

Christian Marriage Bill 1994

Whereas it is expedient to consolidate, amend and codify the law relating to marriage of persons professing the Christian religion.

And whereas, though the Christian religion does not advocate divorce and professes the sanctity and indissolubility of all marriages it is expedient in certain cases to suspend or terminate civil effects of marriage, it is hereby enacted as follows:

CHAPTER I

Preliminary

Short Title

1. (i) This Act may be called the Christian Marriage Act 1993.
- (ii) It extends to the whole of India except the States of Jammu & Kashmir and Goa, Daman & Diu.
- (iii) It applies to Christians domiciled in the territories to which this Act extends and also to Christian Indian nationals domiciled outside the said territories.
- (iv) It shall come into force on such date as the Central Government may, by notification in Official Gazette, appoint.

Definitions

2. In this Act, unless the context otherwise requires —
 - (a) "Christian" means a person who professes the Christian religion;
 - (b) "Church" is a denomination of Christians following the Christian religion and having a distinct name and organisation.
 - (c) "Church building" includes any chapel or any other place generally used for public worship;
 - (d) "Desertion" has the meaning assigned to it by explanation (i) of sub section (1) of Section 31.
 - (e) "Diplomatic officer" means an ambassador, envoy, minister, charge d'affairs, high commissioner, commissioner or other diplomatic representative,

or a counsellor or secretary of an embassy legation or high commission;

- (f) "district" in relation to a Marriage Registrar, means the area for which he is appointed as such under this Act;
- (g) "district court" means, in any area for which there is a city civil court, that Court, and in any other area, the principal civil court of original jurisdiction in matrimonial matters and includes any other civil court which may be specified by the State Government by notification in the Official Gazette; as having jurisdiction in respect of the matters dealt with in this Act;
- (h) "Divorce" means the termination of civil effects of marriage.
- (i) "Licensed Minister" means a Christian licensed under Section 6 to solemnise marriage under this Act;
- (j) "Marriage Registrar" means a Marriage Registrar, appointed under Section 7 or Section 8.
- (k) "minister of a Church" means a Minister ordained as per the rules of a Church.
- (l) "prescribed" means prescribed by rules made under this Act;
- (m) "prohibited relationship" — means the relationship between a man and any of the persons mentioned in Part I of the First Schedule and a woman and any of the persons mentioned in Part II of the said schedule.

Explanation 1. — "Relationship includes:-

- (a) relationship by half or uterine blood as well as full blood;
- (b) illegitimate blood relationship as well as legitimate; and all terms of relationship in this Act shall be construed accordingly.

Explanation 2. — "Full Blood and half blood" — Two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives.

Explanation 3. — "Uterine blood" — Two persons are said to be related to each other by uterine blood when they are descended from a common ancestor but by different husbands.

(n) "Rule of a Church"— includes a rite, ceremony or a custom of that church;

(o) "Custom" and "Usage" mean any rule which having been continuously and uniformly observed for a long time has obtained the force of law among Christians in any local area or tribe.

CHAPTER II

Conditions of Christian Marriage

Marriage of Christians solemnised according to Act

3. Every marriage between persons one or both of whom is or are Christians, may be solemnised in accordance with provisions of this Act: except in the case of such *tribal* Christians whose Customs and Practices demand that both be *Christians*.

4. Conditions of Marriage — A marriage may be solemnised under this Act, if the following conditions are fulfilled, namely;

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of marriage, neither party —

(a) is of unsound mind;

(b) is incapable of giving a valid consent to the marriage;

(c) though capable of giving a valid consent has been suffering from mental disorder of such kind or to such an extent as to be unfit for marriage.

(iii) The man has completed the age of twenty one years and the woman the age of eighteen years at the time of the marriage;

(iv) The parties are not within the degree of prohibited relationship, unless the custom or usage or rules of the Church governing each of them permits of a marriage between the two.

CHAPTER III

Solemnisation of Christian Marriages

Persons Authorised to Solemnize Marriages

A. Persons authorised to solemnize marriages

5. Marriage may be solemnised under this Act

(a) by any Minister of a Church, or

(b) by or in the presence of marriage Registrar appointed under this Act; or

(c) by any licensed Minister.

Licensed Minister

6. (a) The State Government, may by notification in the Official Gazette, grant a license to any Christian to solemnise marriage within the whole or any part of the State.

Appointment of Marriage Registrars

Marriage Registrar

7. The State Government may appoint one or more Christians, either by name or as holding any office for the time being to be the marriage Registrars for any district subject to its administration.

8. The Central Government may by notification in the Official Gazette appoint such diplomatic or consular officers as it may think fit to be the Marriage Registrars for any country, place or area abroad.

Senior Marriage Registrar

9. Where there are more Marriage Registrars than one in any district, the State Govt. may appoint one of them to be the Senior Marriage Registrar.

Magistrate when to be Marriage Registrar

10. When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the district shall act as, and be, Marriage Registrar thereof during such absence, illness or temporary vacancy.

B. Marriage before Minister of a Church

Solemnisation of Marriages by Minister of Churches

11. (i) Marriages may be solemnised under this Act by any Minister of a Church according to the rules and regulations of the Church of which he/she is a Minister and in the presence of at least two witnesses.

(ii) No such marriage shall be solemnised,

- (a) if the Minister has reason to believe that the solemnisation of the intended marriage would be contrary to provisions of Section 4, or
- (b) if the marriage is against any rule of the church to which the Minister belongs and
- (c) unless a solemn declaration has been made before the Minister in the form specified in the Fourth Schedule — by both parties to the marriage.

C. Marriage before Licensed Ministers and Marriage Registrar.

Notice of intended marriage to Licensed Minister or Marriage Registrar

12. (1) When a marriage is intended to be solemnised by a licensed Minister or by or in the presence of a Marriage Registrar, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule, —

- (a) to the licensed Minister whom they desire to solemnise the marriage, or
- (b) to the Marriage Registrar of the district in which at least one of the parties to the marriage has resided for a period of thirty days immediately preceding the date on which such notice is given.

- (2) The licensed Minister or the Marriage Registrar as the case may be, shall keep all notices given under Sub-section (1)

with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book.

**Procedure to be followed
by the Licensed Minister
on receipt of Notice**

- 13. Where a notice under Section 12 is given to a Licensed Minister, he shall proceed as follows:

- (a) If the parties intending marriage desired it to be solemnized in a particular Church building and if the Licensed Minister be entitled to officiate therein he shall cause the notice to be published by affixing a copy thereof to some conspicuous part of such Church;
- (b) If it is intended that the marriage shall be solemnised in a private building or in any other place, the licensed Minister, on receiving the notice under Section 12, shall forward a copy thereof to the Marriage Registrar of the District, who shall cause it to be published by affixing it to some conspicuous place in his office.

**Procedure to be
followed by Marriage
Registrar on receipt of
Notice**

- 14. Where the notice under Section 12 is given to a Marriage Registrar, he shall proceed as follows:

- (a) The Marriage Registrar shall cause the notice to be published by affixing a copy thereof to some conspicuous place in his own office;
- (b) If either of the parties intending marriage is not permanently residing within the local limits of the district of the Marriage Registrar, the Marriage Registrar shall also cause a copy of such notice to be transmitted to the Marriage Registrar of the district within whose limits such party is permanently residing and was last residing and that Marriage Registrar shall thereupon cause a copy thereof to be affixed to some conspicuous place in his own office.

