

GOVERNMENT OF INDIA.
LEGISLATIVE ASSEMBLY DEPARTMENT.

Paper No. 1.

OPINIONS

ON

THE MOSLEM PERSONAL LAW (SHARIAT) APPLICATION BILL.

(Introduced by Mr. H. M. Abdullah, M.L.A.)

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No. 1.—NORTH-WEST FRONTIER PROVINCE.

Government, North-West Frontier Province.

THE Bill is a verbatim copy of the Moslem Personal Law Shariat Application Bill as was introduced in the North-West Frontier Province Legislative Council. The Bill was circulated for eliciting public opinion and was later on passed by the Legislative Council with the addition of a very important proviso to Section 2 of the Act.

A copy of the Act VI of 1935 which is in force in this Province is sent herewith.

NORTH-WEST FRONTIER PROVINCE.

ACT VI OF 1935.

THE NORTH-WEST FRONTIER PROVINCE, MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT, 1935.

An Act to make provision for the application of Muslim Personal Law (Shariat) in the North-West Frontier Province.

Preamble.—

Whereas it is expedient to make provision for the application of Muslim Personal Law (Shariat) in the North-West Frontier Province, it is hereby enacted as follows :—

Short title, commencement and extent.—

1. (1) This Act may be called the Muslim Personal Law (Shariat) Application Act of 1935.

(2) It shall come into force at once.

(3) It extends to the whole of the N.-W. F. Province.

Decision in certain cases to be according to Muslim Personal Law.—

2. In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, guardianship, minority, bastardy, family relations, wills, legacies, gifts or any religious usage or institution including Waqf (trust and trust property), the rule of decision shall be the Muslim Personal Law (Shariat) in cases, where the parties are Muslims.

“ Except in so far as such law has been altered or abolished by legislative enactments or is opposed to the provisions of the North-West Frontier Province Law and Justice Regulation, 1901.”

Repeal of provisions of previous Law.—

3. On and from the day of the enforcement of this Act Section 27 of the North-West Frontier Province Law and Justice Regulation (No. VII of 1901) shall be repealed in so far as the Muslims are concerned.

No. 2.—AJMER-MERWARA.

Chief Commissioner, Ajmer-Merwara.

I HAVE the honour to forward copies of certain opinions on the provisions of the Bill. The Judicial Commissioner, Ajmer-Merwara, states that in some Mohammedan families in Ajmer-Merwara there is a custom that females do not inherit and consequently the Bill is hardly likely to be popular here.

2. The Commissioner of Ajmer-Merwara is of the opinion that, while the matter is one in which general Muslim opinion should be the prevailing factor, it is possible that even if general Muslim opinion is in favour of the principle contained in the Bill preponderating local Muslim opinion may in places be against it. Possibly the best course would be to enact the Bill subject to the provision that it would only come into force in a Province after the Local Legislature had passed a resolution in favour of extending it or any part of it to that Province.

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Additional District Judge, Ajmer-Merwara.

I do not feel very competent to give an opinion on a matter of personal Law of the Mohammedans. I however think that the Bill is much too wide. The rigid application of Shariat in cases of say guardians and minors and succession and gift and maintenance and so on might render nugatory some provisions of the enacted Law on these points ; and in cases of say succession and adoption would revolutionaries the customary law which governs some communities on those points in the Punjab and Ajmer-Merwara and other parts of India. It may be observed that Moslem personal law is usually the test applied in all such matters but where the interests of the parties or the state so require it the enacted law or the local customary law is and should be allowed to override it. The Bill is as far as my restricted view goes rather a backward one and is not well conceived, and I am unable to support it.

Sub-Divisional Officer, Kekri Sub-Division.

I have the honour to submit that the provisions proposed in section 2 of the proposed Bill already exist in section 4 of the Ajmer Laws Regulation 1877, *vide* page 732 of the Volume II, H. to L. (fourth edition). It is only the proviso to that section that will be made inoperative if the proposed Bill becomes an Act, and personally I am of opinion that this change will be for the better. Cases are not infrequent where in some Muslim families of the District women are deprived of their rights of succession to the property on the basis of custom and the introduction of the proposed Muslim Personal Law Act will automatically raise them to the position to which they are entitled. Moreover it will also obviate the necessity of recording a good deal of evidence in such cases which becomes necessary to prove the custom as the Muslim Personal Law (Shariat) exists in the form of a Code. It seems proper that the followers of the Muslim religion be governed by their Shariat Law which is well-known for its certainty and definiteness in matters enumerated in section 2 of the Bill in preference to the customary law.

Khan Bahadur Abdulwahid Khan, President, Durgah Committee, Ajmer.

In my opinion the Muslim Personal Law (Shariat) Application Bill, though a step in the right direction, has gone too far and is bound to produce sudden revolutionary change in juridical and legal rights of Moslems *inter se*, which might be unacceptable to many of them. The Bill is drastic as it provides for the application of Muslim Personal Law to the whole of British India in respect of cases relating to all matters mentioned therein.

It also goes too far in providing that even 'laws' as distinguished from usage and custom shall have no force as against Muslim Personal law in respect of cases relating to all matters specified in section 2 of the said Bill.

The Bill in its present form might also undo reforms in relation to wakf property introduced by means of enactments from time to time during the last 50 or 70 years. I am of opinion that Bill in a modified form will most probably be acceptable to an overwhelming majority of Muslims throughout British India and it would be preferable if sub-section 2 of section 1 be amended and section 2 be divided in 2 sub-sections as suggested below.

Sub-section 2 of section 1.—

(1) This section and sub-section 1 of section 2 shall extend to the whole of British India including British Baluchistan. But any of the Local Governments may, from time to time, by notification in the Official Gazette extend subsection 2 of section 2 of the said Act or any part thereof to the whole or any specified part of the territories under its administration.

Section 2.—

(1) Notwithstanding any custom or usage or law to the contrary in all questions regarding special property of females betrothal, marriage, divorce, dower, bastardy, and family relations, wills, legacies, gifts or *pre-emption*, the rule of decision in cases where the parties are Moslems shall be the Muslim Personal Law (Shariat) and in such cases question of minority shall be decided according to Muslim Personal Law.

(2) Notwithstanding any custom or usage to the contrary in all questions regarding succession, guardianship, maintenance, adoption or any religious usage or institution including wakf (trust and trust property) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law.

No. 3.—BENGAL.

High Court of Judicature at Fort William in Bengal, Appellate Jurisdiction.

THIS Bill deals with matters of policy only. The Hon'ble Judges therefore have no opinion to offer thereon.

No. 4.—COORG.

Chief Commissioner of Coorg.

I AM directed to forward copies of the opinions of selected officers and other persons who were consulted on the subject.

2. The Chief Commissioner concurs in the view expressed by the Additional Judicial Commissioner.

3. The Bill, together with the Statement of Objects and Reasons, was published in the Coorg Gazette in English on the 2nd June 1936 and in *Kannada* on the 1st July 1936.

District and Sessions Judge, Civil and Military Station, Bangalore.

Since it is pointed out by the mover of the Bill that the customary law prevalent in certain places in India has adversely affected the rights of muslim women in those places and that all muslim women organisations have therefore condemned the customary law, I have the honour to state that the proposed Bill which is intended to raise the status of muslim women and also to ensure uniformity of rights and obligations among muslims all over British India should be placed on the Indian statute book.

Additional Judicial Commissioner of Coorg.

I am not in a position to offer a confident opinion, but am inclined to think the bill is too sweeping, and that any real disabilities resulting from customary law should be removed in detail, not by a bill that will, for instance affect succession to property, in many parts of India.

Commissioner of Coorg.

I have the honour to state that there is a divergence of legal opinion among the persons whom I consulted about this Bill. The Government Pleader and the Munsiff, Virajpet, point out that the Muhammadans are the best authorities to express an opinion on it. The Munsiff, Mercara, approves of the Bill, but gives no reasons. The Bar Association, Virajpet, opposes any compulsory legislation as the Bill will upset the prevailing law of inheritance and the consequent contractual obligations where Muhammadans are governed by customary law. It remarks that the Bill is a belated one and that this fact shows that there is no genuine demand for the proposed change. The Subordinate Judge, Coorg, states that the Mercara Bar Association is in favour of the Bill, but he himself is against it as there are numerous instances where custom recognised by a court has overridden the law. These are the opinions of the Hindu lawyers on the Bill.

2. The President of the Anjumane-Ittihad-e-Islam, Coorg, is in full agreement with the principle of the Bill as it seeks to remove the anomalies in the Muhammadan personal law in different parts of India. He considers that the customary law which overrides the personal law as far as Muhammadans are concerned is bad. He remarks that this is the view held by the general Muhammadan public of Coorg (which are few in number).

3. There are several Mapillas in Coorg and I know that the Mapillas of Malabar follow the Maramakkatayam system of succession and have been following it for generations. The Mapilla, although a good business man, is ignorant of law and its intricacies and would, I am sure, resent very much any change in long established customs. However, if the Muhammadans of Coorg desire a uniform law as stated by the President of the Anjuman Ittihad-e-Islam, I see no reason to oppose the Bill.

4. I enclose the opinions of the Bar Association, Virajpet, the Subordinate Judge and the President of the Anjuman Ittihad-e-Islam, Coorg.

Bar Association, Virajpett.

The Bill will upset the prevailing law of inheritance and the contractual obligations following from in those places where Mussalmans are governed by customary law. The Khojas and Borahs especially, a very large class of rich Mercantile community, are governed by Hindu law of the Bombay Schools. A change in their personal law, will necessarily effect and upset many contractual relations entered into under the existing settled law. We also believe that it is not right to force any change in the personal law of a party, unless there is unmistakable demand for it. This belated Bill only shows that there is no real demand for the change proposed.

We have also to point out that in Malabar, where the mapilas are governed by marmakatayam law as regards family property the proposed legislation, will work tremendous hardship on the people as the entire structure of society will be changed. We fear that the consequences might be more serious than the proposer of the Bill thinks.

We are therefore opposed to any compulsory legislation applicable to all. We have, however, no objection to a Bill, which gives the concerned party an option to change his personal law.

Subordinate Judge, Coorg.

I have the honour to state that the Bar Association, Mercara, is in agreement with the Bill. But absolutely no reasons are stated therein. I am not in favour of the Bill, as there are numerous instances in which custom recognised by the Courts has overridden the law and the principle of *stare decisis* should be given effect to. Details of instances do not seem needed.

President, Anjuman Ittihad-e-Islam, Coorg.

I fully agree with the principle and the provisions of the Bill which seeks to remove serious anomalies in the Muslem personal law as administered in the different parts of British India. The enactment of the Bill into an Act will not introduce any revolutionary changes in this part of the country as Muslem personal law prevails here. The so called customary law which overrides Muslim personal law is an unhealthy and undesirable accretion upon it. Hence the enactment of the present Bill is a desideratum. This opinion of mine is shared by the General Muslim public of this part of the country. It is therefore salutary piece of legislation, so far the Muslims of British India are concerned.

No. 5.—MADRAS.

Government of Madras.

I AM to forward herewith copies of the replies which have been received so far, namely, those of the Advocate-General, the Government Pleader and six others including four Muhammadan M. L. Cs.

2. His Excellency the Governor in Council would like to formulate his views after considering the opinions of the Hon'ble the Judges and of the remaining Muhammadan M. L. Cs. I am to say that his views will be forwarded to you along with the opinions of the Hon'ble the Judges.

3. The Bill with the Statement of Objects and Reasons was published in the Fort St. George Gazette in the following languages on the dates noted against each :—

English	..	..	..	..	15th October 1935.
Malayalam	..	..	..	..	} 2nd June 1936.
Kanarese	..	..	..	..
Hindustani	..	..	..	..
Tamil	..	..	..	..	} 9th June 1936.
Telugu	..	..	..	..

