

India. Legislative Assembly Dept.

Paper No. II

Opinions on

The Hindu Marriage Validity Bill

(Introduced by Bhagwa Das)

Opinions Nos. 13-18

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J.M.186

GOVERNMENT OF INDIA.
LEGISLATIVE ASSEMBLY DEPARTMENT.

Paper No. II.

OPINIONS

ON

THE HINDU MARRIAGE VALIDITY BILL.

(Introduced by Dr. Bhagwan Das, M.L.A.).

Opinions Nos. 13—18.

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ASSAM.

PAGES.

No. 13.—From the Chief Secretary to the Government of Assam, No. J/842-4102-G.J.,
dated the 21st July, 1936 and enclosures 25—28

UNITED PROVINCES.

No. 14.—From the Secretary to Government, United Provinces, No. 514-J., dated
the 23rd July, 1936 and enclosures 28

BURMA.

No. 15.—From the Secretary to the Government of Burma, No. 390-W./36 (1258),
dated the 15th July, 1936 and enclosures 28—29

BOMBAY.

No. 16.—From the Secretary to the Government of Bombay, No. 7801/3-B., dated
the 23rd July, 1936 and enclosures 29—36

ORISSA.

No. 17.—From the Secretary to the Government of Orissa, No. 2042-J., dated the
28th July, 1936. 36

BIHAR.

No. 18.—From the Secretary to the Government of Bihar, No. 1404-J.R./A-II-36,
dated the 29th July, 1936 and enclosure 36—37

No. 13.—ASSAM.

Government of Assam.

I AM directed to enclose selected opinions on the Hindu Marriage Validity Bill. Most of those who were consulted support the Bill as a measure which is in accordance with the spirit of the times and which, owing to its permissive nature, is not open to objection. On the other hand, orthodox Hindus oppose the Bill on the ground that it seeks to break down the caste system which is the very foundation of Hindu Society. Between these extremes there are those who think that there is already sufficient legislative provision for intercaste marriages in the Special Marriage Act, 1872, as amended by Act III of 1923, and that the present Bill is unnecessary.

2. Mr. Bhagwan Das, in his speech introducing the Bill, expressed the hope that such legislation would protect a person who contracted a marriage out of his caste from being openly proclaimed as an outcaste. The Governor in Council finds it difficult to believe that this result will be attained, and in any case, considers that the attitude of Government towards the Bill should be one of complete neutrality.

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

Sanatan Dharma Sabha, Gauhati.

THE committee of the Sanatan Dharma Sabha (Gauhati) does not see the necessity of an act like this. The Bill consists of one Clause which proposes unbridled license in marriage.

Hindus who wish to marry outside the pale of their caste can do so under Act III of 1872, (Special Marriage Act) as amended by Act XXX of 1923. Before 1923, a Hindu could not have married under the Special Marriage Act. The preamble of Act III of 1872, provided marriage for persons who did not profess the Christian, Jewish, Hindu, Mahomedan, Parsi, Buddhist, Sikh or Jain religion. In 1923, by Act XXX the Act III of 1872 was made applicable to Hindu, Buddhist, Sikh and Jain. Now a Hindu can marry outside the pale of his caste under the provision of Act III of 1872, as amended by XXX 1923, and such marriages are being held without any legal bar. So those Hindus who want to marry, disregarding the caste rule are at liberty to do so. As stated in Clause 2 of the Bill such intercaste marriage will not be invalid provided the marriage is performed according to Act III of 1872. In 1923, when the Bill of Act XXX was introduced it was argued that as the Hindu Law did not allow intercaste marriage so it was necessary that Hindus should be allowed to perform marriage under Act III, 1872. In Act III of 1872, there are various safeguards and salutary provisions to regulate such marriages. Section 11 of the Act provides that marriage may be solemnized in any form provided that each party says to the other in the presence of the Registrar and witness "I (A) take thee (B) to be my wife or husband". The Act also provides certain age limits—bridegroom must complete 18 years and the bride 14 years. Section 17 makes the Indian Divorce Act applicable to such marriage. Section 2 prohibits consanguineous marriage among near relation. In 1923, when the law was amended and the Act III of 1872, was made applicable to the Hindus there was great opposition on the part of the Hindus but it was passed as the ultra-radical Hindus wanted to perform intercaste marriage without making any declaration that they were not Hindus as provided in the older Act of III of 1872. In the original Bill of 1923, the Mahomedans were also included with the Hindus, but they raised a vigorous protest so the Act III of 1872, has remained inapplicable to them upto time.

The mover of the present Bill does not refer to the amendment of 1923 (Act III) and he has not said how this Bill has become necessary after the amendment of Act III (1872).

The mover of the Bill does not say under what formalities such marriage is to be performed. The marriage rituals prescribed by Hindu Sastras will not be applicable to such marriage.

The mover of the Bill in his speech said that provisions should be added to ensure monogamy and divorce. Both these matters are provided in the Act III of 1872. It appears that this Bill is the thin end of the wedge and after the passing of this Bill he will come forward with a general Bill for divorce, etc., which is quite foreign to Hindu Law. The Bill is quite incomplete and it will give free license to marriage just like companionship marriage now in vogue in the New World.

This Bill is objectionable on the following grounds :—

- (1) It will destroy the purity of Hindu Society by encouraging promiscuous and even consanguineous connection without any Safeguards like those provided in Act III of 1872.
- (2) The mover does not say how this new Bill has become a necessity after the amendment of Act III of 1872—intercaste marriages are being held under this act.
- (3) The Bill is meagre and is fraught with dire consequences to the future welfare of the society and it will introduce such evil practices as companionship marriage, etc.

On the above grounds the committee of the Sanatan Dharma Sabha opposes the Bill.

Mr. Gopika Ballabh Goswami, Pleader.

THE provision proposed in the Bill does not seem to me to be an altogether new thing for the Hindus since on a study of the sacred Vedas and the Mahabharat, we find intercaste marriage was extensively prevalent from the Vedic age down to the days of Mahabharat. If the Bill is passed into law it will only put the Hindus into the custom of the old Vedic age—I can quote Chapter and verse from the Vedas and the Mahabharat in support of my contention and I do not think it is necessary to be discussed in this report of mine.

Apart from the Shastric authority we ought to look at the question from another point of view ; with the spread of English education, rigours of caste are fast vanishing and under these circumstances, it will only be in the fitness of things to legalise unions between different castes—some of Shastras also say that *Dharma* should be decided according to times and necessity.

* * * * *

With these few words, I fully support the Bill.

Judge, Assam Valley Districts.

THE Bill seems to be unnecessary and inequitable. If a man calling himself a Hindu wants to marry in violation of the well-established tenets of his religion one who is not of the same caste there is nothing to prevent his contracting such a marriage under the present law but it is certainly inequitable to compel the believers in the tenets of Hindu religion to accept such an unbeliever as a Hindu. If a man does not believe in the caste system which is the very basis of the Hindu religion he should be prepared to back up his belief by not continuing as a Hindu when he is not willing to accept the tenets of Hinduism. The Bill should not become the law of the land to give a very legitimate ground of grievance to the majority of Hindus in India.

Subordinate Judge, 2nd Court, Sylhet.

ACCORDING to Hindu Law, marriage between persons who do not belong to the same caste is invalid, but between persons belonging to different subdivisions of the same caste are valid. In actual practice however, marriages between different subdivisions of the same caste are strongly resented and disapproved by the Society. Social reformers have been trying hard for a quarter of a century to bring about marriages between Rahri and Varendra communities of the same caste but with very little success upto now, even though the law permits it. Only a few people who by reason of their position or wealth can afford to defy the mandate of Society have ventured to enter into such alliances. There was a violent agitation both in the press and the platform when the High Court of Calcutta held in the case of *Bholanath vs. Emperor*, 51 Cal. 488 (1924) that a marriage between a Kayastha of Bengal and a Dom Woman was valid ; and held in the case of *Biswanath vs. Sarashibala*, 48 Cal. 926 (1921) that a marriage between a Kayastha of Bengal and a Tanti woman was valid. In Sylhet and in some parts of Eastern Bengal by custom marriages of Brahmins and Kayasthas with Sahu girls are valid, but a considerable degree of odium attaches to them, those men are practically outcasted—their Brahmin and Kayastha relations would not dine with them, would not invite them in social functions. Any legislation on the lines of the Bill will only unnecessarily cause bitterness without in the least ameliorating the condition of those for whom it is intended.

Such marriages would not be looked upon with greater favour by reason of any legislative sanction. Legislature cannot do what custom has failed to do. Legislature can only give the women the status of wife, and the children the status of legitimacy, but for that fresh legislation is not necessary. Hindus desirous of marrying outside their caste may do so under the special Marriage Act, 1872, as amended by the Special Marriage (Amendment) Act, 1923. I, therefore, am of opinion that the Bill should not be made into law.

District Bar Library Sylhet.

WHILE supporting the Bill in toto we give the following reasons :—

Since the indirect and ultimate motive of the Bill legalising intercaste marriages is, in our opinion, to eradicate the hereditary caste system, which is sapping the very vitality of the community, we take the very motive to be our foremost reason in support of the Bill. It is a mild but sure dose of poison to kill the caste giant without allowing it to create undesirable disturbances. The caste, though originally based on personal qualifications and actions, is no longer so, it has now begun to run with the blood doing much harm by dividing the community in itself into so many quarantine-groups and fostering the growth of vanity. The Bill without striking direct at the caste system, the inevitable result of which would have been a drastic revolution, has judiciously taken the path of least resistance to achieve the same ideal by evolutionary process. Thus we consider the Bill to be a desirable and effective measure.

We might consider the Bill from other angles of vision, viz. Eugenically, sociologically, politically and also from religious point of view.

From Eugenical point of view we are of opinion that the enactment proposed will tend greatly to make the intermixing of different castes through marriage to be more thorough and extensive with the inevitable result of obtaining better quality of human stuff. From what has been proved by experimental science about cross breeding within "Certain range" it can be asserted that intermixing of different castes through marriage will facilitate the production of the best type of human beings by generally suppressing the inferior qualities of the parents. As regards the words of limitation "within certain range", we think, the range will not be violated by intercaste Hindu marriages since the nature of general diet, living temperament and religious faith of the Hindus are practically the same.

From Sociological point of view we are of opinion that the intercaste marriage will extend the matrimonial sphere and will enhance the probability of suitable marriage. May be, there will be disturbances at the initial stage but in comparison with the ultimate gain, this is nothing.

From political point of view it can be said that in this factious state of Hindu Community there should be vigorous intercaste marriage—with the effect that all the members would be bound together by matrimonial ties bringing into existence of unified political block.

From religious point of view we see that the ancient sages, whose viewpoints are embodied in Dayabhaga, Mitakshar Smritis, never prohibited the intercaste marriages. Only the latest commentators took the converse view. So the present Bill is not going to do something diametrically opposite to the views of our ancient sages.

In the conclusion we like to say that since the principle of intercaste marriage has already been recognised by the Special Marriage Act (Act III of 1872) as amended by Act XXX of 1923, we find no harm in allowing its full play by removing some restrictions as the age of the parties, as to the consent of the guardians and as to the registration of marriages and further the anomaly existing between the intercaste marriage of Hindus under the Special marriage Act and the ordinary Hindu marriage regarding their effects—power of adoption, divorce and the mode of intestate inheritance will be removed.

Considering the Bill from every possible point of view, we cannot but support it. We consider it to be a wholesome measure which the Hindu community is badly in need of. In the words of the learned author of the Bill we like to emphasise that it is purely a permissive measure such as Hindu widow re-marriage Act (Act XV of 1856) and will never trench upon individual liberty.

Mr. P. C. Dutt.

THE Bill seems to be an attempt to break through the caste system as it prevails amongst the Hindus. This task should be left to the reformers and has been made easier by impact of western ideas. A legislature composed not only of Hindus but of

a host of non-Hindus should not be allowed to interfere in a matter of this kind which does not offend against any moral laws. Those who have given their opinions in favour of the Bill have been carried away by the feeling that the caste system is a stumbling block to unity amongst the Hindus. But they do not seem to fully appreciate the other view that once you allow a few radicals amongst the Hindus with the help of non-Hindus whose social and religious systems are quite different from that of Hindus in general to interfere in matters of such social sanctity among them, Hindu society will be metamorphosed into something which will be quite different from what it has been for centuries. Cases of *Sati* are altogether different. *Kapalik* among Hindus sacrificed human lives; a sense of natural justice imposed upon any rulers of the country to put a stop to such practices. But that is quite different from interfering with a practice which has been regarded as the basis of Hindu society for centuries. And it is at least debatable whether there is anything repugnant to good morals in it.

No. 14.—UNITED PROVINCES.

Government, United Provinces.

IN continuation of this Government's letter No. 489-J., dated July 15, 1936, I am directed to submit a copy of the opinion recorded by the Hon'ble Judges of the Chief Court of Oudh, on the provisions of the Bill to validate marriages amongst different castes of Hindus.

Copy of opinions recorded by the Hon'ble the Chief Judge and other Hon'ble Judges of the Chief Court of Oudh.

I AM entirely in favour of the proposed Bill. Hindu society has reached a stage of evolution when such a Bill has become a necessity for the more advanced and enlightened section of the Hindu community. The orthodox members of the community can have no valid objection to this Bill since it is merely permissive.

(Sd.) E. M. NANAVUTTY, I.C.S.

This again is a measure on which the opinion of the bulk of the Hindu community should count.

(Sd.) M. ZIAUL HASAN.

Without knowing more about the implications latent in the Bill, *e.g.*, as regards inheritance, I am not able to say that I support the Bill.

(Sd.) H. G. SMITH, I.C.S.

I am in sympathy with the object of the Bill and approve of its principle.

(Sd.) B. N. SRIVASTAVA, O.B.E.,

Chief Judge.

No. 15.—BURMA.

Government of Burma.

I AM directed to say that the Bill 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 Communique which was issued in English on the 27th May 1936.

2. The Hon'ble Judges of the High Court of Judicature at Rangoon, the Bar Library Association, Rangoon, the Bar Association, Mandalay, the Pleaders' Association, Rangoon, the Madras Association, Rangoon, the Burma Provincial Hindu Sabha, Rangoon, the Bengal Social Club, Rangoon, the Nattukkottai Chettyars' Association, Rangoon, and the Burma Indian Chamber of Commerce were consulted. The Bar Library Association, Rangoon, the Bar Association, Mandalay, the Pleaders' Association, Rangoon, and the Madras Hindu Association, Rangoon, have not yet replied but this Government does not propose to wait for their replies. Copies of the replies (and their enclosures) received are forwarded herewith for the information of the Government of India.

3. The Hon'ble Judges of the High Court of Judicature at Rangoon and the Burma Indian Chamber of Commerce do not desire to offer any remarks on the provisions of the Bill. The Bengal Social Club and the Burma Provincial Hindu Sabha support the Bill while the latter would like to see the scope of the Bill further enlarged by defining the term "Hindu" so as to include Arya Samajists, Brahmo Samajists, Jains, Sikhs and other sects of Hindus. The Governor in Council has no remarks to offer on the provisions of the Bill.

Registrar, High Court of Judicature at Rangoon.

I AM directed to say that the Honourable Judges do not desire to offer any remarks on the provisions of the Bill.

Burma Provincial Hindu Sabha.

THE Rangoon Hindu Sabha supports the principle of the Bill and would like to see that the scope of the Bill is further enlarged by defining the term 'Hindu' so as to include Arya Samajists, Brahmo Samajists, Jains, Sikhs and other sects of Hindus.

