

The Caste Disabilities Removal Act 1850

Report No. 85

THE CASTE DISABILITIES REMOVAL ACT 1850

This Act was enacted for extending the principles contained in section 9 of Regulation VII of 1832 of the Bengal Code to the territories subject to the Government of East India Company. According to the said principles as contained in the preamble of the Act, whenever in any civil suit wherein one party shall be of the Hindu and the other of the Muhammadan persuasion, or where one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. The provisions of the Act read as under:-

Preamble. WHEREAS it is enacted by section 9, Regulation VII, 1832, of the Bengal Code, that “whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Muhammadan persuasion, or where one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled : and whereas it will be beneficial to extend the principle of that enactment throughout the territories subject to the Government of the East India Company ; It is enacted as follows:-

1. Law or usage which inflict forfeiture of, effects, rights on change of religion or loss of caste to be enforced. So much of any law or usage now in force within the territories subject to the Government of the East India Company as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced So much of any law or usage now in force within the territories subject to the Government of the East India Company as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law in the Court of the East India Company, and in the Courts established by Royal Charter within the said territories as law in the Court of the East India Company, and in the Courts established by Royal Charter within the said territories.

The purpose of the Law was to suppress any law or usage, which inflicts on any person forfeiture of rights or property or affects any right of his inheritance by

reason of his renouncing of his religion or exclusion from his religion or caste. This Act is one of those Acts promulgated by the Britishers during their rule over India for attracting the Indians to convert to Christianity.

The caste Disabilities Removal Act 1850, was adopted vide the Adoption of Acts and Ordinances Order 1949. An Amendment was made in the Act vide the Caste Disabilities Removal (West Pakistan Amendment) Act 1963 (Act X of 1963) by adding the following proviso to section 1 of the Act by which its application to Muslims to the extent of the right of inheritance has been exempted.

“Provided that nothing contained in this Act shall apply to the rights of inheritance”.

“Provided that nothing contained in this Act shall apply to the rights of inheritance to the property of a Muslim”

This Act was considered by the Council of Islamic Ideology in 1966 and then in 1976 and it was unanimously recommended that “An apostate, according to the Islamic Law, is deprived from inheritance. Again a non-Muslim can not be the heir of a Muslim but a Muslim can be the heir of a Muslim as well as a non-Muslim. The present Act is a negation of these principles and comes in to conflict with the provisions of Islamic Law”. However, the above recommendations of the Council are silent about the amendment made in the through Act X of 1963, law by adding the proviso to section I of the Act.

The Act was again considered by the Council in 1981 and it was observed that the aforesaid amendment in the law saves only the right of inheritance to the property of a Muslim and does not cover his other rights, namely, the right of guardianship, of marriage and custody of Muslim minor’s person and property etc. So the council recommended that exemption in the proviso added to Section 1 of the Act vide Act-X of 1963 may also be extended to right to marriage and Guardianship and other rights of a Muslim affected by the law and the existing proviso may be substituted by the following:

“Provided that nothing contained in this Act shall apply to the rights of guardianship, of marriage, and the rights of inheritance to the property of a Muslim or any other rights of a Muslim affected under Shariah on account of his renouncing Islam.”

The Council has in its recommendations on the law taken into consideration the comments made by the then Chairman Council of Islamic Ideology Dr. Justice Tanzil-ur-Rehman regarding the said Act in his book “**Islamization of Pakistan Law**”. The relevant portion reads as under:-

“So far as the provision relating to laws of caste and its effect is concerned, it cannot be objected from Islamic point of view as Islam does not believe in caste system. But the provisions relating to the change of religion (of Islam) and its effect on ones rights of property or right of inheritance are in conflict with the Islamic law. In Islam, if a Muslim renounces his religion of Islam and becomes apostate, his rights and property are thereby affected. The principles of law in

the aforesaid Act are repugnant to the Injunctions of the Holy Qur'an and Sunnah in matters. *Inter alia*, of guardianship, of marriage, custody of Muslim minor's person and property, right of inheritance, holding property and giving evidence against a Muslim."

