LAW COMMISSION OF INDIA

EIGHTEENTH REPORT

(CONVERTS' MARRIAGE DISSOLUTION ACT, 1866)

GOVERNMENT OF INDIA : MINISTRY OF LAW

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New Delhi-3.
February 23rd, 1961.

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

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Eighteenth Report of the Law Commission on the law relating to the Dissolution of Converts' Marriages.

2. This subject is connected with the law relating to Marriage and Divorce among Christians in India and was taken up for consideration along with it. It was, however, considered desirable that there should be separate legislation dealing generally with the effect of conversion from one religion to another on a marriage previously contracted. A draft Report on the subject was accordingly prepared by me and was considered by the Law Commission at its meeting held on the 19th August, 1960. In accordance with the decisions taken at that meeting the draft Report was revised and circulated to the State Governments, High Courts, Bar Associations and other persons and bodies interested, for opinion. The comments received on the draft Report were considered by the Commission at its meeting held on the 6th January, 1961. The Report has been drawn up in accordance with the decisions taken at that meeting.

3. Shri Sachin Chaudhuri has not been able to come down to Delhi to sign the Report, but it has his concurrence.

4. The Commission desires to express its appreciation of the services rendered by Shri D. Basu, Joint Secretary, and by Shri P. M. Bakshi, Deputy Draftsman, in the preparation of the Bill and the Notes.

Yours sincerely,

T. L. VENKATARAMA AIYAR.

REPORT ON THE CONVERTS' MARRIAGE DISSOLUTION ACT, 1866

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APPENDICES

REPORT ON CONVERTS' MARRIAGE DISSOLUTION ACT, 1866

1. During the examination of the law relating to marriage and divorce among Christians in India, a question which figured prominently in the evidence was as to the effect of conversion of a person to Christianity on a marriage previously contracted by him. The Converts' Marriage Dissolution Act, 1866, provides for the dissolution of such a marriage under certain conditions. Discussing this Act, we observed in our report on the law relating to Marriage and Divorce amongst Christians[1] as follows:— Need for revision.

> "But this Act applies only if the parties to the marriage are not Muslims, Parsis, or Jews; and the criticism levelled against it, that it is discriminative in character, in that (1) it applies only to cases of conversion from Hinduism, and (2) it gives relief only in cases of conversion to Christianity, is well-founded. In view of this, we are considering whether we should not recommend the enactment of a law, which will be generally applicable to all cases of conversion from one religion to another religion. The question of the repeal of the Converts' Marriage Dissolution Act, 1866, can appropriately be taken up then for consideration."

Having, since, fully considered the matter, we are of opinion that there is need for legislation on the lines of that Act, because if (i) a marriage is contracted under a law which prohibits polygamy—and the present law governing all the communities in India excepting Muslims does that,—and (ii) conversion does not dissolve the marriage already contracted in accordance with a monogamous faith—and that is well-settled law—then hardship is bound to be caused if no provision is made for dissolution of the marriage. It is obviously with a view to granting redress against this, that the Converts' Marriage Dissolution Act, 1866, was enacted; but that enactment gives relief only when the conversion is from Hinduism to Christianity, and does not go far enough. We, therefore, feel that that Act should be repealed and replaced by a law which will be uniformly applicable to all conversions and confer on a convert a right to have the marriage contracted before conversion dissolved on such terms as might be considered just and proper. That is the scope of this Report.

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[1] 15th Report, paragraph 63.

Scope of the proposed legislation.

2. It should be mentioned that the legislation which we recommend is restricted to petitions by the *convert* for dissolution of the marriage, because there is already provision in the existing law for the spouse *who remains unconverted* to move for dissolution of the marriage. Thus, section 13(1)(ii) of the Hindu Marriage Act, 1955, provides for a decree of divorce being granted in favour of the petitioner on the ground that the other party has ceased to be a Hindu by conversion to another religion. Under section 32(j) of the Parsi Marriage and Divorce Act, 1936, it is a ground for divorce that the defendant has ceased to be a Parsi. In our Report[1] on the law relating to marriage and divorce amongst Christians in India, we have recommended the insertion of a provision that the petitioner can move for divorce on the ground that the respondent "has ceased to be a Christian by conversion to another religion". It would, therefore, be sufficient to limit the proposed legislation to petitions *by* converts.

Difficulty caused by differences in personal laws.

3. As it is the personal law of the parties that governs them in matters of marriage and divorce, the question arises whether, in view of the difference in that law as it obtains among the several communities in India, it would be feasible to enact one law applicable generally to conversions from one religion to another. The difficulty mainly arises by reason of the fact that, while some systems of law enjoin monogamy, others sanction polygamy. According to the law governing Christians, Jews and Parsis, marriage is "a union for life of one man and one woman to the exclusion of all others". The Hindu law, as it stood, sanctioned polygamy, but now, as a result of legislation, marriage among the Hindus has also become monogamous. The Muslim law permits the husband to marry four wives, and therefore polygamy is possible only among Muslims. Where the conversion is from one monogamous religion to another, the question presents no difficulty. The law is well-settled, that conversion does not *ipso facto* put an end to the marriage, and, therefore, unless and until it is dissolved as provided under the law, the convert cannot enter into a fresh marriage[2]. The law has, therefore, merely to provide for dissolution of the marriage, prescribe the conditions therefor and prohibit re-marriage until that is decreed.