Bengal Social Club, Rangoon.

WHEREAS such marriage as referred to in the Bill introduced by Dr. Bhagawan Das is not in contravention of the spirit of the doctrines of Hindu marriage, and whereas the social observances in respect of marriage between members of the same caste, custom and group to preserve the purity of blood are not generally hampered by the introduction of the said Bill, this Club supports the proposed Bill in order to check the gradual decay of the Hindu race. This Club condemns the usual indifferent attitude and passive resistance shown towards the marriage of members belonging to different castes, customs and groups who thus have no other recourse but to seek shelter under other religions to maintain the honour and prestige of their marriage.

Nattukkottai Chettyars' Association, Burma.

My Committee welcome this measure to validate marriages between different castes of Hindus and accord their support to this bill.

Burma Indian Chamber of Commerce.

My Committee do not propose to offer views on the Bill.

No. 16—BOMBAY.

Government of Bombay.

IN continuation of Government letter No. 7801/3-B., dated the 14th July 1936, I am directed to forward herewith the non-official opinions which have since been received on the Hindu Marriage Validity Bill introduced in the Legislative Assembly by Dr. Bhagavan Das, M.L.A.

Private Secretary to His Holiness Jagadguru Shree Shankaracharya Sankeshwar-Karvir Peeth.

I AM, by order, sending herewith the following authoritative representation putting forth the views of His Holiness Shree Shankaracharya on the anti-religious Bill, viz. Mr. Bhagandas' Hindu Marriage Validity Act, now before the Assembly.

2. Coming as it does from the authoritative religious head of the Hindu religion, whose decisions in matters concerning the Hindu religion are absolutely final and are also recognised by the Hindu Law and the Law Courts of to-day, and have been unchallenged for thousands of years and have been respected and enforced by all the former Rulers of India including Mahomedan Rulers even, I hope that it would be given an exceptional importance and should outweigh the combined weight of the opinions of all other Associations or individuals. I may point out that His Holiness Shree Shankaracharya is to the

Hindus what the Pope is to the Roman Catholics or His Highness the Aga Khan to the Khoja Mahomedans and that He is the religious Head of about 21 crores of Hindus in India who are vitally affected by the proposed legislation.

3. Adi Shree Shankaracharya who re-established Hinduism after driving away Buddhism out of India, founded certain Maths or seats of Religion and framed a constitution for the future management (called "Mathamanaya") of these Maths. Successive incumbents of the Gadi are selected by the predecessors from amongst the Sanyasi disciples in accordance with this constitution; and they are looked upon by the people as representatives of the Adi Shree Shankaracharya Himself and therefore their opinion is considered as final and binding on all Hindus. In view of these facts, I hope that His opinion would be given due weight, at least in those matters where His authority has always been unchallenged, and is so even to-day among the Sanatanists.

4. Further, His Holiness Shree Shankaracharya was the president of the Conference of all the Dharmacharyas held at Guruvayur in 1933 and He has been authorised to take all necessary steps to convey to Government the authoritative opinion of the Dharmacharyas in India. So, the following representation is being sent in this representative capacity on behalf of all the authoritative religious Heads representing the Sanatanist masses in India who are the real "Hindus" recognised by the Hindu Law.

5. In view of the grounds set forth in the succeeding statement, we do hope that Government will not allow such Bills to be introduced or discussed in the House, and that Government will oppose the Bill as it did at the time of the Temple Entry Bill of 1934.

Opinion of His Holiness Shree Shankaracharya.

1. The language of the proposed Bill is so loose and so vague as to defeat its own purpose. A Bill is a legal document and the sponsor has to make precise and accurate statements and define the various terms used therein. It must also indicate the changes necessary in the other legislative Acts or Civil or Criminal Law bearing on matters resultant and dependent on the subject-matter of the proposed Bill. The Bill unfortunately lacks in all these essentials of a legislative measure and shows either the legal ignorance of the sponsor or his deliberate intention to withhold the truth from the general public, whom the Bill is likely to affect adversely. As examples of such inaccuracies and inconsistencies, etc., we may cite the following :—

(1) The sponsor of the Bill states "Whereas it is expedient to Validate marriages between Hindus of different castes....". Under the existing Hindu Law, there is no such thing as "Marriages" between Hindus belonging to different castes. According to the religious injunctions recognised by the Hindu Law, parties contracting such a union automatically cease to be "Hindus". Such a Union when consummated cannot, therefore, legally be termed "Hindus" and also "Marriage", as the consummation lacks in an essential factor prescribed religious ritual, absolutely necessary to validate it legally as Hindu marriage between two individuals belonging to the Hindu religion. The title "Hindu Marriage Validity Act" is thus quite vague, misleading, meaningless and self-contradictory (in view of the meaning attached to it by the sponsor) as it presumes the existence of an event which has no existence both in law and in fact.

(2) In the statement of objects and reasons the author of the Bill says "This interpretation besides being open to question, etc.". This is a mischievous, vague and absurd statement. What does the author exactly mean thereby? Does the statement not savour of contempt of Law of Courts that administer it and also of Government established by Law? The existing Hindu Law of Marriage having been based upon age-long customs and ritual enjoined by Hindu religious texts, the interpretations thereof were subjected to all the legal tests before they were accepted as a basis for the present Hindu Law of Marriage. Notwithstanding this fact, when the author has the audacity to state that these interpretations are open to question without precisely stating how, will it be wrong to conclude that the malicious temperament of the author towards the Hindu religion, its customs and the rights of its people is the ruling factor in promoting this measure, rather than the welfare of the microscopic minority whose interests he outwardly proposes to safeguard?

3. "Has caused serious hardships in individual cases" is again a wrong statement. It is true that a few persons who were renegades from the Hindu religion, e.g., Brahmo Samajists, etc., found that they could not contract marriages with the real Hindus in the real sense of the word and it was for the amelioration of the difficulties and hardships of these renegades from all the recognised old religions that the Civil Marriage Act was passed. According to this Act persons contracting marriages under it were required to declare that they did not belong to any old recognised religion. Recently by an

amendment to the Act the declaration has been dispensed with, but the fact that they do not belong to any recognised old religion still remains recognised by the said Act. According to the Hindu religious texts, persons who are about to contract a marriage against the Shastric injunctions are renegades from the Hindu religion even before the contract is consummated, and it is not therefore understood how Hindus are concerned to promote a measure for the amelioration of the hardships of these mad renegades who have wilfully defied the Hindu community, its religion and its culture. Mr. Bhagwandas is quite aware of this Act and there are no hardships remaining unredressed within the capability of a legislative measure.

4. The author further says "Retard the progress of the community". What community he exactly refers to has not been stated. Nor does he state what he exactly means by "progress". As shown in clause 3 above, the measure is intended in fact to safeguard the interests of the renegades of the Hindu religion and not the Hindu community as the author has apparently attempted to mislead the Hindu public, and people belonging to other old religions and the Government into a wrong belief that it is intended for them, by intentional omission to name the community.

5. "Any custom or any interpretation of Hindu Law to the contrary notwithstanding". Only a Bolshevik mentality can conceive of such a sweeping measure which disowns all past traditions or religious customs and rights and established natural civic rights. No civilised Government which professes to respect age-long right and customs of the people can have power to enact such a measure. The sponsor seems determined to carry out his whimsical ideas in spite of every kind of opposition by a mere stroke of the pen.

6. Caste system is an integral, essential and indispensable part of the religion known as "Hinduism". So that it is absolutely impossible for a person to break the caste regulations and remain a Hindu. The so-called marriage of persons belonging to different castes by whatever ceremony or formality cannot possibly be called a "Marriage" according to the Hindu Law, as enunciated in the Dharma-Shastras. The new law to be enacted may prescribe certain formalities for validating such marriages which may then be called legal marriages or civil marriages and not Hindu marriages at all. The present Bill is defective inasmuch as it does not prescribe and define the definite formalities that will constitute this "Marriage". In the absence of this, there will always be disputes in Court (by the aggrieved party of course) as to whether a certain marriage was a real marriage or not. Further what is the status of such a marriage as compared to the other types of marriages? Can such a marriage be dissolved by the consent or wish of either party without going to a law-Court as is prevalent in some Hindu castes? Or is it indissoluble as among the Brahmins? Or can it be dissolved only in a Law-Court like a Christian marriage? All these possibilities must be thought over and provided for in the Bill to avoid future complications.

7. Knowing that there is the civil marriage Act to validate such marriages as are contemplated of in the present Bill, why does Mr. Bhagwandas feel it expedient to promote the present Bill to validate them as "Hindu marriages". There is no answer to this obvious question in the draft Bill. Taking a parallel situation, would the Christian Ecclesiastics tolerate a law recognising all the registry office marriages as "Christian Marriages"? Would the Mahomedan Moulvis tolerate such civil marriages being styled "Mahomedan Marriages", thus making Mahomedan law applicable to them? This is just what the sponsor intends to do to Hinduism. He wants that all those marriages which were so far called Registry office marriages or Civil marriages should be recognised as "Hindu Marriages". Our surmise as to the reason why it is sought to validate these marriages as "Hindu marriages" is briefly stated below.

8. Mr. Bhagwandas belongs to a school of thought of recent growth of politically-minded educated Indians, who are for all practical purposes by their thought and action, renegades from the Hindu religion. Unlike their predecessors (Brahmo Samaj, Arya Samaj, Theosophical society, etc.), they do not wish to be honest and be openly identified as seceders from the Hindu religion by the establishment of a separate communion. Most of the present-day leading men looming large on the political horizon belong to this school of thought, e.g., Messrs. Gandhi, Tilak, Madan Mohan Malaviya, N. C. Kelkar, Barrister Jayakar, Justice Madgaonkar, Dr. Kurtkoti, Sapru, Ambedkar, Rajbhoj, Dr. Deshmukh, Dr. Munje and such others. All these leaders together with their following are renegades from the Hindu religion. The motive in concealing their identity as renegades is that they can pose themselves as Hindus both before the Government and the uneducated Hindu masses, and exploit the support of the latter to gain their personal political ends. One of the several ways in which they have been exploiting the support of the innocent uneducated Hindu masses for their anti-Government propaganda is to persuade Government to pass anti-religious laws by misrepresenting the facts, and then

use the same as a lever to stir up the masses by representing to them that Government is responsible for this interference in their religion and religious rights. Babu Bhagwandas belong to this class of renegades from the Hindu religion and that is why he thinks it expedient to bring forth this mischievous measure with a view to provide a tool in the hands of his comrades outside the Assembly to stir up the masses against Government and exploit their wrath to further their personal political motives. In this connection in order that Government may have a clear idea as to how these selfish busibodies have been exploiting to their personal advantage the new Government machinery introduced in 1919 by keeping their real identity concealed we invite Government's attention to paragraphs 1-12 of our representation at the time of the Temple Entry Bill of 1934.

9. At the present moment, the Government are diverting their attention and resources towards rural uplift. The anti-Government agitators are fully aware of the fact that the rural population is mostly orthodox and uneducated. The present assembly also is mostly representing these renegades (bogus Hindus). In the reforms shortly to come, the responsibility for all such matters lies directly on the ministers, and not on the Government as at present. With full appreciation of this favourable situation, they have thought of arming themselves with the weapons of anti-religious measures to be rushed through the present Councils and the Assembly with a view to defeat Government in the work undertaken by them. In our opinion all this is the main reason for the expediency and rush of all these anti-religious measures at the present moment.

10. If the anti-religious Bills now before the Assembly are passed and finally consented to by the Government, they will be used to stir up the wrath of the masses by these agitators by mis-representing to them that Government is responsible for all this religious interference and persecution exactly as Sarda Act was used in furthering the cause of the Civil Disobedience Movement of 1931. It was the passing of the Sarda Act by the end of 1929 which infuriated the masses against the Government and this was instrumental in giving Mr. Gandhi the huge following that he got for his movement in 1930-32 and this following gradually withdrew from the Civil Disobedience Movement when the masses realized his anti-religious temperament from his taking up the Harijan uplift in defiance of all religious texts.

11. Lastly we desire to bring to the special notice of Government that Mr. Bhagwandas, M. C. Raja and Dr. Deshmukh being renegades from Hindu religion, automatically cease to represent the Hindu masses even though they may have manoeuvred to have themselves elected by concealing their identity and have therefore no right to promote any measure either affecting or protecting the Hindu religion on behalf of the Hindus.

12. With a view to put a stop to the mischief played by these bogus Hindus and to rescue the masses from the clutches of these agitators, we take this opportunity to draw the attention of the Government to the scheme of declaring them as renegades from the Hindu religion as detailed in paragraph 13 of our representation against the Temple Entry Bill of 1934.

13. It will be seen from the above how the Bill is loosely worded and based upon misinterpretation of facts promoted by malicious intentions towards the Hindu religion and its followers and lacks in every essential of a legal document.

Bombay Provincial Varnashram Swarajya Sangha.

THE Bombay Provincial Varnashram Swarajya Sangha opposes the Bill on the following amongst other grounds :—

PRELIMINARY POINTS OF OBJECTION.

- (i) Regarding the grounds set out by the author in support of the Bill, *vis.*, those of (a) expediency, (b) hardship in individual cases, (c) doubt in the interpretation of the existing law, and (d) retarding the progress of the community, it may be stated that none of these grounds goes to make out any case of necessity or justification for introducing drastic and revolutionary changes in the existing law of marriage as proposed by the Bill.

(a) Expediency and (b) Individual Hardship.

Mere expediency or hardship in individual cases could never be urged as a valid ground for making drastic changes and innovations in the existing law of marriage governing the Hindus in general and which is followed by them scrupulously by an unbroken tradition based on their scriptures since ages past. If an individual suffers hardship by being

prevented by his neighbour from having an ingress to his own house, could he move the Legislature to have his hardship removed by a special legislation to suit his convenience ?

(c) *Doubt in the Interpretation of the existing Law.*

Regarding the ground that there are doubts in the interpretation of the existing law of Hindu marriage it may be stated that the sacred law of the Hindus in the Smritis is explicit on the point and it enjoins in clear and unmistakeable terms that a Valid Hindu marriage can take place between persons belonging to the same caste only and not between those belonging to different castes. See Manu 3-2 ; 4-1. Yajnavalkya 1-55. The above interpretation of the Hindu law is questioned by a certain section of reformers only, of the type of Dr. Bhagwandas the author of the present Bill but who are in a very small minority.

(d) *Retarding the progress of the Hindu Society.*

Regarding the ground that the existing rules of Hindu law preventing marriages between persons belonging to different castes retard the progress of the Hindu society, it may be stated that the above opinion is not the opinion of the orthodox Hindus in general who constitute the largest bulk of the Hindu population and have an overwhelming majority. But it is the opinion of a very small minority of heterodox reformers only most of whom do not even believe in the cardinal doctrines of the Hindu scriptures and shastras and their authority in social and religious matters. It may be pointed out that if the reformers who are in minority hold the above view of the matter, the orthodox Hindus who are clearly in the majority are opposed to the above interpretation and they are clearly of the opinion that if Valid marriages are allowed to take place between persons of different castes, it will lead to destruction of the social and religious order (Varnashram) on which the Hindu society is based, and the racial and religious purity of the Hindus. It is therefore submitted that the above grounds urged in support of the Bill are unsustainable.

