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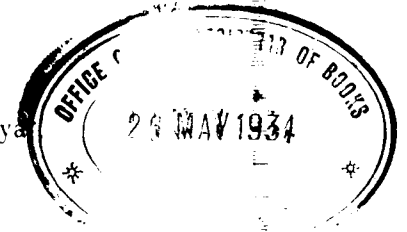
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THE
Bharata Dharma

Magazine of Liberal Hinduism

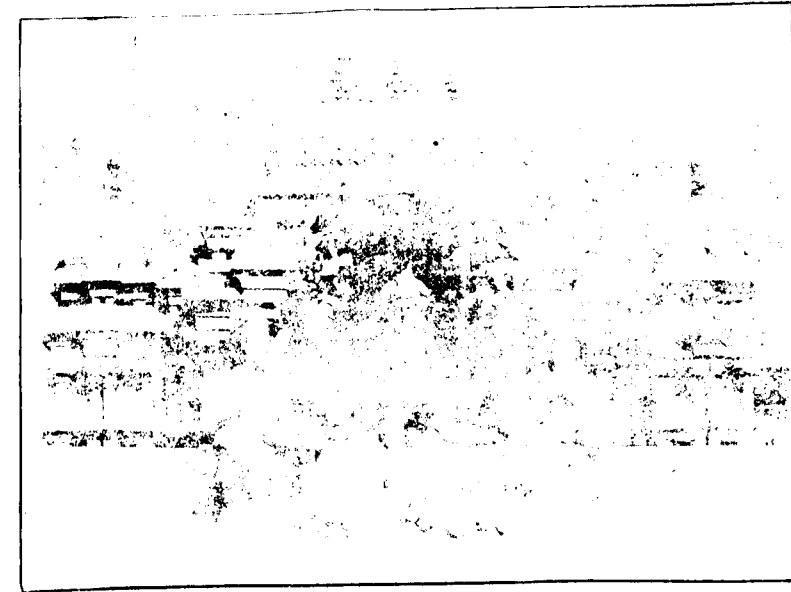
Honorary Editors : { C. V. Krishnaswami Ayya
 { K. V. Sesha Ayyangar.



VOL. XIII]

MAY, 1934

[No. 2



On the front parapet of THE TEMPLE OF LIGHT, Adyar

चित्रे वृक्षगेर्भे वृद्धा शिक्षया गुरुयुवा ।

गुरुस्तु मौनं व्याख्याने शिष्यास्तु छिन्नसंशयाः ॥

Ah! The wonder under the Banyan tree! There sits the Teacher a youth; the disciples, elders. The teaching is silence, and the disciples' doubts are dispelled.

PUBLISHED ON THE 15TH OF EVERY MONTH AT "MOKSHALAYA", ROYAPETTAH.
Yearly : India, Rs. 2 ; Foreign. 4s. Single No. : India, As. 3 ; Foreign. 4d.

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SOME APPRECIATIONS

MR. JINARAJADASA FOR DR. BESANT AND HIMSELF.—The attempt of the Bharata Dharma is most necessary if Hinduism is to survive as an effective force in the reorganisation of India to-day....Not only her (Dr. Besant's) sympathy but her enthusiasm is exactly with such a work as is being attempted by the Bharata Dharma.

SIR. P. S. SIVASWAMI AIYAR.—The Bharata Dharma has offered a platform for the discussion of our religious and social problem from the standpoint of modernised faith responsive to the requirements of intellectual progress and rapidly changing social and economic conditions. The articles in the journal have been thoughtful, broadminded and inspiring.

THE HON'BLE MR. JUSTICE VENKATASUBHA RAO.—The ideal of the Bharata Dharma is a lofty one that of enabling the readers to approach the problem of life in a spirit of reason....There is greater need in India to-day than ever to examine old customs and old conceptions and to discard courageously such as are bound to be unsuitable. The Bharata Dharma offers to its readers helpful suggestions in this direction.

MADAME MARY RAINE (AUSTRALIA).—The Bharata Dharma fills my heart with inspiration, love and pity and quickens the body to acts of helpfulness and brotherly love....I have found it a great comfort and education and look with joy to its arrival each month as it enables me to regulate my life in harmony.

Sadhya P. L. Vaswami writes :—The "Bharata Dharma" is precious to me for its noble aspiration to interpret the ancient wisdom in the light of the modern spirit. Great is India's destiny and great the mission of the Hindu Dharma in the new age. May you and your work be ever increasingly blessed in the service of *Satyam Sanatamam*!

T. V. VENKATARAMA AIYAR.—The Bharata Dharma is an organ of humanity and stands for the highest ideals of Hindu culture and Philosophy. It is ably edited.



THE

Bharata Dharma

N.B.—The Arya Mata Sabha is not responsible for any opinions expressed or statements published in this magazine unless they are contained in an official document

VOL. XII]

MAY, 1934

[No. 2

CONCEPTION OF GOD IN BUDDHISM.

The month of Vysak which commences usually some time in May is a month of great significance to millions and millions of human beings. Two great historic teachers of religion were born in it—Buddha and Sankara. The former was not only born in it but obtained his great illumination and shuffled off his mortal coil in that month. The tradition is that the same day (18th May in this year) marks the anniversary of all the three. Readers of "Bharata Dharma" who believe in the fellowship of faiths, and who interpret the fellowship, as Swami Vivekananda did, not merely as toleration of one another but actual realization in one's own life and conduct of the best of every faith, will we think be interested in reading in this Vysak number of "Bharata Dharma" what the Faith that goes by the name of Buddhism says on one of the most fundamental questions in the domain of religion, viz., theism or the existence of God in the sense of creator and upholder of this universe. It is not uncommon to find even learned persons saying that Buddhism is only a system of ethics and Buddha was no theist. The following extracts from a collection of passages by Mr. Guha from the sermons of the Right Revered Shaku of Japan, one of the most learned of modern Buddhist scholars, and published in the January number of our new contemporary "Kalyana Kalpataru" will, we fancy, be read with interest by our readers.

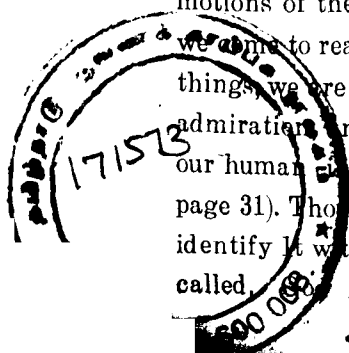
C. V. K.

