

The hon. Deputy Minister stated that it is a matter for consideration whether we should enact under Article 25 (2) (b) of the Constitution to provide entry into temples to all Hindus or any section thereof. She has admitted that the U. P. Government and the Bombay Government have done it already. I had pointedly asked what the Government of India has done so far as Delhi and other Union territories are concerned. But, she has now assured us that enquiry will be made and necessary action will be taken on that. It is really important from this point of view, that once the other non-Harijans, the backward classes particularly, are allowed to enter these temples, I think, there will be no difficulty for Harijans to do it afterwards.

As I said, the removal of untouchability is linked with the amelioration of the conditions of the non-Scheduled Castes and Backward Classes and their being allowed to enter the temples and other places. Therefore, I appeal to the Home Minister either to bring in necessary legislation—to see that the Bill is brought as early as possible, under Article 25 (2) (b) of the Constitution—or to extend some of the Acts which are in force in Bombay and U.P. to the Union territories. I also feel that the Central Government should be a model to the State Governments in the matter of amelioration work for the Scheduled Castes. It is no use telling that we have referred the matter to the State Government and that they are taking action. Is it not necessary that the Government of India should be a model to the State Governments in this respect? I hope our Home Minister who is very sympathetic towards Scheduled Castes and Tribes will take some positive action with regard to this.

When this Act was before the Joint Committee, they made a valuable suggestion that in each State there should be a committee to review the implementation of the Act. Except M. P., no other State, I think, has taken that action. It is necessary that

there should be such a committee to review the progress and implementation of this particular Act. It has been admitted that this Act has not been implemented properly for two reasons. Firstly, the police are not taking cognisance of these cases and secondly, even the Harijans on account of their economic conditions are not able to go and lodge complaints against caste Hindus who are usually of richer class. So, I request the Home Minister to issue instructions to State Governments to implement this Act in all earnestness. The hon. Deputy Home Minister had assured that action is being taken about these matters and so I request the House to permit me to withdraw the Bill.

Mr. Chairman: Has the hon. Member leave of the House to withdraw his Bill?

The Bill was, by leave, withdrawn.

16.24 hrs.

HINDU SUCCESSION (AMENDMENT) BILL

(Amendment of Section 30) by Shri Hem Raj

Shri Hem Raj (Kangra): Sir, I beg to move:

“That the Bill further to amend the Hindu Succession Act, 1956 be taken into consideration.”

Sir, in this Bill I have suggested an amendment to section 30 of the Hindu Succession Act. It has been necessitated due to special circumstances which obtain in Punjab. Before I proceed to the specific points, I deem it proper to bring to the notice of the House the special differences which exist in Punjab for which reason this Bill has been necessitated. As an eminent lawyer, you, Mr. Chairman, know that there are two schools: the mitakshara and dayabagha. The former recognises both devolution of property by survivorship and by succession. But survivorship applies to joint family and succession to property held in absolute ownership by

[Shri Hem Raj]

the last owner. In dayabagha there is only one sort of devolution and it is succession. Every member in a joint Hindu family under dayabagha holds his interest in a separate share. In the Punjab it is the village community which holds the property in common. In the Punjab, whether they follow the agricultural profession or any other profession, if they were inhabiting the villages, they were also governed by the custom. By and large in the Punjab it was customary law that prevailed and it was neither the Muhammadan law nor the Hindu law. Whether they were Muhammadans or Hindus or Sikhs, everybody was governed not by their personal law but by the customary law of the Punjab.

Section 5 of the Punjab Customary Law Act, 1872, is to the following effect. In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be any custom applicable to the parties concerned, which is not contrary to justice, equity and good conscience, and has not been by this or by any other enactment altered or abolished and has not been declared to be void by any competent authority.

Sir Rattigan was the first person who codified the customary law in Punjab, and he appropriately remarked that custom in Punjab is the first rule of decision in all questions regarding all these matters which I enumerated above. Consequently, he enunciated four principles of succession.

