



PARLIAMENT OF INDIA RAJYA SABHA

45

DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON
PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

FORTY FIFTH REPORT

ON

THE MARRIAGE LAWS (AMENDMENT) BILL, 2010

(PRESENTED TO THE RAJYA SABHA ON 1ST MARCH, 2011)

(LAID ON THE TABLE OF THE LOK SABHA ON 1ST MARCH, 2011)

**RAJYA SABHA SECRETARIAT
NEW DELHI
MARCH, 2011 / PHALGUNA 1932 (SAKA)**

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* To be appended at printing stage.

COMPOSITION OF THE COMMITTEE

1. Smt. Jayanthi Natarajan — *Chairperson*

RAJYA SABHA

2. Shri Shantaram Laxman Naik
3. Dr. Abhishek Manu Singhvi
4. Shri Balavant *alias* Bal Apte
5. Shri Ram Jethmalani
6. Shri Parimal Nathwani
7. Shri Amar Singh
8. Shri Ram Vilas Paswan
9. Shri O.T. Lepcha
10. Vacant*

LOK SABHA

11. Shri N.S.V. Chitthan
12. Smt. Deepa Dasmunsi
13. Smt. Jyoti Dhurve
14. Shri D.B. Chandre Gowda
15. Dr. Monazir Hassan
16. Shri Arjun Munda
17. Shri Shailendra Kumar
18. Smt. Chandresh Kumari
19. Shri Bhajan Lal
20. Dr. Kirodi Lal Meena
21. Ms. Meenakshi Natarajan
22. Shri Devji M. Patel
23. Shri Harin Pathak
24. Shri Lalu Prasad
25. Shri S. Semmalai
26. Shri Vijay Bahadur Singh
27. Dr. Prabha Kishor Taviad
28. Shri Manish Tewari
29. Shri R. Thamaraiselvan
30. Adv. P.T. Thomas (Idukki)
31. Vacant

SECRETARIAT

Shri Deepak Goyal, Joint Secretary
Shri K.P. Singh, Director
Shri K.N. Earendra Kumar, Joint Director
Smt Niangkhanem Guite, Assistant Director
Smt. Catherine John L., Committee Officer

(i)

* Vacancy caused due to death of Shri M. Rajasekara Murthy on 5th December, 2010.

INTRODUCTION

I, the Chairperson of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Forty Fifth Report on The Marriage Laws (Amendment) Bill, 2010. The Bill seeks to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 to provide for irretrievable breakdown of Marriage as a new ground for grant of a decree of divorce.

2. In pursuance of the rules relating to the Department Related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha referred the Bill, as introduced in the Rajya Sabha on the 4th August, 2010 and pending therein, to this Committee on the 23rd August, 2010 for examination and report.

3. Keeping in view the importance of the Bill, the Committee decided to issue a press communiqué to solicit views/suggestions from desirous individuals/organisations on the provisions of the Bill. Accordingly, a press communiqué was issued in national and local newspapers and dailies, in response to which memoranda containing suggestions were received, from various organizations / individuals / experts, by the Committee.

4. The Committee heard the oral evidence of the Secretaries of the Legislative Department, Ministry of Law and Justice and Ministry of Women and Child Development on the provisions of the Bill in its meeting held on 17th September, 2010 and 28th September, 2010 respectively. The Committee also heard the views/suggestions of various women organizations/individuals/experts on the provisions of the Bill on 11th and 16th November, 2010.

5. While considering the Bill, the Committee took note of the following documents/information placed before it : -

- (i) Background note on the Bill submitted by the Ministry of Law and Justice (Legislative Department);
- (ii) Views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts on the provisions of the Bill and the comments of the Legislative Department thereon;

- (iii) Views expressed during the oral evidence tendered before the Committee by the stakeholders such as representatives of NGOs/women's organizations/individuals.
 - (iv) Other research material/ documents related to the Bill.
7. The Committee adopted the Report in its meeting held on the 2nd February, 2011.
8. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi;
2nd February, 2011

JAYANTHI NATARAJAN
Chairperson,
Committee on Personnel,
Public Grievances, Law and Justice

Chapter-I

The Marriage Laws (Amendment) Bill, 2010 was introduced* in the Rajya Sabha on the 4th August, 2010. It was referred* by the Hon'ble Chairman, Rajya Sabha to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 23rd August, 2010 for examination and report.

2. The Bill (Annexure-A) seeks to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 to provide for irretrievable breakdown of Marriage as a new ground for grant of a decree of divorce; and also to provide certain safeguards to protect the interests of wife and children and do away with the waiting period of six months for moving a joint petition for grant of divorce by mutual consent.

