

India. Legislative Assembly Department

Paper No. I.

Opinions on

the Arya Marriage Validation Bill.

(Introduced by Mukhtar Singh)

Opinions Nos. 1-18

GOVERNMENT OF INDIA.  
LEGISLATIVE ASSEMBLY DEPARTMENT.

[ PAPER No. I. ]

OPINIONS

ON

THE ARYA MARRIAGE VALIDATION BILL.

(Introduced by Mr. Mukhtar Singh.)

Opinions Nos. 1—18.

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## BENGAL.

From W. McC. SHARPE, Esq., I.C.S., Registrar of the High Court of **No. 1.**  
Judicature at Fort William in Bengal, Appellate Side, to the Secretary,  
Legislative Assembly Department, Government of India, No. 5105-G.,  
dated Calcutta, the 21st March 1930.

SUBJECT:—*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

With reference to your letter No. F.133-I/28-A., dated the 11th February, 1930, I am directed to say that the Hon'ble the Chief Justice and Judges have no observations to offer on the provisions of the above-mentioned Bill.

## DELHI.

From the Hon'ble Sir JOHN THOMPSON, K.C.I.E., C.S.I., I.C.S., Chief **No. 2.**  
Commissioner, Delhi, to the Secretary, Legislative Assembly Department,  
No. 3163-Legislative, dated Delhi, the 4th April, 1930.

SUBJECT:—*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

In reply to your letter No. F.133-I/28-A., dated the 11th February, 1930, I have the honour to say that, from the views expressed by the District Judge, the Judge, Small Cause Court, and the Bar Association, it does not appear that the Bill would be welcome. The Bar Association vehemently opposes the Bill.

The District Judge expresses his opinion as follows.—

- (A) The principle underlying the Bill is one which affects only members of the Arya Samaj, whether it is introduced or not should rest entirely with the members of that community.
- (B) If the principle be introduced at the wish of the members of the Arya Samaj community the bill introducing it should be such as to ensure:—
  - (1) That there is no retrospective legislation.
  - (2) That only members of the Arya Samaj community are affected.
  - (3) That only marriages between people who are both members of the Arya Samaj community should be affected.

The proposed bill fails on all three points and is, in my opinion, totally unsuitable in its present form.

- (C) The drafting of the bill is very faulty—the definition of an "Arya Samajist" as a member of any "Arya Samaj" is useless, unless "member of any Arya Samaj" is defined.

Sub-clause (c) of clause 2 needs an introductory word either "or" or "and". Sub-clause (b) would be better placed after sub-clause (c) in which case much repetition could be avoided.

Sub-clause (b) of clause (2) is far too wide—the phrase "member of the family of" is indefinite whilst the rest of the sub-clause introduces people who may have no wish to be treated as Arya Samajists.

Clause 3 should be modified so as to deal only with marriages between *two* Arya Samajists.

2. It seems to me clear that in its present form and at the present stage the Bill cannot be supported.

## BALUCHISTAN.

From Major E. T. R. WICKHAM, M.V.O., I.A., Secretary to the Hon'ble **No. 3.**  
the Agent to the Governor-General and Chief Commissioner in Baluchistan, to the Secretary, Legislative Assembly Department, Simla,  
No. 414-J., dated Quetta, the 16th April, 1930.

SUBJECT:—*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

With reference to your letter No. F.133-I/28-A., dated the 11th February, 1930, asking for an opinion on the provisions of the Bill indicated above, I am directed to state that this Administration has no remarks to offer.

2. As far as the Arya Samajists are concerned they support the Bill. A copy of the views of Quetta Hindu Panchayat who consider that the question of inheritance has not been made clear is also enclosed for information.

*Copy of the views of the President, Hindu Panchayat, Quetta, dated the 17th March, 1930.*

THE Hindu Panchayat of Quetta have carefully considered the proposed Bill and as it is meant to apply to Arya Samajists they (the Hindus) do not see any objection. They are, however, of opinion that the two sections of Arya Samajists should be consulted.

The Panchayat have noted that neither in the Bill nor in the discussion that has taken place, the question of inheritance has been made quite clear. They think that this is an important point, which should be very carefully defined.

The Arya Samaj (though they are an off-shoot of the Hindus) has come into existence since 1875, and is still largely composed of Hindus, does admit into its folds members of other religions. There may thus be cases of:—

- (a) A Muhammadan convert to Arya Samaj marrying a girl belonging to the Hindu Community.
- (b) A Christian convert to Arya Samaj marrying a girl who belonged to Muhammadan or Hindu community.
- (c) A Hindu becoming a member of the Samaj and marrying a girl (or a widow) who comes from Muhammadan or Christian Community.

In these several cases how is the succession to property be governed.

#### NORTH-WEST FRONTIER PROVINCE.

**No. 4.** From the Hon'ble Sir NORMAN BOLTON, K.C.I.E., C.S.I., I.C.S., Chief Commissioner, North-West Frontier Province, to the Secretary to the Government of India, Legislative Assembly Department, Simla, No. 7796—12/244-G., dated Peshawar, the 23rd April, 1930.

**SUBJECT:—***The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

WITH reference to Mr. S. C. Gupta's letter No. F-133-I/28-A., dated the 11th February, 1930, I have the honour to state that a considerable volume of opinion has been obtained from Judges, Bar Associations, etc. The draft bill is unanimously welcomed by the Arya Samaj itself. It is not opposed by orthodox Hindus. As it stands, it has roused considerable resentment in the Muhammadan community owing to the existence of the words "or to different religions" in Section 3. It has been taken that these words will validate the marriage of an Arya Samajist and a Musalman woman, a marriage which is prohibited by Muhammadan law. This is not, I think, the intention of the drafter of the bill, nor can it be properly read into the wording of clause (3). This clause should, in my opinion, however, be redrafted in order to remove any possible objection. A suggested amendment is as follows:—

"No marriage between Arya Samajists shall be invalid by reason of the couple having belonged to different castes or sub-castes of Hindus, any law or usage or custom to the contrary notwithstanding".

The draft bill is acceptable subject to this amendment and also the possible addition of the word 'minor' in clauses (b) and (c) of Section 2, as suggested by the Divisional Judge, Derajat, a copy of whose opinion is enclosed.

The Bill in question with the statements of objects and reasons was published on pages 3-6 in Part V of the North-West Frontier Province Gazette, No. 2, dated the 28th February, 1930.

Copy of a letter No. 1979, dated 12th March, 1930, from Captain B. STUART-HORNER, I.A., Divisional Judge, Derajat, to the Registrar to the Judicial Commissioner, North-West Frontier Province.

I HAVE the honour to refer to your endorsement No. 730-43, dated the 24th February, 1930, with which was forwarded a copy of a letter No. F-133-I/28-A., dated the 11th February, 1930, from the Secretary, Legislative Assembly Department of the Government

of India, to the Hon'ble the Chief Commissioner, N.-W. F. Province, together with a copy of a draft of the Arya Marriage Validation Bill and extracts from the Legislative Assembly Debates thereon, and requesting an expression of opinion from me on the proposed Bill.

I have carefully considered the debates in the Legislative Assembly on the motion to refer the Bill to a Select Committee, from which it is clear that a certain looseness of drafting in the Bill has caused suspicions among the Mohammadans that the Bill as drafted will go further than its mover intends. In order to guard against this I think that certain modifications in the Bill are necessary in view of the fact that the Bill purports merely to deal with inter-marriage of Arya Samajists.

I would suggest that sub-paragraph (b) of paragraph 2 be amended to read "is a minor member of the family of, or a minor relative dependent on any person mentioned in clause (a)", and that the second half of sub-para. (c) of para. (2) be amended to read "and includes the minor members of the family of, and minor relatives dependent on such a person". I consider that all persons, who are majors, will have the right to become members of an Arya Samaj and that therefore sub-para. (b) and that part of sub-para. (c) which refers to the matter need only provide for those persons, who are not yet majors and have not yet had the right to determine for themselves to what religion they should belong, as I do not think it likely that the Arya Samajists would wish to compel those, who are majors, and do not wish to belong to their branch of the Hindu religion, to follow the marriage laws of Arya Samajists in preference to those of the religion to which they prefer to belong.

I consider also that in order to obviate objections which have been raised in the debate para. 3 might be modified to read "No marriage between Arya Samajists shall be invalid etc., etc."

Then I think that a further clause will be necessary to regulate the question of succession. The matter is not quite so simple as might be thought by those who wish to have this succession regulated in the ordinary way by Hindu law. It is possible that a Christian, or Mohammadan or Hindu Woman, or one of any other religion, may be converted to Arya Samaj and become the wife of an Arya Samajist. She may still retain rights of succession to the Christian or Mohammadan or Hindu or other family from which she had originally seceded. Provision should, I think, be made for succession in such a case. This might be done, of course, by depriving her of any right to succeed in her old family, or by such provision as may seem appropriate to the Legislative Assembly. Similarly a man belonging to another religion, who is converted to Arya Samaj, has also to be provided for.

Subject to these remarks to protect the interests of other communities, I consider that the Bill is unobjectionable, purporting as it does to deal with a domestic matter of Arya Samajists in accordance with their own views.

## UNITED PROVINCES.

Letter dated the 26th April, 1930, from the General Secretary, the Country **No. 5.**

League, Cawnpore, to S. C. GUPTA, Esq., Barrister-at-Law, Secretary, Legislative Assembly Department, Simla.

WITH reference to your letter No. F.133-I 26-A of February 11th last, in which you requested to be favoured with the opinion of the Country League regarding the provisions of the Arya Marriage Validation Bill introduced by Mr. Mukhtar Singh.

With only 3 exceptions, all those of our Founders and Members who have expressed to us their views regarding the above Bill have stated themselves to be whole-heartedly in favour both of the principle and of the provisions thereof.

The first exception, a Mohammadan landholder, has expressed himself as being "totally opposed to the Bill".

The second exception, an European business-man, states that he would be prepared to support the Bill only on condition that the marriages to which it applies should be required by law to be *civilly registered*. He adds that the marriage laws of India are at present in a terrible state of confusion owing to the fact that they are largely governed only by religious law and are not civilly registered, and he is therefore of opinion that the above Bill would only further confuse matters unless the suggested amendment regarding the compulsory civil registration of such marriages is incorporated in it.

The third exception, whilst entirely approving of the principle of the Bill, considered that its provisions, as at present drafted by the mover, require very careful consideration and some amendment. In particular he considers that clauses (b) and (c) of section No. 2 of the Bill require to be much more carefully and specifically definite, the former clause, in particular, appearing to him to be far too wide.

## COORG.

**No. 6.** From Major G. LOCH, I.A., Secretary to the Chief Commissioner of Coorg, to the Secretary, Government of India, Legislative Assembly Department, No. 1375—28-30, dated Bangalore, the 25th April, 1930.

**SUBJECT:—***The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

I AM directed to refer to your letter No. F.-133-I/28-A., dated the 11th February, 1930, regarding the proposed Arya Marriage Validation Bill of Mr. Mukhtar Singh, and to enclose the following correspondence containing the opinions of certain persons who have been asked to state their views on it:—

(1) Letter No. 1275, dated the 10th March, 1930, from the District and Sessions Judge, Civil and Military Station, Bangalore.

(2) Letter L. Dis. No. D.-2-660-30, dated the 24th March, 1930, from the Commissioner of Coorg, with enclosures.

2. The Chief Commissioner is of opinion that, while the object underlying the Bill is no doubt excellent, the Bill in its present form affords undesirable opportunities to unscrupulous persons to take advantage of its provisions.

3. The Bill and the Statement of Objects and Reasons were published in English and Kanarese in the Coorg Gazette, dated the 1st March and the 1st April, 1930, respectively.

Copy of letter No. 1275, dated the 10th March, 1930, from the District and Sessions Judge, Civil and Military Station, Bangalore, to the Secretary to the Chief Commissioner of Coorg, Bangalore.

**SUBJECT:—***The Arya Marriage Validation Bill.*

**REFERENCE:—***Your memorandum No. 679/28-30, dated the 20th February, 1930.*

I HAVE the honour to state that I am in general agreement with the provisions of the above bill subject to the following modifications. The definition of an "Arya Samajist" given in clause 2 (b) of the Bill would in my opinion be better by the addition of the terms "provided that he or she be not opposed to come under this Act".

Copy of letter L. Dis. No. D.-2-660—30, dated the 24th March, 1930, from G. W. PRIESTLEY, Esq., I.C.S., Commissioner of Coorg, Mercara, to the Secretary to the Chief Commissioner of Coorg, Bangalore.

**SUBJECT:—***The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

*Your No. 678/28-30, dated the 20th February, 1930.*

I HAVE the honour to forward herewith, in triplicate, copies of opinions of the Subordinate Judge, Coorg, Government Pleader, Mercara, and the Secretary, Bar Association, Mercara, who were consulted in the matter, for the information of the Chief Commissioner, and to state, that for my part before this Bill is passed into law I should like to know that its possible effect on inheritance and succession had been carefully examined. For example a marriage might be invalid according to ordinary Hindu Law and valid according to this. Would the children be regarded as legitimate or illegitimate and would they inherit or not?

Further, this proposal to allow of the validating of marriages after they have taken place seems to need a lot of consideration. And the definition of an Arya Samajist may result in the declaration as Arya Samajists of people who have no desire to be anything of the kind.

The idea underlying the Bill may be excellent, but as it stands the Bill is a singularly ill considered affair which should not be passed into law.

Copy of letter Dis. No. 822, dated the 15th March, 1930, from P. B. MEDAPA, Esquire, B.A., B.L., Subordinate Judge of Coorg, Mercara, to the Commissioner of Coorg, Mercara.

**SUBJECT:—***The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

**REFERENCE:—***Your endorsement No. D.-2-660/30, dated the 28th February, 1930.*

I SEE no objection to the passing of the bill.

Copy of letter dated the 12th March, 1930, from M. R. Ry. M. BHUJANGA RAU, AVL., B.A., B.L., Government Pleader, to the Commissioner of Coorg, Mercara.

SUBJECT:—*The Arya Marriage Validation Bill, No. D.-2-660/30.*

WITH reference to the above I have the honour to state, as follows:—

I approve of the Bill so far as it is an enabling measure permitting marriages amongst Aryas according to their beliefs, that is so far as it declares that marriages amongst them are valid, though the parties belong to different castes or Sub-castes. But the definition of "Arya" as drafted is all embracing, and includes "members of the family of the Aryas," and persons who need not have been Aryas at the time of the marriage but make declarations subsequently. Now the members in a family need not all be Aryas. Secondly, parties may make an illegal marriage in the beginning, opposed to marriage laws extant amongst one of the parties or to both and then try to validate it by means of this measure. Unless the Bill is radically amended in these respects I am not in favour of the Bill.

*Copy of opinion of the Secretary, Bar Association, Mercara.*

*Regarding A Bill to validate intermarriage of Aryasamajists:—*

THE Aryasamajists belong not even to Hinduism proper in as much as there are converts thereto not only from Hindus but also various non-Hindus. Hence no piecemeal legislation ought to be permitted in their own interest. First and foremost it has to be made clear when a person can become an Aryasamajist and whether such profession of faith irrevocable. Further is there any class distinction among Aryasamajists like Brahma, Kshatriya, Vysia and Sudra and Panchama or is it a faith like the Lingayats? This point has to be made clear and it has to be found whether intermarriage between the said classes of Aryasamajists is permissible according to the cult and the usage prevailing among the community. If there is no objection then only a validation Act for recognizing legally the marriage of Aryasamajists among themselves should be permitted. But the Bill as it is drafted does affect other communities and their laws and in the guise of giving validity to the marriage of Aryasamajists the interests and laws of other communities should not be affected. As the marriage has to get validity from legislation it has to be found out whether, according to the usage of Aryasamajists, the marriage is only a contractual relationship revocable by either wife, or husband, or both, or a sacrament lasting for ever as among high class Hindus and, if the former, proper laws for the dissolution thereof should also be provided in the Act itself to be a self-sufficing Act.

Further apart from the status of marriage, as according to Aryasamajists even a Muslim woman can become a convert to Aryasamaj and as some women are sharers or residuaries in Mahamadan law, and as they will not lose their rights to the properties by succession on account of Act XXI of 1850, and even their children or other heirs will be entitled to claim their shares provisions have to be made in the Bill for inheritance as different religions have different systems of inheritance.

Hence I am in favour of the Bill subject to the above restrictions.

#### AJMER-MERWARA.

From the Hon'ble Mr. L. W. REYNOLDS, C.S.I., C.I.E., M.C., I.C.S., **No. 7.**

Chief Commissioner, Ajmer-Merwara, to the Secretary, Legislative Assembly Department, Simla, No. 101-U. C./30, dated Mount Abu, the 30th April, 1930.

*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

With reference to letter No. F-133-I-28-A., dated the 11th February, 1930, from the Government of India in the Legislative Assembly Department on the above subject, I have the honour to forward a statement containing in summary the views of the following persons who were invited to give an expression of their opinion on the provisions of the Bill and to say that I agree with the views of the Commissioner and the Judicial Commissioner, Ajmer-Merwara.

- (1) Rai Sahib M. Mithan Lal, Advocate, Ajmer.
- (2) Rai Sahib P. Tirloki Nath, City Magistrate, Ajmer.
- (3) The Chairman, Municipal Committee, Ajmer.
- (4) The Commissioner, Ajmer-Merwara.
- (5) The Judicial Commissioner, Ajmer-Merwara.

It would appear that public opinion in Ajmer-Merwara is opposed to the passing of this Bill unless it is so drafted as to confine its effects to Arya Samajists.



*Statement containing in summary the views of (1) Rai Sahib M. Mithan Lal, Advocate, Ajmer, (2) Rai Sahib Pandit Tirloki Nath, City Magistrate, Ajmer, (3) the Chairman, Municipal Committee, Ajmer, (4) the Commissioner, Ajmer-Merwara, and (5) the Judicial Commissioner, Ajmer-Merwara on the Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

1. Rai Sahib M. Mithan Lal considers that the Arya Samajists for whose benefit the Bill has been prepared would welcome it, as it suits the purpose for which it has been introduced. He, however, suggests that a definition of "marriage" may be added to section 2 of the Bill as follows:—

"Marriage as used in this Act shall mean and include a marriage performed in accordance with the Vedic rites and principles mentioned in the Sanskar Vedhi compiled by Maharishi Sri Swami Dayanand Saraswati the founder of the Arya Samaj".

2. Rai Sahib Pandit Tirloki Nath considers that although the Bill is in the right direction, its provisions are very wide in its present form and might hurt the religious susceptibilities of people of other persuasions of Hinduism. He thinks that the Bill should be confined strictly to Arya Samajist couples only and suggests that its provisions should be narrowed down, specially clauses (b) and (c) of Section 2.

3. The Chairman, Municipal Committee, Ajmer states that the Committee is in favour of the Bill being recast so as to ensure its application to the Arya Samajists alone.

4. The Commissioner, Ajmer-Merwara, considers that the phrasing of the Bill is ambiguous and that it is not clear exactly what its implications are. He is in favour of the proposed legislation provided that its effects can be confined to Arya Samajists.

5. The Judicial Commissioner, Ajmer-Merwara considers that the Bill is badly drafted. He regards the explanation to section 2 of the Bill as objectionable as it contravenes all principles of religious independence. In his opinion it is not right that a man should bind his children in a matter of religion and that it is still more improper that he should bind persons under his guardianship, who may not be his blood relations at all. He is, therefore, of opinion that clauses (b) and (c) and the explanation to section 2 should be omitted.

## UNITED PROVINCES.

**No. 8.** From A. H. DEB. HAMILTON, Esq., I.C.S., M.L.C., Secretary to Government, United Provinces, to the Secretary, Legislative Assembly Department, Simla, No. 2154-C., dated Naini Tal, May 2, 1930.

**SUBJECT:—***The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

With reference to your letter No. F-33-1/28-A., dated February 11th, 1930, I am directed to forward the opinions of the High Court, the Chief Court, Commissioners and District Officers who have made inquiries from the Arya Samaj and other communities.

2. The Governor in Council is of opinion, on the opinions received that both orthodox Hindus and Muslims would have great objection to the Bill as now drafted, which undoubtedly affects persons other than Arya Samajists. The orthodox part of the Hindu community indeed is likely to object to any Bill which has a similar object to that of the present Bill, though in other quarters there is not likely to be serious objection to a measure the operation of which is rigidly confined to members of the Arya Samaj. The general opinion however is that the present Bill would have to be radically altered so as to provide that it should apply exclusively to persons belonging to the Arya Samaj and it would therefore be preferable that if the community desires to see a measure of this kind passed an entirely new Bill should be introduced.

2. The Bill was published in the United Provinces Gazette of February, 22, 1930.

*Copy of opinion recorded by Hon'ble Mr. Justice Muhammad Raza, Judge, Chief Court of Oudh, Lucknow, on the Provisions of the Arya Marriage Validation Bill.*

I AM not in favour of this Bill.

*Copy of opinion recorded by Hon'ble Mr. Justice Bisheshwar Nath Srirastava, O.B.E., Judge, Chief Court of Oudh, on the above subject.*

I AM in favour of the principle of the Bill. Marriages between different castes of Hindus have been held to be invalid. The validity of marriages between different sub-castes also is not free from doubt. As Arya Samajists do not recognize the caste system they are entitled to relief on the lines suggested in the Bill. But I would omit the reference to "different religions" in section 3. The use of these words opens up a much larger question and seems outside the scope of the Bill as given in the statement of objects and reasons.

*Copy of opinion recorded by Hon'ble Mr. Justice A. G. P. Pullan, I.C.S., Judge, Chief Court of Oudh, Lucknow on the above subject.*

THE draft must be taken as a rough draft, so it is not necessary to point out at this stage the defects in compensation. But if the Bill is to become law it is certain that it must be confined to marriages between members of the Arya Samaj. Probably that is what the mover intended. The definition of Arya Samajist is much too wide, and clause (3) either does not mean what it appears to mean, or leads to religious controversy.

*Copy of opinion recorded by Hon'ble Mr. Justice E. M. Nanarutty, I.C.S., Judge, Chief Court of Oudh, Lucknow on the provisions of the Arya Marriage Validation Bill.*

CLAUSE (3) of the Bill involves great confusion of thought. By the very definition of Arya Samajist given in clause (2) the existence of different castes or sub-castes of Hindus is done away with, for the Arya Samajist does not recognise them; and further the introduction of the words "or to different religions" in this very clause considerably widens the scope of the Bill for it legalises marriages of Arya Samajists with Moslem and Christian persons. This clause thus goes against the preamble to the Bill which lays down that the Bill is meant to recognise the validity of inter-marriages amongst Arya Samajists themselves.

So far as I am aware no one has ever challenged the validity of marriages where the two contracting parties are both Arya Samajists. It is only the union of Arya Samajists with Moslem and Christian women that is resented and disapproved of by orthodox Hindus and Muhammadans; and this Bill if it is meant to validate such unions is sure to rouse much religious passions and bad blood between these two great communities.

*Copy of opinions of Hon'ble Judges of the High Court at Allahabad.*

*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

Sulaiman J.—

"THE draft Bill goes beyond the statement of the object and reasons. While the latter as explained in the speeches is confined to followers of the Hindu religion, clause 3 would apply to people belonging to other religions also.

Even assuming that the Bill would be modified so as to apply to Hindus exclusively, the proposed enactment would be unjust to the members of the other religious persuasions. It seems unfair to lay down that a member of the family of, a relative dependent on or a person under the guardianship of any Arya Samajist should necessarily mean an Arya Samajist for the purposes of this Act. The language of clause 2 would involve an irrefutable presumption which is improper. Even a rebuttable presumption would have amounted to giving preference to one religion over others.

The Explanation to clause 2 is worse as it would prevent a person who has once executed a registered document from producing evidence to show that he is not an Arya Samajist or even that the document has been obtained by fraud, misrepresentation, undue influence or coercion. Indeed, it will make it impossible for him to change his religion subsequently if he so desires.

Clause 3 if enacted would also be in conflict with other religious laws and will abrogate them. I am therefore strongly opposed to the Bill in the form in which it stands at present."

Mukerji J.—

"1. I fully approve of the object of the Bill, but have the following criticism to offer to the bill as drafted.

2. The definition of Arya Samajist is extremely unsatisfactory.

3. In my opinion no definition should be drafted. It will be a question of fact determined by the court whether the parties to a particular marriage were Aryas or not at the date of the marriage. The court will decide on the evidence and circumstances brought before it, as it decides any other question of fact.

4. A person may be permitted to declare by a deed registered under the Indian Registration Act that he or she is an Arya Samajist and then the document may be treated as conclusive evidence of the fact in any later litigation.

5. In cases of all future marriages of Aryas, registration should be made compulsory under law, and a declaration before Marriage Registrar (even where there is no previously executed registered deed) that the parties are Arya Samajists should be made conclusive evidence of the fact.

6. As a safeguard against any *bona fide* marriage being challenged, the law may declare that no marriage between persons who profess at the time of the marriage to have been Arya Samajist, (where the marriage was celebrated before, say, the 30th June, 1932) shall be invalid on the ground that the parties to it once professed some faith other than that of Arya Samajist".

Niamatullah J.—

"The bill which appears to be a badly drafted one is in some respects highly objectionable. There is little to be said against the desire of the Arya Samajists, as a community to validate inter-caste marriages, provided such a desire is wide spread among the members of that community. The bill, as it stands, aims at much wider scope being given to the proposed legislation. S. 3 provides that the marriage of an Arva Samaj, apparently, male or female, with a person of "different religion" shall be valid "any law or usage or custom to the contrary notwithstanding". It follows that the personal law of all other communities is to be abrogated in cases of mixed marriages of the kind this bill seeks to legalise. A marriage between a Mohammadan or Christian and an Arya Samajist is to be deemed to be valid in case the inheritance from the Mohammadan or the Christian is in question. According to the personal law of the pronotus the rule of inheritance applicable to his case excludes the husband or wife as the case may be and the children born of such union; but this bill would so far supersede that law as to make the marriage valid and entitle the husband or wife and the offspring of that marriage to inherit. I entertain serious doubts if the other communities will agree to their own laws being interfered with in the manner desired by the mover of the bill.

The definition of the term Arva Samajist is not only inartistic but mischievous. A person professing another religion is to be deemed to be an Arya Samaj only because he or she "is a member of the family of or a relative dependent on, or a person under the guardianship of, any person" who is a member of any Arva Samaj. In cases of mixed marriages the offspring are likely to follow the religion of one of the parents. The effect of the definition is that in almost all cases regardless of the faith in which a boy or girl has been brought up he or she is to be regarded as an Arva Samaj if the conditions of the definition are fulfilled which will be the case in majority of cases.

The definition of Arva Samajist is a highly artificial one and if it is allowed to stand will be a fruitful source of litigation and communal bitterness. Broadly speaking the bill defines an 'Arva Samajist' to be one who is a member of an "Arva Samaj" or his dependant or ward. The definition employs the very term which it attempts to define.

On the whole I do not think any legislation on these is called for. Under the existing law civil marriages are permissible within certain limits on certain formalities being observed. Marriages between persons of different religions should be in accordance with that law. As for Arya Samajists belonging to different castes a properly drafted bill will have to be introduced; the present one cannot be so amended as to make it innocuous."

Bennet J.—

"1. I approve of the principle of the Bill.

2. I do not think that the period of time when the bill is to come into force is properly expressed. Clause 1 (2) says "it shall apply to all cases that may come up for decision after the passing of this Act". What is meant by "come up for decision"? Does it include a case which comes up for decision on appeal, the decision of the court of first instance or of the lower appellate court having been given before the passing of the Act? The rule of law is that we look to the rights of the parties at the date of filing the plaint, and there seems no reason to depart from that rule in the present Bill. I would therefore omit the words—

"to all cases that may come up for decision after the passing of the Act".

3. The intention and scope of clause 3 are not quite clear. I notice that in the debate there was a discussion as to whether the Bill would affect the rule of Muhammadan law

that a marriage between a Muslim and one who is not a *Kitabi* is invalid under Mohamadan law. If the Bill is not to have such an effect, then the Bill should state clearly 'nothing in this Act will affect the succession to any property under the provisions of Mohamadan Law'."

Copy of letter No. 2299, dated the 15th April, 1930, from A. C. HOLMES, Esq., I.C.S., Commissioner, Gorakhpur Division, Gorakhpur, to A. H. DEB. HAMILTON, Esq., I.C.S., M.L.C., Secretary to Government [Judl., (Civil) Dept.], United Provinces, Allahabad.

WITH reference to your No. 283/VII-178, dated 20th February, 1930, I have the honour to submit in triplicate the opinions of the District Officer of Gorakhpur, four prominent residents of Azamgarh, a committee of 11, (officials and non-officials), of Basti, and a useful note by Rai Bahadur Narsingh Prasad, Advocate of Gorakhpur.

2. The Secretaries of the Arya Samaj and Hindu Sabha of Gorakhpur have not yet sent in their replies.

3. The District Officer of Azamgarh is in favour of the Bill. The District Officer of Basti does not feel competent to offer an opinion.

4. In my opinion some provisions regarding inheritance and succession are very desirable. It is possible that Arya Samajists would accept the Hindu law in this matter, but clear provisions should certainly be made in the Bill.

5. I agree too with Rai Bahadur Narsingh Prasad's proposed amendments regarding clause 2, sub-clauses B and C, and clause 3. This will remove Muhammadan objections raised in the Assembly.

*Opinion of Rai Bahadur Munshi Narsingh Prasad, M.A., Advocate of Gorakhpur, on the Arya Marriage Validation Bill.*

I AM in full agreement with the principle of the Bill. Marriages amongst couples belonging to the Arya Samaj are not uncommon, and such marriages are recognised by them as valid, though the sanction of the law is not behind such marriages as take place between such couples who, before their marriage, belonged to different castes or sub-castes or creeds or religions. There is, however, a reasonable fear in the minds of Arya Samajists that the issue of such marriages may be declared illegitimate. It is therefore desirable that if they want such a law and wish to legalise a practice which has grown up among them, the Legislature should help them by legalising such marriages so that their rights may be protected. If both parties to the marriage belong to the Arya Samaj faith, I see no reason why they should not be free to legally marry each other, though they may have originally belonged to different castes or sub-castes or creeds or nationality, provided that at the time of the marriage the couple profess the Arya Samaj faith.

The Bill, as drafted, is open to many objections and requires considerable alteration. I would therefore suggest the following alterations and amendments:—

*Clause (2).*—The definition of "Arya Samajist" is so wide as to include persons who do not profess the Arya Samajist faith and is therefore objectionable. I give below what I would keep and what I would delete.

*Sub-Clause (a).*—I would keep it as it stands.

*Sub-Clause (b).*—In this Sub-Clause I would delete the words "or a relative dependent on, or a person under the guardianship of", my reasons being, firstly, that no person has a right to impose his will or ideas in matters of marriage or in social or socio-religious matters upon another simply because that other is a relative dependent on such person for his livelihood or maintenance, and secondly because in the case of a minor who professes a faith other than the Arya Samaj or whose parents were not Arya Samajists, it is not desirable that the mere fact that an Arya Samajist happens to be his guardian, the said Arya Samajist should have power to legally marry the minor to a person whom the faith of the minor or that of his parents would not allow to marry.

*Sub-Clause (c).*—For reasons mentioned in Sub-Clause (b) above, I would delete the words, "relatives dependent on and persons under the guardianship of".

*Clause (3).*—This clause is not happily worded. The words "or to different religions" are ambiguous and have naturally given cause to Mohamedans for objection to it. But as the Mover of the Bill has explained, his object, by inserting the said words in the Bill, was not to legalise marriage of an Arya Samajist with a woman who, at the time of her marriage, professed the Moslem faith. But the cases of women who originally belonged to the Mohamedan or Christian religion and who have subsequently been converted to the Arya Samaj faith are quite different. In the cases of such women there should be no

difficulty in legalising their marriages with Arya Samajists. I would therefore suggest that in order to remove the apprehensions of Mohamedans, the words "if at the time of their marriage, both of them are Arya Samajists" be added between the words "religions" and "any law" in clause (3) of the Bill. This will remove all objections of Mohamedans and will meet those cases of conversions which have taken place before the marriage and which it was the real intention of the Mover of the Bill to provide for.

Besides the provisions of the Bill, there are certain matters which need consideration. In the matter of succession, the Bill will affect Hindus as a whole, and especially such Hindus as do not belong to the Arya Samaj, the reason being that Arya Samajists are related to Hindus. As far as I am aware, non-Arya Samajist Hindus do not wish to oppose the Bill, if it does not affect them injuriously and does not have the effect of subverting the principle on which the Hindu Law of inheritance is based. The Bill, therefore, requires very careful consideration and adjustment from this point of view. If the Arya Samajists would be governed by the Hindu Law in the matter of succession, and if clear and adequate provisions are made in the Bill to that effect, it may probably not be objected to by non-Arya Samajist Hindus. What provision should, therefore, be inserted in the Bill and in what language, requires very close study of the question and a consideration of its bearings on the general Hindu Law, which I do not think I am called upon to do.

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Copy of letter No. 2587, dated the 14th April, 1930, from W. W. FINLAY, Esq., I.C.S., District Magistrate, Gorakhpur, United Provinces, to the Commissioner, Gorakhpur Division, Gorakhpur.

In reply to your letter No. 2283/NIX-3, of April 12th, 1930, I have the honour to submit the opinion of Rai Bahadur Narsingh Prasad on the Arya Marriage Validation Bill. The Secretaries of the Arya Samaj and Hindu Sabha have not yet replied. I agree entirely with the criticisms made by Rai Bahadur Narsingh Prasad and I do not have anything to add to them. It is clear that the definition of Arya Samajists should be made less wide than it is in the Bill and that it should be made clear that both the parties to a marriage should be Arya Samajists.

