

The Indian Divorce (Amendment) Bill, 2000
A Bill further to amend the Indian Divorce Act, 1869

Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:

1. Short title and commencement

(1) This Act may be called the Indian Divorce (Amendment) Act, 2000.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of section 1.-In section 1 of the Indian Divorce Act, 1869 (4 of 1869) (hereinafter referred to as the principal Act), the word "Indian" shall be omitted.

3. Amendment of section 3.-In section 3 of the principal Act, clauses (6) and (7) shall be omitted.

4. Substitution of new section for section 10.-For section 10 of the principal Act, the following section shall be substituted, namely:—

“10. Grounds for dissolution of marriage.- (1) Any marriage solemnized whether before or after the commencement of the Indian Divorce (Amendment) Act, 2000 may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent —

(i) has been guilty of adultery;

(ii) has changed her or his profession of Christianity for the profession of some other religion and gone through a form of marriage with another man or woman, as the case may be;

(iii) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent;

(iv) has deserted the petitioner for at least two years immediately preceding the presentation of the petition.

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.”.

5. Substitution of new section for section 11.-For section 11 of the principal Act, the following section shall be substituted, namely: –

“11. Adulterer or adulteress to be co-respondent.-On a petition for dissolution of marriage presented by a husband or wife on the ground of adultery, the petitioner shall make the alleged adulterer or adulteress a co-respondent, unless the petitioner is excused by the Court from so doing on any of the following grounds, namely: –

(a) that the wife, being the respondent is leading the life of a prostitute or the husband, being respondent is leading an immoral life and that the petitioner knows of no person with whom the adultery has been committed;

(b) that the name of the alleged adulterer or adulteress is unknown to the petitioner although the petitioner has made due efforts to discover it;

(c) that the alleged adulterer or adulteress is dead.”.

6. Amendment of section 13.-In section 13 of the principal Act, the last paragraph shall be omitted.

7. Amendment of section 14.-In section 14 of the principal Act, in paragraph 4, the words “in the manner and subject to all the provisions and limitations in sections sixteen and seventeen made and declared” shall be omitted.

8. Amendment of section 15.-In section 15 of the principal Act,—

(a) the words “without reasonable excuse” shall be omitted;

(b) for the words “her adultery and cruelty”, the words “her adultery, cruelty or desertion” shall be substituted;

(c) for the words “such cruelty”, the words “such such adultery as cruelty” shall be substituted.

9. Amendment of section 16.-In section 16 of the principal Act, the words “not being a confirmation of a decree of a district court” shall be omitted.

10. Substitution of new section for section 17.-For section 17 of the principal Act, the following section shall be substituted, namely:—

“17. Power of High Court to remove certain suits.-During the progress of the suit in the court of the District Judge, any person suspecting that any party to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section 8, and the court shall thereupon, if it think fit, remove such suit and try and determine the same as a court of original jurisdiction, and the provisions contained in section 16 shall apply to every suit so removed; or it may direct the District Judge to take such step in respect of the alleged collusion as may be necessary, to enable him to make a decree in accordance with the justice of the case.”.

11. Omission of section 17A.-Section 17A of the principal Act shall be omitted.

12. Amendment of section 18.-In section 18 of the principal Act, the words “or to the High Court” shall be omitted.

13. Amendment of section 19.-In section 19 of the principal Act, in the last paragraph, for the words “jurisdiction of the High Court”, the words “jurisdiction of the District Court” shall be substituted.

14. Omission of section 20.-Section 20 of the principal Act shall be omitted.

15. Amendment of section 22.-In section 22 of the principal Act, the words “without reasonable excuse” shall be omitted.

16. Amendment of sections 23, 27 and 32.-In sections 23, 27 and 32 of the principal Act, the words “or the High court” shall be omitted.

17. Substitution of new section for section 34.-For section 34 of the principal Act, the following section shall be substituted, namely: –

“34. Damages from adulterer or adulteress.-*(1)* A husband or wife may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the district court, limited to such object only, claim damages from any person on the ground, of his having committed adultery with the wife of such petitioner; or her having committed adultery with the husband of such petitioner, as the case may be.

(2) A petition under sub-section *(1)* shall be served on the alleged adulterer and the wife or the alleged adulteress and the husband, as the case may be, unless the Court dispenses with such services or directs some other service to be substituted.

(3) The damages to be recovered on any petition under sub-section *(1)* shall be ascertained by the said Court, although the respondent or either of them may not appear.

(4) After the decision has been given, the Court may direct in what manner such damages shall be paid or applied.”.

18. Substitution of new section for section 35.-For section 35 of the principal Act, the following section shall be substituted, namely: –

“35. Power to order adulterer or adulteress to pay costs.-*(1)* Whenever, in any petition presented by a husband or wife, the alleged adulterer or adulteress, as the case may be, has been made a co-respondent, and the adultery has been established, the court may order the co-respondent to pay:

Provided that the co-respondent shall not be ordered to pay the petitioners cost—

(a) if the respondent was, at the time of adultery, living apart from her husband and leading the life of a prostitute or from his wife and was leading an immoral life, as the case may be; or

(b) if the respondent had not, at the time of adultery, reason to believe the respondent to be a married woman or married man.

