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PART XI.

Bills introduced into the Legislative Assembly of Orissa. Reports of Select Committees presented or to be presented to that Assembly and Bills published before introduction in that Assembly.

LEGISLATIVE ASSEMBLY DEPARTMENT.

NOTIFICATIONS.

The 16th February 1939.

No. 2572-L. A.—The following Bill was introduced in the Orissa Legislative Assembly on the 11th February 1939.

Bill no. 4 of 1938.

**THE CHILD MARRIAGE RESTRAINT
ACT (ORISSA AMENDMENT)
BILL, 1938.**

A

BILL

TO AMEND THE CHILD MARRIAGE RESTRAINT
ACT IN ITS APPLICATION TO THE
PROVINCE OF ORISSA.

WHEREAS it is necessary to amend the Child Marriage Restraint Act in its application to the Province of Orissa in order to make its practical working more efficacious ;

It is hereby enacted as follows :—

1. (i) This Act may be called the Child Marriage Restraint (Orissa Amendment) Act, 1938.

(ii) It extends to the whole of the Province of Orissa.

(iii) It shall come into force at once.

2. (a) In section 2, clause (a), *replace* the words "eighteen" *by* "twenty-one" and "fourteen" *by* "sixteen".

(b) In section 3 and at the end thereof *add* "or simple imprisonment which may extend to one month".

3. In section 4 of the Act *delete* the word "simple" after the words "shall be punishable with" and *substitute* "rigorous"; after the words "one month" *delete* "or" and *substitute* "and" and

after the words "which may extend to" delete "one thousand" and substitute "five hundred".

4. *Add* the following after the proviso to sub-section (1) of section 6 of the Act :—

"*Explanation.*—Any person having the charge of the minor within the meaning of sub-section (2) of this section knowing or having reason to believe that a child marriage is about to be performed fails to inform the public authorities hereinafter mentioned shall be deemed, for the purposes of the said sub-section, to have negligently failed to prevent it from being solemnised".

5. *Repeal* present section 7 and *substitute* the following :—

"Notwithstanding anything contained in this Act or any other law, for the time being in force, a court sentencing an offender under section 3 shall be competent to direct, that in default of the payment of the fine imposed, he shall undergo any term of imprisonment".

6. *Repeal* sections 8 and 9 and *substitute* the following :—

"Section . Any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may take cognizance of any offence, under this Act, either (a) upon receiving a complaint of facts which constitute such offence made within one year of the marriage in respect of which the offence is alleged to have been committed; (b) upon a report in writing of such fact made by any Police officer; (c) upon information received from any person other than the Police officer or upon his knowledge or suspicion that such offence has been committed."

7. In section 10 after the words "taking cognizance of an offence under this Act" *add* the words "upon complaint".

8. In section 11 *delete* the word "shall" after the words "the Court" and *substitute* "may" and *delete* the words "except the reasons to be recorded in writing" and *substitute* the words "only for reasons to be recorded in writing that the complaint does not appear to be bona fide".

9. *Add* the following sections to the Act:—

"Section . . . "Notwithstanding anything contained in Law, Rule, Regulation, Byelaw, Statutory or Departmental Orders for the time being in force, it shall be the duty of every village chowkidar, daffadar and Union President to give information to the officer in charge of the police-station of the proposal of, preparation for or completion of solemnisation of any marriage in which he has reason to believe, one of the contracting parties is a child within the meaning of this Act and the Police officer shall transmit the same along with his report to the Subdivisional Magistrate or District Magistrate or any Magistrate of the first class having jurisdiction".

Section . . . Any marriage to which one of the contracting parties is a child shall, for all purposes of marital and conjugal rights, be deemed as if that same had not taken place.

Section . . . It shall be lawful for any of the Magistrates mentioned in clause 6 above or a Magistrate of the first class to issue an order preventing solemnisation of a marriage of which any of the contracting parties is a child and any disobedience of such an order shall amount to an offence under section 188 of the Indian Penal Code".

