

14.20 hrs

Title: Discussion on the Indian Succession (Amendment) Bill, 2001. (Bill passed.)

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI ARUN JAITLEY): Sir, I beg to move:

"That the Bill further to amend the Indian Succession Act, 1925, as passed by Rajya Sabha, be taken into consideration. "

Sir, this Bill deals with composite laws relating to succession which was enacted in the year 1925. The attention of the Government was drawn by members of the Christian community, particularly the Christian Members of Parliament, with regard to two anomalies that existed in the law. Thereafter, the Government also consulted various other organisations belonging to that religious denomination. Two minor amendments have been suggested. First is the deletion of explanation to section 32 of the Act. The explanation itself says that there may be a situation where a widow of a Christian, on account of contract made at the time of marriage, may be excluded from succession. Now, to exclude a widow from succession in the present day appears to be a bit anachronic. It was generally felt, and the community also represented that this provision should be deleted.

The second is an amendment to the provisions of section 213 of the Act, which prescribed for the successor obtaining a proper order from a competent court in terms of probate or letter of administration before a will could really be given effect to. There is an exception to the effect that this provision does not apply to the Muslim community. The Christian community has also sought parity because they felt that whenever a Christian dies with a will, the successor faces a lot of difficulties in terms of succession. Therefore, all Christian Members of Parliament of this House and the other House and also the members of the community have been representing for inclusion of Christians along with Muslims in this exception. The Government considered this and has approved it. The Rajya Sabha has already approved both these amendments unanimously. Since these are in the interest of the community itself and are progressive in nature, I propose that this august House may consider and approve these amendments.

MR. CHAIRMAN : Motion moved:

"That the Bill further to amend the Indian Succession Act, 1925, as passed by Rajya Sabha, be taken into consideration. "

SHRI E.M. SUDARSANA NATCHIAPPAN (SIVAGANGA): Respected Chairman, Sir, I support this Bill. I feel it is a very progressive step on the part of the Government to bring this Bill. This Bill actually includes Christians, especially the widows who were totally debarred from succeeding to the property of the husband. It is against the normal civilised way of thinking. Before marriage, how can they forego their right? How can they assure that, after marriage, on the event of death of husband they will not claim any right to property of the husband? It might have been based on English Law or based on their way of living. But after Independence, we should have looked into the Indian Succession Act 1925 afresh, especially the definition clause of that Act. Even now it has not been amended. It shows how pathetic the situation is. Section 2(d) of the Act says:

"'Indian Christian' means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of Christian religion. "

We have already passed through this phase. We have got our own Christians. There is no difference between Indian Christians and any other Christians. Christians who are living in India are following their own customs and traditions. Therefore, this particular definition should be looked into for amendment. It should be:

"'Indian Christian' mean people who are professing Christianity in India as Indian citizens. "

This amendment concerning the life of the Christian widows is a very welcome step.

This is one of the very interesting subjects of empowering the women. Therefore, the Government should have this sort of a thinking. The enactments, which are needed for empowering the women, especially in different

denominations, should be looked into. Even the Law Commission, in its 110th Report has not recommended for the amendment of this section because there was no representation from the Christians. But the Government has taken a step on the basis of the representations made by the Christian Members of Parliament and others. So, we welcome this aspect. It will have a far-reaching consequence for the poor people and also the middle class people living in various places.

In the same way, I would like to draw the attention of the Government to one important aspect. Of course, our Law Minister is very dynamic. He speaks in every forum that a lot of cases are pending in the courts. One of the reasons for the pendency of the cases at the lower courts as also in the second stage of appeal at the High Court level is that a lot of confusions are there about the Indian Succession Act. So, a lot of clarity is needed. Therefore, it is high time to have a total review of the Indian Succession Act. It should be simplified in the same way of the Hindu Succession Act and other Succession Acts. The Indian Succession Act should enable the people to have the post-Independence way of living. That should be looked into.

We are now going back to the year 1925 when there were so many differences in so many areas of living of different categories of people. Therefore, I would request the hon. Law Minister to take some initiative in this regard. A lot of Law Commission Reports are also there. There should be a comprehensive law that should give a very clear and direct succession in the event of intestate succession or testamentary succession. There should be a very clear and simplified law for all the sections of the people. That should also protect the interests of different communities of society.

In the same way, I would like to appreciate the hon. Minister for bringing forward amendment to section 213 also. This is also a recommendation which was made by the Law Commission in its 111th Report. But there is a small caveat given in that. In the Report, it is said in page 187, paragraph 34.18A:

"We recommend that (a) section 213 should be amended as above; and (b) consequential changes be made, wherever necessary in other sections of the Act."

