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A

# COLLECTION

CONTAINING

*THE PROCEEDINGS WHICH LED TO THE PASSING OF*  
ACT XV. OF 1856,

(An Act to remove all legal obstacles to the  
Marriage of Hindu Widows.)

With an Introduction

BY

M. G. RANADE, M. A., L L. B.,

AND AN APPENDIX.

COMPILED BY

PANDIT NARAYAN KESHAV VAIDYA,

AUTHOR OF "THE LAMENTATIONS OF HINDU WIDOWS" &c.

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Bombay.

PRINTED AT THE MAZAGAON PRINTING PRESS.

1885.

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To

( B. M. MALABARI Esquire.,

BOMBAY.

, Sir,

*It is to your disinterested labours that we owe the approaching solution of the problem of Social Reform in India, which has engaged some of the greatest intellects of an intellectual nation. With a rare combination of faith, insight and benevolence, you undertook this crusade ; and by God's grace, and under the guidance of enlightened Hindu reformers, you have carried it to an important point. Courage, brave heart ! Struggle on a little while longer, clearing the jungle of Ignorance and crossing the waters of the Dead Sea of Apathy. The promised land is now within sight. Be not dismayed by senseless opposition ; you have the sympathy of all that is wisest and best, from HER MOST GRACIOUS MAJESTY THE EMPRESS downwards. To those who call you an alien and an enemy—You, whose every work they once described as a national benefit, pray show this book which I dedicate to you as a tribute of fervent admiration. You have thousands of admirers in this country, who will doubtless do you more fitting homage. And by the daughters of India, especially, your name will be ever cherished as of a guardian saint.*

*Sir, do not desert the cause now which you have gallantly espoused so long. The Hindus are a grateful race. They will soon forget your mistakes, if any ; but your merits they will enshrine in their memory.*

I remain,

Sir,

Your humble Aryan brother,

NARAYAN KESHAV VAIDYA

Bombay, 15th October 1885.

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# INTRODUCTION.

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The past twelve months have been notably distinguished for the warmth and freshness of light thrown upon many of our most cherished social institutions by free discussion. As is usual in the case of all discussions on social evils, much declamation and invective have been employed on both sides, to supply the place of calm and critical investigation, and the merits of the questions really at issue have been obscured by clouds of words and figures, and empty boasts of self-satisfied complacency. These questions really reduce themselves to two points of inquiry, first, whether or not the institutions assailed produce on the whole more of evil than good, and secondly, whether the evil that is in them admits of a speedier and more effective remedy than is implied in the advice of those who would let things alone, and would drift along with the stream of events, but neither exert themselves, nor permit others to make an effort, to regulate the current and make it run steadier and stronger in the desired direction. On the first point, taking the general sense of those who have spoken out on both sides, there appears to be a general agreement. The dispute here is confined to the alleged extent of the evils, which are freely admitted to be so: On the second point, the difference of views is radical, and there does not appear to be any great likelihood of an agree-

ment ever being arrived at which will satisfy both parties. When one sees how men, who had grown grey in the denunciation of these evils, turned round immediately a suggestion was made for practical action, and joined the orthodox majority in their praise of the existing arrangements, the Political Rishi's warning about the defects of Hindu character seems to be more than justified. There appears to be no ground for hope, under such circumstances, of seeing any genuine reform movement springing up from within the heart of the nation, unless that heart is regenerated, not by cold calculations of utility, but by the cleansing fire of a religious revival. However, there is really nothing strange in all this outcry. There will always be, and there always have been, as Lord Ripon in another connection observed, a clean and an unclean party in small municipal, as well as in large social, arrangements. If the population of our cities were entirely left to themselves, and each man's or woman's vote was as good as another's, the good sense of the men of light and leading would no doubt prevail in the end, but, in the earlier stage of discussion and argument, we should doubtless hear many an appeal to the glory of our ancestors, their long life and vigour maintained, it might be proudly observed, in spite of, or in the absence of, municipal conservancy. Even in European countries, there are anti-vaccination doctors, Shakers, who take no medicine, but leave the body to cure itself, physical science pedants who still question the truth of the motion of the earth round its sun centre, and its motion round its own axis. A love of paradox is a weakness which clings to many great minds, grows with their other excellences like a parasitic excrescence. Leaving these un-



natural developments aside, it is clear that there is a chance of producing a reasonable conviction among not the vast majority of those who do not think, but among the considerable minority who in every country lead opinion by informing it and setting it in proper form before the community in general.

Viewed in this light, there is abundant reason for hope that an historical study of these institutions will dispel many a false conception of the antiquity and sanctity of the existing arrangements.

The early celebration of child marriages, the forcible disfigurement of widows and absolute prohibition of remarriage in the higher castes, the occasional and local practices of polyandry and polygamy, are all admittedly corruptions of recent growth unknown to the best days of our country's history. The Hon. Rao Saheb V. N. Mandlik, who speaks with an authority which few will dispute, has freely admitted that the Hindu girl's marriageable age is 12, and that the corresponding age for boys has been reduced from time to time as the period of Brahmacharya studies was more and more curtailed. Taking the most narrow acceptation of the Grihya Sutra rules, this period could not well be legally curtailed below 12 years, thus making the marriageable age for boys 20 years. In regard to the question of widow marriage, it is admitted by the orthodox leaders of the opposition that the prohibition forms part of the Kali Nisheda, or prohibitions intended for the Kali Yug. The writings of Manu and Yajnavalkya show, what the Itihasas and Purans confirm, that monogamy is the natural con-

dition of Aryan life, and that both polygamy and polyandry are disreputable excrescences. Nobody can, under these circumstances, contend that, on the strictest interpretation of the texts, the local usages which obtain at present agree with our best traditions of the past. Those who advocate a return to the old order of things are thus in good company, and are not foreign imitators.

We have to consider, next, how it came to pass that the Aryan population in course of time departed from the vigorous and healthy usages of their ancestors. Such an enquiry alone will enable us, who now aspire after a higher life, to trace our way back without risk of failure or disappointment. The Hindu community has always been self-contained, if not original, in its grasp of social matters, and no analogies drawn from Christian or Mahomedan nations can have any convincing force, unless they are supported by reasons and associations of our own venerable past.

The rise and fall of female rights and status in Hindu Aryan Society has a history of its own, at once interesting and suggestive in its analogies to the corresponding developments in the institutions of another kindred stock, the Roman Aryans, who have so largely influenced European ideas. Both began by a complete subordination of the women in the family to the men, and of the men themselves to the head of the family. In early Vedic times, the woman was, like the deformed or the sickly member of a family, devoid of rights, and, being incapable of self-protection, was disentitled to share the inheritance. The succession in a united family after the death of its chief

went to the surviving male members, his sons, and brothers, and in their default to the more distant agnate males.

The earlier Sutrakars, Baudhayana and Apasthamba, clearly re-affirmed this exclusion from inheritance and asserted the perpetual subjection of every woman to her father, her husband, and her son. Gradually, however, as the Aryans settled in the land, and the necessities of war gave place to the gentler virtues and victories of peace, the earlier Smritis found admission by express texts for the wife, the mother, the grand-mother, the daughter, and the sister, and finally to the female relations of the male Gotraja Sapinda. It is hardly necessary to follow this growth step by step. Corresponding with this recognition of the claims of family affection, a chivalrous regard for women, and for their personal comfort and liberty, was asserted in other ways. The women took equal part with the husbands in solemn religious rites, and as queens took their places in great religious sacrifices and the deliberations of State on occasions of display and power. They were permitted at their choice to remain single and unmarried, and neither the father nor the mother would interfere by exercising their power of choosing husbands for them. They were poets, philosophers, and Rishis, and composed hymns and wrote works, and studied and argued with men on equal terms. This went on for many centuries, and the proofs of it are too numerous in all our Purans and Itihasas to admit of any hesitation on the part of even the most hostile critic. Marriage was optional with man as well as with woman.

The text of the Marriage ritual, the rule for selecting brides or rather bridegrooms, the practice of Swayamwar in mature age, the liberty to be married again on the death, or absence, or incurable impotency, of the first husband, both before and after consummation, the strictness of the monogamous tie, all these privileges were conceded to women in the natural growth of things.

Thus far there was no break of continuity, and all was smooth sailing. The analogies between the Roman and Hindu developments were complete so far. In course of time, the Aryans like the Romans, having overcome their enemies, fell to fighting among themselves, and long and murderous wars between Brahmins and Kshatriyas devastated the land. Under the pressure of these complicated difficulties, the strong love of the active virtues of fighting and hunting, chivalrous regard for women, and the enjoyment of the pleasures of life generally, gave way to a philosophy which regarded life and being itself as a pain and a calamity, the bustle of the arts of peace and war as unrelieved weeping and lamentation. And naturally weak woman, from being the soul of chastity and virtue, came to be described as a snare and a burden. The gods who had cheered the conquering and militant Aryans with their countenance, retired with the Rishis to the Himalayas and beyond. They could no longer be seen, and gave way to a fatalistic belief that man was the slave of his own miserable *kārma*, and must bear it patiently till he learned how best to throw off this mortal coil. The great excess of bad passions which

had deluged the land with fratricidal blood demoralized society, and lowered the status of women in the family, the state, and in the social arrangements generally. The Aryan ideals lost their charm, and a lower type of character and morality asserted its predominance as the down-trodden races, which had been driven to the hills, issued from their haunts, and fell upon the demoralized and disunited Aryan kingdoms on all sides. At the same time, a new race of invaders from Central Asia, partly Scythian and partly Mongolian in stock, entered India by the north-west, drove before them the old Aryans, and established their power and colonies in the Panjab, in Sind, in Rajputana, and Central India, Guzerat, and even parts of Maharastra. This process of the upheaval of non-Aryan races, and the invasion and settlement of barbarian Scythian conquerors, was in active development for many centuries, and these ethnic and political forces have profoundly modified the institutions and usages of modern India. They brought to the surface races of men with a lower civilization, more patriarchal, and therefore less chivalrous, ideals of life. Polyandry has always been a normal institution of the non-Aryan or Scythian races. It derived new dignity from the rise to power of these backward races. The woman's lot has always been one of dependence and misery in barbarous countries. It could not be otherwise here. Women in these ruder races were bartered in marriage as chattels moveable or slaves. They were burned with their deceased lords, with his bows and arrows, his horse and weapons, to provide for his comfort in another world. . . . When these

races rose to power, the better minds were driven to seek shelter in asceticism and abandonment of the world which had for them no charms, and only misery, life-long and unrelieved, and instead of being the deity of peace and goodwill in the family, women became the symbol of corruption and vice. Optional celibacy and Swayamvar were out of the question. The old state of pupilage and dependence was re-affirmed. Late marriages, and the liberty of second marriage to widows, were denounced, though here and there they were allowed to associate with their husband's surviving brother for the purpose of procreating children for him. The well-marked four-fold divisions of life lost their meaning and their sanctity, and baby and child espousals could not but come into fashion, and bring in their train polygamy and concubinage. Things thus settled themselves on this lower level of barbarous usages.

Gradually the better and the Aryan portion of the community recovered from the surprise and discomfiture, and the dark clouds of the Middle Ages of Indian History, the dreaded Kali Yug of the Purans, began to clear up. The Aryan Religion, social polity, and marriage institutions were reformed on a footing of compromise, and those who guided the course of events tried their best to re-assert the dominion of the Vedas and of the Brahmins, who represented in their persons the highest civilization of the olden days. This form of restoration and renaissance was again interrupted by the Mahomedan invasions, which repeated for some centuries all the horrors of the previous dark period. Before the license of Mahomedan outrage, women shrank

from public gaze, and it became necessary for their safety to secrete them within the dark recesses' of the house. Polygamy and illicit concubinage became once more fashionable.

It will be clear from this review that internal dissensions, the upheaval of non-Aryan races, and the predominance acquired by barbarous Scythian and Mahomedan conquerors, degraded the condition of the female sex deprived them of their rights of inheritance and freedom, and made woman dependent on man's caprice, instead of being his equal and honored helpmate. Political and ethnic agencies of great power have wrought the evil, and we cannot afford to lose sight of this fact in our attempts to elevate the status of the female sex. Fortunately, the causes which brought on this degradation have been counteracted by Providential guidance, and we have now, with a living example before us of how pure Aryan customs, unaffected by barbarous laws and patriarchal notions, resemble our own ancient usages, to take up the thread where we dropped it under foreign and barbarous pressure, and restore the old healthy practices, rendered so dear by their association with our best days, and justified by that higher reason which is the sanction of God in man's bosom.

The next question is, as stated above, a more difficult one to deal with. How is this gentle revolution to be effected without breaking with the past, is a problem which admits of difference of views. There are two schools of thinkers among those who have discussed this subject. One set would utilize all the active and passive agencies which tend

to encourage and vitalize reform ; the other set would leave things to take their own course, firm in the confidence that the passive agencies at work would secure all our ends just as we desire, slowly but surely. Those who feel the full force of the ethnical and political causes mentioned above, and also feel how necessary it is at certain stages of man's progress to secure the assertion of right ideas by the highest sanctions, advocate to some extent the help of State regulation, as representing the highest and most disinterested wisdom of the times, working to give effect to the other tendencies, concentrating and popularizing them. Those who are not sufficiently alive to these considerations would trust to education and the gradual development of better ideas by their own internal force, to achieve all that we desire. It is needless to state that the publication to which these remarks are prefaced is intended to strengthen the hands of the first set of thinkers, and to show, by the example of what occurred in the past, that timely State regulation is not attended with the mischiefs which people attribute to it, and that it co-ordinates and vivifies the healthy action of the other agencies. It becomes, in this connection, necessary to consider briefly the several objections urged by the advocates of the let-alone school in their order of relative importance.

The first objection urged on this head is that these are social questions, which it is not the duty of the State to regulate. We answer that this argument is not open to those who welcome, as the vast majority of this class of opponents freely acknowledge, State regulation of *sati* and widow marriage, of infanticide, the self-murder of



jogees on the Ganges, and hook-swinging before idol-shrines, or to those who propose compulsory education, and compulsory vaccination, and sanitary precautions generally. Individual liberty of action is no doubt a great force, but this liberty has its limitations imposed by the fact that no man's liberty should encroach upon the liberty of those who surround him. Whenever there is a large amount of unredressed evil suffered by people who cannot adopt their own remedy, the State has a function to regulate and minimize the evil, if by so regulating it, the evil can be minimized better than by individual effort and without leading to other worse abuses. The State in its collective capacity represents the power, the wisdom, the mercy and charity, of its best citizens. What a single man, or a combination of men, can best do on their own account, that the State may not do, but it cannot shirk its duty if it sees its way to remedy evils, which no private combination of men can check adequately or which it can deal with more speedily and effectively than any private combination of men can do. In these latter cases, the State's regulating action has its sphere of duty marked out clearly. On this, and on this principle alone, can State action be justified in many important departments of its activity, such as the enforcement of education, sanitation, of State undertakings like the Postal service, or subsidizing private effort in Railway extension and commercial development. The regulation of marriageable age has in all countries, like the regulation of minority, or the fit age for contracts, been a part of its national jurisprudence, and it cannot be said with justice that this question lies out of its sphere. The same observation holds true of

the condition of the widow rendered miserable in early life, and thrown helpless on the world. More legitimate than minors, the widows are the wards of the nation's humanity, and to the extent that the evil they suffer is remediable by man, it cannot be said that this remedy may not be considered by the State as fully within its proper function.

The next argument urged on the other side is that the evil is not so great as some people think, and that it really needs no State action. There can be no doubt that, to some extent, Mr. Malabari has laid himself open to this side attack. The evils of child-marriage, and enforced widowhood, and unrestricted polygamy, are not quantitatively, and calculating them by statistical returns, so great as Mr. Malabari described them to be. But this does not go to show that, after making due allowance for all exaggerations, the residue of unredressed wrong which calls for remedy is not sufficiently great to justify action. Much the same thing was said when it was proposed to prohibit Sati or Infanticide. Wherever there is undeserved misery endured in a large number of cases, there is a ground for State interference, always supposing that the interference will lead to the redress of the wrong, better than any individual effort can accomplish.

A third way of stating the same objection is that the parties who suffer do not complain of it, and strangers have therefore no business to intervene. This is a very old line of defence. It was urged as an argument against the abolition of slavery, as well as against the laws which rendered Sati and Infanticide crimes, and validated widow

marriages. Perhaps the worst effect of injustice is that it depresses the down-trodden victims to such an extent that they lick the hand of the oppressor. The slaves fought on the side of the Southern planters against their Northern liberators. No wonder then, if the helpless women and widows side with the orthodox majority. If the State contemplated forcible action in spite of the wishes of the victims, the argument might be urged with some effect. But nobody in his senses can, or does, contemplate any such method of procedure. Widows and children are not the proper persons who can seek their own relief under the wrong that is done to them, and to society, and this argument therefore falls to the ground.

Fourthly, it is urged that admitting the fact that such regulation falls within the province of State action, and that these evils, after making all allowances for exaggeration, and the apathy of the victims, are still sufficient to justify State action, if such action can remedy the wrong without leading to other and greater abuses, and that it is not proper to wait till the victims rebel—it is urged that a foreign Government cannot be trusted with this power. This jealousy of foreign interference in social matters is not altogether a bad sign, and if the interference was of foreign initiation, the force of this argument would be irresistible. (In this case, however, the foreign rulers have no interest to move of their own accord.) If they consulted their selfish interests only, they would rather let us remain as we are, disorganized and demoralized, stunted and deformed, with the curse of folly and wickedness paralyzing all the healthy activities and vital energies of our social body. The initiation is to be our own, and

based chiefly upon the example of our venerated past, and dictated by the sense of the most representative and enlightened men in the community, and all that is sought at the hands of the foreigners is to give to this responsible sense, as embodied in the practices and usages of the respectable classes, the force and the sanction of law. These considerations weighed with our leaders in the past when they welcomed this co-operation in the abolition of Sati and Infanticide, and in the recognition of the validity of widow marriages. If we are to abjure such help under all circumstances, we must perforce fall back behind the Parsis, Mahomedans, and Christians, who have freely availed themselves of the help in recasting their social arrangements. Further, as it is likely that foreign rule will last over us for an indefinite length of time, we reduce ourselves, by accepting this policy, to the extreme absurdity of shutting out a very useful help for many centuries to come. In such matters, the distinction of foreign and domestic rulers is a distinction without difference. It has a meaning and significance when foreign interests override native interests, but when the foreigners have no interest to serve, and the initiative is to be all our own, the recognition of State help is not open to the stock objection urged by those who think that we forfeit our independence by seeking such regulation on lines approved by us.

Fifthly — It is further urged in deprecation of State action that in this matter we must not lose sight of the fact that institutions, like constitutions, must grow, and cannot be made to conform with foreign ideals to order. There is a great force in this observation, and it would

be a fatal-objection if the argument for change were based on the ground that we must copy the foreign exemplar. (The remarks which have been made above are, however, a sufficient answer to this allegation. The change is sought not as an innovation, but as a return and restoration to the days of our past history.) Those who advocate it justify it on the authority of texts revered, and admitted to be binding to this day. The intermediate corruption and degradation was not of the nation's seeking. It was forced upon it by the predominance of barbarous influences, and by the intolerance of ruthless conquerors. That force having ceased to be operative, we must now return to the old order of things, if we are to grow to our old proportions. The history of the suppression of Infanticide and of Sati shows that these institutions, which had grown as excrescences upon the healthy system of ancient Hindu Society, were checked, and could be checked, only by the strong arm of Law, and once they were denounced as crimes, they disappeared from the face of the country. Before Government made up its mind to deal finally with these evils, the usual arguments that Institutions grow, and cannot be made to order, were urged, and the duty of religious neutrality was held up *in terrorem* to frighten the timid and arouse the passions of the ignorant and the prejudiced. (The diseased corruptions of the body cannot, and should not, be dealt with in the same way as its normal and healthy developments. The sharp surgical operation, and not the homœopathic infinitesimally small pill, is the proper remedy for the first class of disorders, and the analogy holds good in the diseases of the body politic, as well as the material body

as also in dealing with the parasitical growths of social degeneration.

Sixthly—The apprehensions against State legislation expressed in some quarters might have been most reasonable if, as a fact, Hindu Society was really not governed by any law, and it was proposed for the first time to regulate these matters by subjecting them to the regulating action of the State. The fact, however, is that a law, a written law, and a very stringent one too, does regulate these matters, and it is enforced much in the same way as other laws. The courts are bound to give effect to that law, and decree personal rights and disabilities in strict accordance with it. What is now proposed is to substitute the more ancient and righteous law for a later corruption, cancel a law which is condemned by a law more reasonable, at least more amenable to reason, utilize the force of State sanction as a final support. No private understanding can prevail against the coercive power of this corrupt law. The new law proposed is itself not a foreign importation, but is only a revival of the ancient law of the country as laid down in the texts, and all that the Government is called on to do is to revert from the times of corruption to the times when Hindu Society was more healthy and vigorous.

