

Public (189⁹) Department.

ORDINARY MS.

G.O., No. 341

Dated 17-3-98

INDEXED.

[Despatch Abstract.]

According certain notes regarding
the functions of the Legislative Dept connected
with G.O's No 361 Public of 1-4-97 and Nos 55-57 Leg
of 10-8-98.

BACK PAPERS.

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

FURTHER PAPERS.

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

Public Dept.

Order no 341 of 17-3-13
mis.

Recorded.

10/1/90

Note by the Under Secretary d/15-2-91.

Please see ~~in~~ the second paragraph of G.O. dated 18th December 1890, No. 456, Marine.

I respectfully submit that the Legislative Department (which exists only as a channel of communication between the various other departments of the Executive Government and the Legislature) should not be called upon to decide whether it is advisable or not to repeal an Act. Such a course is, I think, unprecedented and it is obviously objectionable from several points of view. The usual course is for the Executive Govt. to decide (in communication if necessary with the Advocate General) whether it will proceed to legislation and, if it so decide, a Bill is prepared in the Department most intimately concerned and the Bill is then transferred to the Legislative Department which proceeds in due course to communicate the Bill to the Legislative Council. It is apparent that the Department most fitted to decide whether the Acts now in question should be repealed in the Marine Department and I therefore respectfully submit that the papers should be re-transferred thither.

(Intd.) A.B.

NOTE by the Chief Secretary, d/14-2-91.

The view taken by the Under Secretary appears to be right.

(Intd.) A.B.

NOTE by the Honourable W.L. Stokes, C.S.I.,
dated 17th February 1891.

There is no doubt about the
repeal. The Under Secretary is the draft-
ing Officer of Government and he should
draft and acts for which the administra-
tive department furnishes a sketch pro-
posals. Here it is simple enough

(Intd.) W.L.S.

NOTE by the Hon. J.H. Garstin C.S.I.,
dated 23rd February 1891.

Yes. The G.O. does not throw
on the Legislative Department the duty
of deciding whether the Acts are to be
repealed or not. That is left by the
G.O. itself and the Legislative Depart-
ment has merely to draft an Act of a
very simple character repealing them
so far as they are local acts.

(Intd.) J.H.G.

Question. Which Dept. should
address India on Infant Marriage
Bills.

To

Judicial.

The attention of Judicial is in-
vited to the fact that of the only
two members noting on the above
question, one observed that Legisla-
tive could take only a technical
view of the proposed Bills, while the
other observed that administrative
questions were involved in the intro-
duction of the Bills.

2. A perusal of paras. 5, 6 and 8
page 46 Indian Councils Acts and
Rules, will direct attention to the
fact that Legislative is not an ini-
tiating department, its proper func-
tion being to clothe with a technical
shape projects of law of which the
policy has been affirmed elsewhere.
It is Govt. in its executive capacity
which has to decide whether a project
of law shall or shall not be intro-
duced. And until such a project is
introduced, Legislative has nothing
to say to it.

3. It would therefore seem that
Executive Department should address

left for the consideration of the Chief Secretary. Here it was thought that Judicial was concerned - partly because it deals with marriage.

(Id.) S.R.T.

18-5-99

left

NOTE FOR THE CHIEF SECRETARY.

Please see note from the Legislative Dept. below.

The point now raised has already been definitely decided by H.L. who has noted "the reference to India must no doubt issue in Legislative". The Honourable Mr. Grose has added "Yes, &c.", meaning it is submitted that he agrees that Judicial must comment on the bill - but that Leg. should address India. Judicial has, it is submitted, done its part. It has sent the question up for orders and obtained the orders of H.L.'s.

It is respectfully submitted that the argument of the Secretary (Legislative Dept.) in para. 2 of his note is not applicable. There is here no question of Govt. measures, (vide rule 5 on page 4 of the Council Rules). The question now at issue is whether bills already in proper form should be introduced into the Council by a private member. No dept. of Govt. is in this instance required to initiate legislation.

Submitted therefore that the following reply may be appended to the Secretary's note.

In page 1 of the note for

noted "The reference to India must
no doubt issue in legislative". and in
however that Judicial should comment
upon the bill. The Honourable Mr. Grose
has agreed, apparently on both points.
Judicial has now done its part in noting
upon the subject and the further
action is under the note now recorded,
for legislative.