The second part should also be looked into if there are any rules and other sections which are detrimental as a consequence of this enactment. If necessary, some amendments should also be brought in so that the enactment of this amendment is useful for the particular people, the Christian people.

Regarding probate and also the subsequent suits, we have to take into consideration whether this enactment is going to help only before filing the suit or after filing the suit also. That should be also be taken into consideration. *In toto*, we feel that the amendment is appreciable. It is useful for one sect of the people. My feeling is that the entire nation should benefit by bringing forward a comprehensive Bill so that the Indian laws are simplified to a great extent. Then, it will be easy to live here with no litigation and automatic succession will be there for any people.

With these words, I conclude.

श्री गिरधारी लाल मार्गव (जयपुर) : माननीय सभापति जी, माननीय अरुण जेटली जी जो भारतीय उत्तराधिकार, अधिनियम, 1925 में संशोधन लाए है वह देखने में तो बहुत छोटा है परन्तु सैक्शन 32 के एप्लीकेशन और सैक्शन 213 में जो भेदभावपूर्ण व्यवहार क्रिश्चियन महिलाओं के साथ किया गया है, उसको खत्म करने के लिए माननीय कानून मंत्री जी इस बिल को लाए हैं। यह इतिहास में एक प्रकार का सुंदर अमेंडमेंट है। सन् 1925 में हिंदुस्तान पर ब्रिटिश सरकार राज कर रही थी।

ब्रिटिश सरकार ने जो भेदभावपूर्ण कानून बनाया था, उसे समाप्त करने के लिये माननीय मंत्री जी यह विधेयक लाये हैं। मैं अपनी पार्टी और अपनी ओर से उन्हें घन्य वाद देना चाहता हूँ।

इसके अलावा अंग्रेजों ने हिन्दू और मुस्लिम महिलाओं के साथ भेदभावपूर्ण व्यवहार किया। इसाई महिलायें जो विधवा हो जाती थीं, जब शादी उन्हें करके ले जाया जाता था तो उन्हें 5 साल इंतजार करने के बाद कोर्ट जाना पड़ता था तभी उन्हें कैवीएट मिलता था। इस प्रक्रिया में बहुत पैसा खर्च होता था। मैं माननीय मंत्री जी का घन्यवाद करना चाहूंगा कि इसाई महिलाओं के साथ अंग्रेजों द्वारा किये गये अन्यायपूर्ण व्यवहार को दूर कर उनका हक उन्हें दिलाने के लिये यह संशोधन विधेयक लाये हैं। इस संबंध में केरल महिला आयोग ने कई प्रकार की बातें की हैं। कई अन्य संस्थाओं ने भी कहा है कि इंडियन सक्सेशन एक्ट के तहत इन महिलाओं को उनका अधिकार मिलना चाहिये।

सभापति महोदय, संविधान की धारा 213 में यह मुस्लिम, जैन, बौद्ध महिलाओं पर लागू नहीं है। केवल मैट्रोपौलिटन सिटीज़- मुम्बई, चैन्ने और कोलकाता में सारे नियम लागू हैं। मैं एक बार माननीय मंत्री जी का फिर से अभिन्नदन करना चाहूंगा कि इसाई महिलाओं के साथ हुये अन्याय को दूर करने के लिये यह बिल लाये हैं, मैं इस बिल का समर्थन करता हूँ।

SHRI ADHIR CHOWDHARY (BERHAMPORE, WEST BENGAL): Sir, I must welcome this Bill most unequivocally. The title of the Bill is the Indian Succession (Amendment) Bill, 2001 but the same is dealing with personal laws.

Sir, the Bill is itself reflecting the state of the Indian womenfolk who are in dire straits and were subjected to social discrimination, anti-female bias and social marginalisation. By deleting the explanation to Section 32, the Christian widow will accrue the benefit of succession, and the long arduous journey the Christian widow pursues before

getting the benefit of the will has now been ended by this amendment. However, under article 300(A), no person shall be deprived of his properties, save by the authority of law. But, due to our colonial hangover, we are still bearing the discrimination insofar as the Christian widow is concerned. Now, she would no longer be required to obtain the mandatory probate before having a property of her deceased husband. By amending Section 213, the Christian widow has been put at par with Muslim.

However, as far as Hindus, Parsis and Jains are concerned, they still require the probate in some areas, especially in Kolkata, Chennai and Mumbai. So, I think, still there is some sort of discrimination and this has to be removed as early as possible.

Sir, I would like to inform the hon. Law Minister that in his Bill the distributive share has been ensured. But how do you define the share of the Christian widow? What would be the share of the children of the Christian widow? These questions have to be dealt with. In the Christian society, when a son dies, his father becomes entitled to his property. Therefore, I would request the hon. Law Minister to bring in a comprehensive Bill so that the entire distortion could be sorted out.