There is another incidental and an important advantage likely to accrue in consequence of the change proposed. All progress in social liberation tends to be a change from the law of status to the law of contract, from the restraints of family and caste customs to the self-imposed restraints of the free will of the individual. Nay more, the present confusion of judicial authorities on

ancient Hindu Law and custom furnishes the strongest argument for a definite pronouncement on the subject by the legislature. There is not a custom however absurd which cannot be defended by some strong text of law. The usual practice of reconciling texts intended for different ages and countries, and the loss of the spirit of true criticism, have benumbed the power of judgment. The liberation from superstitious thralldom, which will result from the changes proposed, is not likely to be the least of its benefits. It will be necessary to be very circumspect in graduating the change desired to meet exactly the extent of the evil crying for redress. The past century or half a century has effected a change in national sentiment, which, if not recognized to the extent it has gone, will only lead to a catastrophe and revulsion of feeling that will be simply irresistible, and may involve the ruin of many interests dear to the nation's heart.

There is only one more objection - which we think deserves a passing notice. It is said that all previous legislation was directed against positive crimes, or was only of a permissive nature, while the evils now sought to be remedied are not crimes, and the remedies proposed are not of a permissive character. On the first point, we must urge that the practices now complained of are in some respects far more criminal than those which State action has checked. Sati was committed under temporary insanity caused by grief, while infanticide was in too many cases dictated by a similar mad impulse. They were both offences not committed in cold blood, and their effects spent themselves in a single act of violence, which inflicted the greatest shock on the

perpetrator himself or herself. In most cases, enforced widowhood and disfigurement, the destruction of home sanctity by polygamous connections, the stupidity of baby marriages, are not impulsive acts, they are done in cold blood, and they inflict lifelong and undeserved misery on helpless victims, while the offenders suffer but little. So far as their moral heinousness is concerned, they are inflictions of injustice without any redeeming features, and the criminal responsibility of the nation is beyond all reprove.

As regards the question of permissive *versus* compulsory legislation, we have no patience with those who can find consolation in empty words. The remedies proposed are in their nature permissive, and need give offence to nobody. If the law lays down strictly that no polygamous connections shall be entered into except for reasons specially permitted by the ancient law of Manu, we fail to see how such legislation is more compulsory than permissive. When the law lays down that no widow may disfigure herself except of deliberate choice, and at a fit time of life, say after she is 25 years old, where indeed is the compulsion? When the law lays down that marriages shall not be celebrated below a certain age, 12 for girls and 18 for boys, under penalty that earlier celebrations will not meet with the recognition of the Civil Courts in cases of disputes, where again is the compulsion.

We have thus noticed and answered all the usual objections urged by those who honestly support the continuance of the existing order of things. (The question of principle is one which must first be argued out in all its bearings. Once the principle is recognized, the details of



legislation may safely be left to the common sense of the community. (It is with this view that the compiler of this publication has addressed himself to the task of placing before the public, in an accessible form, the literature of the subject in the shape of the debates that took place when the Widow Marriage Bill was just introduced in the Legislative Council 30 years ago. The arguments then urged and refuted have a curious family likeness to those we hear at present, and just as the apprehensions then entertained were disappointed, so surely we trust to see that all our ignorant prophecies will be falsified.) The directions in which the marriage law needs reform have been already briefly indicated. Diwan Bahadur Raghunath Rao has already sketched out a draft Bill in which some of the reforms urgently required are set forth in full detail. The late Maharaja of Burdwan submitted 30 years ago a scheme for abolishing polygamy, which will be found in the Appendix to these papers. The views of those who have given thought to the subject on this side of India may be briefly thus summarized.

(1) We would fix 12 and 18 as the minimum ages of marriage for girls and boys. These periods are in full keeping with the most approved practice, and the more respectable orthodox sentiment of the present day. Even Rao Saheb V. N. Mandlik has stated 12 years for females as a permissible limit, and for boys we do not think he will regard 18 years as an unreasonable limit.

(2) Marriages contracted before this age should be discouraged not by pains and penalties of the criminal law, but by the attendant risk of making them liable to

be ignored in case of disputes in the Civil and Criminal Courts.

(3) Marriage, unless consummated by actual cohabitation, should not be recognized as a perfect union before the limits laid down above are reached. Before such consummation, the girl should not be recognized as having become one with the husband in Gotra, Pinda, and Sutaka. This is the ancient law, and our reversion to it will do away with the superstition which paralyses the action of parents in dealing with the misery of child widows.

(4) We would on no account permit disfigurement except after 25 years, when the female is really alive to the circumstances of her position, and can choose deliberately the celibate course of life.

(5) Under no circumstances should one wife be superseded by a second connection, except under the safeguards, recognized by Manu and other writers.

(6) The widow's forfeiture of her husband's estate as a consequence of her second marriage should be done away with, and her life interest in her husband's inheritance should remain intact, whatever her choice of life might be.

These are the several reforms we advocate. We are fully aware that the details of legislation will not be easily settled, without suggesting many difficulties and doubts which will have to be provided against. The time, however, for suggesting these details has yet to come. We think the discussion has now reached a stage when all sides may well agree in asking for a

Commission of Inquiry. Such a Commission, composed of representative Natives and Europeans, on the model of the Education Commission, will pave the way for practical suggestions. Its inquiries will give point to the discussion, and tend to preserve the interest that has been aroused in all quarters.

M. G. RANADE.

*Poona, 15th September 1885.*

6. No female is competent to marry before she is 10 years old.

Rig Veda, 10-85, 21, 22, 40, 41.

Manu, 3-5, quoted by Vydyanath Dikshita.

Samvarta, p. 589 & 590, Calcutta Edn.

Atri, p. 29,——Ditto.——

Yajnavalkya, 1, 52, Commentary by Vijnaneswara, Mitakshara, Bom., p. 9.

Parasara, Chap. 7, p. 24, Calcutta Edn.

Vashista, Chap. 8 and 17, p. 471 and 489, Cal. Edn.

7. She can give herself in marriage, if her guardians neglect to give her away before the expiry of three years after she attained puberty.

Manu, 9-90, 91.

Goutama, p. 423, Cal. Edn.

Vishnu, Chap. 24.——Do.

Yajnavalkya, 1-64.—Do.

Mahabharata, Anoo, Chap. 44, &c.

Matsya Puran, Chap. 227-27, 28.

8. Marriage is defined to be a solemn contract entered into by the Bride and Bridegroom to become one and continue one, after her gift, either by her guardians or by herself, the contract being completed by sacrifices and by consummation on or after the fourth night from the commencement of the ceremonies, when she becomes one with her husband in Pinda, Gotra and Sutaka.

Rig Veda, 10-85.

Yajur Veda Mantra Prasna.

Sama——Ditto.——

Aswalayana, 1-8-10, 11, 12.

Apastamba Grihyasutra, & Dharma Sutra 2-6-15-10.

Gobhila 2-3-13, 15; 2-5-1, 7. Cal., p. 321.

Manu, quoted by Bhavadev Bhat.

Kattyayana, 5-5. Cal., p. 608.

Yajnavalkya, 1-81.

Likhita, Cal., p. 377.

- Yama, Bom., p. 29.  
 Mahabharat, Gada, Chap 53.  
 Harivamsha, V. 5 104-108.  
 Vishnu Puran, 4-27.  
 Sanskara Coustubha, pages 16-17.  
 Viramitrodaya, quoted by Colebrooke in p. 306  
 Mitakshara.  
 Fatva given by Pandit Venkatesh, Shastri of the late  
 Sadar Divani Adalat, in 1805, vide page 305  
 Vol. II of Sir T. Strange's Hindu Law, Edition  
 of 1830, London.

9. A woman may be married, if she likes, more than once in the case of the death of her betrothed husband, with Vedic marital rites, *provided* she is a virgin, but without them, if she be a non-virgin.

- Rig Veda, 10-18-8 and 9.  
 Taitiriya Aranyaka 6-1, pages 651 to 653.  
 Atharva Veda, 14.  
 Manu, 8-226, 9-76, 16.  
 Manu quoted by Madhava and Vydyanath Dikshita.  
 Yajnavalkya quoted by Krishnacharry.  
 Parasara, Chap. 2, page 31.  
 Ditto—of the place of Tanjore.  
 Vishnu, 15-92, 93.  
 Vashista, Chap. 17.  
 Narada, Chap. 12, 96 to 100.  
 Shatatapa of the Tanjore palace.  
 Bodhayana quoted by Vydyanath Dikshita  
 Anandatirtha charriar, Mahabharat Tatparyanirnaya,  
 Chap. 20, 155.  
 Mahabharat, Adi. Chap. 120, 122, 123.  
 Ditto.—Bhishma, Chap. 90.  
 Sri Bhagavat, 9-9-29, 30, 34.  
 Agni Puran, Chap. 154.

10. A marriage contract becomes valid the moment the gift of a girl is made either by herself or by her guardians with her consent, and it is accepted by the bridegroom; and it ceases to be in force, the moment one of the couple is dead or becomes an apostate.

The definition of a Punarbhu by Kassapa and  
 Boudhayana, quoted by Madhava Tel. 106, & 107.  
 The Mahabharat Vana, Chap. 293, 294, & 295.  
 The Mahabharat, Ood. Chap. 173, 174, 175, 176, 177.  
 Savitri Oopakhyana.  
 Amba Oopakhyana.  
 Sanaskara Coustubha, page 172.  
 Dharma Sindhu, part I. p. I. II., page 59.

11. The children of the re-married women are  
 legitimate.

Manu, Chap. IV. 22.  
 Vishnu, Chap. XV. 7.  
 Yajnavalkya, 2-131 to 135.  
 Parasara, Chap. VI, p. 182; Chap IV. 22, Madhava's  
 commentary thereon.  
 Vasishtha, Chap. XV. 11-12-18, 25.  
 Bodhayana, II, 23, 27-32.  
 Narada, Chap. XII. 45 to 47.

12. A virgin widow, marrying a second time and  
 cohabiting with the second husband, becomes of *his*  
 Gotra, Pinda and Sutaka, *after* sexual intercourse with  
 him.

Rishyasringa, quoted by Tollapper in Sudhivilochan.

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*The first Petition which necessitated Legislation on the  
subject of removing the disabilities of Hindu Widows.*

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To

THE HONORABLE

THE LEGISLATIVE COUNCIL OF INDIA.

The Humble Petition of the undersigned Hindu  
Inhabitants of the Province of Bengal.

RESPECTFULLY SHEWETH,

That by long established custom the marriage of Widows among Hindus is prohibited.

That in the opinion and firm belief of your Petitioners, this custom, cruel and unnatural in itself, is highly prejudicial to the interests of morality, and is otherwise fraught with the most mischievous consequences to society.

That the evil of this custom is greatly aggravated by the practice among Hindus of marrying their sons and daughters at a very early age, and in many cases in their very infancy—so that female children not unfrequently become widows before they can speak or walk.

That in the opinion and firm belief of your Petitioners, this custom is not in accordance with the Shastras, or with a true interpretation of Hindu Law.

That your Petitioners and many other Hindus have no objections of conscience to the marriage of widows, and are prepared to disregard all objections to such marriages, founded on social habit or on any scruple resulting from an erroneous interpretation of religion.

That your Petitioners are advised that by the Hindu law, as at present administered and interpreted in the Courts

of Her Majesty and the East India Company, such marriages are illegal, and the issue thereof would be deemed illegitimate.

That Hindus, who entertain no objections of conscience to such marriages, and who are prepared to contract them notwithstanding social and religious prejudices, are by the aforesaid interpretation of Hindu law prevented therefrom.

That in the humble opinion of your Petitioners, it is the duty of the Legislature to remove all legal obstacles to the escape from a social evil of such magnitude which, though sanctioned by custom, is felt by many Hindus to be a most injurious grievance, and to be contrary to a true interpretation of Hindu law.

That the removal of the legal obstacles to the marriage of widows, would be in accordance with the wishes and feelings of a considerable section of pious and orthodox Hindus, and would in nowise affect the interests, though it might shock the prejudices, of those who conscientiously believe that the prohibition of the marriage of widows is sanctioned by the Shastras, or who uphold it on fancied grounds of social advantage.

That such marriages are neither contrary to nature nor prohibited by law or custom in any other country or by any other people in the world.

That your Petitioners, therefore, humbly pray that your Honorable Council will take into early consideration the propriety of passing a law to remove all legal obstacles to the marriage of Hindu widows, and to declare the issue of all such marriages to be legitimate.

And your Petitioners, as in duty bound, shall ever pray.

ISHVARCHANDAR VIDIASAGAR,

and others.

4th October 1855.



# A BILL

*To remove all legal obstacles to the marriage of  
Hindu Widows.*

(AS ORIGINALLY INTRODUCED IN COUNCIL.)

WHEREAS it is known that, by the law as administered in the Civil Courts established in the territories in the possession and under the Government of the East India Company, Hindu Widows, with certain exceptions, are held to be, by reason of their having been once married, incapable of contracting a second valid marriage, and the offspring of such Widows by any second marriage are held to be illegitimate, and incapable of inheriting property: and whereas many Hindus believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the Civil law administered by the Courts of justice shall no longer prevent those Hindus who may be so minded from adopting a different custom, in accordance with the dictates of their own consciences: and whereas it is just to relieve all such Hindus from this legal incapacity of which they complain; and the removal of all legal obstacles to the marriage of Hindu Widows will tend to the promotion of good morals and to the public welfare—It is enacted as follows:—

I. No marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person since deceased, any custom and any interpretation of Hindu Law to the contrary notwithstanding.

II. All rights and interests which any Widow may by law have in her deceased husband's estate, either by way of maintenance or by inheritance, shall, upon her second marriage, cease and determine as if she had then died; and the next heirs of such deceased husband then living, shall thereupon succeed to such estate. Provided that nothing in this Section shall affect the rights and interests of any Widow in any estate or other property to which she may have succeeded by inheritance otherwise than through her deceased husband, or to which she may have become entitled under the will of her deceased husband, or in any estate or other property which she may possess as *Stridhan*, or which she may have herself acquired, either during the life-time of her deceased husband, or after his death.

Estate of deceased husband to descend to next heirs on re-marriage of Widow.

Proviso.

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#### STATEMENT OF OBJECTS AND REASONS TO THE ABOVE BILL.

A PETITION, signed by very nearly one thousand members of the most respectable Hindu families in and near Calcutta, dated 4th October 1855, has been presented to the Legislative Council; the object of which petition is that a law may be passed to remove all legal obstacles to the marriage of Hindu Widows, and to provide that the issue of such marriages, if in other respects the marriages are legal, shall be legitimate—any custom and any interpretation of Hindu Law to the contrary notwithstanding.

The Petitioners allege that, by a long established custom, such marriages are prohibited; that this custom is cruel, unnatural, immoral, and mischievous; that, in their firm belief, it is not in accordance with a true interpretation of the Hindu Shastras; that they are conscientiously impelled to disregard

it; and that they are prevented from following the dictates of their consciences in this matter by the law as now administered in our Courts, which pronounces such marriages to be invalid, and makes the issue of such marriages illegitimate. Wherefore they pray that, without affecting the interests of any other Hindus who entertain a different belief, they may be relieved from the legal restriction now existing, and they assure the Council that a law affording such relief will be in accordance with the wishes and feelings of a considerable section of orthodox Hindus.

The object of this Bill is to give the Petitioners, and all who agree with them, and all who hereafter may agree with them, the relief prayed for; without interfering with any other people.

It is well known that, by Hindu doctrine, a Hindu Widow who does not burn as a Satti, (which act can no longer be committed in India,) is bound to a life of the most painful bodily mortification. Those who agree with the Petitioners allow the reputable alternative of re-marriage. Those who do not, allow of no reputable alternative. The law of our Courts allows no reputable alternative to either class.

There is no doubt that all the statements of fact made in the petition are true. A large number of Hindu families are prevented by the municipal law of the country, as now existing in practice, from acting as they wish to act, and as they believe it right to act. All Hindus of caste, though they should be anxious to encourage the marriage of Widows, are prevented from taking even a first step towards such encouragement, by this state of the municipal law.

This prohibitory law, viewed generally, so far from being in the interests of good morals, and so far from tending to human happiness, is admitted by all to operate intensely to the injury of good morals, and to create at best a frightful amount of human misery. Upon general grounds, therefore, the enforcement of this prohibitory law by the Civil Code

of the country is indefensible. It is true that the custom which prohibits the marriage of widows operates, and ought to operate, as a moral sanction upon all who believe that the prohibition is in accordance with the directions of an authority which they revere, and to which obedience is a primary duty. But this circumstance affords no justification to a Municipal Law which enforces, by worldly penalties, even as against those who believe thus, a dogmatic prohibition, which operates injuriously to morals, and cruelly to individuals. Still less does it afford a justification or excuse for a law which enforces such a prohibition by worldly penalties against those who disbelieve the dogma, and who regard those who believe it as the victims of a false interpretation. If the learning, reason, and conscience of a single Hindu father direct him to save his little child from life-long misery or vice, the law of the country should not stand in his way: It is not less abominable to force a Hindu who disbelieves and abhors this fatal interpretation of the Hindu Shastras, to act in accordance with it, than it would be to force a Christian or a Mahomedan, because he happened to live amongst people of another creed, to sacrifice his daughter in the same manner.

The Bill now presented will wipe out that blot in the Municipal Law of India. At the same time it will leave all those Hindus who do not agree in the opinion of the Petitioners precisely as they are now. It does not pretend to say what is the right interpretation of the directions for conduct in respect of marriage in the text books; or which of the conflicting authorities ought to be followed by a Hindu. It will interfere with the tenets of no human being; but it will prevent the tenets of one set of men from inflicting misery and vice upon the families of their neighbours, who are of a different and a more humane persuasion.

These are my chief reasons for proposing this enactment.

J. P. GRANT.

*17th November 1855.*

# THE LEGISLATIVE COUNCIL OF INDIA.

*Calcutta, 17th November 1855.*

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ON the order of the day for the first reading of the Bill to remove all legal obstacles to the Marriage of Hindu Widows being read,—

The Honorable Mr. J. P. GRANT said, before he approached the subject of this important Bill, he desired to explain, in a few words, how its introduction had fallen into his hands. After his Honorable and learned friend to his right (Sir James Colvile) had left Calcutta, Pandit Ishwarchander Vidadiasagar, the learned and eminent Principal of the Sanskrit College, who was the chief mover in the agitation out of which the Bill had arisen, and was one of the subscribers to the Petition which had been presented to the Council a few weeks ago, praying for the measure, called upon him and consulted him on the propriety of asking the Council for such a law as the Bill now brought in. He (Mr. Grant) was not then aware that the Pandit had previously consulted any other Member of the Council; and, to fortify his own opinion respecting the enactment of such a law, he consulted two or three Honorable Members more competent than himself to give an opinion on the question. Such of the Honorable Members whom he consulted as were present, would have an opportunity of expressing their own sentiments; but he might mention the name of one of them who was not present (Sir Lawrence Peel) who

had since retired from the Council, and whose retirement he could not regard otherwise than as a national misfortune. Sir Lawrence Peel agreed entirely in the principle of the measure proposed. Fortified by these opinions, he (Mr. Grant) promised Pandit Ishwar Chander that, if the Petitioners presented their petition, he would bring in a Bill such as they asked for. After he had given his notice for the first reading, his Honorable and learned friend to his right returned from Madras; and he then learned that his Honorable and learned friend had been consulted before his departure on the same subject; and had interested himself greatly in it. He (Mr. Grant) much regretted that he had not been aware of this fact before, because had he been aware of it, he should certainly have left this Bill to abler hands. He had been ready to make it over to those abler hands; but it was thought better that he should make the motion of which he had given notice. To this arrangement, he the more readily acceded from the consideration that, as this was a motion affecting the religious usages of Hindus, it required to be seconded, and was open to discussion on the first reading. His Honorable and learned friend had promised to second him, and therefore all his own deficiencies would be amply compensated by the Speaker who would address the Council after him.

He did not move this question without having carefully and earnestly considered it; for it was one of a class of questions which, in his opinion at least, ought never to be approached without great deliberation and caution. The questions which generally came under the attention of the Council were, more or less, of a technical

nature; and the official training and experience of Honorable Members enabled them to feel a just confidence that, with ordinary care, their legislation upon such questions would be suitable to the people to whom it was applied. But this was a question of a different kind. It was a question which affected the most important social institution of the people, and went home to the bosom of every man and every woman of the Hindu persuasion in this immense Empire. Not only therefore had he not thought it right to propose the present measure until he had satisfied himself of the abstract propriety of his principle: he had not thought it right to propose the measure until after he had endeavoured to regard it from that point of view which would be taken by those to whom it was intended to apply. Regarding it as best he could from that point of view, he felt convinced that, prepared as the Bill was, no candid Hindu, whatever is own opinion as to the interpretation of the Shastras upon the question involved might be, would say that it was either offensive or unjust to any class.

