

[L. 17]

Legislative (1897) Department.

ORDINARY PRINTED.

G.O., No. 79

DATED 2 10. 97.

INDEXED.

10/10

[Despatch Abstract.]

Hindu Gurus of Learning Bill

Communicating to the Honble V. K. Shyam
Srinagar, C. R. Dwivedi Bahadur, member in charge of the
the opinion of the Honble the Judges of the High Court, members on the
bill

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Government { 1897 } of Madras. LEGISLATIVE.

Recd.

Regd.

} 1897.

Enclosures

Spare copies

G.O., No. 79, 2nd October 1897.

OCTOBER.

Hindu Gains of Learning Bill.

Communicating the opinion of the Honourable the Judges of the High Court, Madras, on the — to the Hon'ble V. Bhashyam Aiyangar, c.i.e., Diwan Bahadur, Member in charge of the Bill.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—again the following paper:—

G.O., No. 63, Legislative, dated 9th August 1897.

ABSTRACT.—Referring for the opinion of the Honourable the Judges of the High Court, Madras, the Hindu Gains of Learning Bill with connected papers.

READ—also the following paper:—

From D. W. G. COWIE, Esq., Registrar of the High Court of Judicature, Madras, to the Chief Secretary to Government, dated 8th September 1897, Dis. No. 1547.

With reference to G.O., No. 63, Legislative, dated the 9th ultimo, forwarding, for the opinion of the Honourable the Judges, a Bill to declare gains of learning by a Hindu to be his separate property, I am directed to forward copies of the minutes recorded by the Honourable Justices Shephard, Subramania Aiyar and Benson, and to state that the Honourable Mr. Justice Boddam considers that the Bill will simplify the law and be beneficial. The Honourable the Chief Justice and Mr. Justice Davies have no remarks to offer.

ENCLOSURE.

Minutes.

THE HONOURABLE MR. JUSTICE SHEPHARD.—In principle I think Mr. Bhashyam Aiyangar's Bill is undoubtedly a good one, for it is clearly desirable to put the law, at present uncertain, on a more definite footing and to shut out the difficult question as to the character of a man's education and the nature of his gains which, as is shown in the Statement of Objects and Reasons, may at any time arise. I have, however, some observations to make on the language of the Bill. It may be convenient for Hindu lawyers to use the terms "learning" and "gains of learning" in the wide sense in which they are used in the books. But when a statute has to be framed I submit that words ought to be used as far as possible in their correct sense, and that a fictitious use of them is to be deprecated. In the second clause of the Bill "learning" is said to mean education. That is certainly not the English meaning of the word, for learning stands in the relation of a product to education which is a process. "Gains of learning" are said to mean "all acquisitions of property made substantially by means of learning", i.e., by means of education. To ordinary persons the phrase would suggest scholarships, college prizes and, possibly, income derived from the work of teaching. It certainly would not suggest the miscellaneous gains which are intended to be brought within the operation of the Bill. The Bill, as I understand, is intended to benefit not only those who pursue the learned professions and who may therefore be supposed to have some tincture of learning, but also to apply to persons of all sorts who, by their own wits or their own skill of whatever kind, contrive to make money, unassisted by direct aid from the family. The Bill is intended to apply alike to the college professor, the lawyer, the doctor, the musician, the acrobat, the juggler, the dancing girl. I should demur to the accuracy of the proposition that the fees of a lawyer or a doctor are earned substantially by means of learning. But to say that the earnings of an acrobat or a dancing girl are acquired by that means is, in my opinion, an abuse of language. Beyond pointing out that the use of such adverbs as "usually" and "substantially" is eminently calculated to provoke argument, I do not propose further to criticise the definitions, because, in my opinion, they

can be dispensed with altogether. The object of the Bill is, as I understand, to preserve to the energetic or fortunate member of a Hindu family the gains which he makes by his own exertions, unaided by any direct or immediate subvention from the family property. It is desired that the unproductive members of the family should no longer be entitled to claim such gains as part of the family estate, notwithstanding that indirectly and remotely an education, general or special, obtained at the expense of the family may have contributed to the acquisition of the gains. The matter is very clearly put by Sir T. Muttusami Aiyar. He observes that the object of the proposed legislature is to place gains of learning on the same footing with other descriptions of self-acquired property. All that is required then is to get rid of the difference by declaring that the fact of a man having been educated at the family expense, or having been maintained by the family during the period of his education, shall in no case be taken into account in deciding whether any property acquired by such person is his separate property or family property.