"One of the most fundamental beliefs of Buddhism is that all the multitudinous and multifarious phenomena in the universe start from, and have their being in, One reality which itself is above spatial and

temporal limitations. (Soyen Shaku's *Sermons*, p. 26). This is a world of relativity, or *nanatva*, as Buddhists call it; but the very constitution of the mind demands a unifying principle which is an indispensable hypothesis for our conception of phenomenality, (*Ibid*, p. 26). Therefore, Buddhism recognises the two 'gates'—the 'gate of sameness', *samata*, in contra-distinction to the 'gate of difference,' *nanatva*. (*Ibid*, p. 27). In some measure the 'gate of sameness' may be said to correspond to 'God' and the 'gate of difference' to the individual. (*Ibid*, p. 27). According to Buddhism, God or the principle of 'Sameness' is immanent in the universe. (*Ibid*, p. 28). But Buddhists do not make use of the term 'God', which characteristically belongs to Christian terminology. An equivalent most commonly used is *Dharmakaya*. (*Ibid*, p. 32). The *Dharmakaya* is also called *Buddhakaya* or Buddha-Body. The essence of *Dharmakaya* is infinite, but its manifestations are finite and limited. (*Ibid*, p. 66). For it is in the inherent nature of the *Buddhakaya* that it individualizes itself in the manifoldness of the phenomenal world. It does not stand alone outside particular existences, but it abides in them and animates them. (*Ibid*, p. 65). We Buddhists believe that all these particular things surrounding us come from one Ultimate Source which is all-powerful, all-knowing, and all-loving. This world is the expression or manifestation of the reason or spirit or life. However diverse, therefore, things are, they all partake of the nature of the Ultimate Being; not only man, but even the lower animals and inorganic substances manifest the divinity of their source. (*Ibid*, p. 83). This recognition of the oneness of things naturally leads to our third belief that the *one is the many* and the *many is the one*. God does not dwell in the heavens. It is living right among ourselves and directing the course of things according to its innate destiny. (*Ibid*, page 84). Therefore God not in this world is a false God, and world not in God is unreality. All things return to One and One operates in all things, many in one and one in many. Billows and waves and ripples, all surging, swelling, and ebbing, and yet are they not so many different motions of the eternally selfsame body of water? (*Ibid*, p. 30). When we come to realise this mysterious presence of the Highest Reason in all things, we are struck with the fact and there arise mingled feelings of awe, admiration and helplessness. We are awe-stricken because it is beyond our human intelligence to grasp thoroughly the scheme of God. (*Ibid*, page 31). Though Buddhists refuse to have God walk out of us, they do not identify It with the totality of existence. They are not pantheists so-called. It is immanent in the universe, surely enough; but It is

greater than the totality of things. For the world may pass away, the universe may be shaken out of its foundation; but God will remain and will create a new system out of the former ruins. The ashes of existence will never be scattered to the winds, but they will gather themselves in the ever-designing hand of God and build themselves upon to a new order of things. (*Ibid*, p. 84). Mere talking about, or mere believing in, the existence of God and His *infinite love* is nonsense, so far as religion is concerned. If God exists, He must be felt. If He is Love, it must be experienced and must become the fact of one's inmost life. Without the awakening of the religious sense, God is a shadow, the soul a ghost and life a dream. In Buddhism this faculty is known as *Prajna*. (*Ibid*, pp. 135-7). When the existence or non-existence of God is *proved*, philosophers are satisfied; for they have made the utmost use of the intellect which is their sole weapon of attack and defence. But so long as there is some unutterable yearning of the human heart for something more real, more vital, more tangible than mere abstraction and mere proving, we must conclude that our consciousness, however fractional, is capable of coming in touch with the inmost life of things in another way than intellection. The existence of *prajna* is therefore admitted by Buddhism, and religious discipline among Buddhists is directed towards the awakening of this faculty. (*Ibid*, p. 142). As everybody endowed with sentience feels the ice cold and the fire warm, so what the *prajna* sees or feels in its inmost being, must be universally the same. God, Allah, *Dharmakaya*, Tao, Holy Ghost, Brahma are a mere verbal quibbling over the same fact which is felt in the deepest depths of our being. (*Ibid*, p. 138). There is but one great spirit, and we individuals are its temporal manifestations. We are eternal when we do the will of the Great Spirit; we are doomed when we protest against it in our egotism and ignorance. We obey and we live. We defy and we are thrown into the fire that quencheth not. (*Ibid*, p. 211). The Highest Being is known under various names and appellations among various peoples on earth, according to their culture, education and environment. Humanity being essentially the same everywhere, it will sooner or later come to the knowledge of a Supreme Moral and Spiritual Power which governs the universe and whose commands we are compelled, under penalty of annihilation, to respect and obey. (*Ibid*, pp. 113-14)".

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THE LATE DR. S. RENGACHARI.

By C. V. K.

On the 24th of April, 1934, at Madras, there ended an earthly career remarkable in many respects. Dr. S. Rengachari was one of the most eminent among the surgeons and physicians of his generation. He had an almost uncanny sureness of diagnosis of the ills which human flesh is heir to. He had quite a genius for inventing swift remedies therefor. But even these would not ordinarily have called for notice of his death in the columns of a journal like the Bharata Dharma, as even such "individual uniqueness" in the most humane of professions is not within its range. But still there is an insistent feeling in our mind that he was among the few whose disappearance from the earthly scene needs a record in these columns. Besides being eminent in his profession, Rengachari lived his life in a way in which few others can be said to have lived it. It was, for one thing, extraordinarily strenuous. From early morn till dewy eve and often even later, he was at his work, either at his nursing home or at the bed side of some one or another of his innumerable patients. It was not only the rich that received his keen attention. Countless are the cases where the lowest of the low had equal attention—fees or no fees. Many indeed were the instances where he not merely gave his services free but found funds from his own pocket for the medicine and the meal of the poor. That he never demanded pre-payment of fees, and that he was ever ready to jump up from his bed, even at midnight, at a call by telephone which it is said he had always near his ear even when he went to sleep, have long been well known tales. His attitude towards women was exemplary. In the course of his practice as an obstetrician he came in contact with many young women. None of them was ever so free with any male but her husband as with Rengachari and every one always felt that she was with a modern Suka.

And yet Rengachari never expressed any belief in any religion as it is understood popularly. He confessed to no faith in another world or in any being higher than man. "Mr. Sawbones" has for long been the type of an agnostic or an atheist. Man for man there have been among the medicos more persons who had no such belief than among the members of any other profession, and it is perhaps no matter for surprise that Rengachari's outward attitude was what it was. He had no faith in rites and ceremonies and the present writer remembers how when a patient with more faith in *mantras* and consecrated water was sprinkling himself with that, the kindly doctor's face became full of piteous smiles, if one can

be permitted that phrase, pity at the credulousness of one whom he considered an otherwise sane man. Rengachari's life will be a poser to the spiritually minded. Here was one with that indifference to women and money—*Kamini kanchana*—which even great yogis found it difficult to attain. Here was a passion for helping the needy and the suffering which is the hall-mark of one who sees Him in all creation. Here was a devotion to duty as unselfish as one will find only in a Kamyayogin with profound faith in a beneficent "Iswara" whose plan he wishes to help in working. It is said, and said often with justice, that the great, almost indispensable sanction or motive or lever for a high ethical life is religion which involves a faith in a Supreme Being. That faith is predicated even by those like Gouthama (not the Buddha but the author of Dharma Sastras) who put qualities like honesty, truthfulness, compassion over the heads of all the forty *samskaras*. Wherefrom came this great light to the dear departed: his great strength. Can it be that they came from a life previous wherein the lamp of such a faith shone brightly but got occulted in this one for some karmic cause. Can it be that the faith was there even in this incarnation in the subconscious mind but owing to environment or temperament it was kept sedulously in the background? Who knows that if some sympathetic soul had spoken to him in his last moments we may not have got from Rengachari something like what were the last words of Huxley.

One incident connected with his passing away is instructive in this connection. A meeting was called to mourn his death. It has held literally in the shadow of an ancient temple. It was the time when the stars were beginning to appear on the sky and the sun was going on the last bit of his daily round radiating a gorgeous glow. The temple bells were ringing calling the devout to the evening service. The audience was being replenished by men who were on their way to it. If ever there was holiness and a call from on high in the atmosphere or the time of a meeting it should have been there. Six good men and true spoke at the meeting. Yet, not one of them referred to or called for the Lord's grace or blessings for or prayed for the peace of the departed soul. For all that was said—many fine things were said—by the speakers there seems to have been no place in their mental world at that time—as in Laplace's system—for God, even as a hypothesis. Some years ago if Indians-Hindus or Mahamadans—had met for such a purpose there would have been open prayers for God to give the departed soul the peace that passeth all understanding. Yet every one of the speakers, we know, would, any day, openly declare

his faith in a Supreme Being if only asked directly about it. The fact is that such faith has ceased to be the every minute experience of educated India, though its heart is fairly sound at the core. How much more effective will its endeavours be if the actors feel the presence of the Eternal Witness at every step.

