

Jyots

CHANGES IN CHRISTIAN PERSONAL LAWS
A Brief Account of the Advocacy Process

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One of the major hurdles faced by Indian women has been the fact that despite the Constitutional guarantee for equality, women are divided because of their religion in the area of personal laws. Joint Women's Programme which was beginning to establish itself as a Women's Human Rights Organisation in 1977 was anxious to work with women of all religion, castes and classes was faced with the above problem of difference between men and women. Several cases began coming to it for redressal and legal counselling. This made JWP realize that law related to family matters was different for women of different religious groups. The Constitution had made the commitment that Uniform Civil Code will be provided to end the difference among women in Family Law but no effort was being made to ensure this.

In 1978 JWP along with Christian Institute for the Study of Religion and Society organised a national conference on "Plea for a Uniform Civil Code". Religious leaders, social activists, women's rights activists were invited to participate in the conference and evolve a strategy to urge the govt. to take steps to ensure Uniform Civil Code.

This meeting took place in Bangalore city. Christian participants seemed to agree with the majority of the participants to push for a UCC but the Muslim representatives were angry and refused to be dictated to. Muslim Personal Law was theirs to reform or keep. Their identity should not be tampered with, they urged. There was a sharp polarization between the pro UCC participants and the Muslim participants. At the end of the meeting I had to sum up by saying that there was need for more awareness and understanding about the laws, specially as these affected women, and that JWP will try to arrange another meeting on the same subject.

Our women activists and community organisers were asked to hold grassroot meetings in all the states where we had groups to spread the message for UCC, and to elicit public opinion.

What this exercise revealed to us was the fact that women were not always willing to express their opinion about changes in their family laws even though they were suffering under them. Christian women however were more anxious for something to be done to change the laws. We felt that our efforts to inform and educate women to demand the changes needed to continue. In the mean time I had started to establish contact with liberal minded members of all communities to solicit their help with regard to demand for a common family law. Again Christian members were more supportive.

Strategies

I. Both Muslim and Christian religious leaders were trying to justify their position not to change the laws by citing sections from the scriptures. I needed to know the scriptures, to find passages and writings that were in favour of women and supported women's rights to be able to use them in different fora. Here again Christian religious books the Bible was easier to follow and understand. Muslim schools of thought and interpretation were several though Koran is the one divine revelation of the word of God. There are four sources of Islamic law and it was difficult to understand which source was being used in each case. Another area of concern was that marriage was a civil and dissoluble contract among Muslims in sharp contrast to the principles laid down in Christianity and Hinduism where marriage was viewed as an indissoluble sacrament. There was also, the provision of stipulated mehr and a woman had the right to one half of the male counterparts share of property. Thus Muslim religious leaders felt that there was no discrimination against women. Yet Muslim women in India were in a pitiable position specially because of divergent legal positions and the laws of divorce being the most problematic.

Some changes had already been carried out in Hindu Law with the Hindu Code Bill for the support of women. But no changes had taken place in Christian Personal Laws.

II. In 1982 to take the matter further and push for a Uniform Civil Code, I organised another national Consultation on the theme "Authority of the Religions and the Status of Women". I wanted experts to present their views with regard to two positions in the context of women's rights (1) Religious Laws as they are written down, (2) Religious Laws as they are practiced. All religions were represented including Buddhism, Jainism, Sikhism and Zoroastrianism.

My intention was to lead the discussions towards a Uniform Civil Code by establishing the fact that all religious scriptures basically support woman's human rights though the practice may be different and that there was a need to amend the laws to give women equal treatment in Personal Laws.

Once again I found that the Muslim Personal Law Board which had sent their representatives protested and demanded that the Muslim Religious leadership did not want any interference in their laws.

The Christian community on the other hand appeared very anxious to constitute a Committee to review their laws but wanted some one who could provide a Biblical (scriptural) support to the need for amendment to the Christian Personal Laws.

I requested the participants to allow the JWP to coordinate the work of the committee for changes in the Christian Personal Laws with the suggestion that we will have Biblical experts in the committee. JWP decided to keep the question of the campaign for UCC in abeyance and take up the challenge for changes in Christian Personal Laws.

