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JOINT/SELECT COMMITTEE REPORTS OF LEGISLATIVE ASSEMBLY - 1926

The Hindu Religious and Charitable Trusts Bill

3624 (4)
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Act & Bills section

FB-60, PLB

List of Reports of Select or Joint Committees
presented in the Legislative Assembly in 1926.

Sial No.	Short title of the Bill.	Date of presentation.	Remarks.
1.	The Indian Naturalization(Amendment) Bill.	28.1.26.	
2.	The Insolvency (Amendment) Bill.	2.2.26.	
3.	The Indian Registration(Amendment) Bill by Dewan Bahadur T.Rangachariar.	9.2.26.	
4.	The Code of Civil Procedure(Amendment) Bill(Section 102 and 103).	9.2.26.	
5.	The Legal Practitioners(Amendment)Bill.	9.2.26.	
6.	The Hindu Religious and Charitable Trusts Bill by Dr.Hari Singh Gour.	10.2.26.	
7.	The Coparceners Liability Bill.by Dr.Hari Singh Gour.	19.2.26.	Copy not available.
8.	The Indian Tariff(Amendment) Bill.	23.2.26.	
9.	The Transfer of Property(Amendment) Bill by Sir Hari Singh Gour.	4.3.26.	
10.	The Indian Factories(Amendment) Bill.	8.3.26.	
11.	The Indian Income-tax(Amendment) Bill.	8.3.26.	
12.	The Indian Bar Councils Bill.	18.8.26.	

LEGISLATIVE DEPARTMENT.

WE, the undersigned, Members of the Select Committee to which the Bill to make provision for the better management of Hindu religious and charitable trust property and for ensuring the

Paper No. I.	keeping and publication of
Paper No. II.	proper accounts in respect of
Paper No. III.	such properties was referred,
Paper No. IV.	have considered the Bill and
Paper No. V.	the papers noted in the
	margin, and have now the
	honour to submit this our
	Report.

2. We have carefully examined the opinions received on the Bill. There is a large and influential body of opinion against the proposed measure. While we feel that some better provision for the management of Hindu religious and charitable trusts of a public nature is needed than at present exists, we have, after examining the provisions of this Bill, come to the conclusion that it is defective, unsatisfactory and far too comprehensive. In the first place, the Bill makes no provision at all for any sort of management or for bettering the management of the trusts. Clauses 3, 5 and 6 are the main operative clauses. Some of the main objects aimed at in these clauses in the case of public trusts are already provided for in Act XIV of 1920. In the second place, the machinery provided for getting a register, as it were, of all the multitudinous and varied trusts in the country is the Court. This provision, besides being open to the objection that it will throw an enormous amount of additional work on Civil Courts not altogether of a judicial character, is open to the further objection, which has been taken in the various opinions received, that the Court may be presided over by a member not professing the Hindu religion.

3. Further, the definition of "trust" in the Bill is far too wide. It includes large and small, religious and charitable, public and private trusts, and it will also include *mullas* of various kinds. While no doubt it may be improved so as to confine the operation of the measure to public trusts, nevertheless the operative portions of the Bill do not provide any sufficient or satisfactory protection for the better management of the trusts. The liability to furnish particulars relating to a trust under the Bill is cast upon the individual concerned and he has to decide for himself whether he is a trustee or not coming within the scope of the Bill, and any failure on his part is not to be remedied by any other judicial machinery, but he merely becomes liable to prosecution under clause 10 and a Criminal Court will have to decide intricate civil issues.

4. It is said at present that there is no reliable record available of the trusts of the character dealt with in the Bill, and this measure will ensure the maintenance of such a record. In places where Act XX of 1863 has been in operation, such records exist and, as regards purely charitable trusts, Regulation VII of 1817 in Madras and corresponding Regulations elsewhere cast the duty

of looking after them on Revenue authorities. It cannot be the function of a Civil Court to undertake the preparation of such a record. It will be more within the knowledge of Revenue authorities in each Province and more within their competence to take the initiative and assist in the preparation of such a record, and the final verdict as to whether there is a trust or a gift only or whether the trust is a public or a private one should be left to a statutory tribunal composed of members of the community concerned in each institution. It is well known that all Hindus are not interested in each Hindu religious or charitable Institution. There are any number of sects among Hindus and the institutions also vary in kind. Circumstances vary in each Province. Pointed objection has been taken by various Local Governments to the Central Legislature dealing with this subject. While we do not agree with the view that the Central Legislature should not in any case undertake legislation on this subject, we consider such interference should be exceptional, and that this measure is not one which the Central Legislature should undertake. The Bill itself leaves it to the Local Governments to extend or not the operative portions thereof. We have, therefore, mainly on the above grounds decided by a majority to recommend to the Assembly that the Bill be not further proceeded with.