Who can make bold to say that Rengachari was not religious in the highest and truest service of the word? Such devotion to the stern daughter of the voice of God-Duty—such compassion for the suffering, such resistance of temptation—these can't be altogether of the earth. Five and twenty centuries ago, the world had a similar puzzle on a higher plane and on a grander scale, as Rengachari's life furnishes. Was not Buddha the Compassionate decried as a *nastika*? But was he *really* an unbeliever?

Requiescant in pace.

SANATANA DHARMA AND "SANATANISTS"

By

T. V. GOPALASWAMI AIYAR,
(Retired Deputy Collector, Tanjore).

The glory of Ancient India is a matter of common knowledge. She had a Civilization unrivalled in the depth of her philosophy, in the spirituality of her religion, in the perfection of her Dharma of orderly and graded individual and national life, expressing that balance which saved her, while all her contemporaries of her splendid Nationality are dead. What was the cause of this greatness? It was in the Ideals which she ever kept before her mind's eye and the practical application of those ideals in her every-day life. There was no divorce between thought and action, especially among the Leaders, the Dharma Teachers, and therefore the Nation was growing from Glory to greater Glory. She gave birth to advanced Souls, men and women, who knew Dharma practised it and lived it in their life. Great Souls were thus able to find fit habitations and India gave birth to Leading Lights in Religion, Politics, Statesmanship, Philosophy, Poetry, Music, Painting, Sculpture, &c. There were Saints and Rishis who had realized Life, who took birth in physical bodies as Manu, Vyasa, &c., who preached and taught real Dharma and guided the Nation along right path, the Path of Dharma.

What is her position now? She has lost her education and culture, and the Ideals which created these; she sold her birth-right by internecine quarrels, by selfishness and neglect of the Dharma which kept her great,

by many acts of *adharma* of which we have now many, by customs and traditions which are lifeless, which have no meaning and which are treated as 'Sishtacharam, (a curious, misinterpretation of the word), by the higher castes, (Brahmanas and Kshatriyas) arrogating to themselves privileges contrary to Dharma and due to some other causes also. All these *adharmic* acts tended to poison her body politic and brought about her downfall. She might have shared the fate of her contemporaries and died but the Great Guardians of Humanity having entrusted to her a Civilization which is intended to be the guiding Light to all the Aryan Races of the world, she is kept alive and attempts are made by Them from time to time to see if she has learnt the lesson of her fall from the height she occupied and They are ever trying to make her rise again to her Glory. And it looks from many events of the recent past and present that she has not yet learnt her lesson in spite of her many bitter experiences.

I shall state here, very briefly in the following few lines, the relationship between Brahman, Saguna Brahman, Easvara of a System, the Jivatma and the Universe in which the Jivas evolve from savagery to Liberation, as this knowledge is absolutely necessary to understand Truth, Dharma and Sanatana Dharma. Nirguna Brahman is the One about which no description can be given and it is the One without gunas, pervading all Universes. Nothing in manifestation or outside it can exist without It. It ever is. Saguna Brahman is still the One, but with the gunas. Sri Krishna identifies Himself in the Gita discourses with the manifested Brahman (Saguna Brahman). I quote a few verses below.

"I, O Gudakesha, am the Self, seated in the heart of all beings; I am the beginning, the middle, and also the end of all beings. (X, 20).

And whatsoever is the seed of all beings, that am I, O Arjuna; nor is there aught, moving or unmoving, that may exist bereft of me (X, 39).

"Having pervaded this whole Universe with one fragment of Myself, I remain. (X, 42).

"Those devoid of reason think of me, the Unmanifest, as having manifestation, knowing not My Supreme nature, imperishable, most excellent. (VII, 24).

There are two kinds of Prakriti, which are His Prakriti, one called *Apara prakriti*, and the other, *Para prakriti*, inferior and superior and these two are the cause of the birth of all universes and the evolution of all forms in them. He says.....

"Earth, water, fire, air, ether, Manas, Buddhi, Ahamkara, this is My prakriti, divided eight-fold.

"This is the inferior prakriti; but, as distinct from this, know thou My superior prakriti, the very life, O mighty-armed, by which the universe is upheld.

"Know that all beings have birth in these. So, I am the source and dissolution of the whole universe.

"There is naught else higher than I, O Dhananjaya; in Me all this is woven as clusters of gems on a string". Bhagavat-Gita, (VII, 4, 5, 6, and 7).

In the above verses, earth stands for the subtle rudimental element (tanmatra) of earth and similarly water, fire, air and ether stand for their tanmatras. The superior prakriti is the very Self of Easvara, the Kshetrajna, that by which life is sustained, that which enters within the whole universe and sustains it.

It must be understood that both these are prakritis; and it is by these that forms are evolved for the manifestation of Jivas, in the universe of matter and for the unfoldment of their powers till the forms they occupy become perfectly pure and balanced and the light within is able to realize the Omnipresent Light (Life) and thus the embodied Jiva is released from the bondage of form.

Let us now consider what Jiva is. "Jiva is a portion of My (Easvara's) own Self, transformed in the world of life, into an immortal Spirit which draweth round itself the senses of which the mind is the sixth, veiled in matter". Bhagavat Gita (XV, 7). "The Atman, the senses and the mind combined, the intelligent call the enjoyer". (Katha Upanishad, III, 4). "This is true; as from the flaming fire issue forth by thousands, sparks of the same form, so from the immortal proceed, good youth, diverse jivas and they find their way back into it". (Mund Up, II, 1 (1)). It will thus be seen that Jivatma is of the same essence as Easvara. He is a spark of the Divine Flame, of the same essence as the Flame, finding his way back into It, in due course. When he takes his birth in this universe, he is perfectly ignorant of his surroundings and subject to the qualities of matter—Satwa, Rajas and Tamas, which bind him (the indestructible dweller) fast in the bodies he wears. He is in a state of perfect ignorance, not understanding the qualities of matter which bind him fast in his bodies and he has slowly to learn his lessons in the school of the world and goes on unfolding his powers life after life and passes through varied experiences, before he realizes his identity with the One Life. The Law is—"he has to learn the lesson of every experience fully" and thus, he goes through similar experiences a number of times. A great Teacher says "An experience pursues you until you have learnt

the lesson of that experience fully and you are free from it." The process is very, very tedious and laborious, as one can see from his experience in the world—The Gita says:—

"Among thousands of men scarce one striveth for perfection; of the successful strivers scarce one knoweth Me in essence.....At the close of many births the man full of wisdom cometh unto—Me, "Vasudeva is all," saith he, the Mahatma, very difficult to find." (Gita VII, 3 and 19).

