CHAPTER- VI

EFFORTS TOWARDS LEGISLATION- AN EVALUATION

The need for reforming the law of marriage, divorce and succession was being felt by the members of the Christian community for the last several years. However, no serious attempts were being made towards legislation; discussions, debates, Commission Reports and private members' bills notwithstanding. This inertia continued in spite of difficulties created by the lack of statute law in the field of adoption, guardianship etc. As has already been discussed, it was Mary Roy which was a shot in the arm for the community and there started a strong movement towards legislative reforms. This movement, mainly stressing on reforms of laws on marriage, divorce and succession, is yet to culminate into legislation. It may therefore be worthwhile to evaluate these efforts with a view to offer suggestions for improvement.

As regards the law of marriage and matrimonial causes of Christians, statutory law\(^1\) has been found to be not satisfactory both by the community and by the Courts.\(^2\)

\(^{1}\) The Indian Christian Marriage Act, 1872 and the Indian Divorce Act, 1869.

The community took initiative for reforms and indeed Private Bills were introduced in Parliament. Thereupon, the question of revision of the law on the subject was referred by the Government to the Law Commission of India. The Commission invited suggestions from all persons interested in the matter, took evidence, and submitted its 15th Report on the Law of Christian Marriage and Divorce on the 19th August, 1960. It also proposed a bill - The Christian Marriage and Matrimonial Causes Bill, 1960. The Ministry of Law, in implementation of the Report of the Commission, prepared a formal bill (The Christian Marriage and Matrimonial Causes Bill, 1961) for approval of the Central Government before introduction in Parliament. It was however decided by the Government that public opinion should again be elicited on the Bill and that this should be done through the Law Commission. Thus the matter came up before the Commission


4. Ibid. at 49. It may be mentioned that the Roman Catholic Church under the leadership of the late Cardinal Gracias took a prominent part in the formulation of the Bill.
once again. It examined the questions again and finalised its twenty-second Report on the 15th December, 1961. It suggested some changes in the Bill of 1961. On the basis of this Report, the Government of India introduced the Christian Marriage and Matrimonial Causes Bill, 1962 in the Lok Sabha, to amend and codify the law relating to marriage and matrimonial causes among Christians. It was however referred to a joint select committee of the Parliament. And the Bill was reported on by the Joint Committee promptly. But it lapsed when the Lok Sabha was dissolved.

While so, the Chairman of the Law Commission received a letter in 1981, which narrated the sad plight of Christian women who were treated with severe cruelty by their husbands, as a consequence of which the women had to undergo a lot of suffering, resulting in their mental breakdown. It also mentioned many other cases of cruelty by Christian husbands.


7. See infra n.9 at 7.

who even force their wives to enter into prostitution. These women remained helpless because of the difficulty of getting a divorce in such cases; it was stated that these women have no hope of redeeming their lives and finding happiness for themselves and their children. On these representations, revision of Section 10 of the Indian Divorce Act, 1869, was taken up by the Law Commission suo motu in view of the existing element of discrimination based on sex under the Indian Divorce Act as applicable to Christians in India. The Commission also thought that in the field of marriage law, extensive developments have taken place both in law and in society. Therefore it was found proper that these developments should be taken note of and the law applicable to Christians be brought in tune with the times. The Law Commission came to the conclusion that there was urgent need to remove the element of discrimination from which women


The Commission found that an amendment to Section 10 of the Indian Divorce Act was a constitutional imperative. It was specifically pointed out that a comprehensive legislation covering the entire field was necessary; but having regard to the past history of proposals for reform on the subject, the Commission proposed amendment of Section 10 of the Indian Divorce Act, 1869 as an urgent measure. Inspite of such an urgency being pointed out by the Law Commission, the Government had not come forward to bring in new legislation on the subject.

This brought about indignation among social activists engaged in advocating a fair deal to women. In 1983 the campaign for changes in the Christian personal laws started gathering momentum. The women activists issued an appeal to reform the law of marriage, divorce, succession and also adoption. Their ultimate object was enactment of a common law for Christians in the matter of family law,

11. See supra n.9 at 17. This recommendation can be considered only as an interim measure.

12. This was initiated by the Joint Women's Programme, C.N.I. Bhavan, New Delhi.
recognising the equality of sexes. Seminars were organised at different places. And the Joint Women's Programme led a delegation of Christian women to meet the then Prime Minister Shri. Rajiv Gandhi in 1985 to appraise him of the need for reform of the archaic and discriminatory legislation. The Prime Minister wanted the opinion of the church. The drafts were sent for comments to all the churches. By 1988, women activists came up with a write up listing out the essential changes required in the law. While so, the Christian Marriage and Matrimonial Causes Bill, 1989 was introduced in the Lok Sabha as a Private Member's Bill. In July, 1989, the Jacobite Syrian Christian Lay-Men's Association submitted a memorandum to the Prime Minister of India, setting out the reasons for reform of the law.

