

RGICS

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RGICS LEGISLATIVE BRIEF

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The Divorce [Amendment] Bill, 2017

KEY MESSAGES

- a. The Government intends to modify the 147 year old Christian law of divorce
- b. The separation period of Christians is being recommended to be reduced from two to one year
- c. Issue of maintenance rights is not addressed in the suggested amendments
- d. In spite of suggested changes the Indian Divorce Act continues to remain discriminatory towards women

PART I. INTRODUCTION

Divorce rates are gradually rising in urban India. The divorce rate in India has risen in the last ten years from 13 per 1000 (2016) from 1 per 1000 (2006) (Shukla, 2016). This can be attributed to an attitudinal change towards divorce in the past few years and it is no longer considered to be a taboo and a practice associated only with the Western societies. Considerable number of couples are resorting to divorce and changing the family structures of India. The disruption of the joint family system, more women entering the workforce and late marriages resulting in reluctance to compromise are some of the major reasons being attributed to the rising divorce rates in the country (Dutt, 2015). Within the Indian States and Union Territories, media reports have tagged New Delhi as the divorce capital of India (Pioneer, 2016; Times of India, 2016). More than 100 divorce petitions are being filed on an everyday basis in the city's family court (Pioneer, 2016). Among the religious groups, Christians and Buddhists have the highest rates of divorce followed by Muslims (Census of India, 2011).

Given the diversity of India, there are separate provisions for divorce for every religious group in the country. There are separate laws of divorce for Hindus, Muslims, Parsis and Christians. The Sikhs, Jains and Buddhists are covered under the Hindu Marriage Act, 1955 as they do not have a separate laws or provisions for either marriage or divorce. The Divorce [Amendments] Bill, 2017 specifically addressing the divorce conditions for Christians, is being introduced in the upcoming Budget Session in the Lok Sabha, 2017. Recently the Supreme Court dismissing Christian personal laws prevented the Church from granting divorces. The Supreme Court judgment indicated that only civil courts have the jurisdiction to adjudicate matrimonial dispute among Christian couples. Post the intervention of the Centre on triple talaq, the government seeks to make changes to the Christian divorce laws. This is the second time amendments are being recommended for The Indian Divorce Act, 1869. Previously the Act was amended in 2001 when it was criticized for not being gender neutral. Drawing from the Indian Divorce Act, 1869 and the amendments introduced in 2001, this brief will analyze the amendments to the Bill being suggested for the upcoming session. In particular the brief will highlight the gaps in the amendments and understand where the Christian community is positioned with respect to other religious communities in India.

PART II: BACKGROUND

In colonial India, when the British intervened in the personal laws of all the religious communities, one of the first communities to introduce reforms in their laws was Christians. Though the Roman Catholic Church does not accept divorce as a practice, nonetheless the Indian Christians introduced divorce in their personal laws through the Indian Divorce Act, 1869 under colonial India. Under the Indian Divorce Act, 1869 divorce could not be obtained through mutual consent. According to Section 10 of the Act, either spouse can sue for the dissolution of marriage. While male spouses can sue in any case of adultery female spouses can sue only when adultery is coupled with the following:

- incestuous adultery;
- bigamy with adultery;
- marriage with another women with adultery;
- adultery coupled with cruelty ; and
- adultery coupled with desertion without reasonable excuse, for two years or upwards

The Indian Divorce Act, 1869 was criticized for not being gender neutral and amendments were introduced in the year 2001. With the efforts of the Law Commission in 2001 amendments were made to the Indian Divorce Act, 1869 and both male and female spouses could sue each other for divorce on cases of adultery. Additionally the amendments also introduced divorce by mutual consent in the Act. However the Bill is again up for debate and some more amendments have been proposed to be introduced in the upcoming session in Lok Sabha, 2017.

PART III: KEY ISSUES

The Indian Divorce Act, 1869 is being amended for the second time. Some of the major reasons behind the amendments are as follows:

- **Christians have to wait longer:** As compared to other communities such as Hindus, Muslims, Jains, Parsis and others, who are granted divorce after a period of separation of one year, Christians have to remain separated for two years. The law is clearly discriminatory and requires reform.
- **Christians cannot file for divorce in case of NRI spouses:** According to the Divorce Act, 1869, Christian men and women cannot file for divorce if their respective spouses are a citizen of any other country. In case the husband deserts his wife or vice versa and leaves for their country of origin, the wife/husband cannot file for divorce in India.
- **Annulment from Roman Catholic Church:** As previously mentioned the Roman Catholic Church does not recognize divorce. Catholic Christians in India have to seek an annulment from the Roman Catholic Church before they can proceed for divorce. The annulment from the Church takes years and it delays the process of divorce for Catholic Christians in India.
- **Women cannot inherit property in interfaith marriages:** In case a Hindu woman marries a Christian man and is later divorced by him, she is dependent on alimony (one fifth of the husband's income) for her source of income. She cannot inherit her ancestral property because she has had an interfaith marriage.

