

THE



Bombay Government Gazette.

Published by Authority.

FRIDAY, 8TH AUGUST 1873.

 Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Report of the Select Committee of the Council of His Excellency the Governor of Bombay, on the Petitions relating to Bill No. 7 of 1870 (a Bill for the Regulation of Burial-grounds and Burning-grounds and places for the exposure of the Dead in the Territories subject to the Government of Bombay, without the limits of the City of Bombay) is, in accordance with Rule 25 of the Rules for the Conduct of Business at Meetings of the Council, published for general information:—

Report of the Select Committee appointed to Report on the Petitions relating to Bill No. 7 of 1870 (a Bill for the Regulation of Burial-grounds and Burning-grounds and Places for the exposure of the Dead in the Territories subject to the Government of Bombay, without the limits of the City of Bombay).

We are of opinion that almost all the objections urged in the several petitions against the proposed measure are well founded and that they are deserving of every consideration.

2. With respect to the petition of the Poona Survajanick Subha we apprehend that its drift has been misunderstood by some of the Members of the Select Committee. The Association seem to have thought that the principle of the Bill had already been affirmed, because in their 1st para. they say "it would be to little purpose for your memorialists to urge their reasons for making any modifications in the principle of the Bill," and therefore they confined themselves to urging such modifications only as would render the Bill a lesser evil.

3. No one will deny that a measure for the regulation of places commonly used for burial and burning purposes is expedient for the sake of public health, but the Government have full power at present to ensure this under Section 518 of the new Code of Criminal Procedure, which we consider to be quite sufficient for the protection of public health.

4. From the intimate knowledge that we possess of the deep-rooted and religious feeling which exists in all classes of the native population in regard to the rites of sepulture which they consider themselves bound to bestow on their dead, we are strongly of

opinion that the passing of such a Bill, as that under consideration, would be an impolitic measure, and that it would inevitably create much discontent and irritation among the masses of the people in this Presidency.

(Signed) MUNGULDASS NATHOOBHOY.
 „ JAMSETJEE JEJEEBHOY.
 „ NARAYEN VASSUDEO.

6th August 1873.

The undersigned members of the Select Committee appointed to report on the petitions relating to Bill No. 7 of 1870 (a Bill for the Regulation of Burial-grounds and Burning-grounds and places for the exposure of the Dead) regret that they are unable to concur in the opinion expressed by the majority, and beg to state as follows :—

Fifteen petitions concerning this Bill have been submitted. Of them twelve emanated from bodies of Parsees resident in the Surat, Broach, Ahmedabad, and Tanna Districts, one was sent by the Poona Survajunik Subha, one was presented by the Ahmedabad Association, and one was preferred by the Mahomedan community of Surat.

All the petitioners are more or less opposed to the Bill, but whilst the Parsee signatories of the 12 petitions proceeding from that portion of the population disapprove *in toto* of the provisions of the Bill in so far as they affect the interests of the Parsees, the Poona and Ahmedabad Associations in their memorials do not utterly condemn the Bill, but on the contrary admit that if modified as suggested by them and if altered in accordance with their wishes it would be a useful measure. The Surat Mussulmans are hostile to the Bill as a whole, and only recommend certain changes in its provisions, because they think these changes if adopted would render it less harmful than it is in its present condition, and not because they consider that any beneficial results can arise from such a measure.

The twelve Parsee petitions may be considered together, as the only difference discoverable between them is one of comparative length. The same arguments are advanced in each, in many cases indentially the same words, and the petitions would all appear to have been formed on one model and to have been copied with slight variation from one original draft. The arguments against the Bill in so far as it applies to the Dokhmas or Towers of Silence put forward in these petitions may be summed up as follows :—

1st.—The provisions of the Bill run counter to the terms of the proclamation of the Queen disclaiming all desire and intention of interfering with the religious rites and beliefs of her Indian subjects.

2nd.—Too much discretion is left to the Collector, who by a hasty or reckless order directing the discontinuance of the use of a Tower of Silence might cause much pecuniary loss to a Parsee community and outrage their religious feelings.

3rd.—No necessity exists for making the provisions of this Act applicable to Parsee places for the exposure of the dead, as such places are always situated at a distance from human habitations.

4th.—The provision relating to the survey and measurement of such places is eminently objectionable, as if any person not being a Parsee Nassurselah (one of a class of persons amongst the Parsees whose special duty it is to carry the corpse to the Tower of Silence) were even to touch a Tower of Silence the Tower would be defiled and could no longer be used as a place for the exposure of the dead.

