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The Christian Marriage Act 1994, Gender Justice and Uniform Civil Code

*RITA MONTEIRO**

On August 20, 1995, in London, a beautiful, heavenly Hindu temple, built with the voluntary seva of 2500 people, in pure white Italian marble and Bulgarian limestone, according to the traditional architectural principles from the shilpashastras, was consecrated amid scenes of piety, that conveyed a message of faith, charity and inter-religious understanding.

It is noteworthy that the faith of an immigrant community has not invited any nasty comments in a country constitutionally committed to an established Christian Church.

The head of the Swaminarayan sect, Pramukh Swami Maharaj, the inspiration behind the temple, propagated an all-embracing view of Hinduism. The Mandir Mahotasav Committee included a Jain, a Sikh, a Christian and a Muslim.

The British Home Secretary who attended the consecration read out shlokas from the Bhagwad Gita. The British Prime Minister, John Major sent a message congratulating devotees for building a permanent monument to faith.

The BJP leader Mr. L.K. Advani, referred to the high moral ground of Hinduism its all-inclusive character, liberal and peaceful traditions. Recalling the pluralism inherent in Hinduism, he said that Indian democracy was underpinned by such traditions. Hinduism did not preach just "tolerance", but "respect" for other traditions. Within its fold, there was scope for every kind of belief and even disbelief. It recognised that there were many paths for the seeker.

As we reflect on Personal Laws, Gender and Justice and a Uniform Civil Code, the presence of a Hindu temple consecrated

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in London and the words of Mr. Advani, bring hope and a vision which is deeply rooted in our culture. Pluralism, or multi-cultural diversity, or religious plurality, is lived in our country in a closely woven, rich fabric of daily life, food, clothes, forms of prayer and meditation, dance, music, drama everything that constitutes the collective soul of the Indian people.

Yes we have to recapture a vision of respect for different religious traditions, cultures and customs, even while we move forward to reach for a uniform civil code and gender justice. I say recapture, because incidents continuously take place, where social workers dedicated to justice for the people are attacked and killed. Fear strikes our hearts when violence, rape of women, destruction and grievous loss explode.

If we are to make India, our Bharat Mata, a strong, vibrant, dynamic nation, then we must work to see that no man, woman or child goes hungry, homeless or naked. If we want respect for the law, and gender justice, then we must actively work for an environment of trust, justice and peace. It is within such an environment that unrelenting persuasion, within a ladder of initiatives, must allow the inevitability of a goal to emerge as the voice of the people. At such a point, government should be sincerely committed to reform to seize the best moment to enact reform.

If a community works for reform but a government ignores the work thus done, preferring to give a priority to its own political survival, then all claims of being committed to gender justice are to no avail and the true motives stand revealed.

Such is the situation of the Indian Christian Community. After a four year struggle to reform its obscurantist and outmoded personal laws, it has been left high and dry.

Since early 1994, the draft bill, the Christian Marriage Act 1994 (CMA 1994) has been lying in the Prime Minister's office waiting to be presented in Parliament.

As nothing further has happened, in May-June 1995 a representation has been made to the present government by leaders of the Christian Community, to introduce this bill. This was followed by an announcement in June 1995, reported

in the press, that the government would begin the process to pass it as a law in the monsoon session in Parliament.

Struggle to reform Christian personal law

Congress government has stated repeatedly its policy that for any reform in the personal law of the minorities, the unanimous consent of their religious heads must be given. There have been several attempts in the Christian community since 1947 to reform the Indian Christian Marriage Act 1892 (ICMA 1892) and the Indian Divorce Act 1869 (IDA 1869). While the former, a registration law, is in urgent need of reform on several counts of substance, the latter is highly discriminatory and unjust to women.

According to the IDA 1869, the ground upon which a divorce may be sought is adultery which in any case is difficult to prove. A Christian husband has to establish adultery on the part of his wife. But a Christian wife must prove, besides adultery, bigamy, cruelty, desertion, incest or conversion to another religion. Thus section 10 of IDA 1869 is contrary to the constitutional guarantee of equality and prohibition of discrimination.