These principles which he enunciated were these: 'there are four leading canons governing succession to an estate amongst agriculturists: first, that male descendants invariably exclude the widow and all other relations; second, that when the male line of descendants has died out, it is treated as never having existed, the last male who left descendants being

regarded as the propositus; third, that a right of representation exists, whereby descendants in different degrees from a common ancestor succeed to the share which their immediate ancestor, if alive, would succeed to; and fourth, that females other than the widow or mother of the deceased are usually excluded by near male collaterals, an exception being occasionally allowed in favour of daughters or their issue, chiefly amongst tribes that are strictly endogamous."

These are the four principles on which the whole customary law of the Punjab was based. That law has been interpreted in the high court, as I have said earlier, to the effect that all the castes, whether Muhammadan or Hindu or Sikh, were governed not by their personal law but by the customary law in the Punjab. Thus, there was no joint family so far as Punjab was concerned. It was succession and customary law that governed the whole thing.

There was one more feature under custom. That is, in respect of ancestral property in the hands of an individual there existed some sort of residuary interest in all the descendants of the first owner or body of owners however remote and contingent may be the probability of some among such descendants even having the enjoyment of the property. The owner in possession was not regarded as the sole owner, but when he died, the property by devolution devolved even on the farthest possible agnate. It was an agnatic theory. According to that theory, the property in the village ultimately belongs to the village proprietary body who were descendants from the common ancestors. The owner in possession is not regarded as having the whole sole interest in the property and power to dispose of it so as to defeat the expectation even of the farthest reversioner. So, the theory in Punjab is that the land ultimately belongs to the tribe or the village community and the owner of the property for the time being is not

empowered to alienate it except for a necessary purpose.

Suppose there was a holder of a property and he wanted to alienate that property. His alienation could be challenged not only by the son, but even by the farthest reversioner. The whole village proprietary body of that village had some interest in the land of the owner. This right was subsequently by legislation circumscribed to five degrees. That is to say, supposing there was a owner A. If he alienates some property, that could be challenged not by everybody, but under Act I and Act II of 1920, it could be challenged by anybody upto five degrees, i.e., up to the great-great grandson.

What I want to bring to the notice of this House is that the owner of the property did not become the full owner of the property and if he wanted to alienate the property, his rights were circumscribed and his great-great grandson could challenge it in the direct line. It could also be challenged by any person who was within five degrees from the common ancestor. This was the state of affairs in Punjab.

But when we passed the Hindu Succession Act, we were very chary and we wanted to make the fair sex or the female sex a full owner, whereas she was only a limited owner till then. Not only did we make her full owner, but so far as Punjab was concerned, the rights of the male owner remained the same while the rights of the female owner became unlimited. As I just explained, in Punjab, under the customary law, the male owner is not the full owner so far as ancestral property is concerned. His rights are restricted by descendants up to fifth degree or if there is any common ancestor by collaterals coming in the fifth degree. So, if he succeeds, he succeeds not as a full owner, but his rights are circumscribed by that custom. Under the Hindu Succession Act

which we passed in 1956, we wanted to make a uniform code for inheritance. We also wanted to give equal status both to the males and females. The third thing was that there the Hindu female was made the full owner. The list of heirs has been defined as of four categories and under section 30, a Hindu coparcener has been given the right to will the property. But those rights which we gave under the Hindu Succession Act did not touch the Punjab customary law. The Punjab custom remained as it was.

