let us take the Ajanta and Ellora Caves. You see the sculptures. They have been done centuries ago. If we really want to put down that, we will have to destroy the caves before we can say that this is obscene and this is not obscene.

DIWAN CHAMAN LALL: Therefore, it would be right and proper that we should not follow British traditions—regarding these restrictions that are placed on art, literature and science. Is that correct?

SHRIMATI SHRIDHARANI: Yes. I was just trying to say that art is international. I think art has moved with the times. I think today in India we are influenced by what is happening in the West. Today, in the 20th century, we are in a different atmosphere, whether we accept it or not. Young artists are greatly influenced much more than musicians and dancers. Art travels faster. I do not say that we should keep back, but this factor is there that the influence of the West is there already.

DIWAN CHAMAN LALL: Quite true, the influence of the West is there. There is no doubt about it. For instance, in painting we follow the post-impressionist. For instance, in our painting and in our sculpture fortunately we have given up the tradition, which is apparent in Konarak or in Kajuraho or in the hundreds of other temples, round about Delhi too. As you know, we have given up that tradition as far as sculpture is concerned. That sculpture has died down more or less. Painting is reviving following the traditions of Gokak and other post-impressionists, but what I am driving at is something different.

It is this general liberalisation to the attitude towards life in India as compared with the West. The West, as I said a little while ago, is governed by the old, original idea of sin, which has come down right through the centuries, *viz.*, Adam being tempted by Eve, and that tradition is there. It is a restrictive tradition. It is an intolerant tradition. Not so in India, where you worship the Lingam. For instance, we openly worship the Lingam. It is a free movement. It is worship of the generative organ, the generative principle in life, the ocean of life. Unfortunately the restriction came with the British when the British ruled us. Forty odd years ago they brought in the conception of law as they saw it following upon an international conference. That was 42 years ago. Now we are free, we have to go back to our own tradition and see to it that the works of art and literature and science in the context of the life that we lead, in the context of the religion that we practise, are freed from the restrictions which were imposed, the intolerant restrictions that were imposed upon art, literature and science. Don't you agree?

SHRIMATI SHRIDHARANI: I do agree. I think perhaps we are traditionally more liberal but I do not think in practice we are. I think the West in practice today is more liberal. This is my feeling. Maybe traditionally we are, but how much of the tradition is influencing the present-day life? I think our life is full of inhibitions as to rights and wrongs. Maybe we do not really believe in it, but the society cover has come over. I do not think really we are free in our thinking. I will give you one instance. A famous poem was being beautifully directed with slides. Very good slides were selected. There was a person who was in great temper as to why we were showing such a thing. I went through a great deal of trouble to convince him that it was the greatest piece of art that we were showing and the poem was a famous poem. But there was going to

be a complaint against me. The objection was what we were showing in the way of slides again was perhaps obscene.

DIWAN CHAMAN LALL: That is the exact thing that I am driving at. The point is that although we have got a tradition of tolerance much greater than in the West, nevertheless in practice because of two hundred years of British rule intolerance has crept in as in the case which you have cited. Perhaps it will interest you to know that I was one of the first to read a poem by T. S. Eliot many years ago. Eliot and I were at Oxford together. We found it a little crude called Coterie. "The Wasteland" came much later. You know "A Cooking Egg":

"I shall not want Capital in
Heaven For I shall meet Sir
Alfred Mond;

And we two shall lie together lapt
In a five per cent Exchequer
Bond."

I remember Tulsi Goswami citing this when Sir Alfred Mond, who was Lord Mond later on, was sitting up in the gallery in 1924 about the time of this particular measure; Tulsi Goswami was speaking and he cited that. This is what I am driving at. In practice it has become intolerant. You would be in favour of that particular tolerance and freedom.

SHRIMATI SHRIDHARANI: Very much. I think we need complete freedom. I do not separate art from life. I think progress really depends on how our attitude towards it is because it is really beauty in life; without it to me there is nothing really worth, if that is to be cramped. I think the artist should have full freedom of expression whether it is painting or whether it is writing or whether it is any other form, and I think it is very essential that we protect their rights completely and give them freedom. I do agree also at

the same time that there are a number of people who do not qualify for it. Therefore, I say that you can work it out into two categories: pure art in a separate category; then these little publications and posters which should not be counted in art as separate. The rules for them should be different.

DIWAN CHAMAN LALL: That is to say, you would be in favour of protecting works of art, literature and science?

SHRIMATI SHRIDHARANI: Yes.

DIWAN CHAMAN LALL: Those which are really good works of art, literature and science?

SHRIMATI SHRIDHARANI: Full and complete freedom I think is essential. To be honest I did not even know that there was such a law or restriction which has come up now, and I think I have been saved. We had a number of exhibitions and if somebody really wanted to come and give trouble, we would have been in trouble. In any exhibition we have to be very careful.

CHAIRMAN: The judgment of the court to a certain extent did that.

SHRIMATI SHRIDHARANI: So far we have not reached the court level but I am sure that it will because they know what we do, the work we do, but it is very disheartening to be cramped in this way.

DIWAN CHAMAN LALL: Thank you very much.

PANDIT S. S. N. TANKHA: I suppose you are aware of the fact that the law as it stands today, the Indian Penal Code, has certain provisions restricting obscene paintings, literature, and all that. Am I to understand from what you have said that you think that this section of the Indian Penal Code is coming in the way of the development of painting drawing or art and that these provisions should go instead of being tightened or being allowed to remain there?

SHRIMATI SHRIDHARANI: I think it should go. I think we should have freedom. Also I do not know how far the law in this respect is being observed. We have had a number of exhibitions in our gallery and I was not aware of this law, and I am sure I would come under punishment if it was really taken up. Anyway the artist should be free. Obscenity-- that again is a question. I did get letters from various people saying that this is obscene. Where do you draw the line? We have reproductions more or less from the Ajanta and Ellora Caves. I have post cards. I may still have some in my files. But tomorrow somebody can say. The point is, it is not obscene. Who is to say that it is not obscene? If somebody takes the case to the court, how do we decide the case? That is very important as to who is going to be the judge in this case.

PANDIT S. S. N. TANKHA: You must realize that unless the State has some standard and it places some restrictions, all sorts of paintings and all sorts of caricatures will come up. Will that be in public good or for the morality of the society?

SHRIMATI SHRIDHARANI: I agree, that was what I said right at the beginning. It is possible that many people will take advantage of that. Therefore we must safeguard against that. I am not quite an expert and I cannot say how it can be done. At the same time in trying to safeguard against one side, we cannot give up the other side.

PANDIT S. S. N. TANKHA: Have you known any cases where pieces of art have been proscribed and have not been allowed to be exhibited by the State because of this provision of the Indian Penal Code?

SHRIMATI SHRIDHARANI: I may be wrong; I am saying only what I have heard. So, it can just be discard-

ed. I heard that in Bombay some years ago there was an exhibition by an artist. Shri Morarji Desai was the Home Minister then. And I was told by this artist that there was a case and that the exhibition was closed. When our present Minister, Mr. Chagla, was there, he fought the case. So, there was an incident. I may be completely wrong. But this incident was quoted to me by the artist when we had the trouble in Triveni.

PANDIT S. S. N. TANKHA: There has been a case in the court, you mean?

SHRIMATI SHRIDHARANI: In the court, because the exhibition was closed. As I say, it is not obscene to us. So far, we have had many exhibitions. But if the law is there in print, it can happen and therefore we should try and see that we safeguard against it.

PANDIT S. S. N. TANKHA: Therefore, what you are saying is that the present provision should be removed. Is that what you want?

SHRIMATI SHRIDHARANI: I would not say that it should be removed absolutely, completely but separately removed as far as high quality art is concerned.

PANDIT S. S. N. TANKHA: According to me, high quality art is exempted even at present. There is no question of binding high quality art under the present provision of the Indian Penal Code.

SHRIMATI SHRIDHARANI: All right. But who is to decide whether it is high quality art or not?

PANDIT S. S. N. TANKHA: The court decides. If the matter is taken up before a court of law, it is the court which decides and then an appeal lies against that decision.

SHRIMATI SHRIDHARANI: As I have said, if there is complete free-

dom already provided, then the question does not arise. But there must be restrictions. Therefore this point comes. And if there are any restrictions of any kind, I very strongly feel that they should go.

CHAIRMAN: In Dewan Chaman Lal's amendment there will be sufficient protection. Have you gone through it?

SHRIMATI SHRIDHARANI: I am afraid, I can only say as a lay person. I do not understand the legal terms. But I do feel this and I have discussed it with the various artists who are in the institutions as to their feeling towards it and their reactions because not only are they concerned but we are also concerned because it says that even if we rent out a place for exhibitions, we are liable. All of us feel very strongly about it.

CHAIRMAN: What is the reaction of your colleagues?

SHRIMATI SHRIDHARANI: They feel very strongly that they should have complete freedom; they say, freedom or no freedom, we will go on and do our work.

PANDIT S. S. N. TANKHA: About the public sentiment, apart from the restriction imposed by the State, it is possible that the public may object to a particular cinematograph film as hurting its feeling. You say that a picture was exhibited in an art gallery and a gentleman came and objected to its being put up there. That is a different thing. Now it is not a prohibited thing under law; it is not prohibiting the displaying of it in your gallery. One person may come and object to it. That is a different thing. Now the only question is whether the State should be empowered to do it in the general public interest. The present provision is like this:—

“292. Whoever—

(a) sells, lets to hire, distributes, publicly exhibits or in any manner

puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever.

This is the present provision.

SHRIMATI SHRIDHARANI: Yes. It is all right. The question is about the word 'obscene'. We are trying to see what is obscene and what is not obscene. Where do you draw the line?

PANDIT S. S. N. TANKHA: Therefore I am asking you whether in your opinion no restriction should be placed on the obscenity which may be found in an art or painting or drawing.

SHRIMATI SHRIDHARANI: It should not be called 'obscene' whatever is in the art. I will not say 'no restriction on obscenity' because there is no such thing as obscenity in art. It is an expression of life. It is there only when it is used for some purpose by which people want to make money, want to use it for cheap selling. It is a special thing. I do not know what it is called. It is a very long word.

DIWAN CHAMAN LALL: Pornography.

SHRIMATI SHRIDHARANI: Unless it is used for it. I do not accept that any good art can be obscene no matter what it depicts.

PANDIT S. S. N. TANKHA: Therefore, it comes to this that you are opposed to the present provisions contained in the law and according to you this provision should be removed, in order to enable the artist to present whatever he likes for public exhibition and in any manner he likes.

SHRIMATI SHRIDHARANI: I am not speaking in a legal way because, I am afraid, I do not know the legal term. I can only say in a simple way that the artist should be free to ex-

press in any way he likes whatever is in his mind or in his thought and it cannot be called obscene.

PANDIT S. S. N. TANKHA: You call it by any name you like. If you do not want to call it 'obscene'; call it 'objectionable', that it is an objectionable picture or drawing.

SHRIMATI SHRIDHARANI: I call it 'high aesthetic views', I cannot call it 'objectionable'. Why should it be called 'objectionable'? Truth is not objectionable. It is only how we depict it. I think, anything that is true in life is true. That is there.

PANDIT S. S. N. TANKHA: You think that a person who considers a picture as obscene is wrong in doing so.

SHRIMATI SHRIDHARANI: 'Obscene' is low quality of art.

PANDIT S. S. N. TANKHA: So according to you it is a defect in the mind of the person who sees and considers a picture as obscene.

SHRIMATI SHRIDHARANI: I think that obscenity is more actually in the mind to a great extent because something very plain and straight forward can look to one person as very obscene and to others it may be just normal. Therefore I talked of East and West. You take our present-day women in India. We wear the saree. And for any Indian girl to show her legs bare will be considered obscene. It is not so in the West. Here in villages they wear very short cholis. Even in England it will be considered obscene. I have studied dramatics. I know it was embarrassing for me to get into the Ballet School, because it is traditional. It is in your own mind and it is your mental make-up. Therefore I will never put it down as definitely obscene; whether it is bad literature or good literature or bad painting or good painting, here it is a great deal in the mind also. At the same time, I do agree with you—there is a great deal of trash which

has got to be stopped not only to safeguard against obscenity but to protect the real art. I put it in that way because I have to fight for the artists, because there are these cheap dirty things, not only are they obscene but they are contrary to the art.

PANDIT S. S. N. TANKHA: Then what is your suggestion for shutting off that class or portion of it?

SHRIMATI SHRIDHARANI: I can only suggest that you divide it into two categories. I think the experts should think out the legal ways of how to do it.

CHAIRMAN: We agree that what is really art cannot be objectionable, cannot be obscene. But what is really very trash, very objectionable, that is not art.

SHRIMATI SHRIDHARANI: I really think that it is the quality that we have to protect. We have to see and to guide and leave the quantity separately.

PANDIT S. S. N. TANKHA: What or proper to hand it over to your upon seeing it do not think it right or proper to hand it over to your daughter?

SHRIMATI SHRIDHARANI: I do not see anything wrong in handing over a piece of art to the children unless there is something really bad. We must separate the two. It also varies from person to person. A high class piece of art can look to a person who does not understand it as very obscene, more obscene than what the artist considers it. Actually it depends on who sit in judgment. We should have experts to judge it.

SHRI A. D. MANI: Experts may not agree.

SHRIMATI SHRIDHARANI: Experts may not agree, I agree. But I am glad they do not agree but that you have to find out.

PANDIT S. S. N. TANKHA: Therefore, you concede that some sort of restriction is necessary under the law.

SHRIMATI SHRIDHARANI: Not on art but on trash stuff. Anything by the word ART must be free.

PANDIT S. S. N. TANKHA: But it is only through a particular process that we can judge whether a particular thing is a piece of art or not.

SHRIMATI SHRIDHARANI: I do not say it should be judged. On the contrary I am saying that there should be a proper expert committee for the purpose. I have agreed to that. But I will never agree to a real piece of art being banned. For instance, take the pictures from the Ajanta and Elora and put them along with the posters that have been declared as obscene by any high committee. Any lay person will say that the former are more obscene. But can we destroy those caves?

PANDIT S. S. N. TANKHA: I have not known of any case where an object of art, whether it is picture or drawing or any sculpture, has been prohibited under the present law.

SHRIMATI SHRIDHARANI: It may not be but it can be because presently people are not bothered to take note of these things. But tomorrow, it can happen. Now when exhibitions were taking place in the Triveni Gallery, if this law had been there then, we would have been in trouble. Even if the law is there, perhaps the authorities concerned do not go to these exhibitions, I do not know who is the authority.

SHRI A. D. MANI: Home Ministry is the authority.

SHRI M. P. BHARGAVA: I can quite appreciate your anxiety to preserve real art. But I hope you will agree with me when I say that a lot of trash is being published these days

in the name of art and, I think, the authorities are finding it difficult to prevent all that trash being published under the present law. Would you like the law to be tightened as far as all this trash is concerned?

SHRIMATI SHRIDHARANI: I think I said that. Another thing can be done. Very often there have been cases where such literature attacks people personally. You can have a law to say that any art which introvertly or directly or by way of posters is directly attacking some one else. That is punishable. Art should not bring in personal attacks. You can have that safeguard. There is a lot of trash appearing in these little weeklies. It must be absolutely stopped. You can say that anything, even if it is not directly giving the name, that gives such a thing should be stopped. If any such thing even indirectly implies that someone involved, that should be punishable. Art will never do such things. You can always safeguard that, and I think, very strongly.

SHRI MULKA GOVINDA REDDY: Mrs. Shridharani, in fact it is rather difficult to demarcate between art and obscene things. What guarantee do you prescribe to judge that a certain object is a piece of art? Secondly, if there are no restrictions people will begin to publish or write things of obscene nature. And there is freedom given to the public also, instead of these things being put down through law, they may voluntarily put down such sort of obscene publications.

SHRIMATI SHRIDHARANI: Where do you draw the line? It is very difficult. Again, I think, the whole thing comes down to background, education. I think a great deal can be done but it is a long process of educating people's mind towards the right kind of art, right kind of sculpture, encouraging them to learn. But obscene, again, as I said, it can be separated, though it is difficult. But you can

separate the good art from the bad art. You can separate a high quality art from something trash.

CHAIRMAN: Again it will be a matter for experts.

SHRIMATI SHRIDHARANI: Yes, but may be experts may not agree. But only experts should be permitted to decide what is trash. Let there be some law. But leave the art as much as possible. When I was in England I was quite free to work. Similarly here we should be free in the matter of art. Supposing we hold an exhibition in our gallery. Somebody may want to hang a painting which may be considered obscene by the law. Before this I never knew such a thing and we were quite happy. Our artists also did not know. I have talked to many artists. I am afraid it is going to tighten the thing to a great extent and they will resent if they know that there is such a thing. Suppose there is a young artist. After this law he will be confused in his mind whether his object will be recognised as a piece of art or not. What guarantee is there that the experts will not think that his work is not a work of art? I think, by making such a law and putting restrictions we draw people's attention more to obscene things by giving it too much emphasis. For instance, the Film Censor is doing the same thing. If drinking is not allowed, the person in the film who is supposed to have a glass in his hand, is cut off when the glass comes near his lips. The purpose of it is defeated. On the contrary, you draw more attention of the people. And that way we really work up the mind of the youngsters more towards it.

SHRI K. K. SHAH: I agree with you that all art must be protected. Your anxiety is that real art should be protected and trash should not be allowed to masquerade under the guise of art?

SHRIMATI SHRIDHARANI: Yes

SHRI K. K. SHAH: It has been defined in Sanskrit as". : क्षणे क्षणे यं नवतन उपैति तदेव रूपं रमणीयतयाः ।

This has been defined in Sanskrit. It means every time that one looks at it, something new attracts the mind or eye. This is very well translated into actuality by different writers in Sanskrit. There is also art in expression and in writing. A piece of art will not be a place of art unless there is also art in expression. Would you agree?

SHRIMATI SHRIDHARANI: Yes. That is a very good definition, but for that again the lay person has to be aware of it.

SHRI K. K. SHAH: I will give how it is being expressed in Sanskrit:

मना भवेत्तु तदेव दृष्टि रमणीयं प्रतीयः

Instead of saying 'I want your company or Krishna and Radha should have company, it is said Krishna is such a coward that after sun-set it is not right to permit him to be alone'. This is an artful way of expressing. It is not necessary that we should resort to obscenity or we should open up by resorting to obscenity, what is more enjoyable by being covered. Therefore all this could have been expressed in a vulgar way also. So you will agree that when you are worried about are being protected

SHRI JAISUKHLAL HATHI: She is more an expert in art.

SHRI K. K. SHAH: Take the eyes being in a real statue. The shade, the colour, the blossoming, the smile, in everything, even if it is the human beauty as put forward by human beings, there is an expression. By making art naked art ceases to be art.

SHRI A. D. MANI: Who says that?

SHRI K. K. SHAH: It is said by the second well-known person, next to Kalidasa.

SHRIMATI SHRIDHARANI: That way obscene can be in posters without nakedness. Obscene does not necessarily mean that because there is nude painting, it is obscene. You can have a completely closed figure but have obscenity.

SHRI K. K. SHAH: Therefore what you are interested ultimately is that a real piece of art should be protected.

SHRIMATI SHRIDHARANI: It should be protected and artist's mind should be protected. Suppose a young artist does tend to go a little far—a twenty-three year old artist may produce something—if you cramp his style at this moment by putting this fear, you kill the artist.

SHRI K. K. SHAH: Side by side you would like to protect the mind of the young artist by not permitting him to sink into depravity?

SHRIMATI SHRIDHARANI: Both are necessary.

SHRI K. K. SHAH: You want to protect the real artist?

SHRIMATI SHRIDHARANI: That is the job of the teachers or historians but not the job of the law and you cannot do that by law.

SHRI K. K. SHAH: Law will come into effect only after he has passed through his teachers. Your anxiety is before he passes through teachers like you. . . .

SHRIMATI SHRIDHARANI: I have not passed any test.

SHRI K. K. SHAH: To-day there is a vast difference between what you had before 30 years and to-day. The mass media of publicity has opened up a number of dangers. Do you agree there?

SHRIMATI SHRIDHARANI: agree. That is where we should see—the mass media.

SHRI K. K. SHAH: If you agree there and if you also agree that the present day tastes of the generation has gone down to some extent on account of the mass media of publicity which caters to baser tastes and a good film will not have a box office success . . .

SHRIMATI SHRIDHARANI: Yes.

SHRI K. K. SHAH: If that is so, it is also necessary that the standards do not go down in this country by permitting this type of art.

SHRIMATI SHRIDHARANI: Yes, not only by not permitting it but by encouraging the other kind of art. We should give more freedom and stress and funds to the real art so that it comes up but there can be a ban on certain quality of mass media. You want to test the artist by an expert before he is condemned. You do not test the publisher of a certain magazine to see whether he is qualified. The question before you is really to protect from what is happening to-day. I think art is brought as the background, but why blame the poor artist? You can straight-away test the person bringing out the magazine by bringing him before a qualified Selection Committee and saying that he is responsible to that Committee for what is produced in his magazine and you can straight-away control that. Actually that is the real thing needed and not any restriction on the artist.

SHRI K. K. SHAH: Will you say: 'anything that is necessary to explain art, the interpretation of the living art, even if it is obscene may be permitted but anything which detracts from the value of art or which degenerates art into trash should not be permitted?'

SHRIMATI SHRIDHARANI: Yes, anything which degenerates art into trash, I will say that, but I cannot say two words together; 'obscene' and 'art', I cannot put together; I don't understand. 'art' as being 'obscene'. Therefore I will not agree there. But anything which is going to detract, anything which is degenerating into the cheap thing, which is going actually to take away from the genuine, by all means separate it, by all means take away the trash.

SHRI K. K. SHAH: I understand it is not possible for you to differentiate between the two. But would you agree here? It is said in the Roman history that the Romans went out of their way to mix with the barbarians and so Roman life became debased.

SHRIMATI SHRIDHARANI: I do not know.

SHRI A. D. MANI: Who says that?

SHRI K. K. SHAH: It is a well known saying in the Roman history, and that debased mentality became pervading, or pervaded the Roman mind so much as to make art degenerate into trash.

SHRIMATI SHRIDHARANI: Yes, I agree again and I say that it must not be allowed, but we should not also allow a mixing up of the two and then try to get the trash out.

SHRI K. K. SHAH: That is our trouble.

SHRIMATI SHRIDHARANI: think the whole....

SHRI K. K. SHAH: How to translate what you say into actual legislation?

SHRIMATI SHRIDHARANI: Yes, you translate it this way. First of all see that the art is high quality art, that the art is recognised art. The other art, which is trash, if it is no good, should not be allowed. Take

any good thing. You will not find one painting by an artist done twice, like in Nature you never see two things exactly alike. There may be a reproduction, there may be a reprinting, but no artist will again paint exactly the same thing done once with his hand. But you can do it in your posters, in your publications. I do not exactly know, but I am sure one can think out, may be not to protect it completely, but to a great extent. Why don't you really have a law by which any obscene printed matter, any obscene publication, which has mass circulation, circulation, say, more than 10,000, where the art value of it is practically nil, where it is sold very cheap, does not come into being? You can say that so and so must all qualify. Why do you permit all these publications which are obscene?

SHRI K. K. SHAH: May I put it this way? May I take it that you would like to differentiate between something which is in mass circulation from something which is a rare piece?

SHRIMATI SHRIDHARANI: Not exactly. You can never produce a lovely painting on a mass scale except by printing it. I cannot just put the word 'mass circulation' there also, but no mass circulation, which is not a reproduction, can really be pieces of art.

SHRI K. K. SHAH: Now supposing a piece of art or literature is placed before you, how would you look at it? Will you examine it first whether it is a piece of art?

SHRIMATI SHRIDHARANI: I see it; I see the feeling aroused by it and then I judge it as a piece of art. I do not think you can sit down . . .

SHRI K. K. SHAH: Will you agree that, when you look at a piece of art or literature, if the feeling first is a feeling of repulsion, it is not an art?

SHRIMATI SHRIDHARANI: No, not necessarily. I have seen modern paintings. Even recently there was an exhibition. I could look at it, but that does not mean that it is not good art.

CHAIRMAN: Especially modern art.

SHRIMATI SHRIDHARANI: Art is and must remain an expression of life. If today's life is repulsive, then the art must express the repulsion. If the life today is a hotch-potch, then also the art must express the hotch-potch. Now we do not like this hotch-potch, but then that does not disqualify an art depicting it from being a piece of art. If today's mind is repulsive, then the art will be repulsive. But that repulsive mind will not be repulsive because the mind changes.

SHRI K. K. SHAH: Once again, if the modern mind is repulsive . . .

SHRIMATI SHRIDHARANI: The modern mind is not necessarily repulsive. What I am trying to say is that a true artist will express life as he sees it; that is all.

SHRI K. K. SHAH: Art can never be; if it is really a piece of art, it can never be repulsive.

SHRIMATI SHRIDHARANI: I am not saying that art will be repulsive; I am saying that art must express all those moods.

SHRI K. K. SHAH: A real piece of art, the moment you look at it, if it is inviting, it is a piece of art. If it is repulsive, it is not a piece of art.

SHRIMATI SHRIDHARANI: Not necessarily. Real art or quality art is how well an artist is able to present it. Now you see a tragedy. Nobody likes to see a tragedy, but we go and see a tragedy. Now the more movingly it is done the greater art it is.

SHRI K. K. SHAH: Perhaps you have not followed my observation. If you look at that piece of art, and if you do not like to take away your eyes from it, it means that it is inviting, that it is a good art.

SHRI A. D. MANI: Not necessarily.

SHRIMATI SHRIDHARANI: Suppose an artist is showing the horrors of the war and you see the death and devastation caused by it, and the horrors that are in a war are . . .

SHRI K. K. SHAH: It means that even in representing the horrors of war there is art.

SHRIMATI SHRIDHARANI: It is art.

SHRI K. K. SHAH: And the mind immediately sees the art.

SHRIMATI SHRIDHARANI: How receptive the mind is to the . . .

SHRI K. K. SHAH: So it is the art which gets over the horrors.

SHRIMATI SHRIDHARANI: But how many people in this country or in any country are so . . .

SHRI K. K. SHAH: May I take it now that your anxiety is that a real piece of art should have complete protection?

SHRIMATI SHRIDHARANI: Yes. In an artist doing a piece of art, the artist should not have any fear in his mind as to whether this will land him in trouble. He should have complete freedom.

SHRI K. K. SHAH: Thank you very much.

SHRI A. D. MANI: Mrs. Shridharani, you stated earlier that obscenity may perhaps be in the mind; I would like to follow it up. In a matter of art and literature one cannot be very categorical about the circumstances which operate in art and literature.

Obscenity may not be necessarily in the mind, but in the circumstance, and in the community. For example, there is Nagaland—and there are other parts of India—where people go without any clothes, and it is regarded by them as a form of civilization. But then it cannot be done in Delhi because it would be considered a filthy act. So would you like to qualify it and say that obscenity may be in the mind but also in the circumstances and in the community?

SHRIMATI SHRIDHARANI: Yes, I gave the example of England. And in India how do we look at it? In exactly the same way it is the customs of a country that have to do a great deal with it.

SHRI A. D. MANI: Now you said that an artist's style should not be cramped. Nobody likes to cramp the style of an artist or a writer. But will you agree that artists cannot have any special privileges which are not shared by other citizens? They are part of the community. If, for example, the work of art of an individual is going to cause civil commotion or disturbance, or lead to feelings of revulsion, would you still say that the artist should be protected even though the community is horrified by what he does? I will give you an hypothetical example. If a disgusting drawing about a respected leader of the country is pasted in the form of posters, all over Delhi, it may arouse the widest feelings of revulsion; there may be disturbances. It may be a work of art. Now would you like to put restrictions on such things?

SHRIMATI SHRIDHARANI: I wish to safeguard against it, wherever it appeared if it directly concerned a person I explained that. I said that you can always safeguard against it by saying that wherever a literature or drawing directly mentions a person in derogatory terms or derogatory form, no matter how great the art, it should be prohibited.

SHRI A. D. MANI: Now the third point I would like to go to is this. you must have heard of the paper—"The Indian observer".

SHRIMATI SHRIDHARANI: It should be banned.

SHRI A. D. MANI: "The Indian Observer" specialises in the publication of a large number of suggestive photographs of the human anatomy. I do not want to place any copy of this paper in your hands, but the latest issue is pretty horrible. The Government of India and the Local Government are not able to take effective action. You suggested that such a journal should be banned, journals which try to exploit the baser feelings in the community to build up their circulation. It is with that class of people we are dealing and that is why we discuss this question of obscenity. We are concerned with the real artist. The real artist will always get the sympathy of the community, however obscure or difficult the form of that art may be. While a nude photograph can be a thing of great beauty, if a particular vulnerable part of the human anatomy is highlighted and that alone is drawn, then it becomes obscene and vulgar.

SHRIMATI SHRIDHARANI: I don't really see any reason why we should mix up art with this kind of publications, publications like the "Indian Observer." Why can't we divide the two and place press publications separate?

SHRI A. D. MANI: It is difficult. The line that the Editor of the Observer takes is that he stands for morality, that he wants to expose vices that he wants to put an end to scandals, and that is why he publishes his journal. This is the plausible line of defence that he takes and as Mr. Hathi knows, lawyers can always twist a matter in a court of law and they are not able to get a firm conviction against this paper except once in Calcutta. Now, such journals are multiplying all over the country and they are disgrace to our country and to our

society. There had been such journals in the United States of America and in England also. But public opinion was so strong against them that they could not flourish.

Now, Mrs. Shridharani, if you agree that trash which passes in the name of art should not be encouraged . . .

SHRIMATI SHRIDHARANI: have said that.

SHRI A. D. MANI: If you agree there . . .

SHRIMATI SHRIDHARANI: You cannot give the name of art to that.

SHRI A. D. MANI: Any person can say he is an artist. Art is never labelled as you know. A man can offer a painting without calling himself an artist. That also happens. Art itself is the basis of its own performance. Nobody can object to it being called art. We have our Fundamental Rights in this country and any person literate or non-literate, artist or non-artist, can bring out a paper. The man in the exercise of his Fundamental Rights, brings out a trash called The Indian Observer. He publishes the Indian Observer with suggestive photographs. This is to deal with such categories of trash. They are a disgrace to Indian society, to any society. That is part of the problem and we are concerned with that part of the problem now.

Now, Mrs. Shridharani, I do not want to take you to the niceties of law. But when the Indian Penal Code was drafted by Lord Macaulay, he never defined the word "obscene". The word "obscene" occurs in section 292:

"If any person has got in his possession paper, pamphlet, drawing, painting representation or figure or any other obscene object"

But "obscene" has not been defined. If in place of the word "obscene" we should substitute this phrase—and I want to mention it very slowly so that

you may grasp the import of it, I mean the import of the phrase—as a definition, “any filthy, lewd object”. They are not art. “Any filthy, lewd object which tends to corrupt the morals and deprave the taste of the community.” If we do that, would you think that real art will be protected by this?

SHRIMATI SHRIDHARANI: You should also add “which attacks a person” or “which attacks personally,” or some such thing.

SHRI A. D. MANI: Yes, we can add that also.

DIWAN CHAMAN LALL: If I may interrupt for a moment,

SHRI A. D. MANI: Let me finish this argument.

DIWAN CHAMAN LALL: Here is a judgment of the court. When the judge says it is not filthy, then what happens?

SHRI A. D. MANI: Let us not confuse the witness. The witness is very clear in what she says. Now, would you accept this as a workable basis for a definition? If it is lewd or filthy it is objectionable. That is something that is understood and felt. If it is lewd or filthy. And we also say, “which tends to corrupt morals and deprave the taste of the community”. And we can also add “which seeks to traduce a person”. We could put it in whatever legal phraseology may be needed. Would you accept that as a workable definition?

SHRIMATI SHRIDHARANI: I don't know, but . . .

SHRI A. D. MANI: I mean as a workable basis for a definition?

SHRIMATI SHRIDHARANI: The whole purpose, as I understand it is this, that somehow you should stop this kind of publications. Instead of saying all this and bringing in art in a roundabout manner, why not leave art alone? Don't mention art anywhere. Just draw up a schedule and say that the following will be banned

or not permitted, and in that list you may put this kind of publications. Or whatever publications here may be, you can say that certain restrictions would be put in. But why bring in art at all? If you do, then this question will arise, what is a piece of art and what is not art.

SHRI A. D. MANI: My difficulty in drawing up such a schedule is this. If I mention the Observer by name, then the Indian Observer may become the organ of the Sadachar Samiti tomorrow. After all the march from sin to virtue is a never-ending march. A sinner can be reformed. In drawing up a schedule you brand the person as a permanent sinner. A'so art can be revolutionising. New forms of art may emerge.

SHRIMATI SHRIDHARANI: When these publications come up I don't know—but I think they take the permission of the Press Registrar. Don't they?

SHRI A. D. MANI: That is going a little wide of the field and that will be putting restrictions on Fundamental Rights. We can discuss that aspect of the matter also. But now I would like to come back to the original thing. If you say that trash should go, then a reasonably acceptable definition may become necessary as to what is trash and what is not. Lewd and filthy, we all understand that they are. No artist will ever support a filthy thing, if he is a real artist.

SHRIMATI SHRIDHARANI: We all understand it here. I am sure everybody understands that. But law is something so tricky that it can find ways and means to get round things.

SHRI A. D. MANI: I am coming to that concept also. But as I said earlier, the artist cannot claim any special privileges denied to other citizens.

SHRIMATI SHRIDHARANI: In what way?

SHRI A. D. MANI: If a lawyer breaks the law, say, steals a motor car—I am glad it has not happened so far—he is not tried by the Bar Council. He is tried by the ordinary court of the land according to the ordinary law of the land. If you say that an expert artist should find out whether a thing is proper or not, that means you are constituting a special tribunal for artists to decide matters. So it is a negation of the law as it stands now. Law is equal to all. The law is common to everybody. If once you say that this point should be decided by a special tribunal of artists, it would be against the law as it is. It has got to be decided by the ordinary courts of the land. The judge may be literate or not, he may be an artist or he may not be. But you have got to take the chance.

SHRIMATI SHRIDHARANI: I really think against that instead of all this . . .

SHRI K. K. SHAH: It is not fair to the witness to say this, because courts also have to depend on expert witnesses to decide, say whether a hurt or injury is a serious one or not.

SHRI JAISUKHLAL HATHI: She said that the case should be tried by experts. That is all.

SHRIMATI SHRIDHARANI: I wonder why we should go on thinking of this in this manner. Our real aim is to ban trash. We are not trying to ban art. So why are we bringing in so much of definition and this and that. Let us work out a list of what are the things that we want to be banned.

SHRI M. P. BHARGAVA: You mean putting it in the negative way.

SHRIMATI SHRIDHARANI: I mean it is easier. Otherwise it is so very difficult.

CHAIRMAN: It is difficult to enumerate all these things. Many things

may come up later which may not be in our minds for the time-being. Generally the procedure of law or rather the method of law is to put things in a general, but at the same time, definite manner. Art as you understand it, is above all this. What goes in the market as art, you also agree, that it is objectionable and that it has to be checked.

SHRIMATI SHRIDHARANI: Yes, it will safeguard real art also.

SHRI A. D. MANI: I will go on. We have studied your point of view. You want trash to be dealt with in some suitable way. That way it is for others to decide.

SHRIMATI SHRIDHARANI: Which will allow real art to flourish.

SHRI A. D. MANI: We understand your point.

CHAIRMAN: What is real art is a matter for the artists to decide, not for others.

SHRI A. D. MANI: I would like you to see this clause in the amending Bill which you must have read. This clause seeks to protect real art. It says "which is meant for public good." Can I read it for you? Or have you read it? I think even if you have read it you should keep a copy before you now because you must see it. Would you generally accept that as a protection for art?

SHRI K. K. SHAH: I wanted to read the judgment of the Supreme Court which could have set at rest all her anxiety. All along any piece of art has been protected. It is only for marginal cases that my friend Diwan Chaman Lall has brought this amendment. Only one case has happened and that is that of "Lady Chatterley's Lover".

SHRIMATI SHRIDHARANI: More than the marginal cases, I think it is fair that the artists should know this because they do not know that such a thing is there. In fact, one of the points I wrote down to say was that if there is any such law we should be informed. We cannot be reading always these things. I have written through the Academi that this should be circulated because the poor artist sometimes does not know. At least we should know as an institution; tomorrow I might put up some Exhibition and if anyone were to come and say . . .

CHAIRMAN: Normally you would not have any difficulty.

SHRIMATI SHRIDHARANI: Things are not always normal, you know.

SHRI A. D. MANI: I do not want to ask many questions excepting this. Do you think this clause generally protects the artist, namely, this law of obscenity shall not apply to any book, pamphlet, writing, drawing, painting, representation or figure meant for public good or for *bona fide* purposes of science, literature, art or any other branch of learning? You are in general agreement with this?

SHRIMATI SHRIDHARANI: Yes, I think so. One has to think a little if something else is also to be added, if this is to become the law.

CHAIRMAN: This is the protection.

SHRIMATI SHRIDHARANI: Even if it is protection, it is perhaps possible to protect further. I cannot straightway think of something else but generally it seems to cover.

CHAIRMAN: At present under the existing law there is no such safeguard. That is why Diwan Chaman Lall has brought this amendment.

SHRIMATI SHRIDHARANI: I think it is very essential. He will have

the good wishes of the artists because this is very important.

PANDIT S. S. N. TANKHA: It seems to me that your opinion is that the artist should be left absolutely free to give expression to his feelings in the drawing or painting in any manner he likes. If that is your view cannot a writer or a poet would also say that he should be given that right and liberty also . . .

SHRIMATI SHRIDHARANI: He should be.

PANDIT S. S. N. TANKHA: . . . and he will say, it is not for you to judge if my writing is obscene or not.

SHRIMATI SHRIDHARANI: I agree there; just as you have good art and bad art you have good literature and bad literature. If it is bad, it is not literature; it is trash.

PANDIT S. S. N. TANKHA: You have said that the court is not entitled to judge whether a particular piece of art is art or is not art. In the same way others can say that the court should not be asked to judge whether their writing or journal is or is not obscene.

SHRIMATI SHRIDHARANI: When I say I am not talking only of the dancers or the painters or musicians. It covers literature, it covers everything.

PANDIT S. S. N. TANKHA: Then it comes to this that according to you this provision of law should be deleted from the I.P.C. only because it should be left to be decided by the artists etc. whether something is or is not desirable and obscene in their writings or paintings etc.

DIWAN CHAMAN LALL: But Mrs. Shridharani also said that she is against trash.

SHRIMATI SHRIDHARANI: I am again and again saying that there is more of trash and less of art. There is more of quantity than of quality and so you require stronger law to protect the quality against quantity.

PANDIT S. S. N. TANKHA: The moment you say that trash has to be stopped or removed then somebody has to decide what is trash and what is not trash.

SHRIMATI SHRIDHARANI: In the beginning itself I said somewhere a line will have to be drawn by the experts but in trying to safeguard one interest we should not kill the other. In our eagerness to get the trash out we should not allow the good thing to go also. Therefore this is not a job of the lay people.

CHAIRMAN: She is agreeable that art should be protected fully but at the same time the trash and other things which are undesirable should also be checked and controlled properly.

SHRIMATI SHRIDHARANI: I think I fully agree with what has been provided in this amendment. It protects art but it does not say that you do not punish the others. In fact I think it is good for the artists themselves that the others are punished.

PANDIT S. S. N. TANKHA: Then you agree with this point of view that some restrictions will have to be put under the penal law on a particular class of writing poetry or art.

SHRIMATI SHRIDHARANI: I do say a particular class; as I said I will not say art. I do not use the same word for both. As I have been saying from the beginning, trash should be checked and how best it could be checked, it is the job of the experts.

PANDIT S. S. N. TANKHA: And you also agree that it is the courts which will decide what is and what is not obscene art or obscene literature.

SHRIMATI SHRIDHARANI: I do not agree there. I think the courts should decide with the help of experts. We live in a country where law

is essential and things must go through according to law. But I think just as they have the jury system in many places, there can be expert people from among the public whose opinion will count outside and who are knowledgeable and impartial. The court can listen to the two sides but the judgement should be left only in the hands of the experts. There can be one separate for painting, one for literature and so on.

PANDIT S. S. N. TANKHA: That stage will arise only when a particular person objects to a particular writing or art or a portrait. If nobody objects then there is no question of its being judged. But once someone objects to it then it becomes a matter for the court to decide. You cannot ask us to have another forum or a separate tribunal for this.

SHRIMATI SHRIDHARANI: Then I think there is something in the law which will have to be changed.

PANDIT S. S. N. TANKHA: It is the courts which will decide. The court can be assisted by expert opinion. Provision already exists for it in law. The Evidence Act gives right to the court to call for expert opinion as to whether or not a particular literature is obscene, or whether or not a particular painting is obscene.

SHRIMATI SHRIDHARANI: If they call for expert opinion, that is exactly what I am saying. It would not be fair to the Judge himself to expect him to be an expert in all fields of art. Today he may deal with literature and tomorrow he will have to deal with painting. No one person can be the judge so far as art is concerned.

PANDIT S. S. N. TANKHA: What happens in the court is that both sides produce experts who more often than not contradict each other.

SHRIMATI SHRIDHARANI: Cannot you have a kind of jury.

PANDIT S. S. N. TANKHA: When there is difference of opinion between the expert themselves then the court will have to decide as to which of the two expert opinions is correct.

SHRIMATI SHRIDHARANI: Will the experts be brought in both by the defendants and the plaintiffs?

PANDIT S. S. N. TANKHA: Yes, and the court itself can call for experts.

SHRIMATI SHRIDHARANI: They will come only as witness for one particular case, whoever brings them. What I am thinking is just as the Judge is there in the court to decide, there should be attached a body of advisers and the final judgment is given by the Judge.

PANDIT S. S. N. TANKHA: You mean a permanent body for each court?

SHRIMATI SHRIDHARANI: I do not know.

CHAIRMAN: That is a matter of detail.

PANDIT S. S. N. TANKHA: But she must know the position. Experts should be consulted, but there are so many courts.

CHAIRMAN: She mentioned at the very outset that she does not know these legal details.

DIWAN CHAMAN LALL: May I draw your attention to the fact that in the London case of 1959, when the case was considered there were no witnesses from the side of the plaintiff? All or most of the witnesses were brought in by the defendants.

CHAIRMAN: Thank you very much, Mrs. Shridharani. We are grateful to you and I am sure your exposition of this delicate question will help us to come to a decision. I assure you that we are all anxious to protect art, literature and science.

At the same time, we want to control what appears in the guise of art, but which is not art. That is really our problem. On my behalf and on behalf of the Select Committee I thank you for giving your exposition.

SHRIMATI SHRIDHARANI: Thank you very much.

(At this stage the witness left the meeting.)

(Shri A. S. R. Chari was then called in.)

CHAIRMAN: Mr. Chari, as you all know, is one of the Senior Advocates of the Supreme Court and is very progressive in many matters. We are very glad to have you here, Mr. Chari, and we hope that your experience will help us in dealing with this delicate matter, which is, in a way, controversial. Now, I would request you to give evidence and, if I am permitted, I would begin. So far as the present law is concerned and the amendment is concerned, do you think that the present law is adequate or it has to be amended and, if so, in what direction? We are faced with the fact that good literature and art is being penalised on the one hand. We do not want that to be done. At the same time, we know of many things in the name of art, but which are not really art at all. They are trash and in a way they corrupt the mind of our young people. So, we would like to have your advice on both these counts, i.e., where are we to relax the law and where are we to tighten up the law? That is my first question to you.

SHRI A. S. R. CHARI: I must confess that this is the first time I am appearing as a witness before a Select Committee and I do not know what are the 'Dos' and 'Don'ts'. If you think that certain general state-

ments on the question of obscenity and on the question of literary and artistic development might be of use, then I will not make a speech but I will give it to you in the form of points, as I have thought about it, if it helps you. If you want me to restrict myself only to the question of Diwan Chaman Lall's amendment and what my attitude to that is, I will do that also.

CHAIRMAN: You may give your views.

DAHYAAPHAI V. PATEL: There are no 'Don'ts'. They are all 'Dos'.

SHRI CHARI: The first point I would like to make is that in all early human societies the act of procreation was considered to be one of those great mysteries of nature in the field of fertility and, therefore, in all early societies the sex act, the act of procreation was considered to be something sacred, something good and not something about which one need be ashamed of. That you can see in all our old temples, in our old literature, where the whole act of procreation and the sexual act is dealt with not from the point of view of corrupting people, but of making them realise what an ennobling mission has fallen to man in the development of human society. That is the first point that must always be kept in mind, because we in India have got temples, we have got literature which very clearly and candidly and sometimes in great detail deal not only with the sexual act, but also with what may be described as voluptuous descriptions. One can read "Ritu Samhara" the description of the thighs of a woman and things like that which when you read does not deprave you. It gives you an artistic appreciation of what you probably have been enjoying without a sense of art. That is the first point that I want to make.

The second is that in the West the effect of Pauline Christianity—St.

Paul's ideas—made sex a dirty, vulgar thing of which one should be ashamed, and it was permitted only in a marriage which was considered a sacrament administered by the Church, and even then you were only permitted to do it but not to speak about it. This shame-faced and puritanical and in many respects thoroughly unreal attitude to the sexual act prevailed in Europe for quite a long time. It was only the thinkers of the French Revolution who fought against the Church as a feudal lord and also fought the Church in the realm of ideology; they began the battle against the Church's hypocrisy of celibacy in such a way that they dealt with the sexual act as a thing of beauty which can be written about and which can be read and with great benefit by the people. French writers like Thophile Gautier in "Mademoiselle de Maupin" and Jules Romain "Body's rapture" and others give a detailed description of the sexual act, but one must have really a very depraved mind if he reads that and says that there is something vulgar, because it is an ennobling description; that is how the French did it.

The Elizabethan writers in England were never shame-faced about it. In various plays of Shakespeare and in Shakespeare's Venus, Adonis sex was considered a part and an important part of life.

Then comes the period of what may be described as Victorian prudery where the aristocracy and the upper circles in English life considered mention of any intimate part of a man's life as something obscene and vulgar, and this Victorian prudery continued for quite some time. Thomas Hardy's novels and things like that show how the writers felt absolutely straightjacketed under those conceptions. The real break came only after the First World War. After the First World War when hundreds of thousands were

killed in the war and western society went back to the *status quo*, the privileged sections keeping their privileges and the poor people not being able to better their lot, in my opinion this led to the development of an anarchistic attitude to art and literature in the West. The artist finding no cause larger than himself to identify himself, finding that he was out of tune with this kind of society withdrew into himself and declared "I am an artist for art's sake; I have nothing to do with society". That in my submission is the socio-economic reason for all the various aberrations that we find in the field of art, where the artist draws something which nobody can understand, but he says "I am drawing only to express myself". D. H. Lawrence was one of those writers who carried a social protest in the only form in which he could express it. He himself was the son of a miner. He registered the social protest of the working class against the aristocracy and he did it in two ways: one, he made aristocratic women fall in love with common men, and second, he deliberately used four-letter words which were considered taboo in the upper circles but which were perfectly prevalent among the common people in the East End. In fact in our country too in many of our languages persons speak the four letter word as if it was nothing unusual. When I borrowed a light from an English army officer in Secunderabad and thanked him, he said "fuck off". He just used the expression not meaning anything vulgar. But that is the way he expressed it. The same is the case with Telugu, Tamil and other Indian languages. Lawrence said, "I am going to defy them by including as many of the four-letter words in my literature". It should be understood from that point of view. It is a kind of social protest not only against the upper class but against the mores and norms of that upper class. As far as the background is concerned, I think that is enough to indicate how I approach the question.

The question of obscenity is un-

doubtedly a very very tricky question because a great deal depends upon the individual, his attitude to art, his attitude to literature, his attitude to life, and his attitude primarily to one aspect, namely, after his work does a man throw himself into joy or not. This is an extremely important aspect which I think we as a people have not developed. We have not developed our capacity to throw ourselves into joy after our work. This is partly due to the fact that many millions of our people do not have the opportunity to throw themselves into joy. This attitude reflects itself in the upper classes of Indian society. When we come to the question of the existing law as to obscenity, as we all know, sections 292 and 293 were introduced because of the international convention for suppression of traffic in obscene literature, and we introduced it in our law. The real difficulty arises always in this way. It is true that there is good literature in which there are parts which deal with what a person may call obscenity. There is also quite a lot of so-called literature which is no literature at all, which is just sheer obscenity and nothing else. They are pornographic literature. I think there will be no difficulty so far as pornographic literature is concerned and no two persons are likely to disagree when they see it. But, so far as literature proper is concerned there are two aspects: one, where the law as it exists exempts only things connected with religion from the taint of obscenity. I believe Diwan Chaman Lall's amendment—insofar as it wants to extend this to art, literature and various other things which are for the public good—is necessary. The prevailing practice is to take the obscene passages first, read the obscene passages and say, "Is this not obscenity?"

SHRI A. D. MANI: The totality should be taken.

