164

LAW COMMISSION OF INDIA

ONE HUNDRED SIXTY FOURTH REPORT

ON

THE INDIAN DIVORCE ACT (IV OF 1869)

NOVEMBER, 1998

JUSTICE
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Chairman, Law Commission of India

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Dear Dr.M.Thambi Durai,

I am sending herewith 164th report on "The Indian Divorce Act (IV of 1869)".

2. The subject was taken up by the Commission suo motu in view of the discriminatory provisions based on sex as applicable to the Christians in India, so as to make recommendations for removing anomalies and ambiguities in the law.

3. It may be mentioned that the Law Commission had suggested comprehensive amendments to the Act in the Bill titled "The Christian Marriage and Matrimonial Causes Bill, 1960" submitted alongwith its 15th report. The Commission had also dealt with this matter in its 22nd and 90th reports. 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.

With regards,

Yours sincerely,

(B.P.JEEVAN REDDY)

Dr.M.Thambi Durai,
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CHAPTER I

INTRODUCTORY

1.1 Significance of the Act and the need for revision: The Indian Divorce Act, 1869 was taken up by the Law Commission in pursuance of its terms of reference, which, inter alia, empower the Commission to make recommendations for the removal of anomalies, ambiguities and inequalities in the law. The Act of 1869 is a central Act of considerable importance to the Christian community. In view of the inequalities pointed out in various judicial decisions as discussed in the succeeding chapters, a review of the Act appears to be badly needed.

1.2 Scheme of the Act in brief:- The Indian Divorce Act was enacted in the year 1869 "to amend the law relating to divorce and matrimonial causes". Its application is confined to persons professing the Christian religion. Of course, it is enough even if one of the parties to the marriage professes Christian faith (see section 2). Section 10 sets out the grounds on which a decree for dissolution of marriage can be made. According to section 14, such a decree for dissolution can be granted by the "court", which expression is defined by clause 4 of section 3 to mean the High Court or the District Court, as the case may be. Section 17, however, provides: "Every decree

for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court. Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the judges of the High Court is three or upwards) by a Court composed of three such judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the judges of the High Court is two) by a Court composed of such two judges, and in case of difference the opinion of the Senior Judge shall prevail." Section 16 provides that where a decree for a dissolution of marriage is made by the High Court (not being a confirmation of a decree of a District Court), it shall, in the first instance, be a decree nisi, not to be made absolute till after the expiration of not less than six months from the date of such decree. Section 20 provides that every decree of nullity made by a District Judge shall be subject to confirmation by the High Court in the manner provided by section 17.

1.3 Some discriminatory, anachronistic provisions of the Act:- Section 10, which specifies the grounds for dissolution of marriage reads as follows:

> "10. **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 Christainity 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."

1.4 It may be emphasised even at this stage that section 10 makes a clear and invidious discrimination against the woman. While a man seeking dissolution need prove only adultery on the part of his wife, a wife is required to prove some other marital offence in addition to adultery to be able to obtain dissolution.

1.4.1 In section 55 of the Indian Divorce Act, an appeal has been provided against a decree made by the High Court as if it were a decree made in exercise of its original civil jurisdiction which means that an appeal lies to a division bench against an order of the judge of a High Court granting a decree for dissolution of marriage under section 16.

1.4.2 The Act was made more than 128 years ago. In view of its antiquated and discriminatory provisions, it has become an anachronism today. The Law Commission was seized of this problem in the past and has been making repeated recommendations for a thorough review of the law and for enacting a new Act in its place.

