

Epilogue

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THE SEMINAR on the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 was organised by the Indian Law Institute with a view to making a critical appraisal of both the Acts and explore the feasibility of further modifications, if any, required in the light of the *Fifty-ninth Report* of the Law Commission, judicial pronouncements and information available on the basis of experience of persons involved in matrimonial litigation for a period of over two decades. Endeavours at the Seminar were made to bring important provisions within the ambit of deliberations as it was not possible to deal in detail with all the provisions of the two Acts within the short span of three days. A brief resume of the points on which there was consensus at the Seminar may be given here.

The grounds relating to divorce were discussed in detail at the Seminar and the consensus was that irretrievable breakdown of marriage should be made the sole ground for divorce. In other words the breakdown theory should form part of the Indian matrimonial law (both of the Special Marriage Act and of the Hindu Marriage Act). There was a discussion on such grounds of divorce as adultery, cruelty, *etc.*, but the Seminar ultimately came to the conclusion that the breakdown theory should be accepted. The participants were of the opinion that the grounds for judicial separation and divorce should be concurrent and the court should have the discretion to grant either of the reliefs considering the interest of the spouses as well as the children.

All participants were unanimous in recommending that the remedy of restitution of conjugal rights does not serve any useful purpose and has become redundant. Thus, it should not be retained on the statute book. Divergent opinions were expressed with regard to the retention of three years bar to matrimonial reliefs, though the dominant view was in favour of its continuation.

The participants felt that the present judicial system with adversary procedure is not suitable for solving matrimonial disputes. Moreover, there is a great delay involved in litigation, whereas marriage disputes require expeditious settlement. The participants also felt that there was imminent need for the establishment of family courts. However, it was desired that it would be necessary to study thoroughly the composition of those bodies, their procedures and the qualifications of judges and other matters in detail, before

they are considered for adoption in India. These family courts should be supplemented by a system of conciliatory boards, whose efforts will be to effect reconciliation between the parties.

The participants expressed the view that the present provisions of the Hindu Marriage Act and the Special Marriage Act relating to financial matters merely provide for maintenance, and it was suggested that adequate provisions should be made in both the statutes for other financial arrangements and property settlements before a decree in a matrimonial case is granted. A view was also expressed that a provision should be made for property settlement during the suspension of marriage.

At present if two Hindus marry under the Special Marriage Act it means their severance from the joint family and the application to them of the Indian Succession Act, 1925. The Law Commission has recommended that these provisions of the Special Marriage Act should not apply if both parties to a marriage under the Special Marriage Act are Hindus. The participants expressed a strong view that no such amendment should be made in the Special Marriage Act. Rather a separate law for persons of the same community desiring to enter into a civil marriage may be provided, so that even when they marry in the civil marriage form, their own personal law relating to succession and other matters continue to apply to them.

A few other important suggestions made by the participants at the Seminar were as under :

(i) Section 9 of the Hindu Marriage Act deals with the remedy of restitution of conjugal rights. There is a controversy over the issue of the burden of proof of 'reasonable excuse' mentioned in section (9)(1). It gives rise to the question whether onus of proving withdrawal of the husband or the wife from the society of the other is on the respondent or the petitioner. Section 9(1) requires revision so that the burden of proof be placed on the respondent as it tends to be difficult for the petitioner to prove absence of reasonable excuse for withdrawing from the society of the other spouse.

Section 9(2) requires the respondent to confine the excuse for withdrawing from the society of the other spouse to that envisaged by judicial separation or for nullity of marriage or for divorce. In practice the application of section 9(1) together with 9(2), creates difficulties. Hence, deletion of section 9(2) was sought.

(ii) A marriage could be dissolved on the ground that the other party 'is living in adultery'. It was difficult to establish a continuous course of adulter-

ous living of the other party. The majority of participants felt that to resolve this difficulty a single conduct of infidelity should be made a ground of divorce.

