[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 stigama 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 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."

Sir, the Bill that I am moving has got a limited scope. By this Bill, as it will be clear from the Statement of Objects and Reasons, I want to put in a few amentments to sections 14 and 15 of the Legal Practitioners Act. It has been necessitated because after the passing of the Advocates Act a very large number of legal practitioners still remain outside the perview of Advocates Act, 1961 who are governed by the Legal Practitioners Act. When we passed the Advocates Act, the idea was that all the lawyers who are practising at the moment might come under that Act. But in Section 55 of the Advocates Act it has been provided.

> "(a) every pleader or vakil practising as such immediately before the date on which Chapter IV comes into force (hereinafter in this section referred to as the said date) by virtue of the provisions of the Legal Practitioners Act, 1879, the Bombay Pleaders Act, 1920, or any other law who does not elect to be, or is not qualified to be, enrolled as an advocate under this Act;"

So, there may be certain persons who are not entitled to be enrolled as advocates. Then it says:

> "(b) every attorney practising as such immediately before the said date by virture of the provisions of the Legal Practitioners Act, 1879, or any other law who does not elect to be, or is not qualified to be, enrolled as an advocate under this Act;
>
> (c) every mukhtar and revenue agent practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act. 1879, or any other law;
>
> shall, notwithstanding the repeal by this Act of the relevant provisions of the Legal Practitioners Act, 1879, the Bombay Pleaders Act, 1920, or other law, continue to enjoy the same rights as respects practice in any court or revenue office or before any authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed or, as the case may be, to which he was subject immediately before the said date and accordingly the relevant provisions of the Acts or law aforesaid shall have effect in relation to such persons as if they had not been repealed."

Under the Legal Practitioners Act, Section 14 provide for the disciplinary action against the pleader and section 15 is concerned with the report which is made by the subordinate court to the high court. Before I deal with these provisions I just want to give you some background as to why I have moved this amendment. Sir, legal profession was considered to be a very very noble profession. Just as you, Sir, who belong to the legal profession, know most of the educated people from the earliest days were attracted towards it. Consequently its number increased from day to day and it gave good income. Mostly it were the legal practitioners and eminent lawyers who took the best part in the freedom struggle of our country and they became famous for their sacrifices.

At present their number—I have not been able to get the latest figures —as counted by the Law Commission is something like 76,000 or 80,000. Out of that number under the Advocates Act something like 36,000 are advocates and 40,000 are other revenue agents, mukhtars or pleaders. These pleaders have to practise not in the High Courts but in the subordinate courts.

[Shri Hem Raj]

Now, what happens in the subordinate courts? There are several courts which are situated at different places. The pleaders have to practise in the different courts in a variety of subjects. Some practise in the criminal courts, some in the revenue courts and some in the civil courts. When a pleader has to practise in the subordinate courts, he has to deal with various sorts of clients and various sorts of cases. In order to earn his livelihood, he has to take several cases. He is not like the High Court advocate who takes only one or two appeals and prepares those appeals. But the pleaders have to book 15, 20 or 30 cases if they are to set out their livelihood. They have to appear in different courts. Sometimes they are not able to appear in one court and the clients run after them. In between the case may be filed. It may happen that the pleader may have to draft so many plaints in a day and sometimes when he drafts the plaints, even by giving his best attention, he may not be able to put in certain facts. There may be cases where a pleader accepts a case. We have seen that the clients also have become too clever and sometimes the will not pay his fee. Once the pleader has appected his *vakalatnama*, if he refuses to take up his case, the pleader becomes liable for misconduct or if the client does not pay and the pleader fails to appear in that case he comes under disciplinary action for misconduct. There may be other cases also. Suppose, a pleader is a member of the joint Hindu family and his family may be doing some professional business. If somehow or other some such application is made that he is doing moneylending or something of that kind. It may be that he may have to give up a case when the case may be weak one. Sometimes, suppose, the pleader thinks that the case can be won by producing one or two witnesses, but, fortunately or unfortunately, his judgement may not be justified and case may take a different turn. Every case goes by it own strength or weakness but, after all, the pleader puts in his best effort. But certainly there are cases and cases which due to some mistake or other reasons may go wrong. In all such cases most of the clients at the instigation of somebody vexatious and false application against the pleaders. Once that application is made, an enquiry starts from below, either in the subordinate judge's court or in the magistrate's court. That enquiry takes a long time. Now, one does not like to appear for oneself in one's own case. Some may like. But this being quasi-judicial proceedings every pleader will not like that he should plead his own case. So, he shall have to engage a lawyer. Suppose, a lawyer is engaged then he is to put in witnesses in defence and he has to pay for the witnesses diet money. If, after a prolonged enquiry, that complaint is found to be false, the charge fails and the complaint is dismissed. Under the Legal Practitioners Act, no provision has been made for awarding him the cost. If the complaint is found to be correct and the charge is held against the pleader, the proceedings will go to the High Court under section 15 of the Act, but if the charge fails and it is dismissed, the proceedings do not go to the High Court.