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*Copy of an opinion dated March 4, 1930, furnished by Thakur Surajnath Singh Saheb, B.A., LL.B., Advocate and Chairman, District Board, Azamgarh.*

THOUGH I am not member of any Arya Samaj, I am entirely in favour of this Bill and the sooner it is passed into law the better it would be for the future well-being of the Hindu Society.

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*Copy of an opinion dated 19th March, 1930, furnished by B. Brij Bahadur Lal, Secretary, Arya Samaj, Azamgarh.*

#### *The Arya Marriage Bill.*

I ENTIRELY and wholeheartedly support the Arya Marriage Bill which is beneficial not only to the Arya Samajists but also to all the communities of the world.

The Bill should be passed into law as early as possible in the lifetime of the present assembly.

The whole community of Arya Samajists of Azamgarh City and district have, often and particularly on the 9th March, 1930 in the Arya Conference, resolved that the Bill should be passed into law as soon as possible by the present assembly. Even at the annual celebration of the Local Arya Samaj in Subzinaandi on the 9th inst. the public consisting of Arya Samajists and non-Arya Samajists passed a resolution moved by Thakur Dharma Raj Singh to the same effect.

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*Copy of an opinion dated 12th March, 1930, furnished by Pt. Baijnath Misra, Advocate, Azamgarh.*

#### *The Arya Marriage Validation Bill.*

THE Bill with the three short sections as it stands is very defective. If passed in the present form it will unsettle materially, the status of every Hindu family in which there is any Arya Samajist, as a member and who marries outside the caste.

While providing a law validating inter-caste marriages, provisions have to be made prescribing rules of inheritance and succession as to the Arya Samajist members who so marry as well as to the woman who so marries. Without such provision the Bill, if passed into law will give rise to disputes for which there is, as far as I know, no express provision in the Statute law to serve as guide and the rules indicated in the Dharam-shastras are too general and obsolete and are such as will not be acceptable to the Arya Samajists.

As the opinion is wanted at once I am not able to supplement the above general remark with further details.

*Copy of opinion furnished by a committee of officials and Non-officials of Basti.*

PRESENT:

- (1) B. RAM BIHARI SAHI Sahib.
- (2) Rai Bahadur B. ASHT BHUJA PRASAD Sahib.
- (3) R. B. B. SARJU PRASAD Sahib.
- (4) B. GANPAT SAHAI Sahib, Rai Sahib.
- (5) B. JAGDAMBA PRASAD Sahib.
- (6) B. LAKSHMI NARALAN TANDON Sahib.
- (7) P. CHANDRA BALI TRIPATHI.
- (8) B. JAI NARAYAN SRIVASTAVA.
- (9) Th. MURAT SINGH Sahib.
- (10) P. KATESHWAR PRASAD PANDE.
- (11) Pt. D. S. NAGAR.

It is unanimously passed that the bill may be enacted into law with due regard to the likely disputes in succession. It was also resolved by majority that in order to avoid disputes in succession it may be cleared up that the offspring of such marriages will not, in the presence of other possible heirs according to the Hindu Law, be entitled to inherit the property of Non-Arya Samajist collaterals or other relatives of the parties.

The word 'family' also requires to be clearly defined, so as to make the Act applicable only to Arya Samajists.

(Sd.) R. B. SAHI,  
*Deputy Collector.*

19th March 1930.

(Sd.) JAGDAMBA PRASAD,  
*Deputy Collector.*

19th March 1930.

(Sd.) R. B. B. SARJU PRASAD,  
*Vakil and Hony. Magistrate and  
Hony. Assistant Collector.*

(Sd.) R. B. B. ASHT BHUJA, PRASAD,  
O.B.E.,  
*of Bansi.*

(Sd.) Rai Sahib B. GANPAT SAHAI,  
*Vakil and Hony. Assistant Collector.*

(Sd.) CHANDRA BALI TRIPATHI,  
*Vakil and Secretary, Hindu Sabha.*

(Sd.) KATESHWAR PRASAD PANDE,  
*Vakil and Secretary, Hindu Sabha.*

(Sd.) D. S. NAGAR,  
*Deputy Collector.*

But the provision about succession, need not be incorporated.

(Sd.) RAI JAINARAYAN SRIVASTAVA,  
*Vakil.*

(Sd.) MURAT SINGH,  
*Vakil and Secretary, Arya Samaj.*

(Sd.) L. NARAYAN TANDON,  
*Mukhtar and President, Arya Samaj.*

*Views of Sri Bharat Dharma Mahamandal—the Socio-religious Association of Hindu India—on Arya Marriage Validation Bill.*

THE Society of Arya Samaj as it is known at present is widely different from the body of the orthodox classes of Hindus. There is the wider difference between the two than the Roman Catholics and the Protestants amongst Christians, Shias and Sunnis amongst the Mohammedans and Ma-jan and Hin-jan amongst the Buddhists. The Arya Samajist do not believe in all the sacred Scriptures in which the Hindus have faith. In matters of rituals and caste system they are not bound by the sacred scriptures of the orthodox Hindus. In these there is nothing common between the orthodox Hindus and the Arya Samajists. For the above reason the orthodox body of the Hindus should be exceedingly careful to see that there is nothing in the act which may affect them even very distantly. The orthodox community cannot have any objection to what takes place amongst those who call themselves Arya Samajists, but the greatest difficulty and most harmful question lies in the fact that there is no fixed line of demarcation between an Arya Samajist and an orthodox Hindu like that of a Hindu and a Mahomedan, a Hindu and Christian and a Hindu and a Buddhist. In a Hindu family one brother is of orthodox principles and the other an Arya Samajist. Their views are as different and wide as two poles asunder. Hence the Bill must be very critically and scrupulously scrutinised to protect the interest of the orthodox body of the Hindus. Hence the following remarks may be justly made regarding the application of its provisions indiscriminately and widely on other communities who are not Arya Samajists:—

- (a) The preamble of a Bill has no bearing upon and does not govern its clauses and also does not form the part of the Act itself. Although the words of the preamble of Bill as introduced in the Legislative Assembly are that it is a Bill for the validation of inter-marriage of Arya Samajists, yet when read with clause 3 it becomes clear that it intends to legalise marriages between people of different faiths, it allows a marriage between an Arya Samajist and a non-Arya Samajist. Whenever an Arya-Samajist enters into a marriage this Bill comes into operation even though the other party belongs to any other sect or religion other than the Arya Samajists. The Bill does not say that both the parties should belong to Arya Samaj or that conversion should precede the marriage. It has therefore an important bearing upon them and affects an important aspect of pre-historic Hindu social organisation and personal law of the orthodox Hindus and Moslems and other communities. Further under clause 1 (2) the application of the act having been made retrospective, it has the effect of injuriously affecting very closely the interests of every community. So the Bill has more serious and pernicious implications than what has been expressed by the short title.
- (b) The Bill does not explain who is an Arya Samajist but its definition under clause (2) of the bill has been made so wide as to include persons of all other communities. A man has every liberty to change his faith or his socio-religious ideas and adopt one which he may consider to be more liberal but thereby he cannot compel others with whom he is related by birth to adopt his own views or impose his faith on such persons or any one who is dependent on him or under his guardianships. This will be nothing less than a fallacy. The definition should have made it clear and comprehensive to show the faith convictions, religious creed, rites and observation, codes of customs and practices of social and domestic life, etc., of the person who will be denominated as Arya Samajist.
- (c) Question of succession cannot altogether be separated from the question of marriage. Succession is governed by marriage; the law of succession applicable to anybody of persons is based upon certain principles of marriage prescribed in that system of law. The Bill is silent upon the bearings of the marriage custom and codes of marriage of the Arya Samajists. In fact the Arya Samajists are a sect of the Hindus, they are not entirely a separate entity in Hindu community and they are governed by the Hindu law in the matter of succession. But if this Bill be made into law, there will certainly arise great implications in the matter of succession as the Bill in seeking to legalise a marriage between persons of different faiths, sects, or religions, omits to provide for its consequences by statutory measures.

The Bill as it stands is perfectly vague and indefinite full of ambiguity, allows of different interpretations. If it be passed into law, it is sure to produce revolutionary and disastrous consequences in every community, in the social organisation and peaceful home and hearth of every community and thereby create unfavourable feelings in the orthodox Hindu section of the people who form a bulk of the population against the Government.

Copy of letter No. 3209/XIX-1 (29-30), dated the 18th April, 1930, from C. W. GRANT Esquire, I.C.S., Commissioner, Agra Division, to the Secretary to Government, United Provinces, Judicial (Civil) Department.

With reference to your letter No. 283, VII-178, dated the 20th February, 1930, I have the honour to forward in triplicate opinions of the undermentioned Associations, prominent individuals and officers on the Arya Marriage Validation Bill by Mr. Mukhtar Singh, and to say that personally I am in favour of the Bill. It is a liberal measure which seeks to break down caste restrictions. The bulk of orthodox Hindus are against it but they are not directly concerned. There is no reason why the Arya Samaj community should not have marriage laws in accordance with their own convictions.

1. Arya Samaj, Mainpuri.
2. Bar Association, Mainpuri.
3. Rai Sahib Pt. Debi Dayal Pathak, B.A., LL.B., Advocate, Honorary Magistrate and President of the Mainpuri Hindu Sabha.
4. Rai Bahadur Pt. Kharagjit Misra, M.A., LL.B., Advocate, Honorary Magistrate and Honorary Assistant Collector, Mainpuri.
5. B. Jagdish Prasad Pandey, Senior Hindu Deputy Collector, Mainpuri.
6. District Officer, Mainpuri.
7. Arya Samaj, Etah.
8. Chairman, Municipal Board, Etah.
9. Chairman, Municipal Board, Kasganj.
10. Chairman, Municipal Board, Soron.
11. Chairman, Municipal Board, Jalesar.
12. Bar Association, Etah.
13. Karyalaya Arya Samaj, Aligarh.
14. Hindu Sabha, Aligarh.
15. City Hindu Sabha, Agra.
16. Shri Sanatan Dharam Sabha, Agra.

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Copy of letter No. 2, dated the 29th March, 1930, from the President, Arya Samaj, Mainpuri, to the District Magistrate of Mainpuri.

With reference to the papers sent to me for opinion on the Arya Marriage Bill, I beg to submit a copy of the translation of a resolution passed at a meeting of the Arya Samaj, Mainpuri, held on 28th March 1930, at 7 p.m. The resolution embodies my personal opinion also.

Translation of the resolution:

"Unanimously resolved that this Samaj strongly supports the Arya Marriage Validation Bill and insists that the Bill should be passed as it stands".

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*Copy of the resolution passed by the Bar Association, Mainpuri.*

"1.—THE Arya Samaj Marriage Validation Bill was taken up, resolved that this Association thinks that the Bill is a necessary one and should be passed."

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*Copy of the opinion of Rai Sahib Pt. Debi Dayal Pathak, B.A., LL.B., Advocate, Hoay. Magistrate and President of the Mainpuri Hindu Sabha.*

I HAVE carefully read the provision of the Arya Marriage Validation Bill. All its provisions appear to me to be salutary and in keeping with the wishes of the Arya Samajists. I am, therefore, of opinion that the Bill as it stands be passed into law.



*Copy of the opinion of Rai Bahadur Pt. Kharagjit Misra, M.A., LL.B.,  
Advocate, Hony. Magistrate and Hony. Asstt. Collector, Mainpuri.*

I AM not in favour of the Bill. As the time is short, I cannot write out the reasons in detail.

*Copy of the opinion of B. Jagdish Prasad Pandey, Senior Hindu Deputy  
Collector of the District.*

I AM not in favour of the Arya Marriage Validation Bill, as it is likely to introduce a sweeping and revolutionary change in the Hindu society.

The Arya Samajists, however, are unquestionably in favour of the Bill.

*Copy of letter No. 381/XV-8, dated the 12th April, 1930, from Khan  
Bahadur M. MAQSUD ALI KHAN Sahib, District Officer, Mainpuri, to  
the Commissioner, Agra Division, Agra.*

I HAVE the honour to submit in quadruplicate the opinions of the following Hindu associations and prominent individuals on the subject of Arya Marriage Validation Bill by Mr. Mukhtar Singh:—

- (1) Arya Samaj, Mainpuri.
- (2) Bar Association, Mainpuri.
- (3) Rai Sahib Pt. Debi Dayal Pathak, B.A., LL.B., Advocate, Hony. Magistrate and President of the Mainpuri Hindu Sabha.
- (4) Rai Bahadur Pt. Kharagjit Misra, M.A., LL.B., Advocate, Hony. Magistrate and Hony. Asst. Collector, Mainpuri.
- (5) B. Jagdish Prasad Pandey, Senior Hindu Deputy Collector of the District.

2. Personally I am in favour of the Bill as it is a liberal measure which seeks to break down caste barriers in marriages among Arya Samajists.

*Copy of letter No. nil, dated the 16th March, 1930, from the Secretary, Arya  
Samaj, Etah, to the District Magistrate, Etah.*

With reference to G. O. No. 283/VII-178, dated February 20, 1930, and your endorsement No. 391, dated March 8, 1930 thereon, I have the honour to say that the Arya Samaj, Etah has already passed a resolution in support of the Arya Marriage Validation Bill introduced by Ch. Mukhtar Singh in the Legislative Assembly.

In pursuance of that resolution telegrams were sent to the Home Member, Government of India and Ch. Mukhtar Singh, M.L.A.,

A copy of the said resolution is herewith attached.

*Copy of Resolution.*

"THE Arya Samaj, Etah strongly supports the Arya Marriage Validation Bill introduced in the Legislative Assembly by Ch. Mukhtar Singh, M.L.A., and urges the Government to give its whole-hearted support in getting the Bill passed into Law".

*Copy of letter No. 698 of 1930, dated the 24th March, 1930, from Pandit  
SHIVA DATTA Sahab, B.A., LL.B., Advocate and Chairman, Municipal  
Board, Etah, to the District Magistrate, Etah.*

With reference to your endorsement No. 391, dated March 8, 1930, forwarding copy of G. O. No. 283/VII-178, dated February 20, 1930 (Judicial Department), I have the honour to submit my opinion as follows:—

According to Hindu religion castes are recognized by birth and almost all the Hindus still believe in caste system by birth.

The Arya Samajists do not form a separate community amongst the Hindus and they are not any separate or distinct entity. Even those who profess to be Arya Samajists

observe caste system and whatever they may say in theory, in practice they adhere to caste system with all its implications. The number of such Arya Samajists who are prepared to ignore caste system would be found to be very infinitesimal. Marriage is a religious sacrament amongst the Hindus and under the Shastras marriages amongst different high castes are prohibited. There are very rare instances of marriages amongst different castes having taken place even amongst those who call themselves Arya Samajists.

The proposed legislation is opposed to Hindu faith and offends against the tenets of their religion. This legislation would prove to be an incentive to the demoralization of the Hindu religion in which caste system plays a very important part.

For those who have no faith in Hindu religion, the provisions of Special Marriage Act III of 1872 are quite enough.

Caste system still retains a great strong hold over the Hindu community and such sanctity is still attached to it. The intended legislation would prove most prejudicial to Hindu religion and it would very severely offend the sentiments of the Hindu public.

I am, therefore, strongly opposed to the proposed Bill and consider it to be highly undesirable and unnecessary.

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Copy of letter No. 936, dated the 19th March, 1930, from the Chairman, Municipal Board, Kasganj, to the District Magistrate, Etah.

WITH reference to your endorsement No. 391, dated March 8, 1930, forwarding a copy of G. O. No. 283/VII-178, dated February 20, 1930, I have the honour to inform you that the local Arya Samaj and the Arya Kumar Sabha have been consulted and both the institutions fully approve of the Arya Marriage Validation Bill by Mr. Mukhtar Singh.

I beg to inform you accordingly and submit herewith the copies of opinions in writing received from aforesaid bodies.

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Copy of letter No. 16, dated the 19th March, 1930, from the President, Arya Kumar Sabha, Kasganj, to the Secretary, Municipal Board, Kasganj.

As desired under your endorsement No. 262-L., dated March 17, 1930, I have the honour to enclose herewith a copy of the resolution passed on the above subject by this Sabha at its weekly meeting held on February 22, 1930 and to let you know that our Sabha fully sympathises with the Arya Marriage Validation Bill and requests the Government to enforce the Bill as soon as practicable.

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Copy of letter No. 136, dated the 12th March, 1930, from the Chairman, Municipal Board, Soron, to the District Magistrate, Etah.

WITH reference to your endorsement No. 391, dated March 8, 1930, forwarding copy of the G. O. No. 283/VII-178, dated the 20th February, 1930 Judicial Department, I have the honour to state that there is no Arya Samaj Association or any prominent Arya Samajist who could be consulted in this municipality. Personally I am of opinion that the Arya Marriage Validation Bill as proposed by Mr. Mukhtar Singh is both necessary and desirable, considering that there is a growing tendency towards inter-marriages specially in Arya Samaj circles, and it is necessary that the validation of such marriages should be finally recognised by law.

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Copy of letter No. 934, dated the 24th March, 1930, from the Chairman, Municipal Board, Jalesar, to the Commissioner, Agra Division, Agra, through the District Magistrate, Etah.

WITH reference to G. O. No. 283/VII-178, dated February 20, 1930 received with your endorsement No. 2425, dated March 1, 1930, regarding Arya Marriage Validation Bill by Mr. Mukhtar Singh, I have the honour to submit herewith a copy of views given by Pt. Shri Ram Shastri, Member Municipal Board, Jalesar and prominent Arya Samajist for your kind perusal, which is as follows:—

“Inter-marriages among Hindus are allowed by our religious books and such marriages were considered as valid in ancient. Inter-marriage Validation Act will not be against our dharam.” Dated 24th March, 1930.

Copy of letter No. Nil, dated March 19, 1930, from the Secretary, Bar Association to the District Magistrate, Etah.

In reply to your No. 391 of 8th March, 1930, forwarding copy of G. O. No. 283/VII-178, dated 20th February, 1930, I have the honour to state that the Collectorate Bar Association is in entire agreement with the spirit and objects of the "Arya Marriage Validation Bill" introduced by Mr. Mukhtar Singh, M.L.A., and accords its full support to its passage as law.

2. The bill applies to Arya Samajists alone and they as a class are unanimous that the proposed law will give great relief to them in matters of marriages and inheritance.

*Translation of resolution of the Arya Kumar Sabha.*

THIS Arya Kumar Sabha, at its ordinary meeting, fully supports the Arya Marriage Bill of Chaudhuri Mukhtar Singh and urges the Government to pass this Bill which will remove obstacles in the way of inter-caste marriages of the Aryas.

*Translation of a letter, dated the 18th June, 1930, from Mr. Raghunandan Lal Gupta of Kasganj Arya Samaj Mandir.*

RECEIVED your letter regarding Arya Marriage Bill of Chaudhuri Mukhtar Singh . . . \* I had no opportunity to place it before the meeting, but such members as were present on the occasion of the Samaj Ceremony were consulted; all of whom generally approve of it. I, therefore, fully support the Arya Marriage Bill on behalf of the Samaj and express my hearty sympathy.

Copy of letter No. 3005, dated the 13th March, 1930, from the Secretary, Karyalaya Arya Samaj, Aligarh, to the District Magistrate of Aligarh.

I WENT through the papers sent by you with your letter No. 1345 of the 7th instant. In reply I send to you the well-considered opinion of my house which I myself do hold and which is as follows:—

"This meeting of the Arya Samajists of Aligarh wholeheartedly supports the Arya Validation Bill introduced in the Legislative Assembly by Ch. Mukhtar Singh, M.L.A., and requests the Government to give full weight of its support to this measure with a view to get it passed into an Act within the life-time of the present Assembly."

Copy of letter dated the 20th March, 1930, from B. KAMTA PD., B.A., LL.B., Vakil, Honorary Secretary, Hindu Sabha, Aligarh, to the District Magistrate of Aligarh.

REFERENCE :—*The Arya Marriage Bill with its enclosures.*

In reply to your letter dated the 13th March, 1930, I have the honour to inform you that the Hindu Sabha approves of the principle underlying the Bill. But it is submitted that the definition of the term Arya is very wide and should be restricted: The papers sent to me are returned herewith.

*Copy of opinion from the Honorary Secretary, City Hindu Sabha, Agra, dated the 30th March, 1930, to the District Magistrate, Agra.*

In reply to your above communication, I am directed by the Executive of the City Hindu Sabha, Agra to inform you that the Sabha is unable to express any opinion on the Arya Marriage Validation Bill as it does not come within the purview of the Aims and objects of the Hindu Sabhas, that stand for strict religious neutrality amongst the various sects and creeds that comprise the entire Hindu Community, and give them full scope to act according to their religious beliefs.

In view of this position of Hindu Sabhas, and also in view of the fact that the said Bill primarily concerns the Arya Samajists, the Arya Samaj Agra, situate in Mohalla Hing-ki-Mandi, may be consulted on the point for expression of opinion.

In fairness to the Arya Samajists, members however in their individual capacity, are not against such legislation, if they want it for themselves according to their religious beliefs.

*Copy of opinions from the Honorary Secretary, Shri Sanatan Dharam Sabha, Agra, dated the 31st March, 1930, to the District Magistrate, Agra.*

Your letter No. 2635/1, dated 10th March, 1930, was duly received by U. S. as directed by you, it was placed before the Committee of the Sanatan Dharam Sabha for opinion. All the members were unanimous in holding that the proposed Arya Marriage Bill is against the Vedas and Dharam Shastras and so they should strongly oppose it.

The assertion of the honourable proposer of the bill that present caste system is not in accordance with our scripture the Vedas, is quite wrong, and shows ignorance of the sacred books. If he had got any knowledge of these, he would not have made such a statement. It means that in order to gain the selfish ends of the Arya Samajists he has tried to mislead the Government.

It is not hidden from all those who have any knowledge of the Vedas and Dharam Shastras that caste system is clearly described in the Vedas and the Dharam Shastras that are in accordance with them. For instance, it is clearly stated in the Yajur Veda, Chapter 31, Verse 11, that God created Brahmins from his mouth, and the Kshatriyas from his arms, and Vaishyas from his thighs and the Sudras from his feet.

Now from verse 7, Chapter 2, of Manu Smriti it is evident that the aforesaid shruti is strictly in accordance with the Vedas on which it is based, and for that reason, it is as binding upon a follower of the Vedas as are the Vedas themselves. It is clearly stated in verse 10 chapter 2 of Manusmriti that the Shruties are the Vedas and Smrities are the Dharam-Shastras and that both these are infallible in all respects and that human reason should not be used to dispute them for these two are the basis of true religion.

Again it is explicitly stated in the Manu-Smriti, chapter 2, verse 11 that those of the Brahuuns, Kshatriyas, Vaishyas, who use their reason to call in question the authority of the vedas which are the root of the Dharam, that is law and Religion are not worthy to mix with respectable people and should be shunned by the latter, for being the revilers of the Vedas, they are Atheists.

The creation of the four castes which, as stated above by God from his own body, is given in the Vedas, is also mentioned in Manu-Smriti (*Vide* verse 1, chapter 3.).

While dealing with the marriages among the members of the four castes, it is clearly stated in Manusmriti that a member of each of these four castes should marry a good girl of his own caste only. Further from verse 7 chapter 3 of the same Smriti we learn that the girl whom he selects to be his wife and to bear children unto him should not be of the same *Gotra* as that of his father and should not be within the seventh generation on his mother's side.

Manu absolutely prohibits inter-marriages between members of different castes, as may be seen from chapter 3 verse 15. It is stated therein that those of the twice born who out of infatuation or delusion marry a girl of a caste inferior to theirs are soon degraded into Shudras, along with their descendants. Rishi Attri and Rishi Goutam, son of Rishi Utatthia, both hold that a Brahmin who marries a Shudra girl degrades himself thereby. Again Rishi Shaunak emphatically asserts that a Kshattria who begets children from Shudra woman lowers his caste degrades himself, and Rishi Bhrigu holds that similarly a Vaishya loses his caste and degrades himself by begetting children from a Shudra woman.

Again, Manu explicitly lays down that among men of all the four castes, only such children as are begotten by them from a virgin and married girl, of their own caste, will be of the same caste as their father, *e.g.*, children begotten by a Brahmin from a Brahmin wife should be called Brahmin, Children begotten by a Kshattria from Kshattria wife should be called Kshattria, children begotten by a Vaishya from a Vaishya wife should be called Vaishayas and children begotten by a Shudras from a Shudra wife should be called Shudras, while all children begotten otherwise should be called Baransanker, *i.e.*, of mixed caste.

Similarly it is also stated in Manusmriti that a Shudra has no right to beget a child by a Vaishya or a Kshattria or a Brahmin woman; if he does so the child will be Baransanker. (*Vide* chapter 10, verse 12 of Manusmriti).

Again in the Manusmriti it is stated that the country in which are born children of such mixed caste, who are the polluters of the four castes, is soon destroyed with all its inhabitants.

Now in the face of all these injunctions and explicit statements of the Vedas and the Dharamshastras the worthy proposer of the Bill, without having any knowledge of the vedas, asserts that inter-marriages are in accordance with the Vedas, he merely wishes to use the authority of the sacred Books to mislead the Government and the Public.

Now the proposed Bill is against the Hindu religion and as such is the sub-verter of our sacred religion and will be the cause of creating unrest and discontentment among the Hindu Public, and will be a source of much trouble to the Government and the Public. We, therefore unanimously oppose this Bill and hope that the Government in view of the

sacred pledges of Queen Victoria, King Edward the VII, and the King George the V. not to interfere in the religious matters of their subjects, will not allow such dangerous irreligious and horrible Bill to be introduced in the Assembly and made into a Law.

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Copy of letter No. *Nil*, dated *Nil*, from H. G. Walton, Esq., I.C.S., Commissioner, Lucknow Division, United Provinces, to the Secretary to Government, U. P., Judicial (Civil) Department.

**SUBJECT:—***The Arya Marriage Validation Bill.*

WITH reference to G. O. No. 283/VII-178, dated February 20, 1930, on the subject of the Arya Marriage Validation Bill, I have the honour to forward copies of letters received from the Deputy Commissioners of Lucknow and Rae Bareilly and to say that my views are the same as those of the Deputy Commissioner of Lucknow.

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Copy of letter No. 838/XIX-15-(27-29), dated the 29th March, 1930, from Dr. S. S. NEHRU, I.C.S., Deputy Commissioner, Rae Bareilly, to the Commissioner, Lucknow Division, Lucknow.

WITH reference to your endorsement No. 1591/XIX-30, (27-28), dated February 27, 1930, forwarding a copy of G. O. No. 283/VII-178, dated February 20, 1930, regarding the expression of opinion on the provisions of Arya Marriage Validation Bill by Dr. Mukhtar Singh, I have the honour to say that the President of the local Arya Samaj and the Secretary of the local Sanatar Dhram Sabha were consulted on the provisions of the Bill and that the former supports the Bill while it is opposed by the latter but no reason has been put forward by them. The Arya Samajists usually do not recognize caste restrictions and the measure should merely be a permissive one to enable them to contract a valid marriage out of caste if they so desire. This purpose can be achieved by requiring that such a marriage should be registered with Civil Authority both parties declaring that they are Arya Samajists.

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Copy of letter No. 1532-XIX, dated the 28th March, 1930, from A. MONRO, Esq., I.C.S., Deputy Commissioner, Lucknow, to the Commissioner, Lucknow Division, Lucknow.

WITH reference to your No. 1591/XIX-30-(27-28), dated Feb. 27, 1930, I have the honour to say that I consulted the Arya Samaj and other Hindu Associations. The Arya Samaj is the only body which has given any opinion on the Bill. It wholeheartedly supports the measure and offers no criticism of any kind. I am not in a position personally to give any considered views in a matter of this kind which is purely concerned with Hindu social customs and religion. Speaking generally however I would support any measure that tends to break the caste barriers which are the greatest obstacle to Hindu progress.

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Copy of letter No. 2385-XXIX-3-(29-30), dated the 14th April, 1930, from G. FLOWERS, Esq., I.C.S., Commissioner, Jhansi Division, United Provinces, to the Secretary to Government, U. P., Judicial (Civil) Department, Allahabad.

WITH reference to G. O. No. 283/VII-178, dated February 20, 1930, calling for views on the provisions of the Arya Marriage Validation Bill by Mr. Mukhtar Singh, I have the honour to submit, in triplicate, copies of letters received from the District Officers of the division, together with their enclosures, and to say that some useful opinions have been given and thoughtful criticisms of the Bill offered I would invite particular attention to the notes of the District Magistrate, Hamirpur, and Rai Bahadur Lala Chiman Lal, Deputy Collector of Jhansi.

2. I cannot myself usefully add anything to these notes.

Copy of letter No. 3253/XXIX-15-(29-30), dated the 27th March, 1930, from the District Magistrate, Jhansi, to the Commissioner, Jhansi Division, Jhansi.

I HAVE the honour to refer you to your endorsement No. 1847/XXIX-3-(29-30), dated the 27th February, 1930. A copy of the note drawn up by Rai Bahadur Lala Chinman Lal, Deputy Collector, after consulting prominent Arya Samaj and Hindu Association, is sent herewith.

### *Note on the Arya Marriage Validation Bill.*

ACCORDING to the instructions of the Collector I consulted Messrs. Madan Mohan Seth Sub-Judge, Lala Bodhraj Sahney, Advocate, Presidents and Secretaries of the Arya Samajis in the city, Sipri Bazar and Suddar Bazar and B. Bindraban Lal Secretary of the Hindu Sabha. I also consulted many other persons individually. Every one strongly supports the Bill. There is an orthodox section also who strongly oppose it, but they are in the minority. I offer the following criticism on the Bill and it has been approved by the many gentlemen I consulted.

#### *Section 2—*

As regards the definition of an Arya Samajist contained in clause (a) of the section there might arise at times acute controversies relating to the *bona fides* of entries on the rolls of the Arya Samaj especially with regard to new and vacillating converts. To set all this sort of trouble at rest a declaration on the part of the parties to the marriage that both of them are Arya Samajists, should be called for—just as similar declarations are called for under the Civil Marriage Act (Special Marriage Act III of 1872) as it stands amended.

The declaration of the above type would also remove the unjust deprivation of liberties of minors and dependent relatives contemplated by clause 2 (b). The mere fact that a guardian of a joint Hindu family is an Arya Samajist should not give rise to the presumption that his dependent relatives are of the same view. The personal declarations of the marrying parties would thus save them from imposition of religion social views of persons who may become guardians of such persons or their children.

In clause (c) of section 2 for the validation of post inter-caste marriages a period of five years has been allowed by the present Bill. This is quite justifiable; beyond this no further latitude should be allowed as is claimed by the Hon'ble sponsor of the Bill. To allow validation of future marriages not performed under this Act would encourage a policy of vacillation and create scope for communal wrangling. Hence the alternative validating clause of one year after marriage should be deleted as most undesirable. Similarly the rest of the clause contains undue privileges which are so apparent. These too should be deleted.

#### *Section 3—*

A proviso should be added at the end of this section in order to set at rest the controversy that has arisen round the question whether a person declaring himself to be an Arya Samajist could legally marry a person of another creed or religion. The phraseology of this section gives rise to many a just doubt—as it stands there is nothing in the words of this section or any previous or subsequent part of the Act, to compel "both" the parties to a marriage to declare that "both" of them are Arya Samajists or persons believing in some such creed. Besides this in order to avoid further doubts regarding the creed or religion of issues born of such marriages it is necessary to add the following proviso:—

Provided that both the parties to a marriage under this Act shall have declared themselves to be Arya Samajists or shall have filled up a form, in the alternative, hereinafter prescribed:—

The three essentials of the alternative form may be:—

- (1) that the declarant believes in the Vedas,
- (2) is a monotheist, and
- (3) that he or she believes in inter-caste marriages.

In this section after the words "or to different religions" the words "before becoming Arya Samajists" be added—that would clear the position and much of the opposition in the Assembly would be gone.

(Sd.) CHIMMAN LALL.

The 23rd March, 1930.

Copy of letter No. 1156, dated the 5th April, 1930, from B. V. BHADKAMKAR, Esq., I.C.S., District Officer, Hamirpur, to the Commissioner, Jhansi Division, Jhansi.

WITH reference to your endorsement No. 1847/XXIX-3 (29-30), dated February 27, 1930, forwarding a copy of G. O. No. 283/VII-178, dated February 20, 1930, I have the honour to enclose the opinions

- (1) of myself,
- (2) of the Bar Association, Hamirpur, which consists mainly of Hindu members, and
- (3) of the local Arya Samaj Associations of Rath and Hamirpur, in quadruplicate.

There is no Hindu Association in the district which can be consulted, but the views of the Bar Association may be taken as representing the views of the Hindu community. There is also reason to believe that the Hindu community, generally speaking, though quite in favour of the Bill, would like that the question of succession be placed beyond all doubt.

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*Opinion of the District Officer.*

It has been made quite clear during the course of the debate that the Bill is not intended to refer to marriages in which both the parties are not Arya Samajists. This should do away with the fear of the Muhammedan community. All that appear necessary is a slight amendment of Section 3.

