

Shri Raghunath Singh: I beg to move:

"That the Bill, as amended, be passed."

Mr. Deputy-Speaker: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

INDIAN PENAL CODE
(AMENDMENT) BILL

(Amendment of Section 497)

Shri Dabhi (Kaira-North): Sir, I beg to move:

"That the Bill further to amend the Indian Penal Code, 1860, be taken into consideration."

This is a very short Bill consisting of only two clauses, of which only one is an operative clause. The Bill seeks to amend section 497 of the Indian Penal Code which defines the offence of adultery and makes it punishable. Section 497 reads thus:

"Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor."

It will be seen from the wording of this section that any man who commits adultery with the wife of another person is punishable but the wife of that another person is not punishable as an abettor. My Bill wants to delete that proviso to this section, namely: "In such case the wife shall not be punishable as an abettor". In short this Bill seeks to do away the discrimination in favour of women with regard to punishment for adultery.

Sir, an identical Bill was introduced by me in this House in 1932. That Bill was debated for a few hours on the floor of this House and some Members of this House also took part in that debate. Ultimately I withdrew that Bill. I shall let the House know a little later why I withdrew that Bill.

Before that I will refer the House to the reasons which prompted the authors of the Indian Penal Code to exempt the wife from punishment under section 497 of the Code. This is what the authors of the Indian Penal Code say:

"Though we well know that the dearest interests of the human race are closely connected with the chastity of women and the sacredness of the nuptial contract, we cannot but feel that there are some peculiarities in the state of society in this country which may well lead to a human man to pause before he determines to punish the infidelity of wives. The condition of the women of this country is, unhappily, very different from that of the women of England and France. They are very often neglected for other wives while still young, they share the attentions of a husband with several rivals. To make laws for punishing the inconstancy of the wife, while the law admits the privilege of the husband to fill his Zenana with women, is a course which we are most reluctant to adopt."

You will see from this that the reason given by the authors of this Code for not punishing the wife as abettor was that at that time polygamy existed among all sections of the people, except the Christians and Parsis. My humble submission is that the circumstances which influenced the authors of the Code have ceased to exist and the time is ripe now for doing away with this proviso which makes a discrimination between men and women.

We know that in India polygamy does not exist among Christians and

Parsis. The total population of our country is 35,67,00,000 and out of this, 31,33,00,000 or 80 per cent. are Hindus. By passing the Hindu Marriage Bill, 1955, we have done away with polygamy among Hindus. Of course, polygamy still remains among Muslims, but even before the passing of this Bill, polygamy in this country has become rare even among the Muslims. It is stated at page 75, *Census of India, Vol. I, Part IA* as follows:

"..... Polygamy, though it exists, is known to be very rare..... Out of every 10,000 persons in India, there are 2353 males for every 2357 married females."

Therefore, times have changed and this system of polygamy has ceased to exist. The very cogent ground on which the authors of the Code exempted women from being punished as abettors does not exist at all.

I shall tell you the reason why I withdrew my Bill on 30-7-1952. Hon. Members Shrimati Jayashri and Shri Raghuraj Sahai argued at that time that so long as polygamy existed among Hindus and so long as women were not allowed divorce, it was quite unfair to delete this proviso. So, I withdrew the Bill. Now, as I have said, that the Hindu Marriage Act, 1955, which not only prohibits polygamy but also permits divorce to women, has been placed on the statute-book, the arguments advanced by the authors of the Code do not exist.

There is another point also. We have articles 14 and 15(1) of the Constitution which place men and women on equal footing. So, it can be very well argued that after the passing of the Constitution, no discrimination can be made only on the ground of sex. There is still difference of opinion whether this proviso contravenes articles 14 and 15(1) of the Constitution; but, I have no doubt that this proviso is against the spirit of the Constitution which seeks to confer equal rights on men and women.

5-23 P.M.

[SHRI BARMAN in the Chair]

Apart from the question whether this proviso in the Indian Penal Code is against the Constitution or not, I do not understand why, when a person, whether man or woman, actually commits an offence, the man alone should be punished and not the woman. We must remember that section 497 punishes adultery and not rape. When there is rape, it means that it is against the will of the woman concerned; but in adultery, the real consent of the woman is necessary. Therefore, when polygamy has already been abolished and divorce has been allowed to women, there is no reason why we should not do away with this proviso. It passes my comprehension why a woman, who permits another person to take liberties with her, should not be punished. I want those Members who want to continue this proviso to put themselves in the position of the man whose wife has committed adultery. I would like to ask our sisters one question: Is it or is it not a fact that the interests of the human race are closely connected with the chastity of women? If they reply "no", I have nothing to say. But, if the reply is in the affirmative, I think this proviso should be dropped and woman also should be punishable as an abettor.

