# Personal Law of the Christians in India

***Fr. Antony Samy DCL, Vicar General, Catholic Bishop's House, Palayamkottai – 627 002.***

Every religious community in India is governed by a personal law of its own. What is personal law? What is its scope? What are the fields that are governed by it? There is no precise definition or a specific and unique definition on this subject. According to professor G. C. Cheseire the following matters are to be in a greater or lesser degree governed by the personal law : the essential validity of a marriage, the mutual rights and obligations of husband and wife, parent and child, guardian and ward, the effect of marriage on the proprietary rights of husband and wife, divorce, the annulment of marriage though to a limited degree only, legitimation and adoption, certain aspects of capacity, and the will of movable and intestate succession to movables.[1] Thus the personal law regulates the personal status of an individual. That is why in the provisions of the international private law, the personal law of an individual is determined according to his domicile, that is by the *lex loci*, that is by the law of the place or the territory in which a person is domiciled, so that he will always be governed by the same juridical system not withstanding his temporary stay in a foreign country.

But there is no uniform *lex loci* for all the citizens in India by the fact that India does not have a uniform civil law to regulate the matters such as marriage, divorce and matrimonial causes, adoption and succession for all the Indian citizens, for these subjects are governed by the personal law of the individual according to the religion he or she professes. The personal law in India has got its own ramifications and its own peculiar features. It differs according to the religion to which an individual belongs. This has already been affirmed clearly in as early as 1871 in *Skinner* v. *Ford* "While Brahmin, Buddhist, Christian, Mahomedan, Parsee and Sikh are of one nation, enjoying equal political

rights and having perfect equality before the Tribunals, they co-exist as separate and very distinct communities, having distinct laws affecting every relation of life. The law of husband and wife, parent and child, the descent, devolution and disposition of property are all different, depending in each case, on the body to which the individual is deemed to belong; and the difference of religion pervades and governs all domestic usages and social relations".[2]

This juridical system which was in effect at the time of the independence of India in 1947 continues to exist till today. Although the modern Indian State tries, since more than half a century, to establish a uniform civil code for all the citizens, as recommended by the art. 44 of the Constitution of India, it has not succeeded yet. Thus a community of every religion is submitted to a juridical body of its own.

With regard to the personal law in India, J.D.M. Derrett remarks, "India is a land of personal laws. The personal law in India is the system of rules applicable by any Court to an individual in respect of the topic covered by that law determined by reference to the religion which he professes or purports to profess, or is presumed to profess; for the law determines what a man's religious affiliation is, for the purpose of application of the personal law by methods peculiar to itself".[3]

The Christians in India, as a distinct religious community in the Indian society, have their own personal laws. The personal laws applicable for Christians in India are the following: The Christian Marriage Act, 1872, The Divorce Act, 1869, and the Indian Succession Act, 1925. The Christians in Kerala are governed in the matters of marriage and succession by The Travancore Christian Succession Act, The Cochin Christian Succession Act, The Cochin Christian Civil Marriage Act.

Moreover the English Common Law is still applicable as personal law for the Christians in India in the areas of the law not covered either by the statutory provision or by local customary law.

However the Christians who are living in the former French territories or in the former Portuguese colonies in India are not governed by this English Common Law. The provisions of the Portuguese Civil Code concerning succession, both testamentary and non-testamentary, are still in effect in the territory of Goa. In Pondicherry the *Renonçants* [4] are still governed by the French law. Thus the personal law for the Christians in India is very complex and varied in different states of the sub-continent.

## 1. Legislation Relating to the Marriage of the Christians: The Indian Christian Marriage Act, 1872

There are two principal legislations that concern the marriage and matrimonial causes for the Christians in India: The Indian Christian Marriage Act, 1872 and The Divorce Act, 1869. While the former deals with the celebration and registration of marriage, the latter treats the matrimonial causes such as dissolution, nullity of marriage, judicial separation and restitution of conjugal rights of the spouses. Moreover The Special Marriage Act, 1954, being a civil law applicable to all the Indians irrespective of faith which either party to the marriage may profess, is also available for the Christians. Thus a Christian can contract marriage today under the provisions of the Indian Christians Marriage Act, 1872 or of the Special Marriage Act, 1954.

