LAW COMMISSION OF INDIA

TWENTY-SECOND REPORT

(CHRISTIAN MARRIAGE AND MATRIMONIAL CAUSES BILL, 1961)

DECEMBER, 1961

GOVERNMENT OF INDIA : MINISTRY OF LAW

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CHAIRMAN
LAW COMMISSION
New Delhi.
December 15, 1961.

Shri Asoke Kumar Sen,
Minister of Law,
New Delhi.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Twenty-second Report of the Law Commission on the Christian Marriage and Matrimonial Causes Bill, 1961.

2. After the submission of the Fifteenth Report of the Commission (Law relating to Marriage and Divorce among Christians in India), the Ministry of Law prepared a formal Bill implementing the Report. Government decided that the Bill should be referred to the Commission for eliciting public opinion thereon. The Bill having been so referred to the Commission, the Commission circulated it for public opinion. Several comments were received from the public, and these were tabulated according to each clause of the Bill, and considered at the meeting of the Commission held on the 8th December, 1961. It was left to the Chairman to prepare the Report of the Commission on the subject in the light of the discussions that took place at this meeting. This Report has been drawn up accordingly.

3. Member Shri N. A. Palkhivala could not attend the deliberations held at the meeting of the 8th December, 1961, and has therefore been unable to sign the Report.

4. The Commission desires to express its appreciation of the services rendered by Shri P. M. Bakshi, Deputy Draftsman, in the preparation of the Report.

Yours sincerely,
T. L. VENKATARAMA AIYAR.

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REPORT ON THE CHRISTIAN MARRIAGE AND MATRIMONIAL CAUSES BILL, 1961

REPORT ON THE CHRISTIAN MARRIAGE AND MATRIMONIAL CAUSES BILL, 1961

Genesis of the Report.

The Ministry of Law referred to the previous Law Commission the subject of revision of the law relating to marriage and divorce amongst Christians in India. On receipt of the reference, the present Commission prepared a draft Bill, and circulated it for comments to the State Governments, High Courts, High Court Bar Associations and other interested bodies and persons, including several Churches and other organisations of Christians. The Commission also recorded the evidence of a number of persons on the subject. After considering the comments received and the oral evidence recorded, the Commission submitted its Report on the subject, being the 15th Report of the Commission (Law relating to Marriage and Divorce amongst Christians in India). In conformity with the usual practice of the Commission, the Report discussed the main changes recommended in the law and contained an Appendix which showed, in the form of a draft Bill, the recommendations of the Commission.

The Ministry of Law, in implementation of the Report of the Commission, prepared a formal Bill for approval of Government before introduction in Parliament. It was, however, decided by the Government that public opinion should again be elicited on the Bill and that this should be done through the Law Commission. That is how the matter has come up again before the Commission.

Action taken for inviting comments.

2. On receipt of the reference from Government, we decided to circulate the Bill prepared by the Ministry to all persons or bodies who had shown their interest in the subject at the time of our previous Report by sending written comments or offering oral evidence on the draft Bill circulated at that time. Further, we sent copies of the Bill to the State Governments, High Courts and High Court Bar Associations for their comments. Copies were also supplied to several other persons and bodies who applied for the same. A large number of comments were received, and from a perusal of them it will be seen that while the Bill has in general been received with satisfaction some of its provisions have come in for some comment or criticism. Most of these are repetitions of what had been stated before us, and as they have been fully discussed in the previous Report, we shall deal with them briefly in this report.

Clause 7—Recognition of Churches—objection to principle.

3. There is, however, one point on which there has been a considerable body of criticism, and as that is one of substance, we shall consider it fully at the very outset. That has reference to the category of recognised Churches under clause 7.

Section 5 of the Indian Christian Marriage Act, 1872, enumerates five different modes in which marriage could be solemnized. At the time when we invited comments and heard oral evidence for our previous Report, we found that there was a large body of opinion that this differentiation should be abolished, and one uniform mode prescribed for all marriages between Christians. If we were to accept this view, it would have been necessary to provide that all marriages should be solemnized by Ministers of Religion licensed by the State. In our previous Report[1], we declined to accede to this suggestion, because there were certain ancient and well-established Churches, like the Roman Catholic Church, and the Anglican Church, in which Ministers who derived their authority from episcopal ordination solemnized marriages in accordance with well-defined rules prescribed by the Church. To require that marriages between persons belonging to those Churches should be solemnized by a Minister licensed by the State, might be challenged as constituting the super-imposition of an outside authority on the Churches in what is a matter of religion and therefore repugnant to the Constitution. It was also pointed out that there were likewise other religious denominations, which had also well-defined rules as to the persons who could solemnize marriages between its members, and the procedure to be followed in such solemnization, and that they would also be entitled to claim similar constitutional protection. It was in view of this that we recommended the enactment of a general provision whereunder every Church which satisfied the conditions laid down in clause 7(2), might be classed as a recognised Church, such recognition being for the purpose of protecting the rights conferred on religious denominations under the Constitution.