Existing law as to effect of conversion to Islam from monogamous religion.

4. The problem arises only when the conversion is from a monogamous religion to a polygamous religion and *vice versa*, and, as already stated[3] it can now happen only when it is to or from Islam. To decide whether, the proposed legislation should or should not extend to these conversions, it is necessary to see what the present law on the subject is. Considering, first, the effect of conversion

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[1] 15th Report, para. 63, first sub-para. and App. I, clause 30 (1)(*ii*).

[2] See for example, sections 4 and 52(2), Parsi Marriage and Divorce Act, 1936.

[3] See para. 3, *supra*.

to Islam from a religion which is monogamous, the effect of such conversion depends, according to Muslim jurists, on whether it takes place in a country subject to Muslim law or in a country where the law of Islam is not the law of the land. In the former case, according to them, the converted spouse should offer Islam to the other spouse, and if that is refused the *Kazi* must dissolve the marriage, and in the latter case the marriage will automatically stand dissolved at the end of three "periods" of the wife. The application of this rule to this country has been considered in a number of decisions, by the High Courts of Calcutta, Madras and Bombay,[1] and the law as laid down therein may be summed up as follows:—

(1) India is not a country subject to the law of Islam, and therefore there can be no question of a converted spouse offering Islam to the other spouse and the marriage being dissolved by a *Kazi* on the refusal of such offer.

(2) The rule of Muslim law that on conversion in a non-Islamic country the marriage previously contracted becomes automatically dissolved has no application to this country.

(3) The incidents of a marriage solemnised in India are determined by the personal law governing the parties at the time of the marriage, and they cannot be changed by either party unilaterally by conversion to another religion.

(4) When one of the parties to a marriage becomes a convert to another religion, and, as a result thereof, there arises a conflict between the personal laws applicable to the two parties, their rights are to be determined not according to the personal law applicable to the convert, but according to rules of justice, equity and good conscience.

5. On the above principles, it was held that conversion to Islam did not operate to dissolve the marriage which had previously been solemnised, according to Hindu religion (*vide Budansa Rowther* v. *Fatima Bibi*)[2]; according to Christian religion, per Edgley J. (*vide Noorjehan* v. *Eugene Tiscenko*)[3]; according to Jewish religion (*vide Syeda Khatoon* v. *Mt. Obadiah*)[4]; and according to Zoroastraian religion (*vide Robasa Khanum* v. *Khodadad Bomanji*)[5]. This, it may be taken to be well-settled that

[1] *Vide Budansa Rowther* v. *Fatima Bibi*, (1914) 26 M.L.J. 260 ; *Noorjehan* v. *Eugene Tiscenko*, A.I.R. 1941 Cal. 582 ; *Syeda Khatoon* v. *Mt. Obadiah*, 49 C.W.N. 745; *Robasa Khanum* v. *Khodadad Bomanji*, A.I.R. 1947 Bom. 272.

[2] (1914) 26 M.L.J. 260.

[3] A.I.R. 1941 Cal. 582.

[4] 49 C.W.N. 745.

[5] A.I.R. 1947 Bom. 272.

conversion from a monogamous faith to Islam does not dissolve a marriage previously contracted, and, therefore, in law, the position is the same whether the conversion is to Islam or to a monogamous faith.

6. Does it make any difference in the result, that the Muslim law permits polygamy? Can it be said that even though conversion does not dissolve a marriage previously contracted, neither does it prevent the convert from marrying more wives in accordance with that law? Such a view will conflict with the principles on which conversion to Islam has been held not to operate to dissolve the marriage previously contracted. It was observed by Chagla J. (as he then was) in *Robasa Khanum* v. *Khodadad Bomanji*,[1] with reference to a marriage contracted between two Parsis, that it was "a solemn pact that the marriage would be monogamous and could only be dissolved according to the tenets of the Zoroastraian religion", and that "it would be patently contrary to justice and right that one party to a solemn pact should be allowed to repudiate it by a unilateral act". In other words, the marriage already contracted had created mutual rights and obligations between the parties, which did not cease on the conversion of either party, and therefore the right of the convert to marry more wives in accordance with Muslim law must be held to be subject to the right which the wife has acquired, under a monogamous marriage prior to conversion, to exclude all others in consortium so long as the marriage subsists. And if, as held in the decisions already referred to[2], the parties are, after conversion, governed, where there is a conflict of personal law, by rules of justice, equity and good conscience, a restriction on the right of the convert to marry more wives until the marriage already contracted is dissolved would be in accordance with the law applicable to the marriage which was solemnised under a monogamous religion, and that would also be in consonance with justice and right, as observed by Lodge J., in *Syeda Khatoon* v. *Mt. Obadiah*,[3] and by Chagla J. in *Robasa Khanum* v. *Khodadad Bomanji*.[4]

Sham conversions.

