

HINDU GAINS OF LEARNING ACT, 1930

30 of 1930

[25th July, 1930]

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STATEMENT OF OBJECTS AND REASONS "This Bill reproduces what. it is submitted, is the true rule of the Hindu Law. in the matter of individual and personal earnings by the member of a joint family. It derives support from the equitable and liberal spirit which pervades the utterance" of the Smriti writers (with almost a solitary exception) on the subject-matter of the Bill and which forms quite a contrast to the narrow views of the latter-day commentators and the decisions based thereon, The opinion of many eminent British Indian Judges, including their Lordships of the Privy Council, who have approached the subject without prepossession, is districtly in favour of the principle of the Bill. The propriety of conceding to the acquirer the sole and independent right to his gains of learning is not merely a matter of expediency, but a question of natural justice which, in modern times, can hardly be gainsaid by any fairminded person. The Bill, if passed, will check wasteful, harassing and unrighteous litigation, remove distrust and greatly tend to promote peace and goodwill among members of Hindu families. The measure will likewise lead to a profitable employment of capital, that is otherwise locked up in jewellery and in sales, by removing some of the obstacles existing in the present state of the law, which induce a wealthy member of a family to keep his savings in disguised investments in landed property, rather than in an open

and easily convertible form. An important result of the proposed Bill will be that it will immensely improve the position of the female members in a Hindu family. The widow and the daughter of the acquirer, often left helpless, will, in the absence of male issue, take by inheritance the deceased's gains of learning, in preference to distant male members who can, under the present law, lay claim to the same by survivorship. The present rule is archaic. It is based upon a misconception of the true spirit of the Hindu law and has, in modern conditions of Hindu society, the effect of stagnation. It breeds most wasteful litigation, as is obvious to anyone, who has even a cursory acquaintance with reported Indian decisions or the Daily Cause Lists of judicial Tribunals. It is necessary that the original doctrine should be revived, which will set the spirit of private enterprise and individual exertion once more free from the trammels imposed in later times. The Bill aims at laying down the law in a progressive spirit suited to modern times, and in terms free from ambiguity. It seeks to remove the grave uncertainty and doubt which hang around the questions. The important modification of the existing law which it seeks to introduce, is to put the gains of special or scientific learning on the same footing as those of ordinary education. There are cogent reasons, in modern conditions of life, for the adoption of such a course. Any other plan must result in impracticable and fanciful distinctions and anomalies. To refer only to one case which is a fruitful source of harassing litigation: the issue is comparatively clear as to cases where the education imparted at the expense of the family funds is a purely elementary one (*Lakshman V. Jamnabai*, ILR 6 Bom 225). It is equally clear where such instruction is in a special branch of education, for instance, training for the I.C.S. (*Gokhal Chand v. Hukam Chand*, ILR 48, Indian Appeal. 162). But the issue is not clear in cases which fall neither in the one nor in the other category. Such cases are numerous. Under the old law of the Smritis (with possibly the single exception of *Katyayana*), acquisitions made by means of learning were the exclusive property of the acquirer. (See e.g., *Manu Smriti*. Chapter IX. Verse 206. *Narada Smriti*. Chapter XIII. Verse 6.) There was, no distinction drawn between ordinary or special and scientific education, nor between ordinary, and extraordinary gains of learning. It, however, the acquisition itself was made with the aid of family funds, it was divisible among the coparceners. Later commentators, however relying upon the text of *Katyayana*, have placed restrictions on the right of the acquirer in the gains made by him by means of his learning. According to