Is he helped in his endeavours in thus finding out the purpose of life? The testimony of great Teachers is that he is helped. There is an Inner Government of the world whose members are Aadhikarikas referred to in the Brahmasutras—III, iii, 32. The same fact is hinted briefly in the Gita X, (6). Great Souls who have realized Life and who know the Plan of Easvara and have full knowledge of Truth and Dharma....., Manu, Vyasa, Sri Sankarachariar, the Lord Buddha and many others have taken births in India and preached from time to time the eternal Truth and Dharma. But by lapse of time, the truth has been forgotten and untruth and adharma have taken their place. Why and how? What does Sri Krishna Himself say? "This imperishable yoga I declared to Vivasvan; Vivasvan taught it to Manu; Manu to Ikshvaku told it; This, handed down the line, the King-Sages knew. This Yoga by great efflux of time decayed in the world, O Parantapa. This same ancient Yoga hath been to-day declared to thee by Me, for thou art My devotee and My friend; it is the Supreme Secret. (Gita, IV, 1, 2, 3). Thus from time to time, Dharma disappears and adharma masquerades as Dharma. How was the Yoga lost? Sri Sankarachariar says in his commentary on the Gita,....."lost by falling into the hands of the weak who could not control their senses."

What is Truth, let us examine. Truth is that Eternal Essence, not visible in its Origin except to the Great Souls. It is something like the Noumenon, beyond the Noumenon, from which the phenomena take their rise. Verse 27, of the XIVth Chapter, gives some idea of it.....Gita.

"I am the abode of the Eternal, and of the indestructible nectar of immortality, of immemorial Dharma and of unending Bliss.".....

So far as humanity is concerned, Truth is Satyam, the nature of Sat, in the three worlds—Bhuh, Bhuvah, Suvah, which has to be understood by the mind and taught and practised in speech and action. The Great Seers, composing the Inner Government of the world, who see the Eternal Truth and its manifestations in the Noumenon as planned by the Easvara of our System, preach these truths and Dharmas which have to

be practised from time to time, as suited to the then conditions, viz., men, time, place &c., as the world proceeds in its evolution in such a way that the people concerned may understand them. Truth practised in our daily life is Dharma. Truth and Dharma are thus identical with this difference that the former represents the inner side and the latter, the manifested side in action. Sometimes, Dharma is translated as Truth. If life is to be successful and produce proper results, the two must be harmonised. What mind conceives to be right must be put in action. Otherwise it will be hypocrisy and the action cannot be called Dharma. In other words, we may say that Dharma is the practical application of the human self in relation to the Divine Self—"the Self." This Dharma is based on the Truth, that Life is One, though its manifestations are manifold, countless, millions and millions of forms. It is on this fundamental Truth that the Grand Teachings of the Sanatana Dharma—"There is no Dharma higher than Truth and Harmlessness is the highest Dharma" are based. Truth alone wins, not falsehood—(Mundaka Up III, 1, (6)). Speak the Truth, perform Dharma, (Tait Up, Siksh Valli XI, 1.) This is why it is called Sanatana Dharma.

As this article will become too long for insertion in a single issue of the Bharata Dharma, if I proceed further and take up the questions as to how Dharma is practised now, how far "sanatanists" are responsible for it, &c., I shall stop here and, in my next articles, continue the subject and consider how the Teachings of Sanatana Dharma are practised by the "sanatanists" and others who mean and wish, of course, to be "religious", how most of them are dead traditions which have no life, how these have corrupted the life of the body politic, how selfishness now rules rampant in place of Dharma, how there is exploitation of the ignorant, what are the many acts of adharma which are responsible for the decline of the Brahmana culture and the Indian Nation as a whole and what steps Brahmanas, "sanatanists" and others, should take to restore Dharma and Culture, as suited to modern conditions (as Dharma is intended always to express the *growing* and *changing* life of the nation, in order that the One Truth may be expressed to suit the times in a higher spiral), so that the glory of India may be revived and become once more a reality.

TEMPLE ENTRY AND THE UNTOUCHABLES— A PARALLEL.

By

C. V. KRISHNASWAMI AYYAR.

A piquant situation has risen among those who have been organizing opposition to the contemplated legislation permitting the untouchables to enter into Hindu temples if the majority now entitled to enter them agree. They have been protesting that even on that majority vote, permitting such entry would be a breach of trust and *ultra vires* of the Legislature. According to them the situation should be the same even if there is one single individual who had been using the temple or likely to use it opposed to such legislation, and to use the majority vote against such an individual either by a Court or by the Legislature is, they say, 'compulsion against one's conscience'. In practice, however, these guardians of the rights of even microscopic minorities have been overriding them.

Time was, not very long ago, when sea-voyage was anathema to orthodox Brahmins. During the last decade or two so many otherwise orthodox Brahmin families have sent their young ones across the seas for the purpose of education and competitive examinations, that today it may be well said that there are few Brahmin families in which there is not a son or a son-in-law or a nephew—aye a daughter or a niece—who has not been educated in England. The Brahmin Community with characteristically shrewd realisation of what is inevitable and that genius for adjustability which is the glory of Hinduism has been winking at this sacrilege, in spite of the fury that it showed against the pioneers of the sea-voyage movement. But the tirades which some of the local Sanatanists have been recently uttering against other departures from Shastras have evidently made some of the intelligent men among them uncomfortable as regards this matter of sea-voyage. In a recent issue of our valued contemporary "Arya Dharmam" published at that well-known seat of very erudite orthodoxy—Kumbakonam, a "person in doubt" stated "The number of those among the Brahman followers of the three schools of philosophy who have crossed the seas is increasing day by day. Owing to the rules of communal rotation as regards appointments sea-voyage has become very common. Therefore there is no family some member of which has not committed this sin of crossing the seas. For several reasons and owing to force of circumstances orthodox *lowkikas* have to mix with those who have undertaken sea-voyage, on auspicious occasions and festivities. It will help many orthodox persons if pandits will

state (with authorities) how orthodox *lowkikas* and *vaidikas* should deal with people who have crossed the seas." In a later issue two persons have answered this correspondent. One of them who is anonymous summarises the Shastric position thus: "Sea-voyage is included among *Mahapathakas*. He who undertakes it becomes a *pathitha* which means that he becomes unfit to perform *varnashrama karmas* or to be associated with in respect of marriage and dining. Some say that there is no *prayaschitha* for this sin. The real position of the *Shastru* is that there is *prayaschitha* for it, but what would only enable the sinner to perform his own *karmas*. Even after *prayaschitha* he must stand alone in society. Nobody should mix with him either by marriage or otherwise. There is no use of the performance of the *prayaschitha* by those who have to deal with him everyday such as his wife and son. Those who are not in that position should avoid all manner of contact with him. But when compelled to associate with him they may by means of bathing in sacred rivers and by *Krichram* expiate their sin. Anyway it is a sin to cross the seas."

Another correspondent signing as "Pandit V. Ananthachari" says that it is very doubtful whether there is *prayaschitha* for the *Mahapathaka* of sea-voyage. He wants all the orthodox people to avoid all contact with all persons who have gone on a sea-voyage, and he says that purohits who officiate for them should not be allowed to officiate in orthodox families.

What is said by these two correspondents has been the orthodox interpretation of the *Shastras* for long. The reformers were however offering other interpretations in favour of sea-voyage which the orthodox were repudiating and are repudiating. In spite of such repudiation, however, the fact remains that the very people who now cite again and again the famous remarks of Justice Muthusami Iyer against the entry into temples of those who have disobeyed the *Shastras*, (in I.L.R. 13 Madras page 293) have not raised their little finger against the entry of these seafaring men into those very temples. Yet the merits or the demerits of the rule as to exclusion from entry into the temples are the same in both cases. The substantial question in both cases is whether a departure from "the recognized general usage of the caste affected the person's caste status so as to deprive him of the right claimed in the plaint, i.e., the right to enter temples." To any impartial mind as the result of what was said in the decision above, there cannot be one rule in the case of the caste usage of untouchability and another in the case of breaches of other

caste usages. The Agamas, on which the opposers of *avarna* entry rely must place the *avarnas* and *pathithas* alike. The question has arisen pointedly in Travancore where till recently men and women who had undertaken sea-voyages did not enter temples but were suddenly allowed to enter. Much ingenuity has been expended in the recent report of 'the temple entry enquiry committee' of that State to justify a distinction in favour of sea-voyagers. The following extract is worth reading in that connection.

