

Legislative (1895) Department.

ORDINARY PRINTED.

G.O., No 115

Dated 6th Nov. 1895

12/12

[Despatch Abstract.]

MALABAR MARRIAGE BILL.

Communicating to the Select Committee despatch from the Right Honourable the Secretary of State, and papers regarding the -- with the remark that certain amendments proposed by the Honourable C. Sankaran Nayar appear to meet the objection taken by the Right Honourable the Secretary of State.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

No. 115, LEGISLATIVE, 6TH NOVEMBER 1895.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—again the following paper :—

G.O., Mis. No. 108, Legislative, dated 25th October 1895.

Read—the following despatch from the Right Hon'ble Lord GEORGE HAMILTON, Her Majesty's Secretary of State for India, to His Excellency the Right Hon'ble the Governor in Council, Fort St. George, dated India Office, London, 26th September 1895, No. 1 (Legislative) :—

I have considered in Council your letter in the Legislative Department, No. 4, dated 26th June 1895, enclosing for information a copy of the revised Malabar Marriage Bill.

2. I approve generally of the provisions of the Bill, but with regard to section 7 I am of opinion that it is expedient to avoid any reference in the Bill to religious excommunication.

3. Religious excommunication is an arbitrary power, not defined or circumscribed; its actual scope at the present day may be well known, but it may vary like any other custom. And I am not aware that it has hitherto been openly recognized by any positive enactment of our legislatures.

Order—Mis. No. 108, Legislative, dated 25th October 1895.

Communicated to the Hon'ble C. Sankaran Nayar, with the request that he will state what amendments he proposes to make in the Bill in order to meet the wishes of the Secretary of State.

(True Extract.)

(Signed) L. DAVIDSON,
Ag. Under Secy. to Govt.

To the Hon'ble C. Sankaran Nayar.

READ—also the following paper :—

Demi-official from the Hon'ble C. Sankaran Nayar, dated 31st October 1895.

ORDER—No. 115, Legislative, dated 6th November 1895.

Communicated to the Select Committee with the remark that the following amendments which have been proposed by the Hon'ble C. Sankaran Nayar appear to meet the objection taken by the Right Hon'ble the Secretary of State:—

“Section 7.—For clause (a) substitute—

‘(a) The relation of the parties must not be such in respect of consanguinity or affinity that by the recognized custom of the caste or castes or community or communities to which the parties belong a marriage connection between them would be prohibited.’

“For clause (c) substitute the following:—

‘(c) Cohabitation between the parties must not be prohibited by the recognized custom of the caste, if any, to which the parties may belong.’”

(True Extract.)

Ag. Under Secy. to Govt.

To the Select Committee.

Gobt. of {1895} Madras.
LEGISLATIVE.

Issued

Recd.

Encl.

G.O., No. 115, 6th November 1895.

NOVEMBER.

Malabar Marriage Bill.

Communicating to the Select Committee despatch from the Right Hon'ble the Secretary of State and papers regarding the —, with the remark that certain amendments proposed by the Hon'ble C. Sankaran Nayar appear to meet the objection taken by the Right Hon'ble the Secretary of State.

UNDER SECRETARY
31 OCT 95
PUBLICITY DEPT.

FORM OF MARRIAGE AND REGISTRATION.

When I asked for leave to introduce this Bill I have described the various forms of marriage which are recognized as creating the relation of husband and wife in society. In a marriage regularly performed, the horoscopes of the bride and bridegroom are examined by an astrologer and a day is fixed. Formal leave is obtained by the bridegroom from his elders, and on the appointed day he is taken in procession to the bride's house, the auspicious hour is then announced by the astrologer, certain ceremonies are gone through, and the marriage is consummated. It may be that all these formalities are not always gone through. There is very great difference of opinion among witnesses as to what formalities are essential to the formation of relation. Some witnesses even go so far to say that there is no ceremony or form that is essential, that mutual consent alone is necessary; according to a few others, cohabitation and subsequent acknowledgment of the relation is all that is required. In some parts of the district the Brahmins and the Rajas marry their Nair wives with certain ceremonies; in other parts no formality is, as a rule, observed. According to some, the same distinction is observed in some parts of the district between marriages of Nairs of equal class and of superior and inferior classes. Rama Vurmah Raja of Parapanad, one of the Commissioners, states in his report: "As taluks differ, so do the forms of marriage. In some taluks there are two or three forms of marriage. In the same form of marriage the ceremonies observed and the formalities gone through vary as amsoms or desoms do. In some places of Malabar there is no form of marriage even in its simplest sense." If we consider all the formalities essential, a good number of those sexual connections which are considered honourable may have to be regarded as simply concubinages, while some witnesses who hold no formality is essential would practically obliterate the distinction between marriage and concubinage. Naturally, therefore, the result of this uncertainty must be to lower the general moral tone, obscure the distinction between marriage and concubinage and afford facilities for passing off concubinage as marriage. Accepting the view that marriage is essentially a civil contract, the Royal Commission on the laws of marriage of 1868 observe: "Society is entitled to insist that persons who are about to marry should celebrate the most important engagement in an open and unequivocal manner after due compliance with certain simple and uniform ceremonies. The law makes clear and full provision for contracts effecting the sale of houses and land, horses and dogs and goods and chattels of every description, and why marriage, the most important of all human contracts, should not be as anxiously defined and provided for, and thus placed beyond the reach of fraud and doubt, appears to be one of the greatest anomalies in the law of a Christian country." It is useful to bear these observations in mind.

