



LAW COMMISSION
OF INDIA

NINETIETH REPORT

ON

**THE GROUNDS OF DIVORCE
AMONGST
CHRISTIANS IN INDIA: SECTION 10
INDIAN DIVORCE ACT 1869**

GOVERNMENT OF INDIA : MINISTRY OF LAW

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D.O. No. F. 2(6)/82-I.C.

Chairman

Law Commission
Government of India
Shastri Bhavan
New Delhi-110 001

17th May, 1983.

My dear Minister,

I send herewith the 90th Report of the Law Commission regarding "Grounds of Divorce amongst Christians in India : Section 10 of the Indian Divorce Act, 1869".

2. Revision of Section 10 of the Indian Divorce Act, 1869, was taken up by the Law Commission *suo moto* in view of the existing element of discrimination based on sex under the Indian Divorce Act as applicable to the Christians in India.

3. In the field of marriage law, extensive developments have taken place both in law and in Society. It is proper that these developments should be taken note of and the law brought in tune with the times.

4. The Commission expresses its appreciation to Shri P. M. Bakshi, Part-time Member of the Commission for the finalisation of the Report.

With regards,

Yours sincerely,

Sd/-
(K. K. MATHEW)

Shri Jagannath Kaushal,
Minister of Law, Justice & Company Affairs,
Shastri Bhavan,
NEW DELHI.

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CHAPTER 1

INTRODUCTORY

1.1. The Law Commission of India has taken up for consideration the question whether the law relating to the grounds of divorce applicable to Christians in India under section 10 of the Indian Divorce Act, 1869 should be reformed, and if so, on what lines. The inadequacies of the present law have been stressed from time to time by individuals and social organisations. The Law Commission of India itself had, a few years ago, made detailed recommendations for reform¹ of the law on the subject, in a comprehensive Report dealing with the entire law of marriage and divorce amongst Christians in India, supplemented by another Report² dealing with certain matters arising out of the Bill prepared by Government on the subject. While legislation for removing the defects in the law on the subject has not been introduced, it appears to the Commission that it is urgently necessary in the interests of social justice to take up some issues, even if a comprehensive legislation by way of revision of the enactments on the subject cannot be undertaken by Government.

Need for taking up the subject.

1.2. In a letter recently addressed to the Chairman of the Law Commission,³ there have been narrated certain actual cases of Christian women who were treated with severe cruelty by their respective husbands, as a consequence of which the women had to undergo a lot of suffering, resulting in their mental breakdown. The letter also mentions many other cases of cruelty by Christian husbands (even of husbands putting their wives into prostitution), and of long-continuing desertion by the husbands, who, notwithstanding their own past misconduct, nevertheless expect their wives to accept them back. Because of the difficulty of getting a divorce in such cases, these women, it is stated, have no hope of redeeming their lives and finding happiness for themselves and their children.

The gist of the suggestion of Ms. Roberts.

1.3. It has also been emphasised in the letter mentioned above that the recent proposal to amend the Special Marriage Act and the Hindu Marriage Act by way of introducing "irretrievable breakdown" as a ground for divorce (in the two Acts) is the first step towards the liberation of unfortunate Indian women and that the same should be extended to Christians also. Towards the end of the letter, the need for a uniform divorce law covering every community has also been stressed, "thereby enabling the Christian woman especially, to break away completely from an unhappy union and start a new life while she is still young and sane enough to do so."

Breakdown of marriage.

It may be mentioned that the Marriage Laws (Amendment) Bill is pending before Parliament, and is intended to implement a Report⁴ given by the Law

¹ Law Commission of India, 15th Report (Law relating to marriage and divorce amongst Christian in India).

² Law Commission of India, 22nd Report (Christian Marriage etc. Bill).

³ Letter addressed to the Law Commission by Ms. Aud Sonia Roberts, New Delhi, dated 15th September, 1981.

⁴ Law Commission of India, 71st Report (Hindu Marriage Act—Irretrievable breakdown of Marriage as a ground of divorce).

Commission on the introduction, in the Hindu Marriage Act, of irretrievable breakdown of marriage (evidenced by the parties living apart for a specified period) as a ground of divorce. That report itself had been forwarded in response to a reference made by the Government of India in the Ministry of Law.

Equality of sexes. 1.4. Apart from the questions raised by the letter mentioned above, it is also worthwhile considering whether section 10, Indian Divorce Act, does not stand in urgent need of revision on the ground of equality of the sexes.¹

Scope of the Report. 1.5. Accordingly, the present Report addresses itself to the question of reform of the law relating to grounds of divorce amongst Christians in India.

Working Paper. 1.6. For eliciting views on the subject, the Commission had prepared a Working Paper which had been circulated to interested persons and bodies. The gist of that Working Paper² and the views received thereon will be dealt with in due course.³

¹. Chapter 2, *infra*.

². Chapter 2, *infra*.

³. Chapter 3, *infra*.

CHAPTER 2

THE PRESENT LAW, AND THE ISSUES FOR CONSIDERATION

2.1. Section 10 of the Indian Divorce Act, 1869 deals with the grounds of divorce amongst Christians as under :—

Present law section 10, Indian Divorce Act 1869.

“10. *When husband may petition for dissolution*—Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

When wife may petition for dissolution—Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman;

or has been guilty of incestuous adultery,

or of bigamy with adultery,

or of marriage with another woman with adultery,

or of rape, sodomy or bestiality,

or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensa et toro*,

or of adultery coupled with desertion, without reasonable excuse for two years or upwards.”

2.2. Having regard to the nature of the issues that fall for consideration, we had circulated to interested persons and bodies a Working Paper on the subject for eliciting opinion. The Working Paper so circulated set forth three alternatives for consideration. The reasons for putting forth these three alternatives and the possible justification that could be advanced in support of each of them were set out at some length in the Working Paper. It may be convenient to restate them in this Report (though not necessarily in the same words).

Working Paper as setting forth three alternatives.

2.3. The first alternative put forth in the Working Paper focussed attention on the element of discrimination from which section 10 of the Indian Divorce Act, 1869 seemed to suffer in the Commission's view. This is apart from any other question that may fall to be considered as to the merits of the existing law as tested in the light of the present day social notions in regard to affairs of the family. The Commission was of the view that the provision in section 10 (as it now stands)¹ was blatantly discriminatory against Christian women.

Discrimination writ large in Section 10 (First alternative).

The matter would be clear if one compares the position regarding the two sexes under the section. The ground of divorce available to the Christian husband under this section is expressed simply as “adultery”—no other fact need be proved by the husband. But the ground of divorce available to the wife is expressed in very narrow terms in the section. To mention the position very briefly, the section requires proof by the wife of one or other of the following acts of the husband—(a) conversion accompanied by another marriage, or (b) rape, sodomy or bestiality, or (c) adultery, which, however, must be accompanied by some particular aggravating quality factor or circumstance specified in the section. Briefly, the section requires that the adultery committed by the husband must have been (i) incestuous, or (ii) accompanied by bigamy, or (iii) accompanied by “marriage with another woman”, or (iv) coupled with such cruelty as would itself have entitled a woman to a divorce *a mensa et toro*, or (v) coupled with desertion without reasonable excuse for at least two years.

