

CONFIDENTIAL - G.O.

Seott. I (i)-I-10,006-7-10-70.

- (1) Number of pages 12
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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

JUDL DEPARTMENT

CONFIDENTIAL - G.O.

G.O. No.	62	~~Press~~
B.P. No.		Mis.
Dated	2-7-1896	197

Not to be folded or roughly handled

189

Ottawa

22nd June 1856

My dear Bliss,

I have been looking over "the
Marriage Act, 1856", and one or two
points struck me which seem the worth mentioning
to you.

1. The words "Section 7" in S. 8(1) are a clerical
error for "Section 8(1)(2)" or "this section".

This is evidently a slip of the draughtsman, in not
making a correction consequential on re-numbering
of the sections in the last Select Committee.

2. I fear that the definition of marriage in S. 2 multiplies
the ^{main} purpose of the Act. That purpose, briefly
stated, is to render a Sambandham registered under
the Act a valid marriage, in the ordinary acceptance
of the term, so that the parties may be husband
and wife, in the ordinary acceptance of the terms, and
so that the criminal law may apply to their status
as married persons in the ordinary sense of the word.
There is, however, no declaration in the Act that a
Sambandham registered under the Act is a valid marriage
in the ordinary sense of the word, or for ordinary legal
purposes. Indeed, the definition carefully excludes
such a marriage — the statutory marriage — from being
considered a valid marriage in the ordinary
sense of the word. An unregistered Sambandham
carries with it no legal rights or obligations, and a
registered Sambandham carries with it only such
rights & obligations as the Act expressly declares
to follow from the registration, and these do not
include the rights & obligations of persons who are
married in the ordinary sense of the word.

I doubt very much whether the Penal Code could

be made to protect the status created by registration under the Act. "Marriage" and "married" in the Penal Code have a meaning much wider than those words in the Malabar Marriage Act. In the latter Act "marriage" means merely a sambandham registered under the Act, & as there is no declaration that such a sambandham is a marriage in the ordinary sense of the word or within the meaning of the Penal Code, the Penal Code cannot take cognizance of it as a marriage within the meaning of that Code.

If I am right in this view the main purpose of the Act fails.

The matter might perhaps be set right by adding at the end of S. 12 the words "The Sambandham shall then be a valid marriage", and by adding the words "the last word of S. 12" between "Section 3 clause (c)," and "Section 15" in S. 2.

The effect of this would be to declare a registered Sambandham to be a valid marriage in the ordinary sense of the word. It would, therefore, be within the meaning of the Penal Code & other laws.

3. I am inclined to think that S. 16(2) is nullified by S. 15(2). If a man "institutes a suit" under S. 16(2) he will be met by the plea that under S. 15(2) the marriage is not invalid & the suit must be dismissed. S. 16(2) only enabled a man to "institute a suit" on certain grounds. It does not enable the Court to pass a decree on those grounds, while S. 15(2) expressly prohibits the Court from passing a decree on those grounds. ~~It is a provision~~

It may be that a Court would say that the intention was to regard S. 16(2) as an exception to S. 15(2), and that giving the power to "institute a suit" implied jurisdiction on the part of the Court to pass a decree. But this is rather a straining of language.

It would seem to be desirable to make the matter free from all doubt. This could perhaps be done by adding after the first word of S. 16(2) the words "notwithstanding anything in Section 15 or in S. 15(2)", and after the words "of the Sambandham" the words "and to the Court to pass a decree". I think that in para 2 I need not say anything of the sort. If the matter were argued judicially before me I might say "I cannot see how a man can be said to 'institute a suit' unless he has first obtained a decree from the Court, and if he has obtained a decree from the Court he has already obtained a decree from the Court". I think that the status of marriage as contemplated by the Penal Code is a legal status.

I enclose a letter from Mr
Hanson, dated the 22nd inst.

I incline to think that
he is right in his opinion
as to the definition of the
word "marriage" nullifying
the intended effect of the Act,
and as to the contrariety of
sections 15(2) and 16(2), though
I don't think that the Court
should go so far as to say that
when the Law gives a man
power to institute a suit the
Court has no power to pass
a decree in the suit.

I think the doubts now
raised should be referred
for the opinion of the Adv. Genl.