PART IV. THE [PROPOSED] BILL

The Indian Divorce Act has been criticized for being colonial and archaic in nature and the Government of India has also been criticized for not introducing sufficient amendments to the Act. The amendments being recommended to the Act are as follows:

- **Waiting period to be reduced:** One of the amendments which are being introduced is to reduce the waiting period from two to one year in case of couples seeking for divorce through mutual consent.
- **NRI Spouses can be divorced:** The other amendment which is being introduced is that men and women, whose spouses have deserted them in India and have taken citizenship in any other country, can file for divorce.

In the backdrop of the issues such as maintenance rights pertaining to the Indian Divorce Act, 1869, it is important to note that only two amendments have been recommended. In this context a critical analysis of the amendments are necessary.

PART V. THE CRITIQUE OF THE BILL

As discussed above the existing Indian Divorce Act, post the amendments in 2001 requires further changes. However as highlighted above the amendments being introduced do not address all the concerns of the community. For a truly progressive divorce law, certain key amendments need to be included. These are the following:

- **Maintenance of women in interfaith marriages is not addressed:** As per the Act a non Christian woman marrying a Christian man is entitled only to one fifth of her husband's salary for maintenance. The woman post her marriage to the Christian woman loses her right to inherit ancestral property. It is important for the State to intervene and modify this clause in the Act. In particular if the custody of the child is bestowed on the mother, it is important for the State to give her access to ancestral property and to an adequate alimony to reduce her economic burden and dependence.
- **Annulment of the Church:** Since the Roman Catholic Church does not acknowledge divorce as a practice, the process of divorce becomes time consuming for Catholic Christians who have to seek permission for annulment of marriage from the Church. In this context it is important for the State to make homogenous clauses for Protestant Christians, Catholic Christians, Syrian Christians and Orthodox Christians. A mandatory letter from the Church delays the process of divorce for Catholic Christians and an amendment for this clause is necessary.

Given the fact that the government is not addressing the major concerns of the Christian community, it could be suggested that the Indian Divorce Act will continue to remain discriminatory on certain grounds.

PART VI. CONCLUSION

As mentioned as per Census of India (2011) Christian women had the highest incidences of divorce and separation. In fact, Christian women for years have struggled for succession and property rights. In particular non Christian women marrying Christian men lose the right to inherit parental property as well. The Governments intervention is important in the context of divorce rights of Christian women because Christian women have the highest rates of literacy and employment in India. According to NSSO data (2011-2012) the Labor Force Participation is highest for Christian women (30.4 per cent in rural areas and 27.7 per cent in urban areas) and the lowest non-literates are also among Christian women (23.7 per cent for rural females and 9 per cent for urban females). While Christian women have higher rates of employment and education, a reform of the divorce laws are mandatory for their empowerment.

In this backdrop if the intention of the government is to empower women it is important to develop alternate mechanisms for divorced women irrespective of their caste, class and religious status. Additionally it is also important for the government to remove the social stigma associated with divorce. The rising divorce rates are an urban phenomenon and women in rural India continue to avoid the practice of divorce. Women from every strata irrespective of their religious community continue to suffer oppression and domestic violence from their husbands because of the taboos surrounding divorce. Family members of married women discourage divorce because women continued to be viewed as liabilities and marriage is identified as a process to shift the responsibility of the woman to the husbands. Marriage in India is regarded to be a sacred institution and a divorced woman is considered to be an outlier. Instead of modifying personal laws of religious minorities of India which do not give huge benefits to the women, it is important for the government to develop measures which will enable women trapped in abusive and incompatible marriages to free themselves and establish their own independence. In addition to alternate measures, the government should also create norms that mandate family members of the divorced couple to receive counselling to remove the biases and prejudices surrounding divorce.

PART VI. BACKGROUND INFORMATION/REFERENCE DOCUMENTS

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