Now, when that charge fails, what happens? The pleaders who has been harassed, gets no cost. At the same time, as you perfectly know, in the case of a pleader his reputation is at stake. Suppose, the client starts a vexatious proceedings, a propaganda starts that that particular pleader has taken so much money, without any foundation. By all these means the client tries to undermine the reputation of the pleader. Consequently, his reputation is undermined, he is put to a lot of worry and, ultimately, when the application which is filed against him is dismissed and he comes forward for the purpose of getting costs, the court says that because there is no provision in section 14 of the Legal Practitioners Act for awarding the costs the costs are not granted.

Shri Narendra Singh Mahida (Anand): On a point of order, Sir. There is no quorum in the House.

Shri Hem Raj: There was no quorum formerly also but the proceedings were going on.

Mr. Deputy-Speaker: The bell is being rung.

Now there is quorum. The hon. Member, Shri Hem Raj, may continue his speech.

Shri Hem Raj: Section 14 of the Act says:

"If any such Pleader or Mukhtar practising in any subordinate Court or in any Revenue-Office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the Pleader or Mukhtar at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the Pleader or Mukhtar, and shall proceed to adjudicate on the charge."

In this section there are other clauses and I am reading only the relevant clauses. Thereafter the District Judge or the District Magistrate, whoever makes the enquiry, will record his findings and if he comes to the conclusion that no charge is established, he dismisses it.

"Any District Judge, or with his sanction any Judge subordinate to him, any Judge of a Court of Small Causes of a Presidency Town, any District Magistrate or with his sanction any Magistrate subordinat to him and any Revenue Authority not inferior to a Collector, or with the Collector's sanction any Revenue officer subordinate to him, may pending the investigation and the orders of the High Court, suspend from practice any Pleader or Mukhtar charged before him or it under this section.

Every report made to the High Court under this section shall—

(a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

(b) when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge;

(c) when made by the Magistrate of the District, be made through the Sessions Judge;

(d) When made by any Revenue officer subordinate to the Chief Controlling Revenue authority be made through such Revenue authorities as the Chief Controlling Revenue authority may from time to time, direct:—

Every such report shal be accompanied by the opinion of each Judge, Magistrate or Revenue authority through whom or which it is made."

The charge fails and the application of the client is dismissed, then the District Magistrate or the District Judge or the Subordinate court have got no power to award costs. In this

[Shri Hem Raj.]

respect, may I quote two rulings? One is the ruling of the Allahabad High Court in 1930, Allahabad 225. This ruling says on page 247 that the Legal Practitioners Act is a complete Code in itself and because it does not provide for the award of costs, if the charge fails, therefore, no costs can be granted. Similar is the case in 1943, Madras 250. The Madras High Court has held that if the charge fails, the Subordinate court has no power to grant any costs. Therefore, I have brought this Bill with this object in view that if the application given by a client is found to be vexatious or false, in that case, provision may be made in the Act itself for granting costs, under section 14. After paragraph 3, I want to add these words:

> "If the charge fails and the pleader or mukhtar is acquitted, the court shall grant him the costs of the proceedings."

In para 4, the following shall be added at the end:

> "and award costs of the proceedings to the successful party."

I do not say only to the Pleader. Any party who succeeds should be granted costs. Under section 15 of the principal Act, when proceedings go to the High Court, I want to add at the end of the section:

> "and award costs of the proceedings to the successful party."

In short, my simple prayer is that. This is an innocuous Bill, most harmless. Most of the pleaders and most of the lawyers are being deprived of their costs. They are being daily harassed by the clients. So, I have moved this Bill of mine.

An objection may be taken that under the Advocates Act which we have recently passed, provision has been made under section 43 providing for costs. If an application is made against an Advocate, provision has been made in section 43 of the Advocates Act of 1961 that he may be granted costs. When we have accepted one principle in the case of Advocates, I do not see why a similar provision should not be made in the case of pleaders, who are practising in the subordinate courts. With these remarks, I commend this Bill for acceptance of the House.

Mr. Deputy-Speaker: Motion moved:

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

Shri Oza (Surendranagar): Mr. Deputy-Speaker, the Statement of Objects and Reasons and clause 2 which seeks to implement these objects and reasons are not consistent with each other. The Statement says that in case an application or complained filed against the pleader or mukhtar is dismissed and is found false, frivolous or vexatious, only in this case, the Mover of the Bill has contemplated that some provision should be made for granting costs to the pleaders who have been falsely harassed. But in clause 2 which enshrines the object stated in the Statement of Objects and Reasons, it is nowhere stated that the charge should be false, frivolous or vexatious. Even if the charge fails, he has to be awarded some costs or some damages. I think that that is not a happy state of affairs. These proceedings are of a quasi-criminal character.

