

(Amendment) Bill

Shri Shree Narayan Das: I beg to move for leave to introduce a Bill further to amend the Constitution of India.

Mr. Deputy-Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Constitution of India."

The motion was adopted.

Shri Shree Narayan Das: I introduce the Bill.

15.34 hrs.

HINDU MARRIAGE (AMENDMENT)
BILL

(Amendment of section 23) by Shri
J. B. S. Bist.

Shri J. B. S. Bist (Almora): I beg to move:

"That the Bill further to amend the Hindu Marriage Act, 1955, be taken into consideration."

Amongst Hindus, marriage was a solemn tie and sacred and it was never to be dissolved. But the progress of time and circumstances made us adopt the Hindu Marriage Act. In that Act, judicial separation and divorce is provided for under section 10 which reads:

"Either party to a marriage, whether solemnised before or after the commencement of this Act may present a petition to the district court praying for a decree for judicial separation on the ground that the other party has deserted the petitioner...."—I am quoting (f) with which I am concerned—"has, after the solemnization of the marriage, had sexual intercourse with any person other than his or her spouse."

Section 13 which provides for the dissolution of marriage by a decree

of divorce also provides nearly the same grounds. In sub-clause (1) of clause 13, we have the words 'is living in adultery'. These two items are the subject matter of my amendment. In section 23, we have the procedure which is adopted by courts in granting or disallowing the decree of awards of judicial separation. I have proposed that:

"In section 23 of the Hindu Marriage Act, 1955, after sub-section (2), the following sub-section shall be inserted, namely:

'(3) In any proceedings under this Act, whether defended or not, if the court comes to the finding that the ground of the petition is the ground specified in clause (f) of sub-section (1) of section 10, or in clause (i) of sub-section (1) of section 13 and that such ground is false, it shall grant damages by decree in favour of the person defamed thus in the same proceedings upto a maximum of five thousand rupees, whatever be the fate of the petition on other grounds.'

In my statement of objects and reasons, I have observed:

"It has been observed that false and frivolous allegation of the nature mentioned in clause (f) of sub-section (1) of section 10, or in clause (i) of sub-section (1) of section 13 of the Hindu Marriage Act, 1955, are made in the position under this Act to coerce or defame the other party, which ultimately fail but cause harm to the reputation and character of the aggrieved party."

I thought a deterrent was needed to keep this kind of allegation out of the proceedings unless of course it was true and could be proved.

It is true that this ground of adultery on the part of one of the partners—having sexual intercourse with a person who is not wedded to the party—is very hard to prove, esp-

[Shri J. B. S. Bist]

cially in India. But it is also noted that it has been used very loosely, and the motive behind was either to defame the other party or to coerce it into terms which one of the parties thought he or she should obtain.

Even while passing this Act, the legislators, the Members of this House, have treated marriage as sacred. By section 22 they provided that these proceedings shall be conducted *in camera* and by section 23, they provided that before proceeding to grant any relief under this Act, it shall be the duty of the court, in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties. After all, circumstances and conditions existing as between husband and wife may make divorce proceedings necessary. But all over the world, including western countries, these proceedings are not looked upon with favour and they constitute a stigma. When allegations are made, as I have submitted before, the damage is done. We know that it is the intention of the legislature and that the courts have been definitely directed that everything should be done to see that the parties are reconciled. It has also been noted that when such charges of adultery and sexual intercourse are not involved, it has been found easy to bring about a compromise, but when one of the parties has levelled this charge, it becomes next to impossible to bring about a compromise. That is understandable. After all, human nature is human nature and, especially for a woman, it becomes very hard, as she is placed, to refute a statement which is absolutely false. I have therefore thought that a deterrent like this would make people think twice and that only such cases would go to the court that would be genuine.

It may be said that the Civil Procedure Code applies to the proceedings under this Act. That is

true, but then this does not cover the contingencies of which I am thinking. It only considers the case when the case has been successful and the court has found that the proceedings were malicious, frivolous and false. In this case, I submit, according to this amendment even if the case succeeds, if the allegation which I have mentioned in the amendment is found to be false and frivolous, the court will have the authority to impose a penalty of Rs. 5,000 on the party concerned. That is the difference.

It may also be said that there is the law of libel, but that means going to another court. The forum would be different and then we may have to prove malice which, under these relationships, is not an easy task.

The same thing applies to a suit for damages.