It appears to me that section 2, as drafted, is extremely wide in its scope. It was admitted during the course of the debate that the Arya Samajists form part of the Hindu community; the Arya Samajists do not form any exclusive community like the Christian and the Muhammadans. The result is that in the same family you might find certain members conforming to the orthodox Hindu religion, while others have become members of the Arya Samaj. I think it should be sufficient if section 2 is restricted only to such persons as are the members of any Arya Samaj and in the case of minors to those who are the sons and daughters of any such members. This restriction will, no doubt, be in a sense arbitrary but can be justified by the existing facts. It will always be open to the dependents of an Arya Samajist's family to get themselves enrolled as members of an Arya Samaj; and minors other than sons and daughters, can get themselves so enrolled after attaining majority.

As regards section 2 (c) the period of 5 years may with advantage be reduced to 3 years only.

The difficulty about succession can be got over by legislating that in the case of issues of such marriages the Hindu Law of succession will apply. It is admitted that the Arya Samajists form a part of the Hindu community and any one who becomes converted and joins the Arya Samaj knows very well that he is becoming a member of the Hindu community. The matter is, of course, not quite so simple as I have put it: I only mean to say that the difficulty about succession is not insuperable. It will, in any case, be out of place here to enter into a long discussion on the subject.

B. V. BHADKAMKAR, I.C.S.,  
District Officer.

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*Copy of the proceeding of the meeting held on 23rd March, 1930, at Arya Samaj Mandir, Rath.*

THERE held a meeting in the Arya Samaj Mandir, Rath, under the Presidentship of B. Mansa Ram Sahiv in which the Arya Marriage Bill was fully discussed and came to this conclusion that with the following amendment it should be passed:—

In the definition clause II—

- (a) There should be a declaration on the part of parties to the marriage that both of them are Arya Samajists or are believer in inter-caste marriage as declarations are called for under the Civil Marriage Act.

Clause III the proposed proviso provided that both the parties to a marriage under this Act shall have declared themselves to be Arya Samajists.

We the members of the Arya Samaj and other Hindus of Rath give our consent for the proposed Arya Marriage Act.

JAGMOHAN LAL,  
Secretary.

In a meeting held by the Arya Samajists of Hamirpur the following resolution was passed unanimously:—

“That the members of this Branch request the Govt. to pass the following Bills and to enforce them early:—

Arya Marriage Validation Bill.  
Adoption Bill.”

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*Resolution of the Bar Association.*

In a meeting of the Bar Association, Hamirpur, held on the 23rd March, 1930, it has been unanimously resolved that their Association extends its hearty support to the Bill, as it is calculated to prove salutary to the Social organizations with the following reservation:—

That the definition Sec. 2 clause (b) be deleted, except the following sentence:—

(b) “is a member of the family of” any person mentioned in clause (a).

B. NIGAM,  
Secretary.

The 24th March, 1930.

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Copy of letter No. 1182-XXIX-2, dated the 24th March, 1930, from W. F. G. BROWNE, Esq., I.C.S., District Officer, Jalaun (United Provinces), to the Commissioner, Jhansi Division, Jhansi.

In compliance with your endorsement No. 1847/XXIX-3 of February 27, 1930, forwarding a copy of G. O. No. 283/VII-178 [Judicial (Civil) Department] of February 20, 1930 and copy of enclosures, I have the honour to give below the views expressed by the prominent Arya Samaj and other Hindu gentlemen and Associations in this district:—

- (a) Some nine notable Arya Samajists and other educated and sensible Hindus of the Jalaun tahsil, who were consulted, cordially welcome and strongly support the Marriage Bill.
- (b) The Secretary of the Arya Samaj at Kalpi is, in consultation with the members of his association, in favour of the passing of the proposed Bill.
- (c) Rai Bahadur Pandit Gopal Das Sharma, Advocate of Orai, who is an Arya Samajist, is of opinion that the passing of a measure contemplated in the Bill is a necessity, that he has no objection to sec. 2, and that for the sake of removing doubts expressed about sec. 3 language may be made clear to the effect that the husband and wife should both be Arya Samajists.
- (d) The Arya Samajists of Konch are in favour of the passing of the Bill. But the Sanatan Dharmis, who predominate, observe that the term ‘Arya Samaj’ should include only such persons who are members of an Arya Samaj and no other persons as included in clauses (b) and (c) of section 2, viz., males and females under 18 and 14 respectively, that clause (c) should not be interpreted to include other members, relatives, dependants and minors under guardianship of a person mentioned in clause (a) and that the cases in which marriage may take place after the passing of the Bill should only be governed by the Act.

2. In my opinion the Bill is a reasonable and necessary one and deserves every support. Dislike of the rigidity of the caste system is a healthy and progressive sign.

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Copy of letter No. 1317/XXIX-1, dated the 20th March, 1930, from H. E. BARLOW, Esq., I.C.S., District Officer, Banda, to the Commissioner, Jhansi Division, Jhansi.

In compliance with your endorsement No. 1847/XXIX-3 (29-30), dated Jhansi, February 27, 1930. I have the honour to send you typed copies of the views expressed by the two most prominent Arya Samajists in this district. There is no particular Hindu Association in this district.

I have no particular opinion of my own to offer on this Bill.



*Copy of the views expressed by the Vice-President, Arya Samaj, Banda.*

I HAVE gone through the extract from the Legislative Assembly Debates in connection with the Arya Marriage Validation Bill. There is a perfect and unanimous agreement with the principle of the bill.

In 1925 all the Arya Samajists from different parts of India gathered together at Muttra in connection with the hundred years ceremony of Srimad Daya Nand Saraswati, a resolution was passed unanimously that such a measure was necessary and I myself was at that time. The opinion of the local Arya Samajists as gathered by me is that they want inter-marriage between Arya Samajists belonging to different castes or sub-castes of Hindus or to different religion, i.e., Christians, Mohammadans, etc., but that party of Christian and Mohammadan has to be converted to Arya Samaj faith before a valid marriage can take place.

The Sarvadeshika Sabha to which all the provincial Arya Samaj Associations are affiliated is of the same opinion, it is therefore clear that the whole community of the Arya Samajists is behind the Bill. I can more say that the Educated Hindus in particular are also of this opinion though this bill does not concern with the Hindus it is only for the Arya Samajists. If there are some drafting defects which are suggested may be cured in the Select Committee.

The Arya Marriage Validation Bill is a permissive law and is applicable exclusively to the Arya Samajists. The Sarvadeshik Sabha to which all the Arya Samajes are affiliated, has given its unanimous support. The Arya Samajes through their Provincial Arya Pritinidhi Sabhas, as well as separately have supported the Bill by passing resolutions. There is not a single dissential voice throughout the whole of India among Arya Samajists against the Bill. The Hindu Law is also clear on the point that marriages between different castes are legal and valid. As the Bill is applicable to the Arya Samajists, no other community should have any legitimate or reasonable grievance against the passing of it into law.

(Sd.) SRI DHAR DAYAL,  
Office Superintendent.

Copy of letter No. 2841-XIX-115-14, dated the 14th April, 1930, from D. L. DRAKE-BROCKMAN, Esq., C.I.E., I.C.S., Commissioner, Fyzabad Division, United Provinces, to the Secretary to Government, United Provinces, Judicial (Civil) Department.

I HAVE the honour to refer to G. O. No. 283/VII-178, dated February 20, 1930, with which you forwarded a copy of the Arya Marriage Validation Bill for opinion and to state as follows.

2. Two out of the four Deputy Commissioners consulted have replied that the Arya Samaj Associations consulted by them are wholly in favour of the Bill as it stands; but the Sanatan Dharmists are wholly opposed to it. The Deputy Commissioners whose views have been received and the Sewa Samiti Association of Bahraich are not opposed to the Bill, but suggest that clause 2 (b) and the last sentence of clause 2 (c) should be struck out on the ground that it is wholly unnecessary to include in the definition of Arya Samarists "members of the family of, or relatives dependant on, or persons under the guardianship of, a member of an Arya Samaj". The reasons are obvious and need not be laboured. I agree.

3. In clause 2 (c) for the words "expressing himself to be an Arya Samajist or in terms equivalent thereto" I would suggest "in which he declares himself to be an Arya Samajist or employs expression the meaning of which amounts to such a declaration".

4. Clause 3 is very badly worded. The intention apparently is to render invalidation of certain marriages impossible. I would suggest that the wording be as follows:—

"No marriage solemnized between Arya Samajists shall be invalid by reason of the fact that the parties thereto belong to different castes or sub-castes of Hindus or to different religions, any law, usage or custom to the contrary notwithstanding."

The opinions received are attached as requested.

Copy of letter No. 1630, dated the 10th April, 1930, from B. J. K. HALLOWES, Esq., I.C.S., Deputy Commissioner, Gonda, United Provinces, to the Commissioner, Fyzabad Division, Fyzabad.

I HAVE the honour to refer to your endorsement No. 136/2221/XIX-115-2, dated February 27, forwarding a copy of G. O. No. 283/VII-178, dated 20th February, 1930, regarding the Arya Marriage Validation Bill.

2. The views of the following committees are enclosed:—

Arya Samaj Committee.  
Chief Hindu Association.

3. The definition of an Arya Samajist in clause 2 is the main defect in the bill. The point does not need to be laboured; it is clearly unjust to regard as an Arya Samajist relatives dependant on, or persons under the guardianship of an Arya.

4. Clause 4 is badly worded, and should refer to a marriage where both parties are Arya Samajist.

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*Resolution of the Arya Samaj, Gonda, received through the Secretary.*

RESOLVED that this meeting of the Arya Samajists of the Gonda Arya Samaj held on the 30th March, 1930, wholeheartedly supports the Arya Marriage Validation Bill introduced in the Legislative Assembly by Chaudhari Muktar Singh, M.L.A., and requests the Government to give the full weight of its support to the measure with a view to get it passed into an Act within the lifetime of the present Assembly.

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Copy of letter No. *Nil*, dated *Nil*, from the Secretary, Sri Satya Bandi, Gosti Sanatan Dharm Sabha, Gonda, to the Deputy Commissioner, Gonda.

In reference to your memorandum dated 2nd April, 1930, I beg to say that I am totally against the view of Arya Validation Marriage Bill: as it is against the Shastras. I am explaining this view as Secretary of Sri Satya Bandi Gosti Sanatan Dharm Sabha, Gonda.

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Copy of letter No. 704-XIX-7-2, dated the 4th April, 1930, from A. N. SAPRU, Esq., I.C.S., District Officer, Bahraich, to the Commissioner, Fyzabad Division, Fyzabad.

In compliance with G. O. No. 283-VII-178, dated February 20, 1930, copy received with your endorsement No. 136/2221/XIX-115-2, dated February 27, 1930, inviting the expression of views of officers and important Arya Samaj and Hindu associations on the Arya Marriage Validation Bill, moved in the Imperial Legislative Assembly by Chaudhari Mukhar Singh, I have the honour to enclose in triplicate copies of the opinions of the two local bodies which were consulted by me on the subject. I am in complete sympathy with the principle of the bill. As far as I am aware the vast mass of Arya Samajist opinion not only views the bill with favour but is pressing that legislation along the lines proposed in this bill should be introduced expeditiously. This bill reflects the changed outlook in social matters of a section of the people which, while, perhaps, not numerically strong yet, is making its influence increasingly felt. It will further remove the present uncertainty which exists with regard to the legality of inter-caste marriages by Arya Samajists and by far the greatest argument in favour of it is that it will stimulate healthy progress. The drafting of the bill, however, seems to me unsatisfactory, but the defects of drafting can be rectified in the Select Committee. Clause 2 of the bill, in my opinion, needs radical amendment. I fail to see any justification why a relative dependent on a member of any Arya Samajist should be included within the definition of Arya Samajist. The words, "Or in terms equivalent thereto" in clause (c) of section 2 do not appear to me to convey any clear meaning and should, I think, be deleted.

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Copy of letter No. 258/30, dated the 25th March, 1930, from the Secretary, Arya Samaj, Bahraich, to the Deputy Commissioner, Bahraich.

In connection with the G. O. No. 283/VI-178, dated February 20 of 1930, from Judicial (Civil) Department to the Commissioner, Fyzabad Division, about the Arya Marriage Bill by Mr. Mukhtar Singh, the following resolution has been adopted by the Arya Samaj, Bahraich:—

"Resolved that this general meeting of the Arya Samaj, Bahraich, strongly supports the Arya Marriage Validation Bill and requests the Government to give kind support so that within the life-time of this Assembly it might be passed into an Act."

Copy of a letter No. and dated Nil, from the President, Seva Samiti,  
Bahraich, to the Deputy Commissioner, Bahraich.

WITH reference to your Memo. dated 12th March, 1930, relating to the Arya Marriage Validation Bill I beg to state underneath the opinion of the local Seva Samiti.

The Arya Marriage Validation Bill of Mr. Mukhtar Singh has our entire support with the following modifications:—

- (1) Clause (b) of section 2 may be entirely omitted.
- (2) After clause (c) the passage beginning with the words "and includes" and ending with the words "such a person" may be omitted in Section 2.
- (3) Clause (c) of Section 2 may be styled as clause (b).
- (4) In section 3 the following passage may be omitted:—  
"or to different religions, any law or".
- (5) In section 3 before the word "usage" the word "any" may be added.

Copy of a letter No. 1230, dated the 15th April, 1930, from the Deputy  
Commissioner, Partabgarh, to the Commissioner, Fyzabad Division.

WITH reference to G. O. No. 283/VII-178, dated February 20, 1930, copy forwarded under your endorsement No. 136/2221/XIX-115-2, dated 27th February 1930, I have the honour to enclose in triplicate the opinion on the Arya Marriage Validation Bill of Raja Audhesh Singh of Kalakankar, President of the District Arya Samaj. The President of the local Hindu Sabha has not offered any opinion though he was asked to do so. I am in general agreement with the bill not as there was only one copy of the papers sent to me and it was circulated among these two bodies and kept by them for a long time. I have not been able to examine the bill in detail.

No. 2907—XIX-115-7, dated the 17th April, 1930.

COPY with enclosures submitted to the Secretary to Government, United Provinces, Judicial (Civil) Department, in triplicate, in continuation of this office letter No. 2841/XIX-115-14, dated April 14, 1930.

D. L. DRAKE—BROCKMAN, C.I.E., I.C.S.,  
*Commissioner, Fyzabad Division.*

*Copy of opinion given by Raja Audhesh Singh of Kalakankar, President  
of the District Arya Samaj, dated the 13th April, 1930.*

IN view of the fact that the Arya Marriage Validation Bill move in the Legislative Assembly by Chowdhry Mukhtar Singh, M.L.A., of the Meerut Division Non-Muhammadan rural constituency, concerns the Arya Samajists alone, and is intended to validate, through the support of Law, a practice already followed by some Arya Samajists, I should not, I feel have any hesitation in stating, that as a move towards social reform, it claims all the support of the Government of India. From a study of the papers concerned, it appears that some members of the Legislative Assembly view the Bill with grave doubts, and hold that the passing of the Bill into Law would mean serious difficulties to members of other communities, and to Arya Samajists themselves in settling questions of succession or inheritance. But all this, in my opinion, is due to a lack of clear understanding of facts on the part of those that entertain these doubts. The whole trouble would, I believe, vanish if the following points are borne clearly in mind:

- (1) That the Arya Marriage Validation Bill would not apply to members of any community other than the Arya Samaj.
- (2) That the Bill, after it is enacted into Law, would effect a person only when he or she has become an Arya Samajist before his or her marriage takes place, no matter what his or her faith may have been before this conversion.
- (3) That after an inter-marriage between Arya Samajists has been made valid by such an enactment, all the question of succession or inheritance shall be governed by the existing Hindu Law.

I therefore hold the enactment of the Arya Marriage Validation Bill as a necessary measure, and offer my wholehearted support to it.

Copy of letter No. 1546/XVIII-45-2, dated the 14th April, 1930, from T. B. W. BISHOP, Esq., I.C.S., Deputy Commissioner, Fyzabad, to the Commissioner, Fyzabad Division, Fyzabad.

IN reply to your endorsement No. 136/2221/XIX-115-2, dated February 27, 1930, I have the honour to enclose copies of the opinions furnished by the Arya Samaj, Fyzabad and by the local Hindu Sabha.

The general opinion seems to be that there is no objection whatever to the proposed legislation, which indeed is to be commended, provided that it is confined to marriages between Arya Samajists only. As pointed out by the Secretary Hindu Sabha, however, the wording of some important sections of the bill is at present far too general and is susceptible of controversial interpretations. In my opinion the definition in section 2 is far too wide and should not have retrospective effect in the case of future marriages, though a limited opportunity should be granted to those who have married before the proposed Act comes in force to avail themselves of its advantages. It seems to me that before the passing of the Act can be welcomed the position must be made a great deal clearer regarding marriages in which one of the parties is not an Arya Samajist at the time. I believe that in such cases at present, anyhow in certain circumstances, an individual converted to a new religion is in some respects under civil disability, for example, as regards right of succession to family property. It needs to be set out how section 3 would affect this. I think it is on account of considerations like this that certain Moslem members of the Assembly were suspicious of the bill. Accordingly I requested the Government Pleader here to give me the benefit of his opinion with special reference to the Moslem objections. I enclose a copy of his reply. I fail to see why every member of a family should qualify as an Arya Samajist merely because one member happens to be an Arya Samajist. It is a matter of common knowledge that some members of a family may be Arya Samajists while the remainder remain within the fold of the Sanatan Dharm.

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No. 2908-XIX-115-8, dated the 17th April, 1930.

Copy with enclosures submitted to the Secretary to Government, United Provinces, Judicial (Civil) Department, in triplicate, in continuation of this office letter No. 2841/XIX-115-14, dated April 14, 1930.

D. L. DRAKE—BROCKMAN. C.I.E., I.C.S.,  
*Commissioner, Fyzabad Division.*

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Copy of a letter, dated the 27th March, 1930, from the Secretary, Hindu Sabha, Fyzabad.

I HAVE the honour to submit my opinion on the "Arya Marriage Validation Bill" by Mr. Mukhtar Singh, M.L.A., on behalf of the local Hindu Sabha.

The expediency and desirability of a legislative enactment of this nature with a view to finally recognise and place beyond doubt the validation of the inter-marriages of "Arya Samajists" cannot be questioned if the proposed measure has the support of the community it affects. There is no doubt that the Bill has been supported by the "Arya Samajists" in general. It is intended to remove certain disabilities particularly in the matter of succession which flow from the Special Marriage Act of 1872 as subsequently amended. The Special Marriage Act was conceived in a spirit which is antagonistic to the Hindu notion of marriage as prescribed in the "Shashtras".

The Sabha is of opinion that such a legislation is desirable of its avowed object is to secure legal sanction for the inter-marriages of "Arya Samajists". The wordings of some of the important sections of the bill are too general inapt and susceptible of controversial constructions. In fact this ambiguity of drafting raised a storm of opposition in the Assembly debate by the Muslim section on account of the apprehension that the Bill was opposed to the Muhammadan law of marriage. The apprehensions do not seem to be well founded if we carefully read the utterances of the Mover Mr. Mukhtar Singh in the Assembly and take into consideration his admission of the fact that the bill as drafted is not free from imperfections. It becomes abundantly clear that the intended Bill has not been moved in a spirit of hostility to any culture or religion. It is purely a matter of social amelioration and not a move with any ulterior motive or design behind it. The Sabha is of opinion that the definition of Arya Samajist as given in clause (2) is too general and vague. Clause (a) does not make it clear as to what formalities are to be complied with before a person can be called a member of the Arya Samaj. The Arya Samaj is not an entirely separate body from the Hindu community. The proposed Bill has not taken full note of this fact. The Bill as it stands is not confined to any adult man or woman who declares himself or herself to be a member of the Arya Samaj but it extends the definition so as to include a person who is a member of the family of an Arya Samajist or a relative dependant on him or a person under the guardianship of an Arya Samajist, i.e., any person mentioned in clause (a).

This directly introduces a debatable question whether a man is entitled not only to change his own social and socio-religious ideas but also to impose those ideas upon those who happen to be members of the family or to be dependants on him or under his guardianship. The clause (b) as it stands is open to objection in this respect. The passing of the bill as it stands needs close consideration because it effects the question of succession as governed by Hindu Law. Succession is governed by marriage. The rules relating to a valid marriage as prescribed by the Hindu Law are not identical with the rules proposed to be incorporated in the present Bill. In order to avoid disturbance of the established rules of the Hindu Law governing succession, it cannot be claimed by the sponsors of the Bill that in the matter of succession Hindu Law should govern those to whom the Validation Bill applies. The test of inheritance according to the Hindu Law is the competence to offer spiritual benefit. No one can inherit who is not capable of offering Pinda, which means spiritual benefit. The progeny of a marriage between the Arya Samajist when the couple belongs to different caste, sub-caste, or religions is not competent to offer spiritual benefit; consequently an Arya Samajist under this Bill should not be allowed to normally inherit the property of the Non-Arya Samajist. Regarding the application of this Bill it is urged that it should not have no retrospective effect. The Bill should apply to a marriage in which both the parties are Arya Samajists and in this respect the short title is inconsistent with the operative clause 3 of the Bill. The Sabha is of opinion that persons who once belonged to different religions should be allowed to inter-marry if at the time of marriage they are Arya Samajist, but the married couple would not be governed by the personal law of succession by which they were governed before the marriage. Further that there should be no fear of the issue of marriage under the Arya Marriage Validation Act being declared illegitimate. In this respect it is necessary to have a law which would give relief to the Arya Samajist. Any controversy regarding the matter of succession should be set at rest by special provisions regarding inheritance on which the Act should not be silent because such provisions regarding the matter of succession must necessarily be in contravention of the Hindu law of succession.

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Copy of a letter, dated the 31st March, 1930, from the President, 'Arya Samaj, Fyzabad.

THE Arya Samaj, Fyzabad, wholeheartedly welcome the measures proposed by Mr. Mukhtar Singh for validating inter-marriages of Arya Samajists. The Arya Samaj is very seriously handicapped in the free observance of its principles by reason of the absence of some legislation recognizing the validity of inter-caste marriages. In fact it is regretful that only recently such a marriage was the subject matter of dispute in the Civil Courts Fyzabad and a judgment was given against it. This law is very urgently needed and we would respectfully impress upon the Government that all delay should be scrupulously avoided.

We further endorse all that has been said in this connection by Mr. Mukhtar Singh and Pt. Thakur Dass Bhargava in the Assembly in connection with the Arya Marriage Validating Bill.

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Copy of opinion given by the Government Pleader, Fyzabad, dated the 4th April, 1930.

IN the definition of "Arya Samajist" clauses (b) and (c) appear to be absurd.

A person may not be an Arya Samajist although he may be a dependant on or a relation or a member of the family of, or a ward of an Arya Samajist.

The object of the bill is to render inter-marriages valid. The meaning of a valid marriage is, not that the offspring of such a marriage will not be considered as a child of fornication, but that the children will have the right of succession to the property of their parents and relations. If both the bride and the bridegroom were Arya Samajist at the time of the marriage then there will be no difficulty in deciding the question of succession when there is an occasion for it. If any one of the couple was a non-Arya Samajist at the time of the marriage then the issues of such a marriage may, in some cases, be deprived of their right of succession. Under the Mohammadan law such a child has got no status and cannot succeed to the property of his father or mother. Section 3 appears to do away with this disability and to render inter-marriages valid for all purposes. This will be against the clear provisions of the Musalmani law.

ARYA Samajists are undoubtedly keen on the proposed legislation. But the Bill contains many imperfections which, as argued in the Assembly, may give rise to misunderstanding or friction. If the following changes were made in the Bill—

Clause 2 (b).—Add "and has been following the tenets of the Arya Samaj".

Clause 2 (c) and Explanation.—Delete altogether.

Clause 3.—Substitute the words "between Arya Samajists" for "of any Arya Samajist"—

they would do away with most of the criticisms levelled against it and would leave the main provision intact.

The question whether the Act would produce complications in the law of succession is one on which I cannot give an opinion as difficult legal considerations are involved. If it is found that the Hindu Law of Succession is regularly in vogue among Arya Samajists, the bill might possibly give statutory effect to this, though that would be so much enlarging its scope as to require a change of title.

A further question is whether in view of previous legislation the bill is really needed or not. That too is a question for jurists to determine.

J. H. DARWIN, I.C.S.,  
District Magistrate.

The 29th March, 1930.

Copy of a letter, dated Etawah, the 27th March, 1930, from B. ZORAWAR SINGH NIGAM, B.A., S c., President, Arya Samaj, Etawah, to the District Officer, Etawah.

With reference to your endorsement dated 11th March, 1930, forwarding copies of G. O. No. 283/VII-6178, dated February 20, 1930, and Arya Marriage Validation Bill introduced in the Legislative Assembly by Ch. Mukhtar Singh, M.L.A., I have the honour to say that I had laid the G. O. and the bill before the Executive Committee of the local Arya Samaj at its meeting held on 24th March, 1930, and that after thoroughly considering over the provisions of the bill the committee has unanimously decided to welcome the bill which in its view is a distinct advance over the present situation and as such should be passed into law as soon as possible. It has further resolved to request the Government of India kindly to lend their wholehearted support to the measure.

I would therefore request you kindly to transmit the views of the Etawah Arya Samaj to the Government of India.

Copy of an opinion expressed by B. Zorawar Singh Nigam, B.A., LL.B., President, Arya Samaj and President, District Hindu Sabha, Etawah, dated March 12, 1930, to the District Magistrate, Etawah.

In reply to your letter *re* the Arya Marriage Validation Bill, by Chowdhari Mukhtar Singh, I beg to say:—

I cordially and fully support the bill. It has the unanimous support of the Arya Samajists. I have not come across any Arya Samajist who is against it. It is a modest Bill.

Section 3 is somewhat misleading. In the Legislative Assembly it was also misinterpreted by several honourable members. I suggest if some such words after different religions be added "Before their adoption the Arya Samajist faith", or "Before their conversion to the Vedic Religion." In fact the Arya Samajists do not call their religion as Arya Samajist faith but they call it, "The Vedic Religion". Every man irrespective of country he may be living or his previous religion, has got a right to become a member of the Arya Samaj.

I have carefully gone through the Arya Marriage Validation Bill. My opinion is opposed to it.

Marriage under Hindu Law is a sacrament and not a contract. I recognise, however, that its secular purpose and character is now well-settled.

Hindu Law recognises marriages between persons of different castes valid only when sanctioned by custom. We have to see, therefore, whether such a custom prevails to justify their being placed on the Statute Book. The Allahabad High Court held inter-caste marriage—between a Vaish and a Shudra—wholly void. *Vide* 48 Allahabad (Indian Law Reports) page 670. Bombay High Court is of the same opinion, as Allahabad.

The existence of such a custom is a question of fact, and in the absence of data no opinion can be expressed.

Legislature should not put superfluous Acts on the Statute Book.

There exists the Special Marriage Act III of 1872. Sikhs, Arya Samajists and Brahmos have taken advantage of it by declaring that they are non-Hindus.

Arya Samajists, if they consider themselves outside the pale of Hinduism, can come under this Act. If they consider themselves Hindus their case is covered by the Special Marriage Amendment Act XXX of 1923, under which persons who profess one or other of the following religion, *i.e.*, Hindu, Sikh, Buddhist and Jain can marry irrespective of caste.

Moreover the legal maxim "Quod fieri non-debit factum valet" is applicable to marriages, and marriages amongst Arya Samajists, who are not a separate caste, would be valid under this principle of law.

The provision in clause (c) of section 2 of the Bill would result in hardships in individual cases, and an ambiguous position in cases in which a husband does not declare himself an Arya Samajist within one year of the marriage. This should be a condition precedent and not subsequent.

(Sd.) BRIJ BIHARI LAL,  
Subordinate Judge, Etawah.

The 27th March, 1930.

Copy of letter No. 2354, dated the 29th March, 1930, from J. F. SALE, Esq., I.C.S., District Magistrate, Cawnpore, to the Commissioner, Allahabad Division, Allahabad.

With reference to G. O. No. 283/VII-178, dated February 20, 1930, Judicial (Criminal) Department, copy received with your endorsement circular No. 3000/XVIII-34, dated March 5, 1930, I have the honour to submit copies of opinions of the two local Arya Samaj and Sanatan Dharm Mahamandal and to say that the Arya Samaj and other keen social reformers are strongly in favour of the bill, while orthodox Hindu opinion is opposed to it. I think the Bill should be passed but its principle should not be applied to any but Arya Samajists at present.

Copy of a letter No. 494, dated the 25th March, 1930, from the Honorary Secretary, Sri Brahmavarta Sanatan Dharm Mahamandal, Cawnpore to the Collector, Cawnpore.

In reply to your communication dated 8th March 1930, regarding the Arya Marriage Validation Bill by Mr. Mukhtar Singh I have the honour to submit the opinion of the Mahamandal which is as follows:—

“Sri Brahmavarta Sanatan Dharm Mahamandal, Cawnpore, looks upon the Arya Marriage Validation Bill with feelings of great dismay and alarm, inasmuch as it is against Hindu Dharm Shastras and cuts at the very roots of Varnasharam Dharm and the Hindu Marriage Sacrament the two mainstays of Sanatan Dharm in particular and the Hindu Society in general; and recording its emphatic protest against the Bill prays to Government never to allow passage of such mischievous Acts into law. The Mahamandal fears the measure will affect the entire Hindu community and create religious and social revolution in India.”

Copy of a letter No. Nil, dated the 14th of March, 1930, from the President, Arya Samaj, Cawnpore, to the District Magistrate, Cawnpore.

With reference to your circular letter No. 3000/XVIII-34, dated March 5, 1930, have the honour to submit that the Arya Samaj, Cawnpore has already passed a resolution in its general meeting strongly supporting the proposed Arya Marriage Validation Bill and so far as I know every Arya Samaj in India is in favour of it.

Copy of letter No. 1330, dated the 24th March, 1930, from Khan Bahadur SHAIKH MUHAMMAD MUSANNA SAHEB, B.A., District Officer, Fatehpur, to the Commissioner, Allahabad Division, Allahabad.

With reference to G. O. No. 283/VII-178, dated February 20, 1930, received with your endorsement No. 3000/XVIII-34, dated March 5, 1930, I have the honour to submit in quadruplicate my views on the Arya Marriage Validation Act and those of the President and the Secretary of the district Arya Samaj and Hindu Sabha respectively.

There is no objection in validating marriages in which both the contracting parties at the time of their marriage happen to be Arya Samajists. The bill has been badly drafted. The definition of an Arya Samajist is much too wide. The Arya Samaj is not a separate entity in Hindu society; it is after all a sect of Hinduism. There are many Hindu families in which some of the members have become Arya Samajists, while the others still stick to their old faith. The bill, as it stands at present, includes all these persons under the fold of the samaj. This is wrong. The question of succession will have also to be considered in this connection. Perhaps, there is no idea of introducing any different rule of succession in the case of Arya Samajists. It is believed that they will continue to be governed by the Hindu Law.

The Muhammadans are suspicious of this bill. The bill should be drafted in such a manner as to leave no alarm in their mind.

*Copy of opinion furnished by the Secretary, Hindu Sabha, Fatehpur, on the Inter-marriage bill of the Arya Samajists.*

I CONSULTED various members of the executive of the Hindu Sabha. The Arya Samajists favour it, but others oppose it. I want to bring the following points to the notice for careful consideration:—

- (a) It is simply a misnomer to call it an act concerned with the Arya Samajists only. The definition of an Arya Samajist, as given in the act, is very wide and is calculated to affect other sects of the Hindus very adversely.

According to this act an Arya Samajist means "A member of the family of, or a relative dependent on, or of a person under the guardianship of any Arya Samajist.

Thus it is an attempt on the part of the Arya Samajists to increase their circle by means of legislation which they have failed to do by means of propaganda. It means to say that if a family consists of 10 persons, one of which is an Arya Samajist, they want to call the remaining members also Arya Samajists which is quite unfair and unjust. I believe that every other sect of the Hindus will oppose it. Others may urge that if one of them is a Sanatanist, the remaining also may be termed Sanatanists.

- (b) It is bad logic to argue that this effects only Arya Samajists and others have nothing to do with it. From the definition as given in section 2 (b) and 2 (c) it is clear that it will apply to other members also who do not subscribe to the view of Arya Samajists.

Hence if the Arya Samajists really mean what they proclaim they must delete Sec. 2 cl. (b) and sec. (2) cl. (c) from "or in terms.....persons". Thus cl. (2) will read as follows:—

- (a) Arya Samajist means a person who is a member of any Arya Samaj or who  
 (b) within five years of the passing of this Act or within one year of his marriage executes a written document expressing himself to be an Arya Samajist.  
 (c) Section 3 of the act lays down that the marriage shall be valid even if the couple belonged to different castes, sub-castes of Hindus or to different religions. This means if the husband is an Arya Samajist, the wife will be taken to be an Arya Samajist, and if the wife is an Arya Samajist the husband shall be taken to be so. It is claiming too-much.

Hence it can not be accepted unless it be made clear in section 3 that the Act will apply only if the both husband and the wife are Arya Samajists.

- (d) It has been argued by the supporters of the bill that it shall apply only to Arya Samajists and not others. Hence no body else should raise any objection. The Arya Samajists are not a different body but every Hindu family consists of Arya Samajists and others. Hence an attempt to make them a separate body smells an attempt of disunion and is to be deplored.
- (e) It is also argued that this act has nothing to do with inheritance, but it is a misrepresentation pure and simple. When the act is once passed, low caste Hindus and poor Mohammadans will offer themselves for marriage to well-to-do Hindus. The Arya Samajists, in their eagerness for the propaganda of sudhi will marry them. The result will be that their estates will pass to the sons of Mohammadans and low caste Hindus. If unfortunately these sons revert to Mohammadanism the estate is lost. It is a great loss to the Hindu community specially when we remember that it will affect also those who do not subscribe to Arya Samajist views.
- (f) If the Arya Samajists really mean that the law will not affect the law of inheritance, there is no use of this Bill, for even without the marriage being declared legally valid, the couple can still live together and enjoy under the special marriage Act.