SHRI CHARI: The method followed at present is, they read the obscene

passages and say, "Is this not obscenity?" First they come to the conclusion that this is obscene and then say, "Does the rest of the book or the book as a whole outweigh the obscenity that we have already found in the book?". Here comes a personal factor. It depends upon the particular individual, whether he thinks the passages which we consider obscene are so weighty that the rest of the book does not matter at all or whether he thinks that that is part of it. For instance, D. H. Lawrence had no other way to show how a common gamekeeper was a better man than the aristocrat except by showing that he was very good in the sexual act. That is only the form he expressed. He expressed it on nine occasions. But a person who takes the totality of the book will say that these sexual acts which come in only as interwoven into the character that he wants to present are as good as, if not better than, those of a fellow from the aristocracy. Then we would say it does not matter, he is describing it only for that purpose. It is an incidental matter intended to build up the character of his hero as a person who is proficient in some field. And he can only prove he is good either as a good marks-man or a good lover. These are the only two things that he can show. Put the test of obscenity as laid down in the Hickling case in 1883 was, as a matter of fact, whether the tendency is to deprave or corrupt the morals of persons into whose hands it is likely to fall and they were defined as young persons. Our Supreme Court, in Lady Chatterley's case, does not quite agree with that view. Though it accepts that it is there, still it says that literature and art will be poor if you are going to test it on the basis of what effect it will have on a 15-year old boy or girl. I agree with Diwan Chaman Lal's amendment except that I have got certain verbal changes to suggest. I support the idea of Diwan Chaman Lal's amendment. The verbal changes that I would like to suggest are like this. In section 293A, the whole of the first part remains—

"representation or figure"—up to that. Then I suggest, instead of the words—

"meant for public good or for *bona fide* purposes of science, literature, art or any other branch of learning:"

you should say—

"justified as being for the public good on the ground that it is in the interests of science, literature, art or learning or of other objects of general concern."

Now, the words "other objects of general concern" are in the English Act itself but they are wide enough to cover a case which may not strictly fall under the head of either science or literature or things like that. And still if it is of public concern, it is in public good, and that is why it is done. There are posters in respect of the 'Loop'—the IUCD. You cannot say that it is science, you cannot say that it is learning, you cannot say that it is art. But none the less, it is an object of general concern for a country that wants to limit its population and various things like that may happen in the course of the development of society, and our law should provide a wide enough cover in the language . . .

CHAIRMAN: Under 'science' you can have medicine.

SHRI CHARI: Quite all right. But the difficulty you will face is this. Whereas in a medical book various illustrations can be given and it will not be considered obscene, a poster merely brought out as such will be held as obscene normally. I was only explaining. It may be so, I am not saying that it cannot be brought. I suppose that with a certain amount of argument it can be said that it is science. But this covers those cases which may not strictly fall within these categories.

CHAIRMAN: It may widen the field very much. We may also feel . . .

SHRI CHARI: "Other objects of general concern"—I do not think we need have any fear about that because it is not the writer or the artist who is asked to say about it. He can say that this was the general concern for which I wrote. That he may say. But then the second part will be for experts. He may come and show how far it serves the purpose or not and the decision will be with the court. Even then it will not be with the experts.

CHAIRMAN: The 'Observer' might come and say that it is in the general good.

SHRI CHARI: But nobody will agree with the 'Observer'. That is the whole thing. My suggestion is like this. Section 293 may be marked as sub-section (1). That is the first part. Then I suggest certain things. Instead of using it as a proviso, I suggest a sub-section (2)—"It is hereby declared that the opinions of experts as to the literary, artistic, scientific or other merits of such book, pamphlet, writing, etc. as is mentioned in sub-section (1) may be admitted as evidence and due weight be given to such opinions."

I will explain. What I am driving at in the second sub-section is this. The second sub-section is not only to provide that expert opinion be admitted, but it should not be rejected out of hand by the trial magistrate or judge. There is an English case where experts were called; the prosecution called no experts. The trial magistrate did not even say why he did not accept it. He said, we do not accept it. And what I want to emphasise is that it should be given due weight which means, not that it should be necessarily accepted, but the opinion of the experts, if not accepted, the reasons should be given for the non-acceptance.

DIWAN CHAMAN LALL: You have got that case?

SHRI CHARI: I have got it here because I thought it would be interesting to you. I will give you the reference—1965, All England Reports, page 159: John Calder Publications Ltd. vs Powell.

I will read only one passage:

" . . . It is true that the Justices in their Cases did not say that, while accepting the evidence as to literary merit they did not think it outweighed the demerits. They merely say that they did not accept the evidence of the witnesses, that is, evidence of the witnesses that publication was for the public good."

Now my attitude to it is like this. There is no use calling experts if you have got a magistrate or a Judge just rejecting whatever they say. If the experts are wrong, if the experts are taking an anarchist attitude, if all of them differ, it is both in the interest of the society and the experts and of the person charged that the court should give its reasons for rejecting their opinion. I have put "due weight should be given" not to mean that they must necessarily accept what the experts say but they must give due reasons for rejecting it. That is what I have said so far as that is concerned.

There is a suggestion also that I would like to make. But before I do that it will be of interest if you gentlemen have the time and permit me to quote certain portions from Justice Stable's charge to the jury in a case where an American novel called "The Philanderers" by Stanley Kauffman was charged as obscene. Now "The Philanderers" in my opinion has not even one umpteenth merit of Lady Chatterley's Lover. It is that publication that came up in England on a charge of obscenity. I would like just to read certain portions from Justice Stable's charge to the jury be-

cause, I think, it is of great importance on a question like this, on a question which, in my opinion, is very legitimately agitating the Members of the Select Committee. You will find the reference in the Criminal Appeal Reports, Volume 38, at page 124, R. V. Martin Secker Warburg Ltd. & others—they are the publishers. Justice Stable directed the jury as follows:

“The charge against two limited liability companies and the individual is a charge of publishing what is called an obscene libel . . .”

The novel was called “The Philanderers” and they all pleaded not guilty.

“ . . . There can be no dispute that the verdict which you will give is a matter of the utmost consequence. It is a matter of very real importance to the defendants and to the individuals who are associated with them. It is of importance too, to authors who from their minds and imagination, create imaginary worlds for our edification, amusement, and sometimes, too, for our escape . . . Your verdict will have a great bearing on where the line is drawn between liberty, freedom to read and think as the spirit moves, on the one hand, and licence, which is an affront to the society of which we are all members, on the other.”

It goes on to say:

“It was suggested that by what you decide today, you are to determine whether books like this will or will not be published in the future. May I venture to say that your task is nothing of the kind? We are not sitting here as judges of taste. We are not here to say whether we like a book of this kind. We are not here to say whether we think it would be a good thing if books like this were never written. You are here trying a criminal charge. In the criminal court you cannot find

a verdict of Guilty against the defendant unless, on the evidence that you have heard, you are fully satisfied that the charge has been proved.”

Then it deals with the affairs and says:

“The test of obscenity today is extracted from a decision of 1863, Hicklin (1868) L. R., 3 Q. B., 360.”

The question was asked:

“What can be more obscene than many pictures publicly exhibited, as the Venus in the Dulwich Gallery?”

And it said:

“When we reach the Middle Ages, we find an entirely different approach. The priesthood was compelled to be celibate and a particular qualitative holiness was attached to the monks and nuns who dedicated themselves to a cloistered and sheltered life. You may think it is lucky that all the people were not quite as holy as that because, if they had been, none of us would have been here today.”

Then it goes on:

“Are we to take our literary standards as being the level of something that is suitable for the decently brought up young female aged fourteen? . . . The answer to that is: Of course not. A mass of literature, great literature, from many angles, is wholly unsuitable for reading by the adolescent, but that does not mean that a publisher is guilty of a criminal offence for making those works available to the public.”

Then he takes up the question of depraving of the mind, and that is very important:

“This is a very crude work, you may think. You will consider whether or not it does seek to present

a fair picture of aspects of contemporary American thought in relation to this problem. You will, no doubt, further consider whether or not it is desirable that on this side of the Atlantic we should close our eyes to a fact because we do not find it altogether palatable. You have heard a good deal about the putting of ideas into young heads. But is it really books that put ideas into young heads, or is it nature? When a boy or a girl reaches that stage in life's journey when he or she is passing from the state of blissful ignorance through that perilous stage which we call "adulthood" and finds himself or herself traversing an unknown country without a map, without a compass, and sometimes I am afraid, in the case of a bad home, without a guide, it is the natural change from childhood to maturity that puts ideas into young heads."

Then he goes on:

"The literature of the world from the earliest times when people first learnt to write—literature, sacred and profane, poetry and prose—represents the sum total of human thought throughout the ages and from all the various civilisations which the human pilgrimage has traversed. Are we going to say in England that our contemporary literature is to be measured by what is suitable for the fourteen-year-old schoolgirl to read? You must consider that aspect of the matter and there is another aspect of the matter which I should like you to consider before you come to your conclusion: I do not suppose there is a decent man or woman in this court who does not wholeheartedly believe that pornographic, filthy books ought to be stamped out and suppressed. They are not literature. They have got no message, no inspiration, no thought. They have got nothing. They are just fifth, and, of course, they ought to be stamped out: but in our desire for a healthy society, if we drive the criminal law too

far, farther than it ought to go, is there not a risk that there will be a revolt, a demand for a change in the law, so that the pendulum will swing too far the other way and allow to creep in things that under the law as it exists today we can exclude and keep out? Remember what I said when I began. You are dealing with a criminal charge. This is not a question of what you think is a desirable book to read."

That is really the whole question. My own feeling is that in so far as our law is concerned, I say with a certain amount of hesitation because we have abolished the jury system everywhere, that I am strongly of the opinion that the accused in a charge of obscene publications should be given the right to claim a trial by jury because of two things. In first place any judge or magistrate, however steeled he may be, is none the less a human being and it may very well be that his feeling that it is not a desirable book may outweigh all other considerations. This danger is a real danger particularly when you deal with subjects of this kind, where there are many persons, for instance, who do things and never speak about it. On the contrary, there are persons who never do but speak about it. All kinds of human examples you can have. But there is the danger that the Judge's idea of undesirability of a particular book may outweigh all other considerations, literary, scientific and various other things and also, since the Supreme Court itself said "obscenity is a matter to be judged from the modes of the people of the country." My suggestion is that there cannot be a better test of that than picking up what I would call a special jury which means educated people. A special jury like that will be able to hear the evidence of the experts, will be able to apply the mind to the evidence of the experts, will be able to apply their own knowledge of society as it exists at the time, the various difficulties and

dangers that the said society has to face and will be able to give a decision which will take into consideration the needs of the society to which they belong. They are drawn from that society and if the trial by jury has any virtue, it has this greatest virtue in such matters because the judge or magistrate however much he may say 'I will keep myself free of all these influences' is likely to be influenced by his own opinion. If the jury says that it is undesirable, it is obscene and it should go, there is nothing to question because they are the best judge. If an expert says, "This is absolutely necessary that I must make the statue showing the sex act' and the jury says: 'It is not necessary to show the sex act; show the human figure which is very good, show the human form and in various poses', then obviously it will be a corrective also to certain traits of aberration in the artists, which we do not have now. The artists and the non-artists are in two compartments. The artist says: 'I live for my own class but you cannot understand.' How far it is possible to do that I do not know but in my humble feeling, in these matters, trial by special jury will be of very great benefit not only in weeding out of pornographic literature but also in getting a healthy attitude towards what is generally described as obscene. I cannot see why Lady Chatterley's Lover should be banned and a number of films which deal with murder and glorification of criminals should be allowed. That is as much corruption for the morals of the youth as Lady Chatterley's Lover does not. That is my impression with respect to that.

So far as the Supreme Court is concerned, I will read one passage where they say:

"If obscenity and art are mixed, art must so preponderate as to throw the obscenity into a shadow of obscenity be so trivial and insignificant that it can have no effect and may be overlooked."

In my respectful submission, this is not the correct test because what is trivial? How is obscenity put into a shadow? These are expressions which make the whole question dependent upon individual approaches of Judges rather than upon any objective approach at all. It is surely subjective and you cannot test them. Suppose a Judge says 'it is not a shadow thrown into', you cannot say anything about it. So this test which they are given, in my submission, does not clear the particular danger of individual opinion deciding the case. Firstly it is required to take one passage from Lady Chatterley's Lover and says: "This is obscene'. You read the novel as a whole including the passages which are objected to as obscene and say what is the total effect of that novel. Is the total effect concentrated on that passage? If it is not, it is not an obscene book but if you say. Take the passages first in isolation, consider whether they are obscene or not and then see whether it is thrown in the shadow or whether it is trivial and insignificant. When the game keeper became the lover of Lady Chatterley it was not a trivial matter. In Lawrence's Book of Social conditions, it was a big thing. The test should be where a book is attacked on the basis that there are passages in it which are obscene, the first question should not be to read some passages which are obscene first and find out if it is obscene. I say, read the book as a whole first and ask yourself what is the effect of the book despite passage objected to as obscene.

SHRI JAISUKHLAL HATHI: Judgments are always individual.

SHRI CHARI: All judgments must be to a certain extent individual: If the test is pushed more into the subjective field it becomes dangerous. If it is pushed into objective field. It may be that one person after reading a book may say that the book is bad but the point I am raising is against a particular development that has taken place in the courts of law where they

have laid down that the proper method is to read out the obscene passage and determine whether they are in isolation obscene and then decide about the book as a whole.

CHAIRMAN: This judgment does not say that.

SHRI CHARI: No, it says. It says:

"To adopt such an attitude towards Art and Literature would make the Courts a Board of Censors. An overall view of the obscene matter in the setting of the whole work would of course be necessary but the obscene matter must be considered by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt those whose minds are open to influences of this sort and into whose hands the book is likely to fall."

It has been said by the courts for so many decades. They take it as a method that has to be adopted by the judicial mind, that is, taking the obscene passage, determine whether it is obscene and whether it is gross and then ask 'Is this grossness put into shadow by the rest of the book?' That in my submission would not be a proper test at all. That is why I say that Diwan Chaman Lall's amendment is a good one because it does not place the test of obscenity first in respect of the passages but it places the test of public good first in the interests of science, literature or art and then, if it is upheld, it means that even if there are one or two obscene passages in the book, if it is woven into the story, that should not affect the question at all. As I pointed out, there are reasons why Lawrence's book was banned. It was absolutely tabooed by the higher society. That is all.

CHAIRMAN: Thank you.

SHRI K. K. SHAH: Mr. Chari, in the revised section 293 (a) which you have given which is justified as being

for public good on the ground that it is in the interests of art and science, will that not mean that if it is in the interests of art and science, it is for public good and that if it is in the interests of art and science, it is presumed to be for public good?

SHRI CHARI: Yes. I will answer your question this way. Suppose you did not put the test of public good, then any art expert can come and say that the modern trend to-day is to show all these figures in this particular way.

SHRI K. K. SHAH: I want to carry out your opinion in this way. I want to translate what you have said into words. Here what worries me is this. Instead of that supposing we were to say in 292 (a)....

SHRI CHARI: The words that I have put there are not my words. I have taken them from the English Act. I will read the words in the English Act so that you will be in a better position to speak about these lines of the English Act.

This is section 4, sub-section (1):

"A person shall not be convicted of an offence against section 2 of this Act, and an order for forfeiture shall not be made under the foregoing section, if it is proved that publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, art or learning, or of other objects of general concern."

That means the same words.

SHRI K. K. SHAH: I have studied that and therefore I am asking. Here my only difficulty is this that the interpretation will ultimately be, as the wording goes, that if it is in the interests of art and science, it is for the public good, and the entire meaning of 'public good' will disappear. As against that, if you kindly look at the amendment, at the proviso sug-

gested by Diwan Chaman Lall, what have you got to say if it is changed like this" * * * book, pamphlet, writing, drawing, painting, representation or figure which is (I have substituted 'which is' for 'meant') and which is *bona fide* meant for purposes of science" * * * and so on (I have substituted 'and which is *bona fide* meant' for 'or for *bona fide*).

SHRI CHARI: I will tell you what my objection to that is. "Which is for public good" is a matter which is to be decided by the court ultimately.

SHRI K. K. SHAH: Now you have suggested . . .

SHRI CHARI: I am only talking of the original form. "Which is for public good" has to be determined by the court, and "which is *bona fide* meant for purposes of science, literature" etc. puts the whole thing into the subjective approach of the writer or the artist. The artist will say, "you may consider it obscene and all, but excuse me, Sir, I did it *bona fide* for the purpose of advancing science, literature, art, etc. Now both these in my respectful submission, are matters which ought to be brought more into the open objective field. For instance, when we say that the court must hold that it is for public good, the mere fact that it is done in the interests of science or literature will not exempt a man from punishment. The court must say that those interests are such that furthering of those interests is public good.

SHRI K. K. SHAH: Therefore, to translate your ideas into words, I propose to substitute 'meant' by 'is' in the third line of the proposed section 293A. "Which is" will take the place of 'meant' there. Therefore, your idea is carried out; from the subjective we come to the objective by saying "which is for public good" in place of "meant for public good". "Meant for public good" will take the subjective test of the artist into consideration, whereas "which is for public good" will take away that subjective test and bring in

the objective test in its place, which the judge will apply. Then I propose to substitute 'and which is *bona fide* meant for purposes of science," etc. in place of "or for *bona fide* purposes of science," etc., because I want to get rid of the feeling . . .

SHRI CHARI: I will tell you what the difficulty will be—there are two things there. To say 'is' in legal terminology—in the wording of a section if you say 'is', it means that the matter is decided, not to be decided. That is why the English Act says, "is justified as being for the public good". Whether it is 'for the public good' or not is to be decided by the court. "As being for the public good" is what you claim; if you succeed in establishing that claim, then the court will say that this matter is for the public good, and exempt it. That is why the choice of the word 'is' or 'meant' is, in my respectful submission, not quite appropriate for the purpose we want to achieve.

CHAIRMAN: "Meant" is what he meant. In fact I thought that it would not serve the purpose if it was put that way.

SHRI CHARI: And so various people in their replies to the questionnaire have pointed out that this fell into the subjective field and has to be judged accordingly but, generally, in the obscene sections, there is no such subjective test at all; it is purely objective.

SHRI K. K. SHAH: We can meet it by saying, "which is proved to be for public good".

SHRI CHARI: Yes.

SHRI K. K. SHAH: Here he has grasped my point. My purpose here is this. As you pointed out, "justified as being for the public good on the ground that it is in the interests of

science literature, art" etc. means that the moment you prove that it is in the interests of science, literature, art, etc., it is presumed that it will be for the public good. I want to get out of this if you can help me there.

SHRI CHARI: In the English Act the wording is, "justified as being for the public good on the ground that it is in the interests of science, literature art" etc.—it means you prove that it is in the interests of art and science and even then whether it is for public good will have to be decided.

SHRI K. K. SHAH: Correct. I don't want that. I want 'the public good' to be pre-eminently judged. Therefore there should be two criteria, namely, that it should be in the interests of the public good and in the interests of art and science.

SHRI CHARI: I have no objection to that.

PANDIT S. S. N. TANKHA: Mr. Chari, I am very grateful to you for the learned exposition of the law which you have placed before the Committee. I am sure we have been much benefited by it. All the same I would just like to put one or two questions to you. The first one is that, as I understood it, our view is that the present law should be changed in some manner or the other. You have suggested that instead of a judge there should be a special jury for the trial of such cases. It is a good suggestion and it will be considered by the Committee. But what I want to know is this: Under the law as it exists today, there are various journals and other publications which go scotfree and which under the present law cannot be prosecuted by the authorities. Therefore I would like to know what your suggestion is in the regard and in what manner can the law be tightened on that point so that such scurrilous journals and other things could be banned.

SHRI CHARI: I think the answer to that, if you will permit me to say so, is . . .

PANDIT S. S. N. TANKHA: One of the journals in my mind is the "Observer" and there is another by the name of "Confidential Adviser" or something like that. And then there are various magazines from Europe and America, which are being received by the book-sellers here, and they are available for public in the market. In some of these they mention only "for males only" or "for females only" or something like that. But they are also objectionable journals. Now the question is: How are we to ban them? Do you or do you not consider it advisable for the Government to prohibit such publications?

SHRI CHARI: May I answer it in this way? I am wholly in agreement with you, if I may say so with respect, that there are several magazines that require to be suppressed. But the question is not essentially a legal question, as seems to be present in your mind. I believe that the policy of the Government has a great deal to do with these matters because apart from the Penal Code. Sections 292 and 293, there are also under the Sea Customs Act, the Post & Telegraph Act and various other Acts, the right to prohibit the transmission or import of literature of this type. Unfortunately it so happens that during the years after we attained freedom and particularly in the last 10 years, there has been no exercise of this power in respect of magazines of the European and American kind that come here and which are allowed free entry and free display. They are available to the young and at fairly cheaper rates than many magazines which have got literary, scientific or artistic merits. This can be remedied provided the Government applies its mind to it and sees that it uses the powers given to it under the Sea Customs Act and the other Acts to ban the entry of such books or at least to see that they are not allowed to come freely into the country.

Whether such powers are to be used and when, is a matter for the Government to consider and decide. This is not purely a legal question because you find none of these things when they come before the court can escape from being found obscene. Being obscene they cannot escape the law. In the case of The Observer, I have had occasion to deal with some cases because two or three persons who were very severely hurt by all kinds of slanderous and vulgar articles in it have consulted me about it. There is no reason why under the Press Objectionable Matter Act or other Acts you cannot take action against such vulgar and libellous attack on individuals and condign punishment meted out. I am one of those who feel that it will not be difficult to change the law at all, if necessary. We must do it because such are blackmailing journals.

SHRI DAHYABHAI V. PATEL: Is it not because our Law of Libel is defective?

SHRI CHARI: No. Our law in that respect is not defective. But the persons who are libelled against are afraid and they feel they may have more dirt thrown on them if they went to court and appeared as a plaintiff or complainant. They feel that very few people read The Observer, may be 3,000 or so. If they file a suit many questions may be put and all kinds of suggestions will be made. It is that fear that prevents most people from coming up in court with a case.

PANDIT S. S. N. TANKHA: I am glad you have referred me to the other Acts which prohibit the entry of this kind of literature freely into this country. But do you think Government would be justified in prohibiting them so long as there is nothing in our Penal Code to condemn them or to ban them?

SHRI CHARI: The Sea Customs Act and all the other Acts do not depend on the Penal Code.

PANDIT S. S. N. TANKHA: True; but what will be the justification for banning them if the Penal law does not prohibit? If we make any changes in the Penal Code we will make corresponding changes in the Post Office Act and such other Acts. But now when the Government takes action under any Act the point will be raised as to whether it is justified or not, since the Penal law does not prohibit journals of that type from coming in. How then will the action be justified under that the Post Office Act or the Sea Customs Act prohibiting them?

SHRI CHARI: The possession of obscene materials is banned and there is nothing wrong in law that prohibits the import of such obscene materials. I will go step by step. The Customs authorities and all these preventive authorities are not bound to let the thing come into the country and allow any person to exhibit it for sale. If it is exhibited for sale, let them seize them and produce them in court for the purpose of testing them. Prohibit these things and let the person go to court and let him take out a writ petition and say that a particular magazine I imported and the Customs authorities have no business to keep it because it is my fundamental right to carry on my trade and right is affected. Then the Government can come and say that this is obscene under section 292 and so they are not allowed to let it come in.

PANDIT S. S. N. TANKHA: I understand that. But what about a paper like The Observer?

SHRI CHARI: I think for papers like The Observer, the Press Objectionable Matters Act must specially contain new provisions.

PANDIT S. S. N. TANKHA: So far as my information goes, the Home-

Ministry has been unable to find a formula by which it can check it.

SHRI CHARI: I do not think the human brain is so poor that a formula cannot be found if you are really anxious to find one. I may also add that in general the legal mind tends to be conservative because we have the Anglo Saxon system of looking to old cases, looking for precedents, what has already been decided and so on. This kind of a conception has to go and new ground can be broken. There is no reason why in our society we should not break new ground and I think this is not difficult at all.

PANDIT S. S. N. TANKHA: With regard to this particular amendment before us you must have seen the various opinions which have come on this Bill. Some of them, as you would have seen, have objected to the use of the words "public good" and they feel that by the use of these words you will be letting in such literature which has so far been prohibited, since they will come in on the ground that they are for the public good. Therefore, those giving the opinions suggest that the words "public good" should not be there. What is your opinion?

SHRI CHARI: My respectful submission is that those gentlemen who have written that either are not keeping their eyes open to see the kind of material that is flooding this country, material that is really vulgar and obscene, or they are unnecessarily panicky and think that any thing can be defended as being for the public good. I do not think pornographic literature can be defended as being for the public good. There may be borderline cases about which there may be two opinions. But that is a different matter. What I am saying is that really vicious things, pornographic material, dirt for dirt's sake, that kind of thing cannot be for public good. How can any man say that it is for the public good?

PANDIT S. S. N. TANKHA: The printer and publisher of The observer also says: "We are publishing this for public good."

SHRI CHARI: He is bound to say that. But what he says does not decide the matter.

PANDIT S. S. N. TANKHA: But if we do not have these words, will it not be better?

SHRI CHARI: It is like this I speak as a person who does not know art. It is true that there are several trends in art and I do not understand them at all. But I know there are certain artists who think that this is a very good development in art. I am unable to understand it. Nonetheless if I make an artist himself a judge of what is best, then I will have no control over him at all. That is why the interest of public good becomes the over-riding consideration. You may say whatever you like, but the public will be really the judge whether it is for its good or not. That is why in my suggestion for trial by special jury I wanted to concentrate on this aspect, that the persons should be drawn from the public and they shall give the ultimate judgment. From time to time norms will change, the mores may change. A particular danger may be far greater in a particular period than at other times. At that particular period the man may be convicted. But after five years the danger may not be so much there and the person may not be convicted. You are afraid that by the use of the words "public good" there will be laxity and more of such literature might come in. I do not think that your fears are justified.

CHAIRMAN: In fact it may be a corrective.

SHRI CHARI: Yes, it may be a corrective and the artist cannot claim that he is the sole arbiter of his painting or work of art and that it is not for the court to decide the matter. I said that this claim has developed because the artist has denied his integral connection with society.

PANDIT S. S. N. TANKHA: Now, please see sec. 293A. There you have the words "or for *bona fide* purposes of science, literature," and so on. It has been suggested that the word "or" should be changed to "and" so that it will read "and for *bona fide* purposes of science, literature," and so on. This change is suggested in order to make it more precise and clear. What is your opinion.

SHRI CHARI: Of course if you want to retain the words as they are I suppose 'and' will be better than 'or'.

PANDIT S. S. N. TANKHA: The third point is whether in your opinion the deletion of the word 'meant' occurring here in the amendment would be desirable.

SHRI CHARI: I think 'meant' has really no place in it because suppose a quack says that he conducted a surgical operation for he meant it for the recovery of the patient. But he is a quack and kills the patient. The word 'meant' is a subjective thing. First of all it is difficult to establish and secondly it is irrelevant. What does it matter if you say that you meant it for the public good if what you have done is really for the public bad?

PANDIT S. S. N. TANKHA: If we retain the word 'meant' the result of that will be that a person can come forward and say that he meant his writing for public good and that will have to be accepted.

SHRI CHARI: I believe what Diwan Chaman Lall had in mind when he used the word 'meant' was not what he thought was good but what is for the public good. 'Meant' means the tendency of a thing being for the public good; it is not the subjective intention of the writer or the artist.

PANDIT S. S. N. TANKHA: So do you agree that this word 'meant' should be substituted by some other word?

SHRI CHARI: Yes.

PANDIT S. S. N. TANKHA: Lastly, I would like to know, supposing the Committee comes to the conclusion that the present law should not be changed but it should be left to remain as it is, then as a lawyer could you suggest any other method whereby we can make the law more stringent so as to make it work better regarding publications, etc. of the kind we have spoken about?

SHRI CHARI: Speaking for myself I do not think anything very serious is going to happen if you do not amend the law because broadly speaking art, literature and all these things are considered in one way or another but when we are considering the matter, when you, gentlemen, are considering this in the Select Committee, you are not primarily concerned only with the particular amendment. You have also to apply your mind to the general total picture and see what best could be done in the circumstances. It may be this amendment; it may be some additional amendment; it may even be a separate Act to be passed by Parliament. All these questions are naturally part of the things which you will be considering. If you ask me, there is no urgency for this except for the fact of the Supreme Court decision in Lady Chatterley's Lover case which is also not quite a correct decision. Perhaps that led Diwan Chaman Lall to saying: well, in England it has been upheld, in America it has been upheld, in various countries it has been upheld as a piece of literature and therefore the fact that there are offending passages in it should not outweigh the thing. So as I said here is nothing serious or urgent which is likely to happen if an amendment is not made but since the matter has been brought

forward it is good that Rajya Sabha and the Lok Sabha consider the matter because after all many of our laws which have been there for quite some time require to be changed and amended according to our conceptions, according to our society, our mores, our approach and things like that.

So far as tightening is concerned, I do not think you can make any impact by providing for a punishment of imprisonment for three months. Three months is nothing. If a man makes Rs. 80,000 through such magazines he is quite willing to go in for three months and come out.

DIWAN CHAMAN LALL: Would you suggest that it should be two years as in the British legislation?

SHRI CHARI: Not necessarily two years every time. But anything up to two years can be given.

PANDIT S. S. N. TANKHA: By tightening what I understand is that we have to tighten it in such a way that all these scurrilous matter may not come before the public and not that we should impose a higher sentence of two to three years' imprisonment. People are bringing out such journals because they know they can make much money by writing all these scurrilous things.

SHRI CHARI: That is why I say, my own impression—pardon my saying so—is that in these matters our preventive sections of the police and the customs do not seem to be as active as they should be. There is no reason why many of these pavement books which are really pornographic in character should not be immediately proscribed. But then the question of policy arises. On the one hand it will be said that these are all magazines which are accepted in America and Britain. But we can say, well we do not need them. Why should we accept whatever American has accepted? We need not. So tight-

ening has to be done anyway but the law as such does not require any tightening. The law of obscenity is quite clear. Many of these pornographic things cannot even be defended. Supposing I were to appear in their defence, I would not know what to say.

CHAIRMAN: Still, The Observer and things like that have been defended and judgments have been given in their favour that there is nothing wrong in them.

DIWAN CHAMAN LALL: The point Mr. Tankha is trying to make is this. Mr. Hathi referred to a particular judgment, a four-line judgement in which the Magistrate thought there was nothing obscene in the article in the Observer. What are we going to do in order to put an end to such things?

SHRI CHARI: Why should not the State take it up or the party take it up in appeal?

CHAIRMAN: That will be done but still the difficulty is there. If we have got something more definite, more concrete, if we define 'obscenity' in the light of the different judgments, probably that might help us more and the original court also.

SHRI CHARI: However well you may define it, the application of the definition will still be an individual matter.

CHAIRMAN: But if there is no definition then the field will be much wider.

SHRI CHARI: We cannot say that there is no definition because if you take the Indian cases, even though the Act itself does not define what is obscene, they have accepted the Hicklin test and there is a whole lot of case law on the subject. So the law is settled on the question of obscenity.

CHAIRMAN: True, but if we can embody what has been settled in the

Act itself I think that will normally speaking help us in bringing to book cases that you and most other colleagues here think should not go scot-free.

SHRI CHARI: I wish you all happiness in that task but it is going to be a difficult one. You can take the obscenity test from English cases and from the English law but my own impression is that it is much easier to allow the courts to change it from time to time as the times change rather than bind them down to any particular definition.

CHAIRMAN: That will have to be very wide.

SHRI CHARI: My own impression is that it is not so much the definition of obscenity which matters but it is really who is deciding obscenity.

CHAIRMAN: And whether the law is being implemented or not.

DIWAN CHAMAN LALL: May I thank you, Mr. Chari, for your very lucid exposition on the subject and for your remarks. I entirely agree with you. All that I want to do is to draw your attention to this. You said yourself that there has been change in the customs and habits of our people. Compared with the changes that have taken place in Europe we, for instance, still worship the Lingam. We have Konarak; we have Khajuraho. We have got many temples, where the proclamation of the sex act has been permitted for centuries. We are a little more liberal than the concept which governs Christianity and yet in the law of obscenity which prevails here it is the Christian doctrine of original sin which has been imported into India. Do you not think that it would be worth while differentiating, as you have said quite rightly, between what we have in India and what they have in Christendom, which has been the governing factor as far as morals are concerned in Great Britain? Now, for instance, as I said, do you find the

worship of the Lingam anywhere else in the world, except here in India? I do not think that you will find it anywhere else and yet it is permitted. It is not only permitted, but it is part and parcel of our life. Now, in those circumstances, considering that we have got Kok-shastra, which is the basis of all scientific writing on the subject of sex, we have got Anangaranga and we have got all sorts of other books, we have got Kalidasa who is really from that point of view very obscene, how are we to view it? If Mr. Hathi were to direct his department to bring a case against the publishers of Kalidasa's works, he would succeed under the law as it stands. He would succeed against any complaint that is levelled against Kalidasa's Meghdoot or Kalidasa's Shakuntala. Now, take the case of the song of songs. It is treated as an obscene thing. The book of Leviticus I was compelled to read when I was in a Convent school. We have a great deal of literature and art, sculpture, etc. which may be considered to be obscene. Therefore, it is necessary to change the law. It is absolutely essential that we must change the law. When you said that you do not think that it would make any difference at all, I remember that fortytwo years ago when I raised this particular matter in the Legislature, Mr. Mohammed Ali Jinnah objected to my statement that a third class magistrate would decide if it was a work of art or not. I had read both in French and in English in those days Rousseau's Confessions and I asked Mr. Jinnah. Have you read Rousseau's Confessions? To my utter surprise he said that he had read Rousseau's Confessions not only once but twice. Nobody ever reads Rousseau's Confessions a second time, having read them once. If my friend, Mr. Hathi, were today to decide, it would be considered as an obscene book. Similarly, Lady Chatterley's Lover was considered to be an obscene book and, therefore, banned. I think that you will agree with me that it is necessary to liberalise

and look at this matter with the eyes of an Indian and not with the eyes of an Englishman ruling India.

SHRI CHARI: I entirely agree with you, but I would like to say a few words in reply. Early Indian society regarded the act of procreation as sacred, just as important as any other fertility act in nature. I do not think that the same position obtains today in Indian society. I do not think the fact that we have had such an ancient approach to the question of the act of procreation, the sexual act, their glorious descriptions by Kalidasa and others would require us to allow more of such things than the other countries allow. That is how we have to look at the thing. There is no need for us to state that in our country we ought to allow a freer discussion of the sex act and things like that than in any other country which has been under Christian influence for a long time, because if we take our own literature, our own Vedic literature, apart from a few of the old giants, I do not think that normally our literature has indulged in obscenity at all. I am not talking of the new trends. Now, if you read the writers of the last fifty years in Marathi, Tamil or Telugu they have written novels and they have not drawn upon our ancient traditions in order to describe the sex act and things like that. This is an indication of the fact that our attitude even so far as the present society is concerned is not the same as the old one. We worship the Lingam because that is part and parcel of the entire religious approach by the various sections of our people. But there is no doubt that, if, apart from temples, you show the genital organs of a man and a woman in that action it would certainly be obscene. That is why I am not against a revision of the law. All that I am saying is that, first of all, it is not quite clear to me in what sense the law of obscenity has to be liberalised. We can only say that the test of obscenity should not be made in a particular way. It should not submerge works of literature and art under the guise that there

is a passage of obscenity in it. A judge or a magistrate is not the law. Looking at the amount of pornographic literature that is really coming into this country, you will have to control it. A walk around Connaught Place would reveal so many things. Some of them are hidden under other books and he asks you whether you are interested in such and such magazine. I do not think the authorities are taking sufficient care to prevent this.

CHAIRMAN: Who is to determine whether it is obscene or not under the Sea Customs Act?

SHRI CHARI: It is not difficult at all. The courts will decide.

SHRI DAHYABHAI V. PATEL: They put a blanket ban on all literature from Taiwan, including a book entitled "How to increase agricultural production". They allow all this pornographic literature to come into India without restriction. It is the attitude of the Government that matters really.

CHAIRMAN: They must be further tightened up.

SHRI CHARI: They must be advised. Why are you allowing all these magazines? Do not allow them to come. Take action against the book-sellers who are ordering these things. If you think that it is pornographic, then do not allow it. Let them go to court and tell them that they have a fundamental right to bring such books into this country.

SHRI DAHYABHAI V. PATEL: Mr. Mani was showing some books which are priced five dollars and they are imported into this country, just now, this afternoon. He has taken them away when he went.

DIWAN CHAMAN LALL: Mr. Chari, in your opinion, this will meet the position that you have explained.

SHRI CHARI: That is what I think. It is for you, gentlemen, to think. I am only placing my humble suggestions before you. I am very grateful to you.

CHAIRMAN: I thank you, Mr. Chari on behalf of the Committee for the very clear exposition that you have given us of the background of the whole question and the legal authori-

ty and we are really grateful and I am sure your statement will be very helpful in coming to our conclusions. I thank you.

SHRI CHARI: I thank you also for giving me this opportunity of placing my views before the Committee.

(The witness then withdrew)

Monday, 6th March, 1967

PRESENT

1. Shri Akbar Ali Khan—*Chairman.*

MEMBERS

2. Shri M. P. Bhargava
3. Pandit S. S. N. Tankha
4. Shri Arjun Arora
5. Shri M. M. Dharia
6. Shri Bhupesh Gupta
7. Shri Mulka Govinda Reddy
8. Shri Dahyabhai V. Patel
9. Shri K. K. Shah
10. Shri Jaisukhlal Hathi
11. Shri D. P. Karmarkar.

REPRESENTATIVES OF THE MINISTRIES

Ministry of Law

Shri S. K. Maitra, Additional Legislative Counsel.

Ministry of Home Affairs

Shri G. S. Kapoor, Under Secretary.

SECRETARIAT

Shri S. S. Bhalerao, Joint Secretary.
 Shri S. P. Ganguly, Deputy Secretary.
 Shri Amar Nandi, Under Secretary.

WITNESSES

1. Shri Asoka Sen, Joint Secretary, Ministry of Home Affairs.
2. Shri K. N. Bamzai, Registrar of Newspapers for India.

(Shri Asoka Sen was called in)

CHAIRMAN: Now we begin and we shall examine Mr. Sen, Joint Secretary Ministry of Home Affairs. I am glad that Mr. Sen is here with us to help us. Mr. Sen, you know the amendments which have been suggested by the mover of the Bill, and you also know that the idea and the objective of this committee is two-fold. One is to liberalise, if necessary, the law as it is today, so that a real piece of art, whether literature or anything, should not come under and be hit by the present provisions of the law. The other thing is that there are many things which are really filthy, which are not at all decent but, as I understand it, the Home Ministry finds it difficult to catch hold of them. So on that aspect also we would like to hear your views as to how to tighten the law, so that we may just catch hold of really obscene and undesirable things, and at the same time see that a real piece of art or literature merely because of certain things appearing there should not be banned or should not be hit by the provisions of the criminal law. You know this is a Parliamentary committee and whatever your evidence is, any Member of Parliament can look into it and if you want that anything said in the evidence should be confidential, you can indicate it to us, and we will consider about it.

Now, Mr. Sen, I would like to know whether the amendment that has been brought by Diwan Chaman Lall is needed and, if so whether in its present shape or with alterations. That would be the first question.

SHRI ASOKA SEN: Yes, Sir. We in the Home Ministry have been dealing with this problem of obscene literature for some years now. Straightway I would like to submit that so far as pornography is concerned, I distinguish it from obscenity. We have had no difficulty with tackling pornography; pornography is the filthy

stuff that is sold on the sly in road corners, and there prosecution is launched under sections 292 and 293 of the Indian Penal Code. Of course under each of these sections the punishment provided is small but the offence in either case is a cognisable one and an officer in charge of a police station or any other police officer that will do for the purpose can catch hold of the man selling pornographic literature and send him to court. So in that regard, if I may draw a distinction between pornography and obscenity, we have had no difficulty. But the main difficulty arises with regard to obscenity, which is not purely pornography and so is often overlooked as being only obscene in parts. Now we have a two-fold difficulty. It is a somewhat strange provision of the law that we have absolutely no legal provision for proscribing anything that we may consider obscene; there is nothing at all; there is no law against such books printed and published in India, whereas against the books imported we have the advantage of the Sea Customs Act, using which we can prevent the entry of such a book although we cannot proscribe it if somehow or other it finds its way into this country. When it comes to notice that an attempt is made for the entry of such a book into this country immediately the Customs people refer it to us and we take the decision and tell them not to allow it to be imported. Now whether any book of that kind can be brought into surreptitiously and then reproduced in India with impunity I am not quite sure what the legal position there is. It is being examined. Now there has been the other difficulty in a case of that kind where we wanted to ensure that at least such books did not enter this country from abroad. But for Indian publications we have no law under which we can proscribe them. Of course if a prosecution is launched and it ends in success then the copies seized are forfeited and the book is proscribed for ever. But a blanket proscription order we cannot pass. Now in the case of an obscene

book also a Sub-Inspector of Police can launch a prosecution if it involved a cognisable offence, but no police officer proceeds against a book if it is not pure filth. Naturally, he would like to be sure that the offender will get a conviction if he is proceeded against. So where he thinks that a case merits the launching of a prosecution he at once refers it to the State Government, and in Delhi generally it is referred to us in the Home Ministry, and we also, before advising the local administration to launch a prosecution, like to get the support of legal advice, and we have been trying to get the legal advice from time to time, and the Law Ministry, on the basis of past judgments and Case Law, have generally found it difficult to agree with us. In some cases they have agreed with us and we have advised the local administration to launch the prosecutions, and a number of prosecutions are pending now. But very often the Law Ministry have quoted from British law and from Indian law, particularly from the judgments in the case of the 'Lady Chatterley's Lover', and we have been advised that the case in question is not likely to succeed in court. So with that advice we have always been reluctant to launch prosecutions where doubts are expressed as to their success.

CHAIRMAN: But have they suggested anything as to how those things which are generally considered to be obscene could be brought under the law?

SHRI SEN: I was coming to that, Sir. When we came across this difficulty and approached the Law Ministry for a solution, what the Law Ministry always pointed out was that obscenity was not something that was defined under the law and that the definition that had been applied over the course of years was from Case Law. Also the views of the judges differed from country to country, and from time to time, on the question of how far it was obscene and how far not in a given case. So as things stand at present in India, we had

found a number of publications in India, which we in the Home Ministry thought should be proceeded against, but they found that they could not be proceeded against, because the cases were not likely to succeed in court. So we in consultation with the Ministry of Information and Broadcasting made a recommendation that we should amend the law somewhat on the lines of the Orissa Amendment which was an improvement on the present law in two respects. One was that the definition of obscenity has been enlarged to include the words 'grossly indecent' and 'scurrilous'. Another was that the punishment has been enhanced. Formerly the State Government could only proscribe books and pamphlets under section 99A of the Criminal Procedure Code if they were seditious literature. It now covers obscene literature also in the sense that a book, if it is obscene, even without launching a prosecution against it, could be proscribed. But of course under the Criminal Procedure Code an order of that kind is justiciable; it can be taken to a court, and so the legal difficulty still remains. We suggested the difficulty to the Law Ministry and they felt that just adding a few words to the present provision in section 292 will not remove our difficulty at all. At present it says 'obscene' and even if you say 'obscene, grossly indecent and scurrilous', even if you add these two, three words, the same difficulty in the court of law will remain. There is no definition which is binding on the judge and so on the basis of the existing law it will be of no consequence. We have taken it up again. I intend going and discussing it with the Law Secretary and see whether anything can be done. This is the position at present.

CHAIRMAN: So nothing practical has been done.

SHRI SEN: No.

CHAIRMAN: No definite suggestion has been given by the Law Ministry.

SHRI SEN: Our suggestion has been that we may follow the Orissa Amendment and take powers to proscribe them.

CHAIRMAN: Have you anything more to say?

SHRI SEN: No, except this, that fortunately this type of books are not written and published in our country, I mean of the type that we get from abroad and which in the Home Ministry we have found and considered to be obscene. Such best-sellers widely read books are not produced and published in the market here, books by authors like Miller or Lawrence. Our eminent authors have not yet taken to the writing of this type of books. Here we have either pure pornography for which we can take action or the other variety. The only exceptions are some newspapers and weekly magazines.

CHAIRMAN: According to us even Lady Chatterley's Lover is to be banned.

SHRI SEN: Yes, and books like Fanny Hill or the Tropic of Cancer. We have prevented their entry into the country. But if such books begin to be published in India then our difficulties would be much more because then the help from the Sea Customs Act will not be available to us. The only publications causing us trouble are the weekly and monthly magazines from Delhi. We have prosecuted a few cases and in some the Law Ministry supported us, but in a large number of cases we find that the legal advice is against our launching a prosecution.

CHAIRMAN: Now Members can ask any questions that they may want to put.

PANDIT S. S. N. TANKHA: Mr. Sen, you referred to the Law Ministry's remarks or advice with regard to this matter. Is it that except for saying that under the present law nothing more can be done, have they made any practical suggestion at any time or no?

SHRI SEN: No, Sir. When we sought their advice they have said on the basis of Case-Law and the existing law a case cannot be sustained.

PANDIT S. S. N. TANKHA: Then is it not pertinent to ask: If nothing more can be done under the present law, then what is the State to do in such cases?

SHRI SEN: We have a reference pending with the Law Commission for a long time. I think the Law Commission will be going into it.

PANDIT S. S. N. TANKHA: You have also stated that since there is no definition of the word "obscene" therefore the difficulty arises as to which particular publication is obscene and which is not. Doubt arises in the mind of everybody. Is it possible to define "obscenity"? Do you think we can have a satisfactory definition of it?

SHRI SEN: Various attempts have been made and in England under the Jenkins Act they have made some sort of a definition. Here we can perhaps follow the line taken by our courts in the case of Lady Chatterley's Lover. As for putting all that in a definition I do not know whether it can be put in legal shape. I mean all that is in the long judgment giving the views of the Judges. Whether it can be put in proper legal shape perhaps the Law Ministry will be able to tell us. But our suggestion is that the scope of the present sections may be extended so that there is more scope for bringing in these publications also. But that has not been found acceptable.

PANDIT S. S. N. TANKHA: Would it be possible to get from the Law Ministry some definition so that this Committee may consider it and adopt it with such modifications as may be considered necessary.

SHRI SEN: The Law Ministry has got some definition.

SHRI BHUPESH GUPTA: What does your Ministry think of the proposed amendments in the light of their experience?

SHRI SEN: We are keen to make some amendments and we had made a reference to the Law Ministry.

CHAIRMAN: No, his question is: "What is your own view"?

SHRI SEN: Our tentative view is—not that we have taken any view, we have left it to be obtained after circulation—that we have not a single case where a piece of art or literature or scientific publication had been affected by our existing law. The courts generally are fully conscious of the need for protecting publications of this nature. Actually we have had the other difficulty, the opposite difficulty. But this difficulty we have not experienced at all at any time.

SHRI K. K. SHAH: You say, Mr. Sen, that the word "obscene" has not been defined. But Justice Copper's judgment on the Hicklin case makes the position quite clear. Mr. Setalvad also confirms this view. There should be the tendency to corrupt or deprave minds open to such influence, minds of persons into whose hands the publication may fall. So it is very specific. I do not know how it is said there is no definition of obscenity. Firstly, the mind should be open to such influence. It is not as if everybody should be affected. Secondly the reference is to hands into which the publication is likely to fall, not that it falls into everybody's hands. Thirdly the effect or the tendency should be to deprave or corrupt the mind. When this is the opinion of the highest court in this country the law is settled. So either the Law Ministry should be able to tell you or you should be able to tell them. What are the difficulties? I asked this question to Mr. Setalvad and he was very specific on this point and as a lawyer of a little experience I too feel the

same way. There should be no difficulty.

SHRI SEN: On the basis of this classical judgment the Law Ministry advises whether a particular publication is covered or not. In a number of cases they have told us, "Go ahead with the prosecution." Even with this definition it is a matter of subjective determination by the court. Also it is difficult to produce evidence. Without including this in the law the advice of the Law Ministry has always been guided by this opinion, whether it is likely to fall into such hands, whether it is likely to deprave and corrupt the minds open to such effects etc. etc. I am not sure whether by including it in a definition the position will be any different from what it is now.

CHAIRMAN: As Mr. Shah pointed out there are two factors. One is whether the publication is likely to corrupt the mind in the condition of our society as it is. Can you suggest an improvement?

SHRI SEN: We can certainly make a suggestion.

SHRI K. K. SHAH: I want to understand the position. Here is definition of 'obscene' by Justice Copper. We have to consider the conditions prevailing in the country, the type of people and the type of education available to our young people and the effect that such publication is likely to have. All these three aspects have been covered by this judgment. It has stipulated or defined what is obscene.

SHRI SEN: That is what is being followed now.

SHRI K. K. SHAH: Then kindly tell me where is the difficulty?

SHRI SEN: One of two courses is open to us. One is to have the court interpret the thing in all doubtful cases. If the thing is felt to be obscene, let it go to court and let the court apply the test. The other is not to go ahead where we ourselves

feel it may lead to an acquittal. The matter is still under examination in the Law Ministry. We can still think over it.

SHRI K. K. SHAH: The words in the judgment are "tendency to deprave". What is the difficulty of Law Ministry?

SHRI SEN: In some cases they felt there was no tendency to deprave.

SHRI K. K. SHAH: Did they say so?

SHRI SEN: The difficulty is from the point of view of the prosecution. What sort of evidence is to be produced? What kind of witnesses are to be produced?

SHRI K. K. SHAH: As for tendency to deprave, really speaking, there is no evidence necessary. It is only ocular inspection by the Court or a reading by the Court and the effect that such ocular inspection or reading produces, the effect produced on minds that are open to such influences.

SHRI SEN: Then again we come to a subjective determination by the Court.

SHRI K. K. SHAH: In ninety-nine cases out of a hundred your judgment may be acceptable to the Court, in one case it may not be.

Now, our present amendment may create more difficulties than exist at present. In the new amendment you find the word "intended". If it is understood as meaning "intended by the author" then there is an end of it. The author simply steps into the witness box and says, "That is not my intention".

SHRI SEN: As I said a little earlier, our view has been that we really do not need this type of amendment because the protection that is sought

to be given has already been given by the courts of law.

SHRI K. K. SHAH: We wanted the Home Ministry to tell us what will be the effect of this intended amendment. As you know, there are two things, in it, intended for art, science and so on and *bona fide* meant for such and such things. That again also will create difficulties.

