

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	172	Press Mis-
²⁸⁷⁻²⁹¹ Dated	31-1-	10/865

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Read the following papers:—

No. 289. From Colonel J. M. PRIMROSE, Adjutant General; to the Secretary to Government, Judicial Department, dated Fort Saint George, 22nd December 1864, No. 721.

With reference to the Proceedings of Government in the Judicial Department, and Order thereon, dated 26th August 1864, No. 1283, I have the honor by order of the Commander-in-Chief to forward the accompanying letter from the Officer Commanding 3rd Regiment L. I., dated 3rd October last, No. 241, submitting certain queries connected with the validity of marriages of men of his Corps, and to request you will be good enough to favor this Department with the opinion of the Government Law Officers on the subject.

Stating that references on points of Hindoo and Mahomedan Law may, in future, be made to Government in the Judicial Department.

From Colonel T. G. E. G. KENNY, Commanding 3rd Regiment L. I.; to the Adjutant General, Head Quarters, dated Tonghoo, 3rd October 1864, No. 241.

Doubt having arisen on the following points, I have the honor to submit the same, with the view to the opinion of the Law Officers of Government being taken as to the validity of the marriages in question, in order to complete the Regimental Registers according to the new system of Registry.

1st.—Naigúe Heeraw Laul, No. 1673, a Canoja Brahmin, son of a Canoja Brahmin, by a Tamil woman of Vellala caste, made Shadi marriage with Tylamah, a Tamil woman of Vellala caste.

Heeraw Laul states that on his father's death, he was left alone with his mother and was not recognized by other Brahmins as of the Brahmin caste; he could not get a Brahmin woman to wife, so he entered the Vellala caste and married a woman therefrom.

“Query.”—Is this marriage valid?

2nd.—Naigue Luchmiah, No. 2550, Compti Vysiah caste, makes Bhootoo with Paupamah, Telugu Buljawar caste.

Lutchmiah states that his wife Paupamah was a widow, but that when he made Bhootoo with her, she was a virgin; his own caste people, on account of his becoming a Sepoy, would not acknowledge him or give him a wife, so he was obliged to take one from another caste.

“Query.”—Is this marriage valid?

3rd.—Private Chinnasawmy, No. 1987, a Tamil man of Vellala caste, marries Meenachee, daughter of Jemadar Adjutant, Madura Mootoo, a Tamil man of Vellala caste, by his Bhootoo wife Gowramah, a Telugu woman of Buljawar caste.

“Query.”—Is this marriage valid?

4th.—Private Narrainah, No. 2082, a Tamil man of Vulloowar caste, marries (Bhootoo) Ommaniamah, daughter of Iyalloo Chetty, a Telugu man of Buljawar caste by his wife Nunjamah, a Telugu Buljawar.

Narrainah states that his wife was an orphan, and before her marriage with him she was destitute and had no one to protect her; he kept her first, and then with his father's consent made a Bhootoo marriage with her.

“Query.”—Is this marriage valid?

5th.—Private Curpah, No. 2132, a Tamil Vellala marries (Bhootoo) Mooniamah, a Tamil Pullee.

“Query.”—Is this marriage valid?

6th.—Private Ramdoss, No. 2498, an inhabitant of Orissah, calling himself of the Ooriah Tombooli caste, traders of betel, makes Bhootoo with Adeeleetchmee, Telugu Buljawar caste; she

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had been married to one Ramiah in her girlhood, who left her and has never since been heard of. Ramdoss states she was a virgin when he first kept her.

"Query."—Is this marriage valid?

7th.—Private Valoidum, No. 2275, a Tamil man of Culloor caste, marries (Bhootoo) Meenachee (whom he first kept for some time) a Tamil woman of Pariachee caste.

"Query."—Is this marriage valid?

8th.—Private Coopoosawmy, No. 2215, of the Tamil Vellala caste, makes Shadi marriage with Palnee Aie, Tamil Aggamoodu caste.

"Query."—Is this marriage valid?

9th.—Private Theroomalay, No. 2212, of Telugu Chetty caste, made a Shadi marriage with Ramamah of Tamil Vellala caste.