One of the great objects of legislation being, therefore, to place marriage beyond the reach of fraud and doubt, to give such security to a marriage union that, a certain formality being complied with, it should afterwards be open to challenge, if at all, only on grounds which are certain and specified, I adopted the form of solemnizing marriages before a Registrar which had already obtained the sanction of Government (Act III of 1872). My reasons were that no particular form of marriage has been accepted by a majority of people in Malabar and few people were agreed as to what were essential to form a marriage union, and, as long as these forms and ceremonies are considered essential to the validity of a marriage, doubts may often arise as to their validity and persons interested will attempt to set aside these marriages on the ground that they were irregularly and not duly performed.

This Bill abandons these provisions and it drops the statutory form of marriage. Legislation which deals with the law of marriage which must influence the moral condition of the people must have their sympathy and support. They have now adopted various forms of marriage which prevail in various parts of the district. They do not want a statutory form. Further, it is certain that statutory form will not be generally adopted for some time to come, and it does not enable parents to legitimise their children born previously to marriage before the Registrar. It is impossible, therefore, to adopt a law which requires solemnization before a Marriage

Registrar as essential to its validity, and thus create a difference between the status of children born previously to and subsequent to registration though the marriage connection itself may have been formed according to custom. It will prevent this measure from attaining any considerable degree of success. We have therefore to give up the statutory form of marriage as repugnant to the feeling of the people and proceed to legalize under certain conditions the social marriages now existing.

But the Bill is only permissive. We cannot therefore declare that all social marriages shall be considered marriages in the eye of our law as many people might prefer the continuance of their present sexual relations which remain unrecognized by law. We have therefore provided in the Bill that those who wish their social marriages to be recognized by law, or for rights to flow from that relation, may register the same as evidence of its legal recognition. It is only such unions as are recognized as marriages by society that are allowed to be registered under the proposed Act. Registration will also materially serve the purpose with which the statutory form of marriage was advocated and remedy the evils intended to be provided against by the statutory form. By registration and declaring (section 12) that the marriage certificate shall be evidence of the truth of the statements therein contained, we secure contemporary and unimpeachable evidence of the fact of marriage.

The Bill of course provides for service of notice on the guardians or karnavans of the tarwad of the parties of the application to register the marriage, and a period of three months is allowed within which any person interested might sue in the civil court for a declaration that the marriage ought not to be registered as it contravenes one or more conditions of a valid marriage. One of the conditions of registration is that the marriage must be in the form customary in the caste or class to which the woman belongs. As Sir Muthusami Aiyar has pointed out, it is necessary so to describe it in order that a Nambudri Brahmin or a male member of a kovilagam may contract a marriage under the Act if he chooses to do so: otherwise there may be no form applicable to the case as the Brahmin or Kshatriya ritual does not apply to a marriage with a Nair woman. For registration it is also necessary that the consent of the guardian should have been obtained if the parties are below the age of 21.

CASTE—SECTION 7 (c).