The petition on which the Bill was founded, made certain allegations of fact. It said that, by a long established custom, the marriage of Hindu Widows is prohibited; that the Civil Law of this country, as administered both by Her Majesty's and the Company's Courts, incapacitates Hindu widows from contracting second marriages, by pronouncing such marriages to be invalid, and making their issue illegitimate. It proceeded to say that this compels Hindu widows, whatever their own opinions or the opinions of their families in this matter

may be, to continue widows all their lives, in some cases from the age of five years. It further said that this state of the law inflicts great cruelty upon the widows, who, being now unable to burn as Sattis with their deceased husbands, have no alternative left, and must lead a life of severe mortification, in fact, a life of the most painful asceticism. It said that this custom, cruel and unnatural in itself, is highly injurious to the interests of morals, and is otherwise most mischievous to society. From these premises, it argued that a law having such effects ought not to be forced upon any one who disapproves of it; and it prayed that, as the petitioners are of opinion that the custom is not in accordance with a true interpretation of the Hindu Shastras, they and those who agree with them might be relieved from the legal restriction of which they complain.

Now, if the premises could be proved, this argument was conclusive. The Legislative Council could not stand in the way of the removal of a municipal Law enforcing upon unwilling people a prohibition which, so far from being for the public interests, was in the highest degree mischievous. He would speak of these premises in their order. He believed there was no legal decision affording a precedent which positively established the point that the marriage of Hindu widows is invalid under the Law as it is now administered in British India; and an intelligent native gentleman who had spoken to him on the subject of this measure, had expressed an opinion that, in the absence of such a precedent, it would be premature to legislate, because we do not know whether the courts will enforce the interpretation of the



Hindu doctrine which the petitioners presume that they will. But even if this question of law were really a doubtful point, he could not think the objection valid. He could not think that it would be right to sacrifice even a single Hindu family to such an objection. But it appeared to him that it was very certain that the Courts would decide in the manner alleged by the petitioners. The custom of the country was universally against the marriage of Hindu widows amongst the higher castes; and all modern English text books affirmed that the law was as the petitioners allege. Indeed, text-writers spoke on this point with less qualification perhaps than they might have done, if they had given more attention to it. But the custom prohibiting re-marriage was followed so universally in practice, that the point did not appear to have been very deeply studied by any of the English writers on Hindu Law. However that might be, he could quote enough from received authorities to show that the petitioners were correct in saying that our Courts would disallow the marriage of a Hindu widow. Sir Thomas Strange, a former Chief Justice of the Supreme Court at Madras, in his work on the "Elements of Hindu Law," in a chapter on "Widowhood," wrote thus :—

"To this tyrannic instance of marital selfishness, must be added the prohibition to women of second marriages; and that this should apply, as it does, even to virgin widows, is an abomination, surpassed only, if at all, by the custom that has just been denounced"—

the custom, namely of Sattis. That was the statement of a learned Judge of a Supreme Court who was most

sensible of the evil of the custom, of whose wish, therefore, to open the law for the benefit of widows we might be sure ; but who entertained no doubt of the existence of the prohibition as a legal impediment. He would now quote a high authority of the Company's Courts, Sir W. Macnaghten, from a work written when he was Registrar of the Calcutta Sadar Court. Sir W. Macnaghten, in his " Principles of Hindu Law," writes :—

" It is well known that women are betrothed at a very early period of life, and it is this betrothment, in fact, which constitutes marriage. The contract is then valid and binding to all intents and purposes. It is complete and irrevocable immediately on the performance of certain ceremonies, without consummation. Second marriages after the death of the husband first espoused, are wholly unknown to the Hindu Law ; though in practice, among the inferior castes, nothing is so common."

The practice amongst the inferior castes had, of course, nothing whatever to do with the practice amongst Brahmins and other higher castes of Hindus. He thought he had said enough to convince the Council that, if they wished to make it possible for a Hindu widow to marry with the reasonable expectation of having her marriage held valid, and her children pronounced legitimate, they must pass some such law as that which he had the honor to propose.

The next point to which the petitioners referred was the extreme cruelty to widows of the prohibition against re-marriage. He would not trouble the Council with quotations of what the Shastras required of widows who may not burn with their deceased husbands ; be-

cause all that they did require was not strictly practised, and his object in introducing this Bill was entirely practical. Of the mortifications which the Shastras enjoined, it was difficult to say whether they were more remarkable for their cruelty or for their fantastic absurdity. But he would read to the Council a paper which had been partly supplied to him by a Hindu gentleman of great knowledge, and partly taken down from that gentleman's mouth, which described the mode of life which a Hindu widow of respectability is now actually required to adopt, until the latest day of her life.

“ A widow is required to live a life of austerity, the only alternative being to ascend the funeral pile of her husband. Her manner of life is minutely prescribed. Not only must she see no man, she must also avoid every approach to ease luxury, or pleasure : she must wear no ornaments: her hair must be shaved, or at least must be worn dishevelled, she must not see her face in a mirror, nor use perfumes or flowers: must not freely anoint her body ; and her dress must be plain, coarse, and dirty. The use of any kind of conveyance is prohibited, and she must not rest on a bed. Her food is limited as to quantity as well as quality. She must not take more than a single coarse meal a day, and the betel leaf, which terminates every repast in India, and is often substituted for a meal, is denied her. Besides other fasts, perhaps a dozen in the year, the Hindu widow is required to abstain absolutely from food and drink twice a month one day and night, during every bright and dark period of the moon, on the 25th and 26th day of her age, from which fast not even severe sickness can give her a dispensation.”

Sometimes he believed, if one of the moveable fasts, of which there were he understood about a dozen in the year, happened to fall the day before or the day after the

eleventh day of the waxing, or of the waning moon, this state of strict fasting lasted for forty-eight hours. During these fasts, these unhappy victims, although a fever might be consuming them, and the hot winds might be blowing, were allowed not one drop of water, not one drop of medicine, though it should be necessary to save their lives. The paper from which he was quoting proceeded to say:—

“All amusements are strictly prohibited to her. She is not to be present where there is singing or dancing, or at any family rejoicing; she is not even to witness any festive procession.”

This was the life to which a little prattling girl of five years old, taken from her dolls and her toys, and pronounced to be a widow, was condemned for the whole remainder of her existence upon earth.

He now came to the immorality which the petition stated the prohibition engendered. He did not wish to dwell on this point longer than was absolutely necessary; for it was one which could be agreeable to no body, and must be peculiarly distasteful to those for whose benefit this Bill was intended. But it was impossible to shirk the point altogether; for, in truth, it was the strongest argument in support of the Bill. The Hindu practice of Brahmacharia was an attempt to struggle against Nature, and like all other attempts to struggle against Nature, was entirely unsuccessful. Every candid Hindu would admit that, in the majority of cases, young Hindu widows fall into vice; that in comparatively few cases are these severe rules for a life of mortification virtuously observed; that, in many cases, a licentious and profligate life is

entered upon in secret ; and that, in many other cases the wretched widows are impelled to desert their homes and to live a life that brings open disgrace upon their families. He would read to the Council a very short passage on this subject from Ward's description of the manners and customs of the Hindus:—

“ Early marriages also give rise to another dreadful evil ; almost all these girls, after marriage, remain at home one, two, or three years ; and during this time, numbers are left widows, without having enjoyed the company of their husbands a single day. These young widows, being forbidden to marry, almost without exception, become prostitutes.”

This was the evidence of an English witness. He would now quote the evidence of a native witness, a learned Maratha Brahmin, who it might be presumed was also a man of the world, as he was the son of the minister of a late Raja of Nagpur. Eighteen or twenty years ago, this Brahmin wrote an essay on the second marriages of widows, in which he argued that the prohibition of such marriages was contrary to the Shastras, and urged the general adoption of a contrary custom. Major Wilkinson, when Resident of Nagpur, published the essay, with an “ Introduction ” by himself, in which he gave this abstract of the Brahmin's statements upon this point :—

“ To revert to our author, he maintains that the present prohibition against the second marriages of widows, especially these infant widows, is highly impolitic and unwise, because, in the first place, it disappoints the palpable purpose of the Creator in having sent them into the world ; secondly, because it inevitably leads to great moral depravity and vice on the part of these widows ; thirdly, because it inevitably causes

a frightful amount of infanticide and of abortions ; fourthly, because the maintenance of these widows in an honorable and virtuous course of life causes a ceaseless, though fruitless anxiety to their parents, and parents-in-law, &c.; fifthly because these widows, inevitably rendered corrupt and vicious themselves by the hard and unnatural laws operating on them cannot be prevented from corrupting and destroying the honor and virtue of all other females with whom they associate."

It was a Brahmin who was speaking. To show that there was no exaggeration of the forms of evil which resulted from the system, Major Wilkinson specified several cases that had come within his own official knowledge within a very few months between the receipt by him of the Brahmin's essay, and the publication of his own work. Major Wilkinson specified no less than nine cases, of which three had occurred in ten days. He ( Mr. Grant ) would not trouble the Council by going through these cases : they were of considerable length: but Major Wilkinson's work was at the service of any Honorable Member who might desire to refer to it. He would only say that these cases were proved instances of frightful murders, incests, and, in short, of every abomination which it was possible to conceive, caused by the prohibition of the remarriage of widows.

He thought he had proved the premises set out in the petition ; and he was sure that, being convinced of their truth, it was the bounden duty of the Legislature to abolish a law which could force this cruel and demoralising prohibition upon one single human being who disbelieved the doctrine upon which it proceeded. The Legislature had

no more right to prevent a single Hindu who believed that the existing prohibition was not in accordance with a true interpretation of the Shastras, and who, from a wish to preserve his widow-daughter from life-long misery or vice, desired that she should marry again, from acting in accordance with his humane motive than it had to force a Mahomedan or a Christian, because he happened to live amongst people of another creed; to sacrifice his daughter in the same manner. But this the Council would do, if it refused to pass some such law as that which he held in his hand. This was a law which, while it would set the petitioners and all who concurred with them free to allow the dictates of their own consciences, would leave all other Hindus precisely as they were now. It did not pretend to say what was the right interpretation of the directions for conduct in respect to marriage in the text-books or which of the conflicting authorities ought to be followed by a Hindu. It would interfere with the tenets of no class of people, it would offend the religious feelings of no human being.

The law the petitioners proposed was not now proposed for the first time. The terrible consequences of the prohibition had induced many wise and good Hindus, at many times, and in many places, to attempt to remove it. There was perhaps no part of India where some distinguished Member of the Hindu community had not, within the last few hundred years, made this attempt. He had taken a note of a few instances in which such attempts had been made. Between three and four hundred years ago, in Bengal, Raghanandana, a very learned and celebrated Pandit, who had written a Digest of the

Hindu Law, which formed he believed in Bengal a text-book to this day, made a resolute attempt of this kind. He had at one time firmly resolved that his own widowed daughter should remarry ; but the attempt failed. Raja Rajbullab, of Dacca, about the middle of the last century, made a similar attempt which seems to have been almost successful. He obtained a Vyavasta or law opinion of a large body of learned Pandits ; but finally his attempt also failed. About the same time , the Chief of Kotah made a similar attempt, with no better success. Sir Thomas Strange, in his work on Hindu Law, alludes to an instance in which a large assembly of Pandits at Poona actually gave permission to the widow daughter of a Hindu of high caste to remarry, and the permission was acted upon. Several similar attempts by Hindus to alter this inveterate custom had been made of late years. He had observed, amongst the papers of the Law Commission, a paper written by a learned Brahmin of Madras nearly twenty years ago, praying that a law to the effect of the present Bill might be passed. He had already mentioned the essay of a Maratha Brahmin of Nagpur, published about the same time. In Calcutta, there was a great agitation on the subject about ten years ago, which was repeated two years ago. It was in consequence of the failure of this last attempt that Iswarchandra had taken up the subject ; and the petition lately presented was the result.

It was true that all these attempts had failed. But why had they failed ? We know that a caste or any number of castes can introduce any such change of custom if they please. But to do so, there must be a great



majority in favour of the change. Now, we know that it is the nature of all reforms of this sort to be gradual; to begin with a minority, who, by argument and example in the course of time, win the majority over to their views. For this reason, heretofore, the minority have been powerless in the hands of the majority who hold to the ancient custom which rules the administration of the law to all. But the question comes up to day under happier circumstances. The Legislative Council has it in their power to give to the minority, even if that minority consist but of a single family, liberty to act according to their own consciences and feelings of humanity.

The very question now before the Council—the question of a law making Hindu widows legally capable of contracting a second valid Marriage—had been discussed officially in the late Indian Law Commission; and he took some shame to himself for not having had that discussion in mind before he gave notice of his motion, because he found that he was Secretary to the Law Commission when the question first arose, though not at the time when the full discussion of it took place. He would read one paragraph of a letter issued under his signature, dated the 4th July, 1837, which the Commissioners of the day had caused to be written, on a proposition (to which they objected) that, for the prevention of infanticide, the concealment of pregnancy should be made a specific offence:—

“The Law Commissioners observe with deep regret that the Western Sadar Court believe child murder to be a prevalent crime in the provinces under their jurisdiction. The Law Commissioners think that much of this crime may be owing to the cruel law which prevents Hindu Widows from contracting

second legal marriage. The Law Commissioners are sensible that a mere alteration in the law will immediately and directly effect little towards remedying the evil. But they are not without expectation that an alteration of the law would induce an alteration of feeling in this matter; and, if that could be effected, more would be done towards repressing child murder than could be done by the most severe laws. They are now collecting information on this point, the result of which will surely be laid before the Government of India."

At the same time, the Commissioners addressed a Circular calling for information on the subject, and for the opinions of the Sadar Courts at all the four Presidencies. The returns to that Circular were entirely unfavourable to the views of the Law Commission. He had appended them to his Statement of Objects and Reasons, and would not trouble the Council with reading them now; but if Honorable Members would refer to them that the objections of the Sadar Courts resolved themselves into these:—First, that an Act removing legal obstacles to the Marriage of Hindu Widows would be an interference with Hindus in the matter of their own law and religion; secondly, that it would entirely dislocate the frame-work of the Hindu Law of Inheritance; and thirdly, (an objection which came from the Sadar Court at Madras) that it would be entirely a dead letter. Now, if the Act would be entirely a dead letter, it was very clear that it could not be any interference with Hindus in the matter of their Law or religion and could not dislocate the frame-work of the Hindu Law of Inheritance. He might, therefore, fairly claim the authority of the Madras Sadar Court, as being against the authority of the other Sadar Courts upon the first and second points of objection.

He would say a very few words with reference to these two points of objection. He had said before that the Act, as framed did not pronounce any opinion whatever as to what should be the proper interpretation of the Shastras on the question of Marriage. Of the conflicting authorities who had written on the subject, it did not say which authority ought to be followed. It left every Hindu to be guided, in his conduct by the direction of any text-book to which his own judgment and conscience inclined. He denied therefore, that there could be the slightest color of reason for saying that the Act would be an interference with the religious opinions or feelings of any one Hindu. He said that this Bill would interfere with the religious feelings of no Hindu. He was not sure that it might not interfere with the sports of some Hindus. In every country, there were too many who made it their sport to tyrannise over the conduct and the consciences of others. He could not be sure that his Bill might not be displeasing to some upon this ground. He did not know whether any remonstrance would be actually submitted to the Council against this measure, though he understood that the question of submitting such a remonstrance had been agitated. But of this he was quite sure, that, whatever remonstrances against this just law might be laid upon the table, this feeling would be at the bottom of them; and remonstrances springing from such a feeling, this Council might well disregard.

If the law which was now proposed were fairly looked at, he believed it would be seen to be the natural and necessary complement of the law for the abolition of the rite of Sati. The object of the law for the abolition

f the right of Sati was to save innocent Hindu Widows from a cruel death: the object of the law which is now proposed was to save innocent Hindu Widows from a life which in his conscience he believed to be worse than death. He did not mean to say that, taking a general view of the case, the custom of Brahmacharia was so dreadful as the custom of Sati. An innocent young girl taken to a funeral pile, and there, in the broad light of day, burnt to death according to law before the eyes of a multitude—the officers of the law, armed with all the powers of the law, standing by calm witnesses of the spectacle—was such a horrible and demoralizing practice as was never exceeded in any country. On a general or national view, he could not of course compare this Bill with the law which abolished that open abomination. But confining the view merely to the unfortunate widow who is the victim in either case; when he considered the personal consequences which the custom of Brahmacharia forced upon the unfortunate females who were made its victims; when he considered the misery—the certain life-long misery—the probable profligacy and sin which it caused, he did believe that it would be better for a woman to ascend the funeral pile of her husband, and burn with him as Sati, than to be condemned to the slow torment of such a life as he had described.

The law prohibiting Sati was a compulsory law. From the day it was passed, every Hindu, whatever his own feelings on the subject might be, was compelled to obey it. All the glory, therefore, of that law belonged to Lord William Bentinck and his Council who

passed it. But the present law would afford Hindu gentlemen of station and influence a rare opportunity of illustrating their own names. The present was not compulsory law, and could not be made a compulsory law. It was merely a permissive law, which could have effect only when those for whose benefit it was intended, should choose to avail themselves of it. Under this law, Hindu gentlemen who, from their rank and their education, may stand forward as the leaders of their nation, have it in their power to register their names in History as the names of those who shall have effected the greatest social reform ever effected in their country. The Legislative Council will have done all it can do when it shall have struck the shackles from their limbs : it will be for them, when they shall gain their freedom, to make use of it like men.

The Honorable Member concluded by moving the first reading of the Bill.

*Sir James Colville* seconded the motion. In doing so, he said he could not but express his sincere satisfaction that, owing to the circumstances to which his Honorable Friend had adverted, the charge of this measure had passed from his hands to those of his Honorable and learned Friend, for not only, as the clear and forcible statement which the Council had just heard demonstrated, it had thus fallen into abler hands ; but, as he had often said to the Native gentlemen who had done him the honor to consult him on the subject, the position that was held by his Honorable Friend afforded an answer as it were by anticipation to objections which might have been made to the measure if it had been left in

his (Sir James Colville's) charge. To him, it might have been plausibly objected that being one who when he first came to this country was already "*nel mezzo del cammini nostra vita*," and being one who, from his position, had slender opportunities of becoming acquainted with the usages and feelings of natives living beyond the limit of the Presidency town, he had somewhat audaciously undertaken to effect a great social innovation. No such objection could be made to his Honorable Friend, who was one of the most eminent and not the least cautious members of a Service which had always been remarkable for caution—some might think for over-caution—in attempting social reforms to which native feelings, or native prejudices ran counter; of a Service respecting which it must be owned that, yielding to that feeling, it had permitted for half a century, in Provinces completely subject to its rule, the existence of the monstrous rite of Sati. He (Sir James Colville) did not quarrel with that feeling when kept within legitimate bounds. Nay, he would go further and say that on such questions, it was better that the Government of this country should err, if it erred at all, on the safer side of over-caution. There were doubtless cases, and Sati was one of them, in which it was the positive duty of Government to put down a practice every instance of which necessarily involved a crime. Of the custom which was now under consideration, crime and immorality were not the necessary, but merely the probable consequences. If, therefore, the measure, now proposed, originated with any Honorable Member of this Council acting simply on his own views of the barbarity or impolicy of the custom, or of the

pernicious character of its consequences, he ( Sir James Colvile ) could understand objections being made to such an interference with the usages of the country. But that was not the way in which the question came before the Council. His Honourable Friend had cited several instances in which Hindus of rank, learning, and character had protested against this custom. Ten years ago, when he ( Sir James Colvile ) arrived in this country, he recollected hearing that the question of the remarriage of Hindu widows was matter of discussion amongst Hindus, and that one, a very wealthy inhabitant of this city, who was certainly not of the party known as Young Bengal, had offered a large sum to the first person who should brave opinion and marry a Hindu widow. The question may have slept for a time, but it was now pressed upon the attention of the Legislative Council by a numerous and respectable body of Hindu gentlemen. The particular measure before the Council was prompted by one who, in reputation for learning, yielded to no Pandit in this city, or in this part of India, but who, not suffering his antiquarian lore to contract his mind, as it is too apt to do, by fixing it too constantly on the past, was conspicuous amongst the more liberal of his countrymen for enlarged views, and desire for social progress. If, then, the Council was thus asked to pass a Law of the kind proposed,—a law of which its own reason approved—how could it refuse its assent? The Law would be essentially permissive and permissive only. It would compel no human being to do that from which his or her conscience revolted. Widows who felt that widows ought to live as

the Hindu law prescribed, would live so still. But to those who felt that they were living under a cruel bondage, from which their feelings and consciences revolted, this Act would be a merciful relief. It would not prevent such Hindus as believed the Law to be in accordance with a true interpretation of the Shastras from acting on their own belief; but it would prevent any legal consequences, any diminution of their civil rights from affecting other Hindus who, differing, in opinion from these might follow the dictates of their own consciences and wills. It might prevent the monstrous fact of a virgin widow condemned against her will to a life of mortification, by way of showing duty and respect to a deceased husband whose face she might never have seen, except at the hour of betrothal. It might prevent a vast deal of immorality, which, admitting the passages cited from Ward and others by his Honorable Friend to be highly colored, every reasonable man must see was the natural consequence of enforced celibacy, and of violence done to nature; and those domestic scandals which, he feared, were not unfrequently concealed by darker and graver crimes.