4. (a) On this, the question arose as to what Churches should be recognised for the purpose of clause 7. The Indian Christian Marriage Act had referred to certain Churches. There could be no difficulty with reference to them. Similarly, there are other Churches which also satisfy all the requirements of clause 7. If these were all the Churches, we should ourselves have included them in a Schedule to the Bill. That could be seen from what we have observed in our previous Report[1]. But the evidence disclosed that several new Churches had been formed or were in the course of formation. If they are in fact religious denominations, they can also claim the same protection as the older Churches. To exclude them from the Schedule would have been unjust, apart from such exclusion being open to criticism on constitutional grounds. That is the reason why we left the recognition of Churches as a whole to be made by the Government. Therefore, the

[1]15th Report, pages 11-12, paras.10—2.

complaint that the provision for recognition of a Church under clause 7 is unconstitutional, is, in our view, based on a misapprehension and is wholly unfounded. To set the controversy at rest, we suggest that the definition of "recognised Church" in clause 2(n) may now be modified so as to include expressly the Churches referred to in section 5 of the Indian Christian Marriage Act, 1872, while at the same time making provision for the recognition of other Churches which satisfy the prescribed conditions. It will, as modified, run as follows:—

"Recognised Church means—

(i) the Church of Rome,

(ii) the Church of India, Burma and Ceylon,

(iii) the Church of Scotland and any other Church declared to be a recognised Church under section 7."

(b) Consequential on this, we recommend that definitions of the "Church of Rome" and the "Church of Scotland" may be included in clause 2 of the Bill.[1] (The Anglican Church has now come to be known as the Church of India, Burma and Ceylon.)

Clause 7—Advisory Committee—composition.

5. Another question which has been raised is as regards the composition of the Advisory Committee. It is obvious that in the matter of appointing members to the Committee, the statute should not impose any restriction, but should leave the whole matter to the discretion of the Government. We had already recommended that certain well-established Churches should be recognised by the statute itself. In the circumstances, the only Churches which would like to apply for recognition would be the new Churches, and we have no doubt that the Government would bear this in mind when appointing members to the Advisory Committee.

Clause 7—Recognition of Churches—which Government to have power.

6. Another point raised with reference to the recognition of Churches is, that it is better done at the level of the Centre, rather than States. The matter was left to the State Government with a view to expedftious disposal, in view of the large number of applications that might be received. But in view of the change which we have recommended in the definition of "recognised Churches",[2] we think that this matter could advantageously be dealt with by the Central Government, and the Advisory Committee should also be appointed by the Central Government. This has the additional advantage of securing uniformity in the standards to be applied in according recognition. We,

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[1] *Cf.* the definitions of these expressions in the Indian Christian Marriage Act, 1872.

[2] See para. 4, *supra*.

therefore, recommend that clause 7 should be modified by substituting the Central Government in place of the State Government wherever the State Government is mentioned in that clause.

Other points.

7. Taking up now the other points raised in the representations, we shall deal only with such of them as call for consideration and further elucidation, and we proceed to do so in the order of the clauses in the Bill.

Clause 2(*a*)— "Christian".

8. Clause 2(a) of the Bill defines a Christian as a person professing the Christian religion. It has now been suggested that a Christian may be defined as "one who is baptised and is a follower of Church", or as "a member of a recognised Church" or as a "person who is an official member of any Christian Church in accordance with the rules and regulations governing a particular Church". These are merely repetitions of the suggestions made before, which have been carefully considered in the previous Report[1]. Religion is primarily a matter of faith and belief, and it is not desirable to cut down its connotation by reference to organisational and ceremonial prescriptions. There is, therefore, no reason for modifying the definition given in the Bill.

Clause 2(*c*)— "desertion".

