

VOLUME 1 | ISSUE 1

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

Rights of Christian Women Post-Divorce-Pulkit Taneja ¹**Abstract:**

Marriage is a fundamental unit of society; some consider it to be a bond for a lifetime; others do not believe it to be too rigid. Due to many inconsistencies between partners, or other reasons some marriage terminates in the form divorces. Just like in contracts, when both parties mutually decide to terminate their agreement, there are some rights and liabilities to be fulfilled by the parties. Divorces also have a similar outcome. There are some rights available to one partner, which becomes a liability for the other.

In most cases, the wives are the ones who can execute rights including but not limited to maintenance, property rights of the husband and custody of the children. In an Indian context, the males are responsible for monetary support, while the females take up the responsibility of the household. Considering, this custom in India and elsewhere, the courts require the husband to provide some monetary support to the wives post-divorce for their survival.

Rights of a woman after divorce differs according to personal laws, or if they choose the general laws of India concerning with marriage and divorces. Considering the rich cultural heritage of India, many religions refer to personal laws for marriage and divorces. This research paper would highlight the rights of Christian Women after divorce, including a note on the Uniform Civil Code.

¹ Student of NUJS.

Introduction

The institution of marriage is a *voluntary union* of two individuals, mostly one man and one woman,² considered to be the most sacrosanct institution of a civilized society. Even though society deems it to be a sacred bond, some marriages today are not only earthly but also very tottering. F.M. Knowles in his book "A Cheerful Year Book"³ draws an analogy: "Marriage is a lottery, but you cannot tear up your ticket if you lose" highlighting how the parties to an unhappy relationship are unadapted. Acknowledging and realizing the feebleness of this bond, there are laws in place which seek to provide the parties to dissolve their marital relationship.

Taking due consideration of the diversity of religions in India, our constitution has been framed with a convenient and sensible approach. The constitution recognizes and allows people to be governed by their laws without state interference. We have the Indian Divorce Act, 1869⁴ and the Indian Christian Marriage Act, 1872⁵ for Christians; the Hindu Marriage Act, 1955⁶ for Hindus; the Muslim Personal Law (Shariat) Application Act, 1937⁷ and the Dissolution of Muslim Marriages Act, 1939⁸ for the Muslims; and the Parsi Marriage and Divorce Act, 1936⁹ for the Parsis. Apart from all the above-mentioned personal laws The Special Marriage Act, 1954¹⁰ is in place which is secular legislation which governs marriages and divorce in this country. Due to the scope of research, this paper shall be focusing on the laws concerning Christian Marriages in India.

It is also essential, however, do not ignore the rights of the individual parties post-divorce. Both the men and the women are entitled to certain rights which are essential not to disrupt their normalcy of living after the dissolution of marriage. Arguably, the social impact of divorce on a woman is significantly higher than a man, making their safety and security much harder. Giving due regard to the arguments mentioned above this paper will seek to cover the "Rights of a Christian Woman Post-Divorce".

²KUSUM, MARRIAGE AND DIVORCE LAW MANUAL 3 (2000).

³F.M. KNOWLES, A CHEERFUL YEAR BOOK 16 (2014).

⁴ The Indian Divorce Act, 1869.

⁵The Indian Christian Marriage Act, 1872.

⁶ The Hindu Marriage Act, 1955.

⁷ The Muslim Personal law (Shariat) Application Act, 1937.

⁸The Dissolution of Muslim Marriages Act, 1939.

⁹ The Parsi Marriage and Divorce Act, 1936.

¹⁰The Special Marriage Act, 1954.

