

### V.Bhagat Versus Mrs. D Bhagat

CrI. Revision 109/94. Judgment 19 February 1996 by Delhi High Court, Hon'ble Mr. Justice Jaspal Singh.

The petitioner, Mr. Bhagat, is a lawyer of long standing. The respondent is a vice-president in the Indian Tourism and Development Corporation. They fought in marriage, and for so long and with such venom and bitterness that the Supreme Court had to intervene and dissolve their marriage. They are now fighting out of marriage. The battle now centres around the premises which once happened to be their matrimonial home. Despite the divorce, the respondent has not walked out of it, nor, it appears, she intends to. Not, at least, till she is compelled to. The petitioner seems equally determined to make her go. The battle-lines are thus clearly drawn and once again the courts are to witness the clash of the two titans with both sides betraying no signs of battle weariness.

Soon after the dissolution of the marriage, the petitioner instituted a criminal complaint against the respondent under Section 448 of the Indian Penal Code. To his chagrin, if I may say so, the learned Metropolitan Magistrate holding that there was no sufficient ground to proceed against the respondent, dismissed the complaint under Section 203 of the Code of Criminal Procedure. Hence this criminal revision.

What is the material on the record? Let me portray:

First, the complaint. It alleges that after the marriage in the year 1966 the

complainant brought the accused into the matrimonial home on account of her being his wife and when on November 11, 1993 the marriage was dissolved, she became a trespasser and though she was served with a legal notice dated November 30, 1993 requiring her to remove herself and her belongings, it was to no effect and that whereas the accused continues to use the former matrimonial home as her residence and to enjoy the facilities available therein including the kitchen, he is not left with even a bedroom or some place to rest or some space for his legal practice. The complaint says that the accused is thus deliberately and intentionally insulting and annoying the complainant with her acts of continuing trespass.

Besides the complaint, we have also on the record the statement of the complainant wherein he repeats all the material facts surfacing in the complaint and alleges that the "accused is trespassing and causing serious annoyance and insult" to him and that his peace of mind and ability to work "is seriously affected by the trespassing of the accused."

The learned Metropolitan Magistrate while laying emphasis on the fact that a trespass is "not criminal unless it is done with intention to commit an offence or to intimidate, insult, or annoyance (sic) of any person in possession of the property", proceeded to observe:

"After the dissolution of marriage vide judgement dated 19.11.1993, merely because the marriage has been dissolved and legal notice (sic.) Ext. C2 and Ext. C3 have been given to the wife (sic.) by the complainant (sic.) she cannot be said to have committed any criminal trespass into the house where she is residing prior to the dissolution of marriage. The element of criminal intention is missing. The dispute between the complainant and his wife (sic.) is purely of a civil nature and this case does not fall under the definition of criminal trespass under Section 441 Cr.P.C.(sic.)"

To my pleasant surprise Mr. Bhagat, and so also Bawa Shiv Charan Singh who represented the respondent, were brief though incisive. While Mr. Bhagat, placing reliance on Chandra Deo Singh v/s Prakash Chandra Bose AIR 1963 SC 1430, submitted that there was more than sufficient material on the record to proceed against the respondent, Bawa Shiv Charan Singh lent full throated support to the impugned order. His contention was that intention to commit an offence or to intimidate, insult or annoy being an essential ingredient and that being missing from the statement of the petitioner, mere occupation of the respondent, even if illegal, would not amount to criminal trespass. In support he relied upon Kanwal Sood V/s Nawal Kishore AIR 1983 SC 159.

In *Kanwal Sood v. Nawal Kishore* (supra) one Mr. R.C. Sood had executed a gift deed relating to premises in dispute in favour of Shri Anand Mayee Sangh. Under the terms of the gift deed Mr. Sood was entitled to remain in occupation of the premises during his life time and could as well grant leave and licence to another. He allowed the appellant to occupy the premises. She, however, did not vacate the same even after his death despite notice and repeated requests. The trial court convicted her under Section 448 but the first appellate court allowed the appeal. The High Court reversed the order of acquittal. The Supreme Court perused the complaint and found that there was absolutely no allegation therein about the intention of the appellant to commit any offence or to intimidate, insult or annoy any person in possession. It observed:

"At the most, it can be said that after the death of Shri Sood the leave and license granted by Shri Sood came to an end and if she stayed in the premises after the death of Shri Sood, her possession may be that of a trespasser but every trespass does not amount to criminal trespass within the meaning of Section 441 of the Indian Penal Code. In order to satisfy the condition of Section 441 it must be established that the appellant entered in possession over the premises with intent to commit an offence. A bare perusal of the complaint filed by respondent No.1 makes it abundantly clear that there is absolutely no allegation about the

intention of the appellant to commit any offence or to intimidate, insult or annoy any person in possession."

The appellant may be fondly thinking that she had a right to occupy the premises even after the death of Shri R.C.Sood. If a suit for eviction is filed in the Civil Court she might be in a position to vindicate her right and justify her possession. This is essentially a civil matter which could be properly adjudicated upon by a competent Civil Court. To initiate criminal proceeding in the circumstances appears to be only an abuse of the process of the Court.