The earliest law that was made applicable to the marriages of the Christians in India was the English Statute 14 and 15 of Victoria, Chapter 40. This provision treated the celebration of marriage in which one or both parties were Christians. We can have the celebration of marriage by virtue of this Act, provided there existed no legal impediment according to the law of England. These statutes were further completed by the Indian Act VIII of 1852, and then by the Act XXV of 1864, which was again replaced by the Act V of 1865. Finally the Indian Christian Marriage Act, 1872 was promulgated consolidating and amending all the existing laws related to the solemnization of the marriages of the Christians in India.[5]

As of the early law, the Indian Christian Marriage Act, 1872 regulates the marriage not only between the persons professing the Christian religion, but also the marriage of the parties of whom only one party is a Christian (sec. 4). Moreover the object of this Act is not to forbid the people to contract marriage as they want, but to safeguard them and their posterity by a legitimate and durable marriage if they want to marry as Christians.[6]

The provisions of this Act are applicable to all the persons professing the Christian religion – Catholics, Anglicans, Protestants and all other denominations – living in the sub-continent of India, except the territories which immediately before the 1st November 1956, were comprised in the States of Travancore-Coachin, Manipur and Jammu and Kashmir (cf. sec. 1 & 2). The expressions 'Church of Rome' and 'Roman Catholic' mean the Church which regards the Pope of Rome as its spiritual head; the term 'Christian' means persons professing the Christian religion (sec. 2). Thus any person professing the Christian religion is a Christian for the purpose of this Act. 'Baptism' is not a condition precedent to a person professing Christian religion. Hence a person though unbaptised can be a Christian for the Indian Christian Marriage Act.[7]

## a) The Content of the Indian Christian Marriage Act, 1872

The Indian Christian Marriage Act, 1872 is composed of 88 sections in VIII Parts with a Preliminary. The Preliminary (sec. 1 – 3) gives the scope of the Act as well as the definition of the various terms used in the Act.

Part I treats the following points: sec. 4 deals with the person who can marry under the Act; and sec. 5 details the persons by whom marriages may be solemnised. And the subsequent sections 6 to 9 only elaborate sec. 5 with regard to licensing the ministers of Religion, the appointment of the marriage Registrar and licensing of persons to grant certificates of marriage.

Part II in its sections 10 and 11 deals with the time and place at which marriages may be solemnized. Part III deals with the marriages solemnized by the ministers of religion licensed under this Act (sec. 12 – 26). These ministers, other than those who have received the Episcopal ordination and the clergyman of the Church of Scotland, appointed by the State governments, are to solemnize the marriages within their territories. Part IV (sec. 27 – 37) deals with the Registration of marriages solemnised by the ministers of religion. Part V (sec. 38 - 59) deals with marriages solemnized by, or in the presence of, a marriage registrar. Part VI (sec. 60 – 65) deals with solemnization of marriage by persons who have been licensed to grant certificates of marriage by the State government as per sec. 9. Part VII (sec. 66 – 76) deals with the penalties and other consequences that follow a contravention of the provisions. And Part VIII (sec. 77 – 88) treats the miscellaneous affairs.

## b) The forms of marriage and the persons who can solemnize the marriage.

Sec. 5 of the Act speaks of the different forms of the Christians marriages and the persons by whom marriages may be solemnized. It speaks of three forms of marriages: purely religious, purely secular and a form mixed in character, religious and secular.

Marriages of purely religious character are celebrated by any person who has received Episcopal ordination, and by any competent clergy or a priest. The marriages of Catholics, of Anglicans or of the Lutherans are thus solemnized in their respective churches by their proper pastors according to the rules, rites, ceremonies and customs of their church (sec. 5 (1) and (2) ). Marriages of the Christians purely secular in character are solemnized in the presence of, or by the marriage registrar appointed by the State government; the Christians for example can contract marriage in the presence of the marriage registrar (sec. 5 (4) ). And the third form of the marriage which has a mixed character – religious and secular – can be celebrated by a

minister of Religion licensed under this Act or by any person licensed under this Act to grant certificates of marriage between Indian Christians (sec. 5 (3) (5) ). The ceremonies of these marriages may or may not be religious, for the minister of Religion licensed may solemnize the marriage according to such a form or ceremony as he thinks fit to adopt (sec. 25).

### c) The validity of marriage

The Indian Christian Marriage Act, 1872 considers marriage as a contract. According to the provision of this Act, a Christian marriage is valid only if the parties observe certain formalities of the marriage contract. Sec. 4 stipulates, "Every marriage between persons, one or both of whom is or are a Christian, or Christians, shall be solemnized in accordance with the provision of the next following section; and any such marriage solemnized other wise than in accordance with such provision shall be void". In fact 'the next following section' mentioned in sec. 4 is the sec. 5 which, as we have seen, enumerates the forms of marriage and the persons by whom the marriage may be solemnised. Thus the persons who marry under this Act, before the ministers of their churches, have to follow the rules, rites, ceremonies and customs of their church (sec. 5 (1), (2) ). Hence the Catholics who enter into the marriage covenant by exchange of consent in the Catholic Church before their proper ministers, are subject to the provisions of the Code of Canon Law.[8]

In the absence of the canonical form, the marriage of the Catholics will be null and void. For example, in the case of *Kochan Nadar Yovan Nadar* v. *Rayappan Nadar Varuvel Nadar*[9] the court observed, "Where according to the admissions of the parties the man and woman were Roman Catholic Christians, that the alleged marriage did not take place in a Church and that no priest officiated at the ceremonies, these admissions clearly show that a Christian marriage could not have taken place. A marriage according to Christian rites alone would be valid when both parties are Christians". From this judgement it can not be concluded however that the Marriage Act of

