PUBLIC DEBATE ON CHRISTIAN LAWS INITIATED

KOCHI (SAR NEWS)

A public debate on Christian laws in India has been initiated by Mr. Sebastian Champappilly, a young advocate from the High Court of Kerala.

Mr. Champappilly has prepared and distributed a questionnaire on the existing laws, both in English and Malayalam, with probable choice of answers. The 32 questions focus on the Dowry Prohibition Act, 1961, the Indian Christian Marriage Act, 1872, the Indian Divorce Act, 1869, the Indian Succession Act, 1925, and the Christian Personal Law.

The conflict in the operation of civil law on the one hand, and the personal law through the instrumentality of Eparchial Tribunals on the other, also figures in the questionnaire.

Mr. Champappilly has also raised 13 specific issues concerning the rights of Christian women for maintenance, succession to property, grounds of divorce and
nullity of marriage, guardianship, will, child out of wedlock (Paternity), intercaste, inter-religious marriage, marriage expenses, dowry and intestate property.

Commenting on the proposed bill, which is going to be introduced in Parliament, he said "it was definitely not going to improve the situation of Christian women as far as their legitimate rights were concerned".

He said that the debate, initiated by him, was not confined to printed questions and answers and that he was ready to hold a debate on these issues with any group of Christians anywhere.

Mr. Champapilly has codified the entire Indian Christian law and has released it as a book. His efforts have led to the recognition of Christian Personal Law by the Court, as was evident from the decision in Leelamma V/S Dilip Kumar (AIR 1993 Kerala 57).

Apart from his professional commitment, he is doing his research on Christian Laws for his doctorate from the law department of Cochin University. The focus of his research is on bringing out the inequalities and inadequacies in Christian laws, and also to enlighten the Christians about the grave flaws in the proposed bill, he said.
APPENDIX-II

A REVIEW OF CHRISTIAN LAW

QUESTIONNAIRE

1. The Indian Christian Marriage Act is not applicable to Christians in the erstwhile state of Travancore, Cochin, Manipur and Jammu and Kashmir. The Christians in these areas marry under their customary law and in accordance with their personal law. Yet the Hon'ble High Court of Kerala has held that nullity of marriage granted under the personal law by the Eparchial Tribunal would not be recognised by the Civil Courts. What is your opinion about it?

Ans: The decision is right/not right.

2. What is the reason for your answer?

Ans: In matters of marriage, the law of the church should have importance/Civil law should have importance.

3. Who should determine the marital status of a Christian?

Ans: Eparchial Tribunal/Civil Court.

4. Who should initiate 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?

Ans: Eparchial Tribunal/Civil Court.

* Respondents are requested to answer the questions so as to serve it as an opinion poll and the result will be incorporated in a research work on Christian Law undertaken through the Department of Law, Cochin University of Science and Technology, by Advocate C.A. Sebastian Champappilly.
5. In such a case when the person is proceeded against on the complaint of the aggrieved spouse, should not the decision of the Eparchial Tribunal be recognised?
   Ans: Yes/No.

6. In such cases who should have the authority to declare the 2nd marriage null and void?
   Ans: Eparchial Tribunal/Civil Court.

7. When a Christian proposes to marry a person from another community and when there is doubt as to capacity, who should determine his/her capacity to marry?
   Ans: Eparchial Tribunal/Civil Court.

8. Under the Indian Divorce Act, a Christian husband can get divorce only on the ground of adultery committed by his wife. Whereas the non-Christians in India can get divorce on many other grounds. Do you consider it to be discriminatory?
   Ans: Yes/No.

9. Do you consider that this discrimination would lead to unhappy family ties?
   Ans: Yes/No.

10. Under the Indian Divorce Act, a Christian wife can get a divorce only if she proves many grounds. Do you consider it to be discriminatory to Christian woman?
    Ans: Yes/No.
11. Do you think that a decree of divorce obtained by an Indian Christian in a foreign country should be recognised by our courts irrespective of its validity or otherwise?
   Ans: Yes/No.