SHRI SEN: When this matter is already before the Select Committee I really do not know whether we can have a view at this time.

SHRI K. K. SHAH: Supposing we make some recommendation and then you find some difficulty and find that the wording has not been good then we will be in difficulty.

SHRI SEN: Yes; the difficulty is there. But we left it to the Select Committee to come to some conclusion.

SHRI K. K. SHAH: So you have nothing to say? Supposing instead of 'intended' we use some other expression . . .

SHRI SEN: We have something to say. We have our difficulty but our difficulty has always been the reverse of this. We were not thinking of liberalisation but we were thinking of making the law more stringent.

SHRI K. K. SHAH: So you say that this amendment is not necessary?

SHRI SEN: That is my personal view.

SHRI K. K. SHAH: After taking the evidence, supposing for the sake of argument the Committee comes to the conclusion that an amendment is necessary, then this amendment which is before the Committee must be examined by you. That is an eventuality which you have to meet and if you do not examine this we neither get your assistance nor your views. Without your views we may come to some conclusion which may not be palatable to you or which may not be workable

from your point of view. So will you please examine this and let us have your views?

SHRI SEN: Yes, yes.

SHRI K. K. SHAH: Thank you.

SHRI M. M. DHARIA: Mr. Shah has tried to get clarified several points that were in my mind. The point is, as has been said here, there are various States, various High Courts and there will be various rulings and various interpretations. Even if we look at the amendment we find it says: "Provided that in the event of any dispute arising as to the nature of the publication, the opinion of experts on the subject may be admitted as evidence." Now have you ever tried to define who should be treated as an expert to interpret whether a particular thing is obscene or not.

SHRI SEN: No; except indirectly. Though not in the Home Ministry I may mention that when the Customs prevent the entry of certain books which are considered obscene they have a system of consulting a Committee. That is really an executive decision, that is not a judicial decision. They consult a Committee to decide whether a book is obscene or not and there the experts are generally being taken as processors of literature or professors of history or people high up in the academic world. That is all right for a decision of that type that is taken by the Customs authorities. But in a court of law it will be difficult. If an expert committee is to be consulted, I am not quite sure what the intention is and when it is to be consulted. If it is to be consulted by the prosecuting authority before sending up the case then I envisage a certain amount of difficulty in this sense; if the expert committee says that a particular thing is a fit case for prosecution and if we start prosecution there may be no difficulty—but the Administration of the Government should have the option of disagreeing with the advice of the expert committee and in a case

where the expert committee feels that a prosecution should not be launched if the Government were to decide to launch a prosecution then possibly there will be complications in the court and the findings of the expert committee will be quoted by the defence. These are the practical difficulties.

SHRI M. M. DHARIA: The point is, if you say that this amendment is not going to satisfy the purpose we all have in view then is it possible to have some other amendment by which we can fulfil the objects that we intend to have?

SHRI SEN: I would at once say that if we could make the law more specific to enable us to deal with obscene literature then there would be no objection in also making a specific exception to cover things of artistic value. As it is we find it impossible more or less to take action against obscene literature and we think that the time is not really appropriate for making this relaxation. That would be our view.

SHRI M. M. DHARIA: But have you ever thought of finding some concrete solution which would be better and what are your suggestions in that regard? Now this amendment is before you. I can understand your feeling that this amendment may not be of any use to you but if this amendment is not going to be of any use in what way should the law of obscenity be amended?

SHRI SEN: Amended for what purpose if I may ask?

SHRI M. M. DHARIA: For prohibiting obscene literature and other obscene things that are coming up very fast in the country, especially when we are not in a position to deal with these things that are coming up.

SHRI SEN: From that point of view, as I said, we have made some recommendations which have however been considered not feasible by the Law Ministry. They are the experts and they say, 'well, we have seen

your recommendations but they will not serve the purpose.' So that way we did make concrete recommendations.

SHRI M. M. DHARIA: Is it your contention that the Ministry to be consulted by this Committee is the Law Ministry and not the Home Ministry?

SHRI SEN: The Law Ministry is the advisory Ministry. We put up certain proposals and they feel that they will not be feasible. Naturally we will take it up again.

SHRI M. M. DHARIA: Is it possible for you to consult the Law Ministry and then come before the Select Committee with some concrete proposals in place of this amendment?

SHRI SEN: Yes, that is possible.

CHAIRMAN: In fact last time we did say that after mutual consultations between them they should submit their proposals. But as the evidence is not complete they are waiting for that to be finished.

SHRI M. M. DHARIA: I would like to bring to your notice one more point. There are certain literary bodies like the Marathi Sahitya Parishad, Gujarati Sahitya Mandal and so on. Is it possible for the Government to consult these bodies also in this respect?

CHAIRMAN: We can ask them, it will be much better. We can ask them to come here.

SHRI M. M. DHARIA: What I feel is, these Sahitya Academies and Sahitya Mandals can advise which book is an obscene book and what will be of great help for the Government.

SHRI M. P. BHARGAVA: Mr. Sen could you tell us when this question was first referred to the Law Commission and what was the exact difficulty which you felt for which you referred it to the Law Commission?

SHRI SEN: I have not got the exact . . .

SHRI M. P. BHARGAVA: I just want a rough idea—whether it was three years back or a year back.

SHRI SEN: Certainly more than three years back.

SHRI M. P. BHARGAVA: Will you please tell us what steps have been taken to study the law on the subject in other lands to meet the difficulty which is being experienced by you? May I know whether you in the Home Ministry or anybody in the Law Ministry has made a study of the problem which has been created by your being unable to take action against that kind of literature which you think is obscene?

SHRI SEN: I should think that the examination would legitimately be our duty and the Law Ministry will come in later in an advisory role. We made an examination of it. A sub-committee was set up. There were three officers, one from the Home Ministry, another from the Ministry of Information and Broadcasting and the third one from the Law Ministry. Of course, the officer of the Law Ministry at that stage acted in his individual capacity and not as an adviser. As I submitted earlier, we made certain proposals for strengthening the law. Those proposals have not been acceptable to the Law Ministry. Not that they have any reason to disagree with our views, but they feel that the proposal we made would not meet our purpose and the difficulties would remain. It would just mean adding a few words to the law. The matter is still under the consideration of the Law Ministry. If they can provide us with an alternative amendment, which will meet our purpose, then we shall consider it.

SHRI M. P. BHARGAVA: Now, when was this committee appointed and when was the report received?

SHRI SEN: It will take me a little time to find out.

SHRI M. P. BHARGAVA: If you do not have the dates now, I would like to have the dates chronologically given to us, i.e., the day the difficulty was experienced, the day the committee was appointed and the day you made the recommendation to the Law Ministry. What was the action taken by the Law Ministry? After their reply, what are you doing and what other proposals are there to meet the problem which is there before you?

SHRI SEN: We will give you the dates.

SHRI M. P. BHARGAVA: Do you by any chance have any idea as to what the Law Commission are doing over it?

SHRI SEN: No.

SHRI M. P. BHARGAVA: After making the reference, you have not asked them as to what they are doing.

SHRI SEN: We have reminded them.

SHRI M. P. BHARGAVA: They have not indicated what they intend to do. Can they take an indefinite period of time over it? Is there no way to expedite it?

SHRI SEN: We do not directly deal with the Law Commission. There again we have to deal with the Law Ministry.

SHRI M. P. BHARGAVA: No, the problem is yours, but a solution is not being given by the Law Ministry.

SHRI SEN: I will not put it as categorically as that. There has been a large number of cases which have been sent up to courts. There were some cases in Delhi and there was a large number of cases in West Bengal.

We have been able to secure conviction in those cases even without the advice of the Law Ministry.

SHRI M. P. BHARGAVA: In what types of cases conviction was secured? would you give us some idea of it and under what law?

SHRI SEN: In West Bengal they launched a number of prosecutions. Fourteen cases were registered and . . .

CHAIRMAN: Under which section?

SHRI SEN: Under section No. 292. Thirteen cases ended in conviction and in one case he was acquitted. This is the position.

SHRI M. P. BHARGAVA: With the experience of West Bengal convictions, has any note been received or has any note been sought from the West Bengal Government about the procedure followed in their cases, viz., what were the charges, how were the convictions got and all that?

SHRI SEN: I have to check up on that. This relates to August, 1964. I will go through the papers and find out.

SHRI M. P. BHARGAVA: My worry is this. I would like to be assured that all possible steps are being taken to meet the situation, because we find that more and more obscene literature is coming up. When questions are put in Parliament, we are told that the law is defective and the Government is unable to take any action. Now, if that is the state of things, we must do something expeditiously to meet the situation. So, what all is being done on that account? That is my worry.

SHRI SEN: Well, as I said, we are trying to change the law. As far as the increase in obscene literature is concerned, I am not sure of that except for this journal that comes out in Delhi and possibly in Punjab also it has made its appearance. I

am for the moment forgetting the pornographic aspect of it. I do not know whether there has been practically any increase. It has come to a head only in respect of one type of publication, a certain type of journal.

SHRI M. P. BHARGAVA: So, is the Committee to understand that except for the "Indian Observer" and the "Confidential Adviser", there is no problem for you?

SHRI SEN: No. There are other problems, but I am not sure whether there has been any tremendous increase in the problem. The increase has been caused mainly by these publications.

SHRI M. P. BHARGAVA: As far as I understand, in Calcutta, Madras and Bombay every type of obscene literature is freely available. I do not know whether you have come across it or not. There are several types of things. There are monthly journals, then there are detective stories and the most common thing is *ad hoc* publication. Whenever they get material, they come out and then they stop it.

SHRI SEN: There are certain defamatory things which appear in some papers which verge on vulgarity, but I am not aware of anything else.

SHRI M. P. BHARGAVA: Have you addressed any communication to the States on this problem?

SHRI SEN: Yes, on a number of occasions.

SHRI M. P. BHARGAVA: Do the replies received show that the problem is not of such a magnitude?

SHRI SEN: The replies show that there is the problem, but they have not said that it has increased very much. The replies show that they have tried to take as much action as is possible under the existing law. They have the same difficulties as we have.

SHRI M. P. BHARGAVA: Now, as far as foreign literature is concerned, you said that you can prevent it under the Sea Customs Act and then you cited an example how some literature came in.

SHRI SEN: That was not obscene literature.

SHRI M. P. BHARGAVA: Then, there is another question. Suppose a copy of some sort of obscene literature printed abroad comes here and an Indian printer and publisher publishes it here. How can we stop that?

SHRI SEN: I would not be very definite about it. Under the laws of the Customs Department we will not be able to stop it. That is my tentative view.

SHRI M. P. BHARGAVA: So, foreign literature you cannot stop. In respect of Indian literature you do not have enough powers. That is the position.

SHRI SEN: The saving grace is this. The types of books that we have prevented coming in are not the types of books which anybody would try to republish here. They are well-known publications with copyright and nobody would dream of publishing them here.

SHRI M. P. BHARGAVA: Under the Sea Customs Act you can apply a certain check. Suppose I am coming from Europe or England and I bring a book with me and pass it on to a publisher saying that he can go ahead with it. You cannot prevent that.

SHRI SEN: If he does not infringe the copyright he can do it.

SHRI M. P. BHARGAVA: Copyright is a different thing. As far as this is concerned you cannot stop it.

SHRI SEN: That is my view. I am not quite sure about the Customs law. We are going into that.

SHRI M. P. BHARGAVA: I am not sure about the Sea Customs Act, whether you can prevent its coming before it actually lands.

SHRI SEN: There is the possibility of some leakage certainly; they do open parcels.

SHRI M. P. BHARGAVA: But normally the thing will come to your notice when the parcel has been received, taken possession of; and it is being sold; then only you will know that some sort of literature has come; then you will find yourself in the same helpless condition as in other cases.

SHRI SEN: It is quite possible but in a large number of cases we have found that the Customs authorities had been able to intercept the parcels before delivery.

SHRI M. P. BHARGAVA: That is only if they get some prior information that some such literature is coming. but in the normal course what the consignment contains will not be known.

SHRI SEN: I think it will be known. They have a manifest.

SHRI M. P. BHARGAVA: Manifest will only say books to this amount. It will not say this kind of books. How do you know whether any obscene literature is coming or any real good stuff is coming? Only certain categories are indicated in the manifest.

SHRI SEN: It is extraordinary that in such a large number of cases they have been able to prevent and make reference to us about political and obscene literature; in a large number of cases they have consulted our own Committees about delivery to the consignee or withholding.

SHRI M. P. BHARGAVA: That will be another problem worth study-

ing because in the normal courses they cannot. Manifest does not indicate.

SHRI SEN: We will check up on that matter.

SHRI DAHYABHAI V. PATEL: I understand that the Customs have got methods of finding out what is coming. Particularly in the matter of political literature it is well known that all literature from Taiwan was banned. There was nothing against this country. There was a political ban when there was nothing against this country, but somebody in the Finance Ministry issued a ban. Is it not possible to do something? Why not a little more vigilance be exercised by the Sea Customs authorities instead of diverting their energy on preventing something which is useful? Literature on production of rice has been prevented.

SHRI SEN: As far as foreign obscene publications are concerned we have been able to be a little more effective. We have been doing what you are saying and we have been to some extent fairly effective.

SHRI DAHYABHAI V. PATEL: If you feel you are effective, then it means that the amount of literature that is tried to be smuggled is tremendous. We still see large quantities of that along the footpaths of Delhi. I will congratulate you on what you are doing but the problem is so large that what you are doing is insignificant.

SHRI BHUPESH GUPTA: We do not know exactly what is being done.

SHRI SEN: This is what is done. If the Customs people are sure that the book is obscene and objectionable, they prevent its entry. If they are not sure, they make a reference to the right quarter. Then we advise them. I had submitted that we were more effective in this matter than

-with publications in India. We have really very little powers to do anything. With regard to foreign publications if we received notice, we would do something.

SHRI BHUPESH GUPTA: Some kind of declaration should be there in the case that it does not contain such literature. But this kind of thing has flooded Madras, Bombay, Calcutta and Delhi. There is no doubt some activity on the part of the Home Ministry, not that your Ministry is not active in other fields; but how to counteract this? If it is left to the Home Ministry, nothing much happens. At the State level nothing happens. Then we should seek it somewhere else. We know in the diplomatic bags books can be easily brought in. But so many people go outside and they can bring them in. You are unable to take action. Suppose I violate the copyright; the Government of India cannot take action. Therefore, as matters stand we are most helpless; and whatever effectiveness you may claim it is not very effective.

SHRI SEN: If I may limit myself to your question, books like the Fanny Hill we do not allow to come in. Although we may not be able to launch any prosecution for breach of the copyright I do not think anybody has thought of it. There is certainly a good deal of this trash

CHAIRMAN: It is coming through undesirable means, not openly.

SHRI SEN: Possibly we have to look into the matter as to how these people scrutinise.

SHRI BHUPESH GUPTA: Somehow lots of foreign literature typically obscene which fall within our description or definition are sold in Delhi. Am I to understand that the Home Ministry is helpless in this matter?

SHRI SEN: If it falls within our definition, we will certainly launch prosecution.

SHRI BHUPESH GUPTA: There are two things. Either these literature which are displayed and sold do not come under your definition and hence are not actionable or alternatively somebody is conniving at it.

SHRI SEN: I would not know of anyone conniving in a matter like this. A lot of publications nowadays, from the cover, on the face of it, may appear to contain obscene matters. They say it is high-pressure salesmanship and if you have that it sells better. But the position is like this. If it is really filthy, the sub-inspector himself takes action. If it is not that type, if it has got all the get-up of a respectable publication and it is suggestive and not direct, then a reference is made to the State Government or to us. If it is legally advised that it is actionable, then action is taken. But in a vast majority of cases we have been finding that action is not possible.

SHRI BHUPESH GUPTA: We have a way of doing things in our country. Cover is always good whether in politics or literature. You said that action cannot be taken subject to consideration by legal authorities.

SHRI SEN: If it is cognisable, action can be taken. Technically it is discretion of the officer in the charge of the police station whether a case could be launched or not; but no police officer is going to launch a prosecution without getting legal advice.

SHRI BHUPESH GUPTA: Between the discovery of the thing on the pavement and the availability of the legal advice things are sold.

SHRI SEN: It is quite possible.

SHRI DAHYABHAI V. PATEL: Sir, I have not finished. I would like to ask whether in the opinion of the Home Ministry, the coming in of so

much of pornographic literature, whether smuggled or otherwise has not had any effect over the increase in production of similar literature in the country and, if so, has not the Ministry thought of what to do about it?

The other question that I would like to ask is: Has the Ministry any knowledge of printing presses, particularly in UP, that copy publications, the exact paper, the type, the page numbers, and print cheaper editions of text-books, expensive text-books like medical text-books, and scientific text-books? And are those presses busy with this work also? Has not a survey or an enquiry been made into this matter?

SHRI SEN: I would not hazard a reply as to what has led to an increase in this type of literature. But this increase is visible not only in India but all over the world. It is difficult to say whether it has led to a fall in the moral standards of the people of this country; that is for the sociologists to say. There are divergent, different views. If you look for filth, you could find it; if you do not look for it, you do not find it. If you forgive me. I may quote Havelock Ellis—a school teacher had lewd ideas, lewd homosexual thoughts, when he saw young boys in short pants. Whether to punish or take action against that teacher is one angle; whether it is a correct thing to ban young boys wearing short pants is another angle. That is one way of looking at things. The other is a scientific and advanced way of looking at things. But my personal view would be that we have not reached that stage of sophistication.

SHRI BHUPESH GUPTA: We are not dealing with this particular problem, we are dealing with a particular amendment, what would be effective in preventing this.

SHRI SEN: I have said that we have not reached that stage of sophistication. And we have to look to the problem in the circumstances of the

society as it is, and we have been trying to do our best.

SHRI DAHYABHAI V. PATEL: Have you made any survey about the other thing I mentioned, about those printing presses?

SHRI SEN: No.

SHRI DAHYABHAI V. PATEL: You have had no complaints even from the publishers of text-books that their copyright is being infringed?

SHRI SEN: They have not come to us.

SHRI BHUPESH GUPTA: Cannot we have a simple law that foreign imported books of such a category can be proscribed in this country?

CHAIRMAN: It should be obscene or something else?

SHRI BHUPESH GUPTA: Obscene.

CHAIRMAN: The whole question is what is obscene and what is not.

SHRI BHUPESH GUPTA: He is quite correct there. We do not find eminent men producing such literature here. Anyhow, we have not got that thing here. But then things are borrowed from foreign literature and adapted by some writers. Now, the Sea Customs Act is the only weapon that we have got in our hands. But we cannot proscribe them when they come in, and we have difficulties in dealing with them. Now, as has been pointed out, the Sea Customs laws are not very effective or adequate. Anyhow, they can be circumvented. Then we will have a whole series of subjective reactions to them. Whether a sub-inspector has a subjective or an objective reaction is not known. We do not know it. We do not know how to prevent this kind of thing. That is the main thing. This question you will reconsider whether we cannot have a simple law so that a certain literature should be proscribed especially when it comes from abroad, knowing fully well that the main source is the foreign source.

SHRI SEN: Yes, that can be done, we can have a separate law with reasonable restrictions. But whether we would be able to give a definition and give it a shape which can be handled easily by the administrators, I am not very sure on that score.

SHRI BHUPESH GUPTA: I am not suggesting that you should give a fool-proof definition. That is perhaps very difficult especially from a legal angle. From a social angle one can give it. We are having foreign books of that description—I am using the word 'description'. Internally, we are not faced with that problem; we can tackle them, there are various Acts also. But as far as foreign things are concerned, is it possible to have some kind of a broad legislation which enables one to take action immediately? It is for you to consider; it is not for me to suggest the exact nature of the law. Then perhaps, much of the problem might have been tackled. It might not be a legislation of the kind of amendment proposed.

CHAIRMAN: You will have to think over it?

SHRI SEN: Whether it falls within the fundamental rights, whether it can be passed or not, I do not know.

SHRI BHUPESH GUPTA: I can deal with it. That it is my fundamental right to read obscene literature you cannot say. Nobody will say that I have a fundamental right to read pornographic literature. You can just tackle a particular type of book coming in. Nobody will say that he is going to the Supreme Court because you are not allowing me to go through it. The very entry of it is illegal. There is no fundamental right in that as far as we understand. It is worthwhile considering.

SHRI SEN: Yes, Sir.

CHAIRMAN: One thing I would suggest. In view of the trend

of the questions of the hon. Members and their anxiety to expedite the matter, I hope your Ministry and the Law Ministry will sit down and try to come to some conclusion early. I know it is a difficult task. But we have to come to some decision and see what best we can do to improve the law as far as possible.

SHRI SEN: Certainly.

CHAIRMAN: I thank you on behalf of the Committee for all the help that you have given to this Committee.

(The witness then withdrew)

(Shri K. M. Bamzai was then called in)

CHAIRMAN: Mr. Bamzai, we are glad you are with us. As you know, it is a Parliamentary Committee appointed to look into the question of the amendment to the Criminal law. I am sure you have seen the amendment that has been proposed by our colleague, Diwan Chaman Lall. We want your opinion on that amendment.

We are thinking to liberalise as well as to tighten up the law, liberalise in the sense that as the law stands, it should not hit any piece of real literature or art or anything of that kind. At the same time there is a lot of trash, obscene and other matter, that is circulated. We want to see how we can tighten the law to control its circulation because it has been reported to us that the present law is not adequate enough to meet such a contingency. Therefore, on these two scores we would like to be enlightened by a person of your experience as Registrar of Newspapers. Now I would like to know what do you think of the amendment that is before us.

SHRI K. N. BAMZAI: Sir, I happen to deal with this question in two capacities. I am Registrar of Newspapers as well as Chief Adviser in the Ministry. To every newspaper there is the question of declaration. Since newsprint is a rationed commodity every newspaper has to come to us. Now there are quite a number of people who feel offended. They feel that on the one hand Government wants to put a certain check on newspapers and on the other it feeds them. But we cannot stop them. We have to feed both papers of bad and good character. Under the Act we cannot take action. That is a problem for us.

Before a newspaper comes out it has to go before the Magistrate for title. Then the Magistrate refers to us. Before independence the Magistrate used to exercise some sort of discretion before giving permission to the title. He used to have political as well as various other considerations.

CHAIRMAN: Mostly it was political.

SHRI BAMZAI: Now it is a sheer formality. He goes before the Magistrate for necessary permission to the use of a title. The Magistrate refers to us. Some of the titles are so offensive that they cannot escape attention, for example, Sex, Psychology and Romance and it gives pictures of naked girls. I have no authority to stop it, no sanction if the title is available. They give pictures of such beautiful girls, naked girls. All sorts of Sanskrit title come to us but I am not authorised to stop them. Informally I do consult my Secretary and my Minister.

CHAIRMAN: Did you come to any conclusion?

SHRI BAMZAI: Actually the Government should move in this behalf. At the Magistrate's level something should be done. When a party goes before him with a title, he should not just pass it on to the Press Regist-

rar. Although the title looks harmless it contains nothing but the same matter.

CHAIRMAN: Just like the Indian Observer and Confidential Adviser.

SHRI BAMZAI: Yes, Sir. Then there is another aspect of it. Apart from what comes under obscene, there are some other titles which require the attention of this Committee. For example, there is a gentleman who has been producing a journal under the name C.P.W.D. Gazette. Now for all practical purposes it appears that it is a Government publication. Now we wrote to the Magistrate saying that this is the complaint from the Ministry of Industry. This gentleman has been going about saying that it is a Government sponsored journal and it has the backing of the Central P.W.D. So we had suggested informally "so many titles are available, why don't you take up some other title," because as such we can't stop it. In the same manner, there is a journal by the name "Defence Equipment and Supplies". Now it deals with the various aspects of weapons and armaments. And when I saw it in the routine way, I thought it might be a Defence Ministry journal. But I found that it was again a private journal, although it used a lot of restraint in using the information available to it. So this is another aspect of the matter—whether in such a situation, where it apparently looks like the name of a Government journal, it should be allowed to be utilised as a name by the private parties. . . .

CHAIRMAN: Here we are concerned with "obscene" literature.

SHRI BAMZAI: Yes, that is one aspect. But regarding the amendment, I personally feel that only a tightening up of the present machinery is needed. I perhaps do not agree with Dewan Saheb. There is already available a lot of scope under the present Act because the word 'obscene' has yet to be defined. It

can be relative to various situations. For instance, the "Indian Observer" might look from our point of view, according to our social characteristics, very obscene. But all the same, we are importing so much of literature—which is also available at the same store sold by the same book agent—from a country where the social system is such and where the mental development has gone to such an extent, that it does not look obscene, and the Government does not contemplate, has not contemplated, any action against such a journal.

CHAIRMAN: But is the law adequate enough to take cognizance of such literature?

SHRI BAMZAI: I personally feel the present law is adequate, but it would need a severer punishment . . .

SHRI ARJUN ARORA: . . . and a better definition.

SHRI BAMZAI: Yes. But what has happened is that even in foreign countries, they have not been able to define that precisely to be able to pinpoint a thing straightway. Again it is a question of discretion left to the judiciary.

CHAIRMAN: But it might be made more definite than what we have at present?

SHRI BAMZAI: Yes, Sir, it could be. But the term "obscene" itself is so comprehensive, perhaps if it is left vague, it is also an advantage.

CHAIRMAN: But it has been the opinion of certain departments that as it is many things which are normally considered obscene, cannot be covered by the present position. Would you suggest anything specific?

SHRI BAMZAI: I have not looked at it from that aspect. I have two suggestions. I would submit that the punishment should be severer. And I feel that such literature, as suggested by Dewan Saheb, in the present

circumstances does not come under the present provision.

CHAIRMAN: There is no necessity to liberalise it?

SHRI BAMZAI: In the context of things, I am personally of the opinion that there is no need for liberalising because wherever things are of such a nature as mentioned by Dewan Saheb, there is no restriction on them, and the present law does not in any manner impinge on the production of such things.

CHAIRMAN: But some have been proscribed, as for example "Lady Chatterley's Lover."

SHRI BAMZAI: Even about that, opinion is divided.

SHRI ARJUN ARORA: The Privy Council has held that it is not obscene, but our Supreme Court has said that it is obscene.

SHRI BAMZAI: When the case came to the Bombay High Court, there was divided opinion.

PANDIT S. S. N. TANKHA: You are of the view that the present law is adequate for the purpose. But do you consider that these papers, the Delhi papers that have been mentioned just now namely—"Observer" and others—are capable of being prosecuted under the present law? Because so far we have been told that the Home Ministry finds it impossible to prosecute them even though the matter which they contain is highly objectionable.

SHRI BAMZAI: Yes, that aspect is there; but in my opinion, the present law is adequate. But if the element of punishment is increased, perhaps that would work as a deterrent.

PANDIT S. S. N. TANKHA: The difficulty with the Home Ministry is that they can't prosecute. Once a journal is prosecuted, then only the question of punishment will arise.

SHRI BAMZAI: Broadly from a legal point of view, this is the position. But I have not looked at it from this position. If the Home Ministry's view is that the present provision is not enough to prosecute a person who is indulging in such a thing, then my opinion will not go against it. I myself have referred some cases to the Law Ministry. But I have not so far got the advice of the Law Ministry.

PANDIT S. S. N. TANKHA: Therefore, we should take it that since you consider the present law to be adequate, you are of the opinion that no change is needed in it. But if it is a fact as the Home Ministry says that the law is not sufficient, for awarding punishments, then you agree that it should be suitably amended?

SHRI BAMZAI: Yes, of course, if they have consulted Law Ministry in the matter.

PANDIT S. S. N. TANKHA: If the law is amended as desired by Dewan Saheb, would it improve the position or place more difficulties in the prosecution of the objectionable publications?

SHRI BAMZAI: I personally feel that if the scope of what is provided under the present law is allowed to be extended, then much more could be done.

PANDIT S. S. N. TANKHA: Then it would be helpful if an attempt is made to describe what "obscenity" means.

SHRI BAMZAI: As far as I know I can only base my opinion on what I have read—even in U.K. or in U.S.A., wherever an attempt has been made to explain it. I think they again come back to the same thing that finally it cannot be explained.

PANDIT S. S. N. TANKHA: Are there any difficulties which the newspapers experience because of want of proper definition about obscenity?

SHRI BAMZAI: My experience is that we have more than 10,000 newspapers and it is a very small fraction of the whole newspaper community which is infringing. We have a library of all the newspapers. It is a very small number that infringe. As such it does not concern newspapers in general.

SHRI ARJUN ARORA: But their number is increasing.

SHRI BAMZAI: It might be increasing. But at present, out of 10,000 papers, they constitute a very small fraction.

PANDIT S. S. N. TANKHA: But don't you think that papers of this type which provide this objectionable sexy matter to the public, have greater sales than the other papers which are healthy and therefore the latter suffer?

SHRI BAMZAI: But actually they do not cut away the circulation of other papers. They have a circulation of their own in a particular section of the community. They are not going to give up the other papers. But, as I said, these titles could be tightened, the very titles which are offensive in nature. We should consider what could be done about them.

CHAIRMAN: But that matter should be moved.

SHRI BAMZAI: I have moved in that direction.

PANDIT S. S. N. TANKHA: Don't you think that whenever you consider a particular title to be objectionable, it should be necessary for you to ask for further details from the person concerned?

SHRI BAMZAI: I have no authority to do so. Under no provision of law can I do it.

PANDIT S. S. N. TANKHA: It could be done if we make some changes in the law.

SHRI BAMZAI: It will depend upon what changes are made.

PANDIT S. S. N. TANKHA: By the mere title I do not think it can be possible for you to judge correctly and say that the contents of the book will be objectionable.

(Interruption)

SHRI ARJUN ARORA: Have you examined the possibility of curbing this sort of tendency in the press through the newly established Press Council and have you taken any steps to bring, what you have said today, to the notice of the Press Council?

SHRI BAMZAI: The Press Council has just been established. I had an informal talk with some of them but they are still in a preliminary stage. Actually you must have seen in today's papers that they want to build up some code of ethics, but they are not yet quite clear as to what is the sanction behind it. Actually it is at a very, very early stage.

SHRI ARJUN ARORA: What do you think should be the machinery to decide whether a particular piece of journalism or literature is obscene or not, because literary people are very much divided on this issue?

SHRI BAMZAI: As you know, they have set up a Board of Editors. When we have a problem of such a nature or a situation is developing like that, we remain in touch with the Central Press Advisory Board. - When we see that the atmosphere of a particular place is going to be disturbed, we put it before the editors and they decide between themselves and they give their advice to the persons concerned. I think it should be the editors themselves who will have to come to judgment and lay down certain norms that if it infringes this, then they will recommend action or various steps could be taken. After all voluntary efforts must be there. For example, during several disturbances, language

disturbances, etc. the voluntary efforts of the editors of these papers have succeeded to a great extent and they were able to stop certain stories from spreading. The co-operation of the press has been remarkable.

SHRI ARJUN ARORA: Are you hopeful that such co-operation can be available in a case like the present one?

SHRI BAMZAI: There is another aspect of it. For instance there was the language question and there were disturbances; there was the mizo trouble or rebellion or revolution but this has nothing to do with the emergency as such. When it is put to the editors, they themselves are able to lay down certain norms and some code which is circulated to their other colleagues. The editors give their attention to this problem and I am sure they can be better able to exercise their influence, because they have a number of committees where they meet and discuss such problems.

SHRI ARJUN ARORA: Thank you.

SHRI M. M. DHARIA: So far as the title 'Naked Girl' is concerned, by itself it is obscene. But you mentioned sexuality and romance. How do you say it is obscene?

SHRI BAMZAI: I have not said that. I said such and such a thing is possible by the very title of it, there might be such material inside it. I had only some titles which I wanted to mention here.

SHRI M. M. DHARIA: You suggested severe punishment and also a more concrete definition of 'obscenity'. You may be aware that the present concepts of liberty are extending every day. Even the British Government recently legalised homosexuality—you may have read it in the press. In view of that, is it possible for us to put more and more restrictions on the people or whether it would be advisable to leave this literature to the good taste of the people? What is your advice?

SHRI BAMZAI: But the context changes from country to country. Social development of one country is different from that of another country, depending upon what type of religion is followed and to what extent they have faith in religion. It all depends upon these things to decide whether we go down the drain or up the drain. After all there are different ways of writing an article about sex or with regard to beauty of a girl. It can be written in a way which can mean one thing to one section of the community and on the other hand it can be written in a way which might hurt the susceptibilities of some other sections of the community. Regarding social development, it is a very relative term. Again we feel about it because it emanates from a place like Delhi. There are a number of factors which go to make up our minds.

SHRI M. M. DHARIA: You said something about definition. Have you ever tried to have a better definition of obscenity?

SHRI BAMZAI: We better leave it as vaguely as it is because it can cover a number of things.

SHRI M. M. DHARIA: Is it possible to give more and more incentives for literature of better taste and quality say by giving them a good quota of newsprint or say good advertisements to such magazines which are maintaining taste? Is it possible?

SHRI BAMZAI: As a policy the Government should never try to encourage any newspaper, whatever be its content because then the paper cannot remain independent.

SHRI M. M. DHARIA: Regarding obscenity, is it possible to create incentives in those who maintain the norm?

SHRI BAMZAI: Normally they maintain and only a few papers do not.

SHRI M. M. DHARIA: Is it possible to discourage such papers?

SHRI BAMZAI: By denying newsprint?

SHRI M. M. DHARIA: Yes.

SHRI BAMZAI: No.

CHAIRMAN: Would you suggest any such thing?

SHRI BAMZAI: First of all it presupposed that you have arrived at a conclusion as to what is now obscene.

CHAIRMAN: Supposing we know that?

SHRI BAMZAI: If the law court has given a definition and if a paper is condemned

CHAIRMAN: Suppose the Ministry comes to the conclusion that it is obscene, in that case, would you advise that so far as giving of paper is concerned, it should be controlled?

SHRI BAMZAI: The Ministry's views will not matter in this. The person can take me to the court of law for infringement of Fundamental Rights.

SHRI ARJUN ARORA: In Great Britain homosexuality has not been legalised. What has been legalised is homosexuality between consenting adults in private.

SHRI M. P. BHARGAVA: You said that the powers in the Act are adequate and obscenity is vaguely defined. Supposing you come to the conclusion that a particular journal deals in obscenity, in spite of the vague definition, have you any power to take action against it?

SHRI BAMZAI: No.

SHRI M. P. BHARGAVA: Would you not consider it desirable to amend the law to meet that situation?

SHRI BAMZAI: If you put it to me that the present law needs to be tightened and if it helps, I would personally have no objection.

SHRI M. P. BHARGAVA: Have you come across any situation where you wanted to take action against a paper and you found yourself helpless?

SHRI BAMZAI: I have been in this post only for 5 months and I have always held that I cannot take action as long as there is no provision in the law, whatever be the content of the paper.

SHRI M. P. BHARGAVA: What steps you have taken to rectify the anomaly?

SHRI BAMZAI: I have made reference to the Govt. that these are the complaints from the public in the different categories.

SHRI M. P. BHARGAVA: How many years back?

SHRI BAMZAI: I have been in this post for 5 months and I have made so far 2 references.

CHAIRMAN: We are thankful to you for coming over. If there is anything you can communicate to us. We hope your evidence will be found to be valuable.

(The witness at this stage withdrew)

Tuesday, 7th March, 1967.

PRESENT

1. Shri Akbar Ali Khan—*Chairman.*

MEMBERS

2. Shri M. P. Bhargava
3. Pandit S. S. N. Tankha
4. Shri Arjun Arora
5. Shri M. M. Dharia
6. Shri Mulka Govinda Reddy
7. Shri K. K. Shah
8. Shri Jaisukhlal Hathi
9. Shri D. P. Karmarkar.

REPRESENTATIVES OF THE MINISTRIES

Ministry of Law

Shri S. K. Maitra, Additional Legislative Counsel.

Ministry of Home Affairs

Shri G. S. Kapoor, Under Secretary.

SECRETARIAT

Shri S. S. Bhalerao, Joint Secretary.

Shri S. P. Ganguly, Deputy Secretary.

Shri Amar Nandi, Under Secretary.

WITNESSES

Shri A. K. Jain, President, All India Newspaper Editors' Conference, New Delhi.

(Shri A. K. Jain was called in)

CHAIRMAN: We begin now. You know, Mr. Jain, that this is a Parliamentary committee set up to consider the amendment proposed by Diwan Chaman Lal to the existing criminal law on the subject, and I am sure you must have gone through it. This committee will now record your evidence and it will be made available to Parliament Members to go through and make use of it. If you want that any portion of it should be treated as confidential, we shall certainly consider it.

The position, so far as the proposed amendment is concerned, is that we want to consider whether it is necessary to liberalise the present provisions of the law, because some people think that the present provision is likely to hit good literature fine pieces of art, and things like that. Similarly who have the evidence of those who feel the necessity to tighten up even the present provisions, because cases have come to their notice where a thing is apparently obscene or indecent but still it appears that the law is not adequate enough to catch hold of the persons responsible for such things. So on that ground the provision of the law should be tightened, they say. So, having both these aspects in mind, you, being a very experienced person in this line being the President of the All-India Newspaper Editors' Conference, will please enlighten us on them. I would like to have your views first of all.

SHRI JAIN: At the outset I must say that as a newspaper-man I will not support any curb on freedom of expression and therefore I feel that the present law is quite adequate, more so because my feeling is that our sense of obscenity, etc. will be changing from time to time. Let me cite this as an example. I remember, when I was only a boy and started my career as a journalist, I remember the pictures which I saw then—pin-ups as they were called—which, if we

now see in the papers, nobody would tolerate them. We all know that influential weeklies started it on the last pages and it was all done only to build up their circulation. And today it seems that more and more papers have followed suit. If you look at the Western countries—I am sure you have seen all the literature they have produced—the literature produced there is horrible, it is such that a father cannot read it in the presence of his daughter or even his son. Therefore, it shows that the times have changed, they have come to this stage and I do not know whether it is coming to our country or not, but I am sure that any curb on freedom of expression placed at a particular time may not hold good for all times to come. So, if you are going to change the law, you should be very careful about it.

CHAIRMAN: According to the proposed amendment, experts will be constituted to opine on a thing. Now their opinions may differ. Now, when to take their evidence? Before chalking the case or after?

SHRI JAIN: I think it should be after, because you say that the need has come up. But there are only two or three newspapers which are behaving like this, may be not more than half a dozen in our country. For the rest, for good literature or good pieces of art, we should definitely liberalise the provision of the law. Otherwise, the police or the smaller authorities can act as they like, sometimes on very very ordinary pretexts.

CHAIRMAN: You would also appreciate that, so far as the young mind is concerned, if possible without putting a curb on the producer's liberty or freedom of expression, the young mind should be put on the right lines. Now, too much of sex sometimes appears in black and white.

SHRI JAIN: Sir, there are divergent opinions on this subject. Some people think that sex education is very necessary, and because we have had no sex education in this country,

therefore this thing seems to be very detrimental or harmful to the young mind. For example I can say that when there was no co-education in schools perhaps the attitude of young men was slightly different from what it is today. Surely there are certain things which change with time. Of course, it will be a matter of opinion whether a thing is desirable or not at a particular time. When our young men go outside the country they have more and more chances of moving about and seeing and reading things. How can you stop them from reading the literature they come across there. So in my opinion it is better to liberalise the law. Of course, defaulters and those cases which need to be given some punishment should be properly dealt with. But certain genuine papers or books which may not have been written with a view to augment their circulation or to make money, they should not be affected. Suppose there is an album of Khajuraho pictures or something like that. It will be only a matter of art or culture. What will happen in that case?

CHAIRMAN: If you want to liberalise the present law, would you tell us how to liberalise it and what provisions should be introduced in order to liberalise it?

SHRI JAIN: I have not thought of that.

CHAIRMAN: You will agree it is very material.

SHRI JAIN: I think the provision here of having expert opinion is quite sufficient. If there is any such literature or piece of art found out anywhere then it can be scrutinised by the experts.

CHAIRMAN: You think the taking of expert opinion is sufficient?

SHRI JAIN: Yes.

CHAIRMAN: Now, Mr. K. K. Shah.

SHRI K. K. SHAH: Mr. Jain, I agree with you that so far as freedom

of expression is concerned, nothing should be done to curtail it. But consistently with complete freedom of expression, don't you think it is desirable to provide safeguards against its abuse?

SHRI JAIN: It is desirable, no doubt.

SHRI K. K. SHAH: If it is desirable would you not differentiate sex education from encouraging sexy attitude?

SHRI JAIN: That is right.

SHRI K. K. SHAH: Therefore to the extent it is necessary to curb the incentive to sexy attitude, don't you think that some kind of a provision may be desirable?

SHRI JAIN: May be, but it will be difficult for the person to judge whether a thing is developing a sexy attitude or whether it is sex education.

SHRI K. K. SHAH: In that case you should err on the safer side. For instance there are pictures on sex education showing some dance poses and so on. But surely naked dancing is not to be permitted.

SHRI JAIN: That would not be necessary, not for the present.

SHRI K. K. SHAH: No, not necessary at any time.

SHRI JAIN: It may be difficult to say that.

SHRI K. K. SHAH: As a lawyer I have read all the literature including all the different poses and so on. You know night clubs. But you will agree that it is not necessary to have naked dancing or the type of pictures which are sometimes shown?

SHRI JAIN: I don't know whether some 2,000 years back they had such "Nanga Avadhoots" as they were called. I do not know if they had naked

dances. They might be having. It is difficult to say whether during that period they had such dances.

SHRI K. K. SHAH: You have seen night clubs where they show pictures of three men in unnatural attitudes both at the front and at the rear. That surely is not necessary for sex education?

SHRI JAIN: No.

SHRI K. K. SHAH: I am prepared to accommodate to the farthest extent possible. Would you agree with me if I say that any piece of art so-called or obscene article or literature which later on leaves on the mind an effect not of art or literature but the effect of a sexy taste, should be discouraged.

SHRI JAIN: But Mr. Shah, it is very difficult. The effect may differ from person to person. How a thing affects the mind may differ from person to person.

SHRI K. K. SHAH: Therefore Justice Copper had defined the word "obscene" and that holds good even today. In his definition he says that the effect will be that of depraving the mind, the mind of people who are likely to be depraved and who may come across this type of literature. Therefore he has taken the most extreme cases.

SHRI JAIN: It may be that in the case of weak minds this may be true. But in the case of the large number of persons who live a natural life, the effect will not be that and I do not think we should attach much importance to this matter.

SHRI K. K. SHAH: In the case of young minds?

SHRI JAIN: Even young minds. All those who live a natural life they will not be affected. They will feel that this is bad, this is in bad taste, that they should not look at it, should not discuss it. That will be their natural feeling.

SHRI K. K. SHAH: I agree that the time has come when parents should give sex education to children. Incompatibility or inadequate knowledge of sex is the cause of many unhappy marriages. On that point I have no quarrel. But you know historians have said that the Romans went down before the onslaughts of the barbarians because the Roman life was debased. We do not want to go to the extent where the social structure will be entirely debased.

SHRI JAIN: That is right.

SHRI K. K. SHAH: I am only trying to take you with me to the extreme case. Don't make our people saints, do not encourage the saintly attitude in this modern scientific world. There I agree with you. But let us not go to the other extreme also.

SHRI JAIN: Yes, extremes will be bad.

SHRI K. K. SHAH: Would you then agree with me that only minimum legislation—I am using the word "minimum"—to curb extreme attitudes should be undertaken?

SHRI JAIN: Yes, but I am afraid that may affect the other things like

SHRI K. K. SHAH: I will qualify it by saying that I will exclude works of art, literature etc. Will that be all right?

SHRI JAIN: Yes.

CHAIRMAN: Yes, Pandit Tankha.

PANDIT S. S. N. TANKHA: Mr. Jain, you are of the view that it is not desirable to place curbs on the press. As a representative of the press and a distinguished representative of it, we value your opinion. All the same, do you think that sexy literature should be allowed to fall into the hands of young boys and girls without restrictions?

SHRI JAIN: No, I said earlier that it is not desirable to give that sort of sexy literature. But sex education should be there.

PANDIT S. S. N. TANKHA: That is quite a different subject. We are now concerned with the ordinary sexy literature which is sold in the market to young boys and girls. It is that aspect of the matter that I want you to consider and tell us whether you do not think it desirable to put some restrictions on literature of that kind.

SHRI JAIN: I was only thinking that the restriction may not restrict the other side also, art literature etc. We can have some restriction over the sexy literature as it is called but I do not know whether after ten or twenty years a Committee might not sit like this and then again . . .

PANDIT S. S. N. TANKHA: That is a different matter. The conditions in the country change and with them the laws also change and the interpretation of the laws by the Judges also changes but as the country is situated today what is desirable and what is not desirable is what we have to consider for the moment. I am sure you do not approve of the type of journals like *The Observer* which is in the market and surely you would agree that some restriction should be placed on papers of that type.

SHRI JAIN: That is perfectly right. At the last meeting of the All India Newspaper Editors Conference we censured that paper but then, as I said, opinions were expressed that there was another paper which was quite influential politically and we could say nothing about it. It started printing pictures like that and I may mention in the *Blitz* for the last twelve years—you could see even today—they have been publishing such pictures and carried some spicy stories about maybe murder or things like that. If that was tolerated for a number of years—and this is not my opinion but this was expressed at the last meeting of the Newspaper Edi-

tors Conference—why there should be so much of talk about this? If this is blackmailing the young mind then we know such a thing started from this place and we had taken no action.

CHAIRMAN: But don't you think there is a difference of degree?

SHRI JAIN: There may be, but it is very difficult to draw the line. I do not say that *Blitz* now is sold only on account of these two things.

CHAIRMAN: But this other one is sold only on account of that.

SHRI JAIN: Yes. But I do not know how they were prosecuted a number of times and how they escaped.

SHRI K. K. SHAH: I do not want to interrupt you. But if you consider that you cannot be effective in controlling your Press would you not allow the Government to keep them under control?

SHRI JAIN: No doubt whenever there is any extreme case it should be checked but as I have said I do not know how far one will consider it an extreme, for how many number of years.

CHAIRMAN: We are concerned more with the present society and with the present position of law and the publication of such literature. That is what we want to meet. You are right, Mr. Jain, when you say that things change rapidly these days. But at present we want to know what would be the best thing to do in your view.

SHRI JAIN: One thing more I have seen and I am sure it must have come to your notice also. There are cartoons, small size pamphlets and books which come with naked pictures.

AN HON. MEMBER: Foreign?

SHRI JAIN: Yes, foreign and you are not stopping them from coming.

CHAIRMAN: I think that comes within the ambit of the law.

SHRI JAIN: If you put a curb here then you must also see that the sale of such things is also prohibited.

SHRI K. K. SHAH: We will take care to see that that is not there.

PANDIT S. S. N. TANKHA: The purpose of this Committee is not to shut out one particular paper only but to prohibit all types of such literature whether it comes from foreign countries or whether it is produced here. I do not know whether you are aware of the fact that there is strong public opinion against allowing papers of this type like the *Observer* to be circulated in the country and that in spite of the clear verdict of the people, the Home Ministry has been unable to place any restriction on it because the existing law is not adequate and hence the need for a change. If you agree that papers of this type should not be allowed to be circulated then what is the suggestion that you would like to make for that?

SHRI JAIN: May I ask one question? Is that the only paper which has come to your notice?

CHAIRMAN: Apart from the *Observer* and the *Confidential Adviser* there are other things also.

SHRI K. K. SHAH: Yes, in vernacular.

SHRI JAIN: In any case I do not think there are more than half a dozen papers of that type and the point is if you make a restriction by law whether it will not give a bad name to the good newspapers which are there. Anybody who sees the law might feel why it should be necessary to put restrictions on papers like this. If it is only the *Observer* and a few other things, they should be dealt with under the present law. But you said that the Home Ministry has not been able to do it but I do not know why?

PANDIT S. S. N. TANKHA: It has been found that the present law is not adequate and if you agree with that point of view do you not think that it is desirable that we should attempt to define what obscenity means?

SHRI JAIN: But so far it has been very difficult to define obscenity.

PANDIT S. S. N. TANKHA: True.

SHRI JAIN: And as I said times might change and after a few years you may have to change the definition but I do agree that if the law is inadequate at the moment to deal with such bad taste papers we should have some provision.

PANDIT S. S. N. TANKHA: Since you were of the view that the present law is adequate, I pointed out to you the instance where the Home Ministry found itself unable to take any action against the paper. Therefore if you agree that such papers should not be allowed to be circulated then would you help us in finding out ways and means whereby the Committee could change the law without any detriment to the other good newspapers or journals?

SHRI JAIN: For my information I want to know whether that was the legal experts' opinion also that nothing could be done about such papers.

CHAIRMAN: As the law stands, yes.

SHRI M. P. BHARGAVA: That is the real difficulty; the Law Ministry says that no action can be taken under the present law.

SHRI JAIN: Against papers of this type, against literature of such bad taste if anything is done, by and large the Press will not object to it, so long as it does not affect the freedom of expression. But we should try to put as little curbs as possible.

CHAIRMAN: Yes; the least possible. In fact it would have been better if your own Association could have done something to control papers like the *Observer*.

SHRI JAIN: As I said we censured it at the last meeting.

CHAIRMAN: Has it had any effect on the Editor?

SHRI JAIN: Nothing except that the Editor is not attending our meeting.

CHAIRMAN: We agree that such things in bad taste must be controlled. I know young people going in for such things which are sold like hot cakes in places like Bombay.

SHRI JAIN: I am afraid it is not only young men or young girls who purchase these things but the readership is fairly high among the elders also. And this has been our hypocrisy whatever we want to curb for others we would like to enjoy ourselves.