- (ii) We are of the opinion that if the above Bill is passed into law it would coerce the Orthodox Hindus who form an overwhelming majority to submit to the arbitrary will of the reformers who form a very small minority so as to compel the former to recognize as valid marriages between persons belonging to different castes against their conscience and the principles of their religion and sacred laws.
- (iii) The Bill is further unnecessary as there is already in existence at present the Special Marriage Act III of 1872 as modified by Act XXX of 1923 for the benefit of persons who profess *inter alia* the Hindu religion and which already provides for a valid marriage between persons belonging to different castes.
- (iv) We further beg to submit that if the object of Babu Bhagwandas in bringing the said Bill is to provide for rights of inheritance to property for the offspring of mixed marriages between persons of high castes and those of low castes by validating the marriage, the existing Hindu law makes ample provisions for carrying out the aforesaid object as such marriages can only be treated as legalized concubinage and the issue thereof are given certain rights of inheritance to properties of the married parties. We, therefore, submit that there is no necessity or justification for the proposed Bill as the existing Hindu law makes ample provisions for the children of such marriages.

RELIGIOUS GROUNDS.

- (v) The Bill is directly opposed to the established tenets and principles of the Sanatan religion as laid down expressly in the holy scriptures and Shastras of the Hindus comprising therein Srutis and Smritis which are of binding authority to the Hindus in all matters affecting religion and which in express terms enjoin marriage between persons belonging to the same caste only and prohibit the same between persons belonging to different castes.
- (vi) The Bill is also opposed to the religious rites and customs which are observed by the Orthodox Hindus without any change since time immemorial.

Thus Dr. Arthus A. Macdonell, M.A., Ph.D., the distinguished research scholar in Vedic studies has in this connection observed that "the main features of this nuptial ceremony of 8,000 years ago still survive India".

- (vii) The Bill is further opposed to and destructive of the Vedic theory of marriage which is not a mere contract brought about by the choice of any two willing parties as in other races and religions, but it is a religious sacrament and obligation which enjoins marriages between persons belonging to the same caste only for their own purification accompanied by certain Vedic rites and rituals which constitute not the form but the very essence of Hindu marriage. It is the Vedic form of marriage which alone is highly instrumental in preventing husband and wife from quarrelling with each other and seeking separation. They consider it their sacred duty to be faithful to each other with the result that faithlessness is not generally common amongst the Hindus as in other communities.
- (viii) The Bill by promoting the begetting of hybrid (Varnasankara) children by mixed marriages of persons belonging to different castes which are condemned in strongest terms by all the Smritis or sacred law books as also by the Bhagwad Gita both being held in high esteem by the Hindus, it is apprehended, would frustrate the very purpose and object of a Vedic marriage which enjoins continued succession of male offspring of pure blood by marriages between persons belonging to the same caste only for procuring spiritual good to the manes of the deceased ancestors by doing their Sraddhas (obsequial rites) which form the legal basis of the Hindu law of inheritance.
- (ix) The Bill further seeks to give a legal status to hybrid children by mixed marriages of all sorts whether Anuloma (i.e., marriages of persons of high caste with women of lower caste) or Pratiloma (i.e., marriages of women of high caste with men of lower caste). The latter being the most sinful and condemned as much by all law givers, would destroy the racial purity of the Hindu community and the very institution of caste (Varna) on which the Hindu community is based and which is preserved as such since time immemorial.
- (x) The Orthodox Hindus relying on the authority of their most sacred and revered law book, the Manu Smriti and their holy book the Bhagwad Gita sung by their divine incarnation Sri Krishna feel apprehensive that if mixed marriages between persons of divergent and dissimilar castes are given a full and free scope by legitimising such marriages the resulting offspring of such hybrid marriages would lead the parents to hell and they would destroy not only the Hindu community but "the kingdom in which such bastards sully the purity of castes are born, would perish quickly together with its inhabitants". See Bhagwad Gita 1-42 and Manu Smriti X-61.
- (xi) We are further opposed to the above Bill because it is directly calculated to destroy the Vedic institution of caste which is the foundation and ground work on which the fabric of the present Hindu society is based. The learned author of the Bill is a well known theosophist and he cannot see eye to eye with the Hindus on the traditional interpretation of the Hindu Shastras.

LEGAL GROUNDS.

- (xii) The proposed Bill is *ultra vires* and beyond the competence of the Indian Legislature as in so far it seeks to regulate questions touching the personal law and custom of the Hindus in religious matters, it is repugnant to and inconsistent with the provisions laid down in section 84 and section 112 of the Government of India Act of 1919.
- (xiii) The Bill also affects prejudicially the fundamental rights assured to the people of India by the August Proclamation of the late Queen Victoria of 1858 and subsequently confirmed by successive declarations of the Royal family from time to time.
- (xiv) The Bill is directly opposed to the legal conception of Hindu marriage based on express precepts of their scriptures and Shastras which prohibit marriages between persons belonging to different castes and which are recognised and followed by the different Courts of British India.

- (xv) The Bill is also opposed to the long standing customs observed by the Hindus since time immemorial which have the force of transcendental law as stated by Manu and are recognized as such by all the Courts of British India.
- (xvi) The Bill is also subversive of the institution of caste which was laid down in the Vedas of supreme authority to the Hindus being their Revealed scriptures and of the basic principles of Hindu law governing not only marriages but also other topics of their personal law as adoption, joint family, inheritance, succession and so on which recognise relations only between persons belonging to the same caste.
- (xvii) The Bill if passed into law would be also instrumental in destroying the solidarity, security and peace enjoyed hitherto by joint families of Hindus who could never thenceforth live together as members of the same family with hybrids (Varnasankaras) of mixed marriages and persons belonging to other castes.
- (xviii) The Bill would also interfere with the rights and privileges of Hindu castes and their autonomy regulating their legal and other relations *inter se*.

OTHER GROUNDS.

- (xix) The Bill if passed into law would cut at the very root of the ancient institutions of the Aryans and destroy Aryan race, Aryan culture and civilisation and the purity of noble blood preserved by them hitherto since the earliest times in the dawn of civilisation of the human race notwithstanding several invasions and incursions of India from time to time from several nations and other obstructions and dangers.
- (xx) By destroying the institution of caste and the principle of heredity on which it is based the proposed legislation would destroy by one stroke of the pen inborn traits of excellence and instinctive faculties of superior learning, skill, art, industry, trade, commerce and so on acquired by different castes from birth and preserved by them distinctively by dint of labour and exertion hitherto so as to mark out their peculiar stamp of racial excellence as distinguished from peoples of alien races and nationality.
- (xxi) The Bill if passed into law is sure to lead to serious dissensions and quarrels and perhaps breach of the peace also in the ranks of the Hindu community due to a furious opposition from the Orthodox Hindus all over India who would undergo any amount of privation, hardship, suffering and sacrifice to preserve their ancient religion the very existence of which is endangered by ruthless attacks from the reformers and by pernicious bills introduced by the latter in the legislative assembly seeking to devour the social order and the religious faith of the Orthodox Hindus.
- (xxii) Should the Bill notwithstanding the protests of the Sanatanists be passed into law it would give rise to great discontent and disaffection against the British Government among the Orthodox Hindus throughout the length and breadth of our country who are the most loyal subjects of His Majesty's Government and owe to it an unswerving allegiance notwithstanding political agitation carried on by the Indian National Congress because they would believe the British Government has denied to them the necessary protection which is justly due to them and that they have been handed over to the charge of the reformers to be mercilessly attacked by them.

CONCLUSION.

2. In conclusion we state our considered opinion that the above Bill cannot be accepted by the Orthodox Hindus and it is opposed by them :—

- (a) because it is *ultra vires* and beyond the competence and power of the Indian Legislature to legislate against the basic principles of the Hindu religion in contravention of the positive law of governing the Hindus, the subject matter of the Bill relating to a purely religious subject and not a merely secular one ;

- (b) because it proposes to affect the religion of the Orthodox Hindus and the religious customs, usages and practises observed by them since time immemorial ;
- (c) because it is subversive of the fundamental rights and privileges of the Orthodox Hindus in matters affecting their religion and religious freedom ;
- (d) because it is likely if it is passed into law to create great disaffection and unrest among the Orthodox Hindu populace which might even lead to results which are not desirable in the interest of good government or the peace and tranquility of the country ; and
- (e) because it is bound to lead to communal strifes and disorders and a total disruption of the Hindu community and its solidarity and integrity.

3. We therefore submit :—

- (a) that the Bill should not be allowed to be passed into law ;
- (b) that the Government should openly take a position of offering strong opposition to the Bill ;
- (c) or in any event the Government should not lend its support to this obnoxious Bill in the Assembly ;
- (d) or that even if the Bill is passed by a majority in the Assembly without Government support, it should be vetoed by His Excellency the Governor General in the interest of the law abiding majority population of India, *viz.*, the Orthodox Hindus and peaceful Government and peace and security of the country.

No. 17.—ORISSA.

Government of Orissa.

THE Local Government consulted both the officials and non-officials on the provisions of the Bill. The replies received from them clearly show that the Hindu opinion is divided. There are three shades of opinion :—

- (i) The orthodox view which opposes the Bill strongly on the ground that it would lead to the undermining of religious beliefs and to break up of the structure of Hindu Society.
- (ii) The advanced view that welcomes any measure directed at breaking down of caste barriers and sees in it hope for greater unity in the Hindu Community at large.
- (iii) The cautious opinion of those who sympathise with the spirit of the proposed law but who feel that its provisions while going far enough to make itself felt in giving rise to dissension among families and communities, does not and cannot provide for definition of rights in inherited property and of the status of the offspring of such marriages.

2. The Local Government share the last view and do not consider that the results of the Bill would be beneficial. They also desire to draw attention to the necessity of making provisions in the Bill for compulsory registration of marriages, succession, inheritance, adoption, etc.

3. The Bill was published in English in the Orissa Gazette, dated the 29th May 1936.

No. 18.—BIHAR.

Government of Bihar.

THE Bill with statements of Objects and Reasons was published in the Bihar Gazette dated the 27th May 1936, in English, and was circulated for opinion to the Honourable Judges of the Patna High Court and to numerous selected officers and private persons in the province.

2. Owing to the annual vacation of the Patna High Court, it was possible to obtain the opinions of only the two vacation Judges. A copy of their opinion is enclosed.

3. The opinions on the Bill are sharply divided. It has received a large measure of support from the district officials and the members of the legal profession, and not exclusively from persons who have ceased to be orthodox Hindus. The two Landholders'

Associations of the province and the Maithil Mahasabha are strongly opposed to the Bill, and it is clear that orthodox Hindu opinion, on the whole, is strongly opposed.

4. Of the members of the Local Government one Honourable Minister and one Honourable Member favour the Bill, while His Excellency, one Honourable Minister and one Honourable Member are opposed to it. The Honourable Member of Government who is in favour of the Bill considers that the defect which it seeks to remove has nothing to do with the Hindu religion. He considers that the prohibition of inter-caste marriages is a defect which has crept in recently into the Hindu Law, that this prohibition is now opposed to the ideas of progressive Hindus, and is, in practice, obsolete. He points out that no important measure affecting social customs or religion can be passed unanimously, and holds that the more conservative and backward sections of Hindu society should not be allowed to block a Bill, which is permissive only, and which is generally favoured by educated and progressive Hindus. On the other hand, His Excellency the Governor, and the Honourable Minister and the Honourable Member, who oppose the Bill, consider that the Hindu social system is based on caste and the joint family, and that the Bill would disrupt the very foundation of the Hindu social structure. In their opinion the Government could not support a Bill having such far-reaching consequences, unless there were a far more unanimous support for the Bill, than the opinions received have disclosed.

5. The Local Government are agreed that, if legislation is undertaken to validate inter-caste marriage, the Bill should provide that such marriages should be solemnized only in the presence of an official registrar, and should be duly registered.

Copy of the opinions of the Honourable the Vacation Judges.

This Bill is the primary concern of the Hindus. From the point of view of the Court it is welcome as litigation about the validity of inter-caste marriage will be avoided. But as I have said it is for community to decide. If the Bill is proceeded with it will be much better that such marriage should be made compulsory registerable. This will avoid litigation about the validity of such marriages on the basis of non-observance of forms of marriage.

K. M. NOOR.

I have no objection to the Bill. In fact it represents the progressive tendency of the age. But registration should be made compulsory.

S. P. VARMA.

GOVERNMENT OF INDIA.
LEGISLATIVE ASSEMBLY DEPARTMENT.

[Paper No. I.]

OPINIONS

ON

THE HINDU MARRIAGE VALIDITY BILL.

(Introduced by Dr. Bhagavan Das, M.L.A.)

Opinions Nos. 1—12.

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BENGAL.

Pages.

- No. 1.—From the Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Jurisdiction, No. 15261-G., dated the 9th July, 1936 1

COORG.

- No. 2.—From the Chief Commissioner, Coorg, No. 1791/497-36-Eclos., dated the 8th July, 1936 1

NORTH-WEST FRONTIER PROVINCE.

- No. 3.—From the Officiating Chief Secretary to Government, North-West Frontier Province, No. 19871-H.G./12/353, dated the 11th July, 1936 .. 1—4

AJMER-MERWARA.

- No. 4.—From the Chief Commissioner, Ajmer-Merwara, No. 1009/110-G./36, dated the 13th July, 1936 4—5

BOMBAY.

- No. 5.—From the Officiating Secretary to the Government of Bombay, Home Department, No. 7801/3-B., dated the 14th July, 1936 5—11

CENTRAL PROVINCES.

- No. 6.—From the Legal Secretary to the Government of the Central Provinces, No. 631/438, dated the 13th July, 1936 11—16

DELHI.

- No. 7.—From the Chief Commissioner, Delhi, No. 101-Camp/Legislative, dated the 16th July, 1936 16

UNITED PROVINCES.

- No. 8.—From the Secretary to the Government of the United Provinces, No. 489-J., dated the 15th July, 1936 16

SIND.

	Pages.
No. 9.—From the Chief Secretary to the Government of Sind, No. L. C.-220/L., dated the 13th July, 1936	16—17

BENGAL.

No. 10.—From the Officiating Secretary to the Government of Bengal, Judicial Department, No. 5389-J., dated the 16th July, 1936	17—23
---	-------

MADRAS.

No. 11.—From the Secretary to the Government of Madras, Legal Department, No. 411-2, dated the 16th July, 1936	23—24
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BALUCHISTAN.

No. 12.—From the Agent to the Governor General and Chief Commissioner in Baluchistan, No. 621-J./R., dated the 20th July, 1936	24
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No. 1.—BENGAL.

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

As this Bill deals with a matter of policy only, the Hon'ble Judges have no opinion to offer thereon.

No. 2.—COORG.

Chief Commissioner of Coorg.

I AM directed to forward copies of the opinions of selected officers who were consulted on the subject, and to say that the Chief Commissioner sees no reason why legislation on the lines of this Bill should not be introduced.

2. 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.

Commissioner of Coorg.

ALL the Judicial Officers in Coorg, the two Bar Associations and the Government Pleader are in entire agreement with the provisions of the Bill and I concur with them.

2. The measure is a purely permissive one and is expected to prevent hardship caused in individual cases. The people of this Province always welcome legislation in conformity with modern ideas and I am of opinion that there is unanimous support in regard to the provisions of this Bill.

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

I AM of opinion that the Bill which is only a piece of permissive legislation calculated to legalise marriages among the various castes in the Hindu community should be passed into law in view of the rapidly changing conditions in the social structure of Hindu society in this country at present.

Additional Judicial Commissioner of Coorg.