'The withdrawal of the restrictions on England returned men and women is cited as another precedent which would justify change in matters connected with worship in the temples by allowing *avarnas* to enter it. It was much debated in committee. A few observations are necessary on that point. The so called rule of prohibition in Travancore *must have risen* in the following manner. In the old days there was no instance of a high caste Hindu from Travancore going to foreign countries in ships. Some thirty-five years ago an England returned Cochinite was prohibited from entering the temples in that State. In view of that perhaps the Travancoreans in a similar position did not venture to assert or demand the right of entry. It was apprehended that those who have mooted the question would come in for displeasure on the part of the orthodox authorities. England returned men did not interest themselves in that matter. They could worship God in their own independent way with or without symbols. Their wives and children were not under any disability. The position was illogical but things went on like that. There are no texts in the earlier *smritis* which make a sea-voyage a cause of permanent pollution or an inextinguishable offence preventing entry into temples. The only passage in Manu (111. 158) is that which prohibits the voyagers to take part in *sraddhas*. They are classed along with teachers, priests, officers of the king, money-lenders, physicians, shopkeepers and a host of others. None of these classes is prohibited from entering temples. The offence, if it was one, was but venial and could be expiated by ordinary *prayaschithas*. Those persons did not lose their caste. In *sraddhas* however, the idea is that what remains of the food the *Pithir-shishtam* is to be participated by the members of the family. Hence the privilege was hedged round by stringent rules. It is interesting to note that persons with black teeth or deformed nails were also excluded. Manu's work of collection and compilation of the laws was done before the second century after Christ. But people did go to sea after that. In the third century Hindu culture in Kambodia and other places in the Malaya

Archipelago reached its high water mark. The largest Vishnu temple now in existence is in Angkhora in Kambodia while the Shiva temple in Java is one of the largest. In Champa and Kambodia sanskrit was the official language. The Indians who went out to those regions did not do so on account of religious persecution like the pilgrim fathers who proceeded to America. They *must have gone* there to make money as people now proceed to South Africa or elsewhere. But the intercourse and the relationship with those who remained in India were kept up. This was sometime after Manu, and subsequent practices negative the theory of exclusion. The sea was not a taboo. On the other hand it was held sacred as it is done even now by most Hindus. Woman in their periods do not touch the sea much less bathe in it. And the males themselves perform the bath as a religious ablution. The discouragement of sea-voyage must have been due to a desire to prevent defilement of the sacred waters. The sea was a *thirth*. Filth of any kind was not to be passed into it. There were other reasons besides. In the course of a long voyage baths will be difficult and forbidden food might have to be taken in violation of the rules, of the caste. But these difficulties might be removed by special arrangement as may be seen from the course followed by certain Indian princes and chiefs and other orthodox men of wealth and position when they proceed to Europe. This is not a recent innovation. It may be argued that even though some books may be cited to show that long and habitual sea-voyage causes forfeiture of certain special rights it has nothing to do with admission into temples. This view is supported by historical facts. Rajendra Chola (12th Century) led his naval forces to Pegu beyond the sea. Veerakerlavarmaraja of Cochin Royal family proceeded to Colombo along with another prince and the Paliath Atchan. The great and good Karthigai Thirunal Maharaja of Travancore visited Rameswaram. So did H. H. Vishakam Thirunal Maharaja. The cruising was effected by means of boats. There is no doubt a text which says that a sea-voyage will entail evil consequence only if one remains in a ship for more than three nights. One of the passengers might with impunity do some forbidden act of a serious nature on the first day while another might keep his orthodoxy but remain in the ship for more than three nights. It would be unreasonable to punish the latter and absolve the former. Sea-voyage may therefore be taken to be a legitimate act. *All the rules in all the smritis should not be imported into Agamas and availed of in discovering some authority prohibiting sea-voyage.* There is a continuous custom in favour of the view that such voyage did not entail any loss of status so far as

temple worship was concerned. There is a strong evidence of the custom from time immemorial and in comparatively modern times ranging from the 12th century, to the present day. The wives and children of England returned men were being admitted within the temples eve before the restriction which was supposed to have existed was withdrawn. Thus the change in custom which was openly acknowledged was only an affirmation of an old practice and cannot be viewed as precedent." (*Italics ours*).

We do not believe that this ingenious attempt to find some reason for what cannot be opposed by reason of other circumstances, in favour of sea-voyage will deceive even the most gullible among the Sanatanists. This kind of argument has not even the merit of freshness. It was the argument of reformers years ago when this question of sea-voyage occupied much more of public attention than it does now. The fact is that the orthodox Hindus acquiesce in it now not because they have changed their views as to its heinousness but because they find it to their advantage to recognise the change. In most cases the persons who have crossed the seas are persons whom the community dares not or cares not to keep out. In the case of Travancore the very Sovereign himself has crossed the seas. Now, if the extreme position is to be taken that even in such a state of affairs some members of the community should not be compelled to enter temples polluted by these sea-voyagers the community realizes that it will suffer; and so these few people suffer themselves to be compelled in spite of what has been said above as to the shastraic position. Recently a great Sankaracharya who is strong in his opposition to the legislation as regards the temple entry of the *avarnas* presided over a conference opened by a very esteemable gentleman who had recently returned from England. The stalwarts of Sanatanism of the same place welcomed with *purna-kumbam* a Brahmin politician who had crossed the seas, and thus intimately associated themselves with him. In neither case was the gentleman compelled by anybody else to cross the seas. It is only when the poor *Adi-dravida* comes in that their opposition gets vehement. Our object in pointedly drawing attention to this inconsistency is not to throw stones at sincere Sanatanists, for we are painfully aware how difficult these social problems are and of the inconsistencies which even ardent and sincere reformers have been guilty of in practice. Our desire is to show that when there is compelling necessity or obvious advantage Hindu society is wise enough to adjust itself to it—Shastra or no Shastra. Why what has been done in the case of the sea-voyagers should not be done in the case of untouchables would be the proper question to ask oneself, and

the honest answer, we think, should be "There is no reason why it should not be done if the interests of Hindu society should require it, whatever the Shastras may say". Then will arise the question "is it necessary now in the interests of the Hindu community to permit entry into the temples of *avarnas* to the same extent as it practically permits the sea-voyagers now?" On that we think there will be little doubt as to the verdict of thoughtful men, and they would not allow it to be said that the great Hindu community is willing to allow breach of its Shastras by the rich and influential, and not by the poor and the humble, the helpless and the lowly.

This leads us to the question of method. We are not in favour of reforms like these being effected by legislation if there is any other method available. But even in the case of sea-voyage, under the present law, there is always the danger of the recalcitrant few obtaining injunctions from courts prohibiting the entry of the sea-voyager into the temple. In that case the only remedy open would be to go to the Legislature to get the law amended. That is just what is being attempted now in the case of temple entry by *avarnas*. We hope that this aspect of the matter will receive consideration. As to what form that legislation should take, we refer our readers to the last few pages of the issue of the *Bharata Dharma* for December 1933. It may be that owing to the peculiarly advantageous position of the sea-voyagers suits may not be filed against them, and so there is no need for immediate legislation. But in the case of *avarnas* these attempts to use the courts are there and if the majority are in favour of entry they must get the necessary legislation passed in time to enable them to implement their view. Of course it would be a different matter if the majority of temple-goers are against the entry of *avarnas*. Then the Legislature will be doing wrong by forcing the entry against their will.