1.5 Previous Reports of the Commission and later developments:- The Law Commission had suggested comprehensive amendments to the Act in the Bill titled "The Christian Marriage and Matrimonial Causes Bill, 1960" submitted along with its 15th Report[1] whereby both husband and wife were given the right to seek dissolution of marriage on almost all grounds mentioned in the Special Marriage Act, 1954, including the ground of adultery simpliciter, cruelty and desertion as per clause 30 of the Bill. In clause 31, the Law Commission also recommended that a provision be made for the grant of divorce if after a decree for judicial separation,

cohabitation had not been resumed. On receipt of the 15th Report, the Government finalised a Bill on the lines suggested by the Law Commission and again referred the matter to the Law Commission for its views after inviting opinion from the public. Accordingly, the Law Commission after ascertaining public opinion submitted the 22nd Report[2] reiterating its earlier stand. Though on receipt of the 22nd Report, the Christian Marriage and Matrimonial Causes Bill, 1961 was introduced in the Parliament, the same lapsed on the dissolution of the Lok Sabha. It further appears from the counter-affidavit filed by the Union of India in Mary Sonia v. Union of India[3] that after consulting the leaders of the Christian community, the Central Government had prepared another Bill called Christian Marriage Bill, 1994 but it is not clear why this has not been enacted by Parliament so far. The following extracts from the counter-affidavit are relevant:

> "In view of the fact that owing to the strong opposition from certain segments of the Christian community, the earlier action of the Government of India for bringing in a comprehensive legislation relating to marriage and matrimonial causes of the Christian community could not be got enacted. Now we have, through the efforts of the Joint Women's Programme, a voluntary women's organisation, received comprehensive proposals in

the form of draft Bills for changes in the personal laws of the Christian community from the Christian churches. These Bills include the draft Christian Marriage Bill, 1994 which seeks to consolidate, amend and codify the law relating to marriage and matrimonial causes of persons professing the christian religion and to repeal the Indian Divorce Act, 1869 and Indian Christian Marriage Act, 1872 among other things. The grounds for divorce proposed in the aforesaid Bill are more liberal in nature in tune with the changed social-economic conditions of the community and the prevailing law relating to marriage and divorce available under the Special Marriage Act, 1954. The grounds for divorce include desertion of the petitioner by the other spouse for a continuous period of not less than two years immediately preceding the presentation of the petition. It has been stated that the Bill has the support of the Catholic Bishops' Conference of India (CBCI) and 27 Member Churches of the National Council of Churches in India (NCCI) and some other independent churches.

Since the christian churches have now come forward with the necessary legislative proposal, the Government are actively considering the same

with a view to bringing in necessary legislation as early as possible. The proposals are being studied and examined."

1.5.1 Evidence of Christian community considered by the Commission in its previous reports for making recommendations for amendment of Section 10 of the Act:-

It is also relevant to note that the 15th and 22nd Reports (supra) were prepared after collecting evidence from leaders of the Christian Church, representatives of the Christian Associations, members of the Christian community, Bar Associations and Judicial Officers in the country. The reports would reveal that there was a demand from the Christian community itself for inclusion of progressive grounds for divorce like cruelty and desertion which are available in almost all modern legislations on the subject. Since the law continued as such, in 1983, the Law Commission of India headed by none other than late Hon'ble Justice K.K. Mathew suo motu took note of the urgent need to amend the provisions contained in section 10 of the Act and submitted its 90th Report dated 17.5.1983 recommending urgent amendment of that section. It is appropriate to quote the reasons given in the report:

"The reason why we attach the highest importance to amending section 10 as above 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 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...."

1.5.2 Though more than fifteen years have elapsed after the said Report, no effective action seems to have been taken by the Parliament on the basis of the same to amend section 10 of the Act. The Commission reiterates the urgent necessity of amending section 10 of the Act to remove discrimination between the sexes and recommends that the offending words which have already been struck down by the Kerala and Andhra Pradesh High Courts, be deleted.