3. The Statement of Objects and Reasons, appended to the Bill inter alia reads as under:-

“The Hindu Marriage Act, 1955 was enacted on the 18th May, 1955 to amend and codify the law relating to marriage among Hindus. Similarly, the Special Marriage Act, 1954 was enacted on the 9th October, 1954 to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce. The provisions of the said Acts have proved to be inadequate to deal with the issue where there

* Published in Gazette of India (Extraordinary) Part-II Section 2 dated the 4th August, 2010.

* Rajya Sabha Parliamentary Bulletin Part-II (No.47173) dated the 4th August, 2010.

has been irretrievable breakdown of marriage and therefore a need has been felt for certain amendments therein.”

“Having regard to the recommendations of the Law Commission of India and the observations of the Hon'ble Supreme Court as aforesaid and the demand from various quarters, it is proposed to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 so as to provide for irretrievable breakdown of marriage as a ground of divorce thereunder subject to certain safeguards to the wife and affected children.”

4. With this objective in view, the Bill proposes to make the following amendments:-
 - (a) to insert section 13C in the Hindu Marriage Act, 1955 and section 28A in the Special Marriage Act, 1954 to provide for divorce on the ground of irretrievable breakdown of marriage.
 - (b) to insert section 13D in the Hindu Marriage Act, 1955 and section 28B in the Special Marriage Act, 1954 to provide for a right to wife to oppose the petition for divorce on account of irretrievable breakdown of marriage on the grounds of grave financial hardship.
 - (c) to insert section 13E in the Hindu Marriage Act, 1955 and section 28C in the Special Marriage Act, 1954 to ensure provision of adequate maintenance to children born out of the marriage consistently with the financial capacity of such parties

to the marriage before granting a decree of divorce on the ground of irretrievable breakdown of marriage; and

- (d) to amend sub-section (2) of section 13B of the Hindu Marriage Act, 1955 and sub-section (2) of section 28 of the Special Marriage Act, 1954 so as to do away with the waiting period of six months for moving a joint motion after filing a petition for grant of divorce on the ground of mutual consent.

5. The background note on the Bill submitted to the Committee by the Ministry of Law and Justice (Legislative Department) states that the history of the development of the Hindu Law has shown that it was never static and had changed from time to time so as to meet the challenges and the changing requirements of different times. The Special Marriage Act, 1954, being a civil law and applicable to all, has to necessarily keep pace with any reform in the field of matrimonial laws.

5.1 Initially, the grounds available for divorce under sub-section (1) of section 13 of the Hindu Marriage Act, 1955 were limited to adultery, conversion to another religion, incurably of unsound mind for a continuous period of not less than three years, suffering from virulent and incurable form of leprosy for a period of not less than three years, suffering from venereal disease in a communicable form for a period of not less than three years, renunciation of the world and not heard of as being alive for a period of seven years.

6. The Department further informs that in the year 1974, a need was felt that it would be reasonable and desirable to liberalize divorce provisions and on the basis of the Law Commission's recommendation, the Marriage Laws

(Amendment) Act, 1976 was enacted to include "cruelty" and "desertion" as new grounds for grant of a decree of divorce under section 13 of the Hindu Marriage Act, 1955 and also to provide divorce by mutual consent by way of a new section 13 B of the said Act.

6.1 The grounds for divorce presently available under both these enactments are mainly of three categories. The first category is based on the traditional theory of matrimonial fault. The second is based on the theory of frustration by reason of specified circumstances. The third is the theory of consent. There is, however, no ground in these Acts which expressly provides for divorce on the ground of irretrievable breakdown of marriage.

6.2 Subsequently, keeping in view various decisions of courts holding that it would be unreasonable and inhuman to compel parties to keep up the façade of marriage even though the rift between them is complete, and there are no prospects of them ever living together as husband and wife, etc., "the Law Commission of India in its 71st Report on" The Hindu Marriage Act, 1955 - Irretrievable Break Down of Marriage as a Ground of Divorce", submitted on 7th April, 1978, has recommended insertion of a new section 13C for divorce on the ground of irretrievable breakdown of marriage. While the said report was being considered in consultation with the State Governments and Union territories, several decisions of the Supreme Court including *Miss Joden Diengdeh Vs. S.S. Chopra (reported in AIR 1985 SC 935)* and *Navin Kohli V/s. Neelu Kohli* (reported in AIR 2006 SC 1675), recommended insertion of irretrievable breakdown of Marriage as a ground for grant of divorce. Pursuant to the above referred decisions of the Supreme Court, the Law Commission of India took up study of the subject and after examining the extant legislation and various judgments of the

Supreme Court and High Courts on the subject, has recommended in its 217th report on "Irretrievable Break Down of Marriage - another Ground for Divorce" submitted on 30th March, 2009, inclusion of Irretrievable Break Down of Marriage as a ground for grant of divorce.