Divorce

"There is no time in history when the marriage bond stood in greater peril of destruction than in the days when Christianity first came into this world. At that time the world was in danger of witnessing the almost total break-up of marriage and the collapse of the home.... Theoretically no nation ever had a higher ideal of marriage than the Jews had. The voice of God had said, "I hate divorce".¹¹

— *William Barclay*

Even though divorce is believed to be discouraged by God as discussed in the Holy Bible, when there are all thorns in the marital relationship and no rose, there is no option left but to terminate the relationship. However, it might have devastating impacts on the parties, especially the wife. For example, there is a married couple who have registered under the Indian Christian Marriage Act, 1872¹², where the husband is employed, and the wife is not well educated and qualified to get a job. Soon after the wife finds out about the husband's extra-marital affair, and has to choose to either terminate the marriage and find a marginalized job, or to keep living with her husband and lose her dignity. To avoid hard situations like these, there are certain rights which are entitled to a wife post-divorce.

A Christian wife can file divorce against her husband on the grounds, as mentioned in Section 10 of the Indian Divorce act 1869¹³. However, it is essential to note that in *G. Packia Raj v. P. Subbammal*¹⁴ the court held that only if a valid marriage is subsiding, the remedy under The Indian Divorce Act 1869¹⁵ will be provided.

Rights of Christian Women

A Christian woman after divorce can exercise her rights as recognized under The Indian Divorce Act, 1869¹⁶ and various other statutes. The rights extended to a Christian woman after divorce mainly include: (a) maintenance, (b) property rights, (c) rights concerning custody of children and (d) remarriage.

a. Maintenance

A Christian woman if post-divorce, could not support herself and her needs, she could file a suit against her husband to seek a remedy. This remedy may be in the form of

¹¹ Barclay, William. *The Gospel of Matthew*. Westminster John Knox Press, Rev Upd edition (December 1, 2001).

¹²*Supra* note 5.

¹³The Indian Divorce Act, 1869, §10.

¹⁴ *G. Packia Raj v. P. Subbammal*, AIR 1991 Mad 19.

¹⁵*Supra* note 4.

¹⁶*Id.*

maintenance or alimony. A Christian woman may ask for maintenance from her husband post-divorce by either filing a plea under criminal or civil law.

i. Section 36, Indian Divorce Act, 1869

Within the Christian law and maintenance, Section 36 of the Indian Divorce Act, 1869¹⁷ plays a vital role. The wife is also entitled to alimony during the pendency of the matrimonial proceedings, under the purview of this section. The maintenance under no circumstance exceeds 1/5th of the husband's average net income for the three preceding years. As a general rule, the court will refuse the husband to deduct the amount paid as a premium to his life insurance policies, while calculating is the net income for proving maintenance to the wife unless the policies are made in benefit of wife and family.¹⁸

The quantum of maintenance which is to be awarded to Christian wives under this act may vary according to rank and life of the husband and the number of children, the husband is supposed to support. The court should also take into consideration the earnings of the wife; if she would be able to help herself with her earnings, she cannot claim maintenance¹⁹

ii. Section 37, Indian Divorce Act, 1869

This section allows the court to award a Christian wife permanent maintenance in cases of permanent divorce. The court has the power to pass a decree which will enable the wife to payment from the husband on a monthly or weekly basis. The conditions observed by courts in deciding reasonable maintenance are, namely, the fortune of the wife (if any), ability of the husband and the conduct of the parties.²⁰ Wife's ornaments, property and any other fortunes she might own are to be taken into consideration while fixating the amount of maintenance. To check the ability of the husband to pay the amount of maintenance is subjected to his standard of life, which he would be consistently maintaining. Finally, the conduct of the parties means making sure that the parties come to the court with clean

¹⁷ The Indian Divorce Act, 1869, §36.

¹⁸H.K. SAHARA, LAWS OF MARRIAGE & DIVORCE 329 (4th edition, 1999).

¹⁹Leelavathy v. Sundar Athmaseelan, AIR 1977 Mad 409.