His Honorable Friend had not gone into the details of the Law, nor did he (Sir James Colville) intend at any length to do so. But he would remark that the second Section of the Bill removed the only plausible objection that could be made against the measure.\* Some

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\* The 2nd Section was as follows :—"All rights and interest which any widow may have by Law in her deceased husband's estate, either by way of maintenance or by inheritance, shall upon her second marriage cease and determine, as if she had then died; and the next heirs of such deceased husband then living shall thereupon succeed to such estate.



indeed who were in favour of the Bill might hastily conclude that this Section was too much in restraint of second marriages. He was not of that opinion. On the contrary, he believed that no one who attentively considered the conditions under which a Hindu widow took property by succession on the death of her husband, would fail to see the justice of this provision. He had always thought that the canon of inheritance which made the wife heiress of her husband when he died without sons, was the part of the Hindu law of inheritance—a law generally wise and just—which operated most mischievously. As far as his experience went it was the most frequent cause of the disruption of Hindu families, and of the wasting of Hindu estates by litigation. But the right thus taken by the widows in her husband's estate was a very peculiar one, and very limited in enjoyment. She had not full dominion over the property, for she could not alienate any part of it except for purposes of strict necessity, or for such pious uses as contributed to the spiritual benefit of her husband. In fact, the law gave it to her not for her own benefit, but from the notion that her prayers and sacrifices, and the employment of his wealth in religious and charitable acts, would be beneficial to her deceased husband in another state of existence. If

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Provided that nothing in this section shall affect the rights of any widow in any estate or other property to which they may have succeeded otherwise than through her deceased husband or to which she may have become entitled under the will of her deceased husband ; or in any estate or other property which she may possess as Stridhan, or which she may have herself acquired either during the life-time of her deceased husband or after his death."

then this Bill had enabled her to carry into the arms of another man, or into another family, the property which she had so acquired, its opponents might reasonably have objected to it, that it would aggravate those mischievous consequences which often flow from the law as it exists; and that, contrary to Hindu law and Hindu feeling, it enabled the widow to enjoy her deceased husband's estate freed from the condition and the trusts upon which alone the law gave it to her.

Therefore, he believed his Honorable Friend had, by the 2nd Section, removed from the measure any possible objection which a reasonable man could advance against it; without doing any injustice to widows.

There would be so many future opportunities for discussing the merits of the Bill, that he should now conclude, apologising to the Council for having trespassed so long upon its attention in performing the formal act of seconding a motion.

The *Hon'ble P. W. LeGeyt* said, as the Standing Orders allowed, in respect of such a Bill as was now before the Council, a departure from the usual course prescribed on motions for first readings, and it was open to Members to express their sentiments upon the Bill at the present stage, he could not let the opportunity pass of saying that he was persuaded the great measure of social reform which it proposed would be hailed in Western India with great joy by all classes of Hindus who, by education and experience, had learnt to see the mischievous consequences of the custom which it was intended to remove. For several years past, the

subject of the marriages of Hindu widows had engaged the attention of intelligent and influential Hindu gentlemen in Bombay. Some had written papers regarding it, several of which were distinguished for their ability. He regretted that he had not those papers with him now, or he should have taken this opportunity of reading passages from them to the Council. But he had collected enough, from what the Honorable Mover of the Bill had said, to feel assured that a large majority of the higher class of Hindus would receive with gratitude the relief which this Bill would afford them of releasing the females of their families from a cruel and miserable thralldom which had produced the same lamentable results in Western India that the Honorable Mover of the Bill had stated it had done in Bengal. He had seen in Hindu families of no mean rank in Bombay the pitiable condition of women suffering under the effects of this social tyranny. As one instance, he might mention the case of a lady nearly ninety years old, the member of the family of a judicial officer in the Southern Maratha Country. This gentleman was of high position and consideration, and on an occasion of a family festivity at which he (Mr. McGeyt) was a visitor, had pointed out the lady to him, in that state of separation from the other members of her own family which had been described, and he had stated that what he saw his mother (for she was in that relation to him) suffer daily was an eternal thorn in his side. In Western India, the prohibition against the marriage of Hindu widows was principally confined to Brahmins, and those sects which chose to imitate the

practices of that class. Amongst other classes, the prohibition was not strictly regarded, and he had heard it frequently asserted that the state of higher morality which prevailed amongst the inferior grades of the Hindu community in that Presidency was fully accounted for by that fact. He could not, therefore, but feel assured that the measure now proposed would be cordially received in Western India, if not unanimously, certainly by a very large majority of the class for whose benefit it was designed.\*

Mr. Grant's motion was then carried, and the Bill was read a first time accordingly.

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## THE LEGISLATIVE COUNCIL OF INDIA.

CALCUTTA, 19th January 1856.

Mr. Grant in moving the second reading of the Bill said, that as he had explained at length the principle of the Bill on the motion for the first reading, he did not think it necessary to detain the Council with any further observations upon it on this occasion. He had allowed the Bill to be over for some time, because he had thought it right that a measure of this nature should not have the appearance of being hurried

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\* It may be mentioned here that there were several petitions from the Bombay Presidency, *in favour* of this Bill. There was one from *Oomdat ool-mulk* RAGHUNATHRAO VITHAL, C. S.I., Chief of Vinchur, who was complimented by the Honourable Mr. LeGeyt, "as an enlightened and loyal ruler, supporting every measure calculated to promote the happiness and well being of the people."

through the Council. The Bill, however had now been for two months before the public and Hindus had had ample time to consider the measure even in the most remote provinces of the Empire.

The Bill was then read a second time and referred to a Select Committee consisting of Sir James Colville, Mr Elliot, Mr. LeGeyt and the Mover.

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*Petitions against the Bill.*

(A)

To

THE HONORABLE

THE LEGISLATIVE COUNCIL OF INDIA.

The Humble Petition of the Undersigned  
Inhabitants of Calcutta and the Lower  
Provinces of Bengal,

MOST RESPECTFULLY SHEWETH,

That your Petitioners have read with much concern the Draft of a Bill entitled, "A Bill to remove all legal obstacles to the marriage of Hindu Widows," which was read by your Honorable Council for the first time on the 17th November last, and for the second time, on the 19th January. Your Petitioners are aware, from the printed papers of your Honorable Council, that the said Bill has been brought in, on the Petition of certain Hindus who desire that Widow Marriage should be legalized. Your Petitioners are also sensible that the principle of the said Bill is consonant with the social system of their English fellow-subjects, and therefore is likely to be acceptable to your Honorable Council; yet your Petitioners cannot but feel it as a duty, as well to themselves as Hindus as to their countrymen in general, to submit their objections to the proposed law.

2. The preamble to the Bill states that, "whereas it is known that by the law as administered in the Civil Courts established in the territories in the possession and under the government of the East India Company, Hindu Widows with some exceptions are held to be, by reason of their having been once married, incapable of contracting a second valid marriage, and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property; and whereas many Hindus believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the Civil law administered by the Courts of Justice, shall no longer prevent those Hindus who may be so minded from adopting a different custom in accordance with the dictates of their own consciences," &c.

3. Your Petitioners beg leave to observe that the re-marriage of Hindu females is not only not in accordance with the established usages of Hindus, but is likewise repugnant to the precepts of their religion and the ordinations of Hindu law, from which all their social institutions have originated. Though there are different tribes of Hindus, who speak different tongues, follow different codes of laws, wear different dresses, and have different customs and usages, yet they are all unanimous in reprehending the marriage of their widows, in consequence of its being against the positive injunctions of their law, and the interpretations of that law by different commentators of ancient and modern times. The *Yajur Veda* in the *Tuttiriyā Shikhi* declares that, "as round a single *Yupa* (sacrificial post) two tethers can be tied, so one person can marry two wives. As one tether cannot be tied round two *Yupas*, so one female can not marry two husbands." The most ancient and revered of our lawgivers, Manu, says in Chapter V. verse 161, that "a widow who, from a wish to bear children, slights her deceased husband by marrying again, brings disgrace on herself here below, and shall be excluded from the seat of her lord." And also at the following verse, "issue begotten on a woman by any other than her husband, is here declared to be no progeny of hers; no more than a child, begotten on the wife of another man, belongs to the begetter; nor is a second husband allowed in any part of this code to a virtuous woman." The same authority further directs in Chapter IX. verses 64 and 65,

that "by men of twice-born classes no widow or childless wife must be authorized to conceive by any other than her lord; for they who authorize her to conceive by any other, violate the primeval law. Such a commission to a brother, or other near kinsman, is nowhere mentioned in the nuptial texts of the Veda; nor is the marriage of a widow even named in the laws concerning marriage." The *Mihabharat*, too, lays down that "a woman is to have only one husband, upon whom she must depend through her whole life." These ordinations in the highest sacred works of the Hindus, added to the long established custom and usage of the country, against the marriage of widows, will, your Petitioners trust, weigh more in the estimation of your Honorable Council than the forced construction of any solitary text apparently in its favour, but quite unsupported by a single instance of such marriage having ever been legally contracted in any period of the annals of the Hindus. Your Honorable Council will thus perceive that the marriage of Hindu widows is not in accordance with the dictates of Hindu law, as it is stated in the preamble to the Bill for the removal of legal obstacles to such marriages.

4. Your Petitioners further beg leave to submit that the proposed law is also at variance with the several Statutes of the British Parliament and the Regulations of the East India Company, by which the natives of this country have from time to time been assured that their rights of marriage and inheritance shall not be disturbed or violated. Section 23 of Regulation I. of 1772, which was re-enacted in Section 15 of Regulation IV. of 1793, ordains that, in all suits regarding succession, inheritance, marriage, and caste, and all religious usages and institutions, the Mahomedan law shall prevail in respect of Mahomedans and the Hindu law in regard to Hindus. This is also laid down in the 21 George III Chap. 70 Sections 17, 18, and 19. The 3 and 4 William IV Chap. 85 Section 53 expressly provides that, in making any law for the natives of this country, a due regard should be had to their religion, customs, laws, and usages. The more subsequent Regulation V of 1831 declares that cases relating to the marriage, succession, and inheritance of Mahomedans shall be decided according to Mahomedan law, and those concerning the Hindus shall be adjudicated according to Hindu law. These repeated declarations of the British Parliament and the local Government have induced a firm belief that the

natives of this country would be continued in the enjoyment of their laws relating to marriage, succession, and inheritance. Even in the General Order recently issued by the Governor General in Council in reference to the late disturbance at Bolarum and the conduct of Brigadier Mackenzie on the occasion, the public officers were enjoined in the strongest manner "never to interfere with the religious observances of the natives of India." When the late Law Commission in 1837, applied to the Sadar Courts at the several Presidencies for their opinions on the subject of Hindu Widow Marriage, the Judges of those Courts unanimously observed that the legalization of such marriage "would be an interference with the Hindus in the matter of their own law and religion and at once dislocate the whole frame-work of Hindu jurisprudence." The Hindu Society has undergone no material change whatever since that year, which would warrant the Legislature to interfere with the Hindu law on the ground of expediency. Its integrity, it is true, has been most seriously affected by the enactment of Act XXI of 1850, but your Petitioners submit that one encroachment does not justify another; and what is of more importance, the said law has not increased the number of native converts to Christianity. The experience of the last six years shows that, practically, it has been of no more use than affording an example of an arbitrary and un-called-for interference with the Hindu law of inheritance. Legislative intervention has never yet been able to effect a change in public opinion, while the more such interference is exercised, the more it assumes an objectionable character.

5. Your Petitioners have been told that the Bill for the removal of legal obstacles to the marriage of Hindu widows, is merely a *permissive* law. In reply they beg leave to observe that, so far as it allows a widow to contract a second marriage, at her option, it is undoubtedly of a permissive character, but in its immediate and ultimate consequences, when it interferes with the rights of others, your Petitioners humbly submit, that it is a *compulsory* measure. As for example, if a Hindu dies leaving two daughters, both of whom are widows, but the one has a son, and the other no children; by the Hindu law of inheritance as it is now administered, that son will be the sole heir of his maternal grandfather. But if the childless widow contracts a second marriage and has issue by her second husband, by the proposed law they would be entitled to equal shares of the



property of their mother's father, with the son of the widow who has not re-married. Again, if a married woman dies, leaving two sons, who have acquired property. Their father marries a widow and dies leaving a son by her. One of the brothers has children while the other has not ; but both of them subsequently die. By the Hindu law the said children will succeed to the whole of that property ; but by the proposed law, the son of the widow will not only share equally with the two brothers at first, but will also succeed to the share of the deceased among them to the exclusion of the said children. Again, a person dies leaving a widow, but no issue and directs her by his will to adopt a son and heir. If, before the adoption takes place, she contracts a second marriage, she cannot carry out the directions of her deceased husband according to Hindu law : and the consequence will be that his line will be extinct ; that he and his ancestors will have none to perform the usual funeral ceremonies prescribed by the Hindu religion ; and that, whatever property he may have left, will go to his next of kin, who by the proposed law, will find it to their interest to induce the widow to marry, and thus defeat the intentions of her first husband for their own benefit.

6. Your Petitioners can, to an unlimited extent multiply instances in which the proposed law for the marriage of Hindu Widows will operate against the civil rights of others who may prefer to follow the laws and usages of their country—a consequence which had, no doubt, been anticipated by the Judges of the several Sadar Courts, when they gave it as their opinion that the legalization of such marriages would amount to an interference with the customs and laws of the Hindus, and would at once upset their present system of jurisprudence. If the Petitioners in favour of Widow Marriage be disposed to adopt “a different custom in accordance with the dictates of their own consciences,” as it is stated in the preamble to the Bill, your Petitioners have no objection whatever to their doing so ; but when the law which they have asked for interferes with the rights of others who entertain different opinions and are not inclined to follow their example, their demand is manifestly unjust and unreasonable. The Petitioners at whose instance the proposed law has been brought in, form a very small and insignificant portion of the vast masses of the people whom your Petitioners represent. It would, therefore, be scarcely just and reasonable, or even expedient, to

enact a law for the minority which shall interfere with the rights of the majority. As far as your Petitioners have been able to communicate with the people of the interior, during the short space of two months, which has elapsed between the first and second reading of the Bill, they have found but one opinion exist among all classes of men, and that opinion is, your Petitioners need hardly say, against the proposed law; and if the fact of that law being under the consideration of your Honorable Council be made known still more extensively, your Petitioners are sure the general voice of the entire Hindu population will be raised against its enactment. The great majority of the people of this country have yet had no intimation of the proceedings which have been held in respect of the Bill for the legalization of the marriage of Hindu Widows. They have no knowledge of the English language, and do not read the English newspapers in which the reports of your Honorable Council appear. The Bill made its appearance in the Bengalli *Government Gazette* only on the 12th February; but still that would not be sufficient, as the Bengalli language is only read and understood in only one of the provinces out of the immense extent of territories subject to British rule in India, and that, too, by a comparatively small portion of its inhabitants. Its enactment will, therefore, be without the knowledge of the people whose interests are to be affected by it. If they know of it, your Petitioners are certain they would object to it, and it would be unwise to pass it into law on the application of a few against the wishes of the hundred thousands of the Hindus who own allegiance to the British Crown in India.

7. Your Petitioners also beg leave to submit that the proposed law for the legalization of Hindu Widow Marriage is vague and insufficient; since it does not declare what shall constitute a valid widow marriage. The rite of matrimony is held sacred in all countries and by all nations. It is one of the ten *Sanskars* or sacramental rites of the Hindus. Its details are no where left to the option of individuals; yet such would be the case if the Bill for the removal of all legal obstacles to the marriage of Hindu Widows be passed into law as it now stands. The ceremony which at present prevails among Hindus, cannot be performed in the case of a widow taking another husband. "The holy nuptial texts," says Manu in Chap. 8, Verse 226, "are applied solely to virgins, and no

where on earth to girls who have lost their virginity." Again in Chapter 9. Verse 47. "Once is the partition of an inheritance made, once is a damsel given in marriage, and once does a man say 'I give.' These three are by good men done once for all and irrecoverably." It will, therefore, be necessary to prescribe a new ritual in opposition to the dictates of Hindu Law and Religion to prevent its being a source of much litigation, which it otherwise necessarily lead to. Such a result cannot surely be the object of the Bill which is now before your Honorable Council. Your Petitioners also beg leave to submit that many Hindu widows, if re-married at an early age, under the proposed law, might regard their second union as a degradation and wrong, when at a mature age they come to know the religion and laws of their country.

8. Under these circumstances your Petitioners beg leave to submit that the Bill "to remove all legal obstacles to the marriage of Hindu widows" should not be passed into law, and that your Petitioners, and the rest of their countrymen, who prefer to follow the established laws and usages of their country, will be permitted to continue in the enjoyment of their civil rights as they have heretofore done.

And your Petitioners as in duty bound shall ever pray.

RAJA RADHAKANT BAHADUR,

And Thirty-six Thousand Seven Hundred and Sixty-three  
other signatures.

CALCUTTA, 17th March 1856.

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(B)

To

THE HONORABLE

THE LEGISLATIVE COUNCIL OF INDIA

The Petition of the undersigned Professors  
of the Hindu law, Inhabitants of *Nuddea*,  
*Trebani*, *Bhatparrah*, *Bansbariah*, Cal-  
cutta, and other places.

HUMBLY SHEWETH,

THAT your Petitioners being apprised that one  
Islwarchandar Vidadiasagar, *Modern Pandit*, has lately, in con.

action with a few young men of the rising class, petitioned your Honorable Council to legislate on the subject of the Marriage of Hindu Widows, and that a bill relating to it has been brought in—think it necessary most respectfully to draw your attention to their prayers on the subject.

1st. That the Marriage of Hindu Widows is prohibited in the Veda, the Smriti, the Puranas, and other Shastras.

That the advocates of widow marriage, who maintain that it is authorized by the Hindu Law, and who have therefore petitioned your Honorable Council to legislate in its behalf, are, in their opinions and constructions, utterly at variance with the whole range of the Hindu legal compilers and commentators. For the texts pointed out by the former as sanctioning widow marriage, have invariably been explained and asserted by the latter to refer to betrothed girls, and to widow sin the past yugas (ages). And in truth all the digests of the Hindu Law which have regulated Hindu manners, customs, and religious practices, from time immemorial, not only no where authorize widow marriage, but on the contrary expressly discountenance it. The following extracts from the digests in question, are quoted for your information.

#### RATNAKAR.

“Moreover the verses of Devala, who sanctions the re-marriage of women, declaring that a married woman whose husband has left her, shall wait for eight years, and after that take another husband; and that she may do the same under the circumstances specified therein, refer to former yugas, as also does the appointment of a widow to a brother or some other near kinsman for the purpose of raising issue.”

“But a widow, who from a wish to bear children, slights her deceased husband by marrying again, brings disgrace on herself here below, and shall be excluded from the seat of her lord.”

“Issue begotten on a woman by any other than her husband, is here declared to be no progeny of hers; no more than a child begotten on the wife of another man, belongs to the begetter, nor is a second husband allowed in any part of this code to a virtuous woman.”

“Such a commission to a brother or other near kinsman is no where mentioned in the nuptial texts of the Veda; nor is the marriage of a widow even named in the laws concerning marriage.”

#### MAHABHARAT, 1st BOOK.

“From this day I enact that a woman have only one husband”

as long as she lives, and whether he be alive or dead, if she go to another man, she shall doubtless be degraded."

#### ADITYA PURANÁ.

"The marriage of a widow, a larger allotment to the eldest brother, the sacrifice of a bull, the appointment of a man to beget a son on the widow of his brother, and the carrying of a water-pot as the token of an ascetic, these five are prohibited in the Kali Yoga, or the fourth age."

The Veda says :—"As round one sacrificial post two cords are fastened, so one man may marry two wives ; but, as one cord is not fastened round two sacrificial posts, so one woman cannot have two husbands."

The code of Manu s̄ays :—"Him to whom her father has given her or her brother with the paternal assent, let her obsequiously honor, while he lives ; and when he dies, let her never neglect him."

"Let her emaciate her body, by living voluntarily on pure flowers, roots, and fruit ; but let her not, when her lord is deceased, even pronounce the name of another man."

"Let her continue till death forgiving all injuries, performing harsh duties, avoiding every sensual pleasure, and cheerfully practising the incomparable rules of virtue, which have been followed by such women as were devoted to one only husband."

"And like those abstemious men, a virtuous wife ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity."

#### NIRNAYA SINDHU.

"A woman, even if she has been married, may be given away to another with clothes and ornaments. This and similar customs are prohibited in the Kali Yug, because the Adi Purana says, that 'procreation of a son by a brother, the giving away of a married woman, and the like, are not to take place in the Kali Yug.'"