6.3 The recommendations of the Law Commission of India have been considered and it is felt that the provisions of the aforesaid Acts have proved to be inadequate to deal with the issue where there has been irretrievable breakdown of marriage and therefore, amendments to the said Acts are necessary.

7. The Department asserts that accordingly, the Marriage Laws (Amendment) Bill 2010 has been prepared to provide irretrievable breakdown of marriage as a new ground for grant of a decree of divorce by inserting new section 13C. It is also proposed to insert new section 13D to provide for a right to wife to oppose the petition for irretrievable breakdown of marriage on the ground of hardship. With a view to protect the interests of children born out of marriage, it is also proposed to provide adequate safeguards by inserting a new section 13E for ensuring provision of adequate maintenance to children before a decree for divorce on the ground of irretrievable breakdown of marriage can be granted. Similar amendments are also proposed in the Special Marriage Act, 1954 by inserting new sections 28A, 28B and 28C. It is also proposed to amend sub-section (2) of section 13B of the Hindu Marriage Act, 1955 and sub-section (2) of section 28 of the Special Marriage Act, 1954, respectively, by doing away with the waiting period of six months for moving a joint motion after filing a petition under section 13B for grant of divorce of the ground of mutual consent.

8. The Committee heard the presentation of the Secretary, Legislative Department of the Ministry of Law and Justice on the Bill on the 17th September, 2010 and recorded the views of Secretary, Ministry of Women and Child Development during its meeting held on the 28th September, 2010 on the Bill.

9. In order to have a broader view on the Bill, the Committee decided to invite views/suggestions from desirous individuals/organizations. Accordingly, a press release was issued inviting views/suggestions from individuals/organizations. In response to the press release published in major English and Hindi dailies and newspapers on the 18th September, 2010, a number of representations were received.

10. The Committee examined the representations received on the Bill. Having analyzed these representations, some of them were identified to be considered as memoranda containing pertinent suggestions/comments on the various aspects of the Bill. Some significant issues raised in such memoranda have been summarized in the succeeding Chapter. Some select memoranda were also forwarded to the Ministry of Law and Justice (Legislative Department) for their comments. The list of these memoranda along with the gist of views and suggestions and corresponding comments of the Ministry of Law and Justice on such views/suggestions is placed at Annexure....

11. Given the far reaching legal and social implications of the Bill, the Committee decided to hear the views of all important stakeholders on the Bill so as to have a deep insight of the subject matter of the Bill. For this purpose, the Committee invited various non-official witnesses

(individuals/organizations) to appear before the Committee for tendering oral evidence. The Committee heard the views of National Commission for Women and some NGOs namely MAJLIS, (Center for Women's Rights Discourse & Legal Initiative), Gender and Human Rights Society, Lawyers' Collective and Women's Rights Initiatives, Mothers and Sisters Initiatives, All India Democratic Women's Organization, Save Family Foundation, Children's Rights Initiative for Shared Parenting (CRISP) and Mr. S.R. Abrol, a concerned individual.

CHAPTER II

The major points raised in the memoranda received from the individuals and organizations are summarized as follows:

- (1) It is important to introduce breakdown of a marriage as an independent ground of divorce in totality and not as part of it.
- (2) The legislature needs to understand that under the changed socio-economic conditions of the society, the women have come forward to accept the challenges and they have tried to become self-reliant. They no longer want to live at the mercy of their husbands.
- (3) If the proposed legislation is passed, there will be a total of 6 sections under which a Hindu woman can claim maintenance leading to unnecessary complications and duplication of law.
- (4) The proposed legislation is silent on the issue of child custody. In the best interest of children, a separation between husband and wife should also include provisions on mechanism to deal child custody matters. Child custody and visitation rights should also be decided before granting divorce, while deciding maintenance of the child under this Bill.
- (5) Wife has right to oppose petition on grounds of 'financial hardship'. It clearly ignores large number of cases where husbands have filed for maintenance under Hindu Marriage Act from wife.