7. There is one other aspect of the matter which calls for mention. In the evidence which was taken by us in connection with the legislation on marriage and divorce among Christians in India, it was strongly pressed on us that sham conversions were resorted to for the purpose of defeating the rights of the wife under the marriage, and that to prevent such conversions there should be enacted a provision that the convert should be governed by the personal law which applied to him prior to conversion for a

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[1]A.I.R. 1917 Bom. 272.

[2]See para. 5, *supra*.

[3](1949) 49 C.W.N. 745, 749.

[4]A.I.R. 1947 Bom. 272, at p. 275.

period of three years thereafter. Though we appreciate the purpose behind this suggestion, we do not find any need to adopt it. We have provided,[1] that a marriage entered into prior to conversion subsists until it is dissolved according to law, and that no action for dissolution can be instituted within two years of such conversion. These provisions are ample safeguards against sham conversions and sufficient to protect the legitimate rights of the spouse who remains unconverted.

Conversion from Islam.

8. So far, we have considered the position arising on conversion to Islam from a monogamous faith. Taking, next, the converse case of conversion from Islam to some other faith, the effect of such conversion is, under Muslim law, that the marriage stands automatically dissolved. An exception to this has been enacted by section 4 of the Dissolution of Muslim Marriages Act, 1939. Section 2 of that Act provides that a woman married under the Muslim law should be entitled to sue for dissolution of the marriage on the grounds mentioned therein. Under section 4, conversion of a Mahomedan wife to another religion does not operate to dissolve the marriage, but this does not affect her right to sue for dissolution of the marriage under section 2. Thus, so far as the wife is concerned, conversion does not dissolve the marriage. But as regards the husband, the law still is that on his conversion the marriage or marriages previously contracted by him are *ipso facto* dissolved.

Summary of existing position regarding Islam, and course adopted.

9. Now reviewing the entire field of the law relating to conversions to and from Islam, it will be seen (i) that the effect of conversion to Islam is the same as that of conversion to Christianity or Hinduism—the marriage is not dissolved;[2] (ii) that the effect of conversion of a wife from Islam is the same as that from Christianity or Hinduism[3]—the marriage subsists notwithstanding the conversion, but it may be dissolved on the grounds stated in section 2 of the Dissolution of Muslim Marriages Act, 1939; and (iii) that the effect of conversion of the husband[4] from Islam is, that the marriage stands dissolved by reason of such conversion, and it is only in this particular that the Muslim law differs from other system. We are of opinion that this difference is not so substantial as to require the exclusion of conversion from Islam from the purview of the proposed legislation. It is to be noted in this connection, that even the Dissolution of Muslim Marriages Act, 1939, in so far as it enacted that by conversion the marriage of a Muslim wife was not dissolved, was a modification of the pre-existing law on the subject, and the proposed legislation only seeks to extend the principle of that enactment to conversion of husbands as well. We are of opinion that the advantages of having one law applicable

[1]Appendix I, clauses 3 and 6.
[2]See para. 5, *supra*.
[3]See para. 8, *supra*.
[4]See para. 8, *supra*.

to all conversions far outweigh all considerations based on such differences as have been noted above. The proposed legislation should, in our opinion, generally govern all conversions from one religion to another.

Jurisdiction and procedure.

10. Coming, next, to the question of jurisdiction of the courts wherein proceedings under the Act should be taken, and the procedure to be followed therein, the proposed legislation will, in general, follow the lines of the law relating to marriage and matrimonial causes among Christians in India. There are, however, two matters which require special mention: (i) alimony and maintenance to the wife in case of divorce, and (ii) custody of children. On the question of maintenance, the proposed legislation will provide,[1] as does the law relating to marriage and matrimonial causes among Christians, that the court should have the power to make suitable orders for alimony to the wife so long as she remains unmarried and also to make such orders as regards settlement of property made at the time of the marriage and properties given at that time as to the court might seem just and equitable. It is also proposed to add a further provision[2] that, unless the court decides otherwise, a decree for dissolution of marriage under this Act should be passed only after suitable orders have been made for the maintenance of the wife, the reason being that once a decree for dissolution has been passed, the husband will be free to marry again, and he might thereafter become indifferent and remiss in carrying out his obligations to the divorced wife, and it would work great hardship if she were to be driven to hang on the court for enforcing her rights. If the arrangements for maintenance are completed before a decree for divorce is granted, then it will be merely a question of her realising the fruits of her decree.

Maintenance.

Custody of children.