1872 demands the observation of all the canonical norms with regard to the marriage of the Catholics. In fact sec. 5 deals only with the necessary preliminaries to the ceremonies, the ceremony itself, and the persons who perform it. It has nothing to do with the Canon Law. If the Church lays down that the non-observance of some of its rites or rules will not render the marriage valid, there is nothing in sec. 5 which invalidates a marriage in which such rules have not been observed.[10]

But by virtue of sec. 4 and 5 the marriage between a Christian and a non-Christian, if they want to marry according to the personal law, is to be celebrated according to the provision of the Indian Christian Marriage Act, 1872, and not according to the personal law of non-Christian. It is therefore the Christian rite that will make the marriage valid. However the parties in such marriage of disparity of cult, are free to celebrate their marriage, like any other Indians, under the provisions of the Special Marriage Act, 1954 which does not make any distinction of caste, religion between the spouses.[11]

## d) Registration

Once the marriage is solemnised, the minister of the celebration, priest or minister of Religion, or registrar should enter in the register of marriages the names of the spouses, their date of birth, conditions, date of the marriage, signatures of the parties, of the witnesses and of the minister.

Though as per the provision of sec. 30 the clergymen of the Church of Rome is to forward quarterly, to the Registrar General of Births, death and Marriages, returns of the entries of all marriages registered by him during the three months next preceding, it is legislated currently in the State of Tamil Nadu that the priest must send the marriage returns to the district marriage registrar every month. When he submits the returns, he is to carry with him to the registrar's office the original record to be verified by the registrar.

Care is to be taken by the priest while entering the names, dates of birth and the other details of the parties in the register. The Canon Law also obliges the parish priest to this job (see c. 1121). Some times the persons may have different names or different spelling for his name in the baptism certificate and in the school certificate; even the date of birth may differ in these two certificates. The passport of a person carries the date of birth and spelling of the name as it is found in his school transfer certificate. If the priest enters in the marriage register the spelling and date of a particular person as they are found in the baptism certificate when they are different from the school certificate, the problem of identity of the person will arise when the marriage certificate is issued. This kind of problem is faced nowadays more than ever before by those who work abroad, especially when he or she applies for visa for oneself or for one's spouse. To solve this problem will it not be pastoral prudence on the part of the pastors, while writing banns, once the validity of the baptism is verified and the free state of the parties is assured, to make use of the spelling and the date of birth as they are found in the school certificate of the parties?

## 2. Legislation with Regard to the Matrimonial Causes: The Divorce Act, 1869

The provisions relating to divorce and matrimonial causes for the Christians in India are stipulated in the Divorce Act, 1869 that was titled till the year 2001 as The Indian Divorce Act, 1869. The word 'Indian' in the title of The Indian Divorce Act 1869 has been omitted by the Amendment Act 51 of 2001 with effect from 3.10.2001.

This amendment has a long history. Dating more than a century the legislation of the personal laws of the Christians in India contain the dispositions that do not correspond any more to the present social realities. Though amended many times these Acts are to be still ameliorated and to be honest they should be redrafted completely. The Supreme Court of India as well as many High Courts have repeatedly underlined the outdatedness of the certain provisions in the personal law of Christians. And they have indicated the inequality seen between the man and woman specially in the subject of divorce

and succession. The Indian Divorce Act, 1869 has not updated the grounds for divorce; and the procedure to obtain the divorce too is very long and complex, besides showing discrimination between the man and woman. The Indian Christian Community has been making efforts – which we will see later - to get new legislation for their personal laws since Independence of the sub-continent without any success. It is in this context that the Government of India has introduced the amendment Act 51 of 2001.

The Law Commission of India in its 164th Report on "The Indian Divorce Act (4 of 1869) presented to the Government in November 1998, has, *inter alia*, recommended that Parliament may enact a comprehensive law governing marriage and divorce and other allied aspects for the Christians in India. The Commission, relying on the judgements and observations of certain High Courts, has also urged the Central Government to take immediate measures to amend section 10 of the Indian Divorce Act, 1869 relating to grounds of dissolution of marriages so that the female spouses are not discriminated *vis-à-vis* male spouses in obtaining a decree of dissolution of marriage, and to amend suitably sections 17 and 20 of the Act, 1869 to do away with the procedural requirement of obtaining confirmation from the High Court in respect of a decree of dissolution of marriage or decree of nullity of marriage, for such a procedure is long-drawn and strenuous.

