

Your Committee is of opinion that the need for reform of the divorce laws is made more urgent by these changes and that an increase in either the number of divorces or of the divorce rate per head of population would not indicate a weakening of the institution of marriage. On the contrary, the fact that more people seek divorce in order to terminate impossible matrimonial relationships may be indicative of greater respect for the institution of marriage.

GROUNDS FOR DIVORCE FIELD OF CHOICE

In selecting the system which may be used to effect the dissolution of marriage, there is in theory a fairly wide choice available. There are essentially four basis for divorce in the world today: unilateral declaration, consent, matrimonial offence or fault, and marriage breakdown. These doctrines are not mutually exclusive and can be combined in numerous ways. Your Committee has considered each of them.

I UNILATERAL DECLARATION

The unilateral system has existed in the past and it exists in many parts of the world today, particularly in Islamic countries. With such a system one spouse, usually the husband, can simply dissolve the marriage more or less at will and with little reason and without any consultation with the other, who is merely informed that the divorce has taken place. This system was current in Talmudic times in Israel where a husband delivered a bill of divorce to the wife. Traditionally, it has been a system whereby a man may get rid of his wife, rather than one which allowed a wife to be rid of her husband. Such a system has been advocated by no one and does not seem to merit serious consideration by your Committee. It need not detain us further.

II DIVORCE BY CONSENT

Divorce by consent is an ancient method of terminating marriages and one that goes back to Roman times and earlier. In essence this is founded upon the proposition that marriage is a contract between the parties and like any other contract, may be terminated with the consent of both parties to it. Under Roman law the state was concerned or involved in a divorce proceeding only in so far as it was necessary to insure that the legal forms had been observed and that the contract was terminated in the proper manner. The state had no concern with the actual termination of the contract itself or the grounds for it.

Since divorce by consent is a term that has been used widely and often imprecisely by many people, it should be made clear what your Committee understands by the term. Divorce by consent means a divorce at the will of the parties to the marriage. If they wish the marriage to be dissolved, then it will be dissolved. The role of the state or the courts, if they are called upon to play any part at all, is simply to see that the proper forms are observed. The state would have no discretion at all to prevent the granting of the divorce. Once the state assumed a discretionary power to refuse the decree, it is no longer divorce by consent. Under such a system, therefore, it is the will of the parties alone that determines the issue. Under the present system, even though the parties may both wish to have their marriage dissolved, it is the courts which actually dissolve it and which have the authority to refuse a decree, if they find there to be good reason for so doing.