One further observation I have to make on the clause declaring that the Act shall apply to every Hindu domiciled in any part of the Presidency. This reference to domicile is, I think, out of place, for personal law has nothing to do with domicile. A Hindu born in a family, governed by the Dayabhaga, retains that law as his personal law, although he may come to be domiciled in this Presidency. There is certainly some difficulty in defining the operation of an Act which is intended to modify rules of personal law as administered in a particular province. But I think that practically a declaration that the Act is to apply in the High Court of Madras and in all the Civil Courts subordinate to it would meet the requirements of the case. The enactment would then have no other operation than what an authoritative decision on the same point would have in those Courts. The result would be that Hindu law, as administered in this Presidency, would be altered in the manner indicated in the Act.

THE HONOURABLE MR. JUSTICE SUBRAMANIA AIYAR.—Though a person who acquires properties in the circumstances contemplated by the Bill receives his education at the expense of his family, yet it is impossible to deny that the direct and proximate cause of those gains of learning is the man's own personal capacity and exertion. It is therefore but reasonable that the property should belong to the acquirer only. Nor is the doctrine new to Hindu Law, it having been more or less recognized from ancient times. Some Smritis, no doubt, introduced certain qualifications with reference to the acquirer's exclusive right to his gains of learning. But owing to changes which have taken place in the circumstances of the people, the qualifications introduced by the said Smritis should, as pointed out by Sir T. Muttusami Aiyar in his letter of January 1893 to the Chief Secretary, be treated as unsuited to the present state of the society. Consequently, it must, I think, be admitted by all that the rule intended to be laid down by the Bill is wholly sound and just. Moreover, if the Bill is passed, it would remove the doubt and uncertainty in which the law on the point is now involved, and the enactment would render practically impossible fraudulent litigation that generally springs up after the death of the acquirer and is carried on under circumstances which place those claiming through him at a great disadvantage in establishing the truth. Such an enactment would also render resort to benami transactions on the part of the acquirer unnecessary and would diminish fraud and perjury which are the usual concomitants of such transactions.

As to the objections raised against the Bill, I shall only notice two and that very briefly—

The first is that a law, such as that proposed, would increase partitions in joint families. I think that the effect would be the very reverse. Members of undivided families in this country are, as a rule, willing to remain joint as long as possible, and this disposition to remain joint would be strengthened by the law as it would remove one great inducement to the acquirer in question to seek a partition.

It is next said that, if the Bill is passed, elder members in joint families would refrain from spending money on the education of younger members as freely as they do at present. Now when a Hindu father educates his son, or an elder brother his younger brother, there can be, no doubt, that during the time the education is being given those elder members do not for a moment think anything about the future acquisitions of the younger member thus receiving education. The motive of the

father or the brother in giving the education is, of course, the natural one that the younger member should be made fit to earn a livelihood and to get on in life. I think therefore that the cause of the education of the younger members would not suffer by the Bill becoming law.

I am therefore as strongly in favour of the Bill as I was in 1892.

I would only add that if it is passed there is great hope that it would induce the author of the Bill to bring forward other measures which he is prepared to introduce with a view to remedy a few more serious defects in the Hindu Law as administered in this Presidency. That a considerable number of such defects exist and require to be remedied no one acquainted with the matter can doubt. For obvious reasons, however, the Executive Government could not be expected to start legislation with reference to such matters. The community concerned should, therefore, look principally to native members of the Legislative Council to initiate and carry through legislation calculated to improve the indigenous systems of law. And as the community possesses in the author of this Bill a representative with rare qualifications for undertaking the difficult and delicate task of introducing useful alterations in the Hindu Law, it is a very general wish that this first Bill of his drawn up with great care (which reveals itself only on close examination), supported by much learning and above all kept afloat during all these years with tact and patience, should be passed without further loss of time, not only because the measure itself is a beneficial one, but also because that would very much encourage its author to try and introduce other measures equally useful to the community.

THE HONOURABLE MR. JUSTICE BENSON.—As to the *policy* of the Bill, my sympathies are with it, but it is essentially a matter which should be determined by the weight of Hindu opinion. I cannot add any arguments of importance, *pro* or *con*, to those already before Government.

As to the *terms* of the Bill, I think they are well calculated to give effect to the object of its author.

ORDER—No. 79, Legislative, dated 2nd October 1897.

Communicated to the Honourable Member in charge of the Bill.

(True Extract.)

G. S. FORBES,
Secretary to Government.

To the Hon'ble V. Bhashyam Aiyangar, C.I.E., Diwan Bahadur.

Exd. A. Raitt.

Legislative
Judicial (1897) Department.

CURRENT No. 278

CHIEF SECRETARY
11. SEP. 1897
GOVERNMENT OF MADRAS

The Registrar,
High Court of Judicature,
Madras.

Read again 90. 63 Legislative of 9th August 1897
Read also 278- in print.

Order No. 79 Legislative of 2nd October 1897
P.S. Communicated to the Hon'ble Member in
charge of the Bill

Dated 8th September 1897.