(g) If the act is passed at all there must be a provision to the effect that if the heirs of the Arya Samajists born by surmarriage revert to Mohammadanism or Christianity, they will lose all rights to the estate inherited.

*Copy of the Resolution passed at a meeting of the Arya Samajists of Fatehpur on 9th February, 1930, furnished by the President, Arya Samaj, Fatehpur.*

RESOLVED that this meeting of the Arya Samajists of Fatehpur do whole-heartedly support the Arya Marriage Validation Bill introduced in the Legislative Assembly by Ch. Mukhtar Singh, M.L.A., and request the Govt. to give the full weight of its support to this measure with a view to get it passed into an Act in the life-time of the present Assembly.

*Copy of the Resolution passed on 14th March, 1930, furnished by the President, Arya Samaj, Fatehpur.*

RESOLVED unanimously that the members of the Arya Samaj do agree to the provisions of the Arya Marriage Bill.

Copy of letter No. 870, dated the 5th April, 1930, from S. H. THOMPSON, Esq., I.C.S., District Magistrate, Allahabad, to the Commissioner, Allahabad Division, Allahabad.

With reference to your endorsement No. 3000, dated March 5, 1930, I have the honour to say that following were consulted:—

1. Secretary, Arya Samaj.
2. Secretary, Hindu Sabha.
3. Dr. Ganga Nath Jha.
4. Secretary, Adi Hindu Sabha.
5. Secretary, Sanatan Dharam Sabha.

I have received replies from the first three and enclose copies for your information. Other bodies have not yet replied. Their opinions will be submitted later when received.

Copy of a letter dated April 2, 1930, from B. GANGA PRASAD, M.A., President, Arya Samaj, Chowk, Allahabad, to the District Magistrate, Allahabad.

With reference to your office No. 696 of 24th March, 1930, I have the honour to submit that the Arya Marriage Validation Bill moved by Ch. Mukhtar Singh in the Legislative Assembly and sent to my office for opinion is an extremely urgent measure. I have read the Bill and thought over it. In my opinion the advocates of social reform have to work under very trying conditions and suffer much for want of a law. I and my Samaj hold that there should be nothing in the law of the country that may put undesirable obstacles in the way of social reform. The present Hindu Law of marriage puts such obstacles. There are a number of persons who have in spite of the law and for the sake of reform indulged in inter-caste marriages and suffered accordingly. They deserve not only praise and appreciation but redress too. Such a redress can be given only by passing the proposed bill which in my opinion is overdue.

Copy of a letter No. 141, dated April 1, 1930, from the Honorary Secretary, Allahabad Hindu Sabha, to the District Magistrate, Allahabad.

With reference to your E. No. 696, of the 24th March, 1930, I have the honour to inform you that the bill introduced in the Legislative Assembly by Mr. Mukhtar Singh regarding the validation of inter-marriage of Arya Samajists was placed before the Executive Council of the Allahabad Hindu Sabha on the 30th March, 1930.

The Executive Council of the Hindu Sabha resolved that the proposed bill should not be passed into Law as it will lead to several family and religious disputes as it is against the spirit of the present Hindu Law.

Copy of a letter No. 80/V. G.-30, dated March 26, 1930, from Pt. GANGA NATH JHA, Vice-Chancellor, Allahabad University, Allahabad, to the Collector, Allahabad.

YOUR endorsement No. 696, dated 24th March, 1930.

So far as the Bill is calculated to affect only Arya-Samajists there appears to be no objection to it on the face of it. But when we consider the fact that Arya-Samajism is not a distinct religion and the son of an Arya-Samajist does not *ipso facto* become an Arya-Samajist, like the son of a Hindu or the son of a Christian, I feel that there may be difficulties in the family marrying under the proposed Act. It is not unlikely that the son of the marriage may not be an Arya-Samajist; he may, when he is competent to think of it, like to declare himself a Hindu of the older type; in that case he would find himself seriously handicapped by the fact of his parentage being defective in the eyes of those whose community he would be anxious to join. I feel, therefore, that unless and until Arya-Samajism becomes a distinct religion necessarily passing on in heredity the proposed legislation would be detrimental to the best interests of posterity. From the reformer's point of view also it would appear to be unfair to fetter the discretion of the coming generation by such legislation. If we want freedom for ourselves, we should not tie down future generations.

Copy of a letter No. 948/t. A.-30, dated April 2, 1930, from the General Secretary, Arya Samaj, Chowk Allahabad, to the District Magistrate, Allahabad.

(Re *Arya Marriage Validation Bill*).

In reply to your communication No. 696, of 24th March, 1930, I have to say that Chaudhary Mukhtar Singh's Arya Marriage Validation Bill, on which you have invited my opinion, is a measure on which there are no two opinions among the Arya Samajists. It is applicable only to the Arya Samajists and aims at removing disabilities under which they have to labour when marrying out of caste. Arya Samaj does not believe in caste-system, nor does it allow the present day restrictions of caste to interfere with the discretion of its members in matter matrimonial. But the Hindu Law, as at present administered in our courts does not recognize the validity of inter-caste marriages and as such stands in our way of introducing this necessary reform in our society. This bill seeks to remove this disability and has the hearty support of all the Arya Samajists as will appear from resolutions that are almost daily being passed in its support by Arya Samajic organizations. The bill has in fact been long over-due and the sooner it is passed into an act, the better it would be in the interest of the reform that it seeks to encourage and popularize. As the provisions of the bill will not operate beyond the circle of Arya Samajists, other sections of the population of this country, or for the matter of that, the Hindu community should have no objections to this measure.

I am also enclosing herewith the opinion of the president of my Samaj on it.

Copy of letter No. 1749/XIX-73, dated the 27th March, 1930, from P. MASON, Esq., I.C.S., Superintendent, Dehra Dun, to the Commissioner, Meerut Division, Meerut.

In compliance with your endorsement No. 1602/XIX-9, dated 27th February, 1930, I have the honour to forward herewith in quadruplicate the opinions of—

- (1) Principal Lakshman Prasad of the D. A. V. College, Dehra, President of the Dehra Dun Arya Samaj,
- (2) Pt. Bansi Dhar Joshi, Secretary of the Sanatan Dharm Sabha of Dehra Dun.

Mr. C. P. Singh, Advocate and President of the Hindu Sabha of Dehra Dun, has not yet replied, but his Sabha is perhaps more of a political than a religious organisation.

2. As regards my own opinion which has also been asked for, I consider that the time has now come for legal validation of the inter-caste marriages of Arya Samajists, and do not believe that this will give any such powerful impetus to conversions from the Sanatan Dharma to the Arya Samaj as the followers of the former faith appear to apprehend.

Copy of letter, dated the 17th March, 1930, from Principal LAKSHMAN PRASAD, M.A., President, Arya Samaj, and Principal, D. A. V. College, Dehra Dun, to the Superintendent, Dehra Dun.

With reference to your Memo. No. XIX-73-1, dated 6th March, 1930, I have the honour to inform you that the Arya Samaj Dehra Dun and I fully support the Arya Marriage Validation Bill introduced in the Assembly by Mr. Mukhtar Singh.

Copy of letter, dated the 24th March, 1930, from the Secretary Sanatan Dharm Sabha, Prohit Darbar Saheb, Dehra Dun, to the Superintendent of the Doon, Dehra Dun.

In reply to the copy of G. O. No. 283/vii-178, dated February 20, 1930, I beg to submit the following:—

Sanatandharam is the ancient religion of India. It has been well protected and based on the Vedic principles by the religious legislatures from its origin. It has already been attacked by foreign and Swadeshi infidels the three main parts of its body head heart and lower parts have not been affected at all. It could maintain its existence in the midst of this "Baran Shankar" world. The Budhists and Jains had tried their level best to break the four Varnas (Brahman, Kashtri, Vaish, Shudra) but they could not succeed and could not go beyond the boundary of caste system in India, however, they were able to spread their teaching of unity of mankind in foreign countries like China and Japan. Kabir also who was born in the Muhammadan age preached his followers to set aside the caste system but was not successful.

We are now very much astonished to find that such an Act is being passed in the time of our responsible British Government. Though Arya Samajists are not the followers of the Sanatandharm and their teachings are the copies of the Muhammadan and Christian religions yet they are deceiving those who believe in four Vedas by calling themselves the followers of Vedas. There is no harm if Government passes a separate bill for the Samajists as there have already been so many bills for other sects, but the difficulty is that the Samajists and Sanatnists are very closely connected and related together that is though they have no faith in Sanatnic Tirthas yet they often seek protection in their temples and burn their dead bodies in the same burning places, so there is fear that this Act might affect the Sanatnist as well. The danger is that (1) many voluptuous and sensual Sanatnists will surely join Aryasamaj for the purpose of gratifying their sexual desire, and (2) the sale of the girls and (3) the marriages of the widows will be increased, and there is much possibility that the (4) public peace will be disturbed by this Act. The reason is that the three contending communities that is the Christians Muslims and Aryasamajists are competing with one another to increase their numbers by seducing the followers of the other. The Shudi movement of the Samajists has already revolutionised the Sanatnic ideas because they have gone so far as to join with themselves the much corrupted prostitutes. They some times inter dine with people of low castes and allow them to mix with themselves and thereby encourage them to set at nought the authority of the Government, but they are never successful. They have already got the practice of making the women of other castes their own wives, but owing to the bondage of caste system the children of such couples are illegitimates. So they have now resorted to knock the door of Council Chambers in order to make such marriages valid, because they now think that the majority of the members is of the same opinion and are sure to secure many votes in their favour. There they have now determined not to lose such a golden opportunity as the proverb is, "*Pahile mare so guru ka chela damri lage na dhela.*"

In this matter all that I have to say is that the Government as well as the members should think deeply over it and should not dispose it of in haste because the Hindu Shastras do not permit inter marriages within four Varnas. There are only five forms of marriages that is Brahma, Daibya, Arsh, Prajapatya and Gandharb, which are allowed by Shastras and in which Samajists have also been celebrating their marriages, therefore this Bill will be a great attack on our religion and thus the feelings of the Sanatnists are sure to be injured.

Hence in the end I being the Secretary of the Sanatandharam Sabha Dehra Dun oppose this Bill on behalf of the Sanatanists of Dehra Dun.

Copy of letter No. 1538-XIX-28, dated the 29th March, 1930, from C. H. COOKE, Esq., I.C.S., District Magistrate, Saharanpur, to the Commissioner, Meerut Division, Meerut.

In compliance with G. O. No. 283/VII-178, dated February 20, 1930, copy received with your endorsement No. 1602 XIX-9, dated February 27, 1930, I have the honour to say that the undermentioned prominent Arya Samaj and Hindu Associations, in this district, have been consulted. The Arya Samajists of Saharanpur and Roorkee are in full agreement with the Arya Marriage Validation Bill and the former proposes two additions to its provisions. The Saharanpur Sanatan Dharam Sabha, however, is not in favour of the Bill. The opinions of the Hindu Sanatan Dharam and Arya Samaj Sabhas, existing in Hardwar Union, have been asked for but have not been received so far, nor does there appear any hope of getting them.

1. Arya Samaj, Saharanpur.
2. Arya Samaj, Roorkee.
3. Sanatan Dharam Sabha, Saharanpur.
4. Gurukul Kangri Hardwar Union.
5. Gurukul Mahavidyalaya, Hardwar Union.
6. Vaid Ram Chandra of Kankhal.

Copies of the opinions received are submitted in quadruplicate.

Copy of letter No. 355, dated the 7th March, 1930, from the Secretary, Arya Samaj, Saharanpur, to the District Magistrate, Saharanpur.

SUBJECT:—*"Arya Marriage Validation Bill"*.

I HAVE been asked to express my opinion, as the Secy. of Arya Samaj Saharanpur, on a bill namely "Arya Marriage Validation Act" introduced in the Legislative Assembly by Ch. Mukhtar Singh Sahib, M.L.A. My opinion about the said bill is as follows:—

1. All Arya Samajists are entirely in favour of the said bill. Arva Samaj, Saharanpur, has twice passed resolutions unanimously supporting the said bill, and the copy of resolution has been submitted to the Central Govt., the press and to the Hon'ble Mover of the bill.
2. The Arya Samaj firmly believes, as a matter of principle, that caste or sub-caste can not hinder a man or woman from marrying according to one's own choice. Thousand Aryan families have taken a vow not to marry their sons or daughters in accordance with the present caste system. Arya Samaj, as we all know, is in favour of social reforms, and want to relax the rigidity of the present caste system. It is, therefore, incumbent on the Govt. to help Arya Samaj in legalising such holy marriages. It is in my opinion high time that steps should be taken to pass the said bill into law, after necessary alterations, during the life time of the present Assembly.
3. I have had the privilege of going through the whole debate on the said bill in the Legislative Assembly. I am of opinion that the said bill must apply to Arya Samajists alone and to no other. It should be stated clearly that the parties must be Arya Samajists at the time of the marriage. Marriages under this act must be valid for all purposes, and offsprings from such marriages should be considered legitimate, and entitled to succeed under the Hindu Law just like other legitimate sons and daughters. In my opinion, this act must have retrospective effect, so that all such marriages that have taken place up to now, should be legalised, and thousand noble pairs should be relieved of their future anxieties.
4. I now venture to make two more suggestions, and am of opinion that both these provisions should find a place in the bill:—
  - (a) That parties marrying under this act shall not be entitled to remarry during the life time of the husband or wife as the case may be.
  - (b) That a childless widow, left after such marriage, shall be fully entitled to inherit the property of her deceased husband, until she remarries.

With these remarks, I again request that the Govt. should endeavour to pass this bill into law during the life time of the present assembly, in order to remove the disabilities of thousand noble pairs, who are out to relax the undue rigidity of the present caste system.

*Copy of report No. 438, dated the 12th March, 1930, from the Secretary, Arya Samaj, Roorkee, to the District Magistrate, Saharanpur.*

THE Arya Samaj, Roorkee wholeheartedly supports the Arya Marriage Validation Bill and considers that it will give a social uplift to the society to which it applies. The absence of such a measure is one of the root causes of the downfall of India. The Govt. will, therefore, in the opinion of this Samaj, be rendering a valuable service to the country by passing the bill into an act.

The papers are returned herewith in original.

*Copy of the opinion of the Sanatan Dharam Sabha of Saharanpur, about the Arya Marriage Validation Bill.*

WITH reference to the Government order No. 283/VII-178, dated February 20, 1930, the Sanatan Dharam Sabha of Saharanpur is of opinion that the Arya marriage validation Bill is directly opposed to the principles of the caste system and the mandatory injunctions of the Shastras. It seeks to upset the existing social orders of the Hindu Society, which is so absolutely necessary for the preservation of what is best in Hindu culture and civilization.

*Copy of letter No. Nil, dated the 3rd April, 1930, from the Vice-Chancellor, Gurukula University and Vice-President, All-India Arya League, to the Collector, Saharanpur.*

I HAVE been asked to give my opinion about the Arya Marriage Bill. The Arya Samajists do not believe in caste by birth. They are a large community scattered all over India but mostly in the Punjab and the United Provinces.

Hundreds of respectable Arya Samajists including the late Swami Shardbanand the founder of the Gurukula and the recognised leader of the Arya Samaj and the undersigned have given their daughter in marriage irrespective of caste.

An Arya Marriage Act is, therefore, overdue. The proposed bill concerns Arya Samajists only and no other community can have any objection to the grant of much needed relief to an important community.

No. 1636—XIX-28, dated the 9th April, 1930.

Copy in quadruplicate forwarded to the Commissioner, Meerut Division, for information in continuation of this office No. 1538, dated 29th March 1930.

(Sd.) Illegible.

Deputy Collector,  
for District Magistrate.

*Copy of a note by Th. Hukam Singh, dated the 31st March, 1930.*

THOUGH I was awfully busy throughout this month in the anti-locust campaign, but still I inquired from lot of Arya Samajists and Hindus concerning this bill during this interval. The former are quite in favour of this Bill and wish it to be passed as early as possible. Most of the Hindus too and especially those who are in favour of social reforms are in favour of this bill but the orthodox class of Hindus who belong to the old school do not seem to appreciate it as they are of opinion that it would tell heavily on the existing caste system. They think that the women of low castes or other religions after they become Arya Samajists will be marrying Arya Samajists of higher castes and it would thus badly affect the caste system. Some of them also hold that the dependants or minors of the Arya Samajists should have some right to protect their interests in this bill.

*Copy of letter No. S./190 of 1930, dated the 4th April, 1930, from KRISHNA PRASADA, Esq., I.C.S., Collector, Bulandshahr, to the Commissioner, Meerut Division, Meerut.*

IN compliance with your endorsement No. 1602/XIX-D., of February 27, giving cover to G. O. No. 283/VII-178, Judicial (Civil) Department of February 20, 1930, I have the honour to enclose copies of opinions of the President of the Arya Samaj, and also of B. Kishen Dayal, a leading lawyer and social worker of this place.

2. It is true that the Arya Samajists, who are Hindu Non-conformists, believe, as an article of faith, that the present caste system is not in accordance with their scriptures, and consequently they ought to be free to inter-marry with Hindus of castes other than their own. Accordingly many of them, have contracted inter-caste marriages, which, according to the general Hindu Law, are invalid; and many more would have so married, if there were no such restriction in the Hindu Law by which they are governed. Therefore, it is their unanimous desire that such obstacles should be removed from their way.

Under such circumstances the Legislature should intervene to enable them to act up to their convictions, to legalise the marriages that have already taken place and to place beyond doubt the status of the issue of such marriages.

3. But while I fully agree with the statement of Objects and Reasons, the Pre-ample and section (1) of the Bill, I notice that the substantive clauses of the bill require over-hauling.

The most important word in the Bill, namely "Arya Samajist" has not been clearly defined. It is begging the question to say that an Arya Samajist is a member of an Arya Samaj.

It has not been recognised by the mover of the Bill that there are many families of which only a few persons are Arya Samajists, while the rest are orthodox Hindus. I know of one in which the head of the family is an Arya Samajist, while his wife is a strict orthodox Hindu. Simply because one member of a family becomes an Arya Samajist, it does not follow that all the other members *ipso facto* change their faith; and similarly a relative of an Arya Samajist does not become an Arya Samajist simply because he happens to be a dependant on the latter. Therefore, the words "A member of the family of, or a relative dependant on" should be deleted from clauses (b) and (c) of section 2 of the Bill.

The case with minors and lunatics or other persons who are under the guardianship of an Arya Samajist is on a different footing: they may justly be treated as Arya Samajists.

4. Section 3 of the Bill has given rise to vehement opposition from the side of the Muslims, and it cannot be doubted that they have a just cause for complaint. As was pointed out in the Assembly Chamber by the Hon'ble the Law Member, the Bill legalises marriage, if one of the parties contracting it is an Arya Samajist. The mover of the Bill did himself aver that it was never his meaning. It is true that the Pre-ample of the Bill speaks of "Validation of inter-marriage of Arya Samajists", but the short title is no part of the Law, and cannot guide the interpretation of the section.

5. The Bill stops short with section 3, and omits to provide for the consequences of the marriage, which it seeks to validate. All Acts affecting marriages have to take the consequences of such marriages into consideration. But in the Bill presented to the Assembly by Chaudhri Mukhtar Singh, they have been ignored. The succession of the estate of persons marrying under the Bill ought to be provided for, otherwise serious complications and difficulties are likely to arise in determination of points regarding succession. It will not be enough to say that the Hindu Law would apply to Arya Samajists that marry under the Bill. The trouble is that there is more Hindu Law than one. There are different rules for the "twice born" and the "Shudras".

6. There certainly seems to be need for the legislation of the kind that Chaudhri Mukhtar Singh has in view, but the measure did not receive from him the consideration in all its bearings that it deserves.

*Copy of opinion furnished by L. Kishen Daya<sup>1</sup>, Lawyer, Bulandshahr, to the Collector, Bulandshahr, dated the 13th March, 1930.*

In pursuance of your circulating the "Arya Marriage Validation Bill" I gave the matter my utmost consideration. Though I am an orthodox Hindu and am anxious to keep the sanctity of the Hindu Law in tact, still I think that as the Arya Samajists want such a legislation they must have it and there is no reason why they should not have it, if it does not effect those who do not look eye to eye with the Arya Samajists. I, therefore, think that the Bill may be passed subject to certain additions, omissions and modifications. There is a clear case for its support.

Arya Samaj is not distinct from general Hindus. The Samaj is not a clear cut separate entity from the Hindus. So any legislation which is only meant for Arya Samajists, may also effect the Hindus in general, unless it is strictly limited to them. As Arya Samajists are anxious to have this legislation passed for legalising those marriages which are valid according to their creed, and they are at liberty to have it, so the same liberty must be accounted for those who do not believe in the doctrines of Arya Samaj. Clause 2. Sub-clause (b) and (c) of the bill provide—

Arya Samaj shall mean a person who

(b) is a member of the family of, or a relative dependent on, or a person under the guardianship of, any person mentioned in clause (a).

(c) within 5 years.....executes a written document expressing himself to be an Arya Samajist..... and includes the members of the family of, relatives dependent on, and persons under the guardianship of, such a person.

In my opinion, if these two clauses are allowed to remain as such, it would affect highly the orthodox section. It is not only possible, but is a fact, that in a family some members are Arya Samajists but others are orthodox Hindus. The other members of the family do not become Arya Samajists simply because some of the members belong to that Samaj. There must be clear expressions by them to have come under the folds of Arya Samaj. Same is the case with the relatives. A relative should not be declared an Arya Samajist simply because he is dependent on an Arya Samajist. The case of persons under the guardianship of an Arya Samajist seems to be on a different footing, and it does not seem desirable to exclude them from the definition, but on attaining majority they should be at perfect liberty to renounce their faith in Arya Samaj. Moreover, the descendants of an Arya Samajist should be treated and regarded an Arya Samajists unless they expressly renounce their faith.

So, the deletion of the words "a member of the family of or a relative dependent on" from sub-clauses *b* and *c* of clause 2, and addition of the words "the descendants of" after the words "under the guardianship of" in Sub-clause *b* and *c* of clause 2, and further the addition of, namely, a proviso "Provided the persons under the guardianship of, and the descendants of an Arya Samajist have not expressly renounced their faith in Arya Samaj" are advisable.

Some of the Mohamedans have taken objection to the wordings of clause 3 of the Bill. In my opinion the clause is not happily worded. Clause 3 of the Bill runs like this:

"No marriage of an Arya Samajist shall be invalid, etc., etc." It surely implies that if one of the parties to the marriage be an Arya Samajist, this clause would apply to that marriage. When an Arya Samajist marries a Mohamedan girl, this clause would be affected thereby, though the intention of the Legislature is different, as is evident from the Preamble, but it is not clear in the wordings of the clause itself. To remedy this defect, and to make it more precise and in conformity with the intention of the legislature, the words "before their conversion to the Arya Samajistic faith" should be inserted there-after the words "different religions".

Further the Bill does not lay down the law which would govern the couple and their descendants. That is it leaves open the question "By what law will succession to the property of the husband be governed", for any Arya Samajist who is, Hindu by birth, the difficulty does not seem to arise, as in that case the laws of succession will be the same as are applicable to caste in which he is born. But in the case of a non-Hindu convert to Arya Samaj, the difficulty arises as to what law would apply to him. The first question which arises "whether a non-Hindu convert to Arya Samaj is a Hindu governed by the Hindu Law."

It has been held by their lordships of the Privy Council in *Bhagwan Koer vs. J. P. Bose* (31 Cal. II) that a man by becoming a Brahmoo does not necessarily cease to be a Hindu. Dr. Gour in his Hindu Code has said, "If the Brahmaes are Hindus, the Arya Samajists are more so because though professing to be montheists they believe in the supremacy of the Vedas (Gour's Hindu Code, 1929, page 182 para. 320), and this view of Dr. Gour has been accepted in A. I. R. 1922, Pat. 378 and A. I. R. 1923, Cal. 265 and A. I. R. 1928, Mad. 1279.

From these rulings it is clear that a non-Hindu convert to Arya Samaj is a Hindu and is to be governed by Hindu law in the matters of succession, etc. As Hindu law is different at different places, so it would be convenient, if it is made clear that the couple and their issues shall be governed by the Hindu law of the place where the husband resides. There is some difference between the rules applicable to Dwijis—twice born—and those applicable to Sudra (non-Dwijis). It is to be made clear that a non-Hindu convert shall be governed by the Hindu law applicable to Dwijis. Those rules for succession should be given a place in the Bill.

Further complications will arise in the cases of survivorship and succession to the estate of other members of the family who are not Arya Samajists and *vice-versa*. The Bill does not make any provision in this respect. In my humble opinion, there ought to be sufficient safe-guard for all such difficulties that may arise hereafter and which, I am afraid are most likely to arise, and it will also necessitate the amendment of other similar enactments relating to freedom of such marriages with these recommendations I herewith submit my opinion. The papers are returned.

*Copy of opinion furnished by the President, Arya Samaj, Bulandshahr, to the District Magistrate, Bulandshahr, dated the 20th March, 1930.*

In obedience to your circular letter dated 3rd March, 1930, regarding the "Arya Marriage Validation Bill" introduced in the Legislative Assembly by Ch. Mukhtar Singh, M.L.A., I beg to suggest that in my opinion such a measure is really needed and it would prove a very useful legislation to the Arya Samajists in general.

I fully agree with the principle underlying the Bill. I may further suggest that a section be added to the present Bill that in matter of succession the issue of Arya Marriage shall be considered as lawful heirs and will be governed by Hindu Law.

Copy of letter No 2243/XIX-5, dated April 12, 1930, from the Commissioner, Benares Division, Benares, to the Secretary to Government, U. P., Judicial (Civil) Department.

In reply to your No. 283/VII-178, dated February 20, 1930, I have the honour to forward the only opinions which I have been able to obtain. Other opinions asked have not arrived yet. As you wish for a reply by April the 15th, I cannot wait for them.

My own opinion is that the bill will be useful. The objections to it are far fetched. The bill will have to be re-drafted.

Copy of letter No. 1790/XVIII-162, dated April 9, 1930, from the District Magistrate of Benares to the Commissioner, Benares Division.

With reference to your letter No. 1754, dated February 27, 1930, I have the honour to forward in triplicate the opinion from the President Arya Samaj. Secretary, Bharat Dharm Mahamandal and Secretary, Hindu Sabha were asked to send their opinions, but they have not sent.

My personal opinion is that the bill if passed into law would cause a great deal of trouble. There would be frequent disputes as to whether a party was or was not an Arya Samajist. No real case is made out for the necessity of legislation.

Copy of a letter dated March 29, from the President, Arya Samaj, Kashi, to the District Magistrate, Benares.

In compliance with your office No. XXIII-162, dated Benares the 6th March, 1930, I have the honour to submit three copies to you of the opinion of the Arya Samaj, Benares, which is stated below:—

“The Arya Samaj supports the bill being referred to a Select Committee for correcting drafting mistakes if any, and urges its being passed in the life of this very Assembly.

It is of course presumed that the law of Succession applicable to the issue of such marriages will be the same as applies or would apply to the legitimate children of caste Hindus.”

### MADRAS.

From M. R. Ry. Diwan Bahadur J. VENKATANARAYANA NAYUDU GARU, B.A., **No. 9.**  
B.L., C.I.E., Secretary to the Government of Madras, Law (General)  
Department, to the Secretary to the Government of India, Legislative  
Assembly Department, No. 1945, dated Fort St. George, the 1st May,  
1930.

*The Arya Marriage Validation Bill by Mr. Mukhtar Singh—Letter from  
the Government of India, Legislative Assembly Department, No. F.-  
133-1-28-A., dated the 11th February, 1930.*

I AM directed to say that there are very few Arya Samajists in South India and that the bill is not therefore of much importance so far as this Presidency is concerned. I am to state, however, that this Government accept the principle underlying the bill, the scope of which should, in their opinion be limited to those who have enrolled themselves as members of the Arya Samaj and their lineal descendants. I am to suggest also that questions of inheritance and succession arising in consequence should be examined and necessary provision made in the bill.

2. I am to enclose copies of the opinions so far received by this Government from officers and gentlemen on the provisions of the bill. The opinions of the Honourable the Judges will be forwarded on receipt.

3. The bill and the statement of Objects and Reasons were published in the Fort St. George Gazette in the following languages on the dates noted against each:—

English—29th October, 1929.

Tamil, Telugu, Kanarese and Malayalam—25th March, 1930.



Copy of letter from S. BURN, Esq., I.C.S., District Judge, Coimbatore, dated the 14th March, 1930.

With reference to the Government's Memorandum No. 816-A-2, dated 25th February, 1930, on the Arya Marriage Validation Bill, I have the honour to say that I see no objection to the passing of such a measure, provided that its operation can be limited to Arya Samajists. But it seems to me that grave exception can and will be taken to the inclusion in Clauses 2 (b) and (c) of countless persons who are not in fact Arya Samajists and who may never want to join the Arya Samaj. Also it appears impossible to hold that such a measure will not involve serious consequences in the matter of inheritance, for which no provision is made. There will further be created innumerable difficulties connected with social relationships which do not appear to have been considered. If one person becomes an Arya Samajist and contracts a marriage which is offensive to the religious tenets of those who were formerly his co-religionists, all his dependents, relatives, and wards will be liable to ex-communication as Arya Samajists!

I do not think the matter has received anything like adequate consideration.

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Copy of letter from M. R. Ry. Rao Bahadur T. A. RAMALINGAM CHETTIYAR  
AVL., M.L.C., dated the 15th March, 1930.

SUBJECT:—*The Arya Marriage Validation Bill.*

The bill is not very happily worded but the object is quite clear. The Arya Samajists though included in the general term Hindus have got their own doctrines relating to some very important social institutions especially caste. As they do not recognise caste, it is only fair that legislative provision should be made for avoiding doubts and difficulties in the performance and recognition of their marriages. When there is a general demand from a community for recognition in social matters affecting itself the State is bound to help them. So I think the Bill should be passed, making necessary changes in the wording to confine its ambit to the expressed object of the Bill, viz., to affect marriages where both the parties are Arya Samajists at the time, to whatever religion they might have belonged before.

2. A provision will have to be introduced as rightly contended by Pandit Madan Mohan Malaviya and others that the progeny of these marriages should not claim inheritance to collaterals. While each one should be at liberty to marry where he likes, he cannot be allowed to introduce thereby heirs to other people without their consent.

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Copy of opinion furnished by Mr. A. Krishnaswamy, Advocate General,  
Madras, dated the 17th March, 1930.

SUBJECT:—*The Arya Marriage Validation Bill.*

Ref.:—Memorandum No. 816-A-2, dated the 25th February, 1930, Law  
(General) Department

I AM in sympathy with the principle underlying the Bill. There are various drafting defects inaccuracies in the Bill which have been pointed out in the course of the discussion in the Legislative Assembly. In view of the course the discussion has taken in the Assembly, it is unnecessary for me to refer to the points which were noticed in the course of that discussion.

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Copy of letter from the District and Sessions Judge, Guntur, Dis. No. 1503,  
dated the 17/18th March, 1930.

I HAVE the honour to offer the following remarks on the provisions of the Arya Marriage Validation Bill in reply to Law (General) Memo. No. 816-A-2, dated 25th February, 1930.

2. In the first place the Bill goes much beyond the object set forth in the Statement of Objects and Reasons which says nothing about marriages between Arya Samajists who formerly belonged to different religions. There is nothing in the statement of Objects and Reasons which justifies the inclusion of the words "or to different religions" in the main operative section of the bill (section 3). It is the inclusion of these words which affects the interests of all communities in this country and not merely of the Hindu Community. The Bill is therefore not merely a measure of relief to dissenters from the rigidity of the law of

marriage by which they are hitherto governed, but a measure which affects the laws of marriage by which all other communities are governed including Muhammadans and Christians. It does not seem right that a measure of this wide import which affects the personal law of all communities should be introduced in the legislature under a designation which purports to relate to only a single and comparatively small and new community. A good deal can be said in favour of a Civil Marriage Bill as such, but then, it should not come before the legislature and the public in "such a questionable shape" as the Arya Marriage Validation Bill.

3. The reason given in the Statement of Objects and Reasons for the introduction of the Bill is that "according to the law as administered at present marriages among couples belonging to different castes or sub-castes are considered invalid." I do not think this is a correct statement of the law. Marriages between sub castes are valid according to Hindu Law, and marriages between different castes will be valid if there is a custom or usage to support them. Usage has such force in this matter that it will validate even marriages between persons belonging to different religions, for the rule of equity, justice and good conscience will govern such cases and this rule has to be found by looking to the usages of the class to which parties belong. Even otherwise the doctrine of "factum valet" applies to all marriages, and the presumption is that a marriage actually effected is valid till it is displaced by a specific provision of law or usage. Reference may be made in this connection to the cases reported in 9 Moore's Indian appeals 199, 13 Moore's Indian Appeals 141, I.L.R. 33 Bombay 693, 32 Calcutta 187. and 33 Madras 342.