The reference above to para. 5
of the Council rules/ does not appear
to be applicable in the present instance.
This is not a case of a Govt. measure,
nor is legislative required to draft a
bill. It is merely a question whether
the bill of a private member shall or
shall not be admitted.

(Id.) A.Y.

11-5-98.

NOTE FOR THE CHIEF SECRETARY.

With reference to the note
from the Legislative Dept. regarding
the draft letter to India on the sub-
ject of the "Infant marriage preven-
tion" bills, please see Mr. Forbes'
note at flag F in the file regarding
Religious Endowments. The course
there indicated is, it is submitted,
in accordance with that now proposed
by Judicial- namely that the admini-
strative Dept. should be responsible
for a Govt. measure, while the re-
marks on a bill put forward by a
private member are drafted by legis-
lative.

(Id.) A.Y.

11-5-98.

I have talked this over with Mr.
Forbes who is quite clear that the
draft should be prepared in Judicial.
This should therefore be done.

(Id.) A.T.A.

11-5-98.

Legislative Department.

Note for the Secretary.

The Judicial Department have asked whether Legislative will issue the letter to the Government of India on the subject of the Bills regarding Infant Marriage Prevention. It is pointed out by Judicial that H.M. has remarked on the note for orders "The reference to India must no doubt issue in Legislative;" and that the late Honourable Mr. Grose agreed to this. It is also remarked by Judicial that the question is merely whether the Bill of a private member shall or shall not be admitted.

Orders are requested.

(Id.) A.M.

7-7-98.

Yes; let it go from Legislative but it must go to Legislative, India.

(Id.) H.T.

8-7-98.

Note for the Assistant Secretary.

Please see Standing Orders Nos. 1, 5, 7 and 13(2), also a precedent G.O. Nos. 29-30, Legislative, dated 4th Aug. 1890 regarding the Malabar Marriage Bill. It is submitted that the Home Department is the proper Department to be addressed an endorsement being added to the letter for the Government of India, Legislative Department.

Yes
(Id.) A.M.

(Id.) C.R.V.
9-7-98.

Very well.

(Id.) H.T.
11-7-98.

CONFIDENTIAL.

*Note Connected with the proposed Sargent Marvise
Pension Bill (PNS 55-57 des of 6-8-98).*

Bill would attain it, if they were enforced throughout India. I do not go quite so far as the Chief Secretary and think as he does that there should be a universal demand from the Hindu community before such legislation is justifiable. There are some cases in which it is right for legislation to interfere with the usages of the Hindus, even when there is no demand for it, as in the case of Satti. There are cases in which there should be no legislation, unless there is a pressing demand from the people, as in the case of the Kanya Sulkum Bill prepared by the late Maharaja of Vizianagram. There are other cases, like that of the Age of Consent Act (X of 1891) and the Hindu Gains of Learning Bill, where there is a manifest evil which can be redressed, and legislation may be advisable, if the feeling of educated Hindus is strongly in favour of it and uneducated Hindus are apathetic. The prevention of infant marriages seems to me to belong to this category.

There are, however, other matters, besides the abstract question whether legislation is justifiable or not, which have to be taken into consideration. It would be useless to prohibit marriages in this province which are allowed in all other provinces, and in the Native States, and it would be wrong to legislate in this direction in local Councils. The time, as the Hon'ble Sir H. Bliss points out, is a time of unrest, when legislation of this sort is inadvisable anywhere. I think we should recommend India not to allow the Bills to be introduced into our Council, but to consider whether legislation on this subject should be introduced into the Imperial Council, when a favourable time for doing so arrives.

(Intld.) J.G.
29-1-98.

I most thoroughly agree with the Hon'ble Sir H. Bliss. The course he proposes should be followed.