12. Do you think that mutual consent be included as a ground for divorce among Christians?
   Ans: Yes/No.

13. Do you think that irretrievable breakdown of marriage be a ground for divorce for Christians?
   Ans: Yes/No.

14. Do you think that where paternity of a child born after marriage is scientifically proved to be of a person other than that of the husband, that alone be a ground for divorce?
   Ans: Yes/No.

15. Do you like to have the authority of granting nullity/divorce be exclusively vested in Eparchial Tribunal?
   Ans: Yes/No.

16. Section 125 of Cr.P.C is applicable to a divorced Christian woman whereby she can claim maintenance from her former husband. Are you happy over it?
   Ans: Yes/No.

17. Muslims in India have a special law (Statute) regarding maintenance to divorced women in accordance with their personal law. Do you consider that Christians should have a special law in conformity with their personal law?
18. The Eparchial Tribunal has at present no authority to grant maintenance to a woman whose marriage is declared null and void. In such a situation should the jurisdiction of the Eparchial Tribunal be enlarged or should such authority be exclusively reserved for Civil Courts?
Ans: Extend the powers of the Eparchial Tribunal/Civil Court alone should have such powers.

Problems in the Law of Succession

19. Till recently Christian daughters in Travancore-Cochin areas had only very limited interests, in their parental property. But the Hon'ble Supreme Court and the High Court of Kerala have declared that the law now applicable to Christians in such cases is the Indian Succession Act, which provides for equal shares for both sons and daughters. Do you think that this will adversely affect the cohesiveness of the Christian family/community?
Ans: Yes/No

20. Section 42 of the Indian Succession Act confers rights on the father of the intestate whereas it does not give any such rights to the mother of the intestate. Do you think
that this is discriminatory to the Christian woman?

Ans: Yes/No.

21. Section 33 and 47 of the said Act provides if the intestate has left no children, father or mother, the wife is entitled only to 1/2 of the property and the rest should go to the intestate's other relatives. Do you consider it to be unjust to the Christian women?

Ans: Yes/No.

22. Do you think that, in the case of a person dying intestate, if there are no lineal descendants nor parents living the whole property must go to the wife of the deceased?

Ans: Yes/No.

23. Section 60 of the Act enables the father to appoint a guardian for his children. But no such authority is given to the mother. Do you think that it is unjust to the Christian women?

Ans: Yes/No.

24. Under the Succession Act when a Christian women dies intestate leaving no issues, her father gets a share in her property, but not her mother. Do you consider it to be discriminatory to Christian women?

Ans: Yes/No.
25. Section 213 of the Act makes it mandatory for the will of a Christian to be probated. There is no such stipulation for persons belonging to other communities. Do you think it to be discriminatory?
Ans: Yes/No.

26. The Hon'ble High Court of Kerala has ruled in Joseph v. Union of India, 1978 K.L.T (SN) 116 that the above requirement for probate is not violative of Article 14 of the Constitution which assures equality for all. Do you think that the above decision of the High Court needs review/reconsideration?
Ans: Yes/No.

27. Do you think that the Dowry Prohibition Act should not be made applicable to the Christian women?
Ans: Yes/No.

28. Do you think that the amount usually given by the bride's parents to the bridegroom at the time of marriage, be considered as the bride's share in her parent's property?
Ans: Yes/No.

29. Do you think that the Dowry Prohibition Act does more harm than good to the Christian women?
Ans: Yes/No.

30. In the event of divorce or dissolution of marriage, the amount given to the bridegroom at the time of marriage goes unrecorded and unaccounted. Do you think that there must be some legal provision to have it accounted for and returned
to the woman?

Ans: Yes/No.

31. Do you consider that a thorough reform of the law relating to Christians in India is essential?

Ans: Yes/No.

32. In your opinion is there any other issue concerning marriage, divorce, succession etc. of Christians that should be regulated by law? If so, what is that? (you may add another sheet, if required).

Your name and address:

Name: 

Age: 

Postal Address: 

Place: 

Date: 

Profession: 

Male/Female: 

Educational Qualifications: 

Signature:

* The personal opinion expressed by you will be kept confidential. It is not essential to give your full address, if you want to remain anonymous.