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One last hurdle for marriage Bill

By MARGARETHA GOOSEN

THE end of the long campaign for a just dispensation for South Africa's married women is in sight with the Matrimonial Property Draft Bill released on Friday. The Draft Bill will be put before Parliament next year.

But one stumbling block remains.

The Draft Bill, which has been approved by the Government, deals only with marriages consummated after the Bill becomes law.

Four recommendations, which would give bigger legal and economic protection to women who are already married, are still to be tested publicly.

Mr Kobie Coetzee, Minister of Justice, stressed on Friday that the four recommendations were of "fundamental importance", and urged the public to submit comments as soon as possible.

He said he hoped the recommendations, contained in a separate Bill, would also be passed into law next year.

But Mr Dave Dalling, MP for Sandton and a member of the select committee which made the recommendations, is disappointed that the recommendations have been taken out of the Draft Bill and fears they may be blocked or delayed.

"It is the most exciting

piece of legislation in the last 20 or 30 years," he said. "But if the recommendations are omitted, we will only have an improved law lacking in the essential elements."

What is in store for South African women under the new dispensation?

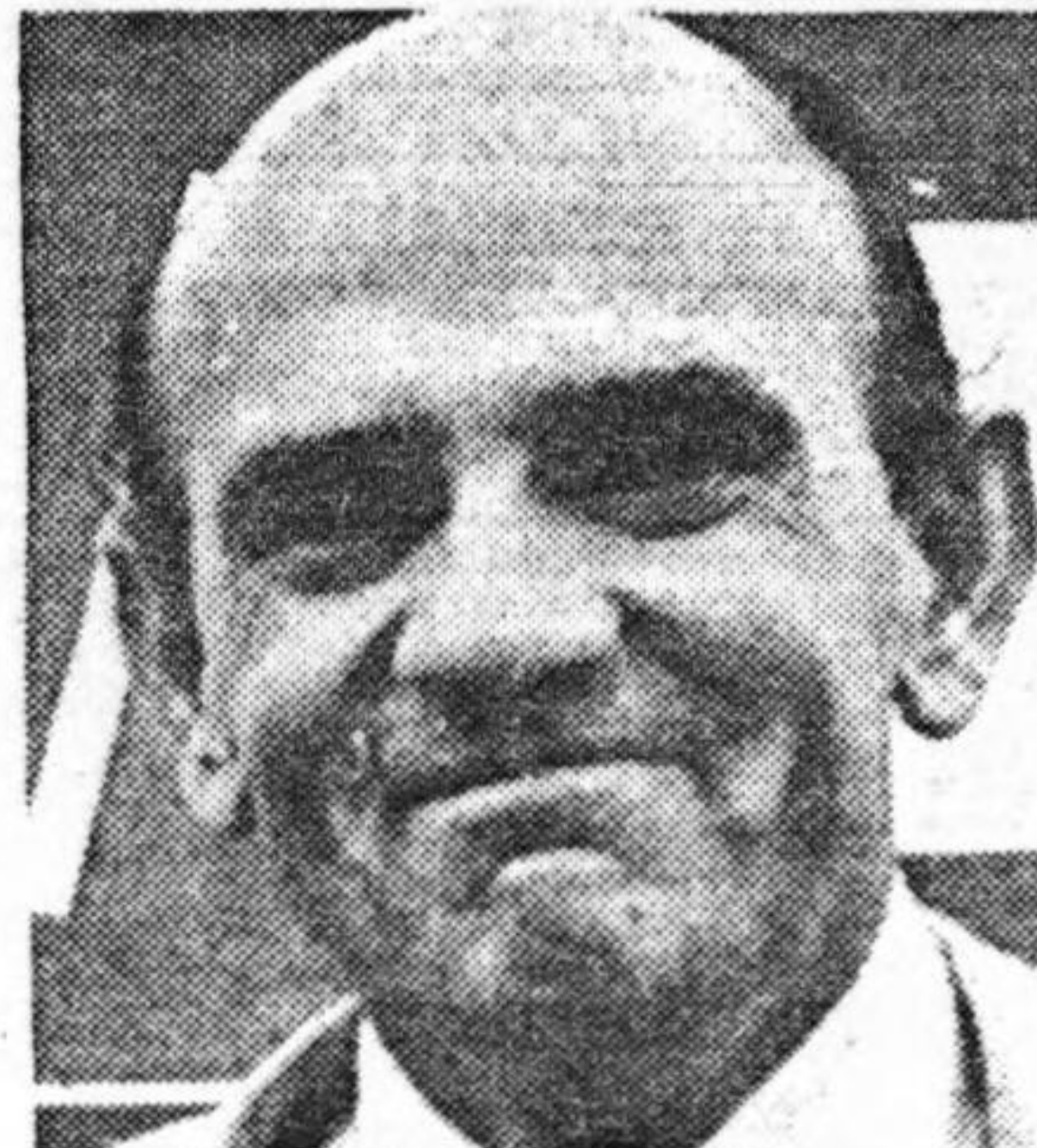
We will still have two basic marriage systems — community of property and antenuptial contract.