meanwhile, the women activists prepared drafts on the Christian Marriage and Matrimonial Causes Bill, 1989, Indian Succession Bill and the Christian Adoption Bill. At this stage other organisations of Christian women came forward to support the Bill introduced in the Lok Sabha. Thereafter several meetings were held in different places, participated in by Bishops, Clergy, Lawyers, the Laity of the Churches and social activists and the consensus reached at these discussions was that the Christian personal law as enacted and administered in India, were out-dated, unjust and inhuman and did not meet the needs of the century. Thereupon, the Joint Women's Programme (J.W.P) along with the Church of North India drafted a new Christian Marriage and Matrimonial Causes Bill, 1990. It was published in May, 1990.


18. See All India Council of Christian Women, (A Unit of the National Council of Churches in India) in their letter dated 21.4.1989 addressed to Shri. Thampan Thomas, supported the move. (Un Published).

19. See the paper presented at the Catholic Bishops Conference of India, Meeting, New Delhi, 1994.

draft of this bill was discussed by the representatives of various churches, including the Catholic Bishops Conference of India (C.B.C.I), the National Council of Churches, the Church of North India, the Church of South India etc. 21 This bill was submitted to the Government in February, 1992. 22 In the meanwhile, the Catholic Bishops Conference of India, after deliberations and consultations, evolved a different strategy as the general feeling among them was not to go in for a new bill that would take too long to be enacted. Therefore, they put forward a proposal to repeal the Indian Divorce Act, 1869 and to amend the Indian Christian Marriage Act, 1872 by incorporating all the grounds available under the Special Marriage Act, 1954, including the provisions for "divorce on mutual consent". 23 The C.B.C.I issued a press release


22. It was given to the then Minister of State for Parliamentary Affairs Shri. M.M. Jacob without consulting or informing the C.B.C.I.

explaining its reasons for such a stand.\textsuperscript{24} The Law Ministry of the Government of India had also taken a stand that the Christian Personal law would be changed as soon as the proposals as approved by all the churches in India were placed before the Government.

By now, differences of opinion reached a clear divide between Catholics and the Protestants.\textsuperscript{25} The Catholic Bishops were concerned about the urgency of a comprehensive bill and updated legislation on marriage which is equitable to women. As there was no way out of the impasse, the standing committee of the C.B.C.I at its meeting, (September 1993), decided not to object to the presentation of the draft bill to the Government. It also decided to help finalising the draft, so that the bill has, as far as possible, a Christian character.\textsuperscript{26} Finally, Christians of all denominations—

\[\begin{align*}
\text{24.} & \quad \text{Christian Personal Law- A C.B.C.I. Press Release. Published in the Examiner, Bombay, on 22.8.1992.}
\text{25.} & \quad \text{This is evident from the letter written by the Director of Joint Women's Programme dated 27.2.93 addressed to Rt.Rev. Alan de Lastic, the Archbishop of Delhi.}
\text{26.} & \quad \text{See the paper presented at the C.B.C.I. Meeting at New Delhi. (September, 1993).}
\end{align*}\]
the Catholic Bishops Conference of India (C.B.C.I), 27 member churches of the National Council of Churches of India (N.C.C.I) and others- have come to a consensus that the Indian Divorce Act, 1869 should be repealed immediately and the Government be requested to do so.

Catholics had already pointed out certain provisions of the Bill of 1990 as not acceptable to them. At last these objections were also taken care of and a draft of the law was finalised.\[27\] This was given to the Prime Minister of India, who referred it to the Minorities Commission. In the Minorities Commission, certain objections were taken by some groups as they felt that they were not consulted earlier. Again, those groups were consulted and their objections were also taken care of and a new Bill was formulated under the caption, the Christian Marriage Bill, 1994.\[28\] This was presented to the Government with the approval of all the known Christian denominations in India. It is yet to be introduced in Parliament.

\[27\] It was given the title, "Christian Marriage Act, (Sic) 1993".

\[28\] Even this Bill is a compromise on various issues.
It is fruitful, at this juncture, to have a look into the various proposals in the Bill, which may need further improvement. Clause 3 of the Bill provides:

"Marriage of Christians solemnised according to Act:—
Every marriage between persons one or both of whom is or are Christians, may be solemnised in accordance with provisions of this Act except in the case of such tribal Christians whose Customs and Practices demand that both be Christians".

Clause 5 specifies persons authorised to solemnise marriage as follows:

"Persons Authorised to Solemnize Marriages:—
Marriage may be solemnised under this Act (a) by any Minister of a Church, or (b) by or in the presence of marriage Registrar appointed under this Act; or (c) by any licensed Minister".