Undoubtedly, the court has to be satisfied that entry on the property was with intent to annoy, intimidate or insult and that the said intention was the aim of the entry. Showing merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult and that this likely consequence was known to the person entering, would not be sufficient. But then, in the case before me the complaint filed by the petitioner fully meets the above noted requirement. Reference, in this connection, may specifically be made to sub-para (d) and (e) of para graph 5 and to paragraph 7 of the complaint which run as under:

"d) the accused continues to use the facilities in the house and in the kitchen at the cost of the complainant Notwithstanding the notice sent to her - the accused is deliberately trespassing on the said premises to cause annoyance and insult to the complainant.

e) the accused continues to use the services of the servant employed by the complainant without any authority to do so while trespassing on the house as aforesaid, and even when the complainant needs the servant's services: this is deliberately and intentionally done by the accused to cause insult and annoyance to the complainant.

7. The accused is deliberately and intentionally continuing to trespass in the said house with the intention of annoying and insulting the complainant as aforesaid. The accused is guilty of the offence of house trespass which is continuing day by day from 19.11.1993 onwards. The accused is the Vice-President of the I.T.D.C., and she is fully aware of her conduct and the consequences thereof.

It was contended by Bawa Shiv Charan Singh that it would not be permissible to look into the complaint and that I must confine myself to the statement of the petitioner. However, I find myself unable to subscribe to this view. It is not even necessary that an inquiry be held but where the Magistrate does hold the inquiry under sub-section (1) of Section 202 of the Code of Criminal Procedure and takes evidence under sub-section (2) of Section 202, in that case he has to decide whether or not to proceed only with reference to the intrinsic quality of the statements before him which would surely, if I may say so, mean the complaint itself, the statement on oath made by the complainant and the statements made before him by other

asons examined at the instance of the complainant. In *Nagawwa v. Veeranna* R 1976 SC 1947, the apex Court served:

" It is well settled by a long catena of decisions of this Court that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceedings against the accused."

*(emphasis supplied)*

In the same very judgement it was served that an order of the Magistrate issuing process against the accused can justifiably quashed or set aside in the following cases.

"(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

(3) Where the discretion exercised by the Magistrate in issuing process is

capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as want of sanction, or absence of a complaint by legally competent authority and the like."

It would thus be apparent that to arrive at the requisite satisfaction, the complaint itself can and should also be gone into. Incidentally in *Kanwal Sood v. Nawal Kishore* (supra) also which was referred to and relied upon by *Bawa Shiv Charan Singyh*, the Supreme Court took notice of the contents of the complaint even after full fledged trial, to know as to whether the ingredients of the offence were spelt out or not.

It was also contended on behalf of the respondent that the material on the record was not "sufficient" for conviction and that as such the learned Magistrate was justified in refusing to proceed against the respondent. I think this is not the correct approach. "Sufficient ground" has been construed to mean the satisfaction that a prima facie case is made out for proceeding against the accused (See *Nagawwa v. Veeranna* AIR 1976 SC 1947), and not whether there was sufficient ground for conviction (See *R.G.Ruia v. State of Bombay* AIR 1958 SC 97; *Chandra Deo Singh v. Prakash Chandra Bose* AIR 1963 SC 1430). The scheme of Sections 200 to 203 of the Code of Criminal Procedure does not envisage a regular

trial to take place. The Magistrate is not even required to weigh the evidence meticulously as if he were the trial court. If he does so, he oversteps the limits of his discretion. The standard is not even the same as the one which is to be kept in view at the stage of framing charges. And, once all this is kept in view and in that light the complaint and the statement of the petitioner are weighed, the sufficiency to proceed against the respondent would be clearly borne out.

*Bawa Shiv Charan Singh* further submitted that the respondent was in possession of the premises in her own right and independent of the petitioner.

As already noticed, the test at this stage is whether there is sufficient ground for proceeding. The question whether the person charged of an offence in the complaint, might have a defence, has to be left to be decided by the appropriate forum at the appropriate stage. In other words, where there is prima facie evidence, the issuance of the process cannot be refused on the ground that the person to be proceeded against might have a defence (See: *Chandra Deo Singh v. Prakash Chandra Bose* AIR 1963 SC 1430).

For the reasons aforesaid the order of dismissal passed by the learned Metropolitan Magistrate cannot be sustained. Consequently, the impugned order is set aside. The learned Metropolitan Magistrate is directed to issue the process and proceed with the case.

**Criminal Revision Petition filed by Mr. Bhagat in Delhi High Court filed on 27-2-94**

1. This petition under 397, Cr.P.C., 1973, is directed against the order of Shri V.K.Malhotra, Metropolitan Magistrate, New Delhi, dated 6.4.1994, in Complaint Case No. 191 of 1993- 'V.Bhagat vs. Mrs. D.Bhagat', dismissing the petitioner's complaint of the commission of a continuing offence under 448 IPC by the respondent, after cognisance thereof had been taken. A true copy of the complaint is annexed hereto and marked Annex-A.

2. The facts necessary for a proper appreciation of this petition are that the petitioner was granted a divorce by the Supreme Court by its judgement dated 19.11.1993, which is reported as (1994) 1 SCC 337, on the ground of cruelty of the respondent towards the petitioner.

3. The respondent is a Vice-President of the I.T.D.C. for several years. She is entitled to a house to live in as a part of the perquisites of her employment, or to allowances in lieu thereof, according to information received by the petitioner. The marriage between the petitioner and the respondent broke up in 1980, and despite the respondent's having obtained employment with the I.T.D.C. within a year or so thereafter, the respondent continued to occupy all the bedrooms on the first floor in the matrimonial home. The petitioner had to sleep in the drawing room, and to carry on his professional practice of a lawyer from one room, on the ground

floor to avoid the respondent's presence as much as possible.