9. A criticism has been made against the definition of "desertion" given in the Bill, that it will be difficult to prove objectively the intention to bring cohabitation permanently to an end. The definition given in section 10(2), Explanation, of the Hindu Marriage Act, 1955, is, it is said, better and might be adopted for uniformity. But that definition does not bring out all the ingredients of desertion, and its precise scope has been the subject of consideration in a Bombay case. The definition in the Bill has been framed in the light of that decision with a view to avoiding further controversies. This has been fully explained in the previous Report[2]. As for the difficulty in proving intention, there are several other questions in which the intention of a person becomes a material element, and the courts have to record a finding thereon on evidence placed before them. It has been observed that "the state of a man's mind is as much a question of fact as his digestion", and that it is a matter of inference from the facts proved. We consider that there is no ground for modifying the definition.

Clause 2(*h*)— "Licensed Minister".

10. An objection is taken to the expression "Minister of Church" occurring in the definition of "licensed Minister". It is stated, that is not the correct phrase and that the correct phrase is "Minister of religion". We had adopted the expression "Minister of Church" in preference to "Minister of religion", because the word "religion" means primarily

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[1]See the 15th Report, page 85, Notes to clause 2—"Christian".

[2]15th Report, pages 85—87, Notes to clause 2—"desertion".

the faith and belief of a person who professes religion and is of a wide import. On the other hand, the word "Church" signifies the creed and the practice of religion associated with a particular institution, and is more definite. In view of the fact that there are a number of Churches which, though they profess the Christian faith, differ from each other in their doctrines and rituals, the expression "Minister of Church" was considered more appropriate. We do not recommend any change.

Clause 2(m)—"Prohibited relationship".

11. It has been suggested that the words "ancestor" and "ancestress" in Explanations II and III to the definition of "prohibited relationship" are inappropriate in the context and that the words "father", and "mother" should be substituted as more appropriate. The words "ancestor" and "ancestress" are, however, terms of art, meaning the lineal ascendant with reference to the concept of full blood. These are the words used in the Hindu Marriage Act and the Hindu Succession Act, and for uniformity it has been considered advisable to retain these words.

Clause 3—Marriage between Christians.

12. A point urged against clause 3 is, that it does not provide for solemnisation of a marriage between a Christian and a non-Christian according to Church rites. This point was raised at the hearing held before the previous Report, and it has been fully[1] dealt with by us. It has to be noted that the Bill puts no impediments in the way of a Christian marrying a non-Christian. It has been pointed out in the previous Report that "the scheme of legislation has, latterly, been that laws governing marriages in a particular religious denomination should have application only when both the parties to the marriage belong to that religious denomination". It has also further been pointed out, that to permit such marriage under this legislation would lead to conflict in the application of laws relating to succession and so forth. There does not appear to be any good reason why a sacramental form of marriage should be insisted upon when a Christian marries a non-Christian. It has not been shown that there is any advantage to be gained in performing such marriages. The Special Marriage Act, 1954 is an enactment which is specially intended to provide for solemnizing such marriages, and can be availed of in such cases.

Clause 4(ii)—Solemnization of marriage—prohibited relationship.

13. The main attack against clause 4(ii)—prohibited relationship—is with reference to the exception in favour of custom. It is said that it should not be recognised. But custom is a well-recognised source of law according to the jurisprudence of this country as well as other countries. It has played an important part in shaping the society of this country. An exception has also been made in its favour in section 5 (iv) of the Hindu Marriage Act, 1955. Now to prohibit custom would produce disunity and confusion in

[1]See 15th Report, page 3, para. 4.

the law relating to family relations. We are therefore unable to agree that the custom should be excluded.

It has been suggested that the custom must be one recognised by the Church. But custom is, according to its true concept, some rule in derogation of the general law, in vogue in a particular religion or a community. There can be no such thing as the customs of a Church. It can only mean "rules of the Church".

One other suggestion with reference to this clause is, that the custom should be recognised if it is permitted by the Church to which either of the parties belong. This is to forget that marriages are bilateral[1], and cannot be accepted.

Clause 4(*iv*)—"Conditions of marriage"—age.