**Issue of Certificate
of Notice**

- 15. (i) Any licensed Minister or Marriage Registrar consenting or intending to solemnise any marriage under this Act, shall, on being required to do so by or on behalf of the persons by whom the notice was given, issue under his hand a certificate of notice in the form specified in the Third Schedule.

(ii) No such Certificate of notice shall be issued —

(a) until the expiration of seven days from the date of publication of the notice; and

(b) unless a solemn declaration has been made before the licensed minister or the Marriage Registrar, as the case may be, in the form specified in the Fourth Schedule —

(i) by the bridegroom, and

(ii) by the bride.

Objection to Certificate

16. (a) Any person may, before in the expiration of seven days from the date on which the notice has been published under Section 13 or Section 14, make an objection in writing to the marriage on the ground that it would contravene one or more of the conditions specified in Section 4.

(b) If an objection is made under Sub-section (a) the licensed Minister or the Marriage Registrar shall not issue the certificate under Section 15 unless he has inquired into the objection and is satisfied that it ought not to prevent the issue of the Certificate or the objection is withdrawn by the person making it.

(c) The licensed Minister or the Marriage Registrar shall not take more than *thirty* days from the date of the objection for the purpose of inquiring into the matter of the objection and arriving at a decision.

Application to District Court against decision on objection

17. (a) If the licensed Minister or the Marriage Registrar upholds an objection to an intended marriage and refuses to issue the certificate of notice of marriage, either party to the intended marriage may, within a period of thirty days from the date of such refusal, appeal by petition to the District Court.

(b) The District Court may examine the allegations of the petition in a summary manner and shall decide the matter after giving a reasonable opportunity to the parties to be heard.

(c) The decision of the District Court on such a petition shall be final and binding on the licensed Minister or the Marriage Registrar.

Procedure on receipt of objection by Marriage Registrar abroad

18. Where an objection is made under Section 16 to Marriage Registrar outside India, in respect of an intended marriage outside India and the Marriage Registrar after making such inquiry into the matter as he thinks fit, entertains a doubt in respect thereof, he shall not solemnise the marriage but shall transmit the record to the Central Government, with such statement respecting the matter as he thinks fit to make and the Central Government after making such inquiry into the matter and after obtaining such advice as it thinks fit, shall

give its decision thereon in writing to the Marriage Registrar who shall act in conformity with the decision of the Central Government.

Certificate not to be issued and marriage not to be solemnised in certain cases

19. No licensed Minister or marriage Registrar shall issue a Certificate of notice in respect of any marriage or solemnise any marriage under this Act if he has reason to believe that solemnisation of the intended marriage would be contrary to the provision of Section 4.

Solemnisation of marriage by Licensed Minister or the Marriage Registrar

20. (i) After the issue of the Certificate of notice by the Licensed Minister or by the Marriage Registrar, the Marriage may be solemnised between the persons therein described, according to such form of ceremony as the parties think fit to adopt and in the presence of at least two witness. Provided that the marriage shall not be complete and binding on the parties unless each party pronounces marriage vows as prescribed:

"I, (A.B.) take thee (C.D.) to be my lawful wife (or husband)"

- (ii) The marriage may be solemnised —

- (a) at the office of the Licensed Minister or Marriage Registrar or
- (b) at such other place in the same district and within a reasonable distance from his office, as the parties may desire, and upon such condition and payment of such additional fee as may be prescribed.

Certificate void if marriage not solemnised within six months

21. If a marriage is not solemnised within six months after the date of the certificate issued by a Licensed Minister or the Marriage Registrar under Section 15, such certificate and proceedings, if any, thereon shall be void, and no person shall proceed to solemnise the said marriage until new notice is given and the certificate thereof issued in the manner provided in this chapter.

D. Registration of Marriage

Certificate of marriage

22. (a) When the Marriage has been solemnised, the Minister of a Church or Licensed Minister or the Marriage Registrar, as the case may be, shall enter a certificate thereof in the form specified in the Fifth Schedule or any other form prescribed by the rules of the Church in a book to be kept by him for that purpose and to be called the Marriage Certificate Book, and such certificate shall be signed by the parties to the marriage and the witness and the Minister/Licensed Minister/Registrar.
- (b) On a certificate being entered in the Marriage Certificate Book by the Minister of a Church or the licensed Minister or the Marriage Registrar, the certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnised.

23. Every Minister of a Church, Licensed Minister or Marriage Registrar shall send, at such intervals and in such form as may be prescribed, a true copy of all entries made by him in the marriage certificate book since the last of such intervals —

- (a) in respect of the territories to which this Act applies, to the Registrar General of Births, Deaths and Marriage Registration Act 1886 or any other corresponding law in force in such territories; and
- (b) in relation to any territory to which this Act does not apply, such officer as the Central Government may specify in this behalf.

CHAPTER IV

Judicial Separation

24. *Judicial Separation* :—

- (1) Either party to a marriage, whether solemnised before or after the commencement of this Act, may present a petition for a decree of judicial separation on any of the grounds specified in Section 31 a to e, 3a - 3b.
- (2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent.

25. Separated wife/husband be deemed spinster/bachelor with respect to after acquired property:

- (1) In every case of a judicial separation under this Act, the wife/husband shall from the date of the judgement and while the separation continues be considered as unmarried with respect to property of every description which she/he may acquire or which may come to or devolve upon her/him.
- (2) Such property may be disposed by her/him in all respects as an, unmarried woman/man and on her/his demise the same shall, in case she/he dies, intestate, go as the same would have gone if her/his husband/wife had been then dead. Provided that if any such wife/husband again cohabits with his/her wife/husband, all such property as she/he may be entitled to when such co-habitation takes place shall be held to her/his separate use subject however to any agreement in writing made between the parties whilst separate.

26. Separated wife/husband deemed Spinster/Bachelor for purposes of contract and suing:

In every case of judicial separation under this Act, the wife/husband shall while so separated, be considered as an unmarried woman/man for the purposes of contract and wrongs and injuries and suing and being sued in any civil proceeding and her husband/his wife shall not be liable in respect of any contract, act or costs entered into, done, omitted or incurred by her/him during the separation:

Provided that where, upon any such judicial separation, alimony or maintenance has been decreed or ordered to be paid to the wife/husband and the same is not duly paid by the husband/wife, he/she shall be liable for necessities supplied for her/his use.

Provided also that nothing shall prevent the wife/husband from acting jointly at any time during such separation, in exercise of any joint power given to them.

27. The Court may, on the application by petition of either party and on being satisfied of the truth of the statement made in such petition, rescind the decree where the parties have expressed a desire to come together and to resume cohabitation or where, for any other reason, the court considers it just and reasonable to rescind the decree.

CHAPTER V

Nullity of Marriages

Nullity Of Marriages

28. Any marriage solemnised, whether before or after the commencement of this Act, shall be null and void and may, on a petition presented for the purpose, be so declared by a decree of nullity, if it contravenes the condition specified in Clause [i], [ii] & [iv] of Section 4.

Voidable Marriages

29. Any marriage solemnised, whether before or after the commencement of this Act, shall be *voidable* and may be annulled by a decree of nullity, on any of the following grounds, namely:

- [1] that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;
- [2] that the marriage has not been consummated owing to the impotence or willful refusal of the respondent;
- [3] that either party was a lunatic or idiot at the time of marriage;
- [4] marriage which has been declared null and void according to the rules and regulations of Church;
- [5] consent obtained by fraud/force.