Further, the main object of registration being, as stated in the Proceedings of Government, to provide unimpeachable evidence of a customary marriage, it is necessary to secure, if possible, that no marriages which do not conform to usage are registered. Every facility has been therefore given to the relations of either of the parties to take the necessary steps to prevent registration of marriages opposed to the custom. It is another condition of registration that the marriage to be registered should not be one that would entail forfeiture of caste and religious excommunication on account of caste restrictions. The policy adopted in this Bill is to respect, and not to oppose, any caste or social usage of the people. We have to see on the one hand that this legislation is not availed of by men to set at defiance the usages of the caste they belong to. At the same time it is necessary to provide against empowering by this legislation caste or any class as a body to place restrictions on the liberty of action which may have been hitherto possessed by any member. It is also necessary to guard against stereotyping usage by legislation, but room must be left for development and change of custom. These principles have been kept in view in drafting this Bill. Any member of the tarwad of either of the parties or any other individual who is interested in the matter may record his objection before the Registrar. Then the marriage shall not be registered for a certain period during which time he may bring a suit to declare that the marriage is obnoxious to the usages of the caste; and in case of his success in the suit, the marriage shall not, of course, be registered, otherwise it may be. But if the marriage is registered with the consent of the members of the tarwad, or of the caste, then certain civil rights which I shall presently refer to flow from the relation unless the marriage is null and void on the ground of bigamy as being within certain prohibited degrees. As the marriage of any person below the age of 21 could be registered only with the consent of his guardian, and females are almost invariably married before that age, there is no reason to apprehend any hasty union, no reason to fear any violation by young persons of social

or caste usage; as marriages could be registered only after notice to the karnavan of the tarwad, as the tarwad and the caste are empowered to protest against registration, it is scarcely likely that there will be any violation of family or social usage. When the responsible guardians consent to the union, believing there is no obstacle to the marriage, when the tarwads of the parties celebrate the marriage with the usual ceremonies, and the members of the castes of the parties sanction it by their attendance and taking part in the ceremonies and festivities that accompany the consummation of the marriage, and when the tarwad after notice to them and the caste people allow the marriage to be registered and the guardians give their consent to such registration as if no impediment to the union existed, it may be safely assumed that the marriage has been in strict conformity to custom and it should not afterwards be impeached on that ground. "If reasonable time for bringing forward objection to the registration of a marriage is given it appears just and proper that registration should be final."—*Government Order*. I entirely agree in this view. Where the parties do not belong to any particular caste, these observations, of course, do not apply.

CONSANGUINITY.

Again, if the relation of the parties be such that marriage between them is prohibited by their usage, then the Registrar shall not register the marriage if objected to. According to our custom, the rule as founded on consanguinity is—persons descended from a common female ancestor are not allowed to marry one another. With reference to forbidden affinity, there is a difference of opinion. It seems to be admitted that prohibition extends to such relations as stand in the position of parent and children. Whether it extends further and how far it extends I am unable to say as the inquiry showed a conflict of opinion on this point. It appears to be clear, however, that the rule of prohibition as regards affinity is not the same as the rule respecting consanguinity. We have therefore provided, as I have already stated, that the Registrar shall not register marriages when objection is raised to the same as being obnoxious to the customary law, but even a registered marriage if opposed to custom will be void if the parties are related to each other within the fourth degree.

BIGAMY.

A marriage is also void notwithstanding registration if either of the parties has previously registered a marriage which is still subsisting. As to polyandry it has died out, and as to polygamy it is acknowledged to prevail but seldom, and as freedom of divorce is allowed this prohibition cannot be objected to as effecting a material change in the habits of the people. As pointed out in the Proceedings of the Government of Madras, dated 30th October 1894, "such a prohibition is necessary to prevent those difficulties as to the right to maintenance and the devolution of property which will certainly otherwise arise." It is also remarkable that in Natal polygamous marriages of Indians are prohibited though such marriages contracted in India are recognized there. I may state that the Commissioners were unanimous in holding that polygamy and polyandry ought not to be recognized by the proposed Act.

Having dealt with registration, I now proceed to the civil rights that are attached to registered marriages.

First as to maintenance and guardianship.

According to the theory of the law, the members of a tarwad all tracing their descent from a common female ancestor in the female line live together under the guidance and superintendence generally of the senior male called the karnavan.

He is constituted the legal guardian of all the children in the tarwad, both during the mother's lifetime and after her death, and the father has by law no right to their custody. In the words of the High Court, "by the principles of the law in Malabar, the mother herself while alive and her children too are under the guardianship of the head of the family—the karnavan. Their position is precisely analogous to that of the members of a Roman family under Patria Potestas. The karnavan is as much the guardian and representative for all purposes of property of every member

within the tarwad as the Roman father or grandfather. Moreover, the relation between husband and wife does not in Malabar disturb their condition. These children have no right whatever upon the property of their father but their rights are entirely in the karnavan's family. There is no doubt at all that he was during the father's lifetime, and continues to be after his death, the legitimate guardian of the children, and the father has by positive law not the smallest right to their custody." But the guardianship does not carry with it any personal obligation to support any member of his tarwad by his own labour and from his own self-acquisition. He is only responsible if the family possesses ancestral property and to the extent of that property.