III. In 1983 the campaign started in earnest. My first step in the whole movement for change was to establish contact with educated, informed enlightened women leaders of the Christian community representing different church denominations. Together we started to study the Bible from the perspective of Equal Rights for Women. Several passages were marked out in the Bible. The first of these being the two stories of creation. Genesis chap.2 which says god created Adam first and then eve who he fashioned out of a rib taken from Adam's body as a negative statement to be replaced by the other version in Genesis chap.1 which reads "God created them in his own image, in the image of God created he them; male and female created he them". There were other passages also Mark chap.10 V 6. "From the very beginning God made them male and female. For this cause shall a man leave his father and mother and cleave to his wife". Mark chap.10 v 11 "Whosoever shall put away his wife and marry another, committeth adultery against her and if a woman shall put away her husband and be married to another she committeth adultery" - A common standard of judgement for both. Another passage was taken from the Book of Galatians chap. 3-28. "In Christ there is neither jew nor gentile, nor slave nor free, nor male nor female. You are all one in Christ".

There were also the parables of Jesus which emphasised woman's equal rights and equal treatment which I used in my publication to be studied by Christian women's Fellowship groups. The first of these " Good News for Women" was much appreciated by all Church groups and they themselves translated it into regional languages. This was followed by two other publications "Women in Praise and Struggle" and "Vision and Service". In all these publications I raised the question of changes in Christian Personal Laws. Every Church has a Women's Fellowship and the group meets regularly for Bible study. Therefore the three publications were meant to be used for Bible study by all the Fellowships. My hope was to spread the message of equality as found in the Bible and promote the demand for changes in personal laws. I was also helped in my effort through the writings of radical Christian thinkers around the world.

IV. The use of the above books (Bible studies) sensitized the women about their citizens rights and the need for changes in Christian family laws. They began to raise the question of equal rights before their Church authorities and often I was invited to address groups of women and clergy by women leaders. I took the opportunity to discuss the need to change the laws

related to marriage, divorce and succession and the need for equal position for women in church bodies.

V. In different meetings held in several places, participated in by bishops, clergy, lawyers, the laity of the Churches and social activists, it had been accepted that Christian Personal Laws, as enacted and administered in India, were out-dated, unjust and inhuman, and did not meet the needs of the present. The Indian Christian Marriage Act 1872, the Indian Divorce Act 1869 and the Indian Succession Act 1925 had several sections that were discriminatory. Women suffered and were treated differently from men. There was also a need for laws to enable Christians to adopt children. The concern for changes in Personal Laws was gradually being accepted by the community. The only hurdles were the idea and definition of Divorce, and Divorce by mutual consent. This was specially raised by the Catholic Bishops Conference.

VI. It was urgent to redraft a new set of legislations governing the Christian community in matters of the family for the Christian leaders to discuss and accept. The JWP took a delegation of Christian Women to meet the late Prime Minister Rajiv Gandhi in 1985. Mr. Gandhi wanted the opinion of the official Church with regard to the demand to change the personal law. The Joint Women's Programme (JWP) along with the Church of North India drafted a new Christian Marriage and Matrimonial Causes Bill. The Indian Succession Amendment Bill and the Christian Adoption and Maintenance Bill in 1985 with help of Shri P. M. Bakshi, the then Member Law Commission. The drafts were sent for comments to all Churches, followed by :- many meetings with the Churches of different denominations including leaders of the Catholic Bishops Conference of India. Several joint deputations were made to the Prime Minister and discussions were held with the Law Ministry which was given the amended Christian Marriage Bills.

The Law Ministry gave the assurance that Christian Personal Laws will be changed as soon as a consensus draft was placed before the Government, which had the support of all Churches in India. A National workshop was held from March 27 to 29, 1990 at the CNI Bhavan, New Delhi. It was organised by the National Council of Churches in India (NCCI), the Catholic Bishop's Conference of India (CBCI), CNI, All India Catholic Union and the Joint Women's Programme (JWP). There were also representatives of Christian Women's Fellowships of various Churches who were very helpful in enabling the Churches to take a decision in favour of the changes. The Churches were requested to send in their consensus draft, and the Christian Marriage and Matrimonial Causes Bill 1990, the Indian Succession Amendment Bill 1990, and the Christian Adoption and Maintenance Bill 1990 were formulated for further discussion. At this point the definition of Divorce was accepted by all church bodies including the Catholic Bishops Conference as Dissolution of Marriage, along with Dissolution of Marriage by mutual consent.