Mr. M. C. RAJAH'S "UNTOUCHABILITY ABOLITION BILL"

By

A FRIEND OF THE UNTOUCHABLES.

There is only one operative clause in the bill to abolish Untouchability which Mr. M. C. Rajah has introduced in the Legislative Assembly, and which that body has sent out on circulation for eliciting opinion. It has been and will be opposed by those who like the ex-Judge of the Travancore High Court hold that "Hindu India believes in pollution, and on that basis long standing social and religious usages have been established." That is only natural. But we think there will be others too who will be opposed to its being passed in its present form, not because they believe in pollution or want it to be perpetuated. And they will be justified, as the bill is one of the vaguest we have come across in our experience. The one operative clause is worded thus :—

"Notwithstanding anything contained in *any* existing enactment regulation or order, and notwithstanding *any* custom or usage or interpretation of law, no penalty, disadvantage or disability shall be imposed upon or any discrimination made or recognised against any subject of the State on the ground that such person belongs to an untouchable caste or class among Hindus and no court, civil or criminal shall recognise any custom of untouchability or base its adjudication on such a custom."

No wonder that even Sir B. L. Mitter, a Brahmo, who cannot be accused of belief in untouchability opposed it. Let us examine the clause closely. One is not sure what penalties, disadvantages and disabilities this clause covers or affects; whether they are only public ones or are even private ones. If at least in the Statement of Objects and Reasons the class of rights and disabilities at which this clause is aimed had been indicated by means of illustrations, sympathisers may be in a position to suggest verbal amendments to improve the bill; but that has not been done. We think that it will be easily conceded that social legislation of this sort can be justified only if it does not affect other people's private rights or unless such rights are against good morals. But the present bill goes far beyond all that. A few illustrations as to the probable effect of this clause may clear the situation.

Under the amended Special Marriage Act, a marriage between a non-untouchable among Hindus and an untouchable is valid now, if registered under it. Ordinarily a member of a joint family is entitled to bring his wife into the joint family *house* and live with her there. The Special Marriage Act provides against it by making a marriage between members

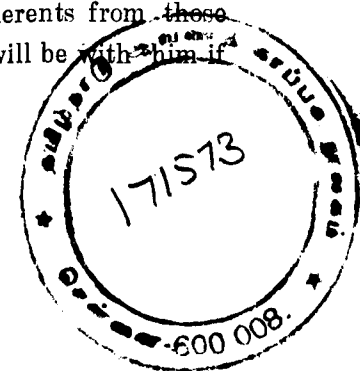
of different castes operate as a partition *ipso facto* and it is on that concession to orthodoxy that the Act was allowed to be passed. Does Mr. Rajah want that to be thrown overboard. If he does so, will he not be infringing what certain persons honestly cherish as their religion, and what justification would he have for this intrusion? Further, it will lead to an anomaly. Marriage between a Brahmin male and Vaisya lady will be subject to that bar, but a marriage between him and an Adi-Dravida lady will by reason of this bill be above it. How can this be justified? We are sure that Mr. M. C. Rajah does not want this anomaly to be created, but the wording of his bill leads to it. We will take another example. There are innumerable places where a community has purchased a big plot of land and allowed its members to build houses on it, leaving spaces for roads in it attached to public roads on both sides. In many cases everybody is allowed to use the intervening road on the private plot, except the untouchables. Suppose an untouchable wishes to use it. Should he be allowed to override the feelings and the rights of the community if it objects? It is often said that if the private road is metalled and kept in repair by the State, it should not be shut against the untouchables. We are not sure that this is a sound doctrine. On that basis grants to European Schools which exclude Indians, to denominational schools without conscience clauses would be unjustifiable. Yet such institutions have as much right to State help as any other. On any other basis grants for their special benefit which are rightly demanded by Adi-Dravidas should not exceed the share of the taxes paid by them. But be that as it may, how can their right of entry in the road we referred to be justified if the owner community does not want any State help? But Mr. Rajah's bill will permit such entry. Other similar examples may be easily cited. It may be that by interpretation these anomalies may be got over. But is it not a dangerous device?

The proper course is to put the matter plainly and squarely before the public and the Legislature. One way of doing it is to frame the bill on what is technically called by draftsmen the "schedule pattern", on the lines of the Repealing and Amending Acts passed by the Legislative Assembly periodically. This can be done by inserting the words "specified in the schedule hereto attached" after the words "disability" and after the word "discrimination", and by introducing the words "in respect of the matters referred to in the said schedule" at the end of the clause as it is, in Mr. Rajah's draft. And then put in all the penalties, disadvantages and disabilities and forms of discrimination in the schedule and also

refer specifically to the enactments, regulations, and orders to be affected. When Mr. Rajah begins to draft such a schedule he will realise the exact extent of the ground his bill will and need cover and the public will know what they are in for. He may after all discover that his wide sweep is not even necessary. Such restricted legislation will be reasonably justified whatever its political merits may be. To avoid frequent recourse to all the formalities observed in the case of a new measure, a provision may be inserted in the main body of the bill that as and when a new disabling, penal or disadvantageous or discriminative, custom or enactment regulation or order is found which ought to be removed in view of the general intentions of his bill, it may be inserted in the schedule, after a resolution to that effect is submitted and passed by the Legislative Assembly, without going through other formalities. This will give Mr. Rajah all that he wants without a leap in the dark—a leap unjustified by any precedent in legislative method.

Of the disabilities etc., in regard to *public* matters we believe there is hardly any left now. Of *personal* disabilities etc., which do not affect the private rights of others there do not seem to be very many, and they should be capable of enumeration and statement easily. Temple entry is already the subject of a separate bill. Economic disabilities are hardly capable of legislative remedies. There appears to be no serious *legal* disability in such matters at present, and if there is any, the bill to remove it must apply to all the poor and not merely to the poor untouchables. The discrimination now is, if anything, not against untouchables in *public* matters. The boot is really on the other foot. Perhaps a few Sanatanists may still feel that they will be polluted by the untouchables and treat them as such. But that is eminently a case, if there is any, where the maxim that you cannot make a man moral by an Act of Parliament applies.

It may be that to confine the legislation to a few specific disabilities penalties etc., will illustrate the old saying that "small reforms" destroy or delay "large reforms" but that defect is nothing before the danger of setting up a precedent in vague legislation. On that ground the opposition to Mr. Rajah's bill in its present form may gather adherents from those in sincere sympathy with Mr. Rajah's objects. They will be with him if and when that form is changed as indicated above.