11. Dealing, next, with the question of the custody of children when a marriage is dissolved on account of the conversion of the petitioner, the law on the subject cannot be said to be in a satisfactory state. Normally, it is the father who is the guardian of the minor children, and unless he is found to be unfit the court cannot award their custody to another person. This rule has been applied in some decisions[3] even where the dispute has arisen by reason of the conversion of the father, though the courts have been careful to emphasise that the welfare of the children is the paramount consideration on which an order for custody should be made. It is debatable whether this is a correct approach to the question. The right of the father to the custody of children has its roots in his status as *pater familias*, and it is doubtful if it can survive when

[1]See Appendix I, clause 13.

[2]See Appendix I, clause 13(2).

[3]*Vide*, Mayne's Treatise on Hindu Law and Usage, 11th Edition, page 290, para. 233, where the decisions are collected.

he ceases to be a member of the family by conversion. It might well be said, that when two persons belonging to a particular religion enter into a marriage, they do so in the expectation that they will maintain a home as members of that religion, and that when one of them defeats that expectation by conversion, there is no reason why he or she should take advantage of what is really a breach of faith on his or her part, to the detriment of the other party who is true to the faith. The question can be of importance only in case of conversion of the husband. If, for example, a Christian husband becomes a convert to Islam, and the marriage is in consequence dissolved, and there are children of the marriage, why should the wife, apart from losing the husband, lose also the society of her children? On the principles already discussed,[1] the law applicable to that situation cannot be one recognising any preferential right in one of the parents under the ordinary law, but a rule which will be in accordance with justice, equity and good conscience, and that clearly requires that it is the non-converted spouse that should have a preferential right to the custody of the children. We have provided accordingly.[2] That, of course will be subject to the paramount consideration of the welfare of the children.

Marriages under the Special Marriage Act.

12. Lastly, it should be mentioned that we have excluded,[3] from the operation of the proposed legislation, marriages performed under the Special Marriage Act, 1954, as considerations based on the religious character of marriages will be foreign to the spirit of marriages performed under that Act.

Appendices.

13. In order to give a concrete shape to our recommendations, we have, in Appendix I, put them in the form of a **draft Bill.**

Appendix II contains notes on clauses, explaining, with reference to each clause of the Bill in Appendix I, the points that need elucidation.

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

[2]See Appendix I, clause 15(2).

[3]See Appendix I, clause 22.

Appendix III contains a comparative table, showing the existing section of the Converts' Marriage Dissolution Act, 1866, and the corresponding clause of the draft Bill in Appendix I.

1. T. L. VENKATARAMA AIYAR,
(*Chairman*).

2. P. SATYANARAYANA RAO.
3. L. S. MISRA.
4. G. R. RAJAGOPAUL.
*5. S. CHAUDHURI.
6. N. A. PALKHIVALA.

} *Members.*

D. BASU,
Joint Secretary.

NEW DELHI;
The 18th February, 1961.

*Shri Sachin Chaudhuri has not been able to come down to Delhi to sign the Report but it has his concurrence.

INDEX TO APPENDIX I

Explanation of abbreviations

Christian Marriage Act . . .	The Indian Christian Marriage Act, 1872.
Converts' Act	The Converts' Marriage Dissolution Act, 1866.
Divorce Act	The Indian Divorce Act, 1869.
H.M.A.	The Hindu Marriage Act, 1955.
M.C.A.	The (English) Matrimonial Causes Act, 1950.
P.M.D.A.	The Parsi Marriage and Divorce Act, 1936.
S.M.A.	The Special Marriage Act, 1954.

APPENDIX I

PROPOSALS AS SHOWN IN THE FORM OF A DRAFT BILL.

(This is a tentative draft only)

THE CONVERTS' MARRIAGE DISSOLUTION BILL, 1961

A

BILL

to provide for the dissolution under certain circumstances of marriages of converts and for matters connected therewith.

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (*1*) This Act may be called the Converts' Marriage Dissolution Act, 1961. Short title and extent.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir. *Cf.* ss. 1 and 35, Converts' Act.

2. In this Act, unless the context otherwise requires,— Definitions.

(*a*) "district court" means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act; *Cf.* s. 3 (*b*), H.M.A.

(*b*) "India" means the territories to which this Act extends; and

(*c*) "minor" means a person who has not completed the age of eighteen years. Contrast s. 3, Christian Marriage Act and s. 3 (*5*), Divorce Act.

CHAPTER II

EFFECT OF CONVERSION ON MARRIAGES

A.—*Effect of conversion, generally*

3. Notwithstanding anything contained in any other law for the time being in force, the conversion of a husband or Conversion by itself

not to dissolve marriage.

Cf. s. 52(2), P.M.D.A. Compare also s. 4, Dissolution of Muslim Marriages Act, 1939.

a wife shall not by itself operate to dissolve his or her marriage.

Prohibition of bigamy.

Cf. s. 44, S.M.A.

45 of 1860.