He is entitled to the possession of such property which is impartible and is absolute in its management. "The junior members have only a right to residence and maintenance in the family house. Outside the tarwad home they are not entitled to claim such maintenance. He is not accountable to any of the members of the tarwad for the income of it, nor can a suit be maintained for an account of the tarwad property in the absence of fraud on his part nor claim any specific share of the income. An absolute discretion in these respects is vested in the manager. His management may not be as prudent or as beneficial as that of another manager would be, but unless he acts *mala fide* or with recklessness or with incompetency, he cannot be removed from such management; almost the only restraint on him in such management is that he cannot alienate the lands of the tarwad except for tarwad purposes." Thus, according to the theory of the law, the mother and children live with the other members under the guardianship of the karnavan of their tarwad in their tarwad house and are maintained by him out of the income of the tarwad. The female members and their children therefore depend upon the karnavan according to the law. Yet taking the districts of Canara and Malabar as a whole, the practice now is otherwise. In Canara the Collector of the district tells us that after marriage the wife leaves her own family house and resides with her husband. In his own words, "Till the death of the husband the wife and children live with him and join in the work of cultivating the fields of his family estate like the other members of his family and are maintained out of it by him. In many cases she and her children serve him in a house occupied by them alone. In fact a Native Judge goes so far as to say that the derivation of the word 'Boodelthee' (wife) shows that the wife was considered as the mistress of the house."

In North Malabar also so strong is the patriarchal family life that the tarwad property intended for the members of the tarwad is now mainly enjoyed by the wife and children of the members of the tarwad. The theory of the law is—and that is also the general feeling—that the property is held in trust for the females and their descendants. "In North Malabar it has become the general recognized custom for the women to leave their tarwad house on marriage and reside with their husbands." "So well established is the custom that the High Court has held that the maintenance of the wives and children of the junior members (residing with their husband in their husbands' tarwad) is a charge which the karnavan is bound to meet. The High Court allows that the ruling would seem inconsistent with the principles of the Marumakkatayam law, but the answers to the interrogatories and the evidence taken by the Commission show that the ruling is really and truly in accordance with existing usage."

Thus in North Malabar every girl quits the tarwad house as soon as she is married, and while all the males, uncles, brothers, nephews, cousins and second cousins remain and bring their wives to live with them. Thus the tarwad income is consumed by the males, their wives and their descendants, while to the females their tarwad becomes an ultimate place of refuge into which they and their families are unwillingly received when their husbands die or discard them. Though the karnavan of their tarwad is the guardian of the males he is not in the same position as regards their wives and children. These latter remain in law under the guardianship of the karnavans of the tarwads to which the wives belong and the husbands have not the slightest authority over them." Sir Muthusami Aiyar also refers in his report to the general practice in North Malabar for the wife to live with her husband, not only when the latter has self-acquired property, but also with the permission of his karnavan when he has no such property.

As to South Malabar he considers that the practice has grown up "among the respectable classes to imitate North Malabar generally in the case of karnavans and occasionally in the case of anandravans." The fact is that those junior members who have any self-acquisitions on their own accounts live with their wives.

We find therefore that though according to law it is the karnavan of a tarwad who is bound to maintain the female members, yet in a large and increasing number of cases they are actually maintained by their husbands. The children also naturally are maintained by their father. The karnavan was bound to give them the education usually given to members of their class, but in the cases above referred to the father educates them. The rule is certainly not, as the report points out, for the karnavan to educate the junior members out of the tarwad income. Either the father educates them, though in law his guardianship is not recognized, or a near relative like a brother or uncle furnishes funds for such education. As the children live with the father he naturally feels greater interest in their education than any one else, and if the position of the karnavan is considered it is not surprising that the national consciousness has now begun to consider the father responsible for the maintenance and education of his children. The karnavan's relationship with some of the children of an ordinary tarwad consisting of many members in the female line is of course remote, and, as the High Court have rightly observed, "a karnavan's duty is in habitual conflict with his private affections and interests." It is only natural, therefore, that in spite of the theory of the law, the home of the father is being recognized the home of the children and their mother, and so long as the State does not undertake the guardianship of the children it seems necessary that such guardianship should be vested in those who are naturally interested in the proper discharge of their duties and who now practically discharge them. The proposal is to bring the law in conformity to such practice. The Bill which I obtained leave to introduce in 1890 vested the guardianship of the wife and children in the husband. This suggestion ignored those numerous instances—found particularly in South Malabar—where the wife and children live in their own tarwad house and under their karnavan's control. The rule in Canara and North Malabar is no doubt, as I have already stated, for the wife and children to live with the husband and father, and the tendency in South Malabar is the same. But it is impossible to ignore the other class of cases where the rule is likely to bring the father into collision with the karnavan and result in discord and litigation. This Bill accordingly recognizes his guardianship only in those cases where the husband or his tarwad maintains the wife and children, where, of course, they would not be under the control of their karnavan. Though according to the incidents of a legal marriage a man ought to be recognized as the guardian of his wife and children, yet the existing state of affairs already referred to by me warrants a departure only to the extent indicated in the Bill—a departure from the existing law which vests the guardianship completely in the karnavan.