4. The Arya Samaj has been in existence long enough to be regarded as a separate body with its own usages, and if, as the mover of the bill states, "from the figures of the last year alone no less than 1682 marriages among different castes have taken place" in that community, the existence of a usage in that community which recognises marriages between different castes as valid must be deemed to be established beyond doubt, and there can be no room for any doubt about the validity of such marriages or for any "fear of the issue of such marriages being declared illegitimate." Where a considerable body of men bound together by common opinions and known by a common name are in the habit of celebrating marriages according to forms and on terms unobjectionable in themselves, the Courts will recognise such marriages as valid. If such a body of men are within the pale of Hinduism they form a separate caste and the usage of that caste will override the texts of Hindu law; if on the other hand they are beyond the pale of Hinduism the rule of equity, justice and good conscience, as ascertained from the usage followed by them will render such marriages valid. I am therefore of opinion that the only reason given in the Statement of Objects and Reasons for the introduction of the Bill, viz., that according to the law as administered at present marriages between Arya Samajists who belong to different castes or sub-castes are considered invalid is based on a misapprehension and that such marriages will be considered by the Courts to be valid. When the only reason for the Bill has no basis the Bill itself must be deemed to be devoid of justification.

5. On general grounds also a Bill which seeks to enact a separate law for a separate body of men is open to the serious objection that it tends to perpetuate the "personal" stage in the development of law and to retard the growth to territorial law. The stage of civilisation at which law is addressed not to the inhabitants of a country generally but to the members of a tribe or the followers of a religious system is a stage which must in course of time be succeeded by the stage in which the modern notion of a territorial law holds full sway. Considerable progress has been made in this direction in this country, and in many branches the law administered in this country is the same for all its inhabitants, and any legislation which tends to perpetuate the personal stage is bound to stand in the way of development. Communal legislation of the type represented by this Bill is in my opinion a retrograde step, and if there are any doubts about the validity of marriages they should be removed or avoided not by means of a marriage law confined to this or that sect or community, but by means of a general law of marriage which can be adopted by any or all inhabitants in the country at their opinion. The breach made in the personal laws eighty years ago by the Caste Disabilities Removal Act, 1850 cannot remain as it is; it cannot remain confined to rights of property but must inevitably extend to marriage and succession. By the Act of 1850 "so much of any law or usage 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 courts". The broad and salutary principle of toleration on which the Act of 1850 is based must be extended so as to permit persons who renounce, or are excluded from their religion or caste to contract valid marriages at their choice subject to the generally accepted principles relating to consanguinity, and to prescribe a law of succession for the issue of such marriages. Such a law of marriage which would of course apply only to marriages between persons of adult age and be optional will solve most of the difficulties now experienced owing to the reaction of the leaven of social reform on the personal laws administered in the Courts.

6. Coming to the details of the bill I am of opinion that its operation should be limited to marriages both the parties to which are adults. It is not desirable that persons who are infants in the eye of the law and cannot therefore be bound by any contract should be permitted by the same law to bind themselves for life. Clause (b) of section 2 of the bill is objectionable on several grounds, and the limitation of the bill to marriages between adults which will nullify that clause cannot, in my opinion, be reasonably objected to by

Arya Samajists as they follow the Vedic usages as far as possible, and the Vedic usage regarding marriage was adult marriage. It should also be made clear that the Bill relates only to marriages both the parties to which are Arya Samajists. I would also add that the provisions of clause (c) of section 2 and the explanation thereto appear to be unnecessary and even undesirable. The execution of the document referred to therein and its registration will be subsequent to the marriage; nevertheless the declaration made therein is meant to relate back to the marriage and to bring that marriage within the operation of the bill. This would make it possible for persons who were not Arya Samajists at the time of their marriage to declare themselves as such subsequently and bring such marriage within the operation of the bill. The explanation would seem to make it impossible for a person who has registered a document containing a declaration that he is an Arya Samajist to cease to be an Arya Samajist thereafter or rather to prove that he has ceased to be an Arya Samajist—which, of course, is absurd, for it cannot be anybody's intention that the law should be: "once an Arya Samajist, always an Arya Samajist."

7 In conclusion I am of opinion that no justification has been made out for the Bill in question and that if there is any justification for it the Bill should consist of a single section, viz., the present section 3 amended by substituting the words "between Arya Samajists" for the words "of an Arya Samajist" therein.

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Copy of letter from the Secretary, Bar Association, High Court, dated the 18th March, to the Secretary to the Government of Madras.

WITH reference to your letter No. 816-A.-3-Law (General), dated 25th February, 1930, I have the honour to forward to you the opinion of our Association.

I am to state that the Bar Association sees no objection to an Arya Marriage Validation Act in so far as it deals with persons professing to be Arya Samajists but is of opinion that the Bill as at present drafted appears to affect a large number of people who may not be Arya Samajists and further that the Bill makes no adequate provision for several important questions which would arise as such "Validation" of marriages, e.g., adoption, divorce, joint family, succession, restraints on prohibited marriages, etc. It is felt that fuller treatment in the Bill on the lines of the Special Marriage Act of 1872 would be better though what is really needed is a comprehensive Civil Marriage Act dealing with the whole country and not merely with particular sections or communities.

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Copy of letter from the District Judge, Tinnevely, No. 1503, dated the 18th March, 1930, to the Secretary to the Government of Madras, Law (General) Department.

SUBJECT :—*The Arya Marriage Validation Bill.*

WITH reference to Government Memorandum No. 816-A.-2, dated the 25th February, 1930—*re. The Arya Marriage Validation Bill*—I have the honour to make the following remarks :—

1. The definition of an Arya Samajist is too wide. Clause (b) of section 2 especially must be made clearer as to whom it is sought to include.
2. As the measure is only a validating one seeking to place beyond doubt the legality of intermarriages of Arya Samajists, I think it is a wholesome enactment to which no objection could be taken on the ground of policy or expediency. The law regarding questions concerning validity of marriages and legitimacy of children should be absolutely clear and any step taken in this direction should be welcome.

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Copy of letter from the District Judge, Bellary, No. Dis. No. 909/30, dated the 18th March, 1930.

SUBJECT :—*The Arya Marriage Validation Bill—Remarks submitted.*

WITH reference to your Memorandum No. 816-A.-2, dated 25th February, 1930, forwarding for my remarks the Arya Marriage Validation Bill I have the honour to state that I have consulted the local Bar Association as to the Bill, the resolution of which giving its opinion about it is appended.

2. As to my own opinion I would submit that the definition of Arya Samajist in the second Section of the Bill is too wide and needs some modification. I do not think that every relative who is dependent on a member of any Arya Samaj should by reason of such dependence and for no other reason be held to be an Arya Samajist.

3. With reference to the third Section of the Bill I think that it might be recast to make it more clear that it does not cover the case of a marriage between an Arya Samajist and a person professing a different religion at the time of the marriage. I would suggest that it should run:—

“No marriage between Arya Samajist shall be invalid by reason of the couple having belonged, before they became Arya Samajists, to different castes or sub-castes of Hindus or to different religions, any law or usage or custom to the contrary notwithstanding”.

4. The heading of the Bill contains a split infinitive “to finally recognise”, and there is a similar split infinitive in its first clause. The wording in each case should be altered to “finally to recognise” or “to recognise finally”.

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Copy of letter from the Hon. Secretary, Bar Association, Bellary, to the District Judge, Bellary.

I AM herewith returning the papers sent to me in connection with the Arya Marriage Validation Act. The resolution of the Association is extracted here below:—

“Resolved that this Association approves of the Arya Marriage Validation Act, provided it is made applicable, exclusively to Arya Samajists.”

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Copy of letter from the District Judge of Ramnad, No. 3207, dated 19th March, 1930.

*Arya Marriage Validation Bill.*

WITH reference to the Law (General) Department Memorandum No. 816-A.-2, dated 25th February, 1930, calling for remarks on the provisions of the Arya Marriage Validation Bill introduced in the Legislative Assembly by Mr. Mukhtar Singh, I have the honour to state as follows:—

2. The provisions of the Bill have been fully discussed in the course of the debate in the Assembly and it is unnecessary to traverse the same ground once over. A Bill to recognise and validate inter-marriages of Arya Samajists cannot reasonably be objected to, but the effect of Section 3 of the Bill which provides that no marriage of an Arya Samajist shall be invalid by reason of the couple having belonged to different castes or sub-castes or to different religions is far-reaching and will affect the Hindu Law of succession. The son of an Arya Samajist who marries a Muhammadan Lady would be entitled to succeed to the properties of his paternal uncle dying issueless, which is not permissible under the Hindu Law and in so far as the Bill affects the Law of succession, it will be considered highly objectionable by the majority of Hindus who are not Arya Samajists.

3. If the Bill restricts itself to merely recognising and placing on a legal basis the married status of Arya Samajists and aims at conferring on the issue born of such marriages the right to inherit only the properties of their parents, there can be no objection to it.

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Copy of letter from the District Judge, Chittoor, No. 2103/30, dated the 20th March, 1930.

*Arya Marriage Validation Bill.*

WITH reference to Memorandum No. 816-A.-2, dated 25th February, 1930, I have the honour to enclose a note on the provisions of the Arya Marriage Validation Bill.

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*Note on the Arya Marriage Validation Bill.*

The provisions of the Bill do not much affect the South of India; the number of Arya Samajists in the Madras Presidency is presumably very small.—Vol. XIII, Census of India, page 63. I have never met one.

The drafting of the Bill is very defective, e.g., it is not improved by a split infinitive in the title and preamble. I do not understand why the marriage of two Arya Samajists should be styled an 'inter-marriage'.

Section 2: The explanation is badly worded and redundant. It is sufficient to say, "Where the document mentioned in clause (c) is registered under the Indian Registration Act, 1908, it shall be conclusive proof of the facts stated therein." Under section 4 of the Indian Evidence Act conclusive proof means that the Court shall not allow evidence to be given for the purpose of disproving it.

Section 2, clause (c): "expressing himself to be an Arya Samajist or in terms equivalent thereto"—the latter words seem to be undesirably vague. "Written documents": 'written' is unnecessary.

Section 3: "No marriage of an Arya Samajist shall be invalid". As observed by the Hon'ble the Law Member, according to the ordinary grammatical meaning of this clause, if one of the parties be an Arya Samajist, the clause will apply. Presumably it was intended that the Act should apply only where both parties celebrating the marriage are Arya Samajists. If this view is correct, clause (c) will require to be suitably amended.

On the assumption that the intention of the Bill is that both parties to the marriage should be Arya Samajists at the time of the marriage, I am of opinion that the legislation proposed is desirable, since the Bill appears to be supported by the large majority of persons belonging to the sect and since doubts have been entertained regarding the validity of such marriages.

I am not in favour of section 2—the definition—where an Arya Samajist includes in (b) and (c) a person who is a relative dependent on, a person under the guardianship of, any person who is a member of any Arya Samaj. I do not see why an Arya Samajist should impose his beliefs and customs on a dependent or on a ward. I would restrict the definition to persons who are members of any Arya Samaj and their lineal descendants.

As regards section 2, clause (c), I think that both parties to the marriage should execute the document referred to, not merely one of the parties.

If these marriages are validated as proposed by the Bill, questions of inheritance and succession naturally arise. As the Arya Samaj does not recognise caste, marriages can take place between a Hindu and a Hindu woman of a different caste or sub-caste or between a Hindu and a person of a different race or different religion, provided both parties are Arya Samajists at the date of the marriages. Obviously, the questions of inheritance and succession likely to arise may be extremely complicated and diversified and probably the author of the Bill was well advised not to enter on the question of inheritance and succession. The criticism was passed by the Hon'ble the Law Member that the proposed Bill while legislating for the laudable purpose of validating marriages omitted to provide for the consequences. In my opinion the consequences should be explored before the Bill is passed into law.

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Copy of letter from the District Judge, Guntur, Dis. No. 1540, dated 20th March, 1930.

*Remarks on the Arya Marriage Validation Bill.*

*Ref.*:—My letter Dis. No. 1503, dated the 18th March, 1930.

In the last sentence of para. 5 of my letter under reference please read "administered" for "administrated" as it is a slip in the typed copy.

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Copy of letter from the Acting Registrar, High Court, R. O. C. No. 745-B-1/30, dated the 25th March, 1930.

*Bill—The Arya Marriage Validation Bill by Mr. Mukhtar Singh—Reference your letter No. 816-A.-1, dated the 25th February, 1930.*

I AM to state that the Hon'ble the Chief Justice considers that no useful opinion could be offered in the short time allowed.

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*Bill—Indian Bill—The Arya Marriage Validation Bill No. 24 of 1929—Publication in English and Vernaculars—G. O. 186 (Leg.), dated the 7th March, 1930.*

The Law (General) Department may be informed U. O. that the above mentioned Bill together with the Statement of Objects and Reasons was published in the Fort St. George

Gazette on 29th October, 1929, in English and on 25th March, 1930, in the Tamil, Telugu, Kanarese and Malayalam languages.

C. R.,—28-3-1930.

To the Law (General) Dept. U. O.

Leg. No. 1311-2, dated 28th March, 1930.

Copy of letter dated the 1st April, 1930, from the Secretaries, The Advocates' Association, Madras, to the Secretary to the Government of Madras, Law Dept. (General).

With reference to your letter dated 27th February, 1930 *re* The Arya Marriage Validation Bill, we have the honour to inform that the Advocates' Association, Madras, is not in a position to speak about the wishes and feelings of the community concerned because there are very few persons professing the Arya Samaja faith in this part of India and even those that so profess do not form a distinct community by themselves but at the same time sees no objection to any legislation validating marriages between professed Arya Samajists. The Association is however of opinion that considerable re-drafting of the bill is necessary to prevent it from encroaching on the rights and privileges of other communities.

In the place of the elaborate provisions of the bill the Association would suggest two sections like the following which in its opinion, would adequately meet the requirements of the situation.

1. "Notwithstanding any usage or rule of Hindu Law to the contrary, for purposes of marriage, all Arya Samajists shall be deemed to belong and to have always belonged to one and the same caste".
2. "A written declaration before marriage by the parties thereto shall be sufficient evidence of the fact that they are Arya Samajists provided the persons making the declaration are at the time of making such declaration, of full 18 years of age".

Section 2 as framed at present would seem to make all dependents and members of family of the Arya Samajists as well as their wards Arya Samajists without any reference to the wishes and feelings of the parties concerned and in the case of the wards without reference to the religion of their parents. It is a sort of conversion by relation which the section effects for which there can be no justification. The general law recognises the power of the father, within limits, to control the religion of the children and in accordance therewith, children would ordinarily be presumed to be of the same faith as their father but to go further and to erect a statutory presumption *juris et de jure* of the sort laid down by section is unjustifiable. It may in individual cases, constituted as the Hindu Society is, be opposed to fact and operate to the prejudice of infants.

Section 2 Cl. (c) II part is also objectionable. It places in the power of parties to a marriage by *expost facto* declaration to validate what in its inception was an invalid marriage.

Again Sec. 3 is too wide as it stands. It validates the marriage of an Arya Samajist with a person who is not an Arya Samajist, whatever the rules of the community to which he or she belongs might be. That raises a very large question, involving other religious communities whose wishes should be consulted before any legislation is undertaken affecting them. The Special Marriage Act would govern marriages of Arya Samajists with ordinary Hindus as both of them would be Hindus within the meaning of that Act. Marriages of Arya Samajists with other communities such as Christians and Muhammadans should be dealt with in the Special Marriage Act—which should be the Civil Marriage Act for all India and not by a Special Act like the Arya Marriage Act which should deal with only Arya Samajists.

*Extract from the letter from Mr. S. Varadachariar, to the Secretary to Government, Law (General) Department, dated the 24th March, 1930.*

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Adverting to your letter No. 816-A-3, dated the 25th February, 1930, I have to state that I have no remarks to offer, on the Arya Marriage Validation Bill.

## ASSAM.

**No. 10.** From W. A. COSGRAVE, Esq., I.C.S., Offg. Chief Secretary to the Government of Assam, Genl. and Judl. Department, Judicial Branch, to the Secretary to the Government of India, Legislative Assembly Department, No. J.-370/4156-G. J., dated Shillong, the 2nd May, 1930.

**SUBJECT:—***The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

I AM directed to refer to your letter No. F.-133-I./28-A., dated the 11th February, 1930, and in reply to say that this Government cannot support the Bill as it now stands. The consensus of opinions received is to restrict the operation of the Bill to real Arya Samajists. The definition of Arya Samajists contained in clause 2 of the Bill is however, a very wide and artificial one. As it stands, if a Hindu marries a Muhammadan and if within a year after the marriage either party executes the documents required in clause 2 (c), the marriage becomes valid, and strict Hindus and Muhammadans would presumably both object to so wide a provision.

2. I am to submit copies of the opinions received from certain officials and non-officials, as noted below and to say that the Governor in Council is of opinion that this is a Bill which should be left to a non-official vote.

1. Note of 17th March, 1930 of the Second Additional Judge, Sylhet.
  2. Note of 9th April, 1930 of the Additional Judge, Sylhet.
  3. Note of 22nd March, 1930 of the Sub-Judge, Sylhet.
  4. Letter No. 207-T., dated 31st March, 1930 from the Commissioner, Surma Valley and Hill Division with enclosures.
  5. Letter No. 1096-G., dated 1st April, 1930, from the Deputy Commissioner, Kamrup.
  6. Letter dated 27th March, 1930, of Srijut Kameswar Das, Pleader, Barpeta.
  7. Note of 7th March, 1930, of Government Pleader, Gauhati.
  8. Letter dated 17th March, 1930, from the Secretary, Bar Association, Dibrugarh.
3. The Bill was published in the Assam Gazette of the 9th October, 1929.

The religion of the Arya Samajists is a proselytising religion and in recent years there have been many converts to the Arya Samaj from men of other communities, including the Muhammadan community. So far as one can gather from the discussions on the subject in the Legislative Assembly, the proposed Bill is not likely to meet with very serious opposition from any community except the Muhammadan Community. The main contention of the Muhammadan members seems to be that the offspring of a marriage of a Muhammadan with a non-Muhammadan must be governed by the Muhammadan Law of Succession and other personal laws of the Mohammadans. Under the Muhammadan Law, that would probably be the case if the Muhammadan, at the time of his or her marriage with an Arya Samajist, continued to be a Muhammadan and were not initiated into the tenets of the Arya Samaj. If, however, the rules of the Arya Samaj make it a condition precedent to the marriage of an Arya with a non-Arya that the latter should first of all be a convert of the Arya Samaj, then the difficulties apprehended by the Muhammadans must disappear, since the offspring of such unions must be bound by the laws of the Arya Samaj as to Succession and similar matters. If amendments are made in the Bill in such a manner as to make this point clear, all difficulties are bound to disappear.

Passing of the proposed Act after necessary amendments seems to be a matter of save urgency, as it is necessary to legitimise by some legal enactment or other the issues of those marriages which have taken place between Arya Samajists and people who belonged originally to other Communities.

(Sd.) S. C. ROY,

2nd Addl. District and Sessions Judge, Sylhet.

17th March, 1930.

*Opinion on the Bill regarding the validity of the marriage of Arya Samajists.*

THE Arya Samajists are steadily growing in number and in my opinion such an Act to validate their marriage is an urgent necessity. But if the Act is meant to apply to Arya Samajists alone, as the preamble indicates, then both the parties require to be Arya

Samajists at the time of the marriage but s. 3 as it stands, indicates otherwise; if the faith held by the parties previous to their marriage is meant when the section speaks of different religions, it should be worded accordingly; but if the Act is meant to validate a marriage between an Arya Samajist and a non-Arya Samajist, different considerations will arise. The definition of an Arya Samajist, contained in s. 2 of the Bill is also very wide, for it includes relative dependents on Arya Samajists who may not profess or ever intend to be Arya Samajists and this seems to be inconsistent with the objects of the legislation.

(Sd.) KUNJA BIHARI GHOSH,  
Additional Judge, Sylhet.

9th April, 1930.

### *Validation of Inter-marriage of Arya Samajists.*

#### Opinion.

THE Bill, though ostensibly one for validation of marriage, is really intended for facility of conversion to the faith of Arya Samaj.

The definition of "Arya Samajist" in section 2 clause (c) shows that after marriage a person may declare himself an Arya Samajist. If the person making the declaration is the head of the family, then under section 2 clause (b) the whole family with distant relatives, however distant the relation may be, and with foster-children will become Arya Samajist *against their will*. This is not desirable.

I am informed that in the Punjab, frequently families may be found in which one member is orthodox and another is an Arya Samajist although they continue in joint Mess. In Bengal, if one member registers himself as a Brahma (which differ from Arya Samaj only in name), he at once goes out of the family. The apparent object of the Bill is to make an Arya Samajist's family homogeneous. This intended that the head would come in with his flock.

The words in clause 3 "the couple" having "belonged to.....different religions" lead support to this view.

Secondly the word "marriage" in section 3 means marriage already performed. This section validates all (so-called) marriages though they may not be according to any prescribed or customary rites, as soon as (an) either the male or the female enters the society of Arya Samaj. So that upon conversion the previous Union does not dissolve, even if it be not performed according to any rite or not performed at all. The word "inter-marriage" in the heading lets the cat out of the bag.

Had the intention of the proposer been that a marriage between two persons proposing the Arya Samaj faith should be declared valid, if performed according to the rites prescribed by the society, there is no necessity for any law. The "Hindu Law" is flexible enough as Marriage performed according to customary rite is valid. This is settled law.

Another object of the Bill seems to be that it would validate all unions without any rite. This is also not desirable. The bill does not define "marriage". The content in section 3 shows that this word must mean "union" only and not marriage which can be regarded as valid by the law as it at present is.

When union not according to Hindu Law or custom or against law is to be made valid, there should be a provision as to the personal law of Succession which would apply to a member of the (Samaj) Society.

It is no doubt a laudable object to declare an illegal union already performed on the principle of factum valet. But there is no justification of sanction of such unions in the future, as section 3 means. Nor is there any justification of validating such unions, on the choice of one party only to such union as section 2 means.

The discussions in Council shows that a Bill referred to a Select Committee, comes out of it in a totally different form. I have strong objections to referring a Bill to a Select Committee unless the sense of the Bill is approved in the Assembly first. The Bill should not therefore be referred to the Select Committee in its present form.

(Sd.)

22nd March, 1930.

Sub-Judge, Sylhet.

Copy of letter No. 207-T., dated the 31st March, 1930, from the Commissioner, Surma Valley and Hill Division, to the Chief Secretary to the Government of Assam, Shillong.

With reference to Mr. Majid's letter No. J./133/445-48-G. J., dated 25th February, 1930, regarding the Arya Marriage Validation Bill by Mr. Mukhtar Singh, I have the honour to submit copies of opinions received from the Deputy Commissioners of Cachar and



Sylhet. I am in sympathy with the object of the proposed legislation but think that the question should be further examined in the light of opinions received.

D. C.

The statement of objects and reasons for the Bill shows that the Bill is intended to apply to Arya Samajists alone. But the substantive clause which is wanted to be made into law appears to be different from the statement. If the Honourable Member who introduced the Bill in the Legislative Assembly intended it to apply where both the parties belong to Arya Samaj and not to apply where one of the parties belongs to any other faith, the substantive clause should be amended accordingly. In that case the general body of Hindus or of Muhammadans or of Christians will not be affected by the Bill at all and there can be no objection to the Bill by a Non-Arya Samajists.

(Sd.) A. DUTTA,

Government Pleader, Silchar.

13th March, 1930.

Bar Association,

Silchar, the 13th March, 1930.

D. C.

Members of our Bar support the provisions of the Arya Marriage Validation Act. But the explanation under the section 2 appears to be very strict, there may be question when the validity of the registered document may be in dispute and under the suggested Act evidence cannot be given. In our opinion there should be provision to admit evidence when the validity or genuineness of such a document is in question.

(Sd.) H. C. DUTTA,

Secretary.

D. C.

There should be no objection to passing the Bill for validation of inter-marriage where the couple, belonged to different castes or sub-castes, were converted to the Arya Samajist faith.

(Sd.) CHEHOTA LAL BAISHYA,

14th March, 1930.

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Copy of letter No. 5492-J, dated the 14th March, 1930, from Babu RAJANI KANTA RAY DASTIDAR, M.A., M.R.S.A.F.R.Met.Soc. (London), Additional District Magistrate, Sylhet, to the Commissioner, Surma Valley and Hill Division.

SUBJECT:—*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

Ref.—*Your Memo. No. 244-45-P., dated the 6th March, 1930.*

A copy of note dated the 10th March, 1930, by the Government Pleader, Sylhet is enclosed herewith. I have no remarks to offer.

#### Re. *Arya Marriage Validation Bill.*

I approve of the object of the Bill. The Arya Samajists who now form a strong and influential group are not negligible in number and as such they are in need of protection which the bill aims at giving them. Of course conservative instincts in men will revolt against introduction of social reforms and will make some quite unsympathetic to a class of persons who have shaken off old traditions and customs as is evidenced by the speech of Mr. M. K. Acharya, but it is not beneficial to any society to cut off all connection with a group who nevertheless recognise themselves as a branch or part thereof. The Arya Samajists professing themselves to be Hindus should be allowed to be governed by the Hindu Law of succession and marriages celebrated between Arya Samajists, both husband and wife being of the same faith should be validated.

I am sure all the imperfections pointed out in the Bill will be remedied in Select Committee and the Bill made as complete and exhaustive as possible in all matters relating to marriages and succession leaving as little room for future doubts and disputes as possible.

(Sd.) J. CHOUDHURY,  
Offg. Government Pleader.

10th March, 1930.

I agree with G. P.

(Sd.) AMJAD ALI,  
P. P.

11th March, 1930.

Copy of letter No. 1096-G., dated the 1st April, 1930, from the Deputy Commissioner of Kamrup, to the Commissioner, Assam Valley Division.

With compliments,

REF. :—Your memo. No. 1259-62-G., dated the 6th March, 1930.

SUBJECT :—*Arya Marriage Validation Bill.*

ATTEMPTS were made to collect opinions, but the only opinion which has been received is that of the Government Pleader, copy of which is enclosed. I have only had time myself to go hurriedly through the Bill and the debate. It seems from the course of the debate that the proposed measure is highly contentious and that the Bill would have to be entirely recast if it is to meet with any general support. Clause 2 (c) in particular seems far too wide—A Mohammadan could apparently claim to be an Arya Samajist within the meaning of the Bill. If, subsequent to his marriage, but within one year of his marriage, he executed a document saying that he is an Arya Samajist. Assuming that such a declaration was genuine and that he was actually converted within the year, it seems entirely improper that his marriage (performed when he was a Muhammadan) should be validated under the provisions of this Bill. It seems even more improper that the still muslim members of his family and his Muslim relations dependent on him, should, by his mere declaration, become Arya Samajist under this measure.

*Opinion on the Arya Marriage Validation Act.*

SERVANTS OF  
BRANCH  
DCA

THE object of the Bill, as stated by the mover is to remove certain suspicion amongst the Arya Samajist that issues of marriages celebrated amongst them might be considered illegitimate. The Arya Samaj is a progressive body and its Catholicity is well known amongst the Hindus I have, therefore, every sympathy with the object of the Bill.

The object of the mover appears to be that marriages contemplated by the Bill should be confined amongst the Arya Samajists. Clause 3 of the Bill, therefore, should clearly lay down that each of the couple should be an Arya Samajist in faith.

A question has been raised by what law should the succession amongst the issues of such marriages be governed. To set all controversies at rest a distinct clause should be inserted to the effect that such succession should be governed by Hindu Law as obtain in the province of their origin or domicile.

(Sd.) K. R. BARMAN,  
Government Pleader, Gauhati.

29th March, 1930.

Copy of letter dated the 27th March, 1930, from Mr. KAMESWAR DAS, Pleader, Barpeta, to the Sub-Divisional Officer, Barpeta.

In obedience to your desire, I beg to express my opinion as follows regarding the "Arya Marriage Validation Bill by Mr. Mukhtar Singh".

The Bill, as it is meant in "the Statement of Objects and Reasons" to apply to Arya Samajists alone and not to anybody else, will have my cordial support subject to the consideration of the following circumstances.

Sub-clauses (b) and (c) of Clause 2 will, in my view, require some careful consideration and will have, I think, to be redrafted so as to put it beyond the scope of different interpretations affecting the people of different castes, sub-castes, and religions. These sub-clauses that once introduce the questions whether a man is entitled not only to change his own social and socio-religious ideas but also impose those ideas upon those who happen to be members of his family or to be dependents on him or to have been under his guardianship, before his immediate conversion.

I would like that the provisions of the Bill are made to apply only to the adult men or women who are members of the Arya Samaj from before and to the relative dependents or persons under the legal guardianship of such members only. The provisions without modifications are likely to adversely affect the people of other castes or religion, if they are made to apply to relative dependents or persons under the legal guardianship of people who, for some reason or other, newly adopt the faith of the Arya Samajists and declare themselves to belong to Arya Samaj.

I hold further that with the passing of the Bill the question of succession will have to be considered under the new situation that will be created. Succession is generally governed by marriage. It is necessary that if this measure is to be passed the question of how succession shall be regulated should be considered,—because as at present, and with the passing of this Bill, an Arya Samajist will be free to change his faith; but it will be unfair to make him entitled to say that those who are related to him by birth shall be compelled to adopt his view on account of his having changed his faith.

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Copy of letter dated the 17th March, 1930, from the Secretary, Bar Library, Dibrugarh, to the Deputy Commissioner, Lakhimpur.

*RE: The Arya Marriage Validation Bill.*

I HAVE the honour to state that the proposed bill is welcome so far as it is an enabling measure but the bill is objectionable as the consequences of the enactment will be far-reaching and might interfere with the existing provisions of Hindu Law, so far as the Law of Inheritance is concerned. Section 3 of the Bill also needs re-drafting. The clause or to different religions should be *deleted*, to meet the objection of the Mohommadan Community in particular.

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**CENTRAL PROVINCES.**

**No. 11.** From R. E. POLLOCK, Esq., I.C.S., Secretary to Government, Central Provinces, Legal Department, to the Secretary, Legislative Assembly Department, Simla, No. 233/125, dated Pachmarhi, the 13h May, 1930.

**SUBJECT:—***The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

WITH reference to your letter No. F.-133-I./28-A., dated the 11th February, 1930, on the subject mentioned above, I am directed by the Governor in Council to say that, as there seems to be a genuine demand from Arya-Samajists for this Bill, he would be prepared to support it provided that the unduly wide definition of Arya-Samajist in section 2 and the defective wording of section 3, which fails to make it clear that the section is intended to apply only to marriages in which both the contracting parties are Arya-Samajists, are amended so as not to impinge upon the rights of other communities.

2. The Bill was published in English in the Central Provinces Gazette of 1st March, 1930, and in Marathi and Hindi on 29th March, 1930 and 12th April, 1930, respectively.

3. Copies of selected opinions are enclosed.

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Copy of letter No. 3132/1-3-3/30, dated the 28th March, 1930, from the Registrar, Judicial Commissioner's Court, Central Provinces, to the Legal Remembrancer to the Government of the Central Provinces, Nagpur.

I AM directed to refer to your letter No. 132/125, dated the 24th February last, which forwarded the Arya Marriage Validation Bill for the opinion of the Judicial Commissioner.

2. In reply I am to say that the Judges of this Court, the District and Sessions Judges and Bar Associations, Nagpur, Saugor, Raipur, Nimar, and Akola and the Bar Association of this Court were consulted on the subject and the replies of the District and Sessions Judges and Bar Associations received so far, are forwarded herewith in original.

3. As regards the opinions of the Judges of this Court, the Judicial Commissioner and the Additional Judicial Commissioner Mr. Macnair think, that, if the community concerned approve of the principle of the Bill, and Act placing beyond doubt the validity of inter-marriages is desirable. They do not, however, think that the definition of "Arya Samajist" should include any adult who may not desire to be so included. They consider it objectionable that a document declaring the executor to be an Arya Samajist at a particular date should have the effect of causing him to be an Arya Samajist at a previous date. Further, as the Act refers to the inter-marriages of Arya Samajists, section 3 should refer to "Marriage between Arya Samajists". Mr. Jackson, Additional Judicial Commissioner, has no objection to the principle of the Bill but the definition of "Arya Samajist" appears to him too wide. He agrees that, at the least, no adult should be made an Arya Samajist against his will. Messrs. G. Mohiuddīn and Sūbhedār concur in Mr. Jackson's opinion.

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*Copy of opinions of the Additional Judicial Commissioners, Central Provinces, Nagpur.*

I AM not aware whether or not the community concerned unanimously approve of the principle of the Bill: if it does, I think an Act placing beyond doubt the validity of inter-marriages is desirable. I do not think the definition of "Arya Samajist" should include any adult who may not desire to be included. I think it objectionable that a document declaring the executor to be an Arya Samajist at a particular date should have the effect of causing him to be an Arya Samajist at a previous date. As the Act refers to inter-marriage of Arya Samajists, Section 3 should refer to "marriage between Arya Samajists".

(Sd.) R. H. MACNAIR,  
Additional Judicial Commissioner.

3rd March, 1930.

I HAVE no objection to the principle of the Bill; but the definition of "Arya Samajist" appears to me too wide. I agree that at least no adult should be made an Arya Samajist against his will.

(Sd.) R. J. JACKSON,  
Additional Judicial Commissioner.

5th March, 1930.

I AGREE with the opinion expressed by Jackson, Additional Judicial Commissioner.

(Sd.) G. MOHIUDDIN,  
Additional Judicial Commissioner.

5th March, 1930.

I AGREE with the opinion expressed by Jackson, Additional Judicial Commissioner.

(Sd.) G. L. SUBHEDAR,  
Additional Judicial Commissioner.

7th March, 1930.