these later authorities, the gains of science are divisible among the members of the family. If the acquirer was instructed in the science by a member of his family or if, where he was studying the science, he or his family had been maintained by other members of the undivided family. It was only when the learning was acquired from a stranger and while receiving maintenance from strangers, that the gains of science formed the separate property of the acquirer. According to these commentators, whether the learning is ordinary or special, the gains of such learning are divisible if the learning was imparted at the expense of the family or by a member of the family. The Mitakshara does not make any difference between the ordinary and extraordinary gains of learning. The view taken by the Courts with regard to this question has undergone considerable fluctuations. At first it was held that the gains of an ordinary general education, at all events the ordinary gains of such education, were partible, if the education was imparted at the family expense or was received by a person in the enjoyment of a family maintenance. Latterly, however, the tendency of the Courts has been in favour of the opposite view, viz., that the gains of education imparted at the expense of the family are divisible only when the education is in a special branch of science which is the source of acquisition and not the elementary or general education which is the necessary stepping to the acquisition of all science. The view taken by the Courts at the present time is opposed to the ancient texts, and is based upon distinctions of an unworkable character which have caused great uncertainty and confusion in their practical application. They place one class of earnings at a great disadvantage. The large majority of people who acquire property by means merely of an ordinary or general education can treat their gains as their separate property: but the comparatively smaller section of the community, which acquire property by means of a special, scientific or extraordinary education, must divide its gains with the other members of the family. There is often great difficulty in working out the distinction drawn between the two classes of cases. What is special or scientific education and what is ordinary or general education is a matter which it is extremely difficult to determine. The standard of education varies in different localities, in different classes and in different families. It is also shifting from time to time. What might at one time have been regarded as extraordinary education becomes ordinary education after the lapse of some years. What might be ordinary education in the case of a wealthy family would be extraordinary education in a

family of scanty means. The result is a great uncertainty of the present law. It is impossible for any person who acquires property by his learning to feel any certainty that his earnings will be regarded as his own. The uncertainty is greater if the distinction drawn in some of the texts and decisions between ordinary and extraordinary gains of learning is borne in mind. A State of the law which renders it impossible for the acquirer of property to know whether he can or cannot exercise any control over it, calls for immediate alteration. The desire of a person to keep for himself what he has earned and the disposition to regard such earnings as his exclusive property are so universal that the claim of the acquirer to his acquisitions must be regarded as natural and legitimate. Likewise, the legal recognition of the claim of the acquirer to be master of his own earnings is the strongest impetus to exertion, an incentive to increase his wealth and a means of promoting the progress of the community. The question did not assume any great importance till modern times, for self-acquisitions were comparatively rare. Under the old conditions of life, when the members of a family all lived together in the same place and followed the same occupation, there was seldom any scope for such acquisition. But, under the altered conditions of present day life, when the joint family is constantly splitting up and the members leave their ancestral home for different places to seek their living by new pursuits, not merely is the strength of the family tie considerably loosened, but the amount of the acquisition of the individual members is, in the main, determined by the capacity, character and special aptitude of the individual. It cannot be denied that the consequences of the present law are unfair to the acquirer and his widow and female issue. So long as he remains as an undivided member of the family, the other members have an equal share in his earnings during his lifetime, and the acquirer cannot make a gift, inter vivos or after his death, out of his acquisitions even to his own daughter or widow, in order to redress the inequalities of the Hindu law of Intestate succession. The idle members of his family do not act very hostilely to the earner in his lifetime, for he can effect a partition and thereby deprive them of all opportunity of sharing his subsequent earnings. Troubles generally arise after the death of the acquirer, and they affect persons least able to protect themselves. If the acquirer dies leaving a widow and female children only, the children are entitled to nothing, and the widow has a bare claim to maintenance. A more shocking case of injustice can hardly be imagined. The proposed measure will have

the effect of raising in some cases at least, the status of women and up lifting them out of a position of helpless dependence in which they are placed by the present law. By depriving a person of control over his earnings, the present law checks the natural impulses to earn and to save. It has also the effect of compelling the acquirer of property to find a means of circumventing the restrictions of the law. It exercises a demoralising influence upon his character by inducing him to have recourse to dishonest subterfuges like benami transactions. Likewise, the present rule is not favourable to the growth of self-reliance among the dependent members of the family. In a rich family, it offers a premium to extravagance, idleness and perpetual discord. Its injustice is manifestly galling. Take, e.g., a case in which a father has three sons and incurs the same expenditure on their education. He sends them all to England to be educated for the I.C.S. One is successful, the other two fail. Of the two who fail, one takes to trade, the other is unwilling to do any work and remains idle. The trader earns a large fortune, which the present law allows him to keep to himself, because his education in England was for the Civil Service and not for trade. But, out of the earnings of the Civilian, two shares are claimed, one by the trader and the other by the brother who has been idle. The trader keeps his own earnings and also takes a share of the Civilian's earnings. Take again a case in which three brothers are given by their father the same education for the same profession and at the same cost. Though they have had the same start in life, the degree of success attained by them may vary according to the differences of aptitude, character and other advantages, natural or accidental. Is there any reason in this case why the more successful brother should be compelled to share his earnings with his less able brothers? It is not suggested here that the claim of a brother to support and assistance should not be recognised by his more fortunate brother, but the claim should rest upon purely moral sanctions, and should not be invested with any legal recognition. Knowing, as we all do, the great intensity of family ties among Hindus, it would be absurd to contend that, if legal obligations were removed, the moral obligations would cease to be recognised even to the extent to which it prevails among non-Hindu races. There is, likewise, ample basis for the view that the ancient Hindu law did not regard a person who spent money upon the education of a member of his family as having any legal right to reimbursement or return of the outlay. Ages ago, it was laid down by the Smritis, and it is still the law, that an educated member of the family is entitled