With a the purpose of ascertaining the views of the Christian community on the proposal for a unified law on marriage and divorce, the Central Government convened a meeting of the leaders of the prominent Churches in India and Members of Parliament belonging to the Christian community on the 28th April 2000, but there was no consensus for bringing in a comprehensive legislation on Christian marriages and matrimonial causes. However, there was no opposition from any one to amend sections 10, 17 and 20 of the Indian Divorce Act, 1869 suitably to remove the gender inequality as contained in section 10 and to do away with the procedural delays in obtaining divorce due to the provisions contained in sections 17 and 20 of the Act. The Government, therefore, proposes to make suitable changes

in the Indian Divorce Act, 1869 for removing the hardships for all concerned.[12]

With this amendment sec. 10 gives many grounds including mutual consent for the dissolution of marriage; the provision contained in sec. 17 and 20 that every decree for a dissolution of marriage made by a District judge shall be subject to the confirmation by the High Court has been abolished.

The object of this Act, as stated in the Preamble, is "Where it is expedient to amend the law relating to the divorce of persons professing the Christian religion". Sec. 2 states further that, "Nothing hereinafter contained shall authorise any court to grant any relief under this Act, except where the petitioner or respondent professes the Christian religion". This is affirmed clearly by the High Court of Andra Pradesh in 1985 in the case of *G.S. Dhanamani* v. *G.V. Bernergi.*[13] The jurisdiction of the High Court to accord the decree of the dissolution of marriage is not barred by virtue of sec. 2 of the Indian Divorce Act 1869 when only one of the parties professes the Christian religion. Thus unless one of the spouses belongs to Christianity they have no right to claim the dissolution of their marriage under this Act.

The Christians can approach the Indian Divorce Act, 1869 for the dissolution of their marriage even if their marriage was not celebrated in the Christian form stipulated by the Indian Christian Marriage Act, 1872. The High Court of Delhi affirmed in one of its sentences in the case of *Pramilla Khosala* v. *Rajnish Kumar Khosala* that the Act does not require that the parties' marriage should have been solemnized in any particular form; it is sufficient that one of the parties was a Christian when the petition was filed.[14] This Act can also be invoked to dissolve the marriage between the parties professing the Christian religion and who are domiciled in India even if the marriage was solemnized out of India.[15]

## 3. Legislation Relating to the Subject of Succession for the Christians in India: The Indian Succession Act, 1925

The Christians in India have also another proper legislation called The Indian Succession Act, 1925, as their personal law relating to the subject of succession. In fact this Act has replaced The Succession Act, 1865 which is an old legislation again applicable only to the Christians. Till the promulgation of the Act, 1865 the Indians converted to Christianity were governed by the Hindu law of succession.[16] Thus this Act has introduced a considerable change in this regard by excluding the Christians as subjects of Hindu law. They were submitted to the provisions of the Succession Act, 1865 even if they followed the Hindu customs and usages in their everyday life.

The Indian Succession Act, 1925 providing the rules for intestate succession as well as for the testamentary succession, has changed the principle followed so far for the Christians in India. By the phrase "or by any other law for the time being in force" in sec. 29 (2), it permitted the Christians to follow the local custom or any other law if they have, relating to the succession. Thus the Christians of the former States of Travancore and Cochin are governed by their proper law: The Travancore Christian Succession Act, 1916 and The Cochin Succession Act.[17]

## 4. The Personal law Applicable to the Christians in the Subject of Adoption and Guardianship

In India except the Hindu religion no other religious community has legislation on the subject of Adoption and Guardianship. If fact, neither the Islam nor the Parsi religion authorises their followers to adopt children. The Christianity is not against the fact of adoption of children by the individuals. As no law was made on this subject for them till today, they are deprived of any juridical measure on the subject. Thus the adoption as a legal institution is limited only to Hindus.[18]

The Hindu personal law relating to Adoption was codified in 1956 under the title 'The Hindu Adoption and Maintenance Act, 1956'. This legislation gives the norms with regard to the capacity and the right of a Hindu man or woman to adopt a son or a daughter who is to be a Hindu. The designation of the term 'Hindu' in this Act is more wide that it includes also Buddhists, Jains, and Sikhs as well.

In the absence of a particular legislation on the subject of Adoption, that which is applicable as personal law for the Christians in India in the matter of Adoption, is the Common Law of England. But the English Common Law considers the responsibilities, the rights and duties of the parents as inalienable. So the parents can not transfer their parental rights and obligations of a child to others by a contract. Thus the Common Law does not sanction the adoption of the children.[19] That which is applicable for the Christians in India in the absence of any legislation, is the Common Law of England and not the English legislation or the positive law of that country.[20] Thus the Christians in India do not have legal sanction for a valid adoption.

The Christians in India, not having any legislation relating to the subject of Adoption, cannot in general adopt legally a child. However, the Indian Courts have sometimes considered the adopted child of non-Hindu religion as a natural child for the question of succession when that particular religious community has a custom to do so. Except for this exemption, which is very rare, the Christians in India, do not have the juridical approbation of adoption. When a Christian adopts a child, it means he assumes a fiduciary rapport with that child. That is, the Christian who has accepted the parental obligations of a child, has the duty to maintain that child. But this adoption or rather taking charge of the responsibility of the child, does not in any way change the legal status of that child; the adopted child continues to be the child of its natural parents. If the person who has adopted the child, dies intestate, the adopted child will not have any right of succession to the patrimony left by the adoptive father. To make the child inherit his properties, the adoptive father must make a testament in favour of his adopted child.