Each time the stumbling block to reform was the delaying tactics, underlying a conscientious refusal of the Catholic Bishops Conference of India (CBCI) representative of the largest number of Christians in India, to give their assent to a bill with grounds for divorce, including mutual consent. This is because for the Catholic Church, marriage is an indissoluble sacrament not just a legal contract.

The Protestant churches do not have ecclesiastical tribunals as does the Catholic Church. When counselling of a married couple in distress fails, the churches permit a civil divorce. Protestant churches do not have a canon law to regulate marriage as does the Catholic Church. Therefore their need for a well defined civil law is absolutely essential.

Since the eighties, there has been a dialogue between all the Christian churches and within the Christian community on the discriminatory nature of the above laws and the untold hardship it caused those seeking relief from irremediable

marriage problems. This is a process of education for gender justice.

In September 1989, Mrs. Jyotsna Chatterjee of the Joint Women's Programme (JWP) Delhi, presented a draft bill on Christian Marriages and Matrimonial Causes (CMMC) to the representatives of all the churches. The priest canon lawyers representatives of the Catholic Church accepted all the provisions of the bill except the grounds for divorce, including mutual consent. At their request all Catholics were exempted from this section. This decision was taken without recourse to the faithful, whose lives it would most affect.

Separate Civil Registration from Religious Ritual

A clear line of thinking began to develop amongst enlightened Catholic opinion makers. Spiritual leadership in the church is supposed to be attuned to what it calls "the sense of the faithful", by which is meant that church leaders must be aware of and sensitive to the views of its members, which have been arrived at after mature reflection in honesty and faithfulness to the gospel message of truth, equality and justice. The Catholic Church has various levels of consultative councils for lay people and numerous national lay organisations which engage Catholics in a dynamic reflection on their faith as related to contemporary events and in a wide-ranging Social outreach.

The leaders of these organisations can be contacted and through them the average Catholic in the pew, to elicit their opinion of the CMMC, as well as to seek a solution to the awkward situation of reconciling church teaching against divorce with the reality of increasing numbers of marriage failure.

A consensus emerged from the people that the Church must make a clear distinction between its religious teaching on marriage as a sacrament and the recognition of marriage as a civil contract. Indeed church law accepted this distinction in acceding to the civil registration of its marriage.

The Catholic Church as a religious body has every right to safeguard its belief and teaching on the indissolubility of

marriage. At the same time, its own law respects the freedom of conscience of those Catholics who decided to avail themselves of the facilities granted by the civil law for divorce. It should also not stand in the way of reform for other groups, or churches, who do not come under the purview of their laws.

The Uniform Civil Code in Goa

An interesting precedent was noted in the union territories of Goa, Daman and Diu and brought to the attention of the CBCI. According to this law enacted by the Portuguese government in 1911, Hindus, Muslims and Christians must at least one month before the religious celebration of their marriage, register their marriage civilly with due notice. All religious communities are thus equal in the recognition by the state that marriage is a civil contract, while giving them the option of a religious marriage. Provisions for divorce are equal for both sexes. For Catholics this offers the relief that if a church annulment of the marriage cannot be obtained, a civil divorce can be a solution. The Catholic church has not refused to accept this law promulgated by the government. On the contrary, a provision exists to grant civil dissolution to marriages that have been annulled by the church, by a simple notification without a second tortuous round in the civil courts. The union territories of Goa, Daman and Diu have at their own request been exempted from the purview of the Christian Marriage and Matrimonial Causes Bill, 1990, since the Uniform Civil Code exists there already. This has been acceded to by the Roman Catholic Bishop of Goa, Daman and Diu. (Please see Appendix on Family Laws in Goa).

In countries such as France, Germany, Spain, Portugal, the Scandinavian countries and Switzerland, a similar system of civil registration of marriage first and religious ceremony later if so wished; has been accepted by the Catholic church.