5th.—An order to close a Tower of Silence would prove extremely inconvenient, as it would take a long time to construct another, and in the interval there would be no place available for the disposal of the Parsee dead.

6th.—The cost of building a Tower of Silence is very great and would fall exclusively on the Parsee community, as by the rules of their religion they are precluded from accepting a contribution towards this purpose from the general public funds or from persons other than Zoroastrians.

7th.—The pulling down or destruction of a Tower of Silence is forbidden by their religion: an order, therefore, directing the removal of such a Tower would be most objectionable.

The undersigned Members of the Select Committee are of opinion that the majority of these arguments are not deserving of any consideration and cannot be deemed of any real importance, and proceed to notice them *seriatim*. With regard to the first they would observe that the Bill in no wise interferes with the religious belief of the Parsees, nor can it be

held to infringe upon any of their peculiar religious rites. It prescribes no rules as to the mode in which they are to dispose of their dead: it leaves existing customs untouched, and merely empowers Government under certain circumstances to direct that a certain place for the exposure of the dead shall no longer be used for that purpose: rites and religion are undisturbed, the site where the rites are to be performed is alone changed. As for the second argument, whatever weight might before have been attached to it has been removed by the alteration effected in the Bill, under which as it now stands Government only is authorized to prohibit the use of any place for the exposure of the dead. The reply to the third argument is, that, when a Parsee Tower of Silence is so distant from human habitations that no danger to the public health can arise from the exposure in it of corpses, no order directing its disuse could be issued under the provisions of the Bill. Cases might, however, occur in which by reason of an increase in the population of a town, and the consequent growth of buildings, a Tower of Silence which when originally constructed was situated at a distance from the town might ultimately be surrounded by new houses, and under such circumstances it might be advisable in the interest of the public health to prohibit its further use as a place for the exposure of corpses. The objection raised in the fourth argument seems to be a valid one, but the undersigned Members of the Committee consider that it can be met by expunging from the Bill that portion of Section I. which provides for the survey and measurement of places for the exposure of the dead, which in the case of Towers of Silence seems to be unnecessary, though it is doubtless requisite in the instance of burning-grounds and burial-grounds. The objection put forward in the fifth argument has no longer any real existence, as the proviso added to Section 3 distinctly declares that before any place for the exposure of the dead can be closed a new one in lieu of it must be provided. With reference to the sixth argument the undersigned would remark that the cost of the construction of an ordinary Tower of Silence seems to be greatly over-estimated, and that the fact that the Parsees are precluded on religious grounds from constructing a Tower of Silence at the cost, wholly or in part, of the general public funds is in itself no argument against the Bill. The objection embodied in the seventh argument is of a purely imaginary nature, inasmuch as the Bill contains no provision authorizing the demolition of a Tower of Silence or an order directing its removal. The Select Committee are on the whole of opinion that the Parsee petitions against the Bill, though numerically strong, fail to show that the measure is unnecessary or would affect injuriously the Parsee portion of the community.

The Poona Survajunik Subha would not appear, judging from its memorial, to be hostile to the Bill as a whole, or to assume in regard to it a position of complete antagonism. It in fact admits that if certain places for the disposal of the dead specified in its memorial are excluded from the operation of the Bill "a measure for the regulation of places commonly used for burial and burning purposes is expedient for the sake of public health and order." The burial places which the Subha recommends should be exempted from the operation of the Bill are those used by certain bodies of Gosavis, by some few other Hindoo sects or monastic orders and by some "old Mahommedan (including Bohrah families)." The persons or sects in whose favour the proposed exception is suggested are it is alleged in the habit of burying their dead in their houses or within the premises attached to their dwellings, and have done so on religious or family grounds from time immemorial. The body of the dead Gooroo is interred by his disciple or adopted son "by the side of his spiritual ancestors" in the house or temple where generations of Gooroos have lived and died before him, and "this usage is regarded by Gosavis as the principal part of their practical religion." In the same way certain Mussulman families possess, it is urged, family grave-yards where are the tombs of their ancestors, and where the members of the family only are buried from time to time. The Poona Association thinks that all such burial places should be exempted from the operation of the measure on account of their sanctity, and of the peculiar religious associations connected with them. These burial places are, it is stated, small, contain few human remains, and are only used at long intervals on the occasions of the death of a Gooroo, the head of the sect, or a member of the family. The undersigned Members of the Select Committee consider that there is much of truth in these representations, and that the proposal of the memorialists might be adopted. This might perhaps best be done by an insertion of a clause in the Rules to be framed under Section 8 of the Bill by the Governor in Council, exempting from liability to be registered, inspected, and licensed burial places of the nature above referred to.