Mr. Hanson seemed doubtful
whether, in his position, it was
quite en règle for him to criticize
an Act otherwise than from the
point in the determination of
a matter judicially before him.
His letter itself had, therefore,
better not be sent to the Adv.
Genl, though its terms can be
followed in the report.

I agree
Circ: 27/10/96

Before circulating this I
sent it to Mr. Davidson for
perusal.

As he points out these words

five lawyers on the Select Committee.
He also states that the mistake
in Section 8 (3) arose from the
Committee not having given the
law notice of the meetings and
having itself drafted the Bill
and inserted the Bill.

120
26/6/96

- (1) The Honble Mr. Justice C.J.C.
- (2) The Government.



[G.
24.]
500-12-12-96.

Legis. DEPARTMENT.

Papers to be read in proceedings:—

Malabar Marriage Act. 1896.

Again G.O., dated	189	, No.
Again G.O., dated	189	, No.
Current No.	of 189	, dated , from
" "	" 189	, " " "
" "	" 189	, " " "

ORDER. No 62 & 2nd July 1896

The following alleged defects in
the Malabar Marriage Act having
been brought to notice, the Hon. the
Advocate General is requested to be good
enough to favour Govt. with his opinion
as to the steps which should be taken to
remedy them.

(1) The words in "sec. 7" in sub-sec.
3 of sec. 8 are apparently a clerical
error for "this section"

(2) The definition of marriage in
sec. 2 is apparently in conflict with
the main purpose of the Act. That
purpose is to render a sambandham
registered under the act a valid
marriage, in the ordinary acceptance
of the term, so that the parties may
be husband and wife, in the ordi-
nary acceptance of the term, and so

that

227/6
29/6

that the criminal law may apply to their status as married persons in the ordinary sense of the word. There is, however, no declaration in the Act that a sambandham registered under the Act is a valid marriage in the ordinary sense of the word or for ordinary legal purposes. Indeed, the ^{definition} declaration correctly excludes such a marriage - the statutory marriage - from being considered marriage in the ordinary sense of the word. An unregistered sambandham carries with it no legal rights or ~~off~~ obligations and a registered sambandham carries with it only such rights and obligations as the Act expressly declares to follow from the registration, and these do not include the rights and obligations of persons who are married in the ordinary sense of the word. It is thus questionable whether the I.P.C. could be utilized to protect the status accorded by registration under the Act, for in that code the words "marriage" and "married" have a meaning much wider than that which is attached to them in the Malabar Marriage Act. If this criticism is correct, a possible remedy

is to be found by the addition to sec. 12 of the sentence. "the sambandham shall thus be a valid marriage", care being taken to secure that the expressions "marriage" shall in this case have the ordinary meaning attached to it by inserting in sec. 2 the words "the last word of sec. 12" between "sec. 3, clause (c)" and "sec. 15, clause (a)" in the definition of marriage.

(3) There is an apparent conflict between sec. 16(2) and sec. 15(2).

If a suit be instituted under sec. 16(2), the defendant may plead that under sec. 15(2) the marriage is not invalid and that therefore the suit must be dismissed. Sec. 16(2) further only authorizes the institution of a suit on certain specified grounds and does not expressly empower the Court to pass a decree on those grounds, while sec. 15(2) expressly prohibits the Court from passing a decree on those grounds. The difficulty would apparently be avoided if the Courts held that sec. 16(2) should be regarded as an exception to sec. 15(2)

to and that giving the power to institute
to a suit implied private jurisdiction
or on the part of a Court to pass a
decree. It would be preferable to
to make the matter free from all
doubt by inserting after the first
or words of sec. 16(2) the words "Not-
withstanding anything contained in
the sub-sec. (1) or in sec. 15(2)" and
to by adding the phrase "and to the
Court to pass a decree" after the
words "of the sambandham".

Malabar Marriage Act

ms

30-6-96
30/6/96
Only

to be
Hob
Oleas v. H. H.
will pass
case law
def. then
1907
27/7/07

subject
not for
signature

ORDINARY, MS.

Legat DEPARTMENT.

G.O., DATED 2. 7. 96
No. 62

INDEXED.

Confidential

When given for copying

[Despatch Abstract.]

Malabar Marriage Act, 1896

Requesting the Honble
the Adv. Genl. to favour Govt
with his opinion as to the steps
to be taken to remedy certain
alleged defects in the —

5 sheets

Para 1 to 5