Church Tribunals do not provide Maintenance

Despite the deeply held value of the Indian Christian Community expressed in their nuptial vows that marriage was "till death do us part", and the belief of Roman Catholics

that marriage is indissoluble, the reality of more frequent marriage break-up from the 1980's is reflected in church statistics. In the Archdiocese of Bombay for instance in 1993-1994 about 3000 marriages were celebrated. About 10 per cent will file for annulments, while about three to five per cent will find their own solution to a marriage gone sour. Similar statistics indicating serious problems were discovered in Kerala, Madras, Bangalore and Pune. The church however cannot insist that maintenance be provided for the woman and her children, as the objective of annulment is to show that the consent is defective and no marriage ever existed. The children however are legitimate.

Women's groups pointed out to church authorities the need for gender justice in marriage legislation which provides a decent maintenance for women and children, most often the sufferers in marital break-up.

Raising Women's Voices ensures reform

Christian Women's groups played an important role in keeping alive the process of discussion, consultation and lobbying. But for these groups— Satyashodhak (Bombay), Prerna (Pune), Joint Women's Programme (Delhi), the All India Council of Christian Women, and the Y.W.C.A., the reform of Christian personal law would have been stymied. The All India Catholic Union, a mass-based, grass-roots national Catholic lay organisation, recognised by the CBCI whose collective membership runs into lakhs, played a crucial role in garnering mass support, as well as legal expertise and liaison with government.

The impetus for reform gained ground during four years. Finally the CBCI the apex body of 14 million Catholics, which includes those belonging to the Latin rite, the Syro-Malabar rite and the Syro-Malankara rite, gave a qualified assent to the CMA 1994, to the government of India. It would not directly propose a bill with grounds for divorce, but it would not object to any others proposing the bill. It would actively work for the refinement of the final draft, by proposing its canon lawyers to be members of the final draft committee.

Thus a certain fraternal unity was also maintained with the National Council of Churches of India (NCCI), which include the Church of North India and Church of South India, the Marthoma churches and the Lutheran churches. Together the Protestants and Roman Catholics represent 90 percent of the 21 million Christians in India.

Such a unanimity is not arrived at without considerable struggle, painstaking efforts and determination. Yet the government of India, despite any protestations it might make in an election year, has ignored this process of a community to put its own house in order to achieve gender justice.

Thousands of Christians caught in traumatic marriages are unable to obtain relief. The judgement of a full bench of the Kerala High Court at Kochi has modified section 10 of IDA 1869, making adultery, desertion and cruelty independent grounds for divorce for Christians. This is an interim measure. It is not enough! The CMA 1994 ought to be fully enacted as its matrimonial reliefs are in line with progressive, modern matrimonial legislation. Its structure follows the pattern of a civil law for registration of marriages based on the Special Marriages Act 1954. This could be the basis for a registration system acceptable to all. Thus it states a common procedure for registration of all marriages of Christians, definite provision of maintenance of records, a simple clear mandate on who can marry and the prohibited degrees of marriage.

The CMA 1994 has certain features to accommodate religious sensitivities, which do not nullify civil aspects of law, or prevent gender justice. Thus marriages annulled by the church have been considered and under this act the state should declare such marriages as null and void by a simple noting in court. This will prevent a second tortuous round in the civil courts for those who get church annulments.

Again divorce has been defined as the dissolution of the civil effects of marriage by this Act. Chapter 6 deals with the grounds of divorce which can be obtained independently of 1. adultery committed after the solemnisation of the marriage, 2. cruelty, either physical or mental, 3. desertion for a continuous period of two or more years, 4. ceasing to be a Christian by conversion to another religion, 5. mental illness

which cannot be cured and psychopathic disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent, 6. not heard of as alive for a period of seven years or more, 7. and divorce by mutual consent.

This act provides for the right to the matrimonial home and an increase in maintenance to the aggrieved party. In keeping with progressive matrimonial laws, it provides for commonality of property, that is, all property and assets acquired by the couple during the course of the marriage are divided equally. This recognises the unpaid contribution of looking after the home, the children and the main breadwinner which is made by the woman, as well as the liability she faces in resuming earning a living after a considerable break in professional work.