14. We have received a number of suggestions as to the age of the bride and the bridegroom. One suggestion is, that the age should be 21 years for both the parties in accordance with the canon law. Another suggestion is, that it should be 25 years for the bridegroom and 21 for the bride. A third suggestion is, that it should be 18 for the bride. It must be remembered in this connection that there is no uniformity in the marriage laws of several countries, and this is due to differences in the local conditions. In India, the age fixed for marriage in the other statutes is 18 for the bridegroom and 15 for the bride, and that is also the age adopted in the Child Marriage Restraint Act. In conformity with the other pieces of legislation bearing on this topic, and having regard to the conditions of this country, we consider that the age of marriage should be as proposed in the Bill.

Clause 4(*v*)—conditions of marriage—consent of guardian.

15. Clause 4(v) provides that, where the bride has not completed the age of 18 years, the consent in writing of her guardian or the district court should be obtained for the marriage. It has been suggested that the consent of the minor bride also should be obtained, and conformably to that suggestion, it is said that in the declaration form, she should put her signature. We are unable to accept this suggestion. It was pointed out in our previous report that, as a minor is in law incapable of giving a consent, it cannot be prescribed as a condition of a valid marriage that she should give the consent. We are, therefore, unable to recommend any change.

Clause 4(*vi*)—Conditions of marriage—domicile.

16. It is provided in clause 4(vi) that, where the marriage is solemnized outside India, both parties should be domiciled in India. It has been suggested that the Bill should provide for marriages outside India even when both the parties are not domiciled in India. This suggestion proceeds on a misconception as to the true scope of this legislation. According to the rules of private international law, the Legislature of a country can enact a law with reference

[1] *Cf.* 15th Report, page 16, para. 25.

to marriages performed inside its territory, or where it is performed outside, if both parties thereto are domiciled in the country. The object of the Bill, as explained in the Report[1], is to provide for both these classes of marriage.

Clause 5(1)—Consent of guardian in marriage.

17. As regards clause 5(1), it has been suggested that where the minor bride is not living with her parents, but is under the care and custody of some other relation or person, that other person should have the authority to give consent to the marriage as a *de facto* guardian. We do not accept this suggestion. The trend of legislation and judicial decisions latterly has been to construe narrowly the powers of the *de facto* guardian, and there is very good reason for this, because it is easy for any stranger to put himself in the position of a *de facto* guardian and expose the minor to risks by his acts. As already observed by us in our previous Report[2], the *de facto* guardian can obtain the leave of the district court, and, therefore, it is unnecessary to specifically mention him in the list of guardians.

18. (a) It has also been suggested that, failing the father and mother and a *de facto* guardian, the parties should have the right to apply to the ecclesiastical authorities for obtaining consent for the marriage. This has also been considered by us in our previous Report[3] wherein we have expressed the opinion that the function of granting permission to an intended marriage in such cases is one which pertains to the domain of civil rights and is properly confided to the courts.

(b) Another criticism which has been levelled against the scheme of clause 5 may be mentioned. Under sub-clause (3), when a person, entitled to guardianship under sub-clause (1) refuses, or is for any cause unable or unfit to act as such, the person next in order should be entitled to be the guardian. It is said that under this clause, when the father refuses to give his consent, the brother might act as guardian and give consent to the marriage and that would lead to disharmony in the family. This criticism proceeds on a misapprehension as to the true scope of the provision. It is only when the person first in order refuses *to act as guardian* that the person next in order will have the right to act as guardian. Where there is a refusal to give consent, there is no refusal to act as guardian, and the person next in the order of guardianship will have no right to act as guardian.

Clauses 5(4) and 5(5)—Permission of district court.

19. Under clause 5(4), when a guardian refuses to consent without just cause, the parties to the intended marriage may apply to the district court for permission. It

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[1]15th Report, page 4, *et seq.*, para. 8 (marriages outside India and clause 84, Notes to clause 5, (1)—Marriage—Application (marriages outside India).

[2]See 15th Report, page 17, para. 26.

[3]See 15th Report, page 17, para. 27.

is suggested that this provision should not apply where the guardian is a father or a mother. We have considered this aspect in our previous report[1], and do not see any reason to change our decision.

Clause 6(a)— Who may solemnize marriages— Ministers of recognised Churches.

20. Coming to clause 6(a), it has been suggested that some authority in a recognised Church should have the duty of informing the State Government of the names of Ministers entitled to perform the marriage At one stage we were of the view that such a provision would be useful to the Registrar-General in checking up the marriage records, and a suitable clause to that effect was inserted in the Bill originally circulated for comments[2] before preparation of our previous Report. However, after evidence was taken, we came to the conclusion that, having regard to the large number of Ministers functioning all over the country, the provision would be unworkable and, accordingly, we dropped it. We do not see any necessity for restoring it.