I AM in favour of the proposed Bill—though I believe there will be very strong public opinion against it, among Hindus of the higher castes.

No. 3.—NORTH-WEST FRONTIER PROVINCE.

Government, North-West Frontier Province.

I AM directed to state that as the proposed measure is purely one connected with Hindu Law, and as the Civil Marriages Act already enables Hindus to contract legal marriages in opposition to their ancient customs, the Governor in Council has no comments to offer.

Copies of the opinions recorded by persons who have been consulted on the subject are enclosed herewith for the information of the Government of India.

The Bill with Statement of Objects and Reasons was published in Part V of the North-West Frontier Province Gazette, dated the 29th May, 1936.

R. B. Lala Ishar Das, Honorary Sub-Judge, Nawanshahr (Hazara).

In my opinion the Bill proposes to introduce revolutionary changes in the caste system of Hindus and so far as it depends not on evolutionary processes to break the barriers of caste but frankly courts assistance of Law in regard to a controversial matter, it may defeat the very object the eminent sponsor of the Bill has in view. I am not one of those who look upon caste as sacrosanct. I very much deplore its rigidity but I do not believe that an institution, vicious though it may be considered by some people, which has grown in the course of centuries can be done away with by one stroke of Legislative action. The idea of the mover of the Bill appears to be to popularise inter-caste marriages by

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removal of the legal disability that attaches to them at the present time. It is my considered opinion that even though the object of the mover is laudable it will not be achieved if the Bill is passed into Law. Unless Legislation proceeds on and has backing of strong public opinion it remains a dead letter. Very few intercaste marriages take place in spite of the fact that a movement is growing in favour of such marriages. It cannot be said that many more people would contract such marriages if a law like the one proposed exists on the statute-book. Even now there is nothing to prevent a person marrying outside his caste from contracting an alliance under the Civil Marriage Act.

If the Bill is enacted it would lead to a bitter controversy amongst the Hindus which would retard rather than help unifying influences and the growing loosening of the caste ties under natural influences that are at work. If I may venture to suggest to the mover of the Bill, in case he considers that it is essential in the interests of the community to legislate at once in the matter, he should provide, at this stage, only for validation of marriages between the sub-castes of the main four castes, each within its own varna but legislation of marriages between asavarnas at the present moment will only delay the removal of caste barriers which he has in view. In the end I beg to say that I am not opposed to the principle of intercaste marriages at all. My objection to the legislation is based on the fact that in my opinion the moment is not ripe for undertaking legislation of the nature proposed.

R. B. Sardar Makhan Singh, Landlord, Banker and Senior Vice-President,
Municipal Committee, Kohat.

THE proposed Bill, is a most useful measure for the Hindu Community, in as much as it will bring in that Homogeneity that it lacks. Not only will the measure exterminate the sense of inferiority amongst the lower classes, but will conduce to cement the relations of different castes *inter-se*, bringing in concord and mutual sympathy by allowing inter-marriages and legalising them. In the present age of democracy, it is but essential that there should be all equality, and all should realise that. This can only be done by inter-dining and inter-marriages which the present proposed Bill legalises.

Dewan Bahadur Dewan Jaggan Nath, Rais and Jagirdar, Dera Ismail Khan.

As we know under the strict Hindu Law Marriages between different castes are held invalid. The present Bill only tries to validate marriages that may take place in future. The measure is a purely permissive measure. It does not compel any one to maintain social relations against his will with any person who has contracted such a marriage out of his caste.

The Bill if passed will have the effect of saving persons who have contracted such a marriage from being bounded out of caste.

The principles which lay under the caste system originally no longer hold good. There were four castes to start with but Hinduism to-day has degenerated into a mass of thousand castes and sub-castes. World is progressing onward and there is no reason why under the present conditions of the caste system; a marriage should be invalid because the parties do not belong to the same caste. The present interpretation of Hindu Law has caused hardship in individual castes and is calculated to retard the progress of the community. In the interest of our brotherhood we should widen our circle of activity so far as inter-caste marriage is concerned.

I considered the Bill a "Progressive Measure" and support it accordingly.

R. B. Lala Chiman Lal, Khurana, Advocate, Bannu.

THIS Bill if enacted will prove much useful to all the Hindus specially those who live in those parts of India which are much caste ridden. We in the N.-W. F. P. and also in the Punjab where "caste is weak and women are scarce" do not feel any surprise in Inter-Caste Marriages. We don't stand in need of "Jat Pat Torak Societies" as they are called. The Hindu Law in such matters among people of the Punjab and N.-W. F. P. is subject to local customs, *vide* Section 27 Law and Justice Regulation or Section 5 of the Punjab Laws Act.

The remarks of the Hon'ble Judges of the Punjab Chief Court expressed on the subject in Punjab Record Civil No. 65 of 1911, and No. 57 of 1909 are so well known to every one, that I need not repeat them.

The main principle underlying the prohibition of inter-caste marriages among Hindus was the common superstition against inter-dining among separate caste people who on account of their separate profession formed into separate castes in the ancient time which gave us our caste system and other necessary results.

The rules or law as they are now called about Hindu marriages have been changing and keeping pace with the time. This process has been named evolution.

There is no lack of judicial authority in all the province about the validity of

- (a) Inter-marriages between sub-caste.
- (b) Inter-marriages between mixed castes.
- (c) Inter-marriages between males of higher castes and females of the lower castes.

This point has been discussed at great length on the basis of rulings of various High Courts in Gour's Hindu Code. I need not repeat it here.

In view of the progress of civilization, education of females on modern lines, free communication between Hindu Females and their sisters of other communities resulting in their inter-change of thoughts, facilities of travelling by increase of Railways, etc., demand that inter-caste marriages should be legalized.

In any case the proposed legislation is only an enabling one and in modern times when we are expected to give every one freedom of action and thought, why should we not help the progress of the country and specially of the backward majority community of India, by removing this obstacle, viz., the supposed ban on inter-caste marriages.

R. B. Lala Beli Ram, Advocate, Peshawar.

I AM an Arya Samajist and have already given my opinion in favour of the Arya Marriage Validating Bill aiming at validating inter-caste marriages amongst the Arya Samajists because the Arya Samajists do not believe in the prevailing caste system and regard it as opposed to the commandments of the Vedas. Doctor Bhagavan Das's Bill however goes much further as it seeks to apply to all Hindus orthodox as well as reformed. An orthodox Hindu believes in Puranas and the prevailing caste system. The Puranas insist on the purity of the blood in the family and condemn the issue of marriages between persons of different castes as Varan-Shankars (Hybrids or Doughlas). I may add that there are sub-castes in each caste and among the orthodox Hindus prejudice against marriages between persons of certain sub-castes (though of the same main caste) has not yet disappeared. For example Uttradhis and Dakhnas are the two main sub-caste of Aroras and ordinarily an uttradhi will not marry a dakhna and *vice-versa*.

Similarly certain high caste Khattris do not inter-marry with Khattris of comparatively lower order and I believe the practice among the Brahmans also is the same. Until these sub-divisions disappear, we can assume that the orthodox Hindu Society is not prepared to sanction inter-caste marriages. A Hindu wanting to marry outside his caste can marry under the provisions of the Civil Marriage Act. A marriage under Hindu Law is a sacrament and not a mere Civil contract and in order to a sacrament it must be a marriage within the caste. An educated Hindu because after all the demand for inter-caste marriages is confined to educated Hindus only—cannot have it both ways, viz., to have all the advantages of a Hindu marriage, but without conforming to its essential conditions. I believe there is still a lot of prejudice among the orthodox Hindus (and they form the vast majority) against the so-called inter-caste marriages and the Government would be well advised not to lend its support to this Bill. The best course for the Government would be to remain neutral.

President, Shree Sanatan Dharam Sabha, Peshawar Cantonment.

I HAVE to state that the Bill in question is quite against the creed of Sanatinist, against the injunction of Vedas and Shastras and is an attempt to attack the principles of Hindu Law and to cut at the root of Socio-Religious order the Varanashram and Dharma of the vast majority of His Imperial Majesty's loyal subjects.

R. B. Lala Karam Chand, M.L.C., Peshawar.

I WHOLEHEARTEDLY support this Bill. I quite agree with the mover of the Bill that this measure is a purely permissive one. Marriage between Hindus of different castes are being solemnized in the Punjab and other Provinces and their legality is not questioned in any court of Law, nor their validity has ever been questioned by Hindu

Society constituted as it is at present. Whatever the protagonist of the rigidity of cast system may say marriage between Hindus of different castes do not excite any commotion or surprise in the society, whether the proposed Bill is passed or not, the practice will continue but I am of opinion that the Bill be placed on Statute-Book to remove an hardship in individual cases.

Sanatan Dharam Sabha, Kohat.

THE Bill was placed in a special meeting of Sanatan Dharam Sabha, Kohat, held on 2nd June, 1936, and it was unanimously resolved that :—

1. (a) The Bill in question is very detrimental and harmful to Varn-Vaivastha. Varn Vaivastha is part and parcel of the Caste-system of the Hindus. The Bill will degenerate Hinduism.

(b) It interferes the principles of Hindu religion. This Sabha humbly requests the Government that in future those Bills which interfere any religion should not be allowed to be moved in the Assembly.

(c) According to our Shastras and Smritis and other religious books, such marriages are totally forbidden. Below are given a few out of many Shalokas :—

(i) Yagya-Valka's Smriti, page 42, Shaloka No. 49, which means " The marriages should be held in a Sa-Varna Castes only ".

(ii) Manu's Smriti, Chapter 3, Shaloka No. 12, which means " Dujatis, i.e., Brahmans, Khshatriyas, Vaishyas should marry in their own castes, otherwise their descendants will be degenerated ".

(iii) Manu's Smriti, Chapter 10, Shaloka No. 61, which means " The Government in which degenerated castes come into existence decays soon along with its subjects ".

(iv) Shrimad Bhagwat Gita, Chapter 1, Shaloka No. 42, which means " The degenerated descendants impurify the souls of their ancestors ".

It will be clear that the principles of our religion lay great stress on the marriages in the same castes only.

Therefore this Sabha submissively prays the benign Government not to pass this Bill.

No. 4.—AJMER-MERWARA.

Chief Commissioner, Ajmer-Merwara.

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

2. The Judicial Commissioner of Ajmer-Merwara has no remarks to make ; the Commissioner, Ajmer-Merwara sympathises with the principle on which the Bill is based and the object which it is intended to achieve, but considers that the matter is one where the wishes of the Hindu community alone—in whichever direction they may be found to lie—should be allowed to prevail.

3. I agree with the views of the Commissioner.

Additional District Judge, Ajmer-Merwara.

I AM not in favour of this Bill. I quite recognise that there should be parity in temperament and interests in marriages but the Bill will hardly serve to achieve this object. It would if enacted rather raise many complications in matters of succession and inheritance and social relations. I think the Hindu Society should be left to seek its own remedy in the matter. Cases of such marriages must be few and far between and it is not necessary to make such a forward enactment in the interests of a negligible minority.

Rai Bahadur Mithan Lal Bhargava, Advocate, Ajmer.

I, THE members of the Arya Samaj and the educated people of advanced ideas appreciate the motion very much, though staunch Hindus and the members of the orthodox Brahmans, Rajput and Mahajan community are likely to resent it.

2. On the other hand I find that the tendency of the young generation of all the communities is to have a partner for life of equal status and capability in education and therefore they are likely to prefer, an educated wife from amongst the girls of another community, whose qualifications, actions and temperaments correspond with theirs, to an ignorant girl of their own community and in the same way the parents of educated girls would be prepared to give their daughters in marriage to a boy of high qualification, good status and temperament, belonging to another community, if they fail to find one according to their selection in their own community.

3. In case people favour marrying women of another caste, but their sons by such marriage are not allowed to inherit or succeed the children are punished for no fault of theirs and hence it is just and equitable that the marriage be held to be valid.

4. Keeping all circumstances in view, I am in favour of supporting the bill and would like to see it passed into an Act.

Pt. Shri Dhar Sharma, Vice-President, Shamlat Committee, Jagir Pushkar and Updaishak, Bharat Dharam Mahamandal, Pushkar.

I STRONGLY oppose the Hindu Marriage Validity Bill by Doctor Bhagwan Dass as the 'Varna-Ashram' Dharam will disappear if this bill is passed.

This bill is totally against the 'Vedic' principles and at the same time goes against the well founded social conditions.

Therefore respectfully I urge the Government that for the welfare of the Indian Empire, its continued prosperity and strength they will not pass the Bill destroying the pious feelings of peace-loving and loyal Sanatan Dharmis.

No. 5.—BOMBAY.

Government of Bombay.

I AM directed to state that the Hindu Marriage Validity Bill by Dr. Bhagavan Das, M.L.A., with the Statement of Objects and Reasons was published in the Bombay Government Gazette in English on 28th May 1936, in Gujarati and Kanarese on 11th June 1936 and in Marathi on 18th June 1936.

2. I am to enclose selected opinions official and non-official, which were received by this Department regarding the Bill. A majority of the officials is in favour of the Bill. Amongst non-officials, that section of the Hindu Community which represents Reformers is in favour of the Bill, while the orthodox section is opposed to it.

3. The Governor in Council is of opinion that the problem is one for decision by the Hindu Community, and that legislation in this matter should be postponed until the new Constitution is in working order.

4. As regards the merits of the Bill, the Governor in Council is in agreement with the opinion expressed by the Reformers and with the suggestion that marriages under this Bill should be monogamous. He is further of opinion that a provision similar to section 2 (2) of the Special Marriage Act, III of 1872, should be inserted in the Bill.

Registrar, High Court, Appellate Side, Bombay.

I AM directed by the Honourable the Officiating Chief Justice and Judges to say that Their Lordships are in favour of the Bill and to forward herewith the opinions of the District Judges consulted by Their Lordships in the matter.

District Judge, Ahmedabad.

My personal opinion is in favour of the bill. As pointed out by the author of it, it is merely a permissive piece of legislation. Hindu Society is fast advancing due to facilities for education of both males and females who have now ample opportunities of meeting outside their homes. Inter caste marriages are in consequence, increasing and unless there is legislation to validate them, the off spring of such marriages would be penalised for no fault of theirs. The bill aims at regularising the position of parties to such marriages within the fold of Hindu religion and though it certainly contravenes the spirit of the rules for marriages among Hindus, the advance of Hindu Society justifies its adoption in its own interest.

District Judge, Ahmednagar.

THE object of the Bill is, no doubt, commendable, considering the spirit of the times, and the growing recognition among the Hindus that caste barriers are a hindrance to the progress of the society. But the provisions of this Bill are so wide that they are likely to do more harm than good. So long as marriage is not monogamous among the Hindus and the system of joint family continues to exist, it is necessary for the protection of the interests of women, and the family—if not of the caste,—that suitable conditions and restrictions should be imposed on any enlargement of the liberty to marry beyond the pale of the caste.

Such conditions and safe-guards have been provided in the Special Marriage Act, III of 1872 as amended by Act XXX of 1923, ensuring monogamy, divorce, separation from family, inability to adopt, etc. The object for which the present Bill has been introduced has thus already been secured in a much more desirable and salutary form by that Act which is really quite sufficient for the purpose of those desiring to contract such marriages after due consideration of all the circumstances involved.

4. I am therefore of opinion that the present measure is not only superfluous, but likely to prove injurious to the best interests of the Hindu community.

District Judge, Satara.