- (6) The proposed legislation is silent on what will happen to the pending cases like Domestic Violence Act, 498A IPC, Child Custody, CrPC 125 and any other Civil and Criminal cases and has left scope for future litigations. It should ensure that all proposed litigation between the parties are settled before granting divorce.
- (7) Just to think that women only are weak and need protection and it is always the men who are harassing a wife shows complete disconnect from the ground realities.
- (8) The proposed provision that Courts can stay the case until appropriate arrangements are made will lead to legal extortion with the help of lawyers and vengeful women. This will force husbands to 'buy' divorce regardless of, who at fault, is. This proposed amendment will widely be misused.
- (10) The current concept of gender neutrality like that of Section 24 of the Hindu Marriage Act which takes into consideration that both the husband and the wife can face financial hardship has been totally ignored in the proposed amendment.
- (11) The term 'financial hardship' should be defined because otherwise this will lead to a subjective interpretation of this term and will ultimately turn into a tool for extortion and will be used to block a divorce till the unreasonable financial demands of the respondent are fulfilled.

- (12) Provisions for all the ornaments and other cash/ goods that the wife received for the marriage as gifts shall be returned to the husband in the event of divorce.
- (13) If property like flat, land etc. is purchased with husband's money, ownership of same should be granted to the husband. In case wife has contributed for same out of her earnings, joint ownership must be granted by the court, proportional to investment. Also the benefits under any insurance policy including health insurance, should be decided proportional to investment.
- (14) All court cases should be decided in less than 3 years. Cases filed by Senior citizens (60 years or more) should be given priority in all courts. Vacancies of judges should be filled up urgently and additional judges appointed to clear pending cases. Special courts should be set up to hear cases for divorce.
- (15) At least a minimum of 6 month's time is required for separation with a minimum of 3 sittings with both the parties. This time period is required to calm the initial force of decision of separation.
- (17) The compensation to the wife should be at least 70% of total income of husband or more. The total income should include all allowances, perks, incentives and monthly salary. The Initial compensation should be made Rs. 50,000/- in rural areas and Rs. 1,00,000/- in Urban areas. The compensation should be

stopped if she remarries or stays in relation with another person to restrict adultery.

- (18) The laws should be made in simple language to be understood by everybody.
- (21) Issues such as, whether it has been a long term or short term marriage, whether the wife is a wage earner and also a home maker or merely a home maker, and which of the spouses is desirous of obtaining a divorce and is keen to move on in life become key concerns in this discourse. Other factors such as age and class also play a part.
- (22) A discussion over women's right to matrimonial home and property should proceed alongside the discussion on irretrievable breakdown of marriage so that certain safeguards can be built into the proposed legislation to secure women's rights.
- (23) Unless women are treated as equals in a marriage and given the same financial and other security that men have on its breakdown, it would be discriminatory to further liberalize the grounds of divorce.
- (24) Equal rights to wife in the property acquired by the couple during the subsistence of the marriage and equal division of the marital property upon separation has to be legally provided.
- (25) It must be ensured that a provision is made that women with children have a house/ place of residence.

- (26) The laws relating to maintenance for women and children must be strengthened to ensure that women/ children receive an adequate amount of maintenance sufficient enough for them to live in a lifestyle which is similar to the one they were used to in the marital home. Special laws for disclosure of income of the Husbands and shifting of onus of proof in these cases will have to be considered. Ways and means to lessen the discretion of the judiciary in these matters must be thought of as women and children have invariably been awarded very low maintenance amounts by a large number of Courts.
- (27) The Government has to enact a law to enforce and recover maintenance amounts. Apart from this a fund will have to be created from which maintenance can be immediately given to the wife and children. In several countries separate enforcement agencies have been created to recover maintenance amounts. It is a duty of the State to see that women and children are not left to fend for themselves in these cases.
- (28) Entitlements from the state should be made essential for deserted/ separated/ divorced women and children in cases in which there is no property or cases in which no maintenance can be granted because of poverty and/ or other reasons.
- (29) Sub section (2) of section 13B of Hindu Marriage Act, 1955 and the subsection (2) of section 28 of the Special Marriage Act, 1954 needs to be removed since the waiting period of six months for moving a joint motion after filing a petition for

grant of divorce on the ground of mutual consent serves no purpose but creates unnecessary bad blood and acrimony in the two families.

- (30) The role of NGOs may be incorporated in helping getting divorce in case of irretrievably broken down marriages. The NGOs after providing counseling to both the sides, may give their opinion in the courts.
- (31) The role of the advocates in the above said cases may be minimized as it is seen from experiences that they make all sorts of efforts to delay divorces.
- (34) It makes a very sad commentary on the administrators of a Welfare State, that the concerned wife should be required to oppose the divorce in spite of irretrievable grounds and prefer to continue to live in a miserable condition because there is none to help her to nullify the likely hardships (Mainly Financial). Though these days, there may be some wives who might be misusing the laws to their advantage, by and large it is the husbands who are blameworthy and hence we must orient our actions keeping only this aspect in view. The Welfare State must be the first to go to the help of the aggrieved wife instead of providing this power to her to oppose to remain forever in the miserable condition.
- (35) When a case comes to the stage of the court of law, there is already a break in the relationship by way of the place of residence and the consequential financial hardship has already

started on the part of the wife and the children if they have gone with their mother. This necessarily needs immediate and urgent attention of the court.

