

independent grounds of divorce, thus releasing the Christian women from the century-old shackle of having to prove dual grounds of adultery along with cruelty or desertion in order to obtain a divorce. Christian men could obtain divorce upon a single ground of adultery. In 1997, the Bombay High Court had struck down this provision as discriminatory against women. Kerala and Andhra Pradesh High Courts had also similarly struck down this provision. But through the amendment, Christian women all over India will be rid of this discrimination.

Another significant aspect of the amendment is making available the remedy of mutual consent divorce to a Christian couple for the first time in the history of modern India and thus doing away with the need of proving a matrimonial fault. While all other communities could avail of this facility for last several decades, a Christian couple desiring a divorce had to collude and fabricate false grounds of matrimonial fault against each other, adultery being the most oft used among them. Usually the husband would accuse the wife of adultery and in the hope of a decent settlement the wife would consent. In this absurd farse played in court rooms on oath, the couple, their lawyers and the judges were all *consenting parties!* Now finally the couple can opt for an honest and straightforward divorce with consent.

Inching its way towards gender justice, the ceiling set upon maintenance that it should not exceed one-fifth of the husband's income has been removed. The amendments have also deleted the provision of confirming every decree passed by the district court in a subsequent procedure in the high court which rendered the procedure of obtaining divorce doubly cumbersome for a Christian couple and amounted to 'procedural unreasonableness'.

The amendment has also expanded the jurisdiction of courts to entertain petitions in both the place of marriage as well as the place of last residence. While under all matrimonial statutes the dual jurisdiction was conferred, a Christian couple could file for divorce only at the place of last residence. For women this would invariably be the place of their husband's residence which would make it impossible for them to file for divorce if, after separation they moved back to their natal home where the marriage had been performed.

The blatantly sexist provision entitling the husband to claim damages from the adulterer or the power of the court to

settle an errant woman's property in favour of her husband/children has also been deleted.

The struggle for amending the archaic statute has been long and chequered with the orthodox and conservative opinion within the various churches thwarting every move to modernise the statute since the 1960s. Met with repeated opposition from the churches, around 1983 Jyotsna Chatterjee of the Joint Women's Programme, Delhi, initiated a sustained campaign to obtain consensus of all the churches for a new bill along the lines of the Special Marriage Act. After the struggle of a decade, a new bill was finally ready and was sent to the prime minister's office in 1993, where it lay gathering dust till the country entered a new millennium.

When Ram Jethmalani was the law minister, he took it upon himself to finalise the bill. But the bill, finalised by the present NDA government, met with opposition from the churches as it included certain provisions which would lay the clergy susceptible to penal provisions by the state. In the final drafting the law department had added provisions which had not been endorsed by the community hence it raised an alarm. In the present communally vitiated atmosphere, the church felt that it could be *misused against the clergy.* After the unceremonious departure of Jethmalani from the ministry, one felt that the issue had been shelved. But the new law minister, Arun Jaitley picked up the threads. In September 2000, he made an announcement that the controversial bill would be shelved and the government would only introduce amendments to the most blatant provisions of the Indian Divorce Act.

The church responded to the news with the traditional apprehension asking why the government had changed its course midway. Any move from a right-wing government with a declared anti-minority stand becomes a suspect. For the women's organisations, this would mean a major setback to the struggle which spanned two decades. The challenge then was to bring all stakeholders to the negotiating table to work out common grounds of reform. At this stage, Majlis, a women's rights group from Mumbai stepped in and initiated fresh rounds of negotiations with the Church and the state. If by amending the existing bill the purpose of gender justice would be served, there would be no problem in shelving the controversial bill. The tight-rope walk was that while ensuring that minority sentiments are not trampled upon,

the interest of women are not sacrificed.

In November 2000, a delegation comprising of Majlis representatives along with Jyotsna Chatterjee of Joint Women's Programme, Delhi and Virginia Saldhana of Women's Commission of the Catholic Bishops Conference of India (CBCI) met the law minister and urged him to include eight more amendments along with the three already suggested by him. The meeting was facilitated by Beatrix D'Souza, Lok Sabha MP from the Samata Party. Majlis representatives also met the CBCI representatives and urged them to consent to these amendments as they did not hinge upon any religious tenet and were in fact matters of practical concern for women. These amendments were then circulated to all Christian MPs seeking their active support in parliament. When the bill was introduced in parliament, in its earlier form with only three amendments, due to this campaign, it was referred to a select committee headed by the congress MP Pranob Mukherjee to explore the possibilities of including the other eight amendments to the bill. Through yet another winding process the consent of the community leaders was sought so that it did not raise further controversy. Finally a new amendment bill was drafted which met with the cabinet approval in mid-August and was passed by the Rajya Sabha on Monday, August 27, 2001 and by the Lok Sabha on Thursday, the August 30, 2001.

While the Gazette Notification heralding the changes are still awaited, there is a sense of jubilation among thousands of Christians whose cases are pending in various courts across the country. With these amendments, the Indian Divorce Act will very closely resemble the Special Marriage Act. The only discriminatory aspect of the new bill is that the period of separation for a divorce by mutual consent is two years while under the Special Marriage Act and the Hindu Marriage Act it is one year.

These developments provide an interesting study in the realm of gender justice for minority women within a communally vitiated atmosphere. The process is slow and gradual and each juncture a new strategy will have to be evolved. But rights of women which is a complex issue, entrenched in broader political processes must evoke a complex response. The positive outcome of these two campaigns will hopefully pave the way for many more struggles for empowerment of women in the years to follow. [E]