THE Bill aims at validating marriages between Hindus of different castes and creeds. Such inter-caste marriages have been already recognised in Baroda State. Personally speaking such a measure is long overdue. There are already instances where such marriages have taken place between parties belonging to different castes among the Hindus. And the educated communities at least do not look down on such marriages. There are quite a number of instances where high caste Hindus like Brahmins have married girls from the Maratha community.

At present parties not belonging to the same caste are obliged to have recourse to the provisions of the Special Marriage Act, No. III of 1872 as amended by Act XXX of 1933, for want of a law of the nature contemplated in the present Bill. A marriage under this Special Marriage Act No. III of 1872 has, in my opinion its own disadvantages which are not liked by some communities. Such a marriage has the effect of separation of the man taking advantages of the Act, from the joint family : it debars him also from holding religious offices or to act as a trustee of Hindu religious institutions ; the Indian Succession Act automatically applies to him in the matter of succession and not his personal law : Similarly the Divorce Law automatically applies even though the parties are Hindus. Some of these features are not favoured by members of certain communities. There are many people today amongst Hindus who though prepared to contract inter-caste marriages, are not prepared for the consequences of the Divorce Law applicable to them.

If the present Bill is passed into Law, it will enable such persons to marry without disadvantages above referred to.

It may be that this Bill may not be immediately taken advantage of by the several communities. But in course of time it will be a popular measure even amongst the uneducated classes. At the beginning, only the educated classes will take advantage of the Bill if passed into Law. The extremely orthodox section may oppose on religious grounds, but the opposition, in my opinion, is sure to be feeble. It may be however considered whether it would be desirable to provide in the Bill that the parties to such marriages shall be majors, viz., above the age of 18.

I support the Bill on principle.

District Judge, Thana.

I must observe that there is absolutely no necessity for this enactment. To those persons professing Hindu religion who want to marry in contravention of the provisions of the Hindu Law and customs, there are sufficient facilities given them by the Special Marriage Act III of 1872. No doubt under that Act a declaration has to be made by the party that he or she does not profess the Hindu religion, but a person who wants to marry in contravention of the Hindu Law should have no objection whatsoever to make a declaration of that sort. This enactment is of a revolutionary character which would strike at the very root of the rules of the Hindu Law as regards marriages between persons belonging to different castes amongst Hindus, the marriages between whom are prohibited by Hindu Law. This sort of legislation which goes to the foundation of Hindu society

governed by Hindu Law should not at all be given legislative sanction. This undue interference with the rules of Hindu Law is not called for in order to give sentimental satisfaction to those persons who want to take advantage of other provisions of Hindu Law but who want to contravene the provisions of Hindu Law as regards marriages. For such persons there are ample facilities provided by the Special Marriage Act III of 1872, and I do not think there is any force of public opinion behind this proposed legislation. This undue interference with the system of Hindu Marriages which is a quasi religious institution and is a sacrament is bound to wound the religious susceptibilities of the whole community, and hence, in my opinion, this sort of legislation is quite undesirable and inadvisable.

Commissioner, Northern Division.

I HAVE the honour to state that all the Collectors in this Division are in favour of the bill.

2. Although the measure is one which must depend on the evidence of general public demand, it is one which obviously must meet with the approval of a large section of the population. Act III of 1872 (The Special Marriage Act) has already legalised mixed marriages, provided the parties abandon their religion. A long period has elapsed since the passing of that Act and it would appear to be time to legalise mixed marriages without the imposition of such a condition, provided there is sufficient demand for a measure of this nature. And if there is sufficient demand, the fact that the measure is merely permissive should entitle it to the support of Government.

3. The suggestion of the Collector of Ahmedabad that the measure should apply strictly to monogamous marriages has considerable force.

4. There will probably be a section of the more orthodox persons who would support the measure if it was confined to ' anuloma ' marriages (i.e., those in which the bride only was of lower caste), a position which apparently is already recognised by the Hindu scriptures, and was not permitted in the opposite case of ' pratiloma ' marriages, but this is a compromise which would rob the measure of all its force, and should not be supported

Commissioner, Central Division.

I WOULD strongly support the Bill. Though the orthodox Sections are likely to oppose it such a measure appears necessary to meet the social changes that are necessary and are already being introduced. One addition seems necessary, viz., that the Law applicable to the father should be more applicable to the children.

2. The Collectors of Satara and Nasik were consulted and copies of their reports are forwarded herewith.

Commissioner, Southern Division.

I HAVE the honour to state that the District Magistrates of Belgaum, Bijapur, Kanara, Kolaba and Ratnagiri were consulted by me on the provisions of the Bill. Three District Magistrates out of five are in favour of the Bill. The District Magistrate, Ratnagiri, proposes that the Bill should be deferred for consideration by the reformed legislatures, and the District Magistrate, Belgaum, seems to think that the passing of the Bill would encourage inter-caste marriages and thus be the cause of immense trouble.

2. The object of the Bill is to validate marriages and it is purely a permissive measure and does not compel any one to marry out of his caste against his will or compel any one to maintain social relations against his will with any person who has contracted such a marriage out of his caste. The apprehension evinced by the District Magistrate, Belgaum, does not appear to be real and the provisions of Act III of 1872 are in present conditions clearly inadequate. The Bill is intended to save persons who have contracted such marriages being hounded out of caste by castemen of both the parties. Even the District Magistrate, Belgaum, admits that the ultimate object of the Bill is laudable. In these circumstances, I see no objection to the Bill but consider that it might be left for decision to the votes of the representatives of the Hindu community.

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Collector of Ahmedabad.

IN my opinion the principle underlying the Bill deserves support. Act III of 1872 already enables parties belonging to different castes to enter into valid matrimonial relations but that Act of course does not validate intercaste unions which have already taken place and about the legality of which inconvenient doubts may hereafter be raised. It would be a great social advance definitely to recognize such unions as legally valid within the scheme of Hindu Law as expounded at present. This protection should, however, be given, on principle, only to monogamous marriages and subject to this essential reservation, the Bill may, very well be accepted by Government.

Collector of Belgaum.

I AGREE with Dr. Bhagwan Das, who has introduced the Bill, in as much as the Bill aims at removing the serious hardship caused in individual cases ; but I am not in favour of the passing of the Bill, at the present stage, for the following reasons :—

- (1) The encouragement of intercaste marriages will mean immense trouble, disunion, and loss of harmony in so many Hindu families.
- (2) The social fabric of Hindu Society which rests on the system of joint family will be disturbed to a great extent, by such marriages.
- (3) The consideration of some happiness in an individual case is not so much when compared with the immense trouble and disorder that the family of the individual may be put to.
- (4) Ideas of morality are not so much advanced among Indians as amongst Europeans and as a result, the passing of such a Bill may have an unwelcome effect on their minds, majority of whom still advocate ancient customs and institutions.

Time, therefore, is not yet ripe for Government to enter upon such a step. It seems better to wait for some time more. Times are changing and caste distinctions are gradually disappearing. There would be a time when there would be a rush for such intercaste marriages. For the present the special Marriage Act No. III of 1872 provides for marriages of the kind noted in the Bill and it seems better to be content with it, till sufficient public opinion is created in favour of such a Bill. I do not think the Bill will now get the support of major portion of the Hindu population. The ultimate result by the passing of such a Bill would no doubt be good as all caste distinctions would disappear and there would be unanimity of purpose and action, and communal jealousies and fights would vanish.

Collector of Ratnagiri.

A PROGRESSIVE section of Hindus is in favour of Dr. Bhagwan Das' Bill to validate marriages between different castes of Hindus. The more orthodox sections of Hindu society, however, have not had proper opportunity to express themselves fully on the provisions of the Bill. It will, therefore, be better if the Bill is reserved for the consideration of the new reformed legislatures to be brought into existence as a result of the Government of India Act, 1935.

District Government Pleader, Surat.

THE Bill though apparently an innocuous piece of legislation and of a permissive character in its implications, is a legislation of a far-reaching character affecting the Hindu Society at large on one of its most important social institutions. It is therefore likely to put up the backs of not only the orthodox members of the Hindu Society but also of those who ordinarily are not zealous in the cause of the marriage institutions of Hindus in the present form. The undersigned would therefore consider it not proper to rouse the susceptibilities on social questions of the Hindu society at large and no wonder if the susceptibilities are roused, for it is a sentiment which requires to be respected rather than to be touched by the weapon of Legislature. The controversy is an old one how far the Government would be justified in its interference with the social institutions which have been followed though it may be, in mere form rather than in substance. Of late, reformers have received encouragement by the various social legislations which go to the root of the old policy of non-interference. Though by no means an orthodox member of the Hindu society and feeling as keen as the mover of the Bill for the social inequality pointed out by the mover, the undersigned does maintain that there must be a limit to such inroads and a point must be there which when reached can fairly be said "to be thus far and no further".

The inequalities pointed out by the mover in his speech can be met by a piece of social legislation of a more innocuous nature and comprising of a single section, declaring that children born of any Hindu marriage between Hindus of different castes shall be classed for purposes of succession, inheritance, partition and other rights relating to property as if they were the issue of couple belonging to the same caste provided the marriage was in the Hindu form and the marriage was otherwise valid and the parties were otherwise competent to marry. The Act shall come into force from the date on which it receives the assent of the Governor General.

The undersigned proposes this form of legislation as the assumption under the proposed legislation is not quite correct under the Hindu Law as now administered by the British Indian Courts. For instance, an Anuloma marriage which means marriage of a male Hindu of a higher caste with a female Hindu of a lower caste is not invalid at all and such a marriage is recognised under the Hindu Law. A son born of such a marriage is legitimate the only difference being as regards the extent of his share in the property of his father.

General Secretary, All-India Maratha Educational Conference.

THE proposed Bill, if passed, would be an inactive one. Inter-marriages, not only between different sects of Hindus or different castes and classes but even between Hindus and Non-Hindus, do take place everywhere ever since immemorial time, and no such necessity was ever felt before. Such a legislation, if made, would be a dead letter, one as it is not likely to override the customs of the country. There seems no reason why there should be no such legislation to validate marriages between Hindus and Non-Hindus.

There is no superstition at all. It is based simply on some principles. It keeps purity of blood and racial health. Such a legislation, if made, would not save the Hindu religion from degeneration nor will help in any way the married parties as such marriages are generally discarded by the public and even the parties morally feel that they have committed something wrong. They do not, therefore, like, at least in the beginning, to mix with the Society. Their progeny becomes a different class and their marriages take place amongst themselves. To keep a pure blood is one of the principles of occupational, intellectual and emotional interests and tastes. It is not only nominal observance of caste name.

Deccan-Maratha Educational Association.

THE Association is in agreement with the general principles contained in the Hindu Marriage Validity Bill introduced by Dr. Bhagavan Das in the Legislative Assembly.

Chairman, Maratha Vidya Prasarak Samaj, Satara.

THE Bill was placed before the meeting of the Managing Committee held on the 25th instant and it has been unanimously resolved that the Government may be communicated that this Samaj finds no objection to pass the Bill especially in view that now a days number of marriages take place and therefore why the progeny should be thrown off orphan for no fault of it. The progeny must get share in the ancestral property. Some people may not like. Alright there is a remedy for them, they should better discourage such inter-marriages.

The Sanatan Vedic Dharma Sabha, Surat.

THIS Association strongly disapproves of both the principle and provisions of Dr. Bhagvandas' Hindu Marriage Validity Bill. The Law of Manu held sacred by the Hindus strongly interdicts "Pratiloma Marriages" and treats the "Anuloma marriage" as permissible only by way of toleration. The Anuloma marriages, have also been condemned by long established customs in accordance with the spirit of Manu and other law-givers. This Bill strikes at the very root of the social system of the four varnas enjoined in the Shastras and established from the ancient times. This Association strongly deprecates such attempts at the sabotage of the Hindu Social system and it strongly protests against the false interpretation of the "Savarna" given by the Honourable Mover reducing it to the "parity of temperament" while it means "belonging to the same caste".

This Association is afraid that reforms like this would break up the Hindu Society and create or accelerate discontent against the Government and disturb the peace and

order in the country. The Association respectfully submits that such Bills may not be allowed in the legislature by the Government for the following reasons :—

1. They interfere with the religion and long established custom and create discontent.
2. Those who themselves are indifferent Hindus are not competent to represent the Hindus in these matters.
3. Such views are not the proper sphere of the mixed votes of the multi-communal bodies like legislative assembly.
4. The Bills are against the promise and spirit of the great proclamation of 1858 with which the British Crown assumed the sovereignty of India.
5. Such Bills being against the cultural unity and social solidarity of the people, any connivance at countenancing of such Bills by the government is construed by the people as the result of a foreign government's cultural antipathy, and is used by the agitators to stir up discontent and rebellion. This Association therefore holds that in the present state of things, when the legislatures are not adequately, culturally and proportionately representative of the people's opinion and when the fundamental of democratic representative government, viz., the value and reliability of each vote have come to be regarded with serious distrust, the basic structure of the Hindu Society should not be allowed to be disturbed and undermined by new innovators, nor left to the mercy of the uncertain and haphazard vote of the mixed legislatures.

This Association respectfully invites the Government special attention to the great fact that such communities as the Hindus are distinct cultural groups with their own established ideals, principles, traditions and socio-religious customs, to which voluntary allegiance is tacitly given by their components and it is in accordance with the sanest principles of the democratic theory of self-government that they be ruled by their recognised systems. It should be for those who differ in their allegiance, to disassociate themselves from the cultural group and to leave the original group the freedom to follow its own lines. The principle of forcing the so-called reforms on the people according to the change in weight of prevailing opinion is highly unsafe for the state as well as the people. We therefore respectfully warn the government against the consequence and tendencies of such anti-religious and anti-communal measures of legislature.

The Bombay Presidency Social Reform Association.

DR. BHAGAVAN DAS has written to the Council of the Association as also in the public press justifying his omission to provide for monogamy in his Bill. My Association is in favour of the Bill only on condition that the Bill makes a provision that marriages under the Bill are made monogamous. The Association will like to add that the evil of taking a second wife during the life-time of the first even among the educated classes is growing in recent years in Hindu Society owing to the breaking down of the force of public opinion, which exercised a wholesome restraint in former times.

When an innovation is sought to be made by a permissive legislation in the customary law of a community, care must be taken to avoid the danger of a new evil arising from it. It is incumbent to introduce in the Bill a provision that the marriage shall be monogamous. Otherwise a person may be able to marry validly women of different communities under the Bill, if passed. It is a matter of regret that educated girls come forward to perform marriages with a man who has a former wife living. If the principle of monogamy is not contained in the Bill, my Association will be against the passing of Dr. Bhagavan Das' Bill, especially as marriages can be validly performed between different castes of Hindu under Govt's Act 30 of 1923 which insists upon monogamy as a condition of a valid marriage under the Act.

Gujarati Hindu Stri Mandal.

My Committee find it difficult to fall in with the principle involved in the Bill as it does not seem to enhance the position of Hindu Women. My Committee is further afraid that the Bill if made into Act will adversely affect the status and interests of Hindu Women and will handicap their domestic peace and happiness in cases where the husband is not inclined to be monogamous.

We fail to see the necessity of such a Bill as the present one as the Civil Marriage Act is in force.

Bombay Presidency Women's Council.