4. The petitioner has reason to believe that all along for the past 10-12 years the respondent has been taking house rent allowances or other allowances in lieu thereof from her employer on the pretext that she is living in rented accommodation and/or other false pretexts and side by side harassing the petitioner and damaging his health and work by occupying all the bedrooms in the (now former) matrimonial home.

5. Upon the grant of the divorce by the Supreme Court as aforesaid on 19.11.1993, the legal relationship of husband and wife was severed between the parties. The respondent had been brought into the matrimonial home by the petitioner consequent upon the marriage; the respondent had no other right to live therein. The right to reside in the matrimonial home came to an end on 19.11.1993, but the respondent did not voluntarily vacate the same.

6. The respondent continued and continues to go to late night parties on her own as she has been doing for the past 12 years, and enters the former matrimonial home late at night disturbing and annoying the petitioner (she misuses the key to the house which she has not returned after the grant of divorce, and also comes in through the kitchen or roof entrance if the front entrance is bolted). The respondent also enters the former matrimonial home at any time she chooses and remains there

at night with the deliberate intention of annoying and insulting the petitioner.

7. The petitioner's lawyer sent a notice dated 30.11.1993 to the respondent requiring her to vacate the former matrimonial home consequent upon the divorce, but the respondent chose not to comply with it.

8. The petitioner thereupon filed a criminal complaint under 448 IPC in the court of the Chief Metropolitan Magistrate, New Delhi, against the respondent on 23.12.1993. The complaint was assigned to the court of Shri V.K. Malhotra, Metropolitan Magistrate, New Delhi. The said Magistrate took cognisance of the complaint; and the petitioner was examined on oath on 16.2.1994 (the next date after 23.12.1993). On 28.3.1994, the petitioner handed up written

submissions in support of his complaint and orally argued it also. A true copy of the written submissions is annexed hereto as Annex-B.

9. By order dated 6.4.1994, the Magistrate dismissed, under 203 Cr. P.C., the petitioner's complaint without summoning the respondent. Without knowing what defence, if any, the respondent might have taken, the Magistrate created imaginary facts and defences for the respondent to base the impugned order on. The basis task of ascertaining whether a prima facie case had been sufficiently put forth by the complainant was overlooked by the Magistrate.

10. The petitioner submits that this is a fit case for exercise by this Hon'ble

Court of its jurisdiction under 397 Cr. P.C(1) The Magistrate took over 3 months to dismiss the complaint; (b) the impugned order is entirely illegal, perverse and a misuse of jurisdiction; (d) one of the reasons why the Supreme Court transferred the matter to itself and granted the divorce was the extreme delay in disposal of the case; (e) if the matter gets delayed further by appeals etc., at the very initial stage then the respondent will have succeeded in preventing the petitioner from enjoying the benefits of the divorce granted by the Supreme Court.

11. The petitioner seeks setting aside of the order dated 6.4.1994 passed by Shri V.K.Malhotra, Metropolitan Magistrate, New Delhi, in Complaint Case No.191 of 1993-V.Bhagat vs. Mrs. D. Bhagat on, inter alia, the following.

### GROUND S

A. The Magistrate has committed an error of law and jurisdiction in holding that no offence was made out because the accused did not have a "criminal intention". The kinds of intention required by 441 IPC for constituting criminal trespass are - intent to (a) annoy, (b) insult, (c) intimidate or (d) commit an offence. The intention to annoy and to insult pleaded in the complaint was sufficient averment of the intention required by the section.

B. The Magistrate had no jurisdiction or power to invent a new type of intention - "criminal intention" - to be added to the kinds of intention specified by 441 IPC. The law simply requires intention of one of the kinds set out in the section; and there is no

distinction between "criminal intention" and "civil intention" known to law. The holding in the impugned order that "The element of criminal intention is missing." is perverse and with out any basis in law: jurisdiction has been misused to dismiss the complaint.

C. The finding of the Supreme Court (in 1994) 1 SCC 337 that the respondent had made life hell for the petitioner was sufficient to establish that the respondent was deliberately causing annoyance and insult to the petitioner; this finding satisfied the test of 441 IPC and was binding on the Magistrate. The Magistrate committed an error of jurisdiction in dismissing the complaint.

D. The Magistrate has committed an error of record in holding that the respondent was or is in joint possession of the matrimonial home with the complainant. There is no material on record to even vaguely suggest such a finding. The Magistrate has created facts and/or a defence on behalf of the accused- respondent on his own, which he had no jurisdiction to do. Even otherwise in law a wife, qua wife, is in permissive possession of the matrimonial home; and the permission or licence comes to an end with the dissolution of the marriage. The Magistrate has ignored the effect of a divorce. The Magistrate has virtually tried to confer possession of property on the accused-respondent by perversely inventing facts.

E. The Magistrate is in error in distinguishing the decision of the Supreme Court reported in (1991) 2 SCC 141. If a former employee of a company commits criminal trespass by remaining in occupation of premises belonging to the former employer, there is no reason why a former wife does not commit the same offence if she continues to remain in the former

matrimonial home contrary to the wishes of the former husband.

F. The Magistrate has committed an error of law in not noticing that dissolution of a marriage severs the legal ties between the husband and wife. No law permits a divorced-wife to continue in occupation of the former matrimonial home. The respondent's occupation thereof became unlawful upon grant of the divorce.