"Query."—Is this marriage valid?

10th.—Private Venkatachellum, No. 2108, Tamil Pariachee, marries Parwuthee, Tamil Vellala.

"Query."—Is this marriage valid?

11th.—Private Permaulloo, No. 2076, states that his father was of the Tamil Vellala caste, and his mother Telugu Gowrloo; he states that it is his intention to take a wife from his mother's people.

"Query."—Of what caste is private Permaulloo to be considered?

2. To enable the Committee to complete the Registry of certain men of the Regiment under my command, I beg to be informed whether, in the cases of those marriages which have

been declared* by reason of husband and wife not being of the same caste to be "not good and valid," by the law Officers of Government,

the widows will be barred from pension in case of their husband dying on Foreign service, and whether the claims to pension of the children of such invalid marriages would be on the same plea disregarded.

3. I would beg to bring to notice that many of these men, whose marriages are considered invalid, have married in good faith not being aware of the illegality of their union, and have lived with their wives for years bringing up large families. Some men becoming Sepoys, and others from the circumstances of their birth, and from no fault whatever of their own, have been refused wives from their own caste or from that of their fathers, and have therefore taken wives from other castes.

Referred to the Government Solicitor for the opinion of the Advocate General.

FORT SAINT GEORGE,

(Signed) A. J. ARBUTHNOT,

23rd December 1864.

Chief Secretary.

No. 290. From J. R. BOYSON, Esq., Government Solicitor, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Madras, dated 21st January 1865, No. 22.

I have the honor to acknowledge the Order of Government, noted in the margin (with its enclosure), requesting the Advocate General's opinion as to the validity or otherwise of certain marriages between privates of the 3rd Regiment L. I.

2. I submitted the matter, with further information obtained from the Adjutant General's Office, for the consideration of the Advocate General, with whom I have also conferred; and,

3. I now forward a copy of his Opinion, and return the order and enclosure above noted.

Dated 23rd December 1864, and made on letter from the Adjutant General to Government of the 22nd idem, No. 721.

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COPY—OPINION.

I am of opinion that the marriage in the 1st Case put, that of Naigue Heeraw Laul, is clearly valid. Though his father was a Brahmin he married a Vellala woman, and the offspring of that marriage became Vellala. Hence Heeraw Laul's marriage with a Vellala woman is of one of equal degree with himself.

2. I am not aware that the term "*Shadi*" applies to the marriage of Hindoos. I believe that it is the term for a Mussulman marriage performed with the pomp and ceremonies of the Hindoos, according to customs which the Mahomedan conquerors of India copied from the conquered. The Koran knows of no such distinction as *Shadi* and *Nicka* marriages. Possibly in Regiments wherein many of the men are Mussulmen, a "*Shadi*" marriage may be a loose popular designation of any marriage performed in the Regiment with all form and ceremony, and I presume from the use of the terms here that the marriage of Heeraw Laul was one in which all the ceremonies were followed.

3.—Case No. 2. Naigue Lutchmiah. I cannot express any confident opinion with regard to this marriage on the information now before me. Great doubts always prevailed as to the legality or illegality of the re-marriage of Hindoo widows. The Courts appear to have generally been against the legality. A large section of the Hindoos doubted this interpretation of their ancient law, and Act XV of 1856 was passed to legalize the re-marriage of Hindoo widows. I am not informed whether Naigue Lutchmiah's marriage took place before or after the passing of the Act. Probably after, in which case no question can arise. I think, however, that the Act legalizes all past marriages of the kind, though there is no express Clause to that effect. Virginity, or the want of it, makes no difference in the case.

4. The parties appear to be of different castes; but I do not know which is the higher. The Compti Vysiah is, I believe, a sub-caste of Soodras, and not the regular Vysiah caste, which, as one of the three higher castes (Brahmins, Kshatrias, Vysiahs,) would be above the Soodra caste. Nor do I know what the *Buljawar* caste is. I must be, I presume, one of the sub-castes of Soodras.

