

16-04 hrs.

**MISCELLANEOUS PERSONAL
LAWS (EXTENSION) BILL**

Mr. Deputy-Speaker: Let us take up the next item on the agenda. The hon. Law Minister... Not here. Perhaps he could not anticipate that the Arms Bill would be finished soon!

Shri F. E. Patel (Mahsana): As he is not here, the Bill lapses.

Mr. Deputy-Speaker: The Law Minister and the Deputy Minister were here just now. In fact, from the morning they have been waiting. Perhaps they thought that we had reached only up to 13 clauses of the Arms Bill and that it might take time to finish. They have been here.

Some Hon. Members: The Deputy Minister of Law is coming, Sir.

Mr. Deputy-Speaker: Yes.

The Deputy Minister of Law (Shri Hajarnavis): Mr. Deputy-Speaker, Sir, I beg to move:

"That the Bill to provide for the extension of certain personal laws to parts of India in which they are not now in force, as passed by Rajya Sabha, be taken into consideration".

The Bill is extremely simple. Those provisions which are intended to be extended are given in Schedule I. They are the Converts' Marriage Dissolution Act, the Anand Marriage Act, the Hindu Disposition of Property Act, The Hindu Inheritance (Removal of Disabilities) Act, the Hindu Gains of Learning Act, the Muslim Personal Law (Shariat) Application Act and The Dissolution of Muslim Marriages Act.

When certain Indian laws were extended to Part B States in 1951 by the Part B States (Extension of Laws) Act, the personal laws were exchanged, because firstly we thought we ought to wait till we finished the codification of the Hindu law. We

had also not ascertained then what exactly were the provisions of personal laws in the various Part B States. Now that the laws have been ascertained, we have brought a comprehensive measure. In extending these laws, we have to displace certain other Acts already in force there. For instance, the Hindu Transfers and Bequests (City of Madras) Act, 1921 and the Madras Hindu Transfers and Bequests Act, 1914 had the same content as the Hindu Disposition of Property Act, 1916. Certain other Acts which are now extended are already applied to various portions of Part B States, such as the Hindu Gains of Learning Act, 1930 which was extended to Andhra Pradesh by the Andhra Pradesh (Extension of Laws) Act. Now we seek to bring about uniformity so far as personal laws are concerned. By passing the Act, we also ensure that the source of law is the same, viz., central legislation.

A word of explanation is necessary so far as the Hindu Transfers and Bequests (City of Madras) Act, 1921 and the Madras Hindu Transfers and bequest Act, 1914 are concerned. It has been represented to us that though as I said, the provisions of both these Acts are the same as the provisions of the Hindu Disposition of Property Act, 1916, it does not contain the definition of the word "Hindu", which is found in the Madras Act. In the Madras Act, this is done in an Explanation. We have taken the view that that particular explanation is not necessary now, especially after we have codified the Hindu law. The Explanation said:

"Hindus governed by the *Marumakkattayam* and the *Aliyasantana* laws shall be deemed to be the persons governed by the Hindu law for the purposes of this Act."

Now we have given an almost all-inclusive definition of the word "Hindu" in the codification of Hindu laws. So, we have thought it is not necessary to adopt that definition here.

As regards the extension of the Muslim Personal Law (Shariat)

Application Act, 1937, it has been represented to us that we ought to amend the Act by including within its scope question relating to agricultural property, etc. The House is aware that when the Government of India Act came into force in 1937, the Central Legislature did not have jurisdiction to pass any law with respect to agricultural property. So, whenever provision had to be made about succession to agricultural property it had to be undertaken by Provincial legislatures. When the Muslim Personal Law (Shariat) Application Act was passed here it naturally confined itself to non-agricultural property because the Central Legislature did not have authority to pass a law in respect of agricultural property. Now in Madras the Madras Legislature passed a similar law with respect to agricultural property. So as far as Madras is concerned, the Shariat law is in operation both in respect of non-agricultural and agricultural property. Now as I said a representation was made to us that our own law should embrace all kinds of property whether agricultural or non-agricultural. Having given great consideration to this kind of representation, we have come to the conclusion that this could not be done because the law relating to agricultural property in various States are different. It is also not quite clear that, so far as agricultural property is concerned the States themselves require any uniformity to be attained. Therefore, what we have done is this. We have left agricultural property to be dealt with by the State Legislatures themselves. If there is any State law applicable to the Muslims which governs the succession to agricultural property of the Muslims, that law shall hold the field. So far as Madras is concerned we do not think we are making any change in law, because the law that we are going to apply relates to non-agricultural property. We do not want to disturb the law relating to agricultural property in that State. This is the scope of the Bill, and I commend it to the acceptance of the House.