In criminal cases, in the case of libel, we know that such cases are not very easy to proceed with and need all attention and good legal advice. Also, it would be putting the party to extra expense, because one has to go to another court. What I propose is that the matter should be decided by the same original court before which the witnesses would be passing, which would notice the demeanour of the witnesses, the demeanour of the petitioner and the opposite party. That court would be in a better position, rather than the other court where things would be staged afresh, to come to a correct judgment. I therefore submit that this Bill needs full consideration.

I find that an identical Bill was moved in this House by Shri Sarhadi on 24th February, 1961. I may bring to the notice of the House the remarks made by the hon. Deputy Minister of Law at the time. He said:

"Personally speaking, I have very great sympathy for the sentiment expressed in the Bill. If marriage as an institution has survived, if marriage is one of

the stable institutions of Hindu society. It is because it is based upon this sentiment which is the common heritage of the whole of Hindu society. I therefore would support the principle of the Bill."

He has further gone on to say:

"The only question is, in this particular case, if an allegation happens to be false and frivolous, whether it should be liable to be compensated by a larger measure of damages. That is a fact which, as I said, would depend upon the general public opinion. That is the limited question which in fact would be referred to public opinion because, as I pointed out, section 35A is wide enough to cover a case like this."

I came to know about it rather late. It was circulated for public opinion and public opinion has been received. I do not know if this information was circulated to the Members, but it is there. I have been able to get the copies, and I have gone through them. I have not been able to tabulate it because I got it late, but I find the majority opinion is in favour of this amendment. Of course, there are also suggestions that the amount of Rs. 5,000 is too heavy, that it may be Rs. 1,000 and that the word should not be "shall" but "may".

May I request the hon. Deputy Minister of law to take these facts into consideration? I do not say that my Bill is very well drafted or is excellent. In the opinions received on Shri Sarhadi's Bill I think there are many things which need consideration. I concede that. Taking into consideration the view of his predecessor, I hope the hon. Deputy Minister will be able to pay attention to this matter and see that something is done.

Mr. Deputy-Speaker: Motion moved:

"That the Bill further to amend the Hindu Marriage Act, 1955 be taken into consideration."

One hour has been allotted. We have taken 15 minutes.

Shri Tyagi (Dehra Dun): I want to put one question. How long will this take? Though I sympathise with my hon. friend, those who have entered into marriage can divorce and finish with it, but the country would not relish the idea that Parliament should be discussing marriage at this time.

Shri J. B. S. Bist: Wars will go on, marriages will go on. I do not understand the argument, with due respect to Shri Tyagi.

Shri Tyagi: Not divorce.

Shri Oza (Surendranagar): I can very well appreciate the feelings of my hon. friend Shri Tyagi, but so long as cases go to the law court, so long as they are agitated and fought out there, there is necessity to raise these debates, unless all proceedings in courts are stopped and they adjourn *sine die* till the war is over.

I wholeheartedly support the amendment brought forward by the hon. Member. This thing takes us to the very root of the whole thing, that pleadings in our courts of law are so frivolous. Every conceivable plea is taken by a defendant, and the plaintiff also, when going to court, does not go to the real issue, but tries to take resort to all sorts of frivolous pleas, thinking that perhaps some of it would appeal to the court, or the defendant may succumb to some of them. The defendant is also encouraged to take any plea imaginable under the sun.

We know that in such cases usually this plea is taken simply to blackmail the plaintiff. I know of a case in which even an old woman who had filed a petition had to face this plea. When the defendant was confronted and asked when this adultery took place,

[Shri Oza]

he was nonplussed, but the court was helpless, it could not give any relief at all.

The hon. Deputy Minister will perhaps argue that as the law stands today, even in the Civil Procedure Code there are sufficient provisions for granting damages when false and vexatious pleas are taken by parties, but we know that in rarely one case out of a thousand such damages are given by courts. The parties have again to resort to fresh litigation in order to get the damages for the blackmailing they have undergone. So, if there is a provision in this Act and the amendment is accepted, the courts shall have to give damages when they find that even though a party has won on a particular point, he did not resist the temptation of resorting to frivolous pleas. Such a provision is necessary if we want to improve the level of the pleadings in our courts of law and such a provision will have to be made not only in this Bill but in so many Acts so that the parties may immediately go to the real issue and not resort to frivolous issues. I wholeheartedly support the spirit behind the Bill and I request the hon. Minister to find out ways so that such frivolous pleas are not encouraged by the courts.

