



**PARLIAMENT OF INDIA**  
**RAJYA SABHA**

**45**

**DEPARTMENT - RELATED PARLIAMENTARY  
STANDING  
COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES,  
LAW AND JUSTICE**

**FORTY FIFTH REPORT**

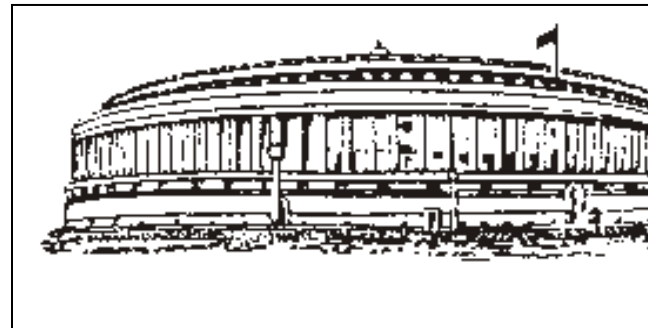
**ON**

**THE MARRIAGE LAWS (AMENDMENT) BILL, 2010**

**(PRESENTED TO THE RAJYA SABHA ON 04.03.2011)  
(LAID ON THE TABLE OF THE LOK SABHA ON 04.03.2011)**

**RAJYA SABHA SECRETARIAT  
NEW DELHI**

**MARCH, 2011/PHALGUNA, 1932 (SAKA)**



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## COMPOSITION OF THE COMMITTEE

1. Shrimati Jayanthi Natarajan — *Chairperson*

### **RAJYA SABHA**

2. Shri Shantaram Laxman Naik
3. Dr. Abhishek Manu Singhvi
4. Shri Balavant *alias* Bal Apte
5. Shri Ram Jethmalani
6. Shri Parimal Nathwani
7. Shri Amar Singh
8. Shri Ram Vilas Paswan
9. Shri O. T. Lepcha
- \*10. Vacant

### **LOK SABHA**

11. Shri N.S.V. Chitthan
12. Shrimati Deepa Dasmunsi
13. Shrimati Jyoti Dhurve
14. Shri D.B. Chandre Gowda
15. Dr. Monazir Hassan
16. Shri Arjun Munda
17. Shri Shailendra Kumar
18. Shrimati Chandresh Kumari
19. Shri Bhajan Lal
20. Dr. Kirodi Lal Meena
21. Ms. Meenakshi Natarajan
22. Shri Devji M. Patel
23. Shri Harin Pathak
24. Shri Lalu Prasad
25. Shri S. Semmalai
26. Shri Vijay Bahadur Singh
27. Dr. Prabha Kishor Taviad
28. Shri Manish Tewari
29. Shri R. Thamaraiselvan
30. Adv. P.T. Thomas (Idukki)
31. Vacant

\*Vacancy caused due to death of Shri M. Rajasekara Murthy on the 5th December, 2010

**SECRETARIAT**

Shri Deepak Goyal, Joint Secretary

Shri K.P. Singh, Director

Shri K.N. Earendra Kumar, Joint Director

Shrimati Niangkhanem Guite, Assistant Director

Shrimati Catherine John L., Committee Officer

## INTRODUCTION

I, the Chairperson of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Forty Fifth Report on The Marriage Laws (Amendment) Bill, 2010. The Bill seeks to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 to provide for irretrievable breakdown of Marriage as a new ground for grant of a decree of divorce.

2. In pursuance of the rules relating to the Department Related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha referred the Bill, as introduced in the Rajya Sabha on the 4th August, 2010 and pending therein, to this Committee on the 23rd August, 2010 for examination and report.

3. Keeping in view the importance of the Bill, the Committee decided to issue a press communique to solicit views/suggestions from desirous individuals/organisations on the provisions of the Bill. Accordingly, a press communique was issued in national and local newspapers and dailies, in response to which memoranda containing suggestions were received, from various organizations / individuals / experts, by the Committee.

4. The Committee heard the oral evidence of the Secretaries of the Legislative Department, Ministry of Law and Justice and Ministry of Women and Child Development on the provisions of the Bill in its meeting held on 17th September, 2010 and 28th September, 2010 respectively. The Committee also heard the views/suggestions of various women organizations/individuals/experts on the provisions of the Bill on 11th and 16th November, 2010.

5. While considering the Bill, the Committee took note of the following documents/information placed before it : —

- (i) Background note on the Bill submitted by the Ministry of Law and Justice (Legislative Department);
- (ii) Views/suggestions contained in the memoranda received from various organizations/institutions/individuals/experts on the provisions of the Bill and the comments of the Legislative Department thereon;
- (iii) Views expressed during the oral evidence tendered before the Committee by the stakeholders such as representatives of NGOs/women's organizations/individuals; and
- (iv) Other research material/documents related to the Bill.

7. The Committee adopted the Report in its meeting held on the 2nd February, 2011.

8. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

NEW DELHI;  
2<sup>nd</sup> February, 2011

**JAYANTHI NATARAJAN**  
*Chairperson,*  
*Committee on Personnel,*  
*Public Grievances, Law and Justice*

## CHAPTER-I

The Marriage Laws (Amendment) Bill, 2010 was introduced\* in the Rajya Sabha on the 4th August, 2010. It was referred@ by the Hon'ble Chairman, Rajya Sabha to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 23rd August, 2010 for examination and report.

2. The Bill (Annexure-A) seeks to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 to provide for irretrievable breakdown of Marriage as a new ground for grant of a decree of divorce; and also to provide certain safeguards to protect the interests of wife and children and do away with the waiting period of six months for moving a joint petition for grant of divorce by mutual consent.

3. The Statement of Objects and Reasons, appended to the Bill *inter-alia* reads as under:-

“The Hindu Marriage Act, 1955 was enacted on the 18th May, 1955 to amend and codify the law relating to marriage among Hindus. Similarly, the Special Marriage Act, 1954 was enacted on the 9th October, 1954 to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce. The provisions of the said Acts have proved to be inadequate to deal with the issue where there has been irretrievable breakdown of marriage and therefore a need has been felt for certain amendments therein.”

“Having regard to the recommendations of the Law Commission of India and the observations of the Hon'ble Supreme Court as aforesaid and the demand from various quarters, it is proposed to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 so as to provide for irretrievable breakdown of marriage as a ground of divorce thereunder subject to certain safeguards to the wife and affected children.”

4. With this objective in view, the Bill proposes to make the following amendments:-

- (a) to insert section 13C in the Hindu Marriage Act, 1955 and section 28A in the Special Marriage Act, 1954 to provide for divorce on the ground of irretrievable breakdown of marriage.
- (b) to insert section 13 D in the Hindu Marriage Act, 1955 and section 28B in the Special Marriage Act, 1954 to provide for a right to wife to oppose the petition for divorce on account of irretrievable breakdown of marriage on the grounds of grave financial hardship.
- (c) to insert section 13E in the Hindu Marriage Act, 1955 and section 28C in the Special Marriage Act, 1954 to ensure provision of adequate maintenance to children born out of the marriage consistently with the financial capacity of such parties to the marriage before granting a decree of divorce on the ground of irretrievable breakdown of marriage; and

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\* Published in Gazette of India (Extraordinary) Part-II Section 2 dated the 4th August, 2010.

@ Rajya Sabha Parliamentary Bulletin Part-II (No.47173) dated the 4th August, 2010.



- (d) to amend sub-section (2) of section 13B of the Hindu Marriage Act, 1955 and sub-section (2) of section 28 of the Special Marriage Act, 1954 so as to do away with the waiting period of six months for moving a joint motion after filing a petition for grant of divorce on the ground of mutual consent.

5. The background note on the Bill submitted to the Committee by the Ministry of Law and Justice (Legislative Department) states that the history of the development of the Hindu Law has shown that it was never static and had changed from time to time so as to meet the challenges and the changing requirements of different times. The Special Marriage Act, 1954, being a civil law and applicable to all, has to necessarily keep pace with any reform in the field of matrimonial laws.

5.1 Initially, the grounds available for divorce under sub-section (1) of section 13 of the Hindu Marriage Act, 1955 were limited to adultery, conversion to another religion, incurably of unsound mind for a continuous period of not less than three years, suffering from virulent and incurable form of leprosy for a period of not less than three years, suffering from venereal disease in a communicable form for a period of not less than three years, renunciation of the world and not heard of as being alive for a period of seven years.

6. The Department further informs that in the year 1974, a need was felt that it would be reasonable and desirable to liberalize divorce provisions and on the basis of the Law Commission's recommendation, the Marriage Laws (Amendment) Act, 1976 was enacted to include "cruelty" and "desertion" as new grounds for grant of a decree of divorce under section 13 of the Hindu Marriage Act, 1955 and also to provide divorce by mutual consent by way of a new section 13B of the said Act.

6.1 The grounds for divorce presently available under both these enactments are mainly of three categories. The first category is based on the traditional theory of matrimonial fault. The second is based on the theory of frustration by reason of specified circumstances. The third is the theory of consent. There is, however, no ground in these Acts which expressly provides for divorce on the ground of irretrievable breakdown of marriage.

6.2 Subsequently, keeping in view various decisions of courts holding that it would be unreasonable and inhuman to compel parties to keep up the facade of marriage even though the rift between them is complete and there are no prospects of them ever living together as husband and wife etc., "the Law Commission of India in its 71st Report on The Hindu Marriage Act, 1955 - Irretrievable Break Down of Marriage as a Ground of Divorce", submitted on 7th April, 1978, has recommended insertion of a new section 13C for divorce on the ground of irretrievable breakdown of marriage. While the said report was being considered in consultation with the State Governments and Union territories, several decisions of the Supreme Court including *Miss Joden Diengdeh Vs. S.S. Chopra (reported in AIR 1985 SC 935)* and *Navin Kohli V/s. Neelu Kohli* (reported in AIR 2006 SC 1675), recommended insertion of irretrievable breakdown of Marriage as a ground for grant of divorce. Pursuant to the above referred decisions of the Supreme Court, the Law Commission of India took up study of the subject and after examining the extant legislation and various judgments of the Supreme Court and High Courts on the subject, has recommended in its 217th report on "Irretrievable Break Down of Marriage - another Ground for Divorce" submitted on 30th March, 2009, inclusion of Irretrievable Break Down of Marriage as a ground for grant of divorce.

6.3 The recommendations of the Law Commission of India have been considered and it is felt that the provisions of the aforesaid Acts have proved to be inadequate to deal with the issue where there has been irretrievable breakdown of marriage and therefore, amendments to the said Acts are necessary.

7. The Department asserts that accordingly, the Marriage Laws (Amendment) Bill 2010 has been prepared to provide irretrievable breakdown of marriage as a new ground for grant of a decree of divorce by inserting new section 13C. It is also proposed to insert new section 13D to provide for a right to wife to oppose the petition for irretrievable breakdown of marriage on the ground of hardship. With a view to protect the interests of children born out of marriage, it is also proposed to provide adequate safeguards by inserting a new section 13E for ensuring provision of adequate maintenance to children before a decree for divorce on the ground of irretrievable breakdown of marriage can be granted. Similar amendments are also proposed in the Special Marriage Act, 1954 by inserting new sections 28A, 28B and 28C. It is also proposed to amend sub-section (2) of section 13B of the Hindu Marriage Act, 1955 and sub-section (2) of section 28 of the Special Marriage Act, 1954, respectively, by doing away with the waiting period of six months for moving a joint motion after filing a petition under section 13B for grant of divorce on the ground of mutual consent.