A NAYUDU—ADI-DRAVIDA MARRIAGE.**Legal Validity.**

We print below the relevant portions of a noteworthy judgment (as reported in our valued contemporary "The Law Weekly" for 16th March 1934) in which a learned judge of the Madras High Court has answered in the affirmative the question whether a Nayudu (Sudra) can validly marry an Adi-dravida girl. It is not the pronouncement of a judge who could be accused of ever having allowed his zeal for reform to get the better of his duty to administer the law as it is. Sir C. V. Anantakrishna Ayyar is well known for his regard for conventions and has never exhibited any passion to set the Coom on fire. If anything, he is a conservative by habits and temperament. The value of his judgment no doubt suffers from one or two circumstances. It would have been more satisfactory if he had yielded to his first impulse to examine the problem before him "in detail" or had got the case posted before a bench of two judges, or relied less on precedents of High Courts having jurisdiction over provinces where the cleavage between untouchables and caste Hindus is not so clear as in this presidency of Madras. It is not quite certain that this decision could "not be the cause for creating confusion where there is certainty" as he says it "should not." Neither he nor the decisions he relies on discuss the many texts quoted often by Sanatanists to show that the Adi-dravidas are not within the Hindu caste system. The one text of Manu which he refers to has been variously interpreted. Neither he nor they refer to that variation. The foundation of the judgment is that Adi-dravidas are Sudras. That is not accepted in practice for many purposes, as anyone who is acquainted with Hindu Society in South India knows. For example the learned Judge himself would not employ an Adi-dravida girl as a domestic maid-servant in his own house though he would not have the slightest objection to employing a *Sudra* girl. We are afraid that the whole question will be debated over again at the earliest opportunity, specially as his decision was given in a case which admits of no appeal. It will make for social peace if the question is settled not by a single judge, however eminent, but by a body of judges whose decision would be final, as far as judicial opinion can be made final. Yet, this judgment of his should be welcomed as the opinion of a learned Judge of the highest caste that Adi-dravidas are Hindus—a position recently denied by a well-known Sanatanist leader—and not only that, but also that they are *Sudras* and that in his opinion the matter was too clear to necessitate elaborate

argument. This must lead a good deal to a change in the social consciousness of Hindu Society. Further, according to well-known decisions, it will shift the onus of proof on to those who would deny temple entry to Adi-dravidas, for no one even denies seriously the right of Sudras to enter all temples. It is by such recognition that progress is made in social uplift. And what is more, even if this decision is not to be held to be altogether beyond cavil, it must be a help to those who agitate for the removal of untouchability, in getting suitable legislation passed through the legislature. A similar judicial recognition gave the tenants of Zamindars their great charter, viz., "The Estates Land Act," though there were decisions and practice to the contrary.

C. V. K.

Sir C. V. Anantakrishna Ayyar, Kt., J.

8th January, 1934.

MANICKAM

v.

POONGAVANAMMAL.

This raises a question of importance. Ordinarily, I should have liked to examine the question in detail; or to post the case before a Bench; but Mr. K. S. Jayarama Ayyar has drawn my attention to certain cases decided by the High Courts in India which seem to be direct authority on the point. I therefore proceed to consider those cases.

In *Muthuswami Mudaliar v. Masilamani* (1) it was decided by Sankaran Nair and Abdur Rahim, JJ., as follows:

"A marriage contracted according to Hindu rites by a Hindu with a Christian woman, who before marriage, is converted to Hinduism, is valid when such marriages are common among and recognized as valid by the custom of the caste to which the man belongs, although such marriage may not be in strict accordance with the orthodox Hindu religion. Apart from custom, such a marriage between parties who do not belong to the twice-born classes, is valid under Hindu Law. It is only persons who belong to the twice-born classes that are enjoined to marry in their own class. All other persons must be treated as Sudras and marriages between members of different classes of Sudras are valid."

In *Pandaiya Telaver v. Puli Telavar* (2) Scotland, C. J., observed as follows at page 483:—

"The general law applicable to all the classes or tribes does not seem opposed to marriage between individuals of different sects or divisions of the same class or tribe, and even as regards the marriage between individuals of a different class or tribe, the law appears to be no more than directory. Although it recommends and inculcates a

(1) 33 Mad. 342.

(2) I Mad. H.C.R. 478.

marriage with a woman of equal class as a preferable description, yet the marriage of a man with a woman of a lower class or tribe than himself, appears not to be an invalid marriage rendering the issue illegitimate."

In *Inderun Valungypooly Taver v. Ramaswamy Pandia Telaver* (1) it is remarked by the Privy Council as follows:—

"Then, if there was a marriage in fact, was there a marriage in law? When once you get to this, viz., that there was a marriage in fact, there would be a presumption in favour of there being a marriage in law."

See also Sir Gurudas Banerjee's *Marriage and Sridhanam*, 3rd edition, lecture II page 77.

At page 159 of 13 Moore's Indian Appeals it is further observed as follows:—

"On the whole, seeing that these parties are both of the Soodra caste, and that the utmost that has been alleged really is that the zamindar was of one part of the Soodra caste, and the lady to whom he was married was of another part, or of a sub-caste, their Lordships hold the marriage to have been valid; to hold the contrary would in fact be introducing a new rule, and a rule which ought not to be countenanced."

While admitting that Adi Dravidas are Hindus, [See *Bhagwan Koer v. Bose* (2) special page 15, where the Chief Court of Punjab stated that chamars, however low in the scale, were included in the pale of Hinduism; See also *Morarji v. Administrator General, Madras* (3)] the learned advocate for the petitioner argued that Adi Dravidas are outside the class of Sudras, and as Manikkam is a Sudra of the Naidu caste, therefore the present is not a case of a marriage between different members of different sub-sections or parts or sub-castes among Sudras, and that the marriage was therefore invalid. On the other hand Mr. K. S. Jayarama Ayyar argued that all Hindus should belong to one of the four classes, (1) Brahmin (2) Kshatriya (3) Vaisya and (4) Sudra; that all those who do not come under the first three (twice-born) classes come under fourth class—Sudras; that the sub-sections under the Sudras are unlimited; and that there was no fifth class according to Manu. My attention was drawn to *Bola Nath Mitter v. Emperor* (4) and to *Sohan Singh v. Kabla Singh* (4) as directly relevant to the point under consideration,

In *Bhola Nath Mitter v. Emperor* (4), Greaves and Panton, JJ., held "that a marriage between Kayesth and a Dom woman is valid in law, if performed with due rites of the Hindu Religion." It was argued in that case by the learned Counsel as follows:—"The woman was a Dom. She is not a Sudra. A Dom is not a sub-division of the Sudra caste but out-

(1) 13 M. L. A. 141 at p. 158,

(2) 31 Cal. 11 (P. C.)

(3) 52 Mad. 160 = 28 L. W. 674.

(4) 51 Cal. 488.

(5) 10 Lah. 372.

side it and untouchable. The Kayesth is of a higher caste than Sudras," and that the marriage was invalid.

At page 493, Panton, J., observed as follows:—

"In support of the second part of his contention, Mr. Mukerji urged that a Dom is not a member of a sub-division of the Sudra Caste, but an outcaste, untouchable, and not a member of the Hindu community. He supports this contention by reference to the articles on the Dom caste in Risley's *Tribes and Castes of Bengal* and Crooke's "Tribes and castes of the North Western Provinces and Oudh," laying particular stress upon the opinions of the learned authors as to the aboriginal origin of the Doms. The low social status of the Dom community is a fact for which no authority is needed; but I cannot assent to the proposition that people of aboriginal origin can have no place in the Hindu system. He refers us to the text of Manu, Chapter X, verses 16, 30, 51, 56, laying particular stress on verse 53 'Let no man, who regards his duty, religious and civil, hold any intercourse with them; let their transactions be confined to themselves, and their marriage only between equals.' *Manu's Institutes of Hindu Law*. The degraded condition of the community is here emphasised, and intercourse with its members is deprecated. But this carries the matter little further, and I am not prepared to say that the institution against inter-marriage is such as would render such a union, otherwise regularly celebrated, invalid at the present day. On the other hand, there is distinct authority of the Courts to support the view taken by the learned Magistrate, though, it is true, no decision which I can find relates directly to the Dom community. The learned vakil has invited us to hold that the case of *Muthuswami Mudaliar v. Masilamani* (1) on which the Court below has relied, was wrongly decided inasmuch as it proceeded on two incorrect assumptions:—(1) that every one not a member of the twice born castes is a Sudra, and (2) that the validity of a marriage is for the caste to decide. As to the second point, it is only necessary to refer to the concluding portion of the judgment of Sankaran Nair, J., at page 356, where he finds the marriage in question valid not only on the ground of custom and because it was recognised by the caste, but also 'because it is in conformity with Hindu Law which does not prohibit marriages between any persons who are not dwijas or twice-born persons. As to the first point, the opinion of the learned Judge expressed at pages 346 and 347 of the report, is founded on ample authority, including a decision of this Court; *Upoma Kuchain v. Bholaram Dhubi* (2). The latter case is

(1) 33 Mad. 342.

