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Register Marriages Under The Special Marriage Act

INDIAN law concerning matrimonial relief in respect of Christian marriages is contained in the Indian Divorce Act of 1869—a .statute more than a century old and hopelessly outdated. Based on English matrimonial law of the time, the Divorce Act has remained unchanged for nearly 120 years, while English matrimonial law has undergone many changes.

The shortcomings of the Divorce Act were recently dramatically high-lighted in a tragic case which reached the supreme court, Ms Jorden Diengdeh versus S. S. Chopra (AIR 1985 SC 935). The wife, a Presbyterian Christian, and the husband, a Sikh, were married in 1975 under the Christian Marriage Act, 1872. The marriage proved unsuccessful and in 1980 the wife petitioned for a declaration of nullity or, alternatively, a decree of judicial separation. The prayer for a declaration of nullity was refused, but a decree of judicial separation was granted on the ground of cruelty. This decision, upheld by the divisional bench of the high court, means that the parties are bound to «ach other in wedlock, although under no obligation to live together. The marriage has clearly ceased to exist except in name; yet the spouses remain tied to each other, neither one free to remarry and to make a new life.

Why, it might be asked, did not the wife petition for divorce ? To answer this question it is necessary to consider the terms of the Indian Divorce Act.

The Indian Divorce Act of 1869 was framed at a time when marriage was regarded as a union for life, dissolvable judicially only in the most extreme circumstances—and the circumstances had to be more extreme if the wife were the petitioner than if the husband were the petitioner.

Adultery is virtually the sole ground which the 1869 Act recognises for divorce : a single act of adultery on the part of the wife entitles the husband to divorce, but the wife has to prove some aggravated form of adultery, like incestuous adultery, bigamy with adultery, adultery coupled with cruelty, or adultery coupled with desertion for at least two years.

In the course of its decision, the supreme court reviewed the grounds for divorce available to Christians under the Indian Divorce Act 1869, the Parsi Marriage and Divorce Act 1936, the Dissolution of Muslim Marriages Act 1939, the Special Marriage Act 1954, and the Hindu Marriage Act 1955.

In its discussion of the divorce

provisions of the various statutes it considered, the supreme court failed to stress the very important provision contained in the Special Marriage Act 1954 for registration of marriages celebrated under one or other of the religious laws. Indeed, the supreme court stated that the provisions of the Special Marriage Act applied "only to marriages; solemnised under that Act." It did not clarify that the provisions of the Special Marriage Act apply also to marriages validly solemnised under any other law and subsequently registered under the Special Marriage Act.

Any marriage already solemnised under any other law—provided that the parties are adult and sane, that neither has another spouse living, and that the parties are not related within the specified prohibited degrees, may be registered under the Special Marriage Act. After such registration, the matrimonial relief provisions of the Special Marriage Act will apply to the marriage, ousting the provisions of the religious law under which the marriage was originally celebrated.

This means, for instance, that even though the parties may botb be Muslims and their marriage originally solemnised

* Both parties must be at least 21 years of age at the time the marriage is registered. Their age at the time of the marriage is immaterial, provided that the marriage was valid under the law according to which it was solemnised. The fact that a marriage is solemnised in violation of the Child Marriage Restraint Act does not affect itsvalidity.

according to Muslim rites, after registration of the marriage the marriage is monogamous (any second marriage by the husband would be void) and is capable of dissolution only by a decree of the court (a *talaq* pronounced by the husband would have no legal effect).

One major problem is that marriages between first cousins, common among Muslims and valid in Muslim law, cannot be registered under the Special Marriage Act because they contravene the specified prohibited degrees. A special exception is, however, made for marriages solemnised before 1956 when the Special Marriage Act came into force.

I recently had occasion to advise an Indian Muslim couple who had three daughters and no son. They wanted their property to be inherited by their daughters but, under the Muslim law, a considerable part of the property would go to a distant male relative. They brought up the subject of the Special Marriage Act and said that unfortunately it was enacted a couple of years after they had married and that if it had been available at the time, they would have married under it but it was now "too late." They were quite surprised when I said that it was not too late, even now, even though they had been married for more than 30 years. When I explained that they could now register their marriage under the Special Marriage Act and take advantage of its provisions, they were amazed and delighted to find such a simple solution to a problem that had been causing them considerable concern.

Or, if the spouses are Christians or had married under the Christian Marriage Act, the law of divorce applicable to the marriage would not be the Divorce Act of 1869, but the divorce provisions of the Special Marriage Act.

Many Christians or Muslims or Parsis may prefer a religious ceremony of marriage to a civil ceremony. However, it is perfectly possible and relatively simple to register a marriage solemnised according to such religious rites under the Special Marriage Act.

If the Christian marriage in the case before the supreme court had been so registered, divorce would have been obtainable on the ground that the parties had been living apart for at least one year and had mutually agreed that? the marriage should be dissolved; or on the ground that there had been no resumption of cohabitation between the spouses for a period of one year after the passing of a decree for judicial separation. Divorce would also have been obtainable on the ground of cruelty, a ground which under the Divorce Act only entitles a spouse to judicial separation and which was the very ground on which Ms Diengdeh had obtained her decree of judicial separation. At least one of these grounds would have offered a way out of the present impasse. Instead, since the Diengdeh Chopra marriage had not been registered under the Special Marriage Act, the archaic Divorce Act applies to the marriage.

It is probably too late for the unhappy Diengdeh Chopra couple to take advantage of the opportunity the Special Marriage Act affords for registration of marriage. In order to register a marriage, the spouses have to affirm not only that a ceremony of marriage has been performed between them but also that they "have been living together as husband and wife ever since." The present parties have clearly not been "living together as husband and wife," but have been separated for some time, eventually under a decree of judicial separation.

On the joyous occasion of the celebration of a marriage and during the happy years of married bliss, questions of divorce and matrimonial relief are far from the mind of a young bride or wife. By the time problems arise it may be too late, as it is apparently too late for the Diengdeh Chopra couple.

The relatives of the bride, her colleagues and friends, must remind her that the "it can't happen to me" philosophy has too often proved tragically wrong. Marry according to whatever rites one may prefer, but register that marriage under the Special Marriage Act !

It might also incidentally be noted that for reasons identical to those urged above for spouses marrying in India, Indians who marry abroad according to religious rites, regardless of whether their spouse is an Indian or a foreigner, should register their marriage under the Foreign Marriage Act 1969. Such registration will ensure that the matrimonial relief provisions of the Special Marriage Act apply to the foreign marriage.