In order to have a legal guardianship of the child, the one who adopts can obtain an order of guardianship from a competent Court - High Court or District Court – by virtue of the provision of The Guardians and Wards Act, 1890. While it is facultative for the Indian Christians to obtain the order of guardianship from a competent Court, when they adopt the children, it is important for the foreigners to do so when they take the children from India in adoption. And that will facilitate the process for taking passport for the adopted child when they want to take them to their countries.[21]

Though the adoption is in practice among the Christians in India, there is no juridical sanction for it without legislation on the subject. In fact the Christians, in general, in India try to have legislation in this regard since long time which we will see later.

## 5. The Special Marriage Act, 1954

Though The Special Marriage Act, 1954 is not the personal law for Christians in India, as this legislation is applicable for all the citizens of India, the Christians, as citizens, have the right to recourse to this Act. Replacing the old law The Special Marriage Act of 1872, The Special Marriage Act, 1954 provides a special form of marriage which can be taken advantage of by any person in India and all Indian nationals in foreign countries irrespective of the faith which either party to the marriage may profess. The parties may observe any ceremonies for the solemnization of their marriage, but certain formalities are prescribed, before the marriage can be registered by the Marriage Officers.

Any persons who are already married under other forms of marriage are also permitted to register their marriage under this Act and thereby avail themselves of these provisions (see sec. 15).

## 6. Is Canon Law, Personal Law for the Catholics in India?

The Christian community, though a small minority in the Indian population, is far from being homogenous from the religious or juridical

point of view.[22] Thus the different Christian churches and ecclesial communities for example Catholics, Jacobites, Christians of the Churches of South India (CSI) and of the North India (CNI), Salvation Army, etc., have their own proper laws for the liturgical celebrations and for the internal administrations. The personal law of Christians which are the same for all the Christians, respect however the different internal statutes of each Christian community, particularly those statutes which concern the religious celebrations that will have public civil effects.

Section 88 of The Indian Christian Marriage Act, 1872 reads, "Non-validation of marriages within prohibited degrees: Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into". The 'personal law' envisaged in this provision refers to the personal law of the religious community to which either of the parties belong.[23] Thus The Indian Christian Marriage Act, 1872 gives an official recognition to different laws concerning marriage observed by the different churches or ecclesial communities. Each church is authorised to formulate its own laws of prohibited degree and other marital norms. The marriage considered invalid by the norms of a particular church will be considered such as well in the civil law.

For the Indian Catholics – as of the Catholics of the world in general – the subject of the marriage and matrimonial causes constitute a juridical regime; the canonical form, consent, impediments and dissolution are governed by the provisions of the Code of Canon Law. Thus the Code is recognised by this civil Act in the matter of the marriage of the Catholics.

The supreme Court in its judgement in 1972 in *Lakshmi Sanyal* v. *Sachit Kumar Dhar*,[24] stated that if the parties to the marriage at the time of solemnization of their marriage professed Roman Catholic Religion, the question of capacity to marry and the impediments in the way of marriage would have to be resolved by referring to their personal law and for the purpose of deciding the validity of marriage, the law of the Roman Catholic Church, namely Canon Law of the Church is to

be looked into. The violation of the provision of the canon law in this regard will render the marriage invalid.[25]

Can we say that by virtue of the section 88 of The Indian Christian Marriage Act, 1872 all the legislation of the Canon Law on the subject of the marriage and on the subject of procedure of the declaration of nullity of marriage have a civil recognition in our country? In fact the Indian civil law which accords the civil effects to the religious marriage celebrated in a church by the catholic competent ministers according to the provision of Canon Law, does not however recognise the nullity of marriage declared by the ecclesiastical Tribunals. The spouses, whose marriage is declared null and void by an ecclesiastical Court, can not remarry unless they obtain a decree of annulment or divorce in a civil court. E.D. Devadason states that one can not arrive at a conclusion that by virtue of the section 88 of the Indian Christian Marriage Act, 1872 the Canon Law in its entirety is integrated or grafted into the Indian Christian Marriage Act 1872. What is accepted by the section 88 is only those canonical norms which deal with the impediment of prohibited degrees and not the whole canonical legislation on the subject of marriage. A non-observation of a canonical provision in the celebration of a marriage which may render the marriage invalid may not necessarily make always invalid in the eyes of the civil law.[26]