4. Every person who, during the lifetime of his or her spouse by a marriage contracted before conversion, contracts any other marriage after his or her conversion, shall be subject to the penalties provided in section 494 and section 495 of the Indian Penal Code for the offence of marrying again during the lifetime of his or her wife or husband, and the marriage so contracted shall be void.

Dissolution of marriage on ground of conversion not permitted except under the Act.

5. No marriage shall be dissolved at the instance of a spouse on the ground of the conversion of that spouse, except as provided in this Act.

B.—*Dissolution of marriage on repudiation or refusal to cohabit after conversion.*

Dissolution of marriage on conversion, where the other party repudiates the spouse or refuses to co-habit.

Cf. s. 4 and and s. 5, Converts' Act.

6. (*1*) If a husband or wife becomes converted to another religion, and if, in consequence of such conversion, the other spouse, not being a minor, repudiates or refuses to cohabit with such husband or wife, the marriage, whether solemnized before or after the commencement of this Act, may, on a petition presented by such husband or wife, be dissolved by a decree of divorce on the ground of such repudiation or refusal.

(2) No petition shall be entertained under this section unless at the time of the presentation of the petition a period of not less than two years has elapsed since the conversion of the petitioner.

Re-marriage of divorced persons.

Cf. s. 19, first para. Converts' Act.

Cf. s. 57, Divorce Act, s. 13(1), M.C.A. s. 13, S.M.A. s. 15, H.M. A.

7. Where a decree of dissolution of marriage under this Act has been passed, and the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed and the decree of dissolution has become final, but not sooner, either party to the marriage may marry again.

CHAPTER III

JURISDICTION AND PROCEDURE

8. Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction— Court to which petition should be made.

Cf. s. 6, Converts' Act.

(*a*) the respondent is residing at the time of the presentation of the petition, or Compare s. 19, H.M.A. and s. 31, S.M.A.

(*b*) the marriage was solemnized, or

(c) the husband and wife last resided together, or

(*d*) the petitioner is residing at the time of presentation of the petition, provided the respondent is, at that time, residing outside India.

9. No court shall entertain any petition for the dissolution of any marriage under this Act unless the parties are domiciled in India at the time of the presentation of the petition. Jurisdiction of Indian courts.

Cf. s. 3, Definitions of "husband" and "wife", read with ss. 4 and 5, Converts' Act.

10. (*1*) Every petion presented under this Act shall state distinctly the facts of the case and shall also state that there is no collusion between the petitioner and the other party to the marriage. Contents and verification of petition.

Cf. s. 7, 2nd para. Converts' Act

and

(*2*) The statements contained in every such petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints and may, at the hearing, be referred to as evidence. s. 47, Divorce Act.

s. 20, H.M.A.
s. 32, S.M.A.

11. Subject to the other provisions contained in this Act and to such rules as the High Court may make in this Application of Code of Civil Procedure.

Cf. s. 22, Converts' Act.

Cf. s. 45, Divorce Act, s. 21, H.M.A. s. 40, S.M.A. 5 of 1908.

behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

Maintenance *pendente lite*, and expenses of proceedings.

Cf. s. 36, Divorce Act. s. 24, H.M.A. s. 36, S.M.A.

Cf. s. 28, earlier half, Converts' Act.

12. Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, may seem to the court to be reasonable.

Permanent alimony and maintenance.

Cf. s. 37, Divorce Act, s. 25, H.M.A. s. 37, S.M.A.

Cf. s. 28, latter half, Converts' Act.

13. (*1*) Any court exercising jurisdiction under this Act on the petition of any person, may, at the time of passing any decree of dissolution of marriage or at any time subsequent thereto, order that the petitioner shall, while the respondent remains un-married, pay to the respondent for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the respondent as, having regard to the petitioner's own income and other property, if any, the income and other property of the respondent and the conduct of the parties, may seem to the court to be just; and any such payment may be secured, if necessary, by a charge on the immovable property of the petitioner.

(*2*) Where a petition for dissolution of a marriage under this Act has been filed by the husband, the court shall not pass a decree of dissolution of the marriage without passing an order under sub-section (*1*) unless, for special reasons to be recorded, the court thinks that such order is unnecessary.

(*3*) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (*1*), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(*4*) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it shall rescind the order.

14. (*1*) In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of the marriage, which may belong jointly to both the husband and the wife. Disposal of property. *Cf.* s. 27, H.M A.

(*2*) In any proceeding under this Act in which the court pronounces a decree for dissolution of marriage, the court may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or any part of the property so settled (whether the settlement is for the benefit of the children of the marriage or of the parties to the marriage or both), as the court thinks fit. *Cf.* s. 40, Divorce Act.

(*3*) The court shall not make any order under sub-section (*2*) for the benefit of the parents or either of them at the expense of the children. *Cf.* s. 40, Proviso, Divorce Act.

15. (*1*) Subject to the provisions of sub-section (*2*), in any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make, from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made. Custody of children. *Cf.* ss. 41, 42, 43 and 44, Divorce Act. s. 26, H.M.A. and s. 38, S.M.A.