21. Suggestions relating to clause 7 have been already dealt with[3]

Clause 9(1)— Mar Registrars in India.

22. Under clause 9(1), the State Government may by notification appoint any person to be a Marriage Registrar for any district. It has been suggested by a number of persons that the Registrar should be a Christian. Section 7 of the Indian Christian Marriage Act, 1872, does provide that all Marriage Registrars shall be Christians. We made a departure from this provision, because we wanted to provide for a contingency when no Christian may be available in an area for being appointed as a Marriage Registrar. And as there is no question of the marriage being sacramental when it is performed before the Registrar, we considered that it would be convenient if no condition were imposed as to who should be the Marriage Registrar Our intention was, that the Registrar should ordinarily be a Christian, but in case where one was not available, it should be open to the Government to appoint a non-Christian as Registrar. We have once again considered the matter, and we think that there is no need to make any change in the provision, because we have no doubt that the Government will appoint Christians as Marriage Registrars wherever practicable.

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[1]See 15th Report, page 91, Notes on clause 5 (4).

[2]Clause 75 of the Bill which was circulated for opinion before preparing the 15th Report made such a provision. It ran as follows :—

"The prescribed authority of every Church entered in the Second Schedule shall send to the Central Government at the prescribed intervals a list of its functionaries authorised to solemnize marriages under this Act and the churches or chapels where they are authorised to solemnize such marriages."

[3]See paras. 2 to 6, *supra*.

23. A criticism has been levelled against clause 11 that there is no guidance in it as to what a Minister of a recognised Church should do, if an objection is preferred against an intended marriage. But it will be seen that sub-clause (2) contains several directions which the Minister has to observe, and they are sufficient guidance to him in deciding objection to the marriage. It should, further, be remembered that this provision applies only to recognised Churches, and these Churches have detailed regulations governing the matter, and the Minister would certainly be guided by these rules.

Clause 11 (1)—Solemnization of marriages by Ministers of recognised Churches.

24. Clause 11(2)(b) provides that no marriage shall be solemnized if a lawful impediment is shown to the solemnization thereof. It has been suggested that after the words 'lawful impediment', the words 'according to the rules of the Church to which the Minister belongs, for the solemnization of the marriage' should be added. We have discussed in the previous Report[1] the impediments contained in the Church Rules and given our reasons for not adopting them. We adhere to that opinion. It may be noted in this connection that, under clause 70 of the Bill, a Minister of a recognised Church cannot be compelled to solemnize any marriage, the solemnization of which may be contrary to the rules of the Church.

Clause 11(2)(b)—Solemnization of marriages by Ministers of recognised Churches.

25. Clause 13(d) provides that, where the bride is a minor, the licensed Minister shall send a copy of the notice of the intended marriage to the Senior Marriage Registrar of the district, who shall send a copy of the notice again to each of the other Marriage Registrars. It has been suggested, that this provision is cumbersome, expensive and unnecessary and that it would be sufficient if the notice of marriage is sent not to the Senior Marriage Registrar, but to the Marriage Registrar for the part of the district where the bride resides. As to this, it may be pointed out that the Bill follows the existing law as enacted in sections 15 and 16 of the Indian Christian Marriage Act, 1872 and we do not consider it necessary to change it.

Clause 13 (d)—Procedure to be followed by licensed Minister on receipt of notice.

26. Clause 16(3) provides that the licensed Minister or the Marriage Registrar shall decide an objection to the marriage within 30 days. A point has been raised as to what would happen if the licensed Minister or the Marriage Registrar fails to decide the objection within the period prescribed. The suggestion is that they should, in that case, apply to the district court for extension of time. We do not accept the suggestion. We think that the better course would be to provide that where the inquiry is not concluded within 30 days, any party shall have the right to apply to the district court for determination of the objection. This can be done by suitable amendment of clause 17 of the Bill.

Clause 16 (3)—(Objection to certificate) and clause 17(1)

[1]15th Report, page 17, para. 29.

Clause 20—Solemnization of marriage by licensed Minister.