²⁰(1995) 2 All ER 85.

hands in regards to financial matters.²¹ The court also reserves the right to increase the amount of maintenance if it deems it be justified.²²

iii. *Provisions under the Code of Criminal Procedure*

Section 125 of The Code of Criminal Procedure²³, is an alternative to the existing provisions concerning maintenance under the Indian Divorce Act²⁴ for destitute Christian wives. This is an independent right of a wife to claim for maintenance and for which the pendency of the civil proceedings in the Civil Courts will not be a bar to claim maintenance.²⁵

A claim of maintenance under s.125 Cr.P.C²⁶ has two significant advantages. First, the procedure which is adopted to grant maintenance is not elaborate, and there is no need to frame a formal charge in *Inderjit Kaur vs. Union of India*²⁷ the court said that: "Section 125 Cr.P.C²⁸ indeed provides a speedy remedy against starvation of the civil liabilities of the parties, the order made thereunder is tentative and is subject to a final determination of the rights in civil court".²⁹ Thus, there is a chance to get a quick remedy under this provision than under civil proceedings.

Secondly, the stringent provisions of this act check upon the enforcement of the decree passed by the court. If a person is asked by the court to pay maintenance under this section, fails without a valid reason as deemed by the court, to execute the payment, the court may take specific actions in order to realize the amount for as levying fines. If it is found that the amount is still unpaid, the husband may be sentenced, and a warrant of arrest will be obtained, such term may be extended for a month or until the payment.³⁰

The payment of maintenance by the husband to the wife after divorce under this provision is, however, subjected to some conditions. First, that the husband must

²¹ *Supra* note 17.

²² *B. Iswarayya v. S. Iswarayya*, AIR 1931 PC 234.

²³ The Code of Criminal Procedure, 1874, §125.

²⁴ *Supra* note 14.

²⁵ 'Conclusion and Remedial Suggestions as to Desirable Changes in Maintenance Law', available at https://shodhganga.inflibnet.ac.in/bitstream/10603/132500/14/14_conclusion%20and%20suggestion.pdf (Last visited on February 20, 2020).

²⁶ *Supra* note 22.

²⁷ *Inderjit Kaur vs. Union of India*, (1990) 1 SCC 344.

²⁸ *Id.*

²⁹ *Id.*

³⁰ B. Sivaramayya, *Matrimonial Property Law in India* 45.

have sufficient means to maintain, he, therefore, must not be kept in a position to pay maintenance if he is unable to maintain himself in the first place. Secondly, the maintenance will only be provided to the wife if she is indeed unable to maintain herself. Therefore, if a wife is somewhat educated and is in a position to get employment, however, does not take any steps to avail it further, the amount which can be claimed as maintenance will be reduced³¹. Thirdly, if the wife is living in adultery, Section 125(4) of Cr.P.C³² prohibits the wife from claiming for maintenance if she is living in adultery. This provision is, yet, used by *unscrupulous husbands* to stall the enforcement and the payment of maintenance or to humiliate the wife. The law commission though suggested removing this subsection which deprives the wife to claim for maintenance if living in adultery as to avoid these measures taken by their husbands.

b. Property Rights

i. Settlement of Property rights of the adulterous wife

Section 39 of the Indian Divorce Act, 1869³³ stimulates that the court, if deems fit, may settle the property of the adulterous Christian wife in part or wholly for the benefit of the husband and children. The Seventy-Seventh Report on the Indian Divorce (Amendment) Bill, 2000 in the Rajya Sabha mentions various reforms that were sought by many stake-holders, mentions healthy suggestions by The Joint Women's Programme, for the deletion of this section as it may be wrongly used by husbands to humiliate the wife.³⁴

ii. Right to claim property post-divorce

A Christian man can legitimately wed a second time just upon the demise of the principal spouse or after lawfully separating from her. On the off chance that he has a subsequent spouse while his first wife is as yet living or is not separated, the

³¹Abdulmunaf v. Salima,(1979) Cri. L.J. 172 (Kar HC).

³²*Supra* note 22.

³³ The Indian Divorce Act, 1869, §39.