And Clause 57 prescribe penalties for unauthorised solemnisation of marriages thus:

"Solemnising marriage without due authority:—
Whoever not being authorised by Section 5 to
solemnise a marriage, solemnises or professes to solemnise under this Act a marriage between persons one of whom is a Christian, shall be punishable with imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to two thousand rupees".

A combined reading of Clauses 3, 5 and 57 would lead us to the conclusion that any person can solemnise a marriage between Christians or between a Christian and a non-Christian if he does not profess to solemnise the marriage under the provisions of this law as it is not made mandatory that a Christian marriage be solemnised under this law. Thus Clause 3 leaves room for individuals and groups to conduct their marriages in accordance with their sweet will. Once the law is codified, it is not desirable to allow such a situation to exist in modern times. If at all needed, the only other opinion should be the one under the Special Marriage Act, and it must be specified too.

Clause 4 of the Bill specifies the conditions for a Christian marriage. Sub Clause(iv) of Clause 4 provides:
"The parties are not within the degree of prohibited relationship, unless the custom or usage or rules of the church governing each of them permits of a marriage between the two".

The attempt to prevent marriages within the prohibited degrees of consanguinity is made ineffective as even a small group can claim exemption by making rules to by-pass the prohibitions.

The provisions for appointment of Marriage Registrars and registration of marriages do not take into account the ground realities. For example, Clause 10 provides—

"Magistrate when to be Marriage Registrar—
When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the district shall act as, and be, Marriage Registrar thereof during such absence, illness or temporary vacancy".

When the District Magistrate is to solemnise a marriage under the provisions of Clause 10, it is most likely that the
marriage may not be solemnised in accordance with the convenience of the parties to the marriage, as the District Magistrate is already burdened with other responsibilities under numerous enactments. Further, there are no provisions in the Bill for taking custody of or maintenance of Marriage Register by the District Magistrate and this would further create practical difficulties in making entry of a marriage in the Marriage Register. In fact the elaborate provisions made in Clauses 7 to 23 can be condensed by providing that persons authorised under Clause 5 to solemnise a marriage be authorised to issue a Certificate of marriage which should be registered in a Marriage Register to be kept by the Registrar appointed under the Registration Act 1908 and such Registrar can be conferred with the powers of a Registrar under the law on marriage. A provision for mandatory registration of all Christian marriages before a Civil Authority would only be in the best interest of the community for all the purposes of law in modern times. Thus, the different procedures provided under Clauses 15, 16 and 17 in matters relating to issue of certificate of notice of intended marriages, objections to certificates and applications to District Court and the binding nature of the
orders of the District Court can all be brought within the simplified procedure. The different procedures provided under the Bill, to be adopted by different denominations of Christians make the Bill voluminous and it looks like a Church Union Agreement rather than a piece of legislation. Here clarity and precision have become the casualty.

Further, in this Bill, Clause 4(11) enacts that a marriage may be solemnised under the Act if "at the time of marriage, neither party is of unsound mind". And any marriage solemnised in contravention of this condition is declared to be a nullity under Clause 28. At the same time Clause 29(3) makes a marriage only voidable if "either party was a lunatic or idiot at the time of marriage". Thus the distinction between "Void" and "Voidable" is lost sight of in the Bill and the confusion becomes more confounded on further analysis. It is almost impossible to prove that a party to the marriage was of unsound mind or lunatic at the time of marriage. If the party was of unsound mind and remained to be of unsound mind in a case of incurable mental illness, the presumption of incapacity to contract is not recognised even in this Bill. This difficulty has been experienced in the working of the earlier enactments on the subject and the present Bill has not improved the situation in any way.
The provisions made under Clause 29(2) for the declaration of nullity of marriage on the ground of non-consummation is again bereft of clarity especially in the background where the English Courts have held that even the use of a condom amounts to non-consummation of marriage.\(^{29}\) Hence a proper definition of the term is essential as otherwise the Courts will be left with no option but to go to English precedents on this issue.

Again the provisions incorporated in Clause 29(4) for recognition of the decree of nullity of marriage given according to the rules and regulations of the Church is ineffective as a decree of nullity is again required from the civil court under Clause 29 itself. The provisions and procedure followed under the Portuguese Civil Code in Goa could be followed in this matter.\(^{30}\)

Yet another provision for declaration of nullity of marriage as given in Clause 29(5) is that consent for the marriage was obtained by "fraud". And the term "fraud" 

\(^{29}\) See supra Chapter III, n.163.

\(^{30}\) See supra Chapter II, n.39-40 and Chapter III, n.114.
has been eluding a clear definition through out the last more than a century and the Courts went on holding that even concealment of pregnancy contracted through someone other than the man who contracts the marriage would also not amount to fraud. Hence an appropriate definition of the term "fraud" is essential as otherwise the inclusion of that ground for declaration of nullity of marriage is of no use.