1.6 Observations of Courts regarding review of Act:- The courts in India have noted the antiquated and anomalous nature of the Act and stressed the need for amendment of the law in various judgements. In S.D. Selvaraj v. Chandirah Mary[4], Alagiriswami, J. (as he then was) had stressed the need for an immediate

amendment of the Act on the lines of the provisions contained in the Hindu Marriage Act, 1955, the Parsi Marriage and Divorce Act, 1936, and the Special Marriage Act, 1954. In T.M. Bashiam v. M. Victor[5], a special Bench of the same court after referring to the observations of Alagiriswami, J. in Selvaraj's case has made the following observations:

> "It is only under this Act (4 of 1869) that the law remains where it was, when this enactment was born, so that parties governed by this law are under the grave disadvantage that, even if a husband deserts his wife for a considerable period, that will be no ground for divorce; in our view, it is a genuine hardship and there is urgent need for re-examination of the provisions of Act 4 of 1869, as the Act governs a large body of persons in this country to see that its provisions are rendered humane and up-to-date." (emphasis supplied)

1.7 It is, therefore, recommended that Parliament enact a comprehensive law governing the marriage, divorce and other allied aspects of the Christians in India. The draft Bill enclosed with the 22nd report of the Law Commission, a draft Christian Marriage and Matrimonial Causes Bill, 1961 and the draft Christian Marriage Bill, 1994, referred to hereinabove, should serve as a basis for such a law. We do not think that there is any ground for procrastinating the matter any longer.

CHAPTER II

OBSERVATIONS OF VARIOUS HIGH COURTS

PART I

2.1 Constitutionally invalid provisions:- Though as obiter, A.M. Bhattacharjee, J. speaking for the Full Bench in Swapna Ghosh v. Sadananda Ghosh[1] had the following observations to make in regard to the constitutionality of the provisions under consideration:

> "... If the husband is entitled to dissolution on the ground of adultery simpliciter on the part of the wife, but the wife is not so entitled unless some other matrimonial fault is also found to be superadded, then it is difficult to understand as to why this provision shall not be held to be discriminatory on the ground of sex alone and thus to be ultra vires. Art.15 of the Constitution countermanding any discrimination on such ground ...."

2.2 Discriminatory provision under section 10:- Then again, under the Divorce Act, Christian spouses are not entitled to dissolution of marriage on the ground of

cruelty or desertion, but are only entitled to judicial separation under section 22 which shall have the effect of a divorce a mensa et toro, that is separation only from "bed and board" whereunder matrimonial bond remains undissolved. But spouses married under the Special Marriage Act, 1954, Hindu, Bhuddhist, Sikh and Jain spouses governed by the Hindu Marriage Act, 1955, Zoroastrian spouses governed by the Parsi Marriage and Divorce Act, 1936, Muslim wives under the Dissolution of the Muslim Marriages Act, 1939, are entitled to dissolution of marriage, and not merely judicial separation, on those grounds. Are we then discriminating against Christian spouses and that too, on the ground of their being Christian by religion and thus violating the mandate of Art.15 interdicting discrimination on the ground of Religion only?

2.2.1 K.T. Thomas, J. has also made the following observations and directions while passing an interim order[2] [in O.P. No.5805 of 1988]:

> "... After independence, the Indian Parliament brought about radical changes in the marriage law applicable to Hindus, Parsis and even to foreigners living in India by incorporating progressive and realistic grounds for divorce in such enactments. But either for no reason or for

reasons which are not easy to comprehend, the law of marriage applicable to Christians remains unrealistic and antiquated."

After observing so, the learned Judge has directed the Union of India to take a final decision regarding the recommendations of the Law Commission in its 90th Report already referred to within a period of six months from the date of receipt of a copy of the said order. In spite of such a positive direction, no final decision to amend the law, has been taken though the direction was given on 13.12.1989.

2.3 In Mary Sonia v. Union of India[3], a Full Bench of the Kerala High Court has struck down the discriminatory words in section 10. The declaration granted by the High Court is in the following words:

"For all the above reasons, we would hold that the offending portions of the provisions as already indicated are severable and they are liable to be quashed as ultra vires. We would further hold that the remaining portions of the provisions can remain as valid provisions allowing dissolution of marriage on grounds of adultery simpliciter and desertion and/or cruelty independent of adultery. Adoption of such a course, in our view, would help to avoid striking

down of the entire provisions in section 10 of the Act and to grant necessary reliefs to the petitioners and similarly situated Christian wives seeking dissolution of their marriage which has for all intents and purposes ceased to exist in reality.