STATEMENT OF OBJECTS AND REASONS.

The Child Marriage Restraint Act has been in operation in India since the 1st day of April 1930. There is no gainsaying the fact that the child marriage is a canker worm in the social fabric of the Indian Nation and is responsible for their premature physical and mental deterioration. Any pretension to its being a mandatory marital canon was that it was sanctioned by the Hindu Sastras; but to refute such a theory it needs no more than quoting a passage from the most erudite and scholarly exposition of the mover of the *Sarada Bill* in his statement of objects and reasons—"According to the Brahmans, the most ancient and the most authoritative book containing the laws of the Hindus, the minimum marriageable age of a man is 24 and a woman 16. And if the welfare of the girl were the only consideration in fixing the age, the law should fix 16 as minimum age for the valid marriage of a girl. But amongst the Hindus, there are people who hold the belief that a girl should not remain unmarried after she attains puberty.

In order, however, to make the Bill acceptable to the most conservative Hindu opinion, provision was made in the Bill that the marriage of a Hindu girl would be permissible even when she is above 14 years of age. No Hindu Sastra enjoins marriage of a girl before she attains puberty, and the time has arrived and public opinion sufficiently developed, when the first step towards the accomplishment of the social reform so necessary for the removal of a great injustice to its helpless victims and so essential to the vital interests of a large part of humanity, should be taken, by enacting a law declaring invalid the marriages of girls below 14 years of age".

Notwithstanding the very laudable objects of the Act volume of orthodox opinion in India has reduced the same to an ineffective piece of legislation. In its practical working it has proved a failure. Instances are not wanting of the offences under the Act being perpetrated under the very nose of law and order.

Even high public judicial officers find their power too much paralysed to be put into action for enforcing the law.

This Bill aims at removing the various barriers put by the Act in the way of enforcing the law and for successful eradication of the evil that is aimed at.

Members of orthodox communities have, in order to put up a determined fight against the Act, cohesed themselves into an impenetrable bulwark so that they can very easily flout the authority of the Act, in its very face.

The object in so framing the Act was to give the society some time to accommodate themselves into the new atmosphere created by the legislation and to form a strong public opinion against the evil.

Now that 7 years have passed since it came into force, it is high time that the Act should have its full play and operation. In this Bill, the offence under the Act has been made cognizable by all Magistrates of considerable experience and ability in criminal work upon getting information of the offence from whatsoever source and it has been made like any other offence under Indian Penal Code a subject necessitating vigilance on the part of the Police officers of all grades in gathering information of commission of the said offences, transmitting the same to the higher authority in order to prohibit their commission and to bring the offenders to justice whenever committed.

This Bill further aims at annihilating the object of the perpetrators of the crime by denying to them the fruits of such invalid marriages either after evading the law altogether or after a slight admonition sanctioned by law. Gentlemen having the good of our country and society at heart should all be determined with one voice to extirpate this evil from the society. We are looking up to a time when men and women should stand shoulder to shoulder to fight freedom's battle and we cannot expect our sisters who are treated like chattels to be made somebody's property before they gain fully developed mind and body to fight this battle.

In the International Convention regarding the traffic in women and children the principle of punishing whoever, in order to gratify passions, procures, entices or leads away by any means whatsoever a woman or minor girl, even with her consent, was adopted by the Second Assembly of the League of Nations.