8. The Committee heard the presentation of the Secretary, Legislative Department of the Ministry of Law and Justice on the Bill on the 17th September, 2010 and recorded the views of Secretary, Ministry of Women and Child Development during its meeting held on the 28th September, 2010 on the Bill.

9. In order to have a broader view on the Bill, the Committee decided to invite views/ suggestions from desirous individuals/ organizations. Accordingly, a press release was issued inviting views/suggestions from individuals/organizations. In response to the press release published in major English and Hindi dailies and newspapers on the 18th September, 2010 a number of representations were received.

10. The Committee examined the representations received on the Bill. Having analyzed these representations, some of them were identified to be considered as memoranda containing pertinent suggestions/comments on the various aspects of the Bill. Some significant issues raised in such memoranda have been summarized in the succeeding Chapter. Some select memoranda were also forwarded to the Ministry of Law and Justice (Legislative Department) for their comments. The list of these memoranda along with the gist of views and suggestions and corresponding comments of the Ministry of Law and Justice on such views/suggestions is placed at Annexure....

11. Given the far reaching legal and social implications of the Bill, the Committee decided to hear the views of all important stakeholders on the Bill so as to have a deep insight of the subject matter of the Bill. For this purpose, the Committee invited various non-official witnesses (individuals/organizations) to appear before the Committee for tendering oral evidence. The Committee heard the views of National Commission for Women and some NGOs namely MAJLIS, (Center for Women's Rights Discourse & Legal Initiative), Gender and Human Rights Society, Lawyers' Collective and Women's Rights Initiatives, Mothers and Sisters Initiatives, All India Democratic Women's Organization, Save Family Foundation, Children's Rights Initiative for Shared Parenting (CRISP) and Mr. S.R. Abrol, a concerned individual.

## CHAPTER II

The major points raised in the memoranda received from the individuals and organizations are summarized as follows:

- (1) It is important to introduce breakdown of a marriage as an independent ground of divorce in totality and not as part of it.
- (2) The legislature needs to understand that under the changed socio-economic conditions of the society, the women have come forward to accept the challenges and they have tried to become self-reliant. They no longer want to live at the mercy of their husbands.
- (3) If the proposed legislation is passed, there will be a total of 6 sections under which a Hindu woman can claim maintenance leading to unnecessary complications and duplication of law.
- (4) The proposed legislation is silent on the issue of child custody. In the best interest of children, a separation between husband and wife should also include provisions on mechanism to deal child custody matters. Child custody and visitation rights should also be decided before granting divorce, while deciding maintenance of the child under this Bill.
- (5) Wife has right to oppose petition on grounds of 'financial hardship'. It clearly ignores large number of cases where husbands have filed for maintenance under Hindu Marriage Act from wife.
- (6) The proposed legislation is silent on what will happen to the pending cases like Domestic Violence Act, 498A IPC, Child Custody, CrPC 125 and any other Civil and Criminal cases and has left scope for future litigations. It should ensure that all proposed litigation between the parties are settled before granting divorce.
- (7) Just to think that women only are weak and need protection and it is always the men who are harassing a wife shows complete disconnect from the ground realities.
- (8) The proposed provision that Courts can stay the case until appropriate arrangements are made will lead to legal extortion with the help of lawyers and vengeful women. This will force husbands to 'buy' divorce regardless of, who at fault, is. This proposed amendment will widely be misused.
- (9) The current concept of gender neutrality like that of Section 24 of the Hindu Marriage Act which takes into consideration that both the husband and the wife can face financial hardship has been totally ignored in the proposed amendment.
- (10) The term 'financial hardship' should be defined because otherwise this will lead to a subjective interpretation of this term and will ultimately turn into a tool for extortion and will be used to block a divorce till the unreasonable financial demands of the respondent are fulfilled.

- (11) Provisions for all the ornaments and other cash/ goods that the wife received for the marriage as gifts shall be returned to the husband in the event of divorce.
- (12) If property like flat, land etc. is purchased with husband's money, ownership of same should be granted to the husband. In case wife has contributed for same out of her earnings, joint ownership must be granted by the court, proportional to investment. Also the benefits under any insurance policy including health insurance, should be decided proportional to investment.
- (13) All court cases should be decided in less than 3 years. Cases filed by Senior citizens (60 years or more) should be given priority in all courts. Vacancies of judges should be filled up urgently and additional judges appointed to clear pending cases. Special courts should be set up to hear cases for divorce.
- (14) At least a minimum of 6 month's time is required for separation with a minimum of 3 sittings with both the parties. This time period is required to calm the initial force of decision of separation.
- (15) The compensation to the wife should be at least 70% of total income of husband or more. The total income should include all allowances, perks, incentives and monthly salary. The initial compensation should be made Rs. 50,000/- in rural areas and Rs. 1,00,000/- in Urban areas. The compensation should be stopped if she remarries or stays in relation with another person to restrict adultery.
- (16) The laws should be made in simple language to be understood by everybody.
- (17) Issues such as, whether it has been a long term or short term marriage, whether the wife is a wage earner and also a home maker or merely a home maker, and which of the spouses is desirous of obtaining a divorce and is keen to move on in life become key concerns in this discourse. Other factors such as age and class also play a part.
- (18) A discussion over women's right to matrimonial home and property should proceed alongside the discussion on irretrievable breakdown of marriage so that certain safeguards can be built into the proposed legislation to secure women's rights.
- (19) Unless women are treated as equals in a marriage and given the same financial and other security that men have on its breakdown, it would be discriminatory to further liberalize the grounds of divorce.
- (20) Equal rights to wife in the property acquired by the couple during the subsistence of the marriage and equal division of the marital property upon separation has to be legally provided.
- (21) It must be ensured that a provision is made that women with children have a house/ place of residence.
- (22) The laws relating to maintenance for women and children must be strengthened to ensure that women/children receive an adequate amount of maintenance sufficient enough for them to live in a lifestyle which is similar to the one they were used to in the marital

home. Special laws for disclosure of income of the Husbands and shifting of onus of proof in these cases will have to be considered. Ways and means to lessen the discretion of the judiciary in these matters must be thought of as women and children have invariably been awarded very low maintenance amounts by a large number of Courts.

- (23) The Government has to enact a law to enforce and recover maintenance amounts. Apart from this a fund will have to be created from which maintenance can be immediately given to the wife and children. In several countries separate enforcement agencies have been created to recover maintenance amounts. It is a duty of the State to see that women and children are not left to fend for themselves in these cases.
- (24) Entitlements from the state should be made essential for deserted/separated/divorced women and children in cases in which there is no property or cases in which no maintenance can be granted because of poverty and/or other reasons.
- (25) Sub section (2) of section 13B of Hindu Marriage Act, 1955 and the sub-section (2) of section 28 of the Special Marriage Act, 1954 needs to be removed since the waiting period of six months for moving a joint motion after filing a petition for grant of divorce on the ground of mutual consent serves no purpose but creates unnecessary bad blood and acrimony in the two families.
- (26) The role of NGOs may be incorporated in helping getting divorce in case of irretrievably broken down marriages. The NGOs after providing counseling to both the sides, may give their opinion in the courts.
- (27) The role of the advocates in the above said cases may be minimized as it is seen from experiences that they make all sorts of efforts to delay divorces.
- (28) It makes a very sad commentary on the administrators of a Welfare State, that the concerned wife should be required to oppose the divorce in spite of irretrievable grounds and prefer to continue to live in a miserable condition because there is none to help her to nullify the likely hardships (Mainly Financial). Though these days, there may be some wives who might be misusing the laws to their advantage, by and large it is the husbands who are blameworthy and hence we must orient our actions keeping only this aspect in view. The Welfare State must be the first to go to the help of the aggrieved wife instead of providing this power to her to oppose to remain forever in the miserable condition.
- (29) When a case comes to the stage of the court of law, there is already a break in the relationship by way of the place of residence and the consequential financial hardship has already started on the part of the wife and the children if they have gone with their mother. This necessarily needs immediate and urgent attention of the court.
- (30) Let the divorce be granted immediately on the filing of the case but if the wrong doer is not so severely punished that other prospective wrong doers must shudder in their hearts even at the very thought of doing anything wrong to anybody, then this provision will be misused by unscrupulous people. So, the mutual consent needs to be dissected thoroughly.
- (31) The Bill is just another gender biased law open to massive misuse. This Bill does not care that a child would be forced to be brought up in a broken family, and a father would not

have any legal right, even to save his own marriage, under this Bill, even for the sake of his own child.

- (32) Providing the wife with all the control in a divorce case will only help in alienating father from their children.
- (33) The Bill essentially grants freedom and happiness to wives through a divorce but is totally silent on how the false and frivolous cases that are filed by wives be dealt with, even when the wife gets the divorce and happily remarries.
- (34) There would be cases where the husband is all willing to save his marriage, so that his child can have both the parents, but under the present format of the Bill, the husband will not have any legal remedy to save his own marriage, even for the sake of his own child.
- (35) A Gender neutral shared child custody and parenting law must be drafted and implemented nationwide before this Marriage Laws Amendment Bill is even contemplated. The repercussion of the amendments of this will be that after the quick divorce the wife will have little interest in even attending court hearings thereby alienating the child forever from the hapless father. Alternately a separate section can be inserted explicitly stating that child custody cases must be resolved to the satisfaction of both the parties before divorce is granted.
- (36) Provide a clear and objective definition of “Financial Hardship” so that this term is not interpreted in a wrong way and divorces are not sold by wives. All other maintenance cases filed by the wife, like Section 24, CrPC 125, Domestic Violence etc., should not be allowed to continue, blocking the judicial dockets, as the relief sought in all of them, will also be available in this Bill.
- (37) Create objective parameters for calculating financial assistance like tenure of the marriage and relative sacrifice made by the parties in the marriage.
- (38) Reduce separation period from 3 years to 1 year under Section 13C - Petition for divorce only after 1 year of marriage.
- (39) Include condition of closing child custody litigation before granting divorce under Section 13C, so that rights of child to seek the involvement of both the parents are not taken away from it.
- (40) The proposed Bill totally ignores the Law Commission’s 71st report and gives no reasonable justification of choosing the period of separation as 3 years instead of 5 years as suggested by Law Commission’s 71st report. It is extremely unfortunate that it seems that such a Bill and a clause has been hurriedly introduced, without any public debate.
- (41) This Bill would be widely misused as the husband will be forced to ‘buy’ a divorce, while the wife can choose to walk out, at her whims and fancies. Moreover this Bill totally excludes the possibility that the husband can also face financial hardship. The current concept of gender neutrality like that of Section 24 of the Hindu Marriage Act which takes into consideration that both, the husband and the wife can face financial hardship has been totally ignored in this Bill.