The further provision in Clause 37(b) that the petitioner be "residing" in India at the time of presentation of petition, would lead to procedural difficulties in modern times. In fact, it could be that the petitioner should have his/her domicile in India or be residing in India at the time of presentation of the petition.

The provisions made in Clause 44 for maintenance pendente lite for the applicant alone is conceptually wrong and legally unsustainable. The benefit must be given to the respondent in the proceedings also as otherwise it would lead to miscarriage of justice.

Further under Clause 2(h) "divorce" is defined as the termination of civil effects of marriage, and the term
"nullity" is left undefined, whereby a nullity granted by the church is to be recognised by the civil court under Clause 29(4) whereas no corresponding duty is imposed on the church whereby the present situation of conflict with the civil court is still left open.

And the provisions contained under Clause 74 dealing with repeal of enactments have not specifically covered the law in force in North East India and the Cochin Christian Civil Marriage Act, 1920. Inshort, the Bill requires re-examination and re-drafting to suit the needs of the community.

The efforts of certain individuals against the legislative inertia has resulted in a decision by the Kerala High Court in Mary Sonia Zachariah in 1995. In this case, the Full Bench of the Kerala High Court has struck down

31(a). Mary Sonia Zachariah v. Union of India. O.P. No.5805 of 1988. See supra n.117 of Chapter IV.
certain words from §10 of the Indian Divorce Act, 1869 as violative of Art.14 on the ground of discrimination based on sex. In fact the intention of the Court was to remove gender discrimination; but as a matter of fact, this has led to reverse discrimination against men as has already been discussed. In short, the aforesaid decision of the Kerala High Court is a classic example of the pitfalls inherent in judicial legislation. To sum up, the decision has not helped to remove gender discrimination reflected in Section 10 of the Indian Divorce Act, 1869, and it is no alternative to a thorough reform of the law of marriage and divorce by the legislature. It appears that this position was acknowledged by the Court itself.

The movement for reform of Christian law of succession in Kerala has already been discussed in detail. The efforts of the Kerala Law Commission did not culminate

31(b). See supra n.123 of Chapter IV and the accompanying text.
31(c). See supra n.121-122 and the accompanying text of Chapter IV.
31(d). See supra n.125 and the accompanying text of Chapter IV.
32. See supra n.57-58 of Chapter V and the accompanying text.
in reforming the law. The Law Commission of India took up the matter *suo motu* and considered the necessity of revision of the provisions of the Indian Succession Act, 1925, in the prevailing social and constitutional set up. And the Commission submitted its 110th Report on 25th February, 1985, to the Government of India. The Commission dwelt on the question of the law of succession among Christians in general and also considered the problems in Travancore and Cochin areas of the State of Kerala and recommended to the Government to take a decision on the continued application of the Travancore Christian Succession Act, and the Cochin Christian Succession Act, as it was considered to be a matter of social policy. It appears from the Report that the Law Commission of India was not aware of the earlier recommendations of the Law Commission of Kerala. It seems, had the Law Commission of India had the Report of the Law Commission of Kerala before it, its recommendations would have


34. See Ibid. at 54 & 276.

been different. The Law Commission of Kerala was aware of the social, political and legal background of the enactment of the Travancore Christian Succession Act, 1916, which in fact was codification of the customary law among Christians in Kerala.\(^36\) And to that extent the Kerala Law Commissioner's Report reflected the aspirations of the community. Even this report is not a result of an in-depth study of the matter. The Government of India is yet to act upon the 110th Report of the Law Commission of India, submitted on 25th February, 1985.

In the meanwhile, social Activists were seized of the necessity of reform of the law of succession for Christians. The Joint Women's Programme had already pointed out the gender discriminatory aspects in the law of succession in the year 1983 itself.\(^37\)

While matters remained thus, the Supreme Court of

\(^{36}\) The codification was made on the recommendations of the Christian Committee. This Committee was appointed by His Highness' Govt by Order No.J 3520 dated, Trivandrum, 23rd July, 1911. It submitted its Report in 1912.

\(^{37}\) An Appeal was made to all concerned by the Joint Women's Programme, C.N.I. Bhavan, New Delhi, in 1983. (Un Published).
India rendered its decision in *Mary Roy's Case*. The Court did not advert to the 110th Report of the Law Commission of India. Nor did the Court look into the recommendations of the Law Commission of Kerala, or the historical background of the Travancore Christian Succession Act as revealed in the Report of the Christian Committee of 1911.