PANDIT S. S. N. TANKHA: Now, Mr. Jain, have you carefully studied the amendment which has been proposed by Diwan Chaman Lall and do you consider that if that change is made in the law it would be helpful or detrimental in any manner?

SHRI JAIN: To be very frank my office has been having a lock-out for the last 20 to 25 days and I have not gone through it very carefully. But I know it is a very small thing and there was a provision that such matters should be referred to the experts and then action should be taken. I should think that it is quite all right if, before taking any action, experts' opinion is obtained. This is what is in my mind.

CHAIRMAN: So, you think that this may be adopted.

PANDIT S. S. N. TANKHA: Thank you.

SHRI M. M. DHARIA: Mr. Jain, in the beginning you made a statement that the present law should be liberalised. May we know the reasons why you made the statement that it should be liberalised?

SHRI JAIN: Because I know of certain cases where newspapers were penalised for no fault of theirs. I received a number of complaints from the papers and as President of the All India Newspaper Editors' Conference I had dealt with certain State Governments and other officers. So, I know of certain wordings in the law and that is why I said it.

SHRI M. M. DHARIA: Have you got any specific cases? The proceedings here are confidential and if you can mention the names or cases of newspapers where they were harassed unnecessarily, without any reason whatsoever, it may be useful to us.

SHRI JAIN: I shall send them to you later on. I do not remember any now, because it is more than a year.

SHRI M. M. DHARIA: Do you recollect at least the nature of the complaints?

SHRI JAIN: They were like this. Some police action was taken against two newspapers in Rajasthan. Then I wrote to the Chief Minister and the matter was settled. They were let off. If you like, I shall ask them to send it on to you.

CHAIRMAN: Was it anything defamatory or obscene?

SHRI JAIN: It was on account of obscenity.

SHRI M. M. DHARIA: You say that you support this amendment, if I am right. May we know your concept of experts? As you know, so far as experts are concerned, they do not usually agree. Two editors write editorials on the same subject which are diametrically opposite. What is your concept of experts' view. If they

differ, as they do, how are we to reach any conclusion?

SHRI JAIN: As the Chairman rightly pointed out, it would be only advice from the experts. That may not be binding on the Judges. They can take the opinion of three experts and from their arguments the Judges themselves can come to a decision. It is true that it differs from person to person. One Judge may see a lot of obscenity in a particular case and another may not. It has happened, as you know, in the case of certain books in Britain, in America and in France. This might happen in our country also, if we are free to express our views. Therefore, we should not mind if there is any difference between two opinions.

SHRI M. M. DHARIA: In that case again the matter will go to some other Judge. Judges, of course, may have different views on the subject. In the circumstances, do you think that it is necessary to have some definition which would concretise to the extent possible our own concept of obscenity?

SHRI JAIN: I feel that the definition of "obscenity" will then differ from man to man. If you put down one definition, there may be other Members of Parliament in the Rajya Sabha who may not agree with that. They may differ. One may think that the definition is too rigid and another may think that it does not go far enough. Why should you make a law like that? That is why I feel that it should remain undefined. The definition may change according to changing times. After twenty years or ten years, who knows they may take a different view of obscenity as it is thought of at present. If you define it, you confine it and it may not last for many years. From person to person a judge might differ. If he is very liberal, he will say, 'this is not obscene'. Everybody can define obscenity from his own point of view, but I do not think it will be very good to define obscenity.

SHRI M. M. DHARIA: I entirely agree with you. I know it is very difficult to define obscenity. If we do not put forth our concept of obscenity, then naturally we shall be just flowing with the current and particularly because of the impact of the modern Westernised world of today on this country of ours, it may not be possible for us to resist in any way such obscenity that is flowing and getting accelerated in our country. Should we not check that sort of feeling in our country? That is the main problem. We would like to have your advice as to how it would be possible for this country of ours to check these concepts of obscenity which are absolutely bad in taste.

SHRI JAIN: I will just put one instance before you. We had also some two years back compiled a code of conduct for newspapers. The first Press Council of Britain did it, but the second Press Council said: "No, we cannot do it. We shall have to change it." The Code of Conduct shall have to be changed if not every year at least during every three or four years. Therefore, if you define obscenity it would be difficult to do so.

CHAIRMAN: Don't you still think that there should be a Code, no matter even if it has to be changed after a couple of years? If there is no Code, don't you think the difficulties will be still more?

SHRI JAIN: There are difficulties, no doubt.

CHAIRMAN: My friend, Mr. Dharia, said: "True, it may be changing, but to meet the present situation some practical and specific effort is necessary."

SHRI M. M. DHARIA: I would like to know how far you feel that the present Press Council would be in a position to put some curbs on this growing tendency of creating obscene literature or other obscenity in some other form.

SHRI JAIN: As a member of this Press Council I do not know whether I should express my opinion or not, but my opinion is this. It was at the last meeting of the Press Council and we were of course dealing with a complaint by a very big man of our country against a small newspaper that it comes under obscenity. I think if this Press Council is given time, I am sure it should be able to do something to curb such things, because ultimately the complaint will go to them and they shall have to deal with it. Then as I said, regarding this code of conduct, we also thought about it at the Press Council and then we said let us not take it up at the moment, we will do it later. In the next meeting if there are more complaints about this type of literature and newspaper, we shall have to think about defining obscenity or otherwise. As the Press Council in Britain has been able to do something in this respect, I think the Indian Press Council should be able to do something.

CHAIRMAN: That will enhance the prestige of the Press Council if they could take up these matters and deal with them.

SHRI ARJUN ARORA: You said something very significant when you mentioned the Khajuraho album. I agree with you that in our desire to prevent the circulation of obscene literature we should do nothing which will really discourage or put out of circulation real pieces of art. Will you be satisfied if we lay down that a jury composed of artists and men of letters will decide whether the thing is a pure piece of art or not? And a pure piece of art may be exempted, surely you will agree. Art covers literature also.

SHRI JAIN: Yes, I agree.

SHRI ARJUN ARORA: Another thing which occurred to me, while you were expressing your views, was that as a newspaperman you were literally more concerned with the press and what the press is doing and

what the press should be able to do. There is another means of mass communication in the country which is very pertinent in this problem, and that is the films.

SHRI JAIN: Yes.

SHRI ARJUN ARORA: And you were correct when you said that the offenders in the press were so few that one could count them on one's fingers. That I think is not true about films. As a matter of fact you could count the exceptions on one's fingers.

SHRI JAIN: That is correct.

SHRI ARJUN ARORA: So, don't you think that some law will have to be made which will look after at least the films?

SHRI JAIN: I understand that the Films Censor Board are looking after that. In that case also if you allow the American films which are very popular, then how can you curb your own films and allow the foreign films to come?

SHRI ARJUN ARORA: As Mr. Shah pointed out, there cannot be any discrimination.

SHRI JAIN: So far there has been.

SHRI ARJUN ARORA: That is correct. I personally feel that the Board of Censors, which is supposed to censor not only indigenous production but also imported films, has failed.

SHRI JAIN: Yes, so far as this is concerned, because I do not see films very much, but whatever I see I also find bad taste in them.

SHRI ARJUN ARORA: If you take the films in view perhaps tightening of the law is more justified than the code of the press as a whole.

SHRI JAIN: That is right.

SHRI M. P. BHARGAVA: Mr. Jain, the Law Department and the Home

Ministry find it difficult to meet the situation about these things being printed. You say that in your Association you came to the conclusion about a certain paper and you censured and the result was that the editor stopped coming to the meetings and beyond that nothing could be done. Have you any concrete suggestions to make to meet the situation created in this connection? Neither have you any powers nor the law gives any power to take action. How to meet the situation when you find yourself helpless in trying to bring the editor to book?

SHRI JAIN: In such cases public opinion is the only way and it is the thing which matters. I do not know how the public opinion should be made in this respect because, professional body as ours is, we have censored the paper, but he gets readers and they like to read it.

SHRI M. P. BHARGAVA: Mr. Jain, you say public opinion should be created, and I hope you agree that newspapers are one of the media of creating public opinion. Has any single paper come out with a condemnation of the "Indian Observer" and "Confidential"?

SHRI JAIN: My own paper. I wrote an editorial about it. I can speak only about my paper. Of course, I said that obscenity cannot be defined, but then I said that such bad things should not be tolerated.

SHRI M. P. BHARGAVA: I quite agree that obscenity cannot be defined but even in cases where you come to the conclusion with a vague definition of obscenity that a particular thing is obscene and you want to take action, yet you cannot take action. What to do about such cases, that is our worry.

SHRI JAIN: I think that should be a matter for the lawmakers to go into.

CHAIRMAN: We want your suggestion.

SHRI JAIN: I have not given any thought to it. I do not know, but when you say that the Law Ministry and the Home Ministry with the present law cannot prosecute them, I think those pictures or those writings which are of bad taste should be definitely checked.

SHRI M. P. BHARGAVA: You just said you have not thought about this matter. The problem having been posed before you, would you like to send us a note later on as to how to meet this situation so that before the Committee finalises its report it has your view on this matter?

SHRI JAIN: I would.

SHRI MULKA GOVINDA REDDY: Mr. Jain, instead of leaving the matter to the Judges to decide whether it comes under obscenity or not, is it not desirable to have a broad definition? It may be difficult to define the word "obscenity" but is it not desirable to have a broad definition so that the Judges can act and the lawmakers can act?

SHRI JAIN: You can have it. But as I said in the beginning, it is not very good to define a particular obscenity or anything. If you define it, you will confine it. Therefore, tomorrow if something else springs up, then you will be again thinking of amending the law.

SHRI MULKA GOVINDA REDDY: To meet the present situation a broad definition can be arrived at. Later on if it is not sufficient it can be amended.

SHRI JAIN: You can try, that is what I think.

SHRI MULKA GOVINDA REDDY: Regarding experts, you said that the experts might differ. But how do you define who is an expert in such and such a thing?

SHRI JAIN: As the judges differ—they are supposed to be experts in defining the law—I think the experts on art and literature may differ. It is only this that a man is very famous and he has a reputation of being a big artist or a literateur. I do not think any other definition we can have to define an expert on art and literature.

SHRI MULKA GOVINDA REDDY: Then, is it necessary to prepare a panel of experts on art, literature, drama, etc. and some of the members who are included in that panel may be invited to give evidence?

SHRI JAIN: Yes, that would be desirable.

SHRI D. P. KARMARKAR: Well, Mr. Jain, I would like to ask you two or three questions. I take it that if you were to attempt to describe obscenity, would you agree that whatever depraves would be obscene and whatever is otherwise, has a neutral effect, would not be so? For instance, you mentioned Khajuraho. You have been to Khajuraho?

SHRI JAIN: Yes, I have been.

SHRI D. P. KARMARKAR: I have also been there. You see in its ancient temples some of our sculptural pieces like Shiva and Parvati, Parvati's whole anatomy being obvious. That is number one.

Number two, in Khajuraho they have actually described the sexual poses without paying any attention to anatomic excellence. One would not mind it because it is a sculptural piece and is not depraving and would say it is not obscene; another may feel that the purpose appears to have a demonstration of the sexual act and therefore it is obscene. Would you agree with that?

SHRI JAIN: That is perfectly right, Sir. But I do not know whether you will consider it right or wrong. Even

a nude picture can excite feelings, whereas pictures of the actual sexual act may not. That will differ from man to man.

SHRI D. P. KARMARKAR: So, you would not broadly define it? Where the main purpose is to describe a sexual act as such without any sense of art, would you ignore that?

SHRI JAIN: They say that there is some artistic thing in that also. I do not know, I am not an expert. But I saw those pictures. Of course, I find that some of them are really pieces of art but some of them seem to be of bad taste.

SHRI D. P. KARMARKAR: Whatever is of bad taste would, in your opinion, be something objectionable?

SHRI JAIN: Yes.

SHRI D. P. KARMARKAR: Now in these things, it is obvious that the thing is obscene. Taking our society of today and not what it might be tomorrow or ten years hence—that is another matter—in today's society, you would call it naked, bland sex or sexiness—as my friend, Mr. Shah, put it—which is something which is not liked by society normally?

SHRI JAIN: Yes.

SHRI D. P. KARMARKAR: We are not abnormal, either this way or that way; we here are normal beings. Either it depraves or it does not. Would that be broadly agreeable to you, that type of thing?

SHRI JAIN: That does not seem to be desirable. And there is something which the society knows—which is not desirable or fair. You may call it obscene or bad taste.

SHRI D. P. KARMARKAR: That is right.

My other question is this. The difficulty is about the experts. Is it not? The expert may be old and nearer his end. He might say, it does not

matter. But if the expert is young? It depends upon whether he is married or unmarried. Married people know all the things worth knowing. I am just putting it to you. In Western Railway's Central Station they put them all girls at the reservation and much of the complaints from Bombay Reservation disappeared. Suppose there is to be a panel of judges or juries and if the panel is of three ladies to judge whether a thing is obscene or not, would that be a safer guide? Or we can have some men even?

SHRI JAIN: I do not think that all the ladies alone would be better judges. But of course, one or two of them could be included.

SHRI D. P. KARMARKAR: Oh! I see. Suppose a magistrate wants to

decide what is obscene, it may be desirable to have a panel of what you call experts and, if necessary, at least one of them should be a lady?

SHRI JAIN: Yes, that is correct.

SHRI D. P. KARMARKAR: Thank you very much.

SHRI K. K. SHAH: In such an eventuality when it is difficult to define it, the assessment should be by whom?

SHRI JAIN: It may be by anybody but ultimately the decision should be with the court.

CHAIRMAN: Thank you very much. Your comments have been very useful. You will kindly send us a note.

(The witness at this stage withdrew)

Monday, 24th April, 1967

PRESENT

1. Shri Akbar Ali Khan—*Chairman.*

MEMBERS

2. Shri M. P. Bhargava
3. Pandit S. S. N. Tankha
4. Shri Arjun Arora
5. Shri M. M. Dharia
6. Shri Mulka Govinda Reddy
7. Shri P. K. Kumaran
8. Shri A. D. Mani
9. Diwan Chaman Lall
10. Shri D. P. Karmarkar.

Shri K. S. Ramaswamy, Deputy Minister in the Ministry of Home Affairs, also attended the meeting.

REPRESENTATIVES OF THE MINISTRIES

Ministry of Law

Shri S. K. Maitra, Additional Legislative Counsel.

Ministry of Home Affairs

Shri S. S. Varma, Deputy Secretary.

SECRETARIAT

Shri S. P. Ganguly, Deputy Secretary.

Shri Amar Nandi, Under Secretary.

WITNESSES

1. Shrimati Leela Chitnis.
2. Shrimati Snehaprabha Pradhan.

(*Shrimati Leela Chitnis was called in*)

CHAIRMAN: I am much obliged to you all, who have taken pains and come here and we have got a very encouraging number here. We are also happy that the Home Ministry is also represented through our friend Mr. Ramaswamy. We are also glad, Madam, (Mrs. Leela Chitnis) that you are here. As you know, we are considering an amendment proposed to be made by Diwan Chaman Lall relating to sections 292 and 293 of the Indian Penal Code regarding obscene literature and other matters. He is of the opinion that the present provision may come in the way of the development of art and scientific literature. So he has brought in an amendment with the idea of liberalising and widening the scope of the present provisions of the Indian Penal Code.

There is also a view that the present provisions are rather too wide and there are many matters which are obscene and which escape the arm of the law. So some of the friends think that these should be tightened up. You have got a very wide experience in this matter and we want the benefit of your experience. We will be grateful if you will give your opinion in this matter.

DIWAN CHAMAN LALL: May I interrupt, Sir, for a minute? Your remarks might possibly imply that there is a distinction between the latter and the previous suggestion that was made. There is no distinction. One does not restrict the other. All that the Chairman wants to imply is that the present law as it stands does not bring certain things within the arm of the law for the purpose of catching the culprit. My amendment is also designed for another purpose, and that is to remove certain works of art, science and literature from the purview of the present law. Take, for example, the controversy about the book on Lady Chatterley's lover, in Great Britain. The court decided

that it was a piece of art and was found to be innocent. All I am seeking to do is to have that sort of immunity governing such works of art like Lady Chatterley's Lover.

CHAIRMAN: We want to have your opinion on that too, as Diwan Chaman Lall has pointed out. But, as I said, people are thinking of the other side of the question also, as it was represented to us at the previous meetings. What do you think of the proposed amendment?

SMT. LEELA CHITNIS: Mr. Chairman and members of the Select Committee, at the outset I would like to say that I was expecting to see some ladies on this Committee but I am disappointed to see that no ladies are included in it. But, after all, that is not my business. I am here to give my opinion on the particular Bill that Dewan Chaman Lall has brought in.

According to the note for the guidance to witnesses which has been given to me, apart from the Bill which has been brought in, there are a few other questions on which opinion of witnesses like me has been sought. I will first of all stick to the Bill itself and tell you what I think about it.

I personally feel that what is sought to be obscene is what mostly relates to sex and sex desires. But I must say that sex is a part and parcel of human life, of human mind as well as of human life. I for one do not see why so much fuss should be made about obscene literature. We do not make any fuss about other matters in human life and human mind on which a lot of literature is written and published, and I think, it is just because we make such a fetish about sex and sex desires that we find more and more offences in this regard. In this note it has been stated that of late it has been observed that more and more obscene literature has been in circulation. I feel that the reason for this is that too much fuss is made

about obscenity and too much restriction is imposed on the general public on writers as well as, on artists. I have come to believe, from experience that the more we try to restrict a thing the more it will come out in undesirable ways and forms. According to me, that is what is happening in India today, and that is why things are going wrong in our young generation. I do not think that by tightening the law against obscenity things can be improved. On the contrary I have a feeling that the more the law is liberalised, the better it will be for the development of art and literature, and what art and literature have to teach and depict to the common man and the general public.

Young people start getting an awareness of sex desires at a very early age—during their adolescence. It is at this stage that their lives are to be moulded by the type of upbringing that they get, the education they receive and the environments in which they grow. Parents and teachers are duty bound to impart the right type of sex education to them. But mostly what happens in actuality is that when an adolescent starts becoming of his sex desires, he develops a guilt complex and this leads to all sorts of complications in his mental make up. He feels isolated. He tries to hide his instincts because of the ideas of what is virtuous and what is sinful as they are imbibed into him. He feels it is he who is sinful and the hypocritical society around him is genuine, and that there is something wrong with himself.

He tries to shove and push these instincts and desires out of his conscious self and what is called corruption of consciousness thus sets in. His suppressed desires needing an outlet keep banging on his consciousness, and it is this turmoil and conflict within himself which produces psychological problems and abnormalities in him.

It is for educationists and psychiatrists and other experts in that field to say in what exact manner sex education should be imparted to adolescents. But I feel that it is only when the right type of sex knowledge is imparted to them that they will grow up into healthy citizens of tomorrow. But today's problem is that even the parents and teachers in schools have themselves led suppressed lives and thus are suffering from all sorts of complexes.

I have brought up my own children and I have observed my friends and relatives bringing up theirs, and I feel their problems need delicate handling.

Now, apart from adolescents let us come to the adult problem and let us see whether the so called obscene literature should be kept away from the adults of today. I entirely agree with Diwansahab's Bill and would even go a further than that.

As a contrast to the obscene literature that is rampant today—though I cannot say that there is so much of such literature in India today as in the Western countries—I can authoritatively talk about the films in India. Films are also a vital part of the artistic development of a people. But the films have simplified life too much. I feel it is a very wrong thing to do. It is a much worse crime than writing or circulating obscene literature.

Films are a very powerful medium of instruction as well as entertainment. There is hardly any other entertainment worth the name available to our young people today, and it is today's films and what the heroes and heroine are shown to do in films. It is these things that create a deep impression on the mind of our young people.

The complex problems that face an individual or a society are never depicted in our films. They are too unreal, too simple and too exotic. The

hero may be a poor man or he may belong to the working class. But he will wear expensive imported jerkins and suits, and must visit night clubs where girls in exotic costumes—the type of which are never seen in India will be fantastically dancing away. I have hardly seen any night clubs in Bombay or in any other cities of India. The heroine, whether she is a village lass or a middle class girl, will have fancy hair-does and expensive costumes. Romance in Indian films means the hero running after the heroine and both singing away songs at the most beautiful locations of Kashmir or Manalay or Paris or New York. Seeing this life on the screen, today's young man gets a terrific feeling of frustration and despondancy. The hero may be shown to be as poor a man as himself, but he cannot dream of having the same expensive jerkins and beautiful surroundings. His own sweetheart, or wife or sister can stand no comparison with the heroine on the screen.

Never does he see in films the real problems facing him in real life. This creates a deep feeling of bewilderment in our young people.

It is very important and imperative that our films should tackle the real vital problems of life and even of sex that are encountered by the people as some of the Western films do. To give just an instance I would quote Dr. Zhivago. It is only when a variety of themes depicting life as it really is are tackled in our films that our young people would get a proper perspective of life.

As these notes before me here say, it is true that of late it has been noticed that there has been a spurt of obscene literature which is very much in circulation. I think this is a sort of a reaction to too much simplification of life as depicted in films and literature of today. Obscenity we can say is a consequence of over-simplification of life as shown in art and literature of the day. Apart from the disastrous

effects that this unrealistic over-simplification of life is having on the minds of young people, life itself, which is day by day going to another extreme with increasing handicaps and difficulties in conditions of living and double standards and hypocrisy seen amongst those who have to be models in society, young people are getting terribly disillusion in life. There is one class of young men on whom the reaction of all this is that they stop living and merely drift and exist. There is another class of young men who are equally disillusioned and frustrated, but then they are the type whom nature has gifted with much more sensitivity and an inborn artistic or literary talent. It is because of these innate qualities that his deep frustration and the utter shame and hypocrisy around him has a devastating impact on him and he loses all sense of values, he finds no ideals to live for. Ideals and values just crumble down before him like a house of cards. The very earth under his feet he finds is giving way and he is living in a vacuum. His despair makes him want to die but then the instinct to live proves to be too strong for him. Life around him and the goings on around him make him mad. It is this gifted but disillusioned man of today who is the angry young man and as a reaction to the over-simplified unread literature and art of the day it is he who utilises his gifts in producing the so called obscene literature and artistic work to wreak vengeance on conventional and prudish society.

But I think unless a balance is struck, in our art and literature, this sort of action and reaction is bound to be there. Because what we found today is that something which is allowed is too insipid and what is not allowed becomes too strong. I do not know whether I should bring in the analogy of prohibition here, but from my experience and my contact with members of the younger generation, I find that on account of the restrictions, the younger generation is inclined more and

more towards drinking rotten stuff and this applies as well in the field of literature also. Because they are working under terrible pressure of 'dents' life for them becomes too insipid, and that is why they go to the extreme end of using and reading or writing and indulging in such type of literature.

Regarding the question as to the test for deciding what is obscene, I feel that if any work of art or literature depicts sex life and sex desires framing them in the larger canvass of life then it cannot be considered obscene, because it is a part and parcel of our life, but it becomes obscene if it is isolated and enclosed into a very narrow frame of its own, if it is removed from the canvass of life, I personally feel that Government should appoint a Commission of Experts in the social sciences, psychology, child-psychology, psychiatry to collect a lot of data and to study the problems of the young generation and also to find out why then go after so called obscene literature. Just as elders feel that something is drastically wrong with them, the young people also think that something is wrong with the older people. The Commission may go into all these questions and find out what constructively can be done for the betterment of our youth. I do not think I have anything further to say in the matter.

CHAIRMAN: You referred that no lady is in our Committee. I think it is just an accident, Madam. We will be very happy to have them in our Committee and we will always have them, but I am really sorry that in this Committee there is no lady member.

As regards other things I feel in general you agree with the amendment of Diwan Saheb. You have given a very helpful suggestion that there should be sex education. But, do you think that what goes on to-day in such literature or in such cinemas is helpful for proper sex education?

SMT. CHITNIS: I do not think that there is anything obscene in our films

as they are, I have already stated why I feel that today's films over simple joy life hence are harmful to the younger generation.

CHAIRMAN: Is it a sort of encouragement always to think in sex and sex only?

SMT. CHITNIS: Sex education should be given its proper place. If a young person is given proper education he can thoroughly understand the problem, he can thoroughly understand his own desire as well as what is sex and what are sex desires. He has to understand it thoroughly. Unless he understands it properly, I do not think that he can place them in their proper place in the whole perspective of life. One has to learn first, in order to unlearn.

CHAIRMAN: I would request the members to put questions, if they so desire. I will start with Mr. Mani.

SHRI MANI: Mr. Chairman; may I ask the witness whether it is her considered opinion that there should be no ban on obscene literature. May I ask her whether her attention has been drawn to the articles in the Indian Observer of Delhi, where there is heavy concentration on sex.

SMT. CHITNIS: I think I have said that very obscene literature which is in circulation to-day is a sort of reaction to the life that to-day young people are living. It is a sort of suffocated reaction, and that they have no ideal. In old times, 20 or 25 years ago young people had some ideals like fighting for the freedom of the country, and for social and religious reforms. May be because we were a slave nation then. To day because of the stifling, lack of integrity that young people see all around and consequent hard living conditions they have to face, it is for this reason that they have gone to the other extreme. That is why this sort of literature is too much in circulation amongst people. There are no values in life and there is no idealism to live for.

That is why probably they are throwing a challenge to society by indulging too much in this sort of literature. I think such literature is too much in circulation because of the conditions under which today's suffocating generation is compelled to live.

SHRI MANI: I know that there is lot of circulation and that the people have gone to the extreme. My question is whether such literature help youngsters or while you liberalise the section you should also tighten up the section dealing with these journals. About one of the magazines which is devoted to the industry there were questions and answers. I do not want to give the name of the magazine. A question was asked about a politician who married an elderly lady. A supplementary was put by somebody as to what is going to be the result of the marriage. The answer was wait for ten months. That was published, in one of the high class magazines devoted to industry. Would you concede that this type of publication in the journals devoted to industry is so bad and that the word "obscene" should be defined? Or, you think that such publication should be banned?

SMT. CHITNIS: If you ban such publication from circulation, do you think that the matter is going to end there. I personally feel that the matter goes much deeper. Unless the general public is educated on the correct lines this sort of circulation will go on in secret. I gave the analogy of Prohibition. Just because people are prohibited to drink, it does not mean that they have stopped drinking. I think in every street corner and every lane there are places where they not only drink on the sly but drink the dirtiest possible liquor.

SHRI MANI: About obscene publication it is not even art or good sex. It is not the sex which is so much

objectionable, but it is the vulgarity which is most objectionable. About the *Indian Observer* it is in circulation in hundreds of thousands. The boys and girls purchase this journal and read them. Would you like to consider the definition of the word 'obscenity' on these lines. What is obscenity? "Any object which has the tendency to debase public tastes and corrupt public morals"? Would you like that to be put in? My suggestion is that, while liberalising the law relating to obscenity, we must also strengthen the law to limit such publications.

SMT. CHITNIS: From what I see around me. I find that this sort of thing will go on even if you put a check on it. How can you guarantee that there will not be such books and such journals secretly circulated amongst young people? You may today try to put a stop to these magazines and tighten the laws, but a time may come, say after 10 or 12 years, when you may have to liberalise the whole thing, just as it has happened in the case of prohibition. Slowly people are getting convinced that prohibition has not made much headway. I remember that quite a number of years ago, there was a book 'Lolita' which was proscribed. Even I myself felt like reading it because it was banned. That is human nature, and if that is so with middle-aged woman like me, then naturally you can imagine the state of mind of the youth which is very much prone to such things.

SHRI MANI: As long as there is such a section in the Indian Penal Code about obscenity, we have to see whether the situation justified the retention of such a section or it justifies a modification of the section.

SMT. CHITNIS: I am all for the amendment that has been suggested to the law.

SHRI MANI: You are in favour of something to be done about obscenity.

SMT. CHITNIS: That is so, but when all is said and done, I feel that a Commission of experts should be appointed to go into this matter. It is they who should guide Government in this matter. It is a good thing that the opinions of people are called for, but in addition to that, the most important thing is, I think time has come when such a Commission should be appointed and they should tell us what should be done for the present generation in India.

CHAIRMAN: I may point out for your information that, regarding this amendment, we have solicited the opinion of the public on a very large scale, and we have received, from practically all the States, their comment regarding this matter which also throws good light on this subject which you have just now referred to.

SHRI KUMARAN: In the course of your speech, you said that modern films rather simplify life. I am under the impression that modern films deal with fantastic nonsense. May I know in what sense you say that they simplify life.

SMT. CHITNIS: They do not tackle the vital problems of life. They are a fantastic nonsense as you say, the same type of boy meets girl, romances have been going on for the last so many years.

DIWAN CHAMAN LALL: You referred to 'Lolita'. Have you read other similar novels which were proscribed in Great Britain?

SMT. CHITNIS: Yes.

DIWAN CHAMAN LALL: Even though they were real works of art, they were proscribed. May I, on behalf of all those present here, give you a great compliment for the clarity with which you have dealt with this subject? With your permission, Sir,

I would like to say that we are very grateful to Smt. Chitnis.

CHAIRMAN: That would be done at the end of our deliberations.

DIWAN CHAMAN LALL: We are really grateful to her and my friend on my right joins me when I say that.

SMT. CHITNIS: I too thank you very much.

DIWAN CHAMAN LALL: You are in favour of this amendment?

SMT. CHITNIS: Yes. I am positively in favour of this amendment.

SHRI DHARIA: You said something about the appointment of a Commission. What is your idea about this Commission and what would be their terms of reference?

SMT. CHITNIS: What I feel is that the youth of today is really proving to be a problem for the country and for the family. It is our duty to find out the causes and try to eradicate them. That is why I feel that the appointment of a Commission of experts in social sciences and psychiatrists would help to solve the problem. They should get together and try to collect the data as to what is going on and why there is so much frustration and so much anger in our young generation. There is also unrest in the minds of our young people. It is quite apparent that there is something drastically wrong. They are the people who will lead the society tomorrow and so it is our duty to find what is wrong with them so that some ways and means can be found out.

SHRI DHARIA: This committee has very limited scope so that it cannot suggest the appointment of any Commission. But are you happy with this amendment? Do you think that this amendment is enough so far as this aspect is concerned?

SMT. CHITNIS: I would even go beyond that. I am all for this amendment. But I feel that experts should handle this problem and that is why I stressed the need for such a Commission.

SHRI DHARIA: You are referring to experts. But are there any experts in this country for solving this problem of obscenity?

SMT. CHITNIS: Don't you think that the people who have made a deep study of human psychology would be proper guides?

SHRI DHARIA: Here we want to define obscenity. According to courts, it is very difficult to point out what is obscenity because the term differs from individual to individual.

SMT. CHITNIS: There are experts in educational field and in literary field. Opinions of some people may differ; but opinions of people who have made special study of human psychology should matter much.

SHRI DHARIA: Can you name some experts?

SMT. CHITNIS: Oh, there are so many.

SHRI TANKHA: I must express my regret for being late so that I could not have the opportunity of listening to the early part of your speech. I heard the latter part of your speech. According to you, there is agitation in the minds of the students. But do you mean to say that the society should allow them to go the way they like irrespective of the consequences that may be there? Is that what you want?

SMT. CHITNIS: Not, not at all. I said the right-thinking persons should tackle this problem and from that point of view I made that suggestion. I did not mean to suggest that the young people should be allowed to go the way they like. How can that be?

SHRI TANKHA: What I thought was that there is frustration in the minds of the young people—men and women—because society is not allowing them to go the way they like or indulge in such things which they want to do and therefore they are frustrated and raise alarm against the society?

SMT. CHITNIS: No, no It is not like that. This is not a superficial question of not allowing the children to read obscene literature or something of that kind. The frustration in the life of young men and women is not because of elders, but it is due to scarcity of jobs, the all-round rise in prices of things and so on, the lack of accommodation. For instance a young man wants to marry, but he has no job or no accommodation and so has to wait for such a time till maybe he reaches 40. Don't you think therefore that these young people have enough problems today?

SHRI TANKHA: These are problems not only for the youth, but also for grown-ups.

SHRIMATI CHITNIS: But the grown-ups can take care of themselves. Today we are more concerned with the youth because they are the citizens of tomorrow. I will take care more of my children than of myself.

SHRI TANKHA: The main point is whether the type of literature that is in circulation, can it be called a piece of literature or art?

SHRIMATI CHITNIS: That problem would worry me as it would do anybody else.

CHAIRMAN: You also think this is objectionable?

SHRIMATI CHITNIS: The trash journals referred to by Mr. Mani are disgusting and as I said it is sex for the sake of sex and whether it can be stopped by law, I am very sceptical.

tical about it. There are ways and means found out by some people to make easy money by selling such dirty literature to young people. If it is stopped by law, it will go underground.

SHRI TANKHA: We are concerned with the failure of society so far as our young generation is concerned. What is the reaction of young people to such literature when they have no idea of the standard of morality?

SHRIMATI CHITNIS: It is an unfortunate thing, particularly so far as growing children are concerned. It would be a most unfortunate situation when such journals fall in their hands. It is the responsibility of parents and teachers and the society to see that children are kept away from such filthy literature and to give them correct education about sex on proper lines. Parents must take instructions from psychiatrists as to how to deal with such children. We should not scold our children for reading such literature, because if we do that, it will have adverse effect on their minds and they might even go to their friends and read such literature and that would create more dangerous situation. Instead, we should take them into confidence and bring home to them the evil effects of such literature.

SHRI TANKHA: Would it not be still better that the State does not allow such books to go to them?

SHRIMATI CHITNIS: First of all we shall have to decide what is obscene and what is not obscene. By depicting, what may appear to be obscene, reality in life, if a piece of art or literature is produced, it should be brought out from the purview of the ordinary law and that is perhaps the purpose of this amendment that is sought to be introduced.

SHRI MANI: May I suggest that this is a talk between Pandit Tankha and the witness. We are not able to hear it at all.

CHAIRMAN: You may use the m'ke.

PANDIT TANKHA: Certain portions of films are obscene and they are not certified by the Board of Censors for exhibition. Do you think whether such portions of films are really such as should be avoided?

SHRIMATI CHITNIS: Unless we personally see how can we judge what exactly they are?

PANDIT TANKHA: You as an artist must have seen many cases where particular portions have been objected to either by the public or by the Central Board of Censors. Do you think that it is right to allow them or not to allow them and what other type of portions should be deleted? Or, whether they are also of some social type which should be deleted and therefore they are objected to?

SHRIMATI CHITNIS: Some such portions are objected to. Censors feel that some portions should be deleted. In crime pictures some shots are deleted which make a very unhealthy and wrong impression on the minds of the people. But at the moment I cannot think of any particular film or any particular portion of the film which has been wrongfully deleted.

CHAIRMAN: Madam, we are very thankful to you. Diwan Saheb has already voiced our feelings. Once again I thank you on my behalf and on behalf of the Committee. Your evidence has been very helpful to us and we hope to benefit by your evidence. I thank you again.

SHRIMATI CHITNIS: Mr. Chairman and Members of the Committee. It is I who must thank you for having patiently given a hearing to what I had to say. You have heard lot of opinions and it is possible that my opinion may seem unique to you. But after all it is my opinion formed from my own experience of life. More experience may make me change my

opinion. But to-day I have been feeling in the way in which I have expressed myself before you, I must thank you all for having given me a patient hearing. Thank you.

CHAIRMAN: Actually we very much appreciated your point of view. This is for the Parliamentary Committee. It would not be published unless the Parliament so desires. It will be for the consideration of the Members of the Parliament and no statement should be issued on this point.

SHRIMATI CHITNIS: Yes.

CHAIRMAN: I am much obliged to you, Madam.

SHRIMATI CHITNIS: Thank you very much.

(The witness withdrew at this stage)

(Shrimati Snehprabha Pradhan was called in)

CHAIRMAN: Thank you very much Shrimati Pradhan for coming over. You know what is the subject under consideration. We would like to have your opinion on the amendment proposed by Diwan Chaman Lall. This statement will be for the Members of Parliament and it will be strictly confidential unless the Parliament decides to publish it.

SHRIMATI SNEHPRABHA PRADHAN: Well, I have read the reports which were sent to me. I have read the original Bill and the amendment too. Am I allowed to speak anything on the original Bill or am I strictly forbidden?

CHAIRMAN: You are at liberty to give your opinion.

SHRIMATI PRADHAN: I shall first consider the original Bill and take the liberty of saying that according to me the Bill like the Prohibition law has never been effective. First of all I

feel that the punishment that is awarded for any person who commits the offence is too mild. A person who makes a profession of producing obscene literature wants to make money by indulging in such things. He will not be worried about three months' rigorous imprisonment. During the time he is imprisoned he would entrust the job to some of his friends or relatives interested in that type of work who would carry it out underground. He will take up the work immediately after he is released. My first observation about the Bill is that if at all the Bill has to be effective it has to provide for intensive punishment. It has to be made clearly impossible for the man to think of indulging in this sort of social offence after he is released. Even before he is punished he should have to think twice before committing the offence. In this the Bill is not effective. All over Bombay such offences are being committed and Bombay is not an exception to the rule. Such things are going on all over India. There are people who do not have a sense of social responsibility or obligation and they do not think they have to contribute something to the society to make it a better place to live in. Then how and where exactly does this Bill come into force. Let us take the cinema posters. According to me, most of the modern cinema posters are downright vulgar and an insult to womanhood. I call it an insult to womanhood because I do not like the idea that a woman should be made to think that her survival in this world merely depends upon her physical charms. Our mothers, and here I refer to my mother and to your mothers—they were not necessarily beautiful women, but they were good women. They lived for a certain cause. Maybe they lived only for their families but they were loved and respected. Nowadays the stress is mostly on a woman's physical beauty. I would like a woman to be charming mentally. One should be mentally more attractive. Of course, men and women have to be physically fit to produce a healthy generation. We

all have to live physically. It is criminal to become repulsive due to indifference to physical well-being. But the body also has a mind. These days, no matter whether the substance of the book is philosophy, law, medicine or religion, somewhere or the other one comes across an advertisement which uses a scantily clad female figure to draw the readers' attention. The other day I came across an advertisement advertising some fabric for males. A woman was lying on the floor naked; she was covered with bare covering of this particular fabric and it was mentioned that it was meant only for men. You can see the idea behind it. I, as a woman, feel that this is a bad trend in human thinking. There are millions of such posters and millions of such books freely circulated. What is being done about it by law?

It is a medical fact that a man can turn impotent if his mind is not awakened or if he is under stress. Similarly a woman can turn frigid if her mind is filled with fear or revulsion, which proves that the mind comes first and the mind alone decides whether two people would be happy sexually. Obscene books and pictures reduce woman to the lowliest level and advertise her as merely a playground for man. The idea is most repulsive to me.

CHAIRMAN: You want something stricter to be done in this respect?

SHRIMATI PRADHAN: Yes. I feel that each person is born with a definite trend. I have done a great deal of reading in psychology and mental diseases and I find that every person is born with a certain definite trend. There are two paths in life; one is low and one is high. There are people who will always take the low path. For example, a man who is rich drinks because he is rich. He womanises because he is rich. A man who is poor drinks and womanises for other reasons. If he became rich, he would do the same thing and the rich man, if he became poor, would also do the same thing. A friend of mine

once said that he would like to leave smoking because I did not like it. I told him that he should leave it only because he was convinced that it was bad for his own health and not because A or B or C did not like it. I, feel that no amount of restriction is going to stop people from reading dirty books, if their minds are set upon reading such books. Yet, with all this, certain people in society do believe that such regulations and rules are necessary. Therefore, let us make them more effective and watertight so that an offender is so punished that it will be impossible for him to indulge in such an offence again. Unfortunately I do not find that this is so. I was compelled to read, a book like "Lady Chatterley's Lover" because I kept on wondering as to how some people could think that it was a piece of art and some people could think that it was obscene. When I read the book I found that it was nothing but downright obscene. I was saying to a friend this afternoon that if it is very artistic to describe in words, in minutest details, what the physical intimacies between a man and woman are then it should be equally very artistic for a man and a woman if they indulged in the open on a footpath in physical intimacy, say, according to the teachings of Kama Sutra. Why should it not be considered as a brilliant example of art? Man and woman will continue to indulge in sex for as long as the world goes on. Even then we do restrict ourselves because of certain social bindings. A man may be sitting in his own room in half pants, but when a visitor comes, he puts on a shirt. He does so because of certain rules and regulations, imposed upon by society. If that is so, why should we make allowances in this particular case and permit anything to go on in the name of art? I do not accept Lady Chatterley's Lover as a piece of art because I do not believe it is necessary to describe every dirty detail to educated people. I am also against taking opinions of experts in this matter. Is the reading of the book going to be limited only to the

experts and are the objects of art going to be seen or handled by them alone? Or is the general public going to read the books and view the pieces of art? Therefore, I feel that this amendment would be very seriously harmful and it would open up a very royal path for all people who want to indulge in obscene literature and art etc. They will make use of this particular amendment and they will manage to get a few experts to say that it is a very good thing and thus it would be a complicated affair, because every time a book is published or a piece of vulgar art is exhibited, so many experts will come and say that it is good.

CHAIRMAN: You have said that a man or a woman is born with certain trends. Don't you think by education, by association, by company and particularly by the good association of a lady companion these trends would be modified or changed?

SHRIMATI PRADHAN: I do not think that unless a person is basically of a good fibre he will respond to any outside factor.

CHAIRMAN: There are people who are responsive to good company?

SHRIMATI PRADHAN: Yes, but only because basically they are good. The weak minded or people who have a natural tendency to turn to the vices of life cannot be reformed.

CHAIRMAN: Do you not think that some sort of sex education is necessary for our young people?

SHRIMATI PRADHAN: Definitely. But I feel that the school for that type of education is at home first and in colleges and schools second. These days our young people are not able to find their way because parents have lost control over them and educational institutions have lost control on the students. Our young people have not got any burning problems except the pleasures of flesh. Their problem is: "How can I take a girl out; and how soon can I get her to bed?" In the days of our freedom struggle, young people had some ideals before them.

Such ideals are not there now in them. Modern life is different. The parents of the girls go to bad films again and again. I have seen so many parents saying that they had gone to a particular picture twenty times. The picture showed nothing but how girls are dressed up in the most sexy manner. How can such elders guide or control their children? I have seen mothers proudly praising their 5-6 years old girls or boys for being precocious and for being able to exactly imitate some sexy song or dance from a film. I have seen that even when parents have different views they are unable to prevent their children from reading trash, from indulging in anti-social behaviour or from turning totally to the bad in Western culture. These youngsters are not only completely ignorant of Indian religion, art, music and literature but they turn away contemptuously from anything Indian. Even our Maharashtrian people, supposed to be conservative, are gleefully crowding the theatres to watch plays in which actresses dresses in skin tight pants, exhibiting the ugly contours of a badly kept figure. This audience comprises women and men of 60 years and also girls and boys of 8-9 years of age.

CHAIRMAN: What is the reason for all this?

SHRIMATI PRADHAN: I have already discussed the point. The elders cannot inspire the children to live nobly. The teachers also are no more in a position to do so. These days, when they can afford it, modern women leave their kitchen in the hands of cooks and their children in the care of Ayahs. They spend hours before the mirror and pass their evening with their husbands in the company of friends. They say that if they did not do so the husbands would turn to other women. What education can Ayahs give to the youngsters?

PANDIT TANKHA: I am extremely thankful to you for giving out your forthright views on this matter. I entirely agree with what you have said.

SHRIMATI PRADHAN: I want to tell you one more thing, I have also objection to making exceptions to obscene literature or pieces of art on the ground of religion. For example, the carvings on temple walls may be pieces of art to an artist, but from the layman's point of view they can only look erotic. I do not agree with the view that people going to temples go with a pious mind and they have no temptations. It is amusing that we are going to consider the carvings in temples as pure and nice and the reproduction of those carvings elsewhere as obscene. When Amrapalli was released in Bombay, a strip reproducing these carvings was used as a decoration. Next day it was removed because it was considered vulgar. Is not this amusing! The same man in a temple is supposed to consider them sacred and pure while when he sees them reproduced elsewhere he must brand them as vulgar! I know or rather I am told that at Mahalaxmi during Navaratri flower girls beautifully dressed sit along the steps of the temple and people visiting the temple do not go there to take the *darshan* of gods inside the temple, but goddesses sitting outside along the steps. Therefore, I object to the law making exception to certain things on the ground of religion. So also there should not be any exception in the case of books, pictures, paintings, sculpture, etc., except when these objects are treated from a purely scientific angle. Scientific treatment will limit the books, etc., only to those who are making a study of a subject specifically—either for a degree or a thesis with their prohibitive prices these books, etc., will not be handled by the general public.

These are modern works of art crowding all the big halls. We are told these are great pieces of art. But I find them most repulsive poses and when a layman looks at these awful poses, his mind is obsessed with strange ideas.

SHRI ARJUN ARORA: How will you distinguish between a genuine

piece of art and an obscene piece of literature or sculpture?

SHRIMATI PRADHAN: There is no such yardstick, but common sense should help us to decide what is good and what is bad. Individual opinion should not be considered since what might appear as a piece of art to one will appear to another as vulgar and erotic. A case should be judged by the opinion of the general public as to whether a particular thing is obscene or is a piece of art. That should be the only way of judging what is obscene and what is not obscene.

CHAIRMAN: You mean the impression created in general?

SHRIMATI PRADHAN: Yes, on a cross-section of the society. That should be the only way to judge.

SHRI ARORA: Once that criterion is accepted, who will be the judge?

SHRIMATI PRADHAN: The public. Suppose the court is full of 50 persons. The judge instead of deciding it for himself, can ask those who are present whether they would agree to have a particular object or book in their homes to be handled by their own children? That would be the only way to judge.

SHRI ARORA: What is the correct age for starting sex education? The desirability of sex education is expressed by many in these days.

SMT. PRADHAN: I am afraid, the modern generation can teach us in this matter. It seems they start from the time they are born.

SHRI ARORA: What has led to this sort of situation in our society?

SMT. PRADHAN: I think the trend started during war time. The films which were meant to entertain the soldiers from abroad have been most responsible for the degeneration. And now our own producers have started producing such pictures. During British Raj we were constantly conscious of Indian heritage. To-day

with the stigma of slavery gone, we are becoming more British—more westernised than we ever were in the past.

SHRI ARORA: I presume you have Hollywood pictures in view when you mentioned imported pictures.

SMT. PRADHAN: Yes.

SHRI ARORA: There is a Board of Film Censors which censors imported and indigenous films. Do you think it has failed in its duty?

SMT. PRADHAN: Very frankly I do not wish to give an opinion on this matter because I have no intimate contact with the Members of the Censor Board but from what we see in the pictures to-day it does not seem to give any proof of the existence of the Board.

SHRI ARORA: Some people seem to say that it is the affluence coming in our Society, which is leading to obscenity. What is your opinion?

SMT. PRADHAN: I think it is generally loneliness and boredom which are leading many people to seek cheap thrills and pleasures. The joint family system has ended. The need for sacrifice, tolerance, mutual adjustments, self-control and self-denial is no more felt. There is not enough to occupy the time of either the grown-ups or young people. Now we have small families, that is, the husband and wife and a couple of children. Supposing I invite the husband and wife and two children to my house, we adults begin to talk on several matters. The children get bored as they cannot and will not participate in the talk. So, they want to go out. When the husband and wife are together, they are also bored and they also want to go to pictures or to clubs, etc. In the case of the poor people also harmless pleasures have become expensive.

SHRI MULKA GOVINDA REDDY: Miss Pradhan, you said that the parent control the boys and the girls and the professors cannot control the boys and

girls. That means it is not possible to control the activities of the boys and girls. How is it possible to control them by stricter legislation and stricter enforcement of legislation?

SMT. PRADHAN: I did not say that we cannot control them. The fault lies with the modern parents and teachers. In practice they show preference for the wrong values. They will talk of virtue but will rush to honour a rich black-marketeer. They will talk of spiritual values but run after pleasures of the flesh. At home this is the state of affairs. Outside also the youngsters can easily lay hands on sexy books and see sexy pictures (our heroines are already stripping upto the hip-bones)! Is it then surprising that with no solid good values to believe in, the young of to-day have become disrespectful to elders? Bereft of faith they are becoming a destructive force. Even as a top film star of yesterday I have never taken one pie in black. I do not drink, smoke, gamble or go to races. I do not visit temples but I observe the principles of Religion in every day life. But for all this the credit goes to my parents who have inspired me with their own brilliant behaviour. Another draw-back of modern life is the complete lack of personal touch. Every-body is in a hurry to go somewhere (God knows where!) and no body is interested in burdening himself with another's problems. Parents have lost that personal touch, teachers have lost it. Doctors have lost it. Neighbours have lost it.

Our elders had family Doctors who knew every single thing about the patients' family background and problems. To-day we have only specialists who treat every part of our body as a separate unit! How can the young find answers to millions of questions which crowd their life? They cannot and obscene literature etc. has become for them a thrilling diversion—offering them easy respite.

What I feel is that unless we set before the young people a good example ourselves we will not be able to control them merely by the fact of being their elders or teachers! We must create for them proper values by ourselves believing in those values and applying them in life. We must not damage their faith and we must not cause confusion in their minds by ourselves saying one thing and doing another. If we want them to be virtuous, we must be so ourselves. If we say they must honour virtue then we must also do likewise. Mostly the elders constantly contradict their own teachings.

SHRI REDDY: You said that there should be stricter enforcement of law relating to obscenity and there should be deterrent punishment. Don't you think that if it is done the literature that is published will all go underground and there will be more clamour for such literature?