Provided that no petition for annulling a marriage —

- a) On the ground specified in Clause (3) above shall be entertained unless the Court is satisfied : —

- [i] that the petitioner was at the time of the marriage ignorant of the facts alleged; or
 - [ii] the proceedings have been instituted in the case of marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriage solemnised after such commencement, within one year of the marriage; and
 - [iii] that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree.
- b) On the Ground specified in Clause (5) above shall be entertained, if:-
- [i] the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or
 - [ii] the petitioner has with his or her full consent, lived with the other party to the marriage as husband or wife, after the force had ceased to operate or, as the case may be, the fraud had been discovered.

30. *Legitimacy of Children of void/voidable marriages :*

- [i] Notwithstanding that a marriage is null and void under Section 28, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of this Act and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act. Such child shall be entitled to inherit the property of his/her parents.
- [ii] Where a decree of nullity is granted in respect of a voidable marriage under Section 29, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree, the marriage had been dissolved instead of being annulled, shall be deemed to be their legitimate child, notwithstanding the decree of nullity.

CHAPTER VI

Grounds of Divorce

31. 1. Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife be dissolved by a decree of divorce on the ground that the other party —

- [a] has, after the solemnisation of the marriage, committed *adultery* ;
- [b] has, after the solemnisation of the marriage treated the petitioner with cruelty either physical or mental; or
- [c] has *deserted* the petitioner for a continuous period of not less than *two years* immediately preceding the presentation of the petition; or
- [d] has ceased to be Christian by *conversion* to another religion; or
- [e] has been incurably of unsound mind or disorder, or has been suffering continuously or intermittently from mental or psychopathic disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent; or
- [f] has *not been heard* of as being alive for a period of seven years or more by those persons, who naturally would have heard of it, had that party been alive.

Explanation : In this sub-section —

- (i) "Desertion" means the withdrawal from cohabitation with the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage;
 - (ii) "Wilful neglect" means the deliberate and intentional failure to perform marital obligations indicative of a total repudiation of the obligations of marriage.
 - (iii) "mental disorder" means mental illness which cannot be cured;
 - (iv) "psychopathic disorder" means a persistent disorder or disability, aggressive or seriously irresponsible conduct on the part of the other party [whether or not it includes subnormality of intelligence and whether or not it requires or is susceptible to medical treatment].
2. Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of marriage by a decree of divorce on the ground that there has not been resumption of co-habitation as between the parties to the marriage for a period of one year or upward after the passing of a decree for judicial separation in proceedings to which they were parties; or

3. Any spouse may also present a petition for the dissolution of her/his marriage by a decree of divorce on the ground —

[a] that the respondent has, since the solemnisation of the marriage, been guilty of rape, sodomy, lesbianism or bestiality; or

[b] that in a suit, or in a proceeding under Section 125 of the Code of Criminal Procedure, 1973, a decree or order, as the case may be, has been passed against the Respondent awarding maintenance to the Petitioner notwithstanding that he/she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upward; or

**Alternate relief in
divorce proceedings**

32. In any proceedings under this Act, on a petition for dissolution of marriage by a decree of divorce in so far as petition is founded on any of the grounds mentioned in Sub Section (1) of Section 31 Except Clause (d) thereof, the Court may, if it considers it just so to do, paying regard to the circumstances of the case, after sufficient counselling has been done, pass instead a decree for judicial separation.

**Dissolution of
Broken Marriages**

33. *Dissolution of Broken Marriages:*

(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.

34. *No petition for divorce to be presented within specified period of marriage:*

(i) Notwithstanding anything contained in this Act, it shall not be competent for the Court to entertain any petition for dissolution of marriage by a decree of divorce,

unless at the date of the presentation of the petition, one year has elapsed since the date of marriage.

Provided that the Court may upon application made to it in accordance with the rules as may be made by the High Court in that behalf, allow a petition to be presented before one year has elapsed since the date of marriage on the ground that the case is one of exceptional depravity on the part of the respondent, but if it appears to the Court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the Court may, if it pronounces the decree, do so subject to the condition that the decree shall not have effect until after the expiry of one year, from the date of marriage or may dismiss the petition without prejudice to any petition which may be brought after the expiration of the said one year upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

- (ii) In disposing of any application under this section for leave to present a petition for divorce before the expiration of one year from the date of the marriage, the Court shall have regard to the interest of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said one year.

35. *Remarriage of divorced persons*

When a marriage has been dissolved by a decree of divorce and —

- (a) either there is no right of appeal against the decree; or
- (b) if there is such a right to appeal, the time of appealing has expired without an appeal being presented; or
- (c) an appeal has been presented but has been dismissed, but no sooner, it shall be lawful for either party to the marriage to marry again.

Provided that no such remarriage shall be solemnised within a period of six months from the date of the decree on any order in appeal as the case may be.

CHAPTER VII

Jurisdiction and Procedure

- 36. Nothing contained in this Act shall authorise any Court to grant any relief under the Chapter 4 to 6 of this Act, except where —

- (a) One/both the parties to the marriage are *Christians* at the time of the presentation of the petition; or

- (b) the marriage was solemnised under any enactment repealed hereby, and at least one of the parties is a Christian at the time of the presentation of the petition.

37. Nothing contained in this Act shall authorise any Court:-

- (a) to make any decree of dissolution of marriage except where —
 - (i) at least one of the parties to the marriage is domiciled or residing in India at the time of the presentation of the petition; or
 - (ii) the marriage was solemnised under this Act or under any enactment repealed hereby.
- (b) to grant any other relief under Chapter 4 to 6 of this Act except where the petitioner is residing in India at time of the presentation of the petition.

**Court to which
petition to be made**

- 38. (i) Every petition other than those under Chapter 6 shall be presented to the District Court or Family Court within the local limits of whose ordinary original civil jurisdiction the Licensed Minister discharges his functions, or the office of the Marriage Registrar is situated as the case may be.
- (ii) Every petition other than those under Chapter 6 shall be presented to the District Court or Family Court within the local limits of whose ordinary original civil jurisdiction —
 - (a) the respondent, at the time of the presentation of the petition, resides; or
 - (b) the marriage was solemnised; or
 - (c) the parties to the marriage last resided together;
 - (d) the petitioner is residing at the time of the presentation of the petition, in case where the respondent is at the time permanently residing outside India or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he/she was alive.

**Contents and verification
of petition**

- 39. (i) Every petition presented under Chapter 6 of this Act, shall state as distinctly as the nature of the case permits, the facts on which the claim to relief is founded.
- (ii) The statements contained in every petition under Chapter 6 of this Act shall be verified by the petitioner or some other competent person, in the manner required by the law for the verification of plaints and may, at the hearing, be referred to as evidence.

40. Decree in proceedings :

[i] In any proceeding under this Act, whether defended or not, if the Court is satisfied that :-

[a] any of the grounds for granting relief exists and petitioner, except in case where the relief is sought by him/her on the ground specified in Sub-clause (a), (b) or (c) of Clause [ii] of Section 4 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief; and

[b] when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence; and

[c] there is no other legal ground why relief should not be granted then, and in such a case, but not otherwise, the Court shall decree such relief accordingly;

[ii] Before proceeding to grant any relief under this Act, it shall be the duty of the Court in the first instance, in every case, where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:-

Provided that nothing contained in this sub-section shall apply to any proceedings wherein relief is sought on any of the grounds specified in Clauses [d], [e] and [f] of sub-section (1) of Section 31.