M. R. Ry. T. R. Venkatarama Sastri Avl., Advocate, Madras.

THIS is a matter entirely for Muslims. The Muslim opinion has been steadily in favour of replacing by Shariat all the customary laws retained by the Muslim converts in this country. I see no reason why an outsider should insist on the retention of the

customary law in preference to Shariat. The Muslims may justly claim that the Shariat is much more favourable to women's rights to property than the customary law which it is sought to displace by the Bill. It is not necessary to agree with the author of the Bill in all that he says or implies as to other systems of law in his Statement of Objects and Reasons. It is enough to say that, if the Muslims who are now under the customary law desire to change to Shariat, there is no need or reason for outsiders to object to such a change.

Advocate-General, Madras.

I DOUBT if a drastic provision of the kind is called for. So far as this Presidency is concerned, there have been large sections of the Mohammedan population whose present law relating to devolution of property by long established custom and usage has been at variance with the rules of Mohammedan law. Some of these cases have even gone up to the Privy Council, and so far as I am aware there has been no insistent demand on behalf of the members of the communities for a wholesale alteration of the law in the manner contemplated by the intended legislation.

Khan Bahadur M. Schamnad Sahib Bahadur, M.L.C.

I HAVE the honour to state that I have gone through the Bill and that I am in complete agreement with the provisions of the Bill.

I have however to point out that the application of the shariat in all the matters mentioned in the Bill will be different and impracticable unless we have recognised works on Mahomedan Law of the different schools or Mazhabs in Islam. Even now when shariat is only partially applicable such difficulties are felt when the law applicable is not in Hanafi Law. Therefore an approved text book on Muhammadan Law must be got ready before hand, containing the opinions and decisions of Hanafi, Shafi, Maliki, Hambali and Shiek jurists, on all points on which there is disagreement between the different schools.

In certain parts of Kerala Moslems follow Maramekkatheyam law regarding family properties. In these cases family properties are not inherited according to Mahamedan Law, but they are inherited by the sisters and sister's children of the deceased, according to the local custom or law known as the Marumakkathayam law.

I am introducing a Bill in the Madras Legislative Council, known as the Moplah Maramakkathayam Bill for enacting that family properties also shall ultimately devolve according to Mahomedan Law. For this I have already obtained the sanction of the Governor-General. If the present Bill will cover this case also, my Bill will not be necessary.

But there are some stanam properties also in these parts. These are properties attached or belonging to some stanames or positions such as that of the Rajah of Cannanore. Such properties should continue to be attached to the Stanam and the head of the family should enjoy them and distribute or spend their income according to the local law.

Mr. Basheer Ahmed Sayeed, M.L.C.

So far as I have been able to examine the provisions of this short Bill in the light of the debate in the Assembly on the motion to introduce the Bill, I am of the opinion that the Bill is a necessary and desirable measure and should be proceeded with. It may be that the Bill seeks to introduce a change in regard to matters of succession in some provinces where the Rule of custom prevails, but from my experiences and knowledge of the attitude of Muslims throughout India, I am in a position to state that the generality of the Muslim community throughout India and particularly in the provinces directly affected by the proposed measure, feel the necessity and reasonableness of such a law.

I may add that I have ascertained the views of the South Arcot District Muslim League on the Bill in question and I am glad to say that the Muslim League of the District of South Arcot strongly supports the measure.

Khan Bahadur Yahya Ali, District and Sessions Judge, Guddapah.

THE proposed Bill relates to the application of the Moslem Personal Law otherwise called Shariat to certain portions of the Moslem community which, on account of long established local usage and custom, has allowed itself to be governed in matters of inheritance, succession, and kindred subjects by certain provisions of the Hindu Law.

The cases that are characteristic with this province are those of the Moplas of the Malabar district and the Moslems of the South Kanara district who are governed respectively by the Marumakathayam and Aliasanthana law and usage. Similarly, we find scattered all over the province, particularly in the Telugu area, a community called the Dudekulas who follow the Hindu system not only in matters of inheritance but even in regard to partition and marriage prohibitions. Though in broad outlines the Labbe and Rowther communities of the South follow the Moslem law, still on account of linguistic affinity with the Hindus they unconsciously follow those conventions. In this state of affairs however, there has been for long a genuine and persistent feeling in the minds of the entire Moslem community and particularly the classes that I have enumerated above to assimilate themselves with the rest of the community and to initiate legislation for the purpose of overcoming the effect on their legal rights of the long usage which has acquired the force of law and which has been interpreted by Courts to be binding upon them. I am to a certain extent aware of that feeling among the Moplas and the Moslems of South Kanara. I believe the same feeling is shared in other provinces as well. I am therefore personally of opinion that the legislation would be welcome to the entire community and particularly to the persons seeking to be profited thereby and that it is a wholesome piece of legislation which may not provoke any serious opposition from any quarter.

M. R. Ry. P. N. Marthandam Pillai Avl., Madras.

I FEEL it is a very natural and proper request on the part of people affected by it, if they so desire ; but as a non-Mohammadan I am willing to respect Mohammadan sentiment and bow to the opinion of the people who are affected by this Bill.

Syed Tajuddin Sahib Bahadur, M.L.C.

THE Bill is a long felt desideratum. There is nothing objectionable in it. I am, therefore, in entire agreement with the provisions of the Bill.

The Government Pleader, Madras.

I AM unable to offer any definite opinion on the provisions of the Bill. If the Muslim community desires such an enactment, I could see no objection to it.

No. 6.—CENTRAL PROVINCES.

Government of the Central Provinces.

I AM directed by the Governor in Council to say that the opinions received from the Muhammadan community are in favour of the Bill. This Government also lends its support to it.

2. Copies of selected opinions are enclosed.

3. The Bill was published in the Central Provinces Gazette in English on the 11th October, 1935.

Copy of opinions recorded by the Hon'ble the Chief Justice and the other Judges of the High Court of Judicature at Nagpur.

Bose, J.

I do not know enough of the Mohammedan Law to be able to express an opinion.

(Sd.) VIVIAN BOSE.

Gruer, J.

THE Bill seems to me to be somewhat drastic, and its operation would affect vested rights based on usages and customs.

For instance in our province succession in practice does not follow the orthodox Mohammadan Law so far as females are concerned. At the same time the idea is a good and logical one and it is essentially for the Mahommedans themselves to decide. If it be found that *Mahommedan* opinion is *strongly* in favour of the Bill, then I think Government should not stand in the way except to see that existing rights are protected.

(Sd.) H. G. GRUER.

Pollock, J.

I WOULD leave the matter to the Mahomedan community to decide.

(Sd.) R. E. POLLOCK.

Niyogi, J.

This Bill affects certain Moslem communities such as Khojas, Katchi, Memons, etc., who can decide for themselves.

(Sd.) M. B. NIYOGLI.

Chief Justice.

I AM of the opinion that, assuming that the purpose aimed at is desirable, it might be preferable, instead of sweeping away customary law by a sentence and making the only law applicable the personal law which may or may not in certain cases be more suited to existing conditions and times, for the law applicable between Mahommedans to be codified and passed as a Code. Such Code might modify in certain particulars the personal law in the light of custom if on examination in any particular case such custom were more desirable.

Were it considered that such an Act were outside the powers of the Legislature, the same criticism could apparently be levelled at the present Bill.

(Sd.) G. STONE.

Khan Bahadur Syed Hifazat Ali, Khandwa.

I SUPPORT the provisions of the Bill for the reasons given in the Statement of Objects and Reasons. I agree with the mover that the existence of customs at variance with the Mussalman Shariat, which claims to be based on Quran which is a Code in itself is a misnomer. I have, in my professional capacity, rarely come across cases where an alleged custom in contravention of the pure Mohammadan law has been successfully established and it would appear that the money spent in such unsuccessful pleas is really wasted. Moreover it is in the interest of Society at large that persons dealing with Mohammadans should know definitely under what conditions they are so dealing, and an innocent party relying on pure Mohammadan Law should not have a plea of custom at variance with Mussalman Law thrust on him after he has parted with valuable consideration.

There are other more weighty reasons why the Bill should become law, and it has I think the concurrence of the bulk of Mussalman public opinion.

Mr. K. M. Akram, D. S. P.

I AM not aware if any of the matters referred to in the Bill relating to Moslems are governed by custom, usage or customary law in any other parts of India, than the Punjab and the N.-W. F. P. Even there, the practice, as far as I am aware, is not uniform. Certain clans and families, I believe, follow the ' Shariat ', while several others claim in the law courts, to be governed by what is called the customary law. In matters of succession or inheritance particularly, disputes are settled in accordance with the custom which as far as I am aware, is based on the Hindu Law. Wives and daughters, against the injunctions of the Moslem shariat, are deprived of their due shares in their parents and husbands' property both moveable and immoveable, even in the absence of male issues, sometimes even distant heirs, and reversioners claiming heritage to the entire exclusion of daughters, while the wives are allowed to retain possession and use of the property only during their life time, purely for the purpose of personal maintenance, without any undisputable right of its disposal by mortgage, sale or auction and this also in the absence or during the minority of sons, if any. The daughters can claim only the expenses of their dower, marriage, etc., according to the means and status of the family.

This practice or custom is not only opposed to the letter and spirit of the ' shariat ' but would appear to be highly iniquitous sometimes leading to cases of dire hardship. Complications in the matter of inheritance, naturally arise in cases of inter-marriages between two families following different codes and even courts would perhaps find it difficult to decide the disputes, under such circumstances.

I am personally, therefore, in favour of the Bill being accepted and an enactment being allowed on the lines laid down.

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It will no doubt override the provisions of several other existing laws in British India. It will perhaps for instance come into conflict with the Sarda Act, in the matters of betrothal and marriage, etc., and it is obviously the deliberate intention of the proposer to free the Moslems from the shackles of that Law. In any case I feel sure that the proposed enactment will in no way be unwelcome except to a very inconsiderable section of the Moslem public in India.

Khan Bahadur Walayatulla.

THE Bill introduced by Mr. H. M. Abdullah in the Legislative Assembly in order that the Moslem Personal Law (Shariat) may be applied to Moslems in British India in place of the Customary Law is, in my opinion, a very desirable piece of legislation. The Customary Law is undefined and variable. It has been seen that while one party contends that the Personal Law should be applied in his case, the other party tries to make out that Customary Law is applicable to him. These contentions often make an otherwise simple case a complicated one. The court has first to determine whether the Personal Law has to be applied or the Customary Law in the particular case. If it decides that the Customary Law has to be applied, the custom has then to be ascertained and various attempts are then made by the parties to make such modifications as may seem profitable to them.

The Personal Law is already codified and is free from all doubts and innovations. For these reasons in my opinion it would be very desirable if the Bill is passed into Law.

Khan Bahadur M. E. R. Malak.

I HAVE the honours to state as follows :—

1. That it has been a long felt want of the Mussalmans almost all over the country that in matters relating to subjects enumerated in the said Bill, the Moslim personal law should be strictly adhered to.

2. That I am aware that such a measure would involve some amount of inconvenience in places where people have by long standing practice been accustomed to certain customs which are in contravention to strict Shariat. But notwithstanding the above factor I am clearly of opinion that a uniform application of Shariat all over the country would greatly tend towards the solidarity of the Community and in the long run result in general good.

It is my profound conviction that the Shariat as embodied in "Quran" and as exposed by the Muslim Jurists is such as exactly meets the needs of our Community and as such should be uniformly observed.

3. That in cases (which I am sure would be very rare) where there is no direct-tenant of Shariat or where there is no consensus of opinion among the Muslim Jurists, the Shariat may be interpreted in the light of local customs and usages.

With these humble observations I give my whole hearted support to the Bill.

Mr. Samiulla Khan, Advocate.

IN my opinion the proposed legislation is absolutely necessary in order to apply uniformly the Mohamedan Law to all the Indian Muslims. This Bill, I am sure, will be strongly supported by the Muslims all over India.

Mr. M. Bhaduri, Public Prosecutor.