My Committee accepts whole-heartedly the principle of the said Bill and begs to make the following submissions and recommendation with a request for favourable consideration :—

1. No doubt that intercaste marriages will be validated by the Bill, but the wording of the Bill as it stands merely validates such kind of marriage in all parts of India, as well as "Pratiloma" marriage, that is, marriage between a higher caste female and a lower caste male, but the same does not purport to add or affect the rights of inheritance of the children of such marriages. It is therefore necessary that a clause should be added to that effect.
2. My Sub-Committee also feels that an opportunity should be taken of providing that persons whose marriages are validated under this Act, shall not contract any polygamous marriage, and that no polygamous marriage will be validated by the provisions of the Act, and that persons marrying under the same shall have rights of divorce and Judicial Separation, etc., analogous to the rights of parties marrying under the Special Marriage Act.
3. My Sub-Committee further suggests that, for the purposes of this Act the word "Hindu" shall include Jains, Sikhs, Jats and members of other communities to whom the Hindu Law of Marriage is applicable.

All-India Hindu Law Research and Reform Association, Bombay.

My Association feels thankful to Government for the opportunity they have given it of expressing its views on the provisions of the Bill.

The Committee of my Association are in favour of these provisions. They would, however, suggest that the Bill may provide that the marriages performed under its provisions should be monogamous on both sides.

The Bhagini Samaj, Bombay.

THE members of the Samaj have considered the Bill and are not in favour of its being put on the Statute Book. I am directed to draw the attention of Government to the drawback, namely that if marriage takes place according to Hindu rites the parties would not be entitled to seek divorce. Then also Dr. Bhagwandas does not in his Bill insist on monogamy and does not make any provision for the rights of succession, of the widow and issue of the marriage including the daughters.

Bombay Women's Association.

My Committee is of opinion that provisions should be incorporated in the Bill providing for monogamy and the right of succession of widow and issue.

If proper provisions to this effect are incorporated then my Committee will support it.

No. 6.—CENTRAL PROVINCES.

Government of the Central Provinces.

I AM directed to say that there is a diversity of opinion on the Bill and that the views of those who support it cannot be said to be representative of Hindu public opinion. Agreeing with the views expressed by the Commissioner, Nagpur Division the Governor in Council thinks that in the circumstances Government should not lend its support to the provisions of the Bill.

2. Copies of selected opinions are enclosed.

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

Commissioner, Nagpur Division.

It appears to me that for those sections of the Hindu community which are so far advanced as to countenance intercaste marriages, the existing provisions of the Civil Marriage Act should suffice. As regards other sections, it is not possible to change public

opinion by legislation, and it is unwise in my opinion to legislate in advance of any gradual change that may be taking place. So long as the bulk of the Hindu community, which remains orthodox, declines to recognise the validity of intercaste marriages, it would be useless and undesirable for the Law to affirm their validity. I am, therefore, of opinion that the Bill should be opposed.

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

Bose, J.

I agree with the Bill.

VIVIAN BOSE.

Gruer, J.

I support it.

H. G. GRUER.

Pollock, J.

I support the principle of the Bill. I have however this doubt. If Hindu Law provides only for the marriage of persons of the same caste, can there be a valid marriage under Hindu Law between persons of different castes? The use of the word "validate" suggests that the Bill is intended to have retrospective effect, but this is probably not intended.

R. E. POLLOCK.

Niyogi, J.

I strongly support it.

M. B. NIYOGI.

Chief Justice.

Inform that the Bill is supported by all but that it is considered desirable to make it clear that the Bill either has or has not a retrospective effect. As the principle of the Bill is supported its having a retrospective effect would also be supported.

G. STONE.

Accountant General, Central Provinces.

I AM opposed to the Bill for the following, among other, reasons :—

- (1) As the Legislative Assembly is composed of Hindus as well as Non-Hindus, it should not legislate with reference to the social customs of the Hindus ;
- (2) The social customs of the Hindus are based on their sacred scriptures of hoary antiquity and a body like the Legislative Assembly consisting of members who have not properly studied the scriptures should not legislate on the social customs without taking steps to ascertain the opinions of the orthodox Pandits who are versed in the sacred scriptures ;
- (3) The older generations of the Hindus are mostly opposed to inter-caste marriages. If facilities are given to the younger generation for contracting marriages outside their caste, the peace of many a home will be seriously disturbed ;
- (4) The Hindu religion is based on the caste system. If the caste system is seriously disturbed, the foundations of Hindu religion will be shaken.

Sri Bharat Dharma Mahamandal.

1. It is yet another attempt to attack the principles of the Hindu Law as enjoined by the Holy Shastras and to cut at the root of the socio-religious order—the Varnashram and Dharma of the vast majority of His Imperial Majesty's loyal subjects. And the time allowed by the authorities to submit opinion in this matter of such a grave importance is indeed too short and much objectionable.

2. At this period of the Indian History, the Government are called upon to deal with measures affecting the personal law and religious sacraments of the "Varanshrami" Hindus. Their socio-religious order, religious beliefs and usages are based on Vaidic Philosophy which in their belief is unchallenged from the spiritual point of view and which has so successfully passed the hardest tests of both modern and ancient histories. One great thing which pervades every sect, caste and class of this pre-historic community, irrespective of education or culture, is its deep and unshakeable attachment to its religious beliefs and observances, and its faith in the Mighty Occult world. Those who have witnessed the religious festivities of the Hindus, the bathing ghats of the Ganges and sacred places on the Eclipseday, or in the Kumbhamela season, or the annual festivities of the shrines and temples, can well imagine how countless ages of materialism have not succeeded in effacing the deep-rooted faith of this vast majority. In numerical strength this orthodox Sanatanist Hindu community is the largest; in property stake it is the most substantial of all that constitute His Majesty's subjects in modern India. Persons of modern education may call it superstition, prejudice, ignorance or by whatever name they like, but they cannot possibly ignore the existence of its feeling, its conviction, its living moral force; nor can they afford to disregard that faith under which countless multitude of people have died and are still living, keeping also the organization of the Occult World in their proper angle of vision.

3. More than once we have distinctly placed before the Government and its responsible Head, His Excellency the Viceroy of India, the basic principles of the creed of the Sanatanists who form the bulk of the population of India and who are peace-loving by nature and spiritual culture. According to their eternal creed they have firm faith in the King as a responsible representative of the Devas—the high Governors of the Occult World and therefore protector of the people and defender of their religion.

4. These basic principles of the creed of the Sanatanist Hindus are as follows:—

- (a) Faith in the existence of the mighty Occult World behind this mortal world and its High Governors—the Devas, the Rishis and the Pitris;
- (b) Faith in the Divine Universal Law of Karma, i.e., of actions and re-actions of individuals and nations which guide their destinies;
- (c) Faith in the Image Worship, Yoga practice, ceremonies pertaining to peace and advancement in next life such as the sixteen Sanskaras, Daibhaga, Tarpana, Shraddha, etc., and other Shastric sacraments;
- (d) Faith in the Varnashrama Order, i.e., hereditary caste system and stages of life established on the principles of birth-right and purity of blood and of physical and super-physical bodies through inner forces of Nature derived from Suddha-Asuddha Viveka—the so-called touchability and untouchability and Achara and Vichara;
- (e) Faith in the transmigration of soul and cycle of birth and re-birth, working under the Divine Law of Karma;
- (f) Faith in the sanctity of women based on their Satiwa, i.e., the unique self-dedication of an extreme nature for preserving socio-religious order, peace of the family group and community, and for the purity and spirituality of the pre-historic race of humanity; and
- (g) Tolerance and catholicity in respecting beliefs of other creeds of the world as so many different paths to reach the SAME ONE GOAL—THE OMNI-PRESENT ALMIGHTY GOD—and never to interfere with their observances.

The Varnashrama Order and the Special Dharma of the Sanatanists.

5. The Varnashrama Social order of the Sanatanists is based, on the one hand, on the unanimous sanction of all their systems of Vedic philosophy and other scriptures and on the other hand, on their most scientific sociology which has stood the hardest test of both the ancient and modern histories. This unique system of their sociology contains order of caste by birth and stages of life with some special restrictions as are inevitable in evolution for preserving this pre-historic spiritual race of humanity. The Varnashrama order has not sacrificed the principle of unity and universal brotherhood. It is a philosophical truth that unity and uniformity are not one and the same thing. The Sanatanists believe in the unity in fundamentals and universal brotherhood in feelings, but with as much diversity in practice as is required to retain originality of every human race in general and the Sanatanists in particular. The Sanatanists hold that the purity of their nation as the spiritual race of humanity and upkeep of the principles of their scientific sociology are entirely dependent on the purity of blood. The pre-acquired cultural attainment of a Sanatanist determines his rights, duties and responsibilities in life, socially, morally, religiously and spiritually. To a Sanatanist

one culturally unfit for certain duties must not aspire to them unless and until he acquires the culture in his inner constitution and when he does acquire this, he is sure to be born in the appropriate family and group. On the other hand, by a fundamental change in Sanskara (inner structure) and Achara (rituals and sacraments) one makes himself unfit for being even called a Sanatanist. The hereditary caste system, prohibition of intermarriage among persons of different castes are not only conducive to their religion but definitely provided by the Vedic philosophy and are the bulwarks for the preservation of a particular helping factor in critical times when spirituality is in danger through social and political revolution. The Sanatanists sincerely believe that the Hindu laws (Dharma Sastras) are revelations directly from the occult authorities and that the order of Varnasrama cannot by any means or for any reason be interfered with by any mortal being, King or Government, as such laws are eternal and immutable.

6. Having firm faith in the above mentioned creed, in the principle of evolution through births and re-births, in social order based on hereditary rank and privileges acquired through actions of present and past existence, and the mighty occult organisation guiding the destiny of this world, the spirit and life of the Sanatanists are quite different from those of other communities in India and their creed is essentially different from other old or new creeds of the country. According to their creed, training and nature they give religion the foremost place in their life and according to the injunctions of their Sastras they are friendly towards other creeds and sub-creeds devoted to the uplift of humanity by their sacrifice, peace-loving nature, all-embracing catholicity and loyalty to the King. On the other hand the Sanatanists sincerely believe that the Hindu Law (Dharma Sastras) is the effect of revelation directly from the Occult authorities. This law may be classified in two groups, viz., (a) that pertaining to Raj-Niti (principles and policies of the Government of the country), and (b) that pertaining to Dharma Niti (regarding Religious and socio-religious order of the Sanatanists). The Criminal Procedure of a mortal King may for his conveniences be altered or added to, in the Raj-Niti portion of the Hindu Law to suit the necessity of the time, but the laws of Dharma-Niti which govern the Sanskaras (inner structure), the Karma (religious actions), Upasana (devotional practice), Jnan (spiritual attainment) and their Divine social order—the Varnasrama order—cannot, by any means or for any reason, be interfered with by any mortal being, King or Government, such laws are eternal.

7. Formerly the word "Hindu" meant one who believed in all sacred scriptures of the Hindus, and followed their injunctions as articles of faith. But now the term has acquired a different meaning. It is often used as a simple synonym for any Indian who is non-Muslim and non-Christian; and is often qualified with various adjectives. We thus read of Varnasrami Hindu, non-Orthodox Hindu, Political Hindu, Reformed Hindu, Arya Hindu, Brahmo Hindu and so on. All these excepting the first are new groups, each of them having its own faith, creed, aims and methods of propaganda. Therefore according to the injunctions of the sacred scriptures and laws of socio-religious order these qualified Hindus are not considered as (Varnasrami Sanatanists) Original Hindus. The Sanatanist Hindus, the ancient spiritual race of humanity, the followers of Eternal Varnasrama Order, have their own special creed, their own faith and sound mentality based on ancient systems of philosophy and their separate existence cannot be ignored by any one. The Mover of the Bill, if he is not a Sanatanist, has no right to interfere with the religious laws of the Sanatanists, as for instance, a Mahomedan has no right to introduce any Bill relating to any reform regarding the Christians.

8. The Hindu law undoubtedly gives a high position to women in society, a position which might even be envied by the members of the same sex, belonging to other nationality. Marriage among the Hindus, apart from being a spiritual union of husband and wife, is a pious sacrament, the life of which may be found to be conspicuously lacking under any other law. The marriage ceremony of the Varnasrami Sanatanists is a *Sanskara* (Religious sacrament) to be performed under special religious laws determined by the Vedas and Dharma Sastras. It is neither a civil agreement between the members of the two sexes, nor is it an ingenious measure to satisfy the lust of a couple, nor a method to secure only household happiness, as is imagined by the so-called reformers of the present day who are not, really speaking, Hindus. According to the philosophy of the Vedas there are sixteen Sanskaras—purificatory sacraments. The Divine presence and help is invoked through these purificatory rites and this being secured, it imparts to the purified individual special conditions regular spiritual development on the principles of evolution for his attainment of Moksha, the final liberation in the end. The marriage ceremony is the root cause and basis of all these purificatory sacraments, as the first *Sanskara Garbhadhan*—the religious ceremony of consummation—is performed after this ceremony. The Vedic philosophy further declare that death does not signify anything more than the leaving of the physical body (sthula sarira) by the super-physical body

(Sukshma sarira) of a Jiva. This automatic point of separation is called death. So, in the angle of vision of a Sanatanist the path of a cycle of births and re-births is considered always open and straight for securing Dharma and Moksha. So the Sanatanist woman through her Satitwa—self-dedication of an extreme nature—and a Sanatanist man through his Varnasrama order and the above mentioned creed, treading jointly and gradually the path of sacrifice and spiritual attainment, both reach the final goal. Therefore, the marriage sacrament of the Sanatanists is not intended only for this mortal world, but to help the couple in their path of *Avagaman chakra* the cycle of births and re-births.

The Humble Appeal of the Sanatanist Community.

9. The Bill is quite against the creed of the Sanatanist, against the injunctions of Vedas and Sastras, against the established system of their philosophical Sociology, eternal customs and usages, hence, in the opinion of this All-India Association of the Sanatanists the Bill should be thrown out for the reasons briefly summarised in this appeal.

10. This representative Association of Hindu India observes that Government office bearers having other faiths and the political leaders should always bear in mind that although they think that every religion of the country ought to be a pure matter of "Faith" to be kept to one-self and that religion should have nothing to do with the social order of business of life, the Varnasrama Hindu—the entire community which this Society represents having entirely opposite beliefs always claim that the Government or the political organizations of the country should not interfere with anything affecting religion, socio-religious order, observances and sacraments of the community or sub-community of the country. For the well-being and continual prosperity and strength of the Indian Empire the Council of this representative Association humbly and respectfully request the Government to refrain from their attempt to interfere with the religious order and sacraments of a numerically superior and peace-loving community. History, both ancient and modern, proves that this pre-historic and spiritually inclined nation can do wonders on either side in the name of Religion.

11. Since more than a quarter of a century we have been approaching the Government of India with regular prayer, submitting that India is the "Land of Religions" and that the religious and religious sacraments of the inhabitants of India may not be interfered with, even indirectly, under any circumstances and that the previous Imperial Proclamations regarding the observances of religious neutrality and non-interference with religion, may be observed with strict code of honour befitting a wise powerful Empire building nation. His Excellency Lord Irwin through His Excellency's Private Secretary kindly gave us assurance that "he will bear in mind the principles to which this All-India Association has drawn His Excellency's attention as being essential to any constitution that may be framed for India". It is known to all that by their eternal tradition, their inner structure, nature and religious creed the Sanatanists are remarkably law-abiding, peace-loving and loyal and they do not want any cheap Swaraj or any Government at the cost of their religion. The Council, on behalf of Sri Bharat Dharma Mahamandal, request you to be kind enough to lay before His Excellency this humble representation for his favourable consideration and also for kindly taking necessary sympathetic action of justice keeping in view of the security of the Empire and the affectionate relations to be maintained between the people of both England and India.

