A point of debate

The Christian Marriage Act

Having incarnated in a series of avatars since the early 1960s, the draft Bill proposed to amend Christian marriage and divorce laws, is now in its year-2000 version. Still surrounded by controversy, it must win approval from all sections of the community before it enters Parliament...

Though they tampered with no other indigenous religions or religious practices through the enactment of personal laws; well before they quit India, the British had bestowed upon Indian Christians the Indian Christian Marriage Act, 1872 and the Indian Divorce Act, 1869. The product of fervent Victorian thinking, many aspects of these two laws, especially the latter, are today perceived as anachronisms, thoroughly outdated in an era when women's rights are sought to be introduced in every legislation.

The Indian Divorce Act, 1869 is also being seriously examined by many concerned groups since it goes against the grain of the provisions in Article 16 in part IV of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), ratified by the United Nations as far back as 1979.

Roughly put, the proponents of change are seeking the uniform codification of the Indian Christian Marriage Act, 1872 which presently lays down, in absolutely antiquated language, five different modes to solemnise Christian marriage services.

More unpopular, however, is the Indian Divorce Act, 1869, said to be blatantly in favour of husbands. Incidentally, it applies even to those couples where just one of the two professes Christianity. And of course, its language is equally antiquated. Of special interest is Section 10, which sets out the grounds on which a decree for dissolution of marriage can be made.

When the husband may petition for dissolution: Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnisation thereof, been guilty of adultery.

When the wife may petition for dissolution: Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that since solemnisation thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman.

Or, has been guilty of incestuous adultery

Or, bigamy with adultery

Or, of another marriage of another woman with adultery

Or, of rape, sodomy or bestiality

Or, of adultery coupled with such cruelty as without adultery would have entitled her to divorce a *mensa a toro.*

Or, of adultery coupled with desertion without reasonable excuse, for two years or upwards.

Notice here, that the section pertaining to the husband is short and simple. He needs only to prove adultery on the part of his wife. His wife, should she seek a divorce, is required to prove some other marital offence in addition to adultery.

Also drawing adverse comment is the fact that every decree of the dissolution of marriage made under this Act by a District Judge would require the

confirmation of the concerned High Court.

On August 10, 1998, in Bincy Matthew *vs* Sabu Abraham, a Division Bench of the Kerala High Court opined that "it was high time that the provisions regarding confirmation by the High Court in every decree of dissolution of marriage made by a district judge under sections 17 and 20 of the Indian Divorce Act 1869, were deleted from the statute". Later, in a judgement on Aliysious Thomas *vs* Union of India dated May 3, 1999 another Division Bench directed the Government of Kerala to bring an amendment to the Indian Divorce Act, 1869, on the lines of the Uttar Pradesh Amendment.

If India wants to toe the CEDAW line it will have to dovetail this Act to the provisos laid down in Article 15: "States Parties shall accord to women equality with men before the law"; and Article 16: "States Parties shall take all appropriate measures to eliminate discrimination in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women –

(c) The same rights and responsibilities at marriage as at its dissolution."

Attempts to resolve this knotty issue without hurting the sensibilities of any sections commenced as far back as 1941 and again in 1961–62 to bring legislations to Parliament.

The Law Commission first suggested comprehensive amendments to The Indian Divorce Act 1869, in a Bill titled The Christian Marriage and Matrimonial Causes Bill 1960, submitted along with its 15th Report, whereby both husband and wife were given the right seek dissolution of marriage on almost all the grounds mentioned in the Special Marriage Act, 1954, including the ground of adultery *simpliciter*, cruelty and desertion as per clause 30 of the Bill.

"It is a travesty of justice that, while the court recognises a marriage solemnised by the Church, it does not recognise a decree of nullity granted by it."

Bishop Job Mar Philoxenos

In clause 31 the Law Commission also recommended that a provision be made for the grant of a divorce if, after a decree for judicial separation, cohabitation had not been resumed.