(*2*) Where a marriage is dissolved under this Act on the petition of any person, the respondent shall be entitled to the custody of the minor children of the marriage, unless the court, by reason of the special circumstances of the case, deems it just to make an order to the contrary.

16. All decrees and orders made by the court in any proceeding under this Act shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being are enforced. Enforcement of decrees and orders. *Cf.* s. 55, Divorce Act. s. 28, H.M.A. s. 39, S.M.A.

17. All decrees and orders made by the court in any proceeding under this Act shall be appealable as decrees of the court made in the exercise of its original civil juris- Appeals from decrees and orders. *Cf.* s. 29, Converts' Act. s. 28, H.M.A.

s. 39, S.M.A. s. 55, Divorce Act. s. 96, C.P.C.

diction, and such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction:

Provided that there shall be no appeal on the subject of costs only.

CHAPTER IV

MISCELLANEOUS

Rules by the High Court. *Cf.* s. 62, Divorce Act, and s. 41(1), S.M.A.

18. The High Court may, by notification in the Official Gazette, make such rules consistent with the provisions contained in this Act as it may consider expedient for the purpose of carrying into effect the provisions of this Act.

Proof of refusal. *Cf.* s. 21, 'Converts' Act.

19. In any proceeding under this Act, proof of the respondent's refusal to cohabit with the petitioner after the petitioner's conversion and after knowledge thereof by the respondent shall be sufficient evidence of such refusal being in consequence of the petitioner's conversion, unless some other sufficient cause for such refusal be proved by the respondent.

Dissolution of marriage not to affect status or right of children. *Cf.* s. 27, Converts' Act.

20. The dissolution of a marriage under this Act shall not operate to deprive the respondent's children (if any) by the petitioner of their status as legitimate children or of any right or interest which they would have had according to the personal law applicable to them, by way of maintenance, inheritance or otherwise, in case the marriage had not been dissolved under this Act.

Provision regarding persons to whom the Hindu Marriage Act applies both before and after conversion. 25 of 1955.

21. For the purposes of this Act, a person to whom the Hindu Marriage Act, 1955, applies, shall not be deemed to have been converted to another religion if, even after such conversion, the said Act continues to apply to such person.

Savings for marriages solemnised under the Special Marriage Act. 43 of 1954.

22. Nothing in this Act applies to any marriage solemnised under the Special Marriage Act, 1954.

Repeal. 21 of 1866. [New]

23. (*1*) The Converts' Marriage Dissolution Act, 1866, and any enactment corresponding to that Act in force in any area immediately before the commencement of this Act, are hereby repealed.

(2) Nothing contained in this section shall affect any proceeding under the Converts' Marriage Dissolution Act, 1866, or any such corresponding enactment, pending at the commencement of this Act, and any such proceeding may be continued and determined as if the Converts' Marriage Dissolution Act, 1866, or such corresponding enactment, as the case may be, had not been repealed. Contrast s. 29 (3), H.M.A. and s. 51 (2) (*b*), S.M.A. 21 of 1866. 21 of 1866.

(3) The provisions of sub-section (2) shall be without prejudice to the provisions contained in section 6 of the General Clauses Act, 1897, which shall also apply to the repeal of the corresponding enactment. *Cf.* s. 51 (3), S.M.A. 10 of 1897

APPENDIX II

NOTES ON CLAUSES

Clause 1.

The existing Converts' Marriage Dissolution Act extends to the whole of India except the areas which were comprised within Part B States. A recent Act passed by Parliament, namely, the Miscellaneous Personal Laws (Extension) Act, 1959 (48 of 1959), which amends section 35 of the existing Converts' Marriage Dissolution Act, has the effect of extending the Converts' Marriage Dissolution Act to the whole of India except the State of Jammu and Kashmir and the Union Territory of Manipur[1].

There is no reason why the Act should not apply to Manipur[2]. The necessary change has been made accordingly.

Clause 2.—"district court"

This follows the language of the corresponding provision in the Hindu Marriage Act.

Clause 2.—"India"

The expression "India" occurs in some of the clauses[3] and has therefore been defined here.

Clause 2.—"Minor"

The expression "minor" occurs in some of the clauses[4] and has therefore been defined here.

Clause 3.

The object of this clause is to provide that the conversion of one spouse will not, by itself, put an end to the marriage[5].

Clause 4.

When only one spouse is converted, cases often arise where, after conversion, that spouse enters into a second marriage with a person belonging to his or her new religion. This, it is considered, causes hardship, and the object of the clause under discussion is to provide that after conversion a person will not re-marry.

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[1]The Act came into force on 1st February, 1960.

[2]*Cf.* the recommendation made in para. 3 of the 15th Report of he Law Commission (Report on the law relating to marriage and divorce amongst Christians in India) regarding the applicability of that Act to Manipur.

[3]For example, see clause 9.

[4]For example, see clauses 6 and 15.