³⁴DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON HOME AFFAIRS, Rajya Sabha, *Report on INDIAN DIVORCE (AMENDMENT) BILL, 2000*, SEVENTY SEVENTH REPORT ¶8.8(JULY 2001).

subsequent wife or children borne of her will have no privilege on the man's property. The first spouse, including any children, will be the ones to have full rights over the property.

It is also to be noted that even after legally divorcing the wife, the wife has equal rights over the husband's property as that of the second wife he might have and their children.³⁵

c. Custody of Children

Concerning the custody of children, the Christian law does not have any provisions. The same is governed by the Indian Divorce Act, 1869³⁶ and the Guardians and Wards Act, 1890³⁷. The child's economic needs are also taken into due consideration by the court. The court will first determine as to who among both the parents will give more financial support to the child and for his/her education and upbringing. Therefore, in most cases, the custody of the child is conferred upon the father unless the court finds him unfit or the child at an inconvenient age for the father, i.e. less than five.

It is to be noted that the court in *Rossy Jacob v. Jacob A. Chakramakkal*³⁸ observed that the custody of a minor ward is always to be considered as temporary orders which were made in the existing situations. Therefore, the court has the power to amend their rulings and orders later if it deems fit. The Personal law (amendment) bill was passed in 2010 with certain amendments in the Guardian and Wards Act, 1890³⁹ section 19(b) which included mother's right as well in regards to child's custody same as that of the father. Later, the 133rd Law Commission Report⁴⁰ titled "Removal of discrimination against women in matters relating to guardianship and custody of minor children and elaboration of the welfare principles"⁴¹ gave an elaborated idea and arguments as to how the mother's rights concerning the child's custody should be equal viz-a-vis the father.

³⁵'All You Need To Know About Property Rights Of Christians In India', available at: <https://www.proptiger.com/guide/post/all-you-need-to-know-about-property-rights-of-christians-in-india> (Last visited on February 25, 2020).

³⁶*Supra* note 3.

³⁷The Guardians and Wards Act, 1890.

³⁸*Rossy Jacob v. Jacob A. Chakramakkal*, (1973) AIR 2090.

³⁹*Supra* note 36.

⁴⁰ Law Commission of India, *Removal of discrimination against women in matters relating to guardianship and custody of minor children and elaboration of the welfare principles*, Report No.133rd, (August 1989) available at <http://lawcommissionofindia.nic.in/101-169/Report133.pdf>. (Last visited 24 February, 2020).

⁴¹*Id.*

The child by nature is provided with the affection and love from the mother without her making any efforts. A child, the time he/she is conceived, develops a physical bond with the mother. After birth, the mother is the one who feeds and comforts the child. A woman is usually better equipped with emotions and patience to understand the child than the father. Furthermore, the father is usually the breadwinner of the family and is engrossed with his employment commitments, and therefore does not have the time to develop an emotional understanding with the child. Emotional support is essential for the child to develop a balanced and well-oriented personality. Therefore, the relationship between the mother and the child must not be hampered.

In most cases, the mother is denied the custody of the child on economic and financial grounds. Though in most of the households, the mother plays a role of the housewife and could not support the child financially better than the father, it must not be considered as a paramount reason to deny custody to the mother. Moreover, the court can always ask the father to provide maintenance for the child and his financial needs.

The disparity between the rights of Christian wives and Hindu wives

1. Maintenance:

A few disparities between the rights of a Christian wife and rights of a Hindu wife concerning maintenance are subject to the personal laws they are governed by. Firstly, the power of the court to grant maintenance to a Christian wife under s. 36 of the Indian Divorce Act, 1869⁴² is not subjected to a condition that the wife is not able to maintain herself, however, under s.24 of the Hindu Marriage Act,⁴³ such a condition is essential for the court to pass an order of maintenance.

Secondly, a Christian wife can only claim 1/5th of the husband's net income as maintenance, however, so such ceiling is observed for a Hindu wife claiming for maintenance.