We would accordingly sever and quash the words "incestuous" and "adultery coupled with" from the provisions in section 10 of the Act and would declare that section 10 will remain hereafter operative without the above words."

2.3.1 Having granted the aforesaid declaration, the Full Bench proceeded to make the following pertinent observations[4]:

"Before parting with this case, we would like to observe that in spite of a positive direction by Thomas, J. in these two Original Petitions which were filed in the year 1988, directing the Central Government to take a final decision on the recommendations of the Law Commission in its 90th Report for making amendments to S.10 of the Act, no final decision has been taken in the matter till today. The direction issued was to take a decision within six months from the date of receipt of a copy of the order dated

13.12.1990. In spite of such a peremptory direction, the Central Government has not even cared to inform this Court about the decision if any taken in the matter till the fag end of the arguments in this case when the Central Government Pleader has produced the communication to which we have already referred to. It is after taking note of, if we may say so, the totally intransigent attitude adopted by the Central Government in the matter of taking a final decision regarding the amendment of the law on the point which was recommended by successive Law Commissions of India at least from 1961 onwards and the various courts in India through their observations and directions including the positive direction in this case, that we have decided to consider the matter on merits and to grant the reliefs prayed for, assuming the role of the reformer to the extent legally permissible as an attempt to bridge the gap between the personal laws."

2.4 In Youth Welfare Federation (represented by its Chairman, K.J. Prasad) v. Union of India[5], a Full Bench of the Andhra Pradesh High Court held that section 10 of the Indian Divorce Act, 1869, is inconsistent with

Article 14 of the Constitution, being discriminatory against wife "who is subjected to more onerous grounds to obtain divorce than the husband...."

2.5 A Special Bench of the same Court in N. Sarada Mani v. G. Alexander and another[6], again reiterated the view of the Full Bench as under:

> "...we are of the opinion that the grounds which are available to the wife (sic - "husband") under section 10 should also be made available to the husband (sic - "wife") in a petition filed by him (sic - "her") seeking divorce and the Parliament should immediately take note of the discrimination writ large between the grounds available to the wife and the husband in a petition for divorce. It is for the Parliament to take note of this anamoly and fill-in the void by suitable legislation. A pre-constitution discrimination by the provision in section 10 of the Indian Divorce Act, 1869, it is rightly held by the Full Bench in Youth Welfare Federation case (supra), cannot survive the test of equality between men and women as envisaged under Articles 14 and 15 of the Constitution of India."

[In Anil Kumar Mahsi v. U.O.I.[7], the Supreme Court of India, in another context, held that whereas husband could get dissolution of marriage on the ground

of adultery simpliciter, wife had to prove that husband was guilty of not only adultery simpliciter but that adultery was (i) incestuous, (ii) coupled with bigamy, (iii) coupled with marriage to another woman, (iv) coupled with cruelty which without adultery would have entitled her to divorce a mensa et toro. To that extent, it was the wife who was discriminated against and at a disadvantage.]

2.6 Inasmuch as the aforesaid decisions of the High Courts have no binding effect in States other than where they are located, and also because, the whole Act needs to be replaced by a new and modern legislation, it is absolutely essential to enact a new law on the lines of the draft Bill prepared by the Law Commission and reiterated by it again under the Chairmanship of Mr. Justice K.K. Mathew, former Judge, Supreme Court of India, which is enclosed to the Reports of the Law Commission referred to hereinabove.

PART II

URGENT NECESSITY TO AMEND SECTIONS 17 AND 20 OF THE ACT

2.7 If for any reason, there is going to be some delay in enacting a new comprehensive law as suggested in Part I and paragraph 1.5.2, supra of this report, the provisions in sections 17 and 20 may at least be amended forthwith in the circumstances and for the reasons mentioned hereinafter.