- (42) The Government is forcing a Divorce on an unwilling husband just because the wife want it and thus the husbands will have absolutely no legal remedy, relief or right, even to oppose the same, even for the sake of his children.
- (43) This Bill is totally unconstitutional and it takes away all the rights of the husband, even to defend himself or even to save his own marriage. A wife would stay away from the husband and would automatically get a divorce by default after 3 years, without any fault of the husband who would also have no right or say altogether, or even have any right to defend him.
- (44) Interestingly, this Bill is totally silent on the rampant misuse ,of 498A. At present, under Mutual Divorce format, the wife goes for quashing of all cases before grant of divorce, under mutual consent. However as per the present format of this Bill, the 498A cases would continue for years on. Thus the Bill should have a provision to quash cases between the parties before grant of divorce under 13C as it happens presently.
- (45) That special provision should be made in the Marriage Laws (Amendment) Bill, 2010, to ensure that both spouses may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to them and that it would in all the circumstances be wrong to dissolve the marriage, with the amount of financial hardship, being decided by the Court, based on the merits of the case.
- (46) It is suggested that the father must be assigned the care and custody of child(s) where the mother has been proved unable to maintain them, is of a dubious behavior, has lost her rapport in society on the basis of a corroborated evidence and facts.
- (47) “Irretrievable Breakdown” should be spelt out clearly and may include the following:-
- That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
  - That the respondent has deserted the petitioner for a continuous period of at least three years immediately preceding the presentation of the petition;
  - That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition.
  - That no reasonable probability remains of the spouses again living together as husband or wife for mutual comfort and support.
- (48) Where the petition is based on the “living apart” facts, the court may refuse to pass a decree if the dissolution of the marriage will result in “grave financial or other hardship to the respondent” and that “it would in all the circumstances be wrong to dissolve the marriage.”
- (49) A decree of divorce may be refused if the court feels that there is a reasonable likelihood of resumption of cohabitation.
- (50) Introducing irretrievable breakdown of marriage as a ground for divorce in the Hindu Marriage Act and the Special Marriage Act at this time, would cause irreparable harm to

women because of the absence of any laws governing division of matrimonial property. A woman's negotiating power and her rights to her matrimonial property would be severely diluted. As such provisions for safeguarding economic security for women will have to be built into the proposed legislation.

- (51) The proposed Bill only speaks of maintenance to children and is silent on the issue relating to division of property.
- (52) In such situations where the woman is vulnerable, we expect that the courts would refrain from granting an *ex-parte* decree.
- (53) 'Irretrievable breakdown of marriage' as a ground for divorce in a marriage and the power given to the wife in such a situation should be applicable to all religions and not specifically Hindu.
- (54) All grants by the Government, whether in terms of land or housing, should be in the name of both the spouses.
- (55) Quashing all cases between the husband and wife while granting divorces under Irretrievable Breakdown Marriage, would immediately reduce the crore of pending cases in courts and will provide relief to crores of aged mothers and sisters condemned to a lifetime of judicial apathy in Indian courts due the Indian gender laws.
- (56) Reconsider the stipulated time period of three years of 'living apart' to a lesser duration keeping in mind the objective to mitigate the ordeal for an estranged couple.
- (57) Include 'living in the same household' as 'living apart'. This will ensure that facts and circumstances typical to each case will be given adequate space and consideration.
- (58) For divorce on irretrievable breakdown of marriage or divorce on any other ground, introduce as a precondition in the law, distribution of marital assets based on 'community of property'.



## CHAPTER-III

### **Deliberations of the Committee**

The Committee heard the presentation of the Secretary, Legislative Department of the Ministry of Law and Justice on the Bill on 17th September, 2010 and recorded the views of Secretary, Ministry of Women and Child Development during its meeting held on 28th September, 2010 on the Bill. Apart from it, the Committee received inputs from the non-official witnesses namely National Commission for Women and some NGOs/individuals during its meetings on the 11th and 16th November, 2010 in Delhi.

### **Legislative Department (Ministry of Law and Justice)**

2. The Committee heard the Secretary, Legislative Department of the Ministry of Law and Justice on 17th September, 2010. The Secretary while giving an extensive power-point presentation on the Bill apprised the Committee of the circumstances that necessitated the introduction of the Bill and also the various provisions of the Bill. The Secretary, Legislative Department assured the Committee that provisions of right to wife to oppose the divorce on the ground of financial hardships and provisions regarding the maintenance to children have been incorporated in the proposed Bill to safeguard the interests of women and children while introducing irretrievable breakdown of marriage as a new ground for granting the divorce.

### **Ministry of Women and Child Development**

3. The Committee heard the views of Secretary, Ministry of Women and Child Development during its meeting on 28th September, 2010. The Secretary, Ministry of Women and Child Development apprised the Committee that the Ministry supports the Bill as it finds that inclusion of irretrievable breakdown of Marriage as a new ground for divorce is a facilitative provision in cases where the Marriage between the parties has broken down irretrievably and completely and prevent the multiplicity of litigations.

4. However, the Secretary indicated some issues that need to be addressed if the rights of women and children are to be protected after the enactment of Bill. The issues are:

- The proposed Bill cast a greater responsibility on the courts particularly in case of the interpretation the situation of “irretrievable breakdown”. Thus Courts have to exercise care and caution in cases where they feel that the husband has deserted or abandoned the wife and filed a petition under this section after living separately for three years.
- In situation where the woman is vulnerable the courts should refrain from granting ex-parte decree.
- The provision of section 13(E) of the proposed Bill should be interpreted as or an express ‘inclusion’ may be made in the provision to include the children adopted by the parties to the marriage.
- The waiting period of six months after the presentation of a petition for grant of divorce should not be abolished because it provides the parties the time to change their mind *vis-a-vis* the petition of divorce.

## **Non-Official Witnesses**

5. Given the wider legal and social implications of the Bill, the Committee decided to consider the views of all stakeholders on the Bill. For the purpose, the Committee invited some individuals/organizations to appear before the Committee for tendering oral evidence. The Committee heard the following non-official witnesses (Individuals/Organizations) :-

- National Commission for Women
- MAJLIS, Center for Women's Rights Discourse & Legal Initiative
- Gender Human Rights Society
- Lawyers Collective Women's Rights Initiative
- Mothers and Sisters Initiative
- All India Democratic Women's Association
- Save Family Foundation
- Children's Rights Initiative for Shared Parenting (CRISP)
- Shri SR Abrol, a concerned individual.

6. Committee's deliberations with the above- mentioned organizations/individuals witnessed divergent opinions on the provisions of the Bill and other matters associated with the matrimonial disputes. The issues that emerged during the Committees' interaction with them may be categorized under the following points;

### **On the Bill**

- New Grounds for the divorce is in larger social interest
- Section 13D (safeguard interest of wife/children)
  - (i) Should be gender neutral
  - (ii) Term Financial hardship should be defined
  - (iii) Apprehensions that this provisions may lead to eventuality buying of a divorce by the husband as many a times, wives are also at fault.
- To define the term "Irretrievable Breakdown of Marriage".
- Retention of the waiting period of six months.
- Reduction of the time period of separation mandated for seeking divorce.

### **Other Related Matters**

- The Bill should provide for division of matrimonial property.
- The Bill should provide for custody of children and visitation rights.
- Time period may be fixed for disposal of petition for divorce under the new ground.

- Law to provide for recovery of maintenance.
- To ensure that there are no *ex-parte* orders of divorce.
- In foreign countries where the provision for irretrievable breakdown of marriage as a ground for divorce is prevailed, there are sufficient laws to protect the economic interests of women.
- Entitlement from the State should be essential for separated women where there is no property and no maintenance can be granted.
- Proposed amendments tend to further weaken the plight of women/children in rural India.

## CHAPTER-IV

### **Committee's Observations/Recommendations**

Having analysed the various provisions of the Bill and having considered the written submissions received by the Committee and the views of the witnesses who tendered their oral evidence, the Committee is of the view that the subject matter of the Bill and the amendments proposed therein are of immense public importance with wide ranging legal and social consequences. The Committee, however, is in agreement with the broad objective of the Bill, *i.e.*, introduction of 'irretrievable breakdown of marriage' as a new ground for grant of a decree of divorce. The Committee is also in agreement with the thought that if a marriage has ceased to subsist and has reached a stage where it is not felt possible to bring back together the parties to the marriage, it would be in the interest of all if the marriage is dissolved.

2. However, the Committee though being in agreement with the rationale behind the Bill, feels that some of its clauses which have vital implications need to be reviewed. The Committee strongly feels that there are certain vital social and legal issues on the subject that need to be addressed before this new ground of divorce is introduced.

#### **Clauses 2 and 6 of the Bill**

##### **(Doing away with the waiting period of 6 months before moving a joint motion in case of divorce by mutual consent)**

3. While deliberating on the Bill, the Committee has come across a strong view expressing apprehension about the likely adverse social impact in doing away with the cooling off period of 6 months for moving a joint motion after filing a petition for grant of divorce by mutual consent. The Committee during its deliberations has not come across any view expressing hardship over the existing provisions providing for a cooling off period in case of divorce by mutual consent. The existing provision of law seems to function well as it provides an opportunity to the parties to a marriage to think coolly before finally moving jointly for divorce. **The Committee also does not see much linkage between this amendment and the main objective of the Bill, *i.e.*, introduction of a new ground for grant of a decree of divorce. The Committee, therefore, is of the view that the existing provisions of law for divorce by mutual consent are fair and reasonable and the prevailing cooling off period be retained so as to protect and preserve the institution of marriage. The Committee, accordingly, is not in agreement with clauses 2 and 6 of the Bill.**

#### **Clauses 3 and 7 of the Bill**

##### **(Introduction of irretrievable breakdown of marriage as a new ground of divorce)**

4. The Committee during the course of its interaction on the Bill with the various stakeholders did not come across much resistance *per se* to inclusion of irretrievable breakdown of marriage as a new ground of divorce. The Committee too is of the opinion that there is no point in prolonging a marriage where parties to the marriage are unable to live as husband and wife. But the written/oral submissions made before the Committee have brought forth serious apprehensions regarding the likely misuse of the proposed new ground of divorce, as formulated in the Bill, against women, particularly those in the rural areas. Going by the provisions of the Bill, the proposed Section 13C(1) of the Hindu Marriage Act, 1955 and Section 28A(1) of the Special Marriage Act, 1954 simply provide that either party to a

marriage may file a petition for dissolution of marriage by a decree of divorce on the ground that the marriage has broken down irretrievably. One condition prescribed in the Bill for grant of a decree of divorce on this ground is that the court hearing the petition has to be satisfied that the parties to the marriage have lived apart for a continuous period of not less than 3 years. Thereafter, if the court is satisfied on the basis of ‘all the evidence’ that the marriage has broken down irretrievably, it shall grant a decree of divorce. In the opinion of the Committee, the Bill should provide for some more safeguards so that the new ground for divorce is not misused by either party to the marriage. In the Committee’s view, it is important to note that either party to the marriage can ‘move a petition for divorce under this new ground and as the provisions of the Bill presently stand, there is no bar to court’s granting decree of divorce, *ex-parte*. In this backdrop, the Committee has serious apprehension with regard to the misuse of this ground, particularly against the women in rural areas where women are not so well aware. **The Committee, accordingly, recommends that the Bill should provide for some safeguards so that the new ground for divorce is not misused. The Committee also recommends that the Government may consider defining the term “irretrievable breakdown of marriage” in the Bill so that some uniform standards are followed in dealing with divorce petitions by the Courts.**

5. Coming to the protection of the rights of wife and children, the Committee again is not satisfied with the provisions of the Bill in this regard. As per the proposed section 13D(1) of the Hindu Marriage, 1955 and Section 28B(1) of the Special Marriage Act, 1954, a wife has been given a right to oppose grant of decree of divorce if the same results in ‘grave financial hardship’ to her and ‘it would in all circumstances be wrong to dissolve the marriage’. **The Committee notes that the term ‘grave financial hardship’ appearing here is capable of varied interpretation. Further, it may be difficult for the wife to satisfy the court that it would ‘in all circumstances be wrong to dissolve the marriage’. Not only this, the provisions of the Bill talk of ‘grave’ financial hardship, i.e., divorce may not be allowed on this ground if the wife is being subjected to a ‘grave’ financial hardship. Does it mean that court may proceed with the grant of a decree of divorce on this ground despite the fact that the wife may be put to ‘financial hardship’ and not “grave” financial hardship? The Committee, accordingly, recommends that the term “grave financial hardship” may be defined so that there is less of ambiguity. The Committee further recommends a review of these provisions of the Bill so that the interests of the women are better safeguarded in the divorce proceedings in the court.**