The question 'What is personal law for Christians in India?' was considered by the High Court of Kerala in the case of *Varky* v. *Thresia*,[27] while deciding if the wife was entitled to maintenance from her husband under the personal law of Christians in India. Abandoned by her husband the petitioner went to the High Court claiming a maintenance for her and for her two children. By the fact that the provisions of the Christian marriage Act and the Indian Divorce Act do not foresee anything in this regard, the husband argued that he was not obliged to maintain his wife. Though the provision of the art. 125 of the Code of Criminal Procedure habilitates any wife without considering her religion to have recourse to the magistrate for the question of maintenance, it has nothing to do with the personal law of the Christians. The Court therefore had to consider what is the personal

law that would govern the Christians in India and from what source the Courts can draw the common law applicable in such cases. The parties reported in the above said case being Catholics the Court made reference to the Canon Law. The Court observed, "Under the Canon Law also the husband is bound to maintain his wife. The husband has the duty of providing his wife with the necessities of life which Civil Law further details".[28]

Thus the Canon Law though not taken in its entirety is considered by the Indian Courts as being valuable to determine the personal law of the Catholics in India.[29]

## 7. The Bills Proposed for the Amendment of the Personal Law of Christians in India

As we have seen, it is now more than a century that the laws relating to the Christian marriage and divorce in India have been formulated and in many ways they are outdated. They neither take into consideration the aspirations of the present day Indian Christian community, nor do they fulfil the needs of the social realities. The British Crown, during its colonial period of this sub-continent, had a policy not to intervene in the affairs of the local religions and in their religious practices. They never tried to promulgate the laws that would touch in one way or another the personal laws of the followers of these indigenous Faiths. The only exception to this English policy was Christianity. The British Government had thus promulgated The Indian Christian Marriage Act, 1872, The Indian Divorce Act, 1869 and The Indian Succession Act, 1925. And these legislations, though carry the adjective 'Indian', are applicable only to Christians.

After the independence of India in 1947, the Indian Government has promulgated various enactments modifying the personal laws of the Hindus, Parsis, etc. in the subject of marriage, divorce, succession and adoption. Similarly The Special Marriage Act, 1954 has been promulgated to provide law for civil marriage for those who would like to act outside their personal law. But the personal laws of the Christians have not been updated nor redrafted so far by the Union of India.

The Supreme Court of India as well as various High Courts had occasion from time to time to deal with various provisions of the personal laws of the Christians and certain provisions have been judged to be discriminatory, and particularly against women. The Courts have however expressed their inability to interfere in the legislations of the personal law of Christians or to correct them, since it fell within the purview of the legislature to amend and update the personal law of any community. Thus the Courts have made appeal to the legislature to amend these laws. But the Government of India, as did the English authority formerly in India, follows a policy of prudence when it is a question of interfering in the matters of the personal laws of the religious communities, and that too, of the minority communities of the sub-continent.

Though the Government by its Amendment Act 51 of 2001 has amended the discriminatory clauses in the Indian Divorce Act, the expectations of the Christian community are not totally fulfilled. Besides the discriminatory provision, specially against women, in the Indian Succession Act, 1925, there is total void in the field of law relating to Adoption and Maintenance for the Christians. The Christian community has therefore felt since the independence the need to amend its personal laws and to introduce a new legislation to overcome the lacuna and thus to give the community a sense of security and to alleviate the problems that affected its members.

The efforts have been made to this effect already in 1941 and again in 1962 to introduce such legislations in the Parliament. The Bill concerning the Christian marriage and the matrimonial causes, 1962 has been presented to the Parliament in the same year 1962. The Roman Catholic Church under the presidentship of Cardinal Gracias has played an important role in the redaction of the Bill. For inexplicable reasons, the Bill was not passed and it never became law. Then, this effort has taken a new vigour in the beginning of 1980s. This time various organisations of the Churches and the ecclesial communities joined together and made efforts to amend their personal law by

presenting a Bill to the Government, so that it can enact it as law in the Parliament.

The Government has affirmed that such a Bill has to come from the consensus of all the churches and ecclesial communities in India. Conferences, seminars have therefore been organised with the participation of the representatives of National Council of the Churches of India (NCCI), Catholic Bishops Conference of India (CBCI), All India Catholic Union (AICU) and the organisations of the other Churches including the Christian women movements. After much deliberations 'The Christian Marriage Bill, 1994', 'The Indian Succession Amendment Bill, 1994', and 'The Christian Adoption and Maintenance Bill, 1994' have been formulated. These Bills have been prepared and presented to the Government with the support of all the major Christian Churches and the organisations of the Churches in India.

The policy of the Government being always not to interfere in the personal laws of the minority communities, unless the necessary initiative comes from the concerned community, the Government has asked the National Commission for the Minorities to verify the consensus of the different groups of the Christians in India on the proposed Bills. The National Commission, under the presidentship of B.S. Ramoowall has consulted the members of the different Churches and has informed the Government that the personal law of the Christians could be changed according to the demand made by the Christian community. The National Commission, during the press conference, has not only congratulated the Christian community for coming together to update their personal laws, but also exhorted the other minorities to emulate the example of the Christians.