[iii] For the purpose of aiding the Court in bringing about such reconciliation, the Court may if the parties so desire or if the Court thinks it just and proper so to do, adjourn the proceedings for a reasonable period and refer the matter to the head of the Church to which either or both the parties belong with directions to report to the Court as to whether reconciliation can be, and has been effected and the Court shall, in disposing of the proceeding, have due regard to the report.

[iv] In every case where a marriage is dissolved by a decree of divorce, the Court passing the decree shall give a copy thereof to each of the parties free of cost.

Adulterer or Adulteress to be a correspondent

41. (i) On a petition for divorce or judicial separation presented on the ground of adultery, the petitioner shall make the alleged adulterer or adulteress a co-respondent, unless the petitioner is excused by the Court from so doing on any of the following grounds namely :-

- (a) that the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed;
 - (b) that the name of the alleged adulterer or adulteress is unknown to the petitioner although the petitioner has made due efforts to discover it;
 - (c) that the alleged adulterer or adulteress is dead;
 - (d) any other ground which the Court may regard as sufficient in the circumstance of the case.
- (ii) The provisions of Sub-section (i) shall so far as may be, apply in relation to the answer of a respondent praying for divorce or judicial separation on the ground of adultery, as they apply in relation to a petition for divorce or judicial separation presented on that ground.

42. Relief for respondent in divorce and other Proceedings:

In any proceedings for divorce or judicial separation the respondent may not only oppose the relief sought on the ground of the petitioner's adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on those grounds; and if the petitioner's adultery, cruelty or desertion is proved, the Court may give to the respondent any relief under this Act to which he or she would have been entitled if, he or she had presented a petition seeking such relief on that ground.

Application of Code of Civil Procedure

43. Subject to the other provisions contained in the Act, and subject to such relief as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

Maintenance pendents lite & expenses proceedings

44. Where in any proceedings under Chapter 4 to 6 of this Act, on an application filed by either the wife or the husband, it appears to the court that the applicant has not sufficient means to pay for the applicants support, and for the necessary expenses of the proceedings, it may order the respondent to pay to the applicant for her/his support and reasonable expenses of the litigation.

Permanent alimony and maintenance

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.

Disposal of property

- 46. (i) In any proceeding under chapter 4 to 6 of this Act, the Court may make such provisions in the decree as it deems just and proper for disposal of any property presented, at or about time of marriage, which may belong jointly to both the husband and the wife, or any property of one spouse in the possession of the other spouse.
- (ii) All other properties acquired by the spouses during the subsistence of their marriage shall be deemed to have been jointly acquired and owned.

Custody of Children

- 47. In any proceeding under Chapter 4 to 6 of this Act, the Court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children consistently with their wishes wherever possible, & may after the decree, upon application by petition for the purpose make, from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceedings for obtaining such decree were still pending, and the Court may also from time to time revoke, suspend or vary such orders and provisions previously made on a petition made by one of the parties.

Proceedings may be in camera and may not be published

- 48. A proceeding before a Court under this Act shall be conducted *in camera* if either party so desire or if the Court so thinks fit to do, and it shall not be lawful for any person to print or publish any matter relating to proceeding so held *in camera* except with the previous permission of the Court.

Exception — The provisions of this section do not apply to the publication of a judgement of High Court or the Supreme Court.

49. Appeals from decrees and orders

- (1) All decrees made by the Court in any proceeding under this Act shall subject to the provisions of Sub-section (i) be appealable as decrees of the Court made in the exercise of its original civil jurisdiction, and every such appeals shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in the exercise of its original civil jurisdiction.

**Enforcement of
decrees and orders**

- (2) Orders made by the Court in any proceeding under this Act, under Section 46 or Section 48 shall, subject to the provisions of Sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in exercise of its original civil jurisdiction.
- (3) There shall be no appeal under this section on the subject of costs, only.
- (4) Every appeal under this Section shall be preferred within a period of thirty days from the date of the decree or order.

50. All decrees and orders made by the Court in any proceeding under this Act shall be enforced in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction for the time being are enforced.

51. *Expeditious trial :*

- (1) The trial of a petition under this Act shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.
- (2) Every petition under this Act shall be tried as expeditiously as possible; and an endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition of the respondent.
- (3) Every appeal under this Act shall be heard as expeditiously as possible, and an endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.

52. *Documentary evidence:*

Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence in any proceeding at the trial of a petition under this Act merely on the ground that it is not duly stamped or registered.

53. *Mode of taking evidence:*

The witnesses in all proceedings before the Court where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness and shall be examined and may be cross examined and re-examined like any other witnesses.

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit. However

the deponent in every such affidavit shall on the application of the opposite party, or by direction of the Court, be subject to cross-examination or on behalf of the opposite party orally, and after such cross-examination may be re-examined.

CHAPTER VIII

Penalties

- | | |
|--|--|
| Punishment of bigamy | 54. Every person whose marriage is solemnised under this Act and who, during the lifetime of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in Section 494 and Section 495 of the Indian Penal Code for the offence of marrying again during the lifetime of the husband or wife, and the marriage so contracted shall be void. |
| Punishment for contravention of certain other conditions of marriage | 55. Every person who contracts a marriage in contravention of the condition specified in Clause (iii) or Clause (iv) of Section 4, shall be punishable with simple imprisonment for a term which may extend to one month, or with fine, which may extend to one thousand rupees, or with both. |
| Penalty for false oath, declaration notice or certificate for procuring marriage | 56. Whoever, for the purpose of procuring a marriage or license of marriage, intentionally :—

(a) Where an oath or declaration is required by this Act or by any Church according to the rules of which marriage is intending to be solemnised, makes a false oath or declaration; or

(b) Where a notice or certificate is required by this Act, signs a false notice or certificate;

shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine. |
| Solemnising marriage without due authority | 57. Whoever not being authorised by Section 5 to solemnise a marriage, solemnises or professes to solemnise under this Act a marriage between persons one of whom is a <i>Christian</i> , shall be punishable with imprisonment for a term which may extend to <i>ten years</i> , and shall also be liable to fine which may extend to two thousand rupees. |
| Penalty for wrongful action of Marriage Registrar or Minister, etc | 58. Any Licensed Minister or Marriage Registrar being authorised under this Act to solemnise marriage, knowingly and wilfully —

a) solemnises such marriage

i) without publishing a notice regarding such marriage as required by any provision of this Act; or |

- ii) in contravention of any other provision contained in this Act; or
 - b) issues any certificate in contravention of any provision contained in this Act, shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees or with both.
- Destroying or falsifying Marriage Certificate Books** 59. Whoever, by himself or another, wilfully destroys or injures any Marriage Certificate Book, maintained under this Act, or any part thereof or any authenticated extract therefrom or falsely makes or counterfeits any part of such book, or wilfully inserts any false entry in any such book or authenticated extract, thereof, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine which may extend to two thousand rupees.
- Limitation for prosecution** 60. No prosecution for any offence punishable under Section 53, Section 54, Section 56, Section 57, Section 58, or Section 59 shall be instituted after the expiry of two years from the date on which the offence is committed.