Thus, the woman is placed in a much more unfavourable position than the man, since she is required to prove, besides adultery, one or other of the additional facts enumerated above. In so far as the present provision in section 10,

¹ Paragraph 2.1., *supra*.

Indian Divorce Act, 1869, has imposed on the Christian woman these stringent limitations in regard to adultery as a ground of divorce, it appears to be violative of article 14 of the Constitution. Notwithstanding judicial dicta to the contrary,¹ this seems to be the proper view to take. Under article 14 of the Constitution, the State must not deny to any person equality before the law or the equal protection of the laws within the territory of India. Section 10 violates that mandate.

Further, section 10 would seem to violate article 15(1) of the Constitution, under which "the State shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them." The Constitution favours special provision for women, but not against them.² Therefore, there is an urgent need to remove the discrimination that is writ large in section 10, Indian Divorce Act, 1869 and to introduce equal treatment of the sexes. This was the first—and the most urgent—question to be considered, according to the Commission, and was the first alternative put forth in the Working Paper.

Widening of the grounds of divorce for Christians (Second alternative)

2.4. The second question to be considered in regard to divorce was a somewhat wider one, namely, whether the Indian Divorce Act, 1869, should be so amended as to permit divorce amongst Christians on grounds not mentioned in the present section, such as cruelty, desertion, insanity, and other diseases and various other miscellaneous grounds available under other enactments in force in India.³ This constituted the second alternative put forth in the Working Paper.

The Commission noted that it was possible to evolve a milder form of the second alternative. One can think of introducing as a ground of divorce available to either spouse (amongst Christians):—

- (i) adultery;
- (ii) desertion for a period of two years without reasonable excuse,⁴ and
- (iii) cruelty.

Irretrievable breakdown of marriage (Third alternative)

2.5. The third alternative put forth in the Working Paper raised a still much wider question, namely, whether the Indian Divorce Act, 1869, should be amended more radically by introducing in that Act, as a ground of divorce "irretrievable breakdown" of marriage (evidenced by the parties living apart for a specified period). This would be on the lines of the Bill now pending before Parliament, whereby the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 are proposed to be amended to introduce this particular ground. This was the third alternative put forth in the Working Paper.

Comprehensive Provision—Law Commission Report on Christian Marriage and Divorce.

2.6. It was also pointed out in the Working Paper that, in principle, there may even be a case for still more extensive amendments in the matrimonial legislation applicable to Christians. If one were to embark on the task of revising the entire law relating to marriage and divorce amongst Christians in India, one could even think a comprehensive revision of Indian Christian Marriage Act, 1872 and the Indian Divorce Act, 1869—along with the introduction of necessary reforms, both in the substantive rules and in the procedure. As already mentioned,⁵ the Law Commission of India had forwarded to the Government such a Report, being the Law Commission's 15th Report on the law relating to marriage and divorce amongst Christians in India (1960). This Report was followed by the 22nd Report of the Law Commission, in which the Commission expressed its views on certain further issues which the Government of India had referred to the Commission. These were issues relating to the Bill that had been prepared in the Government to implement the 15th Report. The Commission's Reports on the subject have not been implemented. This past history of law reform proposals on the subject was also set out in the Working Paper.

¹ *Dwarkanbai v. Narhan*, A.I.R. 1953 Mad. 792.

² *Yusuf v. The State*, A.I.R. 1954 S.C. 321, (1954) S.C.R. 930.

³ The various grounds of divorce under Indian Matrimonial Legislation are summarised in Appendix.

⁴ If a comprehensive definition of "desertion" is introduced, absence of reasonable excuse would form part of the definition itself.

⁵ Para 1.1, *supra*.

2.7. Against the background of the above material (which was included in the Working Paper), the Commission invited opinions of the following alternative proposals. Three alternatives
in the Working
Paper.

- (i) Should the law relating to divorce amongst Christians in India (section 10, Indian Divorce Act) be amended so as to remove the element of discrimination against the wife at present apparent in the law?
- (ii) Should the law relating to divorce amongst Christians in India be amended by widening the grounds available to both the spouses so as to include the grounds available under the various matrimonial statutes in force in India as they stand today?
- (iii) Should the ground of irremediable breakdown of marriage, evidenced by the parties living apart for a specified period (which is proposed to be introduced in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954) be made available to Christians also?

CHAPTER 3

COMMENTS RECEIVED AND VIEWS EXPRESSED ON THE VARIOUS ISSUES

Introductory

Introductory.

3.1. We have set out above the important proposition on which views were invited in the Working Paper. We shall now summarise the views received on the Working Paper.¹ The first alternative posed the query whether the law relating to divorce amongst Christians in India (Section 10, Indian Divorce Act, 1869), should be amended so as to remove the element of discrimination between the sexes which is, at present manifest in the law. This was the narrowest of the alternatives formulated in the Working Paper.

The second alternative in the Working Paper raised the query, whether the grounds of divorce available to both the spouses among Christians should be widened so as to include the grounds available under the *various matrimonial statutes in force in India as they stand today*. The widest alternative was put forth in the third query, which solicited opinion on the question whether the ground of irretrievable breakdown of marriage, evidenced by the parties living apart for a specified period (which is proposed to be introduced in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954), should be made available to Christians also.

Comments favouring first alternative

3.2. The first alternative has been favoured by several comments received in response to the Working Paper. It has also been strongly supported by many of the articles and letters in newspapers and magazines that we have had the opportunity of perusing. For example, the Catholic Bishops' Conference of India, in its comment on the Working Paper, impliedly accepts the soundness of the reasoning underlying the first alternative put forth in the Working Paper and agrees that the discrimination between the husband and the wife as in section 10 of the Indian Divorce Act, 1869 is wrong and needs to be rectified. However, the comment has made certain additional points which may be thus summarised. In the first place, it has been stated that India, being a secular State, should not have special legislation concerning marriages of different religious communities. The national legislation may limit itself to general issues, while areas peculiar to specific religions may be left to the provisions of the rules of each religion.