(iii) Section 13(ii) of the Act confers a right on a Hindu to procure divorce if the respondent has embraced another religion. It is found that quite often this provision is abused by a person converting himself to a religion which permit polygamy in order to marry another person while the previous marriage subsists. Suitable restrictions should be imposed on the person opting for another religion so that he could be debarred from remarrying during the continuation of previous marriage.

(iv) The duration of three years for the continuation of leprosy, unsoundness of mind and venereal diseases in the respondent before the presentation of the petition seems to be unnecessary.

(v) The requisite waiting period of two years for obtaining divorce after the decree of restitution of conjugal rights and judicial separation served no useful purpose in cementing the hostile relationship between the separated husband and wife. The period should be reduced to one year.

(vi) Provision for divorce by mutual consent of the parties on the lines of the Special Marriage Act should be made available under the Hindu Marriage Act.

(vii) The bar of one year to remarry after a decree of divorce serves no useful purpose after the lengthy legal proceedings of divorce.

(viii) To ameliorate the position of illegitimate children born of void and voidable marriages the stipulation of granting of a decree of nullity should be removed from section 16 of the Act so as to accord the status of legitimacy to the children born of void and voidable marriages under sections 11 and 12 of the Act, irrespective of whether the marriage is declared null and void by a decree of nullity.

(ix) For expeditious disposal of matrimonial proceedings time limits should be prescribed.

(x) The expression 'while the applicant remains unmarried' in section 25 of the Act for the purpose of seeking alimony from the respondent is relevant only where the marriage is dissolved by a decree of divorce or declared a nullity, and not where the decree passed is for judicial separation or restitution of conjugal rights. Hence, these words should be deleted from the section,

(xi) Provisions for free legal aid should be incorporated in the Act for the benefit of needy and indigent persons involved in matrimonial disputes.

The task of the Seminar in ferreting out the lacunae in both the Acts was facilitated by the report of the commission. The majority of the proposals of the Law Commission were favourably accepted, whereas in the case of others dissenting views were expressed. Subsequent to the Seminar the Marriage Laws (Amendment) Act, 1976 was passed. Major amendments introduced by the Marriage Laws (Amendment) Act in the Hindu Marriage Act are as under :

(a) Clause (ii) of section 5 of the Act prohibits the solemnization of marriage between the persons, if any one of them was idiot or lunatic at the time of marriage. The amended clause clarifies the circumstances in which unsoundness of mind, mental disorder, insanity or epilepsy will invalidate a marriage.¹

(b) Section 9 of the Act providing for the remedy of restitution of conjugal rights is modified in two aspects. Sub-section 2 of section 9 is deleted as it was found to have the effect of restricting the scope of defences of reasonable excuse available to the respondent. A new explanation is added to the section to clarify that the burden of proving reasonable excuse for withdrawing from the society shall be on the spouse who has withdrawn from the society of the other.²

(c) The grounds of judicial separation under section 10 and divorce under section 13 of the Act have been made concurrent.³

(d) The amended section 11 of the Act makes it clear that the petition for declaring a marriage void can be filed only against the other spouse to the marriage. After the words "presented by either party thereto", the words "against the other party" are substituted.⁴

(e) One of the grounds for avoiding the marriage under section 12 of the Act is impotency of the respondent not only at the time of marriage but its continuation up to the institution of the proceedings. The amended sec-

1. Section 5 (ii) of the Act is amended on the recommendations of the Law Commission.

2. The modification of s. 9(1) and deletion of s. 9(2) were suggested by the commission and supported by the Seminar.

3. Identical grounds for judicial separation and divorce were recommended by the commission and favoured at the Seminar.

4. The modified section 11 found approval at the Seminar,

tion 12(1)(a) enables a spouse to avoid a marriage where it has not been consummated owing to the impotency of the other party.⁵

(f) Section 12(1)(c) declares a marriage voidable if the consent of the guardian for the marriage of his ward was obtained by force or fraud. The phrase fraud has been defined by substituting the words "or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent" in place of the words "or fraud".⁶