In 1992, the Joint Women's Programme (JWP) with the support of the Church of North India (CNI) finalised the draft legislation and met the Prime Minister again and submitted the Bill. The delegation was informed that *"no changes or amendments will be made in the existing Personal Laws of any minority community, till there was a consensus law proposed by them"*. This was because some Christian Leaders who were consulted by the Govt. were opposed to any change.

The JWP began to lobby with leaders of various smaller churches as main line churches had already endorsed the changed Bill and Christian politicians. In 1993, an Ecumenical Committee for changes in Christian Personal Law was formed. This Committee studied the 1992 amendment of JWP, CNI and at two representative Working Committee Meetings, the draft was finalized and the Christian Marriage Bill - 1994 was ready to be presented to the government on February 22, 1994. The Ecumenical committee consisted of representatives of all Churches and christians groups in India including women's fellowship groups.

VII. The media was also very helpful in projecting the demands of the Christian community and keeping the issue alive by constantly reporting about meetings held by JWP and other Church bodies in different parts of Kerala, Andhra Pradesh, Tamil Nadu, West Bengal, Delhi,

Uttar Pradesh, Maharashtra. Any press statement on the subject that JWP sent them were well covered. It also reported favourable court judgements from Kerala, Mumbai, Hyderabad etc.

VIII. National women's groups also supported JWP's demand by highlighting the efforts made to change the laws. JWP kept them informed about the consensus position reached by all the churches who accepted the proposed draft and these organisation in their turn informed their women members to send support letters to the Law Ministry.

IX. Another strategy used by JWP was to telephone the Law Ministry once every month ever since February 1994 and request the Joint Secretary, and Secretary to place the matter before the Law Minister. Also there were several visits to the Law Ministers and to the three Prime Minister by JWP and the Bishops of various churches.

Background

As the Laws stand, the main enactments on the subject, namely, the Indian Divorce Act 1869, and the Indian Christian Marriage Act 1872 are more than a century old. In the normal course of events the very fact that these enactments are so old would have been regarded as sufficient justification for examining their provisions - not necessarily with a view to recommending change in every case, but at least with the objective of applying one's mind to it and coming to a conclusion whether changes are needed. Apart from that, even on the merits, many of the provisions of the two acts are out of date with modern social conditions. Some of the provisions of the Act relating to divorce would, in any case, need revision because of the constitutional mandate of equality. Several court judgements had also demanded changes in the Divorce Act 1869.

These are, in themselves, important considerations for undertaking a revision of any law. They are of still greater importance when one is concerned with marriage and divorce, for these are matters which bring the family and the law into contact at vital points. Matrimonial legislation which is too much in advance of, or too much behind prevailing social conditions may exist in the statute book, but its existence is no guarantee that it continues to receive the support of those to whom it is applicable. It follows, therefore, that an attempt to assess and re-assess matrimonial legislation at fairly regular intervals is good for society, though this does not necessarily mean that every time when a review is made, radical changes will be considered necessary in all provisions.

Christian Marriage (and Matrimonial Causes) Bill 1994

(a) Marriage

The bill reflects a consensus position of the Christian people of India who agreed to update their laws pertaining to marriage and matrimonial causes, bearing in mind the vast social changes that have taken place in the last century. The law on the subject comprises of two major enactments. Of these, the Indian Christian Marriage Act 1872 was in need of urgent improvement. The most important changes made are as follows:

- (i) the conditions of marriage are nowhere set out conveniently in the Act 1872 in a manner that will give at a glance the position in that respect. This has been taken care of in the new draft.
- (ii) secondly, there was a bewildering variety of forms of marriage as envisaged by the 1872 Act. It was felt that while the parties should be allowed to enjoy, at their option, the facility of a religious or a secular marriage (as at present), there was scope for simplifying the law in this regard. Besides this, from the linguistic point of view, the provisions of the 1872 Act on marriage was badly in need of revision. All these changes have been conveniently carried out, keeping in mind the objectives mentioned above.
- (iii) There are provisions for marriage for minors, which have been excluded in the draft.
- (iv) Definite provisions have been made for maintenance of records, registration of marriage, marriage licence etc.
- (v) It provides for a clear mandate on who can marry and the prohibited degrees of marriage.
- (vi) Restitution of Conjugal Rights has been dropped.