Shri M. L. Jadhav (Malegaon): I rise to oppose the measure before the House. In the first place, the Hindu Marriage Act is a civil law and not a criminal law and there is enough protection for the plaintiff or the defendant, even if frivolous or false pleas are taken by the parties and it is not necessary to introduce a penal provision here. If a false plea is taken, a defamatory suit can lie either in the civil or the criminal court. It is very difficult to prove adultery or sexual intercourse by one person with the other. In general persons are reluctant to come to the law courts to depose that one is in adultery with the other.

In these circumstances, when evidence is not possible and proof is difficult, are we to penalise a person because an allegation is not proved? For want of evidence the matter may fail. Now in the Hindu Marriage Act divorce is allowed only on certain conditions. In the world around, divorce is allowed on so many frivolous grounds. We are very conservative in that light. So, I feel that a measure which tries to penalise a party because something proves to be false should not be allowed to go on the statute book. Hence, I object to the measure that has been brought forward by the hon. Member.

Shrimati Sarojini Mahishi (Dharwar North): Sir, I do appreciate the principles and the spirit behind this Bill, whose intention is that the parties who are put to suffering on account of such false pleas put forward before the court of law and whose reputation is damaged must be properly compensated and people should be deterred from putting forth such false pleas. Much has been said but how far it will prove favourable to the other party also must be taken into consideration. In the conditions existing today, the fear is, a male member may put forward such pleas against a female party and then it may be to the disadvantage of the female party. The female party will also be deterred from putting forth such pleas. Even though she considers it true, in case evidence is not proved to be correct or not accepted, it may prove to be false. The other party in whose interest we want to amend the law may feel like not putting forth the plea; that is just possible. Marriage is considered a sacrament in Hindu law; it was one of the *sanskaras* enumerated by Manu, who admitted judicial separation and divorce under different circumstances.

‘नष्टे मृते प्रवृजिते क्लीवे च पतिते पतौ,
पंचसु आपत्सु स्त्रीणां पतिरन्यो विधीयते ।’

No such penalty has been put forward by Manu. In the present society we attach much importance to the material outlook rather than to the sacramental outlook; marriage has been reduced to a contractual bond. So we shall have to consider all these things. Sections 10 (f) and 13(1) of the Act are there; judicial separation or divorce may be granted if some conditions are proved and adultery in one amongst them. We find there are other circumstances also. There may be defamation against the defendant under section 497 of the Indian Penal Code where a husband makes a charge against a third party for being in adultery with his wife. Even though the wife is not directly a party there, she is brought in indirectly and there is a sort of defamation. Section 488 Cr. P.C. is there, where maintenance allowance is granted, a husband may try to escape that by proving that there is adultery. In such circumstances the party is defamed but there is no penalty for the person putting forth such pleas. The point is whether there could be any remedy for this under this section because there is no other remedy in the other circumstances.

I do appreciate the spirit of this Bill. There must be some remedy. Even though there is no such remedy under section 497 IPC or 488 Cr. P.C., section 35(a) of the CPC affords compensation. Anyway, the arguments in favour of this amendment may also prove to be rather not so helpful to the other party under some circumstances. When equally effective remedies are available, they must see whether this particular remedy will be as forceful and effective. If it is not so, it is no use amending this particular section.

16 hrs.

One of the grounds for judicial separation is that a spouse is in adultery. Here the same ground cannot be put forth by the other party. When a Bill was circulated for eliciting public opinion, eminent judges have given their opinion to the effect that in a society which is mainly dominated

by man—I am sorry for using that word—it is the man who always puts forth frivolous pleas that the woman is in adultery. But now equal opportunity is also given to the woman to put forth this plea. She may find that her evidence may not be valid. Witnesses who come to give evidence in favour of a particular party may turn hostile when they are examined or cross examined. The witnesses may turn hostile and prove that the evidence given is not correct. Therefore, much depends not upon the actual and direct evidence brought in but on the circumstantial evidence as is found in such cases. It is very difficult to say whether this particular, frivolous charge is quite acceptable or not. It is very difficult to prove it. Therefore, it is equally difficult to prove whether it is in favour of the male member or in favour of the female member. Therefore, in this society where the woman is accustomed to or who considers this marriage as a sacrament, who rather hesitates to put forth the plea and who rather hesitates to go in divorce to sue, may still be deterred from going in, such cases. I do not mean that such cases must be encouraged. But, when there is provision in the Hindu Marriage Act for taking advantage of this, which was denied before the codification and passing of the Hindu law in 1955, she should also be able to take advantage of this provision if she needs it. Therefore, it is quite essential that she should also be not deterred from putting forth this plea with the apprehension that this particular thing put forth by her may not be accepted, and as a result she may also be penalised. There is no such thing that only one party will be penalised and the same shall not be used as a remedy with reference to another party. One remedy which may be made applicable with reference to one party may be made applicable with reference to another party also.