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*Copy of opinion dated the 11th March, 1930, from the Additional District and Sessions Judge, Nagpur.*

SUBJECT:--*The Arya Marriage Validation Act.*

In my opinion, the Bill is unnecessary. The Bill aims at legalising the marriages by an Arya-Samajist with a member of any caste or sub-caste of Hindus or with anyone of different religion. As a matter of fact, the legality of such marriages has been recognised by the Special Marriage Act of 1872, and although it is pointed out that this bill of 1872

has been conceived in the spirit that the marriage is a contract and not a sacrament, the present Bill means to recognise the marriage as a sacrament. This difference alone is not, in my opinion, a sufficient ground for making a free legislation on that point. In the first place, it is an attempt to put down the long established caste-system of India, and although, it has been pointed out on behalf of the Samajists that they do recognise caste-system, they contend that the caste-system should not be regulated by birth. Several undesirable results will follow by the introduction of such Bill and if the Bill was limited to its operation to the Arya-Samajists only one might probably say that the Bill may be passed with a view to satisfy the fad of the Samajists who are prepared to undertake the consequences of such an action on their part. But the wording of the Bill is so general in its application that mischievous results are bound to follow and in the garb of legalising an Act of a few people great discontent will prevail. Section 1 of the Act is so worded, that it may appear to apply not only to Arya-Samajists but to all Hindus who are Aryas by their very birth in India. Section 3 is particularly objectionable, as it provides any other marriages by an Arya-Samajist with anyone of a different religion, notwithstanding any law, or usage or custom to the contrary. Moreover, the Bill has made no provision for the kind of succession which will govern the issues of such a couple, and in the absence of such a provision, a good many difficult questions of succession are likely to arise, and great discontent will prevail. I am therefore, not in favour of the Bill, unless at least the bill is substantially altered in its wordings.

*Copy of opinion dated the 10th March, 1930, from the Secretary, Bar Association, Saugor.*

I AM directed to submit the following as the considered opinion of my Association on the above Bill which was sent to us with connected papers by the District Judge, Saugor, for our consideration.

*Section 2.*—As regards the definition of an Arya-Samajist contained in clause (a) of this section there might arise at times acute controversies relating to the *bona fides* of entries on the rolls of Arya-Samaj especially with regard to new and vacillating converts. To set all this sort of trouble at rest a declaration on the part of parties to the marriage that both of them are Arya-Samajists or are believers in inter-caste marriages should be called for, just as similar declarations are called for under the Civil Marriage Act. (Special Marriage Act III of 1872) as it stands amended.

The declaration of the above type would also remove the unjust deprivation of liberties of minors and dependent relatives contemplated by clause 2 (b). The mere fact that a guardian of a joint Hindu family is an Arya-Samajist should not give rise to the presumption that his dependent cousins, nephews, brothers and sisters are of the same view. In actual experience of things we find facts to the contrary as has been pointed out by the venerable Pandit Madan Mohan Malaviya in his debate in the Assembly on this topic. The personal declarations of marrying parties would thus save them from imposition of religio-social views of persons, who may owing to some family calamity, become guardians of such persons or their children.

In clause (c) of Section 2, for the purpose of validation of past inter-caste marriages a period of five years has been allowed by the present Bill. This is quite justifiable; beyond this no further latitude be allowed as is claimed by the Hon'ble sponsor of the Bill. To allow validation of future marriages not performed under this Act would encourage a policy of vacillation and create scope for communal wrangling of which we had had enough. Hence the alternative validating clause of one year after marriage should be deleted as most undesirable. Similarly the rest of the clause contains undue privileges which are so apparent. These too should be deleted.

*Section 3.*—A proviso should be added at the end of this section in order to set at rest the voluminous controversy that has arisen round the poser whether a person declaring himself to be an Arya-Samajist or his equivalent could legally marry a person of other creed or religion. The phraseology of section 3 gives rise to many a just doubt. As it stands there is nothing in the words of this section or any previous or subsequent part of the Act, to compel *both* the parties to marriage to declare that *both* of them are Arya-Samajists or persons believing in some such creed. Besides this in order to solve future doubts regarding the creed or religion of issues born of such marriages it is necessary to add the proviso.

The proposed Proviso:—

“Provided that both the parties to a marriage under this Act shall have declared themselves to be Arya-Samajists or shall have filled up a form in the alternative hereinafter prescribed”.

*The three essentials of the alternative form may be:—*

- (1) that the declarant believes in the Vedas;
- (2) is a monist, and
- (3) that he or she believes in inter-caste or international marriage.

*Copy of opinion dated the 19th March, 1930, from Mr. D. K. Mehata,  
Pleader, Seoni.*

I AM in full sympathy with the object of the mover of the Bill but do not support all the implications of the Bill as drafted.

I should alter the Bill to apply to cases in which both the parties to the marriage or their legal guardians are declared Arya Samajist. I would also require a clause stating the requisites of a valid marriage—what will be the form of marriage which will be deemed valid.

I repudiate the application of the Bill to cases in which the parties to the marriage belong to different religions. For such cases the Special Marriage Act is there. In cases of this sort the marriage cannot be a sacrament and must be a matter of contract, as no particular religious form can be adopted to validate such a marriage.

I would also amend the definition clause so as to take away dependents, etc., of mature understanding from being included in the phrase Arya-Samaj.

*Copy of opinion, dated the 19th March, 1930, from Mr. M. K. Golwalkar,  
M.L.C., Pleader, Jubbulpore.*

I APPROVE of the Bill generally. I object to clause 2 (b) and the latter portion of clause 2 (c). Every person desiring to come within the purview of the measure should be left free to make his choice. Clause 2 (b) and the latter portion of clause 2 (c) unnecessarily fasten the measure on members, relatives and dependants who may or may not like to be governed by the proposed law. Anybody who so desires will be able to make a declaration to that effect under the first part of clause 2 (c), or become a member of any Arya-Samaj. Nobody should be forced to accept this law by a mere declaration of another person. There should be complete freedom in the matter of faith.

*Copy of letter No. 403/D., dated the 23rd March, 1930, from the Deputy  
Commissioner, Chanda, to the Commissioner, Nagpur Division,  
Nagpur.*

WITH reference to your endorsement No. 1079-A., dated the 4th March, 1930, forwarding copies of Mr. Mukhtar Singh's Arya Marriage Validation Bill for opinion, I have the honour to report that time was too short to obtain any non-official body of opinion. I forward a copy of the only opinion submitted.

2. The debate in the Legislative Assembly shows that there is a great deal of contentious matter in the body of the Bill; on the whole the principle of legitimatising the issue of marriages between Arya-Samajists appears to be accepted, but much controversy has raged over the wording of the Bill. If the Bill is intended only to validate marriages between two persons both of whom belong to the Arya Samaj then I am fully in support of it, and further add that the wording of the Bill should be limited to that and not embody other matter which apart from causing disputes is liable to misinterpretation in court of law. In my opinion the definition of Arya Samajist as laid down in sub-clauses (b) and (c) of clause 2 is very much too wide and must inevitably lead to the inference that there is something more than mere validation behind the Bill. I can see not the slightest justification for including in the term "Arya-Samaj" family members, dependent relatives or even, without restriction, persons under the guardianship of an Arya-Samajist; I would restrict the definition to include only minor dependents of whom the Arya-Samajist is a guardian by a near relationship. It is obviously wrong that, for example, an adult son or daughter or a dependent sister or mother should be defined as an Arya-Samajist simply by the fact of relationship.

3. Again, clause 3, as has been pointed out by the Hon'ble Law Member can be construed to apply to a marriage between an Arya-Samajist and one who not only may not be an Arya-Samajist but may belong to a religion other than the Hindu religion. I am not at all sure that whole clause is not merely redundant, if the Bill is to apply to marriages between parties both of whom are Arya-Samajists. If both are Arya-Samajists then it seems to me irrelevant whether at some previous stage they had been members of different castes or sub-castes or whether they had been members of different religions. If a man previously Muhammadan or Christian becomes an Arya Samajist I presume that he loses all his claim under any personal law of his former religion and is bound by the tenets of his new faith; having already ceased to be Christian or Mohammadan I cannot see that Christians or Mohammadans, and on the same analogy members of other religions, can have any objection to the Bill. For the same reason, I cannot see the necessity for clause 3.

4. The Hon'ble the Law Member has pointed out that the bill also affects other serious questions such as inheritance. It is evident that inheritance would represent very great difficulties whether the married couple belonged to different schools of Hindu Law and even greater difficulty if when they previously belonged to a different religion. Marriages of the former kind must have taken place on many occasions and I am not aware if there have been any disputes concerning inheritance as a result. It would be desirable obviously to combine this piece of legislation with legislation affecting inheritance and other dependent matters, but I imagine that difficulties in working out satisfactory scheme of inheritance might be almost insuperable. There is, of course, the Indian Succession Act but it appears that the propounders of the Bill do not wish to lose their personal law and, I cannot help saying, their Hindu Personal Law, in other words, the Bill has a Hindu bias rather than an Arya-Samajist bias.

5. Summing up, there is more to be said against the Bill than for it; it is badly worded, it appears to have proselytizing tendencies, and to leave untouched other questions intimately bound up with it. If however it is better to legitimize these marriages under law other than the Special Marriage Act, I consider there is no objection provided the wording is changed to that effect. This leaves aside the inheritance and other questions but there is something to be said for the principle that it is better to have a little than nothing at all.

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*Copy of opinion dated the 6th March, 1930, from the District and Sessions Judge, Raipur.*

1. This Bill was moved in the Legislative Assembly and evoked a good deal of adverse criticism and finally it was circulated for eliciting public opinion. The object of this Bill as stated succinctly in the Statement of Objects and Reasons, is to place beyond doubt the legitimacy of marriages contracted by persons belonging to the Arya Samajist faith.

2. There can be no doubt that during the last few decades Arya-Samaj has made rapid strides in the country and now claims amongst its adherents lakhs of persons, specially in the Northern India. The Arya-Samajists do not believe in the caste-system in the same sense in which the orthodox Hindus do. They also see no objection to the marriage of persons belonging to different castes or creeds, provided they follow the Vedic faith. There can be no doubt that a large number of marriages which would be invalidated under the strict Hindu Law, have been contracted by these persons. The mover of the Bill stated in his speech that in one year alone there were over 1,500 marriages of this type and I see no reason to doubt his word. These people are not immoral or dissolute. They conscientiously believe that the original and pure Hindu religion permits such marriages, and having the courage of their conviction they have contracted such marriages. Therefore by giving legal recognition to such marriages, the legislature would not be countenancing immorality. As a matter of fact most of the Arya-Samajists are intensely religious and puritanic in their outlook. No legislature worth its name can view with equanimity the prospect of a large number of marriages of such persons remaining unrecognised by law and the children of such unions becoming illegitimate and bastards. That is a contingency which every wise legislator should try to avoid. As an instance of the undesirability of relegating a large number of children to such a position, I may mention the legislation that was enacted in Great Britain and other Western countries to provide for the laxity which almost inevitably followed the conclusion of the Great War. In the debate that followed in the Legislative Assembly the necessity of the measure was almost universally recognised.

3. Nor is there any reason to doubt the statement of the mover of the Bill and other members supporting it in the Assembly that the Arya-Samajists as a whole support the Bill. I am not an Arya-Samajist myself, but I know several who are the followers of Swami Dayanand, and from my personal knowledge I can say that the Arya-Samajists feel the need of such a measure very keenly, as is natural. For otherwise their own children may be unrecognised by law and may run the risk of being disinherited and treated as outside the pale of society. That the measure has a very wide support in the community to which it is intended to apply is a proposition which, to my mind, can hardly be disputed.

4. Much of the opposition to the Bill was due to its defective draftmanship. Misconception as regards the real position of the Arya Samajists in the Hindu society was also partly responsible for the criticism that it received. The defects of draftmanship I shall consider subsequently, when dealing with the individual provisions of the Bill. But it may be convenient to consider the latter reason first. It seems to have been assumed by several members, who opposed the Bill, that there is antagonism between Arya-Samaj and Hinduism, that the former is something distinct and separate from the latter. This is evidently a misconception. Arya-Samajists have never claimed that they are not Hindus. As a matter of fact they have always asserted that they are better Hindus than the followers of the orthodox religion. Arya Samaj is a puritanic movement

in Hindu society and their slogan is "back to the Vedas" and to pure Hinduism unadulterated by subsequent incrustations, Hinduism is a cosmopolitan religion. Many a sect professing widely different doctrines has flourished within its pale. The Hindu system of philosophy includes even uncompromising atheists. Therefore there is no incongruity in Arya-Samajists being governed by the general Hindu Law, except in those special cases where its doctrines are different. A good deal of criticism of the Bill have been avoided if this fundamental fact had been properly appreciated.

5. It is this misconception which was responsible for the criticism that was levelled on the ground of succession. Arya-Samajists have not repudiated the Hindu Law of succession, and there is no difficulty in applying that law to them. Under the present conditions there are many families in which some members have embraced Arya-Samaj, but they still continue to live amicably in the family dwelling house and are governed by the Hindu Law of inheritance and succession. This objection was therefore really tantamount to a redherring drawn across the path of the Bill. It has been stated that difficulty would arise where the parties to a marriage spring originally from different castes or religions. Where the original personal law of the father and mother is different, the law is that the issues are governed by the personal law of the father. Thus to my mind there would be no difficulty in the Arya-Samajists being governed by the general Hindu Law. If necessary a special provision could be introduced in the bill to this effect to obviate all doubt.

6. It may be asked what law would govern the parties where the father is a convert to the Arya-Samaj from another religion. The general Hindu Law is the Benares school and the other schools are really by way of exceptions to it. I see no difficulty therefore in a convert to Arya-Samaj from another religion being governed by the Benaras school. The Law Member in the course of the debate quoted an illustration, and stated that there would be difficulty in applying the Dayabhag school of law to a case where the husband belong to that school and the wife is an Arya-Samajist, who was originally a non-Hindu. With the greatest respect it may be stated that the fallacy underlying his argument was that he assumed that the accepted theory on which the Dayabhag law of inheritance and succession is presumed to have been based, namely, the capacity to offer Pinda, was alive and in full operation even now. That may have been the underlying criterion when the law givers propounded the law. It cannot be disputed however that it is no longer alive or recognised by the society, for otherwise many Hindus who do not observe the strict ceremonies and who have transgressed its laws as understood by the orthodox by foreign travel and the like would cease to be governed by the Hindu Law of succession, as no longer capable of offering Pindas. The Law Member admitted that the Bramhos, although they call themselves non-Hindus, still continue to be governed by the Dayabhag law. Therefore I see no difficulty in the way of Arya-Samajists being governed by the Hindu Law. As I have already stated if necessary a specific provision may be inserted in the Bill to remove all doubt on the point. Now I shall consider the provisions of the Bill in detail.

7. The preamble and the first clause are harmless and open to no objection. They merely specify the title and the extent of the Bill. The second clause defines an "Arya Samajist". Admittedly this definition is defective, and exposed the bill to a good deal of unnecessary criticism. The definition is lacking in precision and clause (b) thereto is too sweeping. I should draft the definition on the lines given below:—

"For the purpose of this Act "Arya-Samajist" shall mean and include:—

- (a) all Hindus who believe in the doctrines of Arya-Samaj, and
- (b) all non-Hindus who have by undergoing the ceremony of purification entered the fold of Arya-Samaj.

*Explanation.*—The fact that a person is enrolled as a member of any Arya-Samaj or that he has executed a written document expressing himself to be an Arya-Samajist or in terms equivalent thereto shall be presumptive evidence of his being an Arya-Samajist".

It will be noticed that I have omitted the clause (b) of the definition proposed in the Bill, I do not think it fair that a man, merely by changing his religion, should *ipso facto* drag with him the other members of his family, whether they are willing or not. The changing of faith should in every case be a voluntary act, and should not be the consequence of the acts of another individual.

8. Question may arise here as to the conversion of minors and females. The law as regards conversion is well settled. All persons of either sex who have attained majority are free to adjure their religious faith and embrace another, provided it is an act of free will on their part and has not been forced upon them by illegal means. Minors cannot be allowed to be converted, except perhaps with the permission of their legal guardian. This is the general law on the subject and I do not see why Arya Samajists should not be governed by it.

9. During the course of the debate on the bill it was objected that the Bill failed to specify what were the operative doctrines of Arya-Samaj, by which it would be possible to determine whether a particular individual belongs to that faith or not. I do not think



that it is necessary to specify the essential tenets of Arya-Samaj in the Bill. They are all mentioned in Arya Samajist literature, and it will be a matter for the law courts to decide what are the essential doctrines.

10. A good deal of criticism was also levelled against clause 3 of the Bill which deals with the marriages of Arya-Samajists. This clause as it stands is certainly liable to the interpretation that it applies also to a marriage in which one party only is an Arya-Samajist. This is due to defective draftsmanship, and the mover of the Bill made it very clear that he never intended that this should be result of the clause. This ambiguity can be removed by the following amendments:—

- (i) Deletion of the word "an" before "Arya-Samajist".
- (ii) Adding the letter "s" after "Arya-Samajist" so that it would after amendment read "Arya-Samajists."
- (iii) Insertion of the word "originally" between "having" and "belonged".

Thus the amended clause would read as follows:—

"No marriage of Arya-Samajists shall be invalid by reason of the couple having originally belonged to different castes or sub-castes of Hindus, or to different religions, any law or usage or custom to the contrary notwithstanding".

Thus all ambiguity would be removed and the Bill would be confined to those cases only where both the parties to the union are Arya-Samajists.

11. This ambiguity could as pointed out by various members in course of the debate be cleared in the Select Committee after the express assurance of his intention that was given by the mover of the Bill. Some of the opposers of the Bill were however still not satisfied and it seems that their real objection was that they desired to put obstacles in the way of conversions to Arya Samaj by refusing all facilities for recognition of Arya marriages. The policy regarding conversions is a different question altogether, and so long as other religions are allowed the freedom to continue their proselytising activities, it is hardly fair that the legislatures should treat Arya-Samaj only in this cavalier fashion and try to harm it by such back-door methods.

12. With suitable amendments on the lines suggested above I am in favour of the Bill.

### *Copy of opinion expressed by Mrs. Seeta Parmanand on the Arya Marriage Validation Bill by Mr. Mukhtarsingh.*

In the present stage of social reform there does not seem to be a strong case for the passing of a new Act for the validation of the Arya-Samajist Marriages when the Special Marriage Act in its amended form can be applied to the Arya-Samajist Marriages without any particular hardship. The disadvantages of the Special Marriage Act are, in my opinion, more imaginary than real and the advantages which it is expected would follow, in the even of the enactment of the Bill under consideration, are in reality practically non-existent.

2. According to Hindu ideas of sacrament, immediately a marriage requires the help of law for its validity, it loses a good deal of its sacramental nature. It no longer remains a sacrament, pure and simple, and thus it becomes more or less a contract. The argument, therefore, that the new Act is sought to give the Arya marriage a sacramental character, which the Special Marriage Act does not give, loses most of its force.

3. The couple married under the Special Marriage Act, it is true, is severed from the joint family. This, it is pointed out, leads to two hardships (1) social ostracism, (2) certain legal disabilities. The social hardship, if at all it exists, would not be removed, even if the marriage is solemnised, by the Arya-Samajist ritual, and subsequently recognized by the new Act. For, if any hardship of the nature of social boycott exists, it exists not because, the marriage is performed under any particular Act, or by any particular form of marriage, but because the marriage is an inter-caste marriage and as such it is performed in violation of the sacred bonds of orthodox caste system. To the layman, the distinction between these two Acts, viz., the Special Marriage Act and the proposed Act, is not likely to be clear and therefore will not make any difference in his way towards a couple which marries according to either one Act or the other. In my opinion, therefore, the severance from joint family ties, does not affect the social relations of such a couple. There is, therefore, no necessity for passing another Act because of the alleged defects in the Special Marriage Act, viz., the severance from the joint family. Such severance does not cost any social hardship. (2) The legal position is affected only in one way. The couple marrying under the Special Marriage Act, not being any longer connected with the joint family, is governed by the Indian Succession Act. This, in my opinion, far from being a hardship, is distinctly a boon, and in saying this I am voicing the sentiments of many more women, with whom I have had occasion to talk on this question. In these modern times, when we are trying hard to improve the Proprietary Rights of

Hindoo Women by introducing fresh Bills in our Legislative Bodies, it would be retrogressive indeed, if by this Bill we were to seek to withhold from women, a concession, which has been so kindly given to those who marry under the Special Marriage Act. A second aspect of the legal disability would be the incapacity to manage religious trusts and temples. This also, on reflection, will appear to have been solved in the only fair way possible, in the Special Marriage Act. If a couple, marrying under the Special Marriage Act, breaks the principles of caste, which form, as it were, the foundation of the structure of Hinduism, it should not in all fairness claim the right of interference, with the religious institutions of orthodox Hindus. When the time is ripe for reform in this direction, the orthodox Hindus will not take any objection. When a certain concession to any community interferes with the rights of another community, which is a majority community it is not enough, in my opinion, to consult the wishes of the minority community only, but it is equally important to respect the sentiment of the majority community also. It would, therefore, not be right for the Arya Samajists to outrage the sentiments of orthodox Hindu community by breaking some of its basic principles and yet to insist that the privileges of orthodox Hinduism should be granted to them by means of legislation.

4. The removal of caste disabilities Act enables a man to inherit his ancestral property, even when, he has married by the Special Marriage Act. Even though a man at the time of his marriage under the Special Marriage Act, is a member of the joint Hindu family, it is not in my opinion, fair to grant him the right of inheriting his ancestral property, when he marries under the Special Marriage Act; because after such a marriage, the right of succession to *his* property is taken away from the other members of the joint family who would have ordinarily enjoyed a right of share in *his* property. It may be right, from one point of view, not to take away the right of a man enjoyed by him before his marriage, and divest him of his share in the joint family property. If, however, we look at his position from another point of view of higher principles equity and justice, we shall see, that this case also should have been treated in the same way as the case of the management of religious trusts and temples. Under Hindu Law, the right of succession is governed by the capacity to give offerings to the dead ancestors. On marrying out of caste, a man becomes 'Patit' or 'degraded' in the eyes of Hindu society and as such, he is not considered fit, to perform the funeral rites of his ancestors. If thus he is not able to perform his duty by his ancestors, why should he be allowed to take a share of his ancestral property? The question whether an Arya Samajist recognizes the principle of offering 'Pinda' or not is in my opinion unimportant. Inasmuch as an Arya Samajist believes in marrying out of caste and marries accordingly, he "falls off" from the Hindu community (*i.e.*, becomes "Patit") and thus loses his right to be looked upon as a member of Hindu joint family. The entire object of an Arya Samajist, therefore, in demanding a new Marriage Act, apart from the Special Marriage Act, *viz.*, continuation of the membership of the Hindu joint family, must in all fairness fail. It would thus follow, that the new Act is not necessary on this score. The Arya Samajist should remain satisfied with the special concessions which the Special Marriage Act allows them to enjoy, and not demand more rights which equity and justice demand should not be given to them.

5. In my opinion, there can be no distinction between the outlook of the caste-system, of the Arya Samajist and of the outlook of the people who marry under the Special Marriage Act. Any such hair-splitting distinction is more imaginary than real. It is a matter of common knowledge that any one, who does not believe in the caste-system, does so only because he thinks that castes based on the mere accident of birth have no force left in them, in the changed circumstances and times, and must therefore go away. He also believes these "castes" should be replaced by what are commonly called classes determinable only by individual culture. The Arya Samajist, in this respect, need not lay claim to a unique system of thought which would distinguish him from the non-Arya Samajist, who marries under the Special Marriage Act, and as such, the Arya Samajist should not on this ground stand in need of a separate Act, to validate his marriage.

6. It should not be enough to see only as I have already pointed out above, that the Arya Samajists want to have the new Act. Under the new Act the Arya Samajists propose to seek certain privileges which are governed by principles which the Arya Samajists do not recognize. They want to be allowed to manage religious trusts and temples, but it should be open to the Hindus who are in a majority and whose rights must be guarded to say whether the Arya Samajists should thus be allowed if the orthodox Hindus are not willing to look upon the Arya Samajists as Hindus, for reasons given above, then the Special Marriage Act should serve the purpose of the Arya Samajist as well, as it does of the other Hindus, who at present marry under the Special Marriage Act, and are well satisfied with its provisions.

7. If the majority of the orthodox Hindus do not mind allowing the Arya Samajists, who do not observe caste restrictions, the concession of the privilege of being appointed trustees to religious trusts and temples, then rather than passing a new Act the existing disability under the Special Marriage Act should be removed by further amendment of the Special Marriage Act. In such amended form the Special Marriage Act would confer on the Arya Samajists all that the Arya Samajists should be entitled to.

8. There are several defects in the drafting of the present Bill, for example (1) the definition of the Arya Samajist is too broad and vague, (2) the inclusion of the "wards" and dependents of an Arya Samajist in the word "Arya Samajist" is both unfair and likely to cause mischief, (3) the application of the Bill to members of other religions though not illegitimate is likely to cause misunderstanding in the present state of communal feeling, (4) the retrospective effect which it is sought to give by this Bill is unfair and violates principles of legislation.

9. As I, however, do not think there is any necessity for passing the proposed Arya Marriage Validity Bill into an Act, and as on a careful examination of the case, the Special Marriage Act appears to me, to be adequate even for the Arya Samajists, I do not intend to go further into the details of these defects in the drafting of the Bill.

(Mrs.) SEETA PARMANAND

Deputy Commissioner's Bungalow,  
Yeotmal (Berar).

30th March, 1930.

### BURMA.

**No. 12.** From U. TUN YA, K.S.M., A.T.M., Offg. Secretary to the Government of Burma, Judicial Department, to the Secretary to the Government of India, Legislative Assembly Department, No. 194-W./30, dated Maymyo, the 16th May, 1930.

**SUBJECT:—***The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

I AM directed to refer to your letter No. F.133-I/28 A., dated the 11th February, 1930, forwarding the papers noted below for the opinion of this Government, and those of the Hon'ble Judges of the High Court and of such selected officers and other persons as this Government may think fit to consult, on the provisions of the Bill noted above; and requesting that the Bill and statement may be published in the Burma Gazette in English and in such other languages as this Government may deem proper.

1. The Arya Marriage Validation Bill by Mr. Mukhtar Singh.

2. Extracts from Legislative Assembly Debates dated 21st January, 1930 and 23rd January, 1930, regarding the Bill.

2. In reply I am to say that the Bill with Statement of Objects and Reasons was published in English in the Burma Gazette of the 15th March, 1930 and that the fact of such publication was duly intimated to the public in a *Press Communique* (containing also a précis of the provisions of the Bill) which was published in English in the local newspapers and in Burmese in the Headman's Gazette of the 19th March 1930.

3. The Hon'ble Judges of the High Court of Judicature, Rangoon, the Rangoon Bar Library Association, the Hindu Sabha, Rangoon, the Burma Indian Chamber of Commerce, Rangoon, the Nattukkottai Chettyars' Association, Rangoon, the Madras Hindu Association, Rangoon, the Pleaders' Association, Rangoon, and the Mandalay Bar Association were consulted; but no replies have been received from the last three Associations although it is now nearly two months since they were first addressed on the subject and although they were reminded about a month ago that the Local Government's reply was due in India on the 1st May 1930. The Hon'ble Judges do not desire to offer any remarks on the Bill, and the Burma Indian Chamber of Commerce also have no views to offer on the same. But the Nattukkottai Chettyars' Association say that they are in sympathy with the objects of the Bill on the understanding that the provisions thereof are applicable to Arya Samajists only, and desire that a further provision be made in the Bill that the succession of issues of such marriages will be governed by Hindu Law. The Hindu Sabha, Rangoon, and the Rangoon Bar Library Association, have pointed out certain defects in the Bill; and copies of their views are forwarded herewith for the information of the Government of India.

4. The Local Government understands from the Extracts from Legislative Assembly Debates which were forwarded with your letter under reply that it is not only the Arya Samajist community which will be affected by the proposed measure but the Hindu community generally, and that the matter is one of some acute controversy in India. In view of the fact that there are in Burma comparatively very few members of either community, the Governor in Council feels that he is not in a position to offer any useful opinion on the subject

Copy of letter dated the 29th March, 1930, from the Honorary Secretary, Hindu Sabha, Rangoon, to the Secretary to the Government of Burma, Judicial Department.

I BEG to acknowledge with thanks a copy of the Arya Marriage Validation Bill with copies of extracts sent with your Judicial Department letter No. 194-W.-30, dated the 10th March, 1930, and to forward herewith the views of the Hindu-Sabha, Rangoon (in duplicate) as desired on the proposed measure.

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*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

From the standpoint of the Hindu-Sabha, we think that Inter-marriages among the members of the different sects will help the unification of Hindus. But we think Inter-marriages in general cannot be practicable at the present moment.

The present Bill aims at the recognition on Inter-marriages among the members of the Arya-Samajists which are being solemnized every day. But we are afraid that the definition of the term "Arya-Samajists" is very wide. We think clause (b) of section 2 and the last four lines of clause (c) of the same section should be omitted from the proposed bill. The proposed law should be confined to the members of the Arya-Samaj or to persons who declare themselves as Arya-Samajists and their descendants.

✓ We agree with the underlying idea of the bill and with the modification noted above we support the same.

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Copy of letter dated the 10th April, 1930, from the Honorary Secretary, Bar Library Association, Rangoon, to the Secretary to the Government of Burma, Judicial Department, Rangoon.

SUBJECT :—*The Arya Marriage Validation Bill.*

WITH reference to your letter dated the 10th March, 1930, No. 194-W.-30, and the subsequent reminder dated the 9th April 1930, I have the honour to forward herewith the opinion of the Rangoon Bar Library Association.

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*The Arya Marriage Validation Bill.*

The bill as framed appears to be very defective. It may be desirable to validate marriages contracted between parties who are both Arya Samajists. But clause 3 of the bill does not make this clear and is defective.

The desirability or otherwise of validating marriage between Arya-Samajists who belong to different religions is a question to be decided by the Arya Samajists themselves.

While it is sought by the bill to validate marriages between Arya Samajists there are no provisions in the bill relating to inheritance and complications may arise in regard to questions connected therewith. It does not appear therefore to be advisable to have the bill for validation of such marriage without incorporating provisions as to the devolution of inheritance in case of such unions.

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**PUNJAB.**

From C. M. G. OGILVIE, Esq., C.B.E., I.C.S., Home Secretary to Govern- **No. 13.**  
ment, Punjab, to the Secretary, Legislative Assembly Department,  
Simla, No. 348-S.-Judl., dated Simla, the of May, 1930.

SUBJECT :—*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

WITH reference to your letter No. F-153-I-28-A., dated the 11th February, 1930, enquiring the opinion of the Governor in Council and other selected officers on the Arya

Marriage Validation Bill moved by Mr. Mukhtar Singh, I am directed to forward copies of the undermentioned correspondence.

Copy of a letter—

- (1) No. 3061-Genl./XVI-B.-26, dated 1st May, 1930, from the Registrar, High Court of Judicature at Lahore, with enclosure.
- (2) No. 1044, dated 28th March, 1930, from the Legal Remembrancer to Government, Punjab to the Home Secretary to Government Punjab, with enclosure.
- (3) No. 436, dated 9th April, 1930, from Commissioner, Ambala.
- (4) No. 247, dated 9th April, 1930, from Deputy Commissioner, Kangra, to Commissioner Jullundur, with Commissioner's endorsement thereon.
- (5) No. 304, dated 14th April, 1930, from Commissioner, Lahore.
- (6) No. 114/Hq., dated 6th May, 1930, from Commissioner, Rawalpindi, with enclosures.
- (7) No. 645, dated 22nd April, 1930, from Commissioner, Multan.
- (8) No. nil, dated 14th April, 1930, from the Joint Secretary Bar Association, Jullundur.
- (9) No. nil, dated 29th April, 1930, from Honorary Secretary Bar Association, Multan.
- (10) No. 12017, dated 11th April, 1930, from the Secretary, the Arya Pratinidhi Sabha, Punjab.
- (11) No. 2600, dated 24th April, 1930, from the Secretary, Arya Pradeshik Pratinidhi Sabha, Punjab, Sindh and Baluchistan, Lahore.

2. The Governor in Council prefers to express no opinion on the principles of the bill. He is however of opinion that any such enactment if passed should apply only to marriages between professing Arya Samajists (a term which requires most careful definition) and their children, natural or adopted, and not to the marriages of their wards and other dependents. He also considers that such a bill should contain a clause defining the law of inheritance which will apply in these cases.

3. I am to add that the Bill and the Statement of Objects and Reasons has been published in the English editions of the Punjab Gazette, dated the 21st and 28th March and 4th April, 1930 and in vernacular editions dated the 14th, 21st and 28th March, 1930.

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Copy of a letter No. 3061-Genl./XVI-B.-26, dated the 1st of May, 1930, from the Registrar, High Court of Judicature at Lahore to the Home Secretary to Government, Punjab.

SUBJECT:—*Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

In reply to your letter No. 7913-Judl., dated the 11th of March, 1930, on the subject noted above, I am directed to forward a copy of the opinions recorded by the Hon'ble Justices Agha Haidar, Jai Lal, Tek Chand, Addison and Broadway, together with a copy of the opinion recorded by the Hon'ble the Chief Justice. The Hon'ble Judges who have not recorded separate notes concur generally in the opinion of Mr. Justice Agha Haidar. The opinions of certain selected District and Sessions Judges are also forwarded.