(g) Section 13 of the Act dealing with the grounds of divorce has been subjected to material changes by the amending Act. The ground 'living in adultery' has been modified in such a manner as to make it clear that a single act of voluntary sexual intercourse with any person other than his or her spouse is sufficient to constitute the ground of adultery.⁷

(h) Cruelty *simpliciter* is made a ground of divorce. Prior to the amendment cruelty was a ground for judicial separation and that too where it generated a reasonable apprehension in the mind of petitioner of harm or injury.⁸

(i) Continuous desertion for two years is made a ground of divorce (earlier it constituted a ground for judicial separation only).⁹

(j) Section 13(1)(iii) provided for divorce on the ground that the respondent had been incurably of unsound mind for three years preceding the petition of divorce. The definition of unsound mind has been enlarged so as to include mental disorder, continuous or intermittent mental illness, incomplete development of mind, psychopathic disorder or schizophrenia.¹⁰

(k) The bar of three years for filing the petition for divorce on the grounds of unsound mind, leprosy and venereal disease is lifted.¹¹

5. The recommendation of the commission was adopted by the amended Act.

6. The proposal of the commission was incorporated in the amended Act.

7. Suggestion of the commission for simplifying the ground of adultery gained support at the Seminar.

8. Recommended by the commission and supported at the Seminar.

9. Desertion was recommended as a ground of divorce by the commission and its insertion was desired by the participants at the Seminar.

10. On the recommendation of the commission s 13(1)(iii) has been revised.

11. The proposal of the commission that three years period for instituting proceedings for divorce on the ground of unsoundness of mind be done away with, not only found support at the seminar but it was also recommended that the period of three years in the case of venereal diseases and leprosy under section 13(1)(iv) and (v) be deleted. Some of the participants at the Seminar favoured dispensation of initial three years period on all the three grounds dealing with the diseases of the respondent.

(l) The waiting period for procuring the relief of divorce after the decree of restitution conjugal rights or judicial separation is reduced from two years to one year.¹²

(m) Two additional grounds for divorce in favour of wife have been introduced in section 13 of the Act. One of them is non-resumption of conjugal relationship for one year or more after the passing of a decree or order for maintenance in favour of the wife under section 18 of the Hindu Adoptions and Maintenance Act, 1956 or under section 125 of the Code of Criminal Procedure, 1973 (or under the corresponding section 488 of the Code of Criminal Procedure, 1898).¹³

(n) The other ground is that a minor wife, if her marriage is solemnised before the age of fifteen years, whether consummated or not, has a right to repudiate the marriage before attaining the age of eighteen years.¹⁴

(o) Discretionary powers are given to the court to pass a decree of judicial separation instead of divorce, if the circumstances of the case merit it, except where the petition is founded on the ground that the other party has ceased to be a Hindu by conversion to another religion or has renounced the world by entering any religious order or has not been heard of as being alive for seven years.¹⁵

(p) Divorce on the mutual consent of both the parties is made possible. The petition for dissolution of marriage is required to be made jointly by both the parties indicating their inability to live on together. On the motion of the parties after the lapse of six months of filing the petition, but not later than eighteen months, the court may pass a decree of divorce if it is satisfied with regard to the averments made in the petition to the fact that the consent has not been obtained by force, fraud or undue influence.¹⁶

12. Reduction of the period from two to one year for obtaining the decree of divorce after the decree of judicial separation or order for restitution of conjugal rights was suggested by the commission and approved of at the Seminar.

13. Proposal of the commission was incorporated in the amended Act.

14. This ground was included in the amended Act on the recommendation of the Committee on the Status of Women. See the statement of objects and reasons of the Marriage Laws (Amendment) Act, 1976.

15. Provision for empowering the court to pass a decree of judicial separation instead of divorce was favoured by the commission and the Seminar.

16. There was a general consensus at the Seminar for the inclusion of a provision for divorce by mutual consent in the Hindu Marriage Act.