Lastly, our sisters were asking for equal rights. Even their self-respect demands that they should not ask for any favours from the point of view of law. What I say should not be misunderstood. Nobody can accuse me of saying anything against my sisters because, as you know, I was for absolutely equal rights for women while the Hindu Marriage and the Hindu Succession Bills were being discussed in this House.

Under these circumstances I think the time has come when we should do away with this invidious distinction between men and women. This clause does not, to my mind, do any good to women, because it gives encouragement to bad-character per-

sons. I hope that this Bill would, therefore, receive the consent of the whole House.

Mr. Chairman: Motion moved:

"That the Bill further to amend the Indian Penal Code, 1860, be taken into consideration."

Shrimati Jayashri (Bombay-Suburban): On the last occasion when this Bill was brought by the hon. Member I remember I had opposed that Bill, not because, as the hon. Member said, we were asking for any favour but because, as I had said then, women were suffering from disabilities at that time. He also said that there was polygamy at that time, and now, as we have got the new Hindu Marriage Act passed in which monogamy is enforced, he thinks that women should be put on an equal footing with men and they should also be punished.

I would like to say that we are willing that men and women should be put on an equal footing. But I see now that there is no necessity of having this clause at all. As we have got provisions relating to divorce also in the Hindu Marriage Act, the aggrieved party can have recourse to that measure for asking for divorce if there is any injustice done. I can understand, as he said, that if there is a rape then there is a necessity of giving punishment. But in adultery, where the consent of each party is there, if the person has got any grievance he can ask for divorce. So there is no necessity now left for having this clause in the Penal Code, and I would suggest that this clause should altogether be removed. Mere punishment is not going to help. If the aggrieved party has got something in his hand and if he wants to punish the other party—wife or husband—he or she can take the matter to the court and ask for divorce. So, now I feel that there is no necessity left for this amendment. I should have expected the hon. Member to have brought a Bill by which he could have asked for the removal of this clause

from the Penal Code. And I recommend to the House that we should have another amending Bill for removing this clause from the Penal Code.

Shri D. C. Sharma (Hoshiarpur): I have a great deal of respect for Mr. Dabhi, and I respect him for his reforming zeal. But I must say that in the presentation of this Bill, his valour has outrun his discretion. He has brought forward many arguments in favour of his Bill. But in all humility I will submit that most of the arguments that he has given are specious and do not convince anybody.

I put it to you, Sir, can we reform human beings by means of passing laws? Of course, we can do so to some extent. But to think that every human-ill, social, economic, political or moral, can be cured by means of legislation is not the right kind of approach. We have passed a Bill against touchability; but have we eradicated untouchability? We have passed a Bill against adulteration of food; but have we been able to prevent the adulteration of food? (An Hon. Member: To some extent). My point is this. I believe that legislative measures to eradicate all kinds of evils are not adequate, and we have to have recourse to things of a different kind.

Mr. Dabhi has given sociological reasons for the eradication of this kind of evil to which he has referred. He has said that this thing came into being when there was polygamy, and now polygamy has been abolished by law, and therefore what was done in the interests of womenfolk at that time is not valid now. I think this argument is too premature. We passed this Hindu Marriage Act of 1955 only last year. Of course, we have abolished polygamy there and we have made provision for monogamy. We have also given the right of divorce to women as well as to men. We have done that. But I have to see yet how this Act works, how this Act is able to counteract those evils to eradicate which it has been passed.

I think, therefore, that the argument based on that plea is not yet so sound, as it may appear to be.

Again, it has been said that women have been given equality. I say women have been given equality in the abstract. Women have been given equality in precept. Women have been given equality in our Constitution. Women have been given equality of that kind. But, I put it to you, have women been given equality in the real sense of the word? You will see that our sense of equality has only been sentimental. Our giving of equality to women is not yet operative all along the line. If you had given equality, do you think there will be only half a dozen women in this House? No. There will be many more than there are today.

An Hon. Member: Next time.

Shri D. C. Sharma: We shall see what happens next time. What I am saying is this. This talk of giving them political equality, this talk of giving them social equality, this talk of giving them economic wealth is more sentimental than real. It is based more on copybook maxims than on actual practice. Of course, when the women of India attain equality in the real sense of the word, I think that would be time for bringing forward a Bill like this. At this time, I do not think that the stage has been set for promulgating a Bill of this kind.

Distinction has been made between rape and adultery. I do not want to go into those questions. I do not think that is valid for the purposes of this Bill. I believe, taking the social situation as it exists in India today, and I say with a due sense of responsibility, that women in India are weak. They are not as powerful, as vocal or as assertive as they should be. An hon. friend here says that I am trying to defame women. I think he could have a right to say this; unfortunately his sex has not changed. He has, therefore, no right to sit in judgment so far as women are concerned. I

would say that in India women are not given that kind of privilege, that kind of authority which they enjoy in some progressive countries of the world.