(2) 15 Cal. 708.

here of particular importance since it upheld the validity of a marriage between persons one of whom was an outcaste."

The other learned Judge, Greaves, J., observed at page 495 as follows:—

"Although she was a Dom by birth, she must be taken to be a Sudra, and upon the authorities referred to by my learned brother, it would appear that marriages between different sub-divisions of the Sudra caste are valid."

In *Sohan Singh v. Kabla Singh* (1) the learned Judges, Tek Chand and Johnstone, JJ., held "that a marriage between a jat male and a Mazhabi female is valid, whether performed in the Anand form or according to the ordinary Hindu ceremonies: that under Hindu Law, as administered by Courts in British India, marriages, *inter se* between different sub-divisions of the Sudra caste are legal and that for the purposes of the aforesaid rule, Mazhabis Chamars, and the other so-called 'untouchable' classes are treated as Sudras."

At page 379, the learned Judge Tek Chand, J., observed as follows:—

"The learned Counsel for the appellants while conceding that the statement of the law enunciated above could not be challenged contended as a last resort that the rule could not be extended to inter-marriages of males of the 'pure' sudra caste like the Jat with women of the 'unclean' classes, 'touch with whom was pollution'. He was however, unable to cite any authority in support of this contention. In Gour's Hindu Code at page 199, S. 294 (4) the so-called 'untouchable' classes including Chamars, Pariahs, and Mehtars, are described as Sudras and in the leading case of *Muthusami Mudaliar v. Masilamani* (2) it was held by Sankaran Nair, J., (Abdur Rahim, J., concurring) that for the purposes of the rule aforesaid, all Hindus other than those belonging to the three regenerate classes were to be treated as Sudras, marriages between different sub-sections of whom were valid."

I need not now go into the question, which has been raised in some of the cases, whether Kayasthas of Bengal are Sudras or Kshatriyas. See *Tulshi Ram v. Behari Lal* (3); *Ishwari Prashad v. Rai Hari Prashad Lal* (4); *Subrao Hambirrao v. Radha Hambirrao* (5); *Biswanath Das Ghose v. Shorashi Bala Dasi* (6). The principle of the decision of the cases is that marriage between members belonging to different parts or sub-divisions of the Sudra caste would be valid unless there be a custom to the contrary. The decision in *Muthusami Mudaliar v. Masilamani* (2), by a Bench of this Court, is based not only upon the usage or custom of the caste to which the parties belonged but upon the general principles of the Hindu Law; for, the learned Judges specifically say that apart from custom,

(1) 10 Lah. 372.
(2) 33 Mad. 342.
(3) 12 All. 328.

(4) 6 Pat. 506.
(5) 52 Bom. 497.
(6) 48 Cal. 926.

such a marriage between parties who do not belong to the twice-born classes is valid under Hindu law. I could not accede to the contention that the decision was based only on custom or usage of the caste and that the other observations were obiter. It was argued that under Hindu Law, such marriages as the present have been prohibited to preserve purity of blood and race, and for other similar considerations; but sitting here as a Court, my duty is that I should be guided more by what has been laid down by High Courts which had to consider the question judicially rather than by considerations such as those put forward by the learned advocate for the petitioner.

On behalf of the complainant, it was argued that according to Manu "there is no fifth caste"—(Brahma, Kshatriya, and Vysia are the 'twice-born' castes, and that the remaining Hindus come under the fourth (sudra) caste,—"there being no fifth caste." Manu. X-4-Sacred Books of the East, Vol. 25, page 402. The question is considered at pages 498 and 630 of Mulla's Hindu Law, seventh edition, paragraphs 435 and 639. There is a correct summary of the present position at page 812 of Ghose's Hindu Law, Vol. I, where it is stated as follows:

"The late Justice Dwarakanath Mitter, as well as the late Sir Romesh Chandra Mitra, was of opinion that marriages between sub-castes of Sudra were invalid (see *Melaram v. Thanooram* (1) and *Narain Dhara v. Rakhal Gain* (2), but in more recent cases, it has been held in Calcutta, Madras, and Bombay, that such marriages are not invalid. (See *Upoma Kuchaln v. Bholaram Dhubi* (3); *Inderun v. Ramasawmy Talaver* (4); *Ramamani Ammal v. Kulanthai Natchear* (5); and *Pandaiya Talaver v. Puli Talaver* (6). The Bombay High Court has recently held that such marriages are good. See *Mahantawa Irappa v. Gangawa Mallappa* (7)."

If Adi Dravidas are Hindus (and it was admitted before me that they were), and if there are only four castes among Hindus, it is argued that it follows inasmuch as it is admitted that the parties to the present marriage do not belong to the first three (twice-born castes), then they must come under the fourth or the Sudra Caste. That is what has been held in *Muthusami Mudaliar v. Masilamani* (8). See the arguments reported in *Muthusami Mudaliar v. Masilamani* (9). Even if the directions laid down in the Hind Law texts that a male could not validly marry a female of a higher caste (which are admitted to be applicable to the three twice-born

(1) 9 W. R. 552.
(2) 1 Cal. 1.
(3) 15 Cal. 708.
(4) 13 M. I. A. 141.

(5) 14 M. I. A. 346.
(6) 1 M. H. C. R. 478.
(7) 33 Bom. 693.
(8) 33 Mad. 342.

(9) 20 M. L. J. 49.

castes) should be assumed to apply also to marriage between members of different parts or sub-divisions of the Sudra Caste, even then here it is admitted that the counter petitioner's caste status is higher than that of the complainant's. It is not necessary to examine whether such directions would apply to a marriage between different parts or sub-divisions of sudras.

Thus, according to the decisions binding on me, or which must be treated with respect, I think that the view taken by the learned Presidency Magistrate is supported by judicial authority; and as no custom to the contrary has been proved, the marriage in question must be held to be valid.

Having regard to these judicial pronouncements it seems to me that my duty on the present occasion is to uphold the finding of the learned Presidency Magistrate and hold that the marriage in question is valid. My decision should not be cause for creating confusion, when judicial decisions have helped in bringing about certainty, in such important question as that of marriage and legal status of children. I am not impressed with the force of the argument that the result would be most probably, a further addition to the numerous sub-divisions or parts of the sudra caste. Assuming it is so, would it make any material difference in the argument and reasoning?

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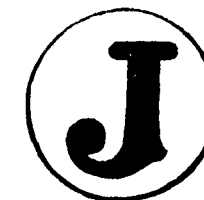
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