27. Clause 20 provides for a licensed Minister solemnizing marriage according to such form or ceremony as obtains in the Church to which the licensed Minister belongs. It has been suggested, that this provision would create difficulties, where the marriage takes place between a Catholic and a non-Catholic, or between a Christian and a non-Christian, and that as the marriage in the above cases is not sacramental, the parties should be free to choose the form of marriage. We agree that marriage between a Christian and a non-Christian is not sacramental, and that is why we have excluded it from the operation of this Bill. As for marriage between a Catholic and a non-Catholic Christian, we do not agree that it is not sacramental. For the sake of uniformity and clarity, it would be advantageous to provide that the marriage must be performed in accordance with the rules of the Church to which the Minister belongs. This will make for uniformity and simplification, and we do not consider that it is likely to cause inconvenience.

Clause 24—Restitution.

28. A suggestion has been made by the High Court of Andhra Pradesh that the adjudications under clauses 24, 26, 27, 28 and 30 should be described not as 'decrees', but as 'orders', because they would not be 'decrees' within section 2(2) of the Civil Procedure Code. But that definition has a bearing only on the question of appealability of decisions under that Code. A decree is appealable under section 96 and section 100 of the Code, whereas an order is appealable only under section 104. But so far as appeals under the Bill are concerned, they are governed not by section 2(2) of the Civil Procedure Code, but by clause 49 of the Bill, and, therefore, the question whether the adjudications under clauses 24, 26, 27, 28 and 30 amount to "decrees" within section 2(2) of the Civil Procedure Code is not relevant. Moreover, even on a question of terminology, adjudications in matrimonial causes have been described as decrees in England [*vide* the (English) Matrimonial Causes Act, 1950] and that has also been the legislative practice in India. We do not consider that a departure from practice is called for.

Clause 25—Judicial separation.

29. Regarding clause 25, the suggestion has been repeated that there is no need to provide for the passing of decrees for judicial separation, as on the same grounds, divorce could be granted. But it has been explained in the previous Report,[1] that the Roman Catholics do not recognise divorce and that there are also considerable sections among Protestants who are averse to divorce, and that they would prefer a decree for a judicial separation to a decree of dissolution of marriage. In our opinion, no ground has been shown for going back on the view taken by us.

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[1]See 15th Report, page 23, para. 44.

30. With reference to clause 27, it has been suggested that if either party is a lunatic or idiot, marriage should be void and not merely voidable as provided in clause 28(1)(a). In our previous Report[1] we have observed that a large preponderance of opinion was in favour of limiting the category of void marriages within the narrowest limits, because the children of such marriages would be illegitimate. We, therefore, do not accept the suggestion that marriage with a lunatic or idiot should be declared void.

Clause 27—Void marriages.

31. Another suggestion which has been made with reference to this clause is, that a third party should not have the right to move the court for nullity of marriage, and that such a right should be given only either to the parties to the marriage or to the previous marriage. This question has been fully considered in our previous Report[2]. There is a well-established distinction between marriages which are void and which are voidable, and as observed in Halsbury,[3] "suits for annulling void as distinct from voidable marriages may be instituted not only by the parties to the marriage, but also by persons having a financial interest in the matter and even after both parties are dead". We are, therefore, not for restricting the clause in the manner suggested. We may point out that section 24(1) of the Special Marriage Act, 1954, also does not contain any such restriction.

32. Under clause 28(2), a marriage is voidable, if the bridegroom has not completed the age of 18 years, or if (the bride being under 18 years of age), consent of the guardian has not been obtained. It has been suggested that this is too drastic a provision and that the marriage should not be liable to be avoided on the aforesaid grounds. This question has been considered by us in our previous Report[4] and we do not find any sufficient ground for coming to a different conclusion.

Clause 28(2)—Marriage voidable for under-age or want of consent of guardian.

33. Coming next to clause 30, a number of suggestions have been put forward as to the grounds on which divorce could be granted. It is strongly pressed on us that divorce is repugnant to Christian faith, and to canon law, and should not be permitted except on the ground of adultery or conversion. We have given in our previous Report our reasons why we cannot accept this[5]. Nothing has been said to persuade us to change the view taken by us.

Clause 30—Grounds of divorce—general.

34. Referring to clause 30(1)(ii) which confers a right on the husband or the wife to sue for divorce on the ground that the respondent has ceased to be a Christian by conversion to another religion, it has been suggested that in

Clause 30(1)(ii)—Grounds of divorce—conversion.