5. The committee cannot accept the main principle contained in the Bill, namely, that the information as to Hindu religious or charitable trusts should be furnished to the Court and the Court should be the administrative authority for dealing with the statements and accounts. The Bill as it stands affords opportunities to any person to inspect statements and accounts and the result will be a fresh crop of litigation and enormous additional work for the Civil Courts. Some of us consider that the proper machinery to deal with these public trusts is a statutory body composed of members of the communities concerned, such as has been recently constituted in the Punjab in the case of the Sikh Gurdwaras. We are doubtful whether, having regard to the scope of the Bill, we can embark upon substituting that agency for the agency provided in the Bill. If we proceeded to draft the Bill on those lines, it would be a new Bill altogether and the Assembly has had no opportunity to express its views on that question. Moreover, while that idea commends itself to some of us, it requires to be carefully examined and considered by the Hindu community before legislation can be undertaken to give effect to it.

6. We regret to have to come to this conclusion, and desire to add that in our opinion the Government of India should take the initiative to satisfy public opinion in the matter and appoint a committee composed of Hindus of the various Provinces at an early date to advise them upon the measures necessary to protect trusts of a public character.

7. The Bill was published as follows:—

<i>In English.</i>		<i>In the Vernaculars.</i>		
<i>Gazette.</i>	<i>Date.</i>	<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Gazette of India	23rd February, 1924.	Madras	Tamil	15th April, 1924.
Fort Saint George Gazette . .	11th March, 1924.		Telugu	15th April, 1924.
Bombay Government Gazette .	1st May, 1924.		Kanarese	15th April, 1924.
Calcutta Gazette	2nd April, 1924.		Malayalam	15th April, 1924.
Punjab Government Gazette .	4th April, 1924.	Bombay	Marathi	15th May, 1924.
Burma Gazette	15th March, 1924.		Gujarathi	15th May, 1924.
Central Provinces Gazette .	1st March, 1924.		Kanarese	15th May, 1924.
Assam Gazette	5th March, 1924.	Central Provinces.	Marathi	12th April, 1924.
Bihar and Orissa Gazette .	10th April, 1924.		Hindi	12th April, 1924.
Coorg District Gazette . . .	1st March, 1924.	Coorg	Kanarese	1st May, 1924.
Sind Official Gazette	8th May, 1924.	Sindh	Sindhi	29th May, 1924.
North-West Frontier Province Gazette	21st March, 1924.			

T. RANGACHARIAR.

BABA UJAGAR SINGH BEDI.

MADAN MOHAN MALAVIYA.

K. C. NEOGY.

S. C. GHOSE.

GAYA PRASAD SINGH.

M. C. NAIDU.

T. C. GOSWAMI.*

H. S. GOUR.*

NILAKANTHA DAS.*

The 10th February, 1926.

* Subject to Note of Dissent.

NOTES OF DISSENT.

I do not think the action taken by the majority of the members of the Select Committee was within their competence. After considering all the opinions received and the objections raised on the Bill, the House stood committed to its principle and it appointed a Select Committee to examine and revise it in detail. This the majority of the Select Committee refused to do. All the objections that can be legitimately raised and have been raised by the majority of the members of the Select Committee could have been discussed and, if approved, embodied in the Bill. I had made it clear to the Select Committee that I was prepared to exclude from the definition of trusts, private and illusory trusts and limit it to public trusts and to those in which the public were directly interested. As regards the control of the courts, the objection raised could have been met by making a suitable provision in the processual section of the Bill.

As regards the preparation of the record of public trusts, that again is a matter which the Select Committee should have discussed, and if they thought the Revenue courts were the more suitable authority, the necessary alteration was possible. The objection raised by the majority of the members of the Select Committee that

legislation of this character should not have engaged the attention of the Central Legislature was already considered and overruled by the Assembly. It is a question for the Assembly to decide whether they will allow a few members to overrule their decision.