Therefore, under the circumstances, when there was great opposition even

[Shrimati Sarojini Mahishi]

for the codification of the Hindu law and the Marriage Act, and there was great opposition for giving a share in the property of the father to the daughters and giving an absolute share to the widow, we find naturally that a woman who is aggrieved, who suffers on account of this will not come forward to put forth this claim and take advantage of this particular section. Therefore, in the interest of the weaker section of society, the House will reconsider this matter twice before amending the existing law.

Shri A. S. Alva (Mangalore): Mr. Deputy-Speaker, Sir, I oppose this amendment. In the first place, it may not be necessary because there is enough provision in the Civil Procedure Code itself. Because of the amendment to section 35, incorporating section 35A, if any litigation is false and frivolous or vexatious, the court has got ample powers to give compensatory costs. That is one safeguard, where false pleas can be dealt with by the court.

Secondly, no one can put in defamatory pleadings. If anyone puts in defamatory things or statements in any pleading, it is only qualified privilege. Anybody could be challenged both in a criminal court and a civil court for damages if any person has been defamed in pleadings. Here, as far as we are concerned, under the Hindu Marriage Act, a provision has been made for granting divorce. As a matter of fact, even judicial separation also requires certain conditions to be fulfilled. As far as divorce is concerned, there are stringent rules. ordinarily, adultery is one of the things that the party has to prove if the party has to get an order from the court for dissolution of marriage. As a matter of fact, it is a thing which cannot be directly proved; indirect evidence and circumstantial evidence have to be adduced before a court. According to the Bill, a person for fear of paying compensation—in certain cases the compensation may amount to Rs. 5,000

or so—he or she will hesitate and may not go to a court at all, if it is passed into law.

Let us take a case of a poor litigant—may be a woman or a man. That person wants to get the marriage dissolved or get a divorce. Simply because there may be a chance of failure he is afraid and he may not come before the court at all. At the same time, the idea of the Mover is to see that frivolous allegations are not made and the parties do not defame others and do not get away. For that reason, as I have already submitted, there is section 35A which has been incorporated in the Civil Procedure Code which applies to all proceedings. These proceedings will also come under the Civil Procedure Code which says compensatory costs may be awarded against the party, or compensatory costs may be given.

Secondly, as I said, as a matter of fact, if any party is falsely saying that adultery has been committed, there is ample provision in the law. Here, in these proceedings themselves, costs can be granted. Further, any third party aggrieved can certainly come forward even before a criminal court or a civil court and proceed to get the remedies. In the circumstances, this Bill is absolutely unnecessary, because the idea of the Mover himself is to see that some safeguards should be provided. They are already there. So, I feel that this is really redundant and it is unnecessary that the Hindu Marriage Act, so far as divorce is concerned, should be amended. So, I oppose this amendment.

Shri Tyagi: How can it be possible to prevent ladies from levelling false charge against their husbands? It is in their very nature.

Shrimati Lakshmikanthamma (Khammam): They must have learnt it from their husbands!

Shri K. K. Verma (Sultanpur): Mr.

Deputy-Speaker, Sir, I have heard the speeches of the hon. Members and I have also perused this Bill. In the Statement of Objects and Reasons, it has been stated thus:

"A deterrent is needed to the making of such false and frivolous allegations, and the only way is to vest the courts with power to grant damages, where such allegations prove false, whatever the fate of the petition be on other grounds."

I fail to understand one thing. This Bill presumes as if our courts are not vested with powers to grant damages. I think there are ample provisions in our civil law to grant damages. When the courts are already vested with such powers, how did it arise and how it came about that there is necessity for enacting a law in order to vest the civil courts with powers to grant damages? A reference has already been made to section 35A of the Civil Procedure Code and there is a provision for granting damages in case false or frivolous allegations are made. There is no restriction under section 35A for granting damages, to what extent the courts will grant damages, etc. There is unlimited power there. I find that that unlimited power has been restricted in this Bill to Rs. 5,000 only. It is just possible that the aggrieved party may be of a very high status and simply granting Rs. 5,000 may not be adequate, having in view the status of the aggrieved party. So, I think this Bill is uncalled for, and it is not necessary to put this Bill on the Statute-Book.