Secondly, the comment of the Conference suggests that since the canonical provisions regarding and the form of marriage are accepted by the civil law of the country, a declaration of nullity of marriage granted by the competent ecclesiastical authority should also be recognised by the civil law. Thirdly, it is stated that the Church also provides for separation of bed and board on grounds of faith, infidelity (adultery), etc., and these provisions as in canon law, could also be recognised by the State. Finally, the comment expresses an anxiety to keep separate divorce and separation from board and bed. The last paragraph of the comment makes the following concrete suggestion as regards the queries made in the Working Paper of the Law Commission :—

“In the light of the above, the answers to the three questions raised at the end of the Working Paper would all be “yes”, provided the matter refers to separation from *bed and board* and not to *dissolution of the bond of marriage with the resultant freedom to marry again.*”

Comments favouring the second alternative.

3.3. Some of the comments received on the Working Paper favour the second alternative put forth in the Working Paper. Thus, one High Court, definitely approving the first alternative put forth in the Working Paper, agrees that discrimination between the sexes should be removed. That High Court would even accept the second alternative, put forth in the Working Paper, but with the rider that all the grounds of divorce available in all the matrimonial statutes in force in India need not be incorporated in the legislation relating to Christians. “It would be sufficient to include the grounds available under the

¹. Working Paper circulated on 29th November, 1982 paragraph 15.

amended Hindu Marriage Act, 1955, including mutual consent as provided therein. This comment does not, however, favour the third alternative (irretrievable breakdown of marriage as ground of divorce), which it regards "as somewhat controversial and not yet tested in India."

3.4. Certain comments received on the Working Paper favour a comprehensive revision of the law—the third alternative put forth in the Questionnaire. One High Court, for example, states that the Indian Divorce Act, 1869 needs comprehensive amendment, "to help Christian couples to have resort to Courts where both the spouses mutually agreed to separate and where there is irretrievable breakdown of the marriage". The comment of this High Court further states that the Indian Divorce Act, 1869, "as at present available is outmoded". The High Court also makes a plea for repealing section 7 of the Act (which requires the Courts in India to follow the English practice in matters not specifically provided for), and for abolishing the original jurisdiction of the High Courts under the Act to try dissolution cases. The High Court further suggests that the need for confirmation of a decree of divorce by a full bench of the High Court should be done away with and, further, that there is no need for a six month period for the decree to be made absolute (which is necessary under the present law). The comment ends with the following concrete suggestion:—

"The provisions of the Act can be brought in accordance with the provisions of the Special Marriage Act or the Hindu Marriage Act."

3.5. The Government of India in the Legislative Department,¹ while agreeing in principle with the need for amendment of the law, has, in its comment on the Working Paper, referred to the history of the past attempts at reform of the law on the subject, (a matter which was mentioned in the Working Paper of the Law Commission also). The Legislative Department has also referred to abandonment of the Bill implementing the 15th and 22nd Reports of the Law Commission, after the Bill was reported on by the Joint Committee of both Houses of Parliament. The Department has also made a mention of the Starred Question on the subject which was answered by Government in the Lok Sabha on the 16th December, 1980. It appears from the comment that Government is anxious that the views of the Christian community in the matter may be ascertained, with special efforts. The basic approach of the Government seems to be contained in the last paragraph of the comment, which we reproduce below:—

"While on first principles the answers to the three questions posed by the Commission in their Working Paper have to be in the affirmative, it would appear necessary, particularly in view of the past experience of the Government, to make special efforts to ascertain the views of the Christian community in the matter."

3.6. Apart from the comments received on the Working Paper, we have been able to have a look at articles and correspondence published in certain newspapers and periodicals, which contain an expression of views on the subject. The majority of the articles and letters reveal a deep dissatisfaction with the present law, though there is a small shade of view favouring the *status quo*. The remedy or reform suggested in the various articles and letters varies and many of them raise a matter not raised in our Working Paper, namely, the need for some provision in the law for facilitating the recognition, by the Civil Courts, of a pronouncement of nullity made by a competent authority of the Church.

Several points have been made in the articles published on the subject in newspapers and periodicals. By and large, the need for a revision of the law in the light of the changing social conditions has been stressed. Further, it has been argued that the absence of a provision for recognition, by the civil courts, of a pronouncement of nullity granted by the Church leads to a serious anomaly, inasmuch as (under the present position), a person stays married for the purposes of the law of the land, while the Church has already declared his marriage to be void. It has also been stated that Portuguese law, as in force in Goa, recognises such pronouncements of nullity made by the Church authorities. (Reference has been made in this connection to a provision made by the Portuguese law in 1911 in regard to Goa).

¹ Legislative Department F. 11 (2) 82 L. II, dated 12 January, 1983.

Summary of view
in articles.

3.7. It is unnecessary to refer in detail to each and every point made in the articles and correspondence in newspapers and the periodicals. However, it would be useful to mention the important points. In broad terms, the salient points made are as under :—

G.R. Rajagopaul,
"Personal Law Integration"
(15 September, 1982)
Indian Express.

Necessity for changes in the law concerning Christians pointed out, in the Light of the Supreme Court judgment (Mutual consent as a ground of divorce).¹

Kenneth A. Phillips,
"Christian victims of archaic
law"
(21 September, 1982)
Times of India.

Archaic nature of the Indian Divorce Act pointed out. Reference made to certain judgments pointing to the need for reform. Necessity for removing discrimination against women highlighted. Desirability of expanding the grounds of divorce and "a total reconstruction of the system" stressed.

Reference is also made to the law in Goa which, in effect, it is stated recognises a pronouncement of nullity by the Church.² Mention is further made of a Madras ruling³ which points out the anomaly in the Indian Divorce Act, in not recognising absence of the other spouse for seven years as a ground for dissolution of marriage. The article ends with a quotation of the following passage from an Encyclical of the Pope :

"Since women are becoming ever more conscious of their human dignity, they will not tolerate being treated as mere material instruments, but demand rights as befitting a human person, both in domestic and public life."

George Menezes, letter published
in (1 October, 1982) Times of
India.

Need for grant of divorce on the ground of desertion for a continued period stressed. Discrimination between the sexes under the present law also pointed out. Absence of geographical uniformity in the law also emphasised, since Christians of Goa, Daman and Diu have a much more progressive law, than Christians in the rest of India.

Father Cruz D'Souza, Sawant-
wadi, letter published in (11
October 1982) Indian Express.

The State must recognise annulments and dissolutions granted by the Church, as in Goa under the Portuguese law enacted in 1911.

Doris D'Souza, Bombay, letter
published in (16 October 1982)
Times of India.

The Indian Divorce Act is discriminatory and archaic. Even though the woman obtains an annulment from the Church, she has to go through the "long-suffering, oppressive, endless and impractical procedure of the court to obtain a divorce which in any case is long time consuming. I wish our Parliamentarians would pass suitable legislation immediately to give much needed relief to innocent, harassed victims of the Indian Divorce Act, 1869."

Winston F. Saldanha Bombay,
letter published in (23 October
1982) Times of India.