As the adverse effects of the decision became clear, the community took initiative to cushion the impact. Seminars were organised at different places in Kerala and papers were presented highlighting the difficulties arising out of the decision in *Mary Roy's Case*. This was followed by a memorandum submitted by the All Kerala Catholic Congress before the Government. In the meanwhile, a Private Member's Bill—The Indian Christian Succession Bill, 1986—was introduced.


41. This memorandum was given to the then Minister of State for Parliamentary Affairs, Shri. M.M. Jacob in December, 1986.
in the Lok Sabha. This Bill was almost a verbatim reproduction of Part V of the Indian Succession Act, 1925 and it cannot claim any credit for original thinking, nor can it claim support from any research. This Bill was not enacted.

As the decision in *Mary Roy's Case* brought about retrospective effect by way of its reasoning, it was felt that the retrospective effect must be removed. Towards this end, a Bill was introduced in the Lok Sabha on 24th November, 1986. But it was not enacted as the Central Government took the view that matter covered by the Bill was a concurrent subject and therefore, the State has legislative competence to do it.

This was followed by a period of relative calm in the efforts towards legislation. By 1990, along with the proposals for reform of the law of marriage and divorce, the matters relating to Succession, Adoption and Maintenance

42. The Indian Christian Succession Bill, 1986. Bill No.92 of 1986 was introduced in the Lok Sabha by Shri Thampan Thomas. M.P.

were also taken up by social Activists and others. Thus the Indian Succession Amendment Bill, 1990 and the Christian Adoptions and Maintenance Bill, 1990 were drawn up after consultations and deliberations among various groups of Christians in India. These Bills were submitted to the Government of India on 11th February, 1992. The Indian Succession Amendment Bill, 1990 identified areas of gender discrimination in the law of succession under the Indian Succession Act, 1925. But, the Executive and the Legislature remained unresponsive to these demands made by the community. At the same time, it is worthwhile to note that there was always one or the other pressure group working against the move of the mainstream of Christians for legislative changes.

However, the Kerala Catholic Bishops Conference took up the matter in 1991 and passed a resolution on 5.6.1991 demanding removal of the retrospectivity of the decision of the Supreme Court. Another meeting was organised at the Archbishop's House, Trivandrum on 2.7.1992. This was

attended by Bishops, the Speaker of the Legislative Assembly, the Law Minister and 26 Christian M.L.As belonging to different Political Parties and different denominations of Christians. The participants called upon the State Government to take steps to solve the problems created for the community by the decision of the Supreme Court in 1986. But the Law Minister opined that the Government wanted to get the opinion of the Bishops of the various other Christian denominations and the Archbishop of Trivandrum agreed to collect the opinion of others and wrote letters to all of them individually. In response to these letters, the Bishops supported the move for removal of retrospective operation of the judgment of the Supreme Court. The Malankara Orthodox Syrian Church (Catholicate of the East) supported the move. The Mar Thoma Syrian Church of Malabar also supported the same.

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The Executive Committee of the Diocese of Madhya Kerala (C.S.I.) appointed a Special Committee which recommended urgent legislative measures in this regard. This was communicated by the Bishop. The Episcopal Synod of the Malankara Jacobite Syrian Orthodox Church passed a resolution on 7.8.1992 calling upon the State Government to undertake legislative measures in this regard. And all the Bishops of Kerala met at St. Thomas Apostolic Seminary, Vadavathoor on 28th October, 1993 to discuss problems confronting the Christian Community in different areas of life, and resolved among other things, that men and women should have equal rights in the possession of paternal property and welcomed the decision of the Supreme Court, but at the same time called upon the Union and State Governments to introduce immediate legislation to remove the obstacles in the sale and transfer of property which are due to the effect of the judgment and that this should be done


by safeguarding the interests of those women who have not obtained their share of paternal property for any reason.  

The year 1992 and thereafter, witnessed expression of public opinion through the media. There were responses both for and against legislative changes. Mostly, it took the shape of a debate for gender egalitarian law in matters of succession among Christians. What is interesting is that not many voices were heard against giving equal treatment to women. Yet, in many a debate it was passion than reason that found expression. One writer had described the factual position in Mary Roy's Case as a fight for gender equality. This was answered by another writer that Mary Roy is not alone in her fight, but the real issue is the "retrospective effect" of the Supreme Court judgment. This was stoutly opposed by another writer who described the situation thus:


52. George Isaac, "She is not alone". Indian Express, Kochi, June 4, 1992.
"When new laws or new decisions on existing legislation come, often some confusion or implementation difficulties arise. Naturally, in the case of the 1986 decision of the Supreme Court doing justice to Christian daughters in Kerala also, there are some difficulties in implementing it. They have to be circumvented." 53

While the debate is thus going on, the efforts made by the present writer caught the attention of the media and the community. 54 In the period that followed, debates were organised by various organisations. 55 Academic writers including the present writer have been writing on various aspects of Mary Roy's Case. 56 The State Government of Kerala also formulated a Bill- The Travancore and Cochin Christian

53. DR. John Berchman, "A lone Crusader". Indian Express, Kochi, June 11, 1992. It is thus evident that even the most vociferous supporter of the Mary Roy's decision acknowledges that it has created difficulties for the community.
55. The Sunday Observer. "Sanctity of the family Versus Women's rights" by Malini Menon, Nov. 14-20, 1993. The main theme of this lead article is about denial of equal inheritance rights to Christian women.
Succession (Revival and Validation) Bill, 1994. And it is pending enactment by the State Legislature.