- (36) Let the divorce be granted immediately on the filing of the case but if the wrong doer is not so severely punished that other prospective wrong doers must shudder in their hearts even at the very thought of doing anything wrong to anybody, then this provision will be misused by unscrupulous people. So, the mutual consent needs to be dissected thoroughly.
- (37) The Bill is just another gender biased law open to massive misuse. This Bill does not care that a child would be forced to be brought up in a broken family, and a father would not have any legal right, even to save his own marriage, under this Bill, even for the sake of his own child.
- (39) Providing the wife with all the control in a divorce case will only help in alienating father from their children.
- (40) The Bill essentially grants freedom and happiness to wives through a divorce but is totally silent on how the false and frivolous cases that are filed by wives be dealt with, even when the wife gets the divorce and happily remarries.
- (41) There would be cases where the husband is all willing to save his marriage, so that his child can have both the parents, but under the present format of the Bill, the husband will not have any legal remedy to save his own marriage, even for the sake of his own child.

- (44) A Gender neutral shared child custody and parenting law must be drafted and implemented nationwide before this Marriage Laws Amendment Bill is even contemplated. The repercussion of the amendments of this will be that after the quick divorce the wife will have little interest in even attending court hearings thereby alienating the child forever from the hapless father. Alternately a separate section can be inserted explicitly stating that child custody cases must be resolved to the satisfaction of both the parties before divorce is granted.
- (45) Provide a clear and objective definition of "Financial Hardship" so that this term is not interpreted in a wrong way and divorces are not sold by wives. All other maintenance cases filed by the wife, like Section 24, CrPC 125, Domestic Violence etc., should not be allowed to continue, blocking the judicial dockets, as the relief sought in all of them, will also be available in this Bill.
- (46) Create objective parameters for calculating financial assistance like tenure of the marriage and relative sacrifice made by the parties in the marriage.
- (47) Reduce separation period from 3 years to 1 year under Section 13C - Petition for divorce only after 1 year of marriage.
- (48) Include condition of closing child custody litigation before granting divorce under Section 13C, so that rights of child to seek the involvement of both the parents are not taken away from it.

- (49) The proposed Bill totally ignores the Law Commission's 71st report and gives no reasonable justification of choosing the period of separation as 3 years instead of 5 years as suggested by Law Commission's 71st report. It is extremely unfortunate that it seems that such a Bill and a clause has been hurriedly introduced, without any public debate.
- (50) This Bill would be widely misused as the husband will be forced to 'buy' a divorce, while the wife can choose to walk out, at her whims and fancies. Moreover this Bill totally excludes the possibility that the husband can also face financial hardship. The current concept of gender neutrality like that of Section 24 of the Hindu Marriage Act which takes into consideration that both, the husband and the wife can face financial hardship has been totally ignored in this Bill.
- (51) The Government is forcing a Divorce on an unwilling husband just because the wife want it and thus the husbands will have absolutely no legal remedy, relief or right, even to oppose the same, even for the sake of his children.
- (52) This Bill is totally unconstitutional and it takes away all the rights of the husband, even to defend himself or even to save his own marriage. A wife would stay away from the husband and would automatically get a divorce by default after 3 years, without any fault of the husband who would also have no right or say altogether, or even have any right to defend him.

- (53) Interestingly, this Bill is totally silent on the rampant misuse of 498A. At present, under Mutual Divorce format, the wife goes for quashing of all cases before grant of divorce, under mutual consent. However as per the present format of this Bill, the 498A cases would continue for years on. Thus the Bill should have a provision to quash cases between the parties before grant of divorce under 13C as it happens presently.
- (54) That special provision should be made in the Marriage Laws (Amendment) Bill, 2010, to ensure that both spouses may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to them and that it would in all the circumstances be wrong to dissolve the marriage, with the amount of financial hardship, being decided by the Court, based on the merits of the case.
- (55) It is suggested that the father must be assigned the care and custody of child(s) where the mother has been proved unable to maintain them, is of a dubious behavior, has lost her rapport in society on the basis of a corroborated evidence and facts.
- (56) "Irretrievable Breakdown" should be spelt out clearly and may include the following:-
- That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

- That the respondent has deserted the petitioner for a continuous period of at least three years immediately preceding the presentation of the petition;
 - That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition.
 - That no reasonable probability remains of the spouses again living together as husband or wife for mutual comfort and support.
- (57) Where the petition is based on the "living apart" facts, the court may refuse to pass a decree if the dissolution of the marriage will result in "grave financial or other hardship to the respondent" and that "it would in all the circumstances be wrong to dissolve the marriage."
- (58) A decree of divorce may be refused if the court feels that there is a reasonable likelihood of resumption of cohabitation.
- (59) Introducing irretrievable breakdown of marriage as a ground for divorce in the Hindu Marriage Act and the Special Marriage Act at this time, would cause irreparable harm to women because of the absence of any laws governing division of matrimonial property. A woman's negotiating power and her rights to her matrimonial property would be severely diluted. As such provisions for safeguarding economic security for women will have to be built into the proposed legislation.