THIS Bill, if passed into law, will not only introduce revolutionary changes in regard to matters of succession in the Punjab amongst the Khojas and Cutchi Memons in the Bombay Presidency and the Sunni Borahs of Gujrat but will effect certain sections of Mohammadans in other spheres of life, for example, a Cutchi Memon may now dispose of the whole of the property by will by customary law. A similar custom exists among the Khojas of Bombay. This will not be possible after the passing of the Bill.

2. The Indian Majority Act (Act IX of 1875) expressly saves the capacity of any person to act in matters of marriage, dower, divorce and adoption and therefore the question of minority is not effected by any law.

3. It is interesting to recall that in the Civil Court Act of Bengal, N.-W. F. P. and Assam (XII of 1887) (*vide* section 37) expressly lays down that questions regarding succession inheritance marriage or any religious usage or institution will be decided

according to Muhammadan law in cases where the parties are Muhammadans. It is important to note that in the aforesaid Provinces customs cannot vary the rule of Muhammadan Law in matters of succession, inheritance, marriage or any religious usage or institution but in the Civil Courts Acts of other Provinces it has been laid that in matters of succession, divorce, dower, guardianship, bastardy and other similar matters the parties will be governed by their personal law modified by such customs as are not contrary to justice, equity and good conscience (see Punjab Laws Act IV of 1872, section 5) (In our own Province see section V of Act XX of 1875, C. P. Code, Vol. 1, p. 32).

4. It is further interesting to recall that the wordings of clause 2 is a verbatim reproduction of section 5 of the Punjab Laws Act IV of 1872, except that sub-section (1) of that section, (which lays down that in matters mentioned in the section, the rule of decision shall be any custom applicable to the parties concerned which is not contrary to justice equity and good conscience and has not been abolished by law) has been dropped and the latter part of sub-section (2) has also been consequently dropped.

5. It is important to remember that in the matter of gifts the rule of Muhammadan Law has not been affected by section 123 of the Transfer of Property Act and consequently amongst Muhammadans a registered instrument is not necessary to validate a deed of gift of immoveable property (see 44 C. L. J. 490).

6. Similarly, the provisions of section 63 of the Indian Succession Act which lays down the formalities which are to be observed in the execution of wills do not apply to Muhammadans (see section 57, sub-section 2 of *ibid*).

7. I do not think therefore that this Bill is necessary. The existing provisions in the various enactments sufficiently protect the interests of the Muslim community and any drastic change is not called for.

Deputy Commissioner, Akola.

My own view is that if Moslems as a body desire to be governed by their personal law as regards matters referred to in section 2 of the Bill, no difficulty should be placed in their way either by Government or by other communities. But one thing is not clear to me either from the Bill or from the extract of the Legislative Assembly debates forwarded along with it. Does the sponsor of the Bill desire that the Shariat should be made into an immutable law, secure against all onslaughts by progressive and reformist minds? However excellent a law the Shariat might have been in the past and, however excellent it might be even to-day, it cannot be said that nothing superior to it, or nothing more satisfactory than it, can be evolved in the march of human progress. In my opinion, therefore, the door should not be closed to all reform, as appears to be the intention of the mover.

Another suggestion that I want to make is that all parties concerned should be Moslems before the Shariat can be applied to the matter in dispute. This object will be secured by substituting "all parties concerned" in place of "the parties" in the last line but one of section 2 of the Bill. The reason for the change I suggest must be clear. For example in a matrimonial dispute between a Moslem and a non-Moslem it will not be either just or proper to apply the Shariat unless both parties wish to be governed by it. Such instances might no doubt be rare but should not be lost sight of by the law-maker. And even though they might be rare to-day they may not continue to be so in future.

Subject to the observations above I am inclined to favour the amendment suggested by the non-official gentlemen whom I have consulted.

No. 7.—SIND.

Government of Sind.

I AM directed to state that while the local Moslem opinion approves of the Bill, the Judicial Commissioner of Sind, the Bar Association of Karachi and some of the officers consulted on the subject are definitely opposed to it. The Local Government are not inclined to support the measure.

The rules of personal law are being generally followed in this Province except in the Frontier districts, and the Government are of the opinion that in these districts, the Bill will meet with very strong opposition from the public. In the case of agricultural colonists from the Punjab, the presumption in matters of succession and inheritance is that they are governed by customary law. These customs have been so frequently discussed and affirmed that they have attained the authority and precision of a Code. It would not be expedient to upset these ancient customs, based partly on historical and partly on economic grounds, from considerations of mere religious sentiment.

Some of the rules of personal law have been modified by legislation. The Child Marriage Restraint Act is an instance of this kind. The present Bill if brought on the Statute book will exclude the application of this Act to Mahomedans. The Legislature should not deprive the Mahomedan public of the advantage of such a beneficial measure, nor should it be prepared to admit the implication that the rules of Mahomedan Law must, inspite of the changing conditions of society, remain unchanged for ever, and that it should be powerless for all time to modify them when public policy so requires.

For these reasons the Government are of the opinion that the Bill is retrograde and that it should be opposed.

Copies of the opinions of the Judicial Commissioner of Sind, the Bar Association, Karachi, and the Collectors of Larkana and Sukkur and some of the non-officials consulted, are sent herewith.

The Bill was published in English and Sindhi on 14th and 21st May, 1936, respectively in the Sind Government Gazette.

Mr. M. H. Gazdar.

I AM entirely in favour of the provision of the Bill. The Muslims are in great need of such a measure.

Mr. H. M. Fazal Ellahi.

MR. H. M. ABDULLAH deserves the gratitude of the entire Muslim community of India for bringing such a wise Shariat Act in introduction and its operation will certainly benefit the whole Muslim community in general and Muslim women in particular.

Mir Ayub Khan.

I HAVE the honour to state that the proposed Bill will prove highly beneficial to the Muslim community and ensure females their rightful position to which they are entitled under the Shariat and the sooner it is passed into law, the better for all concerned.

Judicial Commissioner of Sind.

No application has been made out for this Bill and I disapprove of it.

Karachi Bar Association.

THE Bill is so sweeping in its provisions that it can not be imagined where it will lead to. In certain places some custom and usages of law are so old and are so well established, that it would entail considerable hardship if they are changed in this manner. Moslem Personal Law (Shariat) is nowhere clearly defined and if the Bill is passed, it would probably be necessary to go to Ulama and Kazi's for interpretation of the law.

If the principle underlying this Bill is accepted and extended to other religious communities as well it would create considerable difficulties and confusion.

My Committee are therefore against the Bill and do not support it.

District Magistrate, Sukkur.

THE measure is bound to evoke a strong opposition from certain important and primitive sections of the Moslem community, e.g., Baluchis among whom in certain areas women themselves are disposed of in marriages according to decision of council of elders based on customs regardless of all laws of Shariat. It would therefore be advisable to provide that the Governor General in Council shall have power to exclude any particular tribe in a particular area from the operation of this Act by a notification in the Government Gazette.

District Magistrate, Larkana.

I AM strongly opposed to the introduction of this Bill into Upper Sind, where a large number of Baluchis live, who are guided by their own customs, which very often conflict with the Shariat. For instance, in Baluch custom the option of repudiation on attaining puberty does not exist. According to the Shariat a widow can remarry where she likes, but according to Baluch custom her father has the right to remarry her where he pleases.

I fully agree that Baluch custom is old fashioned and gives to woman a position little better than a chattel. But the abolition of the legal sanctions of Baluch customs will provoke the strongest opposition and discontent from all Baluchis. The Baluch customs will not be given up by Baluchis when the legal sanctions are abolished. If they cannot enforce them by Law they will certainly attempt to enforce them outside the Law. Further, on the abolition of special Baluch personal laws, Baluchis who find it suitable to do so, *i.e.*, especially women, will be encouraged to take the greater freedom that the Shariat allows, and which is often in conflict with Baluch custom. This will bring down retribution upon them from conservative Baluchis. All this will lead to an increase in bloodshed and disorder. I am firmly of opinion that Baluch customs are out of date and their legal sanctions should be abolished, but I am just as firmly of the opinion that this abolition cannot be done with one stroke of the pen without grave dangers. What is required is a gradual withdrawal of the application of the jirga system over a long period of years.

No. 8.—BALUCHISTAN.

Agent to the Governor General and Chief Commissioner in Baluchistan.

I AM directed to state that the opinion of such officers as have been consulted, with which the Agent to the Governor General is in agreement, is that in view of the circumstances which actually exist in Baluchistan, where customary law prevails, difficulties will attend attempts to enforce a law on the lines of the Bill until the people of this province progress in this direction spontaneously in imitation of developments in other parts of British India. It would, therefore, be preferable that the Bill, if enacted as law, should not be extended to Baluchistan at present.

No. 9.—DELHI.

Chief Commissioner, Delhi.

I HAVE the honour to forward copies of certain opinions on the Bill.

My own view is that however suitable the Bill may be for Moslem town-dwellers (and there seems good reason to suppose that it is) I nevertheless entertain the gravest doubts—more especially in view of the impending constitutional changes—whether the time is yet ripe for extension of the provisions to Moslem agriculturists. In this connection, and with particular reference to the conditions of the Punjab and Delhi, I invite special attention to the note of the Government Pleader.

District and Sessions Judge, Delhi.

THERE is not the least doubt that the Bill will be opposed by majority of the Muslim Agriculturists, who have so far been governed in matters of succession by custom, which has generally excluded the females from succession, but it cannot be denied that the Bill has a very noble object. It will introduce uniformity of law and raise the status of Muslim women. It will reduce litigation which is the outcome of diversity of customs prevailing in different parts of the country and will have a healthy effect on the economic condition of the country. The Bill will be welcomed by the educated Muslims of British India and the Muslim women and should receive the support of every well meaning member of the society. There can possibly be no serious objection to the Bill except in that it will deprive those who have been taking advantage of the customs dictated by them in the absence of the women who being confined in *parda* had no voice in submitting their case before the Settlement Officers who were entrusted with the preparation of the Customary Laws of the country.

Deputy Commissioner, Delhi.

I HAVE the honour to forward copies of certain opinions and to state that for the reasons given by the Government Pleader in his note, I am very doubtful as to whether the proposed legislation is desirable. The Delhi rural area is small but conditions are similar to those which exist in the Punjab, and I think that careful consideration should be given to the opinion of the Punjab Government in regard to the way in which the Moslem rural population will be affected by the proposed Bill.

Imam of Jama Masjid and 9 others.

I FULLY agree that Muslim Personal Law (Shariat) as applied by Mr. H. M. Abdulla should be enacted for all Muslims in British India.

Khan Saheb Sardar Bahadur Captain Habibur Rahman Khan and 2 others.

THE Bill, in my humble opinion, deserves favourable consideration and full support of all concerned.

Government Pleader, Delhi.

(1) THE object of the Bill appears to be that in all questions regarding succession, special property of females betrothal, marriage, divorce, maintenance, etc., etc., etc., the rule of decision where the parties are Moslems should be the Moslem Personal Law although there may be a custom, usage or law to the contrary. The Customary Law has been described in the statement of objects and reasons as having no sound basis. Delhi District was a part of Punjab Province upto 1911 and even now although Delhi is a separate province, most of the laws prevailing in Punjab are in force. In Punjab custom is the first rule of decision in all questions regarding succession, special property of females, betrothal, marriage, etc., etc. In all matters embodied in this Bill custom is the first rule of decision in the Punjab and in this province also. What is intended now is that the personal law should be the first rule of decision and not the custom. The Customary Law of Punjab is an unwritten law and the records commonly known as the Riwaj-i-Am are its evidence. The Settlement Officers are charged with the preparations of such records. On the basis of this unwritten law of custom and Riwaj-i-Am being treated as evidence, there have been numerous decisions of the Punjab High Court. And it may be safely said that the Customary Law of the Punjab is as much a settled thing as one can desire. It has more or less the form of a codified statute. The Mohamaden Law is not generally applicable to the agricultural tribes of the Punjab Province. And Punjab and Delhi (barring the city of Delhi) are purely agricultural provinces. Custom, of course, must be reasonable and no custom unless consecrated by time has the force of law. No custom based upon immorality or founded on violence and usurpation has been regarded as good law. Custom in this province supersedes general law. Entries in Riwaj-i-Am regarding the custom are only made by the public officers when the officers have satisfied themselves as to their truthfulness.