The status in society of a couple whose marriage has been annulled by the Church is uncertain. "The remedy lies in codifying the law and making it uniform. Progressive laws like the Hindu Marriage Act, 1955 and the special Marriage Act, 1954 should be the basis. Irretrievable breakdown of marriage and annulment by the

¹. Cf. Chapter 5, *infra*.

². On this point, see further paragraph 4.8 *infra*.

³. *George Cornelius v. Elizabeth Depti Samadanam*, A.I.R. 1970 Mad 240 (Palaniswamy, J.) referred to in *Reynold Rajmani v. Union of India* A.I.R. 1982, S.C. 1251 (Sept.)

Church should also be further grounds for divorce/annulment by the courts of law. It is unfortunate that the Government has not reintroduced in Parliament the Christian Marriage and Matrimonial Causes Bill which had been introduced in 1962 but which lapsed."

Ami Ashanti, Bombay, letter published in (4 October 1982) The Examiner.

The writer draws attention to the need to provide relief to couples who suffer from mental cruelty. She refers to the battered spouses of alcoholics who eke out their existence and to the husbands of "nymphomaniac and psychoaberrated" wives. She also refers to her project experience in the Institute of Social Sciences (Bombay) where she had met several Catholic women who were living sub-humanly "only because of the indissolubility of the marriage bond " "If Catholic priests can seek and obtain Laicisation... why cannot the Catholic Laity.... seek and obtain, if not divorce, annulment, especially when it can be proved that the marriage has irretrievably broken down ?"

Teresa Albuquerque, Bombay, letter in (11 December, 1982) The Examiner.

- (i) A church annulment of marriage should be recognised in law.
- (ii) The present law is an affront to women, as it makes a distinction between the sexes.

F.M. Pinto, Bombay, letter in (18 December, 1982) The Examiner.

The time has come for a reoriented thinking on the subject of divorce for Christians.

Winson F. Saldana, letter in (24 December, 1982) The Herald and in (January, 1983) Home Life and (January, 1983) The Examiner.

The letter mentions a large number of tragic cases of Catholic couples all over the country whose marriages are void on one or more of the grounds specified in the article of Mr. Kenneth Phillips and who are unable to obtain speedy annulment of their marriage. This is just because the number of clergymen learned in moral theology and in canon law to constitute ecclesiastical tribunal to adjudicate upon these cases and to grant relief is insufficient. The cure, it is stated, lies in having zonal interdiocesan tribunals.

Peter Figuerido, Calcutta, letter in (24 December, 1982) The Herald.

Commenting on the article of Mr. Kenneth Phillips, Mr. Figuerido states that the provisions of the Indian Divorce Act as to nullity are adequate. According to the comment, the procedure in civil courts is superior to that in Church tribunals. The Divorce Act safeguards against collusion, while in Church tribunals, there is secrecy (of proceedings).

"There is no reason why a genuine case from the Church tribunals should not, on the same evidence established before, be accepted by Civil Courts. To accept blindly the decision of a secret tribunal does not appeal to the concept of equality before law. The Indian Divorce Act remains as close to traditional Roman Catholic ethics as is possible in a society where libertinage is the order of the day. It is sad to see it attacked, in the name of progress, in a Roman Catholic journal."

News item in (31 December 1982) The Examiner.

A resolution demanding that the provision for divorce should be extended to the Christian Marriage Act was passed on 30 December 1982 at Cochin at the three day Biennial National Conference of Women Lawyers.

F.M. Pinto, Bombay, letter in (January 1983) Home Life.

- (i) Annulment of a marriage by the Church should be recognised.
- (ii) It is unfortunate that the Christian Marriage and Matrimonial Causes Bill of 1962 proved abortive.

Comment under "Current Topics" in (6 January, 1983) Times of India.

- (i) Under the Indian Divorce Act, 1869, divorce is available under very limited conditions, which virtually makes the provision infructuous. The wife cannot sue for divorce on grounds of impotency, insanity or cruelty.
- (ii) The archaic and cruel nature of the law is evidence from the fact that it does not accept the annulment order passed by the Church. The Portuguese law in Goa is much more progressive and dissolves marriages annulled by the Church.
- (iii) The Act of 1869 needs to be changed also because it does not treat men and women as equals. "In order to update it, the legislators can draw upon the provisions of the Hindu Marriage Act and the Special Marriage Act and take into account a wide range of issues to make it easier for men and women to separate when marriages have broken down."

Dr. L. De Souza, Bombay, letter in (15 January, 1983) The Examiner.

The archaic law applicable to Christians needs revision. "In case of other religions, particularly the Hindus, there have been progressive changes as seen in the Hindu Marriage Act, 1955, where amendments have been made for divorce whenever there are cases of irretrievable break down of the marriage among many other grounds, including mutual consent. It is not only deplorable but very sad, to see Christian couples whose marriages have fallen apart, living a life of misery and undergoing all the hardships that prevent them from getting married again".

M.C. Abraham, "Dissolution of Christian Marriage" (Feb. 1983) Cr. L.J. Journal 2,4.

According to this article, there is no need to add any ground of divorce. "Union for life is the method of Christian marriage and not separation". As we have already stated¹, the majority of views favours at least the introduction of equality between the sexes; in regard to divorce amongst Christians.

¹, Paragraph 2.2, *supra*.

CHAPTER 4

THE QUESTION OF NULLITY

4.1. It is now necessary to consider in some detail the point regarding nullity of marriage, raised in many of the articles and letters that have appeared on the subject.¹ The point can be thus elaborated. Since a marriage performed by the Church authorities according to sacred rites is recognised by the law, (it is stated that) it is anomalous that a pronouncement of nullity of marriage made by a Church authority according to canon law should not be recognised by the law. Although no reference to the relevant statutory provisions is made in the articles and letters which have raised the question of recognition of such a pronouncement, it appears that the allusion here is to section 5 of the Indian Christian Marriage Act, 1872 which deals with the persons by whom a marriage for the purposes of the Act, may be solemnised in India.

4.2. Section 5, Indian Christian Marriage Act, 1872 reads as under :—

Section 5—Indian Christian Marriage Act 1872.

5. "Persons by whom marriage may be solemnized :—

Marriages may be solemnized in India :—

- (1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister;
- (2) by any clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland;
- (3) by any Minister of Religion licensed under this Act to solemnize marriage;
- (4) by, or in the presence of, a Marriage Registrar appointed under this Act;
- (5) by any person licensed under this Act to grant certificates of marriage between Indian Christians.

Clauses (1) and (2) of the section are of particular relevance to the point under discussion.