[1] 15th Report, page 19, para. 33.

[2] 15th Report, pages 100-101—Notes on clause 27.

[3] Halsbury, 3rd edition, Vol. XII, p. 226 para. 422, second sub-para.

[4] 15th Report, page 101, Notes on clause 28 (2).

[5] 15th Report, page 26, para. 48.

such a case, there should be a provision for granting divorce at the instance of the converted spouse also. Advancing the same suggestion with a more limited objective, it is urged that under the Converts' Marriage Dissolution Act, 1886, a person, who is converted to Christianity, could sue for dissolution of marriage when the non-converted spouse deserts or repudiates the convert, and that a provision to that effect should also be inserted in the present clause. The question of dissolving a marriage contracted before conversion, at the instance of the very party, who becomes a convert, arises not merely when the conversion is to Christianity, but also to other religions, and is one of general importance. In our view there should be a law applicable to all conversions irrespective of the fact whether it is to Christianity or some other religion, and on that basis a separate Report[1] has been submitted by the Law Commission. In view of this, there is no need to consider these suggestions in this Report.

Clause 30(1) (*vii*) Grounds of divorce—wilful refusal to consummate.

35. It has been suggested with reference to clause 30(1)(vii) that wilful refusal to consummate a marriage should not be a ground for divorce but that the marriage itself should be declared a nullity. This question has been discussed in our previous Report[2] and we do not see any ground for changing our views.

Clause 30(1) (x)— Grounds of divorce—cruelty.

36. It has also been suggested that what is cruelty for the purposes of clause 30(1)(x) should be defined. This question, again, has been discussed by us in our previous report[3] and for the reasons given there, we consider that it would be inexpedient to lay down any rules as to what would amount to cruelty.

Clause 30 (1)– Grounds of divorce—mutual consent.

37. It has been suggested that a provision should be inserted to the effect that both the wife and the husband may present a joint petition for dissolution of marriage without assigning any reason thereto. This practically amounts to granting divorce by consent and goes even farther than section 28 of the Special Marriage Act. We have, in our previous report[4], given our reasons for rejecting divorce on any such grounds, and we see no reason for adopting a different view.

Divorce—other suggestions.

38. Apart from the above, some suggestions have been made touching matters of detail, such as that the period mentioned in clause 30(1)(iii), (iv) and (v) should be increased from three to five years, and that the periods specified in clause 30(1)(viii) and (ix) should be reduced by half. We see no force in them. The suggestion has also been repeated that leprosy should be a ground for

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[1] 18th Report (Converts' Marriage Dissolution Act).

[2] 15th Report, page 28, para. 53.

[3] 15th Report, page 28, para. 56.

[4] 15th Report, page 30, para. 61.

divorce only if it had not been contracted from the petitioner. These and similar suggestions have been fully considered by us in our previous report and we do not consider it necessary to travel the same ground over again. Suffice it to say that we see no reason for modifying the decisions taken thereon.

Clause 33—Remarriage of divorced persons.

39. With reference to clause 33 which allows remarriage after final decree of divorce, it has been suggested that at least one year should elapse between the final order of divorce and remarriage; such a provision, it is argued, will act as a moral check on the parties as well as on the society. We may, however, point out that the Bill prescribes an interval between the decree *nisi* and the decree absolute for divorce—clause 42. The purpose of prohibiting marriage after the dissolution, namely, to prevent resort to divorce proceedings for getting rid of the wife so as to be able to marry another woman is, as pointed out in our previous Report[1], better served by prescribing an interval between the two decrees as proposed in the Bill, rather than by having a provision barring remarriage after the final decree. Questions of paternity of children born after the final decree would also not arise when a minimum interval between the two decrees is laid down. No change is, therefore, necessary in the Bill on this point.

Clause 36(3)—Court to which petition to be made.

40. We have received some suggestions as to the conditions under which Indian courts could grant relief with reference to marriages solemnized outside India, as proposed in clause 35(a); and the courts in which proceedings could be taken for relief in matrimonial causes when the respondent is residing outside India as provided in clause 36. The provisions in the Bill are in accordance with the accepted principles applicable to the matter, and we are of opinion that they are ample for doing justice.

Clause 36—*Ex parte* decree.