(2) It will be thus seen that if the present Bill is made a law applicable to the agricultural tribes also then so far as Punjab and Delhi are concerned, it will mean not only a change but a revolution. I really wonder if any of the agricultural tribes have been consulted in the matter. It is perhaps true that they are to a certain extent incapable of expressing a logical opinion. But how far it is justified to trust entirely new law upon these agricultural tribes who have followed their customary law for generations? The matter is really for the persons who are effected by this act but it seems to me that a sudden change in the personal law of the person whether customary or not is not likely to be a source of happiness.

Resident Magistrate, New Delhi.

THE object of the Bill is that Muslim parties should be governed by the Muslim Personal Law (Shariat), regarding succession, betrothal, marriage, divorce, maintenance, etc. There seems to be no objection if the Personal Law is made the first rule of decision, but this is bound to meet with opposition from the agriculturists of the Punjab so far as the Law of Succession is concerned. Villagers in the Punjab are governed by Custom, and daughters are not given a share in the property of their father. If Shariat comes into force, the land in the Punjab will be reduced to petty holdings, which is bound to result in poverty. People living in urban areas will certainly welcome the Act.

No. 10.—ASSAM.

Government of Assam.

I AM directed to say that Muslim opinion in this province appears to be generally in favour of the Bill. Some selected opinions are enclosed. The Governor-in-Council is of opinion that, admirable as the Shariat is in many ways, it is too late now to use it as the sole source of law for Muslims. The present Bill is so general that, to make it possible at all, it would be essential to introduce such a wide number of important exceptions that the result would be to leave matters much where they are.

The Bill was published on the Assam Gazette on the 9th October 1935.

Hon'ble the Minister of Education, Assam.

Apparently it will be very nice and perhaps will conform to the general declarations even of the British Government but the Bill will introduce a good deal of complications. The Moslem Personal Law has been interfered with under more than one enactments of the legislature, *e.g.*, the Majority Act, the Sarda Act, etc. Some of the Moslem communities of Western India have been allowed even by the Moslem divines of old to retain some of their own customs. Bohras and Khojas of Bombay Presidency are even now following the Hindu Law of Succession. In my opinion it is rather late in the day to attempt to go back to all the laws of Shariat in the matters mentioned in clause 2 of the proposed Bill.

Even if any such enactment is attempted at the present moment, I am afraid, innumerable exceptions shall have to be made which will very largely reduce the scope of the Bill. I am afraid, the complications introduced by the legislative enactments and the existence of customs must have induced Malik Muhammad Din, M.L.C. of the Punjab to withdraw his Bill.

The Moslem public even with exceptions would welcome such an enactment.

Anjuman Sabile Islamia, Gauhati.

The Anjuman is of opinion that enforcing custom among the Muslims in India should be abolished for the sake of uniformity, and therefore the Anjuman approves of the principles embodied in the proposed Moslem Personal Law Application Bill.

Professor M. Muhibulla, Cotton College, Gauhati.

It is, no doubt, desirable that there should be one uniform Personal Law for all the Moslems of India and British Baluchistan.

To enact this Bill into Law will, I believe, not be an innovation, but only an improvement upon matters already in existence. During the Moslem Rule, the Moslems were governed by the Laws of Shariat. In the early days of British Settlement, the same Shariat Laws were kept enforced in all its departments. Even now (excepting Shariat Laws regarding crime, punishment, revenue, landtenure, procedure, evidence, etc.), cases relating to Moslem Society, such as, marriage, divorce, maintenance, guardianship, succession and inheritance, etc., are decided as far as practicable under the circumstances, according to the Laws of Shariat. But this is done without any positive sanction behind them.

It cannot, however, at the same time be denied that there are many instances of cases where Shariat Laws are not strictly adhered to and in consequence, the decision go contrary to them, more particularly, in case of those places where customary Laws or usages are prevalent.

The main object of the Bill, therefore, is to do away with customary Laws and usages, as under them certain Moslem Communities in some parts of India (particularly the women) have been labouring under great injustice in various matters. The introduction of the Moslem Personal Law will, surely remove the disabilities of the women of those communities and raise them to the status which they are entitled to under the Mahommadan Law ; and it will give a definite sanction and power to the court to administer justice in accordance with one Law, which will bring about some amount of unity and uniformity in the social life of the Indian Moslems.

This Bill, of course, contemplates certain great changes and there will be a considerable diversity of opinion. But the Bill, important as it is, deserves thorough and dispassionate consideration.

If the Bill be passed into Law, there will appear a good deal of difficulties in its application ; but I do not think that they will be such as to prove insurmountable.

Secretary, Anjuman-i-Islamia, Jorhat.

SHARIAT or the Principles of Mahomedan Law, are in fact to be applied to all matters whether they are social, personal, religious, political, educational and economical. But it is a pity that few Mahomedans only are strictly guided by Shariat, and they are the saintly persons with enlightened hearts and developed souls.

The cases of Purdah and widow-marriage as personal as well as social concerns and such like matters over and above those mentioned in the Bill, ought to have drawn the attention of the learned body Ulema-i-Hind. When it is asked, if Shariat is followed in this respect, the answer is in the negative. The rules of Purdah are being transgressed by a few of these gentlemen, who are cultured in Western lines. It admits of no doubt that Purdah as it exists among Mahomedans of today, is not the quaranic Purdah.

It may be said with truth that in almost in all matters except such as Succession Shariat is followed by all Mahomedans in India and other countries. For example marriages are performed, dowers are fixed, divorces when made are declared to be valid according to the Principles of Islam. But it has been a time honoured custom, say among Assam Valley Mahomedan Parents, and it may be the case elsewhere in the country, to give as much portion of dowery to a girl, when married, as will ensure that she, and her sisters if there be any, will not be on the look out for receiving 1/3 of the property of her father, on the death of the latter, after deducting the due share of the widow. Where is the injury in this custom? Does it not show that Shariat is followed in spirit even in this matter? To deprive a married woman of her dues by her brothers or other relations is surely condemnable.

The Prophet of Islam is said to have remarked that good customs existing in certain places may be maintained, provided they are on the lines of Shariat. In this respect the opinion of men like Maulana Pir Ashraf Ali Saheb of Thanawi, Deoband (U. P.) may kindly be consented.

People will be left with lacerated hearts, if a revolutionary change be introduced all on a sudden and peace and tranquility will be unknown thereby. Women should not be Memmon Worshipers. However, rich woman may be in wealth, her status cannot be said to be truly elevated, if her mind, heart and soul are not developed. Let her follow in the footsteps of the illustrious ladies of the days of Caliphate for her real uplift. Let Shariat with regard to all matters be preached more from the platform than from the Press, because all women are not schooled, and if there be changes, and changes there cannot but be, will be slow, wholesome and embracing.

Hony. Secy., Assam Provincial Muslim League.

I do not find any objection to the passing of the said Bill. The Moslems of Bengal, U. P., and Assam are governed by Mohamedan Law in all questions relating to succession, inheritance, marriage or any religious usage or institution, in cases where the parties are Mohamedans. Consequently the Moslems of Bengal and Assam will not be effected at all. Those who will be effected, are Khojas, Cutchi Memmons, Sunni Bohras of Gujrat and Molesalem Girasias of Broach.

In the Madras Presidency the law of Pre-emption is not applied to Moslems even and unfortunately section 2 of this Bill is silent in this point. I am of opinion that the salutary provision of this piece of Mohamedan Law should not be denied to Moslem residents of that province and that the word "pre-emption" should be added in section 2 of this Bill.

No. 11.—UNITED PROVINCES.

Government, United Provinces.

The Hon'ble High Court at Allahabad and the Chief Court of Oudh have been asked to express their views and endeavours have been made through local officers to ascertain the general feeling of the Muslim public towards the Bill. The intervention of the vacation has made it impossible to obtain the considered opinion of the Courts. Of the Hon'ble Judges of the High Court only Mr. Justice Niamatullah has expressed an opinion, a copy of which is enclosed herewith and the Chief Court's views are not to be expected till after the vacation. This is the more unfortunate because it is in Oudh that the effect of the Bill will be greatest, if it is passed into law. I am however to forward for the information of the Government of India a copy of the views of Mr. H. S. Gupta, the Government Advocate for Oudh and also of those of Khan Bahadur Muhammad Ismail, the Government Advocate for the province of Agra. Both these gentlemen like Mr. Justice Niamatullah are opposed to the Bill. For the rest, the feeling of the Muhammadan community, so far as it has been possible to ascertain it, is in favour of the Bill.

2. It is inevitable that Muslim sentiment as a whole should favour a Bill which asks that the Muslim Personal law should override customary law especially since the Shariat is considered by Muslims to have high religious sanction. At the same time, as pointed out by the Hon'ble Home Member in his speech in the Legislative Assembly on April 7th,

the enactment of the provisions of the Bill would introduce revolutionary changes in certain parts of India, where custom, in such matters as succession, has become the established law. In the United Provinces this condition exists to a considerable extent especially in Oudh where, for instance, the succession to many Muslim taluqdari estates is governed by custom and not by the personal law.

3. The Governor in Council is impressed by the considered views expressed by Mr. Justice Niamatullah, Khan Bahadur Muhammad Ismail and Mr. Gupta who point out some of the serious legal consequences likely to ensue, if those provisions of this Bill were to become law. On the other hand, he feels that less weight should be attached to the views of those who are in favour of the Bill, since the probability is that for the most part they would not be affected by it. In the opinion of the Governor in Council the demand for the application for such legislation to those who have hitherto followed customary law should come from the persons concerned and not from those who are not likely to be affected by it. He also agrees with Mr. Justice Niamatullah that legislation, if any, should be provincial in character since customary law among Muslims must differ in various provinces and should preferably be considered after provincial autonomy has been introduced.

4. The Bill was published in English in the United Provinces Gazette, dated May 16, 1936, and in Urdu in that of May 23, 1936.

Hon'ble Mr. Justice Niamat Ullah.

I am opposed to this slipshod Bill which does not take any account of a number of statutory provisions, which are in conflict with it, and which it does not expressly repeal. Conditions so widely differ from province to province that an omnibus Bill of this description, if passed into law, will result in endless confusion.

There are several provinces in which customary law superseding the Mohamedan Law in certain respects has received statutory recognition. In Oudh it was enacted as far back as 1876 that in certain matters a well proved custom should prevail. A large number of ancient *zemandari* families have been following for generations certain rules of succession recorded in the *Wajibularzes* of their villages. Judicial recognition has been extended to those rules. The mover of the Bill is perhaps not aware that these families are the back bone of Muslim society in that province.

What I have said above applies with greater force in the Punjab where customary law is the rule rather than the exception in matters of inheritance and power to alienate.

The Khoja community of Bombay has not followed the Mohamedan Law in most respects and the rules of Hindu Law, modified here and there, are applicable to the members of that community as customary law.

I do not propose to discuss the broad question whether Mohamadan Law in all its aspects is suited to modern conditions, but in any case, the demand for its application to those who have not hitherto followed it in some respects must come from them and not from those who are not likely to be affected by it and who do not approach the question from a practical point of view. In my opinion, legislation of this kind should be undertaken by Provincial Governments where there is need or demand for it. Each Provincial Legislature should be left free to retain or abolish all or some of the customs which prevail within its ambit of authority. I do not think that opinions obtained by circulation of the Bill will reflect the opinion of those who are vitally interested in the proposed legislation and whose opinion it will not be right to ignore. This is of greater importance in view of the impending Provincial autonomy with enlarged Councils and electorates.

In my opinion the Government should not encourage this Bill.

Khan Bahadur Muhammad Ismail, Government Advocate for Agra.