CHAPTER IX

Miscellaneous

- Liability for frivolous objections** 61. (i) Where any person makes an objection against the issue of any certificate of notice of marriage and Marriage Registrar under Section 16, or the District Court under Section 17, declares that the objection is not reasonable and has not been made in good faith, the Marriage Registrar or the District Court, as the case may be, may, after giving such person a reasonable opportunity of being heard, impose costs against such person to be paid to the parties to the intended marriage.
- (ii) Any person aggrieved by an order of the Marriage Registrar or the District Court under Sub-section (i) may, within a period of thirty days from the date of the order, appeal to the District Court or the High Court, as the case may be.
- (iii) Subject to any order passed in appeal under Sub-section (ii), the order of the Marriage Registrar or the District Court under Sub-section (i) shall be final.
- (iv) Any order of costs made under Sub-section (i) may be executed in the same manner as a decree passed by the District Court within the local limits of whose jurisdiction the office of the Marriage Registrar is situated.
- Savings regarding irregularities** 62. Whenever any marriage has been solemnised under this Act it shall not be void merely on account of any irregularity in respect of any of the following matters namely:

- a) any statement made in regard to the dwelling place of the persons married;
- b) the notice of the marriage;
- c) the certificate of the notice of the marriage or translation thereof;
- d) the registration of the marriage.

Correction of errors

63. (i) Any person authorised to solemnise a marriage under this Act, who discovers any error in the form or substance of any entry in the Marriage Certificate Book may, within one month next after the discovery of such error, in the presence of the persons married or, in case of their death or absence, in the presence of two other witnesses, correct the error by entry in the margin, without any alteration of the original entry and shall sign the marginal entry and add thereto the date of such correction.
- (ii) Every correction made under this section shall be attested by the witnesses in whose presence it was made.
- (iii) Where a copy of any entry has already been sent under Section 23 to the Registrar-General, such person shall make and send in like manner a separate certificate of the original erroneous entry and of the marginal corrections therein made.

Marriage Registrars to be deemed to be public servants

64. Every Marriage Registrar shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

Inspection of Marriage Notice Book

65. The marriage Notice Book, kept under this Act, shall be open for inspection at all reasonable time, by any authorised person.

Inspection of Marriage Certificate Book

66. (i) The Marriage Certificate Book, kept under this Act, shall at all reasonable times be open for inspection by authorised persons and shall be admissible as evidence of the statements contained therein.
- (ii) Certified extracts from the Marriage Certificate Book shall, on application, be given *by the person who solemnised the marriage* or the other person having the custody for the time being of the Marriage Certificate Book, to any person who applies for the same.
- (iii) Inspection of the Marriage Certificate Book under Sub-section (i) and the grant of certified extracts under Sub-section (ii) shall be—
- a) without fee if applied for by parties to the marriage at or about the time of marriage.

- b) Subject to the payment of the prescribed fee in other cases.

Certified copy to be evidence

67. Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage Certificate Book, of any entry of a marriage in such book, shall be received in evidence without production or proof of the original.

Language of notice and declarations

68. (i) Any notice to be given or declaration to be made by any person in respect of an intended marriage under this Act may be given or made in a language commonly in use in the State or the part of State in which the notice is given or declaration made or in English.
- (ii) Every person solemnising a marriage under this Act shall satisfy himself that the parties to the marriage have understood the contents of the notice given and the declaration made by each of them, and (where a certificate of notice of marriage is required to be issued under This Act) of the certificate of notice of marriage issued for the marriage.

Minister of recognised Churches not compelled to solemnise

69. No Minister of a Church shall be compelled to solemnise any marriage, the solemnisation of which would be contrary to rules of the Church of which he/she is a Minister.

Powers of Marriage Registrars in respect of inquiries

70. For the purpose of any inquiry under this Act, the Marriage Registrar shall have all the power vested in civil Court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely :
- a) summoning and enforcing the attendance of witnesses and examining them on oath;
 - b) compelling the production of documents;
 - c) reception of evidence on affidavits; and
 - d) issuing commissions for the examinations of witnesses; and any proceeding before the Marriage Registrar shall be deemed to be a judicial proceeding within the meaning of Section of 193 of the Indian Penal Code.

Explanation:: for the purpose of enforcing the attendance of any person to give evidence, the local limits of the jurisdiction of the Marriage Registrar shall be local limits of his district.

71. [1] The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- [2] In particular, and without prejudice to the generality of the forgoing power, such rules may provide for all or any of the following matters, namely :

- a] the duties and powers of Marriage Registrar and the areas in which they may exercise jurisdiction;
- b] the manner in which a Marriage Registrar may hold inquiries under this Act, and the procedure thereof;
- c] the form and manner in which any books required by or under this Act shall be maintained;
- d] the fees that may be levied for the performance of any duty imposed upon any person under this Act;
- e] the conditions under which licenses to solemnise marriages may be issued by the State Government, and the circumstances under which they may be revoked;
- f] the surrender of such licenses on the expiry thereof by revocation or otherwise;
- g] the form in which, and the intervals within which copies of entries in the Marriage Certificate Book shall be sent to the Registrar-General;
- h] any other matter which may be, or requires to be prescribed;

[3] Every rule made under this Section shall be laid, as soon as may be after it is made, before each house of Parliament, while it is in session, for a total period of thirty days, which may be comprised, in one session or in two successive sessions, and if before the expiry of the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule shall thereafter have effect only in such modified form or be of no effect as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Rules of High Court

72. The High Court, by notification in the Official Gazette, may make such rules consistent with the provisions contained in this Act as it may consider expedient for the purpose of regulating the procedure to be followed in petitions under Section 17; and for the purpose of carrying into effect the provisions of Chapter 4 to 7 of this Act.

Savings regarding Marriages so solemnised before the Act

73. A marriage solemnised before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid merely by reason of any provision contained in this Act.

Repeal

74. [i] The following laws are hereby repealed;

- [a] the Indian Divorce Act, 1869;
- [b] the Indian Christian Marriage Act, 1872;

[c] the Indian and Colonial Divorce Jurisdiction Act, 1926;

[d] the Indian and Colonial Divorce Jurisdiction Act, 1940;

[e] any enactment corresponding to the Indian Christian Marriage Act, 1872 in force in the territories which immediately before the first day of November 1956 were comprised in the State of Travancore, Cochin and Manipur.

[ii] Notwithstanding such Repeal, —

[a] all marriages duly solemnised under the Indian Christian Marriage Act, 1872, or any such corresponding enactment, shall be deemed to have been solemnised under this Act;

[b] all suits and proceedings in causes and matters matrimonial which, when this Act comes into force, are pending in any Court shall be deemed to be causes and matters under the provisions of this Act and be governed by this Act and any proceeding under Section 17 and 20 of the Indian Divorce Act, 1869 pending in any High Court shall abate and the decree of the District Court shall become final.

[c] all suits and proceedings in causes and matters matrimonial which, when this Act comes into force, are pending in any Court under the Indian Divorce Act, 1869, or under the Indian and Colonial Divorce Jurisdiction Act, 1926, or under the Indian and Colonial Divorce Jurisdiction Act, 1940, or under the Indian Christian Marriage Act, 1872, or any such corresponding enactment, shall be dealt with and decided by such Court as if this Act had not been passed;

[iii] The provisions of Sub-Section [ii] shall be without prejudice to the provisions contained in section 6 of the General Causes Act, 1897 which shall also apply to the repeal of the Indian and Colonial Divorce Jurisdiction Act, 1926, the Indian and Colonial Divorce Jurisdiction Act, 1940, and such corresponding enactments.

