

HINDU SUCCESSION BILL—Contd.

Shri Seshagiri Rao (Nandyal): This is a very important Bill. The changes that have been made here are of very far-reaching consequences. I agree with my friend Shri Altekar who has said that the joint family system has been very badly attacked, in spite of the fact that the Minister of Legal Affairs has said that he has not tried to tamper with it. If equal status has to be given to the daughters, then it is up to him to take away the joint family system altogether by introducing a new Bill for the purpose.

Clause 6 of the Bill reads :

"When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property, shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act: . . ."

According to the proviso to this clause, the interest will be as though it had been divided and partitioned just before the death of the deceased. I shall presently pose two problems and show how if clause 6 were to come into operation, a grave injustice will be done. Supposing A, the father, dies leaving a son that is divided, another son, and two daughters at the time of his death, then the divided son will take his share in the coparcenary property, and his wife, the son, and the two daughters take equally. And after his death, even the divided son also gets a share. Does it not mean that the undivided son is getting a property which is much less than that of the divided son? How are you going to meet this anomaly? This is not what the Minister has intended, but that is what we find here from this clause.

Again, suppose A, a father, dies, leaving his wife, son and two daughters. If the son dies first, that is, before the death of his father, then he gets half the share. But supposing he dies later, he is going to get only one-fourths of the property. How is it that his wife gets a property, when the son dies, first, and not when he survives his father? This is a very grave injustice that will be done if this provision were to come into effect.

The explanation to this proviso reads:

"For the purpose of the proviso to this section, the interest of the deceased shall be deemed to include the interest of every one of

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his undivided male descendants in the coparcenary property, and the female relative shall be entitled to have her share in the coparcenary property computed and allotted to her accordingly."

In the proviso, we find that the female relative and the male relative claiming through the female relative have been mentioned, but in the explanation, we find that only the female relative has been mentioned. I agree with my hon. friend Shri V. G. Deshpande who has said that the daughter's son will be excluded from the purview of the explanation. I submit that clause 6 has been very badly drafted.

I would also like to invite the attention of the Minister to clause 17(b) which reads:

"any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

The words are 'the husband'. But it is not clear which husband is referred to. Suppose a woman marries A, and after his death, again marries B, taking A's property, and after the death of B marries C, and thereafter she dies; then, which husband's heirs are going to get the property of A and B? It should have been very clearly mentioned that the property shall devolve on the heirs of the husband from whom she gets the property. Otherwise, the provision as drafted will be an unjust one. You want equality, but what we find is that the worst discrimination has been done in this case.

Clause 23 deals with presumption in cases of simultaneous death. I do not know why the Minister has wanted this sort of presumption, especially in view of this explanation. The wife of the person who dies last gets very little. Suppose a father and his son travelling by an aeroplane, and there is an air-crash, and both of them die; then what happens? The presumption is that the son survives the father, and if he should survive, then his wife gets less property than she would otherwise have done. I would therefore submit that this presumption ought not to exist, and the whole thing should be left to be decided by evidence.

[Shri Seshagiri Rao]

So far as the question of giving a daughter a share equal to that of the son is concerned, I agree that we should see that some proper amendment is made to clause 6. If necessary, clause 6 could be substituted by a new clause so that the daughters also can get a share in the coparcenary property equal to that of the brothers. But in so doing, we should also see that the divided son and the undivided son do not get different shares.

I agree with my friend who said that so far as the property which a widow inherits is concerned, the right should not be an absolute right. I think it was Shri K. P. Gounder who said that it should not be an absolute property, but only a limited interest, because she is getting her father's property with absolute interest. What she will be getting from the husband, she should not have in case she remarries. If she goes on getting such property, sometimes it so happens that a woman widowed a number of time becomes very rich, getting all the properties of her husbands. Such a thing is something that is improper.

As Shri Altekar said, the husband is not inheriting the property of the wife, but the wife is inheriting the property of the husband. Equality must be accomplished by the codification. If the code is so modified that all the possible defects or problems are tackled, and it is codified there will be a lot of litigation. As, otherwise, it only exposes the defects, the code makes the defects of the law more obvious and, therefore, emboldens knaves. Therefore, if the code is not perfect, there will be a lot of litigation. As you yourself, Sir, have said, all these clauses are full of defects which will lead to perennial litigation.

Shri V. P. Nayar (Chirayinkil): Concealed.

Shri Seshagiri Rao: Not concealed. They are so patent, obvious on the very face. If they are concealed at least, it is much better.

I submit that in the case of such legislation, one should go in a very calm and scientific way. Professor Indra, member, Oriental Faculty, Punjab University, has written a book, *The Status of Women in Ancient India*. I would like to read the advice he has given in connection with such legislation. He says:

"To my educated sisters, I would say, 'Our approach to many problems concerning the betterment of the status of women must be a

scientific one. It is a fact that the gentler sex has a long tale of sufferings to tell. It has undoubtedly received at the hands of the other sex anything but a fair and just treatment. Yet, tearing altogether of the past will be an injudicious step. In the glamour of modernity, an indiscriminate breaking with all the hoary traditions of the country will be a very serious action fraught with dangerous consequences. So we must distinguish between good and evil that once pertained to India's past and retain the former, eschew the latter and further adopt many salutary elements of modernity as well. Thus alone, we can serve the cause which is so near and dear to our hearts'".