The Bill moved by Mr. H. M. Abdulla, M.L.A., aims at introducing drastic changes in the present law of the country. I am certain that it will be strongly resented by those who are likely to be affected by it. The object of the mover is to make it obligatory on the courts to apply Muslim Personal Law (Shariat) to Muslims in India. In clause (2) of the Bill it is stated that "notwithstanding any custom, usage or law to the contrary all questions regarding succession, special property of females.....shall be the Muslims Personal Law".

It has been the policy of the British Government from the earliest times to apply personal law of the parties in all suits regarding inheritance, succession, marriages and caste usages, but in course of time the judges had to apply customary laws adopted by certain communities if a strong case was made out on the evidence. This was considered permissible on the ground of equity and justice.

Regulation II of 1772, S' 277, was the first enactment of its kind. Under Regulating Act of 1773, Section 17 the courts were directed that between the native inhabitants of Calcutta their inheritance to land, rents and goods, etc., shall be determined in the case of Mohamedans by the laws and usages of the Mohamedans and in the case of Gentoos by the laws and usages of Gentoos.

In the Bengal Civil Courts Act, VI of 1871, Section 24 makes similar provision which has been reproduced in Bengal, Agra and Assam Civil Courts Act, XII of 1889, S. 37.

In the course of the last century and a half certain Mohamedan communities in different parts of India have preferred to deviate from the strict rule of Mohamedan Law chiefly in the matter of succession. It will be disastrous to force them by legislation to accept rules of Mohamedan Law which is foreign to them. It will cause serious dislocation in the family life and will do violence to the sentiments of the persons concerned.

It seems to me that in order to introduce any change it will be absolutely necessary to deal with each Province separately and to examine the prevailing customs of different Muslim communities that have adopted rules of inheritance, etc., other than those provided by Mohamedan Law. This will require an elaborate investigation and if any change is considered desirable it must be in consultation with the persons affected by the change. In 9 M. I. A., page 199 their Lordships made the following observation "The profession of Christianity releases the convert from the trammels of Hindu law but it does not of necessity involve any change of the right or relation of the converts in matters with which Christianity has no concern".

If a Mohamedan chooses to profess Christianity or Hinduism or *vice versa* it is a question of faith and belief in the tenets of a particular religion but it does not follow that he is prepared to accept rules affecting property and other personal rights which are not integral parts of religion. I think it will be unwise and unfair to unsettle the settled rules of customary law in different Mohamedan communities of India.

Mr. H. S. Gupta, Government Advocate for Oudh.

In my opinion the Moslem Personal Law (Shariat) Application Bill will not be acceptable to the Moslems of Oudh and specially to the Mohamedan Taluqdars.

Under the Oudh Laws, Act No. XVIII of 1876, Section 3 (b), in questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions or any religious usage or institution, the rule of decision shall be—

- (1) Any custom applicable to the properties concerned which is not contrary to justice, equity or good conscience and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority ;
- (2) The Mohamedan Law in cases where the parties are Mohamedans..... except in so far as such law has been, by this or any other enactment, altered or abolished or has been modified by any such custom as is above referred to.

The Mohammedan Law as regards succession has been modified by the Oudh Estates Act, No. I of 1869 as amended by Act X of 1885 and by the U. P. Act III of 1910. There is a list of Taluqdars prepared under Section 8 (List 2) whose estate according to the custom of the family, on or before the thirteenth day of February 1856, ordinarily devolves upon a single heir. In the case of a Taluqdar entered in list 3 or a Grantee entered in List 5, rule of succession is by lineal primogeniture. Section 22 lays down rules of succession to the "Estate" (as defined in Section 2 of the Oudh Estates Act) of a Taluqdar or Grantee whose name is entered in lists 2, 3 or 5 or his heir or legatee. Section 23 regulates succession to the other property of such taluqdar or Grantee, or his heir or legatee. It also regulates succession to all property including the "estate" of a Taluqdar or Grantee whose name is entered in list 4 or 6. It has been held by the

Privy Council in several cases that the words "ordinary law" mentioned in Cl. 11 of Section 22 and in Section 23 include custom. In short the rules of Mohamēdan Law have been entirely modified by the Oudh Estates Act and Special rules of succession have been enacted.

Again the law of pre-emption in Oudh is regulated by the Oudh Laws Act. This act applies to Mohammedans with the result that the rules of Mohammedan Law of Pre-emption do not apply except on the footing of local customs.

Under the Mohammedan Law where a claim is made under a contract of dower, the court should, unless it is otherwise provided by any legislative enactment, award the entire sum provided in the contract. Dower is often high to prevent the husband from divorcing his wife, in which case he would have to pay the amount stipulated. But under the Oudh Laws Act 1876, Section 5, the Court is not to award the amount of dower stipulated in the contract of marriage, but only such sum as "shall be reasonable with reference to the means of the husband and the status of the wife".

The Mohammedan Law does not recognize adoption, but the Oudh Estates Act 1869, Section 29, permits a Mohammedan Taluqdar to adopt a son to him.

Minority under the Mohammedan Law terminates on completion of the fifteenth year. But that law has been materially altered by the Indian Majority Act, XI of 1875, and the only matters in which a Mohammedan is now entitled to act on attaining the age of 15 years are (1) marriage, (2) dower and (3) divorce. In all other matters his minority continues until the completion of 18 years, and in the cases of a minor of whose person or property a guardian has been appointed or of whose property the superintendence has been assumed by the Court of Wards, the age of majority shall be deemed to have been attained on his completing the age of 21 years.

Under the Mohammedan Law, a Mohammedan cannot by will dispose of more than a third of the surplus of his estate after payment of funeral expenses and debts and a bequest to an heir is not valid unless the other heirs consent to the bequest after the death of the testator.

Under Section 11 of the Oudh Estates Act of 1869, every Taluqdar and grantee, and every heir and legatee of a Taluqdar and grantee is competent to bequeath by his will to any person the whole or any portion of his estate, right or interest.

It will thus be seen that the Mohammedan Law has been modified by customs and legislative enactments and if the proposed Bill is passed into law the result will be so sweep away the old customs having the force of law and a number of enactments and, in my opinion, it will be against justice, equity and good conscience.

For use of Members only.

GOVERNMENT OF INDIA.
LEGISLATIVE ASSEMBLY DEPARTMENT.

Paper No. II.

OPINIONS

ON

THE MOSLEM PERSONAL LAW (SHARIAT) APPLICATION BILL.

(Introduced by Mr. H. M. Abdullah, M.L.A.)

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No. 12.—BOMBAY.

Government of Bombay.

I AM directed to forward herewith certain opinions and to state that a majority of the official opinions is against the Bill. None of the Muhammadan Associations which were consulted by Government on the Bill has sent its opinion so far.

2. The Governor in Council is of opinion that this is a matter for the Muhammadans to decide, and particularly for those sects of Muhammadans who do not follow the Shariat in matters of succession and inheritance. He also desires to draw attention to the Cutchi Menons' Act, 1920 (Act No. XLVI of 1920), which provides that any member of that community can, by a declaration filed before the prescribed authority, declare that he desires to be governed by the Muhammadan Law in matters of succession and inheritance. A possible alternative to the present Bill would be to allow a similar option to individual Muhammadans to be governed by the Shariat and not by the existing law in matters of succession and inheritance.

3. The Bill with the Statement of Objects and Reasons has been published in English in the Bombay Government Gazette, dated the 28th May, 1936, and in Marathi, Gujarati, Kanarese and Urdu, in the Bombay Government Gazette, dated the 18th June, 1936.

 Registrar, High Court, Appellate Side, Bombay.

I am directed by the Honourable the Acting Chief Justice and Judges to say that Their Lordships think that the question is one which the Mahomedan community ought to decide for itself. They would remark however that they have not noticed any strong demand for the proposed change and they think that if made, it is likely to create complications and lead to an increase in litigation.

The opinions of the District Judges consulted by Their Lordships on the provisions of the Bill, accompany.

 District Judge, Ahmednagar.

I am opposed to the Bill. The Assistant Judge and the Subordinate Judges in this District, including Mr. M. M. Hakim, the Mahammadan Sub-Judge, are also all opposed to it.

2. The Bill is likely to create great complications. The Muslims have been accustomed to the present law since a long period, and they would not like the change which will revolutionise their settled system and beliefs.

3. Custom and usage which are ancient, invariable, consistent and unequivocal ought to be recognised as law—perhaps even more than law. In some provinces they have been codified. It will be difficult to ascertain the personal law of each individual Muslim.

4. I am therefore of opinion that the long standing practice should not be disturbed and custom and usage which have acquired the sanction of law ought not to be undermined.

 District Judge, Belgaum.

I have the honour to state that so far as this Presidency is concerned Moslems are governed by the Mohomadan Law not in all but in some matters only as regulated by the Statutes of the Imperial Parliament and by Local Legislation. They are not governed by pure Mohomadan Law as such. The introduction therefore of this Moslem Personal Law to Moslems throughout India will no doubt achieve a sort of certainty and definiteness and will put an end to all customs, usages which are repugnant to the notions of Moslems and offend against the principles of the Shariat. It might be suggested that this Bill, in some parts of the Punjab or in other places in Northern India, might introduce a sort of rather revolutionary change where it appears to a certain extent that the customs and usages are practically codified. Still, in order to put an end to this conflicting state of affairs and the diversity of opinion based on the so-called customary law and usage which has not got any intrinsic definiteness characteristic of law as such about it and which is generally liable to frequent changes and which considerably enhance the risk of failure in the administration of Justice, I am in favour of the Bill being passed.

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District Judge, West Khandesh, Dhulia.

I might state that well-informed opinion among the Judges subordinate to me is opposed to this Bill. The only Mohammedan Subordinate Judge, Mr. Merchant, though he is in favour of the aims of the Bill is apparently opposed to its provisions. The Bar Association endorses the fear expressed by the Honourable the Home Member that the Bill would introduce revolutionary changes of a far-reaching character. It must, however, be added that the two Mohammedan members of the Dhulia Bar are in support of the Bill.

It will thus be seen that the Bill is highly controversial in character. Personally I am not prepared to support it for various reasons. In the first place, I do not sympathise with the idea of brushing customary law aside. Students of Mohammedan Law are well aware that even in the so-called personal law there is a considerable element of old custom and that Islam by itself is a continuation of old Arabic traditions. A reference might usefully be made in this connection to the introductory chapter of the Honourable Mr. Tyabji's Principles of Mohammedan Law. As he has also pointed out, the 'Urf' or custom is one of the principal sources on which Moslem lawyers have based the development of their law. "The law so obtained would be likely to be best adapted to the varying classes of people who embrace Islam, but it was distinguished in the language of the jurists from the 'shara' or religious law which was derived from other sources." Thus even in the Personal Law (Shariat) as prevailing to-day we do find a considerable element of custom.

Ordinarily, therefore, there is no reason why customs of people who profess Islam should be disregarded and they should be made to adhere strictly to the Personal Law even against their wishes. The customary law or legal customs are based on popular practice and they represent the unsophisticated sense of the community concerned. They are practical arrangements approved by the opinion of the community and have gradually ripened into the validity of a law. Even highly developed legal systems do not pretend to fix every particular of legal arrangement but leave a considerable margin for traditional customs. The necessity of respecting such customs prevailing among the various communities which profess Islam in India is indeed very great. It has been specifically recognised by all the enactments now prevailing. Custom having the force of law is at present invariably accepted by our Courts even when the parties concerned are Moslem. To abrogate such customs would be to give a rude shock to the existing popular notions of rights and justice. Besides, there are communities to whom the Moslem Personal Law does not apply at all in matters of succession and inheritance. Thus the Khojas and Katchi Memons in the Bombay Presidency are governed in these matters by the Hindu Law. To force the Moslem Personal Law on them would be to disrespect their traditions of centuries which apparently have worked very satisfactorily for them. Mr. Merchant, who as I understand, is a Bohra, rightly emphasizes that "all Moslems are not true Moslems" and that some of them accept only the vital principles of Islam. He does not understand why "such persons should be forced by an enactment to accept other principles which they are not prepared to follow and which are not among the fundamental principles which a person has to accept to become a Moslem." This is a useful distinction between Islam as a religion and Islam as a system of Personal Law. It is possible to have one without the other as is demonstrated by many communities in India which profess Islam.