6. In the similar manner, the Committee also does not find acceptable the provisions of the Bill relating to restrictions on decree for divorce affecting children. As per the proposed Section 13E Hindu Marriage Act, 1955 and Section 28C in the Special Marriage Act, 1954, the court, before passing a decree of divorce under the new ground, has to satisfy itself that adequate provisions for maintenance of ‘children born out of the marriage’ has been made consistently with the financial capacity of the parties to the marriage. **The Committee finds that the proposed Bill covers only those children who are born out of the marriage, thereby leaving out the case of ‘adopted’ children. The Committee would like the Government to clear their position with regard to the adopted children also in the Bill.**

7. During the course of its deliberations on the Bill, the Committee’s attention has been drawn to another very vital aspect of the Matrimonial Law which relates to the rights of the wife to matrimonial property in case of divorce. Quite a few of the women’s organizations have emphasized on this aspect

before the Committee and demanded that while granting divorce, it needs to be ensured that the women get their share atleast in the assets/properties which the parties to the marriage have acquired during the subsistence of the marriage. The Committee finds logic in this demand of the various women's organizations. It is generally seen that in majority of cases women are left with very little to fall back upon after the divorce and quite often they also have to bear the burden of the children born out of the wedlock. In such situations, it seems quite natural for women to feel cheated when they are left to their fate without any roof or financial support although during the subsistence of marriage they might have contributed in varied forms in the matrimonial family in the prime of their age. This is more true in case of working women. **Accordingly, the Committee feels that there should be some effective legal mechanism so that the women atleast get their share in the matrimonial property which has been acquired during the subsistence of marriage. The Committee, accordingly, recommends the Government to make adequate provisions in the Matrimonial Law to ensure that the courts, while adjudicating on divorce petitions, also decide upon women's share in the matrimonial property while granting divorce so that they are not deprived of the assets/properties in which they have contributed during the continuance of marriage. The Committee is strongly of the view that liberalization of the laws of divorce should essentially be accompanied with appropriate provisions recognizing the legitimate rights of the women on the matrimonial property/assets atleast, in which they have their share of contribution.**

8. **The Committee, accordingly, despite being in agreement with the rationale of the Bill, i.e., adding 'irretrievable breakdown of marriage' as a new ground of divorce, is not in agreement with the various clauses of the Bill, be it doing away with the cooling off period in case of divorce by mutual consent or the conditions enumerated in the Bill for granting divorce on the ground of 'irretrievable breakdown of marriage'. The Committee feels that these provisions are liable to be misused against women. The Committee, accordingly, recommends that the Government should reconsider the various clauses of the Bill keeping in view the Committee's apprehensions and suggestions and a revised comprehensive Bill may be brought thereafter.**

# **MINUTES**

I  
FIRST MEETING

The Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 11.00 A.M. on Friday, the 17th September, 2010 in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**

1. Shrimati Jayanthi Natarajan — *Chairperson*

**RAJYA SABHA**

2. Shri Balavant *alias* Bal Apte  
3. Shri Ram Jethmalani

**LOK SABHA**

4. Shri N.S.V. Chitthan  
5. Shrimati Jyoti Dhurve  
6. Dr. Monazir Hassan  
7. Shri Shailendra Kumar  
8. Dr. Kirodi Lal Meena  
9. Shri Devji M.Patel  
10. Shri S. Semmalai  
11. Shri Vijay Bahadur Singh  
12. Dr. Prabha Kishor Taviad  
13. Adv. P.T. Thomas (Idukki)

**SECRETARIAT**

Shri Deepak Goyal, Joint Secretary  
Shri K.P. Singh, Director  
Shri K.N. Earendra Kumar, Joint Director  
Shrimati Catherine John L., Committee Officer

**WITNESSES**

**MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)**

1. Shri V.K. Bhasin, Secretary  
2. Shri N.K. Nampoothiry, Additional Secretary  
3. Ms. Veena Kothavale, Deputy Legislative Counsel

2. At the outset, the Chairperson welcomed the Members of the newly constituted Committee and informed them that The Marriage Laws (Amendment) Bill, 2010 introduced in Rajya Sabha and pending therein, has been referred to the Committee by the Hon'ble Chairman, Rajya Sabha on the 23rd August, 2010 for examination and report within two months. The Chairperson further informed the Members that the Hon'ble Chairman, Rajya Sabha, in consultation with Hon'ble Speaker, Lok Sabha has referred The Constitution (One Hundred and Fourteenth Amendment) Bill, 2010 and The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 introduced in



Lok Sabha, to the Committee for examination and report within three months. The Committee then decided to issue Press Communique on the Bills, inviting views/suggestions from the interested individuals/organizations/stakeholders and accordingly, authorized the Secretariat to issue the Press Communique.

3. Thereafter, the Chairperson requested the Secretary, Legislative Department, Ministry of Law and Justice to make presentation on The Marriage Laws (Amendment) Bill, 2010. The Secretary, Legislative Department, while highlighting the salient features of the Bill, apprised the Committee of the reasons and circumstances which necessitated the introduction of the Bill. The Secretary apprised the Committee that the Bill seeks to amend The Hindu Marriage Act, 1955 and The Special Marriage Act, 1954 to provide for “irretrievable breakdown of marriage” as a new ground for grant of a decree of divorce. Thereafter, the Secretary made a power point presentation on the Bill with the help of slides.

4. The Members sought clarifications on various aspects of the Bill and shared their views on its socio-legal implications. The Secretary responded to some of the queries. The Chairperson directed the Secretary to furnish written replies within a week’s time on the issues which were not responded to in the meeting.

*(The witnesses then withdrew).*

5. Thereafter, the Committee decided to hear the views of the Ministry of Women and Child Development and the Chairperson of National Commission for Women on the various provisions of the Marriage Laws (Amendment) Bill, 2010. The Committee also decided to seek the views/comments of the State Governments and Union Territories on the Bill. The Secretariat was, accordingly, authorized to seek the permission of the Hon’ble Chairman, Rajya Sabha for this purpose.

6. A verbatim record of the proceedings of the meeting was kept.

7. The Committee adjourned at 12.00 Noon.

## II SECOND MEETING

The Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 11.00 A.M. on Tuesday, the 28th September, 2010 in Room No. 074, Parliament Library Building, New Delhi.

### **MEMBERS PRESENT**

1. Shrimati Jayanthi Natarajan — *Chairperson*

### **RAJYA SABHA**

2. Shri Shantaram Laxman Naik
3. Shri Ram Jethmalani
4. Shri O. T. Lepcha
5. Shri M. Rajasekara Murthy

### **LOK SABHA**

6. Shri N.S.V. Chitthan
7. Shrimati Deepa Dasmunsi
8. Shrimati Jyoti Dhurve
9. Shri. D.B. Chandre Gowda
10. Dr. Kirodi Lal Meena
11. Kumari Meenakshi Natarajan
12. Shri Vijay Bahadur Singh
13. Adv. P.T. Thomas (Idukki)

### **SECRETARIAT**

Shri Deepak Goyal, Joint Secretary  
Shri K.P. Singh, Director  
Shri K.N. Earendra Kumar, Joint Director  
Shrimati Catherine John L., Committee Officer

### **WITNESSES**

#### **MINISTRY OF WOMEN AND CHILD DEVELOPMENT**

1. Shri D.K. Sikri, Secretary
2. Shri Subhir Kumar, Additional Secretary
3. Ms. Sangeeta Varma, Economic Advisor
4. Shrimati Kalyani Chandra, Director

#### **MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)**

1. Shri N.K. Nampoothiry, Additional Secretary
2. Ms. Veena Kothavale, Deputy Legislative Counsel

2. At the outset, the Chairperson welcomed the Secretary, Ministry of Women and Child Development, Additional Secretary, Legislative Department, Ministry of Law and Justice and other officers of both the Ministries on behalf of the Committee. The Chairperson also welcomed the new Members appointed on the Committee in the second phase with effect from 21st September, 2010. Then, she requested the Secretary, Ministry of Women and Child Development to present the views of the Ministry on the Marriage Laws (Amendment) Bill, 2010.

3. The Secretary, while making a presentation on the Bill apprised the Committee that his Ministry supports the proposed Bill and considers the inclusion of the “irretrievable breakdown of the Marriage” as a new ground for granting the decree of divorce as a facilitative provision in cases where the marriage between the parties has broken down irretrievably and completely. While acknowledging the difficulty in laying down the precise parameters for granting the decree of divorce on this ground, the Secretary emphasized upon need for the judiciary to implement the law judiciously and effectively so that justice is not denied to any party. The Secretary also highlighted the fact that in order to realize the objectives of this Bill, the Courts would have to exercise due care and caution so that women’s interests were protected and they were not put to a disadvantageous position.

4. The Members sought clarifications from the Secretary *vis-a-vis* the points made by him during his presentation and shared their views on the various aspects of the Bill. The Secretary responded to some of the queries. The Chairperson of the Committee also requested the Additional Secretary, Legislative Department, Ministry of Law and Justice to clarify on some of the queries relating to his Department, pertaining to the legislation, raised by the Members on the Bill. He, then, responded to queries of the Members.

*(The witnesses then withdrew)*

5. A verbatim record of the proceedings of the meeting was kept.

6. The Committee adjourned at 11.41 A.M.

## RECORD OF DISCUSSION

The Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 3.00 P.M. on Thursday, the 11th November, 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

### MEMBERS PRESENT

1. Shrimati Jayanthi Natarajan — *Chairperson*

### RAJYA SABHA

### LOK SABHA

2. Shri Shailendra Kumar
3. Shri Bhajan Lal
4. Shri S. Semmalai
5. Dr. Prabha Kishor Taviad
6. Shri Manish Tewari

### SECRETARIAT

Shri Deepak Goyal, Joint Secretary

Shri K.P. Singh, Director

Shri K.N. Earendra Kumar, Joint Director

Smt. Niangkhanem Guite, Assistant Director

Smt. Catherine John L., Committee Officer

### WITNESSES

#### I. National Commission for Women, Delhi

1. Dr. Girija Vyas, Chairperson
2. Smt. Yasmeen Abrar, Members
3. Smt. Zohra Chatterjee, Member Secretary

#### II. MAJLIS, Mumbai

Ms. Flavia Agnes, Director

#### III. Gender Human Rights Society, Delhi

Shri Sandeep Bhartia, President

#### IV. Lawyers Collective Women's Rights Initiative, Delhi

Ms. Nilima Dutta

#### V. Mother and Sisters Initiative and Rakshak Foundation, Delhi

Mrs. Kiran Kukreja, Spokesperson

#### B. REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)

1. Shri N.K. Nampoothiry, Additional Secretary
2. Mrs. Veena Kothavale, Deputy Legislative Counsel

2. The Chairperson of the Committee welcomed the Members of the Committee and the Chairperson, National Commission for Women and other witnesses. When requested to apprise the Committee of the views of the Commission on the Marriage Laws (Amendment) Bill, 2010, the Chairperson of the National Commission for Women made a brief presentation before the Committee on the Bill. She highlighted the complex issues arising out of the said Bill which needed to be addressed if the Bill is to be made an effective legislation.

2.1 Raising the issues like ensuring adequate maintenance to the women, relevance of separation period required for seeking divorce and cooling-off period prescribed under the Marriage Laws (Amendment) Bill, 2010, she urged upon the Committee that these issues should be addressed properly while introducing the “irretrievable breakdown” as a new ground for grant of divorce. The Members also sought clarifications from the witnesses.