The right to claim maintenance is also conceded to the wife and children. The Bill provides that she would not be entitled to receive maintenance if she is disentitled under section 488 of the Criminal Procedure Code. Accordingly, if she is living in adultery, or if without any sufficient reason she refuses to live with her husband or if they are living separately by mutual consent, she cannot claim maintenance. It is also provided, adopting Sir Muthusami Aiyar's view, that whatever defence is available to the husband under the Hindu law may be pleaded under the Act. His reason was this—the Malayalis are Hindus and the rule of Hindu law on the subject is likely to prove more acceptable. Sir Muthusami Aiyar is right. The tendency on the part of the masses and of the aristocracy who have not received an English training is to look to the Hindu sages for guidance, and if any of the members take the trouble to go through the mass of evidence taken by the Commission it will be found that Hindu texts are frequently appealed to in support of their views as obligatory on the followers of Marumakkatayam law.

To this provision in the Bill regarding maintenance I do not presume any serious objection can be raised. It is already recognized as a moral obligation; once marriage is legalized it seems to follow that a man's liability to maintain his wife and children should be declared. The law of every nation imposes upon the parent the obligation to maintain his children and a text of Manu is often cited as meaning that a virtuous wife and infant son must be maintained even by crime.

The alteration proposed by the law does not materially affect the usage of the country. The karnavan will continue to be the guardian except in those cases where he has virtually renounced his rights and obligations by allowing the wife and children to become a part of the husband's family and the husband now *de facto* guardian. The change effected in the usage thus is *nil*.

DIVORCE—SECTIONS 16, 17 AND 18.

After Maintenance and Guardianship, the Bill deals with Divorce. Sir Muthusami Aiyar thus describes the present situation:—

"Among Marumakkatayam Hindus, marriage has yet to be legalized; polyandry has ceased but recently, and no religious sanction sustains the notion that one man is united in wedlock to one woman all his life for better or for worse. The basis on which the duration of the marital relation rests is that the couple should do their best to get on together well and that, if they fail, it must cease. Hence the husband or the wife may in theory divorce the other at will. But in practice neither does so except for a cause which commends itself to his or her family and to the society in which they move. Arbitrary divorces appear to be rare, much more so in North than in South Malabar. In most cases the anandravans are too poor to support a family and have no self-acquired property, and they work for their tarwads and marry or put away their wives only with the consent of the karnavan, who allows them to bring their wives into the tarwad house and maintains them out of tarwad income together with other tarwad relations. This is the general practice in respectable tarwads in North Malabar when there is cordiality and harmony in the family. What grounds of divorce are considered reasonable in Marumakkatayam society and whether any formality is observed when marriage is dissolved are matters concerning which I have taken evidence. But the evidence is discrepant and conflicting and conveys the impression that, save adultery, no other determinate cause is recognized and no specific form is observed in Malabar or even in the same part of the district. Adultery, cruelty, mutual desertion, disobedience on the part of the husband, incurable or infectious disease, impotency, barrenness, stealing the husband's property, levity of conduct and incompatibility of temper are among the causes enumerated by one or other of the witnesses. It is stated by several witnesses that the wife is at liberty to take a second husband if the first discontinues matrimonial intercourse for one year and omits to send to her the customary presents during the two principal feasts of the year, viz., those of Vishu and Onam. It is also observed by some witnesses that in parts of the district, when the husband desires to divorce the wife, he takes one or more cloths to her tarwad house and, leaving them there, announces to her karnavan that he divorces her. These causes and forms do not, however, appear to be so general or uniform as to render it safe to accept them as containing the elements of a customary law. What scheme of divorce is then best adapted to Marumakkatayam Hindus?"

In the Bill which I asked leave in 1890 to introduce into the Council the provisions of the Indian Divorce Act and the Parsi Marriage Act were incorporated. But, as Sir Muthusami Aiyar has pointed out, the strong opposition which the Bill has evoked is in the main due to them. One objection to that scheme is that they constitute an elaborate system of judicial divorce devised to support a high standard of matrimonial sanctity not unfrequently found impracticable even in societies in which marriage has been a religious as well as a legal institution for centuries and in which lapse of time and strength of religious sentiment have carried it beyond the stubborn exigencies of married life. Further, the provisions in those Acts are complex, and suits for nullity of marriages, for judicial separation and for divorce, accompanied as they are with public revelations of the frailty of domestic life, are obnoxious and repulsive to the people of Malabar as elsewhere.

