



CALL FOR REFORMS IN CHRISTIAN DIVORCE LAW

THE KERALA High Court, speaking through Justice K. T. Thomas, in *Mary Sonia Zachariah v. Union of India*,¹ has passed an interim order directing the Government of India “to take a decision within six months from the date of receipt of a copy of this order, on the recommendation of the Law Commission in its 90th Report for making amendments to S. 10 of the Indian Divorce Act.”²

The facts in brief were: The petitioner, an Indian Christian was married to the third respondent, her husband, in 1972 and a daughter was born in 1974. Subsequently the husband went abroad and had adulterous relations with another lady and repelled the petitioner’s efforts to resume marital life with her. In fact, he demanded a divorce from his wife. Consequently, a stage came when she had to leave her matrimonial home in 1977. In this plight, she filed a petition for a decree of divorce under section 10 on the ground of desertion without reasonable excuse for two years and upwards and also challenged in another petition the constitutional validity of section 10 in so far as it discriminated against Christian women alone for requiring desertion without reasonable excuse for two years or upwards coupled with adultery to enable them to obtain divorce.

Section 10, which deals with the grounds of divorce for Christian men and women, is heavily weighted against women because when wives petition for divorce, aggravated forms of conduct coupled with adultery have to be proved against husbands.³

The Indian Divorce Act 1869 enacted by British Parliament for regulating matrimonial relations among Indian Christians is outmoded

1. 1990(1) KLT 130.

2. *Id.* at 133.

3. S. 10 reads:

“When 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 solemnization thereof, been guilty of adultery.

When 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 the solemnization 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 of bigamy with adultery,

or of marriage with 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 a divorce *a mensa et toro*,

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



and archaic. The original British legislation, which was the forerunner of the Indian statute, has undergone fundamental changes to confer equality on husbands and wives in matrimonial matters. But the Indian law has not kept pace with changes made in the family laws of other Indian communities, namely, the Hindus and Parsis.

There have been recommendations from many quarters for changes in this discriminatory law. The Supreme Court and High Courts have called upon the legislatures to effect changes in this law.⁴ The law reform body, namely, the Law Commission of India has recommended revamping of the Christian marriage and divorce legislation in several reports. The commission in its Fifteenth Report⁵ had made detailed recommendations for reform of Christian marriage and divorce laws. Consequent upon that the Ministry of Law formulated a Bill and referred it back to the commission for eliciting public opinion. The commission obtained public opinion and submitted its Twenty-second Report recommending a thorough revision of the existing legislation.⁶ A Bill entitled the Christian Marriage and Matrimonial Causes Bill was introduced in Parliament in 1962. However, with the dissolution of *Lok Sabha*, the Bill lapsed. In 1983 the Law Commission had taken up *suo motu* the issue of revision of section 10 in view of the sex-based discrimination applicable to Christians. The commission observed :⁷

The reason why we attach the highest importance to amending section 10 may be stated. We regard such an amendment as a constitutional imperative.

In our view, if the section is to stand the test of the Constitutional mandate of equality before the law and equal

4. As early as in 1968 the Madras High Court suggested suitable amendments to the Indian Divorce Act. See, *S.C. Selvaraj v. Marj*, (1968) 1 MI J 289; *Ms. Jorden Diengdeh v S.S. Chopra*, AIR 1985 SC 935. In the context of a marriage under the Christian Marriage Act 1872 which had broken down, Justice Chinnappa Reddy sought legislative intervention to provide a uniform divorce law to give relief to couples in cases where marriage has failed. See also the Madras High Court decision in *T.M. Bashiam v. V.M. Victor*, AIR 1970 Mad. 12, Madhya Pradesh High Court decision in *Neena v. John Pormer*, AIR 1985 MP 85, and Calcutta High Court decision in *Swapana Ghosh v. Sadananda Ghosh*, AIR 1989 Cal 1 wherein it was observed:

“We are inclined to think that our Parliament or the State Legislatures (Marriage and Divorce being matters in the Concurrent List) should very seriously consider the question of introducing similar amendments in the Divorce Act of 1869 to bring it in harmonious conformity with other analogous enactments on the subject governing the other communities in India.” (*Id.* at 3).