2. Possibility of a Uniform civil code:

Christians living in India have come out with various arguments in regards to differential treatment concerning the personal laws in India. A part of the Christian community believes

⁴²Supra note 16.

⁴³ The Hindu Marriage Act, 1955, §24.

that Section 10 of the Indian Divorce Act⁴⁴ is discriminatory against women since much is expected by way of proof from them as against men. Most of the Indian Christians support the introduction of a uniform civil code though with some reservations. For example, the Catholics prefer annulment of marriage over the divorce. On the point of adoption, the Christians want full adoption to be legalized. Now there is a prohibition in Christian law; they cannot adapt, and hence Christians are sent abroad for adoption. All of them are of the uniform view that all aspects of Christian personal law are negotiable. On the point of succession, they believe that through the Indian Succession Act⁴⁵ is entirely satisfactory, in case of intestacy, the customary Christian laws that are discriminatory must go. According to them, the widow must get full rights in a husband's property to be divided between the children, as and when she likes. In the John Vallamattom and Anr vs Union of India⁴⁶ case 2003, the Supreme Court declared Section 118 of the Indian Succession Act⁴⁷ to be void as it found the provision to be discriminatory and violative of articles 14⁴⁸, 15⁴⁹, 25⁵⁰ and 26⁵¹ of the constitution⁵². The section stated that "No man having a nephew or niece or any nearer relative shall have the power to bequeath any property to religious or charitable uses, except by a Will executed not less than twelve months before his death, and deposited within six months from its execution in someplace provided by law for the safe custody of the will of living persons".⁵³ The Christians found this to be an infringement upon their religious right to practise charities to attain spiritual salvation.

Conclusion:

Post-divorce the rights of a Cristian woman to claim maintenance, inherit the property rights of the husband and the rights related to custody of children are well enriched in the Indian Divorce Act, 1869⁵⁴and other various statues. Most of the women in this country are not very well aware of their rights, and other provisions which aim to protect them from the harsh social and economic pressures. Where the husband is the breadwinner in most of the households, the wives take an active role to

⁴⁴*Supra* note 12.

⁴⁵Indian Succession Act, 1925.

⁴⁶John Vallamattom and Anr vs Union of India, 2003 (52) ALR 556.

⁴⁷Indian Succession Act, 1925 §118.

⁴⁸ The Constitution of India, 1950, Art.14.

⁴⁹ The Constitution of India, 1950, Art.15.

⁵⁰ The Constitution of India, 1950, Art.25.

⁵¹ The Constitution of India, 1950, Art.26.

⁵² The Constitution of India, 1950.

⁵³'Not all NGOs can accept donations of land or house; check before you donate', available at <https://www.livemint.com/Money/7JEd7111GvOYO37m0xGijM/Not-all-NGOs-can-accept-donations-of-land-or-house-check-be.html> (Last visited February 26, 2020).

⁵⁴*Supra* note 3.

support the family. They, therefore, lose out on their employment opportunities—now considering the example of a Christian household which includes a housewife, a working husband and their two children. The wife is not very well qualified and stay at home, taking care of her family. The husband is discovered to be living in an adulterous relationship, and the wife chooses to file a divorce. Without any fault of her own, she will lose out on the money her husband uses to bring in from his job. The wife could have worked all this long to establish herself and earn a necessary amount of money had she chose not to take care of her family. This usually puts the wives in an unfair situation, and therefore, it was essential to bring in maintenance and other rights which will protect the wife.

Being such a culturally diverse country with the constitution giving most rights to be governed by their laws, it often becomes discriminatory, as example stated above relating to maintenance for Hindu wives in comparison to the maintenance awarded to Christians wives post-divorce. Therefore, it is essential to understand the concept of a Uniform Civil Code and its immediate need for this country. A Uniform code will end the discriminatory practices many wives face because of their laws and will put all the wives and their claims under one statue, making it impartial and comfortable for the judiciary to pass orders.