श्री रामेश्वरानन्द (करनाल) :
सभापति महोदय, प्रस्तावक महोदय को तो हिन्दी आती है और वे हिन्दी प्रान्त से आते हैं इसलिये उन को अपना भाषण अंग्रेजी में न दे कर हिन्दी में देना चाहिये।

सभापति महोदय : आर्डर, आर्डर। अब इस के लिये किसी को मजबूर नहीं किया जा सकता है। यह उन की इच्छा पर निर्भर है कि वे चाहें हिन्दी में बोलें अथवा अंग्रेजी में।

श्री रामेश्वरानन्द : अब यह तो पंजाब से आते हैं और हिन्दी जानते हैं इन को तो हिन्दी में ही बोलना चाहिये। यह कोई मद्रास और बंगाल से थोड़े ही आते हैं जो अंग्रेजी में बोलें।

सभापति महोदय : इस के लिये इन्हें कोई आदेश नहीं दिया जा सकता है कि वे हिन्दी में ही बोलें। (*Interruptions*)

श्री रामेश्वरानन्द : आप इतना गरम क्यों होते हैं ? हाउस में बोलने का अधिकार केवल आप को ही नहीं है, हम को भी है।

Shri Hem Raj : I was just submitting, Sir, that under the Hindu Succession Act that we passed in 1956 we wanted to give more and more to the fair sex. That we did. But ultimately what happened was, so far as Punjab is concerned, the powers of the males remained rather limited

[Shri Hem Raj]

while the powers of the females became unlimited. What we wanted under the Constitution was that there should be a civil code and the males and females should enjoy equal powers.

Under Dayabhaga mode of devolution, in dealing with property the owner could dispose of it in whatever manner he liked. But under the Punjab customary law, just as I submitted earlier, the holder of the property could not alienate it because he was a limited owner. What I want, under the present circumstances, is that a male owner in the Punjab should also have the same rights which are being enjoyed by the female sex. In the Punjab, under the Punjab customary law as it is obtaining today, even after the passing of the Hindu Succession Act, the rights of the agriculturists, the rights of the villagers, who own property by way of land or house, are limited.

I would like to make my point a little more clear. Supposing in the Punjab a widow succeeds to a certain property. What were her rights before? Previously if she wanted to alienate a certain property she could not do it unless there was a necessity for it. Similar was the position of a male proprietor and he could not also alienate a certain property unless there was necessity for it or there was some act of good management. But what has happened now? After the passing of the Hindu Succession Act, the widow has been given full power. She becomes the full owner now. She can sell it, exchange it, gift it away or do whatever she likes. But what is the position of a male member? Supposing he is going to will away a certain property. I take the instance of willing away because willing away of property has been provided for under the Hindu Succession Act. Suppose a person wills away his property; then, that will can be challenged by his collateral in the fifth degree. It can be challenged by his son or his col-

lateral, provided it is ancestral and the collaterals are in the fifth degree. Consequently, this has brought a change. So far as the Punjab Customary Law is concerned, the Hindu Succession Act has brought a change by which the position of the male owner has been degraded while the position of the female owner has been upgraded. The object of my Bill is to bring the position of the male as well as the female on par with each other.

श्री बड़े : क्या माननीय सदस्य पंजाब हाई कोर्ट का १९६१ का रूलिंग पढ़ कर सुना सकते हैं ?

श्री हेम राज : मैं अभी उस के कुछ हिस्से पढ़ कर सुनाता हूँ ।

I will now say what I propose to do by my amendment. Section 30 of the present Act reads as follows:

“(1) Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a *tarwad*, *tavazhi*, *illom*, *kutumb*, or *kavaru* shall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this sub-section.

(2) For the removal of doubts it is hereby declared that nothing contained in sub-section (1) shall affect the right to maintenance of any heir specified in the Schedule.....”

Under this section, a coparcener has been given the power to will away

his property. Still, the joint Hindu family is not dismembered. Even if he wills away his property, that property will remain there. So, I submit that under the Punjab Customary Law even this power which has been given under the Hindu Succession Act has been denied to them.

In this connection, I will just quote one ruling which has recently been given, only last year, by the Punjab High Court. It was the case of a Hindu Jat agriculturist. He had no heirs of his. Consequently, he willed his property to a certain person. Then, certain interested persons brought a declaratory suit. Consequently, it was argued that after the passing of the Hindu Succession Act, the Punjab Customary Law did not apply. But, then, the High Court held that it was not so, and, so far as the Punjab Customary Law is concerned, the Hindu Succession Act does not touch it and alienation of it was set aside. Here I will read a few paragraphs of that judgment and case. The heading is:

"Hindu Law—Applicability—Hindus in Punjab are governed by Mitakshara—Agriculturists in Punjab are governed by Customary Law."