In view of the resolutions adopted by the Council of State on 31st January 1922 and by the Legislative Assembly on 7th February 1922, the International Convention as adopted by the League of Nations was signed at Geneva on behalf of the Government of India by His Majesty's Minister at Berne on March 28, 1922, with a reservation to substitute age of 16 years or any greater age for the age-limit prescribed in paragraph B of the Final Protocol of the Convention of 4th May 1910 and in article 5 of the subsequent convention. To give effect to this two new sections, namely 366-A and 366-B, were added to the Indian Penal Code by the Indian Penal Code Amendment Act, 20 of 1923, and in those sections ages of 18 and 21, respectively, have been adopted as the age of consent whereas by all other high contracting parties to the convention age of consent adopted is 21. We certainly look for a time when no marriage in our country should be consummated without active consent of the girl. Before that age arrives it is but meet and proper that in order to maintain the social equilibrium as against certain revolutionary upheaval, we should have prepared the men and women of our society to view child marriages with extreme sense of repugnance and repulsion. Here at our very house a traffic in girls under-age is being conducted under the pretext of a marriage and such a traffic, if I may so call it, should be stopped at once and marriageable age of the girl should be equal to the age of consent, that is, 18.

But this legislation should be welcomed as a legitimate step towards that ultimate goal. Further it is but natural that in choosing a life's companion each one of the contracting parties should be capable of exercising free volition. Under the present state of the society specially the girls are completely denied any such right. In order to remove these anomalies this legislation should be piloted by this House without any demur.

CUTTACK:

The 18th December 1937.

SARALA DEVI,

Member in charge.

C. G. NAIR,

Secretary, Orissa Legislative Assembly.

The 16th February 1939.

No. 2573-L. A.—The following Bill was introduced in the Orissa Legislative Assembly on the 11th February 1939 :—

MANAGEMENT OF ESTATES BILL, 1939.

Preamble.

WHEREAS it is expedient to provide for the management of estates by the Government or by manager appointed by the Collector under certain contingencies ;

It is hereby provided as follows :—

Short title,
commencement
and extent.

1. This Act shall be called the Management of Estates Act.

It shall come into operation on such date as the Provincial Government may by notification in the *Orissa Gazette* appoint.

It shall extend to the whole of the Province of Orissa.

Definition.

2. Unless there is anything repugnant in the context the following words, terms or expressions used in this Act shall bear the following meanings and no other :—

Estate.—An estate is a unit of property consisting of revenue-paying or revenue-free property or portion and shares thereof held by an individual proprietor or group of proprietors.

Tauzi.—Tauzi means land included under one entry in any of the general registers of revenue-paying lands and prepared and maintained by law for the time being in force by the Collector of a district.

Proprietor.—The term proprietor means and includes all persons who hold whether in trust or for his own benefit an estate or part of an estate or sub-proprietary interests and tenures and who is

registered as such under the Land Registration Act, 1876, or any other law for the time being in force.

Explanation.—The term proprietor includes a guardian of a minor or a receiver appointed by the Court or a marfatdar.

Common Manager.

3. Where any dispute exists between the proprietors of an estate, sub-proprietary interest or tenure as to the management thereof and in consequence there has ensued or is likely to ensue (a) inconvenience to the tenants in matters of payment of rent or exercise of their legitimate rights, (b) injury to the private rights, (c) default in the payment of revenue or rent of six consecutive kists, (d) encumbrance of such properties and (e) inconvenience to the public, the Collector may on his own motion or on the application of any proprietor issue notice on all the recorded proprietors as to why a common manager should not be appointed to manage such estate, sub-proprietary interest or tenure.

Appointment of
Common Manager.

4. Where the Collector is satisfied after hearing the parties that a common manager should be appointed, he shall proceed to appoint a common manager either from among the proprietors or from such other persons as the Collector may deem fit and such common manager shall be accountable to the Collector for all acts done by him as such.

Release of estate
from Common
Manager.

5. When any property is placed under a common manager by the Collector the same shall not be released until the Collector is satisfied that suitable arrangement has been made either by partition of the property or otherwise by which default in payment of revenue or rent or injury to private rights or inconvenience to the public is likely to

cease and the order releasing the property shall take effect from such date as the Collector may deem fit.

Court of Wards.

