

REFLECTION PAPER

DISSOLUTION OF MARRIAGE: AN ISSUE NEEDING TREATMENT IN CHRISTIAN MARRIAGE LAWS PETER JACOB¹

To ensure that legal equality, on whatsoever basis, translates into a social equality; the societies must ensure that such legislations accompany a social consciousness on the issue.

This reflection paper seeks to address the controversy over the proposed amendments (draft laws) regarding the Christian marriage laws. The readers are encouraged send their feedback on

<https://www.facebook.com/awam.pakistan.7/> | E-mail: awampk@yahoo.com

Background

Long before the National Commission on Status of Women established by the government of Pakistan prepared its draft for amendments in the Christian Marriage (1872) and Divorce (1869) Acts in 2011,² a debate and a demand for introducing amendments was alive in this respect. In the last few decades particularly, the Christian community had started debating from different viewpoints.

In 1993, the late Bishops; John Joseph and Patras Yousaf organized a seminar on sanctity of Christian marriage – anchoring the issue of forced conversion.³ This seminar held at The Pastoral Institute in Multan also discussed the inconsistencies of the Christian matrimonial laws in the present context, particularly the overriding effect of Muslim personal laws.

Also in the late 90s, Mr. Naeem Shakir, a lawyer along with Bishop Samuel Robert Azaraih Moderator Church of Pakistan organized a series of consultations involving legal experts and church leaders. The consultations entailed writing a recast of the said laws by Mr. Shakir under the aegis of Idara-e-Aman-o-Insaf.⁴

Human Rights Monitor, the annual report published by National Commission for Justice and Peace (NCJP) established by the Pakistan Catholic Bishops' Conference consistently recorded the issues in marriage,⁵ among others, and demanded amendments to these laws to bring them to comply with the standards of universal human rights between 1997 and 2013.⁶

¹ The author is a human rights expert having a standing of 28 years of working in Pakistan and the director of Centre for Social Justice; www.csjpak.org.

² The input was invited from Mr. Naeem Shakir, Mr. Justice (R) Kailash Nath Kohli, Justice Majida Rizvi and the author (in writing).

³ Coupled with second marriage without dissolving the first.

⁴ Committee for Justice and Peace, (established in 1974 having its principal office in Karachi was forced to shut after the assassination of six members of its staff and a member of the board in 2002, by the terrorists).

⁵ Section 10, of (Christian) Divorce Act 1869, manifested stark inequality between men and women regarding grounds for dissolution of marriage and because of the stringency of the law spouse were forced to use unfair allegations when filing divorce suits.

⁶ <http://archive.paxchristi.net/MISC/2014-0252-en-ap-RV.pdf>



NCJP, together with other civil society organizations (CSOs), also highlighted the issues in the CSO's shadow reports presented to the UN CEDAW Committee in 2007⁷ and 2012⁸. On which, the Committee called on the government of Pakistan: "To adopt the Hindu Marriage Bill, the Christian Marriage (Amendment) Bill and the Christian Divorce Amendment Bill;"⁹

Hence, the government of Pakistan is obliged to consider new legislation on the Christian Marriage laws, before the next cycle of CEDAW particularly but for other international reviews as well under different bodies of the UN and the EU under GSP+.

In this context, Federal Minister for Human Rights Senator Kamran Michael held a meeting with religious leaders of the Christian community in August 2016, inviting their comments on the bills. The Church leaders have initiated a process of consultation in this respect.

Some Christian individuals, including parliamentarians have expressed their reservations particularly on the Divorce amendment bills basically which they contended would clash with the Christian concept of marriage.

Religious understanding of Christian marriage:

It is a widely held interpretation of the scriptural text that marriage is a sacred union.¹⁰ Major Christian denominations define marriage as a sacrament¹¹ or a religious / spiritual event of receiving God's grace. Several verses, largely in the New Testament, are found emphasizing the permanence or indissolubility of marriage bond,¹² hence for ages, the Christian marriage has been defined in this perspective. Although there have been occasional adjustments of the principle and different interpretations were applied to suit various contexts and situations in order to establish justice in marriage and uphold primacy of family and individual rights.

The foremost divergence is called "Pauline privilege", this concession was applied when St. Paul allowed the new converts to revoke their marriages solemnized before becoming Christians. Hence the instance added the probability of cancellation of a marriage in certain conditions. The concept of holding certain marriages null and void and legal separation of spouses; were borrowed from the civil law, i.e. Roman law and the Common law evolved under British traditions. These concepts are today part of several ecclesial laws, importantly the Catholic Canon law which has been in force for centuries.¹³

Apart from accepting influences from civil law,¹⁴ the Christian matrimonial concept made a valuable contribution to evolving the principles of rights in marriage, particularly women's rights and treatment

⁷ Discrimination lingers on, Recommendation (a) p. 60.

http://www.ncsw.gov.pk/prod_images/pub/CEDAW%20SHADOW%20REPORT%202007.pdf

⁸ A case of double jeopardy, P. 93.

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PAK/INT_CEDAW_NGO_PAK_13269_E.pdf

⁹ CEDAW/C/PAK/CO/4, Para 38, 27 March 2013.

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPAK%2fCO%2f4&Lang=en

¹⁰ Proverbial, matches are made in heaven, celebrated on earth.

¹¹ A definition according to Encyclopedia, "A sacred or spiritual power is believed to be transmitted through material elements viewed as channels of divine grace." <https://www.britannica.com/topic/sacrament> (Seven: Baptism, Confirmation, Eucharist (holy communion), Penance (confession of sins), Ordination (Priesthood), Marriage, Anointing of the sick or Last unction.