(Intld.) A.E.H.
4-3-98.

a general feeling may arise among the people themselves that such marriages should not be allowed. If so, I can see no reason why the Legislature should not intervene to carry out the popular desire. But this cannot be for a long time to come. For the present, my feeling is that any legislation on such a subject would be most inopportune. Partly because of the famine, partly because of the plague, partly because of the Bombay newspaper prosecutions, and it may be because of other causes of a more subtle and less apparent nature, there can be no doubt that the country is in a state of unrest. It would in my opinion be most unwise to add to that unrest, even if not to give cause to positive discontent, by the introduction of a measure which, however unreasonably, would without doubt cause acute mental distress to a large number of quiet, worthy people, who (as the Chief Secretary says) are in no way represented by the men of the educated classes whose opinions on the matter have been collected and are pressed upon our attention. I do not think that the introduction of these Bills into the Legislative Councils should be permitted. At the same time, I do not think that it is for us to say so and to refuse to forward the Bills for India's orders. The right to permit the introduction of such Bills vests in India, and therefore, I think, the right to refuse permission to introduce them. The papers should therefore go to India, accompanied, of course, by an expression of our views.

(Intld.) H.W.B.
3-4-98.

I have kept these papers back in order to inquire what effect the law for the prevention of infant marriages has had in Mysore. I find that, up to date, 51 cases of transgression of it have been reported, that the Government has sanctioned prosecution in 42, and that conviction ensued in 10, the maximum imprisonment being one month—simple, and the fines Rs. 51 in one case, Rs. 50 in one case, Rs. 25 in three cases, and small amounts down to Rs. 1 in the other cases. It is stated on good authority that the Act has had no really deterrent effect yet, and that it is regarded by the people with apathy and indifference.

It seems to me that the object of the proposed legislation is good, and that the provisions of Jambulinga Mudaliyar's

Yes, a strong expression of objection.

(Intld.) A.E.H.

fear that, except perhaps through the agency of the Collectors, the uneducated mass of the community might remain unheard. I question gravely, however, the desirability of making any such reference. If the Government feels that such Bills cannot be made law, no enquiry and no application to India are needed.

(Intld.) A.T.A.
15-3-98.

16. It may be well to append a remark as to the reason why so many of the educated Hindus are out of touch with the bulk of the community and advocate measures which the uneducated community have no sympathy with and perhaps regard with the strongest aversion. The result of Western education upon the majority of Hindus is to destroy their faith in the Hindu religion, and to regard its services, rites and festivals as superstitious with which they have no concern. The common meeting-place for villagers and townfolk is the local temple or temples where the numerous ceremonies and festivals frequently call the community together and give occasion for interchange of views and discussion of common affairs. As a very prominent member of the Hindu community told me, the temple is the nearest parallel among the Hindus to the English Club, and the women of course go there as do the men. From this social and religious life the Anglicized Hindus are more and more withdrawing themselves and by so doing are severing themselves from the bulk of the community whose thoughts and interests they no longer share. Mischievous exceptions are not wanting in the lower class of vakils who seek for their own purposes to obtain control over the temple finances. The picture above drawn may not be universally true—all social conditions must be described in general terms—but it is a Hindu view and no mere speculation of my own.

(Intld.) A.T.A.
16-3-98.

There can be no doubt that it would be an unmixed good if the people themselves would put a stop to the marriages of very young girls—whether the Legislature (that is, the Government) should interfere to do so, is another question. The Chief Secretary seems to think that it should never do so. I cannot go quite so far. I can quite imagine that, perhaps generations hence,

well-to-do have even horoscopes for the policeman on Rs. 7 per month to decipher and interpret, what an inexhaustible field for bribery and extortion would be thrown open!

Even if the girl were over 8 and the fact could be conclusively proved, the mere threat of the informer with fear of personal inquiry by the Police Inspector—the official named in Mr. Jambulinga Mudaliyar's Bill—and the anticipated legal expenses, would be ample to secure silence by a bribe. Imagine the *sava indignatio* in any English household at the intrusion of a policeman at a wedding to inquire the age of the bride! If any legal enactment could make the British Government odious to the people of the country, it would be an enactment such as this.

13. A curious side light is thrown on the Native press by these two Bills—the contents of which have of course become generally known.

Although the Brahmin community—the most educated and the most intelligent—would be affected to its core by legislation such as this, and although the proposal must be regarded with detestation by many even among the educated—I know of two prominent men myself—not a letter or an article has, so far as I have seen, appeared in the *Hindu* or elsewhere attacking the proposals. This is attributed partly to the fear among the educated of appearing “behind the time,” and as far as the *Hindu* is concerned to the fact that the editor has committed himself to widow re-marriage, etc., and is not likely to admit free discussion in the columns of his paper. How far this is true I cannot say.