4.3. We have very carefully examined the suggestion for recognising a Church pronouncement of nullity and in this context have also had a look at the rules of canon law pertaining to "impediments" to marriage, as applicable to Roman Catholics. These rules are fairly elaborate; they contain a lengthy set of provisions that seem to have developed across the centuries, so as to assume their present sophisticated shape. We do not consider it necessary to quote or summarise them here.² But having devoted careful thought to the matter, we have come to the conclusion that it would not be quite appropriate to insert in the law a sweeping provision for the recognition of a pronouncement of nullity made by a Church authority. We are afraid that this would have the effect of introducing considerable confusion in the law and its administration. Some of the grounds of nullity of marriage as recognised in canon law may overlap the grounds of nullity expressly permitted or impliedly recognised by section 19 of the Indian Divorce Act, a section which we shall presently discuss in detail. It is possible that in a particular case, the Church authority, while adjudicating on the facts alleged as constituting a particular ground of nullity might have taken one view of the matter, while the civil court, when moved by appropriate proceedings, might take a different view on the same facts.

¹. Chapter 3, supra

². These have been extracted in Appendix 2. The source from which they have been extracted may not be up to date, but we understand that there have not been substantial changes.

Anomaly likely to result by reason of two parallel authorities.

4.4. The co-existence of two parallel adjudicating bodies on the same subject could thus create serious problems for all concerned. The view has been expressed in one article that the present position (non-recognition of a pronouncement of nullity made by a Church authority) causes hardship to the parties.¹ But the suggested solution would hardly be an improvement. If anything, it would make matters worse.

Difference between recognition of marriage and recognition of nullity.

4.5. The argument with which we are at the moment dealing seems to be based on section 5 of the Indian Christian Marriage Act, 1872.² As already stated, that section recognises marriages solemnised according to certain Church rules and the argument seems to be that since a Church marriage is recognised by law, a church pronouncement of nullity should also be recognised by law. However, in this context, we would like to point that there is a difference between the civil court recognising a marriage performed according to religious rites and the civil court recognising a pronouncement of nullity made by a Church authority. No doubt the relationship of marriage may originate in a particular religious ceremony; but if, during the subsistence (or alleged subsistence) of the relationship, a question arises whether such a status has been created, there will always be available, in conformity with the law of evidence, some other factual material in proof or disproof of the alleged marriage.³ The most important species of evidence would be the factum of cohabitation of the parties and the acceptance of their spousal status in society. The point to make is that the courts would not, in a factual investigation about the existence of marital status, be confined to evidence of the performance of religious ceremonies only.

This is the position regarding proof of marriage. The position would be different where the question relates to the existence or effect of a pronouncement of nullity granted by an authority outside the judicial hierarchy. If, in a court of law, the question arises whether such a pronouncement has, in fact, been made or (if made) has been validly made, it is only that pronouncement which would form the basis of inquiry before the court. For a court of law, it would not always be easy to determine these questions in a satisfactory manner. This is a difficulty which would be additional to the other anomalies that are likely to arise if two parallel authorities adjudicating upon the same dispute are to be recognised in law. These are anomalies to which we have already referred.⁴

This is our general approach on the point at issue and it follows that consistently with this approach, it would not be logical to accept the suggestion that pronouncements of nullity made by ecclesiastical authorities should be recognised by civil courts.

No substantial lacuna in present law.

4.6. Even so, we have taken the opportunity of looking carefully at the concrete points made in this context. We have, for this purpose, examined at length the articles published on the subject.⁵ We find that they do not (with one exception to be presently noticed),⁶ precisely pinpoint any specific lacuna (in the Indian Divorce Act) linked up with a particular ground of nullity recognised in canon law. On a preliminary study of the relevant provisions of canon law,⁷ we are not satisfied that any urgent amendment of the Indian Divorce Act is needed on the point at issue. Section 19 of the Act, which we quote below, should cover a pretty large number of cases, where a serious defect in the marriage may be regarded as justifying a decree of nullity. If on a deeper examination of the law, some situations cause grave hardship are found to be left uncovered by the section, the matter could still be considered when a comprehensive revision of the Divorce Act is undertaken. But as already stated above, no urgent reform appears to be needed on the point under discussion.

1. Paragraph 4.6, *infra*.

2. Paragraph 4.2, *supra*.

3. Cf. Section 50, Indian Evidence Act, 1872 and sections 6-9 and 11 of that Act in particular.

4. See para 4.4., *supra*.

5. Chapter 3, *supra*.

6. Paragraph 4.8, *infra*.

7. Cf. paragraph 4.3. *supra*.

4.7 Let us quote section 19 of the Indian Divorce Act 1869, which reads ^{Section 19 Divorce Act.} as under :—

“19. **Grounds of decree**—Such decree¹ may be made on any of the following grounds :

- (1) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;
- (2) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;
- (3) that either party was a lunatic or idiot at the time of the marriage;
- (4) that the former husband or wife or either party was living at the time of the marriage; and the marriage with such former husband or wife was then in force.”

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

We proceed to examine if the section leaves out any important ground of nullity that might have been canvassed in the view pressed on the subject.

4.8. In this connection, we may again state that concrete points as to the ^{Annulment in} defects, if any, in the existing legal approach have been made in ^{only one article} on the subject. This is an article by Mr. Kenneth A. Phillips. Pleading for the ^{recognition by Civil Courts of a pronouncement of nullity made by the Church,} he states that the conditions laid down by the canon law of the Catholic Church for an annulment of the marriage, among other grounds, are :—

- (1) The inability to assume and perform the essential marital obligations and duties.
- (2) The wilful deception of the other party with regard to a quality which, by its own nature, seriously perturbs conjugal life and this deception is done in order to obtain the other's consent.
- (3) Lack of will or intention to get married.

Concentrating on these three circumstances, we have devoted some thought to the question whether, and if so, how far the Indian Divorce Act, 1869, as it stands at present, provides for these circumstances as constituting a ground for matrimonial relief amongst Christians.

4.9. Taking up, one by one, the concrete situations referred to by Mr. Phillips, we note that the first situation mentioned above (inability of a spouse, ^{Comparison with} to assume, etc. essential marital duties) is substantially covered by section 19 (1) of the Indian Divorce Act, 1869. According to that section,² impotency of the respondent at the time of marriage and at the time of the institution of the suit empowers the civil court to make a decree of nullity of marriage.

4.10. The second situation mentioned above (wilful deception), is also, in substance, covered by the last paragraph of section 19 of the Indian Divorce Act. That part of the section preserves the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud. No doubt, the jurisdiction to grant such a decree (on this particular ground) is confined to the High Court. The reason for this seems to be that the High Courts in India have inherited their jurisdiction on the subject from the Supreme Courts, which, in their own turn, had inherited the power to make a decree of nullity (on the ground of duress or fraud) from ^{(ii) Wilful deception.}

¹. Decree of nullity.

². Paragraph 4.7. *supra*.

Paragraph 4.8. *supra*.

the ecclesiastical courts.¹ If the present position causes serious hardship, by reason of the jurisdiction being so confined the point can, no doubt, be looked into,² at the time when the entire Divorce Act is revised. But what needs to be pointed out is that the law applicable to Christians, even now, does provide some remedy to deal with circumstances of fraud or duress, in the field of matrimonial relief. Thus, the present law cannot be regarded as substantially inadequate.