41. There is also no need to add a provision that, when a respondent does not appear in a proceeding under this legislation, and an *ex parte* decree is passed, he or she should have the right to have it set aside for sufficient cause, because the provisions of the Civil Procedure Code will be applicable by force of clause 38[2], and an application for that relief will be competent under O.9, r. 13, Civil Procedure Code.

Clause 36 (3)—Court to which petition to be made—backward areas.

42. It has been suggested that in backward areas, such as the Union Territory of Tripura, there are no communications and parties are uneducated, and that to confer jurisdiction on the ordinary civil courts in matrimonial cases in such an area would be most inconvenient. But decisions on matrimonial disputes must have serious repercussion on family life, and they must be entrusted to competent courts. There is no reason why, on such a matter, the people of

[1]15th Report, page 40, para. 78.

[2]15th Report, pp. 99-100, Notes on Clauses—clause 26 (2).

Tripura should be dealt with differently from Christians in other places. Even now, the Indian Divorce Act, 1869, applies to the whole of India (except Jammu and Kashmir) including Tripura, and gives jurisdiction to the civil courts. The proposal in the Bill does not introduce any change in the existing law. What is now suggested is that a departure should be made from the existing law. We are unable to accept the suggestion. In this connection, it may be noted that the expression "District Court" is so defined as to include any court subordinate to a District Court, which may be specified in this behalf.

First Schedule. Prohibited relationships.

43. The first Schedule to the Bill gives a list of prohibited relations. The question as to who should be placed in this list is one of considerable difficulty, as there is no agreement among the several sections of the Christians thereon. In view of the serious consequences which marriage between prohibited relations entails, it was considered desirable to enumerate in the list only those relations marriage between whom was prohibited by all sections of the society. There is a large body of opinion that father's sister, mother's sister, father's brother and mother's brother should be put in the list of prohibited relations. At one stage we shared this opinion and that is why we included them in the list attached to the draft Bill, which was originally circulated for opinion. After evidence was taken, the matter assumed a different complexion. As pointed out in our previous Report[1], marriage between some of the relations, though not favoured generally by the community, could be solemnized after obtaining Papal dispensation therefor. As there is no place for a Papal dispensation in the scheme of the Act, we considered that the proper course was to omit these relations from the list and leave the prohibition of marriages between those relations to be regulated by public opinion and not by statute. Again there is a suggestion that marriage with the daughter or son of the maternal uncle and paternal uncle should also be prohibited. As to this, it appears that marriages between them are specially favoured in certain communities, especially in South India, and it was considered that to prohibit those marriages would strike at the very root of family life. This is preeminently a subject in which custom should be the paramount law. We have accordingly considered it inadvisable to ignore it. We do not, therefore, recommend any change.

Conclusions.

44. We have considered all the suggestions of substance put forward before us and we recommend for adoption the Bill as drafted, subject to the modifications suggested here.

Appendix.

45. We have, in the Appendix, given a summary of the points on which we have recommended changes in the Bill.

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[1]15th Report, page 15, para. 23.

1. T. L. VENKATARAMA AIYAR—*Chairman.*
2. L. S. MISRA.
3. G. R. RAJAGOPAUL.
4. S. CHAUDHURI.
*5. N. A. PALKHIVALA.

} *Members.*

6. D. BASU—*Member-Secretary.*

NEW DELHI;

The 15th December, 1961.

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*Shri N. A. Palkhivala could not attend the deliberations pertaining to the Report and has therefore been unable to sign it.

APPENDIX

Changes recommended in the Christian Marriage and Matrimonial Causes Bill, 1961

Clause 2

New definitions to be added.—Definition of the Church of Rome and Church of Scotland may be added[1].

Clause 2 "Recognised Church"

The definition of recognised Church should be altered so as to read as follows:—

> "recognised Church" means the Church of Rome, the Church of India, Burma and Ceylon and the Church of Scotland, and includes a Church declared to be a recognised Church under section 7[2].

Clause 7

The power of recognition of Churches and the appointment of an Advisory Committee for such recognition should be vested in the Central Government instead of the State Government[3].

Clause 17

Where the licensed Minister or the Marriage Registrar does not decide the objection to an intended marriage within 30 days, any party should be free to apply to the district court for a determination of the matter. Clause 17 may be widened to cover such a situation also[4].

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[1]Para. 4(*b*), body of the Report.

[2]Para. 4 (*a*), body of the Report.

[3]Para. 6, body of the Report.

[4]Para. 26, body of the Report.