G. The Magistrate has exercised jurisdiction illegally. His function at the stage was simply to see whether the complaint as pleaded prima facie showed the commission of an offence. If it did he had to summon the accused, and to then try the case, inter alia, on such defence as the accused might take. The Magistrate had no jurisdiction to create defences, or to assume facts, on behalf of the accused without summoning her, and on such defences/assumptions to hold that no offence had been committed.

H. The direct effect and implication of the impugned order is that either spouse can, after dissolution of the marriage, continue to occupy the property of the other. This would result in a preposterously illegal situation.

I. The effect of the impugned order is to frustrate the consequences flowing from the order of the Supreme Court granting a divorce to the petitioner, inter alia, that the petitioner can get rid of the presence of the respondent in the house and can remake his life-personal and professional-as he wants to.

In the premises aforesaid, the petitioner prays that this Hon'ble Court be pleased to set aside the order dated 6.4.1994 passed by Shri V.K.Malhotra, Metropolitan Magistrate, New Delhi, in Criminal Complaint No.191 of 1993;

IN THE COURT OF SH. V.K. MALHOTRA, Metropolitan Magistrate, NEW DELHI

Complaint Case No.191/93

V.Bhagat

vs.

D.Bhagat

and pass such other or further orders as are fit and proper.

**Order dated April 6, 1994**

A complaint under section 448 IPC was filed by the complainant against the accused as she has continued to trespass into the house of the complainant day-to-day to the annoyance of the complainant, after the marriage was dissolved by the Hon'ble Supreme Court vide judgment dated 19.11.93. The house has not been vacated by the accused despite the notice dated 30.11.93 given to her. The copy of judgment proved on the record is Ex. C-1, whereas the notices sent are Ex. C-2 and C-3. The complainant has entered the witness box as CW-1.

2. I have heard arguments and have also perused the records. Written submissions have also been made by the complainant.

3. Reliance was also placed on 1991 2 SCC 141, 147-148. The complainant who is also an Advocate by profession has also referred to section 441 IPC and argued that in view of judgment of Hon'ble Supreme Court there is a criminal trespass, if the accused continued to occupy the employees premises, then divorced wife who continued to remain in the former matrimonial home also commits criminal trespass. The accused was permitted to enter the house of the

complainant on account of the marriage. This permission came to an end with dissolution of marriage and her presence thereafter became unlawful.

4. To recapitulate in brief it is clear that the complainant got married with the accused but later on a divorce was granted by the Hon'ble Supreme Court vide judgment dated 19.11.93. Thus a perusal of the judgment Ext. C-1 shows the marriage was dissolved between the complainant and the respondent.

4. That it is also an admitted fact that prior to the dissolution of marriage vide judgment dated 19.11.93, the respondent was residing in the same house itself and continued to reside there even after passing of judgment. Now short question to be considered is whether this constitutes a criminal trespass within the meaning of Sec.441 IPC and in view of judgment 1991 (2) SCC 141, 147-148. The complainant alleges that respondent has committed criminal trespass punishable u/s 441 IPC.

5. That the law is well settled that a trespass into the property of another person is a civil right. If committed with criminal intention then it is to be treated a criminal offence. Sec 441 defines criminal trespass. To constitute an offence of criminal trespass, there must be an unauthorised entry or if the entry has been lawfully and legitimately

obtained, there must be an unlawful remaining either directly or constructively, against the will of the person in possession. In either case, the unlawful entry or unlawful remaining must be with intent (i) to commit an offence or (ii) (a) to intimidate (b) insult or (c) annoy any person in possession of the property where there is unlawful remaining with one of the intentions prescribed or unlawful entry with the necessary intent followed by unlawful remaining also with the necessary intent, neither type is covered by the plain words of his section. A trespass is not criminal unless it is done with intention to commit an offence or to intimidate, insult or annoyance of any person in possession of the property. Thus the dominant intention of the accused is material before he can be said to have committed an offence of criminal trespass as defined u/s 441 IPC.

6. The word 'in possession of another' as used in sec 441 IPC means actual possession of some person other than the alleged trespasser. Such person should be entitled to exclude another person from entering the property.

7. Thus in this case of joint possession, the husband or wife cannot be said to have trespassed into the property.

8. Thus in this case, the complainant's alleged wife was in joint possession of the matrimonial home where she being his wife was residing. After the dissolution of the marriage, vide judgment dated 19.11.93, merely because the marriage has been dissolved and legal notice Ex C-2 and Ex C-3 have been given to the wife by the complainant, she cannot be said to have committed any criminal trespass into the house where she is residing prior to the

dissolution of marriage. The element of criminal intention is missing. The dispute between the complainant and his wife is purely of a civil nature and this case does not fall under the definition of criminal trespass as defined u/s 441 IPC and on this ground this case can be distinguished from 1991 2 SCC 141, 147-148 where an employee continues to reside in the premises and has not vacated the company's quarter after

retirement which is punishable under the Companies Act.

9. For the detailed reasons given above, I am satisfied that in the absence of any criminal intention on the part of the respondent who continues to reside in the property where she has been residing prior to the dissolution of the marriage she cannot be summoned for the offence punishable u/s 448 IPC. There are no sufficient grounds to proceed against the accused as prayed

Introduced in Rajya Sabha March 1988 & Reintroduced 13th May 1994 by *Veena Verma Bill No.XXV of 1994*

### THE MARRIED WOMEN (PROTECTION OF RIGHTS)

A bill to protect the rights of a married woman and for matters connected therewith.