On account of the strong feeling of opposition against introducing the provisions of the Divorce Act or the Parsi Marriage Act they had to be dropped. Another scheme which was considered was to declare, as just grounds for divorce, adultery, cruelty, desertion and certain others, and direct that if either party repudiates the marital relation without a just cause, the guilty person shall forfeit one-fourth of his or her self-acquired property, if any, to the other, and that if there are children the ownership

shall vest in them, the usufruct alone vesting in the innocent wife or husband during his or her life. The principle of compensation was adopted from the civil law and the Smriti of Yagnavalkya. After full consideration by the Commissioners, the Governments of Madras and India, this scheme also has been dropped and the right of free divorce by judicial process has been recognized. The main reasons for rejecting this proposal are that it would open a door for all the evils of the first scheme and would render the new law obnoxious and prevent it from attaining to that measure of success which may otherwise be anticipated. The Bill as now drafted empowers the husband or wife to present a petition to the Court of District Munsif praying that the marriage may be dissolved. The Bill proceeds on the existing usage, and freedom of divorce is recognized by such usage. It has not been shown that this right of divorce is much abused and it is therefore unnecessary to legislate in opposition to the wishes of the people. If without recognizing freedom of divorce we introduce a scheme which pre-supposes the paternal family as the social institution, we shall have to alter the law provisions respecting maintenance and guardianship. We shall have to modify the of inheritance in its entirety, which is, of course, now impracticable. It cannot be denied that, by requiring a probationary period, the Bill imposes upon divorce a restriction which does not exist at present, and it will not be a difficult matter to legislate on the subject hereafter if experience proves that restrictions upon divorce are necessary for the further protection of those who have registered marriages under this proposed Act. For these reasons it has been finally decided not to introduce any provisions into the proposed Act which would not find their justification in existing usage.

SUCCESSION—SECTIONS 19 TO 22.

The Council is aware that according to our law a man's interest in his tarwad property as well as his self-acquisition lapses to the other members of his tarwad on his death. The Bill does not touch his interest in the joint family property. As heretofore on his death the other members take it. He is entitled to deal with his self-acquired property in any way he pleases during his lifetime. It was therefore suggested by me that the entire self-acquisition ought to go to his wife and children, the members of the tarwad succeeding to his interest in the tarwad property. As the power to dispose of self-acquired property by will is to be conferred or declared by the Bill which I believe will soon be introduced, no one can complain that he is compelled by law to leave his property to those whom he does not want to take it. That suggestion was made in the belief that this marriage law will be generally availed of by those who have adopted the paternal family life, and that the wife and children would keenly feel the breaking-up of the home on the death of the husband and father which till then they had regarded as their own and the recognition of a comparative stranger as successor. There was also the practical inconvenience of a division of property which might lead to litigation. Personally I remain of that opinion still, but the Bill adopts the suggestion made by Sir Muthusami Aiyar and accepted by the Governments of India and Madras. That view is based upon existing usage. The paternal family life has not been so generally adopted by the races who are now governed by the Marumakkatayam law, and the feeling that the wife and children ought to inherit the property is not at present so strong as to warrant a departure to the extent suggested by me. Considering the practice in the district, Sir Muthusami Aiyar suggested—and that suggestion has been adopted—an equal division of the self-acquired properties between the tarwad and the wife and children. I may add that in Tangasserri and Anjengo the right of the children to succeed to half such property is recognized and the properties are thus equally divided on a man's death.

I have thus briefly reviewed the provisions of the Bill. The registration of his marriage under certain conditions enables a man to contract a marriage which would be recognized in Courts of law, the fact of a valid customary marriage is placed beyond doubt, the wife and children's right of maintenance is recognized, the father is constituted the guardian of the children, the stability of the matrimonial union, hitherto precarious and unsettled and very often dependent for its duration on the will of others, has been in some degree secured by the provisions as to divorce and inheritance. No change is really introduced. The provisions of the Bill dealing with rights and duties only carry out the practice of the majority of the people.

Registration is permissive, is only required as evidence; the provisions as to guardianship and maintenance are based on existing usage. The provision as to inheritance also is in conformity to usage, and it appears to me that we must recognize the right of children to at least half the property, as in some parts of the country such right is recognized almost as a legal right and the children invariably take that share. The chief reason for resorting to legislation is undoubtedly the necessity of giving effect to what is recognized as a marriage in society.