Pandit K. C. Sharma: (Meerut Distt. South): Question.

Shri D. C. Sharma: When women are able to do so in India, there will be time for passing a law like this. I ask you one question. We were discussing the Indian Administrative Service rules. Why do you discriminate between women who come to this service and men who come to this service? There is discrimination against women.

An Hon. Member: In her favour.

Shri D. C. Sharma: There are so many services which are, of course, open to them on paper, but which are not really open to them. Therefore, I say, when you will treat your women on a footing of equality in matters like this, when the social situation changes, when women are able to claim everything in their own right, you may take up a law of this kind.

We were discussing some days back the right of women to inherit property. I know what was said by my colleagues here.

Mr. Chairman: May I interrupt the hon. Member for a minute? I understand that this is a very delicate subject. At the same time.....

Shri A. M. Thomas (Ernakulam): I want to know the relevancy of all this.

Mr. Chairman: That is what I am driving at. Because it is a delicate matter, the House should be more serious in its deliberations because the consequence of the passing of this Bill is not small. Therefore, I would request the hon. Member—he said that the arguments of Shri Dabhi were specious—not to be specious in his argument, come to the subject directly and give his opinion so that other Members may have an opportunity to speak.

Shri B. C. Sharma: The point I am urging is this. You can have this kind of Bill when women enjoy equality with men in every sense of the word. These conditions do not prevail in India as present. We have been discussing the right of women to property. You know the debate that took place here. You know how women were not given the kind of rights that they demanded. They had to arrive at a compromise. When women do not enjoy parity of status with men in the matter of property, in the matter of services, in the matter of economic conditions, I do not see any reason why in this matter you should say that women should be treated equally with men.

Women are said to be the weaker sex. The question of strength has to be looked at from so many points of view. I do not want to go into all that because, as you have said, the subject is delicate. Taking into account all these considerations, I would say that there is no need for this Bill. Shrimati Jayashri said that there was no need for this Bill. On account of the sociological conditions in the country, I do not think that this Bill should be pressed further. It is premature. I oppose this Bill.

Shri Tek Chand (Ambala-Simla): I rise to support the Bill. When I heard the speech of the Lady Member, it stunned me, it pained me, it hurt me. My reason is this. The offence of adultery is an offence against persons who defile the sanctity of the marital bed. But what the law provides is, the wife may offer allurements, she may entice the man into her bed, her responsibility may be the greatest, nevertheless, it is the man who is liable, it is the man who merits five years' imprisonment. Take an illustration and that would clarify the absurdity of the opposition to this Bill. Mr. A is married to Mrs. A. Mrs. A offers allurements, she is charming, she entices away Mr. B. Mr. A finds both in flagrant delicto. What happens? Mr. A institutes a prosecution against Mr. B, puts up his own

wife as a witness. The wife is allowed to say, "Yes, I tempted him, I allured him and enticed him away, morally I am the guilty party, but give this man five years and let me remain unharmed." This is the law as we have it. It says she is not an abettor. A person is said to be an abettor when he aids, instigates, helps. So far as this woman is concerned, she is directly a participant in this crime. Her contribution may be more than that of the man who may be lured to her bed. Yet, she can be allowed to say: "I created this trap, it is of my working. I brought him into the web of my allurements. I am the witness against him. He gets five years and I can get nothing."

Pandit K. C. Sharma: May I ask my friend to cite any precedents whatsoever of the nature he is mentioning. He is a practising lawyer.

Shri Tek Chand: I give an illustration. This is the law which we are having. This is the law which Shri Dabhi wants should not stay on the statute-book. What objection is there? The objection of the lady Member is that adultery should not stay even as an offence for either party. It hurt me. The implications of her suggestion are: there should be a free permission, there should be a liberty, nay, there should be a licence...

Shrimati Jayashri: I never said that.

Shri Tek Chand: I said the implication is this, that there should be a licence. Adultery as such is no longer a crime according to her contemplation, and therefore if the parties agree to commit adultery, they cannot go to jail and this is according to her conception of a new penal law that she recommends should be brought on the statute-book. She is satisfied if the guilty party has a divorce. That alone is sufficient.

Then I come to the hon. professor, the learned colleague to my left. He confuses between adulteration and adultery. For him adultery is on par with adulteration of food. He thinks adulteration of food is the same

thing as adulteration of blood. This is a most curious argument coming from him.

I am aware of no less than two countries, France and China, where the guilty party, regardless of sex, can be punished. So far as our own country is concerned, there is the Frontier Crimes Regulation III of 1901 where it is a criminal offence not only for the adulterer but also for the adulteress. It is surprising that our law stands as it is.