The Government once again referred the Bills to the National Commission for Minorities to find out if the Bills had the backing of the Christian community or Church as a whole in the county, since the Bills were presented to the Government earlier by a Christian NGO, though supported by the Church groups. The National Commission

has requested the CBCI and NCCI – which represent most Churches in India – to have joint consultation on the Bills.[30]

The Church authorities were preoccupied with the idea of safeguarding the doctrine of the unity and indissolubility of the Christian marriage and to clear the misunderstanding that could be created among the faithful by their support to the Christian marriage Bill, 1994 in general, and to its provisions relating to divorce in particular, even though the 'divorce' is defined in the Bill as dissolution of the marriage with civil effect. The Catholic Church had a particular difficulty on the legislation concerning the divorce.[31] On the one hand her doctrine of indissolubility of marriage does not permit her to give consent to a legislation that grants divorce. On the other hand, by affirming firmly her doctrine, she can not, non plus, forbid the Catholics to have recourse to the possibility of obtaining the divorce accorded by a civil legislation already in existence by virtue of the provisions of The Indian Divorce Act, 1869. How the Catholic Church can remain faithful to her tradition of indissolubility of marriage without forbidding at the same time the Catholics to make use of the cause to obtain the divorce accorded by the civil law to all the citizens? It is important for her to find out a way to overcome this impasse. Her simple resignation from the consultation on the legislation on divorce would not be prudent on her part, for the Government of India demands consensus of all the Christian Churches in order to amend the personal law of the Christians.[32]

Considering the religious susceptibilities and the apprehensions of the various groups of the Churches on the Bill relating to divorce, the common meeting of the CBCI and the NCCI has decided to present separately the bills for marriage and divorce, i.e. The Christian Marriage Bill, 1997, and The Indian Divorce Bill, 1997 to replace the existing legislations The Indian Christian Marriage Act, 1872 and The Indian Divorce Act, 1869 respectively. Thus in the opinion of the authorities of the Churches they do not present indeed the bills for the new legislations, but only help the Government to amend the legislations in force, so that these legislations become more effective for the members of the Christian communities in India.

If the Government for any reason does not accept the proposal of the two Bills for the marriage and divorce separately, the authorities of the Churches preferred that The Christian Marriage Bill, 1997 be enacted with a supplementary section to the effect that the provisions of chapters V to VII of The Special Marriage Act, 1954[33] be applicable *mutatis mutandis* to the Christians, as there is precedence in sec. 18 of The Foreign Marriage Act, 1969. Thus the authorities of the Churches preferred, in case of the refusal on the part of the Government to have two legislations – one for marriage and another for divorce – integration of the provisions of the Special Marriage Act, 1954 into the Bill of the Christian Marriage rather than incorporate the Indian Divorce Bill, 1997 into the Christian Marriage Bill, 1997, as presented formerly to the Government as the Christian Marriage Bill, 1994.

## Conclusion

The personal law of Christians, as that of those who belong to the other religions, accords them a specific juridical status in the society. This personal status, certainly, helps them to affirm their proper and distinct identity among the Indian population. But it becomes sometimes an obstacle for the spread of Christianity for a simple fact that a non-Christian can not become a Christian without renouncing the juridical system of laws in which he was brought up. If a Hindu, for example, receives baptism, he is to renounce the traditional Indian Hindu law which he followed so far, and he has to submit himself to the juridical status of the Christians. Many find it difficult to approach Christianity because of the changes that conversion brings with it in the field of social and civil life. A converted person is legally separated from his family and is no more considered heir of his or her parents. He is looked down upon by his own relatives not for what he has accepted newly, but for what he has left. To avoid all these complications, will it not be good that there be a uniform civil law, as exhorts the Indian Constitution it its article 44, for all the citizens without considering one's religious tradition.

Moreover the personal law for Christians in India has nothing to do with the religion of Christianity, as the personal laws of the communities of the Islamic or Jewish religions do. In fact, the English laws, imposed on the Christians of this sub-continent as the personal law during the period of British government, continue to reign as the personal law of this Christians community. Of course the legislations of the personal law of Christians have undergone many amendments since the independence of the country. Yet they remain outdated and inadequate. The Christians in India therefore feel that they are to be redrafted entirely taking into consideration of the development and progress of the present day modern society, so as to accommodate all the legal needs of the Christian community. In spite of the repeated request from the Christians the Government of India is to yet to take the proposed Bills to the Parliament to make them laws.

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## Endnotes

[1] G.C.Cheseire, *Private International Law*, p. 164, cited in E.D.Devadason, *Christian Law in India. Law Applicable to Christians in India*, Madras, DSI Publications, 1974, p.236.

[2] 14. MIC. 309, Cited in *Ibid.*, p. 237.