75. Nothing in this Act shall be deemed to permit a marriage that the rules of the Church applicable to either of the parties, specifically forbid.

THE FIRST SCHEDULE

Prohibited Relationships

[See section 3 (m)]

PART I

1. Mother
2. Father's widow (step-mother)
3. Mother's mother
4. Mother's father's widow (step-grand-mother)
5. Father's mother
6. Father's father's widow (step-grand-mother)
7. Daughter
8. Son's widow
9. Daughter's daughter
10. Daughter's son's widow
11. Son's daughter
12. Son's son's widow
13. Sister
14. Wife's daughter (step-daughter)
15. Wife's mother
16. Wife's son's daughter (step son's daughter)
17. Wife's daughter's daughter (step daughter's daughter)
18. Wife's father's mother
19. Wife's mother's mother

Explanation:— For the purposes of this Part, the expression "Widow" includes a divorced wife, and "daughter" includes also adopted or illegitimate daughter.

PART II

20. Father
21. Mother's husband (step-father)
22. Father's father
23. Father's mother's husband (step-grand-father)
24. Mother's father
25. Mother's mother's husband (step-grand-father)
26. Son
27. Daughter's husband
28. Son's son
29. Son's daughter's husband
30. Daughter's son
31. Daughter's daughter's husband
32. Brother
33. Husband's father
34. Husband's son (step-son)
35. Husband's son's son (step son's son)
36. husband's daughter's son (step-daughters's son)
37. Husband's father's father
38. Husband's mother's father

Explanation:— For the purposes of this Part, the expression "husband" includes a divorced husband, and "son" includes also adopted or illegitimate son.

THE SECOND SCHEDULE

[See section 12 (i)]

Form of Notice of Intended Marriage

To

The [Licensed Minister¹] [Marriage Registrar¹] for

.....

We hereby give you notice that a marriage under the Christian Marriage Act,
..... is intended to be solemnized between us within three
calendar months from the date hereof.

Name	Occupation	Date of Birth	Dwelling Place	Premanent dwelling place, if present dwelling place not permanent	Length of residence and last place of residence	Place where marriage is to be solemnized
------	------------	---------------	----------------	---	---	--

A. B. *Unmarried*
 Widower
 Divorcee

C. D. *Unmarried*
 Widow
 Divorce

1. Strike off what is inapplicable.

Witness our hands, this

day of

THE THIRD SCHEDULE

[See section 15 (i)]

Form of Certificate of Notice

I do hereby certify that, on the day of notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of both the parties that is to say, —

Name	Condition	Occupation	Date of Birth	Dwelling Place	Permanent dwelling place, if present dwelling place not permanent	Length of residence and last place of residence	Place where marriage is to be solemnized
------	-----------	------------	---------------	----------------	---	---	--

A. B. *Unmarried*
 Widower
 Divorcee

C. D. *Unmarried*
 Widowe
 Divorcee

and that the declarationrequired by section 15[ii] [b] of the Christian Marriage Act has been duly made by the said

Date of notice entered

Date of certificate given

Witness my hands this day of

[Sd.]

This certificate will be void unless the marriage is solemnised on or before the day of

Licensed Minister¹
Marriage Registrar¹

1. Strike off what is inapplicable.

THE FOURTH SCHEDULE

[See Section 15 (ii) (b)]

Declaration to be made by the Bridegroom

I, A. B, hereby declare as follows:—

1. I am at the present time not married [or a widower or a divorcee, as the case may be].
2. I have completed twenty one years of age.
3. I fulfil all other conditions of marriage under Section 4 of the Act.
4. I am aware that, if any statement in this declaration is false, I am liable to imprisonment and also to fine.

(sd.) A. B. [the Bridegroom]

Declaration to be made by the Bride

I, C, D, hereby declare as follows:—

1. I am at the present time unmarried [or a widow or a divorcee, as the case may be].
2. I have completed eighteen years of age.
3. I fulfil all other conditions of marriage under Section 4 of the Act.
4. I am aware that, if any statement in this declaration is false, I am liable to imprisonment and also to fine.

(sd.) C. D. [the Bride]

THE FIFTH SCHEDULE

[See Section 22 (a)]

Form of Certificate of Marriage

[Schs. III and IV Christian Marriage Act]

I, E. F., hereby certify that on the day of
19..... A. B. and C. D.¹ appeared before me and that the declaration required by section
..... of the Christian Marriage Act, 1993 was duly made, and that a marriage
under that Act was solemnised between them in my presence and in the presence of two
witnesses who have signed hereunder.

[Sd.] E. F.

Minister of a recognised Church

Licensed Minister

Marriage Registrar

[Sd] A. B. [Bridegroom]

[Sd.] C. D. [Bride]

[Sd.] G. H.

[Sd.] I. J. two witnesses

Dated the day of
19.....

1. Herein give particulars of the parties.

THE CHRISTIAN ADOPTIONS AND MAINTENANCE BILL 1994

A bill

to provide for adoption for persons professing the Christian religion
Be it enacted by Parliament in the forty fourth year of the Republic
of India as follows : -

CHAPTER I

PRELIMINARY

1. SHORT TITLE AND EXTENT:

[1] This Act may be called the Christian Adoptions and Maintenance Act, 1993.

[2] It extends to the whole of India, except the States of Jammu & Kashmir and Goa, Daman & Diu.

2. **APPLICATION OF THE ACT:** This Act applies to all Christians domiciled in the territories to which this Act extends.

3. **DEFINITIONS:** In this Act, unless the context otherwise requires:—

[a] "Child" means a person who has not completed fifteen years of age.

[b] "Christian" means a person who professes the Christian Religion.

[c] "fit person" or "fit institution" means any person or institution found fit by the Juvenile Welfare Board, on the recommendations of the local Church or Social Welfare Organisation or Social Worker, to receive and take care of an adopted child removed from the custody of the adoptive parent.

CHAPTER II

ADOPTION BY CHRISTIANS

1. RIGHT TO ADOPT:

[1] No adoption shall be made by a Christian except in accordance with the provisions contained in this chapter, and any adoption made in contravention of the said provisions shall be void.

[2] An adoption which is void shall neither create any right in the adoptive family in favour of the person adopted which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

5. REQUISITES OF A VALID ADOPTION: No adoption shall be valid unless:

- [i] the person adopting has the capacity and the right, to take in adoption;
- [ii] the person giving in adoption has the capacity and the right to do so;
- [iii] the person adopted is capable of being taken in adoption;
- [iv] the adoption is made in compliance with the other conditions mentioned in this Chapter.

6. CAPACITY OF A MALE CHRISTIAN TO TAKE IN ADOPTION:

Any male Christian who is of sound mind and is above 21 years of age has the capacity to take a son or daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Christian or has been declared by a court of competent jurisdiction to be judicially separated or to be of unsound mind.

7. **CAPACITY OF FEMALE CHRISTIAN TO TAKE IN ADOPTION:** Any female Christian who is of sound mind and is above 21 years of age has the capacity to take a son or daughter in adoption:

Provided that, if she has a husband living, she shall not adopt except with the consent of her husband unless the husband has completely and finally renounced the world or has ceased to be a Christian or has been declared by a court of competent jurisdiction to be judicially separated or to be of unsound mind.