The objection taken to customary law on the ground that it is uncertain has no substance in it, because no Court of law usually accepts a custom unless it passes certain judicial tests. Before a custom can have validity in law it must be shown to be both certain and continuous and besides this elementary requirement, it must have, as far as possible, an existence from immemorial times. Customary law, therefore, can be as definite and as precise as Personal law which, it may be pointed out, is not altogether free from ambiguity particularly of interpretation.

For these reasons, I cannot express an opinion favourable to this Bill. I think its sponsors would be well advised to withdraw it as was done in the Punjab Legislative Council some time ago.

Mr. M. J. Merchant, Joint Sub-Judge, Dhulia.

I have the honour to state that as a personal opinion I am in favour of this Bill so far as its aims are concerned. A true Moslem must follow Shariat in all his actions. But all Moslems are not true Moslems. Some of them accept only vital principles of Islam yet are Moslems. Why they should be forced by an enactment to accept other principles which they are not prepared to follow and which are not among the fundamental

principles which a person has to accept to become a Moslem. Particularly in a country like India where there are converts to Islam from Hindus and with whom they yet continue to live and mix and follow their old ancestral mode of living, rules of Shariat especially for succession would work hardship unless they change their mode of living as joint Hindu family.

About the Bill itself Section 2 requires some changes in the last 2 lines to make it free from ambiguities as far as possible. Instead of the words "where the parties are" there should be the word "respecting" because the word "parties" coming after "cases" is likely to be interpreted as parties to a suit or proceeding. The Shariat is differently interpreted and followed by different sects of Moslems. Therefore at the end of section 2 the following words seem to be necessary—"as interpreted by the sect to which they belong."

District Judge, Surat.

I have the honour to submit that the main object of this Bill, as stated by the mover in the Assembly, is that notwithstanding any custom, usage or law to the contrary in all questions regarding succession, marriage, divorce, betrothal and other social and cognate matters between parties who are Moslems, the rule of decision should be the Shariat Law. No doubt, the objection of the Bill is very laudable and it would really conduce to better solidarity amongst the Musalmans in India, but it would bring about a very revolutionary change especially in regard to matters of succession in this Presidency. The Khojas and Kachhi Memons are particularly restricted to this Presidency and in matters of succession and inheritance, they are governed by the Hindu Law. Amongst the Kachhi Memons, there is on foot a movement to adopt the Shariat Law for succession and inheritance purposes; but they have not as yet agreed to its adoption as a community and so far as I am aware, the Khojas have stoutly refused to submit to the Shariat Law in this respect. Moreover, the Sunni Borah Mahomedans of Gujarat and Molesalam Garasias of Broach are also governed by the Hindu Law in these matters and by a stroke of pen to make the Shariat Law applicable to them would naturally arouse great opposition and resentment. In my opinion, it would be disastrous to compel these persons to adopt the Shariat when by long usage and immemorial custom, they have been guided by different principles.

2. Under these circumstances, personally, I would not advocate the introduction of the Bill.

Government Pleader, High Court, Bombay.

1. I feel myself rather different in giving opinion on the merits of the Bill. It is a Bill which concerns a large and important community in India and the leading members of the community are the best fitted to consider the point involved in the Bill.

2. On the one hand is the force and weight of long-standing customary law. On the other hand is the point of ensuring uniformity of rules of law. In my opinion, a long-abiding customary law is proposed to be disturbed for the mere sake of uniformity.

3. The Muslim Women Organisations have, I know, condemned the customary law. It is possible to enact a measure to a limited extent and get over the situation so far as rights of women may require.

Offg. Remembrancer of Legal Affairs, Bombay.

I have the honour to state that the object of the mover of the Bill is to replace customary law (already ascertained by judicial decisions in nearly all cases) by the law of the Shariat. It seems to me that all sections of Mahomedans are not likely to support the proposed change which is, as regards succession, certainly of a revolutionary nature. Unless all sections of Mahomedans favour the proposed change the Bill does not deserve to be passed.

Commissioner, Central Division.

I agree with the view of Mr. Hamid Ali that Shariat should not override express enactments of the Legislature.

2. The proposed Bill would effect a revolutionary change in the case of certain sections of the Muhammadan community, e.g., the Khojas and should be made applicable to them only if they so wish. All that the Bill should do is to enable any section or subsection if it so desires to have the personal, rather than the customary law made applicable to its members.

Commissioner, Southern Division.

I have consulted all the District Magistrates in the Division except the District Magistrate of Kolaba, and I am to state that I generally agree with the view expressed by the Kanara District Magistrate. The other four District Magistrates who have expressed an opinion are in favour of the Bill.

Collector of Kanara.

The Bill seeks to introduce a change of vital importance in the law applicable to Moslems. The purport of the Bill is that where in any particular case a party before the Court relies on a custom as opposed to the Moslem Personal Law (Shariat), the latter should be allowed to prevail against the former. No doubt, the change in law is intended to ensure certainty and definiteness in the mutual rights and obligations of the Moslem public. But all the same the Bill appears to be of a sweeping nature. It may be conceded that in some cases a particular custom may be irrational or unreasonable. But such instances are only far and few between. A court of justice hardly recognises a custom unless it is ancient, reasonable and certain. The proper course to remedy such a defect would be to have a specific measure passed to make the custom illegal. But the present Bill, if passed into law would have the effect of declaring every customary law illegal and void. It is doubtful whether this principle will be acceptable even to the majority of the Moslems. It is clear that in many cases, title to property is based on customary law which has been recognised by a court of justice as not being opposed to justice, equity and good conscience. The existence of one or two bad customary laws referred to in the Statement of Objects and Reasons appended to the Bill can hardly be, in my opinion, a justification for enacting a law which will have the effect of declaring each and every custom void regardless of its merits.

I would therefore suggest that in view of the sweeping and vague nature of the Bill which seeks to introduce a change of a doubtful nature on a subject concerning religious matters, the Government may adopt an attitude of neutrality leaving the question to be decided by the majority of the members concerned in the Legislature.

Commissioner, Northern Division.

I have the honour to forward copies of certain opinions.

2. The most authoritative opinion on the subject seems to be that of Khan Bahadur Vali Baksh, which makes it clear that the Bill would meet with some opposition from considerable sections of Mahomedans in this Division.

3. In the first place the letter of Khan Bahadur Vali Baksh makes it clear that, as far as this part of India is concerned, the only important part of the Bill is that relating to succession and inheritance. In the other matters mentioned in the Bill, *i.e.*, betrothal, marriage, divorce, maintenance, dower adoption, guardianship, minority, bastardy, etc., the Mahomedans of these parts are already governed by the Personal (Shariat) law. It is not known whether there are different customs in this respect in other parts of India.

4. As regards succession and inheritance, the following classes of Musalmans in this Division are subject to the Hindu Law :—

Cutchi Memons.

Khojas.

Sunni Bohras.

Molesalam Girasias.

5. Khan Bahadur Vali Baksh has pointed out that for Cutchi Memons the Cutchi Memons Acts (Government of India Acts XLVI of 1920 and XXXIV of 1923) have already given that the present Bill purports to give. He has also pointed out that, even if the Bill was passed, there would still remain the difficulty in regard to property held by the classes of Musalmans concerned in Indian States.

6. It would therefore appear to be a matter for consideration whether a Bill drafted on the lines of the Cutchi Memons Act for other Musalman communities would not be preferable to the Bill now proposed.

7. As to the intention underlying the Bill, it would appear to be the outcome of the present 'tabligh' movement which is gaining ground as a counterblast to the Hindu 'Shudhi' movement. It is therefore clear that a contentious measure of this nature should not be supported in the absence of clear public demand for it.

Advocate General, Bombay.

I think the Bill is too drastic and will cause both annoyance and uncertainty.

I would oppose it.

District Magistrate, East Khandesh.

I have the honour to state that the Moslem Personal Law (Shariat) should be made applicable to Muslims in British India instead of the customary law for the following reasons :—

Generally all over India the Moslems are governed by the Law of "Shariat" and it is only an exception that in some cases the customary Law is applicable to certain individuals or groups of Moslems overriding the Laws of the Shariat. For instance, the Moslem Community known as Cutchi Memons so far followed the Hindu or Customary Law of inheritance instead of Shariat. But these very Cutchi Memons are now following or adopting the Law of inheritance as laid down in Shariat and giving up the customary Law which was applicable to them.

The Memons are not the descendants of the original Moslem invaders of this country but are converts to Islam and because of a few Hindu customs they follow, they have not been able to intermarry or intermix with the rest of the Muslims in India and have remained a separate community and have not lost their identity though they are more zealous than the rest of Muslims in following the cardinal precepts of Islam, viz., Prayers (Nawaz) ; Fasting (Roza), etc.

It is to make such small communities merge entirely into one large community, its parent body and have common law for all without exception that this Bill aims at and the educated Muslim public including those who are governed so far by customary Law would I believe welcome this Bill.

Collector of Broach and Panch Mahals.

I have the honour to enclose a copy of letter from Khan Bahadur Vali Bax A. Patel, M.L.C., and to state that I agree generally with the views expressed by him. Two other educated Mahomedans were consulted by me. They are in favour of the Bill.

K. B. Vali Baksh Adam Patel, M.L.C.

I have the honour to state that the Hindu Law is applied to those communities who were originally Hindus but have afterwards embraced Islam, only in matters of Inheritance and succession and in all other matters they are governed by the Moslem Personal law, such as betrothal, marriage, divorce, dower, maintenance, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, etc. In no other matters Hindu law is applied to converts to Islam, e.g., in Hindu law joint family system is recognised and a son as soon as he is born acquires rights equal to that of his father in the ancestral property of his father, but this rule does not apply to converts to Islam. Again the theory of joint family business is not applied to them, and the relations between the members of Muslim family are governed by the Indian Contract Act and the Indian Partnership Act as in Mahomedan law itself there as no provision as such. Though the Hindu law of inheritance and succession is applied to them, the doctrine of survivorship is not applied to them.

In the case of Cutchi Memons who are governed by Hindu law in matters of inheritance and succession it is provided for the benefit of those who want to be governed by the laws of Shariat by the Cutchi Memons Act 1920 and the Cutchi Memons (Amendment) Act 1923 that any person who satisfies the prescribed authority—

- (a) that he is a Cutchi Memon and is a person whom he represented to be,
- (b) that he is competent to contract within the meaning of section 11 of the Indian Contract Act, 1872 and
- (c) that he is resident in British India, may by declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of this Act, and thereafter the declarant and all his minor children and their descendants shall in matters of inheritance and succession be governed by the Mahomedan law.

In the above case of a Cutchi Memon wants to give equal status to women he may follow the procedure above mentioned and apply to Moslem law of Shariat to him. In this way

this Act may be extended to the other communities. Again most of those communities are the subjects of native states and in the native states their own law (Hindu law) is applied and it will create great hardship if the law of Shariat is applied to them as the property situated in native states will be governed by the Hindu Mode of inheritance and succession. In Gujarat these communities belong to the agricultural class and their principal holdings are lands and houses and it will be a very difficult task to divide a small piece of land containing a few acres when the daughters are living with their husbands some miles away ; in the District of Broach on account of Bhagdari tenure there is a legal hitch in subdividing the property among sons and daughters ; so a long standing usage recognised by the Civil Courts is prevalent that daughters should not inherit the landed property if their father, they are given instead ornaments and clothes at their marriage and some amount in cash, when they issue marry. The Broach Shirasta recognised by the Civil Court should therefore be allowed to stand, otherwise it would disturb the harmony of the Boras and there would be many family feuds.