Mr. Deputy-Speaker: Motion moved

"That the Bill to provide for the extension of certain personal laws to parts of India in which they are not now in force as passed by Rajya Sabha, be taken into consideration"

Shri P. S. Daulta (Jhajjar) There is not much controversy over the subject matter of this Bill. But I want to know from the Law Minister the legal position of Kashmir. As a matter of fact, every enactment that comes before this House has this legal formula that it will have force through out India except the State of Jammu and Kashmir. I cannot understand this thing. I know that the excuse will be the articles of the Constitution—article 370 etc. But one day this practice may prove dangerous if the law of Kashmir is different from Malerkotla, Amritsar or Pepsu. It may create other difficulties also. At least for nine months of the year Kashmir Muslims remain in the plains and if one law applies in Kashmir and another law applies in Amritsar or Malerkotla it is not desirable. The law should be the same whether it is Malerkotla, Amritsar or Srinagar. This business of one law in one place and another law in another place in India should now cease.

This is a social legislation not a political one. This relates to inheritance and other things. So the Law Ministry should not make us feel that the Kashmiris are different from the rest of Indians. We are told by our Government and no less a person than the Prime Minister, that Kashmir is a part and parcel of India and that Kashmiris are the kith and kin of Indians. If that is so why should there be different laws? If article 370 does not empower this Parliament to do that how can the Members of Kashmir come to this Parliament? This is a strange position. This Parliament has Members from Kashmir but, at the same time it has no power to legislate on matters relating to Kashmir.

This can be done in another way also. The Kashmir Government can

[Shri P. S. Daulta]

be requested to enact the same laws. Otherwise, we will go on passing laws in our own way and there will be conflicts between their legislation and our legislation and a strange situation may be created. So, that will prove very dangerous in the future I know that we will be told that the Law Ministry has nothing to do with the amendment of the Constitution. But we take the Government as one organic whole, jointly responsible to the House. So, Law Ministry can raise this point at the appropriate time. When other articles of the Constitution are being amended, article 370 can also be amended.

The second point that I want to raise is customary law *versus* personal law. From the Schedule what I find is that some personal laws are to be substituted by some other personal laws. I know in erstwhile States where there were no customary laws what is their position. It is true and we have just now heard the hon. Minister say that about the succession of agricultural affairs they do not want to legislate. They may or they may not; I do not know. The Hindu Succession Act, section 14, has upset the entire economy of the Punjabis. Yes. We were governed in respect of our succession by the customary law. Agricultural people, Jats, Rajputs, Gujars, Ahirs of the Punjab, whether they were Hindus or Muslims or Sikhs, were governed by the same law of succession. But now everybody knows that those customary laws prepared by the Britishers and by their Settlement Officers have been set at nought, this Hindu Succession Act applies and that customary succession goes.

So, I want to know what the position in those States is. Was there any customary law applicable in respect of successions or not? I know that in Kashmir a thing like the Hindu Inheritance (Removal of Disabilities) Act was there. Is *shariat* law not there? Perhaps there may be some customary law in Kashmir regulating succession of Gujars and other agri-

cultural communities there. So, the second point that I want to be made clear by the law Minister is whether assessment of the customary law prevailing before these enactments has been made by the Government.

The third point is about repealing and extending these laws. One thing has been presumed that laws of the old British India were certainly superior than the laws of all the States. There were some progressive States, like Travancore-Cochin. These progressive States must be having better legislation than British India. Has there been an attempt to see that a good law of those States has been extended to British India or is it that only the old laws of British India are being extended to those States?

Except for asking these clarifications, Mr. Deputy-Speaker, I find nothing more to say.

Shri C. K. Bhattacharya (West Dinajpur) I want to draw the hon. Minister's attention to one thing only. In the Converts Marriage Dissolution Act that is being changed by this new provision not only Jammu and Kashmir but also Manipur has been brought in. In all the other legislations it was only Jammu and Kashmir. Why Manipur has been brought in in this particular legislation and not in others? What is the necessity of bringing in Manipur at all in this business? That is my question.

So far as reference to Jammu and Kashmir is concerned, which the hon. Member has just now mentioned, it is becoming something like a stereotyped habit with the Government of India to except Jammu and Kashmir in every legislation that is brought before this House. It would be more proper if before bringing in this legislation they arranged with the Government of Jammu and Kashmir by having a talk with them and persuading them to agree to these legislations so that legislations can be made by the Parliament for India as a whole and

not with a particular State always excepted, whatever be the legislation, social or political or anything That is my only submission