- (60) The proposed Bill only speaks of maintenance to children and is silent on the issue relating to division of property.
- (63) In such situations where the woman is vulnerable, we expect that the courts would refrain from granting an ex parte decree.
- (64) 'Irretrievable breakdown of marriage' as a ground for divorce in a marriage and the power given to the wife in such a situation should be applicable to all religions and not specifically Hindu.
- (65) All grants by the Government, whether in terms of land or housing, should be in the name of both the spouses.
- (66) Quashing all cases between the husband and wife while granting divorces under Irretrievable Breakdown Marriage, would immediately reduce the crore of pending cases in courts and will provide relief to crores of aged mothers and sisters condemned to a lifetime of judicial apathy in Indian courts due the Indian gender laws.
- (67) Reconsider the stipulated time period of three years of 'living apart' to a lesser duration keeping in mind the objective to mitigate the ordeal for an estranged couple.
- (68) Include 'living in the same household' as 'living apart'. This will ensure that facts and circumstances typical to each case will be given adequate space and consideration.
- (69) For divorce on irretrievable breakdown of marriage or divorce on any other ground, introduce as a precondition in the law, distribution of marital assets based on 'community of property'.

CHAPTER-III

Deliberations of the Committee

The Committee heard the presentation of the Secretary, Legislative Department of the Ministry of Law and Justice on the Bill on 17th September, 2010 and recorded the views of Secretary, Ministry of Women and Child Development during its meeting held on 28th September, 2010 on the Bill. Apart from it, the Committee received inputs from the non-official witnesses namely National commission for women and some NGOs/individuals during its meetings on the 11th and 16th November, 2010 in Delhi.

Legislative Department (Ministry of law and Justice)

2. The Committee heard the Secretary, Legislative Department of the Ministry of Law and Justice on 17th September, 2010. The Secretary while giving an extensive power-point presentation on the Bill apprised the Committee of the circumstances that necessitated the introduction of the Bill and also the various provisions of the Bill. The Secretary, Legislative Department assured the Committee that provisions of right to wife to oppose the divorce on the ground of financial hardships and provisions regarding the maintenance to children have been incorporated in the proposed Bill to safeguard the interests of women and children while introducing irretrievable breakdown of marriage as a new ground for granting the divorce.

Ministry of Women and Child Development

3. The Committee heard the views of Secretary, Ministry of Women and Child Development during its meeting on 28th September, 2010. The Secretary, Ministry of Women and Child Development apprised the Committee that the Ministry supports the Bill as it finds that inclusion of irretrievable breakdown of Marriage as a new ground for divorce is a facilitative provision in cases where the Marriage between the parties has broken down irretrievably and completely and prevent the multiplicity of litigations.

4. However, the Secretary indicated some issues that need to be addressed if the rights of women and children are to be protected after the enactment of Bill. The issues are;

- The proposed Bill cast a greater responsibility on the courts particularly in case of the interpretation the situation of "irretrievable breakdown". Thus Courts have to exercise care and caution in cases where they feel that the husband has deserted or abandoned the wife and filed a petition under this section after living separately for three years.
- In situation where the woman is vulnerable the courts should refrain from granting ex-parte decree.
- The provision of section 13(E) of the proposed Bill should be interpreted as or an express 'inclusion' may be made in the provision to include the children adopted by the parties to the marriage.

- The waiting period of six months after the presentation of a petition for grant of divorce should not be abolished because it provides the parties the time to change their mind vis a vis the petition of divorce.

Non-Official Witnesses:

5. Given the wider legal and social implications of the Bill, the Committee decided to consider the views of all stakeholders on the Bill. For the purpose, the Committee invited some individuals/organizations to appear before the Committee for tendering oral evidence. The Committee heard the following non-official witnesses (Individuals/Organizations) :-

- National Commission for Women
- MAJLIS, Center for Women's Rights Discourse & Legal Initiative
- Gender Human Rights Society
- Lawyers Collective Women's Rights Initiative
- Mothers and Sisters Initiative
- All India Democratic Women's Association
- Save Family Foundation
- Children's Rights Initiative for Shared Parenting (CRISP)
- Shri. SR Abrol, a concerned individual.