3. Thereafter, the Committee heard the views of other witnesses, namely, the representatives of MAJLIS, Gender Human Rights’ Society, Mothers and Sisters Initiative and the Lawyers Collective Womens’ Rights Initiative.

3.1 The representative of MAJLIS while deposing before the Committee expressed her apprehensions on the inclusion of “irretrievable breakdown” of Marriage as a new ground for divorce without ensuring the laws pertaining to women’s rights on the matrimonial property. She further added that in most of the countries where such ground of divorce is in place, adequate laws regarding the division of property along with an effective enforcement mechanism are also in place so that women’s rights could be protected effectively after divorce.

3.2. The representative of Gender Human Rights’ Society, on the other hand, emphasized upon the need of making the provisions of maintenance under 13D gender neutral and opined that financial hardship can be faced by the husband also, and that it is not the wife only who is always deprived.

3.3. The representative of Lawyers Collective Women Right Initiative argued that in view of the likely financial and social hardship for women the irretrievable breakdown of marriage should not be included as a new ground for divorce until a law, giving wives equal rights in any property acquired by the couple during the subsistence of the marriage, is enacted.

3.4. The representative of Mothers and Sisters Initiative also raised the issued of gender neutrality *vis-a-vis* the proposed Bill. She opined that maintenance should be given according to the needs and not as demanded by the wife.

4. The Committee took note of the issues raised by the witnesses. Thereafter, the Members of the Committee sought clarifications from the witnesses. The witnesses replied to the queries sought by the Hon’ble Members.

*(The witnesses then withdrew)*

5. A verbatim record of the proceedings of the discussions was kept.

6. The Committee adjourned at 4.27 P.M.

IV  
FOURTH MEETING

The Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 3.00 P.M. on Tuesday, the 16th November, 2010 in Room No. '62', First Floor, Parliament House, New Delhi.

**MEMBERS PRESENT**

1. Shri Shantaram Laxman Naik — *In the Chair*

**RAJYA SABHA**

2. Shri O.T. Lepcha

**LOK SABHA**

3. Shrimati Deepa Dasmunsi
4. Shri Shailendra Kumar
5. Dr. Kirodi Lal Meena
6. Kumari Meenakshi Natarajan
7. Shri S. Semmalai
8. Shri Vijay Bahadur Singh
9. Dr. Prabha Kishor Taviad
10. Shri R. Thamaraiselvan
11. Adv. P.T. Thomas (Idukki)

**SECRETARIAT**

Shri Deepak Goyal, Joint Secretary

Shri K.P. Singh, Director

Shri K.N. Earendra Kumar, Joint Director

Smt. Niangkhanem Guite, Assistant Director

Smt. Catherine John L., Committee Officer

**A. WITNESSES**

**I. All India Democratic Womens Association, Delhi**

1. Smt. Kirti Singh, Vice President and Legal Convenor
2. Smt. Asha Lata, Assistant Secretary

**II. Save Family Foundation, Delhi**

1. Shri Wasif Ali
2. Shri Abhimanyu Veer Singh

**III. Children Right Initiative for Shared Parenting, Delhi**

1. Shri Kumar Jagirdar
2. Smt. Ekta Singh

**IV. Shri S.R. Abrol, Delhi**

**B. REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE, LEGISLATIVE DEPARTMENT**

1. Shri N.K. Nampoothiry, Additional Secretary
2. Mrs. Veena Kothavale, Deputy Legislative Counsel

**The Marriage Laws (Amendment) Bill, 2010**

2. In the absence of Chairperson of the Committee Shri Shantaram Laxman Naik chaired the meeting. He welcomed the Members of the Committee and witnesses who were invited to appear before the Committee for tendering oral evidence on the Marriage Laws (Amendment) Bill, 2010. Thereafter, he requested the witnesses to apprise the Committee of their views on the Bill. The witnesses, then, made brief presentations before the Committee on the various provisions of the Bill.

3. Despite acknowledging the need for inclusion of irretrievable breakdown of marriage as a new ground for granting divorce, the representative of the All India Democratic Women Association (AIDW A) expressed their concern about the likely adverse consequences of the Bill on the women community. Referring to the issue of division of matrimonial, property, the representatives of AIDWA emphasized upon the need to ensure the women's right to share in the matrimonial property before the enactment of the proposed Bill. They also emphasised that the divorced/separated women should be entitled for Government's support in case of poor families where there are no properties to be divided.

4. The representative of the Save Family Foundation, albeit, welcomed the inclusion of irretrievable breakdown of marriage as a new ground for divorce. He expressed his disagreement over the present form of the Bill which according to him was not in accordance with the principle of gender neutrality.

5. Representatives of the Children Right Initiative for Shared Parenting, in their presentation drew the attention of the Committee to the fact that the present Bill does not deal with matters like custody of the children visitation rights, etc. He felt that the present Bill is based on the flawed presumption that the child is best taken care by the mother only.

6. Shri S.R. Abrol, while deposing before the Committee, appreciated the inclusion of irretrievable breakdown of marriage as a new ground for granting divorce. He stated that the Bill should be passed as the changes it proposes in the Marriage Laws are the need of the hour.

7. The Committee took note of the issues raised by the witnesses. The Members, then sought clarifications from the witnesses which were responded in detail.

*(The witnesses then withdrew)*

8. \* \* \*
9. A verbatim record of the proceedings of the discussions was kept.
10. The Committee adjourned at 4.44 P.M.

\*\*\*Relate to some other matters.

VII  
SEVENTH MEETING

The Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 3.00 P.M. on Wednesday, the 2nd February, 2011 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**

1. Shrimati Jayanthi Natarajan — *Chairperson*

**RAJYA SABHA**

2. Shri Shantaram Laxman Naik
3. Shri Ram Vilas Paswan
4. Shri O.T. Lepcha

**LOK SABHA**

5. Shri N.S.V. Chitthan
6. Shrimati Deepa Dasmunsi
7. Shrimati Jyoti Dhurve
8. Dr. Monazir Hassan
9. Shrimati Chandresh Kumari
10. Dr. Kirodi Lal Meena
11. Shri S. Semmalai
12. Shri Vijay Bahadur Singh
13. Dr. Prabha Kishor Taviad
14. Shri Manish Tewari
15. Shri R. Thamaraiselvan
16. Adv. P.T. Thomas (Idukki)

**SECRETARIAT**

Shri Deepak Goyal, Joint Secretary

Shri K.P. Singh, Director

Shri K.N. Earendra Kumar, Joint Director

Smt. Catherine John L., Committee Officer

**MINISTRY OF LAW AND JUSTICE**

● **Department of Justice**

1. Smt. Neela Gangadharan, Secretary
2. Smt. Snehlata Srivastava, Joint Secretary
3. Shri S.C. Srivastava, Joint Secretary

● **Legislative Department**

Dr. G.N. Raju, Joint Secretary and Legislative Counsel

● **Department of Legal Affairs**



Shri D. Bhardwaj, Additional Legislative Counsel

2. \* \* \*
3. \* \* \*
4. \* \* \*
5. The Committee, thereafter, considered and adopted the draft 45th Report on The Marriage Laws (Amendment) Bill, 2010 without any changes.
6. A verbatim record of the proceedings of the meeting was kept.
7. The Committee adjourned at 4.05 P.M. to meet again on the 14th February, 2011.

\*\*\*Relate to some other matters.

# **ANNEXURES**

**ANNEXURE - A**

AS INTRODUCED IN LOK SABHA

<p>25 of 1955</p> <p>insertion of new sections 13C, 13D and 13E.</p> <p>Divorce on ground of irretrievable breakdown of marriage.</p>	<p style="text-align: center;"><b>Bill No. XLI of 2010</b></p> <p style="text-align: center;">THE MARRIAGE LAWS (AMENDMENT) BILL, 2010</p> <p style="text-align: center;">A BILL</p> <p style="text-align: center;"><i>Further to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954.</i></p> <p>BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—</p> <p style="text-align: center;">CHAPTER I PRELIMINARY</p> <p>1. (1) This Act may be called the Marriage Laws (Amendment) Act, 2010.</p> <p>(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.</p> <p style="text-align: center;">CHAPTER II AMENDMENTS TO THE HINDU MARRIAGE ACT, 1955</p> <p>2. In the Hindu Marriage Act, 1955 (hereafter in this Chapter referred to as the Hindu Marriage Act), in section 13B, in sub-section (2), for the words, brackets and figure “On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime”, the words, brackets and figure “Upon receipt of a petition under sub-section (1)” shall be substituted.</p> <p>3. After section 13B of the, Hindu Marriage Act, the following sections shall be inserted, namely:—</p> <p>'13C (1) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage [whether solemnized before of after the commencement of the Marriage Laws (Amendment) Act, 2010], on the ground that the marriage has broken down irretrievably.</p> <p>(2) The court hearing a petition referred to in sub-section (1) shall</p>	<p>Short title and commencement.</p> <p>Amendment of section 13B.</p>
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Wife's right to oppose petition on ground of hardship.

not hold the marriage to have broken down irretrievable unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition.

(3) If the court is satisfied, on the evidence, as to the fact mentioned in sub-section (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce.

(4) In considering for the purpose of sub-section (2), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding three months' in all) during which the parties resumed living with each other, but no other period during which the parties lived with each other shall count as part of the period for which the parties to the marriage lived apart.

(5) For the purposes of sub-sections (2) and (4), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and reference in this section to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same household.

13D. (1) Where the wife is the respondent to a petition for the dissolution of marriage by a decree of divorce under section 13C, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by virtue of this section, then,—

(a) if the court finds that the petitioner is entitled to rely on the ground set out in section 13C; and

(b) if, apart from this section, the court would grant a decree on the petition, the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if, the court is of the opinion that the dissolution of the marriage shall result in grave financial hardship to the respondent and that it would, in all the circumstances, be wrong to dissolve the marriage, it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship.

<p>43 of 1954</p> <p>Insertion of new sections. 28A, 28B and 28C.</p> <p>Divorce on ground of irretrievable breakdown of marriage.</p>	<p>13 E. The court shall not pass a decree of divorce under section 13C unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.</p> <p><i>Explanation.</i>— In this section, the expression “children” means—</p> <p>(a) minor children;</p> <p>(b) unmarried or widowed daughters who have not the financial resources to support themselves; and</p> <p>(c) children who, because of special condition of their physical or mental health, need looking after and do not have the financial resources to support themselves.’ .</p> <p>4. In section 21 A of the Hindu Marriage Act, in sub-section (1), after the word and figures “section 13”, at both the places where they occur, the words, figures and letter “or section 13C” shall be inserted.</p> <p>5. In section 23 of the Hindu Marriage Act, in sub-section (1), in clause (a), after the word and figure “section 5”, the words, figures and letter “or in cases where the petition is presented under section 13C” shall be inserted.</p> <p style="text-align: center;">CHAPTER III</p> <p style="text-align: center;">AMENDMENTS TO THE SPECIAL MARRIAGE ACT, 1954</p> <p>6. In the Special Marriage Act, 1954 (hereafter in this Chapter referred to as the Special Marriage Act), in section 28, in sub-section (2), for the words, brackets and figure “On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime” the words, brackets and figure “Upon receipt of a petition under sub-section (1)” shall be substituted.</p> <p>7. After section 28 of the Special Marriage Act, the following sections shall be inserted, namely:—</p> <p>‘28A. (1) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage [whether solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 2010] on the ground that the marriage has broken down irretrievably.</p> <p>(2) The court hearing a petition referred to in sub-section (1)</p>	<p>Restriction on decree for divorce affecting children.</p> <p>Amendment of section 21A.</p> <p>Amendment of section 23.</p> <p>Amendment of section 28.</p>
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Wife's right to oppose petition on ground of hardship.

shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition.