Be it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:-

1. This Act may be called the Married Women (Protection of Rights) Act, 1994.

2. In this Act unless the context otherwise required:-

- (a) appropriate government means the Central or the State Government under whose employment the husband of the widow was at the time of his death;
- (b) 'prescribed' means prescribed by rules made under this Act; p73
- (c) 'property' means movable and immovable property whether ancestral or not, or whether acquired jointly with other members of the family or by way of accretion to any ancestral property of the husband of a married women, and includes deposits of the husband in provident fund, banks, shares, any public saving schemes, ornaments, land and house.

3. A married woman shall be entitled to the following rights, namely:-

- (1) She shall have a right to live in the house of her husband whether owned by him or by his joint family without seeking judicial separation or divorce from her husband;
- (2) she shall without seeking judicial separation be entitled to have, food, clothing and other facilities and maintenance and support for herself from her husband;
- (3) she shall be entitled to have an equal share in the property of her husband from the date of her marriage and shall also be entitled to dispose of her share in the property by way of sale, gift, mortgage, will or in any other manner whatsoever;
- (4) she shall have a right of free access till her life to the children born out of the wedlock if they remain in the custody of her husband irrespective of the dissolution of marriage;
- (5) she shall have an option to bring up the children separately, have their custody, maintenance and education consistently by remaining in the family of her husband;

- (6) she shall be consulted by her husband in matters of family business and other financial transactions made out of the property of her husband or of the joint family.

4. A widow shall be entitled to the following rights, namely:-

- (1) she shall, if eligible, be entitled to get suitable employment in the event of the death of her husband who happened to be an employee in a given Department;
- (2) she shall be entitled to pension at such rates and on such conditions as the appropriate Government may prescribe;
- (3) she shall have the first claim and absolute right on the property of her deceased husband.

5 (1) the rights conferred by this Act shall be enforceable in a court of law or in a Lok Adalat.

- (2) Any transaction or business entered into in violation of sub-section (6) of section 3 shall be null and void.

in the complaint. The complaint is dismissed u/s 203 Cr.P.C.

6. The provisions of this Act shall have effect notwithstanding any thing inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act or in any decree order of any court, Tribunal or other authority.

7. The appropriate Government may, by notification, make rules for carrying out the provisions of this act.

### STATEMENT OF OBJECTS AND REASONS

In the wake of independence Indian woman has not only been able to

recognise her status but has also made man recognise it. Nevertheless, the status of a woman is still far from being dignified and safe in the Indian society. Although we are going to cross over to the 21st century from the 20th century, our attitude towards women is still that of the middle-aged feudal lords. Even to-day we are not prepared to grant the same liberty to women which men themselves are enjoying dauntlessly.

Today the real cause of the exploitation of a woman by her husband is that she has got no right in the house of her husband; she has got no right on the property of the husband. Even our laws confer the right of property on a woman only after the death of her husband and not during her coverture.

If a woman's right in the property of her husband is recognised the moment she marries, she will start feeling secure and will overcome her sense of helplessness and economic insecurity. This will minimise if not eliminate to a great extent the cases of separation and divorce whose basic reason is economic in many cases. What she will get on divorce, society should grant her during the subsistence of marriage. It is the most glaring injustice and indignity to woman that while she is a partner of the husband, the latter does not even think it necessary to inform her about his financial and family transactions leave alone consultation with her.

## THE MARRIAGE BILL, 1994

(As approved by the National Commission on Women, Expert Committee on Laws in its meeting held on 18-19/8/1994)

A bill to consolidate and amend the law relating to marriage in India, and to provide for their compulsory registration.

Be it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:

### 1. Short title, extent, applicability and commencement -

- (1) This Act may be called the Marriage Act, 1994.
- (2) It extends to the whole of India.
- (3) It applies to all marriages performed in India and to all persons irrespective of race, religion, caste or creed of the parties.
- (4) It shall come into force immediately on the expiry of three

months from the date of assent of the Bill by the President.

2. Overriding effect of Act :- Except to the extent expressly provided hereafter, the provisions of this Act shall have overriding effect over all laws in force and all such laws shall cease to have effect in so far as they are inconsistent with the provisions contained in this Act.

Explanation- The expression 'laws in force' includes all customs or usages having the force of law and all personal laws.

3. Conditions for marriage - A marriage may be performed between any person of the male sex and any person of the female sex, if the following

conditions are fulfilled at the time of marriage, namely :-

- (a) Such person, in the case of a male, has completed the age of 21 years, and in the case of a female, has completed the age of 18 years;
- (b) Neither party has a spouse living;
- (c) The parties to the marriage do not fall within the degrees of prohibited relationship;
- (d) Both the parties have consented to the marriage;

Explanation.- For the purposes of this section,-

- (i) "consent" shall not be valid if such consent is-
  - (a) obtained by force or fraud; or



The Bill seeks to achieve the above objectives by granting women certain rights.

(b) if either of the parties is incapable of giving consent by reason of unsoundness of mind.

(ii) two persons are within the "degrees of prohibited relationship".

(a) if one is a lineal ascendant or descendant of the other; or

(b) if one was the wife or husband of a lineal ascendant or descendant of the other; or

(c) if the two are related as brother and sister.

**4. Performance of marriage.-**

(1) a marriage may be performed by both the parties appearing before a Marriage Officer at his office or at such other place within a reasonable distance from the Marriage Office as the parties to the marriage may desire, in the presence of three witnesses, by signing a declaration that the parties fulfill the conditions contained in section 3 by subscribing to an oath in the presence of the Marriage officer in a language understood by the parties stating that each takes the other as his or her lawful wife or husband.