¹² Matthew 19:8,9; Mark 10:5-12; Luke 16:18; Malachi 2:14-16.

¹³ Pope Gregory IX promulgated the first official collection of canons, called the *Decretalia Gregorii Noni* or *Liber Extra* in 1234 A.D.

¹⁴ Including the Greek concept of natural law, and Roman civil law Canon 331, 1983 Code of Canon Law.

of women which was the original idea.¹⁵ One can argue that the permanence element, particularly regarding divorce, did not fully reconcile with the 20th century developments in standards of civil union and equal rights for women. Still some churches appointed women as Bishops are examples where reinterpretation of Gospel values is increasingly applied in the current context.

Pope Francis also invited the attention of the Cardinal and Bishops of Catholic church particularly, on compassionate response to people who remarry, etc. At the conclusion of the Extra ordinary Synod of the Bishops on family in October 2015, the Pontiff said, "The Church's first duty is not to hand down condemnations or anathemas, but to proclaim God's mercy, to call to conversion, and to lead all men and women to salvation in the Lord (cf. *Jn 12:44-50*)."

Challenges to family life as Pakistani Christians in the current context:

The Christians, as distinct faith group and members of several big and small denominations, have been impacted by the overall social, political, economic and cultural realities in Pakistan besides the specific circumstances that they face as a minority community.

The family life of different strata is impacted by growing economic pressures; migration, mostly to bigger cities but external migration as well; changing norms and customs related to marriage; moreover the effects of social and religious discrimination on individual and collective lives, including psychological pressures or disorders.

There is a dearth of empirical data to substantiate all vibes of effects on individual and community lives, nevertheless the following challenges faced by Christian population are difficult to ignore:

- a) Poverty and social injustice are forcing people to migrate that include educated and skilled middle class. The migrating brick kiln workers, agricultural labourers to cities. The migration merely and often turns them to urban poor from rural poor that accompanied a social-cultural uprooting that further exacerbates problems such as social alienation, addiction to alcohol and drugs, etc.
- b) A visit to old and new Christian settlements reveals the official neglect towards civic facilities in these settlements hence vulnerability to disease, unemployment, low literacy and physical insecurity is impacting the family life in a variety of ways. The literacy rate among Christian was 11 % lower than national average in last census.¹⁶ Unemployment is also common and probably much higher than national average among Christian men and women. This low quality of life can only be, explained, understood and addressed using the prism of fundamental human rights.
- c) As members of minority working class, largely, and because women are sometimes better educated than male members; the status of women is relatively elevated than average women in Pakistan. Particularly as women find liberty to work as means of better place in decision making at home. Nevertheless, the traditional concept of male superiority continue to subjugate Christian women, deprives women of role that they can still play in emancipating their families from ordinarily very complex and extremely hard circumstances.

¹⁵ Christ's reinterpretation of Moses' law that allowed soft conditions for divorcing women "was only for the hardness of their hearts", Mark 10:9.

¹⁶ According to 1998 census, when the literacy rate in Pakistan was nearly 45 %, the literacy rate among Christians was 34 %, Human Rights Monitor 2002-2003, p. 44. Life on The Margins, (2012) p. 40, NCJP.

- d) Despite the theological interpretation, Christian do exercise dissolution of marriages, at times through conversion to Islam is on the rise among the Christian community anyhow because their personal law is inapt.¹⁷

Human rights norms and concept of Christian Marriage:

The concept of permanence in Christian marriage has been a subject of debate since ages and changes have been adopted in the civil laws across the global in recognition of equal rights of men and women in marriage. The International law under the UN CEDAW particularly is conclusive about gender equality including the divorce.¹⁸

Divorce is not a fundamental or substantive right; it is a procedural and a contractual right. However equal rights in marriage, protection from violence, freedom from exploitation and coercion, are fundamental in the framework of protection of human rights.

Christian minority in Pakistan has waged a heroic struggle in past decades for equal rights as citizens against discriminatory laws and practices. This struggle along the human rights framework has brought them support within the country and internationally. An impression that the community or a section of it is cherry picking between rights or does not subscribe to gender equality, will affect their image and their struggle for equal rights.

Conclusions and recommendations

The issue at hand though directly concerns the amendment to marriage laws it is also related to other areas of rights of Pakistani Christians as individuals and as a community. Hence the Christian community in particular, the federal and provincial governments and the rights groups should facilitate more intercommunity dialogue to build a greater consensus.

The amendment legislation should accompany a wide support through deliberations. Any section of community should not try to impose their view under whatever pretext but all should participate with recommendations to improve.

Therefore the Christian community, its sympathizers in civil society and the government need to address a couple of risks in the process. First, the legislation process should not ignore that religion has been long abused in Pakistan to dictate terms to the society which was detrimental to both. Hence the law should benefit from the principles of justice in religion, and not rely on the literally interpretations, moreover, without ignoring the realities of the social, economic and political context. Secondly, the amendment in this regard should not be rushed through before a level of awareness about the amendments amongst the Christian community is achieved. Thirdly, the point of view of people who have suffered or are suffering due to these laws need to be included. Finally, the Christian women of different experience and backgrounds should get an opportunity to have their voices heard which the laws made around 145 years ago denied them. A frank, sincere and informed dialogue can indeed help reach better laws governing the Christian marriages.

¹⁷ Author's personal assessment.

¹⁸ Article 5. Obliging states to end superiority of male or female, further Article 16 , 1 &(c), "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:"The same rights and responsibilities during marriage and at its dissolution", Convention on the Elimination of All forms of Discrimination Against Women (passed 1979).