Before the year 1882 Hindus in British India were governed by the Hindu Law of Transfer, but as their principles were not opposed to the principles stated in the Transfer of Property Act, that Act was applied to them entirely but these principles were opposed to the laws of Shariat as in the case of transfer of property and gifts and so the 2nd chapter and the chapter of gifts was not applied to them and also to the Muslim converts, as in those cases they are governed by the laws of Shariat even today.

In the case of marriage, dower, divorce, maintenance, guardianship, minority bastardy, family relations, wills, legacies, and gifts Moslem law of Shariat is applied even today to all Moslems without any distinction among them.

Even though Indian Majority Act is passed it does not apply to Moslems in the case of marriage, divorce, dower and in these cases the law that is applied to Moslem converts is the law of Shariat and not the Hindu law, and the same is the case in matters of maintenance and guardianship.

In the case of wakf also Moslem law is applied and whether a wakf created by a Moslem is invalid is governed by the Moslem law and not the Hindu law.

Looking to all these provisions there is no need of any fresh legislation and reverse the whole law of succession and inheritance which has been followed for more than four hundred years. There is no need to create fresh agitation among the Musalmans, when the generality of them have not demanded it ; the time is not still ripe for it.

Collector of Ahmedabad.

I have the honour to enclose a copy of the letter received from the President, Sunni Muslim Wakf Committee who were consulted on the subject. As regards the Bill itself, it will introduce revolutionary changes in the Law as it has been understood and formulated at present in many provinces and it seems very doubtful whether the parties or the communities concerned will really benefit by the introduction of changes of this description, at the present stage of the evolution of Mahomedan personal law.

President, Sunni Muslim Wakf Committee, Ahmedabad.

I have the honour to state that my committee and myself are in perfect agreement with the object of the Bill, which if passed into Law, will remove anomalies and difficulties often experienced in the administration of Muhammadan Law, but I am afraid, the drafting of the Bill is not so accurate and comprehensive as to obviate all changes of litigants adopting subterfuges to circumvent its provisions. The time at my disposal being limited, I have not attempted to re-draft the Bill.

Mr. I. I. Chundrigar, Advocate, Ahmedabad.

I am in perfect agreement with the object of this Bill and the provisions contained therein. The system of inheritance presented by the Quran made not only a great advance on any system prevalent in any civilized community then, but it is such an excellent system that it gave in the 6th century, A.D. rights to women and others, for which they have to clamour even in the 20th century in several communities.

The customary law owes its origin to Hindu influences on the Muslims in various places. The customary law in almost all cases sets at naught the improvements made by Islam in the Law of Succession prevalent before the introduction of the salutary reforms by Islam. Muslim opinion will therefore greatly welcome the principles of this Bill.

Section 2 of the Bill is however not well-worded. There are several cases of succession to the property of a Muslim, in which non-Muslims are parties and as the Section 2 is worded, it will not apply to cases, in which non-Muslims may be parties. This defect will give an easy handle to those, who want to evade the law of the Shariat.

I therefore suggest that Section 2 may be split up and worded as under :—

- (i) Notwithstanding any custom, usage or law to the contrary, all questions relating to the succession to the property of a Muslim and partition thereof shall be decided according to Shariat.
- (ii) Notwithstanding any custom, usage or law to the contrary, all questions relating to betrothal, marriage, divorce, maintenance and dower of a Muslim shall be decided according to Shariat.
- (iii) Notwithstanding any custom, usage or law to the contrary, all questions relating to guardianship, minority, bastardy of a Muslim and all questions relating to wills of and gifts by a Muslim and any question relating to the special property of a Muslim female shall be decided according to Shariat.
- (iv) Notwithstanding any custom, usage or law to the contrary, all questions relating to wakfs, religious usage or institution shall be decided according to Shariat.
- (v) That notwithstanding any custom, usage or law to the contrary, no adoption by a Muslim shall be valid.

Mr. A. O. Koreshi, Retired Collector.

The Bill for the application of the Muslim Personal Law (Shariat) to the Muslims of British India has long been overdue and is unexceptionable. It is in accordance with the cherished wishes of the Muslim community. It is the law for Muslims in all Muslim countries, and was the law for them until the advent of the British in India.

The Muslim community is one and indivisible, and it is in the best interests of the professors of that faith that their Personal Law should be made applicable to them in all their social and personal relations. It is the Koranic Law which the Muslims believe to be the infallible and equitable God-made and not a man-made Law for the Muslim nations of the world. This Personal Law, therefore, naturally avoids the destructive extremes of Capitalism and Communism. It is so to say a half-way house between Capitalism and Communism in their worst forms. It holds Aristotle's mean as the best law for mankind in their social and personal relations.

There are a few small sections of Muslims very restricted in number—and known by some specific names who follow the Customary Law, such as the Memons, Khojas, Molesalams, etc. But these are not only small in number, but the enlightened members amongst them have, for various reasons such as the advancing tides of Socialism and Communism, awakened to the needs of the situation and evince a real yearning for the Muslim Shariat Law. Some of them are very orthodox such as the Memons, and these have an enabling law enacted so as to have the Islamic Law made applicable to them by choice, and there are others, barring, perhaps, only a negligible few, who are anxious that what is applicable to them in theory should also be made applicable to them in practice. No doubt, some of them follow the Customary Law which is so vague and indefinite and which is really not in consonance with the Islamic faith which they profess.

The Muslim Personal Law is a codified and definite law, whereas the Customary Law, in the real sense of the term can, scarcely be said to be codified. On almost every individual case, the family custom has to be ascertained and much research work is needed for this. Much valuable time and energy of judicial Courts is wasted in ascertaining it, and even then, it is so changeable and vague that one Judge may, on the evidence adduced by each party, arrive at one conclusion and another at another conclusion. Thus, there is a great likelihood of injustice being done. It is in the interests of the Courts themselves as well, and in the interests of fixity and uniformity that the Personal Law should be made applicable to so large a community as the Muslims of British India.

The succession to land which is based on custom creates much heart-burning amongst the women-folk and younger members of a family, and often gives rise to much embitterment, family feud and avoidable litigation.

Moreover, Custom in the case of Muslims is not ancient as in the case of the Hindus, and has really, in most cases, come to take the place of the Personal Law (Shariat) after the advent of the British in India. "To constitute a valid custom, as Rattigan puts it,

“ the usage which goes to support it must be *ancient, invariable and reasonable* ”. The Shariat Law naturally supersedes Customary Law the moment a person comes under the jurisdiction of the Shariat Law which does not recognise custom as such except that which may have been incorporated into it or that which may be in consonance with it. Thus, in the case of the Mussalmans, custom cannot be said to be ‘ ancient ’ in the same sense as it is in the case of the Hindus.

Custom, unfortunately, relegates woman to a very subordinate position in the proprietary hierarchy of inheritance, and she has a very great grievance against the application of Customary Law to her in preference to the Personal or Shariat Law to which she is subject and which ought to be made applicable to her in all her social relations. The grievance of woman, in this matter, is so great that other nations and communities, including Christians and especially the Hindus, have been awakened to a sense of justice to her and are gradually doing their best to bring such laws in line with the highly commendable and liberal attitude adopted by Islam in this connection. An enactment making the Personal or Shariat Law applicable to Muslim women in general alone will restore her to the pristine sanctity, purity and equity of her destined and unequivocal place in the Muslim family life, in matters of betrothal, marriage, divorce, inheritance, special property of females, maintenance, dower, adoption, guardianships, etc.

The Muslim Personal Law partitions the family fortunes of a Muslim family with great precision and enquiry and in full arithmetical proportions. It takes into full account the rights of a mother, wife and daughter in the family estate, as also of brothers and sisters. It thus engenders a feeling of equality, equity and justice amongst the members of that great community.

The application of such a Personal Law will not only distribute the family wealth to almost all the nearest family members of a large Muslim family, but in my humble opinion, from the point of view of State as well, it will greatly help to prevent the spread and permeation of communistic ideas amongst the masses of eighty millions of Muslims inhabiting this great country,—ideas which, as is generally recognised are a great menace at present to the peace, tranquillity, orderly and good government of the country, which it should be in the best interests of the State to nip in the bud.

On these grounds, therefore, I heartily support the Bill.

No. 13.—UNITED PROVINCES.

Government, United Provinces.

IN continuation of this Government's letter No. 1494, dated July 21, 1936, I am directed to submit a copy of the opinions recorded by the Honourable Judges of the Chief Court of Oudh on the provisions of the Bill to make provision for the application of the Moslem Personal Law (Shariat) to Moslems in British India.

Copy of opinions recorded by the Honourable the Chief Judge and the Honourable Judges of the Chief Court of Oudh.

This is a very contentious Bill and there is no universal demand amongst Moslems all over India for the principle underlying this Bill. The “ Shariyat ” will first have to be codified and made exact before courts will be in a position to say what Moslem Personal Law is. The Bill will raise more difficulties than it will resolve, and I am therefore opposed to it.

E. M. NANAVUTTY, I.C.S.

I am whole-heartedly in favour of the Bill which is backed by Muslim public opinion. The Bill is no more than an attempt to enforce with greater definiteness and certainty the principle underlying section 37 (1) of the Bengal, N. W. P. and Assam Civil Courts Act (XII of 1887). The Shariat has long been codified and courts can experience no difficulty whatever in giving effect to its provisions in cases in which parties are Muslims.

M. ZIAUL HASAN.

I do not approve of this Bill. Custom is regarded as transcendent law in this country. There is a large body of Muslims in Oudh who are governed by well-recognised family and tribal customs in matters of inheritance, etc. They are sure to disapprove of such a measure.

BISHESHWAR NATH SRIVASTAVA, O.B.E.,
Chief Judge.

No. 14.—BURMA.

Government of Burma.

I AM directed to say that the Bill together with its Statement of Objects and Reasons, was published in the Burma Gazette of the 30th May 1936, and that the fact of such publication was duly intimated to the public in a press communiqué which was issued in English to the Press generally on the 23rd May 1936.

Copies of the opinions received are forwarded for the information of the Government of India.

3. It will be observed that the Bar Association, Mandalay, and the Chulia Muslim Association, Rangoon, are in favour of the Bill whilst the Burma Moslem Society sees no necessity for such a Bill in Burma as the law in force at present by virtue of section 13 of the Burma Laws Act is sufficient to meet the demands of Moslems in Burma. The Honourable Judges of the High Court of Judicature at Rangoon besides offering criticisms on the incompleteness of the Bill as it stands, have pointed out the difficulties that would arise if, as contemplated by the proposed Bill, the personal law of the Moslems, was made applicable also in questions regarding gifts and partitions.

4. His Excellency the Governor in Council has given the matter his careful consideration and agrees with the Honourable Judges of the High Court that the proposed Bill aims at a great change in the personal law of the Mohamedan community and should not be made applicable to Burma on the eve of Separation.

 Registrar, High Court of Judicature at Rangoon.

I am directed to forward the following views of the Honourable Judges :—

The Bill as it stands appears to be incomplete. The Moslem Personal Law already applies for certain purposes to Mohamedans so far as the Honourable Judges are aware in all provinces. In Burma the Burma Laws Act extends this law to Mohamedans as regards marriage, divorce, succession, inheritance and so on. For this Bill to be complete a schedule of repeals is required, and this schedule would include the Burma Laws Act, the Oudh Laws Act and so on.

With regard to the Act itself the Moslem Personal Law in matters of succession, betrothal, marriage, divorce, maintenance, dower, adoption, guardianship, minority and so on might well be made to apply to Mohamedans so far as their personal and family matters are concerned. The Honourable Judges do not, however, think that the Moslem Personal Law should be applied to Mohamedans where such law directly overrules the general law of the State, and would therefore leave out from clause 2 the words " gifts " and " partitions ". There is no reason why Mohamedans because of their religion should be allowed to make gifts of immovable property without executing a registered deed. The extension of Mohamedan law to gifts to a very great extent takes away from the value of the entries in the Registration Office, which should be a complete list of all changes of ownership of interest in the land, and the same applies to partitions. Other communities would be affected by this. Wherever Mohamedans are concerned the compulsory registration in this register would not be applicable to all changes of title in land, and therefore members of other communities might find themselves buying land from Mohamedans in good faith with complete title according to the Registration Office registers and yet find that their vendors have no title whatsoever, having already given away their interest to some other Mohamedan by a gift, which, if this Bill came into law, would be legal and valid.