5. Law Commission of India, *Fifteenth Report on Law Relating to Marriage and Divorce amongst Christians in India* (1960). See for an evaluation, Lotika Sarkar, *National Specialised Agencies and Women's Equality: Law Commission of India 82-91* (1988).

6. Law Commission of India, *Twenty-second Report on Christian Marriage and Matrimonial Causes Bill, 1961* (1961). See, Lotika Sarkar, *id.* at 93-97.

7. Law Commission of India, *Ninetieth Report on the Grounds of Divorce amongst Christians in India* 17 (1983). See, Lotika Sarkar, *id.* at 73-77.



protection of the laws, 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. Once this happens, there will be created a hiatus in the law, and a tidying up of the statutory provisions will then become even more urgent than at present. In this sense, there is a very strong case for amending section 10...for constitutional reasons. Of course, even apart from the constitutional mandate of equality such an amendment would be eminently sound on the merits.

But no move has come forward from the Central Government till date to initiate legislation for reform in Christian marriage and divorce laws. The view expressed on behalf of the government has been that the initiative for change in the Christian personal laws should come from the Christian community itself and that the government would not impose its views on them who constitute a religious minority in the country. Thus, the Christian wives continue to groan under the discriminatory law.

Against the backdrop of this bleak scenario, the petitioner has done a yeoman service to the Christian community in filing the instant petition which has resulted in the above mentioned directive to the Central Government. Many organisations and church dignitaries had filed applications for getting impleaded in the petition for supporting the contention of the petitioner.⁸

K. T. Thomas J. has specifically referred to the views of different High Courts advocating the urgent need for re-examination of the 1869 law on divorce. The judge also referred to the recommendations of the Law Commission made from time to time and the lapsing of the Bill introduced for effectuation of reform in the law. The continued and persistent legislative inactivity has worked to the great disadvantage of Christian wives over a period of time. Consequently, these hapless victims of an oppressive law had to resort to all kinds of subterfuges to get out of the matrimonial slavery. Their plight has been graphically described by

8. Bishop Paulose Mar Paulose, Chairperson of World Student Christian Federation and Bishop of the Church of East. Rev. K.V. Paulose, Vicar of St. Thomas Orthodox Church, Changanacherry, Kerala. Suhrut, a society registered under the Travancore Cochin Scientific, Literary and Charitable Societies Act 1955—a society formed with the objective of working for social change and to arouse public opinion for new legislation to fight against inequalities. Young Women's Christian Association of Bombay, Christian Institute for the Study of Religion and Society, Trivandrum Centre. Janakiya Vimochana Viswasa Prasthanam, an organisation of Dalit Christians belonging to the Church of South India Central Diocese (they constitute 50 per cent of Indian Christians and 60 per cent of Christians in Kerala). People's Council for Social Justice, a society registered under the above mentioned Travancore statute (it has among its objects, preservation and promotion of human rights and rule of law) and the Indian Federation of Women Lawyers (Kerala Branch).



the judge. He observed:⁹

As the legislature did not help them till now, some of them invented devices to wriggle out of the imbroglio. One device is to undergo a marriage again under the Special Marriage Act and then apply for a decree for divorce under that law. Some other spouses, in order to surmount the difficulty, collude between each other, so that one of them would make false allegations of adultery against the other and the latter would remain exparte. Some others would make false pretence of being insane in order to obtain a decree declaring the marriage null and void. Through these devices, they try to escape from shattered matrimonial bondage. Those others who are not willing to adopt dishonest devices continue to suffer without escape under the primitive marriage law.

As marriage and divorce are matters in the Concurrent List,¹⁰ the legislative competence to bring about reforms in the Christian family laws falls on both Parliament and the state legislatures. It is significant that the State of Kerala has offered to introduce a Bill for amendment of section 10. The Union of India has stated that the Central Government has not yet taken a decision to implement the recommendations of the Ninetieth Report of the Law Commission regarding changes in section 10.

By the interim order giving time to the Central Government to act within a specified time-frame, the High Court has forced the issue on the Central Government to bring about reforms in the Christian personal law to the extent of amending section 10 of the Indian Divorce Act to alleviate the agony and misery of Christian wives. It is better in the interest of uniformity of law all over India that Parliament amends the Act instead of leaving it to the Kerala Legislature to do so under its concurrent legislative jurisdiction.

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9. *Supra* note 1 at 132.

10. Entry 5, Seventh Schedule, Constitution of India.

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