(b) Divorce

- (i) The topic of divorce amongst Christians was in even greater need of law reform. Both from the constitutional point of view which demands that discrimination between men and women should go, and from the social point of view substantial expansion of the grounds of divorce was needed. This did not, of course, mean that divorce at the sweet will of one party should be granted for the mere asking. However, reasonably acceptable grounds of divorce, particularly where one party has been guilty of cruelty received serious consideration. In addition, (with certain safeguards) divorce by mutual consent of the couple was made available to Christians, as it was available to Hindus and to persons married under the Special Marriage Act, 1954. There is a similar scope for making the law as to nullity and legitimacy more rational. The section relating to nullity and legitimacy have been rationalised. Also marriages annulled by the Church have been declared null and void to avoid a double process of obtaining annulment under the existing State Laws.
- (ii) For the purposes of this Act, divorce has been considered to be dissolution of marriage.
- (iii) Equitable, matrimonial reliefs have been included like
 - a. Commonality of Property Rights
 - b. Right to the Matrimonial Home
 - c. Increase in maintenance to the aggrieved party, which is specially beneficial for women.
- (iv) Both can claim damages when they find their partners guilty of adultery.
- (v) Provisions for permanent/interim maintenance in matrimonial proceeding are rationalised.
- (vi) The priest be given the freedom to conduct re- marriages of divorced persons.
- (vii) Several procedural aspects of the present divorce law have proved to be inconvenient irritants in practice have been revised.
- (viii) Decree of divorce to be granted by the very court where the petition has been filed, thus making it easier and saving time has been proposed.
- (ix) Apart from proposing improvements in point of substance and language, the Bill sought to collect at one place provisions at present scattered in two enactments.

This consensus Bill of 1994 had the support of all mainline churches and other church groups. It also proposed changes in the Indian Succession Act, 1925 and drafted a new Christian Adoption Bill 1994. All these were taken together as one comprehensive law - the "**Christian Marriage Bill - 1994**" and the **Christian Adoption Bill 1994**.

The purpose of this Bill was to give the Christians an amended law, which provided for equitable conditions for men and women. Thus it retained those portions that were positive.

One of the positive aspects of the Indian Christian Marriage Act, 1872 was that it permitted couples, **one of whom need not be a Christian, to be married by the church**. This was retained in the 1994 Bill, as in the present context mixed marriages were becoming common because of the small size of the Christians community and also because the church did not force the non-Christian party to convert.

When the Government did not respond despite several requests, the Christian Marriage Bill 1997 was forwarded by the CBCI & NCCI with the same proposals. Since 1997 to April 2000 there was no action on the part of the Govt. even though sec.10 of the Indian Divorce Act was struck down in several High Courts. In the mean time JWP had been constantly contacting the Law Ministry, once every month, requesting the Law Secretary Mr. Raghbir Singh to do the needful.

Christian Marriage Bill 2000

On the 28th April 2000, the Law Minister, Sh. Ram Jethmalani invited some church leaders, Christian MP's women activists and others to discuss his proposed Christian Marriage Bill -

2000. While all present appreciated the Law Minister's concern to give Christians a comprehensive marriage bill which was gender just, the church leaders felt that the Bill was given to them on the 20th April and they had only 6 days to discuss it with all the church leaders in the country and Christian Institutions.

It was also found that there were some definite changes in the proposal, which they could not accept. The Christian representatives and JWP demanded that if the Law Minister gave them Sections 3 and 9 as stated in the Bill - 1994, which had consensus of all churches throughout India, they will agree for the Bill 2000 to be introduced in Parliament. The Law Minister insisted that he would introduce his proposed Bill - 2000, as it was drafted without any change. The participants at the meeting did not agree and demanded that he should make the few changes according to the **consensus proposal of 1994**. Two small meetings were again held but the Law Minister insisted that he would introduce the Bill first and then make the changes.