(2) A marriage may also be performed by the parties in any other form chosen by them.

(3) Where a marriage has been performed under sub-section (2), both the parties to the marriage shall sign a declaration to the effect that they fulfill the conditions laid down in section 3 and that the marriage has been duly performed.

(4) The declaration referred to in sub-section (3) shall be signed in the

presence of three witnesses who attended the marriage and may include the priest, kazi or other functionary who performed the marriage.

(5) The duly executed declaration shall thereafter be forwarded by the parties to the marriage or by any person on their behalf, to the Marriage Officer within three days of the performance of the marriage.

(6) A marriage performed under the provisions of this section shall not be called in question on the ground that-

(a) the parties thereto do not belong to the same religion or caste; or

(b) that any religious or customary rite has not been performed or any practice has not been followed.

**5. Registration of marriage.-**

(1) Where a marriage has been performed in accordance with the provision of sub-section (1) of section 4 or where the Marriage Officer receives a declaration referred to in sub-section (5) of that section, he shall forthwith register the marriage by entering the particulars of the marriage in the Marriage Register which shall be a permanent Register to be kept in the custody of the Marriage Officer.

(2) The Marriage Officer shall, within a period of fifteen days of registration of marriage under sub-section (1) issue to each of the parties to the marriage a Marriage Certificate.

**6. Correction or cancellation of entry in the marriage register.**

(1) If it is proved to the satisfaction of the Marriage Officer that any entry in the marriage register or in the marriage certificate is erroneous, he may, subject to such correction not affecting the validity of the marriage, correct the

error by suitable entry in the margin with signature, date and seal and issue a fresh certificate of marriage.

(2) No such correction shall be made unless the parties to the marriage or their legal representatives have been given a reasonable opportunity of being heard.

**7. Effect of Registration.**

(1) Entry in the Marriage Register in respect of a marriage or a marriage certificate shall be presumptive proof that the marriage has been validly performed.

(2) If there is no entry in the Marriage Register regarding a marriage it shall be presumed that no such marriage has been performed.

(3) Any person whose marriage is registered under section 5 shall not be subject to any disabilities including disability in regard to the right of succession to the property of any other person.

(4) Children born during the subsistence of a marriage registered under section 5 shall not be subject to any disabilities including any disability in regard to the right of succession to the property of any person.

**8. Void marriage.**

(1) Any marriage performed after the commencement of this Act shall be void if either or both the parties to the marriage do not fulfill any of the conditions specified in section 3.

(2) where a marriage is void under sub-section (1), either party to the marriage, may, on presentation of petition to the court, obtain a declaration to that effect.

**9. Voidable marriage.**

(1) Any marriage performed after the commencement of this Act shall be voidable and may be so declared by a

decree of nullity on a petition presented by either party to the marriage within one year of the discovery of the fact, that the other party was impotent at the time of the marriage and such impotence was not within the knowledge of the petitioner.

(2) Any marriage performed after the commencement of this Act shall be voidable and may be so declared by a decree of nullity on a petition presented by either of the parties within six months of the date of marriage, if-

- (i) the other party wilfully refuses to consummate the marriage; or
- (ii) the wife was, at the time of the marriage, unknown to the husband, pregnant by some person other than the husband and the husband had no sexual intercourse with the wife after the discovery of the fact of pregnancy.

#### 10. Dissolution of marriage by mutual consent.

(1) Both parties to a marriage performed before or after the commencement of this Act may jointly present to the court a petition for dissolution of marriage on the ground that they have mutually agreed that the marriage should be dissolved and that they have been living separately for a period of not less than three months.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than twelve months after the said date, if the petition is not withdrawn in the meantime, the Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

#### 11. Dissolution of marriage on other grounds.

(1) Either party to a marriage performed before or after the commencement of this Act may present a petition before the Court for dissolution of such marriage and the Court may grant a decree for dissolution of marriage on any of the following grounds, namely:-

- (i) the mutual incompatibility of the parties is such that it is no longer fair to the parties or either of the parties to keep the marriage alive; or
- (ii) the other party has, after the performance of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, and the petition for dissolution of marriage is presented within six months of the discovery of such fact; or
- (iii) the other party has, after the performance of the marriage, treated the petitioner with cruelty; or
- (iv) the other party has voluntarily and without reasonable cause deserted the petitioner without his or her consent for a continuous period of not less than two years immediately preceding the presentation of the petition; or
- (v) the other party has wilfully neglected the petitioner for a continuous period of one year immediately preceding the presentation of the petition; or
- (vi) the other party has become addicted to intoxicating liquor or stupefying drugs so as to render the petitioner's life miserable or difficult; or
- (vii) the other party has taken to a life of crime; or

(viii) the other party is guilty of rape, sodomy or bestiality, including attempts or abetment thereof; or

(ix) the other party is undergoing sentence of imprisonment for seven years or more for an offence punishable under any law for the time being in force; or

(x) the other party has been suffering from acquired immuno deficiency syndrome (AIDS), sexually transmitted disease or leprosy in a communicable form, any of the aforesaid diseases not having been contracted from the petitioner; or

(xi) the other party has been, for a period of not less than one year, of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with him or her; or

(xii) the other party has not been heard of for a period of three years or more by those persons who would normally have heard of him or her, if he or she had been alive.

**12. Limitation.** Notwithstanding anything contained in this Act, it shall not be competent for any Court to entertain any petition for dissolution of marriage by a decree of divorce, unless at the date of presentation of the petition one year has elapsed since the date of the marriage.