(3) If the court is satisfied, on the evidence, as to the fact mentioned in sub-section (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce.

(4) In considering, for the purpose of sub-section (2), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of anyone period (not exceeding three months in all) during which the parties resumed living with each other, but no other period during which the parties lived with each other shall count as part of the period for which the parties to the marriage lived apart.

(5) For the purposes of sub-sections (2) and (4), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and reference in this section to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same household.

28B. (1) Where the wife is the respondent to a petition for the dissolution of marriage by a decree of divorce under section 28A, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would, in all the circumstances, be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by virtue of this section, then,—

(a) if the court finds that the petitioner is entitled to rely on the ground set out in section 28A; and

(b) if apart from this section the court would grant a decree on the petition, the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if, the court is of the opinion that the dissolution of the marriage shall result in grave financial hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage, it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship.

	<p>28C. The court shall not pass a decree of divorce under section 28A unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.</p> <p><i>Explanation.-</i> In this section, the expression “children” means–</p> <ul style="list-style-type: none"><li>(a) minor children;</li><li>(b) unmarried or widowed daughters who have not the financial resources to support themselves; and</li><li>(c) children who, because of special condition of their physical or mental health, need looking after and do not have the financial resources to support themselves.’</li></ul> <p><b>8.</b> In section 40A of the Special Marriage Act, in sub-section (1), after the word and figures “section 27”, at both the places where they occur, the words, figures and letter “or section 28A” shall be inserted.</p>	<p>Restriction on decree for divorce affecting children.</p> <p>Amendment of section 40A.</p>
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## STATEMENT OF OBJECTS AND REASONS

The Hindu Marriage Act, 1955 was enacted on the 18th May, 1955 to amend and codify the law relating to marriage among Hindus. Similarly, the Special Marriage Act, 1954 was enacted on the 9th October, 1954 to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce. The provisions of the said Acts have proved to be inadequate to deal with the issue where there has been irretrievable breakdown of marriage and therefore a need has been felt for certain amendments therein.

2. In view of the demand from various quarters for making irretrievable breakdown of marriage as a ground for divorce under the Hindu Marriage Act, 1955, the Central Government referred the matter to the Law Commission of India for its consideration. The Law Commission in its 71st Report titled “The Hindu Marriage Act, 1955 — Irretrievable Breakdown of Marriage as a Ground of Divorce” submitted in April, 1978 had examined the issue in detail and recommended amendments to the Hindu Marriage Act, 1955 to make irretrievable breakdown of marriage as a new ground for granting a decree of divorce among the Hindus. Accordingly, a Bill, namely, the Marriage Laws (Amendment) Bill, 1981, further to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954, was introduced in Lok Sabha on the 27th February, 1981. However, before the Bill could be considered and passed by Lok Sabha, the Seventh Lok Sabha was dissolved on 31st December, 1984, and hence the Bill lapsed.

3. Subsequently, the Hon’ble Supreme Court in *Ms. Jorden Diengdeh vs. S.S. Chopra* (AIR 1985 SC 935) had pointed out the necessity to introduce irretrievable breakdown of marriage and mutual consent as grounds for grant of divorce in all cases. Similarly in *Naveen Kohli vs. Neelu Kohli* (AIR 2006 SC 1675), the Hon’ble Supreme Court recommended to the Union of India to seriously consider bringing an amendment in the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown of marriage as a ground for divorce.

4. Further, the 18th Law Commission of India *suo motu* took up the matter and in its 217th Report titled ‘Irretrievable Breakdown of Marriage — Another Ground for Divorce’ presented to the Government in March, 2009 recommended that ‘Irretrievable breakdown of marriage’ should be incorporated as another ground for grant of a decree of divorce under the aforesaid Acts.

5. Having regard to the recommendations of the Law Commission of India and the observations of the Hon’ble Supreme Court as aforesaid and the demand from various quarters, it is proposed to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 so as to provide for irretrievable breakdown of marriage as a ground of divorce thereunder subject to certain safeguards to the wife and affected children.

6. At present, a petition for grant of a decree of divorce on the ground of mutual consent could be presented by both the parties to the marriage together before the court under sub-section (1) of section 13B of the Hindu Marriage Act, 1955 and similarly under sub-section (1) of section 28 of the Special Marriage Act, 1954. Under sub-section (2) of section 13 B and that of section 28 respectively, the parties have to move a motion jointly not earlier than six months after the date of presentation of the petition referred in sub-section (1) and not later than eighteen months after the said date for the said purpose. It has been observed that in several cases one of the parties do not turn up for filing the motion jointly with the other party under sub-section (2) of section 13 B of the Hindu Marriage Act,



1955 or under sub-section (2) of section 28 of the Special Marriage Act, 1954, as the case may be, leading the party desirous of obtaining a decree of divorce hapless and remediless. In order to mitigate such hardships and to allow divorce in cases of complete failure of such marriages, it is proposed to amend sub-section (2) of section 13B of the Hindu Marriage Act, 1955 and sub-section (2) of section 28 of the Special Marriage Act, 1954, respectively, by doing away with the aforesaid condition of moving motion subsequently.

7. In case the wife happens to be the respondent in respect of a petition for grant of a decree of divorce on the ground of irretrievable breakdown of marriage under the proposed new section 13C of the Hindu Marriage Act, 1955 or under the proposed new section 28A of the Special Marriage Act, 1954, as the case may be, the wife is entitled to oppose the grant of a decree of divorce on the ground that a dissolution of the marriage will result in grave financial hardship to her. Similarly, provision has been made to restrict grant of a decree of divorce on the ground of irretrievable breakdown of marriage if the court is satisfied that adequate provision for the maintenance of children born out of the marriage has not been made consistently with the financial capacity of the parties to the marriage.

8. The Bill seeks to achieve the above objects.

NEW DELHI;  
*The 13th July, 2010.*

M. VEERAPPAMOILY.

ANNEXURE

Extracts from the Hindu Marriage Act, 1955

(25 OF 1955)

\* \* \* \* \*

**13B. (1)\***  
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Divorce by mutual consent.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

\* \* \* \* \*

**21A. (1) Where—**

Power to transfer petitions in certain cases.

(a) a petition under this Act as been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13, and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same district court or in a different district court, in the same State or in a different State, the petitions shall be dealt with as specified in sub-section (2).

**23. (1) In any proceeding under this Act, whether defended or not, if the court is satisfied that—**

Decree in proceedings.

(a) any of the grounds for granting relief exists and the petitioner except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief and

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then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

\* \* \* \* \*

EXTRACTS FROM THE SPECIAL MARRIAGE ACT, 1954

(43 OF 1954)

\* \* \* \* \*

**28. (1)\*** \* \* \*

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

\* \* \* \* \*

**40A. (1) Where—**

(a) a petition under this Act has been presented to the district court having jurisdiction by a party to the marriage praying for a decree for judicial separation under section 23 or for a decree of divorce under section 27, and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for decree for judicial separation under section 23, or for decree of divorce under section 27 on any ground whether in the same district court or in a different district court, in the same State or in a different State, the petition shall be dealt with as specified in sub-section (2).

\* \* \* \* \*

Divorce by mutual consent.

Power to transfer petitions in certain cases.

RAJYA SABHA

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BILL

*further to amend the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954.*

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*(Shri M. Veerappa Moily, Minister of Law and Justice)*

**ANNEXURE - B**

**Government of India  
Ministry of Law and Justice  
Legislative Department**

Part:- 1: COMMENTS AND SUGGESTIONS ON THE BILL

Clause No.

Sl. No.	Memo. No.	Name of organization/individual	Comments/suggestions	Response of Government
1	2	3	4	5
1.	1.	Shri Vijender Kumar, Professor of Law, Head-Centre for Family Law and Commonwealth Fellow, NALSAR, Hyderabad.	After considering arguments for and against the introduction of irretreivable break down of marriage as a ground for grant of divorce and considering decided cases of the High Courts and the Supreme Court	The suggestions are supportive of the proposed amendments and hence, no comments are called for.
			and also after examining the Family laws of other countries like Australia, New Zealand, USSR, Canada, Sweden, England and Wales which recognises irretreivable break down of marriage, has suggested amendments to provide irretreivable breakdown or marriage as a ground for grant of divorce in the largest social interest.	
2.	2.	Shri S. Raguraman, 4, Southpark Street, Singarayar Colony, Narimedu, Madurai - 625 002.	(1) Strongly opposes proposed amendments on the following grounds —  (a) Proposed amendment is not gender neutral;  (b) there are total six sections under	(a) Irretreivable, breakdown of marriage is a ground of divorce available to both genders and is neutral in its application. Keeping in view the societal and ground realities, certain safeguards are provided for wife and children as a special measure and the courts are given necessary powers to ensure such safeguards;  (b) The proposed section 13 D

which a Hindu woman can claim maintenance and section 13D duplicates Maintenance Laws leading to unnecessary complication and duplication of laws;

(c) Increases discrimination against father in child custody cases as no mechanism is included to deal with child custody matters;

(d) controversial sections as section 13 D ignores cases where husbands have filed maintenance cases against wife;

(e) oppose to intention of the Supreme Court and the Bill is silent on what will happen to pending cases filed under Domestic Violence Act, 498A IPC, child custody, 125 CrPC and other civil and criminal cases;

is intended to confer a right to the wife to oppose petitions on the ground of grave financial hardship and not to take recourse under it to seek maintenance. Though provisions for maintenance are available under various laws the wife is entitled for maintenance under anyone law as per the requirements of that law and not under all the laws simultaneously. It depends upon as to which law is involved in getting appropriate remedies. Moreover, sufficient safeguards in this regard are available in section 60 of the Code of Civil Procedure, 1908;

(c) both husband and wife have equal rights to have custody of the children as both are natural guardians. However, between the two who should have custody of the child depends on the facts and circumstances and age of the child in each case, the paramount consideration being the welfare of the child;

(d) keeping in view, the societal and ground realities, section 13D has been provided as a special measure to safeguard the interest of the wife and the children. It is positive discrimination towards gender equality.