14. As to the application which the two Hon'ble Members desire this Government to make to the Government of India for permission to introduce the Bills into the Legislative Council, it ought not, I submit, to be made. Such legislation would in my view be bad in principle and ought not to be countenanced by this Government even if the educated community supported it.

15. If it were thought desirable to obtain the views of the Hindu community on the proposals, it should be done by reference to all Collectors and to all Local Fund Boards and Municipalities for report, though even then I should

Yes.

(Intld.) A.E.H.

I have read this note with much interest and profit

(Intld.) A.E.H.
5-5-98.

One of the papers in the file shows that at the commencement of 1896, 14 cases had been reported since the Act came into force, prosecution had been ordered in 12 and fines of Rs. 20 and 25 had been inflicted.

(Intld.) J.G.

the marriage outside Mysore territory, the Bangalore cantonment and the town and temple of Tirupati in North Arcot being favourite places of resort for the purpose.

10. If a similar Act were brought into force in the Madras Presidency, similar results would follow. In the first place we should have the absurdity that an act which is perfectly lawful in the Bombay Presidency or in Bengal, and in any Native State but Mysore, is punishable with fine and imprisonment in the Presidency of Madras. Parties wishing to evade the law could do so by taking a return ticket to Raichore, or by a trip to Banganapalle. Pondicherry would be available for Madras and South Arcot, Karikal for Tanjore, Pudukkottai for Madura, Travancore and Cochin for Tinnevely and the West Coast, Yanam or Cuttack for the Northern Circars. Is the British Government to put itself in the position of driving its subjects from one province to another or into foreign territory, for the performance of marriages in accordance with religious and social practices which are probably at least as old as the Christian era, with the alternative of fine and imprisonment if they marry at home?

11. Mr. Ratnasabhapati Pillai proposes the additional absurdity of requiring the sanction of the Government for each prosecution, being clearly timorous as to the enforcement of the very law he advocates.

12. Finally there is a fatal objection to the proposed law in the social oppression and terrorism it would inevitably involve. The marriage festivities—the brightest of all domestic events—would be poisoned by fear of the informer and the policeman. Mr. Jambulinga Mudaliyar proposes that “every village headman or other Revenue officer and every Police officer shall forthwith communicate to the nearest Magistrate or to the officers in charge of the nearest police station whichever is nearer, any information which he may obtain respecting the performance of or the intention or the preparation to perform an infant marriage punishable under this Act.”

Considering that birth certificates are at present unknown in the general community, and that only the fairly

immature girls, that is so objectionable; it is the perpetual widowhood that becomes the lot of the girl-wife if the betrothed husband dies. It is this which is the evil, and it is this which Hindu reformers should set themselves to rectify.

5. It is possible that the law for securing the civil status of re-married widows (Act XV of 1856) is defective from omissions or bad drafting. If so, this is a legitimate field for fresh legislation.

6. A change of this far-reaching character affecting the social, domestic and religious feelings of the people must come from within, not from without. Some of the educated Hindus are in favour of it, more are not, and in the bulk of the community—the un-Anglicized—hardly a vote could be expected for such a reform. If men like Messrs. Chentsal Rao and Raghunadha Rao are for it, men like Mr. Bhashyam Aiyangar are against it. But the man form only half the community, the women who form the other half and who are equally interested are believed to be entirely opposed to it.

7. Reference has been made to the Mysore Act limiting the age for the marriage of girls—an Act passed by the influence of Mr. Chentsal Rao during the lifetime of the late Maharaja. I have it on very excellent authority that when the Maharaja of Mysore died in Calcutta, the ladies who came to condole with the Maharani, and who represented the intelligence of the women of highest social status in Mysore, bewailed the misfortune that had resulted from the passing of that Act and said that but for it the Maharaja would not have died. An absurd superstition no doubt in our eyes, but a conviction of religious force in the minds of the women. When the Council of Regency was formed, the Maharani, I am told, insisted on the exclusion of Mr. Chentsal Rao's name.