I can understand one thing that was contemplated at one time. When there was child marriage there could be a child wife and if a child wife committed adultery it could be said that perhaps she was not to the same extent a *particeps criminis*. That being the condition, they said in her case she would not be treated as an abettor, but in a country where the law today is that marriage is only permissible among adults, you cannot say that the wife is not alive to the marital obligations she owes to her husband.

In this country, polygamy has become an offence. Plurality of wives and plurality of husbands are criminal offences. So far as adultery is concerned, both are guilty partners. That is in the very nature of the offence, to distinguish it from the offence of rape. If both are guilty parties, to one guilty party you say: "What is your sex?" "Male". "All right, you get five years." To the other you say: "What is your sex?" "Female". "You get nothing." Yet, she may be the prosecution witness.

There is another danger. There are all sorts of strata of morality in any given society, in any country. There is the risk of a man not so moral, who is callous, who is otherwise capable of being influenced by the lure of lucre, putting up his wife for purpose of allurements, so that somebody may be enticed and he may have the pleasure of seeing him behind the bars, in spite of the fact that the wife can openly

say in a court of law: "Yes, I am responsible. I tempted him, I lured him." The law says: "You did everything. We won't consider you an abettor. You go Scot-free. Go and trap another innocent man. He will get five years. Make a practice of it. You will be absolutely beyond the coils of the law. He alone will be with in the coils of the law."

The hon. Member says, even though an offence, do not treat it as an offence. Let there be a free field. Equality of sexes is being asserted in a peculiar manner from an awry angle. It used to be an offence in the case of males and females. If we are very keen on equality, let adultery be no crime at all.

Mr. Chairman: Her argument was now that the laws are changed, delete the section altogether.

Shri Tek Chand: Therefore, I submit that whatever the newfangled ideas may be, adultery ought to be an offence and adultery ought to be an offence for the guilty people. It is a moral crime for both. If I may say so with the utmost respect, it is a greater crime for a woman who every time lures and entices the man, and that being the position, it will be curious if she goes Scot-free, and the man who falls into the trap, who walks into the spider's web gets a big dose of imprisonment. Then, the law as it is can be abused for purposes of blackmail also.

I congratulate the author of the Bill and I have great pleasure in endorsing what he says and in commending this Bill for the acceptance of the House.

Shri K. K. Basu (Diamond Harbour): Unfortunately, I was away on an important business. So, I could not hear the introductory speech of the Mover while moving this Bill but after hearing half of Shri Sharma's speech and practically the most provocative speech of Shri Tek Chand I am rather tempted to say something on this very important piece of legislation.

[Shri K. K. Basu]

Unfortunately we do not try to look at this problem and especially the provisions of the amending Bill with that amount of seriousness, with that amount of consideration, which the Parliament of India should devote to it. Here is a provision in our country in the criminal law which has been there for a long time, giving due consideration to a certain stage of our social development. We have been told by champions like the Mover that women today enjoy much more rights than under the older scheme and therefore the time has come when every aspect of their legal rights and liabilities should be considered on a par with those of men. I am one of those who strongly believe that adultery should not be committed by any person, whether man or woman, and I believe that has been the attitude of every sensible and civilised man in society not only in our country but throughout the world, but more so in our country where we have extolled the virtues of women from the olden days and considered it a part of our heritage. Even today we consider the status of our women with a much greater amount of sanctity than it is considered in many parts of the world. I do not say these ideas are wrong or right, but we have got to understand and appreciate the condition of our society today before we legislate in such a matter. There is no point in just trying to say that women have these rights, why should they not be punished for this offence. Certainly there should be methods of punishment but we know fully well today that in spite of all the legislation we

have passed, the position of women has not very much improved. The Child Marriage Restraint Act has been there for more than 30 years, but we know what is the reality in the life of Indian society. That has to be judged before we pass this piece of legislation. We are told when the men are punished, why not the women. I remember, when we were discussing the clause regarding the rights of women to property, and the provision regarding the right of inheritance for the illegitimate child, what an amount of fight was put up by Shri Tek Chand to in the matter of allowing the illegitimate child to share normally in the property of the father who was responsible for its birth. It was argued that the illegitimate child could have a right only to its mother's property, as if the mother alone were responsible for its birth. My hon. friend and some others tried to argue that the condition of our society was such that we should not introduce any provision whereby an illegitimate child could be given the right to a share in the property of the father who was responsible for the birth of that child.

6 P.M.

Shri M. D. Joshi (Ratnagiri South):
It is now six o'clock.

Mr. Chairman: Is the hon. Member likely to take some more time?

Shri K. K. Basu: Yes, I would take some more time.

The Lok Sabha then adjourned till Eleven of the Clock on Saturday, the 28th July, 1956.