6. Committee's deliberations with the above-mentioned organizations/individuals witnessed divergent opinions on the provisions of

the Bill and other matters associated with the matrimonial disputes. The issues that emerged during the Committees' interaction with them may be categorized under the following points;

On the Bill

- New Grounds for the divorce is in larger social interest
- Section 13D (safeguard interest of wife/children)
 - (i) Should be gender neutral
 - (ii) Term Financial hardship should be defined
 - (iii) Apprehensions that this provisions may lead to eventuality buying of a divorce by the husband as many a times, wives are also at fault.
- To define the term "Irretrievable Breakdown of Marriage".
- Retention of the waiting period of six months.
- Reduction of the time period of separation mandated for seeking divorce.

Other Related Matters

- The Bill should provide for division of matrimonial property.
- The Bill should provide for custody of children and visitation rights.
- Time period may be fixed for disposal of petition for divorce under the new ground.

- Law to provide for recovery of maintenance.
- To ensure that there are no ex-parte orders of divorce.
- In foreign countries where the provision for irretrievable breakdown of marriage as a ground for divorce is prevailed, there are sufficient laws to protect the economic interests of women
- Entitlement from the State should be essential for separated women where there is no property and no maintenance can be granted.
- Proposed amendments tend to further weaken the plight of women/children in rural India.

CHAPTER-IV

Committee's Observations/ Recommendations

Having analysed the various provisions of the Bill and having considered the written submissions received by the Committee and the views of the witnesses who tendered their oral evidence, the Committee is of the view that the subject matter of the Bill and the amendments proposed therein are of immense public importance with wide ranging legal and social consequences. The Committee, however, is in agreement with the broad objective of the Bill, *i.e.*, introduction of 'irretrievable breakdown of marriage' as a new ground for grant of a decree of divorce. The Committee is also in agreement with the thought that if a marriage has ceased to subsist and has reached a stage where it is not felt possible to bring back together the parties to the marriage, it would be in the interest of all if the marriage is dissolved.

2. However, the Committee though being in agreement with the rationale behind the Bill, feels that some of its clauses which have vital implications need to be reviewed. The Committee strongly feels that there are certain vital social and legal issues on the subject that need to be addressed before this new ground of divorce is introduced.

Clauses 2 and 6 of the Bill

(Doing away with the waiting period of 6 months before moving a joint motion in case of divorce by mutual consent)

3. While deliberating on the Bill, the Committee has come across a strong view expressing apprehension about the likely adverse social impact

in doing away with the cooling off period of 6 months for moving a joint motion after filing a petition for grant of divorce by mutual consent. The Committee during its deliberations has not come across any view expressing hardship over the existing provisions providing for a cooling off period in case of divorce by mutual consent. The existing provision of law seems to function well as it provides an opportunity to the parties to a marriage to think coolly before finally moving jointly for divorce. **The Committee also does not see much linkage between this amendment and the main objective of the Bill, i.e., introduction of a new ground for grant of a decree of divorce. The Committee, therefore, is of the view that the existing provisions of law for divorce by mutual consent are fair and reasonable and the prevailing cooling off period be retained so as to protect and preserve the institution of marriage. The Committee, accordingly, is not in agreement with clauses 2 and 6 of the Bill.**

Clauses 3 and 7 of the Bill

(Introduction of irretrievable breakdown of marriage as a new ground of divorce)

4. The Committee during the course of its interaction on the Bill with the various stakeholders did not come across much resistance *per se* to inclusion of irretrievable breakdown of marriage as a new ground of divorce. The Committee too is of the opinion that there is no point in prolonging a marriage where parties to the marriage are unable to live as husband and wife. But the written/ oral submissions made before the Committee have brought forth serious apprehensions regarding the likely misuse of the proposed new ground of divorce, as formulated in the Bill, against women, particularly those in the rural areas. Going by the provisions of the Bill, the proposed Section 13C(1) of the Hindu Marriage Act, 1955 and Section