"Custom (Punjab)—Ancestral property—Restrictions on power to alienate"

"Hindu Succession Act (1956) sections 4 and 30—Disposal of ancestral property by will—Hindu maleholder governed by Punjab Customary Law—He cannot will away his ancestral property"

I will first read para 14:

"The learned counsel for the respondent sought to contend that section 14 of the Act creates no anomaly for it merely confers full ownership on the females as distinct from absolute ownership. The word "full owner" according to learned counsel was used to

equate females with the male owners, but this contention cannot be accepted because the word "full owner" has been interpreted to mean an absolute owner by their Lordships of the Supreme Court in *Gummalapura Taggina Matada Kotturuswamy vs. Setra Veerayya*, AIR 1959 SC 577.

"Therefore, the anomaly pointed out by the learned counsel for the appellant does exist, but then this may be a case of *casus omissus* and it is not in our province to supply the lacuna.

"The words of the statute are clear so far as the female owners are concerned. As regards male owners, no provision has been made enlarging their estate and the restrictions on the disposal of certain property have continued as such with the only exception as regards coparcenary property as set out in section 30 of the Act. As a matter of fact, Sec. 30 itself envisages the existence of these restrictions for in the operative part it proceeds on the basis that only that property can be disposed of by will by a Hindu, 'which is capable of being so disposed of by him', in accordance with the provisions of the Indian Succession Act or any other law for the time being in force and applicable to Hindus. It is well known that in the Punjab as regards persons governed by the customary law, the notion of coparcenary property is foreign. A clear distinction has always been maintained between Hindus governed by the Mitakshara school of Hindu law and Hindus governed by the customary law of the Punjab."

Again, their Lordships remarked:

"I agree with the counsel that if by virtue of section 14 of the Hindu Succession Act, as has now authoritatively been laid down by the Supreme Court in AIR 1959 SC 577, a female Hindu has been

[Shri Hem Raj]

given a right of absolute ownership over her property, whereas a Hindu male-holder of ancestral immovable property governed by the Punjab custom is still subject to restrictions on his power of disposition, then there does arise an anomaly, the basis or justification of which is not easy to comprehend.

The anomaly becomes more glaring when we find that even the interest of a male Hindu in Mitakshara coparcenary property is also to be deemed to be capable of being disposed of by will. We have, however, to see if the Legislative intent, as is discernible from the language of the statute, is helpful in removing the anomaly, for if it is not so capable, then the remedy does not lie in interpretation but in its amendment by the Legislative branch of the Government, which alone is invested with law-making power."

Then there is another paragraph which says:

"I may at this stage also in passing observe that the proviso to Sec. 6 and the repealing Sec. 31 of the Act also seem to suggest that Parliament while enacting this statute, felt more concerned with enlarging the rights of Hindu women than with abrogating all limitations and restrictions on Hindu males in respect of the disposition of their immovable property. May be that in its anxiety to ameliorate the position of Hindu women, Parliament failed to notice the anomalous consequences, which have arisen on account of the provisions of this Act, but then the remedy for this omission lies not with us but elsewhere."

They conclude by saying:

"Before finally parting with the case, however, it is desirable to

draw the attention of Parliament to the anomaly mentioned above so that if our interpretation is right and the anomaly does need removal, the position may be set right."

It is under these circumstances that I have brought forward this amending Bill. In section 30 after the words "testamentary disposition" I want to insert the words "or by transfer *inter vivos*" and after the words "or any other law" I want to insert the words "or customary law". I also want that in the Explanation after words "in a Mitakshara coparcenary property", the words "or the male proprietor under the customary law of the Punjab" may be inserted. If these amendments of mine under this Bill are accepted, the position of the male as well as of the female under the Hindu Succession Act becomes on par and a male Hindu in the Punjab under the customary law also enjoys the same right.