SMT. PRADHAN: I quite agree with you. I personally feel that no law which comes into force will have any effect. In spite of prohibition drinking is going on. The Book of Lady Chatterley's Lover has been banned. Are we to believe that in India the millions of books that have come, all of them are good books? The other day I went into a library, which is very close to my house. I was very tired and I wanted to do some light reading. I took a book from the library. I picked up the book at random. From the title and cover picture it looked a nice clean book. But in fact, it turned out to be an extremely obscene book. The author (a female) had taken lesbianism as the subject of her novel. From first page to the last she had filled it with horrible descriptions of intimacies between man and woman and also between woman and woman. In sheer vividness of description and sexual knowledge I wonder if any other author would be able to beat her! This was one of the many books

which are easily available to the reader. I could not go beyond glancing through the pages as it filled me with nausea but all the teen-agers who would read this and such other books—would they react like me? In fact, it would make them think that lesbianism i.e. sexual love between two females was the most thrilling pastime. Hundreds and hundreds of such books are being imported. There are obscene pictorials called 'Peep Shows' openly available in many book stalls and way-side libraries. They show lovely female figures in most tantalising poses. These are books which are shaping the thoughts and character of our men and women. What future have we? What has law done about this? Hundreds of books on the line of 'Lady Chatterley's Lover' flood the book stalls. You can see how little the law is effective in preventing the spread of obscenity.

CHAIRMAN: When you order these books, there is nobody to judge as to whether they are good or bad?

SHRI A. D. MANI: They are allowed to be imported.

SMT. PRADHAN: Law becomes effective only when a famous writer writes a bad book. If Lady Chatterley's Lover was not written by a famous writer, nobody would have bothered about it. I should say that millions of authors, who write such books, go scot free. I have not seen a blue film, but I am told that in Bombay very respectable families see these blue films.

CHAIRMAN: Are they shown publicly?

SMT. PRADHAN: They are shown in private houses. Private shows can easily become public shows. If one invites a couple of hundred people to a private party, it is as good as having a public function. I would say here that the relationship between man and a woman is not an animal relationship. Mind is an important thing in any intimacy between man and a

woman. When any book or picture or any piece of art deals with human beings as though mind is not existent at all, I cannot accept it. Physical relationship is not a mathematical calculation. A common approach to life's problems, a common approach to man and religion are important. Complete sex is or should be the sum total of all that a man and woman share together in life. Physical intimacy should be a culmination of all the tender, beautiful moments, hours and days shared together.

SHRI P. K. KUMARAN: Do you consider the carvings of some of our temples—for example the carvings at Kadirapur and in other big temples—which are considered as the heritage of India and a reflection of our ancient culture, as a piece of art?

SMT. PRADHAN: I am a little allergic to this word 'heritage'. We use many big words to say many ordinary things. We have also the great heritage of having treated our other human beings as untouchables and kept them at arms length. It depends upon how the average onlooker views these things. I am talking of law in relationship to an average onlooker.

SHRI KUMARAN: Earlier you said that human beings are born with certain trends; if that is so, even if the law is amended, or even if we are able to enforce the law properly, it will not have any effect.

SMT. PRADHAN: I said that I do not believe that it will be effective, but I know that just because it is not going to be effective, it is not going to be removed from law books. If it is in the law books, then it should be made watertight. I gave the example of prohibition.

SHRI KUMARAN: There are certain facts of life. In India it is not a problem, but in certain countries it is a burning problem. Are we to avoid them?

SMT. PRADHAN: Obscene books etc. can make these problems more intense. They are not educative in nature. When I say that it is a question of giving scientific education, I mean that you must publish these books in a scientific manner. We have literature on family planning, but we do not give a full description of the physical intimacy between man and woman. We tell them everything in a scientific way.

DIWAN CHAMAN LALL: Have you read the book on Lesbianism?

SMT. PRADHAN: No. When I hear of any book that includes some of these things in the name of literature or art, I just avoid it. The same can be said about newspapers. I intensely dislike pornographic literature. I am not such a widely read person of obscene books.

DIWAN CHAMAN LALL: Have you read Rousseau's Confessions?

SMT. PRADHAN: Yes.

DIWAN CHAMAN LALL: The matter contained in this Bill was raised originally in 1924 when Mr. Mohammed Ali Jinnah objected at that time and when he was speaking on it I interrupted his speech and asked him whether he had read Rousseau's Confessions. He said he had read the book not once but twice, and then asked him a series of questions. Lord Hailey, who was then the member in charge of Home in the Viceroy's Executive Council, made a reference in connection with a book that he had banned; but when he went home he found that the book was lying on his table. La Garconne was one of the other books mentioned at that time. What do you think about Rousseau's Confessions?

SMT. PRADHAN: Probably when I read it, I did not study it from any particular point of view. I could give opinion on some of the books which I have read carefully. I shall repeat that I am averse to obscene literature etc. My aversion became more intense after I joined films. And now in the film world of to-day the woman

is only a female body to be exploited for the box-office. I abhor the modern definition of a woman. I belong to a family where we were given freedom, but on healthy lines. We were allowed to speak freely but with respect for elders. We could bring our friends home so that there was no danger of our becoming closeted in restaurants or elsewhere. At home, the elders' presence disciplined our talk and action. I grew up with a sharp but healthy mind. My endeavour all along has been to raise the level of my thoughts and actions. As such there is no room for obscene literature in my life. I am fond of books of serious nature. I like those which deal with psychological or social problems. I have read 'Lady Chatterley's Daughter'— a book which effectively describes the girl's problem. Having seen the shameless affairs of her highly sexed mother, the girl develops nausea for sex. She cannot let any man come near her. She falls in love but the idea of sexual intimacy fills her with fear and disgust. Fortunately the man has understanding and patience. He marries her but does not indulge in marital intimacy until she herself comes to him won over by the depth and steadfastness of his love. Such books I like. I also read books on religion, medicine, law, science, etc.

DIWAN CHAMAN LALL: Have you read Rufino?

SMT. PRADHAN: I shall say again that I do not like reading obscene literature.

DIWAN CHAMAN LALL: I am worried about this particular amendment. It is interesting to hear your views on various topics of life and literature. But I am worried about this amendment. Mr. Kumaran asked you some questions about Khajuraho.

SMT. PRADHAN: I have seen the reproduction of these carvings in books.

DIWAN CHAMAN LALL: But there is a tradition in India which does

not exist in Europe. The tradition is the idea of reproduction and this is contemplated in those carvings. The idea is that of reproduction. So, he asked you about that tradition.

SMT. PRADHAN: But, is the word 'tradition' going to be understood by an onlooker? The onlooker will not see those carvings from that point of view.

DIWAN CHAMAN LALL: You want to see them from a western point of view?

SMT. PRADHAN: No; no. You stated whether (that amendment should be accepted or should be modified. You are not asking my suggestion as to what Miss Pradhan feels about it, but you want my opinion as to what Miss Pradhan feels about an average man's reaction. I am trying honestly to tell you what the average man or woman would think if he looks at something. I am very fond of dogs. Most of my dogs are females. When pups are born, most people do not take females. So I have many female dogs. One of my female dogs was lying on the sofa. You know when dogs are bothered with heat, they usually lie in such a way as to have the minimum part of the body touch the floor because that cools them on all sides. One young boy came to visit me once. He is almost like a brother to me. He said, "Oh, put that dog down." I said: "What is the matter?" He said: "Look at the pose she has taken." The obvious effect of the dog's posture on the young man's mind was erotic. Well, here is the average mind. How are we going to convince this young man and his like (that the carvings in temples are not meant for erotic pleasures:

DIWAN CHAMAN LALL : What conclusion do you draw from this story?

SMT PRADHAN : When I see these carvings my mind is full of wonder that even so long ago they could carve the intricate designs and

figures but it is no use denying that many carvings are of an erotic nature. The general public, I am sure, has the same impression.

DIWAN CHAMAN LALL: When experts look at them, they look with a different angle.

SMT. PRADHAN: That is exactly why I am against taking an expert's opinion. The expert is not a representative of a cross section of people. Suppose a young man or a woman feels quite excited because of the erotic pictures, or literature, how is the expert's opinion going to convince him or her that they are not erotic?

DIWAN CHAMAN LALL: But you convince the judge by the evidence of experts who can testify that this is a work of art and literature.

SMT. PRADHAN : Is the law worried about expert mind or average mind? Law is for all citizens. And experts have no right to give opinion on behalf of all the society. Law is trying to look after the welfare of the society and the society is made up of average men and women and not experts and therefore the opinion of the general public is of importance.

DIWAN CHAMAN LALL: The average man and woman were also considered by Ibsen.

SMT. PRADHAN: But the average man and woman do not know Ibsen and Shaw.

DIWAN CHAMAN LALL: I am talking about life in England at present.

SMT. PRADHAN: I refuse to judge the reactions of our people from the reactions of people outside India. For better or for worse, I cannot do so. For example, westerners look least self-conscious when they get into swimming costumes. Their ease and

their slim figures below the waist make them look decent but our Indian women do not look so to me. Indian woman's anatomy usually includes ample proportions below the waist which is not suitable for a swimming costume. What suits the people of a country does not necessarily suit the people of another country.

SHRI A. D. MANI: It is a very good evidence that you gave before this Committee. We wanted to take the evidence in Bombay because we wanted to have the reactions of the people connected with films on the question of obscenity, because at times there are obscene passages or poses in the films or posters showing obscene or vulgar scenes. Now would you agree with the view that obscenity depends on the state of public mind as it stands in a particular time and that the ideas about obscenity change from time to time?

SMT. PRADHAN : Basically the man of to-day is as conservative as he was yesterday.

I have already said earlier how I have to work with men shoulder to shoulder. It amuses me how a man has different sets of moral code for the girl he wants to flirt with and for the women of his household. A man always has a different set of rules for good behaviour for the women he respects to the one which he wants other women to follow. This shows that the conception of what is basically a correct moral code has not changed. Most men, even in these days want virgins as wives. Why? Now we consider even polygamy an anti-social action! How can then it be said that conception of morality or obscenity has changed in fact? To tolerate a wrong thing is not necessarily to approve of it. If sexual freedom between the two sexes has increased to-day it is not because the participants believe it to be good. The increasing marriage-age, growth

of erotic literature and films, the evil influence of western culture and absence of a noble goal and faith in elders have made our young men and women lose their resistance to temptation. Scientific prevention of conception has aided them. Limited accommodation and the lack of privacy give them further glimpses of sexual life, awakening their desires. But all men who indulge in such a freedom know that they would not have their own children do so. The girls are also conscious of their downfall.

SHRI MANI: Many of these considerations come up when we try to define obscenity. It is also mentioned about some of the statues that we find and also the works of art and other things. I can give you a very fine example. When an art was exhibited in Delhi some visitors said why don't you tie a saree or something round it. It is a curious reaction. Now, would you accept this proposition that one should take a very clear line and must know all code of Censors or for the matter of that any branch of learning? Do you want all these to be governed by rules or would you like the public morals to develop itself?

SMT. PRADHAN: I personally feel that public mind must be educated to distinguish between what is good and what is bad. But then again the difficulty is who is going to educate whom? The parents are not in a position to educate the children. The teachers are not in a position to educate the students.

SHRI MANI: Coming back to the point, this is a matter which we have to consider. Unfortunately, Shri K. K. Shah, who is a member of the Committee, is not attending because he has become a Minister.

CHAIRMAN: He was to come. He could not come because of some engagement in Delhi.

SHRI MANI: I personally feel that Indian films would become more real and would attract more people if kissing was permitted in films. The question of obscenity also comes in. What are your views as a film star?

SMT. PRADHAN: Long ago in a Marathi film in which I had acted, this controversial point had been discussed. Actually, there was no kissing but only an illusion created by clever placing of the camera. I was interviewed by the Press then. I told them then and I say it now that I am strongly against kissing being introduced on the screen. Kissing definitely is a way of expressing either emotions of love or passion but why are the westerners by introducing it on the Indian Screen? Kissing is a natural part of the Westerners' social life but it is not so in India. Since it is not done in actual life why allow it on the screen? If we shall do that soon over youngsters will take it as a green light shown to them to do it freely in public. Do we want this? There is something wonderfully sweet about the modest woman who loves her man and yet will not demonstrate it in public. This type of love is so tenderly romantic. Why not stick to it in social life, or otherwise?

SHRI MANI: While we are discussing about obscenity and kisses we do not take into account only individual reactions. While your views on this matter may be genuinely felt there may be large number of people who may not share with your opinion.

SMT. PRADHAN: Surely: They would want more also. I have no doubt about it.

SHRI MANI: Would you not mind kissing scenes being allowed?

SMT. PRADHAN: Yes, I am against kissing on the screen or for that matter kissing in the open even if the participants may be married. It does not go with the Indian pattern of life.

I am not a puritan. I was the first actress to introduce on the Marathi stage freedom of movement and action between the actors and actresses. In the Marathi play 'Ranicha-bang' you can witness the most tender love scenes. But let us not forget that whether on the stage or the screen, the intimate scenes are not the private doings of two persons. We must not forget that public witnesses the performances of the players. Therefore, the acting in those scenes must not overstep the boundry of decency. I ask you gentlemen, are the love scenes on the screen natural? How many of you have behaved so with your wives? Besides, tender love scenes, within the limit of decency would be an education to the young. Exhibitionism does not show love. It only shows the evil influence of overpowering passion.

We Indians have a long history of noble love. Our fathers, fore-fathers and fore-fore-fathers did not need the western people to teach them how to love. When a man loves and respects a woman he does not demonstrate it publicly for the lewd eyes of the onlookers. We have a population of millions, how many couples are seen kissing in public? Why then introduce it on the screen? Have not our producers sufficiently aped the western films? Must we now have kissing also? For Heaven's sake let us stop in time. Already it seems too late. One very famous American Producer said during his visit to India, "In India I expected to see Indian films and not cheap imitation of bad Hollywood films!" Yes, let us stop aping.

SHRI MANI: I have one more question. One of the difficulties which the Committee experience in studying this matter is while the Penal Code speaks about obscenity, there is no definition of obscenity. It is allowed to be judged by Judges in the light of the prevailing climate of cultural opinion. That is where the difficulty has arisen which has led Diwan Chaman Lall to move the amendment. One of the definitions which the Com-

mittee is considering about obscenity is, whether the tendency of the matter charged as obscene is to deprave or corrupt those whose minds are open to such immoral influence into whose hands a publication of this sort may fall. Some of us feel, as you seem to feel, that there is a great deal of obscene publications in the country which is not raising the cultural level of the people. Something has to be done to see that such publications are discouraged and that there should be a proper description of 'obscenity'.

SMT. PRADHAN: From what I have read from the reports submitted to me, this will ultimately have to be judged on the basis of the evidence which will be tendered and in terms of the effect it will have on the general average public.

SHRI MANI: Thank you.

SHRI M. P. BHARGAVA: You seem to think that the law as it stands to-day has many loopholes. Would you like some Commission to be appointed to see that the law is tightened up?

SMT. PRADHAN: I personally do not think that it would be possible to tighten up the loopholes in this law to such an extent that generally it could bring about glaring reforms in the type of books that are being sold or the type of objects that are being exhibited under the name of art. It will require every citizen in this country to bring about this reform. There are hundreds and thousands of objects and books. Unless every member of the society awakens to a social responsibility, the production, sale and use of obscene literature and pieces of art are not going to be curbed. I would say that the punishment part of it should be made stricter.

SHRI BHARGAVA: Would you like to have the section removed and have a sort of an atmosphere created to make educated people realise as to what is obscene and what is not obscene?

SMT. PRADHAN: What I should like to be done is to take away the minds of the people too much from the subject of sex. What is impossible to do is to stop people from thinking of sex altogether. What is possible to do is to educate the people, to make them deviate from sex and to give them some diversion. For our young people and even for our grown ups there are no diversions. There are no activities in the city where they could go and join in, unless they went to clubs or restaurants or films. There should be proper substitutes, particularly those which will build up the people physically and spiritually. Use of physical strength in constructive hobbies is the best way to diverge sexual energy. Good games and open air life are conducive to good health. So, there should be proper diversions and proper education of the people. Sex has a strong power which cannot be ignored. But the intimacy between man and woman should necessarily have spiritual foundation. That, according to me, is very important.

SHRI MANI: You do not go to the Wellington Club?

SMT. PRADHAN: No; I am not a member of any single club.

SHRI M. M. DHARIA: I would like to know from you the definition of 'obscenity'. You say that obscenity is something which creates a certain kind of unfavourable trend of thinking. What do you mean by that?

SMT. PRADHAN: Men and women, in their relationship, always find something attractive and interesting on the physical side, but when sex becomes an obsession and heightening of sexual pleasure becomes the only proof of 'living and enjoying life' then it must be put an halt to. Such thinking or anything that leads to such thinking I shall call obscene.

SHRI DHARIA: In the matter of our conception of morality, how can we define obscenity?

SMT. PRADHAN: Some famous author has said that we consider that

thing immoral which is done by others. I would say, whether it was five hundred years ago or 5,000 years afterwards, the basic instinct of sex is going to be the same always, and the reaction to objects and to spoken or written words which create or encourage or aggravate this basic instinct is also going to be the same.

SHRI DHARIA: As you know, the concepts are changing from year to year. In the famous book of Dr. Radhakrishnan on 'Society and Religion', he has stated that prior to 1500 years, if a priest came to your door, it was taken to be a matter of privilege and the lady of the house had to be in the company of that guest. If that was the idea which was taken to be the custom in those days, how do you like that idea to be taken today. When you say that our concepts are changing, is it not a proof that our approach towards obscenity is also changing every day?

SMT. PRADHAN: When I say that the concepts are changing, I mean that it is the individual awakening that is seeking to have a change. For example in those days, the woman was considered to be a property; she was as good as a glass of water, a property the man owned. Today, this will not be tolerated by the women. A woman is more free these days.

SHRI DHARIA: When you say that women are more free these days, then to put men and women on an equal level there should no objection. Why should we be so much sensitive about it?

SMT. PRADHAN: To be an equal level does not mean change of sex. Man and woman, each has his or her individual field. Sometimes, these fields merge into one another but even then the anatomical, physiological and psychological differences between the two sexes cannot be done away with. Promiscuity, loose behaviour have far reaching effects on a woman's life, not so on man's.

SHRI DHARIA: We are living in the days of democracy and naturally

our ideas are also changing. Under these circumstances what is the impression on the minds of the public. How can obscenity be curbed?

SMT. PRADHAN: There will always be loopholes. The only way is to educate through parents and teachers. No law would be effective.

SHRI K. S. RAMASWAMI: You said that in your days, students had some ideals before them like the freedom of the country and so on. What is the solution for these students now?

SMT. PRADHAN: No outside means would educate them. It is the family which should educate them. The joint family system should come back though it looks an impossibility as things are today. The young and the old must find their home more absorbing. In England etc. the psychiatrist has got a foothold in practically every home because the young are trying to live without the balming help of the mature elders. The old are forced to be by themselves. Each age has its good points but each needs the help and influence of the other group. The young bring hope into the life of elders. The elders lessen the pitfalls for the young.

Responsibilities in life are like the four walls of a home. The four walls give sense of security.

Responsibilities give fruitful occupation to the mind. They bring a sense of fulfilment and create spiritual well-being. I have looked after cousins and nieces and nephews and it has

been an enriching experience. May be that is what has helped me to keep aloof from vices. Not that I have not committed mistakes. Oh, I have committed blunders but they have been due to bad judgement and not due to wrong inclination or motives.

Our modern life, with its single-family system is a curse to happiness. It is a soil for loneliness and boredom.

CHAIRMAN: The family love is a sort of binding force and I think the same purpose can be achieved if you love poorer sections.

SMT. PRADHAN: My reaction to poor people is very strong. The poor are taking great advantage of their position. Poverty is not the only factor which makes one unhappy. There are other factors also. The poor use their poverty to exploit those with means. Labour has been taught to fight for rights, but they are not taught to do their work honestly.

CHAIRMAN: I thank you very much on my behalf and on behalf of the Committee for giving the evidence. It was very helpful and it will help us to come to a decision on this subject particularly. I am obliged to you for your precise way of making a statement on this very delicate subject.

SMT. PRADHAN: I thank you, Sir, and I also thank you gentlemen. Please forgive me if I have offended anybody by my frank testimony.

(The witness withdrew at this stage.)

Tuesday, 25th April, 1967

PRESENT

1. Shri Akbar Ali Khan—*Chairman.*

MEMBERS

2. Shri M. P. Bhargava
3. Pandit S. S. N. Tankha

4. Shri Arjun Arora
5. Shri M. M. Dharia

6. Shri Mulka Govinda Reddy

8. Shri A. D. Mani

7. Shri P. K. Kumaran

9. Diwan Chaman Lall.

Shri K. S. Ramaswamy, Deputy Minister in the Ministry of Home Affairs, also attended the meeting.

REPRESENTATIVES OF THE MINISTRIES

Ministry of Law

Shri S. K. Maitra, Additional Legislative Counsel.

Ministry of Home Affairs

Shri S. S. Varma, Deputy Secretary.

SECRETARIAT

Shri S. P. Ganguly, Deputy Secretary

Shri Amar Nandi, Under Secretary.

WITNESSES

1. Shri B. R. Chopra, Films Producer & Director.
2. Shri Prithviraj Kapoor, Actor, Director, Stage & Films.

(Shri B. R. Chopra was called in)

CHAIRMAN: Shall we begin? Shri Chopra, we are glad that you are with us notwithstanding your many other engagements. You know we are contemplating an amendment moved by Diwan Chaman Lall regarding Indian Penal Code, sections 292 and 293 about obscene matters. How far the present provision is adequate and how far it is not adequate? We want to have your opinion from your experience. We would like that in order to give a free hand we have to see that the literature and other things are not put in a disadvantageous position on account of the provisions that is existing at present. At the same time there is another view that the present provision need to be tightened up as well. So, we would like to know firstly, do you think whether the provisions that are existing to-day are working alright? The other thing on which we would like to have your opinion is about the amendment that our Diwan Chaman Lall has tabled. I suppose you have received our note and some of the papers also regarding this matter. We would be very happy to have

your views in the matter. You know this is a confidential matter and it will be placed before the Parliament and before the Parliament publishes it, it has not to go to Newspapers. This will be treated confidential. If there is anything which you want to treat as confidential you may say so. So, we would like to have your views on the amendment.

SHRI CHOPRA: In the beginning I would like to know what is really provided in the law which you want to amend and what is agitated.

CHAIRMAN: For instance, I may tell you that Lady Chatterley's Lover is a book which was prescribed in England some time back. Now that thing has gone. In our country our Courts have held that it is something obscene. At the same time, some of those who have discussed this amendment think that a real piece of art or literature or something relating to science may be lost by the present provision unless there is some provision on the lines suggested by the amendment.

SHRI CHOPRA: I feel that it is most unfortunate that Lady Chatterley's Lover was proscribed. It is rare piece of literature. I don't think it could ever be called obscene although some portion could be called erratic. At the same time, if you ask me I many say that there is a difference between a picture and a book.

SHRI BHARGAVA: Why there is differentiation between a picture and a book?

SHRI CHOPRA: A book makes a static reading. It is not necessary for you to read at length—you may read part of it and get it aside to use it later. The film on the contrary has to be seen all at one time and its impact done to the visuals is far greater than the dead print of the book.

CHAIRMAN: Do you think that what we have in films is quite alright or would you like it to be improved and that greater control should be exercised by the Board?

SHRI CHOPRA: I personally feel that the Board does exercise quite a lot of control. We feel that it is too strict in certain matters. A certain point has been agitating my mind that there are two standards. They allow something in British pictures, which they disallow in Indian films on the ground that the custom and culture of that place has admitted those things and they should be allowed, whereas Indian culture and customs are different and therefore should not be allowed. This has been agitating my mind. Personally I feel that there should be no dual standard of judging films though I believe that sex in India is a very sacred thing and should be treated with restraint.

CHAIRMAN: That has to be preserved.

SHRI CHOPRA: I may give you an instance. My neighbour is a Chris-

tian. When he and his wife go somewhere the daughter and the son-in-law kiss in my presence. I do not mind. But if the same thing is done by my daughter I will not like it. I do not know why, but that is inherent in me. That is why personally I oppose these things. We should be more careful in these things. We should try to preserve our culture and customs as much as possible. Otherwise it is not an Indian film.

CHAIRMAN: What do you think of the amendment? Do you think that we need to have an amendment as proposed by Diwan Saheb?

SHRI CHOPRA: What is the amendment? I do not know.

CHAIRMAN: The amendment is to liberalise the present provisions. We had sent it to you. The addition is this:—

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

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

SHRI CHOPRA: According to me it is too vague to say that it should be liberalised. What it really means I do not understand. Everything has to be judged on its own merits. A thing which is liked by somebody may be disliked by somebody else. We have to draw a line where it becomes vulgar and whether the reactions of that literature or painting or art is repulsive.

CHAIRMAN: You are right. Do you think that we need accept the amendment or the provision as it stands is enough?

SHRI CHOPRA: I am not a legal man. It is entirely a matter to be judged by experts and jurists. What I want to say is that one should not be very rigid.

CHAIRMAN: Do you think that the law as it stands is enough?

SHRI CHOPRA: I do not know what is the law as it stands. I would not be able to say.

SHRI BHARGAVA: Have you seen the art in Khajuraho and Kurnal? Do you call it obscene?

SHRI CHOPRA: I will not call it obscene.

SHRI BHARGAVA: What would be your broad definition of obscenity?

SHRI CHOPRA: When you go to a temple you do not go to see sex. You go with different frame of mind. The statues of Khajuraho do not excite the baser instincts in our mind. If we study the background of Khajuraho we will discover that the temples were meant only to divert the people from the Budhists trend of escapism from life, a love for life and a veneration for the Grihastha Ashram the beauty and attraction of which are on the walls of these temples. If however the intention is to create some kind of vulgarity in the minds of the people, that should be stopped.

CHAIRMAN: We have to see how it does affect an average young mind. There may be highly developed people like you and others. I can quite appreciate what you say, but now when we are dealing with the general pattern, we have to see how it does affect the average young mind.

SHRI CHOPRA: You cannot go on putting any restriction on art. I personally feel that art which generates feeling of elation and is not erratic is the most beautiful thing in the world and should be encouraged.

SHRI BHARGAVA: Have you seen this paper "Indian Observer"?

SHRI CHOPRA: It should be banned; it should be destroyed completely.

This paper should not be allowed to appear in public.

CHAIRMAN: So you would like the law to be tightened, because such publications are permissible?

SHRI CHOPRA: I do not allow my children to read it.

SHRI BHARGAVA: So broadly, shall we define that whatever has a bad effect on the minds of children, should not be allowed.

SHRI CHOPRA: Anything that you think is vulgar and in bad taste, should not be allowed.

SHRI ARORA: It appears that there is a thin line between a thing of beauty and something that is vulgar.

SHRI CHOPRA: Yes; there is really a thin line.

SHRI ARORA: That makes the task of a legislator more difficult.

SHRI CHOPRA: Yes; law is, therefore, ambiguous.

SHRI ARORA: We think that, while obscenity should not be paraded, a piece of art should be protected. How could that be achieved?

SHRI CHOPRA: Will whereas the statue of Venus is a piece of rare art if the same statue was to become alive and starts on the road it become vulgar? So, while the statue of Venus is not objectionable, the same Venus walking round the road without clothes would be most vulgar.

CHAIRMAN: And the same thing given in a book?

SHRI CHOPRA: The book with its dead print makes it a medium of greater acceptance for example Lady Chatterley's Lover is to my mind, an artistic writing but the same in a film may perhaps become obscene because of its greater impact.

SHRI ARORA: Is there any obscenity in Indian films or not?

SHRI CHOPRA: Some of the pictures are stupid; they try to bring in obscenity. The difficulty perhaps

seems to be that, by seeing foreign movies which are popular, and which parade sex blatantly we try to imitate them as far as we can. We try to go as far near them as possible, but I do not think there is any actual obscenity in our films.

SHRI ARORA: Do you consider the Hollywood films as obscene?

SHRI CHOPRA: Yes. In the year 1963 I went to Berlin as a member of the jury at the Berlin Film Festival. Out of the 22 films that I saw, 19 of them were nude. That is the trend there. In the American movies also, in the beginning there were no kisses; then they brought in the kiss; then they brought in a kiss for a longer duration; then they went to the bed room. I do not know where they go now? But these pictures come to India and they are seen by our producers. They are the biggest earners today. The producers in India try to copy them, which will be the easiest way to earn money. Audience of both Indian and Foreign pictures being the same the Indian producer cannot resist copying the louder aspects of the American Movie because of its ready acceptance and great popularity.

SHRI ARORA: Don't you think that the standard of Indian films will improve if we ban the import of vulgar films?

SHRI CHOPRA: That is so; I wish it was done earlier. Already the effect has been bad. We had started looking up. Suddenly there came a spate of the James Bond pictures and nudism of west invaded the citadel of Indian pictures and here we are now with a thousand invitations.

CHAIRMAN: Why not stop them now?

SHRI CHOPRA: It may not be easy now, because effect is already there. Many of the pictures have gone into production: We will not be able to wipe out the effect.

SHRI ARORA: But the trouble will not be accentuated.

SHRI CHOPRA: That is true, but since there have already been precedents, it will be argued that since some pictures were already allowed why not allow the others.

SHRI ARORA: The Board of Film Censors was supposed to protect our people from the undesirable effects of such pictures. Don't you think it has failed?

SHRI CHOPRA: When there are double standards of judgement, things are likely to happen like that. You judge differently the English and Indian movies.

SHRI KUMARAN: You said that the 'Indian Observer' should be banned immediately. We are unable to ban it because of the law, but because it corrupts the mind of children, it should be banned. Do you think that, because of a certain piece of art, it should be preserved?

SHRI CHOPRA: A piece of art is entirely different from the Observer; a piece of art is entirely a piece of art, an observer is not a piece of art. I read Lady Chatterley's Lover as a piece of literature. I do not think it will corrupt the mind of the people as the 'Indian Observer' does. The Indian Observer has so much of dirt in it. When I read Lady Chatterley's Lover, I did not have anything like vulgar effect in my mind. If one puts it on my table, I do not mind reading it.

SHRI KUMARAN: The statue of Venus is considered to be a piece of art. A naked woman's statue is also considered to be a piece of art. But at the same time a woman walking naked in the street is considered obscene. Now, how to draw the line between an art and obscenity?

SHRI CHOPRA: It is for the people of law to draw the line.

CHAIRMAN: In Parliament, where should we draw the line? How obscenity can be defined?

SHRI CHOPRA: It is difficult to define.

SHRI KUMARAN: The law has so far failed to intervene in the matter of the Indian Observer. We would like to ban it. But it is said to be a work of art.

SHRI CHOPRA: You cannot help it. Unfortunately in the name of freedom of speech and published such vulgar stuff is hawked about.

CHAIRMAN: You yourself said that the Indian Observer should be banned; but we are not able to ban.

SHRI DHARIA: Our intention in inviting you is to have your opinion as to what is that line.

SHRI CHOPRA: I only say that line has to be drawn. How it should be drawn is very difficult for me to say.

DIWAN CHAMAN LALL: I have suggested in my amendment as under:

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

So, this is where the line can be drawn.

SHRI CHOPRA: But public good is a vague term.

DIWAN CHAMAN LALL: It is. But you said that while Lady Chatterley's Lover is not vulgar in that particular sense, the Indian Observer is a vulgar paper. But now we have to draw the line somewhere. We draw the line by saying that there are certain works of art, literature and science which should be exempted from the operation of this law. How are you going to find that out? We have asked this question not only to experts but also to the general public.

SHRI CHOPRA: I am quite in agreement with what you say; but I have only said that you should draw the line. The amendment, as it is, is perfectly all right. But you have said 'public good'. Now that is a vague term. What is public good to you may not be so to me.

DIWAN CHAMAN LALL: What would happen when an evidence is led before a magistrate is this. There will be a dispute regarding a particular book. You have perhaps read Ulysses. The last statement of Madam Bloor is a work of art and it should be protected. That is the reason why I have brought in this particular amendment. The origin of this thing goes back to 1924 when the Legislative Assembly was seized of this matter by means of a resolution which was moved by the Government of the day, the British Government at that time. They wanted to accept the Geneva convention. Lord Hailey was the Home Minister who moved that this particular convention should be accepted by India. I got up and I objected at that stage in 1924—about 43 years ago—that works of art, literature, science would also be equally banned and Lord Hailey said that he banned in his capacity as Home Minister a particular book; but when he went home he found that particular book lying on his drawing room table. Mr. Jinnah got up and objected as some people are objecting today. I have said that an ignorant policeman or an equally ignorant magistrate would be banning Lady Chatterley's Lover or La Garconne or Rousseau's Confessions or Bernard Shaw's 'Widower's Houses'. It is said that the British Government brought this particular legislation not realising that there are in existence in India Khajuraho and Kunarak which are dedicated to the work of procreation. Nevertheless we have good works of art where the Indian artists have gone out of their way to produce something really good. How are we to protect all these things except by means of this amendment?

SHRI CHOPRA: There is point in protecting such things. But I have my fears because there may be a spate of obscene literature. You might put it in any way, but they may try to find out some loophole and justify this erotic literature also as a piece of Art.

DIWAN CHAMAN LAL: There may be a spate of bad literature like the Indian Observer. That is the second point I want to come to. What is it that you would suggest to put an end to this kind of bad literature?

SHRI CHOPRA: The legal pandits like you gentlemen should be able to find out a solution. The intention of the artist should be noble and if that is so we have to give him the protection of the law. I always resisted the idea of putting a kissing scene in my picture although people around have been insisting on my doing so. They say let the directive come from the censor. I said no. If we think that kissing is a good thing then we can put it and not because the censors have not taken objection to it. You say that kissing is a very good thing, but it is not only kissing itself, but it is the way in which it is represented that matters much.

DIWAN CHAMAN LALL: So if it is used for *bona fied* purposes of science, literature, or art, you want to make the law liberal, but you will not say that the Observer is literature or science?

SHRI CHOPRA: But he would say that it is literature.

DIWAN CHAMAN LALL: What would you do to stop it?

SHRI CHOPRA: I do not read it. That is the way to stop it.

DIWAN CHAMAN LALL: This paper has got wide circulation which means it has large readership.

SHRI CHOPRA: Do you think that by liberalising it you will be able to catch the culprit?

DIWAN CHAMAN LALL: Could it be stopped by deterrent punishment?

SHRI CHOPRA: If it is possible, I shall be happy, but the commercial instinct in people is far greater than cultural instinct.

SHRI DHARIA: Mr. Chopra, I want you to read the amendment again. The amendment says:

“After section 293 of the Indian Penal Code, the following section shall be inserted, namely:—

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

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

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

The only point for us to consider is whether this sort of amendment can be effective enough to curb the obscene literature. But don't you think that to determine what is public good or *bona fied* opinion of experts should be taken as evidence?

SHRI CHOPRA: Don't you think it is being done now?

SHRI DHARIA: According to the present law, whenever any issue is raised in the court as to the obscenity of literature some experts are called and examined. And that is being done today also. The two expressions 'public good' and *bona fide* are absolutely vague, especially in the context of the several headlines appearing in the Indian Observer, if you happen to

go through them. If we go by these two criteria 'public good' and 'bona fide' cause, it is possible that every time the miscreants will come forward saying that whatever they do is for the public good and *bona fide*. There may be difference of opinion whether what is produced is artistic or obscene. And the publishers of several magazines that we see also say that whatever they publish is also a part of literature. According to the definition if it is said that it is for public good nothing can be done, and it will not come within the purview of this amendment. The present law will stand as it is. Is it therefore going to help us by saying that what is for public good or *bona fide* should be protected?

SHRI CHOPRA: I do not think this amendment will be able to help us much. It is actually going to liberalise the definition of obscenity. It is not going to help us unless we are able to decide what is literature and art and what exactly is obscenity.

SHRI DHARIA: How is it going to help our purpose through this amendment, although the intentions are very honest?

SHRI DHARIA: About taking the evidence of experts you know that experts always are bound to disagree. For one expert it may be obscene and for others it may not be because their definition changes.

SHRI CHOPRA: Yes, it does change. Now I cannot think in terms of my father's time. There has been a change of outlook.

SHRI DHARIA: Having regard to this change of outlook I may draw your attention to a case. There was one case in Saudi Arabia. Before 25 years a Pardah Nishin lady was putting her pardah. Only one inch of her foot from the ground, that is the toe, was open. She was prosecuted for wearing such a dress in a way which was likely to create unfavourable atmosphere. That lady was

convicted for keeping her foot open for one inch from the ground. Today in that every country we see the change of outlook.

SHRI CHOPRA: I may give you an instance. There was a nude picture in London. The Country passed it. The critics did not like it. They said that the picture was no liked because the lady was not nude but was wearing chappals.

SHRI DHARIA: Are you aware that the House of Commons has very recently enacted a law and homo-sexuality has been made legal. I may draw your attention to this that it may be madness but it is there. Having regard to the change of purpose do you think that this is going to serve any valid purpose?

SHRI CHOPRA: I have been expressing my doubts, that the present law itself is not able to curb it inspite of protecting the true artists. You may on the contrary be giving a handle in the hands of these people and I wonder if the true artists will be protected. Of course some kind of incentive should be given to true artists for the public good. But how is the problem.

SHRI BHARGAVA: The original law in the Indian Penal Code was drafted by the Britishers at the time when the conditions were very much different than what they are to-day. Do you think that the time has not come when a Commission should be appointed to examine this *denovo* and enact some law which will suit the present day conditions of the conditions of the country and make the law tighter so as to be able to curb these activities? At least do you think that we should make the law upto-date?

SHRI CHOPRA: We have to see whether the present law has in any way proved a damper on the artistic work of people. Has it proved a damper and has it discouraged people from indulging in such things?

DIWAN CHAMAN LALL: I am sorry to interrupt you. May I draw your attention to the fact that the law is as it is existing in Great Britain. This amendment merely follows the legislation of the House of Commons. The legislation was to the effect that the work of artist should be protected. Lady Chatterley's Lover was the first case of its kind which came up before His Majesty, where experts were called in to state whether in their opinion the work was a work of literature or not. They said that it was a work of literature. The Judge held upon the verdict of jury that it was a work of literature. Now this amendment follows upon the amendment that was made in the law in Great Britain and nothing more.

SHRI CHOPRA: My difficulty is this: If it comes before the Bench any time you have to depend on the personal attitude a judge may take. Ultimately you have got to go to the Bench to decide whether a particular thing should be allowed or not. A lot of personal attitude does come into play. If the Lady Chatterley's Lover was allowed to be banned and this Indian Observer is not allowed to be banned, then there is something wrong with the human attitude and not the law.

SHRI BHARGAVA: Something is wrong in the law also because as the law is placed to-day neither the High Court nor the Home Ministry is able to adhere to their view and stop Papers like the Indian Observer. That is why I say that it is necessary to tighten up the law and not loosen it as it is envisaged in the amendment.

SHRI CHOPRA: I cannot say either this way or that way. I would prefer the safe middle. We must be able to create some interest in the mind of real artist to do something good to the public. I would not be able to say much about people like Durlab Singh because I am a lay man.

SHRI RAMASWAMY: What should be the yardstick or principle by which

a Judge has to decide whether it is obscene or a piece of art? Who should be the people that judge whether a thing is a piece of art or obscene.

SHRI CHOPRA: It is the intellectuals who will be able to say whether it is going to have an impression and what kind of impression is going to be created.

SHRI MANI: Mr. Chairman: My hon. friend Shri Bhargava raised a question whether this matter should be considered by a Commission. The witness said that he did not mind going into the matter. May I draw your attention to the fact that this question of obscenity was considered at length by the Press Commission and it dealt with this matter in its voluminous book. This matter was also considered by a Committee appointed by Government to go into the working of Small Newspapers, of which I was the Vice-Chairman. Mr. Chopra knows what happened to it. You are not a lawyer Mr. Chopra. Nor am I. I am a layman as you are. Some of us have been working on attempting a definition of obscenity, because the weakness of the Indian Penal Code is that 'obscenity' has not been defined. It has been left to the Judge or the Magistrate concerned. I may mention here that Blitz is facing a case in Nagpur for the publication of a photograph on the last page. They said that it is obscene. It is going to be decided by the Magistrate there. So, some of us have been working on this to define what obscenity is. The draft is as follows. I am not asking your legal opinion as a lawyer.

The definition is this:—

"For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its

items, if, taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it."

Would you consider this as a working draft? What the final draft would be, that will be in the hands of the legal draftsmen and the Law Ministry. Do you think that a publication like the 'Indian Observer' will come within its tentacles?

SHRI CHOPRA: It would be a good starting point, but whatever you may draw, it has to go to the court ultimately to decide whether 'Indian Observer' is obscene or not.

SHRI MANI: The difficulty is that there are various types of publications. For example, there was some publication about the 'sisters of Kashmir', pertaining to two simple school mistresses. So there are various types of publications, apart from the Indian Observer, even among the film journals. You will agree that there should be some kind of a check on these. If a film star is accused, it is her own affair. All such trials one would like to be in camera. Do you consider this as the starting point for the consideration of this draft?

SHRI CHOPRA: I think it is a good starting point, but I have my personal opinion in this matter. Could we not create some kind of a Censor, composed of highly learned people and public men, to whom these things could go?

SHRI MANI: We had the Board of Censors. It considered the case of a weekly journal. It considered its journalistic standard and passed a resolution. That almost led to a debacle. I would say that even among the film people, there are persons who take a severe view of exposure of the body. In the western custom, one does not feel embarrassed to see a well exposed breast or

a tight fitting dress, but that does not suit our Indian standard.

SHRI CHOPRA: I would not be backward to see an Indian woman in a sweater.

SHRI MANI: Would you suggest some heavy penalties in these cases?

SHRI CHOPRA: That would be a good thing.

SHRI MANI: We are keen on putting a stop to obscenity in the film trade, because the question about obscenity comes up often in Parliament. There is also the question of Night Clubs. In every film you see a Night Club, which perhaps does not exist at all.

SHRI CHOPRA: It is there. Whatever you see is just a semblance of it. Night Clubs are there in Calcutta as well as in Bombay. In the Indian films, there is trouble about one thing. The Censor Board is not able to decide as to what a dance is. The main intention of a dance was to excite people, whether it be Kathak or in Bharat Natyam. The dance took different shapes. It went to jazzy music, then western music came in, then we had the twist etc. I was on the Advisory Committee of the Censor Board. We had difficult problems to tackle. In Calcutta, somebody raised an objection about some lady's dance. When she went to court, the court said that it was perfectly all right.

SHRI MANI: If a thing is to be considered as obscene, it would depend upon the culture of a person, the cultural evolution of a person and the general tradition of the country. For example, in the Naga Land, exposition of a human body would hardly create any sensation. That would depend upon each region. If that was done in Bombay, that would be considered as obscene. So, there comes the difficulty of coming to a proper definition of obscenity. Finally, having defined it,

we will have to leave it to the courts concerned to decide whether a particular publication would come under obscenity or not. The other thing is that once you accept a good working draft, you can accept Mr. Divan's amendment also because it protects works of art.

SHRI CHOPRA: While protecting the art, we should not give a handle to bad artists, because they might use that very amendment to their advantage.

SHRI TANKHA: You have said that obscene literature should be banned?

SHRI CHOPRA: Some steps should be taken to ban it.

SHRI TANKHA: You also agree that the present law is not sufficient to ban such literature to the extent you would like?

SHRI CHOPRA: That is apparent now.

SHRI TANKHA: You are also of the view that the real art, real literature should not be stopped from exhibiting or from circulation. But the difficulty arises as to what is an obscene? You say that Lady Chatterlie's Lover is not obscene; but the Supreme Court has held the book to be obscene.

SHRI CHOPRA: That way I personally feel that the famous story of Kalidas should be considered vulgar when he describes Parvati and her sweat which starts from her forehead and goes to the navel. That also these should be bad; but nobody has challenged that.

SHRI TANKHA: But that book which was before the Court was held obscene and therefore books of that type or the journals which the courts

have not seen should be curbed. Question is how best to stop their circulation and how to prevent their sale? The contention of Shri Divan is not to encourage circulation of such papers or journals. He feels that according to his amendment the genuine art should be protected if there is no objectionable matter in it. But I suppose you do agree that the words used in that amendment are likely to allow such objectionable matter to come in even to a greater extent than is allowed at present.

SHRI CHOPRA: If this amendment seeks to protect the genuine artists and bans the tendency of people to go astray, it is welcome; but if it does not and if it allows the people to dabble in these obscene things, then it will not be helpful.

SHRI TANKHA: The amendment is: "Nothing contained in section 292 or section 293 shall apply to any book, pamphlet, writing, drawing, painting, representation or figure meant for public good or for bona fide purposes of science, literature, art or any other branch of learning." The words used are: "meant for public good or for bona fide purposes of science etc." Do you not think that under the authority of these words, objectionable matter will come in and it will be allowed. In the case of the Indian Observer the author stated that he wanted to reform society by these articles and he says I am bringing these facts to the notice of the society in order to remove the dirt which is there in the society. But do you or do you not think that with the addition of these words there is likelihood of more objectionable literature being allowed to come in?

SHRI CHOPRA: Whether the addition of those words will allow objectionable literature to come in, I am unable to say, because 'public good' may be a debatable point. I wonder whether by inserting those words whether the law would work more effectively.

SHRI TANKHA: I am afraid the addition of those words may give more latitude for the people who are interested in writing obscene literature.

SHRI CHOPRA: I wonder whether the present law really acts as a deterrent. The real artist always goes against the present trend in society and he will exhibit only those things which he thinks worth exhibiting. I have never experienced any handicap in the case of real artists. They are meant to change the trends in society. The real artist will not care for law. He will present his art and then allow people to criticise it. That is my view about the artists. They run against the current so to say, no real artist will first read the law before attempting a piece of Art.

CHAIRMAN: You do not think there is any difficulty as the law exists at present, in producing this literature?

SHRI CHOPRA: The only point is about Lady Chatterlie's Lover and therefore Shri Divan Saheb feels that his amendment will serve as a deterrent.

CHAIRMAN: Do you think that with the present law, there has never been any difficulty?

SHRI CHOPRA: I have always believed that artists have always defied all kinds of law. Even if you put restrictions on artists, a real artist will exhibit the thing that he wants.

SHRI TANKHA: The law will not prevent the artist from drawing the picture of a nude woman, but will prevent it from going in circulation.

SHRI CHOPRA: If the law can create incentive for the artist it is good, if it is going against that, it will not be welcome.

I would like to state here one thing that there are many restrictions during the course of the production of a film put by Govern-

ment and obscenity is not the only ground for putting such restrictions. If we want to show a corrupt Minister or Officer, that is not permitted, because, they say, it will shake the confidence of the people in the Government machinery. They say we are backward and if we show such things, the people will stop showing respect to its administration and the administrators. So I think if there are curbs in providing real talents to the country those curbs must go. That I think is the intention of the amendment. If there are any curbs serving as a deterrent for the real artist to come out, they should go.

DIWAN CHAMAN LALL: According to you there are no curbs?

SHRI CHOPRA: I have not felt any handicaps.

SHRI TANKHA: Has it been your experience that the producers have complained that the censors have usurped certain powers which are according to them essential for bringing out the story in an effective manner?

SHRI CHOPRA: Many times. Everybody looks at the picture from his own point of view and the judgment varies from man to man, and as a result many unhappy restrictions are put on the producers.

The producer in turn does not like interference with the vital things which would affect box-office.

SHRI TANKHA: Are there objections raised by artists themselves?

SHRI CHOPRA: Artists do not figure very much in the ultimate analysis of things. It is between the producers and the censors.

CHAIRMAN: Mr. Chopra we thank you very much for having come here and given excellent evidence before this Committee. I would like to convey special thanks of Diwan Chaman Lall, the mover of

this amendment, I am sure, the statements made by you will be very helpful in coming to our conclusion.

We will now adjourn to meet at 2.30 P.M.

(The witness withdrew at this stage)

(Shri Prithviraj Kapoor was called in)

CHAIRMAN: Now, shall we begin? Mr. Kapoor we are very happy you are with us. You know we are considering the amendment of our esteemed friend Diwan Chaman Lall regarding section 292 or 293 of the Indian Penal Code relating to obscene matters. He has brought an amendment. I am sure you must have seen the original as well as the amendment. We had also sent some notes to you. You might have gone through them. We want to know your opinion on this very difficult question. As the law stands, do you think that it is adequate or not? If it is not, whether we have to liberalise it or not. There should not be anything which would in any way stand in the way of the progress of art, literature and science. At the same time if there is anything filthy and demoralising we would like to tighten up our law to see that such things are prevented and the person concerned is dealt with. These are the two objects with which this Committee is interested. We have been very well benefited by the opinions of so many friends, lawyers, administrators, cine people and people from the literature field. We are very keen to have your views also on the subject. Let the Committee be benefited by it. You have been our ex-colleague also. I need not tell you much about it. This is confidential and it is for the Parliament. If there is anything on which you would like to be still more confidential you may tell us. With these words I would request you to give your views on the subject.