#### 13. Marriage Officer and District Registrar of Marriages.

(1) The Marriage officer for the person competent to make entries in the Register of Births and Deaths for that area or such other person as may be

designated as Marriage officer for that area by the State Government.

(2) There shall be a District Registrar of Marriages for every district who may be such officer as may be appointed by the State Government or, in the absence of such appointment, the District Registrar of Assurances.

(3) The duties of a marriage Officer shall be those which he is required to perform under this Act and the rules made thereunder.

(4) The Marriage Officer shall forward to the District Registrar of Marriages copies of the entries in the Marriage Register in duplicate and one set of all such returns arranged area-wise shall be kept as permanent record in the custody of the District Registrar of Marriages.

(5) The Marriage Officer may within two months of the making of any entry in the Marriage Register correct any error which may have crept into such entry provided that no such correction shall be made unless the parties to the marriage or their legal representatives have been given a reasonable opportunity of being heard. Copies of the corrected entry shall be communicated to the District Registrar of Marriages and dealt with in the manner specified in sub-section(4).

**14. Maintenance, residence, etc. of spouses pendente lite and thereafter.**

(1) Where a petition for relief under the provisions of this Act is presented, the Court may make appropriate interim orders for the maintenance, residence, litigation, medical and other necessary expenses of either spouse which may

be rescinded, varied or suspended from time to time.

(2) The Court may at the time of passing of the decree, either allowing or rejecting the petition, make appropriate orders for the residence, maintenance, medical and other necessary expenses of either spouse. Such order may direct the payment of a gross sum of money, the payment of a periodical sum, the payment partly of a gross sum and partly of a periodical sum, the settlement of property with absolute or life interests, the allotment of the whole or part of the matrimonial home, the allotment of other residential accommodation belonging to the family or to the possession of which either spouse is entitled, the payment of a gross and/or a periodical sum towards procurement and rent of suitable residential accommodation and/or such other adequate provision for maintenance, residence, medical and other expenses as the Court may deem expedient.

**15. Custody, maintenance, etc., of children of marriage pendente lite and thereafter.** Where a petition under the provisions of this Act is presented, the Court may, from time to time, during the tendency of such petition, at the time of the passing of the decree either allowing or rejecting the petition or thereafter, make appropriate orders for the custody, maintenance, education, medical and other expenses of the children of the marriage. Such orders may be revoked, varied or suspended from time to time. The order for the custody of the children shall be in accordance with the provisions of the Minority and Guardianship Act, 1994

**16. Status of children of void, voidable and dissolved marriage.** Notwithstanding anything contained in

any other law for the time being in force, the children of a marriage declared void or voidable by this Act or dissolved under the provisions of this Act shall be considered legitimate children of the parties to the marriage for all purposes including succession to the property of either of the parties to the marriage and of persons other than the parties to the marriage and they shall not be subjected to any disability whatsoever.

**17. Penalties.**

(1) Any person who is required to forward the declaration specified in sub-section (5) of section 5 to the Marriage Officer and fails to do so within the time prescribed shall be punishable with imprisonment which may extend to two years or with fine or with both:

Provided that where the declaration is not forwarded within three days but is forwarded within one month after the marriage, such offence may be compounded by the Marriage Officer on payment of a compounding fee calculated at the rate of one hundred rupees for each day's delay.

(2) Any person who forwards a false declaration relating to a marriage to a Marriage Officer or who makes a false declaration before a Marriage Officer shall be punishable with imprisonment of either description which shall not be less than one month, which may extend to seven years or with fine or with both.

(3) Any person who procures the making of false entries in a Marriage Register shall be punishable with imprisonment of either description which may extend to seven years or with fine or with both.

(4) Any Marriage Officer who fails to make entries in the Register of Marriages as provided in sub-section (1) of section 13 or who knowingly makes false entries in the Register, shall be punishable with imprisonment of either description which may extend to seven years or with fine or with both.

(5) Any person who destroys, mutilated or tampers with the Register of Marriages or any entry therein shall be punishable with imprisonment of either description which may extend to seven years or with fine or with both.

(6) An attempt to commit or the abetment of any of the offences specified in sub-sections (1), (2), (3), (4) or (5) shall be punishable in the same manner as the offences under the respective sub-sections.

(7) Any person who fails to comply with the order of the Court passed under section 14 or section 15 shall be punished with imprisonment of either description which shall not be less than three months but which may extend to seven years or with fine which shall not be less than the amount of maintenance due.

(8) When the Court imposes a sentence of fine or sentence of which the fine forms a part, the Court may while passing the judgment, order the whole or any part of the fine recovered to be paid to the petitioner in lieu of the maintenance which is due to the applicant.

**18. Court to which petition should be made.**

(1) Every petition under this Act shall be presented to the Family Court within the local limits of whose original civil jurisdiction-

- (i) the marriage was performed; or
- (ii) the respondent, at the time of the presentation of the petition resides; or
- (iii) the parties to the marriage last resided together or
- (iv) the petitioner is residing at the time of the presentation of the petition, in case where the respondent is, at that time, residing outside the territories to which this Act extends or has not been heard of as being alive for a period of seven years by those who would naturally have heard of him if he were alive.

(2) Without prejudice to any jurisdiction exercisable by the Court under sub-section (1), the Family Court may, by virtue of this sub-section, entertain a petition by a wife domiciled in the territories to which this Act extends for nullity of marriage or for divorce if she is resident in the said territories and has been ordinarily resident, therein for a period of three years immediately preceding the presentation of the petition and the husband is not resident in the said territories.