Among the other reasons for legislation given by the Commissioners is the desirability of removing from injured husbands the temptation to take the law into their hands. Sir Muthusami Iyer says: "The proposed Act will, on the one hand, elevate and ennoble the precarious social marriage into a legal institution, whilst the strong arm of public law will, on the other, protect the domestic circle against the incursion of irregular passions and thereby remove one cause of acute suffering in that circle and a strong temptation to the commission of crime." According to the Collector of Canara, who favoured us with his views, "symptoms of revolt are everywhere observable against the custom in question, not only among the educated but among all classes following the Marumakkatayam and Aliyasantana laws, which in these respects resemble one another, and the custom is not only one of the principal sources (perhaps the chief source) of civil litigation in the district, but a fruitful cause of the gravest possible crimes against the person", and in proof of this statement he says "instances without number could be quoted since the decision of 1868 from the criminal records of the district"; and after describing an Aliyasantana family he tells us: "Can we wonder that he . . . having no redress at the hands of the law, takes the righting of the wrongs into his own hands and either murders or attempts to murder his wife or her paramour, who is frequently a Mopla or a man of another caste? If crimes of this kind are to be diminished in number and for the sake of morality it is imperative that the law should recognize as marriage what society recognises as such; nor is any great revolution necessary to effect this." About Malabar Mr. Logan writes: "Nowhere is the marriage tie more rigidly observed or respected, nowhere is it more jealously guarded or its neglect more savagely avenged", and the Commissioners—one of whom is Mr. Winterbotham, then the permanent Collector of the district—after citing Mr. Logan's opinion with approval, continue thus: "This opinion has been re-echoed by writers of all opinions with approval." They also say: "According to our colleague, Mr. Chanda Menon, the Nair husband had of old the right to slay the seducer of his wife on the spot with impunity; and he has still an excuse for taking private vengeance on the wrong-doer, because the law now grants him no redress."

This legislation will also discourage the growth of polygamy. The Council will not, of course, by legislation prevent polygamous marriages where they prevail. But taking the classes concerned as a whole, polygamy is now so rare that all the Commissioners are agreed that it presents no difficulty in the way of legislation and need not be recognized. The acceptance of this marriage law by the people generally will therefore probably prevent its growth. After stating his view that a marriage law "appears to be in itself a great public benefit and no small aid to the cause of social progress and good morals", Sir Muthusami Iyer records his view: "It will tend to eliminate from the Marumakkatayam social system the baneful notion seriously put forward by several persons of high social position that it is the exclusive privilege of Nambudiri Brahmins to contract a legal marriage." He refers to the notion that the eldest son of a Nambudiri alone could marry and that the other classes have been denied the right of marriage for the benefit of the younger sons. It appears to me that the plea for legislation becomes very strong when, notwithstanding the influence of this teaching, the people have, or are adopting, paternal family life.

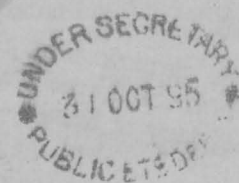
Before concluding I shall notice an objection to the Bill advanced in a paper recently submitted to the Council. It is objected to this Bill that it places a woman under the control of her husband, depriving her of the freedom hitherto enjoyed by her. The objection loses its force when it is remembered that the Bill only proposes to legalize what is at present the usage in the country, and there is no attempt to introduce any material change. By registering her marriage, the woman does not lose her rights to enter into contracts, to acquire, hold and deal with any property. She can

further dissolve the union at her will. In what respect, therefore, she loses her freedom I am unable to see. It is true, no doubt, some travellers say that the Tali tying ceremony emancipates the woman and she is then free of conjugal bonds, at liberty to lead any life acceptable to her without any restraint from her relatives. I am unable to state what amount of truth there was in those statements, but as to the practice now prevailing I may usefully refer to the latest census report, where the Census Commissioner's opinion is thus recorded: "I may here mention that the independence of Nair women, which one reads so much of, is more apparent than real, for she is nearly as much in the power of the elders of her family as the most closely guarded inmate of the zenana, and it is seldom indeed that she has the courage to take her own way in the teeth of the opposition of her relatives." It appears thus that the recognition of the paternal family home of which she is the mistress would be a great advance towards the recognition of the rights of individual women from the Marumakkatayam maternal family system where she has no separate existence and where she is entirely under the control of the elders of the Tarwad.