#### HEMADRI.

"Prohibitions in the Kali Yug :—The marriage of a widow the gift of a larger portion to the eldest brother, the sacrifice of a bull, the appointment of a man to beget a son on the widow of his brother, and the carrying of a water-pot as the token of an ascetic, these five are prohibited in the Kali Yug."

## MADAN PARIJATA.

“The marriage of a widow, the gift of a larger portion to the eldest brother, the sacrifice of a bull, the appointment of a man to beget a son on the widow of his brother, and the carrying of a water-pot as the token of an ascetic, these five are prohibited in the Kali Yug.”

2ndly. That the marriage of a Hindu widow of respectability is contrary to the customs and usages of the country. Among the Hindus of India, there are various customs and usages on various occasions, and the people of the several provinces observe them according to various Shastras ; but the marriage of a widow is not in accordance with the customs and usages of any province, and none of the codes of law in force sanctions it. The practice of austerity by all Hindu widows has been customary from time immemorial ; so that, not to mention the marriage of a widow, even her intercourse with a stranger renders her liable to expulsion from society. Now, if your Honorable Council, with a view of introducing widow marriage, legislate on the subject, the Vedas, Smritis, Puranas, and other religious institutes, and the customs and usages of time immemorial, will fall to the ground. To subvert the religion and usages of the subjects is not the province of the Legislature. Manu says—“ A king who knows the revealed law, must inquire into the particular laws of classes, the laws or usages of districts, the customs of traders, and the rules of certain families, and establish their peculiar laws if they be not repugnant to the law of God.”

3rdly. That, if your Honorable Council legislate on the subject of widow marriage, the rules of inheritance now prevalent among the Hindus will undergo great alterations. Though the offspring of such a marriage cannot, according to the received law and reputable manners of the country, be regarded otherwise than as illegitimate, or children of harlots, yet in case you legislate on the subject, the truly lawful heirs will be compelled to share the inheritance equally with them. The Code of Hindu law on inheritance, which is now of equal weight with the Government and its subjects, must be materially altered or supplanted by an entirely new one to prevent endless disputes arising from the collision of opposing interests, when persons who are not at present of kin to the legal heirs recognized by the Shastras, or by the customs of the country, will be placed on a footing of equality with them. The

passing of the proposed Bill into law will not only, without any cause whatever, endanger the property of many an innocent individual, but in several cases altogether deprive him to it. A few cases of very probable occurrence illustrative of the above position, are most respectfully submitted for your consideration.

If one's father, brother, brother's son, grandfather, or father's brother, or the like, in spite of the Shastras and the established customs, marry a widow and beget a son on her, and die, that son, armed with the law, will usurp the place of a brother, or brother's son and so forth, and thus divide the property of the deceased with the rightful heirs, if such deceased have left no widow and children who are legal according to the Shastras. And sometimes, by his claim of priority, he will nullify the rights of lawful heirs. Similarly, if a widow take a second husband, though it be in opposition to her father's wishes, she may even then, on her father's dying without male issue or other heirs, be entitled to inherit his estate. Again, if she marry in opposition to the wishes of her brother, her son, in the event of her brother's dying without male issue, will stand in point of relationship as his nephew or the grandson of his father, and thus be entitled to inherit his property. In like manner, if the widow be a mother, or mother's or father's sister, or paternal or maternal aunt, or grandmother or brother's wife, and marry in opposition to the wishes of her son or other relatives, the male children she may give birth to, will usurp the place of brothers and so forth, and contend for inheritance. Now it is most respectfully submitted to your consideration, whether or not the proposed Act will deprive many rightful heirs of their inheritance, and wholly upset the Hindu law on that subject.

4thly. That there is the greatest probability of extinguishing the name of many a family by the passing of an Act authorizing the marriage of Hindu widows, and thereby conferring civil rights on the issue of such marriages. For in addition to the sanction of the Shastras, almost every childless man in this country enjoins his wife, in his dying moments, to adopt a son for the perpetuation of the family name. But if the Bill be passed, the desire of worldly enjoyment will induce the widow to take a second husband, and thus slighting the injunctions of her former lord about adoption, she will consign his family name to oblivion.

5thly. In the event of the Bill being passed many a widow, otherwise disposed to observe the injunctions of her own

religion, will, in all probability, by the intrigues of her avaricious kinsmen, sacrifice her honor; for the women of this country being mostly ignorant, and not being accustomed to read, write, and mix in society, it is difficult for them to detect the insidiousness of the cunning and evil disposed. It is therefore that our Shastras have not given them independence in any stage of their lives.

Manu says :—“In childhood must a female be dependent on her father; in youth on her husband; her lord being dead, on her sons; a woman must never seek independence.” Moreover, in conformity to our Shastras, a widow can inherit her husband's estate. Hence if any person die without male issue, leaving a widow, his brothers, through avarice, will use force and intrigue to induce her to take a second husband, that they may come into her rightful possessions. Thus innumerable widows will have cause to bewail the loss of their honor.

6thly. That, though the Bill has been brought in for the benefit of the people, the perusal of the foregoing paragraphs will not fail to convince your Honorable Council, that, instead of producing the good intended, it will injure their temporal and spiritual interests. Besides, those who have petitioned your Honorable Council for such an enactment, cannot by any possibility derive any advantage from it. For at present widow marriage does not obtain in this country, nor can persons be found who are the offspring of such marriages.

In conclusion, your Petitioners most humbly but earnestly protest against a Bill which is opposed to the whole of their Shastras; which is contrary to the customs and usages of the most respectable portion of your Hindu subjects throughout the country; which, when passed into law, will create endless confusion in their order of succession, prevalent from time immemorial, give rise to numberless disputes, and necessitate the framing of a new code on Inheritance for deciding those disputes; by which the property of many a Hindu subject will not only be endangered but even destroyed; from which no party can reasonably expect any present advantage; which will consign the names of many families to oblivion; which will tempt not a few wicked people to betray innocent widows into vicious courses, that they may deprive them of their husbands' estates; and they pray that the discerning Legislature of the British Government, which is so careful of the interests of its subjects, will not pass such a Bill into law.

Your Petitioners are most loyal subjects of your Govern-.



ment. It is not less the duty of that Government to maintain their religion and customs than to protect their lives and property. Your Petitioners do not pretend to direct your Council, nor have they the power to oppose your designs. As children ask indulgence from their parents, so do they supplicate your Honorable Council. Besides, the boon they are now solicitous to obtain from your Honors, is neither exceptionable nor unjust ; for every nation is naturally eager to preserve its religion uncorrupt. It is only the apprehension of interference on your part with their religion which has induced your Petitioners to approach you, in the hope that their prayers will prevail and prevent you from legislating on the subject of widow marriage.

And your Petitioners, as in duty bound, shall ever pray.

( Signed ) SHIRAM SHIROMANI and others.

To

THE HONORABLE THE LEGISLATIVE COUNCIL.

WE, the Select Committee on the Bill "to remove all legal obstacles to the marriage of Hindu Widows," have the honor to submit the following report.

2, Fifty-one petitions from persons of the Hindu religion have been presented in relation to this Bill ; of which twenty-three, signed by 5,191 persons, are in favor of the principle of the proposed measure, and twenty-eight, signed by 55,746 persons, are against the measure. One petition in support of the measure has been presented by the members of the Calcutta Missionary Conference. A communication has been received from Sir Robert Hamilton, the Agent to the Governor General for Central India, who is in favor of the measure. And a communication has been received from the Secretary to the Government of the North-Western Provinces, conveying the Honorable Lieutenant Governor's approval of the Bill,

and the opinions upon it of the Judges of the Agra Sadar Court, of whom the majority, Messrs. Harrington and Smith, are in favour of the Bill, and the minority, Mr. Begbie, is opposed to it; also the opinions of the several Commissioners of Divisions and Provinces under His Honor's Government, of whom eight (exclusive of Sir R. Hamilton) are decidedly in favor of the measure, and two seem to doubt its expediency at the present time.

3. The objections taken in the twenty-eight petitions against the Bill are the following:—

First.—That the marriage of Hindu Widows is prohibited by Hindu law; those who interpret the law otherwise being in error.

Second.—That the marriage of Hindu Widows of respectability is contrary to the customs and usages of the Country.

Third.—That, if the law is passed, the present rules of inheritance will undergo great alteration, endangering the property of some, and depriving others of their property altogether; and that, thus, the law, though professing to be merely permissive, will be in fact "compulsory" in regard to those whose rights of succession will be interfered with when widows re-marry. By this expression we understand the petitioners to mean that the proposed law, in its consequences, will affect, against their will, persons other than those who choose to avail themselves of its provisions.

Fourth.—That Hindu rights of inheritance are closely connected with religious obligations; and, as it is impossible that those inheriting under the proposed law can be recognized by a family holding to the contrary doctrine, as a part of that family, and therefore as capable of performing such religious obligations, it is unjust to allow them to have the rights of inheritance which are connected therewith: wherefore this law would in effect extend the operation of Act. XXI of 1850, which, it is contended, is an unjust law, to a new class of persons, that is to say, to widows who do not change their religion.

Fifth.—That the proposed law would interfere with the Hindu law of marriage, inheritance, and succession, and so would be

contrary to repeated enactments of Parliament and of the Indian Government, providing that the Hindus shall enjoy their own laws on these points: and that it would interfere with the religion and customs of the Hindus, which a proclamation issued so lately as the 9th of August last, by the Lieutenant Governor of Bengal, promised should not be disturbed.

Sixth.—That widows, enjoined by their husbands, when dying to adopt a son, in order to perpetuate the family name, will be induced by the desire of worldly enjoyment to take second husbands, and to slight the injunctions of their deceased husbands about adoption.

Seventh.—That widows will be induced by the intrigues of their avaricious relations to re-marry, and so, it is contended to disgrace themselves.

Eighth.—That the proposed law will introduce strife into families.

Ninth.—That the proposed law is vague and insufficient, since it does not declare what shall be a valid marriage in the case of a widow; the nuptial texts being, it is alleged, inapplicable in such cases.

4. On the first of these objections, namely, that those who interpret the Hindu law as permitting the marriage of widows are in error, we have to report that, in our opinion, this objection, whether it be well or ill founded, does not apply to this Bill; for this Bill does not determine this question of interpretation, and is not founded upon the assumption that either the one or the other of the two interpretations represents the orthodox doctrine. The Bill is founded on the principle of relieving those Hindus who believe that widows may properly marry again, and ought not to be prohibited from so doing, from the legal obstacles which now prevent them from acting according to their convictions. It would be quite out of place, therefore, in reporting upon this Bill, to enter upon any discussion of the question of Hindu law which is raised by this objection.

5. On the second objection, that the re-marriage of Hindu widows of respectability is contrary to the customs and usages of the country, we have to observe that the custom of Hindus of respectability could not be otherwise in the present state of the law as administered by the Courts of justice, by whom any such marriage would be declared invalid, and the progeny of any such marriage would be declared illegitimate. The object of the law is to enable those Hindus who are so minded to break through this custom. But it is obvious that this permission will not interfere with those who desire to continue in the observance of the existing custom.

6. The third objection is grounded on the alleged alteration of the rules of inheritance, which this law would cause. The petitions put several cases as instances in which persons who would succeed to the property of a deceased Hindu, if a certain widow remained unmarried, will either not succeed, or will succeed to a smaller share of the property than they would take otherwise, if that widow marries, and has legitimate issue by her second marriage. But it appears to us to be quite unreasonable to talk of this as an interference with the rules of inheritance, and as introducing a compulsory element into the proposed law, in respect of more remote heirs who fail to succeed to property, in consequence of less remote heirs coming into existence. That such a result would occur was, of course, foreseen by the framers of the law; and the provision for legitimatizing the children of re-married widows was made for this very purpose. It is impossible to relieve any marriageable person from an artificial bar to his or her marriage, without introducing, in all probability, heirs into the line of succession in the family to which such person belongs, who could not otherwise come into existence; and it is impossible to introduce any heir into a line of succession, without displacing all who stand lower in the line. But this can be no argument, one way or the other, as to the propriety of removing the artificial bar. No family suffers as a whole,

by reason of the removal of any such bar; for, when the bar is removed, the issue of the newly authorized marriage are as much a part of the family as the other descendants of the original stock. All the particular cases, however complicated they seem, put by the several petitioners, resolve themselves into this one case of a female in the line of succession marrying and having issue, and thereby cutting out those below her or her issue in the line of succession, or introducing new sharers to divide the estate with heirs standing in the same degree of affinity to the deceased proprietor. And the one answer to all these cases is, that no marriageable person in a line of succession, if he or she wishes to marry, ought to be barred from marrying, merely because other heirs may thereby be disappointed in their expectation of succession.

7. The only particular case which we think it necessary specially to notice, is thus put by the petitioners. "If a Hindu dies leaving two daughters both of whom are widows, but the one has a son, and the other no children; by the Hindu law of inheritance as it is now administered, that son will be the sole heir of his maternal grandfather. But, if the childless widow contracts a second marriage and has issue by her second husband, by the proposed law they would be entitled to equal shares of the property of their mother's father, with the son of the widow who has not re-married."

8. We apprehend that, in the above passage, the law is not fully stated. If a Hindu die leaving neither male issue nor a widow, but daughters, an unmarried daughter is entitled to take in exclusion of the other daughters who have been married, whether they are childless widows, or have or are capable of having issue. In default of an unmarried daughter, daughters who have or are capable of having issue take. A daughter who is barren, or a childless widow, is altogether excluded. In the case put by the petitioners the property would, according to the existing law, first go to the widowed daughter who has a son. The childless widow would be excluded.

9. The Bill, as it stands, does not propose to alter this ; but the case put by the petitioners has suggested to us a difficulty to which they do not directly advert. This law, by permitting a second marriage will certainly in many cases destroy the grounds on which the exclusion of a childless widow-daughter from the inheritance rests ; namely, that, being incapable of having lawful issue, she cannot continue her father's line. If the Act were to remain silent on the subject, it might hereafter be contended that *cessante ratione cessat lex*. We can see no positive injustice in such a conclusion, for the rule is an arbitrary one, and not very agreeable to natural justice or reason. But, adverting to the very complicated rules by which the order of the succession of daughters is regulated, and to the probability that a very large class of widows will be indisposed to avail themselves of this law, we conceive that, to avoid confusion, it will be desirable to provide that no person who, by reason of her being a childless widow at the time of the death of any other person, would, according to the existing law, be excluded from a share in property inheritable on the death of such other person, shall take any share in that property because she may hereafter avail herself of the provisions of this law, and so become capable of having issue. If she has re-married during her father's life-time, we think that she should be allowed to stand on the same footing as any other married daughter. We have inserted Sections to give effect to these views.

10. The Bill being so amended, we are not clear that that which is stated by the petitioners as a consequence of the Act will take place. At present, if a man dies leaving a maiden-daughter and a married daughter, the maiden daughter succeeds to the whole inheritance to the exclusion of the other. According to some schools, on the death of the maiden-daughter after she has married and had male issue, her son succeeds to the grand-father to the exclusion of the married daughter or her son. It is not improbable that, by analogy, according to the same

schools, the same rule would be applied in favor of the son of a married daughter in whom the whole inheritance has first vested, to the exclusion of the son of the excluded widow, born to her on a second marriage after her exclusion. But, if the law were ruled to be otherwise, the addition to the class of heirs of the son born to the widow after her second marriage, would be but a particular instance of the general objection which has been above disposed of in the sixth paragraph of this Report.

11. As to the fourth objection, it is admitted to be an objection which has been already pronounced by the Legislature to be invalid. We have ourselves no doubt of the justice or policy of the enactment which has established the principle that the law shall not inflict loss upon any person of any religion or class, for acting in his religious concerns according to his conscience. But it is unnecessary to discuss this point; the principle is established. This being the established principle, it appears to us, so long as this principle is in force, to be futile to contend that the greater ought not to involve the lesser privilege. If a Hindu widow turns Mahomedan, and so repudiates the whole Hindu Code, it is admitted that, by the law of the land, she may contract a valid marriage, and that her children by such marriage will be legitimate, and will inherit the property of her Hindu ancestor. Nevertheless, if the same widow remains a Hindu, but adopts an interpretation of Hindu law which, though not the interpretation of the majority of Hindus at present, is the interpretation of a very respectable minority, which in point of numbers alone is not inconsiderable, (as the petitions on the table of the Council testify)—in this case it is contended that the law of the land ought to make her incapable of contracting a valid marriage, and that, if she marries, following the dictates of her own conscience, she ought to be treated by the law of the land as a prostitute, and her children ought to be disinherited. We do not consider this to be a tenable doctrine.

12. The fifth objection is that the proposed law would be an interference with Hindu law and custom, in the matters of marriage and inheritance, contrary to the principle of religious equality, and contrary to repeated acknowledgments of the duty of respecting such laws and customs. It appears to us that the petitioners have entirely failed to substantiate this objection. To interfere practically, neither directly nor indirectly, with the persuasion or religious observances of any single class, family, or individual of the Hindu race, is the principle of the British Government; and this principle is strictly observed by the Bill before us. On the other hand, this principle is contravened by the state of the Municipal law, which it is the object of this Bill to correct. The law, in its present state, does interfere with the freedom of certain Hindus in acting according to their own interpretation of their own religious books; and this interference operates injuriously to the individuals more immediately concerned, and to public morals. All that the Bill under review does is, without interfering with any other Hindus, to give practical freedom to the particular class of Hindus for whose relief it is designed.

13. The sixth objection is that widows will remarry, and thereby will be prevented from adopting sons, though enjoined to do so by their deceased husbands. It is manifest that, if a widow duly authorised, who intends to marry again, is inclined, to adopt, she can do so before her second marriage, exactly as if she had no such intention. And, as the Bill is framed, the power of re-marriage cannot operate in the way of an inducement not to adopt an heir to her deceased husband, because she cuts herself off from all such inheritance by re-marriage.

14. The seventh objection seems to us to involve an inconsistency. If the relatives are of the class who believe a second marriage forbidden to a widow, and therefore disgraceful, they cannot be expected to urge what in their eyes would



tend to the disgrace of the family. If they are of the class who believe the contrary doctrine, it is especially for the relief of such as they that the proposed law has been brought forward; and their relief injures no one else.

15. The petitioners who advance the eighth objection do not explain the grounds on which their anticipations are founded. If they had done so, we believe it would have been apparent, either that their anticipations have no reasonable foundation, or that what they call the avoidance of strife in families is nothing less than the restriction of grown men and women from all natural and proper freedom of action, in what chiefly concerns themselves.

16. The ninth objection, which is advanced in two of the petitions against the Bill, is that the Bill is vague and imperfect, in not providing what shall constitute a valid marriage in the case of a Hindu widow. It is alleged that the usual nuptial texts are inapplicable in such a case. The same remark is made in three of the petitions in favor of the principle of the Bill, in the way of recommending an amendment of the Bill in this point, amongst others.

17. The petitioners at whose instance the Bill was introduced do not feel the want of any special provision of this nature. They are of opinion that all the usual texts recited, and ceremonies employed, at the first marriage of a female, are applicable in the case of any subsequent marriage. And, if this is so, as we are inclined to believe it is, whatever would constitute a valid marriage in the one case would equally constitute a valid marriage in the other. But, for greater security, and for the removal of all doubts, we have prepared a clause, expressly providing that, whatever words spoken, ceremonies performed, or engagements made, would constitute a valid Marriage in the case of a female who had not been married before, shall constitute a valid marriage in the case of a widow.

18. In connection with the same point, we have thought necessary to provide specially for the giving away of a minor widow. In the case of a bride who is a minor, the giving away by a male relative, or by a male of the same caste, is understood to be a necessary part of the ceremony of marriage. But, as a widow is considered to have left her husband's family, and to have become a member of her deceased husband's family, doubt might be felt as to the right of her own relatives to give her away, unless special provision on the subject be made. And, similarly, doubt might be felt as to the right of her deceased husband's family to give her away. Her own rights too, both whilst a minor, and after coming of age, might be matter of doubt. We have prepared a clause providing specially for all these points.

19. We propose that, when a widow is a minor, her own male relatives shall be the persons to give her away, exactly as if she were unmarried, and their consent shall be necessary for the validity of her marriage; and that, if she be of age, her own consent shall be sufficient to constitute the marriage, whether she be given away by any male relative, or not. As her husband's family may have an interest in inducing a widow to re-marry, we have thought it right in this manner to render the consent of her own family necessary, in the case of a minor widow. At present, by the Hindu law, an unmarried girl of full age may give herself away; and, of course, a widow of full age should have the same power.

20. Sir Robert Hamilton, the Agent of the Governor-General for Central India, who supports the principle of the proposed law, has made two suggestions respecting this Bill: *first*, that there will be risk of disturbance in families if the widow, who is by law guardian of the infant children of her deceased husband, is allowed to retain such right of guardianship, after she has contracted a second marriage, and has thereupon become the member of another family; *Secondly*, that a

widow ought not to be allowed to retain property left to her by her deceased husband for life, by a will made before the passing of this Act, with remainder to the offspring of the testator.