[5]For a discussion of the reasons, see the body of the Report, para. 3.

Where the previous personal law itself prohibits bigamy, the clause under discussion will be harmless.

Where the previous personal law does not prohibit bigamy, the clause under discussion will benefit the non-converted spouse by virtually enforcing monogamy. To that extent, the personal law will be modified.

The clause, it is considered, should apply irrespective of whether the new personal law allows polygamy or not.

Clause 5.

The object of this clause is to ensure that the converted party should not dissolve the marriage on the ground of conversion except under the Act. In other words, dissolution at the instance of the convert on the ground of conversion will be governed entirely by the new Act.

Clause 6.

Sub-clause (1) enables a spouse to sue for divorce after his or her own conversion, if the other party refuses to cohabit with or repudiates the spouse in consequence of such conversion. The substance of the provision is taken from sections 4 and 5 of the existing Converts' Marriage Dissolution Act, but the requirement that the desertion or repudiation must have been for the space of six continuous months has been omitted as unnecessary. Further, the word "desertion", it is felt, is not appropriate, as the Act gives relief not on the ground of any matrimonial offence of the non-convert, but on the ground of conversion not being acceptable to the other party. Hence the words "refuses to cohabit" have been used.

Sub-clause (2) provides a minimum interval between the conversion and the petition. If no such minimum interval is prescribed, it is apprehended that sham conversions may be resorted to with the sole object of getting a divorce on that basis. Some interval should therefore elapse between the conversion and the presentation of the petition.

Under the ordinary law applicable to the parties,[1] "desertion" itself will be a ground for matrimonial relief if it has lasted for a particular period. The clause under discussion, by providing the same period, will ensure that there will be no sham conversions, and secure uniformity.

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[1]See, for example, section 10(1)(*a*) of the Hindu Marriage Act, 1955, which allows judicial separation on desertion for two years, and section 22 of the Indian Divorce Act, 1869, which allows judicial separation on desertion for two years.

Clause 7.

This deals with the minimum interval for the re-marriage of persons divorced under the Bill, and has been introduced on the lines of the corresponding provision found in other matrimonial laws.[1]

Clause 8.

This deals with the court to which a petition under the Act will be filed (assuming that Indian courts have jurisdiction under the separate clause.)[2]

The respondent's residence will be the main basis, but the court within whose jurisdiction the marriage was solemnised or the husband or wife last resided together will also have jurisdiction as in the corresponding provision in the Hindu Marriage Act and the Special Marriage Act.

Paragraph (*d*) provides for cases not covered by the other paragraphs. If the respondent is residing within India, the matter will be covered by the other paragraphs; but, where he resides outside India, the other paragraphs may not cover the case, though *Indian* Courts as such have jurisdiction.[3] Hence the necessity of this paragraph.[4]

Clause 9.

This seeks to provide that Indian courts have jurisdiction only if the parties are domiciled in India. The existing provisions of the Converts' Marriage Dissolution Act, sections 4 and 5, already contain this requirement, since the definition of "husband" and "wife" in that Act requires that *either* the husband *or* the wife must be domiciled in India. To prevent complications, it is considered that *both* the parties must be domiciled in India.

Clause 10.

This is modelled mainly on the lines of the corresponding provisions of the Indian Divorce Act, Hindu Marriage Act and Special Marriage Act.[5]

It appears unnecessary to prescribe any form of petition.

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[1]These have been cited in the margin against the clause.

[2]See clause 9.

[3]See the next clause.

[4]Compare clause 36(3)(*d*), in Appendix I, 15th Report of this Commission, relating to Marriage and Divorce amongst Christians in India.

[5]These have been cited in the margin against the clause.

Clause 11.

This is intended to provide for the application of *all* the provisions of the Code of Civil Procedure to proceedings under the Act (subject to the provisions of the Act and to the rules to be made by the High Court). The corresponding provisions of the Indian Divorce Act, etc.[1], may be compared.

Clause 12.

This provides for interim maintenance and expenses, etc.

Clause 13.

This deals with permanent alimony and maintenance, and is modelled mainly on the corresponding provisions of the other Acts relating to matrimonial relief.[2]

It is considered that only the respondent in the main proceedings should be entitled to the relief under this clause. So far as the *petitioner* is concerned, he would have instituted proceedings on account of his or her own act, and hence it is not desirable that the petitioner should be given a right to claim maintenance from the other party.

As to sub-clause (2), the reasons have already been given.[3]

Clause 14.

Sub-clause (1) is intended to enable the court to pass orders relating to the disposal of property presented to the parties at the time of marriage and belonging jointly. It has been modelled on the corresponding provision in the Hindu Marriage Act.[4]

Sub-clauses (2) and (3) are intended to empower the court to deal with properties settled before or after marriage of the parties, and are modelled on the corresponding provision in the Indian Divorce Act.[5]

Clause 15.