The Poona Association also recommends the creation of local Committees composed of representative men of the castes or sects whose burial and burning-grounds would be regulated under the provisions of this Bill, in order that the Collectors might,

before taking any measures under the Bill, consult such committees, and that these committees might act as media between the public on one side and the Collectors and Government on the other. It further suggests that a copy of the prohibitory notification mentioned in Sections 3 and 4 should be given in the case of private burning or burial grounds to the managers or proprietors of such grounds, and in the case of public burning or burial grounds to the Local Committee or Panchayet, and also that before the Rules under Section 8 are finally settled the draft Rules should be published in the *Gazette* to enable the persons interested to submit to Government their opinion regarding them and to recommend any alterations that might appear to them desirable. The undersigned Members of the Select Committee consider these proposals reasonable, and think that it might be advantageous to act upon them and, if necessary, to embody them in the Bill. Other suggestions made by the Poona Association do not meet with the approval of the undersigned. Both that body and the Ahmedabad Association recommend that it should be left to the discretion of Municipal Commissioners and Local Fund Committees to grant or not to grant funds to provide new burning and burial grounds, and that a Collector should not be empowered to issue a requisition for funds for this purpose which the Municipal Commissioners or Local Fund Committee should be bound to obey. The undersigned members of the Select Committee do not, however, think that in a matter of such importance and general public utility as this is it should be left to the option of any body of individuals to grant or to withhold the necessary funds, and are of opinion that the Collector's requisition should be binding on the Commissioners or Committee. The undersigned do not concur with the Poona memorialists as to the advisability of granting to the Collector or the Officer in charge of the Suddur Station the power of permitting burials in any place of public worship which is under Section 2 of the Bill conferred on Government alone. The other points touched on in the Poona Association's petition are merely minor matters of detail and do not call for comment now.

The petition of the Ahmedabad Association is very short. The Secretary to that body states that "the Poona Association in its petition to Government has fully shown the requirements of various classes, and it is needless, therefore, to recapitulate them" in the Ahmedabad memorial. The principal suggestion contained in this petition is, that the Collector should always consult "the Municipal Commissioners or Local Fund Committee or Mahajuns" and should be bound to act in strict conformity with their views. The undersigned are not prepared to recommend that a Collector should be made merely the executive officer of any body of persons in his District and should be compelled to carry out their decrees whatever might be his own opinion, and they think that if the Collector, as suggested above, be required to consult and, if possible, to act through Local Committees of representative men of the different castes or sects the case will be sufficiently met.

As before stated the Surat Mahomedans who have signed the petition regarding the Bill are entirely opposed to the measure. Their main arguments, are that the mode of burial and of the construction of tombs obtaining amongst Mussulmans is such that a Mussulman burial-ground can never be prejudicial to the health of the persons living in its vicinity; that it has always been customary to use burial-grounds situated in the centre of towns; that no evil results have arisen from this custom or will arise; that all the members of a family ought to be buried in the same place, as otherwise on the judgment day they may find themselves separated from their ancestors and relatives; that burial-grounds when situated inside towns are more convenient and easily accessible than if located outside towns; and that by their religious law Mussulmans are strictly forbidden ever to use new cemeteries. The undersigned do not think that such arguments as these require refutation by them. The allegations as to the mode in which Mussulmans are buried ("at a depth of eight feet" and in "a sort of air-tight box" of thick wooden planks and chunam) are not borne out by the personal experience of the undersigned, and as all cemeteries must at some time have been new the argument last quoted will hardly bear close examination.

As the Select Committee was merely directed to report on the petitions presented relating to this Bill the undersigned members of it do not consider it necessary or within their competence to express, as the majority have done, any opinion regarding the Bill generally, or on the question of its expediency, policy, and general principle.

6th August 1873.

(Signed) A. ROGERS,
" M. K. KENNEDY.

By order of His Excellency the Governor in Council,
JOHN NUGENT,

Poona, 6th August 1873.

Acting Under-Secretary to Government.