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### *Opinions.*

The Bill on the whole is a crude document, and I am afraid the Parliamentary draftsmen would find it difficult to give it proper shape and finish. So far as the adults are concerned, there is no reason why two Arya Samajists, belonging to opposite sexes, should not be allowed to marry if they choose to do so. Children are supposed to be born in the religion of their parents and they can also be married by their Arya Samajist parents according to Arya Samajist rites. But in my judgment, the marriage of a relative or a dependent or a ward, while he or she is helpless and living under the care and tutelage of an Arya Samajist should not be allowed if it is contrary to the notions entertained by the religious sect to which he or she belongs by birth. The child should be left to make the choice when he or she reaches the marriageable age allowed by law. So much about section 2 (b) of the draft Bill.

The same criticism applies to clause (c) of that section. Besides, I am not in favour of a post-marital declaration such as is contemplated in this clause. When two persons have been living as man and wife for some time, they may by force of necessity and not by free will be persuaded to make the declaration in order to prevent the breaking of the marital tie which binds them.

Section 3 goes too far. It would create difficulties when questions of inheritance and succession would arise, because, though the Arya Samajists profess to be governed by the Hindu Law, the rest of the Hindu community, who are non-Arya Samajists, have their own views on questions of succession and inheritance and they would be reluctant that their property should go to persons who are the offspring of a union which is not lawful according to their religious ideas and is distasteful to their sentiments and instincts. The words 'different religion' in section 3 are full of dangerous possibilities and are likely to create trouble in which even non-Hindu communities might conceivably be involved. In my opinion the best thing would be to delete these words altogether from the draft.

(Sd.) AGHA HAIDAR,  
Judge.

14th April, 1930.

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I see no objection to the provisions of Bill and therefore support it. The aim is, apparently, to validate *inter caste* and *inter-communal* marriages and there can be no valid opposition to it.

(Sd.) JAI LAL,  
Judge.

24th April, 1930.

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I support the principle, underlying the Bill. A few changes may be necessary in the phraseology of clauses (2) and (3), but this can be done in the Select Committee.

(Sd.) TEK CHAND,  
Judge.

24th April, 1930.

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I can see no objection to the principle underlying the Bill.

(Sd.) J. ADDISON,  
Judge.

24th April, 1930.

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I can see no objection.

(Sd.) A. B. BROADWAY,  
Judge.

24th April, 1930.

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The principle underlying the Bill has my hearty support.

(Sd.) SHADI LAL,  
Chief Justice.

24th April, 1930.

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Copy of a letter No 443, dated the 1st April, 1930, from the District Judge, Hoshiarpur, to the Registrar, High Court of Judicature, Lahore.

With reference to your letter No. 2126-Genl. XVI-B-26, dated 25th March, 1930, in which you ask for an expression of my opinion on the Arya Marriage Validation Bill I have the honour to say that I am in entire agreement with the object of the bill, but it does not seem to have been skilfully drafted. The words "a member of the family of" do not convey any exact meaning. It would be better to be more precise. It should be made quite clear what the law of succession will be in the case of the children of such marriages.

Copy of a letter No. 307, dated 7th April, 1930, from the District Judge, Karnal, to the Registrar, High Court of Judicature, at Lahore.

WITH reference to your letter No. 2126-Genl./XVI-B.-26, forwarding the Arya Marriage Validation Bill for my opinion, I have the honour to submit as follows:—

It cannot be gainsaid that the Aryas do not believe in caste system and they do constitute an important and influential section of the Hindu Community in the Punjab and the U. P. The necessity for the proposed legislation does therefore exist, with a view to remove all doubts concerning the validity of such marriages and the legitimacy of their issue.

As regards the definition of an Arya Samajist, I venture to think that the same is worded a little too widely, that clause (b) should be confined to a person under the guardianship of an Arya Samajist only and that clause (c) should be amended accordingly.

As regards clause 3, it should be redrafted so as to bring out clearly that the spouses must both be Arya Samajists at the time of the marriage, their previous caste, sub-caste or religion being of course quite immaterial. A further clause should be added to make it clear that the succession in such cases shall be governed by the system of Hindu Law prevalent in the locality concerned.

I see no objection to the retrospective effect sought to be given by Clause I Sub-Clause 2, provided of course, the marriage comes within the purview of Clause 3 as amended.

Copy of a letter No. 490, dated the 4th April, 1930, from the District and Sessions Judge, Lahore, to the Registrar, High Court of Judicature at Lahore.

In answer to your letter No. 2126-Genl./XVI-B.-26, dated the 25th March, 1930, I give below my remarks on "The Arya Marriage Validation Bill".

Even if the term "Arya Samajist" conveys as definite an idea to a Hindu as, say, "Roman Catholic" does to a Christian, yet the writer is of opinion that in a general law of this nature which may be administered by judges of other religions the term should be made quite clear by a definition being added of "an Arya Samaj". Further, as all the members of Arya Samajist's family are not necessarily themselves Arya Samajists, sub-clause (b) of clause (2) of the Bill should be altered, as otherwise any "member of the family" of an Arya Samajist would be dragged into the scope of the proposed Act although he might not be an Arya Samajist. Then, clause (3) does not seem to express the real intention of the Bill, viz., to legalise marriages between persons who at the time of the marriage are both Arya Samajists. Last, the writer is not in favour of piecemeal legislation of this kind and would prefer to see recognition of some purely civil (non-religious) form of marriage.

Copy of a letter No. 1083, dated the 2nd April, 1930, from Sardar SEWARAM SINGH, B.A., LL.B., District and Sessions Judge, Multan, to the Registrar, High Court of Judicature at Lahore.

WITH reference to your letter No. 2126-Genl.-XVI-B.-26, dated 25th March 1930, calling for my opinion on the Arya Marriage Validation Bill, I have the honour to state as follows:—

There are two provisions in this bill which seem to me to offend all juristic notions. All marriage legislation in its very nature ought to be merely an enabling provision, without entirely upsetting the laws and traditions of people who are not supposed to be governed by it. The operative clause legalizes marriages of a couple that may belong even to *different* religions, any law or usage or custom to the contrary notwithstanding. This means that if a Hindu marries a Musalmani, without the latter being converted to Hinduism, even if such conversion were legally and religiously permissible, the marriage, which would be invalid under the Islamic Law, would be valid. This will happen even if, at the time of the marriage, neither of the couple is an Arya Samajist. Clause 2 sub-clause (c) enables an *ex post facto* declaration of the parties being Arya Samajists. That is to say, a marriage, which at the time of its solemnisation was invalid, and sexual connection between the parties consequently illegal, may become valid, if within a year of its solemnisation, the parties may declare themselves to be Arya Samajists. It is not stated anywhere in the bill how such a marriage may be solemnised. It may or may not be performed according to Arya rites or even according to Hindu ceremonies. The provisions of clauses 2 (c) and 3 when read together in my opinion are so drastic that they would affect not only the members of the Arya Samaj but also people belonging to other sects and religions in the country which it does not appear to be in contemplation that they should do. In my opinion the bill requires considerable modification before it can be enacted.

Copy of a letter No. 96/H., dated the 1st of April, 1930, from the District and Sessions Judge, Azbala, to the Registrar, High Court of Judicature at Lahore.

WITH reference to your letter No. 2126-Genl.-XVI-B.-26, dated 25th March, 1930, forwarding for opinion a copy of the Arya Marriage Validation Bill.

There seems to be a printer's error in para. 2, the conjunction 'or' is between sub-clauses (a) and (b), but there is no conjunction between sub-clauses (b) and (c).

The definition of the words "Arya Samajist" seems to be too wide; a relative dependent on an Arya Samajist may include an adult son, whose religious view may be different from that of his father, and it does not seem right that because the father may become an Arya Samajist, the son also should automatically have to become one; it is also conceivable that a person under the guardianship of an Arya Samajist might be a member of another religion.

The opening words of para. 3 "No marriage of an Arya Samajist" should in my opinion, be "No marriage between Arya Samajists".

Copy of a letter No. 1044, dated the 28th March, 1930, from the Legal Remembrancer to Government, Punjab, to the Home Secretary to Government, Punjab.

WITH reference to your endorsement No. 7914/Judl., dated 11th March, 1930, I have the honour to forward opinions by Mr. R. C. Soni, Assistant Legal Remembrancer (Legislative) and D. Ram Lal, Assistant Legal Remembrancer (Conveyancing). The other officers of the Law Department have no remarks to offer.

*Copy of an opinion recorded by Mr. C. C. Soni, A. L. R. (Leg.)*

THE bill is defective as drafted.

In clause 2 (b) an Arya Samajist "shall mean a person who is a member of the family of, or a relative dependent on, or a person under the guardianship of any person mentioned in clause (a)".

This definition is unnecessarily wide. The relatives and wards need not be Arya Samajists. This would be tantamount to interference with the liberty of conscience of those persons.

Again the word "family" in this definition is vague. Does it mean lineal descendants only? Would it not include a brother or sister, a nephew or niece?

In clause 2 (c) these various persons are again mentioned.

In clause 3 "no marriage of an Arya Samajist shall be invalid by reason of the couple having belonged.....to different religions". This legalizes marriages between parties one of whom is an Arya Samajist and the other, say, a Mohammanadan or Christian. This is a departure from any interpretation of Hindu Law whether orthodox or protestant. It is very doubtful whether a marriage ceremony would be performed by an Arya Samajist present unless both parties are Arya Samajists.

*Copy of an opinion recorded by D. Ram Lal, A. L. R. (Con.).*

In my opinion the bill deserves support. Further, though I recognize that the definition of an Arya Samajist is wide as drafted I would be inclined to leave it so. It does not seem to me to be unnecessarily wide. The Act will be permissive and be liberally construed.

That there is an element of vagueness in the draft in so far as the word "family" has not been defined, I would make an attempt to define "family" and in doing so alter the language of clause 2 (b).

I can personally see no objection to giving validity to marriages where one of the parties belong to a different religion. This matter is one which is likely to raise a good deal of protest amongst Hindus for it would conflict with all traditional notions of Hindu family life and the nature of Hindu marriages. It would probably also be opposed to certain well established rules of Hindu Law but the legislature can vary these. Personally therefore though I would welcome this part of the Bill, I fear it will not be acceptable to Hindu society as a whole, and for the vast majority, the change in the law will be too sudden to be acceptable.



Copy of a letter No. 436, dated the 9th April, 1930, from the Commissioner, Ambala Division, to the Home Secretary to Government, Punjab.

SUBJECT:—*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

WITH reference to your Circular endorsement No. 7914-Judl., dated the 11th March, 1930, I have the honour to forward my opinion on the above mentioned bill.

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*Opinion.*

The definition makes Arya Samajists of all members of the family of an Arya Samajist. It is not clear what meaning is applied to the expression member of the family, it might mean not only sons or daughters but grand children and great grand children to the remotest degree. For the words "member of the family" should be substituted "minor son or daughter" in clause 2 (b) and 2 (c).

Provision should be made for the revocation of the document referred to in clause 2 (c).

(Sd.) MILES IRVING,

*Commissioner.*

5th April, 1930.

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Copy of a letter No. 247, dated the 9th April, 1930, from Kunwar RAGHBIR SINGH, O.B.E., Deputy Commissioner, Kangra District, Dharmsala, to the Commissioner, Jullundur Division, Jullundur City.

SUBJECT:—*The Arya Marriage Validation Bill Mr. Mukhtar Singh.*

I HAVE the honour to refer to your endorsement No. 1827, dated the 20th of March, 1930, on the subject cited above, and to say that Secretary, Bar Association, Dharmsala, and the President, Arya Prati Nidhi Sabha, Dharmsala, were consulted on the subject. They are in favour of the proposed bill. I agree with them.

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Endorsement by Commissioner, Jullundur Division, No. 2558, dated the 16th April, 1930.

COPY forwarded to the Home Secretary to Government, Punjab, with reference to his endorsement No. 7914-Judicial, dated the 11th March, 1930.

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Copy of a letter No. 304, dated the 14th April, 1930, from the Commissioner, Lahore Division, to the Home Secretary to Government, Punjab.

SUBJECT:—*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

WITH reference to your endorsement No. 7914-Judl., dated the 11th March, 1930, I have the honour to say that after consulting certain selected Deputy Commissioners of this Division I have the following observations to make:—

2. The definition of an "Arya Samajist" given in clause (2) is far too wide. As worded it would entitle an Arya Samajist to impose his own social and religious ideas upon persons who are members of his family or who are dependent on him, or who are under his guardianship.

3. The intention of the Bill is *prima facie* sound, but it requires drastic alteration before it can be passed into law. In my opinion Government would be well advised to maintain an attitude of strict neutrality on the principle of the Bill.

Copy of a letter No. 114/Hq., dated the 6th of May, 1930, from SHAIKH ASCHAR ALI, C.B.E., I.C.S., Commissioner, Rawalpindi Division, Rawalpindi, to the Home Secretary to Government, Punjab, Lahore.

SUBJECT:—*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

WITH reference to your endorsement No. 7944-Judicial, dated the 11th of March, 1930, on the above cited subject, I have the honour to forward copies of the undermentioned letters and to say that I entirely agree with the opinion expressed by Rai Sahib Lala Wazir Chand, Additional District Magistrate, of Rawalpindi.

- (1) Deputy Commissioner, Rawalpindi's letter No. 259/G., dated 1st April, 1930, with its enclosure, namely Rai Sahib Lala Wazir Chand's note.
- (2) Deputy Commissioner, Mianwali's letter No. 151/U. X-52, dated 5th April, 1930, with its enclosure.

2. Before the Bill is passed it is absolutely necessary to make it clear, with reference to clause 3 of the Bill, that both the parties should be Arya Samajists at the time of marriage.

3. The definition of an Arya Samajist also needs restricting and should include only those male and female adults who, before an officer appointed by Government, of their own free will declare themselves to be Arya Samajists. There is no reason why members of the family of, or relatives dependent on, or wards under the guardianship of members of, an Arya Samaj should also be considered Arya Samajists. Otherwise there is a general belief amongst non-Arya Samajist Hindus and other religionists that this Bill is a thin edge of the wedge of a proselytizing propaganda.

4. Another important question should also be tackled before the Bill is allowed to pass into law, and that is what law of inheritance should govern the progeny of the unions to be validated by the proposed Bill.

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Copy of a letter No. 259/G., dated the 1st April, 1930, from C. C. GARBETT, Esq., C.M.G., C.I.E., F.R.G.S., I.C.S., Deputy Commissioner, Rawalpindi District, to SHAIKH ASCHAR ALI, C.B.E., I.C.S., Commissioner, Rawalpindi Division.

WITH reference to your endorsement No. P.-XII-212/191-Cir., dated 20th March, 1930, on the subject of the Arya Marriage Validation Bill by Mr. Mukhtar Singh, I have the honour to transmit copy of an opinion furnished by Rai Sahib Lala Wazir Chand, Additional District Magistrate Rawalpindi, with which I concur.

The debate in the Legislative Assembly has thrashed out all points in connection with this proposed bill and there is really nothing which I can add.

There is no quarrel with the object of the bill provided it only affects Arya Samajists. The present clause (3) is certainly ambiguous, although the manner of bill admits that he does not intend it to apply to persons who have not been converted to Arya Samaj before entering into marriage. This clause should be amended to this effect.

I object to the definition of an Arya Samajist being so wide as to include all members of the family or relative dependents or wards of an Arya Samajist. I confess I am not an Arya Samajist but I certainly know some of the families, the head of which is an Arya Samajist but whose family members are not so. I would therefore include in the definition only those members of the family who after attaining majority declare themselves to be such. The word "family" needs also to be defined. This term should include the wife of wives (as the case may be), sons and unmarried daughters but no other relatives. Similarly I would not include in the definition any relative dependents or wards. The point is that Arya Samajists are not a community in the course in which Hindus and Mohammdans are. In the case of the latter, a member born in their community is presumed to have the religion of the community in which he is born, i.e., a child born with Hindu parents is a Hindu and a child born with Mohammdan parents is a Mohammdan until he changes his religion voluntarily. But this cannot or at least is not the case with Arya Samajists, so far as I know. It is not rare that the wife of an Arya Samajist husband be a Sanatanist and that by her force of will she may succeed in growing up her children in her own religion and not in that of the husband.

Again, it is frequent that the sisters or brothers of an Arya Samajist, though dependent upon him, would not be Arya Samajists. Therefore to call them as such merely because they are dependents is certainly causing a revolutionary change in the existing social system.

- (Sd.) WAZIR CHAND.

Copy of a letter No. 151-U.-X.-52, dated the 5th April, 1930, from Lala RADHA KISHAN, M.A., P.C.S., Deputy Commissioner, Mianwali, to Shaikh ASGHAR ALI, C.B.E., I.C.S., Commissioner Rawalpindi, Division, Rawalpindi.

WITH reference to your office endorsement No. P.-XII-212/191-Cir., dated 20th March, 1930, on the subject of the Arya Marriage Validation Bill, I have the honour to enclose herewith a copy of the opinion of the local Arya Samaj. The Hindu community in general will not support, I believe, the provisions of this bill but as its operation is confined only to the Arya Samajists I see no objection to its being passed into law, as the persons to be affected thereby are wholeheartedly in its favour.

A general meeting was held in the Arya Samaj Mandar on 30th March, 1930. The Arya Marriage Validation Act was put before the house for discussion. After full discussion the house unanimously passed the resolution in favour of the bill.

(Sd.) BRIJ LAL,  
Secretary, Arya Samaj.  
Mianwali.

The 30th March, 1930.

Copy of a letter No. 645, dated the 22nd April, 1930, from the Commissioner, Multan Division, to the Home Secretary to Government, Punjab.

SUBJECT:—*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

WITH reference to your endorsement, No. 7914-Judl., dated the 11th of March, 1930, on this subject, I have the honour to say that, so far as I am competent to judge, after consulting certain authorities in the Multan Division, the Bill is an important piece of social reform and should be generally welcomed. Clause 2 seems too vaguely worded, especially in regard to the inclusion of a person under guardianship. In order to avoid diversity of opinion on the proposals contained in clauses 2 and 3 of the Bill, it should be made clear that the Bill will affect Arya Samajists only.

Copy of a letter No. Nil, dated the 14th April, 1930, from the Joint Secretary, Bar Association, Jullundur City, to the Home Secretary to Government, Punjab.

REFERENCE:—*Your No. 7915-Judl., Lahore, 11th March, 1930.*

I HAVE the honour to submit the following resolution passed at an Extraordinary meeting of the Jullundur Bar Association held to-day, the 14th instant, to consider the Arya Marriage Validation Bill by Mr. Mukhtar Singh, M.L.A., and to express our views thereon:—

“Resolved unanimously that the members of the Bar Association Jullundur wholeheartedly endorse and support the provisions of the Arya Marriage Validation Bill and opine that the sooner the Bill is passed into law, the better it would be for the persons concerned, as the measure is long overdue and would dispel all doubts on the point involved.”

Copy of a letter No. Nil, dated the 29th April, 1930, from the Honorary Secretary, Multan Bar Association, to the Home Secretary to Government, Punjab.

WITH reference to your letter No. 7915-Judl., dated 6th March, 1930, I have the honour to forward you herewith the opinion of the Bar Association, Multan, on the—

“Arya Marriage Validation Bill.”

Multan Bar Association is of opinion that if any class of people wants any legislation for themselves only which is not opposed to public policy or moral and which does not affect the interests of any other class or community adversely, the Legislature should have no objection to comply with their wishes. It is an admitted fact that Arya Samajists as a class are keen on some enactment validating their inter-caste marriages, but the present bill is defective in many ways. The definition of an Arya Samajist is very wide. It should be restricted and only apply to those Arya Samajists who declare themselves to be such and to none else. In this age of advancement, a relative dependent or a person under the guardianship of an Arya Samajist is not necessarily an Arya Samajist, therefore it is not fair and proper to include such person in the definition, and clause (b) of section 2 be altogether *deleted* and the words "or in terms equivalent thereto; and includes the members of the family of relatives dependent on and person under the guardianship of such a person" be also *deleted*. Section 3 is not happily worded. A proviso that the couple must be Arya Samajist at the time of marriage should be added to it. As a very large majority of Arya Samajists are willing and in practice follow Hindu Law, there would not be much difficulty with regard to succession or inheritance, if Arya Samajists once for all decide whether to follow *Mitkashara* or *Dayabhaga* Law. If they are keen to have this enactment, it is essential for them to declare that they will all be governed by one of the above schools of Hindu Law, otherwise there is bound to be some conflicts of law with regard to succession and inheritance.

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Copy of a letter No. 12017, dated the 11th April, 1930, from the Secretary, The Arya Pratinidhi Sabha, Punjab, to the Home Secretary to Government, Punjab.

SUBJECT:—*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

IN answer to your letter No. 7913-Judicial, I beg to inform you that our society fully supports this piece of legislation and strongly urges upon the Legislature its early adoption.

Our society would like to so amend clause 3 of the Bill as to remove all ambiguity and make it perfectly plain that what is intended is to place beyond doubt the validation of inter-marriage of Arya Samajists. The said clause may read as follows:

No inter-marriage of Arya Samajists shall be invalid by reason of the couple having previously belonged to different castes or sub-castes of the Hindus or to different religions, any law or usage or custom to the contrary notwithstanding.

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Copy of a letter No. 2600, dated the 24th April, 1930, from the Secretary, Arya Pradeshik Pratinidhi Sabha, Punjab, Sindh and Baluchistan, Lahore, to the Home Secretary to Government, Punjab.

IN reply to your letter No. 7915, dated 6th March, 1930, I have the honour to report that this Sabha is in favour of the Arya Marriage Validation Bill introduced by Mr. Mukhtar Singh. Of course it requires minor modifications as regards drafting, etc., which can well be affected by the Select Committee.

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### BENGAL.

From A. J. DASH, Esq., I.C.S., Secretary to the Government of Bengal, **No. 14.** Education Department, Darjeeling, to the Secretary to the Government of India, Legislative Assembly Department, No. 419-T.-Regn., dated the 19th May, 1930.

SUBJECT:—*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

I AM directed to refer to your letter No. F.-133-I/28-A., dated the 11th February, 1930, regarding the Arya Marriage Validation Bill, introduced by Mr. Mukhtar Singh in the Legislative Assembly, and to report that the Bill with Statement of Objects and Reasons was re-published in the Calcutta Gazette, dated the 21st November 1929. As there are very few Arya Samajists in this province, it was not considered necessary to publish any vernacular translations of the Bill.

2. As desired by the Government of India, selected officers and other persons and associations have been consulted by this Government. Copies of the replies received so far from the persons and associations enumerated in the accompanying list are submitted for the consideration of the Government of India. The opinions of others, who have not replied yet, will be forwarded on receipt.

3. The Government of Bengal in the Ministry of Education are of opinion that the Bill, as introduced in the Legislative Assembly, is not acceptable and should be opposed at all stages on the ground that—

- (a) it does not make clear that both contracting parties should be Arya Samajists;
- (b) the definition of Arya Samajist, as given in clause 2 of the Bill, does not confine the operation of the Bill to Arya Samajists proper; and
- (c) the Bill does not regulate succession.

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*List of officers, persons and associations whose replies have been received so far.*

1. The Venerable the Archdeacon of Calcutta.
2. The District Bar Library, Chittagong.
3. The Inspector-General of Registration, Bengal.
4. The Marwari Association, Calcutta.
5. The Commissioner of the Chittagong Division.
6. The Commissioner of the Rajshahi Division.
7. The Hooghly Bar Association.
8. The Bangadeshiya Kayastha Sabha, Calcutta.
9. The Hon'ble Mr. Justice Manmatha Nath Mookherjee, Judge, High Court, Calcutta.
10. The Secretary, Adi Brahma Samaj, Calcutta.
11. The Assistant Secretary, Bharat Barshiya Brahma Mandir, Calcutta.
12. The Commissioner of the Burdwan Division.
13. The Secretary, Bangiya Brahman Sabha, Calcutta.
14. The District Moslem Association, Midnapore.
15. The Commissioner of the Dacca Division.
16. The Commissioner of the Presidency Division.
17. The Indian Association, Calcutta.
18. The British Indian Association, Calcutta.

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Copy of letter dated the 26th March, 1930, from the Venerable JOHN GRIMES, Archdeacon of Calcutta, to the Assistant Secretary to the Government of Bengal, Education Department.

I HAVE the honour to acknowledge your letter No. 313-Regn. of the 24th instant enclosing copy of the Arya Marriage Validation Bill and to say that as the provisions do not affect Christian marriage I have no opinions to offer upon it.

I return copy of the Bill herewith.

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Copy of letter No. 4, dated the 31st March, 1930, from NAGENDRA LAL DAS, Esq., Secretary, Bar Association, Chittagong, to the Assistant Secretary, to the Government of Bengal, Education Department.

With reference to your letter No. 323-Regn., regarding Arya Marriage Validation Act, I have the honour to inform on behalf of my association that my association has nothing to say against the Bill

Copy of letter No. 232-C. M., dated the 4th April, 1930, from Rai J. N. Ray Bahadur, M.A., B.L., I.S.O., Inspector-General of Registration, Bengal, Calcutta, to the Secretary to the Government of Bengal, Education Department.

With reference to Government letter No. 297-Regn., dated the 22nd March, 1930, inviting opinion on the provisions of the Arya Marriage Validation Bill, I have the honour to state as follows:—

As the Bill is introduced to meet the desire of the Arya Samajists, there seems to be no objection to the Bill so long as it does not affect other communities. The provisions of the Bill, however, a drafted at present appear to be open to the following objections inasmuch as it affects communities other than the Arya Samajists.

Section 2, which defines an Arya Samajist, is far too wide and includes persons who are not members of the Arya Samaj. This definition should be so amended as to preclude a person who is not an Arya Samajist himself.

Section 3 read with the present definition of an Arya Samajist would seem to validate certain marriages which under the existing Hindu or Muhamadan Law are illegal, e.g., marriage between a Hindu and a Muhamadan. This section should therefore be so amended as to preclude the possibility of validating such marriages.

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Copy of letter No. 47—1930, dated the 7th April, 1930, from the Honorary Secretary, Marwari Association, Calcutta, to the Assistant Secretary to the Government of Bengal, Education Department.

With reference to your letter No. 331-Regn., dated the 24th March, 1930, forwarding a copy of the Arya Marriage Validation Bill by Mr. Mukhtar Singh, M.L.A., for an expression of the opinion of this association on the provisions thereof, I am directed by the committee of the association to observe as follows:—

From the statement of objects and reasons it appears that the proposed law is intended to secure that inter-caste marriages among Arya Samajists, who do not believe in the caste system of the Hindus, may not be declared invalid and their children illegitimate under the Hindu law, which makes the equality of caste of the parties to a marriage an indispensable condition and does not recognise the union of men and women of different castes or religions as valid marriage. The provisions of the Bill, however, go far beyond what is stated in the statement of objects and reasons. Under clause 2 of the Bill which defines the term "Arya Samajist," not only a member of an Arya Samaj but the other members of his family too, as also the relatives dependent upon him and even persons under his guardianship, will be Arya Samajists. Then, clause 3 lays down that the marriage of an Arya Samajist shall not be invalid by reason of the married couple having belonged to different castes or sub-castes of Hindus, or even to different religions. It is thus quite clear that if the Bill is passed into law a member of the Hindu society, having joined the Arya Samaj and married outside his caste or religion in defiance of the Hindu Shastras, will still be entitled to call himself a Hindu and remain in the Hindu joint family and society with his wife of another caste or religion. Mr. Mukhtar Singh's speech in the Assembly in moving for a Select Committee for the Bill also makes it clear that such is really the object of the Bill and not as set forth in the statement of objects and reasons.

In the opinion of my Committee, however, it is asking too much. It is one thing to openly break away from Hinduism, contract a marriage in an un-Hindu fashion and then ask for a law for the validation of that marriage, but quite a different thing to contract a marriage against the Hindu law, usage and custom and yet ask for a law to be allowed to enjoy all the benefits and advantages of the Hindu marriage system as if it was a Hindu marriage. No Hindu having any respect for his own religious and social laws and customs can possibly agree to it, and my committee feel they cannot condemn the Bill too strongly.

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Copy of letter No. 1698-G., dated the 9th April, 1930, from M. A. MUMIN, Esq., Khan Bahadur, Officiating Commissioner, Chittagong Division, Chittagong, to the Secretary to the Government of Bengal, Education Department.

I HAVE the honour to refer to Government letter No. 302-Regn., dated the 22nd March, 1930, asking for my opinion on the provisions of the Arya Marriage Validation Bill, and to say that, in my opinion, the definition clause 2 (b) is very wide and vague. I would suggest in its place the following:—

"(b) is a minor and belongs to the family of a member of any Arya Samaj or born of parents who are members of any Arya Samaj."

I would make similar alteration in clause (c).

As regards section 3, I would suggest the following modification:—

“No marriages in which both the contracting parties are Arya Samajists shall be invalid by reason of those parties having previously belonged to different castes or sub-castes of Hindus or to different religions, any law, or usage or custom to the contrary notwithstanding.”

I have no other objection to this Bill.

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Copy of letter No. 1612-J., dated the 11th April, 1930, from R. N. REID, Esq., I.C.S., Officiating Commissioner of the Rajshahi Division, Jalpaiguri, to the Secretary to the Government of Bengal, Education Department.

WITH reference to Mr. Sarkar's letter No. 301-Regn., dated the 22nd March, 1930, asking for my opinion on the provisions of the Arya Marriage Validation Bill introduced in the Legislative Assembly by Mr. Mukhtar Singh, I have the honour to state that there are so few Arya Samajists in Bengal that the Bill is of little practical interest. I would add that, inspite of Mr. Mukhtar Singh's somewhat subtle distinctions, there seems little need to supplement the Special Marriage Act, 1872, with the provision of this Bill.

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Copy of letter No. 26, dated the 11th April, 1930, from Babu PRASAD DAS MALLIK, B.L., Secretary, Hooghly Bar Association, Chinsurah, to the Assistant Secretary to the Government of Bengal, Education Department.

WITH reference to your No. 320-Regn., dated the 24th March, 1930, I have the honour to state that the Arya Marriage Validation Bill was placed before the members of my association at a meeting and they were unanimously of opinion that there was nothing objectionable in the Bill and that it should be passed.

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Copy of letter dated the 12th April, 1930, from Mr. M. L. BISWAS, Secretary, Bargadeshiya Kayastha Sabha, to the Assistant Secretary to the Government of Bengal, Education Department.

I NEG to acknowledge receipt of your letter No. 327-Regn., of the 24th ultimo, enclosing a copy of one Bill, to finally recognise and place beyond doubt the validation of inter-marriage of Arya Samajists as introduced in the Assembly, together with copies of the Assembly debate, and requesting for the expression of our opinion thereon.

In reply I am directed by my association to state that the Bill, as it appears, concerns the Arya Samajists alone and my association have very little in it to pass opinion on. In short they have no objection if the Bill is passed, neither if it is rejected.

But, with regard to clause 3, providing no invalidity of marriage on the ground of either of the couple belonging 'to different castes or sub-castes of Hindus or to different religions,' I am authorised to state that the clause, as it stands, may lead to confusion. Of course, the explanation for it as given by the mover makes it all right, but the clause must stand very explicit on that point. In other words, my association think it expedient to add the words "before being converted to Arya Samaj" after the expression "belonged to different castes or sub-castes of Hindus or to other religions".

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From MANMATHA NATH MUKHERJEE, Esq., to the Assistant Secretary to the Government of Bengal, Education Department.

I AM in receipt of your memorandum, dated the 24th ultimo, and beg to state in reply that as I am not an Arya Samajist I do not feel that I am competent to give any opinion on the proposed Bill (the Arya Marriage Validation Bill). All I can say is that I do not find anything unreasonable in it.

The enclosures are returned herewith.

Copy of letter dated the 15th April, 1930, from Babu KSHITINDRA NATH TAGORE, B.A., Secretary to Adi Brahma Samaj, to the Assistant Secretary to the Government of Bengal, Education Department.

*Regarding Mr. Mukhtar Singh's Bill for the validation of marriages of the Arya Samajists.*

In reply to your letter No. 340-Regn., in the Education Department, Registration Branch, dated the 24th March, 1930, enclosing a copy of the Arya Marriage Validation Bill introduced in the Legislative Assembly by Mr. Mukhtar Singh together with statement of objects and reasons and extracts from the Legislative Assembly Debates, dated the 21st January, 1930, and the 23rd January, 1930, regarding the Bill, asking for an expression of the opinion of the Adi Brahma Samaj on the provisions of the Bill, I have the honour to inform you that the Bill had been circulated to the members of the Samaj for an expression of their opinion on the same. The opinions received up to the 12th instant were placed before the executive committee of the Samaj at their meeting on the said date, viz., the 12th instant. The committee consider that—

- (1) the Bill seems to show signs of hasty drafting as there appear to be omissions on several important points;
- (2) in section 1(1) of the Bill the words "Arya marriage" should be replaced by the words "Arya Samajists' marriage" in order to make the Act applicable only to the religious sect called "Arya Samajists" and not to the Aryans of British India as a whole;
- (3) in section 1 (2) of the Bill after the words "to all cases" the words "of all marriages amongst the Arya Samajists" should be inserted;
- (4) in section 2 an effort has been made to define an "Arya Samajist" as being "a member of any Arya Samaj", but "Arya Samaj" has not been defined. It should be defined to include only the members of any Samaj professedly following the tenets of the late Swami Dayananda Saraswati;
- (5) sub-section 2 (b) should be *deleted* as it takes away the personal liberties of the persons referred to therein, particularly in their selection of a religion or a Samaj; owing to an act of the person who declares himself to belong to the Arya Samaj;
- (6) from the sub-section 2 (c) the words "and includes.....a person" should be *deleted* for reasons stated in paragraph (5) above;
- (7) in section 2 (c)—Explanation, mention has been made of registering the document mentioned in sub-section 2 (c) under the Indian Registration Act of 1908; whereas the Indian Registration Act does not seem to contemplate any document of the nature referred to in the said explanation.
- (8) In the last line but one of the said explanation the word "is" should be replaced by the word "was" with a view to allow subsequent liberty of action to the executant, if any.
- (9) After the word "notwithstanding" at the end of section 3 the following words should be inserted:—"provided that the couple had attained majority at the time of their marriage."
- (10) In the "statement of objects and reasons" after the word "invalid" the words "in some quarters" should be inserted.
- (11) No form of marriage has been referred to in the Bill.
- (12) The status of the marrying couples or of their children has not been mentioned in the Bill.
- (13) The Bill is silent also regarding one very important matter, viz., succession.
- (14) If and when the Bill is revised, the committee suggest that the scope of the Bill be so widened as to include the marriages of other monotheists who may desire to take shelter under the same.