The recommendations of the Council of Islamic Ideology and the views of Dr. Justice Tanzil-ur-Rehman on the law are based on the injunctions of the Holy Quran and Sunnah and the opinions of Muslim jurists. According to a well known saying of the Holy Prophet (P.B.U.H) people belonging to two different faiths can not inherit from each other. It has been narrated from Usama Bin Zaid that the Holy Prophet (P.B.U.H) has said that "neither a Muslim will inherit from his infidel ancestor nor an infidel will inherit from his Muslim ancestor". (*Sahih Muslim, Kitab Al-Faraiz Vol. IV / 237p*). Similarly the guardianship of infidels over Muslim minors and their evidence against a Muslim has been declared by the Muslim jurists as invalid on the basis of many verses of the Holy Quran and the opinions of Muslim jurists, which have been quoted by Dr. Justice Tanzil-ur-Rehman in his book, referred to above.

The Act further contains some words like "**East India Company**" and "**Royal Charter**" etc which were relevant at the time of enactment of the law but now such like words have become redundant as there exists no more territory of East India Company nor a Court constituted under the Royal Charter and need to be replaced with some suitable words. This Act has, to the extent of Muslims, already lost its efficacy on the enforcement of the Muslim Personal Law (Shariat) Application Act 1962. It is therefore proposed that;

- (i) the words "**The East India Company**" in the second line of the section may be substituted with the word "**Pakistan**" and the words "**in any Court of East India Company and in the Courts established by the Royal Charter within the said territories**" may be substituted with the words "**in any Court established in Pakistan.**"
- (ii) The proviso added by the West Pakistan Amendment in the Act may be substituted with the proviso suggested by the Council of Islamic Ideology and it may also be made applicable to the Federal Capital Territory. Or
- (iii) the proviso added to the Act by the provinces may be adopted to the Act in its application to the Federal Capital Territory.

A comparative statement alongwith draft amendment bill is annexed.

Comparative Statement

Existing	Amended
So much of any law or usage now in force within the territories subject to	So much of any law or usage now in force within the territories subject to

<p>the Government of the East India Company as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law in the Court of the East India Company, and in the Courts established by Royal Charter within the said territories.</p>	<p>the Government of Pakistan as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law in any Court established in Pakistan.</p> <p>Provided that nothing contained in this Act shall apply to the rights of guardianship, of marriage, and the rights of inheritance to the property of a Muslim or any other rights of a Muslim affected under Shariah on account of his renouncing Islam.</p>
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A Bill

to amend the Caste Disabilities Removal Act, 1850

Whereas it is expedient to amend the Caste Disabilities Removal Act 1850 (Act XXI of 1850) for the purpose hereinafter appearing;

It is hereby enacted as follows: -

1. Short title and commencement. -

(1) This Act may be called the Caste Disabilities Removal (Amendment) Act 2006.

(2) It shall come into force at once.

2. Amendment of the preamble. In the preamble of Act XXI of 1850

3. Amendment of section 1, Act XXI of 1850.-

1. In the Caste Disabilities Removal Act (XXI of 1850), in section 1,

(a) for the words “ **the East India Company**” the word “**Pakistan**” shall be substituted ; and

(b) for the words and comma “**in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories**” the words and colon “ **in any Court established in Pakistan** : shall be substituted ; and

2. after section 1, amended as aforesaid, the following proviso shall be added, namely.

“Provided that nothing contained in this Act shall apply to the rights of guardianship, of marriage, and the rights of inheritance to the property of a Muslim or any other rights of a Muslim affected under Shariah on account of his renouncing Islam”

Commission’s deliberation on 10.06.2006

The working paper was considered by the Commission in its meeting held on 10.6.2006 and the following are the deliberations:-

The Commission considered the Caste Disabilities Removal Act 1850. The Commission was explained by the Secretary that a number of letters were issued to the Council of Islamic Ideology to supply the copies of study of the law while recommending amendment in the Act by the Council for placing before the Commission but the Council replied that there is no record of study available in the Council. The Secretary further explained that the amendment proposed by the Council of Islamic Ideology is adopted from the book written by one of its Chairman, Mr. Justice (Retd) Tanzilur Rehman. The Chairman observed that the issue relating to guardianship is very technical and will create a lot of problems therefore, the Commission dropped the proposal of adding proviso to the Act however the Commission recommended omission of the words East India Company from the Act.