[3] J.D.M.Derrett, *Religion, Law and State in India*, London, Faber and Faber, 1968, p. 39.

[4] The French Government by its decree of 21st December 1881 authorised the natives of both the sex of all the castes religions living in the French establishments of India, to renounce their personal status. By the very fact of their renouncement which is definitive and irrevocable, they with their wives and minor children were submitted to the civil and political laws applicable to the French in the colonies. Those who opted for the French laws are called *renonçants*. They are to choose a name as family name and that will continue to be the family name.

[5] E.D. Devadasan, *op.cit.*, pp. 251 – 252.

[6] *Maha Ram* v. *Emperor*, A.I.R. 1918, 172.

[7] *David K.J.B.* v. *Nilamoni Devi.*, A.I.R. 1953, Ori, 10.

[8] While the roman Catholics are submitted to the provisions of the Code of Canon Law of 1983, the Catholics of the Syro-malabar and Syro-malankara are governed by the legislation of the Oriental Code of 1990.

[9] A.I.R. 1955, TC, 182.

[10] William E.Pinto, *Law of Marriage and Matrimonial Reliefs for Christians in India. A Juridical Evaluation of Canon Law and Civil Law*, Bangalore, Theological Publications in India, 1991, p. p. 36.

[11] Sebastian Champapilly, *The Christian Law*, Cochin, Continental Publishing co., 1998, p. 58.

[12] Krishan Arora (ed. ), *Marriage and Divorce Law*, Bare Act with short comments, Professional Book Publishers, New Delhi, 2006, p. 121.

[13] A.I.R. 1985, A.P., 237.

[14] A.I.R. 1979, Del. 78.

[15] *Vincent Joseph Konath* v. *Jacintha Angela Vincent Konath*, A.I.R., 1994, Bom. 120.

[16] E.D. Devadasan, *op.cit.*, pp. 296 – 297.

[17] *Ibid.*, pp. 301 – 302.

[18] The object of adoption among the Hindus is essentially religious. The Hindus adopt a son above all when they do not have a male child. It is the adoptive son who will perform funeral ceremonies for his adopted father. Thus he procures spiritual benefits for his adoptive father and for his ancestors. Moreover the secular advantages are not absent in adoption, for example it perpetuates the family name.

[19] E.D. Devadasan, *op.cit.*, p. 327.

[20] The English legislation sanctioned adoption in England by The Adoption Act, 1926; and that Act is replaced by The Adoption Act, 1958.

[21] E.D. Devadasan, *op.cit.*, p. 330 – 336.

[22] Sebastian Champapilly, *op.cit.*, pp. 7 – 12.

[23] *Saldanha* v. *Saldanha*, A.I.R. 1930, Bombay, 105.

[24] A.I.R. 1972, S.C. 2667.

[25] William E.Pinto, *op.cit.*, p. 42.

[26] E.D.Devadasan, *op.cit.*, pp. 264 – 268.

[27] A.I.R. 1955, Kerala, 255.

[28] *Ibid.*

[29] William E. Pinto, *op.cit.*, p. 15.

[30] The Catholic Conference of India (CBCI) has discussed the Bills many times during the meeting of its standing committee. In 1989, it called for a meeting in the Bishop's House, Bombay of certain Bishops with the canonists and civil advocates in order to formulate the opinion of the Catholic Church on the proposed Bills. Then a circular has been sent to all the Bishops, asking them to consult the faithful of their dioceses. On 7th July 1990 a Conference has been organised in Bombay in which more than 400 persons – advocates, social workers – have participated. In the same way conferences have taken place in Pune, Bangalore and in other cities. Again the CBCI has taken this subject for discussion in its general body in January 1992. See. *Report of the Standing Committee Meeting, New Delhi, April 27 – 30, 1993*, pp. 64 – 67.

[31] *Report of the Standing Committee Meeting, New Delhi, April 18–230, 1990*, pp. 22 – 27

[32] Thus the Catholic Church in India has accepted the Bill concerning the divorce. She underlines always by supporting this Bill, she does not accept the divorce in the strict sense of the term. In other words, the Catholic Church does not accept the dissolution of matrimonial bond contracted validly. That which she accepts , it is the termination of the civil effects of the marriage. Moreover the proposed legislation will be helpful to obtain divorce for those whose marriage is declared null by the ecclesiastical tribunals. In fact the Government according the civil effects for the marriages solemnised by the priests in the church, does not recognise the declaration of nullity given by the ecclesiastical tribunals. Cf. *Report of the Standing Committee Meeting, Bangalore, Sep. 16 – 19, 1993,* pp. 73 – 76.

[33] While Chapter V (sec. 22 – 23) of The special Marriage Act, 1954 deals with Restitution of Conjugal rights and Judicial separation, Chapter VI (sec. 24 – 30) deals with Nullity of marriage and Divorce. The Jurisdiction and Procedure are treated in Ch. VII (sec. 31 – 44).