Nor can it be said that courts have not captured the spirit of the principles on which the jurisdiction in question may be exercised. From a study of reported decisions, it appears that, on the whole, courts, when elaborating the concept of fraud, have laid stress on the fact that the essence of a valid marriage is free consent both in regard to the person with whom the marriage is undergone³ and in regard to the ceremony of marriage.⁴ By and large, serious cases of fraud seem to have been taken care of by the present law.

(iii) Lack of will to get married.

4.11. This leaves the third ground for nullity recognised in canon law (as referred to by Mr. Phillips)⁵ namely lack of will or intention to get married. To some extent this situation would, even now, be covered by the Indian Divorce Act, if the other party has been guilty of fraud (section 19, last paragraph, Indian Divorce Act).⁶ The case, of course, is not covered where the party against whom relief is sought is unaware of the state of mind of the claimant (i.e. of the claimant's lack of the will to get married). This would be a case of unilateral misconception on the part of one spouse, not induced by other spouse. But for that, all serious defects of the will seem to have been provided for in the present law.

Lack of will to get married—situation analysed.

4.12. Let us elaborate the point made above, by dealing with the various possible factors that bring out lack of volition. Lack of will to get married may generally arise as a result of one of the following factors :—

- (i) Insanity;⁷
- (ii) misconception⁸ induced by fraud of the opposite party;
- (iii) duress;⁹
- (iv) misconception¹⁰ not induced by fraud of the opposite party.

The first three factors are, in substance, taken care of by the present law applicable to Christians, as contained in the section 19(1), Indian Divorce Act.¹¹ The fourth situation, i.e., the situation where a misconception **not induced by the opposite party** is responsible for a "marriage" undergone without the intention to get married, may not fall within four corners of the provisions of the Indian Divorce Act, 1869. But such cases, we hope, will not be many, and may not, therefore, call for any urgent reform to be taken up in isolation from a comprehensive review of the Act.

Other provisions of law providing for declaration of nullity.

4.13. It may also be mentioned in this context that apart from section 19 of the Indian Divorce Act,¹² relief can be claimed on general principles of law also, for getting a declaration of nullity of marriage, on appropriate grounds. Thus, with reference to section 4 of the Divorce Act, it was held in a Delhi

¹ *T. Saroja David v. Christie Francis*, A.I.R. 1965 A.P.

² Point for further consideration (jurisdiction of High Courts).

³ *Ayukut v. Ayukut*, A.I.R. 1940 Cal. 75. (Decision under Specific Relief Act, 1877).

⁴ *Mehta v. Mehta* (1945) 2 All E.R. 690. (This is an English case, but the position will be the same in India.)

⁵ Paragraph 4.8, *supra*.

⁶ Paragraph 4.10, *supra*.

⁷ See section 19(3) Indian Divorce Act, 1869.

⁸ See section 19, last paragraph, Indian Divorce Act, 1869.

⁹ See section 19, last paragraph, Indian Divorce Act, 1869.

¹⁰ Not covered by the Indian Divorce Act, 1869, at present.

¹¹ Para 4.7, *supra*.

¹² Paragraph 4.7, *supra*.

case¹ that a suit seeking a declaration of nullity on the ground of non-observance of essential ceremonies should be filed in the ordinary court of original civil jurisdiction, and not in the High Court. This indirectly implies that relief on the above ground could be claimed under the general rules of law.

Again, it has been held that so far as a suit for declaring a marriage null and void is based on the ground that the petitioner was an idiot at the time of his marriage and that the petitioner's consent was obtained by fraud, the High Court had jurisdiction to entertain the suit. But a suit based on the ground of non-observance of essential ceremonies must be filed in an ordinary civil court.^{2,3}

Questions of validity of marriage have also been raised with reference to personal law. Thus, it has been held by the Calcutta High Court that personal law of a Roman Catholic woman forbids her to enter into a marriage with a Jew. The marriage ceremony so undergone does not affect a valid marriage.⁴ A suit can be filed, to declare the marriage to be a nullity, under section 42, Specific Relief Act, 1877, (now section 34, Specific Relief Act, 1963).⁵

4.14. In this connection reference may be made⁶ to section 34, Specific Relief Act, relating to declaratory relief to be granted by court. It reads as under :— Section 34, Specific Relief Act, 1963.

“32: Any person entitled to any legal character, or to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief :

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation : A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.”

4.15. Having regard to the present state of the statutory provisions relating to a declaration of nullity of marriage and in the light of the other considerations to which we have made a reference in the first few paragraphs of this Chapter, we do not consider it necessary to make any recommendation for the recognition, in civil courts, of pronouncements of nullity made by ecclesiastical authorities. No need to make provision for recognising ecclesiastical pronouncement of nullity.

¹. *Jordon Dienandoh v. Swaranjit Singh Chopra*, A.I.R. 1882 N.O.C. 313 (Delhi) (December Issue) Matrimonial case No. 1 of 1980 decided in 19 Feb. 1982)

². *Mt. Title v. Alfred Robert Jones*, A.I.R. 1934 273.

³. A.I.R. 1923 Pat 201 referred.

⁴. *Jude v. Jude*, A.I.R. 1949 Cal. 563.

⁵. Paragraph 4.14, *infra*.

⁶. Section 34.

CHAPTER 5

MUTUAL CONSENT

Mutual consent observations in Supreme Court judgment.

5.1. We now proceed to the question whether divorce should be allowed on mutual consent. The question how far mutual consent is a ground of divorce under the Indian Divorce Act, 1869 came up recently for consideration before the Supreme Court.¹ It was held that the Court cannot add a new ground of divorce to those mentioned in section 10 of the Act and resort could not be had to section 7 of the Act for expanding the grounds of divorce on the lines of the grounds recognised in England. The judges pointed out that it was for Parliament to consider whether a provision for divorce by mutual consent should be included in the Act. The Court could not extend or enlarge legislative policy by adding to the statute a provision which was never enacted. One of the judges, Mr. Justice Chinnappa Reddy, in his concurring judgment, after stressing the need for equality between the sexes and social justice, made the following observations as to reform of the law on the subject.

“Yes, I agree with Miss Lily Thomas (Counsel for appellants) that divorce by mutual consent should be available to every married couple, whatever religion they may profess and however they were married. Let no I compel the union of man and woman who have agreed on separation. If they desire to be two, why should the one insist that they be one ?”