In paragraph 5 of the report of the majority of the Select Committee, it is said that the signatories do not accept the main principle contained in the Bill. But this has been accepted by the Assembly as a body and it is not open to a few members of it sitting in Select Committee to overrule its decision. If they had conscientious objection to the principle of the Bill, they should have refused to serve on the Select Committee. The question that the necessary amendments, if made, would have so altered the character of the Bill as to require its republication is again a matter which would have come up at a later stage.

In conclusion, I think that the House jealous of its privileges should recommit the Bill to the Select Committee.

H. S. GOUR.

Dated the 3rd February, 1926.

I agreed mainly with Sir Hari Singh Gour and Mr. T. C. Goswami as they expressed themselves in the Committee. I have not been supplied with their notes of dissent if they have already submitted any. I don't think we are competent to sit in judgment over the decision of the House which has accepted the principles of the Bill after carefully considering almost all the points raised as objections in the report of the majority, e.g., opinions in the country; opinions expressed by Local Governments, and public bodies and public men; the subject of the Bill being a Provincial matter; the provisions in existing Acts; the machinery proposed in the Bill as opening up new avenues for litigation, etc., etc. I don't know of

any existing Act or Regulation which gives facilities for keeping a record of trusts as is contemplated by the Bill; at any rate, the House has already decided on the point.

The definition of 'trust' and the proposed machinery might, if necessary, have well been modified in accordance with the principles involved in the Bill, specially when it is admitted that some provision as is contemplated in the Bill is necessary, and that the Central Government should give the guidance in the matter. I don't think the majority are justified in recommending to the House as they have done.

NILAKANTHA DAS.

The 4th February, 1926.

I regret that a majority of the members of the Select Committee on Sir Hari Singh Gour's Religious and Charitable Trusts Bill, who were present at the meeting held on Saturday, the 30th January, 1926, decided on the unusual course of advising the Legislative Assembly not to proceed with the Bill. I will not say that the drafting of the provisions of the Bill left no room for improvement; but I think it would be decidedly unfair to suggest that it was past all surgery. The argument that Act XIV of 1920 gave effect to the purpose of the Bill is, to my mind, so obviously untenable that I do not propose to discuss it at length. It was remarkable, however, that those who were dead against the Bill on the ground that it sought to interfere with "religion" finally adopted this argument.

It is easy enough to proclaim that the freedom of religion is in danger. One is tempted to

retort: "Religion, how many crimes are committed in thy name." I am entirely against legislative interference with matters of belief,—with the doctrines of a faith. I would not allow any interference with my religious tenets and rites; though, as regards "rites", the State, that is, the public, has a right to see that religious rites do not infringe the accepted ideas of morality and of justice to those who do not believe in them.

The matter of the *public* religious trusts, at any rate, is a matter of public interest and concern. These are national assets, which ought to be co-ordinated—and even pooled—for national needs. A conveniently wide implication is only too often attached to "Religion" by those who have vested interests and by their advocates and apologists. Because certain trusts are "Hindu"—in the sense that the donors and the beneficiaries are Hindus,—

it does not follow that an attempt to see that these trusts are properly and usefully administered is necessarily an interference with religious freedom.

I am entirely convinced that while interference with *private* family trusts—such as *debentures*—would lead to legal complications as well as individual cases of hardship and injustice, the *public* religious and charitable trusts should come under proper supervision. Hindu Committees of supervision and control may do the work. But *how* are they to be effectively set up? Some amount of preliminary legislation seems to be necessary. A census of public religious and charitable trusts is a preliminary step in the right direction.

DELHI,
The 5th February, 1926. }

Of course, there is difficulty in defining a “public” trust in such a way as to exclude, without ambiguity, those which are undoubtedly meant to be private trusts and which ought, therefore, to be treated differently. But I should not think that the difficulty is insuperable, and abandoning the Bill does not appear to be the most courageous mode of solving that difficulty.

To the argument that only Hindus have a right to legislate on Hindu religious matters, my answer is—(1) that all “trusts” which are commonly regarded as “religious” are not religious in any intelligible sense; (2) inasmuch as some so-called “religious” trusts are for public benefit, they are the concern of the public in general; (3) that a nation has a right to take stock of *all* its assets.

T. C. GOSWAMI.

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GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the
Bill to make provision for the better
management of Hindu religious and
charitable trust property and for en-
suring the keeping and publication of
proper accounts in respect of such
properties.