The CMA 1994 or a Uniform Civil Code

Since the Christian churches and communities have struggled through a process and evolved a reform bill which will not be an obstacle to the eventual acceptance of a common law for all citizens of India, it should be made a law as soon as possible. This could prepare the way for both majority and minority communities to look afresh at their personal laws to see if they support gender justice.

The right to the matrimonial home and commonality of property should immediately be incorporated in the personal laws of every community. Perhaps the BJP could give a lead in those states where it is the majority party in governance. The Hindu Marriage Act 1955 could be amended to incorporate those principles which are essential features of all modern gender equitable marriage legislation. The proposed CMA 1994 already has both. Other important features for gender justice are to arrive at certain clear stipulations in the way inheritance is divided to prevent injustice based on whim. Guardianship of children should be to both mother and father.

Legal attention must be given to devise clear laws to recognise marital rape as an offence, and to deal effectively

with domestic violence, so that wives and children are safeguarded and a brake put on the violator.

Simultaneously, a civil code with the above features should be formulated, published, widely distributed and debated. Every care should be taken to ensure that the women of all communities are involved in such a debate.

Value Women's autonomy to achieve gender justice

Gender justice expects much more than mere absence of discrimination in law. A climate has to be created in every community—Hindu, Muslim, Christian, Sikh, Jain, Buddhist and Parsi—where the strength, autonomy and independence of women is valued and promoted.

Recently the World Bank stated that national investment in the all round development of a nation's women as regards health, education and employment, is sound economics. Laws however progressive, or based on gender equity are not enough.

The Human Development Report 1995 by the United Nations Development Programme states that women contribute more to the economic well-being of society than men. Therefore there should be an allocation of more resources in their remuneration and investment in health and education. Women's unpaid labour is valued at \$11 trillion equal to half the estimated world income of \$23 trillion.

India does not figure in the 30 nations that provide information on paid and unpaid labour of its women. Yet we know that 94% of Indian women labour in the unorganised sector. Their earnings help to feed their families.

Therefore let us begin to work for reform in the attitudes of our communities to our women, as well as to our personal laws. But let the governments in the states and at the centre immediately plan and carry out systematically the total development and empowerment of women which should be at the top of their party agendas.

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wife. All assets acquired after marriage are divided fifty/fifty.

4. The grounds for divorce are more or less the same as in the Special Marriages Act 1954.
5. *Alimony & Maintenance*: It is not only the wife who is entitled to them—the husband can pray for maintenance if he requires it. The amount payable shall not exceed one third of the net income of the paying spouse. The law makes no distinction between the innocent spouse and the spouse at fault.
6. A speciality of Portuguese law in Goa are the Ante-nuptial contracts, a public deed, as regards the properties of those considering marriage. It is irrevocable and unalterable after the marriage is solemnized.

There are 4 types of contracts:

- a) Community of assets between the spouses of all their properties and liabilities present as well as future.
- b) Simple community of assets and liabilities acquired and incurred during the marriage
- c) Separation of assets and liabilities
- d) Dowry system: this is a trust in the hands of the husband to be repaid to the wife in case of his death.

The dominant system is the community assets.

7. *In the matter of succession* Portuguese law provides for a) testamentary succession, b) legal succession.

— The testator who has descendants or ascendants can not dispose in toto, as a share in it (half in the case of existence of descendants or parents and one-third in case of other ascendants is indisposible, being assigned by law to descendants and in their absence to the ascendants).

— In case any property belongs to the testator and his wife or her husband, such property or any part cannot be disposed of by will, unless the bequest is in favour of the wife, or the husband as the case may be, or consent is obtained from the wife, or the husband.

As for Non-Testamentary Succession, there are detailed regulations for disposal of property.

9. Portuguese law makes no distinction between husband and wife, father and mother, brother or sister, son or daughter

Illegitimate children are part of the family and inherit in the same manner as legitimate their share being two-thirds of the share of the latter.