(2) Whenever any application is made under section 17, the court, if it thinks that the applicant had no grounds or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application.”.

19. Amendment of section 36.-In section 36 of the principal Act, in the proviso, the words “or is confirmed, as the case may be” shall be omitted.

20. Amendment of section 37.-In section 37 of the principal Act, for the portion beginning with the words “The High Court” and ending with the words “the husband shall”, the words “Where a decree of dissolution of the marriage or a decree of judicial separation is obtained by the wife, the District Court may order that the husband shall” shall be substituted.

21. Amendment of section 40.-In section 40 of the principal Act, for the portion beginning with the words “The High Court” and ending with the words “may inquire into”, the words “The District Court may, before passing a decree for dissolution of the marriage or a decree of nullity of marriage, inquire into” shall be substituted.

22. Amendment of section 43.-In section 43 of the principal Act, for the portion beginning with the words “In any suit for obtaining” and ending with the words “deems proper”, the words “In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in a District Court, the court may before making its decree from time to time make such interim orders as it may deem proper” shall be substituted.

23. Amendment of section 44.-In section 44 of the principal Act, for the portion beginning with the words “The High Court” and ending with the words “may

upon application”, the words “Where a decree of dissolution or nullity of marriage has been passed, the District Court may, upon application” shall be substituted.

24. Amendment of section 45.-In section 45 of the principal Act, for the words “Code of Civil Procedure”, the words and figures “Code of Civil Procedure, 1908 (5 of 1908)” shall be substituted.

25. Amendment of section 52.-In section 52 of the principal Act, for the portion beginning with the words “by a wife” and ending with the words “without reasonable excuse”, the words “by a husband or a wife, praying that his or her marriage may be dissolved by reason of his wife on her husband, as the case may be, having been guilty of adultery, cruelty or desertion” shall be substituted.

26. Amendment of section 55.-In section 55 of the principal Act, —

(a) the first proviso shall be omitted;

(b) in the second proviso, for the words “Provided also”, the words “Provided” shall be substituted.

27. Substitution of new section for section 57.-For section 57 of the principal Act, the following section shall be substituted, namely: —

“57. Liberty to parties to marry again.-Where a decree for dissolution or nullity of marriage has been passed and either the time for appeal has expired without an appeal having been presented to any court including the Supreme Court or an appeal has been presented but has been dismissed and the decree or dismissal has become final, it shall be lawful for either party to the marriage to marry again.”.

28. Amendment of section 62.-In section 62 of the principal Act, for the words “Code of Civil Procedure”, the words and figures “Code of Civil Procedure, 1908 (5 of 1908)” shall be substituted.

29. Repeal.-The Indian and Colonial Divorce Jurisdiction Act, 1926, the Indian and Colonial Divorce Jurisdiction Act, 1940 and the Indian Divorce Act, 1945 are

hereby repealed. (16 & 17 Geo. 5,c. 40, 3 and 4 Geo IV C.35, 9 Geo VI C.51).

STATEMENT OF OBJECTS AND REASONS

The Law Commission of India in its 164th Report on "The Indian Divorce Act (IV of 1869)" presented to the Government in November, 1998 has, inter alia, recommended that Parliament may enact a comprehensive law governing marriage and divorce and other allied aspects of the Christians in India. The Commission, relying on the judgments and observations of certain High Courts, has also urged the Central Government to take immediate measures –

(i) to amend section 10 of the Indian Divorce Act, 1869 relating to grounds of dissolution of marriages so that the female spouses are not discriminated vis a vis male spouses in obtaining a decree of dissolution of marriage;

(ii) to amend suitably sections 17 and 20 of the Act to do away with the procedural requirement of obtaining confirmation from the High Court in respect of a decree of dissolution of marriage or decree of nullity of marriage as such a procedure is long-drawn and strenuous.

2. With a view to ascertaining the views of the Christian community on proposal for a unified law on marriage and divorce, the Central Government convened a meeting of leaders of prominent Churches in India and the Members of Parliament belonging to the Christian community on the 28th April, 2000 but there was no consensus for bringing in a comprehensive legislation on Christian marriages and matrimonial causes. However, there is no opposition from any one to amend sections 10, 17 and 20 of the Indian Divorce Act, 1869 suitably to remove the gender inequality as contained in section 10 and to do away with the procedural delays in obtaining divorce due to the provisions contained in sections 17 and 20 of the Act. The Government, therefore, proposes to make suitable changes in the Indian Divorce Act, 1869 for removing hardship to all concerned.

3. The Commission on Review of Administrative Laws which was set up by the Central Government on the 8th May, 1998 has, inter alia, recommended repeal of various enactments including three British Statutes relating to Christian Personal

Law still in force. It is proposed to repeal these enactments also as they have become obsolete.

4. This Bill seeks to achieve the above objects.

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New Delhi;

The 17th November, 2000.