The Two major areas of difference among other smaller ones were:

1. The Section 3 of the Bill - 2000:- While 1872 and 1994 both said a "marriage may be solemnized between persons one or both of whom are Christian in accordance with the provisions of the Act, the 2000 government proposal *took away this existing privilege* and stated that "every marriage between persons both of whom are Christians shall be solemnized in accordance with the provisions of this Act".
2. The Section 9 onwards dealing with marriage performed by the Minister of the church and the registrar of marriages:- while accepting that the Minister will marry the persons in accordance with the rules of the church, these rules were not recognized if the Minister flouted the rules. He would be penalized in the same way as the registrar of marriages who flouts the state rules and not according to the rules of the Church.

The JWP and Christian leaders therefore demanded from the Government that:

1. The government should give them a bill which reflected the consensus Bill of 1994 by making necessary changes in atleast Section 3,8 & 9 of the Bill 2000.
2. It should not take away a privilege that is already existent and is in keeping with the *secular nature* of the country. It should allow Section 3 to read as "every marriage between persons, one of whom is a Christian, *may be* solemnized in accordance with the provisions of this Act".
3. It should not prevent Christian women from getting a gender-just law by refusing to accept changes demanded by christians in the **Marriage Bill 2000**.
4. It should keep its commitments to give the minority community a personal law, which reflects the consensus position of all denominations of churches and groups as proposed in Christian Marriage Bill 1994.
5. Also, with amended **Christian Marriage Bill 2000**, it should give the Christians amended Indian Succession Amendment Bill and the Christian Adoption Bills as proposed in 1994.
6. This Bill 2000 along with the changes demanded, be introduced in Parliament this year.

The Christian leaders at the meeting with Sh. Jethmalani had not raised any objection to the Chapter dealing with Divorce and related matters. Therefore this section was not discussed. It was understood that the section on Divorce and related matters was according to the consensus position reached in 1994, 1997 and could be accepted.

In December 2000 the new Law Minister declared that he was bringing in changes in the Indian Divorce Act 1869. On looking at the proposed amendment we discovered that again the Govt. was not proposing what JWP and the Christian Community had recommended in their consensus Bill 1994. The Govt. was only changing Section 10, 17, 20 of the Indian Divorce

Act, but in Section 10 the sub section "Dissolution of marriage by mutual consent was not included".

There was need for immediate action. It was necessary for the old ecumenical committee members to immediately get together and intervene. The CBCI, NCCI and JWP met together to discuss the matter. Our hope that the Govt. would consider the Christian Marriage and Divorce Bill together was shattered. JWP recognised that piecemeal changes suggested would not ensure gender justice. We agreed to accept the amendment to Indian Divorce Act, 1869 with the changes in Section 10, 17, 20 as proposed but demanded the following:-

- a) **Deletion of Sec. 7** Indian Divorce Act of 1869 referring to:
"Court to act on principles of English Divorce Act"
- b) **Divorce by Mutual Consent**
After sec.10 add section 10A to provide for Divorce by mutual consent.
This was agreed to in the consensus Bill of 1994. All the Churches had accepted this.
Refer to sec. 33 on Dissolution of Marriage in Consensus Bill of 1994.
 - (1) Subject to the provisions of this Act, a petition for dissolution of marriage by a decree for divorce may be presented to the District Court or Family Court by both the parties to a marriage together whether such marriage was solemnised before or after the commencement of this Act, on the ground that they have been living separately for a period of two years, or more, that they have not been able to live together, and they have mutually agreed that the marriage should be dissolved.
 - (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 eighteen months after the said date, if the petition is not withdrawn by both the parties in the meantime, the Court shall, on being satisfied, after hearing the parties after making such inquiry, as it thinks fit that a marriage has been solemnised and 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 decree.
- c) **Delete sec.34 & 35 of 1869 Act** totally, dealing with damages from adulterer.
- d) **Alimony and Maintenance**
Amend sec.36 dealing with alimony according to the following suggestion in sec.45(i) & (ii) of Christian Marriage Bill 1994.
 - 45(i) Any court exercising jurisdiction under Chapter 4 to 6 of this Act may at the time of passing any decree or at any time subsequent thereto, on an application to it made for the purpose by either the wife or the husband, as the case may be, order that the respondent shall, while the applicant remains unmarried pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant and the conduct of the parties, and other circumstances of the case, may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.
 - (ii) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under Sub-Section(i), the Court may at the instance of either party, vary, modify or rescind any such order in such manners as it may deem just.
- e) **Delete Section 39** dealing with power to order settlement of wives property for benefit of husband and children.
- f) **Custody of Children:** Substitute the words 'in any proceedings under this Act' in Section 37, 43 & 44 in place of "in suits for dissolution or nullity".