Shri Hajarnavis: Mr Deputy-Speaker, Sir, the hon. Member is not right in saying that when we except Jammu and Kashmir from the extension of this Bill we set it up as an excuse or we refer to the provisions of the Constitution as our defence Submission to the Constitution is a duty since we have sworn to abide by the Constitution Surely, the House does not expect the Government to bring in a Bill which is beyond the competence of this House He himself has quoted the relevant article of the Constitution The House is aware that so far as this subject is concerned, we have no legislative competence Even if we omitted these words, the courts, as a rule of interpretation, will confine it only to that portion of India which excludes Jammu and Kashmir Therefore, until the Constitution is changed,—that of course, means not merely a change in the words of the Constitution, but also a change in the political set up is,—I do not think we can embark upon legislation which will embrace Kashmir This is an answer which has been given a number of times I really do not know why it should have to be repeated time and again

Mr. Deputy-Speaker: The hon Member desires that the Law Ministry should take some steps to have that article in the Constitution amended That is what he means

Shri Hajarnavis: As I said, it is not merely a change of words It is a change of the whole political set-up It is a consummation which is very much devoutly to be wished for Beyond that, I do not think I am in a position to make any other statement

As regards the question which was raised by my hon. friend Shri C. K. Bhattacharya about the Converts' Marriage Dissolution Act not applying to the Union Territory of Manipur, this

particular Act was not extended to the Union Territory of Manipur. Since it was not applied to the Union Territory of Manipur, there is no need to apply it to a Territory to which it was not extended That is how that territory finds a place in item 1 in the First Schedule.

As regards the other points which have been raised, my observations were confined to the Muslim Personal Law (Shariat) Application Act, 1937 The hon Member, I believe, is an eminent lawyer He is aware that, although the Muslim Personal Law (Shariat) Application Act says that where the parties are Muslims, they will be governed by their own personal law, what the personal law is will have to be found by the courts. If there is no difference between the personal law applicable to the Muslims in Kashmir and the personal law applicable to the Muslims in the Punjab

Shri C. K. Bhattacharya: May I intervene for a moment? It is not always the case that where the parties are Muslims, they are governed by the Muslim law I have seen cases in the Calcutta High Court where both the parties, though Muslims, claimed that they have been customarily governed by the Hindu Law I have seen such cases being disposed of in the Calcutta High Court

Shri Hajarnavis: The hon Member is anticipating me. I was stating the general position The hon Member has rightly said that customs govern all including a statute It is a well known proposition of law that custom may govern a locality, custom may govern a community or it may govern a family In that case, the parties have an onus placed upon them to prove that they are not governed by the ordinary law, and that there is a particular custom or a set of rules apart from the statute law which governs their transactions and their property. That position remains unless it has been displaced by statute To a large extent, the hon Member

[Shri Hajarnavis]

Shri C. K. Bhattacharya has answered the question which was raised by the hon. Member opposite. Of course, whether any statute saves customary law will have to be read from the words of the statute itself.

Dr. M. S. Aney (Nagpur): Personal law means codified law for the Hindus, Mohammedans and so on. Customary law means uncodified law recognised by the courts. Is it proposed that the customary law shall remain even though the codified law in the name of personal law for a particular community is made or extended unless that saving is specifically mentioned in that law?

Shri Hajarnavis: There is no contradiction between codified law and personal law. There is distinction between codified law and un-codified law, what in England is called the Common Law. The courts ascertain what the law is which a community accepts without the command of the State. That law is not codified law. Codified law is where a statute sets out to contain all the law on a particular subject. That is regarded as a code. Therefore to ask a question whether it is the personal law or the codified law is, I submit, mixing up the two categories. The two categories are entirely different.

As far as personal law is concerned, I understand and I am giving my own individual opinion, it is a law relating to succession, marriage, divorce etc. These are the matters which are generally included in personal law. Personal law may be entirely contained in a code. For instance, a large portion of the personal law of the Hindus is now codified, but a certain portion still remains uncodified and is outside the code.

As I said, the general rule is that custom governs all. If there is a custom which is proved by the Court as binding upon the parties, then the Court will give effect to that custom,

unless, as the hon. Member has said, the statute in that case says that custom is displaced and the statute will prevail custom notwithstanding. Therefore, as the hon. Member himself has said, we will have to go to the words of the statute itself. Beyond that I have nothing to add.

I am grateful to the House for they have appreciated the effort which the Government have made in order to see that the laws are unified throughout the country.

Mr. Deputy-Speaker: The question is:

"That the Bill to provide for the extension of certain personal laws to parts of India in which they are not now in force, as passed by the Rajya Sabha, be taken into consideration"

The motion was adopted.

Mr. Deputy-Speaker: As there are no amendments, we take all the clauses together.

The question is:

"Clauses 1 to 4, Schedules I and II, the Enacting Formula and the Long Title stand part of the Bill."

The motion was adopted.

Clauses 1 to 4, Schedules I to II, the Enacting Formula and the Long Title were added to the Bill.

Shri Hajarnavis: I beg to move:

"That the Bill be passed."

Mr. Deputy-Speaker: The question is:

"That the Bill be passed."

The motion was adopted.