(q) The cooling off period of three years for initiating the proceedings of divorce after the solemnization of marriage has been reduced to one year.¹⁷

(r) The period of one year of waiting before remarriage and passing of the decree of divorce has been done away with.¹⁸

(s) Section 16 of the Act is revised, hereafter children of void and voidable marriages are to be declared legitimate, irrespective of the fact whether marriage is declared void or not by a decree of nullity under the Act.¹⁹

(t) Matrimonial proceedings under the Act can be instituted in a district court within whose jurisdiction the marriage was solemnized, or the respondent, at the time of presentation of the petition resides or where the petitioner is residing at the time of presentation of the petition if the respondent was residing out of India or his or her whereabouts are not known for seven years or more. The court is given power to transfer the petition where two separate petitions are filed by each of the spouses in the same or in two different courts in the same state or different states.²⁰

(u) In order to expedite the disposal of matrimonial proceedings, a directive has been given to the court under section 21B to dispose of the matter within six months of the service of the notice of the petition on the respondent by fixing day to day hearing. Likewise, an appeal is required to be disposed of within three months of the service of the notice of appeal on the respondent.²¹

(v) The documents required to be stamped or registered are made admissible in evidence irrespective of whether they are duly stamped or not. The hearing of matrimonial proceedings *in camera* is made obligatory. The printing or publishing of the matrimonial proceedings is prohibited. But with

17. The commission favoured deletion of three years bar for initiating matrimonial proceedings. Some of the participants at the Seminar favoured reduction of the period from three years to one year, others desired retention of the three years bar.

18. Recommendation of the commission for deletion of this provision found full support at the Seminar.

19. Revised s. 16 of the commission was approved of at the Seminar.

20. This provision was amended at the instance of the commission.

21. Insertion of a new section 21B was recommended by the commission, there was a general consensus at the Seminar in favour of expeditious disposal of matrimonial proceedings.

the prior permission of the court, the judgments of the High Court and, that of the Supreme Court can be printed or published.²²

(w) The court is absolved from its duty of effecting reconciliation where the petition for dissolution of marriage is presented on the ground that the other party has ceased to be a Hindu by conversion to another religion, or has been of unsound mind, or is suffering from leprosy or venereal disease, or has renounced the world by entering any religious order, or has not been heard of for a period of seven years or more. Otherwise, the court is enjoined to adjourn the proceedings for effecting reconciliation between the parties for not more than fifteen days and for referring the matter to any person named by the parties or nominated by the court, if the parties fail to do so. The report of the conciliator be given due consideration by the court while deciding the issue.²³

(x) The copies of the decree of divorce would be supplied free of cost to each of the parties.

(y) Section 23A has been added to enable the respondent to file a petition for divorce, judicial separation or restitution of conjugal rights to oppose the relief desired not only on the ground of petitioner's adultery, cruelty and desertion, but also to make a counter claim for any relief under the Act.²⁴

(z) The anomaly pertaining to the expression while 'the applicant remains unmarried' under section 25 has been resolved. And the court is required to take into account not only the conduct of the parties while determining the quantum of the maintenance but also other circumstances of the case. An order under section 24 for interim maintenance and an order for costs are made non-appealable. The period of limitation for all appeals against decree and orders under section 25 and 29 is fixed at one month.²⁵

The approach adopted by the Law Commission in considering the amendment to marriage laws was that

while all reasonable efforts should be made to protect the stability of marriage, at the same time, if circumstances exist which show that conjugal life is impossible either by reason of a matrimonial offence or by reason of a disease or other specified circumstances,

22. Recommendation of the commission was supported by the legislature.

23. Enlarged provisions for effecting reconciliation was incorporated in the Act on the recommendations of the commission. The Seminar whole heartedly favoured setting up of conciliatory boards for that purpose.

24. Recommendation of the commission found support at the Seminar.

25. On the suggestion of the commission the provision was included in the amended Act.

then the reality must be recognised, and provision should be made for terminating the bond of marriage.²⁶

The statement of objects and reasons of the Marriage Laws (Amendment) Act, recites that the object of the amendment is to (a) liberalise the provisions relating to divorce; (b) to enable expeditious disposal of proceedings under the Hindu Marriage Act, and (c) to remove certain anomalies and handicaps that have come to light after the passing of the Act.