(e) the proposed amendments are in consonance with the views expressed by the Hon'ble Supreme Court in the case of **Naveen Kohli Vs. Neelu Kohli** (AIR 2006 SC

<p>(f) no public debate or opinion was sought;</p>	<p>1675) and not opposed to its intention as claimed. The cases filed under other laws shall be dealt in accordance with those laws and have no bearing on the divorce proceedings under the proposed amendments.</p>
<p>(g) Bill does not cater to every section of society;</p>	<p>(f) the proposed amendments are based on the 71st report of the Law Commission of India which, after making wide research in the matter, had recommended introduction of irretrievable breakdown of marriage as a ground of divorce. Moreover, the proposed amendments are on the same lines as that of the Marriage Laws (Amendment) Bill, 1981 which was introduced in Lok Sabha on the 27th February, 1981 but, later lapsed due to dissolution of the House. As the proposed amendments have been known to the public more than 30 years, there is no justification in the said argument.</p>
<p>(h) no study was done regarding impact of the Bill.</p>	<p>(g) there is no legislative intent to cater to every section of the society as it has been a consistent policy of the Government not to interfere in the personal laws of minority communities unless there is demand from large cross section of that society;</p> <p>(h) necessary study and research have been made by the Law Commission of India before making recommendation for introduction of irretrievable breakdown of marriage as a</p>

<p>(2) Has made suggestions for making the following amendments in the Bill-</p> <p>(a) amend 13D to make the law gender neutral;</p> <p>(b) put a condition for finishing all litigations before divorce is granted;</p> <p>(c) fresh process be initiated as no public opinion was obtained.</p>	<p>ground of divorce.</p> <p>(2)</p> <p>(a) The provisions are gender neutral. However, as section 13D has been provided as a special measure to safeguard the interest of wife and children;</p> <p>(b) the cases filed under other laws are to be decided in accordance with the provisions of those laws and have no bearing on grant of divorce under the proposed amendments. Therefore, the suggestion may not be acceptable;</p> <p>(c) as already stated above that the proposed amendments are in the air for more than 30 years, the suggestion may not be acceptable. Further this will be taken care of by Parliament which reflects the will of the people;</p>
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<p>3. 3. Shri.Pushpal Swarnkar, Mukht Nagar, Padmanabhpur, Durg, Chhattisgarh-491 001.</p> <p>Is of the view that section 13 D (I) is discriminatory and that the proposed amendments will be widely misused and has suggested the following steps to be taken-</p>	
<p>(a) that special provision should be made in the Marriage Laws (Amendment) Bill, 2010 to meet the case of your petitioner to ensure that both spouses may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to them—</p> <p>(b) that special provisions be made in the Bill so that all litigation between parties are quashed before divorce is granted—including but not limited to child custody—</p>	<p>(a) as already stated above, there is no legislative intent in this regard as section 13D has been provided as a special measure to safeguard the interest of wife and children, keeping in view societal and ground realities;</p> <p>(b) The cases filed under other laws are to be decided in accordance with the provisions of those laws and have no bearing on grant of divorce under the proposed amendments. Therefore, the suggestion may not be acceptable;</p>
<p>4. 4. Shri Sumit Kumar, H- No. 1351, Sector 22 B, Chandigarh - 160022.</p> <p>Strongly opposes the Bill and is of the view that section 13D is unconstitutional and has adverse repercussions and has made recommendations as under-</p>	
<p>(a) protection under section 13D must be extended to either spouses;</p>	<p>(a) there is no legislative intent in this regard as section 13D has been provided as a special measure to safeguard the interest of wife and children;</p>

	<p>(b) Objective definition of the word “Financial Hardship”;</p> <p>(c) child custody and visitation rights should also be decided while granting divorce;</p> <p>(d) condition of finishing all pending litigation before divorce is granted;</p>	<p>(b) the term ‘financial hardship’ is quite explicit and does not appear to require defining as it varies from case to case. Any precise definition will defeat the purpose;</p> <p>(c) child custody and visitation rights are matters to be decided by courts based on the facts and circumstances of each case, the welfare of the child being of paramount importance;</p> <p>(d) as cases filed under other laws are to be decided in accordance with the provisions of those laws and have no bearing on grant of divorce under the proposed amendments, the suggestion may not be acceptable.</p>
5. 8.	<p>Shri S.R. Abrol, L - 2 - 91 B, DDA, LIG, Kalkaji, New Delhi-110 019.</p> <p>Fully supports the Bill and suggest that NGOs should be given roles for providing counselling and the role of advocates should be minimized.</p>	<p>As fully supports the Bill, no comments are required. NGOs can however play a vital role, in a non statutory manner.</p>
6. 9.	<p>Shri Puneet Nagar, (address not mentioned)</p> <p>Welcomes the Bill but is sceptical about section 13D that it would delay the matter and prevent timely relief.</p>	<p>Supports the Bill and hence, no comments are required.</p>
7. 10.	<p>Shri Madhusudan V. Sutrave, Business Head, Varivaan Pharma &amp; Biotech Solutions.</p> <p>Providing right to wife only is unfair and the rights should be given to either of the spouses as hardship and breakdown of marriage can occur to any of the spouse.</p>	<p>Keeping in view, the societal and ground realities, section 13D has been provided as a special measure to safeguard the interest of the wife and the child and there is no legislative intent to provide otherwise.</p>
8. 11.	<p>Shri Vasant Narayan Deshmukh, Wing Commander (retd.) (address not mentioned)</p> <p>Welcomes the Bill but suggests that while granting divorce, the same court must deal with the criminal matters, if any, in respect of the same parties.</p>	<p>As cases filed under other laws are to be decided in accordance with the provisions of those laws and have no bearing on grant of divorce under the</p>

		proposed amendments. Hence the suggestion may not be acceptable.
9. 12. Mrs. Ekta Singh (Paul), Member, Child Rights Initiative for Shared Parenting, Delhi NCR Unit, 2nd Floor, H -33/40, DLF Phase I, Gurgaon - 122 002.	(a) A gender neutral shared custody and parenting law must be drafted and implemented nationwide before this Marriage Law Amendment Bill is even contemplated. The representation of the amendments of this will be that	(a) The suggestion may not be acceptable as child custody and visitation rights are matters to be decided by courts on the basis of facts and circumstances of each case.
	after the quick divorce the wife will have little interest in even attending court hearings thereby alienating the child forever from the hapless father. Alternately a separate section can be inserted explicitly stating that child custody cases must be resolved to the satisfaction of both parties before divorce is granted.	
	(b) amend section 13D and making it gender neutral and allowing both the husband and wife to pray for 'Financial Hardship'.	(b) certain safeguards have been provided in section 13D to protect the interests of wife and children as a special measure, keeping in view the societal and ground realities and as such, there is no legislative intent to provide otherwise;
	(c) providing a clear and objective definition of 'Financial Hardship' so that this term is not interpreted in a wrong way and divorces are not sold by wives. All other maintenance cases filed by wife, like section 24, Cr PC 125, DV etc. should not be allowed to continue, blocking the judicial dockets, as the relief sought in all of them, will also be available in this Bill only.	(c) the term 'Financial Hardship' is quite explicit and does not appear to require defining; Any precise definition is also not possible as no general yardsticks could be formulated. Financial hardship will vary from case to case.
	(d) creating objective parameters for calculating financial assistance like tenure of the marriage and relative sacrifice	(d) The suggestion will be taken care of by the court bases on the evidence and hence no legislative provision is

	made by the parties in the marriage.	necessary.
	(e) reduce separation period from 3 years to 1 year under section 13C petition for divorce only after 1 year of marriage.	(e) The period of separation of three years has been recommended by the Law Commission of India on the basis of research made by it and the same has been provided in the Bill. Therefore, the suggestion may not be accepted;
	(f) include condition of finishing/quashing all litigation before divorce is granted so that both parties can live peacefully and that judicial burden can be reduced.	(f) As the cases filed under other laws are to be decided in accordance with the provisions of those laws and have no bearing on grant of divorce under the proposed amendments, the suggestion may not be acceptable.
	(g) condition of closing child custody litigation before granting divorce under section 13C, so that rights of child to seek the involvement of both parents are not taken away from it.	(g) The suggestion may not be accepted as child custody and visitation rights are matters to be decided by courts on the basis of facts and circumstances of each case.
10. 13. Gender Human Rights Society, (Regd.) C 5/8, Mangala Apartments, 53, I.P.Extension, Delhi - 110092	States that — (a) the proposed Bill totally ignores the Law Commission's 71st Report and gives no reasonable justification of choosing the period of separa-	(a) The Bill as well as the period of separation of 3 years are in accordance with the recommendations made by the Law Commission of India in its 71st Report.;
	tion as three years instead of five years, that too without any public debate and suggests to make it 5 years;	
	(b) The Bill excludes the possibility that a woman can also be a cause of marital discord and financial hardship can also be faced by the husband and therefore, suggests to make section 13D (1) Gender-neutral;	(b) No doubt, in some rare cases, financial hardship will be faced by the husband, However, keeping in view, the societal and ground realities, section 13D has been provided as a special measure to safeguard the interest of the

		wife and children and there is no legislative intent to provide otherwise.
	(c) Suggests for insertion of section 13E to provide for the child custody and visitation right;	(c) The suggestion may not be accepted as child custody and visitation rights are matters to be decided by courts on the basis of facts and circumstances of each case.
	(d) States that the Bill is totally unconstitutional and suggests that special clause should be inserted in the Bill so that all litigation between parties are quashed before divorce is granted.	(d) Factually incorrect quashing of other cases filed under other laws is not feasible as those cases are to be decided in accordance with the provisions of those laws by the competent courts before which they are pending and have no bearing on grant of divorce under the proposed amendments. Hence, the suggestion may not acceptable.
11. 14. Majlis Manch , Majlis A/2 Bldg. 4, Golden Valley, Kalina market, Santacruz East, Mumbai - 400 098.	(a) Section 13D is vague and does not serve the purpose of safeguarding women's economic rights and prevents her from becoming destitute. In western countries where irretrievable breakdown of marriage is a ground for divorce, there are detailed laws for division of matrimonial property;	(a) Section 13D has been provided as a special measure to safeguard the interest of the wife and the child. It is too early to say that the said section will not serve the purpose of safeguarding women's economic rights and prevent her from becoming destitute;
	(b) the waiting period of 6 months before a petition for mutual consent divorce is decreed should not be abolished as it will cause inconceivable hardship to woman.	(b) the purpose of removing the waiting period of 6 months before a petition for mutual consent divorce is decreed is to remove the hardship caused to the parties. It may be noted that the parties to the marriage have lived apart. It is a precondition for filing a petition for grant of decree of divorce on mutual consent that for at least one year prior to filing the petition and they have come to a

			mutual understanding when a joint petition is filed. Hence the parties should not be allowed to question their own decision after filing the petition.
12. 15	Shri Arnab Ganguly, President, INSAAF, 808 Kinwest Pkwy Apt 74, Irving Tx, 75063, USA	Strongly protests against the Bill and makes following suggestions- (a) amend section 13 D to make law gender-neutral;	(a) Keeping in view, the societal and ground realities, section 13D has been provided as a special measure to safeguard the interest of the wife and the child and there is no legislative intent to provide otherwise.
		(b) objective definition of 'Financial Hardship';	(b) the term 'Financial Hardship' is quite explicit and does not appear to require defining;
		(c) condition of finishing all litigation before divorce is granted;	(c) as cases filed under other laws are to be decided in accordance with the provisions of those laws and have no bearing on grant of divorce under the proposed amendments, the suggestion may not be acceptable.
13. 16.	Shri Abhishek Goyal, A - 13, Satellite Center, Vastrapur, Ahmedabad - 380 015.	Supports the Bill and raises concern that section 13D should be made gender-neutral.	Keeping in view, the societal and ground realities, section 13D has been provided as a special measure to safeguard the interest of the wife and the child and there is no legislative intent to provide otherwise.
14. 17.	Shri Baljinder Kaur, W/o Nb Sub balwant Singh; Plot No.138/2, Kanshipuri, Tehsil & District Jammu, Jammu and Kashmir - 181 101.	Suggests to insert section 13E to provide for child custody rights of father.	The suggestion may not be acceptable as child custody and visitation rights are matters to be decided by courts on the basis of facts and circumstances of each case.