28A(1) of the Special Marriage Act, 1954 simply provide that either party to a marriage may file a petition for dissolution of marriage by a decree of divorce on the ground that the marriage has broken down irretrievably. One condition prescribed in the Bill for grant of a decree of divorce on this ground is that the court hearing the petition has to be satisfied that the parties to the marriage have lived apart for a continuous period of not less than 3 years. Thereafter, if the court is satisfied on the basis of ‘all the evidence’ that the marriage has broken down irretrievably, it shall grant a decree of divorce. In the opinion of the Committee, the Bill should provide for some more safeguards so that the new ground for divorce is not misused by either party to the marriage. In the Committee’s view, it is important to note that either party to the marriage can move a petition for divorce under this new ground and as the provisions of the Bill presently stand, there is no bar to court’s granting decree of divorce, *ex-parte*. In this backdrop, the Committee has serious apprehension with regard to the misuse of this ground, particularly against the women in rural areas where women are not so well aware. **The Committee, accordingly, recommends that the Bill should provide for some safeguards so that the new ground for divorce is not misused. The Committee also recommends that the Government may consider defining the term “irretrievable breakdown of marriage” in the Bill so that some uniform standards are followed in dealing with divorce petitions by the Courts.**

5. Coming to the protection of the rights of wife and children, the Committee again is not satisfied with the provisions of the Bill in this regard. As per the proposed section 13D(1) of the Hindu Marriage 1955 and Section 28B(1) of the Special Marriage Act, 1954, a wife has been given a

right to oppose grant of decree of divorce if the same results in ‘grave financial hardship’ to her and ‘it would in all circumstances be wrong to dissolve the marriage’. **The Committee notes that the term ‘grave financial hardship’ appearing here is capable of varied interpretation. Further, it may be difficult for the wife to satisfy the court that it would ‘in all circumstances be wrong to dissolve the marriage’. Not only this, the provisions of the Bill talk of ‘grave’ financial hardship, i.e., divorce may not be allowed on this ground if the wife is being subjected to a ‘grave’ financial hardship. Does it mean that court may proceed with the grant of a decree of divorce on this ground despite the fact that the wife may be put to ‘financial hardship’ and not “grave” financial hardship? The Committee, accordingly, recommends that the term “grave financial hardship” may be defined so that there is less of ambiguity. The Committee further recommends a review of these provisions of the Bill so that the interests of the women are better safeguarded in the divorce proceedings in the court.**

6. In the similar manner, the Committee also does not find acceptable the provisions of the Bill relating to restrictions on decree for divorce affecting children. As per the proposed Section 13E Hindu Marriage Act 1955 and Section 28C in the Special Marriage Act 1954, the court, before passing a decree of divorce under the new ground, has to satisfy itself that adequate provisions for maintenance of ‘children born out of the marriage’ has been made consistently with the financial capacity of the parties to the marriage. **The Committee finds that the proposed Bill covers only those children who are born out of the marriage, thereby leaving out the case of**

‘adopted’ children. The Committee would like the Government to clear their position with regard to the adopted children also in the Bill.

7. During the course of its deliberations on the Bill, the Committee’s attention has been drawn to another very vital aspect of the Matrimonial Law which relates to the rights of the wife to matrimonial property in case of divorce. Quite a few of the women’s organizations have emphasized on this aspect before the Committee and demanded that while granting divorce, it needs to be ensured that the women get their share atleast in the assets/properties which the parties to the marriage have acquired during the subsistence of the marriage. The Committee finds logic in this demand of the various women’s organizations. It is generally seen that in majority of cases women are left with very little to fall back upon after the divorce and quite often they also have to bear the burden of the children born out of the wedlock. In such situations, it seems quite natural for women to feel cheated when they are left to their fate without any roof or financial support although during the subsistence of marriage they might have contributed in varied forms in the matrimonial family in the prime of their age. This is more true in case of working women. **Accordingly, the Committee feels that there should be some effective legal mechanism so that the women atleast get their share in the matrimonial property which has been acquired during the subsistence of marriage. The Committee, accordingly, recommends the Government to make adequate provisions in the Matrimonial Law to ensure that the courts, while adjudicating on divorce petitions, also decide upon women’s share in the matrimonial property while granting divorce so that they are not deprived of the assets/properties in which they have contributed during the continuance of marriage. The**

Committee is strongly of the view that liberalization of the laws of divorce should essentially be accompanied with appropriate provisions recognizing the legitimate rights of the women on the matrimonial property/assets atleast, in which they have their share of contribution.

8. The Committee, accordingly, despite being in agreement with the rationale of the Bill, i.e., adding ‘irretrievable breakdown of marriage’ as a new ground of divorce, is not in agreement with the various clauses of the Bill, be it doing away with the cooling off period in case of divorce by mutual consent or the conditions enumerated in the Bill for granting divorce on the ground of ‘irretrievable breakdown of marriage’. The Committee feels that these provisions are liable to be misused against women. The Committee, accordingly, recommends that the Government should reconsider the various clauses of the Bill keeping in view the Committee’s apprehensions and suggestions and a revised comprehensive Bill may be brought thereafter.

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