#### **19. Family Courts.**

(1) There shall be one or more Courts designated as Family Courts in every district who shall have exclusive competence to entertain and try suits in respect of all matters arising under this Act and no other court shall entertain and try any such suit.

(2) the exclusive competence of the Family Courts shall also extend to criminal cases arising out of-

- (i) offences punishable under this Act:
- (ii) contravention of clause (b) of sub-section (1) of section 3 of this Act, being an offence punishable under section 494 of the Indian Penal Code:
- (iii) Offences punishable under section 493A, 495, 496, 497, 498, 498-A of the Indian Penal Code: and
- (iv) offences punishable under sections 4 and 4-A of the Dowry Prohibition Act, section 5 and 6 of the Child Marriage Restraint Act, and offences relating to domestic violence.

(3) When exercising jurisdiction under sub-section (1), the Family Court shall have all the powers of an ordinary civil court of unlimited pecuniary jurisdiction. The procedure shall be as laid down in the Code of Civil Procedure except that on the date of the first appearance of the parties a time-schedule shall be worked out which shall not be departed from save for grave and exceptional reasons so however that the entire proceedings including the pronouncement of judgment shall be concluded within six months from the date of institution.

(4) When exercising jurisdiction under sub-section (2), the Family Court shall have all the powers of a Magistrate of the First Class and may pass any sentence which may be passed by the Court of a Chief Judicial Magistrate. The procedure shall be as laid down in the Code of Criminal Procedure except that on the date of the first appearance of the accused a time schedule shall be worked out which shall not be departed from save or grave and

exceptional reasons so however that the entire proceedings including the pronouncement of judgment shall be concluded within six months from the date of institution.

**20. Appeal.** There shall lie an appeal to the High Court from every final judgment of the Family Court. The period of limitation for filing an appeal shall be thirty days from the date of the decree and such appeal shall be heard and disposed of within three months from the date of filing of the appeal.

**21. Rules.**

(1) The Central Government may make rules for the purpose of giving effect to the provisions of the Act by publication in the Gazette of India.

(2) The High Court may make rules for the purpose of giving effect to the provisions of section 19 sub-sections (3) and (4) and section 20.

**22. Repeal.** The Indian Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936, the Muslim Personal Law (Shariat) Application Act, 1937, Dissolution of Muslim Marriage Act, 1939, in so far as it applied to marriage, dissolution of marriage including talaq, ila, zihar, lian, khula and mubaraat, the Special Marriage Act, 1954, the Hindu Marriage Act, 1955, and the Muslim Women (Protection of Rights on Divorce) Act, 1986 shall stand repealed and the General Clauses Act, 1897 shall apply to such repeal.

**23. Consequential amendments to Act 33 of 1969.** The Foreign Marriage Act 1969 stand amended as directed in the Schedule.

**The Schedule.**

S.No.	Amendment
1.	Throughout the Act, for the word "Solemnized" wherever it occurs, the word "performed" shall be substituted, and such amendments as the rules of grammar may require shall also be made.

2. clause (1) of section 2 shall be omitted.

3. For section 4, substitute '4.' Conditions relating to performance of foreign marriages.- A marriage between parties one of whom at least is a citizen of India may be performed under this Act, by or before a Marriage Officer in a foreign country, if the following conditions are fulfilled at the time of marriage, namely:-

(a) such person, in the case of a male, has completed the age of twenty-one years, and in the case of a female, has completed the age of eighteen years;

(b) neither party has a spouse living;

(c) the parties to the marriage do not fall within the degrees of prohibited relationship;

(d) both the parties have consented to the marriage.

**Explanation.-** For the purposes of this section,-

(i) "consent" shall not be valid if such consent

(a) obtained by force or fraud; or

(b) if either of the parties is incapable of giving consent by reason of unsoundness of mind.

(ii) two persons are within the "degrees of prohibited relationship"-

(a) if one is a lineal ascendant or descendant of the other; or

(b) if one was the wife or husband of a lineal ascendant or descendant of the other; or

(c) if the two are related as brother and sister.

4. In section 18-

(a) For the Short title and sub section (1), the following shall be substituted, namely:

"Matrimonial reliefs to be under the Marriage Act, 1994.-

(1) Subject to the other provisions contained in this section, the provisions of sections 8,9,10,11 and 12 of the Marriage Act, 1994 shall apply in relation to marriages performed under this Act, and to any other marriage performed in a foreign country between parties of whom one at least is a citizen of India, as they apply in relation to marriages performed under that Act."

(b) In sub-section (2),

(i) for the words and figures "Chapter V or Chapter VI of the Special Marriage Act, 1954", the words and figures "section 8,9,10 and 11 of the Marriage Act 1994" shall be substituted.

(ii) For the words "the District Court", the words "the Family Court" shall be substituted.

(iii) For the "Explanation", the following Explanation shall be substituted, namely:

**Explanation.-** In this section, "Family Court" has the same meaning as in the Marriage Act, 1994.

(C) In clause (d) of sub-section (3), for the words and figures " or Chapter V or Chapter VI of the Special Marriage Act, 1954", the words and figures "sections 8,9,10 and 11 of the Marriage Act 1994" shall be substituted.

(d) In sub-section (4), for the words and figures, "the Special Marriage Act, 1954" the words and figures "the Marriage Act, 1994" shall be substituted.

5. Section 29 shall be omitted.