Sub-clause (1) is an exhaustive provision authorising the court to pass orders relating to custody, maintenance and education of minor children. It has been modelled on the corresponding provisions in the other Acts.[6]

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[1]These have been cited in the margin against the clause.
[2]These have been cited in the margin against the clause.
[3]See the body of the Report, para. 10.
[4]Cited in the margin against the clause.
[5]Cited in the margin against the clause.
[6]Cited in the margin against the clause.

Sub-clause (2) is intended to secure, in effect, that only the non-convert party will have the right to the custody of the children, unless the circumstances are such as to require a different order.[1]

Clause 16.

This is intended to deal with the execution of decress and orders made under the Act, and is modelled on the corresponding provision of the other Acts.[2]

Clause 17.

This is intended to provide for appeal against decrees and orders made under the Act. It has been modelled on the corresponding provision of the other Acts[3], with this verbal difference that decrees and orders will be appealable as "the decrees" of the court and not as "the orders" of the court. Orders are not normally appealable under the Civil Procedure Code, and therefore it would not be accurate to say that the decrees and orders will be appealable as the decrees "and orders" of the court in its original civil jurisdiction. Certain other verbal changes have also been made for clarity, and particularly to make it clear that the right of appeal need not be sought for in any other statute.

It may be noted that section 29 of the Converts' Marriage Dissolution Act bars an appeal, and merely provides for a reference of the case to the High Court. It is felt that an appeal would be more convenient than a reference. Hence the change.

Clause 18.

This does not need any comments.

Clause 19.

This has been suggested by section 21 of the existing Converts' Marriage Dissolution Act. That section (besides providing that co-habitation is evidence of marriage—a provision which need not be enacted) embodies two presumptions—

(i) Voluntary *neglect* to cohabit is sufficient evidence of desertion or repudiation and of such desertion, etc. being in consequence of conversion.

(ii) *Refusal* to cohabit is sufficient evidence of desertion, etc. and of the desertion, etc. being in consequence of the conversion.

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[1]For reasons, see the body of the Report, para. 11.

[2]Cited in the margin against the clause.

[3]Cited in the margin against the clause.

[In both cases, the voluntary neglect or refusal should be after the petitioner's conversion and after knowledge thereof by the respondent, and in both cases evidence can be tendered to show some other cause for his refusal or voluntary neglect.]

So far as the first presumption is concerned, it can be broken up into two parts again, namely:—

(a) presumption about voluntary neglect amounting to desertion, and

(b) presumption about voluntary neglect *being in consequence of the conversion.*

The second presumption can also be similarly broken up. The process would therefore lead to four presumptions, in all, namely:—

1. Voluntary neglect proves desertion.

2. Voluntary neglect *further* proves that desertion is in consequence of the conversion.

3. Refusal to cohabit proves desertion.

4. Refusal to cohabit *further* proves that the desertion is in consequence of the conversion.

It has been considered unnecessary to deal with the case of voluntary neglect; we can simplify the clause by confining it to refusal to cohabit. Presumptions No. 1 and 2 therefore go out of the picture.

As regards presumption No. 3, in view of the language adopted in the *substantive* clause,[1] which uses the formula "refusal to cohabit" instead of "desertion", the presumption becomes redundant.

The presumption at No. 4 has been embodied in the clause under discussion, as a useful one. Certain verbal changes have been made for simplicity and precision.

Clause 20.

This has been suggested by section 27 of the existing Converts' Marriage Dissolution Act, the substance of which has been embodied here as a useful provision.

As to the effect of change of religion, and its effect on *proprietary* rights, see the undermentioned Act[2], which deals with the rights of the convert.

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[1]Clause 6.

[2]Caste Disabilities Removal Act, 1850 (21 of 1850).

Clause 21.

The object of this clause is to provide that change of a mere sect within the fold of Hinduism—*e.g.,* from Hinduisim to Jainisim, or to Virashaivsim, etc. —shall not be deemed to be conversion.

Clause 22.

The Special Marriage Act, 1954, allows persons belonging to different religions to marry. It is considered that since *initial* difference of religion does not come in the way of a marriage under that Act, the *subsequent* change of religion should not also affect any such marriage.[1] Hence this clause.

The clause has been framed on wide lines, to stress the idea that personal law has nothing to do with such marriages.

Clause 23.

This is a repeal clause and does not need any comments.

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[1] See also the body of the Report, para. 12.

APPENDIX III

The following table shows the existing sections of the Converts' Marriage Dissolution Act, 1866, and the corresponding clause in the Bill in Appendix I:—

Section of the existing Act	*Clause*
1	1, part
2 (Repealed)	..
3, part	2, part and 9
4	6, part
5	6, part
6	8
7 (Second paragraph)	10
19, first para.	7
21	19
22	11
27	20
28	12 and 13
29	17
35	1, part

The following sections of the existing Act have not been adopted, as unnecessary :—

3, part

7, first paragraph

8 to 18

19, second para.

20

23 to 26

30 to 34.

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