<p>15. 18. Save Family Foundation (Regd.), C-8, Mansa Ram Oark, Opposite Mohan garden, Uttam Nagar, New Delhi-110 059.</p>	<p>Makes the following recommendations- (a) section 13 D(l) should be reworded to make it gender-neutral;</p>	<p>(a) Keeping in view, the societal and ground realities, section 13D has been provided as a special measure to safeguard the interest of the wife and the child and there is no legislative intent to provide otherwise;</p>
	<p>(b) section 13C (2) should be reworded to provide for presentation of petition after one year of marriage;</p>	<p>(b) the suggestion may not be acceptable because it is already covered under section 14;</p>
	<p>(c) section 13C (2) (a) should be inserted to provide for disposal of petition within a period of six months.</p>	<p>(c) in view of reconciliatory procedure relating to family law matters, the suggestion is not feasible.</p>
	<p>(d) section 13D should be reworded to provide for stay of proceedings until all other litigations between the parties are decided;</p>	<p>(d) as other cases filed under other laws are to be decided in accordance with the provisions of those laws and have no bearing on grant of divorce under the proposed amendments. Hence the suggestion may not be acceptable.</p>
	<p>(e) section 13E should be reworded to provide that all matters relating to maintenance alimony and child custody/welfare are decided before granting divorce.</p>	<p>(e) the suggestion may not be acceptable as child custody matters are to be decided by courts on the basis of facts and circumstances of each case.</p>
<p>16. 19 National Commission for Women</p>	<p>Suggests that the Bill should provide for the following safeguards—</p>	<p>The recommendations made are almost covered in the Bill except for division of matrimonial property. As the issue relating to division of matrimonial property is outside the scope and purview of the present Bill, the suggestion may not be acceptable.</p>
	<p>(a) what constitutes 'irretrievable breakdown' should be clearly spelt out;</p>	

	(b) should provide for division of matrimonial property;	
	Also suggest that nationwide consultations may be organised to deliberate and discuss on impact of the Bill, what constitutes fair and reasonable settlement at the time of di- vorce, etc.	
17. 20. (Name and Address not mentioned)	Supports the Bill while drawing attention that the provisions of the Bill are not misused.	No comments are called for.
18. 21. Ms. Ankita Tomar, C - 101, NASC Complex, Pusa, New Delhi-110012.	While supporting the Bill suggests that the ground of irretrievable breakdown should be made applicable to all religions. Also suggest that the waiting period of six months should not be reduced.	The suggestion may not be acceptable as there is no legislative intent to make the Bill applicable to all religions. The provisions of the Bill are applicable to Hindu Marriages and Civil Marriages and hence it applies to all marriages which are not relating to Muslims, Christians, Parsis and Jews by religion as it has been a consistent policy of the Government not to interfere in the personal laws of minority communities unless there is demand from a large cross section of the concerned community society;
19. 23. All India Democratic Women's Welfare Association, 15, Talkotara Road, New Delhi-110 001.	1. A law must be enacted to give wives equal rights in any property acquired by the couple during the subsistence of the marriage. This law allow equal division of the marital property upon separation.	1. As the issue relating to division of matrimonial property is outside the scope and purview of the present Bill, the suggestion may not be acceptable.
	2. It must be ensured that a provision is to be made that women with children have a house/place of residence.	2. The suggestions are outside the purview and scope of the present amendments and hence, no comments are required.
	3. The laws relating to maintenance for women and children must be strengthened	3. The proposed section 13A is intended to confer a right on



	<p>to ensure that women/children receive an adequate amount of maintenance which will be sufficient for them to live in a lifestyle which is similar to the one they were used to in the marital home. Special laws for disclosure of income of the husbands and shifting of onus of proof in these cases will have to be considered. Ways and means to lessen the discretion of the judiciary in these matters must be thought of as women and children have invariably been awarded very low amounts by a large number of Courts.</p>	<p>the wife to oppose petitions on the ground of grave financial hardship and not to take recourse under it to seek maintenance. Other suggestions are outside the purview and scope of the present amendments and hence, no comments are required.</p>
	<p>4. The Government has to enact a law to enforce and recover maintenance amounts. Apart from this a fund will have to be created from which maintenance can be immediately given to the wife and children. In several countries separate enforcement agencies have been created to recover maintenance amounts. It is a duty of the State to see that women and children are not left to fend themselves in these cases.</p>	<p>4. Sufficient safeguards are available in section 60 of the Code of Civil Procedure, 1908.</p>
	<p>5. Entitlements from the state should be made essential for deserted/separated/divorced women and children in cases in which there is no property or cases in which no maintenance can be granted because of poverty and/or other reasons.</p>	<p>5. Suggestions are outside the purview and scope of the present amendments and hence, no comments are required.</p>
	<p>6. All grants by the government, whether in terms of land or housing, should be in the name of both the spouses.</p>	<p>6. Suggestions are outside the purview and scope of the present amendments and hence, no comments are required.</p>
20. 24	<p>Ms. Jayna Kathari, Director, The Centre for Law and Policy Research, Bangalore</p> <p>Has suggested certain amendments in the Bill as under-</p> <p>(a) to provide for maintenance, expenses, child support and custody;</p>	<p>(a) provision for maintenance of children has already been included. However, the issue</p>

	<p>relating to child custody is to be decided by the Court on the basis of facts and circumstances of each case and the age of the child, the paramount consideration being the welfare of the child.</p>
<p>(b) to reduce the period of separation from three years to one year:</p>	<p>(b) A period of separation of three years has been recommended by the Law Commission of India on the basis of research made by it and the same has been provided in the Bill. Therefore, the suggestion may not be accepted;</p>
<p>(c) non-cohabiting should also be included in living separately;</p>	<p>(c) The provisions of section 13C (5) make it very clear that the husband and wife shall be treated as living apart only if they are not living in the same household. Therefore, there is no legislative intent to include non-cohabiting if the husband and wife are living in the same household;</p>
<p>(d) the term “irretrievable breakdown of marriage” should be defined.</p>	<p>(d) the provisions of section 13C explicitly makes clear what the term “irretrievable breakdown of marriage”. Therefore, definition of the term “irretrievable breakdown of marriage” is not required;</p>
<p>(e) guidelines for grant of maintenance.</p>	<p>(e) As the quantum of maintenance to be awarded by the Court varies from case to case on the basis of evidence adduced by the parties in that behalf, the same cannot be included in the Bill.</p>
<p>(f) Application of the Bill to other</p>	<p>(f) The Bill covers all communities except those who</p>

	legislations.		belong to Muslim. Christian, Parsi or Jain by religion. As it has been a consistent policy of the Government not to interfere in the personal laws of minority communities unless there is a demand in this regard from a large cross-section of that society. Hence, the suggestion may not be acceptable.
21. 25.	Save Indian Family Organisation, B-180, Janata Colony, Jaipur-4, Rajasthan	Makes the following suggestions:— (a) Section 13D(1) should be made gender neutral;	(a) certain safeguards have been provided in section 13D to protect the interests of wife and children as a special measure, keeping in view the societal and ground realities and as such, there is no legislative intent to provide otherwise;
		(b) section 13E should be reworded to provide for child custody and provision for visitation;	(b) as the child custody and visitation rights are to be decided by the Court on the basis of facts and circumstances of each case, the suggestion may not be acceptable;
		(c) “Financial Hardship” should be defined.	(c) the meaning of “Financial Hardship” is quite explicit and the need to define it is not felt.
22. 26.	Mothers and Sisters Initiative (MASI), B -7/204 Sector 4, Rohini, Delhi-110085.	Makes the following suggestions:- (a) Section 13D(1) should be made gender neutral;	(a) certain safeguards have been provided in section 13D to protect the interests of wife and children as a special measure, keeping in view the societal and ground realities and as such, there is no legislative intent to provide otherwise;

	(b) section 13 E should be reworded to provide for child custody and provision for visitation;	(b) as the child custody and visitation rights are to be decided by the Court on the basis of facts and circumstances of each case, the suggestion may not be acceptable;
	(c) "Financial Hardship" should be defined.	(c) the meaning of "Financial Hardship" is quite explicit and the need to define it is not felt.
23. 27. Shri Kamal Vikram, President, Bhavya Foundation.	Makes the following suggestions - (a) Section 13D(1) should be made gender neutral;	(a) certain safeguards have been provided in section 13D to protect the interests of wife and children as a special measure, keeping in view the societal and ground realities and as such, there is no legislative intent to provide otherwise;
	(b) section 13E should be reworded to provide for child custody and provision for visitation;	(b) as the child custody and visitation rights are to be decided by the Court on the basis of facts and circumstances of each case, the suggestion not be acceptable;
	(c) "Financial Hardship" should be defined.	(c) the meaning of "Financial Hardship" is quite explicit and the need to define it is not felt.
24. 28. Ms. Mita Bhattacharjee, DGM, New India Assurance Company Ltd., Head Office, Mumbai.	Fully supports the Bill and feels that the proposed amendments will empower women and encourage them to control their lives.	No comments required.
25. 29. Save Indian Family Foundation	(a) Expresses strong displeasure at the apathy meted	(a) certain safeguards have been provided in section 13D to protect the interests of wife and children as a special measure, keeping in view the societal and ground realities and as such, there is no legislative intent to provide otherwise;

			out by the Government in the Bill as section 13D will force the husbands to buy divorce and is not gender neutral;	
			(b) child custody and visitation rights should also be decided alongwith granting divorce.	(b) as the child custody and visitation rights are to be decided by the Court on the basis of facts and circumstances of each case, the suggestion may not be acceptable;
26.	30.	Shri Siby Thomas, Vadakkechooravelil, Kallara South P.O., Kerala.	Has made certain suggestions regarding factors to be considered by courts relating to irretrieveable breakdown of marriage, misuse of section 498A, etc.	The suggestions are outside the purview and scope of the present amendments and hence, no comments are required.
Part - II OTHER ISSUES NOT COVERED BY THE BILL				
SI. No.	Memo No.	Name of organization/individual	Comments/suggestions	Response of Government
1	2	3	4	5
1.	5.	Shri R.R. Shenoy, H-10, Natraj Society, Panchpakhadi, Thane - 400 602. Maharashtra	Has suggested that instead of making fresh law, the existing law should be strengthened and has made certain suggestions including criteria to be considered while granting divorce and radical changes that should be brought in the present judicial enforcement system.	The suggestions are outside the purview and scope of the present amendments and hence, no comments are required.
2.	6.	Shri Dipak Pachkude, 402 - Shrama Saphalya, Opposite Aaram Baug Estate, Veer Savarkar Marg, Thane - 400 602. Maharashtra.	He has argued for strengthening of existing laws and has made certain suggestions such as grounds on which divorce may be granted, procedure to be followed before passing final order, etc.	The suggestions are outside the purview and scope of the present amendments and hence, no comments are required.

3. 7.	Ms. Flavia Agnes Director, MAILIS, A - 2/4, Golden Valley, Opposite Canara Bank, Kalina Market, Mumbai - 400 098.	As at the time of divorce, Women's non-economic contribution is not taken into account, has demanded that women's right to matrimonial property should go along side irretrievable breakdown of marriage so that safeguards for women can be built into the provision.	The suggestions are outside the purview and scope of the present amendments and hence, no comments are required.
4. 22.	Dr.Gajju Ram Malik, Manager, Jai Siksha Evam Manav Sewa Sansthan, 46, Narotam Kunj, Near Madhu Nagar, Agra.	Has made suggestions regarding increasing the age of marriage to 25 years for girls and 30 years for boys.	The suggestions are outside the purview and scope of the present amendments and hence, no comments are required.
5. 31.	Ms. Indira Jaisingh, The Lawyers Collective -Women's Right Initiative, New Delhi.	The ground for irretrievable breakdown of marriage should not be introduced at the present movement as it will result in grate financial and social hardship for women and children. Therefore, a law must be enacted to give wives equal rights in any property acquired by the couple during the subsistence of the marriage, etc.	Financial Hardship has already been taken care of <i>vide</i> section 13D. Divorce on the ground of irretrievable breakdown of marriage does not cause social hardship which is different from the social hardship caused by other grounds of divorce. As the suggestions are outside the purview and scope of the present amendments, no comments are required.