Unfortunately the Travancore and Cochin Christian Succession (Revival and Validation) Bill, 1994 has not been formulated in the manner it ought to have been done. The Bill has been sent to the President of India for his prior sanction. It can be said that the said course of action was not necessary as is evident from Articles 254 and 255 of the Constitution of India. This position has been recognised by the Supreme Court also. The women activists have made quick moves against legislative attempt in this regard. They presented the matter to the Central Ministers.


58. See infra Chapter VII.


60. A memorandum was submitted to Smt. Margaret Alva, Minister of State, Personal, Public Grievances and Pensions, India dated 4.3.1994 by the Forum of Christian Women for Women's Rights, Kerala.
response to the memorandum, the Minister of State for Personnel, Public Grievances and Pensions wrote to the Chief Minister of Kerala thus:

"I am concerned at the attempt that is being made to deny Christian women the rights conferred on them by the Supreme Court. It seems as if anything achieved by minority women whether it is Mary Roy or Shah Bano is taken away by the Government in the name of minority rights. Do minority women have no rights at all?"61

She requested the Chief Minister to desist from any move that will go against the interests of Christian women. The National Commission for Women also took the same stand and shot a letter to the Chief Minister of Kerala to withdraw the move for passing the bill to revive and validate the Travancore and Cochin Acts.62 And a news item appeared in the Press that the

61. See Letter dated 11th August, 1994 written by the Minister of State Personnel, Public Grievances and Pensions, India, to the Chief Minister of Kerala.

62. See Letter written by Jayanti Patnaik, Chairperson, National Commission for Women, New Delhi, dated 4th August, 1994, addressed to the Chief Minister of Kerala.
Central Government has refused to give prior approval for the Bill as sought for by the Government of Kerala. In the meanwhile, Shri. E. Balanandan, M.P. addressed a letter dated 6.9.1994 to the President of India, highlighting the necessity of introducing the Travancore and Cochin Christian Succession (Revival and Validation) Bill, 1994 in the Kerala State Legislature. In response to this letter, the Minister of State for Law, Justice & Company Affairs, Government of India informed the M.P. that the subject matter of the Bill falls under entry 5 of the Concurrent List in the Seventh Schedule to our Constitution and hence the State Legislature, subject to the provisions of Art.254 of the Constitution, is competent to enact the same. And it was reported in the Press that the Bill would be returned to the State Government by the Centre. However, the legislative attempt in these

63. Mathrubhoomi (Malayalam Daily), Cochin, dated 12.9.1994. However, it is learnt that the Central Government has not taken any decision in the matter.


65. See Report in Mathrubhoomi (Malayalam daily), Cochin, dated 29.11.1994.
matters have not fructified yet. As discussed earlier, same is the case with the proposals for reform of the law on marriage and divorce for Christians.

In this context it would be appropriate to analyse the response of the Indian Christian Community on the various problems facing them in matters relating to marriage, divorce and succession. The community's response has been elicited by the present writer by initiating a public debate and distributing a questionnaire.

As regards the problems arising out of the present set of laws, the response of the community is interesting. To a question whether the decision of the Kerala High Court, to the effect that the declaration of nullity of marriage made by the Eparchial Tribunal would not be recognised by the Civil Court, is right, 53% of the respondents answered in the affirmative, while 47% of them

66. See Appendix-I.
67. See Appendix-II. Also see supra n.108-127 of Chapter V and the accompanying text.
68. Question No.1 in Appendix-II.
answered in the negative. The reasoning given by 53% of them was that in matters of marriage civil law should have predominance, while 47% of them said that the law of church should have predominance. 69

As to the question, 70 who should determine the marital status of a Christian, 52% of the respondents opined that it is the civil court that should decide the matter, while 48% of them said that the matter should rest with the Eparchial Tribunal or authorities of the Church.