2.8 The general practice appears to be that parties seeking dissolution of marriage under this Act generally approach the District Court but that court can grant only the decree nisi which has to be confirmed by a Bench of not less than three judges of the High Court. Of course, if the High Court has only two judges then the two judges shall form a Bench and can hear such reference. (As a matter of fact, today there is no High Court with only two Judges, except perhaps Sikkim.) On account of the heavy load of work in all the High Courts in the country, constitution of a three-judge Bench to hear the confirmation matters under this Act takes a long time, indeed several years. Parties who have obtained a decree nisi of dissolution from the District Court have to wait interminably till a special bench of three judges is

constituted. The personal laws governing the Hindus and Muslims do not contain any provision for confirmation by a special Bench of three judges. Under the Hindu Marriage Act, 1955, a decree for divorce or dissolution can be made by a District Judge finally and it is upto a losing party to file an appeal to the High Court which of course is to be heard by a Bench of two judges. Similar is the case in the case of Muslims.

2.8.1 Existing provision for confirmation by a special Bench of three judges of the High Court, criticised:- The aforesaid provision for confirmation by a special Bench of three judges of the High Court has been uniformly criticised by almost all the High Courts in the country. They have suggested that the relevant provisions be amended to bring them on par with the corresponding provisions in other personal laws. A brief reference to the said decisions would be in order.

2.8.2 In Mrs Neena v. John Pormer[8], a special bench of the three judges of the High Court of Madhya Pradesh observed as under:

> "... the procedure prescribed by section 17 of the Indian Divorce Act, 1869, requiring confirmation by the High Court of a decree for dissolution of a marriage made by District Judge, prolongs the agony of the affected parties even

though none of the parties is desirous of preferring an appeal. We see no valid justification for continuation of this procedure especially when no such procedure is prescribed by other Acts dealing with dissolution of marriages, namely, the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955... In our opinion, therefore, there is an urgent need for making suitable amendments in the Indian Divorce Act, 1869 as made in Uttar Pradesh by Act No.30 of 1957."

2.8.3 Similarly, a special Bench of three judges of the Calcutta High Court observed as follows in Swapna Ghosh v. Sadananda Ghosh and another[9]:

"I have, however, my own doubts as to whether the provisions of section 17 of the Indian Divorce Act requiring confirmation of the decree of the trial court by the High Court should any longer be retained. A decree for dissolution of marriage among the Hindus, Buddhists, Sikhs and Jains under the Hindu Marriage Act, 1955 among the Parsis under the Parsi Marriage and Divorce Act 1936, among the Muslims under the Dissolution of Muslim Marriage Act, 1939 are made by the District Courts and under the last mentioned Act, even by courts of lower rank and all such decrees

operate with the fullest efficacy without any confirmation from the High Court. It is, therefore, difficult to appreciate the retention of the provisions of section 17 of the Divorce Act providing that the Christian couples, even after obtaining a decree for dissolution from the District Court, may be after a long-drawn and streneous litigation, must still wait for confirmation thereof from the High Court before those decrees can be complete and binding. These provisions of section 17 even assuming that they had their days when enacted in the mid-ninteenth century, have probably outlived their purposes particularly in the context of the later enactments relating to matrimonial laws governing the other communities and referred to hereinabove and only result in protracting and prolonging the litigation, even where none of the parties is in a mood to have a further review or reconsideration of their case by any higher court. All these considerations led the Legislature of the State of Uttar Pradesh to do away with these provisions in section 17 of the Divorce Act by a State Amendment Act being Act No.30 of 1957. 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 and we are glad to note that a special bench of the Madhya Pradesh High Court while disposing of a confirmation proceeding under section 17 of the Act in Neena v. John Parmer AIR 1985 Madhya Pradesh 85 at p.87 (FB) has also made recommendation to that effect in emphatic terms... Have not the Christian spouses been denied procedural reasonableness and due process by these provisions of section 17 providing for compulsory confirmation hearing, in the context of the spouses belonging to other communities whose matrimonial proceedings are not subjected to any such further hearing?"