5. The validity or otherwise of this marriage will depend upon the parity of castes, or their nearness in degree, and also on any custom which, on such castes, may have modified the strictness of the old law, which was in many respects fanciful and arbitrary in its directions. It also had regard principally to the higher castes, leaving the lower ones to do pretty much as they pleased.

6. I do not know what a "*Bhootoo*" marriage is. It certainly is not one of the eight recognized forms of marriage. It may be that among certain castes, and those implicated in this case, among the number, such a marriage may by long custom have acquired the force of law. I do not know what are the ceremonies at a "*Bhootoo*" marriage. The binding circumstances essential to marriage are gifts and acceptance of the girl, and the performance of *Sapthapathi* or the seven steps. This with regard to the eight recognized forms of marriage. No such ceremony or requisites may be necessary to render a "*Bhootoo*" marriage valid; but of this I have no knowledge.

7. The results of declaring these marriages invalid is so serious to the parties and their offspring, that I think all the circumstances in each case ought to be most carefully and minutely inquired into. The several parties have apparently acted in good faith. Especially this is apparent in those cases in which the Sepoys have married the women with whom they had been living in concubinage, whether from a desire to live more respectably or to benefit the women and their children.

8. Case No. 3.—Private Chinnasawmy. I think this marriage is valid.

9. Case No. 4.—My remarks in Case 2 apply to this case.

10. Case No. 5.—Private Curpah. The variation in caste here is so slight that I think the marriage ought to be regarded as valid. Both parties are below the three highest castes.

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11. *Case No. 6.*—This is a "Bhootoo" marriage, as to which see my remarks above. No specific facts are stated as to the date of the former marriage, the age of the girl at the time, or that of her first husband. The validity of this marriage, assuming that a "Bhootoo" is a marriage, will depend upon the presumption of law as to the death of the first husband. The periods at which such presumption arises according to the circumstances of the case will be found in *Strange's Manual of Hindoo Law, Section 303, 2nd Edition.* The customs of the castes must be inquired into.

12. *Case No. 7.*—Private Valoidum. Valid: provided that "Bhootoo" is a marriage, recognized by the castes as to which inquiry must be made. The old law appears to lay down the propriety of marrying a virgin; and if this could be regarded as the law of the present day, in its strict integrity, and if it applied to more than the "twice born," and perhaps the other two superior classes; the fact that in several of the cases submitted, there had been a "keeping" or concubinage previous to marriage would invalidate the marriage. But I think that in this, as in many other respects, the Hindoo Law is more directory than obligatory. And that the *maxims factum valet, &c.*, which obtains as largely in the Hindoo as in any other system of law, perhaps more so, must prevail.

13. *Case No. 8.*—Private Coopoosawmy. I have no knowledge of the *Aggamoodu* caste; but from inquiries I have instituted among respectable Hindoos, I find that the castes in this case are very nearly equal; and that the marriage may be regarded as valid—See my observations on "Shadi."

14. *Case No. 9.*—Private Theroomalay. "Telugu Chetty." Inquiries should be made to ascertain if this is the *Baleja* caste of that name. If it be, this marriage is valid.

15. *Case No. 10.*—Private Venkatachellum. The castes are equal or nearly so. This marriage should be treated as valid.

16. *Case No. 11.*—I can ascertain nothing about any such caste as "Telugu Gowrloo." Further information as to the mother's caste must be supplied, or I cannot ascertain the caste of the issue.

16th January 1865.

(Signed) J. B. NORTON,
Advocate General.

(True Copy).

(Signed) J. R. BOYSON,
Government Solicitor.

No. 291.

ORDER THEREON, 31st January 1865, No. 172.

The foregoing Opinion of the Advocate General is communicated to the Adjutant General.

(True Extract.)

Chief Secretary.

To the Adjutant General.

Exd. J. Tulloch;

Proceedings of the Madras Govt.
Read the following letters—

From the Adjutant
General — letter 22 Decr '64 N^o 721.
the Govt. Solicitor — 21 Jan '65, 22.

Order — 31st January 1865 N^o 172.

The foregoing Opinion of the
Advocate General is commu-
nicated to the Adjutant Genl.

The Adjutant Genl. 14/2/65.