D.O. 600

31. Oct. 95.

Egmore



Dear Sir,

With reference to the despatch
from the Secretary of State I beg to
suggest the following alterations
in Section (7)

For clause (a) Substitute.

(a) The relation of the parties must
not be such in respect of consanguinity
or affinity that according to the
^{by} recognized custom of the Caste or
Castes or Community or Communities
to which the parties belong a marriage
connection between them would be
improper
prohibited.

For clause (b) Substitute the following

Council consider advisable to omit,
please let me know as early as
possible.

Yours sincerely
C. Sankaran Nair

(d) Cohabitation between the parties
must not be prohibited by the
recognized caste custom of the
caste, if any, to which the parties
may belong.

These Amendments will in
my opinion meet the wishes of
the Secretary of State. It appears
to me that any other alterations may
be conveniently made, if necessary,
in the Select Committee.

I also beg to send you (6) copies of
the Speech I propose to deliver on Monday
for your perusal and distribution among
the members of the Executive Council.
If there is anything in it which you
or the members cons of the Executive

Current No. 600

DEPARTMENT.

From

The Honorable
C. Sankara Nair

No.

Dated 3/14 }
Received 3/14 } - 10 - 95

Enclosures 1
5 Copies of the enclosure

SUBJECT.

Stating that with reference to the despatch from the Secretary of State he suggests certain alterations in section (7) ^{Malabar} and that he sends six copies of the speech he proposes to deliver on Monday, and requesting to inform him if anything is to be omitted from the speech.

DEPARTMENT.

C. No.

FOR ORDERS.

Dear Sir,

In reply to your letter dated yesterday I beg to inform you that your amendment in the Malabar Marriage Bill has been laid before H.E. the G. in C. & met with approval. In clause (a) of section 7 it is considered preferable to adopt the amendment which runs "xxx that by the recognized custom xxx a marriage connection xxx prohibiting with ^{reference} to your speech. I am directed to suggest the desirability of omitting the reference to religious communication which occurs at page 2 of the proof in the seventh line of the section headed "Caste"; a convenient alteration would be effected

substitution of the words
"contrary to caste & recognized
custom" for the words "one
that would entail *** caste
restrictions".

Yrs. sincerely
D
1-11-95

Office Note I ^{one} 2/11.
Circulate three copies
of the speech to the Hon. members
of the Executive Council
D
1-11-95

Note II
To the Hon. C. Sankaran Nayar
This constitutes the
reply to the G.O. communicating
the Govt. dispatch regarding
the Bill. - That dispatch should
be printed with Q of
G.O. no. 600 & a G.O. running
The following amendments which
have been proposed by the Hon. C.
Sankaran Nayar appear to meet
the objection taken by the R.
Hon. the Govt. -
This G.O. should be commd. to the
Leg. Council, as a legislative
paper connected with the Bill
6007, 1st part & referred to the
Select Committee under Council Rule
D
1-11-95

D.O. to the Hon. C.
Sankaran Nayar
Malabar Marriage
FOR ORDERS.
Bill

DEPARTMENT
D

[G.
24]
248-14-11-94.

Legis. DEPARTMENT.

Papers to be read in Proceedings:—

Again G.O., dated 25th October 1895, No. 108 Legislative Council

Again G.O., dated 189 , No.

Current No. of 189 , dated from

of D.O. No. 600 from the Hon. C. Sankaran Nayar
dated 31st October 1895

Current No. of 189 , dated from

Read also the following papers:—

Despatch from the Hon. C.
Sankaran Nayar of 31-10-95

ORDER. No. 115 of 6-11-95. slet

Communicated to the Select Committee
with the remark that the
following amendments which have
been proposed by the Hon. C.
Sankaran Nayar appear to meet the
objection taken by the Right Hon.
the Secretary of State.

"Section 7. For Clause (a) Substitute
'(a). The relation of the parties must
not be such in respect of Consanguinity
or affinity that by the recognized custom
of the caste or castes or community or
communities to which the parties belong
a marriage connection between them
would be prohibited'.

"For Clause (b) Substitute the
following:

'(C) Cohabitation between the parties
must not be prohibited by the recognized
custom of the caste, if any, to which
the parties may belong.'"

20/11
To the Select Committee
on the Malabar Marriage Bill
CRK
5-11-95

Malabar Marriage Bill

sent to Press.

signature.

ched in print.

S. G. O., No.
139

DATED

NUMBER OF COPIES
REQUIRED. { Order complete.
Letter only.
Order complete with Letter.

PRINTED

PRINTED

PRINTED

PRINTED BY THE GOVERNMENT

in full.
to be printed.
Abstract only.
ending only.