**More couples take the road less taken**

Jyotsna Singh, Mar 31, 2012 :

UNION CABINET’S PROPOSAL TO AMEND DIVORCE LAWS DRAWS MIXED REACTION

**In an important decision aimed at changing the landscape for divorce seekers in the country, the Union cabinet recently approved a draft amendment to divorce laws, which would make it easier to for a couple to part ways.**

The cabinet’s proposal seems to be responding to the needs of couples living in urban areas, such as Delhi.

“As women are getting more aware about their rights and are getting economically sound, divorce cases have increased,” said a 31-year-old professional who did not want to be named.

“Awareness levels have increased, especially since the passing of the Domestic Violence Act. I am seeing many of my friends taking the bold step. In fact, a young cousin of mine is determined to have a decent career and economic independence so that she can call off a relationship if it is exploitative in nature,” said the professional. The proposed amendment to the Hindu Marriage Act, 1955 and Special Marriage Act, 1954 needs to be passed by both Houses of Parliament before it becomes a new law. But it has already triggered a debate.

It has four implications. Firstly, it has introduced “irretrievable breakdown of marriage” as a new ground for seeking divorce. Either of the spouses can plead on this ground. But a woman can oppose the husband’s plea while the husband cannot.

Secondly, courts can decide to waive off the minimum six-month-long cooling off period before a couple can get the decree of divorce after filing for it. This is applicable in divorce with mutual consent.

Thirdly, a woman can stake claim to property bought by her husband during the period of marriage.

Fourthly, it gives adopted children of divorcing couples the same rights as biological children.

In 2006, the Supreme Court came up with a judgement in which the waiting period was waived and divorce was granted within weeks because the court deemed it fit. But a later judgement by Justice Markandeya Katzu changed the scenario.

“The judgement evoked values of Indian culture and pointed out the differences with Western notions. The judgement made mediation binding on the courts,” said V K Singh, practising lawyer and member of Delhi Bar Association.

It became the court’s duty to attempt reconciliation in a marriage. The provision already existed in the law, but Justice Katzu’s ruling led to its vigorous implementation.

**Irretrievable breakdown**
Certain sections of people in Delhi have welcomed the introduction of the new ground for divorce. But they have some concerns.

“People have been asking for change in divorce laws on the ground of irretrievable breakdown of marriage for quite some time. Now it has come. But it has been left to the courts to decide,” said Sudha Vasan, associate professor of Sociology in Delhi University.

“In an ideal society, this would have been a good idea. But in India the court system and the police are themselves patriarchal,” said Vasan.

Legal experts believe the amendment will open the doors to provide fast and easy relief in cases where no other option exists. This will also lower the burden on courts which have a long list of pending cases.

“There are both positives and negatives about the amendment. The bad part is that society will be adversely affected as demanding divorce will become easier, leading to breaking up of families,” said Vasan.

“The positive aspect is that in cases where both husband and wife cannot live together and waiting will only make matters worse, the legal process will become less cumbersome. The waiting period confusion will be a thing of the past,” said Vasan.

Geeta Dhingra, a family lawyer at Delhi High Court, said irretrievable breakdown of marriage as a ground for divorce existed in the US, Australia and the UK.

“I have dealt with many cases in which couples get divorce in these countries on the basis of irretrievable breakdown, but after they return to India, our courts don’t accept it,” she said.

**Women’s share in property**

The announcement that a woman must get a share of the husband’s property has sent shock waves.

“I got several calls regarding this issue. I would like to make it clear that the amendment related to share of property applies only to assets bought after entering into marriage, not before that,” said advocate Singh.

On social networking sites, messages were posted opposing the amendment, calling it “irrationally supporting women.” One message read: “This is gender bias against men. In Delhi, all women are independent, own cars and shop for themselves. The family’s money is spent on their needs. Will courts allow husbands to have share in that too?”

Responding to such arguments, Vasan said, “Reality is such that property in the name of women is uncommon. If you look at data from well-known sources, productive assets are still in men’s name. Immovable property is bought in women’s name only when there are tax benefits. So the amendment is welcome.”

She said the law is universal by nature. “It is not meant to be case specific. We can’t have different laws for different regions,” she added.

**Increasing incidences**

In 2005, nearly 40 per cent of cases in family courts used to be divorce petitions, according to Dhingra.

“Now, the proportion has risen up to 70 per cent. Of these, not more than 20 per cent are contested cases and most are mutual consent divorces. Most divorce seekers are young couples in the age group of 25 to 30,” added Dhingra.

Changing social reality has acted as a pressure to change the law, she said.

“People do not want to wait and try to work out a marriage anymore. They look to their future as well. Couples I deal with no more want to get stuck on one issue alone in life and waste time,” she said.

**Issues still unresolved**

But all is still not well. Some complications remain a challenge for lawmakers. The issue of a spouse moving to another country for a long stay is problematic.

“In a number of cases, men go abroad, leaving the women behind. At most they take their wives for a trip. But the women permanently stay in India. When these women file cases, the husbands do not come to court when needed,” said Dhingra.

“Their parents appear before court and complain that they have been dragged into it for no reason. What is the law available to these women whose husbands are abroad?”
Another matter, Dhingra said, relates to extramarital relationships.

“When a marriage does not work out, the couple starts to stay separately. Then one of the spouses gets into a live-in relationship. In one case, the wife left for her parents’ home after her husband developed a tumour. His colleague took care of him during this most trying time, and he started staying with her.

The wife filed a case against them.”

“Now, socially I agree the husband was not at fault. But legally what do we do in such a situation? It is difficult to find an answer.”
 **Steps to be followed**

\*Petition for divorce cannot be filed before lapse of at least one year since the wedding day

\* Spouses must stay separately for at least one year, and proof of this has to be produced

\* The husband or wife can then file a case and appear before court on a date given by it

\* In case of divorce by mutual consent, both must file a joint statement. This stage is called the ‘first motion’

\* After a six-month cooling-off period to allow for reconciliation, the couple must appear before court for the second motion

\* The new proposal allows a judge to waive the cooling-off period

\* The proposed amendment to the Hindu Marriage Act, 1955 and Special Marriage Act, 1954 needs to be passed by both Houses of Parliament

 **Grounds for divorce**

\* Adultery

\* Conversion to another religion

\* Unsound mind

\* Virulent and incurable form of leprosy

\* Venereal disease in a communicable form

\* Abandonment by one’s spouse for two or more years

\* Renouncement of the world and not having been heard of as being alive for seven years

\* Provisions for seeking divorce due to cruelty and desertion were introduced in 1974

\* Irretrievable breakdown of marriage will be added to these once Parliament passes the proposed amendment

\* Some complications remain a challenge for lawmakers. The issue of a spouse moving to another country for a long stay is problematic

\* Extramarital relationships are tricky to handle