8. **PERSON CAPABLE OF GIVING IN ADOPTION:**

- [1] No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.
- [2] Subject to the provisions of section 9, the father/mother if alive, shall have the right to give in adoption but he/she shall not exercise such right save with the consent of the mother/father unless the mother/father has completely and finally renounced the world or has ceased to be a Christian or has been declared judicially separated or to be of unsound mind.
- [3] Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind, or where parentage of the child is not known, the guardian of the child may, with the prior permission of the court, give the child in adoption to any person, including the guardian himself.
- [4] Before granting permission to a guardian under sub-section [3], the court shall be satisfied:—
 - [a] that the adoption will be for the welfare of the child, due consideration for this purpose being given to the wishes of the child, having regard to the age and understanding of the child; and
 - [b] that the applicant for permission has not received or agreed to receive, that no person has made or given or agreed to make or

give to the applicant, any payment or other reward in consideration of the adoption.

9. **EXPLANATION:** For the purpose of this section.

[i] the expressions "father" and "mother" do not include an adoptive father and an adoptive mother.

[ii] "guardian" means a person having the care of the person of a child or of both his person and property and includes:—

[a] a guardian appointed by the will of the Child's father or mother and

[b] a guardian appointed by a Court.

[iii] 'Court' means in the City the Civil Court exercising the powers of the District Court or the District Court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

10. **PERSONS WHO MAY BE ADOPTED:** No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely;

[i] he or she has not already been adopted;

[ii] he or she has not been married;

[iii] he or she has not completed the age of fifteen years.

11. **OTHER CONDITIONS FOR A VALID ADOPTION:** In every adoption the following conditions must be complied with:

[i] if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty one years older than the person to be adopted;

[ii] if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty one years older than the person to be adopted;

- [iii] the same child may not be adopted simultaneously by two or more persons.
- [iv] the intention to transfer the child from the family of its birth or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption is clearly expressed by an agreement executed by the parent/guardian giving and the parent taking in adoption and duly registered.

CHAPTER III

CONSEQUENCES OF ADOPTION

12. **EFFECT OF ADOPTION:** A Child adopted under this Act shall be deemed to the child of his or her adoptive father and mother for all purposes with effect from the date of adoption and shall from such date bear the family name of the adoptive parents and all the ties of the child in the family of his or her birth be severed and replaced by those created by the adoption in the adoptive family,

Provided that the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth.

13. **DETERMINATION OF ADOPTIVE FATHER OR MOTHER IN CERTAIN CASES:**

- [1] Where a Christian who has a spouse living and with whom he or she has not been judicially separated, adopts a child, that spouse shall be deemed to be the adoptive mother or adoptive father, as the case may be of the child.
- [2] Where a widower or bachelor adopts a child, any wife whom he subsequently marries shall be deemed to be the adoptive mother of the adopted child.

- [3] Where a widow or an unmarried woman adopts a child any husband whom she subsequently marries shall be deemed to be the adoptive father of the adopted child.

14. CANCELLATION/RENUNCIATION NOT PERMITTED: No adoption which has been validly made under this Act can be cancelled by the adoptive father or mother or any person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.

15. PROTECTION OF ADOPTED CHILD:

[1] If in the opinion of a police officer, social worker, social organisation or representative of a local Church, any adopted child is treated with cruelty or sexually exploited by the adoptive parent or parents, such police officer, social worker or representative of a local Church may make a report to the Juvenile Welfare Board constituted under the Juvenile Justice Act, 1986 for initiating an inquiry regarding the conditions of the child.

[2] On receipt of a report under Sub-section [1], the Board may call upon the parent to produce the child before it and to show cause why the child should not be removed from the custody of such parent and placed in the care of a fit person or institution.

16. INQUIRY BY BOARD:

[1] When an adopted child alleged to have been cruelly treated or sexually exploited by the adoptive parent is produced before the Board, the Board may examine the Police Officer, social worker, organisation or representative of the local Church who had made the report and record the substance of such examination and hold an inquiry and thereafter make such orders as it may deem fit.

- [2] Where the Board is satisfied on inquiry that the child has been treated cruelly or sexually exploited by the adoptive parent, may make an order directing the child to be removed from the custody of such adoptive parent and placing the child in the care of a fit person or institution, keeping in view the status and conditions of the adoptive parent for such period as the Board deems fit.

Provided that in the event the child is ordered to be removed from the custody of the adoptive parent, Board shall pass suitable orders for the maintenance of the child to be paid by the adoptive parent.

- [3] During the pendency of any inquiry regarding an adopted child, the Board may make such provisions for the custody of the adopted child as may be necessary.

CHAPTER IV

MAINTENANCE

17. **MAINTENANCE OF SPOUSE:** Subject to the provisions of this chapter a Christian spouse, whether married before or after the commencement of this Act, shall be entitled to be maintained by the other spouse during his or her lifetime.

18. **MAINTENANCE OF CHILDREN AND AGED/INFIRM PARENTS:**

- [1] Subject to the provisions of this section a Christian is bound, during his or her lifetime to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.
- [2] A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.
- [3] The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

19. MAINTENANCE OF DEPENDANTS:

- [1] Subject to the provisions of Sub-section [2] the heirs of a deceased Christian are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.
- [2] Where a defendant has not obtained by testamentary or intestate succession any share in the estate of a Christian dying after the commencement of this Act, the dependent shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.
- [3] The liability of each person who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.
- [4] Notwithstanding anything contained in Sub-section [1] or Sub-section [3], no person who is himself or herself a dependant shall be liable to contribute a share or part, the value of which is or would if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

20. DEPENDANTS DEFINED: For the purposes of this Chapter "dependants" means the following relations of the deceased:

- [i] his or her father;
- [ii] his or her mother;
- [iii] his or her widow or widower so long as he or she does not marry;
- [iv] his or her son so long as he is a minor;
- [v] his or her unmarried daughter;
- [vi] his or her minor illegitimate son;
- [vii] his or her unmarried illegitimate daughter.

21. AMOUNT OF MAINTENANCE:

- [1] It shall be in the discretion of the Court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so the Court shall have due regard to the considerations set out in Sub-section [2] or Subsection [3], as the case may be so far as they are applicable.

[2] In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to -

- [a] the position and status of the parties;
- [b] the reasonable wants of the claimant;
- [c] if the claimant is living separately, whether the claimant is justified in doing so;
- [d] the doing of the claimant's property and any income derived from such property, or from claimant's own earnings or from any other source;
- [e] the number of persons entitled to maintenance, under this Act.

22. **CLAIMANT TO MAINTENANCE SHOULD BE A CHRISTIAN:** No person shall be entitled to claim maintenance under this Chapter if he or she has ceased to be a Christian by conversion to another religion.

23. **AMOUNT OF MAINTENANCE MAY BE ALTERED ON CHANGE OF CIRCUMSTANCES:** The amount of maintenance, whether fixed by a decree of Court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is material change in the circumstances justifying such alteration.

24. **DEBTS TO HAVE PRIORITY:** Subject to the provisions contained in Section 27 debts of every description contracted or payable by the deceased shall have priority over the claims of his dependants for maintenance under this Act.