Sir, in India, 2.5 per cent of men are widowed compared to 8.1 per cent of women and always a widower has a greater freedom to marry than his female counterpart. I do not want to linger over this issue, because this Bill has already been passed by the Rajya Sabha. I also find no opposition in so far as this Bill is concerned. However, I would like the hon. Law Minister to enlighten me on the two issues which I have raised. Again, I must say that the existing provision of the Act of 1925 is totally anachronistic in character and unconscionable. Therefore, it is really a welcome measure that the hon. Law Minister has taken and, therefore, he deserves to be praised lavishly.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI ARUN JAITLEY): Mr. Chairman, Sir, several valuable comments and suggestions have been made by the three hon. Members who have spoken on this particular Bill. As I mentioned earlier, the object behind this Bill was two fold. The explanation to Section 32 itself was highly discriminatory. In fact, I was trying to study how a provision of this kind could have been introduced in the first instance itself. The provision says that when a lady becomes a widow and is rendered to a state of destitution, she is further confronted with a situation where she also loses her right of inheritance because of a contract that she made at the time of her marriage.

Now, a contract of this kind normally should have been unconscionable. But since this provision has continued, one possible explanation through my reading is this. I found out the reason why it could have been introduced as was being indicated by one of the hon. Members, Shri Bhargava, that people used to govern this country and rule this country. At the time when this law was made, many officials used to come to India. In case they got married to somebody in India, they wanted to deprive the inheritance of the properties that they owned in England. Therefore, such a contract was envisaged where they could get married but simultaneously have a contract disinheriting the wife in the event she became a widow. Since this clause is no longer in consonance with modern thinking, we consider it appropriate to delete it.

Secondly, we also acceded to the demand of the Christian community that because of this entire harassment, which the legal heirs of a deceased must have in the matter of obtaining letter of administration or probate, they should be exempted from them.

Several suggestions have been made that even though these two suggestions are welcome, there is a lot in our personal laws that really requires to be changed.

The hon. Member, Shri Chowdhary, wanted to know with regard to the rules of succession which are followed in the Christian community. If he sees the main Indian Succession Act, sections 33 and 33-A, define very clearly each category of cases - how the inheritance of an Indian Christian will flow in the event of his death itself.

I quite concede that there are several laws that are still discriminatory. Over the last two years, we have made a concerted effort to change and improve a lot of laws and bring them in tune with modern thinking. Our belief has been that all personal laws must really be in consonance with human dignity, with equality, with some sense of dignity that a person or a spouse is to live into. But one sensitive area that we deal with, when we deal with personal laws, is that normally we do not tinker with them till such time there is a larger participation of the community and an agreement of the community itself that improvements are required. For instance, last year, this hon. House and the other House cleared the amendments to the Indian Divorce Act.

In the last 50 years, those amendments had been turned down by the community on a number of occasions. But last year, when it had again come up, there was a very active participation of the community itself when they had actively supported those amendments.

Similarly, amendments to other maintenance laws, etc., which are also a part of the personal law package, have been made in the last two years by this hon. House. Therefore, even a more logical step or more idealistic step really would be what the hon. Members have said that you take a comprehensive re-look at some of these old laws. An easier course has been that you look at these laws and wherever you find aberrations in terms of violating rights of equality, violating principles of dignity, you, at least, change those aspects. Our experience has been that the active leaders of those communities have been more agreeable to such kind of changes that we have made. The consultation process for update and upgrading of these personal laws is a continuous process. I am sure some of the very valuable suggestions which the three hon. Members have made will be borne by us in mind when future amendments to these laws are envisaged.

I thank the hon. Members for their active support to this particular Bill. I propose to this hon. House that this Bill be adopted by the hon. House.

MR. CHAIRMAN : The question is:

"That the Bill further to amend the Indian Succession Act, 1925, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: The House shall now take up clause by clause consideration of the Bill.

The question is:

"That clauses 2 and 3 stand part of the Bill."

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1-Short Title

Amendment made:

Page 1, line 3, -

for "2001"

substitute "2002" (2)

(Shri Arun Jaitley)

MR. CHAIRMAN: The question is:

"That clause 1, as amended, stand part of the Bill.

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Enacting Formula

Amendment made:

Page 1, line 1,--

for "Fifty-second"

substitute "Fifty-third" (1)

(Shri Arun Jaitley)

MR. CHAIRMAN (SHRI DEVENDRA PRASAD YADAV): The question is:

"That the Enacting Formula, as amended, stand part of the Bill"

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill

The Long Title was added to the Bill.

MR. CHAIRMAN: Now, the Minister may move that the Bill, as amended, be passed.

SHRI ARUN JAITLEY: I beg to move:

"That the Bill, as amended, be passed."

MR. CHAIRMAN: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.