21. Upon the first point, though not insensible to the objections which may be made to depriving the mother of the guardianship of her own children, for doing that which the law will hereafter permit, we agree with Sir Robert Hamilton. The mother will go into the family, and will reside in the family house of her second husband; and, constituted as Hindu society is, it would be socially inexpedient, and indeed unjust, to give her power of removing the children of her late husband from their own family. We have inserted words in the second Section to give effect to Sir Robert Hamilton's suggestion.

22. Upon the second point, which has been raised also by two Commissioners in the North-Western Provinces, we are disposed so far to alter the original design of the Bill, as to extend the principle of the second section, which restricts a widow re-marrying from continuing to enjoy the property of her deceased husband which has devolved upon her as his heiress, to those cases in which she takes by his will any interest determinable with her life, and not giving to her the power of alienating the property. The principle of the second Section was that a widow on her second marriage should forfeit all that the law gives her of right in her deceased husband's estate; but that she should retain whatever she has acquired by way of gift, whether the gift were testamentary, or by act *inter vivos*. The reason for this distinction was that the very peculiar interest which the Hindu law of inheritance gives to a widow in her deceased husband's estate is really, if the texts are examined, intended to be no more than an interest *durante viduitate*; that the conditions on which it is given to her are inconsistent with a second marriage;

and, though she is entitled to the unrestricted possession of the estate, she cannot, except in certain exceptional cases, alienate any part of it. Any absolute interest which she takes by gift stands on a different foundation. If the donor has attached no conditions to the gift, we are not to speculate on his motives, or to ask whether he would or would not have made the gift conditional if he had foreseen the alteration of the law. In no case is the forfeiture intended to be a penalty, or to operate as a restriction on a second marriage. It is imposed in the one case, because it is a consequence of a condition which the law annexes to the estate; it is not imposed in the other, because the Legislature is under no obligation to create a condition on a gift which the donor has made unconditionally. But it often happens that by will a testator gives to his wife very much the same kind of interest as that which, if his heiress at law, she would take on an intestacy. He may sometimes vary the legal incidents of her estate, but still leave it so as to be limited in duration and enjoyment, and to give her no power of alienation. It seems to us that all these gifts, which more or less partake of the nature of a Hindu widow's estate of inheritance, should be put on the same footing as the latter. Again, we have thought it right to provide for those cases in which the husband's estate, having first descended to the sons or grandsons, afterwards vests in the widow as heiress of the first taker. In these cases we think the second Section ought also to apply; and we have altered it accordingly. We have struck out the proviso to that Section, and have secured the widow's rights in the property which she is not to forfeit on a second marriage, more clearly by a separate Section.

23. The Judges of the Madras Court of Sadar Adawlat observe that "the Hindu law does not recognize in Hindus the right to make bequest by will, and that the law of inheritance obtaining amongst Hindus offers impediments to the recognition of titles under wills;" wherefore they think it

“advisable, whatever the practice of the Courts may have been with regard to wills by Hindus,” that the provision of the Bill, preserving to the widow who re-marries the right and interests in any estate or other property to which she may have become entitled under the will of her deceased husband, should be omitted. But we think it quite necessary to retain this provision; for, although Hindu wills are not valid in other parts of India, they are beyond question valid, and of daily occurrence, in Bengal. For Bengal, therefore, the provision is indispensable; and elsewhere it will have no operation, as a widow cannot become entitled to any property under a will, unless that will is recognized by the law as valid.

24. Of the petitions in favor of the Bill, it is only necessary to notice two, in which it is argued that a general marriage Act, according to which valid marriages might be contracted before a registrar, without any religious ceremony—would be preferable to the present Bill. But it is obvious that a general marriage Act of the proposed nature, whilst its scope would be quite different from, and generally very much larger than, the scope of this Bill, unless it went much beyond its own legitimate province, would not supply the place of this Bill. It would merely supply the place of one of the special provisions which we propose to add to this Bill. It would provide, legitimately, how, in one particular way, a marriage can be performed, which will be valid so far as the ceremony is concerned; but it is no part of the purpose of such a law to provide who may or who may not contract marriages together, and what shall be the legal effect of particular marriages upon the rights of the offspring thereof.

25. Moreover, we think, it would be very unwise to complicate the simple object of this Bill, which is an object complete in itself, with extraneous matters involving many difficult points, and many points on which differences of opinion are likely to exist.

26. Further, the class for whose relief this Bill is intended to provide are sincere, and, in their own view, orthodox Hindus. They would consider no marriage as made in accordance with their own law, and as therefore moral, which was not made according to their own rites. They consider these rites as perfectly applicable, and perfectly sufficient for the case. There is no ground for presuming otherwise. It would be casting a slur upon the class for whose relief the Bill is intended, and would be in fact to some extent siding with their adversaries, if the Municipal law pronounced that these rites were not sufficient for the case. That this Bill does not relieve those whom a general Marriage Act might relieve, is no objection to this Bill. Those who, on their own account, really wish such an Act to be passed, should petition for what they want, without complicating either that subject, or the subject of the present Bill, by unnecessarily confounding them together.

37. There are several other points of the same character, in the same petitions, to none of which we think it necessary specially to advert, as they are all answered in substance by the above remarks. They are all resolvable into this one objection; namely, that this Bill goes no farther than its title indicates, and does not make several regulations concerning marriage, which the petitioners think would improve the general law of marriage as it affects Hindus, but which have no more applicability in the case of the marriage of a Hindu widow, than in the case of the marriage of a Hindu virgin. We are of opinion that any regulations of this nature, whether good or bad in themselves, would be quite out of place in any such Bill as the present.

J. P. GRANT,  
J. W. COLVILLE,

Calcutta }  
31st May 1856. }

D. ELIOTT.

## THE LEGISLATIVE COUNCIL OF INDIA.

*Ca'cutta, 12th. July 1856.*

On the Order of the Day being read for the Council to resolve itself into a Committee on the Bill "to remove all legal obstacles to the marriage of Hindu widows"—

The Hon'ble Mr. J. P. GRANT said, since the second reading of the Bill, several Petitions had been received from Hindus, some in favor and some against the measure. He had taken a note of the places from which the Petitions in favor of the measure had proceeded; for he thought it of great importance that the Council should observe that this was not the movement of one party in some one place, but that in many different parts of the country there was a considerable sprinkling of enlightened Hindus who were most earnest for the passing of this Law. He believed that there were upwards of 40 Petitions against the Bill, signed by from 50,000 to 60,000 persons: in favor of the Bill, there were upwards of 25 Petitions, signed by more than 5,000 persons. He did not mean to say that the wishes of 60,000 Petitioners should be disregarded, merely because they opposed a measure which he approved; but it was right that the Council should observe that of all that number, there was not one who, unless he changed his opinions, could be said to have, in any fair sense of the term, any individual and personal interest in the measure. On the other hand, of the 5,000 persons who had petitioned in favor of the Bill, there was not one who could not be said to have, in the fairest and truest sense of the term,

a strong individual and personal interest in it. There was not one of them who, if the Council should refuse to pass this Bill, might not hereafter have occasion to call it to account for having refused to do that which would have saved the domestic happiness and perhaps the honor of his family.

The objections that had been taken in the Petitions against the Bill had been all carefully considered and discussed by the Select Committee to whom the Bill had been referred. It was unnecessary, therefore, that he should detain the Council by entering at any length into them. They had been very fully considered, and, in his opinion, very conclusively disposed of in the Report of the Select Committee. That Report was in the hands of Honorable Members, and had been published; and any one who desired to make himself master of the question in all its details, had only to consult the Petitions and the Report.

The principal objections advanced against the Bill were two. It was said that this measure would interfere with the Hindu Religion; and it was also said that this measure, though in outward appearance merely a permissive Law, was in point of fact a coercive Law.

There was no foundation whatever for the first of these objections. The Bill left every Hindu free to act in accordance with his own religious views. But it would be an interference with Hindus in their religious concerns if the Council should refuse to pass this Bill. For what was the case? Five thousand enlightened Hindus had asked for this Law—and he thought it might safely be assumed that for one Hindu who had had the



boldness to put his name to a Petition for that purpose, there were a hundred Hindus who wished well to the cause. He would read to the Council the names of the places from which the Petitions in favour of the Bill had come. As might be expected, the greater number had come from Bengal; for the Hindu mind was most alive in Bengal. There were Petitions from Calcutta, Baraset, Santipore, Hughly, Kishnagar, Midnapore, Bancorah, Bardwan, Murshedabad, Mysensing, Rangpore, and Chittagong. But the Petitions in favor of the Bill were not confined to Bengal. There were similar Petitions from Poona, Vinchur, Dhulia, Ratnagari, Satara, Ahmednagar, and Secandrabad. So many independent minds, in so many different places, asking the Council to pass this Law, he must consider to be a fact of great importance. These 5,000 Petitioners told the Council that according to their convictions, the rule which prohibited the marriage of Hindu Widows was not in consonance with the true interpretation of their religious books. In addition to this, they said that the restriction against the re-marriage of Widows was absurd, unjust, cruel, and, in its consequences, immoral. The Council did not know, and did not pretend to discuss, whether these Petitioners were right or wrong in their interpretation of their own books; but the Council did know that the Petitioners were right in this—that the restriction was absurd, unjust, cruel and, in its consequences, immoral. If, when 5,000 Hindus came forward and asked to be relieved from the operation of a Municipal Law which prevented their acting in this matter according to their convictions, the

Council allowed that Municipal Law to remain in its present state, then indeed would it be interfering with the religion of a large body of Hindus; but if it did relieve the Petitioners, and all who think with them, from the restriction of the Municipal Law of which they complain, he denied that this would be an interference with the religion of any human being.

The next objection was, if possible, still more fallacious. It was alleged that this Law, though professing to be merely a permissive measure, was in reality a measure of coercion. In support of this position, it was said that, if certain Widows were to marry, they might have children; and if they have children, then some hungry heir might be disappointed in his hope of succession. Was there ever a more ludicrous argument gravely advanced against any Law? He gave those who had advanced it some credit for the art with which, by the help of many irrelevant texts, and ingenious suppositions, they had wrapped up their objection so as to give it an outward appearance of gravity.

Besides the Petitions for and against the Bill, the Select Committee had received some very valuable papers regarding it from the Lieutenant Governor of Agra. After consulting the Judges of the Sadar Court and the Commissioners of Divisions and Provinces under his government, the Lieutenant Governor of Agra had pronounced himself to be strongly in favor of passing the proposed Law. Those were Mr. Colvin's words. It would, he confessed, have been gratifying to him (Mr. Grant) if his Bill had had direct support of this nature

from the other local Governments also ; but no communications from the Governments of Bengal, Madras, or Bombay had been received by the Council. He thought, however, that he could claim a certain degree of negative support from their silence. He could claim the Lieutenant Governor of Agra as a cordial and active supporter of the measure ; and he inferred from the silence of the other Governments that they were, at least, not aware of any political or other serious objection to it.

Mr. Colvin, in recording his cordial approval, had said that he did not expect that the measure would have much early and large practical effect ; and this, he (Mr. Grant) was aware, was also the opinion of many other European gentlemen with whom he was acquainted. But he was happy to say that, amongst the 5,000 native Petitioners who had given their support to the Bill, he did not think there was one who had taken this discouraging view. His own expectations were certainly more sanguine. The measure, as was alleged on one side, and admitted on the other, was a measure of innovation. When he remembered what a creature of habit the Hindu was—what a willing slave he made himself to the society to which he belongs, the fact of 5,000 Hindus, acting independently, and scattered over many different parts of India, coming forward to ask for such a measure was, to his mind, of strong moral significance. And then, when he remembered how often before the same attempt had been made by Hindus themselves at various times and in various places, and how nearly some of those attempts had succeeded, wanting only something like

what this Council was to give them success, he saw no reason to doubt that the pressure of the same evils which had induced large parties of Hindus to make the struggle would induce them to use their victory now that it was won. But, although he considered this to be a matter of very interesting speculation, he maintained that it was not, practically, an argument for the Council to consider now. If he knew certainly that but one little girl would be saved from the horrors of *Brahmacharia* by the passing of this Act, he would pass it for her sake: if he believed, as firmly as he believed the contrary, that the Act would be wholly a dead letter, he would pass it for the sake of the English name.

The Honorable Member concluded by moving that the Council resolve itself into a Committee upon the Bill.

Agreed to.

Section I was agreed to, after a verbal amendment.

Section II provided that the rights of a widow in her deceased husband's property, and her rights of guardianship over his infant children, should cease upon her second marriage.

After a verbal amendment, introduced on the motion of Mr. Currie—

MR. GRANT moved an amendment by which a widow's right to her deceased husband's property would be protected on her re-marriage, if express permission had been given to her to re-marry.

The amendment was agreed to.

After another verbal amendment—

MR. GRANT moved that the words "relating to guardianship of infant children" at the end of the Section, be left out. If they were omitted, he would move a new Section on the subject.

The motion was agreed to, and the Section then passed.

MR. GRANT said, some objections had been taken to the absolute forfeiture of a widow's right of guardianship over her deceased husband's children on her re-marriage. Upon consideration, the objections appeared to him to be valid. He had accordingly prepared an amended Section, and his colleagues in the Select Committee, whom he had consulted, entirely agreed in it. Its effect would be that, in the case of a widow re-marrying, unless she should have been by the Will of her deceased husband appointed guardian of her children, any male relative of the deceased husband might move the highest local Court of Civil Jurisdiction to appoint a guardian, and the Court, after due enquiry, would, at its discretion, appoint a guardian to one or more of the children during their minority.

The following was the new Section :—

"On the re-marriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted by the Will or testamentary disposition of the deceased husband the guardian of his children, the father or paternal grand-father, or the mother or paternal grand-mother of the deceased husband, or any male relative of the deceased husband, may petition the highest Court having original jurisdiction in civil





cases in the place where the deceased husband was domiciled at the time of his death, for the appointment of some proper person to be guardian of the said children ; and thereupon, it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who when appointed, shall be entitled to have the care and custody of the said children, or of any of them, during their minority, in the place of their mother ; and in making such appointment, the Court shall be guided, so far as may be, by the laws and rules in force touching the guardianship of children who have neither father nor mother. Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother, unless the proposed guardian shall have given security for the support and proper education of the children whilst minors."

MR. ALLEN asked if the effect of the Section would be that, in case the mother had been left the guardian by Will, no relative or friend of the deceased husband would be able, on her re-marriage, to take the children out of her custody ?

MR. GRANT said, that would be the effect of the Section. Under the Bill, the widow's right of guardianship would depend upon the same principle as her right of inheritance. If property were left to her by her deceased husband without any qualification, condition, or limitation, she would retain it upon re-marriage : it was only when property was left to her with



certain limitations, after the manner of a life interest, that she would forfeit her right to it upon re-marriage. If a deceased husband had appointed his widow the guardian of his children, without qualification, that would be a case analogous to the case of a deceased husband having made his widow a legatee, without qualification.

SIR JAMES COLVILLE said, the Bill, as originally framed, did not propose to interfere with the mother's right of guardianship, whether she derived that right as a guardian by nurture or by direct appointment from the father of the children. In consequence of a suggestion made by Sir Robert Hamilton, the Agent of the Governor General for Central India, it had appeared to the Select Committee that there might be cases in which the re-marriage of widows who were guardians by nurture of the children of their deceased husbands, would introduce an element of discord into the family, and that it might therefore be desirable to interfere with such right of guardianship. Accordingly, the words at the end of the Section had been introduced. But they had the effect of taking away the right absolutely upon re-marriage. That had appeared to the Honorable Member to his right (Mr. Grant) to go too far, as there might be many cases in which the mischiefs suggested by Sir Robert Hamilton might not arise; and in these, the taking away of the right might, without any cause, do serious injury to infants, besides doing that which every Member of the Council must agree in regarding as at best

a necessary evil—interfering, namely, with the relations between mother and child, and taking away the right of custody which the law of Nature gives to the parent over her offspring. The limitation which the Honorable Member (Mr. Grant) proposed to put upon that right, was simply this—that it might be interfered with only where the deceased father had not, in the exercise of his judgment, expressly by Will appointed his widow the guardian. Every body knew that, in England, the right which was vested in a father of appointing a guardian by Will, depended upon a particular Statute, and this, no doubt, gave the guardian appointed a title to the care and custody of the infant hardly less strong than that of the father himself. There was no Statute which recognised that right in this country; yet, such appointments were not unfrequently made by Will, and effect was given to them when made. This, however, and the exception to which the Honorable Member opposite seemed to object, applied almost exclusively to Bengal; because in those parts of India in which the testamentary power was not recognised, the right of appointing a guardian by Will could not be exercised. He himself did not think that it would be desirable to go farther in this Bill than the new Section in question proposed to go, in depriving the mother of the custody of her child; and he was, therefore, disposed to vote for the Section as it stood.

The Section was then put, and agreed to.

Sections III and IV were agreed to, after verbal amendments.

Section V provided that whatever ceremonies now constituted a valid marriage, should have the same effect on the marriage of a widow.

MR. CURRIE said, this Section appeared to him to be hardly necessary ; and if it was not necessary he thought it should be omitted, as being open to question on the ground that it touched on the religious part of the question, which it was very desirable to avoid doing. It was one thing to enact that a person who was convinced that the re-marriage of widows was consistent with the doctrines of the Hindu religion, should be relieved from any civil disabilities to which from the practice of the Courts, he might be subject in the event of his acting on that conviction ; and another thing to prescribe what rites and ceremonies of the Hindu religion should constitute a valid marriage. If it were necessary to declare what should constitute a valid marriage under the Act, he should greatly prefer recognizing the validity of marriage by civil contract, without any reference to rites and ceremonies. But it did not appear that there was any such necessity. In the Draft Act, there was no provision of this kind and the Select Committee to whom that Act had been referred, stated in their Report—

“The Petitioners at whose instance the Bill was introduced, do not feel the want of any special provision of this nature. They are of opinion that all the usual texts recited, and ceremonies employed, at the first marriage of a female, are applicable in the case of any subsequent marriage. And if this is so, as we are inclined to believe it is, whatever would constitute a valid marriage in the one case, would equally constitute a valid marriage in the other.

He thought, therefore, that the Section was not necessary, and that, if not necessary, it ought to be omitted

SIR JAMES COLVILLE said, he apprehended that this or some corresponding Section was really necessary in the Bill. He would gladly avoid having anything to do with any question of *Mantras*, or ceremonies, if it could be avoided; but it appeared to him that there actually was but one alternative. The Bill could not safely be left without some such provision, as this. In the absence of such a provision what would be the consequence? As the Hindu Law was now understood, some ceremonies were necessary to render a marriage valid. This Bill would declare that a Hindu widow had a legal right to re-marry : it would also declare that the issue proceeding from such re-marriage must be held to be legitimate. But if, while declaring this it made no provision for the form in which the widow was to contract the marriage, there would be nothing by which to distinguish between the marriage and concubinage ; and it would be open to any one who had interest in contesting the validity of the marriage, to raise the question in any local Court of civil jurisdiction. Now, the law of marriage, as understood by Hindus, required the performance of certain ceremonies. Suppose that the Section in question were left out of the Bill, and that the question of the validity of a Hindu widow's marriage came to be tried in the Court of a Principal Sadar Amin, who was a Hindu opposed to the marriage of Hindu Widows, and strongly and conscientiously of

opinion that the *Mantras* were applicable only to the case of a virgin contracting a first marriage—what would his decision be? He would decide that the widow had a right to re-marry under the new law, but that she had not contracted a valid marriage, inasmuch as the *Mantras* pronounced over her were, according to his interpretation, wholly inapplicable to her case. Consequently, if the question of the validity of the ceremonies to be performed at the marriage of widows were not settled by law, it would, in all probability, have to be settled by the Courts, and the effect of that might be such as to render this Act altogether nugatory. It was impossible to say how even the highest Court might decide the question, for there was no doubt that, among learned Hindus, there were two opinions on the subject; one class considered the *Mantras* to be inapplicable to the case of any female not a virgin contracting her first marriage; the other considered them to be equally applicable to the case of widows, and wished the Bill to be passed in its present form, being perfectly sure that no practical difficulty would be experienced in the celebration of widow marriages, or in getting a Brahmin to pronounce these *Mantras*. All that this Section did was, to prevent the validity of a widow marriage from being questioned in Courts of Justice upon the ground of the inapplicability of the ceremonies observed.

The only alternative was to make this Bill go beyond its proper object and scope—which was to legitimize the Marriage of Hindu widows—and alter the Hindu Law of Marriage generally, by providing that such marriages should be made by civil contract, and prescribing the

machinery by which a legal marriage between persons desirous to marry, should be effected. The Report of the Select Committee had given at length the reasons for which the Committee thought it would be better not to enlarge the objects of the Bill ; and he was disposed to adhere to them.

MR. GRANT said, he wished to add only one remark to the observations of the Honorable and learned Chief Justice. The Honorable Member for Bengal seemed to think that this Section touched rather too closely on the religious part of the question. But, on referring to the Bill, it would be seen that the Section relates only to the legal effect of what is done at the marriage, and has no reference to the religious element. The Honorable Member would see that the clause provides as to words spoken and engagements made, as well as ceremonies performed.