To a specific question 71 as to who should conduct civil proceedings against a person, who, though married in a foreign country, contracts a second marriage here under the church law misrepresenting to the church that he is unmarried, 63% of them favoured the civil court, while 32% favoured the Eparchial Tribunal and another 5% of them opined that both the civil court and the Eparchial Tribunal should have concurrent powers. To another related question, 72 if the

69. Question No. 2 of Appendix-II.
70. Question No. 3 of Appendix-II.
71. Question No. 4 of Appendix-II.
72. Question No. 5 of Appendix-II.
person is proceeded against by the Eparchial Tribunal on a complaint of the aggrieved spouse, should not the decision of the Eparchial Tribunal be recognised, 60% of the respondents answered in the affirmative, while 40% of them in the negative. And 58% of them opined that in such case the civil court should have the authority to declare the second marriage null and void, while 35% of them favoured a decision by the Eparchial Tribunal, and at the same time 7% of them opined that both the civil court and Eparchial Tribunal should have concurrent jurisdiction. 73 To another question74 as to who should determine the capacity of a Christian to marry a person from another community, 65% of the respondents affirmed that it must be decided by the civil court, while only 35% of the respondents favoured a decision by the Eparchial Tribunal.

To yet another question75 as to whether the authority of granting nullity/divorce be exclusively vested with the Eparchial Tribunal, 63% of the respondents answered in the

73. This was in response to Question No. 6 of Appendix-II.
74. Question No. 7 of Appendix-II.
75. Question No. 15 of Appendix-II.
negative, while the remaining 37% answered it in the affirmative. And to the specific problem of the Eparchial Tribunal having no authority to grant maintenance in a case where the marriage is declared null and void by it, a question was raised whether the jurisdiction of Eparchial Tribunal be enlarged or whether such authority be exclusively reserved for the civil courts; 66% of the respondents answered that civil court alone should have such powers, while 34% of them opined that the powers of the Eparchial Tribunal should be extended.

As regards the discriminatory aspects in the grounds provided under the Indian Divorce Act, 68% of the respondents opined that the grounds of divorce available to Christians under the Act are discriminatory as against their co-religionists, while only 28% of them opined otherwise. At the same time 4% of the respondents did not express any opinion. Sixty eight per cent of the respondents consider that this discrimination would lead to unhappy family ties, while 28% of them opined otherwise, with 4% of them expressing no views on this question.

76. Question No. 18 of Appendix-II.
77. Question No. 8 of Appendix-II.
78. Question No. 9 of Appendix-II.
To a question 79 whether the grounds of divorce available to a Christian woman under the provisions of the Indian Divorce Act are discriminatory towards them, 76% of them answered in the affirmative while 21% answered in the negative, with 3% of the respondents expressing no opinion in the matter.

As regards recognition of foreign decrees of divorce by Indian Courts, 64% of them oppose the suggestion, while 33% of them favour it, with 3% of them expressing no views. 80

In answer to questions 81 whether "mutual consent" and "irretrievable breakdown" of marriages should be made available as grounds for divorce to Christians, 80% of the respondents answered in the affirmative, while only 20% of them opposed it. To another question 82 as to if paternity of a child born after marriage is scientifically proved to be

79. Question No.10 of Appendix-II.
80. Question No.11 of Appendix-II.
81. Question No.12 & 13 of Appendix-II.
82. Question No.14 of Appendix-II. Among the Garos when a wife conceives a child by someone other than her own husband, it is a ground for divorce. See supra Chapter IV, n.87 and the accompanying text.
of a person other than the husband, whether that alone should be a ground for divorce, 74% of the respondents answered in the affirmative while only 26% of the respondents answered in the negative.

As regards the question of maintenance as provided and made applicable to Christians as well under Section 125 of Cr.P.C. 73% of the respondents favour its continued application. To a suggestion whether there should be some special law for Christians in conformity with their personal law, 58% of them answered in the negative, while 42% of them favoured a special law.

As regards the application of the provisions of Section 213 of the Indian Succession Act, 1925 (which makes probating of wills of Christians mandatory) there have been a few responses. Section 213 is considered to be discriminatory towards Christians by 56% of the respondents, while 42% of them thought it to be otherwise. At the same time 2% of them

83. Question No.16 of Appendix-II.
84. This is in answer to Question No.17 of Appendix-II.
85. This was in response to Question No.25 of Appendix-II.
did not give any answer. To another question whether the decision of the High Court of Kerala to the effect that the requirement of probate is not violative of Article 14 of the Constitution of India, needs reconsideration, 70% of the respondents answered in the affirmative, while only 27% answered in the negative, with 3% of them expressing no opinion on the matter.

As regards gender discrimination in the law of succession, where the position as per the Indian Succession Act, 1925, conferring rights of succession on the father of the intestate alone, excluding the mother from any such rights was pointed out 82% of the respondents considered it as discriminatory to women.