6. Where the proprietor of an estate is disqualified by reason of age, mental derangement or from any other reason from managing his property or where the proprietor of an estate or tauzi paying a revenue of more than Rs. 1,000 per annum to the Government or to a superior landlord (a) makes default in payment of revenue for four consecutive kists or (b) has contracted debts exceeding five times the revenue payable by him or makes an application for placing his estate or tauzi or any part thereof under the Court of Wards, the Collector shall proceed to place such estate, tauzi or part thereof under the Court of Wards :

Provided that (1) the Collector shall not place an estate under the Court of Wards for the indebtedness of the proprietor unless there is a reasonable chance of the debt being cleared off within a period of 20 years, and (2) the property shall not be released from the Court of Wards until a period of five years has elapsed from the date when the property was taken over if it has been taken over on the application of the proprietor.

Rights and liabilities of the Manager.

7. Where a property has been placed under a common manager or under the Court of Wards, the manager whether acting as common manager or as Manager under the Court of Wards shall have the following rights and duties :—

(1) All acts done by the manager and all items of expenditure incurred by him shall be deemed to be valid and justified when such acts or expenses have been sanctioned by the Collector or done under his instruction.

(2) The manager shall exercise all the powers of the proprietors and may contract debts with the previous sanction of the Collector for the improvement of the property or payment of prior debts but must specify the exact reasons why the debt is to be incurred and shall make arrangements to repay such debts in the shortest possible time.

(3) The manager shall be entitled to retain 10 per cent of the actual gross collection as remuneration of himself and of his staff and shall pay the Government revenue or rent of the property out of the collections made by him.

Rights of the Proprietors.

8. The proprietors of property placed under the charge of the common manager or under the Court of Wards shall be entitled to—

- (1) inspect the accounts with the previous permission of the Collector at such time and place as the Collector may specify,
- (2) retain possession of such private lands, tanks for which they make an application and for which they are willing to pay fair and equitable rent which shall be set off against the profits payable to them,
- (3) remain in management of any specified portion of their property under the express control and guidance of the Collector,
- (4) file objections against any act done or expenses incurred by the manager for the consideration of the Collector, the order

of the Collector on such objections being final,

(5) the right to partition

and the creation of maintenance charges on such property by the proprietors shall not be affected in any way but no debt incurred by them shall be valid and binding on such property, although the profit or income derived by any individual proprietor may be attached and sold in payment of any debt.

Power of
Provincial
Government to
make rules.

9. The Provincial Government shall have power to make such rules as may be deemed proper to regulate the procedure to be followed in the appointment of manager, to control the powers and functions exercised by him, to survey, demarcate the holdings in the property and to regulate any power exercised by a Civil or Criminal Court in the trial of suits relating to such properties.

Revenue Sale.

10. No property placed in the charge of a common manager or under the Court of Wards shall be liable to be sold off for arrears of rent or revenue, and the manager shall duly discharge the revenue and rental obligations from the day he assumes charge.

Repeal.

11. Sections 104 and 105 of the Orissa Tenancy Act, 1913, are hereby repealed.

STATEMENT OF OBJECTS AND REASONS.

At present there is no law or enactment by which sufficient provision is made for the management of zamindari estates so that the partition of the estates and the indebtedness of the proprietors result in the revenue falling in arrears and friction between the proprietors and the tenants in the matter of collection of rent. There should be some provision by which the fragmentation of estates may be prevented as this really reacts on the welfare of the tenants, the landlords always becoming more and more oppressive as the difficulty in collecting rent increases. The proposals in this Act do not impose any financial burden on the Government and as it provides for bringing the estates under the control of the Collector, it is expected that friction and oppression based on bad management will be fully controlled and the collection of rent may be facilitated. With the better management of estates, improvement in agriculture may be expected and the public revenue can be easily collected from defaulting estates.

CUTTACK :

The 13th October 1938.

BRAJASUNDAR DAS,

Member in charge.

C. G. NAIR,

Secretary, Orissa Legislative Assembly.