I also find that one thing is not necessary. Why should it be confined to the allegations specified in clause (f) of sub-section (1) of section 10 or in clause (i) of sub-section (1) of section 13? There may be other grounds also which may be false and frivolous, and I think when there is ample power vested in our courts to consider such cases and grant damages,

2102 (A) L.S.D.—7.

this Bill, from every point of view, is uncalled for, and it is not necessary to encumber our Statute-Book with such a measure.

With these words, I oppose the Bill.

The Deputy Minister in the Ministry of Law (Shri Bibhudendra Mishra): Mr. Deputy-Speaker, Sir, I am opposed to this amendment because I do not find myself in agreement with the statement of facts in the Statement of Objects and Reasons. The Statement of Objects and Reasons opens with these words: "It has been observed that false and frivolous allegations are made..." The hon. mover has not said where it has been observed that false and frivolous allegations are made. Has any case come anywhere to the knowledge of the hon. Member where false and frivolous allegations have been made? I refuse to believe that in a country like ours, with the tradition and the training that we have, with the social system that is obtained here, anybody, whether it is the wife or the husband, would like to go to a court of law and that again with a divorce petition. It ought to be noted that whenever a party is forced to go to a court of law he goes after great deliberation, anxious thought and with an agonising heart. It is not a pleasure for any party to go to a court of law with a divorce petition. And, assuming that he succeeds or assuming that he fails, the stigma that is attached to him by the society is so great that even if he wins or loses life becomes intolerable and unbearable. Therefore, to suggest lightly that our society has come to a stage where false and frivolous allegations are made is not to understand the true spirit and character of the society and, I would say, it is also not supported by any statement of facts anywhere.

Apart from that, as it has been pointed out by most of the hon. Members, if it is a vexatious or malicious prosecution, then other remedies are

[Shri Bibhudrendra Mishra]

also available both under the Civil and criminal law. Of course, the difficulty would be that one has to resort to a separate proceeding altogether. But in the same proceeding also, under Section 35A of the Civil Procedure Code the court has ample power to award costs. Of course, the cost is limited to Rs. 1000 whereas in the present amendment it is sought to be raised to Rs. 5000. May I ask whether any purpose would be served by raising this amount of compensation from Rs. 1000 to Rs. 5000? If at all a party wants to go to a court with a divorce petition, can this increase in the amount of compensation deter him from going to a court of law?

Then again, there is the other side of the matter, which has been pointed out by my esteemed friend, the hon. lady Member—I am sorry she is not present in the House now. She is afraid that the right that you give to a woman to go to a court of law with a divorce petition after so many long years will be negatived, will be taken away if you just impose this limit, this penalty, by accepting this amendment. Who knows,—after all, even if the case may be true, the court will determine on the basis of evidence because the courts are concerned with facts as disclosed by evidence—whether a case will be in the last resort proved to be false or frivolous? That danger, that apprehension is also there, that the whole idea underlying this provision for divorce which has been accepted and codified into law after great many deliberations and after very many years may be negatived by the acceptance of this amendment.

Reference has been made to the opinions received from the public. The hon. mover has said that the preponderant opinion is in favour of acceptance of this amendment. I would say that is not a correct statement of facts. Of course, there were opinions, all sorts of opinions, opinions accepting it, opinions objecting to it, opinions

suggesting different amendments or giving different suggestions and apathetic opinions also. Therefore, on the mere basis of opinions we cannot lightly take to a measure that, apart from causing inconvenience and putting a stigma on the society, may have a tendency of negativing the provision.

Therefore, Sir I request the mover to withdraw this Bill.

Shri J. B. S. Bist: Sir, I would like to say only one or two words. I think the hon. Deputy Minister has gone through these reports and read the judges' opinions. The answer to his first part about ideals and instances will be met by it, and I need say no further.

As to the opinions, I may say that I have gone through the opinions. I have not tabulated them, but they were suggestions which were worthwhile taking up. Some said the amendment should be there, some said that Rs. 5000 was a big penalty. I only suggested that if the hon. Minister could look into them it would be good. However, if, after all, the matter is to be dropped, I do not think there is any need to take up the time of the House any further, and I, therefore, beg leave of the House to withdraw the Bill.

Mr. Deputy-Speaker: Has the hon. Member the leave of the House to withdraw the Bill?

The Bill was, by leave, withdrawn.

16.16 hrs.

LEGAL PRACTITIONERS (AMENDMENT) BILL

Shri Hem Raj (Kangra): Sir, I beg to move:

“That the Bill further to amend the Legal Practitioners Act, 1879 be taken into consideration.”