I agree with the general principle that the daughter should be given a share in the property of her father equal to that of the brother. We should amend clause 6 in such a way that she gets it without interfering with the rights of the others, divided or undivided. Let them get an equal and same share. With regard to the estate of the wife, let it be a limited interest or let us follow the advice given by Shri Altekar that she should be the centre of the family, that the husband should go and live in her house. The latter will be the other solution. Otherwise, we are interfering with the society, not in a commendable way but in a confused way. Such a legislation may not be useful for us; it may not even be progressive; it may be rather a piece of retrograde legislation.

Shri N. R. Muniswamy (Wandiwash): Sir, I am glad that I have been given a chance at least at the fag-end of the day. But before I deal with the several provisions of this Bill, let me say something about the nature of this Bill.

This Bill was first circulated for eliciting public opinion. It was definitely stated then that this Bill would not deal with the Mitakshara system of joint family property. It was on that assumption that the Bill was circulated in the country and opinions came from various presons. Now, as it has emerged from the Joint Committee as well as from the Rajya Sabha, the Mitakshara system has been definitely retained in clause 6 but with certain limitations; it looks as though the Mitakshara system, has, for all practical purposes, been retained without being

tampered with, but if we read the provisions of clause 6, we will find that that system has been retained with certain limitations.

Properly speaking, this Bill must again be referred to the country for eliciting public opinion. We have now interfered with one provision of law, and I am quite certain that we are not being fair in dealing with this aspect of the law without giving a proper chance to the people to give expression to their opinions.

As it is, we find in clause 6 that the daughter is given equal share with the brother. This is a commendable provision indeed. But we have to have certain assumption to give this equal right to the daughter. Just as in the case of the Estate Duty Bill, we have to assume for all practical purposes that a particular man's property was carved out as though a partition took place just before his death, for the purpose of giving a certain share in that property to the State, so also here as though the man was divided from the joint family property, we have to take his share into consideration. I can understand that for the purpose of taxation, we have to assume several things, but so far as a question of law is concerned, to assume certain things in this way is not proper. I would say that we have to adopt some other feasible method by which we can still give an equal share to the daughter without infringing any of these provisions.

In the Minutes of Dissent, which I have gone through, I find some illustrations have been given by some hon. Members of the Joint Committee. According to these, an undivided son who happens to continue to stay with the father till his death gets much less than what he is entitled to, because the daughter sometimes gets more share and the divided son gets an extra share but the man who continues to live with him—with the father—till his death, gets much less than what he is entitled to. Somehow or other this anomalous position will have to be rectified. We should adopt some course by redrafting the entire provisions in clause 6 of this Bill with this end in view.

So far as the hon. Members who had appended Minutes of Dissent were concerned, they were not in a position to suggest a plausible, if not a workable, formula by which this object could be

achieved, without making any discrimination between the divided son, undivided son or the daughter. In the absence of any such method, the present method might, in all probability, be adopted; until and unless during the course of the clause by clause consideration, some amendment is made by which we could achieve this object, the present method might be adopted with this exception that the undivided sons should in all probability get share equal to those of the other brothers.

Then I come to the question of the limited estate of the widows who have been given certain rights in a retrospective way. Today, some of the widows are having a limited interest, but after the passing of this Bill, the limited estate will turn into an estate where they will have an absolute right.

Mr. Chairman: It is 5-30 P.M. now. The hon. Member might continue tomorrow. We will take up the next item of business.

CEMENT

Mr. Chairman: Before we proceed the half-an-hour discussion on points arising out of answer given on the 10th April 1956 to Starred Question No. 1303 regarding cement, I would like to say that some hon. Members are very desirous of taking part in this discussion. The signatories to the notice given by Shri V. P. Nayar, are Shri Kamath and Dr. Rama Rao; then the further names are Shri A. M. Thomas, Shri Nambiar and Shri Bansal. I would propose that if Shri Nayar takes 10 minutes and at least 10 minutes are given to the hon. Minister, these signatories may take two minutes each and thus we will be able to arrive workable proposition. I do not know what time the hon. Minister would require.

The Minister of Commerce and Industry and Iron and Steel (Shri T. T. Krishnamachari): It can be done even in 3 minutes; it all depends upon what information the hon. Members want. As far as I am concerned, I can finish in any time you give me.

Shri A. M. Thomas (Ernakulam): I would suggest we resort to the old procedure that questions may be put before the Minister replies to the discussion.

Mr. Chairman: I am going to adopt that procedure. First of all, Shri Nayar will either put questions or make a short statement as he likes and the other Members, who have joined in the notice, will