8. The true remedy is a very slow one, and may take time measured by generations to produce its effect: it is the education and increased intelligence of the women no less than of the men.

9. We have no particulars as to the working of the Mysore Act and as to whether any prosecutions have been instituted under it, but I am told that its provisions are evaded in many instances by the simple expedient of celebrating

number of women who, at one time or another, became widows under 9, and who are still alive, must be much larger.

(Intld.) H.W.B.

(Intld.) J.G.
(„) A.E.H.

See also Mr. T. Venkarami Rao's letter in linked file, flag Z.

Curious but interesting.

(Intld.) A.E.H.

I have seen some prosecutions reported. Fines only have been imposed, so far as I can recollect, and of amounts so small as to be calculated to irritate rather than to deter.

(Intld.) H.W.B.

These Bills are intended to diminish the number of females widowed early in life. According to the census of 1891, 171,679 Hindu women were married between ages 0 and 9. Assuming that the husbands (as per Census report) were 10 years older than their wives, I calculate that of these 171,679 girls married between 0 and 9, 6,500 or 7,000 would be widows before age 20.

(Intld.) J.G.

* By last census.
(Figures are wanting in the census for ages between 8 and 9.)

I would not make too much of this figure. It is merely that of the number of widows under 9 years of age on a given day. But it is evident that there must be a very much larger number of women who became widows under 9 years of age, but who are now of greater ages, up to the limit of human life.

(Intld.) H.W.B.

There were 148,452 women who had been married between 0 and 9, and of these 5,135 were widows. According to the census tables about 45,805 and more of these 148,452 became widows before death.

(Intld.) J.G.
16-4-98.

† In this caste about 2,780 were married below 9 and of these nearly 1,000 would be widowed before they died.

(Intld.) J.G.
16-4-98.

The number would be still further reduced by the number of girl-widows between the ages of 8 and 9, as to whom the census gives no information.

The total number of married women in the Presidency of all ages is 7,850,992, and of widows 3,448,851.

The number of child-widows under 9 years of age who cannot re-marry is thus 0.1 per cent. nearly of the total number of widows in the Presidency.

No. This calculation is not correct—see note on last page. If on a given date there are 5,135 (or 3,425) widows under 9, the total

Although the question put forward, namely, an application to the Government of India for permission to allow the Bill to be introduced, is for Legislative to decide and dispose of, yet as it has been referred to Judicial, I am loath to propose the retransfer of the file to Legislative without commenting on the principles of the two Bills which have been proposed; the one "The Madras Age of Marriage" Bill—for all boys and girls—by Hon'ble Ratnasabhapati Pillai; the other "The Infant Marriage Prevention" Bill—for Hindu girls under the age of 8—by Hon'ble Jambulinga Mudaliyar.

2. The first observation I would make is that the proposed legislation is of the *sic vos non vobis* order. The Hon'ble Members propose to legislate for others rather than themselves. If the Government would object to bring in a Bill of this kind on the ground that it affects customs, religious and domestic, which are not our own, then the same objection applies though in a less degree to the two Hon'ble Members. Out of 5,135 widows* under 9 years of age in the Madras Presidency on account of whom this legislation is proposed, only 106 belong to the Vellala caste † of which both Hon'ble gentlemen are members. Moreover, it is admitted that the Sudra caste to which these gentlemen belong have merely followed the example of the Brahmins and Kshatriyas in the marriage of children, and that there is no actual bar among them as there is among Brahmins to the marriage of a girl who has reached puberty. I have myself known cases of Vellala girls reaching maturity before marriage.

3. Of the 5,135 widows under 9 years of age in the Presidency, 1,653 belong to castes in which the re-marriage of widows is permitted, and thus the number supposed to require legislation is reduced to 3,425.

4. This brings me to the next point, namely, that the remedy for the evil complained of is applied at the wrong end. If marriages are to be arranged for the persons concerned, instead of by them as under the English system, it is difficult to see what vital objection there can be to arranging a marriage between two persons however young they may be, even if they be mere infants. It is not the betrothal or unconsummated marriage between children, or between men and

in which, under similar circumstances, Legislative referred a Bill by the Maharaja of Vizianagram for the opinion of the other Hindu Members of Council before addressing India to sanction its introduction. In the case of the Hindu Gains of Learning Bill also, the preliminary steps appear to have been taken by Legislative.