Rao Bahadur V. M. Jakatdar.

I AM in full sympathy with the Mover of the Bill in validating such marriages. Due to spread of education such marriages are bound to take place and it is therefore necessary that there should be an enactment which make such unions legal.

Rao Saheb R. S. Satarkar, Pleader, Akola.

(1) WITH the advance of present civilization the number of marriages between Hindus of different castes is bound to increase; and, hence, it is, and should be, very necessary to remove serious hardships in individual cases of marriages between Hindus of different castes.

(2) With the said object in view, the proposed legislation is desirable and needed.

(3) I, however, think like some others who have sent some friendly suggestions to the Honourable Mover of the Bill that some provisions should be added to ensure monogamy and the possibility of judicial separation or of divorce in case disparity of temperament develops later on.

L100LAD

Rai Bahadur P. C. Bose, High Court pleader, Jubbulpore.

In my opinion the Bill, though apparently simple in its provisions, is of a far reaching character. In course of time, if passed, it is bound to bring about great change in the Caste System.

However, I agree with the Mover of the Bill that it would weld the Hindu Society ultimately into a homogeneous whole and remove the caste system and the intersociety quibbles and barterings.

Commissioner, Berar Division.

The bulk of the Hindu opinion would probably express itself against the Bill. If so, Government should not support the measure. As pointed out by the Deputy Commissioner, Yeotmal, the question is one affecting the religious beliefs and social customs of the Hindu community; and unlike in the case of the abolition of *Sati* or the Child Marriage Restraint Act, no strong grounds of public policy exist for interfering with these beliefs and customs.

No. 7.—DELHI.

Chief Commissioner, Delhi.

I have the honour to say that neither I, nor the Deputy Commissioner, nor the District Judge, nor other officers of the Delhi administration who have been consulted, have any objections to urge against the Bill.

No. 8.—UNITED PROVINCES.

Government, United Provinces.

I am directed to say that the High Court of Allahabad, the Chief Court of Oudh, and a number of Hindu Associations and prominent Hindu gentlemen have been consulted. Owing to the courts being closed for the vacation, the opinion of the Chief Court has not been received, while of the Hon'ble Judges of the High Court only eight have expressed their opinion. Of these the Hon'ble the Chief Justice and the Hon'ble Mr. Justice Niamatullah have expressed themselves as in favour of the Bill, provided it has the support of Hindu opinion. The other six, of whom two are Hindus, are in favour of the Bill but have not stated the grounds for their opinion. Of the Hindu associations and gentlemen consulted, some have expressed their approbation of the measure and others are opposed to it. Others, including the Right Hon'ble Sir Tej Bahadur Sapru and Pandit Madan Mohan Malaviya have not favoured Government with their views. It is clear that in each case the attitude towards the Bill is influenced by the feeling of the association or gentleman concerned with regard to the preservation of a rigid caste system.

2. It was inevitable that Hindu opinion should be divided on Dr. Bhagavan Das's Bill. The orthodox Hindus have strongly opposed it while the more advanced section of Hindu opinion, including members of the Arya Samaj and persons influenced by contact with the West, are in favour of the measure. A question of this kind can only be decided by members of the Hindu community. The Bill does make an organic change in Hindu custom and practice, if not in Hindu law, and is alien to the prevalent opinion among Hindus as a whole and in particular among the illiterate masses. The Governor in Council is therefore not prepared to give his full support to the measure unless and until a clearer indication is forthcoming of a genuine and widespread demand from the members of the Hindu community.

3. The Bill was published in Hindi in the United Provinces Gazette of May 23, 1936, and in English in the gazette of June 27, 1936.

No. 9.—SIND.

Government of Sind.

I am directed to say that the Judicial Commissioner of Sind, all the District Magistrates in the Province and the Bar Association, Karachi, who were consulted, support the provisions of the Bill; and the Local Government concurs with their opinions. Whatever be the origin of the restriction on inter-caste marriages, it does not seem wise to

impose that restriction at the present day. The membership of some of the castes is extremely limited ; and it is common knowledge that the utmost difficulty is often experienced by educated and advanced members of a community in finding a suitable match for themselves within the fold of the community. In the interests of individual happiness and social progress, it is therefore desirable to widen the field of selection by removing the restriction on inter-caste marriages.

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

No. 10.—BENGAL.

Government of Bengal.

I am directed to forward for the information of the Government of India copies of opinions of some selected public bodies and Associations, etc., which were consulted.

2. After carefully considering the provisions of the Bill as well as the opinions received which are rather widely divergent, the Governor in Council is of the opinion that the proposals in the Bill are out of harmony with the whole structure of Hindu Society, are incomplete and would open up wide possibilities of future dispute. He would accordingly recommend the preservation for the present of the *status quo*. Attention is however invited to the opinions of the Indian Association, the British Indian Association, the Bar Library, Calcutta, the Bar Association, Chittagong and the Incorporated Law Society, who hold different views and have supported the principle of the Bill.

3. I am to add that the Bill was published in the Calcutta Gazette on the 5th December 1935.

Incorporated Law Society of Calcutta.

I am directed by the Council of my Society to inform you that at a meeting of the Council the subject matter of the Bill was discussed and the following Resolution was adopted, namely :—

“ Resolved that the Council of Incorporated Law Society of Calcutta approves of the provisions of the Bill known as Hindu Marriage Validity Bill.”

Marwari Association, Calcutta.

My Committee are strongly opposed to the present Bill. In their deliberate opinion the Bill is wrong in principle, unnecessary, and highly pernicious in its practical effect.

The principle involved constitutes the most vital issue. It is, briefly speaking this : whether or not the Bill attempts to interfere with the religion of the Hindus. Dr. Bhagwan Das seeks to shirk this issue by taking recourse to a two-fold fallacy. Firstly, he argues that the measure is a purely permissive one ; and secondly, he holds that though the caste-system is an institution hoary with age and really based on solid scientific foundations of Hygiene and Eugenics, it has at the present time degenerated into a sorry caricature of its ancient beneficial self.

In form, undoubtedly the Bill is permissive. It creates a status which a person may or may not choose to accept for himself or herself. But once he or she elects to accept it, the status thus created gives rise to certain inevitable corollaries which, so far as other persons are concerned, have compelling force. For instance, when a Brahmin male member of a Hindu coparcenary marries a non-Brahmin girl under the provisions of the present Bill, the coparceners will be legally bound to accept the bride in their family dwelling house and to allow her inside the family temple ; the son born of the marriage, who will presumably be a Brahmin (the Bill is silent on the point) will be entitled to worship the family diety ; etc., etc. My Committee frankly fail to understand what these amount to, if not compulsion pure and simple, so far as the other members of the coparcenary are concerned.

That caste is very ancient cannot be denied. Dr. Vincent Smith opines, it is at least three thousand years old. Orthodox Hindus believe it to be co-eval with creation. That it has rendered yeoman's service in maintaining the solidarity of Hindu society and in assuring its smooth working has never been gainsaid. Dr. Bhagwan Das does not deny these facts about the caste-system. Exigencies of reforming zeal, however, make him supply a gloss, plausible enough to take the unwary by surprise, and carry conviction to

the willing. He explains that what the Sastras prohibit is not inter-caste marriage but marriage between persons of incompatible temperaments. Caste again is admitted to be based on the scientific principle of observing temperance in matters of diet and marriage. If that be so, the very existence of caste implies restrictions against marriages out of caste. Persons belonging to the same caste may have a good many things common among them but surely they all cannot possibly have the same temperament. Therefore when the Sastras condemn 'a-subarna' marriages they cannot refer at the same time to both marriages between persons of incompatible temperaments and marriages outside caste. Caste and compatibility of temperaments do not and cannot go together as necessary adjuncts to one another, nor is it known that in ancient times a person was "hounded out of caste" if he was proved to possess a temperament not worthy of his caste. By 'a-sabarna' marriage, then, the Sastras can only mean, what the orthodox Hindus understand by the term, namely, a marriage outside caste.

The true state of things, my Committee submit, is this, "Caste means a social exclusiveness with reference to diet and marriage". (Sham Sastri, the Evolution of Caste, page 13) Intercaste marriage, therefore is a contradiction in terms. Marriage outside the caste is really the negation of caste itself. "The existing institution of caste", says Dr. Vincent Smith, is peculiar to India, is at least three thousand years old, is 'the most vital principle of Hinduism', dominating Indian social life, manners, morals, thought". (Oxford History of India, 1920, Ed. P. 34-35) "It is an integral part of Hinduism It is intimately connected with the Hindu philosophical ideas of 'karma', re-birth, and the theory of the three 'gunas'." (*Ibid*, p. 34) "Hindu society without caste is inconceivable". (*Ibid*, p. 42).

The present Bill strikes at the very foundation of the Hindu social organisation. It is purely destructive, and does not suggest any substitute for the admittedly useful and ancient structure it seeks to destroy. My committee wish to draw the attention of the Government to the warning uttered by the late Sir Madhava Row: "Thinking men must beware lest the vast and elaborate social structure which has arisen in the course of thousands of years of valuable experience should be injured and destroyed without anything to substitute or with a far worse structure to replace it."

My Committee like to point out that a Hindu marriage is a sacrament and not a mere contract. Bilateral agreement is no doubt sufficient to seal a contract and extraneous hinderances to the conclusion of contracts should surely be done away with. In a social system under which marriage is nothing more than a contract customs or usages that retard the free play of the individual will in the matter of selection of a spouse are undoubtedly obnoxious and liable to be modified. But where marriage is looked upon as a purely religious institution, as among the Hindus, the conditions prescribed by the Sastras are imperative and as such immutable. The Sastric injunctions may be capable of different interpretations, some very ingenious. But that interpretation alone prevails among Hindus which has been accepted by usage. The principle, it is well known, governs the Courts of Justice in British India in deciding which of the conflicting interpretations of a particular provision of the Sastras is to be accepted. In the light of such interpretation a Hindu marriage is possible only within the caste. Any marriage outside the caste may be legal under some enactment or legalised at will by the legislature, but it can never be a Hindu marriage carrying with it all its peculiar incidents, religious and secular.

My Committee look upon the present Bill as an open interference with the religion of the Hindus, and therefore, think it their duty to warn the Government that the enactment of the Bill will surely antagonize the great Hindu community.

The second ground on which my Committee oppose the Bill is that there is no occasion for it. Everywhere legislation is undertaken to meet a particular demand in the body politic. In the present instance my Committee fail to find any such demand. My Committee deny that in the Hindu community proper there is any recognisable demand for inter-caste marriage. There may be some unorthodox persons who prefer to call themselves Hindus, who may occasionally desire a marriage of the kind under examination. For them the Special Marriage Act III of 1923 provides adequate facilities.

The ostensible object of the Bill according to Dr. Bhagavan Das is the prevention of "hounding out of caste" Hindu persons who marry out of caste. My Committee cannot think that this argument is really seriously put forward. For there can be no possible doubt that, Law or no Law, orthodox Hindus will never look upon their co-religionists who marry under the provisions of the present Bill as belonging to their own caste. They will form a nameless caste or class, never recognised as Hindus by orthodox Hindus. Moreover, it is surely an intriguing position for people who choose to disobey caste discipline to cry over their loss of caste.

In this connection my Committee cannot refrain from observing that what Dr. Bhagavan Das' Bill really aims at is not giving a man marrying outside his caste legal protection against "being hounded out of caste" or against defamation but to allow promiscuous marriages among persons who, though not being *bona fide* Hindus, would not give up the advantage of a Hindu marriage, as for instance, right of adoption, membership of coparcenary, etc., that a marriage under Act III of 1872 would not allow.

Lastly, my Committee wish to point out that the Bill if enacted, will give rise to most pernicious consequences. That the great body of the Hindu community will never accept it, there is no manner of doubt about. Marriage to them is a sacrament, and no mere contract depending on the whims of the moment and passing fancies. Promiscuity, intemperance, immoral liaisons, indiscipline and disruption of social bonds will follow. Litigations, civil and criminal between coparceners will be the order of the day. Family ties will snap. Family partnership firms will break up.

The form of the Bill, my Committee find, is also highly unsatisfactory. It makes an inter-caste marriage "not invalid". There is no express mention of the consequences of such a marriage. Will it be a Hindu marriage in the technical sense of the term with all the legal consequences that flow from it? What will be the status of the offsprings of such a marriage? Will there be a new nameless caste or will the obsolete rules about Anuloma and Pratiloma marriages obtaining at a time when Hindu society was in a nebulous state re-emerge? The Bill does not care to settle any such complex points.

In conclusion my Committee wish to observe that the Hindu community relies on the good faith of the Government in observing both in letter and in spirit the undertakings contained in the great Charter of Indian People, the Queen's Proclamation. My Committee want to impress on the Government that the Hindu community does not recognise the members of the Legislatures as at present constituted to have any right to represent it in social and religious matters.

In this view of the matter my Committee strongly and unequivocally oppose the Bill and confidently expects its overthrow.

Bar Association, Chittagong.

THE matter was put up before a General Meeting of the Association and they have passed the following resolution.

RESOLVED :—

"That the spirit of the Bill relating to Hindu Marriage Validity Bill is in consonance with the spirit of the age and this Association accords its support to the Bill".

British Indian Association, Calcutta.

WE are directed to say that our Committee are not opposed to Mr. Bhagavan Das' Hindu Marriage validity Bill introduced in the Legislative Assembly as they consider it a permissive piece of legislation which if passed will validate inter-caste marriages of Hindus and would give the Hindu Society a chance to retain such married couples in the Hindu fold.

The main objections against the Bill are that it goes against the very principle of the caste system and it would be a legislative interference with the religion, customs and usages of the Hindus.

Our Committee are of opinion that the rigid conception of the caste system on the original occupational basis has practically long ceased to exist. Our castes no longer move on functional lines and they are now regulated by economic forces which appear and grow through the impact of ideas, foreign to the caste system; and as such they now fail to secure the very object of marriages inside the castes, viz., the "parity of temperament". The economics of competition is breaking the old barriers of castes and is forming new ones. The Committee therefore think that the Hindus marrying outside castes should not be lost to the Hindu community. They know that such marriages between different castes of Hindus are very few and that the demand for restoration of the practice of inter-caste marriage is confined to a very limited section. But they feel that the growth of the community is considerably hindered if the Hindu Law makes no room for a limited amount of personal freedom in marrying outside castes. The Committee think that the introduction of the inter-caste marriage among Hindus will instead of destroying the "parity of temperament", for which the rule of marrying inside the castes was originally

introduced, will contribute to happy union in many cases. Even eugenic laws favour this as it is said that physical deterioration and intellectual immobility could be to a great extent overcome by restoration of the practice of inter-caste marriage.

Many wrongly think that the Civil Marriage Act can well fulfil the objects of this Bill. But our Committee do not lend support to that view. Marriages under the Civil Marriage Act are not Hindu marriages at all ; there the marriage begins with a declaration by the parties that they are not Hindus. Besides that a marriage under Act III of 1872 is a contract, not a sacrament and is hence dissoluble. This goes against the fundamental principle of Hindu marriage and as such our Committee do and can never support it.

In lending support to the Bill our Committee want to make their position perfectly clear. They do not advocate a general departure from the governing rules of Hindu marriage, viz., marital union must be outside the family but inside the caste, nor do they desire that free inter-caste marriages should be re-introduced and encouraged in the Hindu Society by a legislative enactment. They strongly deprecate such interference on the socio-religious affairs of the Hindus but are equally anxious to see that the Hindu Law should not throttle down individual freedom if it is not prejudicial to the stability of society. Our Committee have perfect faith that Society will work out its own reforms when necessary but they are supporting the Bill with a view to find that no legal disabilities may follow Hindu marriages outside castes.