In any event the Honourable Judges do not think that a Bill which aims at this great change in the personal law of the Mohamedan community should apply to Burma on the eve of separation. If Burma wishes to give this privilege to Mohamedans who live in Burma, it is Burma who should give such privileges, and not India as a final farewell gift.

 The Burma Moslem Society, Rangoon.

My Society feels that the law at present in force by virtue of section 13 of the Burma Laws Act is sufficient to meet the demands of Moslems in Burma.

My Society does not see any necessity for the proposed Bill in Burma.

 " Bar Association ", Mandalay.

The association approves of the Bill in its entirety.

Chulia Muslim Association, Rangoon.

My Association has considered the proposed Bill very carefully and has come to the conclusion that the Association should support it very strongly. The Association is aware that there is also a very strong feeling amongst the Muslims to have their personal law (Shariat) to govern them.

Soorti Mohamedan Association, Rangoon.

My Committee have gone through the Bill very minutely and they entirely agree with the objects and reasons put forward by the Mover and are in favour of the Bill.

Burma Indian Chamber of Commerce, Rangoon.

The Chamber strongly supports the Moslem Personal Law (Shariat) Application Bill by Mr. H. M. Abdulla, M.L.A.

Rangoon Memon Jamaat.

1. This general meeting of Memon Community of Gujarat and Kathiawar, residing at Rangoon, is entirely acquiesced with the proposed Sheriat Bill, introduced by Moulana H. M. Abdulla, M.L.A., in the Legislative Assembly, and most strongly support it. This meeting respectfully appeal to the Government of India that the Bill should be passed into the Law, so that cases between the Mussalmans be decided only according to the Sheriat of Islam ; and that no case of the Mussalmans personal law be decided under any customary or non-Muslim laws.

2. This meeting sincerely requests all the members of the Legislative Assembly and particularly to the Muslim members to support the Bill most vigorously and unanimously. It is a long-felt religious need of the Muslim. Therefore the Bill ought to be passed into the Law.

3. This meeting most earnestly urges to the Government of India, the favour of adding the Sheriat Bill into the book of Statute which has been introduced into the Legislative Assembly, by Moulana H. M. Abdulla, M.L.A.

Jamiyat-e Ulama-e, Burma.

Our Jamiyat heartily support the Shareeat Bill which is introduced by Mr. M. Abdullah, M.L.A., and circulated on 17th April, at the Delhi Session.

We are sure Government of India will also support this Bill as it is one of the most important Bills specially for the amelioration of the condition of Muslims of India.

No. 15.—ORISSA.

Government of Orissa.

THE Mohammadan population in this province is small and, although the representative Mohammadan opinion in the province is generally in favour of the Bill, Government agree with the opinion of the vacation Judges of the Patna High Court that, as far as this province is concerned, the Bill is unnecessary as the Mohammadan Law is always applied by the Courts in all the matters referred to in the Bill.

The Bill was published in the *Orissa Gazette* of the 29th May, 1936, in English only.

Copy of the opinions of the Hon'ble the Vacation Judges.

So far as this Court and Courts subordinate to it are concerned the Bill is useless. In all the matters referred to in the Bill Mohammedan Law is always applied, as far as it can be applied.

(Sd.) K. M. NOOR.

I fail to see how this Bill will be an improvement upon the administration of Mohammadan Law in this Province.

(Sd.) S. P. VARMA.

No. 16.—BENGAL.

Government of Bengal.

I AM to forward for the information of the Government of India copies of some opinions received from selected officers and public bodies consulted.

The Bill proposes to make the Muhammadan Law applicable to all Muslims throughout British India with special reference to certain items such as betrothal, marriage, divorce, maintenance, dower, adoption, guardianship, minority, bastardy, family relations, will, legacies, gifts, partitions, religious usages or institutions, etc. The Governor in Council is advised that the Mussalmans in this Presidency are to a very large extent governed by the provisions of Muhammadan Law in virtue of the operation of Act XII of 1887, unlike the Moslems of certain other provinces where they are governed to a considerable extent by numerous customs, practices, local and tribal law that abrogate the Muslim personal law. So far as Bengal is concerned there is no widespread Muslim public opinion at present pressing for legislation of the nature contemplated in the Bill and there is no difficulty here which legislation of this type may be expected to remove. The Governor in Council is not therefore in favour of legislation on an all-India basis as contemplated by the Bill. Having regard to the existence of differences in different provinces, he would rather favour legislation on a provincial basis if any legislation is demanded at all, with reference to the difficulties and requirements of the particular province concerned.

I am to add that the Bill was published in the *Calcutta Gazette* of the 5th December, 1935, and was also translated into Bengali.

District Judge, 24-Parganas.

I have consulted my colleagues, and one and all are opposed to the provisions of the Bill. I myself also subscribe to that opposition.

In the first place, in my opinion, the principles upon which the Bill is founded have been to a great extent already recognised in this Province. Under the Government of India Act of 1915 the Governor General in Council has power to repeal or alter any of the provisions mentioned in the fifth schedule of that Act. This power is conferred upon him under Section 131, clause (3) of the Act. Under the India Act the Governor General in Council, therefore, has the power to alter the Law to be administered in cases of inheritance, succession, contract and dealings between party and party. The proposed Bill contains in Section 2 a provision that notwithstanding any custom, usage or law to the contrary, all questions regarding succession and the like shall be governed in future by the Personal Law of Moslems where the parties are Moslems. The Bill, therefore, in a measure takes away the power conferred on the Governor General in Council by the Government of India Act to alter the Personal Law of Moslems under Schedule 5 of the Act.

So far as the Province of Bengal is concerned the existing Law of Moslems is provided for in Section 112 of the Government of India Act. That Section provides, "The High Court at Calcutta in the exercise of its Original Jurisdiction, in suits against inhabitants of Calcutta, shall in matters of contract and dealings between party and party, when both parties are subject to the same Personal Law or custom having the force of Law, decide according to that Personal Law or custom having the force of Law, and when the parties are subject to different Personal Laws or customs, decide according to the Law or custom to which the defendant is subject". The Personal Law to be applied, however, in such cases must be such as has not been abrogated by the Statutory Law of British India.

The *mofussil* Courts in Bengal which fall outside the jurisdiction of the Original Side of the High Court, Section 37 of Act XII of 1887 applies, and the Civil Courts have to decide all questions relating to succession, inheritance, marriage or any religious usage to institution by the Mahomedan Law in the cases where the parties are Mahomedans excepting so far as such Law has by Legislative enactment been altered or abolished. In other cases, not provided for by any other Law for the time being in force, the decision has to be according to justice, equity and good conscience. There are also judicial decisions in which custom of inheritance prevailing in a particular family has been recognised, but such cases are few and it is difficult always to prove invariable custom.

This will shew that the principles upon which the Moslem Personal Law (Shariat) Application Bill is founded have been already recognised in this Province. It may be that in other Provinces legislation is necessary—for example, in the Punjab—but, in my opinion, such legislation should be undertaken by the Provincial Legislature alone.

It cannot be denied that the proposed Bill would introduce far-reaching and almost revolutionary changes in the social structure of the Moslem population of India. For example, under its provisions all questions of minority would have to be decided according to Moslem Personal Law ; and this would result in the Indian Majority Act and the Guardian and Wards Act ceasing to have any application in the case of Moslem minors. Another instance in which the Bill would lead to difficulty would be with regard to usury which under Moslem Shariat Law would be entirely forbidden. Still further if the Shariat Law is to prevail, then a Moslem who renounces the Moslem faith would be excluded from inheritance—a rule which has been abolished under the Freedom of Religion Act of 1850.

The Shariat Law may be several centuries old but it contains no element of progress. Any attempt to prohibit Legislative interference with it and to enforce its provisions would be a retrograde step and, under the sanction of religion, would fetter modern progressive society with the shackles of an ancient Code.

I am, therefore, of opinion that the Bill should be opposed. The Bill also is bad in that it makes no provisions for cases in which both the contesting parties are not Moslems and the very word "Shariat" in the Bill is itself indefinite and takes no account of divergencies in the Shiah and Sunni Moslem Laws.

District Judge, Chittagong.

I have the honour to state that the Subordinate Judges in this district (all Hindus) are opposed to the Bill on the ground that Customary Law has been assigned a high place in Islamic Jurisprudence and as such its abolition may be fraught with serious consequences specially in the minds of illiterate people.

2. The Muhammadan Judicial Officers of the district are, however, all in favour of the proposal in the Bill that all Musalmans in India should be governed by the Shariat (Codified Law of Islam). In their opinion, the provisions of the Bill, if passed into Act, will have a salutary effect on society ; make the law definite and uniform all over India, and save the community from going into evidence about the existence of any custom.

3. Personally, I have no views.

Muslim Chamber of Commerce, Calcutta.

My Committee have noticed the growing volume of public opinion among the Mussalmans in favour of the provisions of the Bill and they feel that any customary law or usage cannot be a substitute for the Muslim Personal Law (Shariat) where the parties happen to be Mussalmans. The administration of Anglo-Muslim law in India is essentially wrong in principle and its application in civil cases has resulted in a system of case law which is neither uniform nor satisfactory with the result that in cases of succession, inheritance of property by females and, etc., different usages have acquired the force of law in different provinces.

These obvious deviations from the Shariat with regard to certain fundamental rights and obligations relating to the personal law of the Mussalmans, have been the subject of acute controversy and have been looked upon with disfavour by Muslim public bodies all over India.

Muslim Personal Law has been so modified by the Anglo-Muslim Law in India that a Bill of this kind was long overdue. The provisions of the Bill, if accepted, will go a long way to the amelioration of the economic condition of the Mussalmans, will preserve property rights of their women and make their religious usages and institutions safe from the encroachment of alien principles of legal jurisprudence. If the Government agrees to the principles contained in the Bill that has been circulated, the administrative difficulties attendant on the practical application of the measure can be overcome without much difficulty and as the decisions on the principles embodied in the Bill will be applicable only where the parties are Muslims, other communities need not be apprehensive of any encroachment on their religious or personal rights.

My Committee are conscious of the far reaching changes that the present Bill proposes to bring about by reinstating the Muslim Personal Law (Shariat) as the rule of decisions in cases where the parties are Muslims and they are also conscious of the possibility of opposition to it from some quarters but they believe that any such opposition will be actuated by personal motives and confined only to certain parts of the country.

My Committee believe that the duty of the Government in this respect is perfectly clear. They have to allow and afford ample opportunities to the Mussalmans to enjoy the protection of their own law in contradiction to the customary law and usages that have acquired legal sanction in this country.

My Committee also desire to point out that the procedure adopted to enforce this Bill when it is placed on the Statute Book should be to recruit Mussalmans to conduct such cases as fall within the purview of the laws contemplated by the Bill as this will help in modelling the case law on proper lines.

My Committee desire to give their unanimous and unqualified support to the provisions of the Muslim Personal Law (Shariat) Application Bill and hope that the Government would lend their support to its passage and see that the Bill is passed into law.

Bar Library, 24-Parganas.

The views of the Association are strongly opposed to the Bill. The various systems of customary law affecting social matters of different communities of Moslems in the country were evolved as by a natural process by the respective provinces each according to the peculiar habits of its people, their social conditions and needs, which are not likely to be better or even so well served by a rigidly uniform and inelastic system which the Bill seems to introduce. The reduction of these diverse systems of customary law to the dead level of an ideal uniformity so attractive to theoretical reformers would involve the sacrifice of much that is valuable and useful in these systems. Besides, the customs that are enforced by the Courts are certain and reasonable. The Bill, if passed into law, would in effect introduce an unwanted social revolution and as such my Association is of opinion that the Bill is unnecessary.