MR. CURRIE said, he had no wish to press the objection. He had thought it right to state it for the satisfaction of others as well as his own. After the explanations he had just heard, he had no hesitation in saying that he was entirely satisfied with the Section as it stood.

The Section was then put, and agreed to.

Section VI provided that the consent of certain male relatives should be necessary to render valid the marriage of a widow who was a minor.

MR. GRANT proposed to strike out this Section, and introduce another in its place, of modified effect. By this Section as worded, if a widow who was a minor contracted a marriage without the required consent of any

of her male relatives, that marriage would, *ipso facto*, be invalid; and, consequently, although the couple might cohabit for years, and bring up children and grand-children it might be disputed and set aside. This would be going too far. He proposed an alteration which would be more consistent both with the ideas which Hindus had on the subject of marriage, and with our own. He moved that Section VI be left out of the Bill, and that another Section, which had the concurrence of the other Members of the Select Committee, be substituted for it.

The proposed Section, after some verbal amendments, was passed in the following form:—

“If the widow re-marrying is a minor, whose marriage has not been consummated, she shall not re-marry without the consent of her father, or, if she has no father, of her paternal grand-father, or, if she has no such grand-father, of her mother, or, failing all these, of her elder brother, or, failing also brothers, of her next male relative. All persons knowingly abetting a marriage made contrary to the provisions of this Section, shall be liable to imprisonment for any term not exceeding one year, or to fine, or to both. And all marriages made contrary to the provisions of this Section, may be declared void by a Court of Law. Provided that, in any question regarding the validity of a marriage made contrary to the provisions of this Section, such consent as is aforesaid shall be presumed until the contrary is proved; and that no such marriage shall be declared void after it has been consummated. In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid.”

The Preamble and Title were then severally agreed to.

The Council having resumed its sitting, the Bill was reported.

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## THE LEGISLATIVE COUNCIL OF INDIA.

*Calcutta, 19th July 1856.*

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MR, GRANT moved the third reading of the Bill "to remove all legal obstacles to the Marriage of Hindu Widows."

The question being proposed—

MR. BARNES PEACOCK said, considering the nature of this Bill, and the numerous Petitions that had been presented against it, he did not think it right to give a silent vote in favour of the motion for the third reading. He would therefore, briefly state the reasons which induced him to give the Bill his ready and cordial support.

The Bill had originated out of a Petition to this Council signed by upwards of a thousand Hindus. The Petitioners had laid before the Council the various inconveniences and evils that resulted from the law (which was stated to exist) that the marriage of a Hindu widow was illegal. They had pointed out to the Council the difficulties which arose in consequence of that supposed law, the many mortifications and privations to which Hindu widows were driven by it, and the immorality which it was calculated to engender. There had been many Petitions against the Bill, and many also in favor of it. The dispute as to the legality of the marriage of a Hindu widow arose from a variance in the interpretation of the Shastras or holy books. One class of Hindus, who he believed were equally as sincere and conscientious as the other, contended that, according to their reading of those holy books, the marriage of a Hindu widow was



not illegal: another class contended that the true construction of the holy books was, that a Hindu widow must remain unmarried, undergoing privations and mortifications, and that, if she did marry, her marriage was illegal, and her children illegitimate, and not entitled to inherit any property. It was contended by some of the Petitioners that this Bill was an interference with the religion of the Hindus, and that it was an interference with their usages. It appeared to him that the Bill was no interference either with the religion or with the usages of Hindus in the sense in which the Legislative Council should consider its effect. He had heard it said that the Hindu law was so mixed up with the Hindu religion that the two could not be separated. But he was not of that opinion. He was an advocate for liberty of conscience; and he thought that, so long as the interests of Society were not injuriously affected, no political Government ought to throw in the way of its subjects any impediment whatever against their following the dictates of their own consciences, either directly by subjecting them to penalties, or indirectly by subjecting them to disabilities, or refusing to allow them to participate in the benefits enjoyed by other citizens, or favoring those who entertained a particular belief. There was nothing in this Bill which would prevent any man or any widow from doing as he or she pleased. There was nothing in it which could compel any man to marry a widow, or any widow to re-marry. Every Hindu whose religious feelings would not permit him to marry a widow would be free to abstain from such marriage; and every Hindu widow

who believed that, according to her religion, she was not entitled to re-marry, would be free to act in conformity with her belief, remain a widow, subjecting herself to such mortification and privations as her own conscience might dictate. But that was no reason why the sanction of law should be added to the sanction of religion. In our own church, we heard the commandments constantly read, and we obeyed them in consequence of a moral, not in every case of a legal sanction. Sometimes, the law went along with religion, and prohibited what religion prohibited; but in many instances, the law prohibited what religion did not prohibit, and did not prohibit what religion prohibited. We were commanded, for example, not to worship any graven image, and to keep holy the Sabbath day. We were also commanded not to murder, nor to steal, nor to commit adultery, nor to bear false witness against our neighbour, nor to covet. The law said—"If you murder or steal, or bear false witness against your neighbour, you shall be liable to penal consequences." But why did the law do that? Because it would be injurious to Society if any of those offences should be committed. It was an injury to Society for a man to murder, or rob, or bear false witness against his neighbour; and therefore the law prohibited those offences; but it did not prohibit them in order to give effect to the commandment of religion. On the other hand, there was no law which said that persons must not worship a graven image, and that if they did, they would be subject to penalties. There had been laws which subjected persons to penalties if they did not keep holy the Sabbath day, but they had been repealed; and he believed that, at present, there was no

law of that nature in existence. The Council had lately had a Petition presented to it, asking for a law to shut up all taverns on Sundays with a view to check the open desecration of the Lord's day and the increasing vice of drunkenness, as if it were a greater crime to get drunk on the Sabbath than on any other day in the week! The Legislature prohibited the open desecration of every day, by acts injurious to Society. If a man, in a state of drunkenness, committed on any day an offence which was an injury to Society, the law would punish him for his offence. But the Legislature did not follow every man into his private home to restrain him from drunkenness or other immoral conduct not affecting Society. It left that to his own conscience and his sense of moral duty. A man's conscience was beyond the powers of law, and it had been truly said that Conscience was God's province. Where the commission of an act or the omission of a duty would be an offence against Society, a political government interfered to prevent that act or omission. But it did that for the protection of Society, and not for the protection of religion. Upon what principle was it that the Indian Legislature had proceeded with reference to the practice of Sati? Regulation XVII of 1829 declared that practice to be illegal and punishable by the Criminal Courts; and the Preamble stated the reasons for the introduction of the measure. It said—

“The practice of Sati, or of burning or burying alive the widows of Hindus, is revolting to the feelings of human nature; it is nowhere enjoined by the religion of the Hindus as an imperative duty; on the contrary, a life of purity and retirement no-

the part of the widow is more especially and preferably inculcated, and, by a vast majority of that people throughout India the practice is not kept up nor observed : in some extensive districts, it does not exist : in those in which it has been most frequent, it is notorious that, in many instances, acts of atrocity have been perpetrated, which have been shocking to the Hindus themselves, and in their eyes unlawful and wicked. The measures hitherto adopted to discourage and prevent such acts have failed of success, and the Governor General in Council is deeply impressed with the conviction that the abuses in question cannot be effectually put an end to without abolishing the practice altogether. Actuated by these considerations, the Governor General in Council, without intending to depart from one of the first and most important principles of the system of British Government in India, that all classes of the people be secure in the observance of their religious usages, so long as that system can be adhered to without violation of the paramount dictates of justice and humanity—has deemed it right, &c.”

and then followed rules abolishing and making illegal the rite of Sati. That rite was an injury to society. It was an injury to society that a widow should burn or bury herself with the body of her husband, or that any one should assist her in doing so ; and, therefore, the Legislature had interfered, and made the practice illegal. If a person believed it to be his imperative duty to do an act which would not be an injury to his fellowmen or to society at large, the Legislature would not forbid him to do it ; but if he believed it to be his imperative duty to offer human sacrifice, the Legislature would interpose and say—“We will not allow you to carry out your belief to the injury of your neighbour.” But what was there in this Bill which would prevent any Hindu from following

his or her own belief respecting the marriage of Hindu widows? What was the imperative duty which it would prevent any Hindu from performing? The Bill would not prevent any Hindu from acting according to his own belief that the Hindu religion forbade the marriage of widows; but it would enable those who entertained a different belief to act upon it. What the Council said was this—"We do not decide which is the orthodox opinion: it is not for us to do that: we merely enact that, if a Hindu widow choose to re-marry, she may re-marry." One class of Hindus petitioned the Council to relieve them from the prohibition of law, leaving the supposed prohibition of religion untouched. The Council had, accordingly, come in to remove the legal prohibition, not with the view of compelling those Hindu widows to remarry, whose religious convictions were opposed to marriage, but with the view of protecting those Hindu widows, who believed that they could re-marry, from the thralldom of the class which thought differently from them. If one Hindu widow believed that her religion did not restrain her from re-marrying, why should the law restrain her because others of her community entertained a different opinion on the subject? No injury was done to society by a widow re-marrying. If any such injury were done, the law ought to restrain Christian and Mahomedan widows from re-marrying. But the marriage of Hindu widows was not an injury to society: the injury arose from the law which prevented them from exercising their own free will upon the subject. That law was shown to be highly injurious, and there could be no objection to the Legisla-

ture withdrawing the legal prohibition. If a Hindu widow should become a Christian, there would be no obstacle to her marrying again. Then, why should she not marry again while continuing in her own faith, if she believed in her conscience that the doctrines of that faith did not prohibit her re-marriage?

There was a great distinction between preventing a man from doing that which his religion directed him to do, and preventing him from doing that which his religion merely allowed him to do. If a man were to say that his religion did not forbid polygamy, and therefore that he might marry as many wives as he pleased, when it was impossible for him to carry out the contract of marriage, it would be no interference with his religion for the Legislature to say that the marrying of a hundred wives, and the subsequent desertion of them, was an injury to Society, and therefore that it should be illegal to do so. He (Mr. Peacock) maintained that it was the duty of the Legislature in such a case to prevent him from doing that which his religion merely permitted, but did not command him to do. He could not be a husband to a hundred wives, and could not carry out the contract of marriage. Under no circumstances ought the Legislature to interfere with the privilege of a man to do any act which in his own conscience he believed he was bound to do, unless such act should be injurious to society; but where such an act would be injurious to society, he maintained that it was the duty of the Legislature to prevent him from doing it.

For these reasons, he was of opinion that this Bill ought to be passed. He felt deeply indebted to the Honorable

Member opposite ( Mr. Grant ) for having introduced the measure, and he was delighted to see that the Petitions received in favor of the Bill contained enlightened and liberal sentiments which did honor to those gentlemen from whom they had emanated.

MR. GRANT'S motion was then carried, and the Bill read a third time and passed.

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## THE LEGISLATIVE COUNCIL OF INDIA.

*Calcutta, July 26, 1856.*

### PRESENT :

The Honorable J. A. Dorin, *Vice-President*, in the chair.

Hon. Sir J. W. Colville,		C. Allen, Esq.,
Hon. J. P. Grant,		E. Currie, Esq.
Hon. B. Peacock,		
D. Elliott, Esq.,		Hon. Sir A. W. Buller.

The following Message from the Governor General was brought by Mr. Peacock and read :—

### MESSAGE No. 79.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 19th July 1856, entitled "A Bill to remove all legal obstacles to the Marriage of Hindu Widows."

By order of the Right Honorable the Governor General,

CECIL BEADON,

*Secy. to the Govt. of India.*

FORT WILLIAM, }  
The 25th July 1856 }

## ACT No. XV. OF 1856.

(Received the Governor-General's assent on the 25 July 1855.)

An Act to remove all legal obstacles to the marriage of Hindu Widows.

Whereas it is known that, by the law as administered in the  
 Preamble. Civil Courts established in the territories in the  
 possession and under the government of the East  
 India Company, Hindu Widows, with certain exceptions, are  
 held to be, by reason of their having been once married, incapable  
 of contracting a second valid marriage, and the offspring of such  
 widows by any second marriage are held to be illegitimate and  
 incapable of inheriting property; and whereas many Hindus believe  
 that this imputed legal incapacity, although it is in accordance  
 with established custom, is not in accordance with a true inter-  
 pretation of the precepts of their religion, and desire that the  
 Civil law administered by the Courts of Justice shall no longer  
 prevent those Hindus who may be so minded from adopting a  
 different custom, in accordance with the dictates of their own  
 consciences; and whereas it is just to relieve all such Hindus from  
 this legal incapacity of which they complain; and the removal  
 of all legal obstacles to the marriage of Hindu widows will tend  
 to the promotion of good morals and to the public welfare: It  
 is enacted as follows:—

1. No marriage contracted between Hindus shall be invalid,  
 Marriage of and the issue of no such marriage shall be illegiti-  
 Hindu Wi- mate, by reason of the woman having been pre-  
 dows legalized viously married or betrothed to another person  
 who was dead at the time of such marriage, any custom and any  
 interpretation of Hindu law to the contrary notwithstanding.

2. All rights and interests which any widow may have in  
 Rights of her deceased husband's property by way of main-  
 widow in de- tenance, or by inheritance to her husband or to his  
 ceased hus- lineal successors, or by virtue of any will or testa-  
 bands prop- mentary disposition conferring upon her, without  
 erty to cease on her remar- express permission to remarry, only a limited in-  
 riage. terest in such property, with no power of alienat-  
 ing the same, shall, upon her re-marriage, cease and determine  
 as if she had then died; and the next heirs of her deceased hus-  
 band, or other persons entitled to the property on her death, shall  
 thereupon succeed to the same.



3. On the re-marriage of a Hindu Widow, if neither the

Guardianship of children of deceased husband on the re-marriage of his widow.

widow nor any other person has been expressly constituted by the will or testamentary disposition of the deceased husband, the guardian of his children, the father or paternal grand-father, or the mother or paternal grand-mother, of the deceased husband or any male relative of the

deceased husband may petition the highest Court having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death, for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who, when appointed, shall be entitled to have the care and custody of the said children, or of any of them, during their minority, in the place of their mother; and in making such appointment the Court shall be guided, so far as may be, by the laws and rules in force touching the guardianship of children who have neither father nor mother.

Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother; unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

4. Nothing in this Act contained shall be construed to render

Nothing in this Act to render any childless widow capable of inheriting.

any widow, who, at the time of the death of any person leaving any property, is a childless widow capable of inheriting the whole or any share of such property if, before the passing of this Act, she would have been incapable of inheriting the same by reason of her being a childless widow.

5. Except as in the three preceding Sections is provided, a

Saving of rights of widow marrying except as provided in the three preceding Section (2, 3 and 4).

widow shall not, by reason of her re-marriage, forfeit any property, or any right to which she would otherwise be entitled; and every widow who has remarried shall have the same rights of inheritance as she would have had, such marriage been her first marriage.

6. Whatever words spoken, ceremonies performed, or engage-

Whatever ceremonies now constitute valid marriage shall have the same effect on the marriage of a widow.

ments made, on the marriage of a Hindu female who has not been previously married, are sufficient to constitute a valid marriage, have the same effect, if spoken, performed, or made on the marriage of a Hindu Widow ; and no marriage shall be declared invalid on the ground that such words, ceremonies, or engagements are inapplicable to the case of a

widow.

7. If the widow remarrying is a minor whose marriage has not been consummated, she shall not remarry without the consent of her father, or, if she has no father, of her paternal grand-father, or, if she has no such grand-father, of her mother, or, failing all these, of her elder brother, or, failing also brothers, of her next male relative.

All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year or, to five, or, to both.

And all marriages made contrary to the provisions of this Section may be declared void by a Court of law.

Provided that, in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated.

In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid.



# APPENDIX:

*A brief analysis of the several petitions relating to the Act.*

(a) *Petitions in favour of the Act.*

(1)—Petition from certain inhabitants of Bengal, in favor of legalizing the Remarriage of Hindu Widows, dated 5th October 1855.

(2)—Ditto—from certain Brahmins resident at Poona, expressing their cordial approval of the principle upon which the proposed Bill is based, dated 24th November 1855.

(3)—Ditto—from certain Hindu inhabitants of Kishnagar, dated 8th December 1855.

(4)—Ditto—from the Rev. E. Storrow, Chairman and the Rev. D. Ewart, Secretary Calcutta Mission Conference, in favor of the Bill, dated 22nd December 1855.

(5)—Ditto—from certain Hindu inhabitants of Calcutta and its vicinity, in favor of the Bill. } dated 19th  
January  
1856.

(6)—Ditto—from Ditto—Baraset. }

(7)—Petition signed by the Chief of Vinchur and others, in favor of the Bill, dated 2nd February 1856.

(8)—Ditto—from the Raja of Kishnagar and certain Zemindars, Talukdars and others in and about Santipore, in favor of the Bill, dated 16th February 1856.

(9)—Ditto—from certain Hindu residents of Murshedabad. } dated 23rd  
February  
1856.

(10)—Ditto—inhabitants of Dhulia in Khandesh. }

(11)—Ditto—Ditto—Chitagong, dated 29th February 1856.

(12)—Petition from certain Hindu inhabitants of Secandrabad, dated 8th March 1856.

(13)—Ditto—residents of Midnapere, dated 5th April 1856.

(14)—Ditto—Ditto—Hoogly 12th—Ditto.

(15)—Ditto—Ditto—Ratnagiri.

(16)—Ditto—Ditto—Rangpore.

(17)—Ditto—Ditto—Satara

(18)—Ditto—Ditto—Ahmednagar, dated 31st

May 1856.

} 17th May  
1856.

(b) *Petitions against the Act.*

(1)—Petition from several inhabitants of Calcutta, Nuddea and other places, dated 29th February 1856.

(2)—Ditto—Ditto—of the Lower Provinces of Bengal and Rangpore, dated 29th March 1856.

(3)—Ditto—Ditto—Tipperah dated 5th April 1856.

(4)—Ditto—Ditto—Foonah, dated 12th—Ditto.

(5)—Ditto—Ditto—Mymensing.

(6)—Ditto—Ditto—Murshedabad. } 19th—Ditto.

(7)—Ditto—Ditto—Chitagong, dated 10th May 1856.

(8)—Ditto—Ditto—Pabna, Decca, Orissa, Ratnagiri, dated 17th May 1856.

(9)—Ditto—Satara, dated 7th June 1856.

(10)—Ditto—Ahmednagar, „ 28th—Ditto.

(11)—Ditto—Thana, „ 2nd August 1856.

(12)—Ditto—Surat, „ 9th „

**EXTRACT** from an Official Report dated 11th February 1858, regarding Improvements effected in the Administration of India during the last 50 years, prepared at the India Office, for the information of both the Houses of Parliament, illustrating certain social and religious matters in which the British Government interfered for the public good;—

(a) "*Infanticide*—Equal vigour has been displayed against many barbarous usages of the Natives. Special measures have been carried on during a long series of years; for the suppression of female infanticide, a crime which had become a positive custom among several of the higher castes in various parts of India from motives, not of religion, but of family pride. The co-operation of the Native Princes has been urgently invited, and to a great extent obtained, for the suppression of this practice. In the places, and among the castes, in which the practice was ascertained to exist, means were taken to obtain an annual census of female children. A report of all births, of all deaths of infants, and of the causes of deaths, was required under stringent regulations and penalties. Engagements were taken from the influential person of the castes to preserve their own children, and to aid in enforcing the same conduct on others. Honorary rewards and marks of distinction have been conferred on Chiefs and others who have exerted themselves for the promotion of the object. By great efforts of persuasion and address, the heads of castes and tribes have been prevailed on to agree to a limitation of that favorite subject of vanity, marriage expenses; and grants of money are regularly made to poor persons of the castes, in aid of the marriages of their daughters. These efforts have been rewarded by a continual diminution of the number of infanticides, evidenced by a constant increase in the number of females in existence of the formerly delinquent castes."

(b) "*Sati*.—Sati, or the voluntary burning of widows on the funeral piles of their husbands, after having been long discouraged by every means short of positive prohibition was finally made a criminal offence in all who abetted it, by a

Legislative Act of Lord William Bentinck's Administration, and has now entirely ceased in the provinces subject to British Administration. Unremitting efforts have been used to induce the Native Princes to follow the example, and have been at last successful with all of them except one, the Maharana of Odeypore, the representative of the oldest and proudest dynasty in India; and this Prince Professes himself willing to abolish the rite, when the cessation of existing differences between himself and his feudatory Chiefs shall enable him to obtain their concurrence in the measure. Various other modes of self-immolation practised in India,—by drowning, burying alive or starvation,—have been, with equal success, prohibited and suppressed."

(c) "*Witchcraft*.—The pretence of supernatural powers was a source of great evil in India, not only as a means of extortion and intimidation, but also by the numerous murders perpetrated on persons suspected of practising on the lives and health of others by magical arts. The acts of fancied retaliation have been, with a gentle but powerful hand, repressed, and great progress has been made towards their extinction. The fraudulent pretence is now punished as a substantive crime."