District Judge, Rangpur.

If the proposed Bill be passed into law, there will be difficulties in determining the caste of the issue of mixed marriages. As the Hindu Law does not lay down exhaustively and clearly what caste the issue of such mixed marriages should belong to, there will be substantial difficulties in the administration of the Hindu laws of inheritance, etc., in such cases.

The Bill is incomplete for the good reason that the vexed question of a caste of the issue of such marriages will have to be decided.

In the object and reasons I notice only the social advantages of the proposed Bill are touched, and the legal difficulties are not even hinted, and ignored.

Bar Library Club, Calcutta.

THE Calcutta Bar Library is in favour of legislation to validate marriage between Hindus belonging to different castes.

Bangiya Brahman Sabha, Calcutta.

THE Hindu Marriage Bill, introduced in the Legislative Assembly by Dr. Bhagwan Das, has been circulated for eliciting opinion of the public and we are to give our view on the same. We, accordingly record our strong protest against the Bill for the following reasons.

Dr. Bhagwan Das has considered Vivaha in the Bill as a purely social matter, but it is not so ; it is really a religious function.

Whenever the term " Vivaha " is interpreted as " Marriage ", it loses its true spirit altogether. Marriage indicates a kind of contract and " Vivaha " is a sacred rite ; like the Upanayana sacrament of the twice-born caste, it finds no synonym in other languages.

Our Shastras have specifically dealt on the point. " That the matrimonial rite of a woman is nothing but the Vaidik initiation. Services to husband is equal to living in the Guru's house and the household works are similar to be offered unto fire (as in the case of Brahmachari) (Manu 2, 67).

Kulluka Bhatta, the commentator on Manu, has explained the above in this way :—

The wedding ceremony of women is the Upanayan Samskara itself, the waiting on her husband, is itself the chanting of the Vedas, and her household duties take the equal position of performance of offering to fire in the morning and evening.

Hence, the idea of " Vivaha " amongst the Hindus is unique in its nature ; without performance of Vivaha purification of the body and soul of a woman and perfection of her religious life are next to impossible.

Dr. Bhagwan Das has not only denied the holy spirit of the Hindu Vivaha, but also lowered the status of the same, by introducing such a Bill in the Assembly. So, we emphatically protest it again.

The term "Samskara" itself indicates purification. Purification not only for the material body but even for the spiritual existence, as expounded by Manu :—

The twice-born caste should undergo the "Samskara" of the body beginning from "Niseka" by performing the sacred Vedic rites, which are purifying both for the material and spiritual world. The impurities clinging to the semen or lying in the ovary are purged of the body of the twice-born by the Samskara, Gorbhandhana, Jatakarma, Chura and Upanayan (Manu 2, 26 and 27).

These two verses are dealing with "Samskara" of the twice-born, therefore Upanayana Samskara is mentioned here. But Manu after giving all the laws regarding the Samskaras beginning from Jatakarma, to Upanayana has mentioned the following:—

That women should also for purifying their body undergo all the said Samskaras one after one in due time, without using any Vedic Mantras (Manu 2, 66 and *vide* commentary on it by Kulluka).

Now, it may be presumed from the above verse, that Upanayana Samskara is also necessary for women ; but in answering to this kind of presumption Manu has put before us the above Sloka 2, 67, which clearly establishes that the matrimonial rite itself substitutes Upanayana Samskara in the case of women ; "Vivaha" is not a purifying function for women only but it brings about elevation of religious life of males also.

Manu says.—By chanting of Vedas, observation of celibacy, offerings to fire, austerity, propagation and by performance of sacrifices, the body of a Dwija is made fit for attaining the supreme soul. (Manu 2, 28).

Kulluka has also explained the above very lucidly :—

A Brahmachari, befitting his body and soul for attaining Brahma, has to follow a routine : chanting of Vedas, offering of Homa in the morning and evening, observation of Vrata named "Traividya" and of other austerities. Similarly a householder too has to propagate and impart Vedic education to students to offer water to forefathers, to perform sacrifices, to offer food to Bhutas and to pay homage to the guests and to perform sacrifices like Jyotistoma, etc., to make him fit for realisation of the self.

Now, Manu expounds the rules and regulations relating to the rite of Vivaha in the following manner :—

After finishing celibacy a twice-born, coming to a householder's stage with the permission of his preceptor, should, according to Shastric injunction, take a spouse of his own "Varna" who possesses all good signs. (3, 4).

In the second verse of the Chap. 3, there is an injunction allowing one to enter into the householder's stage, but the above fourth verse of the same chapter has qualified the said injunction by introducing the acceptance of a spouse of the same 'Varna'.

Dr. Bhagawan Das in his short speech delivered in the time of introduction of this Bill, has given a ridiculous meaning of the 'Savarna'. Manu has given the law of 'Savarna-Vivaha' and he has clearly stated in the same chapter what the term 'Savarna' means.

In respect of marriage a wife from one's own caste is to be preferred, but in case of lustful marriage the wives from the next castes may be taken in due order.

A sudra should take a wife only from Sudra Varnas, and a Vaisya may take wives from Vaisya and Sudra. A Kshatriya may take wives from Kshatriya, Vaisya and Sudra Varnas whereas a Brahmin may accept wives from four Varnas. (Manu 3, 12, 13).

According to our ancient Shastras, Sudra is never allowed to take wife from the caste other than that of his own and only Dwijas are allowed to take wives from different Varnas provided they have got first wife from their own caste. The wedding of the first wife is considered to be a religious act and taking of other wives from other castes is considered as lustful marriages. However, it is certain that in illustrating the meaning of 'Savarna', Manu and his commentators have clearly shown that Sudra can have only Sudra wife, Vaisyas are prohibited to take wives from Brahmana and Kshatriya and Kshatriya cannot have a wife from Brahmana caste. So, it is evident, that Manu has clearly expressed the meaning of the term 'Savarna' which he has used in his various injunctions. According to his opinion, it has been clearly shown that 'Savarna' means wife of the same caste of the espouser.

Manu has explained the idea in other verses (IX, 85, 86, 87) also.

If the twice-born castes marry more than one wife according to the previous injunction then the wives are entitled to have honour, offerings and abode according to their order of castes.

The wife belonging to the same caste with her husband would serve her husband and it is her obligatory daily duty, but not she who is different in caste from her husband, as, the Kshatriya wife of a Brahmin or the Vaisya wife of a Kshatriya and so on. The Brahmin, who would make his other wives do these works during the life time of his Brahmani wife, would be looked upon by the sages as a Chandala produced upon a Sudra woman by a Brahmana.

So the meaning of the expression 'Savarna Vivaha' is to marry a wife from one's own caste and not to wed a wife having parity of temperament, equal profession or education, etc.

The parity of temperament, equal profession or education, etc., between the bridegroom and bride are hardly available in this world, as disparity is the law of nature. The Vedic incantations and influence of actions prevail upon such equality of temperament, etc. In corroboration of our view the Rigvedic text (X. 85) 'Samanjantu', 'Visvedevah', etc., may be quoted. And it is possible only when the wife possessed of good signs is taken from the same caste of her husband.

It has been indicated by dictums quoted above that in ages gone by there was 'Anuloma Vivaha' in vogue; that too has been prohibited in the Kali age by the Brihannaradiya Puran text which runs thus :—Marriage of a woman by the twice-born caste from castes different from their own, etc., should be avoided in the Kali age. In short, we may say that the Savarna-vivaha which has been declared by the law givers Manu and others to be the best and primary form of marriage, has been enjoined by the Brihannaradiya Puran. The seers with a view to save a man from the attack of various faults of the mind that overpower him, have prohibited those actions which increase sexual attachment and are performed with some object in view. Different is the duty in the 'Krita Yuga', etc., point to the same conclusion. It should be borne in mind that the sociology of the Hindus stands on the foundation of 'Dharma' and so it is improper by all means to do actions that would demolish the whole structure to its foundation.

Doubtless the caste system is a Vedic institution. The Purushasukta of the Rik and the Yajur-Vedas, the 31st ch. of the Madhyandini school of the Yajur-Veda, the texts of the chahandoyya and Katha Upanishad and Smriti and Puranas may be quoted as authorities on this. The self-born being created for the prosperity of the world, the Brahmanas, Kshatriyas, Vaisyas and Sudras from his mouth, hands, breast and feet. (Manu 1, 31).

Now let us come to the 'Varna' :—The Brahman, Kshatriya and Vaisya, these three, are the twice-born castes and the fourth caste is the Sudra, there is no fifth pure caste. (Manu X, 4). The commentator Kulluka explains the verse thus :—The three castes beginning from the Brahman are twice-born castes on account of the ordination of their investiture with sacred thread. The Sudra is not twice-born as he is not entitled to Upanayana ceremony. There is no fifth caste. The Hybrid castes are a separate race, as they do not belong to any pure caste like mules having a different castes from their parents.

The above four pure castes created by the self-born being and those begotten from parents of the same caste are acknowledged as four original castes, viz., Brahman, Kshatriya, Vaisya and Sudra. Manu also supports the views thus :—

Of all the four castes, the son of a Brahman begotten from his caste Brahmani wife is a Brahman, the son of a Kshatriya from his caste Kshatriya wife is a Kshatriya and so on (X. 5). Kulluka explains the verse in the following manners :—Of all the four castes Brahmanas, etc., the sons born of mothers of the same caste, caste and married duly, would go by the name of Brahman, etc., when begotten by the Brahman, etc., in order. The same thing is declared by Laghu Harit (1. 15) thus :—He is said to be a Brahman who is begotten from a Brahman wife by a Brahmana.

The sum and substance of these stanzas is that the caste of a man is to be determined by the caste of his parents when they are duly married and belong to the same caste.

When Bhagawan Sri Krishna even has pointed out Arjuna as a Kshatriya in "such kind of war is available by happy Kshatriyas alone, Oh ! Arjuna, " who was superior to Brahman Asvathama in respect of continence more truthful than Yudhisthira and a kind ascetic ; then the view that Brahmanya, etc., are dependent upon the present action of the man in question falls at once to the ground.

This is not only a cause for opposition, but it would help to extirpate the caste-system existing from time immemorial. So we lay our strongest protest against it.

If this inter-caste marriage purported by the Bill be passed, the 'Pratilom' vivaha would generate Varna-Sankara and the Samaj shall have no power to stand it. The sanction of the Bill would hurt the feelings of loyal subjects. To speak the truth Pratilom

vivaha is contradiction in term ; it is not marriage in the real sense of the term and the issue coming out of such union led by lust would not be counted, according to scriptural injunctions, as a pure caste, but one outside its Pale (out-castes).

The 'Dharmasastra' gives an account of the Pratilom Sankar thus :—A son born of Brahmani by a Kshatriya is called Suta, and sons born of Kshatriya and Brahmani by a Vaisya are known respectively as Magodha and Vaideha. Sons born of Vaisya, Kshatriya and Brahmani by a Sudra are called Ayogava and Khatta and Chandala in order. These last three are designated as Varna Sankar (Manu X. 11-12).

Sankaras lead their forefathers to hell (Gita). Manu speaks of Sankaras produced during the rule of kind Vena. To remedy the evil the sages killed him through their power of penances.

The Bangiya Brahman Sabha does not hesitate to proclaim that the present Bill is opposed to Dharma, detrimental to society, destroyer of loyalty and contradictory to all religious scriptures. So even if it be passed through majority of votes it should be set aside by royal prerogative.

The original texts are given below for ready reference.

Indian Association, Calcutta.

My Association supports the measure.

No. 11.—MADRAS.

Government of Madras.

I AM directed to state that the Bill was published in English and in the vernaculars in the Fort St. George Gazette on the 15th October 1935 and the 2nd June 1936 respectively.

2. The Bill was referred to the Hon'ble the Judges of the High Court, the All India Women's Conference, the Advocate-General, the Government Pleader, Madras, Mr. T. R. Venkatarama Sastri, and Mr. P. N. Marthandam Pillai, for opinion and I am to enclose copies of the opinions so far received.

3. I am to say that His Excellency the Governor in Council is in favour of the measure but considers that provision should be made in the Bill requiring the consent of the parent or guardian where a party to the marriage is a minor. The Governor in Council also considers that the Bill should contain a clause preventing polygamous marriages under its provisions and that no retrospective effect should be given to the legislation.

Advocate-General, Madras.

I AM not in favour of a measure of this description which may have far-reaching effects upon the Hindu law of inheritance, the Hindu family life and the institution of joint family and joint family property. Marriages between Hindus of different castes have already been validated by the recent changes in the Special Marriage Act, though the rights of inheritance of the offspring of the marriages are restricted. The Hindu community I do not think is prepared for such a drastic measure as the one proposed.

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

THIS is really a progressive legislation which has my sympathy and support, but it is not clear whether it is intended to validate marriages in the past or in the future. There is no definition of marriage. Concubinage and loose sexual intercourses ought to be prevented from being dignified as marriages and claims being made as such especially in a polygamous community like the Hindus. Marriages outside the orthodox forms must be capable of strict written proofs such as registration before an officer of rank. Without such safeguards, the Bill will introduce a great chaos.

Government Pleader, Madras.

THE proposed measure is merely an enabling provision. No question of religion is drawn in. It is open to a Hindu to leave the Hindu religion as it is open to him to lead his own life without strict conformity to Hindu usages. Adherence to old standards cannot be enforced at the present day. I see no objection to the proposed measure.

Mr. R. Ry. T. R. Venkatarama Sastri Avl., C.I.E.

THERE is no need for this Bill. Gour's Act makes valid all the marriages that are intended to be validated by this Bill. Neither the statement of objects and reasons nor the speech of Dr. Bhagavan Das shows that he is aware of that fact. If he desires still to introduce this Bill, it can only be for the following reasons :

1. Dr. Bhagavan Das wants the marriage to be celebrated in the orthodox style and not to be before the Registrar.

2. The devolution of property in the case of those who have married under Gour's Act is governed by the Indian Succession Act, and Dr. Bhagavan Das does not want that provision.

3. Dr. Bhagavan Das wants to release the husband from the rule of monogamy imposed by the Gour's Act.

4. Dr. Bhagavan Das does not want the marriage to produce a division in status which Gour's Act imposes as the result of marriage under that Act.

5. Dr. Bhagavan Das does not want divorce which Gour's Act allows.

Of these reasons (1) and (2) are intelligible, though I see no objection to the Indian Succession Act as regulating devolution ;

(3) can hardly be the object of the author of the Bill ;

(4) cannot be claimed without restriction of other people's freedom ;

I can understand prejudice against (5) ;

In any case, I take it that Gour's Act is not to be repealed and will be available to those who prefer it.

Registration is no hardship. One can have orthodox marriage and registration at the same time. Nobody is compelled to resort to divorce. If all the members of the family agree, they may reunite. Even if they cannot reunite, joint living and wills in favour of each other are always available for members of families who desire it.

It seems to me, for these reasons, that a new Bill is not needed.

No. 12.—BALUCHISTAN.

Agent to the Governor General and Chief Commissioner in Baluchistan.

THE opinion of the Hindu Panchayat, Quetta, is in favour of the Bill and the Agent to the Governor General and such officers as have been consulted, see no objection to the Bill being passed into law.