- The community of property system will be changed dramatically.

The present law makes the husband his wife's legal guardian and his wife a legal minor who cannot enter into a contract without the husband's permission.

Under the new dispensation, the husband's vast powers — which allow him to deal virtually at will with the joint estate — are cut.

However, his position as head of the family, the fact



MR DAVE DALLING
Disappointed

that he determines where the family will live, and his guardianship, will not be affected.

For the rest, husband and wife will now be equals before the law and will manage their joint estate concurrently and their separate estates separately.

The wife will have contractual capacity and capa-

city to litigate. In issues which affect the joint estate materially — like mortgages and hire purchase contracts — the consent of both will be needed.

Spouses will therefore have equal powers "with regard to the disposal of the assets of the joint estate, the contracting of debts recoverable from the joint estate and the management of the joint estate in general".

A spouse will no longer be able to bind himself as surety without the consent of his wife or to burden the furniture and other household effects, unless this is done in the ordinary course of practising his profession or carrying on his trade or business.

Delicts (except for patrimonial loss) will be excluded from the joint estate and a spouse will be able to claim from the other spouse for bodily injuries for which the

other is to blame.

- The antenuptial contract remains the system by which spouses retain their independent status before the law and by which community of property, profit and loss are excluded, but it will become subject to the accrual system unless expressly excluded in the contract.

Accrual refers to the gains after the marriage. Under the new system the spouse whose estate shows no accrual or a smaller accrual will on the dissolution of the marriage (by death or divorce) get the right to claim for an amount equal to half the difference between the accrual of the respective estates.

Inheritances, legacies or donations (which will be possible under the new law) will not be part of the accrual.

The four recommendations which deal with existing marriages and still have to

be approved before they can be put before Parliament will:

- Abolish marital power in existing community of property marriages and introduce the system of concurrent management;

- Enable people married under antenuptial contract to make the accrual system applicable to their marriage without the intervention of the court until one year after the commencement of the new law;

- Introduce a prohibition whereby the family house of spouses married out of community of property cannot be alienated without the consent of both; and

- Introduce a discretionary power for the courts to order, in the event of death or divorce, that an equitable amount be made over from the stronger estate to the weaker.

Marriage reforms, but not for most black women

By MARGARETHA GOOSEN

THE matrimonial property law reforms will exclude the majority of women in South Africa.

Unless married with an antenuptial contract, black women are married under the Black Administration Act — which excludes them from community of property and makes them legal minors.

According to Mr Dave

Dalling, MP for Sandton and a member of the Parliamentary select committee which prepared the new draft Bill, the committee decided not to concern itself with black marriages.

The matter was intricate and representatives of black women and experts in the field needed to be consulted before recommendations could be made, he said.

Mr Kobie Coetzee, Minis-

ter of Justice, said on Friday the matter was receiving urgent attention. The Law Commission of South Africa was investigating and legislation would be ready soon.

Mrs Helen Suzman, MP for Houghton and the only woman on the select committee, said she was unhappy that black marriages could not be included in the draft Bill.

All marriages had to be brought in line as soon as possible, she said.

According to Mrs Babette Kabak, co-convenor of the Women's Legal Status Committee, there was no reason the four additional recommendations should not be retroactive if they were passed by Parliament.

South Africa should follow the example of other countries, she said.

"Even in the Eastern Bloc women have greater equity in their marriage laws."

"The present system could

still partly apply for the next 50 years. An older woman will still be minor while her daughter, who has no experience, will have legal status."

Mrs Debora Klisser, national president of the Union of Jewish Women of South Africa, said she hoped all women's groups would comment as soon as possible.

"We are half of the voters and as such have a lot of power," she said.