With these words I commend this Bill of mine for the consideration of this august House.

Mr. Chairman: Motion moved:

"That the Bill further to amend the Hindu Succession Act, 1956, be taken into consideration."

The Deputy Minister in the Ministry of Law (Shri Bibudhendra Mishra): Sir, may I at this stage request for postponement of consideration of this Bill? I quote see the anxiety of the hon. Member, Shri Hem Raj. He seeks to remove the anomalies that have been pointed out by Their Lordships while interpreting section 30.

May I submit in this connection that the hon. Member's amending Bill seeks also to introduce something more? He also wants to introduce in section 30 which deals with testamentary succession the words 'or by transfer *inter vivos*', which is completely outside the scope of the Hindu

Succession Act itself. It is neither covered by the principles of testamentary succession nor by the principles of intestate succession.

Apart from that, may I say here that the judgment referred to has also been brought to the notice of Government. As a matter of fact, the Punjab Government have appointed a committee of enquiry, which is going into the whole question as to how best the Punjab customary law can be amended not only to cover testamentary disposition of property but also to cover cases of transfer *inter vivos*. And that is already under the consideration of Government, and it will be better if a comprehensive Bill is brought forward, covering both testamentary succession as well as cases of transfer *inter vivos*.

For these reasons, instead of going through a Bill hastily like this, may I request, that since the matter is under the consideration of Government, the further consideration of the Bill may be postponed

Mr. Chairman: It is the request of the hon. Minister that the further consideration of the Bill be postponed. I suppose the House agrees with it.

Several Hon. Members: Yes.

Shri A. C. Guha (Barasat): What is the reaction of the hon. Mover of the Bill?

Shri Hem Raj: The hon. Deputy Minister has just stated the reasons why he wants a postponement. No doubt, I had put one question here.

Shri Bade: What has the hon. Member got to say regarding transfer *inter vivos*? The hon. Deputy Minister has stated that he is transgressing the limits and going ahead. What has the hon. Member got to say regarding transfer *inter vivos*? Let him explain the position in regard to that.

Shri Hem Raj: So far as my Bill is concerned, according to the version of

the hon. Deputy Minister, such custom may be prevailing in other States also, and he has stated that the Punjab Government have also appointed a committee of enquiry. No doubt, that is true. But I had been putting questions after questions here, when this amending Bill was to be taken up, but there was no response from Government, and, therefore, I thought it proper that I should move my amending Bill for consideration, so that the attention of Government may be pointed towards this amendment of the Hindu Succession Act.

Now, if Government are of the view that after getting the report of the Punjab Government we should discuss this Bill, I have got no objection to the Bill being postponed.

Mr. Chairman: I suppose the postponement is agreed to by the House.

Several hon. Members: Yes.

Mr. Chairman: So, the postponement is agreed to by the House.

16.54 hrs.

CODE OF CIVIL PROCEDURE (AMENDMENT) BILL

(Omission of section 87B) by Shri M. L. Dwivedi

Shri M. L. Dwivedi (Hamirpur): I beg to move:

"That the Bill further to amend the Code of Civil Procedure, 1908 be taken into consideration."

सभापति महोदय, मैंने जो विधेयक सदन के सम्मुख प्रस्तुत किया है, उसका उद्देश्य स्पष्ट है, न्यायोचित है। माननीय सदस्यों को मालूम है कि हमारे देश में कुछ समय पूर्व बहुत से देशी राज्य थे। ये देशी राज्य हमारे वर्तमान राज्यों में विलीन हो चुके हैं। इन देशी रियासतों के राजा महा राजाओं अथवा भूतपूर्व शासकों को भारत की नागरिकता के वे सब अधिकार प्राप्त हैं जो हम सब को प्राप्त हैं, भारत के साधारण