However, despite the claim made by the legislature that the amendments give effect to the suggestions received from various quarters, particularly the recommendations of the Law Commission and the suggestions of the Committee on the Status of Women in India, all the suggestions advanced from various quarters were not paid heed to. If all the suggestions made by the Seminar had found favour with the legislature, the format of the amended Act would have been somewhat different.

A few comments on the important amendments to the Acts may be made here.

Divorce on mutual agreement of the parties has been made feasible under the Hindu Marriage Act. Undoubtedly, this provision would help in circumventing the collusive practices and underhand means often resorted to by the spouses to dodge the stringent provisions of the law where both the parties desire riddance from the marital ties.

Nevertheless, the prevailing conditions of the society are yet not so advanced as to accept or tolerate easily dissolution of marriage. Moreover, divorce as such is not always an unqualified blessing. Sometimes it proves to be an unsavoury experience which carries in its trail a cascade of problems for the spouses and insecurity for the children. Further, the majority of Indian women are illiterate and economically dependent. Though a wife is accorded equal opportunities along with the husband on egalitarian basis for seeking disengagement from undesirable marital bonds, yet her rehabilitation after divorce is not without difficulties, especially when there happen to be children. The archaic social attitude adds to her miseries as divorce is looked upon not as a failure or a consequence of maladjustment of incompatible spouses, but is associated in some way with personal fault evocative of societal disapproval.

However, sometimes concurrence of the other spouse in favour of divorce can be obtained either wheedling by or by the dominant spouse through

26. The Law Commission, *Fifty-ninth Report* 66.

fraud, threat and coercion in such a manner as to make it difficult even for the court to find out the reality. Therefore, the availability of divorce on the mutual consent of the parties should be hedged with proper safeguards so as to check its abuse. A decree for divorce should not be granted unless sufficient financial arrangements are made for the wife and children and where there are grown up children in their interest it may be withheld.

Section 23(2) of the Hindu Marriage Act imposed a duty on the court to make an effort to effect reconciliation between the spouses in matrimonial proceedings. The Law Commission had recommended insertion of a new clause to section 23 for effective implementation of the provision dealing with reconciliation. The proposed clause enjoined the court to adjourn the proceedings for not more than fifteen days if the case merits so and refer the parties for effecting reconciliation either to a person named by both the parties or to any person nominated by the court with directions to report the findings to the court. While deciding the matter the court was required to give consideration to the report of the arbitrator.

This recommendation of the commission was adopted by the amending Act. The task of effecting reconciliation between the estranged spouses, who have approached the court for getting their marriage dissolved, is not that simple as could be accomplished within a short span of fifteen days by an arbitrator. The emotionally charged problems of divorce-seekers require sympathetic handling for repairing sensitive human relationship. Again, in most instances, it would not be possible for both the parties to name one and the same conciliator. Under the prevailing conditions of the society the relatives of the spouses do have a tangible hold on the marital affairs of their children. And it is also found that in majority of cases the intervention of the relatives of the husband and the wife in the semi-rupturous situation wherein the stability of marriage is already at the stake, aggravates the problems instead of promoting amicable settlement. Owing to consanguinity the relatives tend to shield the failings of their kith and kin and highlight the angularities of the other party.

Therefore, in the amended Act there should have been provision for setting up of conciliatory boards and family courts. The members of a conciliatory board should comprise trained psychologists, sociologists, and therapists so that effective conciliation between the estranged spouses can be achieved.

If in view of the court a case is a fit one for attempting conciliation, at the initial stage of the proceedings the parties should be referred by the court to the conciliatory board for resurrecting amicable relations between the spouses. At a later stage misunderstandings get intensified thereby making

the attitude of the parties towards each other hardened. If endeavours of the conciliatory board fail without excursion into procedural rigmarole a decree of divorce containing financial provisions for children may be granted.