2.8.4 The same views have been reiterated in another decision of the Calcutta High Court in Ramish Francis Toppo v. Violet Francis Toppo[10].

2.9 To the same effect are observations of special Bench of three judges of the Bombay High Court in Mrs. Pragati Varghese and etc. v. Cyril George Varghese and etc.[11]:

"Section 17, we further find, provides that in case a High Court comprises of only two judges and decree passed by a District Court comes up for confirmation before the said two judges and in case of a difference of opinion, the provision contemplates that the decision of the senior judge would prevail. In our judgement, the aforesaid procedure contemplated by sections 16, 17 and 20 are unreasonable and are arbitrary in nature. The same achieves no useful object or purpose. The procedure provided tends to perpetuate the agonies of the affected parties for no useful purpose. If such a procedure is absent in other similar enactments, we do not find any propriety why this procedure should be applied to Christian spouses. The said procedure, in the circumstances, is liable to be struck down by suitable amendments, which we suggest should be brought about by suitable amendments in the Act.

... We further find the provisions of sections 16, 17 and 20 of the Act are also arbitrary and unreasonable. We suggest that the legislature should intervene and carry out suitable amendments to 'the Act' at the earliest. We direct that a copy of this order may be forwarded forthwith to the Ministry of Law and Justice for such action as they may deem fit to take." (emphasis supplied)

2.10 The latest decision reiterating the above observations is that of the Kerala High Court. A special Bench of three judges observed thus in their order dated 10th August 1998[12]. The relevant observations are to the following effect:

> "Before this Court, even though notice is served on the respondent, he is neither present nor represented by counsel. We feel that it is high time that the provision regarding confirmation under sections 17 and 20 of the Indian Divorce Act 1869 are deleted from the statute. Section 17 provides that every decree for dissolution of marriage made by a district judge shall be subject to confirmation by the High Court. It is further provided that cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the judges of the High Court is three or upwards) by a court composed of three such judges or (where the number of the judges of the High Court is two) by a court composed of such two judges. Section 20 provides that every decree of nullity of marriage made by a district judge shall be subject to confirmation by the High Court. That too by a bench of three judges in courts where the number of judges is three or upwards and where the number of judges of the

High Court is two, by a bench composed of two judges. A petition under section 10 for grant of divorce and section 18 for declaring the marriage null and void can be filed both before the district court as well as the High Court. When such petitions are filed in the High Court, it is being heard by a single judge and appeal therefrom by a bench constituting two judges. Above being the provision, we are of the view that confirmation of a judgment of the district court by a bench of three judges is absolutely unwarranted. We are also of the view that the provision for confirmation can be deleted and in its place a provision could be made for filing an appeal before the High Court by whichever party aggrieved by the order passed either under section 10 or under section 18. Such an appeal can be heard by a bench consisting of two judges as in the case of all other matrimonial appeals." (emphasis supplied)

2.11 The Madras High Court has also expressed similar views in Solomon Devasahayam Selvaraj v. Chandirah Mary[13].

2.12 U.P. Amendment Act No.30 of 1957:

It may also be mentioned that as far back as 1957, the U.P. Legislature has amended the Indian Divorce Act, 1869 by U.P. Amendment Act No.30 of 1957,

deleting clauses 1 to 5 of section 17 of the Act which provide that a District Court alone can make a decree nisi and that such decree nisi has to be confirmed by a special Bench of three judges of the High Court and other allied provisions. Section 20 which provides that every decree of nullity of marriage made by a District Judge shall be subject to confirmation by the High Court was also omitted by the said U.P. Amendment Act. No objection has been taken by any section of the Christian community to the above Amendment Act nor has anyone criticised the aforementioned observations of the High Courts.