Received 11- 21
Registered 12- 21
Enclosures one

Spare copies -

SUBJECT.

Forwarding copies of the minutes
recorded by the Honorable Justices
Shephard, Subramania Aiyar and
Benson on a Bill to declare gains
of learning by a Hindu to be his
separate property.

The Hon'ble V. Bhashyam Aiyangar, C.I.E., Diwan Bahadur.
Note.
The criticisms of the Hon'ble Mr. Justice Shephard
in regard to the re-visions to, maybe fitly discussed
in select committee to which the bill might be referred
on its introduction into the Legislative Council.

As to the arguments of the Hon'ble Justice Subramania
Aiyar they are nothing new [except the last para] + may be found among those
already before Govt in the papers recorded in
fo. 14 Legve of 16-2-97.

CRV
21/9/97

sent this dep.?

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

CURRENT No. 3844 18

Dis. No. 1547.

High Court of Judicature, Madras.
8th September 1897.

From

D. W. G. Cowie, Esquire, Esq.,

Registrar of the High Court of Judicature, Madras.

To

THE HON'BLE MR. J. F. Price, C.S.I.,
Chief Secretary to the Government of Madras.

HON'BLE SIR,

With reference to G.O.,
No. 65, Legislative, dated the 9th ultimo, forwarding, for the
opinion of the Honorable the Judges, a Bill to declare gains
of learning by a Hindu to be his separate property, I am
directed to forward copies of the minutes recorded by the
Honorable Justices Shephard, Subramania Aiyar and Benson and
to state that the Honorable Mr. Justice Boddam considers that
the Bill will simplify the law and be beneficial. The Honor-
able the Chief Justice and Mr. Justice Davies have no remarks
to offer.

I have the honor to be,
Honorable Sir,
Your most obedient servant,

D. W. G. Cowie
Registrar.

Recd. 9.9.

MINUTES.

The Honorable Mr. Justice Shephard:-----In principle I think Mr. Bhashyam Iyengar's Bill is undoubtedly a good one, for it is clearly desirable to put the law, at present uncertain, on a more definite footing and to shut out the difficult question as to the character of a man's education and the nature of his gains which as is shewn in the statement of objects and reasons may at any time arise. I have, however, some observations to make on the language of the Bill. It may be convenient for Hindu lawyers to use the terms "learning" and "gains of learning" in the wide sense in which they are used in the books. But when a statute has to be framed I submit that words ought to be used as far as possible in their correct sense and that a fictitious use of them is to be deprecated. In the second clause of the Bill "learning" is said to mean education. That is certainly not the English meaning of the word, for learning stands in the relation of a product to education which is a process. "Gains of learning" are said to mean "all acquisitions of property made substantially by means of learning", i.e., by means of education. To ordinary persons the phrase would suggest scholarships, College prizes and possibly income derived from the work of teaching. It certainly would not suggest the miscellaneous gains which are intended to be brought within the operation of the Bill. The Bill as I understand is intended to benefit not only those who pursue the learned professions and who may therefore be supposed to have some tincture of learning, but also to apply to persons of all sorts who by their own wits or their own skill of whatever kind contrive to make money, unassisted by direct aid from the family. The Bill is intended to apply alike to the college professor, the lawyer, the doctor, the musician, the acrobat, the juggler, the dancing girl. I should demur to the accuracy of the proposition that the fees of a lawyer or a doctor are earned substantially by means of learning. But to say that the earnings of an acrobat

or a dancing girl are acquired by that means is, in my opinion, an abuse of language. Beyond pointing out that the use of such adverbs as "usually" and "substantially" is eminently calculated to provoke argument, I do not propose further to criticize the definitions because in my opinion they can be dispensed with altogether. The object of the Bill is, as I understand, to preserve to the energetic or fortunate member of a Hindu family the gains which he makes by his own exertions, unaided by any direct or immediate subvention from the family property. It is desired that the unproductive members of the family should no longer be entitled to claim such gains as part of the family estate notwithstanding that indirectly and remotely an education, general or special, obtained at the expense of the family may have contributed to the acquisition of the gains. The matter is very clearly put by Sir. T. Muttusami Aiyar. He observes that the object of the proposed legislature is to place gains of learning on the same footing with other descriptions of self-acquired property. All that is required then is to get rid of the difference ^{by declaring} that the fact of a man having been educated at the family expense or having been maintained by the family during the period of his education shall in no case be taken into account in deciding whether any property acquired by such person is his separate property or family property.

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48
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(True Copy.)

High Court of Judicature,
M A D R A S,
8th September 1897.

Doyle Conic

Registrar.

Redd 7/9.

No. , LEGISLATIVE, SEPTEMBER 1897.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

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Co 14 Leg
16-2-97