SHRI PRITHVIRAJ KAPOOR: Thank you Sir, for giving me this opportunity of meeting friends and for seeing the old faces and new faces. About this particular question we have before us I have read some of the remarks that have come from the Committee, but basically the amendment says something about the intention. I find that the intention of the amendment was not looked into when the remarks were given. I welcome the amendment. Most of the laws are the laws inherited from the British regime and they have negative definition, that there should be no loophole in the law for the people to progress and come forward. This amendment is quite simple and the intention seems to be to cure the negative side of it. I welcome it. If you minimise the pressure of the law it will help the hon. Judges as well. As you know the particular word obscene is not defined either in the original law or in the amendment thereto. We have in our own country the Rishis have given the yardsticks of 'Satyam', 'Sivam' and 'Sundar'. Here we are giving something to the society, to the poets to the publishers, to the painters. The intention, of course, is very fine no doubt, but in so many cases it will be hard to find out what is the intention of the person who is the creator of the poster or the book or the poem or painting. See the view at the Regal cinema-right in front of the Council Hall "Golden Finger". That is the picture running there. A man shows the golden finger. It is written there. But there is a nude body lying there. Who is going to find out the intention of the producer of the picture and had it was produced somewhere in Hollywood. It is rather difficult to find out the intention. Instead of going after and hunting the intention of the person we should straight look at it. What does it show? Is it something good? Yes, if it is so, it is so "Then we go further. Does it do any good to those who see it. If we find the answer is Yes—, then comes another thing. Is it 'sunder'? Is it aesthetic? If the answer to all the question's is yes—

then it should stay otherwise not I believe that Satyam' 'Sivam' and 'Sunderam' is 'the only yardstick with which things of art and public usage should be judged and measured. The mover of the amendment has in his own statement brought out also so many cases. I would say that so much good has been annihilated because of the existing law. The letter of the law and the spirit of the law depends upon the interpreter, under what circumstances it was interpreted, etc. I welcome every step that would remove the shackles on an artist. I welcome every step that would help him to minimise his fears. Even in the film world, every producer has his own fears which he would like to be allayed. Imposing a ban on anything will not take us much further. Even in the Bible we hear of the story about the daughters of Solomon. We read in it that they slept naked with their father to provide heat and warmth to the lying man's cold body. Now, because of this we should ban the Bible? I would say that a negative attitude presupposes that the man has a dirty mind, presupposes that we are bad people. Even in our temples we find beautiful ancient carvings. Perhaps those people thought that the people of our land are all good people. I would say that beauty lies in the eyes of the beholder.. You take even the best of books. In all the these cases it all depends upon how you look at them.

I can give you here also the instance of Dhondu—one of my theatre setting staff. This incident took place in Calcutta. I happened to be there. That man met with an accident. He was lying as if he was dead, with saliva dripping from his mouth. Doctors proclaimed him as dead. I rushed to him, embraced him, I placed his head on my naked chest and gave him warmth. The heat brought back life in him and all this because I had read the Soloman's incident in the Bible which played at the sence of my mind at the hour of need.

So, it all depends upon how we take things. If something good is to come out of the present amendment, I would welcome it.

CHAIRMAN: Do you think that the law as it stands does come in the way of progress of the right kind of art, literature, painting, etc?

SHRI KAPOOR: It has been instrumental in banning that book Lady Chatterley's Lover etc. Bernard Shaw wrote if he had a daughter, he would ask her to pass an examination in that book and then be allowed to marry. There exists fine art in the beautiful statues and the carvings we see art in temples. There are beautiful carvings in the famous Minakshi and Konark and Khajuraho temples. But it all depends upon the mind of the Bacholers. We are now free people. We had been slaves for hundreds of years. When we are slaves, our minds become dirty we should trust our selves. The more we trust ourselves and respect each other, the better our minds would be and stronger we will all become.

I may mention that I did not smoke or drink till I stopped producing children that was my resolve. I started smoking at the age of 35 when my youngest son was 3 years old. I had my first beer when I was 45. The idea was that these things should not go into the blood of my children. My father did not drink at all. He lived upto the age of 75. My grandfather used to drink but would have two chholas of brandy only. Well my sons started drinking comparatively at a very early age. Why? It is because of prohibition. The law that is supposed to safeguard us from drinking has made the young people inquisitive as to what is it that is in the drink? Therefore, they start-drinking. If you ask a man not to do a particular thing. he will do it more readily taking it up as a challenge. Therefore, such laws are broken. In the freedom struggle we were taught to break the laws and when such laws are made, people try to circumvent

these laws. If the prohibition law had not been there, perhaps good people would not have even touched liquor till quite an advanced age. I was in Bombay in 1932. Mr. Wallas was the chief in the Burmah Oil Company. One night I was invited to his house where I was offered liquor. I said No. Then he said that I must drink otherwise that will look bad when he was drinking and so were the other guests. I said, "You bring me lemon squash and I shall drink it along with you". And just as they drank their whisky and soda fourteen times, I drank that lemon squash measuring 14 glasses. Because the law was not there and I considered that drinking was not for me at that age, I never touched it though it was offered to me. Similarly, when I went to Bangalore, with an English Company. At different parties the then military Officers friends of the Boss of our company would insist that I must take whisky, or brandy or any other type of alcoholic drink along with them. I refused to take liquor and so one of the officers poured a bottle of champagne on my head and yet I never drank. But now that the prohibition law is there, I feel that the laws which prohibit us from eating or drinking this or that thing really insult us. Our fisher-woman comes to our house to sell fish. Once she invited us to her Zopadi at Danda. It was a purely simple Zopda. We went round and round those zopadas and she took us to one zopda. I found there was nothing but gold on the bodies of these men and women. The earning of House distilled liquor and not the sale of fish which was their basic profession. Her people said that we did well in coming to their place. They asked us what we would like to have. We told them to give us tea but they said you take some liquor because it will give them more trouble to prepare tea than to give us liquor. So, the reaction is there. If you frame a law asking not to do a certain thing, people will try to do that thing.

CHAIRMAN: There are some papers like the Indian Observer. Many

of us think that such a paper should be stopped. What is your view?

SHRI KAPOOR: The test is that of Satyam, Shivam and Sundaram. If it is not Satya and Shiva and Sundaram, then it is positively ugly and filthy it should be stopped.

CHAIRMAN: But our law at present does not take hold of the man who indulges in these things. The man does not come within the orbit of law. Would you not like something to be done to stop such things as Indian Observer?

SHRI KAPOOR: Again we come to the question of law. Take the law regarding defamation. The law is very weak and you can get away with it. The result is that the man gets defamed in such newspapers. He cannot go to the court, because he fears that some more mud would be thrown at him. But something should be done to stop such persons who have no intention of serving the society.

CHAIRMAN: But they say they are publishing these things for the good of the public to improve their moral.

SHRI KAPOOR: You apply the yard-stick again whether it is satyam whether it is shivam and whether it is sunder. He might say, it is satya; but is it shiv? Is it sundaram?

In 1962 I had been to West Berlin and thereafter to Kartovivari (Czechoslovakia) in 1966. There were some films exhibited which could be described as blue films—all shown under the garb of Art. They were most undesirable—as they might have seen satya, but they were neither Shiva nor Sundar. Such films should have been banned.

SHRI MANI: Are there no blue films in Bombay?

SHRI KAPOOR: At least, I have not seen any.

CHAIRMAN: I would request some of my friends also to ask you some questions so that the matter may be further clarified.

SHRI TANKHA: You seem to be of a view that much depends upon the attitude of mind of a person who sees or reads things which really determines whether or not a thing is bad or good?

SHRI KAPOOR: Yes, as Shakespear has said, there is nothing either good or bad, but thinking makes it so.

SHRI TANKHA: From that point of view, I believe that the law should be changed so as to keep away undesirable or obscene things from the hands of the people.

SHRI KAPOOR: I personally feel and this is what I felt many years ago which now appears to be phantastic that the Education Minister should be handed over all the money for educating the public.

The power of discriminating should be developed in ourselves. Then nothing will harm us. We are in a hurry so much so that in that hurry we have lost time also which perhaps we wanted to save.

SHRI TANKHA: You have stated that laws should be carefully made and that their reaction on the minds of the people should not be such as would compel them to break the law.

SHRI KAPOOR: The restrictions should be placed, but they should be such that it will not affect the minds of common man. In deciding what is obscene, the trouble is how to decide what is obscene. There was some magazine mentioned by our friend. It is very ugly. It gives a bad taste and it is unbearable, undesirable. If you read it, it does not make you happy and it does not do any good to anybody. The disgust is for the man presenting it. Such people should be discouraged. It is like throwing dirt on the road. Such things should be discouraged. If they do not know what harm they are doing it they should be taught to learn it.

CHAIRMAN: The law should be such as to do it?

SHRI KAPOOR: Yes. You remember the famous case of Punjab Diwanji, where somebody was murdered. The case was held at Julundur. The famous criminal lawyer Raizada Hansraj was appearing for the defence. The old man whose son was murdered said to the Judge so long as the Raizada is alive nothing could be done. Leave the accused, he is also somebody's father somebody's son who has murdered my son. But I have to make one request, and that is if you want to save the future generations 'hang that man'. He was a great criminal lawyer of Punjab. The Judge asked why. He said this man came and told me that he will murder my son. He said look here, you cannot do it. You will be hanged for it. But he replied as long as this lawyer is alive nobody dare hang him. There is another instance. In December 1950 when Sardar Patel Saheb died, I was at Bhavnagar with my theatre. Hearing the sad news of the great Sardar's sad demise the entire town of Bhavnagar went into mourning. All the cinema houses and all the Mills had been closed. All the people were roaming about in the streets. Then we realised how much was the population in Bhavnagar which looked a small town otherwise. People were roaming about in streets. The Congress President came to my house and said you please open the theatre, otherwise people go on loitering in the streets and it is difficult to go on the streets. So, some occupation must be there.

SHRI TANKHA: You are of the view that restrictions should be placed on the people by law?

SHRI KAPOOR: We should have minimum restrictions and maximum punishment. There should be maximum punishment for the people who throw muck-o-dirt on the body politic of the country.

CHAIRMAN: When a certain thing affects the general public mind, then the hand of law comes in.

SHRI KAPOOR: We know the intention of most of the laws of those days. Look at the dramas. You know that the censors were the police.

CHAIRMAN: But now that is not the position.

SHRI KAPOOR: But formerly I had to go to the police authorities to get my dramas passed.

DIWAN CHAMAN LALL: An average policeman is unable to understand a work of art, a work of literature or a work of science. So is the average Magistrate. He is so very illiterate that he is incapable of understanding what art is.

SHRI KAPOOR: I would say that by itself the law binds him so much that he does not get time to think. All the time the poor man is seen writing. In the court room there is always a rigmarole. People coming in and going out, etc. The only people who get time to think are the Under Secretaries. The Ministers are busy with some function or the other, with inauguration etc. The only people who are calm and quiet are the Under Secretaries, not even the Secretaries. The Minister depends upon his Under Secretary. I would not question the intelligence of a magistrate. He is engrossed in the form of the law that he has to interpret. Even if a murder is done in his presence he cannot punish the culprit. I pity the poor magistrate. He is bound hands and feet all the time, and he is all the time writing.

DIWAN CHAMAN LALL: I had a friend of mine who was a First Class Magistrate. He had sentenced a man to six months' imprisonment. An old man came to him and started weeping and said, "You are sentencing my son who is the only earner in the family; you will be starving us all." The

Magistrate reduced the sentence from six months to one month. Then a young lady came and she started weeping. She said, "My poor husband, you are sentencing him to death. He has little children. They will have neither father nor mother." The old man's heart was touched and he acquitted that person.

SHRI TANKHA: Am I to understand that you would like the present provisions of sections 292 and 293 of the Indian Penal Code to be removed from the Indian Penal Code because they place certain restrictions on the circulation of obscene literature?

SHRI KAPOOR: In that case, you will have to remove all the laws. As long as they serve the purpose of the amendment they may be there.

SHRI TANKHA: So the law as it is will remain, with the relaxation provided in it by Diwan Chaman Lall?

SHRI KAPOOR: Yes.

SHRI TANKHA: You have also said that something should be done to prevent literature of this type from being circulated freely and that severe punishment should be given. How is it to be reconciled?

SHRI KAPOOR: I would take the other way round. In spite of this law, if all the stalls are full of pornographic literature, coming from America or England, then of what use is the law at all? That means, we have not got enough people to enforce the law. Something should be done which this law has not done. The good cannot be stopped because of the bad. Because of the good, bad came in and we find today bad literature. If the law protects the good, defends the good and stops the bad, perhaps the good will be greater in number and the bad will be discouraged. In that light I welcome this amendment, that it may be able to release the power of good and make our hands stronger and giving us more time to think about the bad. As it is, both the hands of law are occupied. We can use both

the hands to stop the bad. Now, when the law is there, you are able to stop the bad with both the hands. From that point of view I welcome the amendment.

SHRI TANKHA: What you mean is that since there is not sufficient vigilance.

SHRI KAPOOR: Not vigilance, but discrimination. Discrimination is not there between the good and the bad. As we say, both the things—the good and the bad—are measured with the same yard-stick just as in Hindi we say, “Take ser Bhaji and take Ser Khaja”.

CHAIRMAN: Would you like to have some law which would help this idea of discrimination controlling the filthy part?

SHRI KAPOOR: If this amendment controls the filthy part, that is filthy literature, it is very good.

CHAIRMAN: You are right in saying that there will be more vigilance and more thought on the bad. But at the same time should there be something in the provisions of the law to see that such filthy things are controlled effectively?

SHRI KAPOOR: The amendment should be brought in to control such filthy things.

SHRI TANKHA: Your idea is that bad things should be prevented from coming in the open and good things should be encouraged. Then, should there be any law to consider which is good and which is bad? If that is the position, then you must have law. If you feel that the words in the amendment are not proper, then better words should be provided.

SHRI KAPOOR: The Amendment is: Nothing contained in section 292 or section 293 shall apply to any book, pamphlet, writing, drawing, painting,

representation or figure meant for public good or for bona fide purposes of science, literature, art or any other branch of learning. Now there is the intention of doing something for ‘public good’. A new thought is being given to the interpretation of the law! I feel this is for the good of the people. Then the amendment says about bona fide purposes of science etc.

CHAIRMAN: Shri Durlabhsing takes the plea that what he writes is to form the society.

SHRI KAPOOR: You are not going to decide what Shri Durlabhsing is saying. The court will decide what is good and what is bad.

SHRI TANKHA: Have you any idea or suggestion for us to say as to how we can prevent such dirty literature coming in the public hands?

SHRI KAPOOR: An individual has not got the strength to fight the force of evil. Evil has got more strength, more backing and more power. Take the case of bootleggers. If anybody goes and says that this particular man is a bootlegger, the next day he will be stabbed. He dared not do so because the power of evil is great. So, the fight should be with the State. The State should file a suit against him.

SHRI TANKHA: The State will take notice if there is law.

SHRI KAPOOR: Well, I have not studied law. If the law is not there, it should be there. In one film industry, I have not filed a single suit against my debtors, because, as you know, there will be more and more adjournments and the justice is delayed. Therefore, justice should be cheap and it should be simplified.

SHRI MANI: We have been considering the amendment. One of the difficulties that we have experienced is that there is no standard definition of obscenity and obscenity is allowed to be judged by a magistrate or a

judge according to his intentions. Of course, the judge takes many things into consideration; but even then what may not seem to you obscene may be obscene to others. For example, a woman with an exposed breast may not be obscene to some, while it may appear obscene to others.

SHRI KAPOOR: Well, a mother giving milk to a child is a figure which is worshipped by some people.

SHRI MANI: We have had here some witness who stated that they were shocked to find some Indian girls wearing skin-tight gins.

SHRI KAPOOR: They are very old people.

SHRI MANI: The amendment is sought to be introduced because it is found that many escape the clutches of law. For example the Indian Observer which has been indulging in rabid and vulgar writing could not be proceeded against because the Supreme Court held it as an infringement of its fundamental rights.

SHRI KAPOOR: Best course would be to ignore such journals and writings. The same Indian observer had written about me in praise and in the same issue, he wrote defamatory articles about one of my sons. But we did not accept the praise nor the abuse and ignored his observations and remarks.

CHAIRMAN: But there must be some provision in the law to prevent such writings or to punish the offender.

SHRI KAPOOR: By and large, people have got power of discriminating between good and bad.

CHAIRMAN: But people have got to be educated.

SHRI KAPOOR: We must trust our people.

SHRI MANI: Would you like something to be considered for incorporation in law and what should be the

provision to deal effectively with such journals like the Indian Observer.

SHRI KAPOOR: Nobody reads such journals.

SHRI DHARIA: You rightly said that we are free people and we should have trust in ourselves. When you are making this statement you are of the view that ultimately it is for the people to decide what should be done. By accepting this amendment, how do you feel that it may be possible for us to curb the present trend towards obscenity. Because under the law as it stands at present, in spite of the enabling provisions such journals like the Indian Observer are coming up. How do you feel that by accepting this amendment, we are going to solve our problem and how it will be helpful to us. You said that prohibition did not become successful because of the restrictions put by law. If that is so, having prohibitory provision in law perhaps people will go in more and more for this obscene literature.

SHRI KAPOOR: I have already stated that there is a basic thing, the yardstick which has been given in the hands of the nation by the Rishis, viz. Satyam, Shivam Sundaram. But in any case, protection has got to be given to those who are likely to be affected. Although, it is a matter of discrimination and it will be the job of the interpreters of the law.

SHRI DHARIA: Mr. Kapoor, the point is this, if you look at the various judgments so far as obscenity cases are concerned, we find that the Magistrates have nowhere punished the people. I may tell you that I have myself conducted the famous case of Poona (Menaka's case). I was the lawyer for the accused people. There I referred to several judgments of the Privy Council and the Supreme Court, and I could see that these pieces of art and literature have been exempted. My point is this when the court decides the cases it refers not only the law but the case law also.

The cases are clear on that point. This provision which we have got and the previous provision, both are negative. That is why Shri Mani has been insisting on a positive definition and a positive provision, whereby it will be possible for us to educate what is meant by obscenity. Is it necessary? Do you agree with this view?

SHRI KAPOOR: Can we go beyond the point and discuss all these things?

CHAIRMAN: We want to make a distinction in law as far as possible to point out what is obscene and what is not obscene.

SHRI DHARIA: With your permission, Mr. Chairman, I may clarify the position that this Committee is competent enough to make its own recommendations to the House. In case we are of opinion that this sort of positive definition is necessary we can do it.

DIWAN CHAMAN LALL: Whether we can enlarge the particular definition? The definition only is limited to works of art; literature and science, etc., for the public good. What he wants to do is to enlarge the definition of obscenity to include such papers as the Indian Observer.

CHAIRMAN: The word 'obscene' is not defined there.

SHRI KAPOOR: It is very strange. Every term has got to be defined. It is not defined.

SHRI MANI: In this context my amendment will read as follows:—

"For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it appeals to the prurient interest or of its effect, or (where it comprises two or more distinct items) the effect of any one of its item, if taken as

a whole, such as to tend to deprive and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodies in it."

What I have in mind is a cartoon with a letter press. Supposing it arouses public taste and corrupts public mind then it will come within the mischief of this section. The Indian Observer always does it. A large number of people in Delhi are affected. In Madras also there is a paper which publishes scandalous things about humble persons. They talk about Matunga. They write what the ladies do when the husbands go to office. It is published in the paper. It is not in public interest. They are sent by air to Bombay and it is sold in Fort. There are many such journals. There are such journals in Kashmir, Jullunder. We have suggested the following for the Exception:—

"For the Exception, the following shall be substituted, namely:—

'Exception.—This section does not extend to—

(a) any book, pamphlet, writing, drawing or painting,—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, writing, drawing or painting is in the interest of science, literature, art or learning or of other objects of general concern, or

(ii) which is kept or used *bona fide* for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose."

When I am reading this to you I want to stress the importance of one point. This section of the Indian Penal Code was drafted by Mecauley over 130 years ago. This section has

not been touched so far. It is based on British law. The British law has undergone a change after Lady Chatterley's Lover case. We are trying to reopen the section which was considered to be good by Collin. We want your opinion, in the interest of the film industry. If you think that there is a case for reconsideration, it will help us to come to some definite conclusions. We would like to know whether the law should be tightened up in this way. What are the positive measures that will be necessary to do this?

SHRI KAPOOR: In order that these things should be effective, we will have to curb the bad elements by releasing the good. There should not be the danger of this section curbing the good element as well. When we release the good elements, we will be making our hands stronger to curb the evil. Good should be encouraged and the bad should be discouraged. If that is not served, then something more may be added to it.

DIWAN CHAMAN LALL: May I take you to a distinctly forthright statement that you have made? That was excepted of you. That was about the point that was made by Mr. Dharia relating to certain journals and the case law that has been decided, certain works of art, literature, etc. As a matter of fact, the House of Commons, in the year 1954, came to the conclusion that works of art like Lady Chatterley's Lover and literature like Rousseau's Confessions, etc. etc., all these were unnecessarily banned and so they brought in an amendment of the law. The law in India was made by the British. It so happened that the publisher published one million copies of Lady Chatterley's Lover and immediately it was pounced upon by the police and a case was brought against the publisher. The publisher won the case. The words used in the present amendment are exactly the same as those used in the amendment of the law in Great Britain. I would like you to be categorical about it. You accept

this particular amendment as being for the public good, and would prevent the confiscation by the police or the magistracy of any work of art, literature, science, etc. which is for the public good?

SHRI KAPOOR: I think I will be merely repeating what I have already said before. As I have said, it should release the good for curbing the bad. In my early days, even the physical culture magazine, with photographs in bathing costumes, were not allowed. A magazine, "Love of Body Beautiful", was not allowed to be published. The publisher was sued for that. Eventually he was released. The President gave him an interview. He went there with his thirteen children. All the children gave a smile, but the youngest who was in the arms of the mother was rather serious, and the President asked as to why it was so, and the reply given was "Perhaps he is thinking of occupying your Chair."

Then about our girls going about in giens. It is a healthy sign. In America there was a law that dancing around the May Pole would be punished by hanging. Those who did so on May Day were immediately hanged on the nearby trees. But that punishment was stopped. Girls going about in giens is something that would go to improve the health and physical stature. You should do something to curb the bad part, that is, punish those Romeos who try to tease the girls round the streets, and harass the girls. They should be punished severely, whosoever is interfering with freedom of this type. People are becoming healthier this way. Even in Europe people used to have ugly legs, but ever since the ladies raised their skirts, their legs have improved. So, the punishment should be given to those who tease and harass the girls. Let people realise what is beautiful. In the schools and colleges, children should be thrown into the open playgrounds. If they have no playground, let them plough the fields

in the villages. These roadside Romeos should not be allowed to tease girls. That type of behaviour should be discouraged.

DIWAN CHAMAN LALL: You said that first of all works of art, literature, science etc. should be exempted, Then any party which produced papers like the Indian Observer should be curbed.

SHRI KAPOOR: All those things which throw mud should be discouraged. That which spoils the beautiful face of our land, should be discouraged. If a thing is bad for our country, and if tourists come and see such a thing, they will have very bad impression about our country. So, all that is bad should be severely dealt with.

SHRI MANI: You mentioned that the Indian people have got some characteristics. For example, some people do not put on anything on their heads. Then in the past the idea of beauty was different. How do you explain these young Indian girls wearing skin-tight gins?

SHRI KAPOOR: If you come to the Museum I will show you some pictures which would exhibit the standards of beauty 100 years back and

the standards of beauty applied now.. For example Venus was shown very fat and thick 100 years ago; today Venus is shown thin. So, the standards of beauty are changing.

CHAIRMAN: Thank you very much Mr. Kapoor. Your evidence has been very interesting. I am sure we will be benefited by it. On my behalf and on behalf of the Committee, I thank you very much.

SHRI KAPOOR: I also thank you for having done me the honour of inviting me here to offer my views. As a matter of fact, I was not well, but even then I am glad to have come here to meet such beautiful company and I am happy today to have met you all.

CHAIRMAN: In fact, we were really anxious to have you with us because of your old association with us.

Tomorrow, we are meeting here at 11.00 A.M. instead of 10.00 A.M. in view of the fact that we are going to see the Chief Minister who has invited us. Then again we will be meeting at 2.30 in the afternoon.

(The witness at this stage withdrew)--

Wednesday, 26th April, 1967

PRESENT

1. Shri Akbar Ali Khan—*Chairman.*

MEMBERS

2. Shri M. P. Bhargava
3. Pandit S. S. N. Tankha
4. Shri Arjun Arora
5. Shri M. M. Dharia
6. Shri Mulka Govinda Reddy
7. Shri P. K. Kumaran
8. Shri A. D. Mani
9. Diwan Chaman Lall
10. Shri D. P. Karmarkar.

Shri K. S. Ramaswamy, Deputy Minister in the Ministry of Home Affairs also attended the meeting.

REPRESENTATIVES OF THE MINISTRIES

Ministry of Law

Shri S. K. Maitra, Additional Legislative Counsel.

Ministry of Home Affairs

Shri S. S. Varma, Deputy Secretary.

SECRETARIAT

Shri S. P. Ganguly, Deputy Secretary.

Shri Amar Nandi, Under Secretary.

WITNESSES

1. Shri B. P. Bhatt, Chairman, Central Board of Films, Censors, Bombay.
2. Shri B. K. Nundee, Regional Officer, Central Board of Films Censors, Bombay.
3. Prof. D. K. Badekar, Representative of Maharashtra Sahitya Parishad, Poona.

(Shri B. P. Bhatt and Shri B. K. Nundee were called in).

CHAIRMAN: Mr. Bhatt, we are happy to meet you. You know the purpose for which this Committee is meeting. It is in connection with the amendment brought by one of our colleagues Diwan Chaman Lall to the Indian Penal Code, Sections 292 and 293, with the object that these present sections may not hit against anything which is a real piece of art or literature. We are considering that amendment. There is also another view which has been presented to the Committee that there is lot of literature which is really filthy and yet the arm of law has not been able to reach it and in order to achieve that object how far the present law can be tightened so that such things which are generally considered to be obscene do not get out of it and the offenders are brought to book. So these are the two aspects that we are considering. As you are experienced and you are proficient in this matter, we will be very happy to have your views on this subject from both the points of view.

SHRI B. P. BHATT: Sir, I have gone through the papers emphasising those two aspects underlying this amendment. I do not understand whether the purpose is to bring the

existing law in conformity with the law that is prevalent in U.K. That is not mentioned here.

CHAIRMAN: That is one of the things. We have to consider the conditions prevailing in our own country.

SHRI BHATT: Therefore, I cannot understand this because what is prevalent in U.K. may not be wholesome here, because conditions vastly differ. This is a country of massive illiteracy. It is a developing country. There are different levels of education and culture. In U.K. it is very easy, since it has got a common background of centuries and a uniform public opinion, its standard of education is high.

CHAIRMAN: You are entitled to give your opinion independently in view of the general trend in the whole world as well as taking into full consideration the conditions prevailing in our own country. You can give your own opinion.

SHRI BHATT: Considering the background which I just traced, massive illiteracy, lack of uniform public opinion, vast differences in levels of education and culture all these things would suggest that we should not be in a hurry to imitate what is in U.K. law. I am inclined to think of today

where markets are flooded with what is called obscene literature. Look at our advertisements.

CHAIRMAN: We would like to know how to control that.

SHRI BHATT: It is true that there is a growing trend towards obscenity and whether you read a popular journal or see advertisements in responsible newspapers today, this trend is there. It is a point whether we should tighten up the existing provisions of law. I am not a legal pandit to say anything with authority on this subject, but I feel that something has got to be done to maintain the social responsibility. The other day there appeared an advertisement of a talcum powder in which a nude woman was shown with an inch thick strip round her waste. The whole thing was suggestive. It pains me to see that responsible and respectable newspapers allow such advertisements to be published in their papers. It was only reassuring to know that many of its readers wrote in the paper against the publication of such an advertisement and the editor has published some of the letters and that shows that there is social awakening and social consciousness among people. And I do not therefore take a very pessimistic view of things.

CHAIRMAN: We would like to know whether you think that the law as it stands, apart from this amendment, is adequate to meet the situation.

SHRI BHATT: I am afraid, it is not and people go scot-free either because the law is not adequate or there is no desire for the adequate implementation of the law.

CHAIRMAN: We would like to know whether in your experience had there been cases where a real piece of art or literature has been taboo as obscene.

SHRI BHATT: I would like to know whether there is a single inst-

ance where the real piece of art or literature has suffered from a handicap because of the provisions of the existing law. I cannot recall a single instance. Of course, this is my personal experience. I do not recall whether such a great artist wanting to create any piece of art or literature has been stopped by any legal sanction. I do not think we have met with a situation like that. Even the present law would ensure the publication of work of art and literature. We do not think that there is any contradiction between the unfettered publication of a piece of great art and the provisions of law as it exists today.

In our country we did not proscribe the famous book "Lolita". It is a piece of art, a book of literary merit like Lady Chatterley's Lover. Some people put it at a higher level also. It is not proscribed in our country. When a film was produced based on that novel we thought that it certainly lowers the morals of the audience. If I am asked the why of it my idea is that the two media, book and film, are different. What is all right in printed word is not all right in visuals; because the film as a mass-medium has tremendous vitality, it has tremendous intimacy, immediately and mobility. It is a straightforward presentation of facts. All these would suggest a greater emotional appeal than a book to the viewer. With a sophisticated educated man when he reads a book the projection and identification would be considerably less. That would not be in the case of an average film goer. When we certify a film it is not certified exclusively for educated people. It is not certified for intellectuals. It is certified for the entire country. You will therefore appreciate that when we certify a picture for the entire country it will have a country wide audience, audience of literate people, illiterate people, sophisticated educated men, semi-educated men, etc. So, we have to take a middle course. That probably is all right in reading. But, we cannot accept such a film for the reasons I

have given, because a film has tremendous impact on the audience. It is open to all sorts of people and it is shown to all parts of the country.

CHAIRMAN: Are you not satisfied that the films that are produced in the country at present are upto the mark?

SHRI BHATT: Well, Sir, I frankly say that I am mostly disappointed. It is a private sector industry.

CHAIRMAN: You are in the Censor Board.

SHRI BHATT: It is a negative job in a sense that a Magistrate cannot make a citizen a good man. He can put him in the lock-up if he violates the law. So, the film Censor Board cannot lay down a strict guide line for the film makers. If that be so, then the State must take over the industry which is certainly not a good thing to do. Though it is a work of art, and is primarily meant for enjoyment its production is an industrial undertaking. Where the production is an industrial undertaking a profit motive is a dominating factor. However, some Indian films have won international awards. Some Bengali films are certainly of a high quality. But when we see the average films, we feel that we have to go a long way yet to produce films of high artistic standard. But things are coming up.

CHAIRMAN: As things stand today I feel you are not satisfied. What remedies would you suggest to make the film industry more useful for our public and more helpful and more attractive on the constructive nation building lines.

SHRI BHATT: They are slowly moving in this direction. As I said there are certain films which are purposive and are really of educative value. There are very clean pictures and they have certainly the objective which you have in mind. In a matter like this public opinion is a positive

factor. For example, how is it that an average Bengali film that is produced in Bengal is clean? I use the word "clean" in a special sense. How is it so? The reason is simple because the audience would not accept anything less than that. People demand it. We have also to put across our point of view in a manner which will be acceptable to them.

CHAIRMAN: I would ask my colleagues to question you. Diwan Saheb, have you got any questions?

DIWAN CHAMAN LALL: Would you kindly tell me whether you are satisfied with the projection of American films dealing with crime, etc. in America?

SHRI BHATT: Well, it is difficult to say yes or no, but I will explain the position. Where the excessive pre-occupation with crime and sex is found in American pictures, the Censor Board takes due care to delete such scenes, and what emerges in the end is by and large acceptable. But I cannot say I am satisfied, and ones own satisfaction need not mean anything.

DIWAN CHAMAN LALL: You are the Chairman of the Film Censor Board. Do you remember a case of crime committed in India. After that crime I have seen a particular film produced depicting the crime. Here is a case in point. Would you be against any depiction of any such film?

SHRI BHATT: We certainly see that the *modus operandi* of crime shown is banned.

DIWAN CHAMAN LALL: I would like to draw your attention to one other point. You made a distinction between a novel and a film. You referred to "Lolita". You would not consider 'Lolita' as obscene?

SHRI BHATT: As a novel I would not. I think it is my view. I would consider the same about Lady Chatterley's Lover.

DIWAN CHAMAN LALL: Since Lady Chatterley's Lover has been banned, the case went up to the Supreme Court and it was necessary to amend the law to protect such works of art and literature.

SHRI BHATT: I am mainly concerned with the type of things that are being circulated. It is to that limited extent that I would base my reply, but there is no point in laying stress on one isolated instance of a book like Lady Chatterley's Lover. One has to go to the market and see what kind of films are being circulated, what kind of things young people read, and what type of newspapers and journals have a good sale. All that would point out that there is a growing tendency towards obscenity.

DIWAN CHAMAN LALL: Therefore, you would like to stiffen the law?

SHRI BHATT: I would like that some serious thought should be given to the question as to how to stop it. To my mind it does constitute a positive danger to young and immature people.

DIWAN CHAMAN LALL: Even to people like you and me?

SHRI BHATT: You and I will not be shocked even if we read Lolita. The same thing cannot be said about adolescent people.

DIWAN CHAMAN LALL: Any way, you are for tightening up the law in regard to obscene literature, or obscene documents like, I presume, the Indian Observer. Have you seen it?

SHRI BHATT: I have not seen it; but anything that falls under this category is not a desirable publication.

CHAIRMAN: But the difficulty is that we are not able to get hold of such persons.

SHRI BHATT: The law should be tightened up, but in our desire to protect an isolated piece of art, which could be produced only in one century or so, in order to protect hypothetical interest of one such publication, we should not neglect the possible dangers which might result therefrom. If you look at the whole thing in a proper perspective, there is need to tighten up the existing law.

DIWAN CHAMAN LALL: So it is your opinion that, so far as works of literature are concerned, they should be exempt.

SHRI BHATT: Yes. But there again—has there been any instance where the existing law is inadequate or where a great writer wanting to publish his book or a painter wanting to put his paintings in the market but there have been legal disabilities in that behalf? Have such instances come to the attention of the Law Ministry or Government or even to the attention of Diwan Chaman Lall?

DIWAN CHAMAN LALL: Have you read 'Canticles of Solomon' in the Bible?

SHRI BHATT: That is not proscribed.

DIWAN CHAMAN LALL: If anybody takes an objection to that, would it not be proscribed?

SHRI BHATT: Certainly not. In that case you will have to scrap some of the best literature in the world. Take, for example, Geeta Govind and similar literature in Sanskrit. You cannot look at these things in fragments. You must look at the entire picture. So many factors count in the making of art that it will not be proper to isolate one from the other. Our Sanskrit literature is full of erotic writings. Law has not banned it; on the contrary, law is helping it. Law is not able to take action because it finds that there is no ground for taking action. I speak as a layman but you are legal experts. Let

us not look at things in fragments. There is a nude statue of Gāutama, a huge statue in Mysore. Thousands of people go there. When you stand before that nude statue, you are only conscious of nudity and obscenity and other associations. No. Those who are immoral or abnormal persons, they will find fault even in paradise. Law is meant for the protection of decent people. There are so many nude statues. We have not thought for a moment that they are obscene. I would like to know what your idea of obscenity is.

DIWAN CHAMAN LALL: We will come to that later. You admitted that Lady Chatterley's Lover is a work of literature and yet it has been proscribed. In the circumstances, don't you think that it is necessary to ban, in law, such works which are obscene?

SHRI BHATT: My reaction is, in order to help an isolated work like this perhaps unwittingly we are opening flood gates and you will not be able to resist once you do it. Where will you draw the line?

DIWAN CHAMAN LALL: Have you read Ulysses?

SHRI BHATT: It is not obscene.

DIWAN CHAMAN LALL: If anybody raises a complaint he will succeed. Take, for example, the last chapter in it. That would be considered to be obscene if anybody made a complaint about it, under the law as it stands. I take it you agree with that?

SHRI BHATT: I have answered your query by saying that in anxiety to help one piece of art or one rare publication, we need not commit to something the consequences of which may be serious.

DIWAN CHAMAN LALL: Suppose we tighten up the law for proscribing extracts like those that come in the Indian Observer. Do you agree that we should tighten up the law?

SHRI BHATT: I have said we should seriously consider the growing social menace.

DIWAN CHAMAN LALL: Would you agree to tighten up the law in regard to Sanskrit literature?

SHRI BHATT: There is so much in Sanskrit literature and there is so much in our art and heritage and yet the law does not come in their way. If that is so, where is the anxiety of giving exemption to hypothetical instances?

DIWAN CHAMAN LALL: Lady Chatterley's Lover was banned. Tomorrow they may ban other pieces of literature?

CHAIRMAN: The witness has said that that is the only instance.

DIWAN CHAMAN LALL: Yes, it is a single instance, but there are other things like Solomon's Canticles and the like. They have not been banned so far.

SHRI BHATT: I would appreciate if instances are given from the Indian literature. You are considering the amendment of the Indian Penal Code. Let us not go to Lady Chatterley's Lover. These are foreign to us. You are concerned with the average citizen of the country. Therefore, he is not bothered. Whether he can purchase this book in the market or whether he cannot, we should not consider that. The point is has our literature suffered for the last 100 years from this handicap? Has it ever happened that the writer wanted to write something; but he could not because of this? If we have a large number of such instances, then we can come to the conclusion that there is certainly a case for liberalising or for giving exemptions. I find we are arguing in a vacuum. Nothing is before us except some foreign examples. Secondly, how many persons read English in this country. They are hardly 2 per cent. Out of these 2 per cent. how many really would be in-

interested in reading Lady Chatterley's Lover? Suppose Tulsidas' Ramayan has been proscribed on grounds of obscenity, then certainly something should be done. But why should we be anxious and worried about some foreign publications? You are going to amend the law for the entire population. They do not read newspapers and you are only thinking of some 50,000 people in this country. Are we justified in amending the law for the sake of these few people? It is really not necessary unless there are instances of the kind.

DIWAN CHAMAN LALL: There is a Bengali poet who wrote to me saying that his poem has been proscribed for certain reasons. He says this poem has literary value and yet it is proscribed?

CHAIRMAN: Unless those poems are before us we cannot take any decision.

SHRI BHATT: After all the test of good literature is whether it lasts. See whether it has the element of universality, see whether it appeals to the people and whether there is an element of permanency.

DIWAN CHAMAN LALL: An average magistrate or a policeman is qualified to tackle such cases?

SHRI BHATT: That is a different matter. That means you are not satisfied with the quality of the judges in this country. That does not mean you should amend the law.

DIWAN CHAMAN LALL: It is the British who made this law?

SHRI BHATT: Yes.

CHAIRMAN: But it has stood the test of time. That is he is saying.

SHRI BHATT: My friend Mr. Nandi will explain further, with your permission.

SHRI B. K. NUNDEE: A certain magazine has published a story. It was a filthy story and the writer has not suffered for that.

SHRI DHARIA: Mr. Bhatt, what can be the definition of obscenity?

SHRI BHATT: I am not in a position to say how it should be amended.

SHRI DHARIA: You may have read sections 292 and 293 of the Indian Penal Code. Don't you feel that the present law as it stands is of negative character and there is nothing positive which would guide a judge to decide what is meant by obscenity?

SHRI BHATT: I am glad you raise the point as to what is obscenity, I raise a counter question: What is Truth? What is God? What is Beauty? These are abstract concepts. Can you give one single comprehensive all-satisfying definition as to what is God, Beauty and Truth like that? It is very difficult to define obscenity within the four corners of the law. Just as you feel the presence of God, just as you feel the impact of Beauty, you can distinguish between truth and untruth and in the same manner you should be able to feel the impact of obscenity. Is that not correct way of looking at it?

SHRI DHARIA: What is against social morality is obscene. It is defined that way.

CHAIRMAN: There should be some guide-line.

SHRI BHATT: The general guide-line with me is that a film is not certified if it is against accepted standards of decency and morality. Now what is decency and morality? In order to illustrate that certain broad principles are laid down such as that which lowers the moral standards of those who see the picture should not be allowed, that which depraves the minds of the people; things such as crime, sex, vice or immorality, nudity, etc. are examples of indecency and immorality. A picture showing in delicate sexual situations is con-

sidered obscene without having to know the definition of obscenity because there are certain social accepted canons of good taste and good behaviour. If a rape scene is shown it is obscene; then prostitution, procurement, lustful scenes are all considered to be obscene. We have drawn up a list of such things as a guideline. But there is no limit to human ingenuity and the question of obscenity is a difficult one. In all such matters, what is socially acceptable and what is within the four corners of the law should be taken. And we should take a middle course. If you interpret the law too rigidly, you cannot pass a single picture.

CHAIRMAN: We can define obscenity in some such way as you have suggested.

SHRI BHATT: Under the Cinematograph Act, these guidelines have been prepared and we work on the basis of those guidelines. I do not claim they are perfect, but it is not a failure either and you will agree that some sort of censorship is necessary until such time as the industry imposes upon itself some kind of restrictions. In our Act the word 'obscenity' has not been mentioned at all.

SHRI DHARIA: Obscenity has been defined. It may not be a perfect definition, but it can be defined so that it is possible for us or the Judge to assess what is obscene and what is not. In order to find out a positive remedy, we shall have to put something concrete. For instance, English courts have held that the test of obscenity is whether the tendency of the matter charged as obscene is to deprave or corrupt those whose minds are open to such immoral influence into whose hands a publication of this sort may fall. If such a concrete solution is found out and a definite remedy suggested, it will help in prohibiting particular thing coming up in a large measure.

SHRI BHATT: I understand it. Your anxiety is to give exemption to

real work of art rather than to discourage obscene things.

SHRI DHARIA: It is both.

SHRI BHATT: We have taken our basis from Art. 19(2). It lays down reasonable restriction and there it is anything which is against decency and morality that is prohibited and that is what we want to achieve so far as we are concerned. Beyond that we need not go.

CHAIRMAN: If some such restriction is put to same extent, then it will meet the requirement which is in your mind?

SHRI BHATT: It is there already. Obscenity has not been defined in our Act.

CHAIRMAN: Some of us feel that unless it is amended, the Act as it stands may hit real piece of Art, but some of us think that it does not hit and it might encourage some filthy literature and some such thing. So you think some such thing after careful consideration might be introduced which will discourage such literature. At the same time it will not discourage the real piece of art.

SHRI BHATT: In the name of art you can have all kind of pornographic literature. It will be difficult to draw a line.

CHAIRMAN: That is why we have to solve the difficulty. None of us think that it is very easy matter, but the difficulty will have to be faced and solved.

SHRI BHARGAVA: Mr. Bhatt, you feel that there are lots of things which are coming in the market which should be dealt with and the law as it stands today is unable to deal with such matters. Therefore, do you think that there is necessity for examining the question *denovo* because our law was made about 100 years ago and the conditions at that time and the conditions to-day very much differ?

Would you advocate of a Commission to go into this entire matter of obscenity and make recommendations befitting to the present day conditions?

SHRI BHATT: Well, Sir, it is a very serious question. I do not think how a Commission can really meet our requirements. Probably you have in mind that that Commission will lay down certain broad principles.

SHRI BHARGAVA: Yes. What I personally feel is that the law which was enacted about hundred years back was enacted under very different circumstances and by people who had nothing to do with the Indian conditions and their requirements. Now, the conditions have changed, the country has become free and we have to deal with the problems which are facing us to-day. Don't you think that the law requires *denovo* thinking and enacting of a new set of legislation which will deal with the situation?

SHRI BHATT: In other words, do I take it that the terms 'decency' and 'morality' have undergone a radical change and therefore they require re-defining?

SHRI BHARGAVA: I should think so. Decency and morality have undergone change not only in this country but in the whole world. What was not decent 20 years before is decent to-day.

SHRI BHATT: May I submit that it has not. When we say decency and morality there is a certain basic desideratum. That does not change. Only the contemporary fashions change. The country's cultural heritage remains. Its values are permanent. They cannot change. If they change the country has no heritage. If they change there is no abiding cultural value. Contemporary fashions have changed. For instance, now-a-days a boy may smoke in the presence of his father. But this does not affect the basic desideratum.

SHRI BHARGAVA: Has not the standard of decency gone down in that case.

SHRI BHATT: I say the terms 'decency' and 'morality' are very enduring terms they are not subjected to periodical vivisection. Otherwise they are not part of culture. What is culture is something which is imbibed for ages. Twenty years or fifty years are nothing. It is only a spec in the vast course of time. Probably we are too impatient to see the things. I do not think that the basic morality and culture of the Indian society has been affected by the recent political changes.

DIWAN CHAMAN LALL: May I interrupt?

SHRI BHATT: I must frankly say that I do not want to oppose for the sake of opposition. I must hold the opinion which I consider to be valid. I shall be too glad to be converted by distinguished persons like you.

DIWAN CHAMAN LALL: I want to draw your attention to one fact. You yourself said about obscene pictures. What should be done to put an end to such films or to take action against such films?

SHRI BHATT: To that I started in the beginning by saying that probably the law is not adequate and it requires tightening up.

CHAIRMAN: He says that the law and its implementation needs tightening up.

SHRI BHATT: Yes, both should be adequately tightened up. Perhaps people are not taking it seriously. I am not in the field of law and I cannot definitely say about it. If it is defective there is certainly a good case for tightening up.

SHRI BHARGAVA: Diwan Saheb referred to the Bengali poetry. Were there any comments in the Newspapers condemning that kind of poetry? Have you any information on that point?

SHRI BHATT: I have not come across any such thing.

SHRI BHARGAVA: Is that gentleman being prosecuted?

SHRI BHATT: I do not know

SHRI BHARGAVA: So far you did not allow kisses in the films?

SHRI BHATT: It is not true to say that we do not allow. The society does not permit. Does society permit kisses on the Marine Drive? Do the children or lovers kiss in the presence of their parents and friends? Therefore, we do not allow. We only reflect the prevailing social climate. If it is something which is not allowed by social custom we do not allow.

SHRI MANI: What is your opinion. They themselves do not kiss or you do not want them to kiss?

SHRI BHATT: They themselves are divided about it. On the screen they do not want to be shown kissing each other. Kissing is a very minor thing.

SHRI BHARGAVA: You have been with the film Censor Board for a long time. Have you at any time come across any difficulty in deciding whether a particular scene was obscene or not? If that was so, what did you do to decide it?

SHRI BHATT: I do not want to be dogmatic about it. As I said previously there can be situations, there may be two opinions or the same person will not say the same thing after some time. If you say this is obscene to-day it may not be really so the next day. Whenever we come across any obscene scenes while seeing a film we certainly suggest deletions. If there is a difference of opinion we refer it to a revising Committee. If they disagree then a reference to Government is permissible. So there is a three-tier system and ultimately the matter is cleared up to everybody's satisfaction. There may be one or

two things where it is difficult to say whether it is obscene or not. After all what is good taste? Anything which violates good taste is obscene. It is very difficult to define it. I do not know whether you will agree with me. Bharat Muni said, what is *Ashlil*? He among other things says 'you cannot see it with your entire family'. That means I can see with Diwan Saheb and we can still be normal but when we take our children or other members of family, there will be embarrassing moments and it is not good that which you cannot see with your family and children, is '*Ashlil*'.

There cannot be any laws for that but these are time honoured social customs.

SHRI BHARGAVA: Have you seen Diwan Chaman Lall's amendment?

SHRI BHATT: I have seen. My difficulty, there is argument in vacuum. In that way no great artist would be wanting to bring out a book and the existing law is defective. Is it really so? I would like to be convinced of it and I do not find any convincing answer. For example, was Rabindranath not allowed to publish certain things? If Waverkar, Vallathol, Bharti, Vishwanath Satyanarayan, Sumitranandan Pant or Umashankar Joshi could not bring out their writings etc. then consensus would suggest that there is something wrong with the law. Then only let us liberalise it. Let us think of exemption there. Take any instance of a valid kind, of any great book. It must satisfy the definition of greatness. For example, is Tulsidas's Ramayana banned in this country? It is one of the immortal books we have had.

SHRI BHARGAVA: So your view is that the amendment is not called for?

SHRI BHATT: I want to be convinced that there are great artists in this country today waiting to bring out their works and we are anxious to give protection to them legally. Unless it fulfils this condition, I hardly

see any necessity. Probably, when the situation changes, it may be necessary. For example, in this country we have three Academies, viz., Sahitya, Sangeet and Lalit Kala Academy. You are concerned with giving exemption to great pieces of art. Therefore, you are really concerned with the work that falls within the purview of these three national Academies. Have these academies approached you? Have they said that this should be brought about because of legal difficulties?

SHRI BHARGAVA: Not to my knowledge.

SHRI BHATT: These are Sahitya Academies. I think our President is still its President.

SHRI TANKHA: I am sorry I could not follow the whole of your evidence. From what I have been able to understand, you say that it is not necessary to relax the law of obscenity. While a book like Lady Chatterley's Lover has been proscribed and considered as obscene by the highest court, a book like Shakuntala, which also contains some obscene passages, has not been proscribed. Do you think, that from that point of view, there are any passages in Shakuntala which are capable of being banned and which should be banned?

SHRI BHATT: I would say that no two books of art should be compared. It is wrong to compare Shakuntala with Lady Chatterley's Lover, because the climate, background, social value, everything is different and, therefore, the comparisons here are invidious; but Shakuntala is not obscene, judged by the strictest standards because you must look at the entire picture. You cannot pick out, one line from Shakuntala and put a different connotation on it which was not at all intended. When the whole thing is read, the impression left behind on a reader is certainly not one of obscenity.

SHRI TANKHA: In the course of your experience in the censorship of films, have you come across any in-

stances where the artists or the producers have protested to you regarding banning, on the ground that the portion which has been weeded out is such that, if it is allowed to be reproduced, would have completed the story and it would have made it appear more lifelike than with the deletion?

SHRI BHATT: I do not remember any concrete instance off-hand, but as I said before, production of a film is an industrial undertaking and profit motive is there. Nobody would like to have any cuts at all. It is obvious that it is a business proposition. Secondly, why should freedom of expression that an artist would demand be independent of moral principles? To my mind, real freedom which is liberty under the law, is not incompatible with moral principles. There is no such thing as freedom of exemption under the law which pooh-poohs a moral responsibility. Then certainly we do not want that law.

SHRI TANKHA. If we allow the sculpture of Nataraj to be shown to the public without any restriction?

SHRI BHATT: The difference between the sublime and the ludicrous is very thin.

SHRI TANKHA: Then why do you delete the same thing being mentioned in the book?

SHRI BHATT: It is not the same thing. It is not allowed in the film.

CHAIRMAN: He is referring to book only.