(d) "*Tragga*.—The insecurity of rights and the imperfection of the tribunals, under the Native Governments, had introduced, on the part of those who were, or believed themselves to be, injured, a singular mode of extorting redress. They hired a person of one of the religious classes to threaten, that unless the demand, whatever it might be, was complied with, he would kill or wound himself or some one else; thereby, it was supposed, entailing the guilt of murder or of wounding on the persons whose alleged injustice was the original cause of the act. If the threat proved ineffectual, the honor of the threatener was engaged to carry it into practical effect; and many suicides or murders were committed from this cause. This barbarous practice, known by the name of *Tragga*, has been almost entirely suppressed, partly by penal laws, and partly by affording more legitimate means of enforcing just claims."

(e) "*Neria's Sacrifices*.—Among the barbarous tribes who occupy the hill tracts of Orissa, on the south west frontier of Bengal human sacrifices prevailed until a very recent period. By a well devised and judicious series of conciliatory measures, worthy of a more lengthened record than can be given to them in this place, the extinction of this enormity has been effected."

(f) "*Abolition of Slavery*.—After a full consideration of the subject of slavery in India, by the Indian Law Commissioners and by the Government of India, an Act was passed in 1843, which entirely abolished slavery as a legal status. The Courts of Justice are forbidden to recognize it; no fugitive, claimed, as a slave, can be forcibly restored; and every act which would be an offence if done to a free person, is now equally an offence when done to the persons formerly considered slaves."

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Extract from a Lecture delivered by the Hon<sup>ble</sup> W. W. Hunter, LL. D., C. I. E., entitled, "England's work in India."

"Widow-burning, infanticide, hook-swinging, self-mutilation, and human sacrifice, these are a few similar relics of the old bondage under which the Indian intellect cowered and the Indian heart bled. Great as has been the material progress of India during the past century its emancipation from ignorance and priest-craft forms, to my mind, a far more splendid memorial of British rule."

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*Extract from Pandit Ishwarchandra Vidyasagar's pamphlet on the Remarriage of Hindu Widows:—*

"Every one, having the senses of sight and hearing, must acknowledge how intolerable are the hardships of our widows especially of those who have the misfortune to lose their husbands at an early age; and how baneful to society are the effects of the custom which excludes them from the privilege of marrying again. Reader! I beseech you to think seriously for a while upon the subject, and then to say whether we should continue slaves to such a custom, regardless of the precepts of our Shastras or should we throw off the yoke, and resting on those holy sanctions,



introduce among ourselves the marriage of widows, and thus relieve those unfortunate creatures from their miseries. While forming your decision, you should bear in mind that the customs of our country are not immutable in their nature. No one can assert that they have never undergone any change. On the contrary, the present inhabitants of India would appear to be altogether a different race, were you to compare their customs with those that prevailed in days of old amongst their ancestors. One instance will suffice to illustrate the truth of this statement. It was considered a heinous offence in a Sudra, if, in ancient times, he durst be seated on the same carpet or mat with a Brahmin; but the Brahmins of these days, like menial servants, content themselves with sitting on the carpet or mat, while the Sudra occupies a raised seat upon the same.\*

Changes in our customs have taken place even within a recent period. The Vaidyas, from the time of Raja Rajbullab, have commenced to reduce the period of their Asaucha (impurity) to fifteen days, and to wear the sacred thread. Before his time, the period of their Asaucha was a month, and they did not wear the sacred thread. Even now, there are families among the Vaidyas who stick to the old custom. Have these innovators and their descendants ever been treated as men degraded and having no claim to the privileges of their caste. Again, before the appearance of the Dattakachandrika, all Hindus in adopting sons were obliged, in order to make the adoption valid, to take them before the age of five, and to perform the rite of Chura karana (ceremony of Tonsure) on them. Since the publication of that work, if a son is adopted in the case of a Brahmin, before the ceremony of the sacred thread, and in the case of a

\* This custom is opposed to the Shastras. It is not only the Sudras and Brahmins ignorant of the Shastras that follow this custom, but those Brahmins and Sudras who are reputed as versed in them, act in accordance with it without compunction. Manu has said:—

सहासनमभिप्रेप्सु रुत्कृष्टस्यापकृष्टजः ॥

कव्यां कृताङ्गो निर्वास्यः सिक्चं वास्यावकर्त्तयेत् ॥८१२८.

that is, If a Sudra seats himself on the same seat with a Brahmin his loins should be branded with heated iron and he should be banished or his loins cut asunder.

Sudra, before the marriageable age, he is still admitted to be within the proper limits of age, and his adoption considered as valid.

In these cases, new customs were adopted according to a new interpretation of the Shastras, not because they were absolutely needed by the society at large, but merely because they suited the convenience or caprice of certain individuals. For, if the Vaidyas did not reduce the period of their Asau-cha, or wear a thread, or if sons were not adopted after five years of age, society could neither gain nor lose. But what an amount of misery and evil does the country sustain from the non-prevalence of the marriage of widows? Here you have a positive evil—evil of a magnitude passing our imagination to conceive. Now, if you could adopt customs that at best suited but your convenience, you should do any thing for the removal of this awful evil, when you have your Shastras most explicitly permitting your widows to marry again.

But I am not without my apprehensions that many among you at the very sound of the word "custom" will consider it sinful even to enquire if the change should take place. There are others again, who though in their hearts agree to the measure, have not the courage even to say that it should be adopted, only because it is opposed to the customs of their country. O what a miserable state of things is this? Custom is the supreme ruler in this country: Custom is the supreme instructor: The rule of custom is the paramount rule: The precept of custom is the paramount precept.

What a mighty influence is thine, O custom! Inexpressible in words! With what absolute sway dost thou rule over thy votaries! Thou hast trampled upon the Shastras, triumphed over virtue, and crushed the power of discriminating right from wrong and good from evil! Such is thy influence, that what is no way conformable to the Shastras is held in esteem, and what is consonant to them is set at open defiance. Through thy influence, men, lost to all sense of religion, and reckless in their conduct, are everywhere regarded as virtuous and enjoy all the privileges of society, only because they adhere to mere forms; while those truly virtuous and of unblemished conduct, if they disregard those forms and disobey thy authority, are considered as the most irreligious, despised as the most depraved, and cut off from society.

What a sad misfortune has befallen our Shastras! Their authority is totally disregarded. They, who pass their lives in the performance of those acts which the Shastras repeatedly prohibit as subversive of caste and religion, are every where respected as pious and virtuous: while, the mere mention of the duties prescribed by the Shastras makes a man looked upon as the most irreligious and vicious. A total disregard of the Shastras and a careful observance of mere usages and external forms is the source of the irresistible stream of vice which overflows the country.

How miserable is the present state of India! It was once known to nations as the land of virtue. But the blood dries up to think that it is now looked upon as the land of depravity, and that from the conduct of its present race of people. From a view of its present degradation it is vain to look for a speedy reformation.

Countrymen! how long will you suffer yourselves to be led away by illusions! Open your eyes for once and see, that India, once the land of virtue, is being overflowed with the stream of adultery and fœticide. The degradation to which you have sunk is sadly low. Dip into the spirit of your Shastras, follow its dictates, and you shall be able to remove the foul blot from the face of your country. But unfortunately you are so much under the domination of long established prejudice, so slavishly attached to custom and the usages and forms of society, that I am afraid you will not soon be able to assert your dignity and follow the path of rectitude. Habit has so darkened your intellect and blunted your feelings, that it is impossible for you to have compassion for your helpless widows. When led away by the impulse of passion, they violate the vow of widowhood, you are willing to connive at their conduct. Losing all sense of honor and religion, and from apprehensions of mere exposure in society, you are willing to help in the work of fœticide. But what a wonder of wonders? You are not willing to follow the dictates of your Shastras, to give them in marriage again, and thus to relieve them from their intolerable sufferings, and yourselves from miseries, crimes and vices. You perhaps imagine that with the loss of their husbands your females lose their nature as human beings and are subject no longer to the influence of passions. But what instances occur at every step to show, how sadly you are mistaken. Alas! what fruits of poison you are

gathering from the tree of life, from moral torpitude and a sad want of reflection. How greatly is this to be deplored! Where men are void of pity and compassion, of a perception of right and wrong, of good and evil, and where men consider the observance of mere forms as the highest of duties and the greatest of virtues, in such a country would that women were never born.

Woman ! in India, thy lot is cast in misery !

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HIGH COURT, APPELLATE SIDE, 25th MAY 1881.

*Imperatrix versus Vijia Lakshmi.*

(BEFORE MR. JUSTICE WEST & MR. JUSTICE PINHEY).

The above case which excited much attention came on for confirmation of sentence before the High Court. Mr. Shantaram Narayan appeared on behalf of the prisoner to appeal against the sentence, and the Hon'ble Rao Saheb V. N. Mandlik, C. S. I., represented the Crown.

The facts of the case as stated by Mr. S. Hammick, C. S., the Sessions Judge, in his finding, are briefly these. The accused Vijia Lakshmi, is a Brahmin woman, aged 24, who was left a widow in 1876-77. Four or five months ago, the Police Patel Umar heard a rumour that she was pregnant, and having seen the woman and satisfied himself that such was the case, he reported the matter to the Chief Constable, who issued instructions for the purpose of preventing foul play and sent on the report to the Magistrate. It does not appear, however, that any further steps were taken until the 30th March last, when the body of a newly born baby, with a gaping wound across its throat, was found on a mound lying among the rubbish in the Ghanchis' quarters. Suspicion pointed to the accused, as the murderer of the child, and the Chief Constable went to her house. He questioned her strictly, and she then made a statement to him which induced him to send her to the second class Magistrate. Before that officer she confessed that she had given birth to the child, and that to avoid shame and infamy in the world it had been killed by the point of a *tabilha* (a cooking implement) being thrust into its neck, after which a Dubla woman, named Manli (accused No. 2) had thrown the body away among the rubbish. After an interval of four days, Vijia Lakshmi repeated her confession, but in greater detail, before the first class Magistrate, stating that the child had lived about a *ghari* (i.e. 24 minutes) after birth; that she had

killed it by pressing the end of the *tabilha* on its throat, that she had then put the body in a basket, covered it up with rubbish: and that she had on the following morning hired Manli to throw it away.

The Sessions Judge, on the above grounds, found Vija Lakshmi guilty. Her case was a deplorable one and was another instance of the sad results of not allowing Hindu widows to remarry; but nothing was left to him but to pass the sentence of death.

M. Shantaram Narayan drew the attention of the Court to the fact, that in all the five cases of infanticide which had come before the Court since 1876, the Court had recommended the extension of the clemency of Government, and he trusted that this course would be allowed in the present case. The culprit being a woman who was prevented by the hard bondage of custom from legitimate marriage, it was peculiarly a case for an extension of clemency.

The Hon'ble Mr. Justice West in a lengthy and elaborate judgment, remarked that, "people who belonged to castes which visited the offence of libertinism with such extreme severity and did not allow the Remarriage of Widows, were of course labouring under peculiar disadvantages. Society was bound in its own interest to look at the matter calmly and judicially and bring pressure to bear, if it could be done with advantage upon castes which had these rules, which were said to be very cruel. If they were so, the remedy ought to be brought by society itself."

"The case was not to be distinguished from the great number of cases which came before them of a similar description and the Court did not think it was necessary that the extreme penalty of the law should be carried into execution. They did not think the crime of child murder was yet so common that forfeiture of life should follow in every instance where a woman was found guilty of it; but they did think that the case was not one in

which they would be justified in making a recommendation to Government.. Their determination therefore, was that the conviction was confirmed and that the sentence of death was not confirmed, but was commuted to transportation for life."

There were numerous petitions submitted to Government, for the reduction of the above sentence. The Poona Sarvajanik Sabha, in a long letter, No. 31 dated 5th June 1881, addressed to the Chief Secretary to Government Judicial Department, thus observed:—

"In Vijia Lakshmi's case, it is to be noted that she became a widow at twenty, a time of life when youthful passions are apt to get the better of discretion and calm judgment regarding consequences. The law of her caste condemned her to perpetual widowhood accompanied with hardships, social and physical, which do not fall to the lot of her sisters in any other part of the world. Mr. Justice West in his judgment has drawn a harsh inference from the circumstance that Vijaya Lakshmi had given birth to a daughter in her husband's life-time, and therefore had known what marital happiness was. This circumstance however, does not furnish any useful test as to the time of life when Hindu widows of higher castes may be considered as secure against temptation. Unless the Hindu child widows in such castes are from the first educated to a life of self-abnegation, a brief enjoyment of marital happiness fails to furnish a sufficient safeguard against temptation."

The Judges, who tried the appeal were asked to give their opinion on the petitions, when they replied that "the case was not one deserving of the exercise of the prerogative of mercy."

Thereupon, the Government of Bombay in their Resolution No 4645 dated 18th July 1881, "commuted the sentence of transportation for life passed upon Bai Vijaya Lakshmi to one of rigorous imprisonment for five years."

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## AN APPEAL FROM THE WIDOWS OF SURAT, 1885.

Substance of a petition addressed to Sett Dwarkadas Lalubhai, Nagarsett of Surat, and other Mahajans, by helpless widows belonging to different sects of the Bania Community residing in that city:—

“They allege that their life is one of extreme misery, which has become now intolerable. They attribute this state of things to the male sex, for it is they who molest them and make them suffer. They complain that their parents got them married at an early and tender age when they knew nothing of the world and when they were minors. Three out of the whole lot of petitioners were married to husbands whose age was the same with theirs; that two were married to husbands whose age was thrice as much as theirs. Two had husbands who were five times older than they and their parents received Rs. 1000 and 1500 for giving them in marriage. In disposing of their daughters to such husbands, money was a primary consideration with the parents, and not the happiness of their daughters.

They state that at the time of marriage they were uneducated and did not understand the drift of the *mantras* which were recited on the occasion by the priests. That the husbands of four of the petitioners died immediately after the marriages were solemnized—they hardly knew what married life was but when they arrived at majority their sufferings have been indescribably horrible. Their dress and ornaments were taken out—they were subjected to the horrible atrocity of *Shaving* at the hands of the inhuman Monster, the *Barber*, to whose ruffian treatment they had quietly to yield. Shorn of their beauty, deprived of their dress, and what is worse, they have been deprived of their liberty. They are under a system of espionage and treated as prisoners. Quantity of ordinary food is at times denied to them and they are thinned by inches. At times matters reach to such a pass that sometimes they feel an inclination to put an end to their existence, but as suicide is sinful, they are deterred from resorting to so heinous a crime. They have therefore submitted this their appeal detailing therein a recital of their woes, lamentations and miseries to the Mahajans or headmen of the community, in order that



the subject may receive some consideration and that some means may be devised for mitigating their present sufferings. They further maintain, that if males have the option of remarrying as many times as they may wish, why females are precluded from this privilege. It is not desirable to recount the evil deeds committed by males on helpless widows. Instances with full particulars can be cited and published, if needed. The result of this brutal custom of the prohibition of the marriage of Hindu widows has been that incest and adultery are rampant—crimes in their most revolting character are committed and the state of society becomes disgraceful in the eyes of all right thinking men. Quotations are given from ancient writings illustrative of the fact that widow marriages are allowed by the Shastras and that the so-called prohibition has no foundation. It is simply an invention of the priests to place woman under their subjection and control. It is therefore necessary to follow a good and righteous course which will tend to our future happiness. We do not ask any thing more than the reintroduction of a system which did exist before, and does at present exist in some of the Vaishnavas. They pray that the Mahajans will take the subject of their appeal into their deliberate and favorable consideration and thus redress the wrongs of the poor, innocent and helpless widows. If however they hesitate or do not take any action in the matter now brought before them, they will lay their grievances before the benign British Government whose protection they will claim as the daughters of Her Most Gracious Majesty the Queen Empress of this large and vast Empire, the land of the ancient Aryans, who as history and the Shastras relate did not prohibit the Remarriage of Women.

PETITION FROM HIS HIGHNESS THE  
 MAHARAJA OF BURDWAN AND OTHERS  
 AGAINST POLYGAMY.

To

THE HONORABLE THE LEGISLATIVE COUNCIL OF INDIA.

The humble memorial of *Maha Rajadhi Raj*

*Malitab Chand Bahadur, Raja of Bardwan.*

Sheweth,

That your Memorialist has long been engaged in the consideration of the state of marriage among the Hindus in Bengal, and is impressed with a conviction that the interference of the Legislature is absolutely required on the grounds of humanity towards helpless females for the correction of the abuses to which that institution has become subject.

2 That according to the doctrines of the Hindu Law, every Hindu is required to marry one wife but is authorized in the event of certain contingencies and on certain conditions to marry a second, third or fourth time.

The contingencies and conditions are specified in the Laws of Manu, whose authority in such matters is paramount, it being expressly declared that the authority of no Sage or Legislator can be recognized if at variance with his doctrine.

3 That it has become the practice in Bengal to marry several wives without regard to the restrictions imposed by the Hindu Law. The practice obtains specially among the class of Brahmins called Kulins. Although the sacred writings of the Hindus recognize no distinctions among the Brahmins, or even the classes below them in rank, Raja Bullal Sen, a little time before the Mahomedan conquest established distinctions among the Brahmins and Kaysths by which a portion of them under the name of Kulins were declared to be superior to the rest of their tribes. These distinctions, rendered general in course of time among all classes of Hindus by the sanction of example, have been universally adopted in Bengal and are to the present day scrupulously followed and to them may be traced those enormous abuses of the marriage institution which your Memorialist deplures.

4 That the Kulins among the Brahmins are by these

modern innovations on Hinduism prohibited, under pain of degradation, from marrying their daughters to Brahmins of an inferior class. On the other hand, Brahmins of the inferior classes are anxious to marry their daughters to persons of the superior class, and pay large sums of money to secure such alliances. The evils which result from the prevalence of these notions which are at once absurd and contrary to the sacred writings are numerous and flagrant. Those Kulins who cannot get persons of equal caste willing to effect matrimonial alliances with them nor afford the large marriage gratuities which are demanded are obliged to let their daughters arrive at old age without being married. Inferior Brahmins are unable to get wives from inability to pay those large gratuities, and many of them are forced to sell the whole of their property for the purpose. Kulin Brahmins never marry without receiving large donations and multiply wives for the sake of obtaining those gratuities without knowing or caring what becomes of the women to whom they are united by the most solemn rites of the Religion. They have been known to marry more than a hundred wives each, and it is customary with them immediately after going through the nuptial ceremonies and receiving their gratuities to leave the houses of the girls they have married, never to see their faces more. Again the Kulins of some of the Sudra caste enjoy the privilege of disposing of their sons and daughters in marriage for large gratuities. Instances do not unfrequently happen of children only six months old being thus given away.

5 That the state of a Society in which such opinions and practices prevail may be readily imagined. Marriage is a traffic. So far from being entered into as the most solemn transaction of life calling into exercise the purest affections of the heart and furnishing the readiest sources of domestic comfort and happiness, and to be regarded as an indissoluble engagement except in cases of failure of the objects of the institution, the Kulins marry solely for money and with no intention to fulfil any of the duties which marriage involves. The women who are thus nominally married without the hope of ever enjoying the happiness which marriage is calculated to confer, particularly on them, either pine away for want of objects on which to place the affections which spontaneously arise in the heart, or are betrayed by the violence of their passions and their defective education into immorality. To conceal the effects of their vices the practice of abortion is exten-

sively resorted to, the inmates of the family being too willing to afford them aid towards removing the infamy which would attach to them and that even at the hazard of destroying the life of the guilty mother with that of the unborn child of sin and shame. These abortions though more commonly practised than can be imagined, are carefully concealed by the family even from the knowledge of the neighbours; and if concealment becomes impossible, the neighbours and tenantry are strictly cautioned against divulging them. So strict are the precautions taken, that the Police are quite ignorant of deeds of darkness that are committed around them, and the most vigilant Magistrates would be baffled in their attempts to penetrate the veil which covers the atrocities.

6. That your Memorialist is assured that every feeling of humanity make your Honorable Council anxious to suppress evils of such magnitude and it is therefore incumbent on him to point out the means by which crimes of so deep a dye may be prevented and the rights of humanity supported. The obvious remedy is to enforce strictly the Rules of the Hindu Law, on the subject and in accordance therewith to pass a Law the provisions of which may appear to your Hon'ble Council to be calculated to repress the existing evil as above pointed out.

7. That the remedy though obvious and perfectly consistent with the Hindu Law, cannot in the disorganized state of Hindu Society be applied by the force of public opinion or any other power than that derived from the Legislature.

8. Your Memorialist therefore appeals to the humanity of your Hon'ble Council to deliver the Hindus of Bengal from the opprobrium which hangs over them, and females of that community from the ruin and degradation entailed on them by the practice of polygamy and its attendant crimes.

And your Memorialist as in duty bound shall ever pray.

Bardwan,  
Rajbari.  
27th December 1855. }