CHAPTER III

RECOMMENDATIONS OF THE LAW COMMISSION

3.1 The Law Commission is in full agreement with the views expressed by Law Commission in its earlier reports mentioned hereinabove and the views expressed unanimously by several High Courts in the country.

(i) It is, therefore, recommended that Parliament enact a comprehensive law governing the marriage, divorce and other allied aspects of the Christians in India. The draft Bill enclosed with the 15th report of the Law Commission, the draft Christian Marriage and Matrimonial Causes Bill, 1961 as modified by the 22nd report of the Law Commission and the draft Christian Marriage Bill, 1994, referred to hereinabove, should serve as a basis for such a law. We do not think that there is any ground for procrastinating the matter any longer.

(ii) The Law Commission further recommends that in any event paragraphs 1 to 5 of section 17 and section 20 of the Indian Divorce Act, 1869, be deleted forthwith. The last remaining paragraph of section 17 would thus become section 17. Further, section 10 should also be amended in the manner indicated in para 1.5.2 of this report.

3.2 The Law Commission wishes to emphasise the fact that the provisions contained in sections 17 and 20 are only procedural in nature and there is absolutely no possibility of any member of the Christian community objecting to amendments suggested herein. Section 10 of the Act also needs to be amended suitably so that the female spouses are not discriminated vis-a-vis male spouses in obtaining divorce, as indicated by us in paragraph 1.5.2 above. Indeed, the offending portions have been already struck down by Kerala and Andhra Pradesh High Courts and there is not a murmur against the said decisions by any member of the Christian Community. The Law Commission recommends that at least these amendments be made without any delay.

(MR.JUSTICE B.P.JEEVAN REDDY)(RETD)

CHAIRMAN

(MS.JUSTICE LEILA SETH)(RETD) (DR.N.M.GHATATE) (DR.SUBHASH C.JAIN)

MEMBER MEMBER MEMBER-SECRETARY

DATED: 18TH NOVEMBER, 1998

Footnotes and References

CHAPTER I

1. 15th Report of the Law Commission of India on "Law Relating to Marriage and Divorce Amongst Christians in India" with "Christian Marriage and Matrimonial Causes Bill, 1960" appended.

2. 22nd Report of the Law Commission of India on "Christian Marriage and Matrimonial Causes Bill, 1961".

3. Mary Sonia v. Union of India, 1995 (1) KerLT 644.

4. S.D. Selvaraj v. Chandirah Mary, (1968) 1 M.L.J. 289.

5. T.M. Bashiam v. M. Victor, AIR 1970 Madras 12.

Footnotes and References

CHAPTER II

1. Swapna Ghosh v. Sadananda Ghosh, AIR 1989 Cal. 1.
2. O.P. No.5805 of 1988 referred to in Mary Sonia v. Union of India, 1995 (1) KerLT 644.
3. Mary Sonia v. Union of India, 1995 (1) KerLT 644 at 672.
4. Id. p. 673.
5. Youth Welfare Federation (represented by its Chairman, K.J. Prasad) v. Union of India, (1996) 4 Andh L.J. 1138.
6. N. Sarada Mani v. G. Alexander, AIR 1998 Andhra Pradesh 157 at 161-162.
7. Anil Kumar Mahsi v. Union of India, (1994) 5 SCC 704, 706.
8. Mrs. Neena v. John Pormer, AIR 1985 Madhya Pradesh 85 at 87.
9. Swapna Ghosh v. Sadananda Ghosh and another, AIR 1989 Cal. 1 at 2.

10. Ramish Francis Toppo v. Violet Francis Toppo, AIR 1989 Cal. 128.

11. Mrs. Pragati Varghese and etc. v. Cyril George Varghese and etc., AIR 1997 Bom 349 (FB) at 373.

12. C.M. Reference No.48/98 (Bincy Mathew v. Sabu Abraham), decided on 10.8.98 by the High Court of Kerala.

13. Solomon Devasahayam Selvaraj v. Chandirah Mary, (1968) 1 M.L.J. 289.