On the basis of the Law Commission's 15th Report, the government finalised a Bill and then suggested that the Commission now seek public opir on on the issue. This was duly incorporated in the Commission's 22nd report, which basically reiterated its earlier stand. The Christian Marriage and Causes Bill, 1961 was introduced in Parliament, lapsed with the dissolution of the Lok Sabha and was never heard of again.

It took another 20 years for matters to move further. In the early 1980s, various Church-related organisations and denominations came together on one platform and made renewed efforts to update the Christian Personal laws and present draft Bills to the government.

In 1983, the Law Commission headed by the late Hon'ble Justice K.K. Mathew prepared the 90th Report recommending urgent amendment. Stated the report: "We regard such an amendment as a constitutional imperative. In our opinion, if the section is to stand the test of the constitutional mandate of equality before the law, in the context of avoiding discrimination between the sexes, then the amendment is necessary. If Parliament does not remove the discrimination, the courts, in exercise of their jurisdiction to remedy violations of fundamental rights are bound, some day, to declare the section as void."

The Commission also felt that the demand under Section 10 of

the Act, that women prove such additional grounds, was assailable as being violative of Article 14 and 15 of the Indian Constitution. The Kerala High Court, however, adversely commented upon this view. In a judgement given on February 24, 1995 in Ammini E.J. *vs* Union of India and others, it stated: "We would accordingly... quash the words 'incestuous' and (the phrase) 'adultery coupled with' from the provisions in Section 10 of the Act and would declare Section 10 hereby *remain operative* (emphasis ours) without the above words."

In 1989, Member of Parliament Thampan Thomas tried to bring in the legislation through the introduction of the Christian Marriage and Matrimonial Causes Bill, 1989 in the Lok Sabha, as a private Member's Bill. Alas, it never came up for discussion and lapsed. The last decade, however, has seen yet more draft Bills valiantly entering the house.

Interestingly, other than the Law Commission, the Joint Women's Programme, a voluntary women's organisation, too received comprehensive proposals in the form of draft Bills for changes in the personal laws of the Christian community from the Christian churches.

These include the draft Christian Marriage Bill, 1994 which is reported to have the support of the Catholic Bishop's Conference of India (CBCI) and 27 member churches of the National Churches Conference of India (NCCI) and some other independent churches. Also making its debut in the nineties was the Christian Marriage Bill, 1997. The lacunae it sought to fill were:

(i) The conditions of marriage are nowhere set out conveniently in the Act in a manner that will give at a glance the position in that respect as regards Christians.

(ii) Secondly, there is 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 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 were felt to be very badly in need of revision.

(iii) There are provisions for marriage for minors in the present Act, which have been excluded in the aforesaid Bill.

Also making its debut was the Indian Divorce Bill 1997 which has been drafted to be as close to the Special Marriage Act as possible. The latter was enacted in 1954 to provide for Civil Marriage for those who opted for it. These two bills are also said to have the support of the NCCI and CBCI.

In view of all of the above, the Law Commision in its 164th Report is now seeking the views of the various Churches in India on the latest updated version of the Bill – the Christian Marriage Bill, 2000.

States the report "the Commission is of the considered opinion that the recommendations made by it on the subject be implemented expeditiously in the interest of social justice to the Christian community in India."

However, going by what Job Mar Philoxenos, a bishop of the Malankara Orthodox Syrian Church, wrote about it in the national daily *The Indian Express* (June 12, 2000), its prospects look uncertain too.

Stated the bishop "It is a travesty of justice that, while the court recognises a marriage solemnised by the Church, it does not recognise a decree of nullity granted by it. On the eve of the 21st century it cannot be insisted that everybody should accept the decree of the ecclesiastical courts and that too in a secular country. But when both the husband and wife, of their own free will prefer an ecclesiastical tribunal to a civil court, there is no reason why they should be denied their choice. When amending the Indian Divorce Act 1869, the government should also provide for recognising the jurisdiction of ecclesiastical courts simultaneously with that of civil courts."