

The one year. all
such legislative
defects



**ASSIGN
BUSTER**

The other important change was the introduction of Section 21-B, which was inserted with a view to expedite the trial of petitions made under the Hindu Marriage Act, as it was found that the proceedings under the Act remained pending in the courts for many years together and the very purpose of getting relief became frustrated due to passage of time.

The new provision requires the trial court to continue matrimonial proceedings from day-to-day until conclusion. It also requires the courts to conclude trial as expeditiously as possible within six months from the date of service of notice of the petitions on the respondent. The proceedings in appellate court are also required to be completed within a period of three months from the date of service of notice of appeal on the respondent. Divorce has been further liberalised by the Amendment Act of 1976.

Prior to this Act a party to marriage could seek divorce on the ground of adultery only where the other party was living in adultery. It was very difficult to establish the case of living in adultery. Now a single act of voluntary sexual intercourse with any person other than his or her own spouse has been made a ground of divorce. The period of three years which was required to elapse before a petition could be presented for divorce on the ground that the other party had been incurably of unsound mind or had been suffering from a virulent and incurable form of leprosy or venereal disease in a communicable form, has been dispensed with. Further, the minimum period of two years which was required to elapse after a decree for judicial separation or for restitution of conjugal rights without reconciliation, has been reduced to one year. All such legislative defects which existed in

Section 16 have been removed and the matrimonial remedies have been simplified.

A new Section 23-A has been introduced by the Amendment Act, 1976 which is intended to give relief to the respondent in divorce and other proceedings. The respondent may not only oppose the relief sought on the ground of adultery cruelty or desertion but can also make a counter claim for any relief under this Act on that ground. In 1976 several amendments were introduced with a view to advancing the theory of 'breakdown of marriage' as a ground of divorce e. g.

, non-resumption of cohabitation after a maintenance decree, which ground is available to either party bringing divorce and separation at par and introducing the ground of divorce by mutual consent, etc. The Law Commission in its 71st Report forwarded a report to the Government on the question whether irretrievable breakdown of marriage should be introduced as a ground of divorce into the Hindu Marriage Act, 1955 and recommended that "irretrievable breakdown of marriage should be a good ground for the grant of decree of divorce under the Act. The theoretical basis of the suggestion is that the marriage has all the external appearance of marriage, but none of the reality. The marriage is merely a shell out of which the substance is gone. In such circumstances there is hardly any utility in maintaining the marriage as a facade, when the emotional and other bonds which are of the essence of marriage have disappeared.

The Commission recommended a new Section 13-C in the Hindu Marriage Act, under which a petition for dissolution of marriage by a decree of divorce

may be presented to the court by either party to marriage on the ground that the marriage has broken down irretrievably. The court shall not hold the marriage to have broken down unless it is satisfied that the parties to marriage have lived apart for a continuous period of at least three years immediately precluding the presentation of petition. In view of the recommendations made by the Law Commission, the Marriage Laws (Amendment) Bill, 1981 was introduced in Lok Sabha on Feb. 27, 1981 but it lapsed and since then no attempt was made to incorporate the recommendations of the Law Commission.