SHRI BHATT: The book is available in the market. Now, Lolita is a well known book which is available in the market, but the film is banned.

SHRI TANKHA: My contention is, if you allow a thing to be seen in a sculpture, the same thing can be depicted in language also by the artist or a writer. Why do you proscribe that book and allow the other?

SHRI BHATT: You are oversimplifying the thing. Its total impact would certainly vary in different media.

SHRI TANKHA: That brings certain ideas in your mind. Those ideas might be brought in the stories also?

SHRI BHATT: You are only advocating that such books should also be allowed. There are books also even now of that nature and the law has not taken any objection.

SHRI TANKHA: If the law is amended in the manner suggested by Shri Divan, do you not think that there will be a larger scope which will be allowed for objectionable literature to be circulated?

CHAIRMAN: He has said that it will encourage such literature.

SHRI ARORA: You have correctly pointed out that our law today does not prevent a real piece of literature to be published on the grounds of obscenity. But the difficulties which some of us are faced with are that the failure of law would prevent the circulation of obscene journals, books and literature. Would you like the law to be tightened up in this respect?

CHAIRMAN: That also he has said that he wants the law to be tightened.

SHRI ARORA: When the law is tightened, would you like the law to make a provision that the real pieces of literature should not be prevented from their circulation?

SHRI BHATT: No real piece of art has been prevented from publication. So, we are arguing without any material evidence before us.

SHRI ARORA: If the law is tightened, would you like an exception to be made?

SHRI BHATT: Even now exception is made under the existing law because all great works of art continue to be published.

SHRI ARORA: There is a cinema advertisement of Gold Finger and the hoarding there is obscene. The law today is such that such hoardings are not objected.

SHRI BHATT: The law is there. It is the apathy of the law implementers. Some time ago complaints came from various parts of India about certain posters and hoardings and we drew the attention of the State Governments. It is in their jurisdiction. Even the Municipal Corporation can order removal of objectionable hoardings. So, as I said the Magistrates and the other agencies are not sufficiently vigilant or the State Government does not pay sufficient attention to these things.

In Bengal we have a good arrangement where no obscene hoarding or poster can be shown, because the State Government under the existing law has set up a machinery whereby everything is subject to screening. After this machinery okays the thing, it is exhibited in public. If Bengal can do it, the other State Governments also can do it.

DIWAN CHAMAN LALL: I would draw your attention to the fact that Mr. Mulraj Anand produced in Prague a reproduction of Khajuraho Sculpture. That book has not been permitted to be sold in India, although it is sold in Europe.

SHRI BHATT: What is good for Europe is not good for this country. This is a country with a background of massive illiteracy.

SHRI KUMARAN: But Khajuraho is in India.

SHRI BHATT: That is true. But a publication considered good for the Western society may not be good here.

SHRI ARORA: I am grateful to you for this information that the West Bengal has got that machinery. But with your vast experience of film industry, do you find that kind of social awareness in existence in Bombay?

SHRI BHATT: Why say in Bombay? Bengal has certainly given a lead in this matter; but it is coming in other parts also. Some of the films made in South India are very good. I am not inclined to condemn the entire film industry. There are very responsible producers who have shown this social awareness. For example, take the pictures produced by Vijay Bhatt in Bombay. He is one such instance. Like him there are others also who make first class pictures professionally, qualitatively and have also brought in lot of money. So, it is not that unless you keep something vulgar you will not make money. Some producers produce high level stuff and satisfy all people. So there are people who operate this way also.

SHRI ARORA: Would you not agree that by and large the standards of our film is deteriorating?

SHRI BHATT: I would not say deteriorating, but they have to go a long way yet to produce professionally speaking quality films. The films are made in different languages. Apart from certain examples in Bengali and Hindi there are very good films in Marathi. There are good attempts made in Oriya and in Gujarati. Last year a film in Malayalam 'Chemeen' was awarded the national prize. These are indications of this awareness of responsibility.

SHRI ARORA: Some witnesses said here that there are double standards applied in the matter of censorship of films. What is good for an imported film is not considered good for an Indian film.

SHRI BHATT: I am grateful to you for having raised this point, which is to me a fallacious argument. It is true the film reflects the society and the country and its own environment and straightway I would say that there is some divergence of culture and outlook on life in the foreign films and the films produced in this country.

SHRI BHATT: Having said this, I would maintain that the same set of rules operates in the censorship of Indian and foreign films. There are no double standards, but certain allowance is made for the divergence of social standards and customs.

SHRI ARORA: The films which are imported in India are meant for the same society for which the films are produced in India.

SHRI BHATT: Exactly not. When you say foreign and Indian films are discriminated, it is not so. For example, there are 6,000 theatres in India out of which only about 80 theatres show foreign films. This will give you the idea. These films are shown in cities. There are people who see and enjoy these films and the audience generally consist of sophisticated persons. The film is one of the many sources of entertainment to them. They are sufficiently educated. The total screening time of foreign films is less than 5 per cent of the entire screening time for the Indian films.

SHRI ARORA: I beg to disagree with you. How does it justify your discrimination between an Indian film and the imported films and imported films are getting more and more popular.

SHRI BHATT: It is not so. It is based on insufficient appreciation of the censorship law. But by and large, the workmanship of the foreign film, of course I am not generalising, is superior. It is competently done. If it is vulgar, we delete that portion. Secondly, the audience is not the same as for Indian pictures. Then we give to as high as 45 per cent of foreign films Adult certificate. As against that how many Indian films are given adult certificates which have the same liberal treatment of sex? It is hardly five per cent. We have banned between 7 to 10 per cent of the foreign films on these grounds, but rarely an Indian film is banned. It will show that there is no discrimination. In fact we are far more strict with foreign

films than our own films. Our people cannot have it both ways. They do not want to accept the adult certificate for fear of losing income. There is no double standard. This is the underlying position.

SHRI MANI: It is true that ideas of obscenity vary from one part of the country to another and from one country to other. For example, Bombay might have its own idea of obscenity which I may not share. The posters about loop and the cinema hoardings about love scenes in Tokyo are instances in point. Now it has been suggested to us that if the law is to be tightened it can be done on the following lines by amending the Act. The Act was originally framed by Lord Macaulay about 130 years ago.

CHAIRMAN: What is your reaction to this clause Mr. Bhatt?

SHRI BHATT: Still I do not think I can answer it to your satisfaction because I do not understand the legal niceties. There may be many things and it would be unfair for me to say yes or no. I am all in favour of tightening up of the existing law and not thinking of cases for exemption.

SHRI MANI: Somewhat on these lines?

SHRI BHATT: I keep aloof from saying so. I am not a Draftsman.

SHRI KUMARAN: I want to inform Shri Bhatt regarding the question put by Shri Arjun Arora that some of the English films are flocked by people who do not understand even a bit of English. I have seen it in Vizagapatnam, Vijayawada and Madras.

SHRI BHATT: They are all cities. I was talking about rural population.

SHRI KUMARAN: Any body who do not understand a single word of English flock these houses when there are English pictures.

SHRI BHATT: Let us know their number.

SHRI KUMARAN: The House is always full.

SHRI BHATT: As I said the audience for the foreign film is not a drop in the ocean.

SHRI ARORA: That audience is increasing even amongst non-English knowing people because they are more realistic and more obscene.

SHRI BHATT: I would not accept that it is obscene. If it is obscene it would not have got the certificate. If they are more realistic it is a challenge to the industry. If they cannot do it the State can give a lead. They go in large numbers because they do not get disappointed.

SHRI ARORA: I would prefer to see every Indian film and get disappointed.

SHRI BHATT: We do not go to see films for disappointment.

SHRI KUMARAN: I agree with most of the views which Mr. Bhatt has said except that the law is for the normal. I will say that the law is for the abnormal. The law should be useful to curb indecent manifestation of abnormality. The Bombay High Court did not approve of the Lady Chatterley's Lover. At the same time the law of the country is unable to do anything with Durlab Singh. Whether a curb can be put on publications like the Confidential Adviser or Indian Observer and whether the present law can be amended in that light.

SHRI BHATT: I have said that I am all for that. The publication of filthy literature should be stopped.

CHAIRMAN: Thank you very much Mr. Bhatt. Your statement was very interesting and we will be benefited by it and we are benefited by you I thank you on behalf of the Committee and on my behalf.

SHRI BHATT: Sir I have immensely enjoyed the meeting, Sir. Thank you.

(At this stage both the witnesses withdrew)

(Shri D. K. Bedekar was then called in)

CHAIRMAN: Mr. Bedekar, we are happy to have you. You know the purpose for which this Committee is working in connection with the amendment proposed by my esteemed friend Diwan Chaman Lall about sections 292 and 293 of the Indian Penal Code regarding obscene matters. As you have been in this Parishad, and as you are a literary man, in addition to your experience in the political field we are here to be benefitted by your views. So, we would like to have your view.

SHRI D. K. BEDEKAR: At present I am only representing the literary aspect. The Maharashtra Sahitya Parishad was established in 1907 and it is the oldest Marathi Literary Society. In fact we were having our Executive Committee meetings when this question came to us. We have outlined in a Memorandum our recommendations. I would like to read it.

CHAIRMAN: Have you sent the Memorandum to us.

SHRI BEDEKAR: I have brought it with me and I may be permitted to read it.

(1) The Maharashtra Sahitya Parishad is an organization for the advancement of Marathi literature and language. It was established in 1907. The Parishad is keenly aware of the harmful effect of pornographic writings on social morals and even more on literary taste. It has passed resolutions, in recent successive conferences, expressing its concern regarding the spread of pornographic writings.

(2) The Parishad has, in the said resolutions, clearly and explicitly differentiated between pornographic writings and literature. The distinc-

tion is based on the fact that while pornographic writing seeks to and succeeds in commercially exploiting the reader's interest in sexual matters, literature does not do so. A pornographic work may not have used a single word or phrase, which is offending, while a literary work may contain a word or incident, which may be offending. The real distinction lies not in words, but in the total effect. The amending Bill, is, therefore, considered, in this memorandum, in the light of the resolutions of the Parishad and the distinction stated above.

(3) Sections 292 and 293 Indian Penal Code provide for action against pornographic writings and other forms of expression, such as paintings, etc.

(4) The object of the Sections is to penalize only pornography and not to penalize works connected with science, art, literature or religious activity. The actual operation of the Sections shows that, by and large, only pornography was penalized.

(5) The amendment sought to be introduced by the Bill has a very limited objective, namely to make explicit what is intended in Sections 292 and 293. Section 292 has an Exception, which states that writings, drawings etc., which have a "bona fide religious purpose" will not be penalized under the Section. This Exception was, in practice, extended by courts to writings, drawings, etc., which have bona fide scientific, aesthetic and literary purposes, as will be seen from case law in this connection.

The amendment now seeks to codify this extension of the Exception.

(6) The Rajya Sabha debates on the Bill and the opinions on the Bill (circulated to us) have discussed at length the difficult questions relating to the definition of obscenity and to the effect of certain words or descriptions in literary works.

It is submitted that these difficult questions have to be faced, and are faced by the Judiciary, even with the existing Sections 292 and 293. The amending Bill does not raise these issues a new.

In the discussion of the amending Bill, therefore, these difficult, and one may say perennial, questions need not be deliberated upon.

The Bill may be supported or opposed on this very limited consideration: whether the Exception already granted to works of religious purposes be extended to works of science, art and literature?

(7) It is submitted that the Bill be supported, because it extends the said Exception and will thus be particularly beneficial to the literary worker.

The amendment is a protection to the literary writer, who is threatened with prosecution under the existing sections 292 and 293. It is submitted that in a society like ours, which is undergoing transitions in the fields of religious, moral and social behaviour and norms, there are persons who consider, honestly but dogmatically, that every deviation from current norms is depravity and expression of new norms is pornography. It is the experience in other countries that eminent literary writers were prosecuted under the law of obscenity and their works were banned. Even, with us, the poet Shri B. S. Mardhekar had to face a prosecution.

The amendment will not prevent such prosecutions, but will at least give the writer a defence, based on explicit provision in law.

(7) There are two points in the amendment which need to be commented upon.

(a) There is the word "meant" (for public good...), which may indicate that what is to be judged is only the intent of the writer. (The words "religious purposes" in the original Section 292 Exception also may be so interpreted). It is submitted here

that what is 'meant' by the author is to be judged by the effect on the average reader. The average reader is neither an impressionable adolescent nor a saint. The effect, moreover, of say a word or an expression or a description, will have to be judged in the whole context of the work.

(b) The amending Section 293A specifies "public good or *bona fide* purposes of science, literature, art or any other branch of learning." It is suggested by some that the word "or" be substituted by the word "and". It is submitted that such a change would be harmful. The writer of a book, pamphlet, etc., should only be required to prove that his work is for "public good" or that it is for *bona fide* purposes of science, literature, etc." The author of a pamphlet on say Family Planning technique cannot prove that his work is for *bona fide* purposes of science, etc., but he can prove that it is for "public good".

(8) In conclusion, it is submitted that the amending Bill will be conducive to the growth of literature and will not adversely affect the operation of Sections 292 and 293 against pornographic writing. The Bill, therefore, deserves the support of literary persons.

This is generally the opinion of the Executive Committee as well as of literary persons. There are some persons who oppose the Amending Bill, but the memorandum may be taken as the sense of the Executive Committee and of the organisation as such.

CHAIRMAN: Thank you, Mr. Bedekar. It was a helpful statement. I would request some of my friends to get some clarification.

DIWAN CHAMAN LALL: Thank you for the very interesting document that was read out to us. All I want to know is this: There are cases of sheer vulgarity and obscenity which have got to be curbed in the interest of society.

SHRI BEDEKAR: That is a sound proposition.

DIWAN CHAMAN LALL: Have you any suggestions to make?

SHRI BEDEKAR: I think the existing sections are enough.

DIWAN CHAMAN LALL: further thing is about penalties; perhaps if they are severe, then they will have a deterrent effect. Take, for example, the Indian Observer. Have you seen it?

SHRI BEDEKAR: No, but I have seen a number of things in Marathi.

CHAIRMAN: Would you like such things to go in the market?

SHRI BEDEKAR: No.

DIWAN CHAMAN LALL: Would you like presses to be confiscated?

SHRI BEDEKAR: I have given by thought only to the amendment. If the whole section is to be considered, the penalty may be made more severe.

DIWAN CHAMAN LALL: Do you know about Lady Chatterley's Lover?

SHRI BEDEKAR: Yes; it is a controversial book. I would say this, that even the existing sections make an exception, say, in the matter of religious practices. I know that in Maharashtra itself there are devotees of one particular Goddess in Poona. They are castrated persons and they dance in a manner which cannot be considered as anything but obscene. They dance for ten days at the time of the festival of the Goddess. People go there and witness the dance. That is certainly obscene but then it is for a religious purpose and will not come under the mischief of this particular section. I think the amending Bill is giving some protection, to literature, science and art which is already to give religious expression. Obscenity is often there in these things but it is to be tolerated. In a work of literature there may be obscene words. In a good book there

may be obscene words here and there, but the whole book is not therefore obscene. Pornography is different. In pornographic writing, the writer may not have used a single obscene word, and still it may be pornography. I think 'Pornography' should be more carefully defined, as already submitted in the Memorandum.

SHRI BHARGAVA: Do you think that there has been any case where a literary work has been not allowed to be published and some difficulty was felt and that is why it is necessary to have Diwan Chaman Lall's amendments?

SHRI BEDEKAR: Yes. In Maharashtra itself one of our best poets was prosecuted under this Act and recently many young authors were brought under this Act. This is causing a sort of fear complex amongst authors. I would consider this very detrimental to literary progress. Authors may escape prosecution because they will not use certain words for which they may be prosecuted. But I think this would impoverish literature.

SHRI BHARGAVA: What are your suggestions to deal with obscene magazine appearing in Marathi as well as in other languages?

SHRI BEDEKAR: The present section should be implemented vigorously and at the same time the circulation of the pornographic literature which is mainly circulated through the penny libraries should be curbed. If it is possible to curb their activities by preventing them from circulating, these magazines would not exist.

SHRI BHARGAVA: The Indian Observer has been prosecuted at several places, but the law has not helped to write such writings.

SHRI BEDEKAR: That is going on everywhere.

SHRI BHARGAVA: Would you like literature of this type to continue or some steps be taken to curb it?

SHRI BEDEKAR: I would not like that such writings should continue; but some people are spreading this pornography by exploiting the literacy of the people. It is a social evil against which mere law cannot do much. But even though these are the difficulties, one should not be induced to penalise a literary writer who is not a pornographic writer. A literary writer may go wrong in expressing himself, but there are literary critics who will criticise him. Literary methods will have to be used in such cases and not police methods.

SHRI TANKHA: I take it, it is not your intention to say that filthy literature should be allowed to be circulated.

SHRI BEDEKAR: I do not want filthy literature to be circulated,

SHRI TANKHA: Will you kindly see Shri Divan's amendment? The words used are "Nothing contained in section 292 or section 293 shall apply to any book, pamphlet, writing, drawing, painting, representation or figure meant for public good or for *bona fide* purposes of science, literature, art or any other branch of learning." Don't you think that the words "meant for public good" will open a wide door for literature of all kinds to come in which is prohibited under the law?

SHRI BEDEKAR: I do not think so.

SHRI TANKHA: Don't you think that writers whose writings are banned at present will come forward with the plea that what they are writing is meant for public good?

SHRI BEDEKAR: They will come forward with that plea.

SHRI TANKHA: Do you think it would be desirable to allow that?

SHRI BEDEKAR: They may come forward with that plea, but the judge will have to say that what the writer has written is not for public good.

SHRI TANKHA: The present law does not give any scope for any person to say that this writing is for the public good. But if you say that the law should be changed in the manner suggested by Shri Divan, then it would give scope for people to say that though they have been writing filthy writings, they are doing so in order to improve society and as such their writings are meant for public good. I would give an instance of the Indian Observer. The author said that his writings were for the removal of corruption and therefore he has been writing those articles in order to improve society. His contention was that his writings were for public good. Would you agree with me when I say that once the words "meant for public good" are inserted in this section, then we cannot prohibit the publication like the Indian Observer?

SHRI BEDEKAR: The problem is similar to the exception that already exists in the case of writings and other things meant for *bona fide* religious purposes. Now, it is open for a writer to say that he writes such things for *bona fide* religious purposes. Similarly, "public good" is a term which can be interpreted by a judge. If the judge says for example that a book on family planning is for public good though it may contain obscene drawings and obscene writing, he is right in saying so. The book on family planning cannot be read by children or by youngsters, but yet it is to be considered for public good. Divan Chamanlal's point is that the existing sections do not give protection to genuine writings of scientific, literary or artistic character.

SHRI TANKHA: Is it your contention that writings of scientific and literary character should not be pro-

hibited? If that is your intention, then the words "means for public good" are not necessary at all. If the writings are for any other purpose than for literature or science, then they should be prohibited. But the contention of the Indian Observer that the author of that paper has been writing for public good will not be proper because he is not writing for literature or for art. Therefore, do you agree that the words 'meant for public good' may not be there in the law?

SHRI BEDEKAR: This editor of Indian Observer may take shelter under the other provisions of the law also. He would say he is writing to educate the people in science, etc.

SHRI TANKHA: But the court may not accept his plea. But if you allow the words "public good" to be inserted, the court will have no option but to say that since he is saying that his writing is meant for public good, I allow that writing.

SHRI BEDEKAR: The word, science, literature and art do not cover certain books, and they may have to be distinguished as books meant for public good. Of course, lawyers on behalf of a pornographic writer may utilise these words 'public good' and say that the writings are for public good. But then the judge will have to consider whether the contention of the author that a particular writing is for the public good is proper or not. I personally feel that the words should be retained and the word "or" should not be changed into "and", which will indicate that any book, pamphlet, etc., is both for public good as well as for *bona fide* purposes of science, literature, art, etc.

SHRI TANKHA: You are not objecting if any person writes any writing in order to reform the society. Whatever he wants to write, he should write for reforming the society; but at the same time you hold

the opinion that filthy literature should not be encouraged?

SHRI BEDEKAR: On that point I am very clear. I do not want to encourage pornography. But I would like to distinguish between pornography and scientific literary and artistic writing.

SHRI TANKHA: You must tighten the law so as to enable the courts to take definite action. If you keep those words, the court cannot, but accept the plea.

SHRI BEDEKAR: The market is flooded with such kind of literature. By adding one word, we are not going to deal with this situation very seriously and vigorously. The section should be operated vigorously by the administration.

SHRI ARORA: Do you think that the penalty should be more severe than what is prescribed at present?

SHRI BEDEKAR: The penalty should be enhanced.

SHRI KUMARAN: You are in agreement with this amendment, but there is a fear that if you accept this amendment, many books containing pornographic literature might be published. You are in agreement that the present law is not adequate to punish such writers?

SHRI BEDEKAR: The amendment arises because the present law is adequate, but as was suggested the penalty is rather light. That can be enhanced, but the present law is quite adequate. It is not properly implemented; if it is implemented it is quite all right. By accepting the amendment there is not going to be any deterrent to final action against pronographic writings.

One more thing which I wanted to suggest is that the law should make provision for calling literary experts to give their opinion. The law as it

stands at present leaves it to the court to call these experts or not to call them. The law should provide for calling experts to give evidence in determining whether a particular literature or a piece of art is pornographic or not. There should be a specific provision.

CHAIRMAN: We will record it and consider this matter. Even now

experts can be called, but it is left to the discretion of the judge. I thank you on my behalf and on behalf of the Committee. We hope in coming to our conclusion your valuable views will be of great help to us.

SHRI BEDEKAR: Thank you.

(The witness withdrew at this stage)

Thursday, 4th May, 1967

PRESENT

1. Shri Akbar Ali Khan—Chairman.

MEMBERS

2. Shri M. P. Bhargava
3. Pandit S. S. N. Tankha
4. Shri M. M. Dharia
5. Shri Dahyabhai V. Patel
6. Shri P. K. Kumaran
7. Shri A. D. Mani
8. Diwan Chaman Lall
9. Shri D. P. Karmarkar.

REPRESENTATIVES OF THE MINISTRIES

Ministry of Law

Shri S. K. Maitra, Additional Legislative Counsel.
Ministry of Home Affairs'

Shri S. S. Varma, Deputy Secretary.
Shri G. S. Kapoor, Under Secretary.

SECRETARIAT

Shri S. S. Bhalerao, Joint Secretary.
Shri S. P. Ganguly, Deputy Secretary.
Shri Amar Nandi, Under Secretary.

WITNESS

Shri A. N. Mulla, M. P.

(Shri A. N. Mulla was called in)

CHAIRMAN: Justice Mulla, we are thankful to you for conceding to our request and coming to give us the benefit of your knowledge and wide experience in different fields not only law but literature and other matters. You know the subject that

we are contemplating is about sections 293 and 294 relating to obscenity. It has been our difficulty and the difficulty of the administration to pin down what is obscenity. On the one hand, we have felt, there is a risk of real piece of art, literature or science being tabooed as obscene, at the same time it has come to our

knowledge that many filthy things go round and we cannot get hold of those persons because they do not, technically and strictly, come under the provisions on obscenity. Therefore, what we are contemplating is that with the help of friends like you let us make the law more specific so that any good piece of literature or science may not be hit by these provisions and at the same time the filthy things that go in today and are likely to deprave the mind of our young people, there should be some provision to make it more stiff and more straight so that such things may be effectively controlled. In these matters we would like to have your opinion. Now I request you, Mr. Mulla, to give your opinion.

SHRI A. N. MULLA: Mr. Chairman, I am very grateful to you for inviting me here so that I may give my opinion though I feel a bit hesitant to accept the role of an expert for I know the law a little bit, I have dabbled in poetry a little poetry but I do not know what qualities I possess that I should be considered to be an expert on obscenity.

CHAIRMAN: To control obscenity.

SHRI MULLA: Till I believe that obscenity is a matter which is neither purely a question of law nor purely a question of art and the main person who is to decide whether a particular thing is obscene or not is the citizen of that country in which obscenity is sought to be defined. Now we must have a picture before us as to what are our values of life which we want to propagate and laws which are framed are always framed to attain those objectives and values. Therefore, when we decide such a question we have to keep in mind the moral, the ethical and the cultural values of the community in which this definition is sought. I find from the Bill which is drafted by Diwan Chaman Lal that he noticed a great deal of divergence between what was considered obscene in this country and

in countries like America and England, and one of the reasons given for moving this Bill was that this difference of values between the other parts of this world and our own country make it necessary that we must also have our values correspond to the values prevailing in other countries. The first thing, in my opinion, on which you should concentrate is whether it is necessary that there should be an approximation or a uniformity of values, at all. If it is necessary to have an approximation and a uniformity of values only then it becomes relevant that we have different values and they have different values. But if we do not accept certain values in other countries—we have our own values—then obviously the laws would be different. After all, what are laws? Laws only represent the urge of the community and the stage a community has reached after a process of evolution. And laws are made for the needs of the community when it has reached a certain stage. Now in the West, girls have boy friends and they talk about it before their parents and the parents raise no objection for unmarried girls to have boy friends. In the West, women go out topless to offices and other places. They have the strip-tease act which is performed before all audiences. They have clubs where hundreds of nude women come together and perform before the audience. They have developed their life in such a way that if a husband surprises his wife in a compromising situation with somebody else, the husband apologises and withdraws and then perhaps files a divorce suit. And so many things are there. Their life has reached that stage. But in our country, where are we? In our country, we have in our statute sections 497 and 498, where adultery and running away with another man's wife are considered to be criminal offences. We have still large sections of persons who are observing purdah. In our country, if a husband sees his wife committing adultery, in 90 cases out of hundred,

he will try to take a lathi and attack him then and there. I am placing these facts to illustrate that we are at different stages of cultural, ethical and other values which constitute life. We may have similar laws. But when the stages are different, those laws in one place would reflect the urge of the community, in another place they would not reflect the urge of the community.

Apart from that, we may consider from the artist's point of view. After all, it is necessary that an artist should have the liberty to express himself because unless an artist has the liberty to express himself, he is stunted. His creative capacity does not reach its full height. Therefore, in the interests of self-expression, in the interests of the artist's he is granted a latitude and a liberty to express himself. Now it is true that an artist should be granted this facility. And it is here that a sort of compromise has to be made. How much liberty is to be given to the artist and how much the prevalent values of the community should be protected even against the attacks of an artist? Because even an artist when he does something which injures the approved values of a community, stands on no different footing than any other citizen. He cannot claim any greater rights than any other citizen. His only right is that if he has expressed himself in a manner that apart from the obscenity which is there, he has also introduced certain other values in his expression of art which have an abiding value, then obviously, if he has succeeded in giving those values also, you can ignore the obscenity which he has introduced. But who would be the judge of it? After all, the artist alone cannot be the judge. And finally, nobody else except a court of law, would be the final arbiter in the matter as to whether the obscenity introduced by the artist has added an abiding value also in it or not. Of course, if such values are introduced, I think the artist should be forgiven his indulgence in obscenity provided these other va-

lues are also introduced. But if these other values are hardly noticeable, then it remains obscene and it has to be declared obscene.

CHAIRMAN: Could we not help through the provisions of law help the public as well as the court in this matter?

SHRI MULLA: I find that the provisions of law as they exist to-day are sufficient, but if you think that some added help should be given to courts in order to crystallise their minds on certain definitions, on certain aspects of the case and issue you can do so. After all, your experience, gentlemen, is perhaps greater than mine. But I personally think that in many cases which have reached the higher levels, the pronouncements which have been made by the courts are such that they have taken into account both aspects of the case—obscenity as well as other values being present there or not. I think as a whole there is no reason to be dissatisfied with the interpretation given by the higher courts at least. I don't know what interpretations were made at the level of the magistrate's court.

CHAIRMAN: Do you not think, Justice Mulla, that these values are also changing, as you also suggested, in our own country? The values that were observed, say, when you and I were students are not at all the same in the present society—in the same families, in the same society.

SHRI MULLA: Yes, law as I understand it, at least criminal law as far as I understand, translates the social and political objectives of the ruling group. When the ruling group changes, perhaps there may be different objectives. Then that ruling group tries to have its own objectives in the frame work of law. But so far as social values are concerned, there are two ways. One is that we first find whether there is an urge in the community or not and then we translate it into law. The other is that we give a guidance to the urge

of the people that they should proceed towards a particular goal and for that reason we draft a law. For example, take the Sharda Act. It is a dead letter. But you enacted the Sharda Act in order to focus attention on certain things which you considered desirable though the people failed to follow the direction given by the legislature. What you have to see here is that in the case of framing laws regarding individuals, it is the popular urge or the people's urge that the law should be drafted to define obscenity or that this liberty should be given to the artist to express himself or not. If you find, after all you are in a better position to understand if this urge exists in the community that the artist is being fettered, the artist is not being given his right to express himself fully, if that urge exists, then obviously you will be only translating the people's urge when you will be liberalising the strictness of the law as it exists but if no such urge exists in the community, then you would only be trying to direct the mind of the people that you should think like this and you should evolve towards these objectives. So far as my opinion goes, I think the urge in the community does not exist. The community is not chafing against the alleged restrictions on an artist's expression that exists in the present law. It may be that individual artists may be chafing but the individual artists are not the community and if you want to give a direction, you have to crystallise as to what is the value which is in your mind towards which you want to take the people along with you. You should be very clear in your mind that these are the values which you want to propagate and you want the people to adopt and accept these values. So far as I could understand, the only values which can be advanced in favour of liberalising the existing law is that the present law acts as a hindrance to an artist to express himself fully and it may adversely affect some works of art and an artist may not be able to produce those works of arts

unless the law is modified to a certain extent. Now I have, unfortunately or fortunately been classed as an artist also. I have my artist friends and they are sculptors, painters, poets, story writers, etc. and quite a large circle of them is there. Whenever I tried to find which is the class which staff against the existing law as it exists, it was really those who are seldom willing to accept themselves as a unit of the community, who are egoists really, the artists who are egoists, who believe in self-expression above everything else, self-expression in which they want self-fulfilment as their dominating goal. After all so far as I am concerned, I think an artist should regard himself as a useful unit of the community also and such artists have seldom chafed against the existing law. It is only that class of artist who says there must be self-fulfilment, who thinks in terms of self-fulfilment alone who wants that the law should be changed. I read in one of Maugham's stories that this self-expression finds very different ways of outlet. There was a gathering of artists, in one of the Maugham's stories, when, for the sake of self-expression, one of the artists took off his socks and started cutting his nails. That was just to show that he does not care who is looking on, that he is absolutely uninhibited. The idea is you must be absolutely uninhibited as an artist and he gave expression to that. Obviously I think you would not like the law to be relaxed to such an extent that the final discretion of what is artistic or what is obscenity left to the artists. After all it would be for the representatives of the community to be the final arbiters to decide whether a certain thing is obscene or not and if you leave it to the artist, let me assure you that every artist has a different value. No two artists will agree and every artist will have his own values because they are all egoists and they all claim to be experts. Everyone of them will become an expert and will be only voicing his own opinion when

he comes forward as an expert. Therefore in the final analysis the thing will have to be decided by the representatives of the community and it cannot be left to the artists.

I will give an example as to what are the claims for self expression so far as poetry is concerned. It is a woman poet and four of her poems were published in a well-known literary weekly journal and one of her lines in that poem was: "and she masterbated a glitter in her eyes." meaning that glitter was artificially produced in the eyes. She expressed that idea by using this language. It is for the community to judge whether such expressions are necessary for expression and if they are used, the community should take notice of it or not. My own reaction is that I would not object to this sort of expressions provided there are other parts in the poetry also which gave some other artistic values also. I will forgive her for that because so long as there are other values in the poetry, but she is also contributing something to the advancement of the values of the community. So I will let her use that expression. Obscene expressions, if they are used to present certain values which the community approves, should not be held to be obscene because the purpose is to advance those values and not merely to use obscene words. For example in the recent decision of the Supreme Court I do not think I object to the decision in the Lady Chatterley's Lover case though I have a slight difference of opinion. I do not agree with it entirely because though they have certainly said that if the artistic aspect dominates over the obscene part it is permissible but that is not enough. They should also have observed that whether it predominates over it or not, but if there is something else also apart from obscenity there which adds to our literary or artistic values it is permissible. I will let it go for at least a part of it is a work of art. It has to be taken as a whole, and if the other

values are there, then you have to excuse the other part also.

CHAIRMAN: May I take it, Justice Mulla, that you would not, on the whole, like Lady Chatterley's Lover not proscribed? as decided by the Supreme Court?

SHRI MULLA: On the whole, yes, taking the book as a whole I would not proscribe it.

CHAIRMAN: Now the other aspect is this. You know that there is a lot of filthy things going about. Do you think that our law is adequate enough to get hold of such things because our experience has been that the administration has failed to get hold of them on the plea that the law does not help them.

SHRI MULLA: Well, my idea is— I may be wrong—that it is not the fault of the law; it is the fault of the administration. The administration has not pursued it. The administration has not gone in appeal. The administration has not pursued these cases in the higher courts. It has entirely depended upon the decisions of the magistrates and remained silent afterwards.

CHAIRMAN: Depending on their legal adviser's opinion.

SHRI MULLA: Exactly. I would leave it to courts. Leave it to courts and depend upon the courts. Wherever there has been a failure on these matters, it has not been the failure of the law; it has been the failure of the courts, the magistrates' courts. Therefore, even if you improve the law, the failure of such courts would still continue. You cannot improve such courts that way. Therefore, all that I can say is that—as you consider this to be a very important thing—you may not, so far as this type of cases is concerned, leave them to the ordinary magistrates; you may have some other forum where a more experienced mind is

brought to function in deciding such cases, because the ordinary magistrate is too raw for this, and is too much guided by, as I say, the interpretation of the wooden word of the law; he very seldom catches the spirit of the law.

CHAIRMAN: One last question so far as I am concerned. Do you think that the punishment which is prescribed at present is adequate?

SHRI MULLA: I am very glad you put this question to me. There have been so many other types of cases in which I have been agitating that the punishment is extremely inadequate. I have always been dealing with criminal cases. As a matter of fact, my entire practice as a lawyer, my entire functioning in the field of law also as a Judge has been on the criminal side. Therefore, I have observed in many of my decisions that people seem to be very much impressed, where a murder is committed or where a dacoity is committed and the maximum sentence is given to the persons who committed the murder or who committed the dacoity, and somehow the State feels that this would in a way teach a good lesson also to the prospective murderers and dacoits. But those who are murdering the community, they go very lightly off, and they are not adequately punished, for example persons who adulterate food, adulterate drugs, and I am of the opinion that death sentence should be provided for this type of offences, and it may not be provided for a person who commits a murder, for a murder is committed only once—one man may be killed, or two men may be killed. But here the entire community is being wiped out, where we only provide a sentence of two years or three years. We do not look to the social wrong and the great crimes that are being committed by these adulterators. Similarly, in this question of obscenity, where the whole community is being infected, or sort of corrupted in a manner, I would say that a sentence much more than the existing sen-

tence should be provided. I will not be satisfied even with a sentence of two years because, after all, it is in the discretion of the court as to how much the sentence should be, and the sentence awarded may not be even this much. If you provide a sentence of five years, at least the scope of the sentence will be extended. It does not mean that it should necessarily be five years in all cases, but then we must have an adequate sentence which may act as a deterrent for most of the persons who indulge in character assassination or in this type of crimes, they profit by committing these crimes because, if they are paperowners, or if they are editors, it helps them in the sale of their papers, but then, if the sentence prescribed is adequate, they will also think twice before they do a thing since there is the possibility that they may be sentenced to five years of rigorous imprisonment in a case. Then perhaps they will feel that the game will not be worth the candle and they will be more careful. It is not necessary that the sentence awarded should be one of five years' rigorous imprisonment; a case may merit, in the eye of the court, perhaps only one year of imprisonment, but still the hands of the court should be strengthened so that they may be able to award adequate punishment where a case merited it.

CHAIRMAN: Now I would request my colleagues, if they so desire, to put some questions to you.

DIWAN CHAMAN LALL: I thank you for taking the trouble to come here and tender evidence before us. Now it is very valuable evidence; whatever you have been saying is important. Have you considered the other aspect of the problem which was put to you by the Chairman, namely, little rags like the 'Observer' being broadcast everywhere, increasing their circulation up to 1,25,000 each week, making money out of the prurience that they exhibit in their columns, and get off eventually not suffering anything thereby? Have you considered that particular aspect also?

SHRI MULLA: I think in my reply to the Chairman's question I myself mentioned something about it.

DIWAN CHAMAN LALL: Now you would be in favour of increasing the penalties?

SHRI MULLA: Yes.

DIWAN CHAMAN LALL: Now you notice that in section 292 of the Indian Penal Code the sentence is only a sentence of three months; "sha'l be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both".

SHRI MULLA: In my opinion it is totally inadequate. What is more, there would hardly be any case where the courts have given the sentence of imprisonment. They have mostly imposed fines. They have not considered the gravity of this type of crime at all. As I said, they only consider murders and dacoities as grave crimes.

DIWAN CHAMAN LALL: I am very grateful to you for that. Now the second portion of the measure that I am proposing covers a long history. Perhaps you are not aware of the fact that in the year 1924 I raised this matter on an issue, which compelled the British Government of that day to come before the legislature and to introduce a measure, which is now incorporated in sections 292 and 293 of the Indian Penal Code. Now you have said about 'Lady Chatterley's Lover'. But in those days 'Lady Chatterley's Lover' had not been written; it only came into existence in the year 1930, but another book had gained a great deal of prominence then. It was called 'La Garconne'.

SHRI MULLA: Yes, I have read it. At that time Sir Malcolm Hailey, later on Lord Hailey, was the Home Minister. He is still alive, I am glad to say. And when he replied to what I had said, he in his remarks said that he had proscribed a particular book. It was 'Le Garson' that

he had proscribed. But when he went home, he found the book on his drawing room table. His wife apparently did not . . .

SHRI D. P. KARMARKAR: She was perhaps curious to know what her husband was doing.

DIWAN CHAMAN LALL: She was a little more of a literary person than he was. Now he found this particular book in his room. Well, the question is not a question merely of a particular obscenity being attached to books like 'La Garconne'. But you have classical literature of a very high order. Now for instance, in our own country we have the Kama Sutra.

SHRI MULLA: I have read a translation of it but I could not read the original.

DIWAN CHAMAN LALL: But the 'Kama Sutra' is an important book, which lays down certain . . .

SHRI D. P. KARMARKAR: It is a very useful book.

DIWAN CHAMAN LALL: As my learned friend says, it is a useful book too. But it is the basis of later psychology in the matter of sex.

SHRI MULLA: I have read portions of Havelock Ellis.

DIWAN CHAMAN LALL: Now would you like Havelock Ellis or Jung or Freud, for instance, to be proscribed?

SHRI MULLA: I would not have proscribed even Lady Chatterley's Lover.

DIWAN CHAMAN LALL: The point is, I do not know if you, Mr. Justice Mulla, during your visits to the various parts of India, have visited Khajuraho or Konarak.

SHRI MULLA: I have not visited any of these places and it is my loss.

DIWAN CHAMAN LALL: You should take a trip to some of these temples. Now, in Konarak particularly and in both these temples very obscene sculpture is exhibited, but it is the tradition in India that procreation is something sacred and these temples are dedicated to the idea of procreation. Naturally nothing is obscene as far as these temples are concerned and that is why the exception was made. You notice in section 292 there is an exception:—

“This section does not extend to any book, pamphlet, writing, drawing or painting kept or used *bona fide* for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple or on any car used for the conveyance of idols or kept or used for any religious purpose.”

Then, comes section 293:—

“Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of 20 years any such obscene object as is referred to in the last preceding section, or offers or attempts to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

SHRI MULLA: I have already said that if there is something obscene, but along with it there are certain other abiding values, then we can excuse the obscene part of it. Now, I will give a very clear illustration of what is in my mind. You have mentioned the fact that on the temple walls or other places there are what could be described as obscene sculptures or paintings, but along with it the religious motive is so strong, the other abiding values are so associated with it that the impact on the mind of those who see it goes towards the other values and is not confined merely to what is exhibited before them. It may be that

a boy of fifteen or sixteen may not go to the other values and he may concentrate on this presentation along, but that does not take away the importance of the artistic presentation because those values exist there. Now, for example, you, gentlemen, all know that Nero killed his mother, Agrippina. Now, when Nero sent his soldiers to kill Agrippina and Agrippina came to know that those soldiers were sent by Nero, she unrobed herself completely and then asked the officer-in-charge of those soldiers to strike her at that part of her body which gave birth to Nero. Now, if an artist were to paint a picture of Agrippina being killed by the soldiers and she is presented in the context of what I have said and the artist fails to convey what was in the mind of Agrippina, the agony of her soul, the feeling in her mind as to how a son was going to murder his own mother, it would be an obscene picture. But if the artist has succeeded, along with the presentation of this fact, to so portray the features of Agrippina or so present it that her mind goes to show those feelings of the mother at that time, when her son orders her to be murdered, then it would be a work of art and any representation of the obscene part of it would not be obscene, because, as I said, it has other abiding values.

DIWAN CHAMAN LALL: Thank you very much. Now, I suppose my colleagues want to ask you some questions.

SHRI M. P. BHARGAVA: Am I correct if I say that you neither want the law to be relaxed, as desired by Diwan Chaman Lall, nor would you like it to be tightened to deal with rags like the Indian Observer, except that the penalty provided should be increased?

SHRI MULLA: You are in a way right because I think that the existing law is sufficient to cope with both

the questions that you have raised. The existing law is sufficient to cope with it.

SHRI M. P. BHARGAVA: Our difficulty, has been that neither the Home Ministry nor the law courts have been able to deal with the rags like the Indian Observer. The editor has been prosecuted in several courts, yet he has not been punished by any court.

SHRI MULLA: Have you reached the stage of the High Court in any case?

SHRI M. P. BHARGAVA: Yes, in two cases.

SHRI MULLA: Then I would only say that their interpretation of the existing law is not the same as mine.

SHRI M. P. BHARGAVA: So, there is some lacuna somewhere.

SHRI MULLA: May be. If I had been the Judge, I would not have interpreted the law in that way.

SHRI M. P. BHARGAVA: Do you not think that the law as it exists today was enacted by the Britishers about a hundred years back and conditions at that time were very different from the conditions today and, if so, does not the law require *de novo* consideration to meet the present situation?

SHRI MULLA: The difficulty is that it is an abstract thing with which you are dealing. What is obscene and what is not obscene is an abstract thing. To lay down in words as to what is the definition of obscenity is really not possible. Again, human agency would come in to interpret those very words which you use for defining obscenity. Apart from that, it is not correct to say that obscenity is not defined. The definition need not necessarily be in the statute. The definition of several terms comes in the decisions of law courts and if every succeeding court follows the

decision already given, then the definition already exists. You can at best incorporate it in a statute also, but you do not advance it any further. What is the definition of a term in a decision, you can only incorporate it in the statute.

You are not advancing it. The courts have already accepted the definition by following precedent after precedent.

SHRI M. P. BHARGAVA: What would be the remedy to meet the present situation?

SHRI MULLA: The present situation is one, as Diwan Chaman Lal suggested and the Chairman suggested, that I think that the punishment should be made more severe. Secondly, more experienced courts should be entrusted to interpret and make out what is obscene and what is not obscene, and raw magistrates should not be given these cases. If you want something further, then you can say that these cases—if the appeal is for less than the appealable sentence, should also be made appealable. I do not advocate associating of jurors or assessors with these cases because our experience of jurors has not been very good. So far as my experience goes both as a lawyer and then as a Judge—there were no juries when I became a Judge; my knowledge of the jurors was only when I was a lawyer—is that it is only opening another gate for corruption.

SHRI M. P. BHARGAVA: Would you like to try some sort of a definition so that they might act as guiding lines for the courts and prosecuting authorities?

SHRI MULLA: I suppose obscenity has been defined in some cases. Why not adopt that definition? After all that is being followed. If you think that definition is still wanting and not completely expressing what you want to express, perhaps you can improve upon that definition. But you

can make that definition which the courts have observed as the basis for your defining the term "obscenity", and if there are any particular aspects which you think you want elucidated further, you may add to that definition.

SHRI M. P. BHARGAVA: Have you seen an amendment suggested by the Law Ministry, and would you like to comment on it?

SHRI MULLA: This looks to me the definition in the English cases. I have no objection to this definition, but do you really think this advances the case any further than what exists at this moment?

SHRI M. P. BHARGAVA: I would like to have your comments.

SHRI MULLA: Again it is the question of the individual Judge. In the final analysis even after this amendment we do not appreciably advance any further. We are just where we are.

CHAIRMAN: Will it help a little more?

SHRI M. P. BHARGAVA: In his opinion it does not.

DIWAN CHAMAN LALL: What would happen in the case cited about "Lady Chatterley's Lover"? You are against banning the book and yet the Supreme Court has held that it should be banned.

SHRI MULLA: Judges have disagreed in so many matters and then the Second Bench sits. You see in the case of fundamental rights what happened recently. It was upset by a recent decision. The legal procedure is like that. It so happens that in the Bench that is constituted the dominant Judges happen to hold one particular opinion.

SHRI DAHYABHAI V. PATEL: I would like to ask one simple question. Does the witness with his expe-

rience not feel that people who publish such articles or publications are emboldened to do so because the law of defamation is rather weak in this country and the courts do not award sufficiently heavy damages?

SHRI MULLA: I have said that the courts do not consider that as a serious crime. They treat it as a light crime. It is an administrative failure, not a judicial failure. The administration should make it clear.

SHRI DAHYABHAI V. PATEL: Would you say that the suggestion that the law of defamation should be tightened also would help in this matter?

SHRI MULLA: I have not thought over it, but I am not in favour of actually any change in the existing law so far as sections 292 to 294 are concerned; I do not think any change in that law is necessary.

SHRI A. D. MANI: May I ask Mr. Justice Mulla whether he has seen this awful newspaper called the "Indian Observer"?

SHRI MULLA: I believe those who are in Delhi are more fortunate. I should say in getting copies of it. I do not get it.

SHRI A. D. MANI: I want you to see this particular cartoon in which there is a slight reference to the Prime Minister, and let the Committee know whether a feeling of revulsion is not produced in your mind by seeing this cartoon.

SHRI MULLA: Let me say one thing very frankly. So far as obscenity is concerned, I have expressed myself as I could. But so far as nudity is concerned I do not think in India at any rate we can be squeamish about it. We have Nagas, we have women who feed their children openly in the running railway trains. After all I have said we should have the background as to what the com-

community feels. A few literates might feel insulted that this sort of thing is not good. So far as nudity is concerned it is accepted by a large section of the people.

SHRI A. D. MANI: Would you see this cartoon?

SHRI MULLA: That is different. I have seen this cartoon. If you are to prosecute him, certainly under the definition . . .

SHRI A. D. MANI: Unfortunately this paper cannot be successfully prosecuted in a court of law. I am not able to cite the exact case where the railway bookstalls refused to sell this awful journal, and the Supreme Court said that it was an infringement of the fundamental right and forced the railway bookstalls to sell it.

SHRI MULLA: That is another matter. You are drawing my attention to this particular cartoon. So far as this particular cartoon is concerned I can say you can sue him. I do not know about the other things.

SHRI A. D. MANI: As an old journalist I can tell you that we are finding it extremely difficult to cope with journals of this kind. These journals are subscribed to in thousands by young persons in Delhi. The paper claims a circulation of 100,000. And not only that, though the Press Council has been set up, so many public figures come in for slanderous and obscene comments; one of them has been elected as a Member of Parliament also in the recent general elections.

SHRI MULLA: This comes very near pornographic type of publication. This is almost pornographic.

SHRI A. D. MANI: This paper has become a problem in the country. There are other journals like that in Madras. There is a paper, a rag, published in Madras and flown by air to Bombay. Copies of that paper,

dealing with a female clerk working in the Import Controller's Office in Bombay, making slanderous comments on her and describing her as a nude and all sorts of things, are being sold at blackmarket rates in the Fort area in Bombay. It has become a problem. This is one of the reasons why some of us suggested to the Law Ministry that a definition should be attempted. And I am coming to the definition.

May I invite your attention, Mr. Mulla, to the definition which has been given? I want you to go through it line by line and want to submit to you that in some respects, it is an improvement over the existing law. In 1837—that was much before the Woolfenden Report, that was before Oscar Wilde—Macaulay used the word 'obscenity'. There was no other word for obscenity. I have figured as an expert witness in some cases and in at least two cases, I gave my verdict in favour of the journalists concerned. Now, it is judged by a Magistrate, and then the paper goes on appeal, and all sorts of arguments are advanced. And their no well-codified law of obscenity in the country. This is one of the difficulties. You see the case law under obscenity. It is so limited because very few want to prosecute obscene journals for fear that more mud might be thrown at them.

The second thing is that these journals seem to get some free hand at the hands of the law courts.

Here it says—

"For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene . . ."

Because obscenity has not been defined and this is based on the English Law and the Canadian Law.

" . . . if it is lascivious . . . "

I would like personally to drop the word 'lascivious' because any romantic

novel also produces erotic sentiments on a person.

“...or appeals to the prurient interest...”

It is where the essence and ingredient of obscenity lie:

“...or where it comprises two or more distinct items, the effect of any one of its items is, if taken as a whole, such as to end to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.....”

The argument is about the words ‘all relevant circumstances’. You said, nudity is not considered obscene in Nagaland. I have gone to Nagaland. Nudity is not a matter of comment at all. Some of them are extraordinarily beautiful when they are nude, and they take it as part of the communal life of Nagaland. If you go and talk to them about it, they would say that it is part of their communal life. It would depend upon the relevant circumstance, it would depend on the milieu in which the cases lie. If a nude photograph is the subject-matter of a case in Maharashtra where there is some sense of propriety in all these matters, naturally the courts there will hold that they are taking the relevant circumstances into account, and that it is an obscene photograph or obscene drawing.