Further, to encourage reconciliation between the separated spouses in the case of decree of restitution of conjugal rights and judicial separation the parties may be permitted to live together and resume conjugal relations with a view to effecting reconciliation. If their attempts fail the period during which the parties thus lived together should be excluded in calculating the period of separation for passing a decree of divorce.

The application of adversary procedure to family disputes is an inexpedient method of determining the fragile and sensitive human relationship. Instead sympathetic hearing by the presiding officer in an informal and congenial atmosphere of family court would help. Despite the recommendation of the Law Commission in favour of family courts in its *Fifty-fourth Report*, no provision to that effect has been included in the amended Act. The proposed family courts should have jurisdiction over all family disputes as they are inter-connected and their adjudication would be facilitated because of the easy availability of all the files relating to the matter before the court. The members of the family court may comprise not only legal experts but also academic lawyers having expertise in family laws and conversant with family problems.

The amended Act is also silent on the vital issue of return of dowry and settlement of matrimonial property at the time of divorce. Section 27 of the Hindu Marriage Act confines the court's power to the settlement of only that property which was presented jointly to both the husband and wife at or about the time of marriage. The Law Commission was conscious of the limited power of the court as it observed :

Justice requires that the court should have power to direct return of the property presented by the wife's parents to the husband or by the husband's parents to the wife.

The revised provision suggested by the commission provided that if the matrimonial proceedings are instituted after six months of the solemnization of the marriage, the court may make provision in the decree for the return of the property presented at or about the time of marriage to either party by the parents of the other party.

The proposal of the commission failed to find place in the amended Act. There ought to have been comprehensive provisions in the Act, for empower-

ing the court to determine the issue of matrimonial property in its wider context, at the time of passing the decree of judicial separation or divorce. The court dealing with matrimonial proceedings should be empowered to resolve not only the issue of property presented at or after the solemnization of marriage to the husband or wife by the parent of the other party, but should make fair division of matrimonial property acquired or earned severally or jointly by the spouses and pooled together. Where the wife is not gainfully employed outside but is running the household and looking after the children, she should be given equal share in the matrimonial property if the marriage breaks down.

Besides, under the amended Act, a minor Hindu wife is accorded an option to repudiate the marriage, if it was solemnized before she attained the age of fifteen years. The choice of discarding the marriage can be exercised by a minor wife after the attainment of fifteen years of age and before the completion of eighteen years. This ground of divorce in favour of only the minor wife was introduced in the Act on the recommendation of the Committee on the Status of Women although the commission appears to have been unconcerned about it.

This provision corresponds to the traditional Muslim law wherein not only a Muslim minor husband but a wife also is conferred with the right to repudiate the marriage on attaining puberty, if he/she had been given away in marriage by a guardian other than the father or the grandfather. If the marriage is solemnized by the father or the grandfather the right of repudiation could be exercised only in the case of fraud or negligence. Under the Dissolution of Muslim Marriage Act, 1939 the option of puberty yields in favour of a minor wife only and the fact of her being given away in marriage by her father or father's father is immaterial. A Muslim minor wife is deprived of the option of puberty if the marriage is consummated but the right of a Hindu minor wife under the amended Act is not affected by the fact of the consummation of marriage.

However, this salutary provision is not without difficulties, as a minor wife has to exercise the option of repudiation of the marriage before the completion of eighteen years of age, *i.e.*, during minority. And to file a petition for getting the marriage repudiated in a court she has to seek the assistance of a guardian.²⁷ It is doubtful whether a guardian, who might have undergone a lot of difficulties, financial and otherwise, for giving away his ward in marriage would readily agree to get his act nullified.

27. See also B. N. Sampath, 'Option of Puberty for Hindu Wife : Recent Innovation', A.I.R. 1977 (Journal) at 98.

A contrary view was expressed in Parliament during the course of debate on the Bill that in some states and tribal areas where child marriage and the custom of payment of the bride price by the bridegroom are prevalent, this provision would be misused by the guardian who would like to sell his ward to different persons till she completes the age of eighteen years by getting the earlier marriages repudiated by her. Anyway, this apprehension is unfounded as in those areas mostly customary law applies, whereunder easy divorce is already available.