25. **MAINTENANCE WHEN TO BE A CHARGE:** A dependant's claim for maintenance under this Act shall not be a charge on the estate of the deceased or any person thereof, unless one has been created by the will of the deceased by a decree of Court, by agreement between the dependant and the owner of the estate or portion, or otherwise.

26. **EFFECT OF TRANSFER OF PROPERTY ON RIGHT TO MAINTENANCE:** Where a dependant has a right to receive maintenance out of an estate and such estate or any part thereof is transferred, the right to

receive maintenance may be enforced against, the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of the right.

CHAPTER V

MISCELLANEOUS

27. **PRESUMPTION AS TO REGISTERED DOCUMENTS RELATING TO ADOPTION:** Whenever any document registered under any law for the time being in force of the nature referred to in Section 11 (iii) is produced before any court, purporting to effect an adoption made under this Act and signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act, unless and until the contrary is proved.
28. **PROHIBITION OF CERTAIN PAYMENTS:**
- [1] No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person under this Act and no person shall make or give, or agree to make or give to any other person any payment or reward, the receipt of which is prohibited by this section.
 - [2] If any person contravenes the provisions of sub-section [1], he shall be punishable with imprisonment which may extend to six months or with fine or with both.
 - [3] No prosecution under this section shall be instituted without the previous sanction of the State Government or an officer authorised by the State Government in this behalf.
29. **APPEALS:** Any person aggrieved by an order made by the Board under Section 15 may within thirty days from the date of such order, prefer an appeal to the Court of Sessions;
- Provided that the Court of Sessions may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

30. **REVISION:** The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which the Board or Court of Sessions has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit;

Provided that the High Court shall not pass an order under this Section prejudicial to any person without giving him a reasonable opportunity of being heard.

THE INDIAN SUCCESSION AMENDMENT BILL 1994

After a careful study of the various amendments accepted at the consultation, I find that several changes are required in the same. Possibly due to paucity of time several points have not been dealt with in a detailed manner by us at Delhi.

An important point not specifically considered at the consultation is the effect of permitting the widow/widower to receive the entire property in the absence of linear descendants to the exclusives of the kindred. This means that the parent of the intestate will not be entitled to any share in the property of the son or daughter even in the case where the son or daughter dies without leaving any children. This is likely to work extreme hardship in several cases and is not equitable at all.

Moreover it is to be seen whether any of the provisions which have been recommended for change apply to other communities also, in which even they would have to be excluded from its purview wherever applicable. In view of the difficulties that will arise in such an event, it would be much more advisable to have a separate Act providing for succession among the Christian on the lines of the Hindu Succession Act. Since this was not thought of at the consultation, I have merely incorporated the proposed amendments in the enclosed draft with necessary corrections so that the concepts accepted at the consultation are on record. Section 33A has been deleted since it has become contrary to the provisions of the section 33 (c) which has now been introduced.

Section 42 has been modified to provide for inheritance by the father and mother.

Section 43 to 45 have also been amended and section 46 deleted in view of Section 33 (c) and the illustrations given thereunder have also been suitably modified.

PROPOSED AMENDMENTS IN THE INDIAN SUCCESSION ACT

1. (i) This Act may be called the Indian Succession Amendment Act, 1993.
- (ii) It extends to the whole of India except the States of Jammu & Kashmir and Goa, Daman & Diu.

- (iii) It shall be deemed to have come into force on the date on which it is published in the official gazette.
- 2. (b) "Christian" means a person who professes and practices the Christian religion.

Section 3 to 21 - No change

22. Settlement of minor's property in contemplation of Marriage :-

- (1) The property of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the approbation of the minor's father/mother. If they are dead or absent from India, with the approbation of the High Court.

(2) No change

Section 23 to 31 - No change

Section 32 - Devolution of such property - The property of an intestate devolves upon the wife or husband, or upon those who are lineal descendants or kindred of the deceased, in the order and according to the rules herein after contained in the Chapter.

Explanation — A widow is entitled to the provision hereby made for her even if, by a contract made before her marriage, she has been excluded from her distributive share of the husband's estate.

Section 33 — Where intestate has left widow/widower and lineal descendant or widow/widower and no lineal descendants where the intestate has left a widow/widower.

- (a) If he/she has also left any lineal descendants, one half of his/her property shall belong to his/her widow/widower and the other half shall go to his/her lineal dependants according to the rules here in after contained;
- (b) If he/she has left no lineal descendants; the whole of his/her property shall belong to his widow/widower.

Section 33A - To be deleted

Section 34-38 - No change

Section 37 Where intestate has left child or children only :-

Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child if there is only one or shall be divided equally among all his surviving children.

Explanation : "Child" includes an illegitimate child adopted.

Section 38 to 40 - No change

DISTRIBUTION WHERE THERE IS NO WIDOW/WIDOWER AND NO LINEAR DESCENDANTS

Section 41 Rule of distribution where intestate has left no widow or lineal descendants:

Where an intestate has left no widow/widower or lineal descendants, the rules for the distribution of his/her property shall be those contained in sections 42 to 48.

Section 42 Where intestate's father or mother or both are living :-

- (1) If only the intestate's father or mother is living the surviving father or mother shall succeed to the property.
- (2) If both the father and mother of the intestate are living, they shall succeed to the property in equal shares.

Section 43 Where intestate's father and mother dead, but brothers and sisters living:-

If the intestate's father and mother are dead, and there are brothers and sisters of the intestate living, and there is no child living of any deceased brother or sister, each living brother or sister shall succeed to the property in equal shares.

ILLUSTRATION

A dies intestate survived by his/her two brothers of the full blood, John and Henry, and a sister Hary, who is the daughter of his/her mother but not of his/her father. Each of the brothers take one third & Hary, the sister of half blood takes one third.

Section 44 - Where intestate's father and mother dead and his/her brother or sister and children of any deceased brother or sister living.

If the intestate's father and mother are dead and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's life time are also living then each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

ILLUSTRATION

A the intestate leaves his brothers John and Henry and also one child of a deceased sister, Mary, and two children of George, a deceased brother of half blood who was the son of his father but not of his mother. John and Henry each take one fourth, the child of Mary takes one fourth and the two children of George divide the remaining one fourth equally between them.

Section 45 - Where intestate's father and mother dead and children of any deceased brother or sister living : -

If the intestate's father and mother are dead and the brothers and sisters are all dead but all or any of them have left children who survived the intestate, the children or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

ILLUSTRATION

A the intestate leaves no parent, brother or sister but leaves one child of a deceased sister, Hary, and two children of George, a deceased brother. The child

of Hary takes one half and the children of George divide the remaining equally between them.

Section 46 - To be deleted

Section 47-59 - No change

Section 60 - Testamentary Guardian :—

(1) A father/mother whatever his/her age may be, may by will appoint a guardian or guardians for his/her child during minority.

(2) If father is dead, absent from India or incapable of mind, the mother whatever her age may be, may, by will, appoint a guardian or guardians for her child during minority and

Section 61 to 118 - No change

Section 118-A : No person who is a Christian and who has a spouse, lineal descendants of kindred shall have power to bequeath more than one half of his/her property by a will. Any bequest excess of one half, if made, shall to that extent be void and the testator shall be deemed to have died intestate in respect of one half of his property in all such cases.

Section 119 to 212 - No change

Section 213 (1) and (2) - No change

(3) This section shall not apply in the case of wills made by Christians after the commencement of the Indian Succession (Amendment) Act, 1993.

Section 214 to 391 - No change.