There was need to meet Christian MPs, members of the Raj Sabha and Lok Sabha, to inform them about our position and to request them to support our stand.

When the matter came before the Raj Sabha the members who had been sensitized demanded that the concerns of the community be considered and this be sent to the Parliamentary standing committee for discussion with community representatives.

CBCI, NCCI and JWP were invited to present their case before the parliamentary committee on the 9th February, 2001. At the meeting it was evident that the whole committee was supportive of our demands.

On the 27th August, 2001 the Indian Divorce Amendment Act, 2001 was passed unanimously in the Rajya Sabha and Lok Sabha. It had enlarged the ground for divorce in Section 10 and had, also added 10A Dissolution of marriage by mutual consent. This law received the President's consent in October, 2001.

Another Law has been passed "Marriage Laws (Amendment) Act" 2001 which specially addresses the issue of alimony to be given to the wife. Our proposal for changes in Indian Divorce Act 1869 Section 36 has been brought into this Act.

Our struggles for changes in Christian Marriage Act, 1872, Indian Succession Act 1925 continues. We read in the newspaper that the Govt. was bringing changes in the latter but we have not been able to get hold of what is being proposed apart from the newspaper report. We have also heard that Govt. is considering giving Christians the right to adopt, JWP has already sent its proposals to the Law Ministry for action.

I have started speaking to groups of clergy of various churches to inform them about the changes because they are the ones who now need to know what they must do when a marriage breaks down and when parties want to remarry. I have organised meetings so that women can use the new law to their advantage. Knowledge of the law and its enforcement is as important as changing the laws and JWP's new strategy is to emphasize the equal status of women mentioned in Biblical texts to support the changes that have been made in the personal laws so that the Laws do not remain on paper alone.

Finally I must stress the fact that the Govt. has continuously insisting that changes in personal laws, specially for the minority communities will be done only when a consensus has been reached among them. It took, JWP from 1983 to 1993, ten long years to obtain this consensus position and the Govt. was informed about it. But the Govt. turned a deaf ear. We had to push on and convince the Govt. and it took another nine years, four changes of govt., four sets of Prime Ministers and Law Ministers, to recognise the genuine need of the Christian community, specially Christian women and change the laws, and that too partially, only those portions the Govt. wished to change and not what the Christian community and JWP had proposed as the consensus position. This effort has been carried out by the Govt. in a piecemeal manner as a result the public impression is that Christians have made a big gain though actually many sections have not been considered.

Despite the long wait the community has achieved a better set of family laws and we thank the Govt. for it. But more than that is the fact that there is greater awareness in Christian community about their rights as Indian citizens. Christian women who have been empowered through the process of these 20 years of learning have been able to demand one third representation of positions in their church bodies and the right to be ordained as priests. The Church leadership has accepted both demands in most church bodies and JWP is glad to have been a part of this process.

The government has always recognised the religious leaders as the only voice of the community. This has been a major problem for us. We believe that other responsible members of communities such as prominent legislators, intellectuals, women activists and others should

form an integral part of such consultative processes towards reform of Personal Laws of communities.

Why must Personal Laws be changed only at the behest of religious heads? They cannot alone be identified as the sole representatives of the community interest. Muslim women are also facing similar problems. In this case it is again the clergy that is dictating terms.

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