You know that these legal practitioners to whom this Act applies, particularly practice in the rural areas. As my hon. friend has stated, with whose sentiments I agree and which I appreciate very much, the small mukhtars are harassed very much by the small litigants. They take so much load on themselves that they cannot attend to all those cases. They have to run about all the time with the result that so many poor clients suffer, and their cases are dismissed

for want or appearance of the mukhtars and they lose their genuine remedies.

I am afraid that it will not be possible for me to support this Bill, particularly because, as I have stated, in the main provisions of this Bill it is not stated that only in cases where the proceedings are vexatious will costs be awarded, but it has been provided that even if the charge fails, the costs will be awarded. I think that that is not a happy state of affairs, and I am afraid that it will not be possible for me to support it.

Shri K. K. Verma (Sultanpur): So far as the spirit of the Bill is concerned, I have full sympathy with the Mover of this Bill. But the Bill is not happily worded. As has been pointed out in the Statement of Objects and Reasons, the object is that when a charge is found to be false, frivolous or vexatious, costs should be awarded. But we do not find those wrods and that spirit in the main body of the Bill.

I would also like to point out that in several cases the conduct of the party has also to be considered. Whatever the nature of the proceedings may be, sometimes it so happens that a party puts forward false pleas, tries to support them by false evidence and adopts a harassing and vexatious attitude. So, there should always be a discretion vested in the courts to award costs or not to award costs. The court has to consider several circumstances in awarding costs.

But according to this Bill as it has been worded, it seems that whenever a charge fails or the party is successful, then it becomes mandatory on the part of the court to award costs. I do not think that such a mandate is called for, and I hope the Mover of the Bill will withdraw it.

So far as the spirit of the Bill is concerned, I have already expressed my feeling that it is laudable. So, I would suggest that my hon. friend may bring forward another Bill which is happily worded, and which serves all the purposes which we have in view.

The Deputy Minister in the Ministry of Law (Shri Bibhudhendra Mishra): After the passing of the Advocates Act, the picture has completely changed. You will find that so far as the advocates are concerned, the power to take disciplinary proceedings against them does not vest any more with the courts but with the Bar Councils. Provision has been made to that effect in the Advocates Act itself.

It is true that the right has been given under one of the sections of that Act for pleaders and mukhtars to continue their practice; those who are either not entitled to be advocates or who do not opt to be advocates can continue their right to practice as advocates. That right has been given under the provisions of the Act. But their number is negligible and would be negligible. That would be my first contention.

I would also point out that this amendment which seeks to amend sections 14 and 15 of the Legal Practitioners Act will be unnecessary in the sense that sections 14 and 15 of the Act itself will be repealed after Chapter Five of the Advocates Act comes into force. Therefore, this amendment will serve a very limited purpose. Steps are being taken to see that Chapter Five of the Advocates Act comes into force very soon.

There is also another matter under examination. It is to see whether the few pleaders or mukhtars who remain can be brought under the same disciplinary forum or jurisdiction. That may just be possible; I am not sure at this stage that they may also come under the same jurisdiction.

This Act of 1879 has stood the test of time so far, for 80 years or more without the need for my amendment

[Shri Bibhudhendra Mishra]

It will not be fair now to accept an amendment when we are going to repeal the particular sections.

In view of these consideration, I would request the Mover to withdraw the Bill.

Shri Narendra Singh Mahida: Has any High Court recommended this measure?

Shri Bibhudhendra Mishra: Not to my knowledge.

Shri Hem Raj: So far as the opinion given by the Deputy Minister, namely, that after the coming into force of Chapter Five Advocates Act, this class of pleaders and mukhtars will become advocates, is concerned, I do not think it will be a correct statement. In any case, pleaders and mukhtars cannot become advocates as the Act at present stands. So all those persons who cannot be covered by the provisions of the Advocates Act will not be entitled to become advocates and they will still remain to be governed by the provisions of the Legal Practitioners Act.

As regards the question whether their number is dwindling or not their number will still remain sufficiently large.

But as the Deputy Minister has given an assurance that this aspect of the question whether they may also be brought under the same discipline as has been provided for advocates, is under consideration, my purpose in bringing forward the Bill is served and I beg leave of the House to withdraw my Bill.

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

Some hon Members: Yes.

The Bill was, by leave, withdrawn.

Mr. Deputy-Speaker: As regards the other two Bills on the agenda, Shri M. L. Dwivedi and Shri D. C. Sharma are absent.

16.44 hrs.

The Lok Sabha then adjourned till Eleven of the clock on Monday, November 19, 1962/Kartika 28, 1884 (Saka).