However, these observations are suffixed by a qualification expressed as under :—

“But I have a qualification. The woman must be protected. Our society still looks askance at a divorced woman. A woman divorcee is yet a suspect. Her chances of survival are diminished by the divorce so, the law which grants the decree for divorce must secure for her some measure of economic independence. It should be so whatever be the ground for divorce, whether it is mutual consent, irretrievable break-down of the marriage, or even the fault of the woman herself. Every divorce solves a problem and creates another. Both problems need to be solved, no matter who is responsible for the breakdown of the marriage. If the divorce law is to be a real success, it should make provision for the economic independence of the female spouse. After all, Indian society today is so constituted that a woman is a generally helpless and her position becomes worse if she is divorced. It is necessary that the law should protect her interest even if she be an erring spouse, lest she becomes destitute and a dead loss to society.”

No amendment recommended.

5.2. We have taken note of this judgment, and of the observations therefrom quoted above. The question whether mutual consent should be introduced as a ground of divorce amongst Christians, is one which may require consideration at the appropriate time. We do not express any opinion on the subject in the present Report. It could be considered when the entire Indian Divorce Act is revised.²

¹ *Raynold Rajamani v. Union of India*, A.I.R. 1982 S.C. 1261, 1265 (September).

² Point for further consideration when the Divorce Act is revised.

CHAPTER 6

RECOMMENDATION

6.1 On a careful consideration of the views expressed on the subject, we have come to the conclusion that there is urgent need for amending section 10 of the Indian Divorce Act, 1869,¹ so as to remove the element of discrimination from which that section definitely suffers. This does not, of course, mean that the other and more radical alternatives that we have set out in an earlier Chapter² of this Report are totally ruled out. On the merits, there is much to be said for some of the other alternatives. However, having regard to the past history³ of proposals for reform on the subject, we shall for the present, content ourselves with the above recommendation.

Recommendation relating to Section 10, Indian Divorce Act, 1869.

6.2 The reason why we attach the highest importance to amending section 10 as above may be stated. We regard such an amendment as a constitutional imperative.⁴

First and second alternative compared.

In our view, if the section is to stand the test of the constitutional mandate of equality before the law and equal protection of the laws, in the context of avoiding discrimination between the sexes, then the amendment is necessary. If Parliament does not remove the discrimination, the Courts, in exercise of their jurisdiction to remedy violations of fundamental rights, are bound, some day, to declare the section as void. Once this happens, there will be created a hiatus in the law, and a tidying up of the statutory provisions will then become even more urgent than at present. In this sense, there is a very strong case for amending section 10, as above, for constitutional reasons. Of course, even apart from the constitutional mandate of equality such an amendment would be eminently sound on the merits.

6.3 Our recommendation as put forth above must, therefore, be given priority. The next step would be consideration of the second⁵ alternative mentioned above, namely, introduction of certain new grounds of divorce. The third⁶ alternative (irretrievable breakdown of marriage) need not be mixed up with the matters that require more urgent attention. It is likely to detract from the success of the attempt to reform the law, with the result that even the improvements most urgently needed may get defeated in the process.

Priorities.

As to the merits of the fourth alternative,⁷ we think that there may be a strong case for a comprehensive reform of the law and for consolidating the two enactments on the subject, as recommended in the earlier Reports of the Law Commission.⁸ However, we are not sure if any such legislative proposal will have a prospect of being passed within a reasonably short period.

6.4 For this reason, the amendment that we are recommending to introduce equality between the sexes must be given priority. The other reforms adverted to in this Report under the second and fourth alternatives⁹ should also receive serious consideration in due course. We very earnestly hope that on the forwarding of this

Hope as to future reforms.

1. Consequential changes may be required in other provisions of the Act.

2. Chapter 2, *supra*.

3. Chapter 1, *supra*.

4. Paragraph 2.3, *supra*.

5. Paragraph 2.4, *supra*.

6. Paragraph 2.5, *supra*.

7. The fourth alternative—paragraph 2.6, *supra*.

8. Chapter 1, *supra*.

9. Chapter 2, *supra*.

Report, Government will find it convenient to implement the very modest recommendation made in this Report without delay. We also expect that the stage will then be set for contemplating the other reforms of the law on the subject which we have indicated.

Concrete recommendation.

6.5 Our concrete recommendation, then, is that it is most urgently necessary that section 10 of the Indian Divorce Act, 1869 be revised to remove the element of discrimination. Adultery is a ground of divorce should be made available to the Christian wife also (without the need to prove any other aggravating or concomitant circumstances, as at present). Opportunity should also be taken to make available to the husband as a ground of divorce of conversion followed by second marriage (a ground which is at present available only to the wife).

Recommendation for amendments of section 10, Indian Divorce Act.

6.6 In the light of the above discussion, we recommend that section 10 of the Indian Divorce Act, 1869 should be revised as under :—

SECTION 10, INDIAN DIVORCE ACT, 1869 (REVISED)

"10. *When husband may petition for divorce*—Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof—

- (a) *exchanged her profession of Christianity for the profession of some other religion and gone through a form of marriage with another man,*
or
- (b) *been guilty of adultery.*

When wife may petition for divorce—Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved, on the ground, that her husband has, since the solemnization thereof—

- (a) *exchanged his profession of Christianity for the profession of some other religion and gone through a form of marriage with another woman, or*
- (b) *been guilty of adultery or rape, sodomy or bestiality."*

Recommendation as to other provisions of the Indian Divorce Act.

6.7 Consequential changes may be necessary in the other provisions of the Act which may contain a reference to the grounds of divorce.

(K. K. MATHEW)

Chairman

(NASIRULLAH BEG)

Member

(J. P. CHATURVEDI)

Member

(P. M. BAKSHI)

Part-time Member

(CH. RAMAKRISHNA RAO)

Member-Secretary.

Dated : 17th May, 1983.

APPENDIX 1

GROUND OF RELIEF IN INDIAN MATRIMONIAL LAW

Taken alphabetically, the grounds for divorce or other matrimonial relief (including nullity) in Indian matrimonial statutes can be thus enumerated arranging them alphabetically—

- (a) Adultery.
- (b) Bigamy.
- (c) Conversion to another religion
- (d) Cruelty¹ [under section 22, Indian Divorce Act, cruelty is a ground only for judicial separation].
- (e) Desertion for a specified period.²
- (f) Duress (ground of nullity).
- (g) Fornication.³
- (h) Fraud (ground for nullity or divorce)—Position in various Acts differs.
- (j) Imprisonment.⁴
- (k) Insanity.⁵
- (l) Leprosy.⁶
[Mental abnormality—see “Insanity”]
- (m) Non-consummation of marriage.⁷
- (n) Non-resumption of cohabitation after decree for restitution or judicial separation.⁸
- (o) Non-resumption of cohabitation after decree for maintenance.⁹
- (p) Pregnancy. (Pre-marital pregnancy of the wife by a person other than the husband—ground for nullity).
- (q) Prostitution—Compelling the wife into.¹⁰
- (r) Rape, sedomy or bestiality.¹¹
- (s) Renunciation of the world.¹²
- (t) Unnatural offence.¹³
- (u) Venereal disease.¹⁴

(Some of these grounds appear in the Indian Divorce Act also).