The other ground of divorce introduced in favour of the wife under the amended Act is that she can claim divorce, if she has obtained an order for maintenance under section 18 of the Hindu Adoptions and Maintenance Act, or under corresponding section 125 of the Code of Criminal Procedure, 1973 or under section 488 of the Code of Criminal Procedure, 1898, provided there was no resumption of conjugal relations for one year or upward since the passing of a decree or order of maintenance. A wife can claim maintenance under section 125 of the Criminal Procedure Code if the husband is possessed of sufficient means but has neglected her or refused to maintain her. Likewise, the grounds on which a wife can base her claim for maintenance under the Hindu Adoptions and Maintenance Act are : (i) desertion by the husband; (ii) husband's cruelty to the wife; (iii) husband suffering from virulent form of leprosy; (iv) husband living with another wife; (v) husband keeping a concubine in the same house; (vi) husband ceasing to be a Hindu by conversion to another religion; and (vii) any another cause justifying her living separately.

All these grounds conform to the grounds of divorce enumerated under section 13 of the Hindu Marriage Act. Obviously, by opting for maintenance instead of divorce, the intention of the wife is to maintain the status of marriage, otherwise she can petition for divorce and seek alimony thereafter. Hence, in practice this ground would not be made much use of as a lever for divorce by the wife who is getting maintenance from her husband under those two Acts.

Turning to the amendments effected in the Special Marriage Act the specification of the grounds of divorce and availability of various matrimonial reliefs have almost been made at par with those of the Hindu Marriage Act. The major change which figured in the amendment relates to the succession of the Hindus marrying under the Special Marriage Act. The inheritance rights of a person professing any religious faith and solemnising his marriage under the Act is governed by the Indian Succession Act. An automatic severance for purposes of succession is caused from the undivided family, if a person professing Hindu, Buddhist, Sikh or Jain faith opts to marry under the

Special Marriage Act. This provision takes into its lap those cases also where both the parties to the marriage are Hindus and the marriage is solemnized according to Hindu law but is registered under the Act.

The apparent object of the provision is to prevent Hindus from marrying non-Hindus for fear of being disinherited from the joint family property, and to avoid complications in the law of succession where husband and wife belong to different religions.

On the recommendations of the Law Commission the provisions relating to the succession of the Hindus has been modified. New section 21A of the Special Marriage Act removes hurdles in the matter of succession where both the parties to the marriage are Hindus but the seamy side of this provision is the oblique attitude adopted by the legislature in favour of only the Hindus which is not generally liked. This issue generated a lot of heat at the Seminar for its unconstitutional character. It hits at the secular root of the Act and injects religious element in a secular law. Suggestions were also made with regard to the addition of a chapter on civil marriage in the Hindu Marriage Act to facilitate intercaste and inter-religious marriages among Hindus.

The present social climate requires promotion of inter-caste, inter-religious and simplified form of marriages and not desecularisation of an existing social law. Therefore, section 21A providing for partial treatment to the Hindus in the amended Act requires retraction. Section 21A should be amended in such manner as to provide a choice to the persons marrying or registering their marriage under the Act, if both the parties to the marriage belong to the same faith. In the case of the marriage of persons belonging to different religions the applicability of the provisions of the Indian Succession Act may be retained.

Further, to dilute the rigour of religious element from the Special Marriage Act the provisions relating to the definition of the 'prohibited degrees in marriage' may be revised in such manner as not to have leanings towards the religion of any particular community.

Radical marriage laws are required to serve the dual purpose of providing for surgical operation when marital wounds have become malignant and prophylactic treatment for preventing benign wounds from forming suppuration. And if the experiment proves unsatisfactory the legislature should not hesitate to modulate the laws from time to time to suit the health and temperament of the society.