86. Question No.26 of Appendix-II.
88. The present writer had examined the need for changes in Section 213 of the Indian Succession Act, 1925 in an Article already published. See Sebastian Champappilly, "Christian Succession and Probate of Wills- Need for Change". 1993(2) K.L.T (Journal) 32.
89. This is the combined effect of Sections 33 & 42 of the Act.
90. This is in response to Question No.20 of Appendix-II.
On another question whether the provisions of Section 47 of the Act which provides that if the intestate has left no children, father or mother, the wife is entitled only to one half of the property and the rest should go to the other relatives of the intestate, is unjust to the Christian women, 56% of the respondents answered in the affirmative, while 44% of them answered in the negative. In this case even if the intestate has no brothers or sisters, when his wife is alive, half of his property shall have to be divided among those who are of kindred to him. It may be that those kindred might not have seen the intestate during his life time even once. In the present day situations where both the husband and wife are employed or are actually engaged in combined business efforts, the acquisition of property in the name of the intestate might have been made by the joint efforts of both of them and if in the event of the death of one of them, half of the property shall have to be distributed among the relatives, that may workout injustice.

91. Question No. 21 of Appendix-II.

92. This is the combined effect of Sections 33(b) read with Section 48 of the Indian Succession Act, 1925.
to the wife. Such provisions in the Act can only be considered as the embodiment of a philosophy of bye-gone centuries. And 80% of the respondents feel that in such cases the entire property should belong to the wife, while only 20% felt otherwise.93

In yet another situation when a Christian woman dies intestate leaving no issues, her father gets half of her property to the total exclusion of her mother.94 To a specific question95 whether it is discriminatory to Christian women, 82% of the respondents consider it to be discriminatory, while only 18% of them considered it otherwise.

In the matter of appointment of guardian for the children, the father (husband) is given powers to do so, whereas the mother (wife) has no such powers.96 In this case,

93. This is in response to Question No.22 of Appendix-II.
94. This is the cumulative effect of the provisions contained in Sections 33(b) read with Sections 35 and 42 of the Indian Succession Act, 1925.
95. Question No.24 of Appendix-II.
96. See Section 60 of the Indian Succession Act, 1925.
83% of the respondents feel that it is unjust to Christian women, while only 17% of them felt otherwise.  

While revision of the law on succession is to be undertaken, there are other aspects also to be taken into account. For example, 70% the respondents consider that the amount usually given by the bride's parents to the bridegroom at the time of marriage should be considered as the bride's share in her parent's property, while only 27% of them felt otherwise and 3% of them abstained from expressing any opinion. This view finds support in the recommendations of the Law Commission of India as well. It recommends:

"If the Indian Succession Act, 1925, becomes applicable to the persons in question, provision made for daughters by the father should be taken into account when the succession opens on intestacy. It is therefore,

97. This may have to be evaluated in the context of the well known saying that maternity is a fact whereas paternity is a matter of faith.

98. This is in response to Question No.28 of Appendix-II.

99. The Travancore and Cochin Christians are the persons intended by this reference."
recommended that suitable provision should be made to the effect that from the share to be distributed to a daughter on intestacy, the amount or value of property so provided by the father during his lifetime should be deducted. ...." 100

But the Law Commission of Kerala thought otherwise as is evident from its reasoning thus:

"If a father voluntarily gives a portion of his property or money as a gift to his daughter at the time of marriage, he does so of his own accord, and it can hardly be distinguished from an absolute gift in favour of a son". 101

But it appears that in this respect the Law Commission of Kerala has not formulated its recommendations based on the Report of the Christian Committee. 102 Nor did the Indian Law Commission. At any rate, it is the present view of the

100. Law Commission of India. 110th Report, 1985 at 276.
102. Report of the Christian Committee of 1912 of Travancore which was the basis for the enactment of the Travancore Christian Succession Act, 1916.
members of the Christian community that should take precedence over the past opinion when revision of the law is to be undertaken by the legislature. It may be noted that 86% of the respondents consider that a thorough reform of the law relating to Christians in India is essential, while only 8% of them opined otherwise and 6% of them abstained from expressing any opinion.

An assessment of the efforts towards legislation made by the official and non-official agencies indicate that none of them have made an all out effort to study the historical aspects involved in the matter as well as the successful and unsuccessful attempts for legislation made in the past.

It is for the Union Legislature to act upon the recommendations of the Law Commission of India. The State Legislature is also competent to enact laws on succession as it is a subject included in the Concurrent List (VII Schedule) of the Constitution. While doing so, due weight ought to be given to the recommendations of the Law Commission.

103. This is in response to Question No.31 of Appendix II.
of Kerala. The views of various organisations and the current views of the members of the community should also be taken into consideration while bringing in new legislation in these matters. At any rate, piecemeal legislation is not an answer to the problems facing the Indian Christian Community.