to demand a partition at any time and his share is not liable to be debited with even a farthing of the cost of his education, however high it may have been. Nor can the member who has made the outlay compel the member, educated at his expense, to earn or to save or even to postpone his demand for partition, and it is perfectly true to assert that a member of the family who spends money for another's education has no legal right to any return on the outlay. His expectation of benefit, if any, is a mere moral expectation and it is neither necessary nor feasible to clothe it with legal sanction without violating the most deep-rooted principles of the Hindu law. If an educated member of a family, unrestrained by feelings of delicacy, forces a partition as soon as he begins to earn, the family has no legal claim upon him for reimbursement of the outlay made on his education, nor any share in his future acquisitions. It is not, therefore, merely anomalous but unjust that, while in such a case the earning member should be able to keep all his earnings to himself, the educated member who from feelings of generous delicacy, does not wish to enforce a partition against the other members, but confers benefits upon them during the time they are joint, should, in return, for his generosity, be subjected to the penalty of a forfeiture of the greater part of his own acquisitions. The Bill will also have the effect of preventing an inquiry into the character of the education and the means by which such education was imparted. The difficulties of such an inquiry in any suit concerning the property of the acquirer are enormous, especially when it takes place after the death of the acquirer and many years' after the completion of his education. In most cases, such an inquiry is very harassing when conducted at the expense of the estate and with a helpless widow or daughter on the defensive. No fear need be entertained that the present Bill if passed into law, will lead to the violent break-up of the joint family system, for while the existing law furnishes the strongest inducement to the educated member to separate himself as soon as he begins to make a respectable income, the Bill on the other hand would remove this inducement. The Bill is in conformity with the unquestionable working of the 'great law of property' as Ruskin called it, which 'obtains in all civilised countries and according to which a man who works for a thing shall be allowed to get it, keep it and consume it in peace. M. R. Jayakar.'" -Gaz. of India, 1929, Part V, page 228.

1. Short title and extent :-

(1) This Act may be called the Hindu Gains of Learning Act, 1930.

¹ [(2) It extends to the whole of India except the State of Jammu and Kashmir.]

1. Substituted for old sub-section (2) by the Miscellaneous Personal Laws (Extension) Act. 1959 (48 of 1959), section 3 and Sch. 1 (1-2-1960).

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context,-

(a) "acquirer" means a member of a Hindu undivided family, who acquires gains of learning,

(b) "gains of learning" means all acquisitions of property made substantially by means of learning, whether such acquisitions be made before or after the commencement of this Act and whether such acquisitions be the ordinary or the extraordinary result of such learning: and

(c) "learning" means education, whether elementary, technical, scientific, special or general, and training of every kind which is usually intended to enable a person to pursue any trade, industry, profession or avocation in life.

3. Gains of learning not to be held, not to be separate property of acquirer merely for certain reasons :-

Notwithstanding any custom, rule or interpretation of the Hindu law, no gains of learning shall be held not to be the exclusive and separate property of the acquirer merely by reason of--

(a) his learning having been, in whole or in part, imparted to him by any member, living or deceased, of his family, or with the aid of the joint funds of his family, or with the aid of the funds of any member thereof, or

(b) himself or his family having, while he was acquiring his learning, been maintained or supported, wholly or in part, by the joint funds of his family, or by the funds of any member thereof.

4. Savings :-

This Act shall not be deemed in any way to affect-

(a) the terms or incidents of any transfer of property made or effected before the commencement of this Act;

(b) the validity, invalidity, effect or consequences of anything

already suffered or done before the commencement of this Act;

(c) any right or liability created under a partition, or an agreement for a partition, of joint family property made before the commencement of this Act, or

(d) any remedy or proceeding in respect of such right or liability; or to render invalid or in any way affect anything done before the commencement of this Act in any proceeding pending in a Court at such commencement; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.