4. It is, moreover, to be observed that it is undesirable to impose upon other Secretariat Departments the duty of interpreting section 43 of the Indian Councils Act, an enactment with which Legislative is accustomed to deal, and which therefore should be better understood in that department. The question whether the provisions of a Bill are desirable or not is one which is eventually to be settled in the Legislative Council. The whole subject is dealt with in the Indian Councils Act and Rules, and it is therefore submitted that it can be more appropriately disposed in the Legislative Department than elsewhere.

5. In case, however, it is decided that Judicial should take the matter up, attention is invited to the notes and orders attached to G.O., No. 55, Legislative, dated 10th August 1898. In order to ascertain whether public opinion would be in favour of any such measures as are suggested, it is submitted that the Bills might be sent demi-officially to all the native additional members of the Legislative Council. This was the course adopted in the case of the Maharaja of Vizianagram's Bill referred to above. If, however, wider publicity is required, the letters and Bills may be printed, with an order to the effect that, "before addressing the Government of India on the subject, Government desires to ascertain the feeling of the public in the matter." The Hon'ble C. Jambulinga Mudaliyar's Bill which relates only to Hindus might then be communicated for remarks to the Hindu Members of Council, the Madras Mahajana Sabha, Mr. Justice Subramaniya Aiyar, Sankaran Nayar, Chentsal Rao and Kalyanasundram Aiyar, and the Hon'ble P. Ratnasabhapati Pillai's Bill which applies to "all boys and girls in the Presidency" of Fort St. George, might in addition be communicated to the Muhammadan Member of Council, to the Anjuman-i-Islam and the Central Muhammadan Association.

Orders are requested.

(Intld.) A.R.K.
23-2-98.

The position taken in the note is, I think, correct. The question is for Legislative to decide. See, however, below.

(Intld.) A.T.A.

The reference to India must, no doubt, issue in Legislative. But I think it is a matter on which Judicial should comment. Legislative can only take a technical view of this, as of most other subjects, while Judicial is able to take a broader view. In so important a matter, we must somehow get the opinion of the Chief Secretary.

(Intld.) H.W.B.

Yes, the question whether a Bill like this should be introduced involves administrative consideration.

(Intld.) J.G.

See below. I think that no such references should be made, and that the proposal should be negatived on its own demerits.

(Intld.) A.T.A.

JUDICIAL DEPARTMENT.

C. Nos. 460, 476, 507, 677, 697, 774
and 1081. See also C. No. 1124
and Leg. C. No. 20.

Subject—Bill *re* Infant Marriage
Prevention.

FOR ORDERS.

The Hon'ble C. Jambulinga Mudaliyar and the Hon'ble P. Ratnasabhapat Pillai submit to Government in the Judicial Department draft Bills on the subject of infant marriage prevention, and request that Government will be pleased to address the Government of India to accord sanction to their proposed measures under the provisions of section 43 of the Indian Councils Act.

2. Judicial Department is addressed under instructions * given to the Hon'ble Members by the Legislative Department. It is, however, respectfully submitted that the matter is not one with which Judicial can properly deal. The Hon'ble P. Ratnasabhapat Pillai applied in the first instance for leave to introduce his Bill. It was found in the Legislative Department that a preliminary obstacle to the introduction of the Bill existed in the provisions of section 43 of the Indian Councils Act. It is submitted that it is for Legislative either to inform the Hon'ble Member that his Bill cannot be introduced or to take steps under section 43 of the Act to obtain the sanction of the Government of India to its introduction.

3. The established rule, as far as Government measures are concerned, is for the Secretariat Department interested to initiate enquiries: the papers only go to "Legislative" when the principles upon which legislation is to be based have been settled. The present Bill has not been settled. It is not apparent how the Secretariat Department are concerned. Judicial is not interested in the passing of these draft Bills. No necessity for such legislation arises, steps will be taken in this department to initiate Government legislation. Attention is invited to G.O. No. 13, Legislative, dated 1st February 1898.

* Vide notes attached to G.O., No. 55, Legislative, dated 10th August 1898.