Some of us feel that this draft might strengthen the hands of the Government in launching prosecutions. We do not have the representative of the Home Ministry here. But I believe the representative of the Law Ministry would be able to tell us how many prosecutions are launched against obscenity in the country. The number may be at the most about two or three a year because of the defect in the section of the Indian Penal Code which does not define obscenity. Suppose we include it, it may not lead

to a great improvement over the present situation but if it comes as weapon in the hands of the Government or the concerned parties to prosecute journals like the Indian Observer, some good will be done. What is your reaction?

SHRI MULLA: I understand you, Mr. Mani. You want to find some provision by which this type of journals are prosecuted. But the law remains where it is. Every person who would be prosecuted after the passing of this amendment can be prosecuted today. If you have it, it does not advance anything. Any man can be prosecuted to-day who would be liable to be prosecuted, after the amendment is accepted.

CHAIRMAN: Mr. Mulla, you agree with us and Mr. Mani that such journals should be proscribed. What would you suggest to make it more definite and easy for the prosecution to get hold of such journals or the writers in these journals?

SHRI MULLA: I do not know how the prosecutions have failed, I have not seen those cases in which the prosecutions have failed. For example, in regard to the cartoon that has been shown to me, I will be surprised if a prosecution is launched and it does not succeed.

SHRI A. D. MANI: May I ask him—I do not know if the representative of the Law Ministry could guide us in the matter—whether there has been any substantive case law, and how many cases have been launched on the advice of the Law Ministry in Delhi where this Indian Observer is printed? Can he throw some light on the matter?

SHRI S. K. MAITRA: The representative of the Home Ministry will be able to give the statistical information. But so far as I have been able to gather from the files, I have found that in most of the cases where it was proposed to launch a prosecution, the advice given by the Advice Branch was that the prosecution would not

succeed, and therefore, on the basis of that advice, no prosecutions were launched.

SHRI A. D. MANI: Would it be correct to say that there is no substantive case law also?

SHRI S. K. MAITRA: Case laws are very few on this point.

SHRI MULLA: If the Law Ministry has finally decided the cases without going to courts of law, it cannot be said that the courts of law would not have come to your help.

SHRI A. D. MANI: May I ask the Law Ministry's representatives here? Suppose this amendment is passed, do you think that in those cases where the advice was not to launch prosecutions, you can advise prosecution on the basis of this amendment?

SHRI S. K. MAITRA: I would like to explain how this draft has been prepared. The latter portion of this draft is based on the test laid down in the Hicklin's case and that was incorporated in the Jenkins Act of 1959, in the U.K. The same test was applied in Australia and America. The American Supreme Court found that the test which was laid down in Hicklin's case in the 19th century did not go sufficiently far enough and that something more was necessary. And therefore, the American Supreme Court laid down the test that if according to the contemporary community standards, it appeals to the prurient interests, then it is obscene. In Ranjit Udeshi case our Supreme Court said that if it is lascivious or if it appeals to the prurient interests, it is obscene. I have put in that test in the draft, and I feel that that makes the Section clearer than what it is today.

SHRI A. D. MANI: In the light of what the representative of the Law Ministry has said, it does make the law stronger. It may enable the Law Ministry to launch prosecution in

some cases where it could not be done. Would that be a substantive basis?

SHRI MULLA: In the opinion of the Law Ministry, this added amendment strengthens their hands. But my opinion is that the law is still strong without this amendment. And when the Law Ministry advised that there were not sufficient grounds for prosecution I am unable to appreciate it. After all they are the prosecutors. They may feel that it strengthens their hands.

SHRI A. D. MANI: Would you mind if they give a trial?

Then, going back to Lady Chatterley's Lover, the objection to that book which, I think, is a well-argued objection, is that it uses four-letter words which you and I would not use in ordinary conversations. If the sexual act is described in opprobrious terms, it introduces into the minds of those who read the book some revulsion and what is happening is, because of the so-called licence on the part of literary artists, the standards of public discussion are being lowered. What is being written in Lady Chatterley's Lover is also being spoken in public platforms. There is considerable depravity in public taste and corruption of public mind by books like the Lady Chatterley's Lover. On that ground, taking all relevant circumstances into account, as per this amendment, that book should be banned in India.

SHRI MULLA: So far as our Society is concerned, I think it can be divided into three big groups, firstly, the lower group consisting of the poor people. The poor people will not be shocked by the use of these words even if they understand it because when they sit round, they use these words. Even their women-folk indulge in these words and speak these words. Then we come to the middle class. It is the middle class people who are the most conservative in this matter and they are shocked. They have different ethical values and cultural values. But so far as the very rich classes are con-

cerned, you will share my statement that in their drawing-rooms, in their conversations, if not exactly these four-letter words, something very similar is being spoken, and very freely it is being spoken. So it is a section of the community which is shocked while a big section of the community is not shocked by it.

SHRI A. D. MANI: Mr. Mulla, since you mentioned about nudity being obscenity in certain circumstances, may I ask you a connected question about a matter which has come up repeatedly in our evidence, namely, the public reaction to kissing in Indian films with which we are also concerned? When loop advertisements were exhibited in Connaught Place, a large number of people—the matter was also raised in Parliament—objected to it that it is obscene. Now, what is your reaction as a poet yourself, as a man of art, to kissing being depicted on public screen, provided the actors and the actresses concerned do not object to kissing?

SHRI MULLA: We are living in a country where we are not confined to only those things which are produced in our country. The films which we see, the dramas which we see, they are not all staged by our people alone. So if in the American films, or in the British films you can see women in arms and so on, I do not see any reason why if the same thing is witnessed in the Indian films it is not tolerated. It does not shock the people if they see it in the Western films, but they will be shocked to see it in the Indian films. Either they should see it or they should not see it.

CHAIRMAN: For the information of you, Mr. Mani, and others, in 1965, out of 42 challans on obscenity 28 were convicted and in 1966, out of 28, 17 were convicted. So there is something going on.

SHRI MULLA: It depends on merits of each individual case.

CHAIRMAN: And there are some still pending, not yet decided.

SHRI M. M. DHARIA: Mr. Mulla, you say that this picture, according to you, will be obscene and the Editor will not only be prosecuted but convicted too. But I have not yet followed how it would fall under obscenity.

SHRI MULLA: The second cartoon on the right is a definite attempt to excite the woman. That makes it completely obscene.

SHRI M. M. DHARIA: The point is that he can say that in this country of ours we should have banned making money through prostitution. But this Government has not done that so far. Therefore, this cartoon is to expose the policies of the Government and there is nothing wrong in it. It is for the public good.

SHRI MULLA: So far as the question of public good is concerned, an offender always takes that plea. You will never find an offender not taking this plea because that is the only defence open to him. After all, an objective view is to be taken by the courts of law and other members of the community and their decisions will be final.

SHRI M. M. DHARIA: With my limited knowledge of law—I have been an Advocate and I have seen such cases—I can say that such cases were never convicted.

SHRI MULLA: I do not know if they can be convicted or not. I have functioned as a High Court Judge and if a revision from conviction had come before me, I would not have admitted the revision.

SHRI M. M. DHARIA: One more point. You know that obscenity has not been defined in sections 292 and 293 or anywhere in the whole of the Indian Penal Code. Of course, there is that section whereby these religious things are that way exempted from the operation of the law on obscenity. According to the case law, as has been well-established in our country, what

Diwan Chaman Lall is trying to do is to give that exemption to the pieces of art, literature and all that. Now it is making the law more perfect. Besides that, some of the Members feel that we should also make an attempt to define obscenity because it has not been defined in the Act. But, as you rightly said, our case law has definitely decided what is meant by obscenity. According to you what would be the best possible definition of "obscenity"? You have gone through it. Can you suggest some amendment to the draft of the Law Ministry that is before you? Not today, you can give it in three or four days.

SHRI MULLA: I will go through it carefully and if it is possible to give any suggestion I will give it. There is one difficulty about it. As I said, words like "obscenity", "love" etc. are such abstractions that an individual can define them according to his own individualistic reaction. It is very difficult to give a definition to these terms which may be acceptable to the community.

SHRI M. M. DHARIA: Certainly it is very difficult to define "obscenity", but we can create some norms and guide-lines for the magistrates and it is in this context that I requested you to examine this draft by the Law Ministry. We would like to have your advice within three or four days, before we prepare our final report. We hope, Mr. Chairman, we shall get some suggestions from Mr. Mulla during this time.

CHAIRMAN: We will consider it today.

PANDIT S. S. N. TANKHA: May I draw your attention to the proposed amendment of Diwan Chaman Lall? Kindly see clause 293-A as proposed by my hon. friend and mark the words "meant for public good" in line 3. Do you or do you not think that with the addition of

these words in clause 293-A the effect will be that the literature or other things instead of being prohibited will be retained by these words?

SHRI MULLA: I think the words used are capable of the meaning that public good would be determined by the subjective approach of the artist and I don't agree with this because public good can only be determined by a court of law or by the representatives of the community and the subjective approach of the artist is not very material.

PANDIT S. S. N. TANKHA: The thing is that the publisher of the journal 'Observer' maintains that what he is writing in this journal is for the public good, in order to bring to light the defects of the society, so that it may guard itself against them. Therefore, people like him will be excluded from the operation of the section by merely saying that he is acting for public good.

SHRI MULLA: The word "meant" may not be the correct word used here because "meant" indicates that the subjective approach of the artist is also material. I think the subjective approach of the artist is not material at all. He may intend it for public good but if the representatives of the people or the courts of law find that it tends to corrupt the morals of the people, then his intention is irrelevant and only the reaction of the community is material.

DIWAN CHAMAN LALL: May I draw your attention also to the fact that we are dealing with works of science, art and literature? I don't think that 'Observer' can be called a work of literature.

SHRI MULLA: We have known of poets, at least several Urdu poets who chafe under the present law. But I don't think the proper criterion would be the subjective satisfaction of the artist's mind.

CHAIRMAN: It may be a factor, but it is not conclusive.

SHRI MULLA: It is not relevant at all. In all social laws *mens rea* is not a material thing at all. When you play with dangerous weapons you must be an expert. Otherwise you do it at your risk.

PANDIT S. S. N. TANKHA: May I draw your attention to the proviso to this amendment? "Provided that in the event of any dispute arising as to the nature of the publication, the opinion of experts on the subject may be admitted as evidence". You have in the course of your evidence said that you are not in favour of any jury being brought in to judge whether a thing is right or wrong. But the words here are "the opinion of experts on the subject," that is, experts in literature, experts in science, experts in law. . .

SHRI MULLA: So far as the opinion of the experts is concerned, if I mistake not, the words of section 45 of the Indian Evidence Act do already permit the opinion of experts.

PANDIT S. S. N. TANKHA: Quite right.

SHRI MULLA: This only elucidates; it does not advance. Personally, so far as the opinion of experts is concerned, as I said in the very beginning, it is very difficult to accept that there is anybody who is an expert on deciding whether a certain thing is obscene or not. He may be an expert writer; he may be an expert artist. But if any artist says that in his opinion a certain thing is obscene or is not obscene, that would be just his individual opinion. That would be no contribution.

PANDIT S. S. N. TANKHA: You are right in that. But it would be a better guidance to have an opinion from an expert rather than from a lay man.

SHRI MULLA: I may assure you that I am not against this proviso. But let me assure you that you will have as many opinions as there are experts.

SHRI M. P. BHARGAVA: No two experts agree.

SHRI MULLA: Yes. There are three types of witnesses—unreliable witnesses, false witnesses and then the experts . . .

PANDIT S. S. N. TANKHA: Apart from professional experts, supposing a man of your calibre . . .

SHRI MULLA: I would be only voicing my opinion on this point.

PANDIT S. S. N. TANKHA: Quite right. But it would be worthy of greater consideration than an opinion of any ordinary person. Therefore, if the opinion of eminent men is taken by the courts, it will certainly carry weight.

SHRI MULLA: Well, these opinions when they are given may be considered, but more importance than that should not be given to these opinions. After all, the judge considers these opinions, but it would not be of much evidentiary value.

PANDIT S. S. N. TANKHA: Ultimately the matter will rest with the judge himself; he need not be guided by the opinion at all.

The third point is that you said you would prefer a severer punishment to be provided in the law. Do you think a sentence of five years or fine or both would be adequate to meet the situation?

SHRI MULLA: I think five years would be adequate.

PANDIT S. S. N. TANKHA: And fine?

SHRI MULLA: Yes.

DIWAN CHAMAN LALL: And confiscation of the machines?

SHRI MULLA: As a matter of fact, I should suggest that in this type of cases, especially dealing with papers, if you want to stop this type of publication, in the first instance, you may get them convicted, but in the second instance you may also have this type of penalty, that their licence to have the paper would be taken away.

PANDIT S. S. N. TANKHA: Your view is that the matter should not be placed in the hands of magistrates, but men of greater experience in law should judge these matters. Do you think that if we provide that a Sessions judge should try . . .

SHRI MULLA: You may make it an offence triable by the Sessions court.

CHAIRMAN: We are very grateful to you, Mr. Mulla. On my behalf and on behalf of the Committee, I thank you very much. Your evidence has been very helpful and I am sure it will guide us and we will be benefited by it in coming to our final conclusions.

SHRI MULLA: I am very grateful to you, gentlemen. I wish I could have been of more assistance to you.

CHAIRMAN: You may please take a copy with you and if by tomorrow you think there is anything to be added or subtracted or modified, you can send it to us by tomorrow. We will feel much obliged.

(The witness withdrew at this stage).

Friday, 5th May, 1967

PRESENT

1. Shri Akbar Ali Khan—*Chairman.*

MEMBERS

2. Shri M. P. Bhargava
3. Pandit S. S. N. Tankha
4. Shri M. M. Dharia
5. Shri Bhupesh Gupta
6. Shri Mulka Govinda Reddy
7. Shri Dahyabhai V. Patel
8. Shri P. K. Kumaran
9. Shri A. D. Mani
10. Diwan Chaman Lall
11. Shri D. P. Karmarkar.

Shri K. S. Ramaswamy, Deputy Minister in the Ministry of Home Affairs also attended the meeting.

REPRESENTATIVES OF THE MINISTRIES

Ministry of Law

Shri S. K. Maitra, Additional Legislative Counsel.

Ministry of Home Affairs

Shri S. S. Varma, Deputy Secretary.

SECRETARIAT

Shri S. S. Bhalerao, Joint Secretary.
Shri S. P. Ganguly, Deputy Secretary.
Shri Amar Nandi, Under Secretary.

WITNESS

Shri G. S. Pathak, M. P.

(Shri G. S. Pathak was called in)

CHAIRMAN: Shall we begin? Mr. Pathak, I thank you very much for coming before this Select Committee. I am sure your statement, in view of your long association with law and with public life, will be very helpful in enabling us to come to our conclusions. I suppose you know that we are dealing with sections 292 and 293, regarding which our friend, Diwan Chaman Lall, has brought an amendment. This amendment has got two aspects. Some of us feel, in view of the fact that science, art and literature should have free scope, that the present provisions might hit and be a stumbling block in the way of free expression. There is also a view that there is a lot of filthy literature, if you call it, newspaper and things like that, which are currently seen, and that the present provisions of law, so far as we could see, and so far as the administration also feel, are such that they are not able to get hold of such persons who are issuing such unhealthy literature. So we would like you to tell us, in view of these two facts, how far the present law should be liberalised, and how far it should be tightened. You have perhaps also seen the draft which the legal secretariat has made, and we would like to have your valuable advice on that draft as well. Yes, Mr. Pathak.

SHRI G. S. PATHAK: Mr. Chairman, Sir, I am very grateful to you for allowing me to come to this table and try to help this Committee in the way in which it is possible for me to help it.

Mr. Chairman, Sir, in my opinion the present Section is not a stumbling block as you had been pleased to express it as one of the views, nor will the amendment make it easier to get hold of persons guilty of committing the offence of obscenity. According to my thinking, the existing law is clear and comprehensive, and it is not necessary to amend it in the way in which it is being sought to be amended by my hon. friend, Diwan

Chaman Lall. He seems to be of the view that considerations of public good and *bona fide* persons of art, science, etc. should be an exception to section 292. Now my reading of the law as it exists today, and as it has been interpreted by the Supreme Court, is that considerations of public good or social purposes are relevant considerations under the existing law itself, and even now it is open to the accused to set up, by way of exception, a plea that the book or the article he has produced was intended to serve public good and that he was merely fulfilling *bona fide* the purposes of art, science, etc. Now, the Supreme Court, in its decision on 'Lady Chatterley's Lover' . . .

CHAIRMAN: I suppose you have read that book, Mr. Pathak.

SHRI G. S. PATHAK: Yes, I have read it. I have read the unexpurgated edition also, but that I did when I was in the United States, not here, several years back. Now, this ruling of the Supreme Court lays down that where there is the question of propagation of ideas in the public interest—I am giving the substance of it—then if public interest preponderates over the possibility of obscenity, public interest will prevail. The Supreme Court and other courts had cited the instance of medical books, which contain many details on sex matters, which if dissociated from the public good or the social purpose of education or from the scientific purpose, might be objectionable. Now, the Supreme Court has also said that where art and obscenity are mixed, art must be so preponderant as to throw obscenity into the shade or into the shadow, as they say, and while balancing the demands of art against what appears to be obscenity, national standards—I am quoting the Supreme Court when I am using the expression 'national standards'—have to be borne in mind. Therefore, there is always a clash in such cases where art is mixed with sex matters, clash between social purpose and sex matters. It

is for the court to decide which, in the circumstances of the case, preponderates. If it appears that in order to subserve the social purpose any tendency which may flow from the representation of sex is not so material, then in that case the court will hold that social purpose must be subserved. Even though there might be some slight tendency in the evil direction, the social purpose must preponderate. On the other hand, if it appears that the tendency is towards creating depravity or creating immorality, then that tendency must be checked. According to the present law it is for the courts to judge whether the social purpose preponderates in a particular case or whether the tendency is towards immorality. That is the law here. Now, if the law, as I stated, takes into account the social purpose, public purpose, also takes into account the *bona fide* purposes of art, science, literature, etc., then it does not appear to be necessary to make a law by which public purpose or purposes of art, science and literature have to be protected, because it is already there. Now that it is there would appear from the Supreme Court's judgment. The Supreme Court has stated that in England at one time obscenity was prevented by common law. Later in 1857 the law was made into a statute. In 1868 there was a case known as *Hicklin's case* and in that case obscenity was defined. The Supreme Court says that that definition has been accepted by the High Courts in India and the Supreme Court says that although the world has moved very far from what it was before, that test stands valid today. That is what the Supreme Court has said. Now, therefore, I think that the community standards or national standards—the Supreme Court used both the expressions—are a very relevant factor in these matters. It is for this reason that, although this very book, "*Lady Chatterley's Lover*", received a different treatment both in England and in the United States, in India that was not allowed to be put in the public market. Section 292 was applied to that case and the Supreme

Court upheld the judgment of the Maharashtra or Bombay High Court.

CHAIRMAN: Do you approve of that judgment?

SHRI PATHAK: Yes, absolutely. Now, I say there are other reasons.

SHRI A. D. MANI: Not approved. The Supreme Court is a superior body and there is no question of approval.

SHRI BHUPESH GUPTA: We do not accept it here.

SHRI PATHAK: The word 'approve' was used by the Chair and I did not want to contradict the Chair. I did not use any expression of my own.

SHRI M. M. DHARIA: The Committee should not feel that you are disapproving the Chairman.

SHRI PATHAK: There are one or two more reasons why I think that no amendment of this kind should be approved by this Select Committee. One is that this very question was considered by the Select Committee in the year 1925 and the Select Committee said they were opposed to extending the scope of the exception which they made in that year. This you will find in page 2 of the thinner collection of papers here, this is quoted. I am merely stating the fact. If I am wrong, Diwan Chaman Lal can always correct me.

Then another reason why I am inclined to oppose this Bill is that the view which has been expressed by some people to whom the matter was referred for opinion that it is not desirable to extend the scope of the exception seems to be correct. The Supreme Court's decision, which is a recent decision of 1965, in my view reflects the national standard or the community standard, and when according to the consistent decisions it has been held that the Court is the ultimate judge of whether any particular matter is obscene or not, then in cases where public opinion has

changed, where views of the community on sex matters have become more liberal, if I may use that expression, then it is for the Supreme Court on the evidence before it or on the knowledge of such notorious facts as it has to take into account the change in the conditions which have come over the society, and such a situation is taken care of by the fact that the ultimate judge of the question whether any particular matter is obscene or not is the highest Court in the land.

What object will this Bill fulfil? The objects and reasons say that there is a lacuna and it is necessary to fill the lacuna so that the law may be brought into conformity with modern practice in civilised countries. To my thinking there is no lacuna in the law. What may be obscene today may not be obscene tomorrow. That would depend upon the national standard which might change, the community standard which might change. That has got nothing to do with the law, and the attempt seems to be that those standards should change; that is to say, we have to bring into line our thinking with the thinking of civilised countries.

CHAIRMAN: You mean by civilised, modern countries?

SHRI PATHAK: The word used is "civilised" in the objects and reasons. Therefore, I should think that it is not a change in the law that is required. It may be that a change in the thinking may be developed. If the object is to bring our thinking on sex matters into line with the thinking in other countries, then that object could be better fulfilled by means other than introducing a change in the law.

I also agree with the view which has been expressed by some persons who have expressed their views in this matter, although I am not using their language that there might be some confusion in thinking if we amend the law. People might think that the

Parliament wanted to depart from what has been laid down by the Supreme Court. If Parliament by passing this Bill does not seek to depart from what the Supreme Court has laid down, then in that case there is no necessity of changing the law. If Parliament wants to emphasize what the Supreme Court wants to say, even then there is no necessity to change the law. I do not think that any ambiguity has arisen from this judgment or that there is anything in that judgment which is in conflict with the view taken by Diwan Chaman Lall. The view expressed in the language of the amendment is that there should be a requirement of public purpose, public good as it has been termed or *bona fide* purposes of art, science and literature.

SHRI A. D. MANI: If I may just interrupt, you perhaps do not have the background of the discussions which preceded this draft. The representative of the Law Ministry said yesterday that in many cases, for instance, the "Observer" which is a scurrilous journal, they were not in a position to advise prosecution. The second point that we considered yesterday with reference to this draft is that now obscenity cases are tried by the lowest courts.

SHRI PATHAK: I say we will be defeating that very purpose if we pass this amendment. If you want to catch people who are guilty of committing obscenity, you cannot catch them by enlarging the exceptions for escape.

CHAIRMAN: How to tighten it?

SHRI PATHAK: That is a different matter.

CHAIRMAN: We are considering both.

SHRI PATHAK: I thought—that is what the letter said—that we were considering this amendment. I have not considered the question in what different manner . . .

SHRI M. M. DHARIA: We have decided to send the draft to the hon. witness. I do not know whether he has received the amendment.

SHRI PATHAK: I am not aware of that because the letter sent to me mentioned only the amendment. There are two questions that should be kept apart. One, the question of the amendment of Diwan Chaman Lal. That amendment will not help the State in catching the guilty any better than the present law does because the amendment seeks to create an exception. That exception might be availed of by the accused. That would be a legislation which may assist the accused. That is not a legislation which makes the law against the accused more stringent.

SHRI M. P. BHARGAVA: It will facilitate matters if Mr. Pathak sees the latest amendment; then his opinion will be valuable.

SHRI M. P. BHARGAVA: Now, what is before the Committee is the latest amendment.

SHRI PATHAK: It says:—

“For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, . . .”

Now, this is nothing but a repetition of what the Supreme Court has said.

SHRI M. M. DHARIA: I would like him to go through the whole of the amendment.

SHRI A. D. MANI: As a lawyer, he smells the amendment and speaks.

SHRI M. M. DHARIA: We have also expressed regarding punishment,

conviction and all that in the latter part of it.

CHAIRMAN: That enhances the punishment.

SHRI PATHAK: I am reading it. I will deal with it one by one.

Now, the first object is this—

“For the purposes of sub-section (2) . . . see or hear the matter contained or embodied in it.”

This is nothing but what the Supreme Court has said and I do not think any amendment is necessary when the Supreme Court has described what obscenity is.

CHAIRMAN: Is there anything wrong in putting it here?

SHRI PATHAK: In principle, you do not do it unless there is any ambiguity in the law. When some court in India has ever said something which is contrary to what the Supreme Court has said now, certainly you can amend it in order to remove the ambiguity. But I have never heard of any amendment being made merely to repeat what the Supreme Court has said.

CHAIRMAN: The difficulty was—you know, you were the Law Minister—that it was told that the law was not sufficiently stringent enough. That is why we have brought forward this definition so that we will give an idea and direction as to how the legislative mind works.

SHRI PATHAK: It is not on account of any ambiguity in the word ‘obscenity’ that people were not brought to book or that people escaped punishment. It was not on account of any ambiguity in the concept of the word ‘obscenity’. This concept of obscenity has come from 1868. The Supreme Court has said it, all the High Courts in India have followed it; we approve of it. No court has ever said that that concept is wrong.

If any court had said that, it would be necessary if the State had failed on account of the fact that the word 'obscenity' was not there or that it failed on account of the fact that it could not prove the case of obscenity. If what the Supreme Court has not given in the description of obscenity is obscene, then I could have understood it, because in principle unless you find some ambiguity somewhere there is no necessity for legislation. Since 1868 in India there has not been a single court which has departed from that view and every court in India has said, that they follow the definition given in the Hicklin's case in England in 1868. The Supreme Court has said that that has been the law and they approve of it. Obscenity has not been defined clearly. But everyone knows what obscenity is. People may have different views about it. But there is no question that the meaning is clear. The tendency to deprave is the test and that is what the Supreme Court has said and that is coming since 1868. I am opposing this simply on the ground that there is no necessity for it. The word 'obscenity' may be a little elastic. But the judges will always understand what obscenity is because they are the ultimate judges of the quality of a particular article or book on which they have got to pronounce their judgments.

Now, at page 2—

'(i) for the words "with imprisonment of either description for a term which may extend to three months, or with fine, or with both" substitute "on first conviction with imprisonment of either description for a term which may extend to two years and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years and also with fine which may extend to five thousand rupees."'

I have no objection in your making the law as stringent as you like by

enhancing the punishment. But to doing things which may create exceptions in favour of the accused, I am opposed. I am not opposing enhancement or increasing the sentence.

"This section does not extend to—

(a) any book, pamphlet, paper, writing, drawing, painting,—representation or figure—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting representation of figure is in the interests of science, literature, art or learning or of other objects of general concern, or

(ii) which is kept or used *bona fide* for religious purposes."

I believe that for religious purposes the exceptions already exist.

CHAIRMAN: Previously, it was only 'for religious purposes'. But we have included science, literature and art in these exceptions.

SHRI PATHAK: I am opposing this on the ground that I have already mentioned *viz.*, all this public good—the interests of science, literature, art, etc.—is already covered by the existing law. The Supreme Court has said that it is open to the accused to take the plea that he is doing it for public good, it is open to the accused to say that it was a work of art. And when the question will arise which the court will have to adjudge. Where some matter, sex matter, is mixed up with art, what should the court do? Now, if you make these exceptions, they may create an impression that even apart from the balancing as between the requirements of art and sex matters, the moment the accused says that he has done it for the purpose of art, he is safe.

SHRI A. D. MANI: No, he must prove it.

CHAIRMAN: It has to be adjudged.

SHRI PATHAK: I would appreciate it if I were to be told that under the existing law it is not open to the accused to say that he is doing it for the purposes of art or that he has done it for social good or public good. I will accept that.

CHAIRMAN: Mr. Pathak, some witnesses came from Maharashtra. They said that in some cases the writers were under a handicap and they felt that this provision, without any exception, creates difficulty.

SHRI PATHAK: Therefore you are removing the handicaps from the way of the writers? You are not making the law stringent against writers of such things?

CHAIRMAN: As I told you, liberalisation and being stringent. When I mentioned this, I gave you the opinion of those who want to liberalise it.

SHRI PATHAK: I am accepting it. Liberalise it as much as possible. But you should not liberalise it in such a way that those who are guilty of obscenity should have a larger latitude. That should not be the case. You have got to keep a balance between the right to freedom of expression and speech and the requirements or interests of decency and public morals. I am using the word of article 19(2), and that is balancing. To give a greater emphasis to one side would be to disturb that balance, when the balance itself has got to be determined by the court.

CHAIRMAN: But the exception already existing in the section, do you approve of it? Yes.

SHRI PATHAK: Yes.

CHAIRMAN: Not science, etc.?

SHRI PATHAK: The Supreme Court has said—where there is propagation of ideals, opinion and infor-

mation of public interest, books, etc. may not be considered obscene. My point is this that since it is already there it will be a superfluity which may create some misapprehension if you introduce it.

DIWAN CHAMAN LALL: Lady Chatterley's Lover was banned.

SHRI PATHAK: Lady Chatterley's Lover was banned for two reasons. One, the Supreme Court says "No plea of public good was taken in that particular case". It could be taken; it was not taken. Two, there was no question of social purpose in that book. That was done by Lawrence to propagate his ideas on sex matters. It is not necessary that every idea of sex matters promotes social good. It says that where there is propagation of ideas, opinions etc. in public interest, it may not be considered obscene even though it may be considered immodest. Then on page 889 of the L.I.R. the Supreme Court says:—

"We can only say that where obscenity and art are mixed, art must be so preponderant as to throw the obscenity into a shadow or the obscenity is so trivial and insignificant that it can have no effect and may be overlooked. In other words, treating with sex in a manner offensive to public decency and morality (and these are the words of our fundamental law), judged of by our national standards and considered likely to pander to lascivious, prurient or sexual precocious minds, attempts to bowdlerize all literature and thus rob speech and expression of freedom. A balance should be maintained between freedom of speech and expression and public decency and morality but when the latter is substantially transgressed, the former must give way."

So where the charge is under section 292 the pieces of art, literature or science relevantly fall for consideration in a court of law. And so is the question of public good. But all the

factors have to be taken into consideration. A balance has to be struck between the demands of public morality as against these other factors.

An exception has to be made for religious matters. In 1925 an exception was considered necessary because they place religion on a higher pedestal. There is no doubt about that. But so far as all the other matters are concerned there are just a few of those factors which, according to decisions, appropriately fall for consideration when the charge under the un-amended section 292 is made. Therefore, it is not necessary.

Then "Any ancient monument within the meaning of....." I have no objection to "monuments".

Then I have no objection to subsection (c).

Then New Clause 3.

CHAIRMAN: We are giving powers to the Sessions Judge.

SHRI PATHAK: We have no objection.

SHRI A. D. MANI: I want to ask him a clarification. Any person who vends this thing is liable to be punished with conviction of seven years or with fine to the extent of Rs. 5,000. Now a newspaper boy is not only a person who not only vends but he earns his livelihood by vending this thing; he sells it not knowing what is contained in it. The economic conditions are so bad that many people have become hawkers just to earn some money. Would you like to prescribe a punishment of seven years for such a man because a man who vends it in an ordinarily commercial way would also have a sentence of seven years?

SHRI PATHAK: The punishment is maximum. It is open to the court to reduce the punishment. Now if there is an innocent hawker, a poor boy, no court is going to award him seven

years. But if the author himself goes about selling how much does he get? He should get seven years. Therefore, this should be left to the discretion of the court.

DIWAN CHAMAN LALL: What do you suggest should be done in order to protect works of art, literature and science?

SHRI PATHAK: I think such works of art, literature and science are already protected under the existing law. They do not need any further protection.

DIWAN CHAMAN LALL: If it is merely the opinion of the Judge, the Judge may in one case agree with you while in another case he may disagree with you. The Judges of the Supreme Court have disagreed with Lady Chatterley's Lover. It is not banned in America. It is not banned, since the amendment was made, in England, and yet it is banned in India. What do you suggest should be done?

SHRI PATHAK: I would prefer the ultimate decision of the Judges to my view or to any other view because there must be some finality in these matters. There is difference of views in human affairs. Opinions would vary from man to man. But where there is the question of the liberty of the citizens, where there is the question of somebody receiving punishment, there we must leave it to the Judge to decide ultimately. I cannot be a proper evaluator of the situation in such matters.

DIWAN CHAMAN LALL: Therefore, you would agree that all law should be abolished and left merely to the whims of the Judges of the Supreme Court.

SHRI PATHAK: I neither agree that all law should be abolished nor do I agree that Supreme Court Judges are whimsical.

CHAIRMAN: But do you leave any scope for Legislature in a case where the law is ambiguous, in cases where Parliament decides that this decision of the Supreme Court has to be reversed and the view of the law taken by the Supreme Court is not the correct view? I say that the legislators should not intervene where the Supreme Court has not departed from any thinking which the legislators may have. We should not consider it simply because in England or in America, the courts there have taken a different view. It is our national character, our community standard which must override all other considerations.

DIWAN CHAMAN LALL: You talked about national standards, community standards. Have you ever visited Khajuraho or Konark?

SHRI PATHAK: Yes, I may or may not have visited, but I know that there are such engravings or such sculptures which may appear to be nude. I have seen their paintings; I have seen their pictures. I have seen all that, but I have not yet come across a man who has become depraved by seeing them.

DIWAN CHAMAN LALL: Have you not really visited Konark, the chariot temple there? Konark is a few miles from Bhubaneswar and the sculpture there is the most obscene type of sculpture that I have ever seen in my life.

SHRI PATHAK: Then that must be obscene.

DIWAN CHAMAN LALL: Talking about our national standards, our national standards take their cue from sculptures of that particular type . . .

SHRI PATHAK: No, I don't agree. Many, many years have passed since then and I don't accept the view that whatever has happened in the past determines our thinking today.

DIWAN CHAMAN LALL: Now you know Dr. Mulk Raj Anand brought out a book in Czechoslovakia containing pictures of the sculptures of

Khajuraho and Konarak. That book has been banned and not allowed entry into India.

SHRI PATHAK: Well, I am glad to know that. I don't know because according to their standards, Czechoslovak standards . . . standards . . .

DIWAN CHAMAN LALL: It is not banned there, it is banned here.

SHRI PATHAK: Then I am very happy. But we have to judge each case on its own merits. We can't draw several inferences from any situation, if I may use that expression, or argue from one case to another and say we have must make a law. If Diwan Chaman Lall could have pointed out any decision of any court which might have come into conflict with the definition of obscenity as it exists today or with the concept as it exists today, then that would have been an occasion for altering the law by legislation. Simply because Diwan Chaman Lall holds the view or I hold the view that a particular thing is obscene, that does not matter. That does not mean that the law should be changed. Mr. Justice Hidayatullah has said in the judgment itself that the question is not about the definition. The question is that many people will think differently about the same matter. Some people will think it is obscene; some will think it is not obscene. But that is the thinking and the background of the people themselves. That has nothing to do with the question of definition of obscenity.

DIWAN CHAMAN LALL: So the definition should be left to the individual opinion of the judge?

SHRI PATHAK: That is what the Supreme Court has said. That is what the Indian High Courts have said ever since 1868 without one dissenting voice.

DIWAN CHAMAN LALL: This law was made by the British?

SHRI PATHAK: I believe in 1925 the British made the law. From that I am inferring it.

DIWAN CHAMAN LALL: You have not seen the debate on this particular measure?

SHRI PATHAK: No.

DIWAN CHAMAN LALL: Mr. Jinnah took your point of view. There were certain books which were cited by me in the legislature and Mr. Jinnah took your point of view and said "You leave it to a policeman, leave it to a third class magistrate to decide what is obscene and what is not obscene." Then one can go to the High Court and then to the Supreme Court. I asked him while he was speaking whether he had seen Rousseau's Confessions, a book that was equivalent to Lady Chatterley's Lover at that time. We cited La Garconne. We referred to the Canticles of Solomon. I don't know if you have read the Canticles of Solomon. Bernard Shaw is alleged to have said that he would rather strangle a daughter of seventeen years of age, his own, than allow her to read the Canticles of Solomon. And we cited many other things. Now the point that I want to ask you is: How can you help us to give a direction to the judges of the High Court and the Supreme Court and to all other judges dealing with obscenity to examine works of literature, part and so on? Can you help us in any way?

SHRI PATHAK: The Constitution requires that there should be a balancing of freedom of expression with interests of public decency and morality. Now the question requires me to help the legislators in the protection of freedom of expression of works of art, which is one method of expression. But the Constitution requires a balancing. The Constitution says that a law can be made to prevent breach of decency. That is article 19(2). We can't think of protection of works of art, that is freedom of expression, ignoring the requirements of public decency and morals.

They have got to be weighed in the scales. And the question, if I have understood my distinguished friend right, would require me to protect the art that is freedom of expression. But the Constitution does not give protection to expression or to art without reference to the requirements or the demands of decency and morality and, therefore, I can't answer a question. I am saying it with the utmost respect, which disregards this balancing.

DIWAN CHAMAN LALL: Keeping this balancing in view, can you not point to something that you can suggest to us which would be effective in guiding the judges to decide the cases of this nature like Lady Chatterley's Lover.

SHRI PATHAK: The judges so far have never been in any difficulty. They have consistently taken one view. Therefore, in my humble opinion, they do not require guidance. But if the Parliament feels that there is any discordant note anywhere and there is a clash of judgments, then of course we can give them guidance. But so far I have not been able to find any conflict of authority or conflict of view so far as the definition or concept of obscenity is concerned among the judges and I would loath to volunteer guidance where they don't stand in need of guidance, and reading of the judgments does not show that any guidance is necessary.

DIWAN CHAMAN LALL: And yet the fact remains that 'Lady Chatterley's Lover' is free to sell itself anywhere in Europe, anywhere in America, and yet not in India.

SHRI PATHAK: Yes, and the fact remains also, with respect, that the decision of the Supreme Court in India may take a view different from what the English courts take, or what the American courts take because in such matters, the Supreme Court was right in saying that it is the community standard or the national standard which has to be taken into consideration, and today, national interest

would not become world interest; it has not become identified with world interest. It may be that national standard in one country may be very different from national standard in another country; the whole background may be quite different. Things which are looked down upon with disfavour in any particular country might, in another country, be treated as things of daily occurrence, as daily happenings.

DIWAN CHAMAN LALL: You have read Kama Sutra?

SHRI PATHAK: I had no occasion to but there has been the case about Kama Sutra and it has been said in that case that there are no . . . you will read it from Ratanlal's Law of Crime; this is mentioned there; it is not necessary to read the book in every case, but there is a decision on this Kama Sutra itself. I may have to devote more time if I am to dilate on it.

DIWAN CHAMAN LALL: I think the reason as to why 'Lady Chatterley's Lover' was not banned in Great Britain was the existence of this particular amendment. This amending law was passed in England in 1954 and then the case started. When the said law was on the legislative anvil as a Bill, immediately then the publishers decided to publish one million copies of 'Lady Chatterley's Lover', and before they could put it out on the market, they were prosecuted; the prosecution followed the passing of this amendment by the House of Commons and House of Lords. Now what I am suggesting is this. Can you not help us, guide us in regard to the saving of works of art, literature, science, etc. etc. which may be of a kind like 'Lady Chatterley's Lover' or like Havelock's, Ellis's or Freud's etc. etc. They have all been saved by the amendment of the law in 1954 in Great Britain.

SHRI PATHAK: I shall divide this question into two parts, one being as to how they were saved in Eng-

land. I have not studied the proceedings of the English court; my friend, Diwan Chaman Lall, might have studied them, and he might be in a better position to tell you what was the ground on which the court proceeded. But so far as I am concerned, I think that there was a trial by jury. The judge gives the law to the jury, and the jury in the end says whether the matter is obscene or not obscene. The court then does not come into that matter again, and most probably the jury returned—that is my recollection—a verdict of 'not guilty'. So far as the law is concerned, if you find from the charge to the jury that the judge said that you pronounce a verdict of acquittal only if there is an exception of this kind; otherwise you ignore the antecedent law, or you ignore the decided cases, the Hicklin's case, which would show that it is the tendency towards depravity which is the test, then I would be prepared to accept Diwan Chaman Lall's observations. So far as helping the art is concerned, I am not prepared to help Lawrence's book 'Lady Chatterley's Lover'. After I read it, I threw it away. I did not bring it to India because I did not want anyone of my family to read it.

DIWAN CHAMAN LALL: You have read Ulysses.

SHRI PATHAK: I have read its extracts. I have not read the original book as I had many other things to do in life.

DIWAN CHAMAN LALL: The trouble is that this is a matter of literature and some of us are interested in literature.

SHRI PATHAK: I am a Master of Arts in literature but there are so many books other than this Ulysses, other than these books of a doubtful character.

DIWAN CHAMAN LALL: When you took the Degree, Ulysses was not born at that time.

SHRI PATHAK: There were other books written at the time.

DIWAN CHAMAN LALL: Ulysses came to be written much later than that time.

SHRI PATHAK: I am saying about such books; I am not bothered about Ulysses or any other.

DIWAN CHAMAN LALL: Therefore now the position is as stated in my amendment and the proviso thereof in this:—

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

Now experts were taken in, experts on literature were taken in, and they gave evidence in this case of ‘Lady Chatterley’s Lover’ and it is mostly based upon their evidence and the cross-examination of these witnesses that the direction was given for its acquittal.

SHRI PATHAK: Now these words “experts on the subject”; what is the meaning of “subject”? Does the “subject” mean obscenity?

DIWAN CHAMAN LALL: Literature, science, art etc.

SHRI PATHAK: For that there is Section 45 of the Evidence Act, which provides for admissibility of evidence on points of art, science and foreign law. If you think that a question arising out of literature is not covered by this then you may amend the Evidence Act, the Section 45; I have no objection to that. But it is otherwise, if the ‘subject’ is something bigger than art, science, you could have experts on matters which require expert knowledge, like art, like science, like foreign law as has been mentioned in Section 45 of the Evidence Act. But you cannot have experts on everything. If you want to extend the scope of Section 45 of the Evidence

Act, if you think that literature is not covered, I have no objection to enlarging the scope of that Section. But I have serious objection to anybody being called an expert on ‘obscenity’ and his evidence taken as authentic evidence.

SHRI M. P. BHARGAVA: What would you do with such people who want to call themselves experts on this?

SHRI PATHAK: They can please themselves and they can please their friends.

PANDIT S. S. N. TANKHA: Mr. Pathak, as far as I am concerned—I do not know what the other Members of the Committee think about it—I am concerned not with the liberalisation of the law, but I want to make it stricter, to award deterrent punishment. I do not know whether you are aware of the fact that the weekly published from Delhi known as the “Observer” has been published for the last several years and it is a very dirty paper. The Home Ministry made several attempts to get the paper proscribed. The editor and publisher of that paper was also arrested at various places, in Bengal and other places, but ultimately he was let off, because it was found that the law was inadequate to punish him. Therefore, as far as I am concerned, my view is that there should be a stricter law and to make that stricter I would like you to help us in finding out ways and means for throwing off such papers as the “Observer”. From that point of view, I would like to know what suggestions you can offer.

SHRI. PATHAK: This is a matter which requires intensive research. So far as the judgments are concerned, judgments of the High Courts and the Supreme Court, I have not seen any defect in any of those judgments which might be responsible for the acquittal of such people. It may be that it requires a very intensive study of all those judgments. It may be that on some question of fact he might have been acquitted.

CHAIRMAN: But you will remember Mr. Pathak that the Law Ministry has advised that under the present law it is not possible to actually prosecute such papers.

SHRI PATHAK: I do think the Law Ministry will be able to tell you how the law could be made more effective.

CHAIRMAN: They were considering that.

SHRI PATHAK: Let us wait.

CHAIRMAN: Would you give us some suggestions?

SHRI PATHAK: As I have told you, the proper way of dealing with this matter will be to study the cases which have resulted in acquittals. Then, you will find whether there is any loophole in the law or any deficiency in the law, which is responsible for the acquittals. If it is on some question of fact or the effect of the particular article which might have resulted in acquittal, you have got to examine that. Unless you examine loopholes, unless you examine the judgments in order to see whether there is any loophole or deficiency, you will be groping in the dark. That is my submission. If the Law Ministry is already engaged in this task, then I would like this Committee to express its view that this task might be completed and greater intensity might be used in this matter, because it is a matter which would require change in the law which is existing in India for many, many years, for about a hundred years. Before 1925 there might have been other cases. In England there was a common law of obscenity before 1857. All these things have got to be examined in great detail. One cannot simply jump to conclusion that there is some deficiency in the law, some loophole in the law, which we may plug up. The first step should be to find out what the loophole is.

CHAIRMAN: That is your answer to Pandit Tankha.

SHRI PATHAK: If you would permit me to say so, otherwise I am in sympathy with your sentiment that the law should be made more stringent.

PANDIT S. S. N. TANKHA: The Law Ministry gave us the information that one or two cases went up even to the High Courts in respect of this paper "Observer" and ultimately he was acquitted. I do not know how far it is correct, but that is the information we have received. I have not seen the judgments either.

SHRI PATHAK: As I have informed this Committee it will be an inadequate treatment of this matter if we just presume that there is deficiency without reading the judgments. There might be some other reason. It might be that the particular article itself might not be so offensive to morality. I do not know, but we should not say, with all respect, that the Judges have not understood the law or that there is some deficiency in the law already existing without knowing how it was that the acquittals took place.

PANDIT S. S. N. TANKHA: From that point of view a draft was prepared by the Home Ministry of an amendment. I do not know if you have seen that.

SHRI PATHAK: It is the same one which I have read just now. They have merely copied it from the Supreme Court judgment. I would like to have a note from the Law Ministry pointing out what was the flaw in the law which created the difficulty, what was the lacuna, what the deficiency in the law which created the difficulty.

CHAIRMAN: It is only then you can suggest something.

SHRI PATHAK: That is natural, that is logical.

PANDIT S. S. N. TANKHA: would draw your attention to amendment proposed here:—

"(a) section 292 shall be re-numbered as sub-section (2), thereof and before sub-section (2) as so re-numbered, the following sub-section shall be inserted, namely:—"

SHRI PATHAK: I have read it.

PANDIT S. S. N. TANKHA: It says:—

"(1) For the purposes of sub-section (2), a book pamphlet, paper, writing, drawing, painting, representation, figure or any other object shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely,....."

Now, do you not think that with these words in section 292, that section will become very clear and the scope will be distinct?

SHRI PATHAK: As I have already pointed out, this does not lead to any clarification at all. This is merely copying out in substance what the Supreme Court has said. If it is merely copying out, the Legislature is not going to copy out the judgments of the Supreme Court.

PANDIT S. S. N. TANKHA: That I recognise, but you will see that the matter which went up before the courts was perhaps, I think, prior to the judgment of the Supreme Court. The case of the "Observer", I believe went up.

SHRI PATHAK: No, no. I will forget the "Observer" because I do not observe the "Observer" here. I am not meaning any disrespect to Pandit Tankha when I say this. I am saying it with all respect that unless you see the particular judgment which has dealt with a particular article of the "Observer" and see how he got

the acquittal you will be merely surmising why the "Observer" was acquitted. That is my humble view.

PANDIT S. S. N. TANKHA: The information given to us is that the present law was found inadequate to convict him.

SHRI PATHAK: I am prepared to accept the observation if it was held, that the present law is inadequate. But how can anyone advise how the inadequacy has to be removed without knowing in what respect it is inadequate?

PANDIT S. S. N. TANKHA: I understand that. Another matter about which I would like to know is that the view of the Committee is that cases of this type should not go up before the Magistrates but should be decided by Sessions Judges. What is your view on this point?

SHRI PATHAK: I do not think that so far the Magistracy has shown any leniency in such matters where the facts have been established. My feeling is that the Magistrates in the country are quite strong in these matters. If the case is established, they do convict and award suitable sentences. If you feel that way, then in other matters also it will have to be said that it is better that the higher court should decide it. There are practical reasons also. You see that the Sessions Judges' files are overloaded. Unless you find that the Magistracy is for some reason or other not competent to decide such cases—they are not very complicated cases—or if you find from any judgment of a Magistrate that he has not given adequate treatment to the subject or he has not properly appreciated the law, then of course that will be a proper case for considering whether there should be a trial by the Sessions Court and committal by the Magistrate.

PANDIT S. S. N. TANKHA: I have not seen those judgments, but there

are several cases which went up before the Magistrates in various courts, and they were all acquitted.

SHRI PATHAK: I do not know, I will loath to proceed on surmise, if I may say so respectfully. I would rather be on solid ground because we are making the law for the future. We would be interfering with the present laws, with the working of the Magistracy, Judiciary, etc., and we should not lightly do so unless there are some good reasons of which we are aware. Simply because we feel that these things are done in the country

PANDIT S. S. N. TANKHA: You agree with me that the Sessions Judges are more experienced officers, elderly officers and therefore it is better that such cases should be tried by them rather than by young men whose views we do not know as to what they may be about particular matters.

SHRI PATHAK: There are young men and young men. I think some young men give harsher sentences than older people.

PANDIT S. S. N. TANKHA: The next point I would like you to tell me about is regarding punishment. Do you think that the present punishment

as provided in section 292 is sufficient or it should be increased?

SHRI PATHAK: I think I have already said that.

CHAIRMAN: He does not disagree with our amendment of enhancing the punishment. He agrees.

PANDIT S. S. N. TANKHA: What is the punishment you think should be provided in the initial stage for the first offence?

SHRI PATHAK: I have got no fixed views on the matter. It is an elastic matter and you may decide whatever you like. I am in favour of the view that the law must be made more stringent.

CHAIRMAN: Thank you, Mr. Pathak. On my behalf and on behalf of the Committee I thank you very much for your very lucid statement. I am sure it will help us in coming to our conclusions.

SHRI PATHAK: Mr. Chairman, may I address the Members of the Committee through you? I feel honoured in having been invited and I am feeling very grateful for the courteous hearing that you have given me in receiving my evidence. Thank you.

(The witness at this stage withdrew.)

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