¹ Cf. section 13(1) (1a), H.M.A. (“treated with cruelty”).

² Cf. section 13(1) (1b), H.M.A. (desertion for not less than two years).

³ Cf. section 32(d), P.M.D.A.

⁴ Cf. section 32(f), P.M.D.A. (Imprisonment for 7 years).

⁵ Cf. section 13(1) (iii), H.M.A. and section 32(b), P.M.D.A.

⁶ Cf. section 13(a) (iv), H.M.A.

⁷ Cf. section 32(a), P.M.D.A.

⁸ Cf. section 13(1A), H.M.A.

⁹ Cf. section 13(2) (ii), H.M.A.

¹⁰ Cf. section 32(e), P.M.D.A.

¹¹ Cf. section 32(2) (ii), H.M.A.

¹² Cf. section 13 (1) (vi) H.M.A.

¹³ Cf. section 32(d), P.M.D.A.

¹⁴ Cf. section 13(1) (v), H.M.A.

APPENDIX 2

EXTRACTS RELATING TO CANON LAW¹

Classification of Impediments. Impediments are :

1. of *divine law* or of *ecclesiastical law*, according to their origin;
2. *Impediment* (merely prohibitive) or *diriment* (invalidating), according to their effect (C. 1036);
3. *Absolute* or *relative*, according as they affect the person regardless of, or only in relation to certain other persons;
4. *Public* or *occult*, according as they can or cannot be proved in the external forum (C.1037);
5. *Permanent* or *temporary*, according to their duration;
6. *Certain* or *doubtful*;
7. *Dispensable* or *non-dispensable*, according as they can or cannot be removed by dispensation;
8. *Major* or *minor*, according to their grade (C. 1042).

Number of Impediments

1. There are two or three impedient impediments, according as legal relationship is counted or not, depending on the law of the state. They are : simple vow (C. 1058); mixed religion (C. 1060 sq.); legal relationship through adoption, if according to the civil law it forbids marriage (C. 1059).

2. There are twelve or thirteen *diriment* impediments; want of age (C. 1067) ; impotence (C. 1068) ; existing bond of previous marriage (C. 1069) ; disparity of cult (C. 1070) ; sacred orders (C. 1072) ; solemn religious vow (C. 1073) ; abduction (C. 1074) ; Crime (C. 1075) ; Consanguinity (C. 1076) ; affinity (C. 1077) ; public property (C. 1078) ; spiritual relationship (C. 1079) ; and legal relationship through adoption if according to the law of the state. It invalidates marriage (C. 1080) ;

Canon 1067

1. A man before completing his sixteenth year, and a woman before completing her fourteenth, cannot contract a valid marriage.

2. Although a marriage contracted after the aforesaid age is valid yet pastors of souls should try to deter young people from marrying before the age at which according to the received customs of the country marriage is usually contracted.²

Canon 1068

1. Impotence, antecedent and perpetual, whether on the part of the man or the woman, whether known to the other party or not, whether absolute or relative, invalidates marriage by the law of nature itself.

2. If the impediment of impotence is doubtful either in law or in fact, the marriage is not to be hindered.

3. Sterility neither invalidates marriage nor renders it illicit.

¹ T. Lincoln Bouscaren and S.J. Adam C. Ellis, S.J. Canon Law—A text and Commentary, 1949, 426-427. (Bruce Publishing Co. Milwaukee).

² Canon 1034 requires the pastor to dissuade minor from marrying without knowledge or against reasonable wishes of parents.

Canon 1069

1. One who is bound by the bond of a prior marriage even though it was not consummated, invalidly attempts marriage without prejudice, however, to the privilege of the faith.

2. Even though the former marriage be invalid or dissolved for any reason, it is not, therefore, allowed to contract another until the nullity or dissolution of the former shall have been established according to law and with certainty.

Canon 1070

1. A marriage contracted by a non-baptized person with a person who was baptized in the Catholic Church or who has been converted to it from heresy or schism, is null.

2. If a party at the time of marriage was commonly regarded as baptized, or if his or her baptism was doubtful, the marriage must be regarded as valid according to canon 1014, until it is certainly established that one of the parties was baptized and that the other was not.

Canon 1071

The prescriptions laid down in Canons 1060—1064 regarding mixed marriages apply to marriages against which the impediment of disparity of cult exists.

Canon 1072

Clerics who are in sacred orders attempt marriage invalidly.

Canon 1073

Likewise, marriage is invalidly attempted by religious persons who have pronounced either solemn vows or vows which by special provision of the Holy See are endowed with the power of invalidating marriage.

Canon 1074

1. Between the abductor and the woman who has been abducted with a view to marriage, there can be no marriage as long as she remains in his power.

2. If the woman, upon being separated from the abductor and placed in a safe and free place, consents to have him for her husband, the impediment ceases.

3. As regards the nullity of marriage, the violent detention of a woman is regarded as equivalent to abduction, that is, when a man, with a view to marriage, violently detains a woman in the place where she is staying or to which she has freely come.

Canon 1075

The following person cannot validity contract marriage :

1. Persons who, during the existence of the same lawful marriage, have consummated adultery together have mutually promised each other to marry, or have attempted marriage even by a mere civil act;
2. Those who, likewise during the existence of the same lawful marriage, have consummated adultery together, and one of whom has killed the lawful spouse;
3. Those, who, even without committing adultery have by mutual cooperation, physical or moral, killed the lawful spouse.

Canon 1076

1. In the direct line of consanguinity marriage is invalid between all the ancestors and descendants, legitimate or natural.

2. In the collateral line, it is invalid up to the third degree inclusive, but with the understanding that the matrimonial impediment is multiplied only as often as the common ancestor is multiplied.

3. Marriage must never be allowed if there exists any doubt that the parties may be related by consanguinity in any degree of the direct line or in the first degree of the collateral line.

Canon 1077

1. Affinity in the direct line in any degree invalidates marriage; in the collateral line it invalidates it up to the second degree inclusive.

2. The impediment of affinity is multiplied :

1. As often as the impediment of consanguinity from which it arises is multiplied;
2. When marriage is successively repeated with the blood relative of a deceased spouse.

Canon 1078

The impediment of public property arises from an invalid marriage, whether consummated or not, and from public and notorious concubinage; and it invalidates marriage in the first and second degree of the direct line, between the man and the blood relatives of the woman and vice versa.

Canon 1079

The only spiritual relationship which invalidates marriage is that mentioned in Canon 768.

Canon 1080

Persons who according to the civil law are regarded as incapable of marrying each other because of a legal relationship arising from adoption, cannot validly contract marriage together according to canon law.