Copy of letter No. 221-J. G., dated the 16th April, 1930, from P. H. WADDELL, Esq., I.C.S., Officiating Commissioner of the Burdwan Division, Chinsurah, to the Secretary to the Government of Bengal, Education Department.

With reference to your letter No. 299-Regn., dated the 22nd March, 1930, forwarding papers on the subject of the Arya Marriage Validation Bill for an expression of opinion on the provisions of the Bill. I have the honour to state that there can be no objection to the principle underlying the Bill as embodied in the preamble or as explained



in the statement of objects and reasons. Some needless complications as noted below have, however, arisen owing to the defective drafting of the Bill and they may be removed as suggested.

**CLAUSE 2 OF THE BILL.**—It defines the term "Arya Samajist". This definition is needlessly wide and is responsible for much of the hostile criticism levelled at the Bill. There is no reason why a person who is a member of the family of, or a relative dependent on, or a person under the guardianship of an Arya Samajist, should also be classed as an Arya Samajist. The same remark applies to the latter portion of sub-clause (c) beginning with the words "and includes". It should, in my opinion, suffice to include specifically within the meaning of the term "persons whose parents are Arya Samajists, unless such persons are adults and have embraced a different religion". The object of the Bill being merely to validate inter-marriage of Arya Samajists, there should be no objection to the amendment of the definition of the term "Arya Samajist" as suggested. This amendment will not preclude the relatives or other dependents of an Arya Samajist from taking advantage of this measure, if they so desire, for they will be free to come within its scope by means of a written declaration to that effect as provided for in the first part of sub-clause (c) of the Bill.

I am in favour of retention of the first part only of sub-clause (c) of the Bill after deleting the words "or in terms equivalent thereto" which are vague and may lead to complications.

**CLAUSE 3.**—It appears that considerable misgivings have been caused among Muhamadans by the words "or to different religions" occurring in this clause. As the scope of the Bill cannot be restricted only to marriages of persons belonging to different castes or sub-castes of Hindus, it is necessary that marriages among persons who professed Islam or Christianity before their conversion to Arya Samajists should also be validated by the proposed measure. The defective drafting of this clause is responsible for this opposition. Had it been made clear that at the time of the marriage both the persons concerned should be Arya Samajists as intended by the mover, and if this confusion had not been made worse confounded by the use of the singular in the expression "No Marriage of an Arya Samajist shall be invalid" as pointed out by the Hon'ble the Law Member, there would have been no objection to it. The whole clause should be so re-drafted as to make it quite clear that its provisions will not be applicable unless both contracting parties are Arya Samajists at the time of the marriage.

2. The Bill is, however, silent as regards the rights and disabilities of the issues of the marriages it seeks to validate. Probably the cases of new converts to Arya Samajists are now governed by the Caste Disabilities Removal Act, XXI of 1850. If deemed necessary, a provision may be made in the Bill to make this clear on the analogy of section 23 of the Special Marriage Act, III of 1872, as amended by Act XXX of 1923. But what is specially necessary is that the position of the children of marriages coming within the scope of the measure should be clearly defined so as to avoid future complications. It appears from the speeches of the supporters of the Bill in the Assembly that one of the reasons which has prevented the Arya Samajists from taking advantage of Sir H. S. Gour's amendment of the Special Marriage Act—Act XXX of 1923—is that they do not want their children to be governed by the Indian Succession Act as contemplated by section 24 *ibid*, but by the Hindu law. If this be the idea, they are quite welcome to do so and a clause to that effect may be added to the Bill. If, however, seems only fair to the other communities that these rights of succession should not extend to the properties of persons who continue to remain outside the pale of Arya Samajists; or, in other words, that the children of the marriages in question should be allowed to inherit the properties left by their parents or other Arya Samajist relatives in accordance with the Hindu law of succession, but not the properties of persons belonging to a different community or religion on the basis of their relationship to them through such parents or Arya Samajist relatives, unless those properties have first devolved on these latter persons in the usual course of law.

3. The District Magistrate of Bankura, whom alone I have consulted in the matter, has no objection to the provisions of the Bill provided at the time of marriage the couple are Arya Samajists, though they might belong to different castes or sub-castes of Hindus, or to different religions.

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Copy of letter dated the 16th April, 1930, from D. N. SEN, Esq., Assistant Secretary to the Congregation of the Bharatbarshiya Brahma Mandir (Church of the New Dispensation), Calcutta, to the Secretary to the Government of Bengal, Education Department.

On behalf of the members of the Congregation of the Bharatbarshiya Brahma Mandir (the Calcutta Congregation of the New Dispensation) I beg to acknowledge receipt of your letter No. 342-Regn., dated the 24th March, 1930, and to submit the following reply:—

The Calcutta Congregation of the Church of the New Dispensation cannot and does not support the Arya Marriage Validation Bill in the form in which it has been proposed, inasmuch as (1) the proposed Bill does not provide for monogamous marriages, but will

encourage polygamy which is against the principles of our Church, (2) the definition of an Arya Samajist is too wide and vague, (3) the short title of the Act is a misnomer, it should be the Arya Samaj Marriage Validation Act, (4) the provisions of section 3 are objectionable and (5) the Bill is silent as regards the law of succession which will govern persons marrying under the proposed Act.

This Congregation has, however, no objection if the proposed Act is so framed as to be applicable to and to be strictly confined to persons who are *bona fide* members of an Arya Samaj.

Copy of letter dated the 16th April, 1930, from the Secretary, Bangiya Brahman Sabha, Calcutta, to the Assistant Secretary to the Government of Bengal, Education Department.

WITH reference to your letter No. 325-Regn., dated the 24th March, 1930, I am directed by the Bangiya Brahman Sabha to forward to you the following expression of opinion on the provisions of the Arya Marriage Validation Bill introduced in the Legislative Assembly by Mr. Mukhtar Singh:—

*Varnashrama dharma* (caste system) is of the very essence of the Vedic-religion, a *sine qua non* of Hinduism.

*Asavarna vivaha* or inter-marriage between persons of different *varnas* is prohibited and condemned by the Vedic Shastras, and it has not been disputed by anybody that *asavarna vivaha* is so prohibited. But this prohibition obviously applies to Hindus only and to all Hindus. Those who do not believe in the caste system and who therefore are not Hindus cannot be affected by the prohibition of the Hindu Shastras.

So far as the Hindus are concerned the legislatures cannot interfere with what constitutes their religion and their personal law.

And as regards those who are not Hindus and to whom therefore the aforesaid prohibition cannot apply, there can be no occasion for any legislation to validate inter-marriages amongst themselves.

*Varnashrama dharma* (caste system), *pindadan* (the offering of *pinda* for spiritual benefit), pre-puberty marriage, are all cardinal essentials of Hinduism the religion of the Vedas. The Arya Samajists do not believe in any of these. They do not believe in the caste system, nor do they believe in *pindadan*.

Again the converting of a *vidharmi* (one born in a different faith or religion) into one's *swadharna* (one's own faith or religion) is not permitted by the Sanatana Vedic Dharma. The Hindu cannot convert one born in a different faith into the Vedic faith. Hinduism does not permit or recognise conversions. The Arya Samajists, however, believe in conversions, and in fact they have been chiefly concerned with and mostly active in what they call *shuddi* (conversion).

Moreover, Mr. Mukhtar Singh himself said in the Assembly "There are a number of Muhammadans, Christians, Sikhs and others who have joined the Arya Samaj. Their sons and their daughter have to be married. They are being married even to-day, but the question is about their status. They are not Hindus because, according to the opinion of some lawyers, the Hindu religion is considered not to be a proselytising religion, and therefore conversions are not recognised. But the Arya Samaj does believe in conversions; it has converted so many people."

How can a Samaj or body consisting of converts from amongst the ranks of Christians, Muhammadans, Sikhs and others, and of persons who discard and who flout and defy the cardinal essentials of Hinduism, the Sanatana Dharma of the Vedas, be said to constitute a sect or section of the Hindu community? From the speeches of the Arya Samajists members in the Assembly it is evident that although the Arya Samajists do not believe in and although they utterly defy all Shastric injunctions as regards (1) caste, (2) *pindadan*, (3) pre-puberty marriage and although in defiance of Shastric prohibition they believe in conversion and actively go about converting people from all other religions, they still want to enjoy the benefits of succession and the rights of adoption under the Hindu law and to exercise and enjoy the rights of a manager or a member of a joint Hindu family. For that purpose and to that extent the Arya Samajists, to use Mr. Mukhtar Singh's own words, "do not want to sever their connections with the Hindus; rather they want to be governed by Hindu law". They do not want to be governed by the Indian Succession Act. Hence all their tall talk about social reform and about their being "the vanguard of the Hindus." And they come to the Assembly with a measure which closely affects and seriously affects other communities, and the clauses of which (all three of them) are so drafted as to be most mischievous in their operation and consequences. It is no wonder therefore than Khan Bahadur Sarfaraz Hussain Khan sees "that there is some sinister desire behind it."

Let the Arya Samajists only have the courage and honesty to own the truth that they are not Hindus. They have no castes. There could therefore be no such thing as an inter-caste marriage amongst them: Much less would any prohibitions or restrictions

imposed by the Hindu Shastras apply to them. But they have no right whatsoever to propose measures which would violently interfere with the religion and personal law and the vital social interests of other communities.

The Bill closely affects and most seriously affects the vital interests of the Hindus and some of the most important aspects of their social and religious organisation.

Hindu marriage—Sanatan Vedic marriage—is a religious sacrament governed exclusively by the Shastras and the Bangiya Brahman Sabha strongly object, on principle, to marriage legislation by the assembly which is necessarily a heterogeneous body.

The Bill proposes a highly controversial measure and involves questions which, we submit, it is not within the competence of the Assembly to legislate upon. The provisions of the Bill is fraught with the gravest and most mischievous consequences.

There could be no question but that such proposals should summarily be rejected and consigned to the waste-paper basket. What is indeed surprising is that such a Bill should have at all succeeded in obtaining the Governor-General's sanction required under section 67 (2) (b) of the Government of India Act.

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Copy of letter No. 6, dated the 17th April, 1930, from MAULVI ABU AHMAD, B.L., Secretary, District Moslem Association, Midnapore, to the Secretary to the Government of Bengal, Education Department.

With reference to your letter No. 345-Regn., dated the 24th March, 1930, I beg to state the following on behalf of my association.

The Arya Marriage Validation Bill as it stands cannot be passed into law. It is against the injunctions of the Koran and the *shariyat*. No Muhammadan can allow this Bill to be passed into law without protesting against the wordings of section 3 of the Bill. The words "or to different religions" should be *deleted* or the words "except Islam" should be added after "different religions." If this is done the Moslems have no objection to its passing into law. Unless it is made clear by changing the words as indicated above, it will not safeguard the interests of the Moslems and the Moslem religion will be in danger.

The bill as it stands if passed will embitter the feelings of the Moslems and Samajists and the question of Hindu-Moslems unity will be a rare thing.

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Copy of letter No. 2053-J., dated the 17th April, 1930, from A. H. CLAYTON, Esq., I.C.S., Commissioner of the Dacca Division, Dacca, to the Assistant Secretary to the Government of Bengal, Education Department.

I HAVE the honour to refer to your letter No. 300-Regn., dated the 28th March, 1930, on the subject of the Arya Marriage Validation Bill. There are not many members of this Samaj in this part of the country and the idea of inter-caste marriage is generally offensive to Hindu ideas. It seems, however, to be desirable that if there is any doubt as to the validity of such marriages among members of the Arya Samaj, the uncertainty should be removed by legislation.

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Copy of letter No. 143-J. J., dated the 17th April, 1930, from F. W. ROBERTSON, Esq., I.C.S., Commissioner, Presidency Division, Calcutta, to the Secretary to the Government of Bengal, Education Department.

With reference to your letter No. 298-Regn., dated the 22nd March, 1930, asking for an expression of my opinion on the provisions of the Arya Marriage Validation Bill, I have the honour to forward copies of the below noted letters from the District Officers expressing their views on the subject and to observe as follows:—

- (1) Letter No. F.-53-2-30, dated the 12th April, 1930, from the Magistrate, 24-Parganas.
- (2) Letter No. 2763-J. G., dated the 10th April, 1930, from the Magistrate, Nadia.
- (3) Letter No. 1671-J., dated the 13th April, 1930, from the Magistrate, Murshidabad.
- (4) Letter No. 2595-J., dated the 15th April, 1930, from the Magistrate, Jessore.
- (5) Letter No. 2402-J., dated the 9th April, 1930, from the Magistrate, Khulna.

The Bill seems to be open to two serious objections that were made perfectly clear during the *debate* in the Assembly. In the first place it adopts too wide a definition of the words "Arya Samajist" and goes far beyond its avowed object by bringing within its scope people belonging to other religions. In the second place it makes no provision, and in fact it is not possible to make a satisfactory provision in a bill of this nature, regarding successions. On both the grounds, I believe, the Bill is likely to meet with strong opposition both from Hindus and Muhammadans, in particular the latter.

A bill designed to apply to the Arya Samajist alone would be unobjectionable, if such a measure were considered necessary in spite of the special Marriage Act as recently amended. The present Bill as drafted seems to be radically defective and perhaps inopportune in view of the controversies over the Sarda Bill which must continue for some time.

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Copy of letter No. F-530-2-30, dated the 12th April, 1930, from Babu KHIROD LAL MUKHERJI, Additional District Magistrate, 24-Parganas, Alipore, to the Commissioner of the Presidency Division, Calcutta.

With reference to your circular memorandum Nos. 107-111-J. J., dated the 29th March, to 2nd April, 1930, forwarding a copy of the Government of Bengal, Education Department, letter No. 298-Regn., dated the 22nd March, 1930, to your address, asking for my opinion on the provisions of the Arya Marriage Validation Bill introduced in the Legislative Assembly by Mr. Mukhtar Singh, I have the honour to state that in the statement of objects and reasons attached to the Bill the mover has made it clear that the object of the Bill is to give relief to the Arya Samajists. If the Bill receives the support of that community, as it is bound to do, there cannot be any valid objection to its provisions. The two criticisms levelled against the Bill are that (1) it may affect the interests of other communities on account of the very wide definition of "Arya Samajists" given in the Bill and insertion of certain words, to wit "or to different religions," in clause 3 making it vague, (2) it is silent with regard to the question as to how succession shall be regulated. As regards the first criticism, the definition and the clause may be amended in the Select Committee in such a way that they do not impose anything which the mover does not want to impose into the Bill. Regarding the second criticism, I would like to point out that as the Arya Samajists claim to be Hindus they will be governed by the Hindu law and a clause to that effect may be inserted in the Bill.

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Copy of letter No. 2763-J. G., dated the 10th April, 1930, from T. C. Roy, Esq., District Magistrate of Nadia, Krishnagar, to the Commissioner of the Presidency Division.

With reference to your circular memorandum Nos. 107-111-J. G., dated the 2nd April, 1930, on the subject of the Arya Marriage Validation Bill, I have the honour to state that, in my opinion, an Act on the lines indicated in the Bill is over due. Intercaste marriages in ancient India were not uncommon, and *anuloma* (marriage with a bride of a lower caste) and *pratiloma* (marriage with a bride of a higher caste) marriages are mentioned in the Scriptures, and if the Arya Samajists accepting the Vedas as their Scriptures want to reintroduce the old custom the orthodox Hindus have no right to stand in their way.

2. The definition of the words "Arya Samajist" as given in the Bill appears, however, to be open to objection. According to the definition a person under the guardianship of a member of any Arya Samaj is an Arya Samajist. I would amend clause (b) of section 2 as follows:—

Is a member of the family of any person mentioned in clause (a), or is a relative dependent on any such person who has made a declaration that he is an Arya Samajist, or is a person under the guardianship of any such person and has made a similar declaration.

3. The last clause of section 2 (c) seems to be redundant.

4. Section 3, as it stands, would make a marriage between an Arya Samajist and the followers of any religion other than Hinduism valid, though Mr. Mukhtar Singh said, in the speech by which he moved for recurring the Bill to a Select Committee, that marriage is regarded by the Aryas as a sacrament. I would amend the section by adding thereto a proviso to the following effect, viz.:—

Provided that the other party to the marriage has, in the case of marriage taking place after the passing of the Act, before the marriage, and in the case of other marriages whether before or after the marriage, made a declaration to the effect that he or she is an Arya Samajist.

5. As a large number of inter-caste marriages have already taken place among the Arya Samajists, clause (2) of section 1 is essential to the purposes of the Bill and I do not see any objection to it.

6. I should think it necessary that a new section be added to the Bill specially laying down that in the cases of marriage to which the Act applies succession should be guided by the Hindu law.

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Copy of letter No. 1671-J., dated the 13th April, 1930, from J. M. CHATTERJI, Esq., Magistrate, Berhampore, to the Commissioner of the Presidency Division, Calcutta.

WITH reference to your circular memorandum Nos. 107-111-J. J., dated the 29th March to 2nd April, 1930, asking for an expression of opinion on the provisions of the Arya Marriage Validation Bill, I have the honour to state that the Bill as drafted will affect people who are not Arya Samajists. There is no objection to the purpose of the Bill provided it makes it clear that it applies to nobody who has not declared himself to be an Arya Samajist. To do this it would be necessary to *delete* clause (b) of section 2 and the last sentence beginning with the words "and includes" and ending with "such a person" in clause (c) and section 2. It would also be necessary to amend clause 3 by deleting the words "An Arya Samajist" and substituting therefor "persons defined in section 2" and adding the words "before conversion" between the words "belonged" and "to" in clause 3. Clauses (b) and (c) of section 2 as now drafted will seek to impose the provisions of the Bill upon persons who may be related to Arya Samajist, but who are not themselves Arya Samajists and who do not belong to their school of thought.

It is necessary also that a Bill of this nature should have provisions laying down definite principles of succession which will govern the progeny of such marriages. An Arya Samajist who was originally a Muhammadan may marry a woman who was originally a Hindu. If the husband dies without issue the question would arise as to the law applicable to inheritance of his properties. If it is Hindu law the widow will have the status of a Hindu widow and after her death the property left by her husband will revert to his heirs who may be his agnatic relations or sisters' sons professing the Muhammadan faith. Obviously the principles of Hindu law of succession cannot be made applicable to them.

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Copy of letter No. 2595-J., dated the 15th April, 1930, from S. C. GHOSH, Esq., District Magistrate of Jessore, Jessore, to the Commissioner of the Presidency Division.

WITH reference to your circular memorandum Nos. 107-111-J.-J., dated the 29th March, 1930, regarding the Arya Marriage Validation Bill introduced in the Legislative Assembly by Mr. Mukhtar Singh, I have the honour to state that in view of the facts stated in the Objects and Reasons there appears to be real necessity for the Bill and it may be adopted.

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Copy of letter No. 2402-J., dated the 9th April, 1930, from H. QUINTON, Esq., I.C.S., District Magistrate of Khulna, Khulna, to the Commissioner of the Presidency Division.

WITH reference to your circular memorandum Nos. 107-111-J.-J., dated the 29th March, 1930, I have the honour to say that the Bill appears to me to raise highly technical legal issues. From what the mover said in summing up it appears that if it is a fact that Arya Samajists have no legal status at all in the matter of marriage succession, inheritance, etc., the law should provide them with some status. Whether the Bill should be confined to this particular sect is another matter. In fact it seems to me that legislation should rather be to remove the disability not only of Arya Samajists but of all who on certain qualifications have repudiated the Hindu, Muhammadan and Christian marriage laws. The qualifications expressed in clause 2 of the Bill appear suitable so far as Arya Samajists are concerned. The various interpretations put under section 3 by some members show that section 3 is in need of amendment to fit the avowed objects of the mover only and to avoid misconception.

Copy of letter dated the 19th April, 1930, from the Secretary, Indian Association, Calcutta, to the Secretary to the Government of Bengal, Education Department.

In reply to your letter No. 330-Regn., dated the 24th March, asking for the opinion of the Indian Association on the Arya Marriage Validation Bill, I am directed by the Executive Committee of the Indian Association to say that the association strongly supports the Bill.

Copy of letter No. 571, dated the 1st May, 1930, from SURENDRA NATH LAW, Esq., M.L.C., Joint Honorary Secretary, British Indian Association, Calcutta, to the Assistant Secretary to the Government of Bengal, Education Department.

I BEG to acknowledge the receipt of your letter No. 328-Regn., dated the 24th March, 1930, forwarding copy of a Bill to finally recognise and place beyond doubt the validation of inter-marriage of Arya Samajists and requesting the British Indian Association for an expression of opinion thereon. In reply I am directed by the committee to state that considering the growing number of the Arya Samajists and the effects of the *suddhi* and *sangathan* movement, the committee are of opinion that it would create hardship to the members of the Samaj if their intercaste marriage is not validated.

The Bill apparently raises the questions of legitimacy and marriage only. It is obviously the business of the State that marriage and legitimacy are recognised. But the aforesaid Bill is much more extensive in its scope as it affects the question of succession. Succession and marriage are intimately connected, but the Bill is silent about the most important problem of inheritance. It seeks only to validate marriages. The Arya Samajist marriage ignores the *pinda* theory, on which is based the Hindu law of succession, the application of which will be necessarily difficult in the absence of the test of spiritual benefit.

Moreover, the Arya Samajists are no believers in the caste system and they encourage inter-marriage between persons following different religions. Thus the marriage of a Hindu gentleman with a Muhammadan or Christian girl and *vice versa* will make the application of the Hindu law of succession difficult as it would vitiate the *pinda* theory which is the prime factor in settling the line of succession according to the Hindu law.

The Arya Samajists being believers in conversions, the said Bill, if enacted, would give fresh impetus to inter-marriages of different castes and religions. Such marriages being directly against the customs and principles of Hindu law of marriage will, if validated, upset the socio-religious system of an ancient race and every Hindu worth the name will view with alarm such an enactment, specially the definition of an Arya Samajist as given in clause 2. It says:—"Arya Samajist shall mean a person who is a member of the family of, or a relative dependent on, or a person under the guardianship of, any person who is a member of any Arya Samaj." This is a dangerous claim. One must have the liberty of following this or that set of code or religion, but it cannot be forced on others simply because they are members of the family of, or relatives dependent on, an Arya Samajist.

Thus my committee, for reasons stated, above, do think that the said Bill will only complicate the situation; should, however, the Arya Samajists be unwilling to take advantage of the Special Marriage Act and Indian Succession, Act, a marriage validation Bill with due safeguards against the Hindu law of succession and inheritance can be resorted to. My committee cannot therefore support this Bill as introduced in the Assembly. It is not enough to express desire to be governed by the Hindu law of succession, but the customs and traditions prevalent among the Hindus will have to be generally followed to be eligible to the privileges of the Hindu law. My committee, however, have no serious objection to the Arya Samajist marriage being declared valid, provided the Arya Samajist are declared a separate sect like the Sikh or Brahma, and sub-clauses (b) and (c) of clauses 2 and the explanation be *deleted* and the clause 3 be modified as given below:—

"3. No Arya Samajist marriage shall be invalid by reason of the couple having belonged prior to their marriage to different castes of Hindus or to different religions, any law or usage or custom to the contrary notwithstanding."

**BOMBAY.**

**No. 15.** From G. F. S. COLLINS, Esq., Secretary to the Government of Bombay, Home Department, to the Secretary to the Government of India, Legislative Assembly Department, No. 6849/2-B., dated Bombay Castle, the 7th June, 1930.

**SUBJECT:—***The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

With reference to your letter No. F-133-I/28-A., dated the 11th February, 1930, regarding the Arya Marriage Validation Bill by Mr. Mukhtar Singh, I am directed to state that the drafting of clause 3 of the Bill is defective and that clauses 2 (b) and (c) are too wide as they include dependent relatives and wards of "Arya Samajists". The Government of Bombay are not opposed to the objects of the Bill but consider that it should apply only to persons who are themselves Arya Samajists and not to relatives, dependents and wards of such persons and that no marriage should be validated under the proposed law unless both parties to the marriage make a declaration, which should be recorded, that they are Arya Samajists and unless they are either majors, or if minors, have obtained the consent of their fathers or guardians to the marriage. The remarriage of any person, who has already been married under a personal law other than that of the Arya Samaj and whose husband or wife is still alive, should not be validated save in circumstances in which remarriage would be permitted by the personal law under which the former marriage took place. I am to add that in the opinion of the Government of Bombay opportunity should be taken to enforce monogamy, as far as possible, when such special marriage laws are enacted. The High Court of Bombay and the Court of the Judicial Commissioner of Sind do not desire to express any opinion on the Bill.

2. The Bill with the Statement of Objects and Reasons was published in the Bombay Government Gazette in English on the 13th March 1930 and in Kanarese and Urdu on the 27th March 1930. It was also published in the Sind Official Gazette in English on the 21st March, 1930.

**MADRAS.**

**No. 16.** From M. R. Ry. Diwan Bahadur J. VENKATANARAYANA NAYUDU GARU, B.A., B.L., C.I.E., Secretary to the Government of Madras, to the Secretary to the Government of India, Legislative Assembly Department, Law (General) Department, No. 2224-A.-1, dated Fort St. George, the 10th June, 1930.

*The Arya Marriage Validation Bill by Mr. Mukhtar Singh—Letter from the Government of India, Legislative Assembly Department, No. F-133-I/28-A., dated 11th February, 1930.—*

I AM directed to invite a reference to paragraph 2 of this Government's letter No. 1945 Law (General) dated 1st May, 1930, and to state that the Honourable the Judges of the High Court have intimated that they have no remarks to offer on the provisions of the above Bill.

**BIHAR AND ORISSA.**

**No. 17.** From J. A. SWEENEY, Esq., I.C.S., Secretary to Government, Judicial Department, to the Secretary to the Government of India, Legislative Assembly Department, Simla, No. <sup>1285</sup>A.-9/30 -J. R., dated Ranchi, the 2nd July, 1930.

**SUBJECT:—***The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

With reference to your letter No. F-133-I/28-A., dated the 11th February, 1930. I am directed to say that the local Government have consulted the Patna High Court and selected officers and persons, and that the Bill was published in the Bihar and Orissa Gazette dated the 26th February, 1930.

2. The Hon'ble Judges of the High Court have expressed no opinion on the Bill. As to the opinions received from other sources there would not appear to be strong opposition to the Bill so far as it affects persons who are already Aryas. Even in respect of this limited application, however, it will be necessary to examine the effect of the legislation on inheritance. Loss of caste is under the Hindu Law a ground for exclusion from succession. Act XXI of 1850 saves from disinheritance the outcaste or apostate, but it is doubtful whether it affects the issue of the out-caste or apostate. The Bill would need to make some definite provision as to inheritance.

3. Orthodox opinion among Hindus as well as Muhammedans is totally opposed to the Bill, as it stands, because it is so drafted as to affect not merely Aryas but orthodox Hindus and members of other religions including Muhammedans. The Bill would give validity to any marriage so long as one party is an Arya. The other might be an apostate Hindu or Muslim or Christian.

The Arya Samajists in this province, though active politically, are not a large community. In view of the strong opposition of orthodox Hindus and Muhammedans, and in view also of the difficult questions of succession which this legislation may give rise to, the Governor in Council is opposed to the provisions of the Bill.

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### BENGAL.

From A. J. DASH, Esq., I.C.S., Secretary to the Government of Bengal, **No. 18.**  
Education Department, to the Secretary to the Government of India,  
Legislative Assembly Department, No. 807-Regn., dated Calcutta, the  
9th August, 1930.

SUBJECT:—*The Arya Marriage Validation Bill by Mr. Mukhtar Singh.*

In continuation of this Department letter No. 419-T.-Regn., dated the 19th May, 1930, regarding the Arya Marriage Validation Bill, introduced by Mr. Mukhtar Singh in the Legislative Assembly, I am directed to submit for the consideration of the Government of India copies of replies subsequently received from the persons and association noted below:—

- (1) S. Khuda Buksh, Esq.,
- (2) Mahamahopadhyaya Dr. Haraprasad Shastri, M.A., C.I.E.,
- (3) The Jain Swetambari Terapanthi Sabha.

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Copy of a letter dated Calcutta, the 12th June, 1930, from Mr. KHUDA BUKHSH.

With reference to your letter dated the 4th June, regarding the Arya Marriage Validation Bill, I am sorry, through in advertance, the reply has been so considerably delayed.

You will find my opinion in the other page.

#### *Regarding Arya Validation Bill.*

I am of opinion that it is a piece of legislation at once opportune and of far reaching consequence. It has my wholehearted support.

(Sd.) KHUDA BUKHSH.

12th June, 1930.

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Copy of letter dated the 23rd June, 1930, from Mahamahopadhyaya Pandit HARA PRASAD SHASTRI, 26, Pataldanga Street, Calcutta, to B. B. SARKAR, Esq., M.A., Assistant Secretary to the Government of Bengal.

The Hindus and Muhammedans in India are ancient communities. They had even in recent times their system of administration, system of organisation of army, system of judicial, fiscal and other departments of administration. They had also their domestic social and religious system. The East India Company took the former systems



into their hands and left the latter systems as they found them in the hands of the governing bodies of these communities. In the religious, social and domestic matters the East India Company followed a policy of strict neutrality for the old communities clung to these with a tenacity which the Governors found it difficult to deal with and so they let them alone.

Queen Victoria of blessed memory, while taking the administration of India in Her hands, gave a pledge that these affairs should not be interfered with and the communities were very thankful to Her. The Legislature at first nominated and then partially elected, derived their authority from Her Government. She could not delegate to them powers which She expressly renounced. So the present Legislature has no such power. Anything done in that direction by the Legislature is wrong. The immunities enjoyed by the ancient communities are regarded as their personal laws and they enjoy the benefit of these laws simply because they are ancient communities and the personal laws are the wreck of their ancient body of privileges.

A new community has no right to claim personal laws. The Arya Samaj is not even hundred years old. It was founded at about sixty years ago. Can they claim anything as personal laws?—It may be argued that marriage is a matter which is within the jurisdiction of the Legislature, but it is not. Marriage may be looked upon either as a contract or as a sacrament. If it is a contract like other contracts it is subject to the intervention of the Legislature, but if it is a sacrament, it is not. The Arya Samajists say, they believe it to be a sacrament, but not according to the Hindu Shastras and therefore they are going to create a new sacrament. Can the Legislature sanction the creation of a new sacrament unknown to the ancient communities? They cannot and therefore they cannot entertain the Arya Marriage Validation Bill.

The Arya Samaj is said to be the van-guard of the Hindu society. But they do not belong to the Hindu Society, whose cherished ideas of Caste system, Spiritual benefit, Pre-puberty marriage and abstention from Proselytism, they have discarded altogether. They are the product of the contact of India with the West and taking advantage of the disintegration of the ancient communities in India, they are forming a community in which the Hindus the Muhammedans, the Christians, the Shikhs, the Parsis, the Europeans, the Chinese, etc., all may be admitted freely. Will all these ancient communities bring in to the Arya Samaj their personal laws? If not, why should the Hindus coming into the Arya Samaj claim the privileges of the community which they have renounced? Why should the Jews, the Persis and others coming within the Arya Samaj be granted the privilege of Hindu laws of succession and adoption? They are doing another thing. They want that the retrospective effect be given to these marriages by the contracting of which they have in a manner declared a war against the Hindu society. Retrospective effects may be good in certain cases, but I think the Legislature should seriously consider before the grant of such effects, because, sometimes it is fraught with troubles. Some of these past marriages have an interesting, amusing and way ward history. The ancient communities will be in difficulty because young men may contract inter-caste marriages and then joint the Arya Samaj to have these marriages protected. If this Bill is passed into law, it will produce trouble in quiet Hindu families, among brothers cousins, near relatives and will be a perennial source of descension among them.

As regards the wording of the Bill objection should be taken in section 2 (c) to the words "Persons under guardianship of .....". Suppose there are two brothers, one a Hindu and the other an Arya. The Hindu brother dies leaving his children under the guardianship of his Arya brother. Are these nephews to be regarded as Arya Samajists? Under these circumstances the Bill should not be entertained.

Copy of a letter dated the 17th June, 1930, from the Honorary Secretary, the Jain Swetambari Terapanthi Sabha, Calcutta, to the Assistant Secretary to the Government of Bengal, Education Department, Registration Branch, Calcutta.

Your No. 339, dated 21th March 1930, and No. 564-Regn., dated 4th June, 1930.

I AM directed by the Committee of the Jain Swetambari Terapanthi Sabha to acknowledge receipt of your two letters and the papers relating to the Arya Marriage validation Bill moved by Mr. Mukhtar Singh in the Assembly, and to state that as the Bill is intended for the Arya-Samajists only, our Sabha has no comments to offer on same. If the Arya Samajists can make out a case for the passing of such a Bill our Sabha has no objection to it.